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*Attorneys for Defendant Kamala D. Harris, Attorney
General of California*

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,

v.

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

Defendants.

1:11-cv-02137-AWI-SKO

**DECLARATION OF JONATHAN M.
EISENBERG IN SUPPORT OF
DEFENDANT CALIFORNIA
ATTORNEY GENERAL KAMALA D.
HARRIS'S MOTION FOR SUMMARY
JUDGMENT (FED. R. CIV. P. 56) (FED.
R. CIV. P. 56)**

Hearing Date: October 28, 2013
Hearing Time: 1:30 p.m.
Trial Date: March 25, 2014
Action Filed: December 23, 2011

I, Jonathan M. Eisenberg, 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 an attorney admitted to practice law in California and before the present Court. I am one of the attorneys of record for Kamala D. Harris, Attorney General of the State of

1 California (the “Attorney General”), in the instant case, adverse to Plaintiffs Jeffrey A. Silvester
2 (“Silvester”), Brandon S. Combs (“Combs”), The Calguns Foundation, Inc., and The Second
3 Amendment Foundation, Inc. (Together all plaintiffs are “Plaintiffs.”)

4 3. In November 2012, the discovery phase of this case, I propounded a set of
5 interrogatories on Silvester and another set of interrogatories on Combs. In January 2013, both
6 Silvester and Combs returned verified interrogatory responses. Attached hereto as Exhibit A is a
7 true and correct copy of certain pages, including the verification page, from Silvester’s
8 interrogatory responses. Attached hereto as Exhibit B is a true and correct copy of certain pages,
9 including the verification page, from Combs’s interrogatory responses.

10 4. In May 2013, I deposed both Silvester and Combs in this case. I had a court
11 reporter transcribe what was said at each deposition and send me the transcript. Attached hereto
12 as Exhibit C is a true and correct copy of certain pages of the transcript of the Silvester
13 deposition. Attached hereto as Exhibit D is a true and correct copy of certain pages of the
14 transcript of the Combs deposition.

15 I declare under the penalty of perjury that the foregoing is true and correct and that I
16 signed this declaration on September 25, 2013, at Los Angeles, California.

17
18 /s/

19 Jonathan M. Eisenberg
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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
15 **FRESNO DIVISION**

16 JEFF SILVESTER, MICHAEL POESCHL,
17 BRANDON COMBS, THE CALGUNS
18 FOUNDATION, INC., a non-profit
19 organization, and THE SECOND
20 AMENDMENT FOUNDATION, INC., a
21 non-profit organization,

22 Plaintiffs,

23 vs.

24 KAMALA HARRIS, Attorney General of
25 California (in her official capacity), and
26 DOES 1 to 20,

27 Defendant.

Case No: 1:11-cv-02137-AWI-SKO

**PLAINTIFF JEFF SILVESTER'S
RESPONSE TO DEFENDANT
KAMALA D. HARRIS'S FIRST SET OF
INTERROGATORIES**

28 Exhibit A

1 PROPOUNDING PARTY: Defendant Kamala D. Harris
2 RESPONDING PARTY: Plaintiff Jeff Silvester
3 SET NUMBER: One (1)
4

5 **RESPONSES TO INTERROGATORIES**

6 **INTERROGATORY NO. 1**

7 State your full name, date of birth, home address, and Social Security number.

8 **RESPONSE TO INTERROGATORY NO. 1**

9 **OBJECTION:** This interrogatory counts as four separate and distinct interrogatories.
10 Moreover, this request is objectionable as it is not calculated to lead to the discovery of
11 admissible evidence. This request seeks privileged information, including Plaintiff's Social
12 Security number and birth date. (*See* Fed. R. Civ. Proc. §5.2.)

13 **RESPONSE:** Without waiving the above stated objections, Plaintiff responds as follows:
14 Jeffery Sherman Silvester; 1979; N. Bordeaux Way, Hanford CA, 93230; the last four digits of
15 my Social Security number are 4487.

