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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEFF SILVERSTER, MICHAEL POESCHL, BRANDON COMBS, THE CALGUNS FOUNDATION, INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization, **Plaintiffs,** **v.** **KAMALA HARRIS, Attorney General of California (in her official capacity), and DOES 1 to 20.**	**Case No. 1:11-cv-02137-AWI-SKO** **DECLARATION OF VICTOR OTTEN IN SUPPORTOF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT**

I, Victor Otten, declare as follows:

1. I have personal knowledge of the following facts, except where I have just information and belief, as indicated, and, if called as a witness, I could and would testify competently to the facts.

2. I am a partner with the law firm Otten & Joyce, attorneys of record for Plaintiffs JEFF SILVERSTER, BRANDON COMBS, THE CALGUNS FOUNDATION, INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization. I make this declaration of my personal knowledge and, if called as a witness, could testify competently to each of the following facts.

3. On or about January 28, 2013, Plaintiffs prior attorney, Jason Davis, served responses to Defendants first of interrogatories. Attached hereto as Exhibit "A" is a true and correct copy of Brandon Combs responses to Defendants first set of interrogatories. Attached hereto as Exhibit "B" is a true and correct copy of Jeffrey Silvester's responses to Defendants first set of interrogatories.

4. In May 2013, Jonathan Eisenberg took the depositions of Gene Hoffman, Brandon Combs, Jeff Silvester and Alan Gottlieb. A court reporter transcribed what was said at the depositions and provided the parties with a transcript. Attached hereto as Exhibit "C" is a true and correct copy of certain pages of the transcript of the Hoffman deposition. Attached hereto as Exhibit "D" is a true and correct copy of certain pages of the transcript of the Gottlieb deposition.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed on October 14th 2013 in Torrance, California.

DATED: October 14, 2013

OTTEN & JOYCE, LLP

Victor Otten, Esq.
Attorneys for Plaintiffs

EXHIBIT "A"

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

JEFF SILVESTER, MICHAEL POESCHL, BRANDON COMBS, THE CALGUNS FOUNDATION, INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization. Plaintiffs, vs. KAMALA HARRIS, Attorney General of California (in her official capacity), and DOES 1 to 20, Defendant.	Case No: 1:11-cv-02137-AWI-SKO **PLAINTIFF BRANDON COMBS'S RESPONSE TO DEFENDANT KAMALA D. HARRIS'S FIRST SET OF INTERROGATORIES**

broad and unduly burdensome. (*IPC, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD 316, 321 – Providing "every fact" could require "laborious, time-consuming analysis, search and description of incidental, secondary, and perhaps irrelevant and trivial details.")

RESPONSE: Without waiving the above referenced objection, Plaintiff states that, I cannot adequately defend myself or my family with the firearms that are usually kept at home. My need and desire to protect self and family extend beyond the home, and include other locations such as boats, cars, businesses, and other locations.

Moreover, at any given time, my firearms may be: not immediately physically available due to the firearm's proximity to my physical location – both within the home and outside of the home; underpowered for certain self-defense scenarios; over-powered for certain self-defense scenarios; inoperable; stolen; broken; unclean for reliable operation or otherwise unreliable; out for service; loaned to another individual for up to a 30 day period in accordance with California law; there may be a lack of ammunition available for the current firearm; an act of terrorism may make the firearm[s] owned by me insufficient to defend self, family, or home; riots and looting may render the firearm[s] owned by me to be insufficient; earthquakes and other natural disasters may render any and all firearms possessed by me to be insufficient for self-defense and defense of others; temporary seizures of firearms lawfully possessed may render the firearms insufficient for self-defense.

In fact, under the Militia Act of 1792, many were required to have more than one firearm – "and to be armed with a sword and pair of pistols, the holsters of which to be covered with bearskin caps."

INTERROGATORY NO. 7

Identify and describe in full and complete detail all harms that you suffer by, per California Penal Code sections 26815(a) and/or 27540, having to wait 10 days between purchasing and taking delivery of a firearm.

RESPONSE TO INTERROGATORY NO. 7

OBJECTION: Contention interrogatories asking for each and every fact, or application

316, 321 – Providing "every fact" could require "laborious, time-consuming analysis, search and description of incidental, secondary, and perhaps irrelevant and trivial details."]

RESPONSE: Plaintiff contends that there are circumstances in which California Penal Code section 26815(a)'s "waiting period" (between purchase and delivery of a firearm) to first-time firearm purchasers would be unconstitutional, such as applications of the provision to women who have been abused and have obtained Temporary Restraining Orders for their protection, but such contentions are not the subject of this litigation.

INTERROGATORY NO. 9

If you contend that it is unconstitutional to apply California Penal Code section 27540's "waiting period" (between purchase and delivery of a firearm) to first-time firearms purchasers, state all facts supporting this contention.

RESPONSE TO INTERROGATORY NO. 9

OBJECTION: Contention interrogatories asking for each and every fact, or application of law to fact, that supports particular allegations in an opposing pleading may be held to be overly broad and unduly burdensome. [*IPV, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD 316, 321 – Providing "every fact" could require "laborious, time-consuming analysis, search and description of incidental, secondary, and perhaps irrelevant and trivial details."]

RESPONSE: Without waiving the above referenced objection, Plaintiff contends that there are circumstances in which California Penal Code section 26815(a)'s "waiting period" (between purchase and delivery of a firearm) to first-time firearm purchasers would be unconstitutional, such as applications of the provision to women who have been abused and have obtained Temporary Restraining Orders for their protection, but such contentions are not the subject of this litigation.

INTERROGATORY NO. 10

If you contend that California Penal Code section 26815(a) would be unconstitutional if that law's "waiting period" (between purchase and delivery of a firearm) was one day, state all facts supporting this contention.

RESPONSE TO INTERROGATORY NO. 10

OBJECTION: Contention interrogatories asking for each and every fact, or application of law to fact, that supports particular allegations in an opposing pleading may be held to be overly broad and unduly burdensome. [*IPC, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD 316, 321 – Providing "every fact" could require "laborious, time-consuming analysis, search and description of incidental, secondary, and perhaps irrelevant and trivial details."]

RESPONSE: Without waiving the above referenced objection, Plaintiff states that the provisions are unconstitutional, to the extent that they would apply to an individual whose state records (including the Automated Firearm System and Armed and Prohibited Database) identify them as a person not prohibited from possessing firearms and already being the owner of a registered firearm, in that they violate my Second, Fourth and Fifth Amendment rights. The Second Amendment applies beyond merely the home. There are several cases pending in the Ninth, Seventh, and Second Circuit Courts of Appeals relating to whether the Second Amendment's "right to […] bear arms" for the purpose of self-defense extends beyond the home. See generally: *District of Columbia v. Heller*, 554 U.S. 570(2008) and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010). There are currently two cases pending in the Ninth Circuit Court of Appeals relating to California law: *Richards v. Prieto* (Yolo County), Case No.: 11-16255 and *Peruta v. County of San Diego*, Case No.: 10-56971. These cases were argued and submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS (7th Cir. Ill. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision to give the state legislature an opportunity to enact a licensing scheme. But the court in *Kachalsky v. County of Westchester*, 2012 U.S. App. LEXIS 24363 (2nd Cir. N.Y. Nov. 27, 2012) found that the right did not extend beyond the home. These Constitutional violations, both within the home and outside the home, are supported by the following facts:

I am a holder of valid California Certificates of Eligibility and am, per se, not in a class of persons described within Penal Code sections 29800, *et seq.*, 29900, *et seq.*, or Welfare and Institutions Code sections 8100 or 8103, or Title 27 Part 178.32 of the Code of Federal Regulations. 11 C.C.R. §4036(b). In other words, I and other holders of a valid California

Certificate of Eligibility represented by CGF and SAF are known by the State of California, at all times certified, to not be prohibited from possessing firearms under federal or state law.

