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15 Attorneys for Plaintiffs

16 **UNITED STATES DISTRICT COURT**
17 **EASTERN DISTRICT OF CALIFORNIA**

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

25 **Plaintiffs,**

26 **v.**

27 **KAMALA HARRIS, Attorney**
28 **General of California (in her**
29 **official capacity), and DOES 1 to**
30 **20.**

31 **Case No. 1:11-cv-02137-AWI-SKO**

32 **DECLARATION OF VICTOR OTTEN**
33 **IN SUPPORT OF PLAINTIFFS'**
34 **OPPOSITION TO DEFENDANT'S**
35 **MOTION FOR SUMMARY**
36 **JUDGEMENT**

1 I, Victor Otten, declare as follows:

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

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

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

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

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

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1 DATED: October 14, 2013
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OTTEN & JOYCE, LLP



5 Victor Otten, Esq.
6 Attorneys for Plaintiffs
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EXHIBIT “A”

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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
26 Plaintiffs,
27 vs.

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

3 Defendant.

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

5
6 **PLAINTIFF BRANDON COMBS'S**
7 **RESPONSE TO DEFENDANT**
8 **KAMALA D. HARRIS'S FIRST SET OF**
9 **INTERROGATORIES**

broad and unduly burdensome. (*HPC, 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: Contentions interrogatories asking for each and every fact, or application

1 316, 321 – Providing “every fact” could require “laborious, time-consuming analysis, search and
2 description of incidental, secondary, and perhaps irrelevant and trivial details.”]

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

8 **INTERROGATORY NO. 9**

9 If you contend that it is unconstitutional to apply California Penal Code section 27540½
10 “waiting period” (between purchase and delivery of a firearm) to first-time firearms purchasers,
11 state all facts supporting this contention.

12 **RESPONSE TO INTERROGATORY NO. 9**

13 **OBJECTION:** Contentions interrogatories asking for each and every fact, or application of
14 law to fact, that supports particular allegations in an opposing pleading may be held to be overly
15 broad and unduly burdensome. *[IPV, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD
16 316, 321 – Providing “every fact” could require “laborious, time-consuming analysis, search and
17 description of incidental, secondary, and perhaps irrelevant and trivial details.”]

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

24
25 **INTERROGATORY NO. 10**

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

1 **RESPONSE TO INTERROGATORY NO. 10**

2 OBJECTION: Contentious interrogatories asking for each and every fact, or application of
3 law to fact, that supports particular allegations in an opposing pleading may be held to be overly
4 broad and unduly burdensome. *JPF, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD
5 316, 321 – Providing “every fact” could require “laborious, time-consuming analysis, search and
6 description of incidental, secondary, and perhaps irrelevant and trivial details.”]

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

15 See generally: *District of Columbia v. Heller*, 554 U.S. 570(2008) and *McDonald v. City of*
16 *Chicago*, 130 S.Ct. 3020 (2010). There are currently two cases pending in the Ninth Circuit
17 Court of Appeals relating to California law: *Richards v. Prieto* (Yolo County), Case No.: 11-
18 16255 and *Peruta v. County of San Diego*, Case No.: 10-56971. These cases were argued and
19 submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS 17th
20 Cir. Ill. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision
21 to give the state legislature an opportunity to enact a licensing scheme. But the court in
22 *Kachalsky v. County of Westchester*, 2012 U.S. App. LEXIS 24363 (2nd Cir. N.Y. Nov. 27, 2012)
23 found that the right did not extend beyond the home. These Constitutional violations, both
24 within the home and outside the home, are supported by the following facts:

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

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

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

12 I already have at least one firearm, but I seek to have additional firearms for protection of
13 myself and my family, *inter alia*, pursuant to my Second Amendment right to "keep and bear
14 arms." (Emphasis added to note the use of the plural.) I can otherwise demonstrate proof of
15 ownership and lawful possession of a firearm. For example, some firearms are registered in the
16 California Automated Firearms System database pursuant to, *inter alia*, Penal Code section
17 28200, *et seq.* In purchasing my firearms, I was already at least once subjected to the 10-day
18 waiting period prior to physically receiving my firearms. As a result of the 10-day waiting
19 period, I was obligated to endure a 10-day ban on the acquisition of my constitutionally protected
20 firearms and incur additional expense and burden by being forced to make a second visit to the
21 firearms dealer that sold me my firearm.

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

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

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

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

14 In fact, the California Department of Justice had determined alternative methods that
15 eliminate delays upon law-abiding firearm owners while ensuring public safety as early as [99].
16 In its AB 497 Alternative Feasibility Studies: Report of Findings (1991), the Department of
17 Justice identified multiple methods of performing proper background checks such that the
18 persons in prohibited categories would not be allowed to purchase a firearm from a licensed
19 California firearm dealer while imposing minimal infringement on gun owners' rights to
20 purchase and possess firearms. As I am a verifiable law-abiding firearm owner, there is no
21 justifiable reason to delay my acquisition of a firearm I already own.