16 **INTERROGATORY NO. 2**

17 How many firearms are usually kept at your home?

18 **RESPONSE TO INTERROGATORY NO. 2**

19 **OBJECTION:** This request is not reasonably calculated to seek the discovery of
20 admissible evidence. Moreover, this request seeks information that is irrelevant to the matter at
21 hand. This request seeks privileged information as it relates to the number of firearms kept at
22 Plaintiff's home. (*See* U.S. Const. amends I, IV, V, XIV; Cal. Const. art I, §1; and 18 U.S.C.
23 926(a), which states: "No such rule or regulation prescribed [by the Attorney General] after the
24 date of the enactment of the Firearms Owners Protection Act may require that records required to
25 be maintained under this chapter or any portion of the contents of such records, be recorded at or
26 transferred to a facility owned, managed, or controlled by the United States or any State or any
27 political subdivision thereof, nor that any system of registration of firearms, firearms owners, or
28 firearms transactions or disposition be established. Nothing in this section expands or restricts

1 the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal
2 investigation." Thus, there is a clear intent to secure gun owners' privacy as it relates to their
3 firearm ownership. The civil action at issue herein cannot be used to subvert those privacy
4 rights.

5 RESPONSE: Without waiving the above stated objections, Plaintiff responds by stating
6 that, in general, I keep at least one firearm within the home.

7 **INTERROGATORY NO. 3**

8 How many firearms suitable for self-defense are usually kept at your home?

9 **RESPONSE TO INTERROGATORY NO. 3**

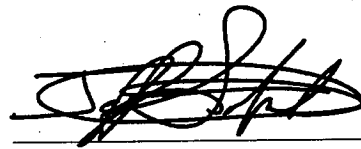
10 OBJECTION: This request is not reasonably calculated to seek the discovery of
11 admissible evidence. This request is also so vague or ambiguous as to be burdensome or
12 oppressive as to the meaning of "suitable for self-defense." Moreover, Plaintiff would have to
13 speculate as to the meaning of the phrase "suitable for self-defense." Firearms are tools. While
14 one firearm may be suitable for self-defense in one scenario, it may not be suitable for self-
15 defense in another scenario. As such, the term "suitable for self-defense" is too vague and
16 ambiguous to properly respond to. Moreover, this request seeks information that is irrelevant to
17 the matter at hand. This request seeks privileged information as it relates to the number of
18 firearms kept at Plaintiff's home. (See U.S. Const. amends I, IV, V, XIV; Cal. Const. art I, §1;
19 and 18 U.S.C. 926(a), which states: "No such rule or regulation prescribed [by the Attorney
20 General] after the date of the enactment of the Firearms Owners Protection Act may require that
21 records required to be maintained under this chapter or any portion of the contents of such
22 records, be recorded at or transferred to a facility owned, managed, or controlled by the United
23 States or any State or any political subdivision thereof, nor that any system of registration of
24 firearms, firearms owners, or firearms transactions or disposition be established. Nothing in this
25 section expands or restricts the Secretary's authority to inquire into the disposition of any firearm
26 in the course of a criminal investigation." Thus, there is a clear intent to secure gun owners'
27 privacy as it relates to their firearm ownership. The civil action at issue herein cannot be used to
28 subvert those privacy rights.

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

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10 San Jose, CA 95125
11 408.364.84889/Fax 408.264.8487
12 Email: Don@DKLawOffice.com

13
14
15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
17 **FRESNO DIVISION**
18

19 JEFF SILVESTER, MICHAEL POESCHL,
20 BRANDON COMBS, THE CALGUNS
21 FOUNDATION, INC., a non-profit
22 organization, and THE SECOND
23 AMENDMENT FOUNDATION, INC., a
24 non-profit organization,

25 Plaintiffs,

26 vs.

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

Defendant.

Case No: 1:11-cv-02137-AWI-SKO

**PLAINTIFF MICHAEL POESCHL'S
RESPONSE TO DEFENDANT
KAMALA D. HARRIS'S FIRST SET OF
INTERROGATORIES**

Exhibit B

PROUPOUNDING PARTY: Defendant Kamala D. Harris

RESPONDING PARTY: Plaintiff Michael Poeschl

SET NUMBER: One (1)

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1

State your full name, date of birth, home address, and Social Security number.

RESPONSE TO INTERROGATORY NO. 1

OBJECTION: This interrogatory counts as four separate and distinct interrogatories. Moreover, this request is objectionable as it is not calculated to lead to the discovery of admissible evidence. This request seeks privileged information, including Plaintiff's Social Security number and birth date. (*See* Fed. R. Civ. Proc. §5.2.)

RESPONSE: Without waiving the above stated objections, Plaintiff responds as follows: Michael Gardner Poeschl; 1974; 27163 El Moro, Mission Viejo, CA 92691; the last four digits of my Social Security number are 1039.

INTERROGATORY NO. 2

How many firearms are usually kept at your home?