Additionally, I am a holder of a valid license to carry a concealed firearm. As a holder of a valid license to carry pursuant to Penal Code section 26150 *et seq.* I and other such holders represented by CGF and SAF are, per se, not in a class of persons described in Penal Code sections 29800, *et seq.*, 29900, *et seq.*, or Welfare and Institutions Code 8100 or 8103. Penal Code section 26195(a)-(b). In other words, I and other holders of a valid license to carry pursuant to Penal Code section 26150, *et seq.* represented by CGF and SAF are not prohibited from possessing firearms under federal or state law and may often be armed with a loaded concealed firearm, including while purchasing firearms for which they are subjected to a 10-day ban on possessing.

I already have at least one firearm, but I seek to have additional firearms for protection of myself and my family, *inter alia*, pursuant to my Second Amendment right to "keep and bear *arms*." (Emphasis added to note the use of the plural.) I can otherwise demonstrate proof of ownership and lawful possession of a firearm. For example, some firearms are registered in the California Automated Firearms System database pursuant to, *inter alia*, Penal Code section 28200, *et seq.* In purchasing my firearms, I was already at least once subjected to the 10-day waiting period prior to physically receiving my firearms. As a result of the 10-day waiting period, I was obligated to endure a 10-day ban on the acquisition of my constitutionally protected firearms and incur additional expense and burden by being forced to make a second visit to the firearms dealer that sold me my firearm.

Though I must wait 10 days to acquire possession of each firearm I purchase for self-defense, others seeking commercial, professional, and personal acquisition of firearms, such as destructive device collectors, movie prop houses, auction purchasers, and "consultants-evaluators," are permitted instant access to firearms.

The National Instant Check System, located at the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia, provides full and instant service to FFLs in 30 states, five U.S. territories, and the District of Columbia. California voluntarily opted out of the

NICS instant background check and maintains its own background check system with an extended 10-day waiting period against purchasers of firearms in California, including myself. Moreover, the Attorney General has established and maintains an online database known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm as indicated by a record in the Consolidated Firearm Information System and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. Penal Code §30000, *et seq.*

The information contained in the PAPF is available for the purpose of determining if persons are armed and prohibited from possessing firearms. Penal Code §30000, *et seq.* Conversely, the PAPF is also available for the purpose of determining if persons are armed and not prohibited by the very nature of the individual not appearing in the PAPF – but appearing in the Automated Firearm System as the registered owner of a firearm.

In fact, the California Department of Justice had determined alternative methods that eliminate delays upon law-abiding firearm owners while ensuring public safety as early as 1991. In its AB 497 Alternative Feasibility Studies: Report of Findings (1991), the Department of Justice identified multiple methods of performing proper background checks such that the persons in prohibited categories would not be allowed to purchase a firearm from a licensed California firearm dealer while imposing minimal infringement on gun owners' rights to purchase and possess firearms. As I am a verifiable law-abiding firearm owner, there is no justifiable reason to delay my acquisition of a firearm I already own.

If I were required to wait 1 day between purchasing a firearm and taking delivery of a firearm, I would thereby be deprived of the use, custody and control of my personal property. The delay would also deny me the ability to defend self, family, and home with said firearm that I already own; the hypothetical waiting period mandates a brief window of 29 days from which I must return to obtain physical possession of property that I already own, causes an additional increased 1 day delay and added expenses of Dealer Record of Sale fees, storage fees, and transportation fees when I am unavailable to take physical possession of the firearm within the

29 day window; causes increased travel expenses upon firearm purchases coinciding with distance from my home to the licensed firearm dealer premises due to the requirement that I must make a second trip to receive custody of the firearm purchased; limits my out-of-town purchases and gun show purchases; and limits the market of firearms available to areas I am willing to travel to twice during a period of at least 1 day and at most 30 days; causes added burden and expense of locating and paying another more local dealer who may be willing, but is not statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm dealer; and causes me to lose the opportunity cost of the time spent on the second trip to receive a firearm I already own.

INTERROGATORY NO. 11

If you contend that California Penal Code section 26815(a) would be unconstitutional if that law's "waiting period" (between purchase and delivery of a firearm) was three days, state all facts supporting this contention.

RESPONSE TO INTERROGATORY NO. 11

OBJECTION: Contention interrogatories asking for each and every fact, or application of law to fact, that supports particular allegations in an opposing pleading may be held to be overly broad and unduly burdensome. [*IPV, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD 316, 321 – Providing "every fact" could require "laborious, time-consuming analysis, search and description of incidental, secondary, and perhaps irrelevant and trivial details."]

RESPONSE: Without waiving the above referenced objection, Plaintiff states that the provisions are unconstitutional, to the extent that they would apply to an individual whose state records (including the Automated Firearm System and Armed and Prohibited Database) identify them as a person not prohibited from possessing firearms and already being the owner of a registered firearm, in that they violate my Second, Fourth and Fifth Amendment rights. The Second Amendment applies beyond merely the home. There are several cases pending in the Ninth, Seventh, and Second Circuit Courts of Appeals relating to whether the Second Amendment's "right to [...] bear arms" for the purpose of self-defense extends beyond the home.

See generally: *District of Columbia v. Heller*, 554 U.S. 570(2008) and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010). There are currently two cases pending in the Ninth Circuit Court of Appeals relating to California law: *Richards v. Prieto* (Yolo County), Case No.: 11-16255 and *Peruta v. County of San Diego*, Case No.: 10-56971. These cases were argued and submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS (7th Cir. Ill. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision to give the state legislature an opportunity to enact a licensing scheme. But the court in *Kachalsky v. County of Westchester*, 2012 U.S. App. LEXIS 24363 (2nd Cir. N.Y. Nov. 27, 2012) found that the right did not extend beyond the home. These Constitutional violations, both within the home and outside the home, are supported by the following facts:

I am a holder of valid California Certificates of Eligibility and am, per se, not in a class of persons described within Penal Code sections 29800, *et seq.*, 29900, *et seq.*, or Welfare and Institutions Code sections 8100 or 8103, or Title 27 Part 178.32 of the Code of Federal Regulations. 11 C.C.R. §4036(b). In other words, I and other holders of a valid California Certificate of Eligibility represented by CGF and SAF are known by the State of California, at all times certified, to not be prohibited from possessing firearms under federal or state law.

Additionally, I am a holder of a valid license to carry a concealed firearm. As a holder of a valid license to carry pursuant to Penal Code section 26150 *et seq.* I and other such holders represented by CGF and SAF are, per se, not in a class of persons described in Penal Code sections 29800, *et seq.*, 29900, *et seq.* or Welfare and Institutions Code 8100 or 8103. Penal Code section 26195(a)-(b). In other words, I and other holders of a valid license to carry pursuant to Penal Code section 26150, *et seq.* represented by CGF and SAF are not prohibited from possessing firearms under federal or state law and may often be armed with a loaded concealed firearm, including while purchasing firearms for which they are subjected to a 10-day ban on possessing.