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

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

10

11 **INTERROGATORY NO. 11**

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

15 **RESPONSE TO INTERROGATORY NO. 11**

16 **OBJECTION:** Contentions interrogatories asking for each and every fact, or application of
17 law to fact, that supports particular allegations in an opposing pleading may be held to be overly
18 broad and unduly burdensome. [*JPV, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD
19 316, 321 – Providing "every fact" could require "laborious, time-consuming analysis, search and
20 description of incidental, secondary, and perhaps irrelevant and trivial details."]

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

1 See generally; *District of Columbia v. Heller*, 554 U.S. 570(2008) and *McDonald v. City of*
2 *Chicago*, 130 S.Ct. 3020 (2010). There are currently two cases pending in the Ninth Circuit
3 Court of Appeals relating to California law; *Richards v. Prieto* (Yolo County), Case No.; 11-
4 16255 and *Pernia v. County of San Diego*, Case No.; 10-56971. These cases were argued and
5 submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS 17th
6 Cir. Ill. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision
7 to give the state legislature an opportunity to enact a licensing scheme. But the court in
8 *Kachalsky v. County of Westchester*, 2012 U.S. App. LEXIS 24363 (2nd Cir. N.Y. Nov. 27, 2012)
9 found that the right did not extend beyond the home. These Constitutional violations, both
10 within the home and outside the home, are supported by the following facts:

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

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

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

1 ownership and lawful possession of a firearm. For example, some firearms are registered in the
2 California Automated Firearms System database pursuant to, *inter alia*, Penal Code section
3 28200, *et seq.* In purchasing my firearms, I was at least once subjected to the 10-day waiting
4 period prior to physically receiving my firearms. As a result of the 10-day waiting period, I was
5 obligated to endure a 10-day ban on the acquisition of my constitutionally protected firearms and
6 incur additional expense and burden by being forced to make a second visit to the firearms dealer
7 that sold me my firearm.

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

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

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

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

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

8 If I were required to wait 3 days between purchasing a firearm and taking delivery of a
9 firearm, I would thereby be deprived of the use, custody, and control of my personal property.
10 The delay would also deny me the ability to defend self, family, and home with said firearm that
11 I already own; the hypothetical waiting period mandates a brief window of 27 days from which I
12 must return to obtain physical possession of property that I already own, causing an additional
13 increased 3 day delay and added expenses of Dealer Record of Sale fees, storage fees, and
14 transportation fees when I am unavailable to take physical possession of the firearm within the
15 27 day window; causes increased travel expenses upon firearm purchases coinciding with
16 distance from my home to the licensed firearm dealer premises due to the requirement that I must
17 make a second trip to receive custody of the firearm purchased; limits my out-of-town purchases
18 and gun show purchases; and limits the market of firearms available to areas I am willing to
19 travel to twice during a period of at least 3 days and at most 30 days; causes added burden and
20 expense of locating and paying another more local dealer who may be willing, but is not
21 statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm
22 dealer; and causes me to lose the opportunity cost of the time spent on the second trip to receive
23 a firearm I already own.

24

25 **INTERROGATORY NO. 12**

26 If you contend that California Penal Code section 26815(a) would be unconstitutional if
27 that law's "waiting period" (between purchase and delivery of a firearm) was five days, state all
28 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

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.

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

1 **VERIFICATION**

2 BRANDON COMBS declares:

- 3 1. I am a plaintiff in the above-captioned action;
- 4 2. I have read the foregoing "PLAINTIFF BRANDON COMBS'S RESPONSE TO
5 DEFENDANT KAMALA D. HARRIS'S FIRST SET OF INTERROGATORIES" ("The
6 Response") and know its contents. I am informed and believed that the matters set forth
7 in the Response are true and accurate, and on that ground I allege, to the best of my
8 knowledge and information, that the matters therein stated are true and accurate.

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct and that this Verification was executed on January 30, 2013, at
11 MADERA, California.

12 
13 _____

14 BRANDON COMBS

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EXHIBIT “B”

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

18 JEFF SILVESTER, MICHAEL PROFORD,
19 BRANDON COOMBS, THE CAGGINS
20 FOUNDATION, INC., a non-profit
organization, and THE SECOND
21 AMENDMENT FOUNDATION, Inc., a
22 non-profit organization.

23 Plaintiff,
24

25 KAMALA D. HARRIS, Attorney General
26 of California in her official capacity, and
27 Defendants.

28

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

29
30 PLAINTIFF JEFF SILVESTER'S
31 RESPONSE TO DEFENDANT
32 KAMALA D. HARRIS'S FIRST SET OF
33 INTERROGATORIES

broad and unduly burdensome. (*JPC, Inc. v. Mercantile Bank of Topeka* (D.KS.1998) 179 F.R.D. 315, 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; unclear for reliable operation; or otherwise unuseable. Any service related 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; ammunitions may make the firearm I 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 leather caps.

