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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 SKO

STIPULATION BY THE PARTIES TO
SUBMIT A REDACTED COPY OF THE
DEPOSITION OF ALAN MERRIL
GOTTLIEB, PRESIDENT OF THE
SECOND AMENDMENT
FOUNDATION IN LIEU OF LIVE
TESTIMONY

[PROPOSED ORDER]

Judge: Hon. Anthony W. Ishii
Courtroom: 8th Floor, Room 2
Trial Date: March 25, 2014
Time: 8:30 a.m.
Case Filed: Dec. 23, 2011

The parties, by and through undersigned counsel, hereby stipulate that the redacted deposition testimony of ALAN MERRIL GOTTLIEB taken on May 14, 2013, (w/exhibit) copy of which is attached hereto, will be accepted into evidence in lieu of live testimony. Furthermore, Defendants waive the right to further cross-examination of this witness and Plaintiffs waive the right to call this witness for live rebuttal testimony.

Both parties reserve all evidentiary objections raised during the deposition and ask that the Court rule on those objections if necessary.

So Stipulated .

Date: March 20, 2014

Date: March 20, 2014

/s/ Donald Kilmer

/s/ Jonathan Eisenberg

Attorney for Plaintiffs

Attorney for Defendants

ATTESTATION OF AUTHORIZATION

I, Donald Kilmer, declare under penalty of perjury under the laws of California and the United States that I have in my possession e-mail correspondence from Jonathan Eisenberg that the content of this document is acceptable to all persons required to sign the document. I declare that this document was signed in San Jose, CA on March 20, 2014.

/s/ Donald Kilmer

Donald Kilmer for Plaintiffs

ORDER

Pursuant to the Parties' stipulation, the attached Deposition Transcripts with Exhibit will be admitted into evidence, with objections made during the deposition reserved.

Date:

United States District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

- - -

JEFF SILVESTER, MICHAEL POESCHL,)
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 (in her official)
capacity), and DOES 1 TO 20,)

Defendants.)
-----)

Case No.
1:11-CV-02137

30(b)(6) DEPOSITION OF

THE SECOND AMENDMENT FOUNDATION, INC.

BY AND THROUGH ALAN MERRIL GOTTLIEB

LOS ANGELES, CALIFORNIA

MAY 14, 2013

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Reported by: Aileen Neitzert, RDR, CRR, CSR No. 5318

File No.: A703C3E

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

- - -

JEFF SILVESTER, MICHAEL POESCHL,)
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 (in her official)
capacity), and DOES 1 TO 20,)

Defendants.)
-----)

Case No.
1:11-CV-02137

30(b)(6) Deposition of The Second Amendment
Foundation, Inc., by and through ALAN MERRIL GOTTLIEB,
taken on behalf of the Defendant, at 300 South Spring
Street, South Tower, Sixth Floor, Los Angeles,
California, commencing at 9:30 a.m., Tuesday, May 14,
2013, before Aileen Neitzert, CSR No. 5318.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

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FOR THE DEFENDANT:

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STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
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(present by teleconference)

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I N D E X

WITNESS: ALAN MERRIL GOTTLIEB

EXAMINATION	PAGE
BY MR. EISENBERG	5
BY MR. OTTEN	111

EXHIBITS:		
NUMBER	DEFENDANT'S DESCRIPTION	PAGE
13-	Plaintiff The Second Amendment Foundation, Inc.'s Response to Defendant Kamala D. Harris's First Set of Interrogatories	46
14-	Notice of Deposition of Plaintiff The Second Amendment Foundation, Inc.	70
15-	Calguns.net release and comments	109

(A copy of previously marked Exhibit 4 is attached for reference.)

QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:

PAGE	LINE
73	24

INFORMATION TO BE SUPPLIED:

(None)

1

ALAN MERRIL GOTTLIEB,

2

having first been duly sworn, was

3

examined and testified as follows:

4

5

EXAMINATION

6

BY MR. EISENBERG:

7

Q. Hi. My name is Jonathan Eisenberg. I'm a

8

deputy attorney general in the office of the California

9

Attorney General, and I represent the Attorney General

10

Kamala D. Harris in the lawsuit for which we're here

11

today, Silvester v. Harris.

12

Would you please state your full name for the

13

record, sir, and spell your last name.

14

A. Alan Merril Gottlieb. Last name is

15

G-o-t-t-l-i-e-b, like in boy.

16

Q. Actually, may I ask you to spell your first

17

name and your middle name as well, please.

18

A. A-l-a-n, M-e-r-r-i-l.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Row	Bar Length (approx. %)
1	95
2	100
3	40
4	85
5	90
6	15
7	35
8	55
9	25
10	10

10 Q. I'm now going to go through the deposition
11 process a bit.

12 | Do you mind closing that door please.

13 MR. OTTEN: Yes.

14 Q. BY MR. EISENBERG: Do you have a general
15 understanding of how depositions proceed?

16 | A. Yes, I do.

17 Q. You understand that the court reporter has just
18 given you an oath to tell the truth, the whole truth,
19 and nothing but the truth, correct?

20	A. Correct.
----	-------------

21 Q. Do you understand that even though we're in a
22 somewhat informal setting of a conference room, the
23 oath that you just took is the same as the one that you
24 would take if you were a witness in a court trial?

25	A. Yes.
----	---------

1 Q. The deposition process basically involves me
2 asking questions and you answering questions, correct?

3 A. Correct.

4 Q. If you don't understand a question that I pose,
5 please tell me. Okay?

6 A. Okay.

7 Q. All right. I'll try to rephrase the question
8 in a way that makes more sense. And the same thing
9 goes if you do not hear all of the question, please
10 tell me.

11 A. Okay.

12 Q. If you are going through the deposition and you
13 realize that an answer that you gave to a prior
14 question was incomplete or inaccurate, please let me
15 know, and I'll give you a chance to elaborate on a
16 prior answer if needed. Okay?

17 A. Thank you.

18 Q. Do you understand that because the court
19 reporter is taking down all the words that are spoken,
20 it's important for you to speak words instead of using
21 gestures when answering questions?

22 A. Yes.

23 Q. And also to avoid words like "uh-uh" or
24 "hum-uh"? Do you understand?

25 A. Yes. Yes. No problem.

1 Q. In the course of a deposition, you may hear me
2 ask a question that you know the answer to before I've
3 even finished with the question. Please let me get the
4 full question out before answering so that the court
5 reporter can make a clean record of the proceedings.
6 Okay?

7 A. Yes.

8 Q. All right. And I'll try my best not to
9 interrupt you, and if I do, please tell me "I'm not
10 finished" or "You've interrupted me," and I'll let you
11 speak further. Okay?

12 A. Okay.

13 Q. Do you understand that there will be a written
14 transcript of the deposition prepared?

15 A. Yes.

16 Q. Do you understand that you will have a chance
17 to review that transcript?

18 A. Yes.

19 Q. You'll have a certain amount of time in which
20 you may note corrections or changes --

21 A. Yes.

22 Q. -- on the deposition transcript.

23 A. Yes.

24 Q. Okay. Do you also understand that the
25 transcript will not be retyped to reflect your changes;

1 rather the changes will be visible along with the
2 original text? Do you understand?

3 A. Yes.

4 Q. And I or anyone else involved in the case would
5 have an opportunity to comment on those -- any other
6 lawyer, I suppose, involved in the case would have an
7 opportunity to comment on any changes or corrections.

8 A. Yes.

9 Q. Do you have any questions about the deposition
10 procedure?

11 A. No.

12 Q. Is there any reason at all why you would not be
13 able to give your best testimony today?

14 A. Not that I know of.

15 Q. During the deposition, if you want to take a
16 break, just let me know, and I'll accommodate you.
17 Okay?

18 A. Okay.

19 Q. I prefer, however, that if you want to take a
20 break, you don't ask for a break while there is a
21 question pending.

22 A. Okay.

23 Q. Okay? Have you heard of an organization called
24 The Second Amendment Foundation?

25 A. Yes.

1 Q. Can you state the full name of that
2 organization.

3 A. Second Amendment Foundation.

4 Q. Is there an Inc. at the end of it or --

5 A. I guess you could say, yes, there is an Inc. at
6 the end of it. It's a nonprofit corporation in
7 Washington -- incorporated in Washington state. So
8 under our State law, I don't know if we put Inc. under
9 it if it's a nonprofit. But, yes, it's a corporation.

10 Q. Okay. And is the Second Amendment Foundation
11 Incorporated, under the laws of Washington state?

12 A. Yes, it is.

13 Q. Do you have an affiliation with The Second
14 Amendment Foundation?

15 A. Yes, I do.

16 Q. What is that affiliation?

17 A. I'm the founder of it, and I also serve as
18 executive vice president.

19 Q. When did you found The Second Amendment
20 Foundation?

21 A. 1974.

22 Q. Have you been affiliated with The Second
23 Amendment Foundation continuously since 1974?

24 A. Yes, I have.

25 Q. The current position that you have, is that a

1 position that you've held for -- well, sorry.

2 How long have you held your current position at
3 The Second Amendment Foundation?

4 A. Since about 1985.

5 Q. And have -- please refresh my memory. What's
6 the title for your position?

7 A. Executive vice president. Prior to 1985 I also
8 served for a while as president. And then somebody
9 else took that position.

10 Q. Did you have positions or titles with The
11 Second Amendment Foundation between 1974 and 1985?

12 A. Yes.

13 Q. What were the other titles and positions that
14 you had during that time?

15 A. President.

16 Q. So you were president from 1974 to 1985?

17 A. Yes.

18 Q. Continuously?

19 A. Continuously.

20 Q. And you have been an executive vice president
21 continuously since 1985?

22 A. Correct.

23 Q. Who is the president of The Second Amendment
24 Foundation?

25 A. Joseph Tartaro, T-a-r-t-a-r-o.

1 Q. How long has he been president?

2 A. Since 1985.

3 Q. Is Mr. Tartaro a founder of The Second
4 Amendment Foundation?

5 A. No.

6 Q. Are there other people who are executive vice
7 presidents of The Second Amendment Foundation
8 presently?

9 A. No.

10 Q. Are there any people who are vice presidents of
11 The Second Amendment Foundation presently?

12 A. No. The executive vice president serves as the
13 only vice president.

14 Q. Are there other officers of The Second
15 Amendment Foundation?

16 A. Yes.

17 Q. Who are the other officers?

18 A. Oh, boy. The -- well, okay. Excuse me. Bob
19 Wiese. Brain dead here. Hold on a second. Massad
20 Ayoob. Gene Hoffman. There are seven in total. So
21 hold on. Sam Sloan. My problem is I serve on various
22 board of directors and I'm trying to remember who is on
23 what board.

24 Q. Bob Wiese, Massad Ayoob --

25 A. Two.

1 Q. -- Gene Hoffman --

2 A. Three.

3 Q. -- Sam Sloan.

4 A. Four. And I'm five. Oh, Joe Tartaro, who is
5 the president, serves on the board. Six. And who is
6 number 7? Brain dead. Herb Stubb.

7 Q. Are the people that you mentioned to me
8 officers or directors or both?

9 A. Some are directors -- they are all directors.
10 Some are also officers.

11 Q. Which of those folks are the officers?

12 A. Bob Wiese is treasurer, and Sam Sloan is
13 secretary.

14 Q. Any other officers?

15 A. No. Myself, executive vice president. Joe
16 Tartaro is the president.

17 Q. Right. And, sorry, I should have made that
18 clear. I meant other than --

19 A. No.

20 Q. -- he and you and the two people you just
21 mentioned. Has the composition of the board of The
22 Second Amendment Foundation changed since December
23 2011?

24 A. Yes.

25 Q. Has there been anybody who was on the board

1 prior -- or as of December 2011 and is no longer?

2 A. Yes.

3 Q. Who is that person or people?

4 A. John Snyder, S-n-y-d-e-r.

5 Q. Anybody else?

6 A. No.

7 Q. Has anybody come onto the board since December
8 2011?

9 A. Yes.

10 Q. Who is that person or people?

11 A. Gene Hoffman.

12 Q. When did Mr. Hoffman join the board of
13 directors of the Second Amendment Foundation?

14 A. September 2012.

15 Q. You understand that we're here for a lawsuit
16 about the ten-day waiting period in California law
17 between the purchase and delivery of a firearm?

18 A. Correct.

19 Q. Did Mr. Hoffman's assent to the board of The
20 Second Amendment Foundation have anything to do with
21 the present lawsuit?

22 A. No.

23 Q. Do you understand that you are here speaking as
24 the representative of The Second Amendment Foundation?

25 A. Yes.

1 Q. Do you understand that you are not being
2 deposited in your individual capacity?

3 A. Yes.

4 Q. Does The Second Amendment Foundation have
5 members?

6 A. Yes.

7 Q. How does a person become a member of The Second
8 Amendment Foundation?

9 A. They join by paying a \$15 annual dues.

10 Q. Does The Second Amendment Foundation have any
11 other title for participants in the organization
12 besides the ones we've mentioned -- the officers, the
13 directors, and the members?