I already have at least one firearm, but I seek to have additional firearms for protection of myself and my family, *inter alia*, pursuant to my Second Amendment right to "keep and bear *arms*." (Emphasis added to note the use of the plural.) I can otherwise demonstrate proof of

ownership and lawful possession of a firearm. For example, some firearms are registered in the California Automated Firearms System database pursuant to, *inter alia* Penal Code section 28200, *et seq.* In purchasing my firearms, I was at least once subjected to the 10-day waiting period prior to physically receiving my firearms. As a result of the 10-day waiting period, I was obligated to endure a 10-day ban on the acquisition of my constitutionally protected firearms and incur additional expense and burden by being forced to make a second visit to the firearms dealer that sold me my firearm.

Though I must wait 10 days to acquire possession of each firearm I purchase for self-defense, others seeking commercial, professional, and personal acquisition of firearms, such as destructive device collectors, movie prop houses, auction purchasers, and "consultants-evaluators," are permitted instant access to firearms.

The National Instant Check System, located at the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia, provides full and instant service to FFLs in 30 states, five U.S. territories, and the District of Columbia. California voluntarily opted out of the NICS instant background check and maintains its own background check system with an extended 10-day waiting period against purchasers of firearms in California, including myself. Moreover, the Attorney General has established and maintains an online database known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm as indicated by a record in the Consolidated Firearm Information System and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. Penal Code §30000, *et seq.*

The information contained in the PAPF is available for the purpose of determining if persons are armed and prohibited from possessing firearms. Penal Code §30000, *et seq.* Conversely, the PAPF is also available for the purpose of determining if persons are armed and not prohibited by the very nature of the individual not appearing in the PAPF – but appearing in the Automated Firearm System as the registered owner of a firearm.

In fact, the California Department of Justice had determined alternative methods that

eliminate delays upon law-abiding firearm owners while ensuring public safety as early as 1991. In its AB 497 Alternative Feasibility Studies: Report of Findings (1991), the Department of Justice identified multiple methods of performing proper background checks such that the persons in prohibited categories would not be allowed to purchase a firearm from a licensed California firearm dealer while imposing minimal infringement on gun owners' rights to purchase and possess firearms. As I am a verifiable law-abiding firearm owner, there is no justifiable reason to delay my acquisition of a firearm I already own.

If I were required to wait 3 days between purchasing a firearm and taking delivery of a firearm, I would thereby be deprived of the use, custody, and control of my personal property. The delay would also deny me the ability to defend self, family, and home with said firearm that I already own; the hypothetical waiting period mandates a brief window of 27 days from which I must return to obtain physical possession of property that I already own, causing an additional increased 3 day delay and added expenses of Dealer Record of Sale fees, storage fees, and transportation fees when I am unavailable to take physical possession of the firearm within the 27 day window; causes increased travel expenses upon firearm purchases coinciding with distance from my home to the licensed firearm dealer premises due to the requirement that I must make a second trip to receive custody of the firearm purchased; limits my out-of-town purchases and gun show purchases; and limits the market of firearms available to areas I am willing to travel to twice during a period of at least 3 days and at most 30 days; causes added burden and expense of locating and paying another more local dealer who may be willing, but is not statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm dealer; and causes me to lose the opportunity cost of the time spent on the second trip to receive a firearm I already own.

INTERROGATORY NO. 12

If you contend that California Penal Code section 26815(a) would be unconstitutional if that law's "waiting period" (between purchase and delivery of a firearm) was five days, state all facts supporting this contention.

In fact, the California Department of Justice had determined alternative methods that eliminate delays upon law abiding firearm owners while ensuring public safety as early as 1991. In its AB 497 Alternative Feasibility Studies: Report of Findings (1991), the Department of Justice identified multiple methods of performing proper background checks such that the persons in prohibited categories would not be allowed to purchase a firearm from a licensed California firearm dealer while imposing minimal infringement on gun owners' rights to purchase and possess firearms. As I am a verifiable law-abiding firearm owner, there is no justifiable reason to delay my acquisition of a firearm I already own.

If I were required to wait 5 days between purchasing a firearm and taking delivery of a firearm, I would thereby be deprived of the use, custody, and control of my personal property. The delay would also deny me the ability to defend self, family, and home with said firearm that I already own; the hypothetical waiting period mandates a brief window of 25 days from which I must return to obtain physical possession of property that I already own, causing an additional increased 5 day delay and added expenses of Dealer Record of Sale fees, storage fees, and transportation fees when I am unavailable to take physical possession of the firearm within the 25 day window; causes increased travel expenses upon firearm purchases coinciding with distance from my home to the licensed firearm dealer premises due to the requirement that I must make a second trip to receive custody of the firearm purchased; limits my out-of-town purchases and gun show purchases; and limits the market of firearms available to areas I am willing to travel to twice during a period of at least 5 days and at most 30 days; causes added burden and expense of locating and paying another more local dealer who may be willing, but is not statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm dealer; and causes me to lose the opportunity cost of the time spent on the second trip to receive a firearm I already own.

INTERROGATORY NO. 16

Describe in full and complete detail all expenses that you have incurred to acquire firearms because of California Penal Code section 26815(a) and its "waiting period" (between

purchase and delivery of a firearm).

RESPONSE TO INTERROGATORY NO. 16

RESPONSE: I have lost the opportunity costs to engage in business and other activities during the time it took me for each and every second trip to the licensed firearms dealer to take possession, custody, and control of each firearm I own.

I have lost the opportunity to purchase firearms due to an inability to make a second trip.

I have incurred expenses, including shipping expenses, additional dealer transfer fees, increased firearm prices due to lack of local competition, additional fuel costs, wear and tear on my vehicle[s] necessary for a return trip to the licensed dealer to receive my firearm. On information and belief, I have spent approximately $1,500.00 on such expenses.

I have incurred additional costs of having to resubmit a Dealer Record of Sale application due to scheduling conflicts preventing me from returning to the store to receive my firearm within the temporary window of availability. Upon information and belief, I have spent approximately $100.00 on resubmission fees.

INTERROGATORY NO. 17

Describe in full and complete detail all expenses that you have incurred to acquire firearms because of California Penal Code section 27540 and its "waiting period" (between purchase and delivery of a firearm).

RESPONSE TO INTERROGATORY NO. 17

RESPONSE: I have lost the opportunity costs to engage in business and other activities during the time it took me for each and every second trip to the licensed firearms dealer to take possession, custody, and control of each firearm I own.

I have lost the opportunity to purchase firearms due to an inability to make a second trip.

I have incurred expenses, including shipping expenses, additional dealer transfer fees, increased firearm prices due to lack of local competition, additional fuel costs, wear and tear on my vehicle[s] necessary for a return trip to the licensed dealer to receive my firearm. On information and belief, I have spent approximately $1,500.00 on such expenses.

I have incurred additional costs of having to resubmit a Dealer Record of Sale application due to scheduling conflicts preventing me from returning to the store to receive my firearm within the temporary window of availability. Upon information and belief, I have spent approximately $100.00 on resubmission fees.

INTERROGATORY NO. 18

State the longest distance you have traveled, in the last 10 years, from your home to a licensed firearms retailer to acquire a firearm.

RESPONSE TO INTERROGATORY NO. 18

RESPONSE: Approximately 764 miles.

INTERROGATORY NO. 19

State the distances from your home, in miles, of the three licensed firearms dealers that are presently closest to your home.