INTERROGATORY NO. 7

Identify and describe in detail and complete detail all harm that you suffer by, per California Penal Code sections 268 (a)(c) and/or 278.4(e), having to wait 10 days between purchasing and taking delivery of a firearm.

RESPONSE TO INTERROGATORY NO. 7

DIRECTIONS: Complete interrogatory regarding, for each and every fact, the implications

1 of law to fact, that supports particular allegations in an opposing pleading may be held to be
2 overly broad and unduly burdensome. *UFCI, Inc. v. Metamail Bank of Poplar* (D.K.S. 1998) 179
3 F.R.D. 376, 381 – Providing “every fact” could require that “soothing consonance analysis,
4 search and description of incidental, secondary, and perhaps irrelevant and trivial details.”

5 RESPONSE: Without qualifying the above referenced quotation, Plaintiff avers that the
6 California Penal Code section that requires me to wait 10 days between purchasing a firearm and
7 taking delivery of a firearm, thereby deprive me of the use, custody, control, and agency as
8 defendant self, safety, and home with said firearm that I already own in spite of a brief window of
9 30 days time which I must return to obtain physical possession of property that I already own
10 cause an additional increased 10 day delay and added expenses of Dealer Record of Sale fees,
11 storage fees, and transportation fees when I am unavailable to take physical possession of the
12 firearm within the 30 day window; cause increased travel expenses upon firearm purchases
13 coinciding with distance from my home to the licensed firearm dealer’s premises due to the
14 requirement that I must make a second trip to receive custody of the firearm purchased; limit my
15 out-of-town purchases and gun show purchases, and limit the market of firearms available to
16 areas I am willing to travel to twice during a period of at least 10 days and at most 30 days; cause
17 added burden and expense of locating and paying another more local dealer who may be willing,
18 but is not statutorily obligated, to process a firearms transfer originating at a competitor licensed
19 firearm dealer; and cause me to lose the opportunity cost of the time spent on the second trip to
20 receive a firearm I already own.

21 **INTERROGATORY NO. 8**

22 If you contend that it is unconstitutional to apply California Penal Code section
23 26815(a)'s "waiting period" (between purchase and delivery of a firearm) to first-time firearms
24 purchasers, state all facts supporting this contention.

25 **RESPONSE TO INTERROGATORY NO. 8**

26 OBJECTION: Plaintiff interrogatories asking for each and every fact, or application of
27 law to fact, that supports particular allegations in an opposing pleading may be held to be overly
28 broad and unduly burdensome. *UFCI, Inc. v. Metamail Bank of Poplar* (D.K.S. 1998) 179 F.R.D.

1 See, e.g., "Providing 'every fact'" could require "laborious, time-consuming analysis, search and
2 description of incidental, secondary, and perhaps irrelevant and trivial details.")

3 **RESPONSE:** Plaintiff contends that there are circumstances in which California Penal
4 Code section 2681(a)'s "waiting period" (between purchase and delivery of a firearm) to first-
5 time firearm purchasers, should be unconstitutional, such as application of the provision to
6 women who have been abused and have obtained Temporary Restraining Orders for their
7 protection, but such circumstances are not the subject of this litigation.

6 **INTERROGATORY NO. 9**

7 If you contend that it is unconstitutional to apply California Penal Code section 2681(a)'s
8 "waiting period" (between purchase and delivery of a firearm) to first-time firearms purchasers,
9 state all facts supporting this contention.

10 **RESPONSE TO INTERROGATORY NO. 9**

11 OBIETTOS' content of interrogatories asking for each and every fact, or application of
12 law to fact, that supports particular allegations in an opposing pleading may be held to be overly
13 broad and unduly burdensome. *Hill, Inc. v. Merchant Bank of Naples*, 10 F.S. (1998) 179 F.R.D.
14 366, at 1. "Providing 'every fact'" could require "laborious, time-consuming analysis, search and
15 description of incidental, secondary, and perhaps irrelevant and trivial details.")

16 **RESPONSE:** Without waiving the above referenced objection, Plaintiff contends that
17 there are circumstances in which California Penal Code section 2681(a)'s "waiting period"
18 between purchase and delivery of a firearm to first-time firearms purchasers would be
19 unconstitutional, such as application of the provision to women who have been abused and have
20 obtained Temporary Restraining Orders for their protection, but such circumstances are not the
21 subject of this litigation.

22 **INTERROGATORY NO. 10**

23 If you contend that California Penal Code section 2681(a) would be unconstitutional if
24 that law's "waiting period" (between purchase and delivery of a firearm) was one day, state all
25 facts supporting this contention.

