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14 Attorneys for Plaintiffs

15 **IN THE UNITED STATES DISTRICT COURT**  
16 **EASTERN DISTRICT OF CALIFORNIA**

17 JEFF SILVESTER, MICHAEL POESCHL,  
18 BRANDON COMBS, THE CALGUNS  
19 FOUNDATION, INC. a non-profit  
20 organization, and THE SECOND  
21 AMENDMENT FOUNDATION, INC., a non-  
22 profit organization,

23 Plaintiffs,  
24 vs.

25 KAMALA HARRIS, Attorney General of  
26 California (in her official and individual  
27 capacities), CALIFORNIA DEPARTMENT OF  
28 JUSTICE, and DOES 1 TO 20,

Defendants.

Case No:

**COMPLAINT**

42 U.S.C. §§ 1983, 1988

SECOND AMENDMENT

FOURTEENTH AMENDMENT

1 **COMPLAINT**

2 **COMES NOW** the Plaintiffs, JEFF SYLVESTER, MICHAEL POESCHL,  
3 BRANDON COMBS, THE CALGUNS FOUNDATION, INC., and THE SECOND  
4 AMENDMENT FOUNDATION, INC. by and through undersigned counsel, and  
5 complain of the Defendants as follows:

6 **INTRODUCTION**

7 1. Plaintiffs challenge the State of California's ten-day waiting periods for firearm  
8 acquisitions facially and as applied to individuals who already have at least one firearm  
9 registered in their name with the State of California. Said challenge is asserted as being  
10 in violation of the Second Amendment and the Fourteenth Amendment of the United  
11 States Constitution.

12 **THE PARTIES**

13 2. Plaintiff JEFFREY SILVESTER ("SILVESTER") is a natural citizen of the  
14 United States, residing in Kings County, California. SILVESTER is an owner of a  
15 handgun that is registered in the State of California's Automated Firearms Systems  
16 ("AFS") database. SILVESTER also possesses a valid carry license pursuant to Penal  
17 Code section 26150, *et seq.*

18 3. Plaintiff MICHAEL POESCHL ("POESCHL") is a natural citizen of the United  
19 States, residing in Orange County, California. POESCHL is an owner of a handgun that  
20 is registered in the State of California's AFS database.

21 4. Plaintiff BRANDON COMBS ("COMBS") is a natural citizen of the United  
22 States, residing in the County of Madera, California. COMBS is an owner of a handgun  
23 that is registered in the State of California's AFS database. COMBS also possesses a  
24 valid California Certificate of Eligibility, which constitutes an ongoing and real-time  
25 background check. 11 C.C.R. §4036(b).

26 5. Plaintiff THE CALGUNS FOUNDATION, INC. ("CGF") is a non-profit  
27 organization incorporated under the laws of California with its principal place of business  
28 in San Carlos, California. The purposes of CGF include supporting the California

1 firearms community by promoting education for all stakeholders about California and  
2 federal firearm and ammunition laws, rights and privileges, and defending and protecting  
3 the civil rights of California gun owners. The purposes of CGF also include the  
4 protection of the rights of citizens to have firearms for the lawful defense of their  
5 families, persons, and property, and to promote public safety and law and order. CGF  
6 represents these members and supporters, which includes SYLVESTER, POESCHL,  
7 COMBS, and others who possess firearms registered in their names with the State of  
8 California. CGF brings this action on behalf of itself and its supporters, who possess all  
9 the indicia of membership.

10 6. CGF is in the practice of informing and assisting local jurisdictions on  
11 constitutional issues relating to firearm regulations. For example, CGF has created and  
12 developed easy to use flowcharts designed to simplify California's complex  
13 semiautomatic firearms and carry license laws. CGF has also developed a program to  
14 promote and educate the public on each of the California counties' carry license policies  
15 and practices. Additionally, CGF promotes educational events with firearms related  
16 attorneys and experts to provide information to the public, including law enforcement.

17 7. Plaintiff SECOND AMENDMENT FOUNDATION, INC., ("SAF") is a non-  
18 profit membership organization incorporated under the laws of Washington with its  
19 principal place of business in Bellevue, Washington. SAF has over 650,000 members  
20 and supporters nationwide, including SYLVESTER, POESCHL, and COMBS. SAF  
21 represents these members and supporters, and others who possess firearms registered in  
22 their names with the State of California. The purpose of SAF includes education,  
23 research, publishing and legal action focusing on the Constitutional right to privately own  
24 and possess firearms, and the consequences of gun control. SAF brings this action on  
25 behalf of its members.