RESPONSE TO INTERROGATORY NO. 2

OBJECTION: This request is not reasonably calculated to seek the discovery of admissible evidence. Moreover, this request seeks information that is irrelevant to the matter at hand. This request seeks privileged information as it relates to the number of firearms kept at Plaintiff's home. (*See* U.S. Const. amends I, IV, V, XIV; Cal. Const. art I, §1; and 18 U.S.C. 926(a), which states: "No such rule or regulation prescribed [by the Attorney General] after the date of the enactment of the Firearms Owners Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or

firearms transactions or disposition be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation." Thus, there is a clear intent to secure gun owners' privacy as it relates to their firearm ownership. The civil action at issue herein cannot be used to subvert those privacy rights.

RESPONSE: Without waiving the above stated objections, Plaintiff responds by stating that, in general, I keep at least one firearm within the home.

INTERROGATORY NO. 3

How many firearms suitable for self-defense are usually kept at your home?

RESPONSE TO INTERROGATORY NO. 3

OBJECTION: This request is not reasonably calculated to seek the discovery of admissible evidence. This request is also so vague or ambiguous as to be burdensome or oppressive as to the meaning of "suitable for self-defense." Moreover, Plaintiff would have to speculate as to the meaning of the phrase "suitable for self-defense." Firearms are tools. While one firearm may be suitable for self-defense in one scenario, it may not be suitable for self-defense in another scenario. As such, the term "suitable for self-defense" is too vague and ambiguous to properly respond to. Moreover, this request seeks information that is irrelevant to the matter at hand. This request seeks privileged information as it relates to the number of firearms kept at Plaintiff's home. (See U.S. Const. amends I, IV, V, XIV; Cal. Const. art I, §1; and 18 U.S.C. 926(a), which states: "No such rule or regulation prescribed [by the Attorney General] after the date of the enactment of the Firearms Owners Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or disposition be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation." Thus, there is a clear intent to secure gun owners'

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

9 If I were required to wait 5 days between purchasing a firearm and taking delivery of a
10 firearm, I would thereby be deprived of the use, custody, and control of my personal property.
11 The delay would also deny me the ability to defend self, family, and home with said firearm that
12 I already own; the hypothetical waiting period mandates a brief window of 25 days from which I
13 must return to obtain physical possession of property that I already own, causing an additional
14 increased 5 day delay and added expenses of Dealer Record of Sale fees, storage fees, and
15 transportation fees when I am unavailable to take physical possession of the firearm within the
16 25 day window; causes increased travel expenses upon firearm purchases coinciding with
17 distance from my home to the licensed firearm dealer premises due to the requirement that I must
18 make a second trip to receive custody of the firearm purchased; limits my out-of-town purchases
19 and gun show purchases; and limits the market of firearms available to areas I am willing to
20 travel to twice during a period of at least 5 days and at most 30 days; causes added burden and
21 expense of locating and paying another more local dealer who may be willing, but is not
22 statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm
23 dealer; and causes me to lose the opportunity cost of the time spent on the second trip to receive
24 a firearm I already own.

25
26 **INTERROGATORY NO. 16**

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

1 purchase and delivery of a firearm).

2 **RESPONSE TO INTERROGATORY NO. 16**

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

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

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

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

15
16 **INTERROGATORY NO. 17**

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

20 **RESPONSE TO INTERROGATORY NO. 17**

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

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

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

1 I have incurred additional costs of having to resubmit a Dealer Record of Sale application
2 due to scheduling conflicts preventing me from returning to the store to receive my firearm
3 within the temporary window of availability. Upon information and belief, I have spent
4 approximately \$100.00 on resubmission fees.
5

6 **INTERROGATORY NO. 18**

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

9 **RESPONSE TO INTERROGATORY NO. 18**

10 RESPONSE: Approximately 764 miles.

11 **INTERROGATORY NO. 19**

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

14 **RESPONSE TO INTERROGATORY NO. 19**

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

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

27 **INTERROGATORY NO. 20**

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

VERIFICATION

MICHAEL POESCHL declares:

1. I am a plaintiff in the above-captioned action;
2. I have read the foregoing "PLAINTIFF MICHAEL POESCHL'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 Mission Viejo, California.