1 **1. RESPONSE TO INTERROGATORY NO. 10**

2 **ANSWER:** Certain interrogatories asking for each and every fact or application of
3 law to fact that supports particular allegations in the opposing pleading may be held to be overly
4 broad and unduly burdensome. (D/F Am. v. *Metamorphic Ranch of Yreka* (D.C.N.J. 1998) 379 F.R.D.
5 316, 331 – Providing “every fact” could require laborious, time-consuming analysis, search and
6 description of incidental, secondary, and possibly irrelevant and trivial details.”)

7 **RESPONSE:** As far as we can tell, the above referenced objection, Plaintiff states that the
8 plaintiff are unconstitutional, to the extent that they would apply to an individual whose state
9 records (including the Motorized Firearms System and Armed and Prohibited Database) identify
10 them as a person who prohibited from possessing firearms and already being the owner of a
11 registered firearm, if that they violate his Second, Fourth and Fifth Amendment rights. The
12 Second Amendment applies beyond merely the home. There are several cases pending in the
13 Ninth, Seventh, and Second Circuit Courts of Appeals relating to whether the Second
14 Amendment entitles “[t]heir arms” for the purpose of self-defense extends beyond the home
15 See generally, *Heller v. District of Columbia*, Heller, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 312 (2010). There are currently two cases pending in the Ninth Circuit
16 Court of Appeals relating to California law: *Richardson v. Franks* (Yolo County, Case No. 11-
17 146258 and *Morgan v. County of San Diego*, Case No. 10-86971. These cases were argued and
18 submitted on December 6, 2012. The court in *McDonald v. Malloy*, 2012 U.S. App. LEXIS 17
19 164 (Cir. Ct. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision
20 to give the state legislature an opportunity to enact a licensing scheme. But see *right to
21 keep and bear arms*, 296 U.S. 34, App. 11, LMS 24763 (2nd Cir., N.Y., Nov. 27, 2012)
22 found that the right did not extend beyond the home. These Constitutional violations, both
23 within the home and outside the home, are supported by the following facts.

24 Additionally, I am a holder of a valid license to carry a concealed firearm. As a holder of
25 a valid license to carry pursuant to Penal Code section 261.5(e), seq., I and other such persons
26 represented by CGA and SMC are, per se, not in a class of persons described in Penal Code
27 sections 29896, et seq., 29899, et seq., or Welfare and Institutions Code 8100, et seq. (Penal
28 Code, 29896, et seq., 29899, et seq., or Welfare and Institutions Code 8100, et seq.)

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 28000, *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 encouraged to take a 10-day break 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 after holding my firearms.

Though I must wait 10 days to acquire possession of each firearm I purchase for self-defense, others seeking constitutional protection and personal acquisition of firearms, such as hunting, deer collectors, movie prop houses, auction purchases, and "consignment" evaluations, are permitted to own diverse firearms.

The National Instant Check System, located in the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia, provides full and instant service to 141 states, the 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 Arms Powers File. The purpose at the time is to alert police to 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

1 firearms fall within a class of persons who are prohibited from owning or possessing a firearm
2 (Penal Code §12021, et seq.)

3 The information contained in the PAPF is available for the purpose of determining if
4 persons are armed and prohibited from possessing firearms. Penal Code §12021, et seq.
5 Conversely, the PAPF is not available for the purpose of determining if persons are armed and
6 not prohibited by the very nature of the individual not appearing in the PAPF – but appearing in
7 the Automated Firearm System as the registered owner of a firearm.

8 In fact, the California Department of Justice has determined alternative methods that
9 eliminate delays upon law-abiding firearm owners while ensuring public safety as early as 1992,
10 in its AB 492 Alternative Feasibility Studies Report of Findings (1992), the Department of
11 Justice identified multiple methods of performing proper background checks such that the
12 persons in prohibited categories would not be allowed to purchase a firearm from a licensed
13 California firearms dealer while imposing minimal enforcement on gun owners' rights to
14 purchase and possess firearms. As from a sensible law-abiding firearm owner, there is no
15 justifiable reason to delay my acquisition of a firearm I already own.

16 I were reported to wait 1 day between purchasing a firearm and taking delivery of a
17 firearm. I would thereby be deprived of the use, custody and control of my personal property.
18 The delay would also deny me the ability to defend self, family, and home with said firearm that
19 I already own. The hypothetical waiting period mandates a 29-day window of 29 days from which I
20 must return to obtain physical possession of property that I already own, causes an additional
21 increased 1 day delay and added expenses of Dealer Record of Sale fees, storage fees, and
22 transportation fees which are unavoidable to take physical possession of the firearm within the
23 29-day window, causes increased travel expenses upon firearm purchase coinciding with
24 distance from my home to the nearest firearm dealer increases due to the requirement that I must
25 make a second trip to receive custody of the firearm purchased, limits my out-of-home purchases
26 and gun show purchases, and limits the market of firearms available so that I am willing to
27 travel to travel during a period of at least 1 day and at most 30 days it causes added burden and
28 expense of locating and paying another local dealer who may be willing, but is not.