14 A. Yes.

15 Q. What are the other positions that people may
16 have with The Second Amendment Foundation?

17 A. Contributors and supporters.

18 Q. What's the difference between a contributor and
19 a member of The Second Amendment Foundation?

20 A. A contributor just donates money and chooses
21 not to be a member. Sometimes he gives less money than
22 \$15 the membership fee, sometimes gives more.

23 Q. And so if you're a member, you have given
24 money. Do you receive publications or --

25 A. Yes.

1 Q. -- messages? So would a contributor not
2 receive those things?

3 A. They would not receive a membership card. And
4 there -- we also have life members and five-year
5 members, not just annual. So five-year members and
6 annual members get additional materials than an annual
7 member would get.

8 Q. And what is the difference between a supporter
9 of The Second Amendment Foundation and a member of The
10 Second Amendment Foundation?

11 A. They may -- may offer to do volunteer work.
12 They may sign petitions and fill out surveys and polls.

13 Q. To be a supporter of The Second Amendment
14 Foundation, do you have to give money to The Second
15 Amendment Foundation?

16 A. No.

17 Q. Does The Second Amendment Foundation have
18 knowledge of the residences of the members?

19 A. We have a mailing address, which usually is
20 their residence. Sometimes it might be their office,
21 but it could be a PO box. But in most cases it's
22 probably their home.

23 Q. The Second Amendment Foundation would like a
24 mailing address from each member, correct?

25 A. Yes. We -- we have mailing -- well, we have

1 mailing addresses for about 99.9 percent of our
2 membership. For about a tenth of a percent we only
3 have an email address.

4 Q. Okay. Does The Second Amendment Foundation
5 make it a requirement that a member disclose a home
6 address to the organization?

7 A. No. Just a contact address.

8 Q. Does The Second Amendment Foundation have a
9 breakdown of how many members have given a mailing
10 address in California versus another place?

11 A. We have -- in California we have something
12 between thirty and forty thousand members and
13 supporters and donors in the state of California. I
14 can't give you an exact number because it's been
15 growing rather rapidly since the first of the year.

16 Q. And do you have a breakdown within the
17 California folks of who is a member and who is a
18 supporter?

19 A. Yes.

20 Q. What's the number? And please just give me
21 your best estimate because I do understand --

22 A. Yeah.

23 Q. -- you're talking about a moving target here.
24 So what's the number of members versus the number of
25 supporters who have California mailing addresses?

1 A. Well, I would say the members are about a third
2 to half. Somewhere -- it's somewhere in that ballpark
3 of a third to 50 percent of thirty to forty thousand
4 people we have on our mailing list.

5 Q. Second Amendment Foundation obviously has
6 members with mailing addresses in places other than
7 California, correct?

8 A. Correct.

9 Q. How many people are members of The Second
10 Amendment Foundation and have given you a mailing
11 address of somewhere besides California?

12 A. Well, in the membership category it would be
13 between two hundred and two hundred and fifty thousand.
14 When you add the contributors, it's about 650,000.

15 Q. And those are --

16 A. Nationwide.

17 Q. Nationwide, folks outside of California?

18 A. Well, subtract the California numbers from
19 that.

20 Q. Okay. Okay. So, in other words, two hundred
21 to two hundred fifty thousand minus thirty to forty
22 thousand --

23 A. Yeah.

24 Q. -- would be the number of people who are
25 members that are outside of California?

1 A. Correct.

2 Q. Okay. Do you know what the total membership of
3 The Second Amendment Foundation was when this lawsuit
4 was filed in December of 2011?

5 A. Probably about 10 percent less than it is
6 today.

7 Q. And during that interim of a couple of years,
8 has the membership gone up continuously?

9 A. It was totally stable, I would say, until this
10 year, 2013, and that's -- all the increase is probably
11 2013.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3 Q. Does The Second Amendment Foundation do
4 research about federal firearms laws?

5 A. Yes.

6 Q. Does The Second Amendment Foundation do
7 research about California firearms laws?

8 A. Yes.

9 Q. Does The Second Amendment Foundation do
10 research about other states' firearms laws?

11 A. Yes.

12 Q. Does The Second Amendment Foundation have a
13 breakdown as to how much of its research is about
14 California firearms laws as opposed to other places'
15 firearms laws?

16 A. I can only make an estimate.

17 Q. Please make the estimate.

18 A. I'd say California compared to all the other 50
19 states takes up about 20 percent of our time.

20 Q. And --

21 A. On the state side. Of course federally it's
22 another matter.

23 Q. Does The Second Amendment Foundation have a
24 breakdown of how much of its research is about state
25 firearms laws versus federal firearms laws? And, I'm

1 sorry, when I say "laws" I also means bills.

2 A. Yeah, about 90 percent is state.

3 Q. California having 20 percent of the research
4 effort, so to speak, of The Second Amendment
5 Foundation, is California the number 1 state in that
6 regard?

7 A. If it's not number 1, it's very close to it.
8 It's probably -- it is probably number 1, followed
9 closely by New York, New Jersey.

10 Q. Do those three states account for more than
11 half of Second Amendment Foundation research on state
12 firearms laws?

13 A. Let me go back. Let me add Illinois to that
14 list also.

15 Q. Okay. Taking those four states -- California,
16 New York, New Jersey, Illinois -- does Second Amendment
17 Foundation research on state firearms laws focus on
18 those states for about 50 percent of the effort or
19 more?

20 A. It's probably, I'd say, 50 percent.

21 Q. Has The Second Amendment Foundation done any
22 research into the ten-day-waiting-period firearms laws
23 that are in question in the present lawsuit?

24 A. Could you say that again. I'm sorry.

25 Q. Has The Second Amendment Foundation done any

1 research about the ten-day-waiting-period firearms laws
2 that are in question in the present case?

3 A. Yes.

4 Q. When did that research effort begin?

5 A. It's been ongoing for a number of years. I
6 can't tell you exactly when it began. My guess is it
7 began shortly after the law was enacted.

8 Q. When you say "when the law was enacted," what
9 time period are you speaking of there?

10 A. Off the top of my head I can't tell you, but
11 the law has been on the books now for a while, from my
12 recollection, and so it goes on a number of years.

13 Q. Do you believe the research effort began more
14 than a decade ago?

15 A. I'm not sure.

16 Q. Is it possible that it's been more than a
17 decade?

18 A. It is possible, yes.

19 Q. Has The Second Amendment Foundation issued any
20 reports or publications or public statements about the
21 California ten-day waiting period?

22 A. Probably. I wouldn't say we issue reports, but
23 we've probably made some comments about it.

24 Q. So I've taken a look at The Second Amendment
25 Foundation website, and there are many publications

1 referenced. Does The Second Amendment Foundation sell
2 publications from its web -- well, first of all, let's
3 back it up.

4 A. Okay.

5 Q. Second Amendment Foundation has a website, yes?

6 A. Correct.

7 Q. What's the --

8 A. Yes.

9 Q. -- website called?

10 A. WWW.SAF.ORG.

11 Q. Does The Second Amendment Foundation offer
12 publications for sale at that website?

13 A. We offer publications for sale. And some of
14 them we give to the general public. Some of them are
15 published on the website so you just can download them.

16 Q. Is there any publication on the SAF website
17 about California's ten-day-waiting-period laws?

18 A. Not as -- not -- to the best of my knowledge,
19 not as a publication. There may be references to it in
20 various other publications or news releases or things
21 that are on the website. But we didn't -- we've never
22 made a direct publication about the ten-day waiting
23 period.

24 Q. Has The Second Amendment Foundation put out any
25 publications on waiting periods not necessarily

1 California's waiting period?

2 A. Historically over time we probably have printed
3 out about waiting periods in general, not necessarily
4 about a particular state but just on the issue of
5 waiting periods.

6 Q. Right.

7 A. I'm sure we have probably done that over time.

8 Q. Is there any publication that you can recall by
9 name on that topic?

10 A. Not by name.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 Q. Okay. Does The Second Amendment Foundation
2 seek input from its members about which litigation to
3 pursue?

4 A. Yes.

5 Q. How does the Second Amendment Foundation do
6 that?

7 A. Usually it's because a member or a person, a
8 donor/contributor or sometimes just a member of the
9 general public, contacts us about a law that they feel
10 is discriminating against them and their rights and
11 calls it to our attention.

12 Q. In the case of the present lawsuit about the
13 ten-day waiting period, how did the Second Amendment
14 Foundation decide to pursue the case?

15 A. After discussing it with legal counsel, it
16 was -- the number of cases -- Don Kilmer --

17 MR. OTTEN: Just wait for a second. He's
18 not -- he doesn't want to hear any conversations that
19 you had with your attorneys.

20 MR. EISENBERG: Yeah, absolutely.

21 MR. OTTEN: So don't get into what the
22 conversations were. But you can talk generally
23 about -- you know, answer the question.

24 THE WITNESS: Okay. Yeah. Well, in
25 consultation with attorneys, staff, and potential

1 people who wanted to be plaintiffs in suits.

2 Q. BY MR. EISENBERG: Was there a Second Amendment
3 Foundation member or supporter who came to the
4 organization and asked for a challenge to the ten-day
5 waiting period?

6 A. Yes, I believe so.

7 Q. Who is that person or who were those people?

8 A. I think Jess Rivera and Brandon Combs talked
9 with us about it, along with The Calguns Foundation and
10 members of their board wanting involvement to do it
11 jointly.

12 Q. Anybody who -- well, let me strike that.

13 You're aware that Jeff Silvester is a plaintiff
14 in this case?

15 A. Yes.

16 Q. You are aware that Brandon Combs is a plaintiff
17 in this case?

18 A. Correct.

19 Q. You're aware that The Calguns Foundation is a
20 plaintiff in this case?

21 A. Correct.

22 Q. Was there any other person who came to The
23 Second Amendment Foundation and asked for The Second
24 Amendment Foundation to consider challenging these
25 ten-day-waiting-period laws?

1 A. We've had a number of members, supporters, and
2 contributors over the years call us complaining about
3 the ten-day waiting period and wanting us to do
4 something about it. So it was on our radar screen for
5 a while.

6 Q. Does The Second Amendment Foundation have any
7 records of those people making those complaints?

8 A. Probably not. We don't tend to keep that.
9 We're really not like, you know, a law firm where we
10 document our hours spent by our employees on particular
11 subjects.

12 Q. How was it that The Second Amendment Foundation
13 was aware that there had been these complaints over the
14 years?

15 A. We get telephone calls, emails, letters.

16 Q. Was there a period of time -- well, sorry.
17 The lawsuit here was filed in December of 2011,
18 right?

19 A. (Nodded head up and down.)

20 Q. How long was this lawsuit as a potential thing
21 on The Second Amendment Foundation's radar?

22 A. As an issue, not having plaintiffs and
23 attorneys on board to file it, it was probably on our
24 radar for a significant number of years, but this
25 particular case happened rather quickly when we had

1 plaintiffs and an attorney.

[REDACTED]

14 Q. All right. I'd like to have you look at a
15 document. We've been deposing people in this case for
16 the last few days. We've looked at some documents and
17 marked them as exhibits, and we've been in the practice
18 of just keeping one long set of documents in play. And
19 so I'm going to give you a document that already has an
20 exhibit mark on it and ask you to work from that just
21 so we have all of the deponents having looked at the
22 same documents. So you will see that it's Exhibit 4
23 and it's says "First Amended Complaint." The first
24 question I have for you is, have you ever seen this
25 document before just now?

1 A. Yes.

2 Q. When was the first time you saw this document?

3 A. Either just before it was filed or just after
4 it was filed.

5 Q. And there is a date stamp at the top of each
6 page that says February 24th, 2012. So is it your
7 understanding that you looked at the Complaint around
8 February --

9 A. Yeah.

10 Q. -- 24th, two thousand -- okay. Did you write
11 any part of this Complaint?

12 A. No.

13 Q. There are references to The Second Amendment
14 Foundation in the Complaint. And I'll direct you to
15 one of them, paragraph 7 on page 3. Do you see it?

16 A. Yes.

17 Q. Did you write any part of that complaint --
18 sorry -- any part of that paragraph?

19 A. I didn't write it. However, I reviewed it.

20 Q. Was there anyone else at The Second Amendment
21 Foundation who worked on any part of this Complaint?

22 A. No.

23 Q. There are several statements about what The
24 Second Amendment Foundation is in paragraph 7. I'd
25 like to give you an opportunity to read over the

1 paragraph to yourself and then tell me if there is
2 anything in there that's false as we sit here now.

3 A. No. It's accurate.

4 Q. So all of this -- all of the statements in that
5 paragraph are accurate?

6 A. Correct.

7 Q. If you'll look at the last sentence of the
8 paragraph, it talks about SAF, which is Second
9 Amendment Foundation for short obviously. "SAF brings
10 this action on behalf of itself and its members." Do
11 you have an understanding The Second Amendment
12 Foundation is suing on its own behalf in this case?