MICHAEL POESCHL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

---oOo---

JEFF SILVESTER, MICHAEL POESCHL,)
BRANDON COMPS, 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,)

Defendants.)
-----)

DEPOSITION OF
JEFF SILVESTER
FRESNO, CALIFORNIA
MAY 9, 2013

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
WWW.DEPO.COM

REPORTED BY: THERESA G. MENDOZA, CSR NO. 12338
FILE NO.: A703C37

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

---oOo---

JEFF SILVESTER, MICHAEL POESCHL,)
BRANDON COMPS, 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,)

Defendants.)
-----)

No. 1:11CV02137AWISKO

Deposition of JEFF SILVESTER, taken on
behalf of Defendants, at 2550 Mariposa Mall, Fresno,
California, commencing at 8:57 a.m., Thursday, May 9,
2013 before Theresa G. Mendoza, CSR No. 12338.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

OTTEN & JOYCE, LLP
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FOR THE DEFENDANTS:

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
BY: JONATHAN M. EISENBERG, DEPUTY
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DEPARTMENT OF JUSTICE
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I N D E X

WITNESS: JEFF SILVESTER

EXAMINATION	PAGE
BY MR. EISENBERG	5
BY MR. OTTEN	130

EXHIBITS

LETTER	PLAINTIFF'S DESCRIPTION	PAGE
	(NONE)	

NUMBER	DEFENDANTS' DESCRIPTION	PAGE
1 -	Stipulation agreement E-mails	16
2 -	Stipulated Protective Order	16
3 -	Silver Start Custom Leather Posts	20
4 -	First Amended Complaint	38
5 -	Plaintiff's Initial Disclosures	80
6 -	Response to First Set of Interrogatories	86
7 -	Calguns Foundation Posts	114

QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:

(NONE)

INFORMATION TO BE SUPPLIED:

(NONE)

1 Q. Have there been firearms that you wanted
2 to purchase but were unable to because of the ten-day
3 waiting period?

4 A. Yes.

5 Q. More than one firearm?

6 A. Yes.

7 Q. How many firearms have you been unable to
8 purchase because of the ten-day waiting period?

9 A. At least three.

10 Q. When is the most recent time of those
11 three that you wanted to purchase and you weren't able
12 because of the ten-day waiting period?

13 A. I'm unsure of the exact date, but late
14 last year.

15 Q. Okay.

16 A. So maybe November.

17 Q. You're doing just fine in terms if you
18 don't remember the specific date, giving me your best
19 estimate. That's just what I want and I appreciate
20 that.

21 A. Okay.

22 Q. On that occasion, what, what was the
23 reason -- sorry, on that occasion, how did the ten-day
24 waiting period make you unable to complete the
25 acquisition of that firearm?

1 A. Can you ask that question in another way?

2 Q. Okay. What was the reason that you were
3 unable to finish the purchase of the acquisition of
4 that firearm?

5 A. Return trips make it financially
6 unfeasible.

7 Q. So this purchase was of a firearm that was
8 far away from your home?

9 A. Correct.

10 Q. How far way?

11 A. 200 or 300 miles.

12 Q. Where did you -- what town was it that
13 were you trying to make that purchase?

14 A. The particular firearm was located up
15 north in the Redding area. I don't recall the exact
16 city.

17 Q. Were you purchasing from a store, as
18 opposed to say a gun show?

19 A. The person that owned the gun was a
20 private party, but all sales have to go through an FFL.

21 Q. Right. Did you travel from your home, the
22 200 or 300 miles north for the purpose of making that
23 firearm purchase?

24 A. If I would have made the purchase, yeah.

25 Q. In other words, when you went on that trip

1 the point was to go buy a firearm at that location?

2 A. Yes.

3 MR. OTTEN: He didn't say he went on a trip, I
4 don't think.

5 Do you understand what he's asking you?

6 THE WITNESS: No.

7 MR. EISENBERG:

8 Q. All right. So you live in Hanford, and
9 you went north a couple hundred miles to this private
10 party, I guess it was the person's house?

11 A. I didn't make the trip.

12 Q. You didn't make the trip?

13 A. I wasn't able to purchase the firearm.

14 Q. How did you become aware of the -- pardon
15 me. I didn't mean to interrupt you.

16 A. That's okay. I just couldn't make the
17 trip because of the distance.

18 Q. Okay. How did you become aware of the
19 existence of this firearm?

20 A. Friends.

21 Q. And so what, what kind of firearm was it?

22 A. I believe it was a Heritage .22 Revolver.

23 Q. Did you attempt to find that firearm at a
24 closer location?

25 A. I've been looking for one and had not

1 found one until I found this one.

2 Q. How did you communicate with the owner of
3 the firearm, the person that you might have bought it
4 from?

5 A. Telephone once and e-mail, instant message
6 over the Internet.

7 Q. Were you aware when you were communicating
8 with him that he was located a few hundred miles away?

9 A. Yes.

10 Q. Did you ever travel to his physical
11 location and look at the firearm?

12 A. No.

13 Q. Were there some characteristics about that
14 firearm that were unique that you needed that firearm,
15 as opposed to another firearm?

