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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION
2500 TULARE STREET | FRESNO, CA 93721

JEFF SILVESTER, BRANDON
COMBS, 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, and DOES 1 to 20,

Defendants.

Case No.: 1:11-CV-2137 AWI SAB
PLAINTIFFS MOTION IN LIMINE RE:
TO EXCLUDE WITNESSES FROM
COURTROOM

Hearing Date: March 11, 2014
Hearing Time: 1:30 p.m.
Courtroom: 2

By and through undersigned counsel, Plaintiffs hereby move this Court for an order that witnesses be excluded from the Courtroom under FRE 615.

At the request of any party, the court 'must' order witnesses excluded 'so that they cannot hear other witnesses' testimony.' It may also exclude witnesses sua sponte. FRE 615; *Geders v. United States* (1976) 425 U.S. 80, 87, 96 S.Ct. 1330, 1335.

Statement of Law

FRE 615 serves both to reduce the danger that a witness' testimony will be influenced by hearing the testimony of other witnesses, and to increase the likelihood that the witness' testimony will be based on his or her own recollections. See: FRE 615, Adv. Comm. Notes; *United States v. Hobbs* (9th Cir. 1994) 31 F.3d 918, 921; and *Perry v. Leake* (1989) 488 U.S. 272, 282, 109 S.Ct. 594, 601, fn. 4 – > Rule 615 designed to prevent shaping of testimony by hearing what other witnesses say.

Rule 615 makes the exclusion of witnesses mandatory if requested by a party. *Government of Virgin Islands v. Edinborough* (3rd Cir. 1980) 625 F.2d 472, 474; *United States v. Collins* (8th Cir. 2003) 340 F.3d 672, 680.

The court cannot exclude the following persons from the courtroom under FRE 615:

- a party who is a natural person;
- an officer or employee of a corporate party (or other artificial entity) who has been designated as its representative;
- a person whose presence is shown to be essential to a party's presentation of its case; or
- a person authorized by statute. FRE 615; *United States v. Phibbs* (6th Cir. 1993) 999 F.2d 1053, 1072-1073; *Milicevic v. Fletcher Jones Imports, Ltd.* (9th Cir. 2005) 402 F.3d 912, 915-916.

An officer or employee of a corporate party who has been designated as that party's representative is not excludible. FRE 615; *Nanoski v. General Motors Acceptance Corp.* (8th Cir. 1989) 874 F.2d 529, 531.

Argument/ Conclusion

Plaintiffs hereby seek an order excluding all percipient witnesses who have not been designated as a party, officer or employee of a corporate party or otherwise authorized under FRE 615.

1 Respectfully Submitted on February 18, 2014 by:

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3 /s/ Victor Otten

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11 /s/ Donald Kilmer

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