13 A. Yes.

14 Q. What is The Second Amendment Foundation suing
15 for on its own behalf?

16 A. Civil rights under the Second Amendment.

17 Q. Has The Second Amendment Foundation attempted
18 to purchase firearms for the organization in
19 California?

20 A. No. We're not allowed to by law.

21 Q. Does The Second Amendment Foundation contend
22 that it has been unable to acquire firearms because of
23 the ten-day waiting period in California?

24 A. Well, we obviously couldn't because of that
25 law, as well as others.

1 Q. So the answer would be, no, you're not making
2 that contention?

3 A. Repeat the question.

4 Q. The question is, is The Second Amendment
5 Foundation contending that it is -- has not been able
6 to obtain firearms because of the ten-day waiting
7 period?

8 A. We have not attempted to purchase a firearm, so
9 I guess if we did, the ten-day waiting period, you
10 know, might apply to us. But to date we have not tried
11 to -- attempted to purchase.

12 Q. Does The Second Amendment Foundation intend to
13 purchase firearms in California?

14 A. We might in the future. We've discussed the
15 possibility of opening up a firearms museum in the
16 state.

17 Q. And would the firearms that are acquired be put
18 in the museum? Is that the idea?

19 A. Um-hum.

20 Q. So would The Second Amendment Foundation be
21 acquiring firearms for self-defense purposes?

22 A. As an organization itself, no.

23 Q. Does The Second Amendment Foundation contend
24 that it has been injured in any way by the enforcement
25 of the ten-day waiting period laws that are in question

1 in this case?

2 A. To the extent that we have had to expend
3 resources -- time, money, effort -- from our staff and
4 our attorneys, I guess you could say we have been
5 injured that way.

6 Q. Would you describe what those injuries are,
7 please.

8 A. Expenditure of funds, time, resources, staff in
9 defending people's civil rights, which is our mission.

10 Q. So The Second Amendment Foundation has
11 undertaken the defense of people who have been accused
12 of violating the ten-day-waiting-period laws?

13 A. No. We've taken defense of people who we feel
14 the ten-day waiting period has violated their rights.

15 Q. So that would mean the plaintiffs in the
16 present case?

17 A. Them as well as other people in California. We
18 don't just defend members. We defend civil rights of
19 all Americans.

20 Q. Okay. So that the expenditures of funds, time,
21 and resources are in connection with the present
22 lawsuit?

23 A. Yeah.

24 Q. Are there other expenditures that The Second
25 Amendment Foundation has had that relate to the ten-day

1 waiting period in California?

2 A. Travel costs.

3 Q. What are -- would you describe what those
4 travel costs are.

5 A. Well, a good example is my plane ticket, my
6 hotel expense, and my rental car coming from Seattle
7 here for this lawsuit.

8 Q. Any expenditures that occurred before the
9 litigation was filed?

10 A. Possibly, again, travel expenses to meet with
11 other potential plaintiffs.

12 Q. So those would be travel expenses incurred in
13 the process of deciding to pursue the present lawsuit?

14 A. Um-hum.

15 Q. Okay.

16 A. Yes.

17 Q. So let's exclude costs associated with the
18 present lawsuit even if they were incurred before the
19 lawsuit was filed. Is The Second Amendment Foundation
20 contending that it has expended resources related to
21 the ten-day waiting period in California?

22 A. Yeah. We have had to do research. We have had
23 staff time and money spent. We've dealt with people in
24 California, you know, calling, writing us, emailing us,
25 discussing the issue. Time, effort, money, resources

1 spent prior to the lawsuit, yes.

2 Q. Does The Second Amendment Foundation have
3 employees?

4 A. Yes.

5 Q. How many employees does The Second Amendment
6 Foundation have?

7 A. As of what date?

8 Q. As of today.

9 A. As of today? Approximately 14.

10 Q. What was the number as of the end of the year
11 2011?

12 A. Probably 12 -- 11 or 12.

13 Q. Let's back up a couple years. What was the
14 number as of the end of the year 2008?

15 A. Eleven.

16 Q. So members of The Second Amendment Foundation
17 contact the employees with issues or questions about
18 firearms laws, yes?

19 A. Contact the employees or the organization and
20 then an employee then responds back.

21 Q. Do you know how the members know that they can
22 contact The Second Amendment Foundation to talk about
23 firearms issues or complaints?

24 A. Well, we have been around a long time, since
25 1974. We have made -- we make a lot of press. We do a

1 lot of TV and radio shows. We do a lot of direct mail,
2 a lot of email communications. A significant
3 percentage of the population knows who we are and when
4 it comes to firearms-related issues contacts us all the
5 time on lots of issues.

6 Q. Are there employees at The Second Amendment
7 Foundation whose job it is to respond to inquiries or
8 messages from members?

9 A. Basically the whole staff shares it.

10 Q. What fraction of The Second Amendment
11 Foundation's work is responding to messages or
12 questions from members?

13 A. A significant amount. I can't -- I can't
14 quantify percentages, but phones ring all day long. We
15 get hundreds of emails every day. We get, you know,
16 thousands of pieces of mail every day.

17 Q. Does the Second Amendment Foundation have an
18 annual budget?

19 A. Yes.

20 Q. Does the budget contain information about
21 resources related to responding to member --

22 A. No.

23 Q. -- messages or questions, et cetera?

24 A. No. The budget is basically broken down by
25 categories of public education, research, legal

1 defense. So it just goes in broad categories depending
2 on what the inquiry to us was.

3 Q. Would a -- let's say, for example, a person
4 calls up The Second Amendment Foundation and wants to
5 know how California's firearms waiting period laws
6 work. Would The Second Amendment Foundation be able to
7 answer that person's questions?

8 A. To a large extent, yes.

9 Q. And how would the work be treated in the
10 budget? Which of those categories that you mentioned
11 would the work be associated with?

12 A. Well, it could come under public education. It
13 could come under legal action. And it'd come under
14 publishing depending upon if we referred to
15 publications or gave them some of our publications.

16 Q. So it's sort of case by case?

17 A. Yeah. Depends on what -- you know -- you know,
18 you don't know what a -- you don't know what a person
19 calling you is going to ask. So you have staff on
20 board that's being paid to have their time devoted to
21 various areas of our program -- project fulfillment,
22 and you try to direct the calls to the person who might
23 know most about the issues.

24 Q. And do the employees keep records of which
25 categories of work they're doing as relates to the

1 budget?

2 A. If it's a major expenditure. Yeah, we wouldn't
3 be doing it for phone calls, emails, you know, or
4 people writing us letters.

5 Q. You say you would not be doing --

6 A. No.

7 Q. -- it for that? Okay.

8 A. No. It would be too cumbersome, too
9 time-consuming.

10 Q. Has The Second Amendment Foundation attempted
11 to quantify the expenditures that it has made relating
12 to the ten-day waiting period and not counting work
13 about the litigation?

14 A. No. We'd have it definitely on the litigation
15 because it goes into a, you know, litigation category.
16 But just ongoing information, it -- to the overall
17 extent of our budget, it's too piecemeal to be able to
18 calculate.

19 Q. So there's no attempt made to do so?

20 A. No. We would make no attempt to do so, not
21 just on the ten-day period, but on any other issue like
22 that as well.

23 Q. The Complaint mentions two Penal Code sections
24 that are under challenge. You're aware?

25 A. Yes.

1 Q. And then there -- starting on page 6 there is a
2 list of exemptions to the waiting period that are
3 mentioned. Does The Second Amendment Foundation
4 challenge any of these exemptions in the present
5 lawsuit?

6 A. No.

7 Q. Is there any one of these exemptions that The
8 Second Amendment Foundation believes should not be an
9 exemption?

10 A. Our position would probably be there should be
11 more exemptions, not less.

12 Q. Does The Second Amendment Foundation attempt to
13 educate its members about the exemptions to
14 California's ten-day waiting period?

15 A. Yes.

16 Q. How does The Second Amendment Foundation do so?

17 A. Well, if a person calls up with a complaint and
18 they're in exempted category areas, we try to let them
19 know that they're exempt.

20 Q. Does The Second Amendment Foundation make
21 recommendations to members about how they might get
22 themselves into one of the exempt categories?

23 A. Not -- not in legalistic terms, no.

24 Q. In any terms.

25 A. We might explain what other people have done

1 or, you know, what constitutes falling into an exempt
2 category.

3 Q. Are there any exemptions that The Second
4 Amendment Foundation regularly points out to members as
5 something that members might fall under or might be
6 able to fall under?

7 A. Probably not.

8 Q. Has The Second Amendment Foundation ever
9 advised members that they should try to get a license
10 as a firearms curios or relics dealer to avoid the
11 ten-day waiting period?

12 A. I think if the person was trying to deal in
13 firearms, they might have been -- somebody may have
14 once said that to somebody, but as a general rule, no.

15 Q. Why are you saying that somebody may have said
16 that? Is it your supposition, or do you have actual
17 knowledge?

18 A. It's a supposition. If somebody would have
19 called and said, you know, "Here is what I want to do.
20 Do you think I should get a curios/firearms relics?"
21 someone on the staff may have said something to them,
22 so I don't want to say it was never done.

23 Q. So it may have happened. You're assuming that
24 because there are so many calls, it might likely have
25 come up in somebody's conversation?

1 A. It could have likely come up in somebody's
2 conversation because of the volume of people asking us
3 questions, yes.

4 Q. And in an average year, how many members or
5 supporters call into The Second Amendment Foundation
6 asking about the ten-day waiting period?

7 A. In California?

8 Q. Right.

9 A. I'm going to say between 50 and a hundred.

10 Q. On what are you basing that number?

11 A. Walking around the office listening to people
12 on the telephones talking to people calling in asking
13 questions. Questions that are directed to me, usually,
14 you know, one to two a day.

15 Q. Any other --

16 A. You have to realize California is about 10
17 percent of the population of the nation and there are a
18 the lot of gun owners in California. And we have a
19 significant database of supporters in the state of
20 California. So 50 to a hundred is not a whole lot
21 compared to the number of calls we get.

22 Q. But I'm driving at, how do you -- how do you
23 figure out that it was 50 to a hundred?

24 A. I'm -- I'm giving you an estimate.

25 Q. Right. Is there any other ways that you

1 | calculated or determined that figure beyond what you've
2 | said already?

3 A. No, because we don't track it and list every
4 phone call we get and what the person wants to speak
5 about.

6 | Q. Okay. Does --

7 A. If I could just add, that would not be a normal
8 business practice.

[illegible]

5 MR. EISENBERG: I'd like to mark another
6 exhibit.

7 THE WITNESS: Do you want this one back?

8 MR. EISENBERG: This one has not been marked
9 before.

10 (Defendant's Exhibit 13 was marked for
11 identification.)

12 Q. BY MR. EISENBERG: My first question to you
13 about this document is, have you ever seen it before
14 just now?

15 A. Yes.

16 Q. Can you identify what this document is.

17 A. Yes. This was our -- The Second Amendment
18 Foundation's responses to the defendant's first set of
19 interrogatories.

20 Q. I don't know if your copy has two copies of
21 page 33. Mine does.

22 A. No.

23 Q. Okay. Good. So page 33 is a document with a
24 title of "Verification" at the top. Do you see?

25 A. Correct.

1 Q. And there is a signature block at the bottom
2 that says in all caps "ALAN GOTTLIEB, EXECUTIVE VICE
3 PRESIDENT, SECOND AMENDMENT FOUNDATION, INC.," and
4 above it is a handwritten signature.

5 A. Correct.

6 Q. Is that your signature?

7 A. I believe it is my signature. I signed such a
8 document.

9 Q. So this is a Verification that you signed?

10 A. Correct.

11 Q. In the last paragraph of the text that starts
12 "I declare under penalty of perjury," there is a
13 reference to January 28th, 2013, and Bellevue,
14 Washington.

15 A. Correct.

16 Q. Did you sign this document January 28, 2013, at
17 Bellevue, Washington?

18 A. I have a copy of it, but I have signed an
19 original of this, correct.

20 Q. Right. Yes. Not this exact one, which is a
21 photocopy.

22 A. Correct.

23 Q. Okay. And this photocopy, as far as you can
24 tell, is the same as what you signed?

25 A. Sure looks like it.

1 Q. Okay. Do you understand what the meaning of
2 you having signed this Verification is?

3 A. Yes.

4 Q. What's your understanding?

5 A. My understanding is that I verified that the
6 answers were true and correct to all the questions
7 posed in the interrogatories.

8 Q. Did you work on preparing the interrogatory
9 responses that go from pages 1 to 32?

10 A. By worked on it, yes, with help of counsel.

11 Q. Was there anyone at The Second Amendment
12 Foundation besides you who worked on these responses?

13 A. No.

14 Q. Was there anyone else who was asked to work on
15 the responses and then just ended up not working on the
16 responses?

