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9	Attorneys for Plaintiffs		
10	UNITED STA	TES DISTRICT (COURT
11	EASTERN DIS	TRICT OF CALI	FORNIA
12 13	JEFF SILVESTER, MICHAEL POESCHL, BRANDON COMBS, THE CALGUNS FOUNDATION,	RESPONSE TO	O OBJECTIONS OF
1415	INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization,	DEFENDANT I TO PLAINTIFI STATEMENT OPPOSITION	KAMALA D. HARRIS FS' SEPARATE OF FACTS IN TO DEFENSE MOTION
16 17	Plaintiffs,		October 28, 2013
18	V.	Hearing Date: Hearing Time:	1:30 pm
19	KAMALA HARRIS, Attorney General of California (in her	Trial date:	March 25, 2014
20	official capacity), and DOES 1 to 20.	Action filed:	December 23, 2011
21		Action mod.	
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	Response to Objections of Defendant Kamala D. Harris		

Under Federal Rules of Civil Procedure, Plaintiffs Jeff Silvester ("Silvester"), Michael Poeschl ("Poeschl"), Brandon Combs ("Combs"), The Calguns Foundation, Inc., a nonprofit organization ("Calguns"), and The Second Amendment Foundation ("SAF"), a nonprofit organization, submits the following responses to objections to the separate statement of facts in opposition to summary judgment submitted herein by Defendant Kamala Harris, Attorney General of California (in her official capacity).

Plaintiff's Additional Material Disputed and Undisputed Facts and Supporting Evidence	Response to Objections	Response to Evidentiary Objections
4. Requirement to wait 10 days deprives Plaintiffs of the use, custody, control and ability to defend self, family and home; it mandates a brief window of 20 days from which Plaintiffs must return to obtain physical possession of property that Plaintiffs already own (See Combs' and Silvester's	This statement is an assertion of fact because the statute explicitly states that there is a 10 day waiting period. It is material because it demonstrates the burden the statute puts on firearm purchaser who already lawfully possesses a gun.	An error occurred and Combs' response to special interrogatory no. 7. It will be added to evidence through a Notice of Errata. Plaintiff's statement is relevant because the statute serves no purpose and is unduly burdensome. Combs and Silvester have personal knowledge. The statement is not

1	Plaintiff's Additional	Response to Objections	Response to
2	Material Disputed		Evidentiary Objections
3	and Undisputed Facts		
4	and Supporting		
5	Evidence		
6	Response to Special		confusing or misleading,
7	Interrogatories #7)		since it states persons
8			must wait to obtain
9			possession of a gun.
10	5. Plaintiffs are forced	Statement is material	The statement is relevant
11	to incur expenses	because it shows the	because it demonstrates
12	including: opportunity	burden the statute puts on	the unnecessary burden
13	costs to engage in	purchasers of firearms.	the statute places on gun
14	business and other		purchasers. The
15	activities during the		foundation exists from
16	each and every time		Poeschl's, Calguns, and
17	Plaintiffs have to make		SAF's Response to First
18	a second trip to the		Set of Interrogatories
19	licensed firearms		#10 - 15. The statement
20	dealer to take		is not confusing or
21	possession, custody,		misleading, since it is a
22	and control of each		straightforward account
23	firearm, lost		of how plaintiffs are
24	opportunity to purchase		injured by the statute.
25	firearms due to an		
26	inability to make a		
27	second trip, additional		

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1	Γ	Plaintiff's Additional	Response to Objections	Response to
2		Material Disputed	•	Evidentiary Objections
3		and Undisputed Facts		
4		and Supporting		
5		Evidence		
6		shipping expenses,		
7		additional dealer		
8		transfer fees, increased		
9		firearm prices due to		
10		lack of local		
11		competition, additional		
12		fuel costs, additional		
13		wear and tear on		
14		Plaintiff's vehicles		
15		necessary for a return		
16		trip to the licensed		
17		dealer to retrieve a		
18		firearm Plaintiffs		
19		already own, and		
20		additional costs of		
21		having to resubmit a		
22		DROS application due		
23		to scheduling conflicts		
24		preventing Plaintiffs		
25		from returning to the		
26		store to retrieve the		
27		firearm within the		
20				