RESPONSE TO INTERROGATORY NO. 19

OBJECTION: This request is so vague or ambiguous as to be burdensome or oppressive as to the meaning of "licensed firearm dealers." Moreover, Plaintiff would have to speculate as to the meaning of the phrase "licensed firearm dealers." This interrogatory provides no definition of what "licenses" or which category of "firearm dealers" this interrogatory refers to. Neither Department of Justice nor any other entity publishes a list or makes a list available of persons who are licensed under California law to transfer firearms – therefore it is impossible for me to know with any certainty who the three licensed firearm dealers that are presently closest to my home.

RESPONSE: Without waiving the above referenced objection, Plaintiff responds: To the best of my knowledge, and on information and belief, the three firearm retailers open to the public that are presently closest to my home are: PRK Arms, Spencer's Firearms, and Herb Bauer's Sporting Goods. The distances from these locations to my home are unknown.

INTERROGATORY NO. 20

State the name and World Wide Web address of each Internet seller of firearms from

VERIFICATION

BRANDON COMBS declares:

1. I am a plaintiff in the above-captioned action;

2. I have read the foregoing "PLAINTIFF BRANDON COMBS'S RESPONSE TO DEFENDANT KAMALA D. HARRIS'S FIRST SET OF INTERROGATORIES" ("The Response") and know its contents. I am informed and believed that the matters set forth in the Response are true and accurate, and on that ground I allege, to the best of my knowledge and information, that the matters therein stated are true and accurate.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Verification was executed on January 28, 2013, at MADERA, California.

BRANDON COMBS

EXHIBIT "B"

Jason A. Davis (Calif. Bar No. [illegible])
Davis & Associates
[illegible] Puente Real Suite [illegible]
Moreno Valley, CA 92[illegible]
Tel: [illegible] Fax: [illegible]
email: [illegible]

Derek E. [illegible] (Calif. Bar No. [illegible])
Law Offices of Derek E. [illegible]
1545 Wilson Street, Suite [illegible]
San Jose, CA 95125
Tel: [illegible] Fax: [illegible]
Email: [illegible]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

JEFF SILVESTER, MICHAEL ROSSOL, BRANDON COMBS, THE CALGUNS FOUNDATION, INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization, Plaintiffs vs. KAMALA HARRIS, Attorney General of California or her official capacity, and DOES 1 to 50, Defendant	Case No. 1:11-cv-02137-AWI-SKO **PLAINTIFF JEFF SILVESTER'S RESPONSE TO DEFENDANT KAMALA D. HARRIS'S FIRST SET OF INTERROGATORIES**

broad and unduly burdensome. (*IPC Inc. v. Mercantile Bank of Topeka* (D.KS. 1998) 179 F.R.D. 316, 321. Providing "every fact" could require "laborious, time-consuming analysis, search and description of incidental, secondary, and perhaps irrelevant and trivial details.")

RESPONSE: Without waiving the above referenced objection, Plaintiff states that I cannot adequately defend myself or my family with the firearms that are usually kept at home. My need and desire to protect self and family extend beyond the home, and include other locations such as boats, cars, businesses, and other locations.

Moreover, at any given time, my firearms may be: not immediately physically available due to the firearm's proximity to my physical location – both within the home and outside of the home; underpowered for certain self-defense scenarios; over-powered for certain self-defense scenarios; inoperable; stolen; broken; unclean for reliable operation or otherwise unreliable; out for service; placed in another individual for up to a 30 day period in accordance with California law; there may be a lack of ammunition available for the current firearm; an act of terrorism may make the firearm(s) owned by me insufficient to defend self, family, or home; riots and looting may render the firearm(s) owned by me to be insufficient; earthquakes and other natural disasters may render any and all firearms possessed by me to be insufficient for self-defense and defense of others; temporary seizures of firearms lawfully possessed may render the firearms insufficient for self-defense.

In fact, under the Militia Act of 1792, many were required to have more than one firearm "and to be armed with a sword and pair of pistols, the holsters of which to be covered with bearskin caps."

INTERROGATORY NO. 7

Identify and describe in full and complete detail all harms that you suffer by, per California Penal Code sections 26815 and/or 27540, having to wait 10 days between purchasing and taking delivery of a firearm.

RESPONSE TO INTERROGATORY NO. 7

OBJECTION: Contention interrogatories are, for each and every fact, or application thereof

of law to fact that supports particular allegations in an opposing pleading may be held to be overly broad and unduly burdensome. (*IPI, Inc. v. Mercantile Bank of Topeka*, D.Kan. 1998) 174 FRD 326, 328 ("Providing every fact would require lengthy, time-consuming analysis, search and description of incidental, secondary, and perhaps irrelevant and trivial details.")

RESPONSE: Without waiving the above referenced objection, Plaintiff states that the California Penal Code sections that require me to wait 10 days between purchasing a firearm and taking delivery of a firearm, thereby deprive me of the use, custody, control, and ability to defend self, family, and home with said firearm that I already own, mandate a brief windows of 30 days from which I must return to obtain physical possession of property that I already own; cause an additional increased 10 day delay and added expenses of Dealer Record of Sale fees, storage fees, and transportation fees when I am unavailable to take physical possession of the firearm within the 30 day window; cause increased travel expenses upon firearm purchases coinciding with distance from my home to the licensed firearm dealer's premises due to the requirement that I must make a second trip to receive custody of the firearm purchased; limit my out-of-town purchases and gun show purchases, and limit the market of firearms available to areas I am willing to travel to twice during a period of at least 10 days and at most 30 days; cause added burden and expense of locating and paying another more local dealer who may be willing, but is not statutorily obligated, to process a firearms transfer originating at a competitor licensed firearm dealer; and cause me to lose the opportunity cost of the time spent on the second trip to receive a firearm I already own.

INTERROGATORY NO. 8

If you contend that it is unconstitutional to apply California Penal Code section 26815(a)'s "waiting period" (between purchase and delivery of a firearm) to first-time firearms purchasers, state all facts supporting this contention.

RESPONSE TO INTERROGATORY NO. 8

OBJECTION: Contention interrogatories asking for each and every fact or application of law to fact that supports particular allegations in an opposing pleading may be held to be overly broad and unduly burdensome. (*IPI, Inc. v. Mercantile Bank of Topeka*, D.Kan. 1998) 174 FRD

[Note: "Providing every fact" would require laborious, time-consuming analysis, search and description of incidental, secondary, and perhaps irrelevant and trivial details.]

RESPONSE: Plaintiff contends that there are circumstances in which California Penal Code section 26815(a)'s "waiting period" (between purchase and delivery of a firearm) to first-time firearm purchasers would be unconstitutional, such as application of the provision to women who have been abused and have obtained Temporary Restraining Orders for their protection, but such contentions are not the subject of this litigation.

INTERROGATORY NO. 9

If you contend that it is unconstitutional to apply California Penal Code section 26815(a)'s "waiting period" (between purchase and delivery of a firearm) to first-time firearms purchasers, state all facts supporting this contention.

RESPONSE TO INTERROGATORY NO. 9

OBJECTION: Contention interrogatories asking for each and every fact or application of law to fact, that supports particular allegations in an opposing pleading may be held to be overly broad and unduly burdensome. *[illegible]*, 129 F.R.D. [illegible] (D.N.J. 1990). [Providing "every fact" would require laborious, time-consuming analysis, search and description of incidental, secondary, and perhaps irrelevant and trivial details.]