17 A. No.

18 Q. When you -- sorry. Did you read a final
19 version of this document before you signed it?

20 A. I assume that the version I read was the final
21 version.

22 Q. You say that you've looked at this document in
23 preparation for today's deposition?

24 A. Correct.

25 Q. In the course of looking at the document, did

1 you find anything in there that was wrong or inaccurate
2 or incomplete?

3 A. No.

4 Q. Let's just direct your attention to
5 interrogatory number 1. On page 2 there is a response
6 that indicates that The Second Amendment Foundation has
7 an Inc. at the end of its name. Do you see?

8 A. Yes.

9 Q. Does that refresh your recollection as to what
10 the exact name of the organization is?

11 A. Yeah. Yes, as I said earlier, sometimes Inc.
12 comes after. Sometimes it doesn't. In Washington
13 state, it's not a nonprofit corporation, you don't have
14 to put Inc. after.

15 Q. In other words, you can --

16 A. But we are a corporation.

17 Q. Okay.

18 A. So it's fine, yes.

19 Q. There is an address listed 12500 Northeast 10th
20 Place, Bellevue, Washington. Is that the address of
21 The Second Amendment Foundation?

22 A. Correct.

23 Q. Is that an actual office building?

24 A. Yes, it is.

25 Q. It's not just like a Mail Boxes Etc. mail slot?

1 A. No. It's a real live office building.

2 Q. Did you review the objection parts of the
3 interrogatory responses?

4 A. Yes.

5 Q. Do you -- actually, strike the question.

6 Let me have you look at interrogatory number
7 2's objection. In the fourth line down there are
8 references to constitutional amendments, U.S.
9 constitutional amendments. Do you see that?

10 MR. OTTEN: Is that line 23?

11 THE WITNESS: You said line twenty --

12 Q. BY MR. EISENBERG: Oh, it is line --

13 A. I'm sorry.

14 Q. -- page 2 line 23.

15 A. Thank you.

16 Q. I misspoke. Page 2 line 23. In the
17 parentheses there is reference to some constitutional
18 amendments.

19 A. Yes.

20 Q. The First, the Fourth, the Fifth, and the
21 Fourteenth.

22 A. Um-hum.

23 Q. Do you have an understanding of what each of
24 those amendments is in the context of responding to the
25 interrogatory?

1 A. Basically, yes. And it was done under guidance
2 from legal counsel for the objection.

3 Q. Okay. Do you have an understanding of why The
4 Second Amendment Foundation cited the Fifth Amendment
5 to the Constitution in that objection?

6 A. Our attorneys advised us to do so.

7 Q. Do you have any other understanding beyond
8 advice of counsel?

9 A. No.

10 Q. Okay. The Second Amendment Foundation keeps
11 firearms at the 12500 Northeast 10th Place address?

12 A. Correct.

13 Q. How many firearms?

14 A. I think we had answered that. There was at
15 least one.

16 Q. Right. So I'm asking for a more specific
17 answer.

18 A. Sometimes the Foundation itself sometimes as
19 many as 30 or 40. We do an annual national raffle, and
20 the raffle prizes come into the office, and so they're
21 there to be distributed from the office. The
22 Foundation also has a bunch of collectibles that have
23 been donated to it, probably another 30 or 40 firearms
24 that are pieces that eventually are going to a museum.
25 And in addition to that, of course, staff brings their

1 own personal firearms to the office.

2 MR. OTTEN: And as we mentioned in the previous
3 depositions pursuant to the protective order, these are
4 just going to be deemed confidential?

5 MR. EISENBERG: I understand.

6 MR. OTTEN: Okay.

7 Q. BY MR. EISENBERG: Does The Second Amendment
8 Foundation have any physical office in California?

9 A. No.

10 Q. Does The Second Amendment Foundation have any
11 other physical office besides the one in Bellevue?

12 A. Yes.

13 Q. Where is the other office or offices?

14 A. Buffalo, New York.

15 Q. Any other places?

16 A. As the Foundation itself, no.

17 Q. What do you mean by "as the Foundation itself"?

18 A. We own radio stations in various places, and as
19 a result, I mean, it's not our direct primary business
20 office, but we still own it.

21 Q. What radio stations does The Second Amendment
22 Foundation own?

23 A. KITZ in Seattle; KSBN, Spokane, Washington;
24 KGTK, Olympia, Washington; KBNP, Portland, Oregon.

25 Q. Any radio stations in California?

1 A. Not at the moment, no.

2 Q. Is The Second Amendment Foundation in the
3 process of acquiring a radio station in California?

4 A. We'd like to acquire some in California, and
5 we've been looking at stations that are for sale in the
6 state and just haven't quite found the right deal yet.

7 Q. Does The Second Amendment Foundation own any TV
8 stations?

9 A. We did. We do not at the present time.

10 Q. Was it one TV or more?

11 A. It was two TV stations in Louisiana.

12 Q. So did -- has The Second Amendment Foundation
13 owned any TV stations in California at any time?

14 A. No.

15 Q. Has The Second Amendment Foundation owned any
16 newspapers?

17 A. Yes.

18 Q. Which newspapers?

19 A. Gun Week.

20 Q. Any others?

21 A. No.

22 Q. Is Gun Week put out as a Second Amendment
23 Foundation publication?

24 A. Yes, it was. Now it's turned from a newspaper
25 into a magazine and it's called The Gun Mag.

1 Q. Does The Gun Mag come out in paper form?

2 A. Both on the Internet as well as paper.

3 Q. And does -- is it identified as a Second
4 Amendment Foundation publication?

5 A. Yes, it is.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 Q. Has -- are there any firearms that The Second

17 Amendment Foundation has that were purchased and had to

18 go through the ten-day waiting period in California?

19 A. I don't believe so. There have been firearms

20 not purchased but donated from California, but they

21 were sent to an out-of-state -- to a Washington state

22 federal firearms dealer, who transferred the firearms

23 to us. So I don't believe they went through any

24 ten-day waiting period because I don't think that's the

25 way your laws are written if they are being shipped out

1 of state from a dealer.

2 Q. Is The Second Amendment Foundation storing any
3 firearms that belong to the organization in California?

4 A. No.

5 Q. If I can have you look at interrogatory number
6 2, which starts on page 2 and then the response goes to
7 page 3. And I just want to focus you on part of the
8 response. So I'm deliberately not giving you time to
9 read the whole response, and the record will reflect
10 that. "...Plaintiff responds by reminding the
11 Defendant that Plaintiff is suing in a representative
12 capacity," dot dot dot. Do you see those lines, line 6
13 and --

14 A. Give me -- are you on page 3 now?

15 Q. 6 and 7 on page 3, right.

16 A. I'm sorry. I'm on page 2. 6 and 7.

17 Q. And I'll freely acknowledge that I did not give
18 you time to read the full response or even the
19 question. "...Plaintiff responds by reminding
20 Defendant that Plaintiff is suing in a representative
21 capacity," dot dot dot.

22 A. Yes.

23 Q. Do you see those lines?

24 A. I don't see a dot dot dot.

25 Q. Okay. Yes. What I mean by that is that the

1 text goes on beyond that but I'm not reading it.

2 A. Okay.

3 Q. Is The Second Amendment taking the position
4 there that it's suing in a representative capacity in
5 this case?

6 A. In response to the question, yes.

7 Q. Is the plaintiff Second Amendment Foundation
8 suing in a representative capacity in response to
9 interrogatory number 2? Is that what you're saying?

10 A. Yes, the response was to interrogatory number
11 2.

12 Q. Second Amendment Foundation was not trying to
13 convey in that response that it was suing in only a
14 representative capacity in the lawsuit?

15 A. I think it was a response to the question. So
16 I'm going back a page here. How many firearms are
17 usually kept in the primary place of business. The
18 primary place of business is not in the state of
19 California, and the response is to that question.

20 Q. Where does it say that your primary place of
21 business is not in California?

22 A. I am just telling you it's not.

23 Q. Oh.

24 A. I mean -- well, it says it on page 1 of the
25 interrogatories, your question 1. We gave you our

1 response --

2 Q. Right.

3 A. -- where we're located.

4 Q. What does the location of the principal place
5 of business have to do with whether The Second
6 Amendment Foundation is suing in a representative
7 capacity?

8 A. I don't know. You asked me the question -- I
9 thought you -- if you want to back up a few questions,
10 I thought you asked me something about California. I'm
11 sorry. I apologize.

12 Q. Okay. I don't recall doing that, or if I did
13 it was a mistake. Isn't it the case that The Second
14 Amendment Foundation is stating here that it's suing in
15 a representative capacity as opposed to an individual
16 capacity in this lawsuit? Isn't that what that
17 response is saying in part?

18 A. It's in response to the question --
19 interrogatory number 2, which says, "How many firearms
20 are usually kept at your primary place of business?"
21 And that's where I got the word "primary place of
22 business."

23 Q. Right. So how does the question -- why did the
24 question elicit a response reminding the Attorney
25 General that Second Amendment Foundation is suing in a

1 representative capacity?

2 A. Well, we are --

3 Q. Okay.

4 A. -- doing it as an individual and representative
5 capacity, so I would assume when we say it's a
6 representative capacity it's accurate.

7 Q. Is there a reason that Second Amendment
8 Foundation omitted mentioning that it was also suing in
9 an individual capacity in that response?

10 A. No, not particularly.

11 Q. Do you have an understanding of the term
12 "Internet seller of firearms"?

13 A. It's a broad term, so I guess depends on how
14 it's being used.

15 Q. Do you have -- does the Second Amendment
16 Foundation have an understanding of the term "Internet
17 broker of firearms"?

18 A. Yeah.

19 Q. What's the understanding?

20 A. Internet broker of firearms, I believe, would
21 be someplace where somebody went to sell a firearm and
22 a broker would then put a buyer and seller together.

23 Q. Does the Second Amendment Foundation know of
24 any websites that are brokers of firearms?

25 A. I assume Gunbroker.com, since "broker" is in

1 their name, would be considered to be a broker.

2 Q. Is The Second Amendment Foundation in the
3 business of brokering firearms transactions?

4 A. No.

5 Q. Either online or offline?

6 A. No, we don't -- we don't broker firearms.

7 Q. If I could have you look at interrogatory 15,
8 please. It's on page 30.

9 A. Thank you. That helps. Got it.

10 Q. If you could just read the interrogatory to
11 yourself and tell me when you're done.

12 A. Okay.

13 Q. All right. So you've got the question in mind.
14 The response here at lines -- starting at line 9 again
15 gives the reminder to the Attorney General that the
16 plaintiff is suing in a representative capacity. Why
17 did The Second Amendment Foundation give that reminder
18 in response to that interrogatory?

19 A. Probably because The Second Amendment
20 Foundation doesn't have any expenses in acquiring
21 firearms --

22 Q. Okay.

23 A. -- in the state of California.

24 Q. The response makes mention of -- "that their
25 members have lost the opportunity costs to engage in

1 business and other activities during the time it took,
2 and takes, for each and every second trip to the
3 licensed firearms dealer to take possession, custody,
4 and control of each firearm." Do you see the phrase?

5 A. Yes.

6 Q. What is -- what is the opportunity costs?

7 A. Well, when one is spending time and effort
8 doing one thing, you lose the opportunity to do
9 something else. So it's a cost -- it's a cost on-- you
10 have to make the choice. If you're doing that, you've
11 given up an opportunity on the other side.

12 Q. Isn't it the case that every human activity has
13 opportunity costs?

14 A. Probably the answer to that is correct, but not
15 every -- again, do you want me to elaborate?

16 Q. Certainly.

17 A. Not every opportunity cost is foisted on the
18 public because of government regulations. Sometimes
19 you have a free choice. In this case you don't get a
20 free choice.

21 Q. Has The Second Amendment Foundation attempted
22 to quantify what those opportunity costs are for their
23 members, the ones that are -- the opportunity costs
24 referred to in this interrogatory?

25 A. No, because it varies depending upon the

1 person, how far you have to travel, how much time it
2 takes. You can't quantify it to a single transaction
3 because each transaction is going to be different.

4 Q. So The Second Amendment Foundation hasn't
5 attempted to come up with any averages or medians or
6 things of that sort for members and the inconvenience
7 to which they're put making that second trip?

8 A. No.

9 Q. If you could look down to line 14 and 15, there
10 is mention of shipping expenses, additional dealer
11 fees, increased firearms pricing, et cetera, et cetera.
12 Do you see those?

13 A. Yes.

14 Q. I wanted to ask about them in turn. What are
15 the shipping expenses that Second Amendment Foundation
16 members have to incur because of the ten-day waiting
17 period?

18 A. Well, if they are having a firearm shipped from
19 one dealer to another dealer or, you know, shipping of
20 various materials, it -- again, it would depend on each
21 individual transaction. Some would have shipping
22 expenses. Some wouldn't have shipping expenses.

23 Q. And then is there any other thing that you're
24 referring to when you say "shipping expenses"?

25 A. Well, it could be the shipping expenses of

1 simply getting there to pick up the gun, shipping
2 yourself there to pick it up.