1 2 3	Plaintiff's Additional Material Disputed and Undisputed Facts	Response to Objections	Response to Evidentiary Objections
4	and Supporting Evidence		
5 6 7	temporary window of availability. (See e.g.		
8	Responses to Special		
9	Rogs. #16-17 for		
10	Combs, and Silvester).		
11			An error occurred in
12 13 14 15 16 17 18 19 20 21 22 23	6. When purchasing a firearm, Plaintiffs go through a background check at the state and federal levels (See Deposition Transcript of Second Amendment Foundation (FRE 602), through Alan Gottlieb ("SAF Depo.") p.80, line 19 - p.81, line 3).	Statement is material because there are levels of background checks.	citation. The proper citation is: (SAF Depo. P. 79, line 18 - p.80, line 3). Evidence is relevant because it makes it more probable that not that the statute serves no purpose and is unduly burdensome. It is relevant to the judicial level of scrutiny applied. The deponent has
2425			personal knowledge of
26			the background checks.
27	7. At the State level,	Statement is material	Evidence is relevant

	Plaintiff's Additional Material Disputed and Undisputed Facts and Supporting	response of	Response to Evidentiary Objections
	Evidence		
	the California Attorney General maintains an online database called the Prohibited Armed Persons File ("PAPF"). (Combs' Response to Special Interrog. No. 10; See also Penal Code §30000 et seq.).	because it goes toward the argument that the 10-day period is unnecessary. The Attorney General has argued it needs 10 days to run a background database; however, the PAPF allows the background checks to be conducted instantly. Furthermore, for plaintiffs who have previously purchased a gun, the 10-day waiting period—intended as a "cooling off period"—is irrelevant because plaintiff already has a gun.	because it makes it more probable that not that the statute serves no purpose and is unduly burdensome. It is relevant because it goes toward the argument that the 10-day period is unnecessary. Combs has personal knowledge of the existence of PAPF and the Penal Code section 30000 et seq.
1 5	8. The information	Statement is material	Evidence is relevant
5 5	contained in the PAPF	because it goes toward the	
7	is available for the	argument that the 10-day	probable that not that the

3	purpose of determining if persons are armed and prohibited from possessing firearms. (Combs' Response to Special Interrog. No. 10; See also Penal	period is unnecessary. The Attorney General has argued it needs 10 days to run a background database; however, the PAPF allows the	statute serves no purpose and is unduly burdensome. It is relevant because it goes toward the argument that
3 0 0 1 1 2 3 3	if persons are armed and prohibited from possessing firearms. (Combs' Response to Special Interrog. No.	The Attorney General has argued it needs 10 days to run a background database; however, the	and is unduly burdensome. It is relevant because it goes toward the argument that
5 6 7 8 9 20 21	Code § 30000 et seq.).	background checks to be conducted instantly. Furthermore, for plaintiffs who have previously purchased a gun, the 10-day waiting period-intended as a "cooling off period"is irrelevant because plaintiff already has a gun.	the 10-day period is unnecessary. Combs has personal knowledge of the existence of PAPF and the Penal Code §30000 part B.
22 23 24 25 26	9. At the federal level, the National Instant Check System (NICS) is controlled by the Federal Bureau of	Statement is material because it goes toward the argument that the 10-day period is unnecessary. The Attorney General has	Evidence is relevant because it makes it more probable that not that the statute serves no purpose and is unduly

1 2 3 4	Plaintiff's Additional Material Disputed and Undisputed Facts and Supporting	response .	Response to Evidentiary Objections
5	Evidence		
6	Investigation (FBI). (See, e.g. Combs' and Silvester's Response to Special Interrog. No. 11).	argued it needs 10 days to run a background database; however, the PAPF allows the background checks to be conducted instantly. Furthermore, for plaintiffs who have previously purchased a gun, the 10-day waiting period-intended as a "cooling off	burdensome. It is relevant because it goes toward the argument that the 10-day period is unnecessary. Combs and Silvester have personal knowledge of the existence of National Instant Check System (NCIS), which is run by the Federal Bureau of
17		period"is irrelevant	Investigation (FBI).
18		because plaintiff already	
19		has a gun.	
20			
21	10. The information in		Evidence is relevant
22	the databases that are		because it makes it more
23	used to conduct	Statement is material	probable that not that the
24	background checks can		
25	be accessed	argument that the 10-day	and is unduly
26	immediately. (See, e.g.	G 11	burdensome. It is relevant because it goes
27	SAF Depo., p. 81, lines	ine Auomey General has	10.00.000