26 8. Collectively, SYLVESTER, POESCHL, COMBS, CGF and SAF are referred to  
27 hereinafter as "Plaintiffs."

28 9. Defendant KAMALA HARRIS ("HARRIS") is the Attorney General of the State

1 of California and is obligated to supervise her agency and comply with all statutory duties  
2 under California law. She is charged with enforcing, interpreting and promulgating  
3 regulations regarding the transfer of firearms under California law, including California's  
4 ten-day waiting period. HARRIS responsible for executing and administering  
5 California's laws, customs, practices, and policies at issue in this lawsuit. Defendant  
6 HARRIS is sued in her official and individual capacities.

7 10. Defendant CALIFORNIA DEPARTMENT OF JUSTICE ("DOJ") is an agency  
8 of the State of California, headed by the Attorney General of the State, with a statutory  
9 duty to enforce, administer and interpret the law and promulgate regulations regarding  
10 the transfer of firearms under California law, including California's ten-day waiting  
11 period.

12 11. At this time, Plaintiffs are ignorant of the names of any additional individuals  
13 responsible for implementing or enforcing the ten-day waiting periods. Plaintiffs  
14 therefore name these individuals as DOE Defendants and reserve the right to amend this  
15 Complaint when their true names are ascertained. Furthermore, if and when additional  
16 persons and entities are discovered to have assisted and/or lent support to the  
17 enforcement alleged herein, Plaintiffs reserve the right to amend this Complaint to add  
18 those persons and/or entities as Defendants.

19 12. Collectively, HARRIS, DOJ and DOES are referred to hereinafter as  
20 "Defendants."

## 21 **JURISDICTION AND VENUE**

22 13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
23 §§1331, 1343, 2201, 2201, and 42 U.S.C. §1983.

24 14. Venue lies in this Court pursuant to 28 U.S.C. §1391.

## 25 **STATEMENT OF FACTS**

### 26 *Second Amendment in the Home*

27 15. The Second Amendment to the United States Constitution states that: "A well  
28 regulated Militia, being necessary to the security of a free State, the right of the people to

1 keep and bear Arms, shall not be infringed.”

2 16. In 2008, the United States Supreme Court held that the District of Columbia’s  
3 requirement that permitted firearms within the home, but required that said firearms in  
4 the home be kept inoperable made “it impossible for citizens to use [firearms] for the core  
5 lawful purpose of self-defense and is hence unconstitutional.” *District of Columbia v.*  
6 *Heller*, 554 U.S. 570, 630 (2008).

7 17. In 2010, the United States Supreme Court held that “the Second Amendment right  
8 to keep and bear arms” is “fundamental to our scheme of ordered liberty” and, therefore,  
9 incorporated against the states through the Due Process Clause of the Fourteenth  
10 Amendment. *McDonald v. Chicago*, 130 S. Ct. 3020, 3036 (2010).

11 18. At a minimum, the Second Amendment guarantees individuals a fundamental  
12 right to possess fully functional handguns in the home. The handguns whose possession  
13 is protected by the Second Amendment are those of a kind that are or would be in  
14 common use by law-abiding people for lawful purposes.

15 19. Corollary to the Second Amendment guarantee of an individual’s fundamental  
16 right to possess handguns in the home is the ability to acquire said handguns for  
17 possession.

18 20. California, however, has placed restrictions on the access to and delivery of  
19 firearms – generally subjecting firearm purchasers to a minimum ten-day ban on the  
20 delivery of firearms from a dealer to a consumer regardless of whether the individual is  
21 already known by the Defendants to both be permitted to possess firearms and to actually  
22 be registered within the State of California as an owner of a firearm.

23 *California’s Ten-Day Waiting Period Laws*

24 21. California currently requires all firearm purchases to be subjected to a ten-day  
25 waiting period wherein a purchaser is prohibited from receiving his or her firearm that he  
26 or she has paid for or has otherwise received title to until ten-days after the purchaser has  
27 completed the necessary transfer paperwork with a licensed California firearms retailer.

28 22. Specifically, Penal Code 26815(a) states:

1 No firearm shall be delivered . . . [w]ithin 10 days of the application to  
2 purchase, or, after notice by the department pursuant to Section 28220,  
3 within 10 days of the submission to the department of any correction to  
the application, or within 10 days of the submission to the department of  
any fee required pursuant to Section 28225, whichever is later.