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

4

5 **INTERROGATORY NO. 11**

6 If you contend that California Penal Code section 268 (5a) would be unconstitutional if
7 that law's "waiting period" (between purchase and delivery of a firearm) was three days, state all
8 facts supporting this contention.

9 **RESPONSE TO INTERROGATORY NO. 11**

10 **OBJECTION:** Contentions interrogatories asking for each and every fact, or application of
11 law to fact, that supports particular allegations in an opposition pleading may be held to be overly
12 broad and unduly burdensome. *J/PK, Inc. v. American Bank of Topeka* (11 KS 494S) (3d JK)
13 316 P.3d. Providing "every fact" could require "elaborate, time-consuming trials on search and
14 description of confidential, secondary, and perhaps irrelevant and trivial details."
15

16 **RESPONSE:** Without waiving the above referenced objection, Plaintiff states that the
17 provisions are unconstitutional to the extent that they would apply to an individual whose state
18 records (including the Automated Firearm System and Armed and Prohibited Database) identify
19 him as a person not prohibited from possessing firearms and already being the owner of a
20 registered firearm, in that they violate his Second, Fourth and Fifth Amendment rights. The
21 Second Amendment applies beyond merely the home. There are several cases pending in the
22 Ninth, Seventh, and Second Circuit Courts of Appeals relating to whether the Second
23 Amendment's right to keep "these arms" for the purpose of self defense extends beyond the home.
24 See generally, *Moore v. Columbia Cnty. Sheriff*, 584 F.3d 1363 (2009) and *M. Donald v. City of*
25 *Chicago*, 130 S.Ct. 3020 (2010). There are currently two cases pending in the Ninth Circuit
26 Court of Appeals relating to California law: *Richards v. Prieto* (Yolo County), Case No.: 11-
27 16255 and *Perry v. County of San Diego*, Case No.: 10-56971. These cases were argued and
28 submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS 1750
(Cir. IL Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision.

to give the state firearms an opportunity to enact a licensing scheme. But the court in *Ku v. Gadsden et al., et al.*, 2013 U.S. App. LEXIS 24367 (S.D. Cal. Nov. 27, 2013) found that the statute did not extend beyond the home. There's no language 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 16150, et seq., I and other such holders represented by CCH and SAF are, per se, not in a class of persons described in Penal Code sections 29800, et seq., 29801, et seq., or Welfare and Institutions Code 8160 et seq., (Penal Code section 16195(a)(b)). In other words, I and other holders of a valid license to carry pursuant to Penal Code section 16150, et seq., represented by CCH 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 carrying firearms for which they are subjected to a 10-day ban on possession.

I already have a firearms license, but I seek to have additional firearms for protection of myself and my family. That will, 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 18706, 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, it was intended to ensure a 10-day ban on the acquisition of my constitutionally protected firearms and non-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 competitive firearm collectors, movie prop houses, auction purchasers, and "concealments" enthusiasts, 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 all 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 at firearms in California, including myself. Moreover, the Attorney General has established and maintained an online database known as the Fugitive Armed Persons File. The purpose of the FAP 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 § 36800, 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 § 36800, 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 Firearms System as the registered owner of a firearm.

In fact, the Customs Department of Justice had determined alternative methods that eliminate delays upon law-abiding firearm owners while ensuring public safety as early as 1993, (IRS AB-497 Alternative Feasibility Study Report of Findings, 1993), 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 impacting minimal infringement on said owners' rights to purchase and possess firearms. As long as verifiable documentation of firearm owner, there is no justification to delay the 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

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

12 INTERROGATORY NO. 12

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

16 RESPONSE TO INTERROGATORY NO. 12

17 OBJECTION: Plaintiff interrogaotories asking for each and every fact, or application of
18 law to fact, that supports particular allegations in an opposing pleading may be held to be overly
19 broad and unduly burdensome. (Pf. ltr. v. Attorney Gen. of Texas 1998-1793-RD
20 Hr. 125 - Procedure, even the "could require" language, time-consuming analysis, search and
21 description of incidental secondary, and perhaps irrelevant and trivial details.)

22 RESPONSE: Without waiving the above-referenced objection, Plaintiff states that the
23 previous are unconstitutional to the extent that they would apply to an individual whose state
24 records (including the Automated Firearms System and Armed and Prohibited Database) identify
25 them as a person not prohibited from possessing firearms and already being the owner of a
26 registered firearm, or that they violate my Second, Fourth and Fifth Amendment rights. The
27 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 firearms 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

1 my vehicle(s) necessary for a return trip to the licensed dealer to receive my firearm. On
2 information and belief, I have spent approximately \$1,500.00 on such expenses.
3 I have incurred additional costs of having to resubmit a Dealer Record of Sale application
4 due to scheduling conflicts preventing me from returning to the store to receive my firearm
5 within the temporary or allowed availability. Upon information and belief, I have spent
6 approximately \$100.00 on resubmission fees.