Plaintiff's Additional Material Disputed and Undisputed Facts and Supporting	Response to Objections	Response to Evidentiary Objections
Evidence		
13-20).	argued it needs 10 days to run a background database; however, the PAPF allows the background checks to be conducted instantly. Furthermore, for plaintiffs who have previously purchased a gun, the 10-day waiting periodintended as a "cooling off period"is irrelevant because plaintiff already has a gun.	toward the argument that the 10-day period is unnecessary. The deponent has personal knowledge of the existence of National Instant Check System (NCIS), which is run by the Federal Bureau of Investigation (FBI). (See SAF Depo p. 22, line 3 - 22). Statement is not confusing or misleading because it explains that a 10-day delay occurs,
		even when unnecessary. Evidence is relevant
11. Defendants	Statement is a fact	because it makes it more
deliberately make	because background	probable that not that the
background checks go	checks have gone on for	ļ ⁻
ten days even though	ten days despite the	statute serves no purpose
the information used in		and is unduly burdensome. The
background checks to	to instantly access	burdensome. The

1 2	Plaintiff's Additional Material Disputed	1105 p	Response to Evidentiary Objections
3	and Undisputed Facts		
4	and Supporting		
5	Evidence		1
6	determine eligibility to	Plaintiff's records.	deponent has personal
7	purchase a firearm can	Statement is material	knowledge of the
8	be accessed	because it goes toward the	existence of National
9	instantaneously. (See,	argument that the 10-day	Instant Check System
10	e.g. SAF Depo., p. 81,	period is unnecessary.	(NCIS), which is run by
11	lines 4-12, and p. 86,	The Attorney General has	the Federal Bureau of
12	line 23-p.87 line 6).	argued it needs 10 days to	Investigation (FBI). (See
13		run a background	SAF Depo p. 22, line 3 -
14		database; however, the	22). Statement is not
15		PAPF allows the	confusing or misleading
16		background checks to be	because it explains that a
17		conducted instantly.	10-day delay occurs,
18		Furthermore, for plaintiffs	even when unnecessary.
19		who have previously	
20		purchased a gun, the 10-	
21		day waiting period	
22		intended as a "cooling off	
23		period"is irrelevant	
24		because plaintiff already	
25		has a gun.	
26			
27	12. California's gun	Statement is material	Evidence is relevant
28	12. California 5 gara		

M an a	laintiff's Additional Iaterial Disputed nd Undisputed Facts nd Supporting	Response to Objections	Response to Evidentiary Objections
h c tl s c r r I l	domicide rates continue to be higher than similarly situated states, e.g. Texas, that do not have a waiting period. (See, e.g. Hoffman Depo., p. 99, ties 5-12, and p. 102, line 5-p.103 line 5).	because it goes toward the argument that the 10-day period is unnecessary. Statement shows that the 10-day waiting period, intended as a cooling off period, is not necessarily effective in achieving its purpose.	because it makes it more probable that not that the statute serves no purpose and is unduly burdensome. It is relevant because it goes toward the argument that the 10-day period is unnecessary. Deponent has personal knowledge. Statement is not confusing or misleading because it explains that California's gun homicide rate is lower than other state's.
3	13. There is no evidence that the 10-Day "cooling off period" effectively deters crime. (See, e.g.	Deponent has not yet found evidence that a 10-day "cooling off period" effectively deters crime.	Evidence is relevant because it makes it more probable that not that the statute serves no purpos and is unduly

Plaintiff's Additional Material Disputed and Undisputed Fact and Supporting		Response to Evidentiary Objections
Evidence		burdensome. It is
Hoffman Depo., p.		relevant because it goes
103).		toward the argument that
		the 10-day waiting
		period is unnecessary.
		Deponent has personal
		knowledge. Statement is
		not an improper opinion
		nor misleading nor
		confusing because
		Hoffman has not yet
		found evidence that a 10
		day "cooling off period"
		effectively deters crime.
14. Because of	Statement is a fact	Evidence is relevant
California's 10-day	because plaintiff must	because it makes it more
wait period, a	make multiple trips gun	probable that not that the
purchaser of a firear	m store. Statement is not	statute serves no purpos
must make multiple	immaterial because it	and is unduly
trips before taking	costs the clients money	burdensome on clients i
possession. (Hoffma		terms of time and cost.

1 2 3 4	Plaintiff's Additional Material Disputed and Undisputed Facts and Supporting	Response to Objections	Response to Evidentiary Objections
5	Evidence		
6 7 8	Depo., p. 117).		Deponent has personal knowledge for stating that persons make
9			multiple trips before
0			taking possession.
11 12	15. The 10-day waiting	Statement is not an	Evidence is relevant
13	period has proven to be	opinion because a 10-day	because it makes it more
14	a hindrance by	waiting period is a	probable that not that the
15	preventing people from	hindrance for people	statute serves no purpose
16	effectively defending	obtaining guns and	and is unduly
17	themselves. (Hoffman	prevents an individual	burdensome. It is
18	Depo., p. 134, and 137-	from protecting	relevant because it goes
19	138).	him/herself during the	toward the argument that
20		waiting period. Statement	the 10-day waiting
21		is not immaterial because	period is unnecessary.
22		it goes to a core	Deponent has
23		fundamental right of self-	foundation. (See
24		defense.	Hoffman Depo., p. 141,
25			line 2 - p. 143, line 6). It
26			is not an improper
27			opinion nor confusing