4 23. Similarly, Penal Code section 27540 states:

5 No dealer . . . shall deliver a firearm to a person as follows: . . . [w]ithin 10  
6 days of the application to purchase, or, after notice by the department  
pursuant to Section 28220, within 10 days of the submission to the  
7 department of any correction to the application, or within 10 days of the  
submission to the department of any fee required pursuant to Section  
8 28225, whichever is later.

9 *Exemptions to the Ten-Day Waiting Periods*

10 24. The ten-day waiting periods have multiple exemptions.

11 25. First, the ten-day waiting periods do not apply to certain law enforcement  
12 transactions. Penal Code §§26950, 27050, 27055, 27060, 27065 (exempting §26815);  
13 §§27600, 27605, 27610, 27615, and 27650 (exempting §27540).

14 26. Second, the ten-day waiting periods generally do not apply to a dealer who  
15 delivers a firearm other than a handgun at an auction or similar event. Penal Code  
16 §§26955 (exempts from §26815); §27655 (exempts from §27540).

17 27. Third, the ten-day waiting periods generally do not apply to dealer-to-dealer  
18 transfers of firearms. Penal Code §§27110 and 27125 (exempts from §26815); §§27710,  
19 and 27725 (exempts from §27540).

20 28. Fourth, the ten-day waiting periods generally do not apply to transfers of firearms  
21 by a dealer to him or herself. Penal Code §§26960 and 27130 (exempts from §26815);  
22 §§27660 and 27730 (exempts from §27540.)

23 29. Fifth, the ten-day waiting periods generally do not apply to transactions between  
24 or to importers and manufacturers of firearms. Penal Code §27100 (exempts from  
25 §26815); §27700 (exempts from §27540).

26 30. Sixth, the ten-day waiting periods generally do not apply to persons who have a  
27 “short barrel rifle” or “short barrel shotgun” permit pursuant to Penal Code section  
28

1 33300. Penal Code §§26965 and 21740 (exempts from §26815); §§27665 and 27740  
2 (exempts from §27540).

3 31. Seventh, the ten-day waiting periods generally do not apply to persons who have  
4 an “assault weapons” permit pursuant to Penal Code section 30500, *et seq.* Penal Code  
5 §21740 (exempts from §26815); §27740 (exempts from §27540).

6 32. Eighth, the ten-day waiting periods generally do not apply to persons who have a  
7 “machinegun” permit pursuant to Penal Code section 32650 *et seq.* Penal Code §§26965  
8 and 27140 (exempts from §26815); §§27665 and 27740 (exempts from §27540).

9 33. Ninth, the ten-day waiting periods generally do not apply to persons who have a  
10 “machinegun” license pursuant to Penal Code section 32700. Penal Code §26965  
11 (exempts from §26815); § 27665 (exempts from §27540).

12 34. Tenth, the ten-day waiting periods generally do not apply to persons who have a  
13 “destructive device” permit pursuant to Penal Code section 18900. Penal Code §26965  
14 (exempts from §26815); §27665 (exempts from §27540).

15 35. Eleventh, the ten-day waiting periods generally do not apply to persons with curio  
16 and relic collector's licenses issued by the Bureau of Alcohol, Tobacco, Firearms and  
17 who have a valid Certificate of Eligibility issued by the DOJ *and only when purchasing*  
18 *curio and relic firearms.* Penal Code §26970 (exempts from §26815); §27670 (exempts  
19 from §27540).

20 36. Twelfth, the ten-day waiting periods generally do not apply to transactions  
21 regarding firearms serviced or repaired by a gunsmith. Penal Code §27105 (exempts  
22 from §26815); §27705 (exempts from §27540).

23 37. Thirteenth, the ten-day waiting periods generally do not apply to dealer sales to  
24 persons residing out-of-state. Penal Code §27115 (exempts from §26815) and §27715  
25 (exempts from §27540).

26 38. Fourteenth, ten-day waiting periods do not apply to deliveries to wholesalers.  
27 Penal Code §27120 (exempts from §26815); §27720 (exempts from §27540).  
28

39. Fifteenth, ten-day waiting periods generally do not apply to loans by dealers who operate target facilities. Penal Code §27135 (exempts from §26815); §27735 (exempts from §27540).

40. Sixteenth, the ten-day waiting periods generally do not apply to certain loans of firearms for use as props. Penal Code §27000 (exempts from §26815); §27745 (exempts from §27540).