8 **INTERROGATORY NO. 17**

9 Describe in full and complete detail all expenses that you have incurred to acquire
10 firearms because of California Penal Code section 37540 and its waiting period (between
11 purchase and delivery) of firearms.

12 **RESPONSE TO INTERROGATORY NO. 17**

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

16 I have lost the opportunity to purchase firearms due to an inability to make a second trip.
17 I have incurred expenses, including shipping expenses, additional dealer transfer fees,
18 increased firearm prices due to lack of local competition, additional fuel costs, stress and fear to
19 buy vehicles(s) necessary for a return trip to the licensed dealer to receive my firearm. On
20 information and belief, I have spent approximately \$1,500.00 on such expenses.

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

25
26 **INTERROGATORY NO. 18**

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

VERIFICATION

1 JEFF SILVESTER declares:

2 as a plaintiff in the above-captioned action;

3 Have read the foregoing PLAINTIFF JEFF SILVESTER'S RESPONSE TO
4 DEFENDANT KAMALA D. HARRIS'S FIRST SET OF INTERROGATORIES in the
5 Response, and know its contents. I am educated and believed that the matters set forth
6 in the Response are true and accurate, and on the ground ofage, to the best of my
7 knowledge and information, that the matters therein stated are true and accurate;

8 Declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct and that this Verification was executed on January 29, 2013, at

10 Hanford, CA, California,



11 JEFF SILVESTER

EXHIBIT “C”

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ORIGINAL

1 JEFFREY M. KLEINER, MICHAEL SPECHT,
2 BRANDON GOMEZ, THE VALLUM
3 FOUNDATION, INC., a non-profit
4 corporation, and THE SECOND
5 AMENDMENT FOUNDATION, INC., a
6 non-profit organization,

Plaintiffs,

v.

Case No.
1:11-cv-02137

7 ANITA MARSH, Attorney General
8 of California, in her official
9 capacity, and DUES 1 TO 20,

Defendants.

10 THIS TRANSCRIPT WAS PREPARED BY DEPUTY CLERK

11

12 101st DEPOSITION OF
13 THE SECOND AMENDMENT FOUNDATION, INC.
14 BY AND THROUGH ALAN MURKIL OUNDRIDGE

15 LOS ANGELES, CALIFORNIA

16 MAY 16, 2013

17

18 Alexander-Makar, Inc.
19 Court Reporters
20 1000 1/2 Broadway
21 www.depct.com

22

23 Reported by: Alissa Moulton, RPR, CRR, CSE No. 5116

24

25 Page 3 of 14 APPENDIX

1 under a NICS check?

2 A. Yes, I believe there are differences.

3 Q. What are the differences?

4 A. I believe in California you have a comprehensive
5 database that you throw in there as well. Also, in
6 the federal one, I learned the fact, if you have
7 outstanding orders, or notices, you're in that database
8 too. This is my understanding California adds in other
9 information of what those notices are so that they
10 aren't exactly in tune with everybody in the federal
11 database.

12 Q. Can you identify what those statements that
13 are included in California are then are not checked
14 either NICS?

15 A. Off the top of my head, I can't. Also,
16 California accepts some things that are in the NICS
17 database along with their own California database. It
18 does both now.

19 Q. Okay. Does The Second Amendment Foundation
20 take the position that there are things that the
21 California background check looks at that the NICS
22 check doesn't? Look at what has happened and is it
23 longer true.

24 A. No, we don't really care what you have in your
25 database or not. That's not what we're challenging.

1 Q. Okay. Now your question is how you use the database.
2 The ten-day waiting period is a problem. The database
3 is not -- no problem.

4 A. Well, the Second Amendment Foundation believes
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 keeping background
10 checks another day or two longer than they could be done faster?
11 A. Well, by varying law or making it ten days, I
12 think it's deliberate.

13 Q. What information 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. Well, according to the data I got, a database and data
18 access is inexpensive, and the same way the NICS
19 check is done federally, the state of California could
20 do it with their database.

21 Q. Any other reason --

22 A. I'm not -- I'm not -- I'm not --

23 Q. A. Any other reason?

24 A. Well, they could do it.

25 Q. But they could -- that they could do it and a

1 and that's just -- I think -- the Constitution should be
2 interpreted. And since it can be done by an instant
3 background check, I believe it should be done then as well.

4 Q. Why is the Second Amendment Foundation not
5 challenging enforcement of the ten-day waiting period
6 for non-fatalistic purchasers?

7 A. Well, I'm just going to object now, that
8 my answer will be attorney-client-communicated
9 privileges with him as to why they did certain things in
10 the law and so forth.

11 Q. Well, if you want to answer it, you can.

12 A. Well, I think I'm going to answer
13 it. I mean, I think the purpose of the second part
14 of the Second Amendment, if you've already -- if you've
15 already gone through it -- the background check, you've
16 gone through the waiting period, and you already have a
17 gun registered in the prohibited database, the state
18 absolutely knows about it. There is absolutely no reason
19 to have an additional waiting period for those second
20 parts. It just is absolutely no sense at all.

