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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
11 FRESNO DIVISION  
12

13 **JEFF SILVESTER, BRANDON COMBS,**  
14 **THE CALGUNS FOUNDATION, INC., a**  
15 **non-profit organization, and THE SECOND**  
**AMENDMENT FOUNDATION, INC., a**  
**non-profit organization,**

16 Plaintiffs,

17 v.

18 **KAMALA D. HARRIS, Attorney General of**  
19 **California (in her official capacity),**

20 Defendant.  
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1:11-cv-02137-AWI-SKO

**DEFENDANT KAMALA D. HARRIS'S  
SUPPLEMENTAL REQUEST FOR  
JUDICIAL NOTICE OF DOCUMENTS**

Date: July 21, 2014  
Time: 1:30 p.m.  
Dep't: 8th Flr., Crtrm. 2  
Judge: Hon. Anthony W. Ishii  
Trial Date: March 25, 2014  
Action Filed: December 23, 2011

1 Defendant Kamala D. Harris, Attorney General of California (the “Attorney General”),  
2 hereby requests that this Court take judicial notice of the following documents, which are  
3 attached hereto:

4 Exhibit A: Additional excerpts from *American Archives: Documents of the American*  
5 *Revolution, 1774-76* (Northern Illinois University Libraries 2004) (referenced in  
6 paragraph 26 of the Attorney General’s Proposed Findings of Fact and Conclusions of  
7 Law (“AG Proposed Findings”);

8  
9 Exhibit B: Additional excerpts from Henry J. Kauffman, *The Pennsylvania -*  
10 *Kentucky Rifle* (Masthof Press 2005) (referenced in paragraphs 27 and 28 of the AG  
11 Proposed Findings);

12  
13 Exhibit C: Additional excerpts from Jack Larkin, *The Reshaping of Everyday Life,*  
14 *1790-1840* (1988) (Def. Exh. EC) (referenced in paragraphs 29 and 31-34 of the AG  
15 Proposed Findings); and

16  
17 Exhibit D: Addition excerpts from Adam Winkler, *Gun Fight: The Battle Over the*  
18 *Right to Bear Arms in America* (2011) (Def. Exh. EK) (referenced in paragraphs 35,  
19 37 and 38 of the AG Proposed Findings).

20 All these documents are excerpts from history books and are proper subject matter for  
21 judicial notice for the legislative facts contained therein. *See e.g., Leo Sheep Co. v. United States,*  
22 *440 U.S. 668, 669-670* (1979) (referencing number of history books that discussed commercial  
23 and social aspects of living on U.S. western frontier during 19th century; “courts, in construing a  
24 statute, may with propriety recur to the history of the times when [a challenged statute] was  
25 passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of  
26 particular provisions in it”); *accord Peruta v Cnty of San Diego, 742 F.3d 1144, 1151* (9th Cir.  
27 2014) (petition for *en banc* review pending). Indeed, Plaintiffs herein agree that historical  
28 evidence is proper subject for judicial notice. (Dkt. # 63 at 2 (“Plaintiffs herein cannot (and do

1 not) object to [historical evidence of the scope and meaning of the Second Amendment] being  
2 derived from academic studies and law-journal articles”).)

3 It is within the Court’s discretion to take judicial notice of documents at this stage of the  
4 proceedings. *See Preminger v. Nicholson*, No. C04-2012 JF (HRL), 2007 WL 735711, \*5 (N.D.  
5 Cal. Mar. 7, 2007). Here, the Attorney General submits Exhibits A and B to give proper context  
6 to the same historical evidence that Plaintiffs submitted—not in the pre-trial statement, as  
7 required, but—one week before trial. Plaintiffs, in their response to the Attorney General’s trial  
8 brief, referenced and submitted excerpts of history books that they had not previously cited or  
9 disclosed. (*See generally* Dkt. # 69.) In particular, Plaintiffs cited and submitted excerpts of two  
10 books—*American Archives* and *The Pennsylvania–Kentucky Rifle*—attached to Plaintiffs’ trial  
11 response brief. (*Id.* at 16; Dkt. 69-2, Exh. B). Plaintiffs did so to make an apparently tangential  
12 point about the widespread use of firearms in the United States in the Founding Era. Presently,  
13 the Attorney General submits additional excerpts from these same two books to provide context  
14 for Plaintiffs’ references and also to provide rebuttal evidence from the same references. More  
15 specifically, the supplemental excerpts support the Attorney General’s contention that in the  
16 Founding Era people generally could not purchase firearms quickly, and hence would not have  
17 objected to a waiting-period law of the kind at issue in the present case. (See paragraphs 26 and  
18 27 of the Attorney General’s Proposed Findings of Fact and Conclusions of Law, filed herewith,  
19 for the discussion of these book excerpts.) Plaintiffs are not prejudiced by the submission of  
20 these two documents or the Court’s taking judicial notice of them, because Plaintiffs have had  
21 possession of these documents, relied on these documents, and cited them, since at the latest one  
22 week before trial.

23 Exhibits C and D are additional excerpts from two books from which the Attorney General  
24 had previously timely submitted excerpts, seeking judicial notice of same. (Dkt. # 78; Def. Exhs.  
25 EC and EK.) The Attorney General, through her attorney, had submitted at trial only those  
26 excerpts that she believed to be crucial to the case. However, the Attorney General, through her  
27 attorney, inadvertently left out certain other excerpts from these two previously disclosed books  
28 that may be helpful to the Court. The omitted excerpts reveal that in the Founding Era stores

1 were closed during the entire harvest season, and so even if stores carried guns (which was not  
2 assured), ordinary people did not expect to be able to acquire firearms instantaneously upon  
3 desiring to do so; there was a natural, built-in waiting period. (These new excerpts are discussed  
4 in paragraphs 29, 31-35, and 38 of the AG Proposed Findings.) Plaintiffs are not prejudiced by  
5 the submission of these two documents and the Court's taking judicial notice of them, because the  
6 existence of, intent to be relied upon, and copies of certain pages of these books were disclosed to  
7 Plaintiffs by the Attorney General more than two months before trial, as part of the joint pre-trial  
8 statement (Dkt. # 45-1.)

9 For the reasons cited above, the Attorney General respectfully requests that this Court take  
10 judicial notice of the attached Exhibits A through D.

11 Dated: June 16, 2014

12 Respectfully submitted,

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14 Attorney General of California  
15 MARK R. BECKINGTON  
16 Supervising Deputy Attorney General  
17 PETER H. CHANG  
18 Deputy Attorney General

19 /s/  
20 JONATHAN M. EISENBERG  
21 Deputy Attorney General  
22 *Attorneys for Defendant Kamala D. Harris,*  
23 *Attorney General of California*