41. Seventeenth, the ten-day waiting periods generally do not apply to loans to consultants or evaluators. Penal Code §27005 (exempts from §26815); §27750 (exempts from §27540).

42. Eighteenth, the ten-day waiting periods generally do not apply to lawful transactions involving cane guns, firearms that are not immediately recognizable as firearms, undetectable firearms, wallet guns, unconventional pistols, and zip guns. Penal Code §21740 (exempts from §26815); §27740 (exempts from §27540).

#### *Calculation of the Ten-Day Waiting Period*

43. For the majority of individuals who are subject to the ten-day waiting period for the purchase or transfer of a firearm, it is calculated as ten (10) 24-hour periods from the date *and time* of the submission of the Dealer Record of Sale (“DROS”) information to the DOJ.

#### *The Legislative Intent of the Ten- Day Waiting Period*

44. California has had a waiting period regarding the delivery of firearms since 1923.<sup>1</sup>

45. Though the original waiting period was merely a ban on the delivery of firearms on the same day, there have been multiple changes to the term of the waiting period, extending from less than one (1) day to as many as fifteen (15) days.

46. Today the waiting period in California is ten days.<sup>2</sup>

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<sup>1</sup> Applying solely to handguns, California’s first waiting period is stated as follows: “No pistol or revolver shall be delivered (a) On the same day of the application for the purchase . . . .” 1923 Cal. AB 263.



1 47. The alleged reasoning behind the different waiting period varies. At least one  
 2 case (*People v. Bickston* (1979) 91 Cal. App. 3d Supp. 29) described the legislative intent  
 3 behind the dynamic nature of the waiting period. *Bickston* states as follows:

4 The court's research discloses some legislative history that throws some  
 5 light on the Legislature's intentions in enacting section 12072. This  
 6 section was originally enacted in 1953 and provided [ . . . ] that "in no event  
 7 shall such firearm be delivered to the purchaser upon the day of the  
 8 application for the purchase thereof. . . . [A] 1955 amendment also  
 9 extended the waiting period to three days. The section was next amended  
 10 in 1965 whereby the waiting period was again extended to five days. The  
 11 last amendment was in 1975 wherein the waiting period was extended to  
 12 15 days. *Thus it appears that an original intent to provide at least an  
 13 overnight cooling off period from "application for the purchase" was  
 14 supplemented over the years with additional time to allow the Department  
 15 of Justice to investigate the prospective purchaser of the weapon.*

16 *Id.* (Emphasis added.)

17 *Ten Days To Allow The Department of Justice to Investigate Prospective Purchasers and  
 18 To Allow Repeat Purchasers To "Cool Off" Is An Infringement*

19 48. Ten days to allow the Department of Justice to investigate prospective purchasers  
 20 and to allow repeat purchasers to "cool off" is an infringement on the purchaser's  
 21 fundamental right to keep and bear arms in their home.

22 49. The need for balance between processing a requisite background check and  
 23 preserving the individual's right to acquire firearms for the home in a timely manner has  
 24 already been made on a federal level. The Brady Handgun Violence Prevention Act  
 25 (Pub.L. 103-159, 107 Stat. 1536) is an Act of the United States Congress that, for the first  
 26 time, instituted federal background checks on firearm purchasers in the United States as  
 27 well as a federally mandated five-day waiting period.  
 28

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25 <sup>2</sup> In 1990, the 15-day waiting period for long guns was shortened to its current ten-day  
 26 term. 1990 Cal AB 497. In 1996, the 15-day waiting period for handguns was shortened  
 27 to its current ten-day term. 1996 Cal. SB 671.

1       50. The Brady Bill provided that, in 1998, the five-day waiting period for handgun  
2 sales would be replaced by an instant computerized background check that involved no  
3 waiting periods. Specifically, the National Instant Criminal Background Check System,  
4 or NICS, is stated to be about saving lives and protecting people from harm—by not  
5 letting firearms fall into the wrong hands. It also ensures the *timely* transfer of firearms to  
6 eligible gun buyers.

7       51. Mandated by the Brady Handgun Violence Prevention Act of 1993 and launched  
8 by the FBI on November 30, 1998, NICS is used by Federal Firearms Licensees (FFLs)  
9 to *instantly* determine whether a prospective buyer is eligible to buy firearms.

10       52. More than 100 million such checks have been made in the last decade, leading to  
11 more than 700,000 denials.