21 Q. Mr. KERKAS: So --

22 A. An aside, if I may,

23 Q. Mr. KERKAS: Okay. One final question:
24 A. The Foundation, I hope, has the Second Amendment
25 foundation believe that it's not ridiculous, it is
26 indefensible, to make -- for the State of California to

5 making a direct-to-the-customer purchase go down to the
6 ten-day waiting period?

7 Q. I think when California passed the ten-day
8 waiting period, we didn't have the instant check
9 systems in place. The instant check system wasn't
10 there at the time. So it is now and it's time for
11 California to change its law, I'm my opinion.

12 Q. So there was a point in time when California
13 became able to do instantaneous background checks, just

14 Q. Now, the federal requirement becomes void if
15 either the NICS database goes bad or the instant check
16 system goes bad. And I believe that's what happened.
17 Plaintiff's California from doing it. And at no time did
18 Plaintiff's argue that he had been deprived of his
19 constitutional rights to keep and bear arms.
20 Plaintiff's argument was that the civil rights of freedom of speech, of
21 assembly were denied.

22 Q. Right, I understand. I'm trying to pinpoint
23 the statutorily mandated time like you said that there
24 was a ten-day waiting law was passed, the ten-day waiting
25 period may have been necessary but it's not anymore.
26 Is that approximately what you said?

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

29 Q. In other words, there is no longer any
30 reason in law that the Second Amendment Foundation
31 would have said it's reasonable, and that's what I

EXHIBIT “D”

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ORIGINAL

THE FOUNDATION, MICHAEL JORDAN, &
BRANDON COOPER, THE CARSONS
FOUNDATION, INC., A NON-PROFIT
ORGANIZATION, AND THE CARSONS
EMPLOYEE FOUNDATION, INC., A
NON-PROFIT ORGANIZATION,

Plaintiffs,

CASE NO.
C13-01079-JHE

AND RICHARD, ASSISTANT GENERAL
COUNSEL FOR THE U.S. DEPARTMENT OF JUSTICE,
DEPUTY, AND DOE # 1 TO 10,

Defendants.

RECEIVED DEPARTMENT OF THE CARSONS FOUNDATION, INC.

14 MAY 16 2013 TURNER LAW OFFICES, LLP,

LOS ANGELES, CALIFORNIA

MAY 13, 2013

Attn: Alexander, D.J.

Federal Regulators

Amicus Curiae

www.amicuscuriae.org

Filed by: Aileen Velizcana, ELS, CEP, CDR # 1, 5013

State Bar # 2500000

Q. There has been an informal attempt to do just

A. Certainly there are conversations about how

much easier it is to be able to do a quick five week interview

and leave the country, in other states.

Q. Has the Bureau attempted to determine whether the

longer waiting period in California is responsible for

any of the disparity between California and other

states?

A. We have certainly compared it from a

criminological standpoint and found that in fact

California's gun homicide rate continues to be higher

than those states that do not have a waiting period.

Q. The research on the gun homicide rates was

related to the mandatory waiting period or not?

A. The focus of California and others,

we believe, is the very long California gun

law as a research

A. I would say it's mostly about the background

check and the universal background check, as well as

the mandatory waiting period.

Q. Did DOJ determine or calculate any gun homicide

rate difference in this research?

A. No, the DOJ did not really rely primarily on the FBI

and CDC data, as well as a study in Los

Angeles.

1 A. Administration of the Florida

2 Q. Any others?

3 A. Florida and others. The ones that are main
4 applied to the state which larger section of the country

5 Q. What I'm asking is -- I'm not asking you to name
6 more than one. I'm saying, which states do you have
7 comparative analysis for --

8 A. We --

9 Q. -- California and other states, which other

10 states?

11 A. We did some in Texas.

12 Q. Did you -- did CCT compile data for states
13 like Colorado, and Nevada?

14 A. We reviewed the rest of the other states, yes.

15 Q. And so CCT's understanding is that Texas has a
16 lower生育保险rate than California?

17 A. That's correct.

18 Q. And this non-compliance rate based on when

19 we're talking?

20 A. The 2011 fine data.

21 Q. Is it like a per capita --

22 A. Yes.

23 Q. Okay?

24 A. Yes, it's a per capita rate.

25 Q. So, the CCT has determined that non-compliance

3 differences in accessibility to firearms is a one-day
4 waiting period in California.

5 Q. Do you see any other way account? One-day
6 waiting period and one to two days waiting period
7 waiting is in Texas.

8 Q. You said that there were other differences in the
9 nature of California gun laws than gun buyback
10 and violent crime gun homicide rate comparative data,
11 correct?

12 A. That's correct.

13 Q. What percentage of the return is from
14 firearms buyback waiting period versus other laws?
15 A. It's impossible to say.
16 Q. Approximately what is it percent?