.	Plaintiff's Additional Material Disputed and Undisputed Facts and Supporting	Response to Objections	Response to Evidentiary Objections
5	Evidence		nor misleading because an ability to possess a gun leaves the owner more vulnerable during the waiting period.
2 3 4 5 6 7 8 9 0 1 1 22 23 24 25 26	16. The time period of 10 days to conduct a background check is arbitrarily set by the legislature. (See, e.g., Hoffman Depo., p. 151, lines 23-25).	It is not an opinion because there is no evidence that 10 days specifically is a sufficient time for an individual to cool down and background checks can be conducted instantaneously. Statement is material because it goes toward the argument that the 10-day period is unnecessary. Statement shows that the 10-day waiting period,	Evidence is relevant because it makes it more probable that not that the statute serves no purpose and is unduly burdensome. It is relevant because it goes toward the argument that the 10-day waiting period is unnecessary. The deponent has personal knowledge of the 10-day waiting period. It is not an improper opinion, nor

1	Plaintiff's Additional	Response to Objections	Response to	
2	Material Disputed		Evidentiary Objections	
3	and Undisputed Facts			
4	and Supporting			
5	Evidence			
6		period, is not necessarily	misleading because there	
7		effective in achieving its	is no evidence that 10	
8		purpose.	days specifically is a	
9			sufficient time for an	
0			individual to cool down	
1			and background checks	
2			can be conducted	
3			instantaneously.	
4				
5	17. For a person who	This statement is a fact	Evidence is relevant	
6	has been through the	and not an argument	because it makes it more	
7	10-day waiting period	because all the databases	probable that not that the	
8	once, California can	used to make the	statute serves no purpose	
9	check to see if that	determination are	and is unduly	
20	person appears on the	available online and can	burdensome. It is	
21	Armed Prohibited	be accessed	relevant because it goes	
22	Persons List and	instantaneously to make a	toward the argument that	
23	thereby make a	determination. The	the 10-day waiting	
24	decision about whether	statement is not	period is unnecessary.	
25	the person should be	immaterial because the	Deponent has personal	
26	allowed to obtain an	10-day waiting period is	knowledge, forming a	
27	additional firearm.	unnecessary when current	foundation, of Penal	

Plaintiff's Additional Material Disputed and Undisputed Facts and Supporting	Response to Objections	Response to Evidentiary Objections
Evidence		
(Hoffman Depo., p.	technology allows	Code §30000 pertaining
153- lines 18-24). (sic)	California instantly to	to the 10-day waiting
	know whether a person is	period. Statement is not
	fit to own a firearm.	confusing and/or
		misleading because it
		describes PAPF, a
		government database.
18. Where the need to	Statement is a fact, not an	Evidence is relevant
acquire a firearm is	argument or opinion,	because it makes it more
more urgent the 10-day	because logic dictates that	probable that not that the
waiting period	if a firearm is necessary	statute serves no purpose
effectively prevents	for defense during the 10-	and is unduly
individuals from being	day period, self-defense is	burdensome. It is
able to defend	inhibited. The statement is	relevant because it goes
themselves. (See, e.g.,	not immaterial because it	toward the argument that
Hoffman Depo., p.	goes toward the Second	the 10-day waiting
134).	Amendment right to own	period is unnecessary.
	gunsa right that is even	The deponent has
	more pronounced in its	personal knowledge,
	necessity during times	forming a foundation, of
	when individuals need,	Penal Code §30000

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Plaintiff's Additional	Response to Objections	Response to	
Material Disputed		Evidentiary Objections	
and Undisputed Facts			
and Supporting			
Evidence			
	and are unable, to defend	pertaining to the 10-day	
	themselves.	waiting period. It is not	
		an improper opinion	
		because logic dictates	
		that if a firearm is	
		necessary for defense	
		during the 10-day period	
		self-defense is inhibited.	
		Statement is not	
		confusing and/or	
		misleading because it	
		explains that firearms	
		may be necessary for	
		self-defense in 10 days.	
	/		
DATED: November 1, 2013 Otten & Joyce, LLP			
DATED: November 1, 2	July Onen & Joy	COLLIN	
Victor J. Otten			
	Attorneys f	or Plaintiffs	
	17 ponse to Objections of Defendant Kama		

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