RESPONSE: Without waiving the above referenced objection, Plaintiff contends that there are circumstances in which California Penal Code section 26815(a)'s "waiting period" between purchase and delivery of a firearm to first-time firearm purchasers would be unconstitutional, such as application of the provision to women who have been abused and have obtained Temporary Restraining Orders for their protection, but such contentions are not the subject of this litigation.

INTERROGATORY NO. 10

If you contend that California Penal Code section 26815(a) would be unconstitutional if that law's "waiting period" (between purchase and delivery of a firearm) was one day, state all facts supporting this contention.

RESPONSE TO INTERROGATORY NO. 10

OBJECTION: Contention interrogatories asking for each and every fact or application of law to fact that supports particular allegations in an opposing pleading must be held to be overly broad and unduly burdensome. [*Hiro, Inc. v. Mercantile Bank of Topeka* (D.Kan 1995) 159 FRD 332.] Providing "every fact" would require laborious, time-consuming analysis, search and description of incidental, secondary, and possibly irrelevant and trivial details.]

RESPONSE: Without waiving the above referenced objection, Plaintiff states that the provisions are unconstitutional to the extent that they would apply to an individual whose state records including the National Instant System and Armed and Prohibited Databases identify them as a person not prohibited from possessing firearms and already being the owner of a registered firearm, in that they violate his Second, Fourth and Fifth Amendment rights. The Second Amendment applies beyond merely the home. There are several cases pending in the Ninth, Seventh, and Second Circuit Courts of Appeals relating to whether the Second Amendment applies to "bear arms" for the purpose of self-defense extends beyond the home. See generally, *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 3020 (2010). There are currently two cases pending in the Ninth Circuit Court of Appeals relating to California law: *Richards v. Prieto* (Yolo County), Case No. 11-16255 and *Peruta v. County of San Diego*, Case No. 10-56971. These cases were argued and submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS 27 (7th Cir. Dec. 21, 2012) found that the right did extend beyond the home but stayed its decision to give the state legislature an opportunity to enact a licensing scheme. But the court in *Nakdimen v. Chief of Bloomfield*, 2012 U.S. App. LEXIS 24565 (2nd Cir. N.Y. Nov. 21, 2012) found that the right did not extend beyond the home. These Constitutional violations both within the home and outside the home are supported by the following facts.

Additionally, Carrie holder of a valid license to carry a concealed firearm. As a holder of a valid license to carry pursuant to Penal Code section 26150 *et seq.* Carrie and other such holders represented by CGF and SAF are not in a class of persons described in Penal Code sections 29800, *et seq.*, 29900, *et seq.*, or Welfare and Institutions Code §8100 or §8103. Penal

Code section 26195(a)-(b). In other words, I and other holders of a valid license to carry pursuant to Penal Code section 26150, *et seq.* represented by CGF and SAF are not prohibited from possessing firearms under federal or state law and may often be armed with a loaded concealed firearm, including while purchasing firearms for which they are subjected to a 10-day ban on possessing.

I already have at least one firearm, but I seek to have additional firearms for protection of myself and my family, *inter alia*, pursuant to my Second Amendment right to "keep and bear *arms*." (Emphasis added to note the use of the plural.) I can otherwise demonstrate proof of ownership and lawful possession of a firearm. For example, some firearms are registered in the California Automated Firearms System database pursuant to *inter alia* Penal Code section 28200, *et seq.* In purchasing my firearms, I was already at least once subjected to the 10-day waiting period prior to physically receiving my firearms. As a result of the 10-day waiting period I was obligated to endure a 10-day ban on the acquisition of my constitutionally protected firearms and incur additional expense and burden by being forced to make a second visit to the firearms dealer for subsequent firearm.

Though I must wait 10 days to acquire possession of each firearm I purchase for self-defense, others seeking commercial, professional and personal acquisition of firearms, such as destructive device collectors, movie prop houses, auction purchases, and "consultants-evaluators," are provided immediate access to firearms.

The National Instant Check System located at the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia, provides full and instant service to FFLs in 30 states, four U.S. territories, and the District of Columbia. California voluntarily opted out of the NICS instant background check and maintains its own background check system with an extended 10-day waiting period against purchasers of firearms in California, including myself. Moreover, the Attorney General has established and maintains an online database known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm as indicated by a record in the Consolidated Firearms Information System and who, subsequent to the date of that ownership or possession of a

firearm fall within a class of persons who are prohibited from owning or possessing a firearm. Penal Code §12021.2(a).

The information contained in the PAPF is available for the purpose of determining if persons are armed and prohibited from possessing firearms. Penal Code §12021.2(a). Conversely, the PAPF is also available for the purpose of determining if persons are armed and not prohibited by the very nature of the individual not appearing in the PAPF – but appearing in the Automated Firearm System as the registered owner of a firearm.

In fact, the California Department of Justice has determined alternative methods that eliminate delays upon law-abiding firearm owners while ensuring public safety as early as 1992. In SB AB 175 Alternative Feasibility Studies Report of Findings (1992), the Department of Justice identified multiple methods of performing proper background checks such that the persons in prohibited categories would not be allowed to purchase a firearm from a licensed California firearm dealer, while imposing minimal infringement on gun owners' rights to purchase and possess firearms. As a law abiding firearm owner, there is no justifiable reason to delay my acquisition of a firearm I already own.

If I were required to wait 10 days between purchasing a firearm and taking delivery of a firearm, I would thereby be deprived of the use, custody and control of my personal property. The delay would also deny me the ability to defend self, family, and home with said firearm that I already own. The hypothetical waiting period mandates a brief window of 28 days from when I must return to certain physical possession of property that I already own, causes an additional increased 10 day delay and added expenses of Dealer Record of Sale fees, storage fees, and transportation fees when I am unavailable to take physical possession of the firearm within the 28 day window, causes increased travel expenses upon firearm purchase considering with distance from my home to the licensed firearm dealer increases due to the requirement that I must make several trips to receive custody of the firearm purchased, limits my out-of-town purchases and gun show purchases, and limits the market of firearms available to me as I am willing to travel to State during a period of at least 10 days and at most 30 days; causes added risk and expense of leaving and paying another licensed dealer who may be willing but is not

statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm dealer; and causes me to lose the opportunity cost of the time spent on the second trip to receive a firearm I already own.

INTERROGATORY NO. 11

If you contend that California Penal Code section 26815(a) would be unconstitutional if that law's "waiting period" (between purchase and delivery of a firearm) was three days, state all facts supporting this contention.

RESPONSE TO INTERROGATORY NO. 11

OBJECTION: Contention interrogatories asking for each and every fact, or application of law to fact, that supports particular allegations in an opposing pleading may be held to be overly broad and unduly burdensome. (*FPC Inc. v. Mercantile Bank of Topeka* (D.Kan. 1995) 159 FRD 316, 321. Providing "every fact" could require "laborious, time-consuming analysis, search and description of evidentiary, secondary, and perhaps tertiary and trivial details.")