17 A. Because the other thing that matters is the
18 up-front background checks requirement.

19 Q. In other words, there are two things that
20 affect this issue. Do you know that each thing affects
21 the other possibly?

22 A. That's not impossible.

23 Q. What's the basis for the supposition?

24 A. The fundamental difference between Texas law
25 and California law is the universal background check
26 and one-day waiting period. When considered with
27 the first two headings are something near 30 or 30

8. What's your point?

9. That person could be doing something else,
10. besides going to the grocery store?

11. That's correct.

12. Is there something about a gun owner making a
13. trip to a gunsmith that creates a different kind
14. of opportunity cost?

15. Yes.

16. What's the difference?

17. If a customer has a single rifle to be shipped
18. across a distance, the customer must do multiple trips.

19. If a gun owner's home is exactly five miles
20. away from a grocery store that the person uses
21. mostly, five miles away in a slightly different
22. direction to a firearms retailer that the person uses
23. and the cost of each piece is the same, isn't
24. the opportunity cost of each purchase same?

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

26. So if the gun owner has to travel when a
27. customer purchases a firearm that's causing an
28. opportunity cost that OSP objects to?

29. It's one of the opportunity costs that OSP
30. objects to.

31. Yeah. I'm saying it's like hypothetical.

32. Right.

A. I do not believe there is any CCR award number
associated with a felony conviction.

Q. So the CCR anticipated a criminal conviction from the
plaintiff before the January waiting period was
extended than from effectively defending themselves or
themselves? (emphasis on the last word)

A. He was aware of a couple situations where it
had been a real hindrance, yes.

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

A. Usually word of mouth specifically around the
club, mostly.

Q. And can you give me some instances or what
statements did the people that made these contentions?

A. This doesn't rise to more than a formal --
informal protestation, Iardon.

Q. So you say there are a couple of instances. Do
you know what?

A. That I'm aware of.

Q. What are the instances related to the C.R.A. rights?

A. Yes.

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

A. One person actually wrote a well-known article
so I don't know to recall the name of the article's

the "Daily Mail" right, didn't know about the other
incubation. There is another GSF member who alleges, you
know, that the ten-day waiting period prevented the
person from getting a different kind of medical treatment
that could have been helpful.

Q. And Dr. Rubin,

Q. Actually, strike. Forget that. Let's move
back. Let's now back to the playwright. Has the
playwright attacked?

A. The playwright escaped during an evening fight,
and he was shot twice. Some, and hopefully, figured out that
he couldn't have set a trap and did not immediately
return to work.

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 going to claim self-defense?

A. I don't recall.

Q. Well, again, let's move on to the other
incubation. Do you know the name of the person who is
the named person that we're redacting now?

A. I would recall her name.

Q. You can recall that the person is a female.

A. That's correct.

24 And do you know anyone who was a witness
25 during the trial of the 1992 I.A. victim?

A. No.

Q. What were the attempts to obtain evidence from
26 the victim during, if anything?

A. She said nothing who she was concerned was a
27 suspect.

Q. When was she told he stalked by this
28 person?

A. A couple years ago.

Q. Did this woman write an article or make any
29 written statement from her comment?

A. No.

Q. Has anybody informed you that this woman had
30 this statement?

A. In conversation with a friend of hers who was a
31 neighbor of hers.

Q. And did you ever -- so you talked to a friend
32 of hers --

A. Correct.

Q. So about this woman's problem --

A. Correct.

Q. Now this one's another and --

A. Uh-huh.

Q. -- that's the one which got a threat to before

Q. I don't recall.

Q. Have you ever heard anyone say that the
background check system for prospective
officers should be a national, or across
state lines, effort?

A. Yes.

Q. When have you heard such statements?

A. Various members of the press, various advocacy
organizations,

Q. That's an organization that advocates for

background checks, right, as the worst of the existing
systems?

A. The background check system is not a system,
it's just one's position is that the background check

system in the state majority takes better than other
states, it's the swiftest perhaps the swiftest.

Q. Does CCP understand that the 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 FBI's
experience.

Q. What's your understanding of why this original
needs to presently be ten days?

A. Apparently set by the legislature.

important to handle. At the same time, we would also want to avoid having many of our members who are prosecuted, so, therefore, it should be very easy to know whether or not someone has been arrested or not.

Q. When you say "prosecuted," what do you mean prosecute?

A. They either have a carry permit or their right to do so is suspended by the Department.

Q. There are 307 members that don't have either a carry permit or current?

A. That's right.

Q. For that group of people, the people that have the license or the certificate, does CCP understand that those people are subject to any kind of continuous or ongoing background check?

A. Yes, usually they are, otherwise the ADP would not be giving people cards.

Q. So it is CCP's position that for a person who has been through the ten-day waiting period, and is allowed to do so, to see if that person appears up the Armed Prohibited Persons List and thereby make a decision about whether the person should be allowed to obtain a concealed firearm?

A. Right.

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