3 Q. So shipping expenses includes, you know,
4 getting in the car and traveling? That's what you
5 mean?

6 A. It could.

7 Q. Well, you wrote the answer, or you verified it,
8 so I don't want to know if it could. I want to know if
9 it does. Doesn't --

10 A. It depends on the transaction.

11 Q. Okay.

12 A. That's why it could. It's not going to be one
13 size fits all.

14 Q. A couple of lines down, line 16, you reference
15 "additional fuel costs, wear and tear on their vehicles
16 necessary for a return trip," dot dot dot. Is that
17 answer now redundant? Is that actually redundant with
18 shipping expenses?

19 A. It might be.

20 Q. Moving back up one line, "additional dealer
21 transfer fees," what does SAF mean by "additional
22 dealer transfer fees"?

23 A. Well, if you had to ship it from one dealer to
24 another dealer closer to the person to pick up, that
25 dealer is not going to do it for free. He's going to

1 charge something.

2 Q. Any other meaning of the phrase "additional
3 dealer transfer fees"?

4 A. Well, the dealer at the other end may charge as
5 well, too. So it could be a double on both sides of
6 the equation.

7 Q. Anything else that you're referring to there?

8 A. Not that I can recollect.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

18 Q. Does The Second Amendment Foundation have any
19 blogs?

20	A. Blogs?
----	-----------

21 Q. Right.

22	A.	No.
----	----	-----

23 Q. Has The Second Amendment Foundation had blogs
24 in the past?

25	A.	No.
----	----	-----

1 Q. You understand what I mean by blogs, right?

2 A. Well, just to make sure, give me your
3 definition.

4 Q. My definition is an Internet site where there
5 are periodic posts to the world coming from The Second
6 Amendment Foundation, and it's usually in a form where
7 you can go back and read all of the prior posts.

8 A. Well, we have a Facebook page that we post
9 things to. We own Keepandbeararms.com, a news website
10 that we don't -- we don't post things to it as such.
11 News stories that are in the general, you know --
12 general publications or media. But other people then
13 post comments to it. We don't post the comments.
14 Other people do.

15 Q. So --

16 A. But I wouldn't consider them a blog.

17 Q. Okay. So Keepandbeararms is more like a forum
18 that The Second Amendment Foundation moderates?

19 A. It's not really a forum. It's a news -- if you
20 go to Keepandbeararms.com, it's a news site where we
21 aggregate stories about firearms worldwide every day.

22 Q. Okay. And it's -- these stories are stories
23 that Second Amendment Foundation didn't necessarily
24 write?

25 A. Correct.

1 Q. Okay. Does The Second Amendment Foundation
2 make comments about the articles on that website?

3 A. No.

4 Q. Does The Second Amendment Foundation allow
5 other people to make comments about the articles on
6 that website?

7 A. Yes.

8 Q. And does The Second Amendment Foundation
9 moderate the comments in any way?

10 A. No.

11 Q. Are you aware of whether at the
12 Keepandbeararms.com website The Second Amendment
13 Foundation has posted or linked articles about the
14 ten-day waiting period in California?

15 A. If they were posted there, they were done by
16 our news editors off stories that came out of
17 California newspapers or TV stations, you know,
18 websites, and posted the story onto it. I don't know
19 of any.

20 Q. Is the goal of that website to be comprehensive
21 in linking or making reference to all media reports on
22 gun issues?

23 A. Yes.

24 Q. Okay. Does the website store articles or just
25 have the current articles present?

1 A. It stores them.

2 Q. And are they -- are the stored articles
3 searchable by members of the public?

4 A. Yes.

5 Q. Are the stored articles stored by subject
6 matter?

7 A. No. By date.

8 Q. By date. So there is no section that would be
9 articles about the ten-day waiting period or something
10 similar?

11 A. No.

12 Q. I think you mentioned that there was another
13 online forum at Facebook.

14 A. Second Amendment Foundation has a page at
15 Facebook.

16 Q. Does The Second Amendment Foundation post its
17 own text at that website, in other words, text that's
18 The Second Amendment Foundation --

19 A. Yes.

20 Q. -- publications?

21 A. Not publica -- we post events, things we're
22 doing, news stories, links to things. We don't post
23 publications per se.

24 Q. Are you the person that runs the Facebook page
25 for The Second Amendment Foundation?

1 A. No.

2 Q. Does The Second Amendment Foundation have an
3 employee whose responsibility is to oversee the
4 Facebook page?

5 A. No one sort of oversees it. Various staff
6 people contribute to it.

7 Q. Are there discussions at the Facebook page
8 about the ten-day waiting period that you're aware of?

9 A. Not that I know of.

10 Q. Does The Second Amendment Foundation have a
11 purpose for having a Facebook page that's different
12 from the purposes of the other online presences The
13 Second Amendment Foundation has?

14 A. Well, we have our website at SAF.org, and we
15 have a Facebook page because lots of people use
16 Facebook and find out what we're doing and communicate
17 with us through Facebook.

18 Q. Is the Facebook page -- does it contain a
19 subset of the information on the SAF.org website?

20 A. No, I wouldn't say it has a subset. It's
21 more -- we put on -- well, if you put out news
22 releases, a news release would go on the SAF.org
23 website, and it would probably then link it on Facebook
24 back to our website.

25 Q. Has The Second Amendment Foundation ever

1 employed Brandon Combs?

2 A. Yes.

3 Q. In what capacity has he been employed by The
4 Second Amendment Foundation?

5 A. As a grassroots-type coordinator.

6 Q. And has Brandon Combs received a salary from
7 The Second Amendment Foundation?

8 A. Yes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 Q. Have you ever been convicted of a felony?

19 A. Yes.

20 Q. What felony have you been convicted of?

21 A. Filing a federal tax return that wasn't true

22 and correct in every material matter.

23 Q. When were you convicted of this offense?

24 A. 1984.

25 Q. Did you understand that the conviction affected

1 your ability to own a firearm?

2 A. Yes.

3 Q. How did the conviction affect your ability to
4 own a firearm?

5 A. Until I had my rights restored, I couldn't own
6 one.

7 Q. And was there a process that you're aware of
8 for having your rights restored?

9 A. Yes.

10 Q. And you went through this process?

11 A. Correct.

12 Q. Sorry. Let me back up. Where were you
13 convicted?

14 A. Where?

15 Q. Right.

16 A. In Washington state.

17 Q. Okay.

18 A. It's a federal conviction.

19 Q. When did you go through the process of having
20 your firearm rights restored?

21 A. The day my sentence was over.

22 Q. Which was when?

23 A. March of 1985.

24 Q. So the restraint that was imposed on you lasted
25 from 1984 until some point, yes?

1 A. Yeah. From about June 1984 till about May of
2 1985.

3 Q. So the -- how long did it take from the start
4 of the restoration of rights process until the rights
5 were actually restored in your case?

6 | A. Thirty to sixty days.

■■■■■

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

████████████████████

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

10 MR. EISENBERG: Madam court reporter reminded
11 me of something that I overlooked, which is making
12 arrangements for the deponents to sign the deposition
13 transcripts. Off the record we talked about the
14 arrangements. I'll repeat what I understand of them,
15 and if I have misstated something, I ask Mr. Otten to
16 correct me. For not just today's deposition but for
17 the other three in this case that have been over the
18 last few days, the deponent will be presented with the
19 original transcript to sign and return. An original
20 transcript will be sent to The Second Amendment
21 Foundation for today's deposition. All the other
22 transcript originals will be sent to Mr. Otten.
23 Correct?

24 MR. OTTEN: Correct.

25 MR. EISENBERG: Okay. So agreed?

1 MR. OTTEN: Agreed.

2 THE WITNESS: Agreed. Are you sure you don't
3 want to see mine?

4 MR. OTTEN: I'm going to get a copy of it
5 anyway.

6 THE WITNESS: Fine.

7 MR. EISENBERG: Off the record?

8 MR. OTTEN: Yes.

9 (Ending time: 11:55 a.m.)

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1 STATE OF CALIFORNIA)
2) SS.
3 COUNTY OF LOS ANGELES)
4

5 I, the undersigned, declare under penalty of
6 perjury that I have read the foregoing transcript and I
7 have made any corrections, additions, or deletions that
8 I was desirous of making; that the foregoing is a true
9 and correct transcript of my testimony contained herein.

10 EXECUTED this _____ day of _____
11 201__, at _____, _____.

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ALAN MERRIL GOTTLIEB

REPORTER'S CERTIFICATE

I, AILEEN NEITZERT, CSR No. 5318, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken
before me at the time and place herein set forth, at
which time the witness was put under oath by me;

That the testimony of the witness, the
questions propounded, and all objections and statements
made at the time of the examination were recorded
stenographically by me and were thereafter transcribed;

That the signature of the witness was not waived
by agreement;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties nor financially
interested in the action.

I declare under penalty of perjury under the
laws of California that the foregoing is true and
correct.

Dated this 24th day of May, 2013.

AILEEN NEITZERT, CSR NO. 5318

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

13
14
15 JEFF SILVESTER, MICHAEL POESCHL,
16 BRANDON COMBS, THE CALGUNS
FOUNDATION, INC., a non-profit
17 organization, and THE SECOND
AMENDMENT FOUNDATION, INC., a
18 non-profit organization,

19 Plaintiffs,

20 vs.

21 KAMALA HARRIS, Attorney General of
22 California (in her official capacity), and
DOES 1 to 20,

23 Defendant.

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

**PLAINTIFF THE SECOND
AMENDMENT FOUNDATION, INC.'S
RESPONSE TO DEFENDANT
KAMALA D. HARRIS'S FIRST SET OF
INTERROGATORIES**

1 PROPOUNDING PARTY: Defendant Kamala D. Harris
2 RESPONDING PARTY: Plaintiff The Second Amendment Foundation, Inc.
3 SET NUMBER: One (1)
4

5 **RESPONSES TO INTERROGATORIES**

6 **INTERROGATORY NO. 1**

7 State your full name, business address, and Employee Identification Number.

8 **RESPONSE TO INTERROGATORY NO. 1**

9 OBJECTION: This interrogatory counts as four separate and distinct interrogatories.
10 Moreover, this request is objectionable as it is not calculated to lead to the discovery of
11 admissible evidence. This request seeks privileged information, including Plaintiff's Social
12 Security number and birth date. (See Fed. R. Civ. Proc. §5.2.)

13 RESPONSE: Without waiving the above stated objections, Plaintiff responds as follows:
14 Second Amendment Foundation, Inc., 12500 N.E. 10th Place, Bellevue, WA, 98005; the
15 Employee Identification Number is 91-6184167.
16

17 **INTERROGATORY NO. 2**

18 How many firearms are usually kept at your primary place of business?

19 **RESPONSE TO INTERROGATORY NO. 2**

20 OBJECTION: This request is not reasonably calculated to seek the discovery of
21 admissible evidence. Moreover, this request seeks information that is irrelevant to the matter at
22 hand. This request seeks privileged information as it relates to the number of firearms kept at
23 Plaintiff's place of business. (See U.S. Const. amends I, IV, V, XIV; Cal. Const. art I, §1; and 18
24 U.S.C. 926(a), which states: "No such rule or regulation prescribed [by the Attorney General]
25 after the date of the enactment of the Firearms Owners Protection Act may require that records
26 required to be maintained under this chapter or any portion of the contents of such records, be
27 recorded at or transferred to a facility owned, managed, or controlled by the United States or any
28 State or any political subdivision thereof, nor that any system of registration of firearms, firearms

Page 2

owners, or firearms transactions or disposition be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation." Thus, there is a clear intent to secure gun owners' privacy as it relates to their firearm ownership. The civil action at issue herein cannot be used to subvert those privacy rights.

RESPONSE: Without waiving the above stated objections, Plaintiff responds by reminding Defendant that Plaintiff is suing in a representative capacity and further states that, in general, there is at least one firearm within the place of business.

INTERROGATORY NO. 3

How many firearms suitable for self-defense are usually kept at your primary place of business?

RESPONSE TO INTERROGATORY NO. 3

OBJECTION: This request is not reasonably calculated to seek the discovery of admissible evidence. This request is also so vague or ambiguous as to be burdensome or oppressive as to the meaning of "suitable for self-defense." Moreover, Plaintiff would have to speculate as to the meaning of the phrase "suitable for self-defense." Firearms are tools. While one firearm may be suitable for self-defense in one scenario, it may not be suitable for self-defense in another scenario. As such, the term "suitable for self-defense" is too vague and ambiguous to properly respond to. Moreover, this request seeks information that is irrelevant to the matter at hand. This request seeks privileged information as it relates to the number of firearms kept at Plaintiff's place of business. (See U.S. Const. amends I, IV, V, XIV; Cal. Const. art I, §1; and 18 U.S.C. 926(a), which states: "No such rule or regulation prescribed [by the Attorney General] after the date of the enactment of the Firearms Owners Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or disposition be established. Nothing in

1 this section expands or restricts the Secretary's authority to inquire into the disposition of any
2 firearm in the course of a criminal investigation." Thus, there is a clear intent to secure gun
3 owners' privacy as it relates to their firearm ownership. The civil action at issue herein cannot
4 be used to subvert those privacy rights.