RESPONSE: Without waiving the above referenced objection, Plaintiff states that the provisions are unconstitutional to the extent that they would apply to an individual whose state records including the Automated Firearm System and Armed and Prohibited Database identify them as a person not prohibited from possessing firearms and already being the owner of a registered firearm, in that they violate my Second, Fourth and Fifth Amendment rights. The Second Amendment applies beyond merely the home. There are several cases pending in the Ninth, Seventh and Second Circuit Courts of Appeals relating to whether the Second Amendment's right to "bear arms" for the purpose of self defense extends beyond the home. See generally *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010). There are currently two cases pending in the Ninth Circuit Court of Appeals relating to California law: *Richards v. Prieto* (Yolo County), Case No.: 11-16255 and *Peruta v. County of San Diego*, Case No.: 10-56971. Those cases were argued and submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS (7th Cir. Ill. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision

to give the state legislature an opportunity to enact a licensing scheme. But the court in [illegible] v. County of [illegible], 2012 U.S. App. LEXIS [illegible] (2d Cir. N.Y. Nov. [illegible], 2012) found that the right does not extend beyond the home. These constitutional violations, both within the home and outside the home, are supported by the following facts.

Additionally, I am a holder of a valid license to carry a concealed firearm. As a holder of a valid license to carry pursuant to Penal Code section 26150 et seq., I and other such holders represented by CGF and SAF are per se not in a class of persons described in Penal Code sections 29800 et seq., 29900 et seq. or Welfare and Institutions Code §8103 or §8103. Penal Code section 26195(a)(b). In other words, I and other holders of a valid license to carry pursuant to Penal Code section 26150 et seq. represented by CGF and SAF are not prohibited from possessing firearms under federal or state law and may often be armed with a loaded concealed firearm including while purchasing firearms for which they are subjected to a 10-day hold on possessing.

Although I have at least one firearm, but I seek to have additional firearms for protection of myself and my family, I have a right, pursuant to my Second Amendment right to "keep and bear arms" (emphasis added to note the use of the plural). I can otherwise demonstrate proof of ownership and lawful possession of a firearm. For example, some firearms are registered in the California Automated Firearms System database pursuant to, inter alia, Penal Code section 28200 et seq. In purchasing my firearms, I was at least once subjected to the 10-day waiting period prior to physically receiving my firearm. As a result of the 10-day waiting period, I was charged to endure a 10-day non-use suspension of my constitutionally protected firearm and incur additional expense and burden by being forced to make a second visit to the firearms dealer that sold me the firearm.

Though I must wait 10 days to acquire possession of each firearm I purchase for self-defense, others seeking commercial, professional, and personal acquisition of firearms, such as destructive device collectors, movie prop houses, auction purchasers, and "consultants" [illegible], are permitted instant access to firearms.

The California Instant Check System, located at the California Criminal Justice Information

Services Division in Clarksburg, West Virginia, provides toll and instant service to FFLs in 50 states, five U.S. territories, and the District of Columbia. California voluntarily opted out of the NICS instant background check and maintains its own background check system with an extended 10-day waiting period against purchases of firearms in California, including myself. Moreover, the Attorney General has established and maintains an online database known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm as indicated by a record in the Consolidated Firearms Information System and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. Penal Code § 30000 et seq.

The information contained in the PAPF is available for the purpose of determining if persons are armed and prohibited from possessing firearms. Penal Code § 30000 et seq. Conversely, the PAPF is also available for the purpose of determining if persons are armed and not prohibited by the very nature of the individual not appearing in the PAPF – but appearing in the Automated Firearm System as the registered owner of a firearm.

In fact, the California Department of Justice had determined alternative methods that eliminate delays upon law-abiding firearm owners while ensuring public safety as early as 1991. In its AB 497 Alternative Feasibility Studies Report of Findings (1991), the Department of Justice identified multiple methods of performing proper background checks such that the persons in prohibited categories would not be allowed to purchase a firearm from a licensed California firearm dealer, while imposing minimal infringement on gun owners' rights to purchase and possess firearms. As I am a verifiable law-abiding firearm owner, there is no justifiable reason to delay my acquisition of a firearm I already own.

If I were required to wait 3 days between purchasing a firearm and taking delivery of a firearm, I would thereby be deprived of the use, custody, and control of my personal property. The delay would also deny me the ability to defend self, family, and home with said firearm that I already own; the hypothetical waiting period mandates a brief window of 27 days from which I must return to obtain physical possession of property that I already own, causing an additional

increased 3 day delay and added expenses of Dealer Record of Sale fees, storage fees, and transportation fees when I am unavailable to take physical possession of the firearm within the 27 day window; causes increased travel expenses upon firearm purchases coinciding with distance from my home to the licensed firearm dealer premises due to the requirement that I must make a second trip to receive custody of the firearm purchased; limits my out-of-town purchases and gun show purchases; and limits the market of firearms available to areas I am willing to travel to twice during a period of at least 3 days and at most 30 days; causes added burden and expense of locating and paying another more local dealer who may be willing, but is not statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm dealer; and causes me to lose the opportunity cost of the time spent on the second trip to receive a firearm I already own.

INTERROGATORY NO. 12

If you contend that California Penal Code section 26815(a) would be unconstitutional if the law's 27 waiting period between purchase and delivery of a firearm was five days, state all facts supporting this contention.

RESPONSE TO INTERROGATORY NO. 12

OBJECTION: Contention interrogatories asking for each and every fact or application of law to fact that supports particular allegations in an opposing pleading may be held to be overly broad and unduly burdensome. [*Pitt Int'l v. Mercantile Bank of Topeka* (D.Kan. 1998) 179 F.R.D. 576, 578 ("Providing every fact could require "laborious, time-consuming analysis, search and description of the dental, secondary and perhaps irrelevant and trivial details.")]

RESPONSE: Without waiving the above referenced objection, Plaintiff states that the provisions are unconstitutional, to the extent that they would apply to an individual whose state records, including the Automated Firearm System and Armed and Prohibited Database identify them as a person not prohibited from possessing firearms and already being the owner of a registered firearm, or else they violate my Second, Fourth and Fifth Amendment rights. The Second Amendment applies beyond merely the home. There are several cases pending in the

If I were required to wait 5 days between purchasing a firearm and taking delivery of a firearm, I would thereby be deprived of the use, custody, and control of my personal property. The delay would also deny me the ability to defend self, family, and home with said firearm that I already own; the hypothetical waiting period mandates a brief window of 25 days from which I must return to obtain physical possession of property that I already own, causing an additional increased 5 day delay and added expenses of Dealer Record of Sale fees, storage fees, and transportation fees when I am unavailable to take physical possession of the firearm within the 25 day window; causes increased travel expenses upon firearm purchases coinciding with distance from my home to the licensed firearm dealer premises due to the requirement that I must make a second trip to receive custody of the firearm purchased; limits my out-of-town purchases and gun show purchases; and limits the market of firearms available to areas I am willing to travel to twice during a period of at least 5 days and at most 30 days; causes added burden and expense of locating and paying another more local dealer who may be willing, but is not statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm dealer; and causes me to lose the opportunity cost of the time spent on the second trip to receive a firearm I already own.

INTERROGATORY NO. 16

Describe in full and complete detail all expenses that you have incurred to acquire firearms because of California Penal Code section 26815(a) and its "waiting period" (between purchase and delivery of a firearm).

RESPONSE TO INTERROGATORY NO. 16

RESPONSE: I have lost the opportunity costs to engage in business and other activities during the time it took me for each and every second trip to the licensed firearms dealer to take possession, custody, and control of each firearm I own.

I have lost the opportunity to purchase firearms due to an inability to make a second trip.

