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

**JEFF SILVESTER, 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

**DEFENDANT KAMALA D. HARRIS'S
OBJECTIONS TO DOCUMENTS CITED
IN PLAINTIFFS' RESPONSIVE TRIAL
BRIEF (Dkt. # 69)**

Trial Date: March 25, 2014
Time: 8:30 a.m.
Courtroom: 2
Judge: The Hon. Anthony W. Ishii

Defendant Kamala D. Harris, Attorney General of California (the "Attorney General"),
hereby objects to the previously undisclosed documents cited in Plaintiffs' Response to the
Attorney General's Trial Brief (Dkt. # 69)(referenced herein as "Plaintiff's Responsive Trial

Brief”). In their Responsive Trial Brief, Plaintiffs cite over a dozen previously undisclosed publications as evidence and submit two of the publications as exhibits:

1. Early American Gunsmiths 1650-1850, Henry J. Kauffman (Exhibit A to Plaintiffs’ Responsive Trial Brief);
2. The Pennsylvania-Kentucky Long Rifle, by Henry J. Kauffman (Exhibit B to Plaintiffs’ Responsive Trial Brief);
3. Stephen P. Halbrook, The Founder’s Second Amendment – Origins of the Right to Bear Arms (*Id.* at 15);
4. Frank A. Mumby, George III and the American Revolution;
5. The Writings of Thomas Jefferson;
6. Boston Gazette (January 24, 1774);
7. David Hackett Fischer, Paul Revere’s Ride;
8. Daniel Dulany Jr., Considerations on the Measures Carrying on with Respect to the British Colonies in North America;
9. E. Foner, Reconstruction: America’s Unfinished Revolution 1863-1877;
10. H.R. Exec. Doc. No. 70;
11. G. Neumann, Swords and Blades of the American Revolution;
12. To the Printer, Providence Gazette (May 27, 1775);
13. Letters of Delegates to Congress 1774-1789; and
14. 39th Cong. Globe 915.

None of these documents were timely disclosed and Plaintiffs therefore should not be permitted to rely on them. The Court’s Pretrial Order clearly states that “NO EXHIBIT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS ORDER SHOULD BE MODIFIED TO PREVENT ‘MANIFEST INJUSTICE.’” (Pretrial Order (Dkt. # 48), at 10.) The documents that Plaintiffs cite and submit as exhibits were not listed in the Pretrial Order.

In addition to not timely disclosing these documents, Plaintiffs also have not given the Attorney General an opportunity to examine them. The Attorney General had requested an

1 opportunity to examine at least two of the documents, and the Plaintiffs have not complied with
2 the request.

3 Plaintiffs also have not requested that the Court take judicial notice of these documents.¹

4 Based on the foregoing objections, Defendant Attorney General requests that the Court
5 strike all references to the documents cited in Plaintiffs' Responsive Trial Brief that were not
6 disclosed in accordance with the Pretrial Order and exclude such documents from trial.

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8 Dated: March 20, 2014

Respectfully submitted,

9 KAMALA D. HARRIS
Attorney General of California
10 MARK R. BECKINGTON
Supervising Deputy Attorney General

11
12 /s/ Peter H. Chang
13 PETER H. CHANG
Deputy Attorney General
14 *Attorneys for Defendant Kamala D. Harris,*
Attorney General of California

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25 ¹ The Attorney General believes that such publications may properly be admitted and used
26 at trial, so long as they were timely disclosed in the Pretrial Order and the opposing party was
27 provided an opportunity to examine them. As shown by the submissions in their trial brief,
28 Plaintiffs agree. Although Plaintiffs filed objections to the Attorney General's evidence, in their
motions in limine briefing, Plaintiffs conceded that they "cannot and (do not) object to [historical
evidence] being derived from academic studies and law-journal articles." Plaintiffs' Reply Re:
Motion in Limine to Exclude Expert Opinion Testimony (Dkt. # 63), at 2:18-19.