5 RESPONSE: Without waiving the above referenced objection, Plaintiff responds:
6 Plaintiff reminds Defendant that Plaintiff is suing in a representative capacity and further states
7 all of them.

8
9 **INTERROGATORY NO. 4**

10 If your answer to interrogatory 3 was two or more firearms, state all reasons that two or
11 more firearms suitable for self-defense, as opposed to just one firearm or no firearm suitable for
12 self-defense, are kept at your primary place of business.

13 **RESPONSE TO INTERROGATORY NO. 4**

14 OBJECTION: This request is compound and asks at least two separate and distinct
15 questions: (1) state all reasons that two or more firearms are more suitable for self-defense, as
16 opposed to just one firearm, and (2) state all reasons that two or more firearms are more suitable
17 for self-defense, as opposed to no firearm.

18 This request is also so vague or ambiguous as to be burdensome or oppressive as to the
19 meaning of "suitable for self-defense." Moreover, Plaintiff would have to speculate as to the
20 meaning of the phrase "suitable for self-defense." Firearms are tools. While one firearm may be
21 suitable for self-defense in one scenario, it may not be suitable for self-defense in another
22 scenario. As such, the term "suitable for self-defense" is too vague and ambiguous to properly
23 respond to.

24 Contention interrogatories asking for each and every fact, or application of law to fact,
25 that supports particular allegations in an opposing pleading may be held to be overly broad and
26 unduly burdensome. (*IPV, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD 316, 321 –
27 Providing "every fact" could require "laborious, time-consuming analysis, search and description
28 of incidental, secondary, and perhaps irrelevant and trivial details.")

1 RESPONSE: Without waiving the above stated objections, Plaintiff reminds Defendant
 2 that Plaintiff is suing in a representative capacity. Nevertheless, the same reasons keeping 2 or
 3 more firearms at a place of business are similar to those for keeping a firearm in the home. One
 4 cannot adequately defend themselves, their coworkers or their family with a single firearm. The
 5 need and desire to protect oneself and family extend beyond the home, and include other
 6 locations such as boats, cars, businesses, and other locations.

7 Moreover, at any given time, firearms may be: not immediately physically available due
 8 to the firearm's proximity to one's physical location – both within the business and outside of the
 9 business; underpowered for certain self-defense scenarios; over-powered for certain self-defense
 10 scenarios; inoperable; stolen; broken; unclean for reliable operation or otherwise unreliable; out
 11 for service; loaned to another individual for up to a 30 day period in accordance with California
 12 law; there may be a lack of ammunition available for the current firearm; an act of terrorism may
 13 make the firearm[s] owned by members insufficient to defend themselves, family, or home; riots
 14 and looting may render the firearm[s] owned by members to be insufficient; earthquakes and
 15 other natural disasters may render any and all firearms possessed by members to be insufficient
 16 for self-defense and defense of others; temporary seizures of firearms lawfully possessed may
 17 render the firearms insufficient for self-defense.

18 In fact, under the Militia Act of 1792, many were required to have more than one firearm
 19 – “and to be armed with a sword and pair of pistols, the holsters of which to be covered with
 20 bearskin caps.”

21
 22 **INTERROGATORY NO. 5**

23 Identify and describe in full and complete detail all harms that you suffer by, per
 24 California Penal Code sections 26815(a) and/or 27540, having to wait 10 days between
 25 purchasing and taking delivery of a firearm.

26 **RESPONSE TO INTERROGATORY NO. 5**

27 OBJECTION: Contention interrogatories asking for each and every fact, or application of
 28 law to fact, that supports particular allegations in an opposing pleading may be held to be overly

1 broad and unduly burdensome. (*IPV, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD
2 316, 321 – Providing “every fact” could require “laborious, time-consuming analysis, search and
3 description of incidental, secondary, and perhaps irrelevant and trivial details.”)

4 RESPONSE: Without waiving the above referenced objection, Plaintiff reminds
5 Defendant that Plaintiff is suing in a representative capacity and further states that the California
6 Penal Code sections that require Plaintiff’s members to wait 10 days between purchasing a
7 firearm and taking delivery of a firearm, thereby depriving them of the use, custody, control, and
8 ability to defend themselves, families, and home with said firearm that they already own;
9 mandate a brief window of 20 days from which our members must return to obtain physical
10 possession of property that they already own; cause an additional increased 10 day delay and
11 added expenses of Dealer Record of Sale fees, storage fees, and transportation fees when they
12 are unavailable to take physical possession of the firearm within the 20 day window; cause
13 increased travel expenses upon firearm purchases coinciding with distance from their home to
14 the licensed firearm dealer’s premises due to the requirement that they must make a second trip
15 to receive custody of the firearm purchased; limit our members out-of-town purchases and gun
16 show purchases; and limit the market of firearms available to areas the members are willing to
17 travel to twice during a period of at least 10 days and at most 30 days; cause added burden and
18 expense of locating and paying another more local dealer who may be willing, but is not
19 statutorily obligated, to process a firearms transfer originating at a competitor licensed firearm
20 dealer; and cause members to lose the opportunity cost of the time spent on the second trip to
21 receive a firearm they already own.

22
23 **INTERROGATORY NO. 6**

24 If you contend that it is unconstitutional to apply California Penal Code section
25 26815(a)’s “waiting period” (between purchase and delivery of a firearm) to first-time firearms
26 purchasers, state all facts supporting this contention.

27 **RESPONSE TO INTERROGATORY NO. 6**

28 OBJECTION: Contention interrogatories asking for each and every fact, or application of
Page 6

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

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

10
11 **INTERROGATORY NO. 7**

12 If you contend that it is unconstitutional to apply California Penal Code section 27540’s
13 “waiting period” (between purchase and delivery of a firearm) to first-time firearms purchasers,
14 state all facts supporting this contention.

15 **RESPONSE TO INTERROGATORY NO. 7**

16 OBJECTION: Contention 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. [*IPV, 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 contends that
22 there are circumstances in which California Penal Code section 26815(a)’s “waiting period”
23 (between purchase and delivery of a firearm) to first-time firearm purchasers would be
24 unconstitutional, such as applications of the provision to women who have been abused and have
25 obtained Temporary Restraining Orders for their protection, but such contentions are not the
26 subject of this litigation.

27 ///

28 ///

INTERROGATORY NO. 8

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

RESPONSE TO INTERROGATORY NO. 8

OBJECTION: Contention interrogatories asking for each and every fact, or application of law to fact, that supports particular allegations in an opposing pleading may be held to be overly broad and unduly burdensome. [*IPV, 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 the provisions are unconstitutional, to the extent that they would apply to an individual whose state records (including the Automated Firearm System and Armed and Prohibited Database) identify them as a person not prohibited from possessing firearms and already being the owner of a registered firearm, in that they violate their Second, Fourth and Fifth Amendment rights. The Second Amendment applies beyond merely the home. There are several cases pending in the Ninth, Seventh, and Second Circuit Courts of Appeals relating to whether the Second Amendment's "right to [...] bear arms" for the purpose of self-defense extends beyond the home. See generally: *District of Columbia v. Heller*, 554 U.S. 570(2008) and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010). There are currently two cases pending in the Ninth Circuit Court of Appeals relating to California law: *Richards v. Prieto* (Yolo County), Case No.: 11-16255 and *Peruta v. County of San Diego*, Case No.: 10-56971. These cases were argued and submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS (7th Cir. Ill. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision to give the state legislature an opportunity to enact a licensing scheme. But the court in *Kachalsky v. County of Westchester*, 2012 U.S. App. LEXIS 24363 (2nd Cir. N.Y. Nov. 27, 2012) found that the right did not extend beyond the home. These Constitutional violations, both

1 within the home and outside the home, are supported by the following facts:

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

8 Additionally, certain members are holders of a valid license to carry a concealed firearm.
9 As a holder of a valid license to carry pursuant to Penal Code section 26150 *et seq.*, they are, *per*
10 *se*, not in a class of persons described in Penal Code sections 29800, *et seq.*, 29900, *et seq.*, or
11 Welfare and Institutions Code 8100 or 8103. Penal Code section 26195(a)-(b). In other words,
12 holders of a valid license to carry pursuant to Penal Code section 26150, *et seq.* represented by
13 CGF and SAF are not prohibited from possessing firearms under federal or state law and may
14 often be armed with a loaded concealed firearm, including while purchasing firearms for which
15 they are subjected to a 1-day ban on possessing.

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

27 Though the members must wait 1 day to acquire possession of each firearm they purchase
28 for self-defense, others seeking commercial, professional, and personal acquisition of firearms,

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1 such as destructive device collectors, movie prop houses, auction purchasers, and “consultants-
2 evaluators,” are permitted instant access to firearms.

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

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

19 In fact, the California Department of Justice had determined alternative methods that
20 eliminate delays upon law-abiding firearm owners while ensuring public safety as early as 1991.
21 In its AB 497 Alternative Feasibility Studies: Report of Findings (1991), the Department of
22 Justice identified multiple methods of performing proper background checks such that the
23 persons in prohibited categories would not be allowed to purchase a firearm from a licensed
24 California firearm dealer while imposing minimal infringement on gun owners' rights to
25 purchase and possess firearms. As certain of our members are verifiable law-abiding firearm
26 owner, there is no justifiable reason to delay their acquisition of a firearm they already own.

27 If our members were required to wait 1 day between purchasing a firearm and taking
28 delivery of a firearm, they would thereby be deprived of the use, custody and control of their

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1 personal property. The delay would also deny our members the ability to defend themselves,
2 their families, and their home with said firearm that they already own; the hypothetical waiting
3 period mandates a brief window of 29 days from which our members must return to obtain
4 physical possession of property that they already own, causes an additional increased 1 day delay
5 and added expenses of Dealer Record of Sale fees, storage fees, and transportation fees when
6 members may be unavailable to take physical possession of the firearm within the 29 day
7 window; causes increased travel expenses upon firearm purchases coinciding with distance from
8 their homes to the licensed firearm dealer premises due to the requirement that they must make a
9 second trip to receive custody of the firearm purchased; limits their out-of-town purchases and
10 gun show purchases; and limits the market of firearms available to areas that they are willing to
11 travel to twice during a period of at least 1 day and at most 30 days; causes added burden and
12 expense of locating and paying another more local dealer who may be willing, but is not
13 statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm
14 dealer; and causes our members to lose the opportunity cost of the time spent on the second trip
15 to receive a firearm they already own.

16
17 **INTERROGATORY NO. 9**

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

21 **RESPONSE TO INTERROGATORY NO. 9**

22 **OBJECTION:** Contention interrogatories asking for each and every fact, or application of
23 law to fact, that supports particular allegations in an opposing pleading may be held to be overly
24 broad and unduly burdensome. [*IPV, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD
25 316, 321 – Providing "every fact" could require "laborious, time-consuming analysis, search and
26 description of incidental, secondary, and perhaps irrelevant and trivial details."]

27 **RESPONSE:** Without waiving the above referenced objection, Plaintiff states that the
28 provisions are unconstitutional, to the extent that they would apply to an individual whose state

1 records (including the Automated Firearm System and Armed and Prohibited Database) identify
2 them as a person not prohibited from possessing firearms and already being the owner of a
3 registered firearm, in that they violate their Second, Fourth and Fifth Amendment rights. The
4 Second Amendment applies beyond merely the home. There are several cases pending in the
5 Ninth, Seventh, and Second Circuit Courts of Appeals relating to whether the Second
6 Amendment's "right to [...] bear arms" for the purpose of self-defense extends beyond the home.
7 See generally: *District of Columbia v. Heller*, 554 U.S. 570(2008) and *McDonald v. City of*
8 *Chicago*, 130 S.Ct. 3020 (2010). There are currently two cases pending in the Ninth Circuit
9 Court of Appeals relating to California law: *Richards v. Prieto* (Yolo County), Case No.: 11-
10 16255 and *Peruta v. County of San Diego*, Case No.: 10-56971. These cases were argued and
11 submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS (7th
12 Cir. Ill. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision
13 to give the state legislature an opportunity to enact a licensing scheme. But the court in
14 *Kachalsky v. County of Westchester*, 2012 U.S. App. LEXIS 24363 (2nd Cir. N.Y. Nov. 27, 2012)
15 found that the right did not extend beyond the home. These Constitutional violations, both
16 within the home and outside the home, are supported by the following facts:

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

23 Additionally, certain members are holders of a valid license to carry a concealed firearm.
24 As a holder of a valid license to carry pursuant to Penal Code section 26150 *et seq.*, they are, *per*
25 *se*, not in a class of persons described in Penal Code sections 29800, *et seq.*, 29900, *et seq.*, or
26 Welfare and Institutions Code 8100 or 8103. Penal Code section 26195(a)-(b). In other words,
27 holders of a valid license to carry pursuant to Penal Code section 26150, *et seq.* represented by
28 CGF and SAF are not prohibited from possessing firearms under federal or state law and may

1 often be armed with a loaded concealed firearm, including while purchasing firearms for which
2 they are subjected to a 3-day ban on possessing.