I have incurred expenses, including shipping expenses, additional dealer transfer fees, increased firearm prices due to lack of local competition, additional fuel costs, wear and tear on

my vehicle) [necessary for a return trip to the licensed dealer to receive my firearm. On information and belief, I have spent approximately $1,500.00 on such expenses.

I have incurred additional costs of having to resubmit a Dealer Record of Sale application due to scheduling conflicts preventing me from returning to the store to receive my firearm within the temporary window of availability. Upon information and belief, I have spent approximately $100.00 on resubmission fees.

INTERROGATORY NO. 17

Describe in full and complete detail all expenses that you have incurred to acquire firearms because of California Penal Code section 27540 and its "waiting period" between purchase and delivery of a firearm.

RESPONSE TO INTERROGATORY NO. 17

RESPONSE: I have lost the opportunity costs to engage in business and other activities during the time it took me for each and every second trip to the licensed firearms dealer to take possession, custody, and control of each firearm I own.

I have lost the opportunity to purchase firearms due to an inability to make a second trip.

I have incurred expenses, including stopping expenses, additional dealer transfer fees, increased firearm prices due to lack of local competition, additional fuel costs, wear and tear on my vehicle) necessary for a return trip to the licensed dealer to receive my firearm. On information and belief, I have spent approximately $1,500.00 on such expenses.

I have incurred additional costs of having to resubmit a Dealer Record of Sale application due to scheduling conflicts preventing me from returning to the store to receive my firearm within the temporary window of availability. Upon information and belief, I have spent approximately $100.00 on resubmission fees.

INTERROGATORY NO. 18

State the longest distance you have traveled, in the last 10 years, from your home to a licensed firearms retailer to acquire a firearm.

VERIFICATION

JEFF SILVESTER declares:

1. I am a plaintiff in the above-captioned action.

2. I have read the foregoing "PLAINTIFF JEFF SILVESTER'S RESPONSE TO DEFENDANT KAMALA D. HARRIS'S FIRST SET OF INTERROGATORIES" ("The Response") and know its contents. I am informed and believed that the matters set forth in the Response are true and accurate and on that ground I allege to the best of my knowledge and information, that the matters therein stated are true and accurate.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Verification was executed on January 28, 2013, at Hanford, CA, California.

JEFF SILVESTER

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

- - -

ORIGINAL

JOHN [illegible], MICHAEL [illegible], BRANDON [illegible], THE [illegible] FOUNDATION, INC., a [illegible] [illegible], and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization,

Plaintiffs,

vs.

KAMALA HARRIS, Attorney General of California (in her official capacity), and DOES 1 TO 20,

Defendants.

Case No.
1:11-cv-02137

30(b)(6) DEPOSITION OF

THE SECOND AMENDMENT FOUNDATION, INC.

BY AND THROUGH ALAN MERRIL [illegible]

LOS ANGELES, CALIFORNIA

MAY 16, 2013

Arkansas-Baker, Inc.
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(800) 128-[illegible]
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Reported by: Alison [illegible], RDR, CRR, CSR No. 5310

File No.: A763[illegible]

under a NICS search?

A. Yes, I believe there are differences.

Q. What are the differences?

A. In California you have a couple stages beyond that you throw in there as well. Also, in the federal one, I left out the fact if you have restraining orders, or felons, you're in that category too. It's my understanding California adds a few other definitions of what those roles are so that they aren't exactly in tune with everything in the federal database.

Q. Can you identify what those other things that are checked in California are that are not checked under NICS?

A. Off the top of my head, I can't. Also, California checks some things that are in the NICS database that are not in the California database. It goes both ways.

Q. Okay. Does The Second Amendment Foundation take the position that there are things that the California background check looks at that the NICS background check does not look at that are inappropriate to be looked at?

A. No. We don't really care what you have in your database one way or the other. That's not what we're challenging

1 Brian. The -- our concern is -- is how you use the database.
2 The ten-day waiting period is a problem. The database
3 is not the problem.
4 Q. Isn't the Second Amendment Foundation believe
5 that California could do background checks with its
6 current system faster than ten days?
7 A. Yes.
8 Q. Does The Second Amendment Foundation contend
9 that California is deliberately racking background
10 checks for ten days when they could be done faster?
11 A. Well, by passing law or making it ten days, I
12 guess it's deliberate.
13 Q. What -- What does The Second Amendment
14 Foundation have that suggests that the California
15 background checks could be completed in fewer than ten
16 days?
17 A. We think that the data is in a database and data
18 is processed immediately, and the same way the NICS
19 checks -- from federally, the State of California could
20 do it with their database.
21 Q. Any other reason --
22 A. Not -- nothing prohibiting it.
23 Q. Any other reason?
24 A. Yes, they could do it.
25 Q. That they could -- that they would be able

[illegible] -- I [illegible] way -- the Constitution should be followed. And since it can be done by an instant background check, I believe it should be done that way.

Q. Why is the Second Amendment Foundation not challenging enforcement of the ten-day waiting period for first-time purchasers?

MR. [illegible]: I'm just going to object that it may have -- we are attorney-client-[illegible] privileged with him as to why they did certain things in this lawsuit and [illegible].

But if you want to answer it, you can.

[illegible] MR. [illegible]: Well, I think I'm going to answer [illegible], because the reason the second [illegible] gun [illegible] is -- if you've already -- if you've already gone through it -- the background check, you've gone through the waiting period, and you already have a gun, [illegible] -- in the prohibited database, the state already knows about it. There is absolutely no reason to have an additional waiting period for that second gun. It [illegible] absolutely no sense at all.

Q. BY MR. [illegible]: So --

A. [illegible].

Q. [illegible] -- Okay. Does the Second Amendment Foundation believe that it's not [illegible]. It is [illegible]. It make -- for the State of California to

make a first-time firearm purchaser go through the ten-day waiting period?

A. I think when California passed the ten-day waiting period, we didn't have the instant check systems in place. The instant check system wasn't there at the time. It is now and it's time for California to revise its law, it's my opinion.

Q. If there was a point in time when California became able to do instantaneous background checks, yes?

A. Well, the federal government became able to with the NICS database check and is the reason why California -- I mean, is nothing technically-wise prohibiting California from doing it. And if it can be done to protect the civil rights of firearms owners, it should be done.

Q. Right, I understand. I'm trying to pinpoint the date. It sounded to me like you said that there was a -- when the law was passed, the ten-day waiting period may have been necessary but it's not anymore. Is that fundamentally what you said?

A. There is no -- with today's technology, there is no reason for it to have it anymore.

Q. In other words, there is no that was a point in time that The Second Amendment Foundation would have sued it's reasonable, and that's a

EXHIBIT "D"

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ORIGINAL

[illegible], MICHAEL [illegible], BRANDON JONES, THE CALGUNS FOUNDATION, INC., a non-profit corporation, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization,

Plaintiffs,

vs.

KAMALA D. HARRIS, Attorney General of the State of California in her official capacity, and DOES 1 TO 10,

Defendants.

Case No.
1:11-cv-02137

DEPOSITION OF THE CALGUNS FOUNDATION, INC.

10:00 A.M. THROUGH 12:00 NOON

LOS ANGELES, CALIFORNIA

MAY 19, 2012

Accurate-Court, Inc.
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www.[illegible].com

Reported By: Aileen Delaurier, RDR, CRR, CSR No. 5[illegible]

File No.: A[illegible]

Q. There has been an informal attempt to do so?

A. Certainly there are conversations about how much easier it is to be able to acquire firearms in the U.S. market, for example, in other states.