12       53. NICS, located at the FBI's Criminal Justice Information Services Division in  
13 Clarksburg, West Virginia, provides full service to FFLs in 30 states, five U.S. territories,  
14 and the District of Columbia. California voluntarily opted out of the NICS instant  
15 background check and maintains their own background check system with an extended  
16 ten-day waiting period against purchasers of firearms in California, including Plaintiffs  
17 herein.

18                   *California's Enforcement of the Ten-Day Waiting Period*

19       54. Plaintiffs already have firearms.

20       55. Plaintiffs have lawfully purchased a handgun within the State of California or can  
21 otherwise demonstrate proof of ownership and lawful possession of said firearms. For  
22 example, some firearms are registered in the California Automated Firearms System  
23 database pursuant to, *inter alia*, Penal Code section 28200, *et seq.* In purchasing their  
24 firearms, Plaintiffs were already once subjected to the Penal Code section 27540  
25 subdivision (a) ten-day waiting period prior to physically receiving their firearms. As a  
26 result of the ten-day waiting period, Plaintiffs were obligated to endure a ten-day ban on  
27 the acquisition of their constitutionally protected firearms and incur additional expense  
28

1 by being forced to make a second visit to the firearms dealer that sold Plaintiffs their  
2 firearms.

3 56. COMBS and other holders of valid California Certificates of Eligibility  
4 represented by CGF and SAF are, *per se*, not in a class of persons described within Penal  
5 Code sections 29800, *et seq.*, 29900, *et seq.*, or Welfare and Institutions Code §§ 8100 or  
6 8103, or Title 27 Part 178.32 of the Code of Federal Regulations. 11 C.C.R. §4036(b).

7 57. In other words, COMBS and other holders of a valid California Certificate of  
8 Eligibility represented by CGF and SAF are known by the State of California, at all times  
9 certified, to not be prohibited from possessing firearms under federal or state law.

10 58. Additionally, as a holder of a valid license to carry pursuant to Penal Code section  
11 26150 *et seq.* SILVESTER and other such holders represented by CGF and SAF are, *per*  
12 *se*, not in a class of persons described in Penal Code sections 29800, *et seq.*, 29900, *et*  
13 *seq.* or Welfare and Institutions Code 8100 or 8103. Penal Code section 26195(a)-(b).

14 59. In other words, SILVESTER and other holders of a valid license to carry pursuant  
15 to Penal Code section 26150, *et seq.* represented by CGF and SAF are not prohibited  
16 from possessing firearms under federal or state law and may often be armed with a  
17 loaded concealed firearm, including while purchasing firearms for which they are  
18 subjected to a ten-day ban on possessing.

19 60. The Attorney General has established and maintains an online database known as  
20 the Prohibited Armed Persons File (“PAPF”). The purpose of the file is to cross-reference  
21 persons who have ownership or possession of a firearm as indicated by a record in the  
22 Consolidated Firearm Information System (“CFIS”) and who, subsequent to the date of  
23 that ownership or possession of a firearm, fall within a class of persons who are  
24 prohibited from owning or possessing a firearm. Penal Code §30000, *et seq.*

25 61. The information contained in the PAPF is immediately available for the purpose  
26 of determining if persons are armed and prohibited from possessing firearms. Penal Code  
27 §30000, *et seq.*

1 62. Conversely, the PAPF is also immediately available for the purpose of  
2 determining if persons are armed and not prohibited by the very nature of the individual  
3 not appearing in the PAPF.

4 63. Plaintiffs already own and have access to their own firearms. In all instances,  
5 Plaintiffs are recorded by the state as being in possession of at least one firearm.  
6 Plaintiffs seek to purchase additional firearms whose possession for the purposes of self-  
7 defense in the home is protected by the Second Amendment. Penal Code sections 26815  
8 and 27540 unnecessarily require an additional ten-day waiting period for each subsequent  
9 firearm transaction, thus barring Plaintiffs from acquiring and using their own firearms  
10 protected by the Second Amendment during the ten-day period following their purchase,  
11 as well as causing them to incur additional expenses, travel, and time lost resulting from  
12 the otherwise unnecessary return to the dealer to accept delivery.

13 **COUNT I**  
14 **RIGHT TO KEEP AND BEAR ARMS**  
15 **U.S. CONST., AMENDS.II AND XIV, 42 U.S.C. §1983**

16 64. Paragraphs 1 through 63 are incorporated as though fully stated herein.

17 65. The Second Amendment, which applies against Defendants by operation of the  
18 Fourteenth Amendment, secures the right to possess firearms in the home.