3 Certain members already have at least one firearm, but seek to have additional firearms
4 for protection of themselves and their families, *inter alia*, pursuant to their Second Amendment
5 right to "keep and bear *arms*." (Emphasis added to note the use of the plural.) These members
6 can otherwise demonstrate proof of ownership and lawful possession of a firearm. For example,
7 some firearms are registered in the California Automated Firearms System database pursuant to,
8 *inter alia*, Penal Code section 28200, *et seq.* In purchasing their firearms, these members were
9 already at least once subjected to the 10-day waiting period prior to physically receiving their
10 firearms. As a result of the 10-day waiting period, these members were obligated to endure a 10-
11 day ban on the acquisition of their constitutionally protected firearms and incur additional
12 expense and burden by being forced to make a second visit to the firearms dealer that sold them
13 their firearm.

14 Though the members must wait 3 days to acquire possession of each firearm they
15 purchase for self-defense, others seeking commercial, professional, and personal acquisition of
16 firearms, such as destructive device collectors, movie prop houses, auction purchasers, and
17 "consultants-evaluators," are permitted instant access to firearms.

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

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

6 In fact, the California Department of Justice had determined alternative methods that
7 eliminate delays upon law-abiding firearm owners while ensuring public safety as early as 1991.
8 In its AB 497 Alternative Feasibility Studies: Report of Findings (1991), the Department of
9 Justice identified multiple methods of performing proper background checks such that the
10 persons in prohibited categories would not be allowed to purchase a firearm from a licensed
11 California firearm dealer while imposing minimal infringement on gun owners' rights to
12 purchase and possess firearms. As certain of our members are verifiable law-abiding firearm
13 owner, there is no justifiable reason to delay their acquisition of a firearm they already own.

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

dealer; and causes our members to lose the opportunity cost of the time spent on the second trip to receive a firearm they already own.

INTERROGATORY NO. 10

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

RESPONSE TO INTERROGATORY NO. 10

OBJECTION: Contention interrogatories asking for each and every fact, or application of law to fact, that supports particular allegations in an opposing pleading may be held to be overly broad and unduly burdensome. [*IPV, 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 the provisions are unconstitutional, to the extent that they would apply to an individual whose state records (including the Automated Firearm System and Armed and Prohibited Database) identify them as a person not prohibited from possessing firearms and already being the owner of a registered firearm, in that they violate their Second, Fourth and Fifth Amendment rights. The Second Amendment applies beyond merely the home. There are several cases pending in the Ninth, Seventh, and Second Circuit Courts of Appeals relating to whether the Second Amendment's "right to [...] bear arms" for the purpose of self-defense extends beyond the home. See generally: *District of Columbia v. Heller*, 554 U.S. 570(2008) and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010). There are currently two cases pending in the Ninth Circuit Court of Appeals relating to California law: *Richards v. Prieto* (Yolo County), Case No.: 11-16255 and *Peruta v. County of San Diego*, Case No.: 10-56971. These cases were argued and submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS (7th Cir. Ill. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision to give the state legislature an opportunity to enact a licensing scheme. But the court in

1 *Kachalsky v. County of Westchester*, 2012 U.S. App. LEXIS 24363 (2nd Cir. N.Y. Nov. 27, 2012)
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3 within the home and outside the home, are supported by the following facts:

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

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

18 Certain members already have at least one firearm, but seek to have additional firearms
19 for protection of themselves and their families, *inter alia*, pursuant to their Second Amendment
20 right to “keep and bear *arms*.” (Emphasis added to note the use of the plural.) These members
21 can otherwise demonstrate proof of ownership and lawful possession of a firearm. For example,
22 some firearms are registered in the California Automated Firearms System database pursuant to,
23 *inter alia*, Penal Code section 28200, *et seq.* In purchasing their firearms, these members were
24 already at least once subjected to the 10-day waiting period prior to physically receiving their
25 firearms. As a result of the 10-day waiting period, these members were obligated to endure a 10-
26 day ban on the acquisition of their constitutionally protected firearms and incur additional
27 expense and burden by being forced to make a second visit to the firearms dealer that sold them
28 their firearm.

1 Though the members must wait 5 days to acquire possession of each firearm they
2 purchase for self-defense, others seeking commercial, professional, and personal acquisition of
3 firearms, such as destructive device collectors, movie prop houses, auction purchasers, and
4 "consultants-evaluators," are permitted instant access to firearms.

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

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

21 In fact, the California Department of Justice had determined alternative methods that
22 eliminate delays upon law-abiding firearm owners while ensuring public safety as early as 1991.
23 In its AB 497 Alternative Feasibility Studies: Report of Findings (1991), the Department of
24 Justice identified multiple methods of performing proper background checks such that the
25 persons in prohibited categories would not be allowed to purchase a firearm from a licensed
26 California firearm dealer while imposing minimal infringement on gun owners' rights to
27 purchase and possess firearms. As certain of our members are verifiable law-abiding firearm
28 owner, there is no justifiable reason to delay their acquisition of a firearm they already own.

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1 If our members were required to wait 5 days between purchasing a firearm and taking
 2 delivery of a firearm, they would thereby be deprived of the use, custody and control of their
 3 personal property. The delay would also deny our members the ability to defend themselves,
 4 their families, and their home with said firearm that they already own; the hypothetical waiting
 5 period mandates a brief window of 25 days from which our members must return to obtain
 6 physical possession of property that they already own, causes an additional increased 5 days
 7 delay and added expenses of Dealer Record of Sale fees, storage fees, and transportation fees
 8 when members may be unavailable to take physical possession of the firearm within the 25 day
 9 window; causes increased travel expenses upon firearm purchases coinciding with distance from
 10 their homes to the licensed firearm dealer premises due to the requirement that they must make a
 11 second trip to receive custody of the firearm purchased; limits their out-of-town purchases and
 12 gun show purchases; and limits the market of firearms available to areas that they are willing to
 13 travel to twice during a period of at least 5 days and at most 30 days; causes added burden and
 14 expense of locating and paying another more local dealer who may be willing, but is not
 15 statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm
 16 dealer; and causes our members to lose the opportunity cost of the time spent on the second trip
 17 to receive a firearm they already own.

18 19 INTERROGATORY NO. 11

20 If you contend that California Penal Code section 27540 would be unconstitutional if that
 21 law's "waiting period" (between purchase and delivery of a firearm) was one day, state all facts
 22 supporting this contention.

23 RESPONSE TO INTERROGATORY NO. 11

24 OBJECTION: Contention interrogatories asking for each and every fact, or application of
 25 law to fact, that supports particular allegations in an opposing pleading may be held to be overly
 26 broad and unduly burdensome. [*IPV, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD
 27 316, 321 – Providing "every fact" could require "laborious, time-consuming analysis, search and
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 2 provisions are unconstitutional, to the extent that they would apply to an individual whose state
 3 records (including the Automated Firearm System and Armed and Prohibited Database) identify
 4 them as a person not prohibited from possessing firearms and already being the owner of a
 5 registered firearm, in that they violate their Second, Fourth and Fifth Amendment rights. The
 6 Second Amendment applies beyond merely the home. There are several cases pending in the
 7 Ninth, Seventh, and Second Circuit Courts of Appeals relating to whether the Second
 8 Amendment's "right to [...] bear arms" for the purpose of self-defense extends beyond the home.
 9 See generally: *District of Columbia v. Heller*, 554 U.S. 570(2008) and *McDonald v. City of*
 10 *Chicago*, 130 S.Ct. 3020 (2010). There are currently two cases pending in the Ninth Circuit
 11 Court of Appeals relating to California law: *Richards v. Prieto* (Yolo County), Case No.: 11-
 12 16255 and *Peruta v. County of San Diego*, Case No.: 10-56971. These cases were argued and
 13 submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS (7th
 14 Cir. Ill. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision
 15 to give the state legislature an opportunity to enact a licensing scheme. But the court in
 16 *Kachalsky v. County of Westchester*, 2012 U.S. App. LEXIS 24363 (2nd Cir. N.Y. Nov. 27, 2012)
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 18 within the home and outside the home, are supported by the following facts:

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

25 Additionally, certain members are holders of a valid license to carry a concealed firearm.
 26 As a holder of a valid license to carry pursuant to Penal Code section 26150 *et seq.*, they are, *per*
 27 *se*, not in a class of persons described in Penal Code sections 29800, *et seq.*, 29900, *et seq.*, or
 28 Welfare and Institutions Code 8100 or 8103. Penal Code section 26195(a)-(b). In other words,

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2 CGF and SAF are not prohibited from possessing firearms under federal or state law and may
3 often be armed with a loaded concealed firearm, including while purchasing firearms for which
4 they are subjected to a 1-day ban on possessing.

5 Certain members already have at least one firearm, but seek to have additional firearms
6 for protection of themselves and their families, *inter alia*, pursuant to their Second Amendment
7 right to “keep and bear *arms*.” (Emphasis added to note the use of the plural.) These members
8 can otherwise demonstrate proof of ownership and lawful possession of a firearm. For example,
9 some firearms are registered in the California Automated Firearms System database pursuant to,
10 *inter alia*, Penal Code section 28200, *et seq.* In purchasing their firearms, these members were
11 already at least once subjected to the 10-day waiting period prior to physically receiving their
12 firearms. As a result of the 10-day waiting period, these members were obligated to endure a 10-
13 day ban on the acquisition of their constitutionally protected firearms and incur additional
14 expense and burden by being forced to make a second visit to the firearms dealer that sold them
15 their firearm.

16 Though the members must wait 1 day to acquire possession of each firearm they purchase
17 for self-defense, others seeking commercial, professional, and personal acquisition of firearms,
18 such as destructive device collectors, movie prop houses, auction purchasers, and “consultants-
19 evaluators,” are permitted instant access to firearms.

20 The National Instant Check System, located at the FBI's Criminal Justice Information
21 Services Division in Clarksburg, West Virginia, provides full and instant service to FFLs in 30
22 states, five U.S. territories, and the District of Columbia. California voluntarily opted out of the
23 NICS instant background check and maintains its own background check system with an
24 extended 10-day waiting period against purchasers of firearms in California, including our
25 members. Moreover, the Attorney General has established and maintains an online database
26 known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference
27 persons who have ownership or possession of a firearm as indicated by a record in the
28 Consolidated Firearm Information System and who, subsequent to the date of that ownership or

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1 possession of a firearm, fall within a class of persons who are prohibited from owning or
2 possessing a firearm. Penal Code §30000, *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 §30000, *et seq.*

5 Conversely, the PAPF is also 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 had determined alternative methods that
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10 In its AB 497 Alternative Feasibility Studies: Report of Findings (1991), the Department of
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13 California firearm dealer while imposing minimal infringement on gun owners' rights to
14 purchase and possess firearms. As certain of our members are verifiable law-abiding firearm
15 owner, there is no justifiable reason to delay their acquisition of a firearm they already own.

16 If our members were required to wait 1 day between purchasing a firearm and taking
17 delivery of a firearm, they would thereby be deprived of the use, custody and control of their
18 personal property. The delay would also deny our members the ability to defend themselves,
19 their families, and their home with said firearm that they already own; the hypothetical waiting
20 period mandates a brief window of 29 days from which our members must return to obtain
21 physical possession of property that they already own, causes an additional increased 1 day delay
22 and added expenses of Dealer Record of Sale fees, storage fees, and transportation fees when
23 members may be unavailable to take physical possession of the firearm within the 29 day
24 window; causes increased travel expenses upon firearm purchases coinciding with distance from
25 their homes to the licensed firearm dealer premises due to the requirement that they must make a
26 second trip to receive custody of the firearm purchased; limits their out-of-town purchases and
27 gun show purchases; and limits the market of firearms available to areas that they are willing to
28 travel to twice during a period of at least 1 day and at most 30 days; causes added burden and

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1 expense of locating and paying another more local dealer who may be willing, but is not
2 statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm
3 dealer, and causes our members to lose the opportunity cost of the time spent on the second trip
4 to receive a firearm they already own.

5
6 **INTERROGATORY NO. 12**

7 If you contend that California Penal Code section 27540 would be unconstitutional if that
8 law's "waiting period" (between purchase and delivery of a firearm) was three days, state all
9 facts supporting this contention.