16 A. Yes.

17 Q. What were those characteristics?

18 A. Good price.

19 Q. Good price. Any other characteristics?

20 A. Suited my needs. It was what I was
21 looking for.

22 Q. Right. So what needs were you trying to
23 satisfy by possibly obtaining --

24 A. Add a .22 --

25 Q. Can you let me finish my question.

1 A. I apologize.

2 Q. It's particularly difficult for the Court
3 Reporter, if two people or more are talking at the same
4 time.

5 MR. EISENBERG: Can you read back the last
6 question.

7 (Whereupon the last question was read back.)

8 MR. EISENBERG:

9 Q. The firearm.

10 A. Add a .22 to my available firearms.

11 Q. I guess I'm trying get more information
12 about why you needed that .22, as opposed to some other
13 firearm that you probably could obtain locally.

14 A. I'm not a rich man. I go where the prices
15 are good.

16 Q. And so again, you did not actually ever
17 travel up there to try to complete the purchase?

18 A. No.

19 Q. Did you think about having the firearm
20 delivered to you by the mail or some other method where
21 you wouldn't have had to personally travel up north to
22 get the gun?

23 A. Let me clarify. Did I consider it?

24 Q. Yes.

25 A. Yes.

1 Q. Okay. Is there a reason that you did not
2 try to use that option?

3 A. Very cost preventative.

4 Q. So did you get a price on how much it
5 would cost to transport the firearm?

6 A. Yes.

7 Q. What was the price; do you remember?

8 A. Can you clarify, are you looking for the
9 shipping cost?

10 Q. Yes.

11 A. Or the transfer cost from another dealer?

12 Q. First, shipping cost, please.

13 A. Was minimal maybe \$20.

14 Q. And you looked into having the owner ship
15 the firearm to another licensed, to a licensed dealer?

16 A. Correct.

17 Q. And there were fees associated with that
18 transfer?

19 A. Correct.

20 Q. How much were the fees, do you --

21 A. In excess of \$100.

22 Q. Excess of \$100, okay. I believe you said
23 there were three times that you said you can recall
24 that you weren't able to purchase firearms because of
25 the ten-day waiting period?

1 A. Uh-huh.

2 Q. So let me move back to the second most
3 recent time.

4 A. Okay.

5 Q. What firearm were you attempting to acquire
6 at that time?

7 A. I believe at that time I was looking for a
8 Kel-Tec PF9.

9 Q. Would that be the same firearm that you
10 mentioned in that blog post?

11 A. No.

12 Q. It's the same kind of gun, correct?

13 A. Correct.

14 Q. So for this firearm that was a Kel-Tec PF9
15 that you have tried to purchase but ultimately didn't,
16 when were you trying to make that purchase?

17 A. Sometime before this blog post.

18 Q. And how far away was the gun, from your
19 house when you were trying to purchase it?

20 A. In that situation, it was in LA. So,
21 whatever the distance between here and LA.

22 Q. How did you become aware of the existence
23 of that Kel-Tec PF9?

24 A. Online classified ad.

25 Q. What web site?

1 A. I look at several, and I don't
2 specifically recall which one.

3 Q. Okay. Which are the ones, which are the
4 web sites that you generally look at, I guess when
5 you're looking to acquire firearms?

6 A. Uh-huh.

7 Q. What are the names of those web sites?

8 A. I have looked at in the past Calguns.net.
9 I have looked at, I have looked at craigslist before,
10 and there's a third that I do not recall the name to.

11 Q. This is not a memory contest, so don't --

12 A. There is a third one, but without looking
13 at my e-mail, I can't --

14 Q. That's fine. If you happen to remember it
15 later --

16 A. I'll be happy to forward it.

17 Q. Or even later today. If you say, oh, I
18 remember now, we can have you add that to the record.
19 But again, this deposition is not a memory contest.
20 When you have found out about the existence of the gun,
21 did you find out it was located in the LA area?