Q. Have you attempted to determine whether the waiting period in California is responsible for any of the disparity between California and another state?

A. We have certainly compared it from a criminologist's standpoint and found that in fact California's gun homicide rate continued to be higher than those places that do not have a waiting period.

Q. This research on the gun homicide rate was related to the three-day waiting period, or not?

A. The laws of California in general.

Q. Here for years, it was about California's gun laws as a whole.

A. I would say it's mostly about the background check and the universal background check, as well as the three-day waiting period.

Q. Did you return to or calculate any gun homicide rates of late, if in this research?

A. No, because that is largely primarily in the CDC and WISQARS data, as well as a hard study in Los Angeles.

1 A. Washington State. Florida.
2 Q. Any others?
3 A. Four-point states. The ones that are been
4 approached are the ones with larger urban environments.
5 Q. What I'm asking -- I'm not asking you to name
6 the 49 that do. I'm saying, which analyses you done
7 this comparative analysis for --
8 A. We --
9 Q. -- California and other states, which other
10 states?
11 A. We focused on Texas.
12 Q. Did you -- did CCT compile data for states
13 besides just Florida and Texas?
14 A. We reviewed the rest of the other ones, yes.
15 Q. And so CCT's understanding is that Texas has a
16 lower gun homicide rate than California?
17 A. That's correct.
18 Q. And the gun homicide rate based on what
19 statistic?
20 A. The FBI crime data.
21 Q. Is it like a per capita --
22 A. Yes --
23 Q. -- rate?
24 A. -- it's a per capita rate.
25 Q. And CCT has determined that some amount of that

1 difference is attributable to there being a ten-day
2 waiting period in California?
3 A. I would say the other way around: The ten-day
4 waiting requirement seems to be as effective as the
5 waiting is in Texas.
6 Q. It's still true that there were other laws in the
7 context of California gun laws that CDF thinks are
8 relevant to its gun homicide rate comparative data,
9 correct?
10 A. I don't understand.
11 Q. What percentage of the effect is from
12 California's ten-day waiting period versus other laws?
13 A. I'd say 50 percent of it.
14 Q. Why are you saying 50 percent?
15 A. Because the other thing that matters is the
16 universal background check requirement.
17 Q. In other words, there are two things that
18 affect rate data. Do you know that each thing affects
19 the data equally?
20 A. That's not supposition.
21 Q. What's the basis for the supposition?
22 A. The fundamental difference between Texas law
23 and California law is the universal background check
24 and the ten-day waiting period. When considered with
25 the fact that handguns are something near 60 or 70

A. That's correct.

Q. That person could be doing something else besides going to the grocery store?

A. That's correct.

Q. Is there something about a CCW member making a trip to a firearms seller that creates a different kind of opportunity cost?

A. Yes.

Q. What's the difference?

A. You can't do a single trip to be able to acquire a firearm. You must do multiple trips.

Q. If a CCW member's home is exactly five miles away from a grocery store that the person uses and is exactly five miles away in a slightly different direction to a firearms retailer that the person uses and that's just from one to both places is the same, isn't the opportunity cost of each trip the same?

A. It doesn't take two trips to buy milk.

Q. So it's the end trip that's excluded when a person purchases a firearm that's causing an opportunity cost that CCW objects to?

A. It's one of the opportunity costs that our members do.

Q. Yeah. I'm saying in that hypothetical.

A. Yes.

A. I doesn't believe there is any CCC board member passed or present with a felony conviction.

Q. Was CCC anticipating other information from Perkins Brian whether the hearing waiting period was intended than from effectively defending themselves or there funding in their homes?

A. We are aware of a couple situations where it has been a real hindrance, yes.

Q. How did you find out about those couple of situations?

A. Usually word of mouth specifically around the L.A. area.

Q. And was a page at CCC interviewed a video statements with the people that made these contentions?

A. This doesn't rise to more than a formal -- informal conversation. Pardon.

Q. If you say there are a couple of instances. Do you mean that?

A. That I'm aware of.

Q. Were such instances related to the L.A. riots?

A. Yes.

Q. Do you know the names of the people who made those contentions?

A. One person actually wrote a well-known article about it but I don't recall the name of the article's

Q. Okay. All right. Let's move on to the other incidents. There is another CSF member who alleges, you know, that the ten-day waiting period prevented the person from getting a firearm to defend himself or his family.

A. Uh-huh.

Q. Actually, strike. Strike that. Let's move back. We're now back to the playwright. Was the playwright attacked?

A. The playwright escaped during a spooking night incident and went home and best guess figured out that he couldn't then get a firearm and did be immediately [illegible].

Q. Do you know if the playwright ever acquired a firearm even, you know, after waiting ten days?

A. He states that he did later, yes.

Q. And in the article does the playwright say that he's just the firearm is self-defense?

A. I don't recall.

Q. All right. Let's move on to the other incidents. Do you know the name of the person who is the other person that we're referring to?

A. I don't recall her name.

Q. Do you recall that the person is a female?

A. That's correct.

1 Q. And in your A SO attempt to obtain a firearm
2 during the time of the 1992 L.A. riots?
3 A. Yes.
4 Q. What was her attempt to obtain firearms for
5 women, lunderstand, if anything?
6 A. The full extent of what she was concerned was a
7 stalker.
8 Q. Uh-huh. When was she being stalked by this
9 person?
10 A. A couple years ago.
11 Q. Did this woman write an article or make any
12 written documents her predicament?
13 A. Yes.
14 Q. How did you become aware that this woman had
15 this predicament?
16 A. A conversation with a friend of hers who was a
17 volunteer for us.
18 Q. And did you -- so you talked to a friend
19 of hers --
20 A. Correct.
21 Q. -- about this woman's problem --
22 A. Correct.
23 Q. -- with the stalker and --
24 A. Uh-huh.
25 Q. -- her desire to get a firearm to defend

A. I don't recall.
Q. Have you ever heard anyone say that the California background check system for prospective firearms purchasers could be a national model, or words to that effect?
A. Yes.
Q. Where have you heard such statements?
A. Various members of the press, various advocates for gun control.
Q. Is it CGF's position that the [illegible] background check system is the worst of the existing [illegible]?
A. The background check system is not a problem. In fact, CGF's position is that the background check system is in some or many cases better than other states. It's the waiting period that's the problem.
Q. Does CGF understand that the California background check system takes ten days for the reason that that's often how long it takes to do a background check?
A. That's actually not what we see from the FFLs [illegible].
Q. What's your understanding of why the background check is presently at ten days?
A. Arbitrarily set by the Legislature.

Department of Justice. At the same time, we are also aware that many of our plaintiffs are prescribed, so, therefore, it should be very easy to know whether or not they are prohibited or not.

Q. When you say "prescribed," what do you mean prescribed?

A. They either have a carry license or certificate of eligibility issued by the Department.

Q. There are DOJ members that don't have either of those, correct?

A. That's true.

Q. For that group of people, the people that don't have either of the certificates, does DOJ understand that those people are subject to any kind of continuous or ongoing background check?

A. Yes, actually they are. Otherwise the APPS would not be giving people a no.

Q. So it is DOJ's position that for a person who has been through the ten-day waiting period, once officer -- -- -- check to see if that person appears on the Armed Prohibited Persons List and thereby makes a determination about whether the person should be allowed to obtain or retain a firearm?

A. Yes.

Q. Is it DOJ's position that that's the only