10 **RESPONSE TO INTERROGATORY NO. 12**

11 OBJECTION: Contention 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. [*IPV, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD
14 316, 321 – 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 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 them as a person not prohibited from possessing firearms and already being the owner of a
20 registered firearm, in that they violate their 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 [...] bear arms" for the purpose of self-defense extends beyond the home.
24 See generally: *District of Columbia v. Heller*, 554 U.S. 570(2008) and *McDonald 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 *Peruta 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 (7th

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1 Cir. Ill. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision
2 to give the state legislature an opportunity to enact a licensing scheme. But the court in
3 *Kachalsky v. County of Westchester*, 2012 U.S. App. LEXIS 24363 (2nd Cir. N.Y. Nov. 27, 2012)
4 found that the right did not extend beyond the home. These Constitutional violations, both
5 within the home and outside the home, are supported by the following facts:

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

12 Additionally, certain members are holders of a valid license to carry a concealed firearm.
13 As a holder of a valid license to carry pursuant to Penal Code section 26150 *et seq.*, they are, *per*
14 *se*, not in a class of persons described in Penal Code sections 29800, *et seq.*, 29900, *et seq.*, or
15 Welfare and Institutions Code 8100 or 8103. Penal Code section 26195(a)-(b). In other words,
16 holders of a valid license to carry pursuant to Penal Code section 26150, *et seq.* represented by
17 CGF and SAF are not prohibited from possessing firearms under federal or state law and may
18 often be armed with a loaded concealed firearm, including while purchasing firearms for which
19 they are subjected to a 3-day ban on possessing.

20 Certain members already have at least one firearm, but seek to have additional firearms
21 for protection of themselves and their families, *inter alia*, pursuant to their Second Amendment
22 right to “keep and bear *arms*.” (Emphasis added to note the use of the plural.) These members
23 can otherwise demonstrate proof of ownership and lawful possession of a firearm. For example,
24 some firearms are registered in the California Automated Firearms System database pursuant to,
25 *inter alia*, Penal Code section 28200, *et seq.* In purchasing their firearms, these members were
26 already at least once subjected to the 10-day waiting period prior to physically receiving their
27 firearms. As a result of the 10-day waiting period, these members were obligated to endure a 10-
28 day ban on the acquisition of their constitutionally protected firearms and incur additional

1 expense and burden by being forced to make a second visit to the firearms dealer that sold them
2 their firearm.

3 Though the members must wait 3 days to acquire possession of each firearm they
4 purchase for self-defense, others seeking commercial, professional, and personal acquisition of
5 firearms, such as destructive device collectors, movie prop houses, auction purchasers, and
6 "consultants-evaluators," are permitted instant access to firearms.

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

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

23 In fact, the California Department of Justice had determined alternative methods that
24 eliminate delays upon law-abiding firearm owners while ensuring public safety as early as 1991.
25 In its AB 497 Alternative Feasibility Studies: Report of Findings (1991), the Department of
26 Justice identified multiple methods of performing proper background checks such that the
27 persons in prohibited categories would not be allowed to purchase a firearm from a licensed
28 California firearm dealer while imposing minimal infringement on gun owners' rights to

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1 purchase and possess firearms. As certain of our members are verifiable law-abiding firearm
2 owner, there is no justifiable reason to delay their acquisition of a firearm they already own.

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

20
21 **INTERROGATORY NO. 13**

22 If you contend that California Penal Code section 27540 would be unconstitutional if that
23 law's "waiting period" (between purchase and delivery of a firearm) was five days, state all facts
24 supporting this contention.

25 **RESPONSE TO INTERROGATORY NO. 13**

26 **OBJECTION:** Contention 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. [*IPV, Inc. v. Mercantile Bank of Topeka* (D KS 1998) 179 FRD

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: Without waiving the above referenced objection, Plaintiff states that the
4 provisions are unconstitutional, to the extent that they would apply to an individual whose state
5 records (including the Automated Firearm System and Armed and Prohibited Database) identify
6 them as a person not prohibited from possessing firearms and already being the owner of a
7 registered firearm, in that they violate their Second, Fourth and Fifth Amendment rights. The
8 Second Amendment applies beyond merely the home. There are several cases pending in the
9 Ninth, Seventh, and Second Circuit Courts of Appeals relating to whether the Second
10 Amendment’s “right to [...] bear arms” for the purpose of self-defense extends beyond the home.
11 See generally: *District of Columbia v. Heller*, 554 U.S. 570(2008) and *McDonald v. City of*
12 *Chicago*, 130 S.Ct. 3020 (2010). There are currently two cases pending in the Ninth Circuit
13 Court of Appeals relating to California law: *Richards v. Prieto* (Yolo County), Case No.: 11-
14 16255 and *Peruta v. County of San Diego*, Case No.: 10-56971. These cases were argued and
15 submitted on December 6, 2012. The court in *Moore v. Madigan*, 2012 U.S. App. LEXIS (7th
16 Cir. Ill. Dec. 11, 2012) found that the right did extend beyond the home, but stayed its decision
17 to give the state legislature an opportunity to enact a licensing scheme. But the court in
18 *Kachalsky v. County of Westchester*, 2012 U.S. App. LEXIS 24363 (2nd Cir. N.Y. Nov. 27, 2012)
19 found that the right did not extend beyond the home. These Constitutional violations, both
20 within the home and outside the home, are supported by the following facts:

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

27 Additionally, certain members are holders of a valid license to carry a concealed firearm.
28 As a holder of a valid license to carry pursuant to Penal Code section 26150 *et seq.*, they are, *per*

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

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

18 Though the members must wait 5 days to acquire possession of each firearm they
19 purchase for self-defense, others seeking commercial, professional, and personal acquisition of
20 firearms, such as destructive device collectors, movie prop houses, auction purchasers, and
21 "consultants-evaluators," are permitted instant access to firearms.

22 The National Instant Check System, located at the FBI's Criminal Justice Information
23 Services Division in Clarksburg, West Virginia, provides full and instant service to FFLs in 30
24 states, five U.S. territories, and the District of Columbia. California voluntarily opted out of the
25 NICS instant background check and maintains its own background check system with an
26 extended 10-day waiting period against purchasers of firearms in California, including our
27 members. Moreover, the Attorney General has established and maintains an online database
28 known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference
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1 gun show purchases; and limits the market of firearms available to areas that they are willing to
2 travel to twice during a period of at least 5 days and at most 30 days; causes added burden and
3 expense of locating and paying another more local dealer who may be willing, but is not
4 statutorily obligated, to process a firearms transfer originating at a competitor's licensed firearm
5 dealer; and causes our members to lose the opportunity cost of the time spent on the second trip
6 to receive a firearm they already own.

7
8 **INTERROGATORY NO. 14**

9 Describe in full and complete detail all expenses that you have incurred to acquire
10 firearms because of California Penal Code section 26815(a) and its "waiting period" (between
11 purchase and delivery of a firearm).

12 **RESPONSE TO INTERROGATORY NO. 14**

13 **OBJECTION:** This request is not reasonably calculated to seek the discovery of
14 admissible evidence. Moreover, this request seeks information that is irrelevant to the matter at
15 hand. Plaintiff is suing in a representative capacity.

16 **RESPONSE:** Plaintiff responds by reminding Defendant that Plaintiff is suing in a
17 representative capacity and further responds that their members have lost the opportunity costs to
18 engage in business and other activities during the time it took, and takes, for each and every
19 second trip to the licensed firearms dealer to take possession, custody, and control of each
20 firearm. Further, Plaintiff's members have lost the opportunity to purchase firearms due to an
21 inability to make a second trip. They have incurred expenses, including shipping expenses,
22 additional dealer transfer fees, increased firearms prices due to lack of local competition,
23 additional fuel costs, wear and tear on their vehicles necessary for a return trip to the licensed
24 dealer to receive their firearms. In addition, they have incurred additional costs of having to
25 resubmit a Dealer Record of Sale applications due to scheduling conflicts preventing them from
26 returning to the store to receive their firearm within the temporary window of availability.

27 ///

28 ///

INTERROGATORY NO. 15

Describe in full and complete detail all expenses that you have incurred to acquire firearms because of California Penal Code section 27540 and its "waiting period" (between purchase and delivery of a firearm).

RESPONSE TO INTERROGATORY NO. 15

OBJECTION: This request is not reasonably calculated to seek the discovery of admissible evidence. Moreover, this request seeks information that is irrelevant to the matter at hand. Plaintiff is suing in a representative capacity.

RESPONSE: Plaintiff responds by reminding Defendant that Plaintiff is suing in a representative capacity and further responds that their members have lost the opportunity costs to engage in business and other activities during the time it took, and takes, for each and every second trip to the licensed firearms dealer to take possession, custody, and control of each firearm. Further, Plaintiff's members have lost the opportunity to purchase firearms due to an inability to make a second trip. They have incurred expenses, including shipping expenses, additional dealer transfer fees, increased firearms prices due to lack of local competition, additional fuel costs, wear and tear on their vehicles necessary for a return trip to the licensed dealer to receive their firearms. In addition, they have incurred additional costs of having to resubmit a Dealer Record of Sale applications due to scheduling conflicts preventing them from returning to the store to receive their firearm within the temporary window of availability.

INTERROGATORY NO. 16

State the longest distance you have traveled, in the last 10 years, from your principal place of business to a licensed firearms retailer to acquire a firearm.

RESPONSE TO INTERROGATORY NO. 16

OBJECTION: This request is not reasonably calculated to seek the discovery of admissible evidence. Moreover, this request seeks information that is irrelevant to the matter at hand. Plaintiff is suing in a representative capacity.

1 **INTERROGATORY NO. 17**

2 State the distances from your principal place of business, in miles, of the three licensed
3 firearms dealers that are presently closest to your home.

4 **RESPONSE TO INTERROGATORY NO. 17**

5 **OBJECTION:** This request is so vague or ambiguous as to be burdensome or oppressive
6 as to the meaning of "licensed firearm dealers." Moreover, Plaintiff would have to speculate as
7 to the meaning of the phrase "licensed firearm dealers." This interrogatory provides no definition
8 of what "licenses" or which category of "firearm dealers" this interrogatory refers to. Neither
9 Department of Justice nor any other entity publishes a list or makes a list available of persons
10 who are licensed under California law to transfer firearms – therefore it is impossible for
11 members to know with any certainty who the three licensed firearm dealers that are presently
12 closest to Plaintiff's place of business and/or home. This request is not reasonably calculated to
13 seek the discovery of admissible evidence. Moreover, this request seeks information that is
14 irrelevant to the matter at hand. Plaintiff is suing in a representative capacity.

15
16 **INTERROGATORY NO. 18**

17 State the name and World Wide Web address of each Internet seller of firearms from
18 which you have purchased at least one firearm.

19 **RESPONSE TO INTERROGATORY NO. 18**

20 **OBJECTION:** This request is not reasonably calculated to seek the discovery of
21 admissible evidence. Moreover, this request seeks information that is irrelevant to the matter at
22 hand. Plaintiff is suing in a representative capacity. This request is also so vague or ambiguous
23 as to be burdensome or oppressive as to the meaning of "Internet seller of firearms." Moreover,
24 Plaintiff would have to speculate as to the meaning of the phrase "Internet seller of firearms." As
25 such, the term "Internet seller of firearms" is too vague and ambiguous to properly respond to.

26
27 **INTERROGATORY NO. 19**

28 Do you contend that there are persons who have been accurately identified as being in

1 one class or more of persons currently prohibited by California law from possessing firearms, yet
2 have a constitutional right to possess firearms?

3 **RESPONSE TO INTERROGATORY NO. 19**

4 RESPONSE: No. But Plaintiff does contend that there should be limits on the period of
5 time certain classes are prohibited from possessing firearms and procedural methods for the
6 restoration of such rights, as well as evidentiary issues and burden of proof issues relating to the
7 same.

8
9 **INTERROGATORY NO. 20**

10 If your answer to question 19 was yes, identify which class (or classes) of persons
11 currently prohibited by California law from possessing firearms has (or have) a constitutional
12 right to possess firearms.

13 **RESPONSE TO INTERROGATORY NO. 20**

14 RESPONSE: No responses necessary.

15 Date: January 22, 2013

16 Respectfully submitted,

17 Davis & Associates

18 
19 Jason A. Davis

20 Jason@CalGunLawyers.com

21 Attorneys for plaintiffs
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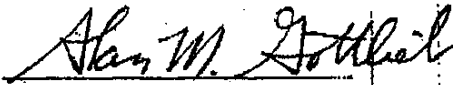
VERIFICATION

1
2 I, Alan Gottlieb, declare:

3 1. I am the Executive Vice President for Plaintiff the Second Amendment Foundation, Inc.
4 in the above-captioned action;

5 2. I have read the foregoing "PLAINTIFF SECOND AMENDMENT FOUNDATION,
6 INC.'S RESPONSE TO DEFENDANT KAMALA D. HARRIS'S FIRST SET OF
7 INTERROGATORIES" ("The Response") and know its contents. I am informed and
8 believed that the matters set forth in the Response are true and accurate, and on that
9 ground I allege, to the best of my knowledge and information, that the matters therein
10 stated are true and accurate.

11 I declare under penalty of perjury under the laws of the United States of America that the
12 foregoing is true and correct and that this Verification was executed on January 28, 2013, at
13 Bethesda, Washington.

14
15 
16 ALAN GOTTLIEB
17 EXECUTIVE VICE PRESIDENT
18 SECOND AMENDMENT FOUNDATION, INC.
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