19 66. Penal Code sections 26815 and 27540, as well as Defendants' enforcement of the  
20 same prohibit, substantially interfere with, inhibit access to, and infringe upon the right to  
21 possess firearms in the home for those individuals represented by CGF and SAF,  
22 including Plaintiffs and improperly impede gun ownership itself.

23 67. Penal Code sections 26815 and 27540 render access to firearms for use in the  
24 home materially more difficult to obtain, by requiring multiple visits to the firearms  
25 retailer, increasing the expense of purchasing a firearm, and, more importantly, barring  
26 access to and possession of constitutionally protected firearms by Plaintiffs – leaving no  
27 sufficient alternative avenues for obtaining firearms for self-defense purposes during the  
28 ten-day waiting period.

68. By maintaining and enforcing a set of laws banning Plaintiffs access to firearms

1 whose possession is protected by the Second Amendment, Defendants are propagating  
2 customs, policies, and practices that violate the Second Amendment to the United States  
3 Constitution, facially and as applied against the individual plaintiffs in this action,  
4 thereby harming plaintiffs in violation of U.S.C. §1983. The Second Amendment applies  
5 to the states, including California, through the Fourteenth Amendment. Plaintiffs are  
6 therefore entitled to declaratory, preliminary, and permanent injunctive relief against such  
7 improper customs, policies, and practices.

8 **COUNT II**  
9 **EQUAL PROTECTION VIOLATIONS**  
10 **U.S. CONST., AMENDS.II AND XIV, 42 U.S.C. §1983**

11 69. Paragraphs 1 through 68 are incorporated as though fully stated herein.

12 70. Defendants' policies and enforcement of Penal Code sections 26815 and 27540  
13 violate Plaintiffs' rights to equal protection under the law as guaranteed by the Fourteenth  
14 Amendment to the United States Constitution, in that Defendants allow some people,  
15 such as destructive device collectors, movie prop houses, auction purchasers,  
16 "consultants-evaluators," and others, instant access to firearms, which instant access is  
17 denied to Plaintiffs and the general public. Such misapplication of the law is arbitrary,  
18 capricious, irrational, and makes unjustifiable distinctions between those individuals that  
19 Defendants deign to exclude from immediate delivery of firearms and those they do not.  
20 Defendants are thereby propagating customs, policies, and practices that violate the  
21 Fourteenth Amendment to the United States Constitution, facially and as applied against  
22 the individual plaintiffs in this action, thereby harming Plaintiffs in violation of 42 U.S.C.  
23 §1983. Plaintiffs are therefore entitled to declaratory, preliminary and permanent  
24 injunctive relief against continued enforcement and maintenance of Penal Code section  
25 27540 subdivision (a) and Defendants' unconstitutional customs, policies, and practices.

26 **PRAYER FOR RELIEF**

27 Plaintiffs request judgment be entered in their favor against Defendants as  
28 follows:

1. An order preliminarily and permanently enjoining Defendants, their officers,

1 agents, servants, employees, and all persons in active concert or participation with them  
2 who receive actual notice of the injunction, from enforcing Penal Code sections 26815  
3 and 27540 as against those persons that may lawfully possess and acquire a firearm and  
4 possess proof of firearm possession or ownership in their name within the State of  
5 California and from enacting, publishing, promulgating, or otherwise enforcing any  
6 polices, rules, or procedures prohibiting or otherwise restricting the delivery of firearms  
7 to said individuals within ten-days of applying for the purchase of any firearms;

- 8 2. Attorney fees and costs pursuant to 42 U.S.C. §1988;
- 9 3. Declaratory relief consistent with the injunction;
- 10 4. Costs of suit; and
- 11 5. Any other relief as the Court deems just and appropriate.

12  
13 Date: December 23, 2011,

Respectfully submitted,

14  
15 Davis & Associates

16 /s/ Jason A. Davis

17 Jason A. Davis

18 Jason@CalGunLawyers.com

19 Attorneys for plaintiffs  
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☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

(For Diversity Cases Only)  
Citizen of This State ☒ 1 PTF ☒ 1 DEF  
Citizen of Another State ☐ 2 ☐ 2 Incorporated or Principal Place of Business In This State ☐ 4 ☒ 4  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

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IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Security Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)  
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. ss1983, 1986, 2nd Amendment, 14th Amendment.

Brief description of cause:

California's 10 Day waiting period on firearm purchases violates the 2nd Amend. and 14th Amend.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/23/2011

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_