22 A. Yes.

23 Q. Was it your understanding that you could
24 not find that kind of gun, a Kel-Tec PF9, locally to
25 your house?

1 A. Yeah.

2 Q. What was the reason or reasons that you
3 wanted to have a Kel-Tec PF9?

4 A. Portability.

5 Q. Do you have other handguns?

6 A. Yes.

7 Q. And you had other handguns at the time?

8 A. Yes.

9 Q. Is there something about the Kel-Tec PF9
10 that makes it more portable than the handguns you have
11 already?

12 A. It is slimmer and smaller.

13 Q. Now, did you travel to Los Angeles to look
14 for, you know, to try to obtain that firearm, the Kel-
15 Tec PF9?

16 A. No.

17 Q. Did you communicate with the person that
18 had the gun?

19 A. Yes.

20 Q. What means of communication did you use?

21 A. Online instant message and e-mail.

22 Q. And forgive me if I've asked you this
23 question already, what was the reason that you did not
24 ultimately purchase the firearm, the Kel-Tec PF9?

25 A. The seller and I couldn't resolve the

1 distance terms. He wanted to schedule something in
2 between where we could meet, and we couldn't work it
3 out.

4 Q. What was the problem working out a meeting
5 place?

6 A. He wasn't willing.

7 Q. He wasn't willing to travel?

8 A. Correct.

9 Q. So in other words, you said I'll travel
10 halfway and he said no, or something like that?

11 A. Something like that.

12 Q. So he said -- it was a he, first of all?

13 A. Yes. I'm pretty sure.

14 Q. And he said you must come to my house --

15 A. Correct.

16 Q. -- to obtain it.

17 A. To his FFL. Sorry to interrupt.

18 Q. Did you consider, you know, using the mail
19 or some other means to deliver the Kel-Tec PF9?

20 A. Not at that time.

21 Q. Were you aware that there -- at the time
22 were you aware that you possibly could have had the gun
23 delivered to you other than going out and getting it --

24 A. Yes.

25 Q. -- in person. And so is there any reason

1 that you didn't pursue that option to obtain the Kel-
2 Tec PF9?

3 A. I had heard it was financially impossible.

4 Q. Did you, did you actually price it?

5 A. Not that time.

6 Q. So you are saying you heard it was --

7 A. Uh-huh.

8 Q. Where did you hear that information?

9 A. Friends in the community.

10 Q. And what was your understanding of the
11 cost -- let's be all inclusive, say transfer fees,
12 shipping cost, everything, what was that amount that
13 you thought the price would be?

14 A. To my understanding, it was going to cost
15 at least \$150 to have it shipped.

16 Q. What was the price that was being asked
17 for that Kel-Tec PF9?

18 A. I don't recall specifically.

19 Q. Was the price of the firearm alone not
20 including another cost more or less than \$150?

21 A. More.

22 Q. Do you recall a range, the best -- sorry.
23 Give me the best guess as to the price at the time.

24 A. Between 500 and 600 for the gun alone.

25 Q. So you had enough money to purchase the

1 gun?

2 A. Yes.

3 Q. But you did not have enough money to pay
4 the additional fees that would be required, if you were
5 going to have it brought to you?

6 A. Correct.

7 Q. Let's move back to the first firearm
8 purchase that you say you were not able to complete it
9 because of the ten-day waiting period. What kind of
10 gun were you trying to purchase at that time, or
11 rather, in that instance?

12 A. Are we talking about the .22 from up
13 north? What are we talking about?

14 Q. We talked about the most recent one.

15 A. Okay.

16 Q. Which is the one up north, 2, 300 miles away.
17 I forget the town.

18 A. Uh-huh.

19 Q. The Kel-Tec PF9.

20 A. Okay.

21 Q. You said there was another one?

22 A. Uh-huh.

23 Q. The attempt of purchase was earlier in
24 time.

25 A. Correct.

1 Q. So for that firearm, what kind of firearm
2 was it?

3 A. I believe it was a long rifle AR-15.

4 Q. Before what -- sorry. What year were you
5 trying to make that purchase?

6 A. Best guess, 2009.

7 Q. And where was this firearm located?

8 A. I think this one was in the LA area also.

9 Q. Was, was this firearm owned by the same
10 person who you almost bought the Kel-Tec PF9 from?

11 A. No.

12 Q. It just happened to be from the same
13 place, the same general place?

14 A. Yes.

15 Q. Okay. How did you find out about the
16 existence of the AR-15?

17 A. Online classified ads.

18 Q. And so the person selling was a private
19 seller?

20 A. Yes. That may -- I don't recall
21 specifically. It could have been a dealer.

22 Q. And so do you recall if you looked up this
23 gun on the Internet and found it listed at an, at a
24 retailer's Internet site?

25 A. I'm sorry, can you please ask that --

1 Q. When you found out about the existence of
2 this gun, it was because you saw a listing for it at
3 an, at a firearm retailer's web site?

