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8 *Attorneys for Defendants California*  
*Attorney General Kamala D. Harris and*  
 9 *California Department of Justice*

10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 **EUGENE EVAN BAKER,**

14 Plaintiff,

15 v.

16 **ERIC H. HOLDER, JR., in his official**  
 17 **capacity as ATTORNEY GENERAL**  
 18 **OF THE UNITED STATES, et al.**

19 Defendants.

Case No. CV 10-3996-SVW(AJWx)

**OPENING BRIEF BY**  
**DEFENDANTS CALIFORNIA**  
**ATTORNEY GENERAL KAMALA**  
**D. HARRIS AND CALIFORNIA**  
**DEPARTMENT OF JUSTICE**

Date: February 4, 2013  
 Time: 1:30 p.m.  
 Dept: Courtroom No.: 6  
 Judge: Hon. Stephen V. Wilson  
 Trial Date: None  
 Action Filed: October 12, 2012

1 Defendants California Attorney General Kamala D. Harris and California  
2 Department of Justice (“State Defendants”) join in the argument advanced in the  
3 Federal Defendant’s Opening Brief that this Court should uphold the  
4 constitutionality of 18 U.S.C. section 922(g)(9) and dismiss Plaintiffs’ entire  
5 amended complaint with prejudice.

6 The State Defendants role in this litigation has been limited. Plaintiffs  
7 initiated their Second Amendment challenge to section 922(g)(9) by filing the  
8 original complaint on May 27, 2010. (Doc. no. 1.) The Court initially dismissed  
9 the complaint with prejudice (Doc. no. 14), but the Ninth Circuit reversed and  
10 remanded with leave to amend (Doc. no. 20). On October 11, 2012, more than two  
11 years after filing suit, Plaintiffs filed an amended complaint naming the State  
12 Defendants for the first time. (Doc. no. 23.)

13 According to the amended complaint, Plaintiffs have added the State  
14 Defendants as parties because the California Department of Justice is the state law  
15 enforcement agency that serves as the intermediary, or “Point of Contact,” between  
16 a federal firearms licensee (“FFL”) and the federal databases checked by the  
17 National Instant Criminal Background Check System (“NICS”), which an FFL  
18 must contact for information on whether receipt of a firearm by the person  
19 purchasing it would violate federal or state law. (First Am. Compl. ¶¶ 4, 11-12 &  
20 29.) *See* 28 C.F.R. §§ 25.1, 25.2 & 25.6 (describing role of Point of Contact); Cal.  
21 Penal Code § 28220(b) (state law authorizing California Department of Justice to  
22 be Point of Contact for background checks). The amended complaint prays that  
23 any order declaring section 922(g)(9) unconstitutional and enjoining its  
24 enforcement encompass both the Federal and State Defendants. (First Am. Compl.  
25 at pp. 13-14.)

26 The amended complaint does not challenge any state law. Rather, only a  
27 federal statute, section 922(g)(9), is at issue. The United States Department of  
28 Justice is charged with defending the constitutionality that law. *See* 28 U.S.C.

1 §§ 501 *et seq.* The Office of the United States Attorney having filed an opening  
2 brief thoroughly and accurately defending the federal statute, the State Defendants  
3 have elected simply to join in that brief.

4 Accordingly, for the reasons set forth in the Federal Defendant's Opening  
5 Brief, this Court should reject Plaintiffs' constitutional challenge to 18 U.S.C.  
6 section 922(g)(9) and dismiss the entire amended complaint with prejudice.

7 Dated: January 7, 2013

Respectfully submitted,

8 KAMALA D. HARRIS  
9 Attorney General of California  
10 PETER K. SOUTHWORTH  
11 Supervising Deputy Attorney General

/s/ ANTHONY R. HAKL

12 ANTHONY R. HAKL  
13 Deputy Attorney General

*Attorneys for Defendants California  
14 Attorney General Kamala D. Harris  
15 and California Department of Justice*

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**CERTIFICATE OF SERVICE**

Case Name: **Baker, Eugene Evan v. Eric H. Holder** No. **CV 1 03996-SVW(AJWx)**

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I hereby certify that on January 7, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**OPENING BRIEF BY DEFENDANTS CALIFORNIA ATTORNEY GENERAL  
KAMALA D. HARRIS AND CALIFORNIA DEPARTMENT OF JUSTICE**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 7, 2013, at Sacramento, California.

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Brenda Apodaca  
Declarant

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/s/ Brenda Apodaca  
Signature

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Case Name: **Baker, Eugene Evan v. Eric H. Holder** No. **CV 1 03996-SVW(AJWx)**

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Brenda Apodaca  
Declarant

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/s/ Brenda Apodaca  
Signature