4 A. No. That's not the way I found out about
5 the gun.

6 Q. Okay. Did you communicate with the
7 potential seller?

8 A. Yes.

9 Q. What were your means of communication?

10 A. E-mail, online instant messaging.

11 Q. And what was the reason that you were
12 ultimately unable to complete the purchase? What were
13 the reasons, if there is more than one?

14 A. I had a scheduled trip that fell through
15 and was unable to make the distance.

16 Q. This scheduled trip, was it for the
17 specific purpose of purchasing this firearm?

18 A. No. I scheduled a family vacation and was
19 going to stop and make the purchase and then make a
20 second trip at a later date, and the trip fell through,
21 and I could not justify making two trips for that
22 firearm.

23 Q. When the trip was planned, it was going to
24 be more than a ten-day stay in the LA area?

25 A. No.

1 Q. So it was less than a ten-day stay?

2 A. Correct.

3 Q. But the plan, the trip plan fell through?

4 A. Didn't work.

5 Q. For this, the AR-15, did you consider
6 having it delivered to you by the mail or some other
7 means that would mean that you didn't have to go
8 physically get the firearm?

9 A. Yes.

10 Q. What, what other methods of delivery did
11 you consider?

12 A. Oh, I'm sorry. I misunderstood the
13 question.

14 Q. Go ahead. What I'm -- let me rephrase.
15 Did you consider a delivery system or -- strike the
16 question.

17 Did you consider obtaining the firearm, the
18 AR-15 through the mail or some other means that would
19 have meant you didn't have to go to LA to get the
20 firearm?

21 A. I considered having it shipped to a local
22 FFL, yes.

23 Q. And obviously, you didn't follow through.
24 What were the reasons that you didn't?

25 A. Same as before, cost preventative.

1 Q. Okay. Do you recall what the asking price
2 for the firearm was?

3 A. Not at all.

4 Q. Can you give me your best guess or your
5 best estimate, rather, your best estimate?

6 A. Maybe \$800.

7 Q. And when we talk about the potential cost
8 of delivery, let's be all inclusive, dealer fees, etc.,
9 what was that amount of money?

10 A. At least \$150.

11 Q. And at the time did you have the \$800 or
12 the amount of money that it would have cost --

13 A. Yes.

14 Q. -- to buy the firearm?

15 A. Yes.

16 Q. But you did not have the extra?

17 A. No.

18 Q. Okay. I say extra, I mean for the
19 delivery.

20 A. I understand.

21 Q. Okay. Let's look back at the Complaint.

22 I think it's Exhibit 4, paragraph 68, please, which is on
23 page 12. Let me ask you to read that paragraph to
24 yourself. You don't need to read it aloud, but just
25 tell me when you finish reading it.

1 as a City-owned property, to hold a rally or have a
2 protest regarding gun rights?

3 A. I don't believe so.

4 Q. You have ever tried to obtain a permit
5 for a protest, even if you were not going to be in the
6 protest?

7 A. Not to my knowledge.

8 Q. Have you ever borrowed a shotgun from
9 anyone?

10 A. Yes.

11 Q. If you -- have you ever -- let's see,
12 when -- how many times have you borrowed a shotgun from
13 somebody?

14 A. Only once that I can think of.

15 Q. Do you understand that if there was a time
16 when you were going through a ten-day waiting period
17 you would be able to go to somebody who you borrowed a
18 shotgun from before and be able to borrow it again?

19 A. I understand that that's a possibility,
20 but not a given.

21 Q. When is the last time you tried to borrow
22 any kind of firearm from anyone, and let's leave out,
23 for example, if you're shooting at, doing target
24 shooting or something? Let's leave out something like
25 that.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

---oOo---

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.) No. 1:11CV02137AWISKO
KAMALA HARRIS, Attorney General)
of California (in her official)
capacity:, and DOES 1 to 20,)
Defendants.)
-----)

DEPOSITION OF
BRANDON COMBS
FRESNO, CALIFORNIA
MAY 10, 2013

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
WWW.DEPO.COM

REPORTED BY: THERESA G. MENDOZA, CSR NO. 12338
FILE NO.: A703C38

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

---oOo---

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.) No. 1:11CV02137AWISKO
KAMALA HARRIS, Attorney General)
of California (in her official)
capacity:, and DOES 1 to 20,)
Defendants.)
-----)

Deposition of BRANDON COMBS, taken on
behalf of Defendants, at 2550 Mariposa Mall, Fresno,
California, commencing at 8:51 a.m., Friday, May 10,
2013 before Theresa G. Mendoza, CSR No. 12338.

A P P E A R A N C E S

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I N D E X

WITNESS: BRANDON COMBS

EXAMINATION	PAGE
BY MR. EISENBERG	5, 208
BY MR. OTTEN	206, 215

EXHIBITS

LETTER	PLAINTIFF'S DESCRIPTION	PAGE
	(NONE)	

NUMBER	DEFENDANTS' DESCRIPTION	PAGE
8 -	Interrogatory Responses	18
9 -	Calgun Web Post	201
10 -	Editorial	205

QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:

(NONE)

INFORMATION TO BE SUPPLIED:

(NONE)

1 Q. Let me direct your attention to page 29,
2 Interrogatory No. 16. That's at the bottom of the
3 page, and then to the response is on the following
4 page, page 30. If you could read the Interrogatory and
5 the response, and then tell me when you're done.

6 A. Okay.

7 Q. Ready? So you make reference to something
8 called opportunity cost or lost opportunity cost. What
9 do you mean by a lost opportunity cost?

10 A. An opportunity cost in this would be time
11 I could have spent on billable hours doing real work
12 versus going to a gun store for a second trip.

13 Q. Isn't it true that everything that you do
14 in your life where you're not billing time for work is
15 a lost opportunity to bill time for work?

16 A. Perhaps.

17 Q. You detail expenses incurred due to having
18 to make a second trip to a firearms dealer to obtain a
19 firearm that you had purchased like ten days before,
20 and you total up the expense to be approximately \$1500;
21 do you see that reference there on line 10?

22 A. Yes, I do.

23 Q. Is that \$1500 lifetime?

24 A. Yeah. Accumulatively.

25 Q. How did you figure that amount, \$15,000?

1 A. Basically doing mileage to and from
2 different dealers that I know I've gone to. I know
3 what my fuel consumption is for my vehicle. All those
4 sorts of actual direct costs that are measurable.

5 Q. Okay. So it does not include opportunity
6 cost, or it does include opportunity cost?

7 A. Does not.

8 Q. Okay. And then there's a reference to a
9 few lines down, line 14, \$100 in resubmission fees. Is
10 that \$100 a lifetime total of the resubmission fees
11 that you've had to pay?

12 A. Yes.

13 Q. How did you calculate that figure?

14 A. Those were just instances off the top of
15 my head that I remembered where, I had to resubmit a
16 DROS because I couldn't get the firearm -- let me pause.
17 Because I couldn't take the firearm with me on the day
18 it was purchased.

19 Q. Did you consult any written records to
20 come up with the \$100 figure?

21 A. No, not for that.

22 Q. I'll ask the same question about the
23 \$1500, did you consult any records to come up with that
24 figure?

25 A. No.

DECLARATION OF SERVICE

Court: **U.S. District Court, Eastern District of California**
Case Name: ***Silvester v. Harris***
Case No.: **1:11-cv-02137-AWI-SKO**

I declare:

I am 18 years of age or older and not a party to this matter. I am employed in Los Angeles, California, in the Office of the Attorney General, Department of Justice, State of California (“OACG”), which is the office of a member of the California State Bar, at which member’s direction the following service is made.

I certify my understanding that all the participants in the above-entitled case are registered CM/ECF users.

I hereby certify that, on September 25, 2013, I, assisting Jonathan M. Eisenberg, caused to be electronically filed with the U.S. District Court, Central District of California, Clerk of the Court, through the CM/ECF system, the document with the following titles: [1] **NOTICE OF MOTION AND MOTION OF DEFENDANT CALIFORNIA ATTORNEY GENERAL KAMALA D. HARRIS FOR SUMMARY JUDGMENT (FED. R. CIV. P. 56)**; [2] **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT CALIFORNIA ATTORNEY GENERAL KAMALA D. HARRIS’S MOTION FOR SUMMARY JUDGMENT (FED. R. CIV. P. 56) – INCLUDING STATEMENT OF UNDISPUTED MATERIAL FACTS**; and [3] **DECLARATION OF JONATHAN M. EISENBERG IN SUPPORT OF DEFENDANT CALIFORNIA ATTORNEY GENERAL KAMALA D. HARRIS’S MOTION FOR SUMMARY JUDGMENT (FED. R. CIV. P. 56) – INCLUDING STATEMENT OF UNDISPUTED MATERIAL FACTS**

By pre-arrangement with opposing counsel, I also e-mailed the same papers to the following e-mail address: vic@ottenandjoyce.com and megan@ottenandjoyce.com

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 September 25, 2013, at Los Angeles, California.

Reina V. Velasco

Declarant

Signature