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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

**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,

v.

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

Defendants.

1:11-cv-02137-AWI-SKO

**DEFENDANT CALIFORNIA
ATTORNEY GENERAL KAMALA D.
HARRIS'S ANSWER TO FIRST
AMENDED COMPLAINT**

Action Filed: December 23, 2011

Defendant Kamala D. Harris, Attorney General of California (the “Attorney General”), answers the February 24, 2012 first amended complaint (“FAC”) of plaintiffs Jeffrey Silvester, Michael Poeschl, Brandon Combs, The CalGuns Foundation, Inc., and The Second Amendment Foundation, Inc. (collectively, “Plaintiffs”), as follows:

SUBSTANTIVE ANSWER

1. Answering enumerated paragraph no. 1 of Plaintiffs’ FAC, the Attorney General ADMITS that the allegations of the paragraph summarize the allegations of the FAC, but otherwise DENIES the allegations of the paragraph.

2. Answering enumerated paragraph no. 2 of Plaintiffs’ FAC, the Attorney General, for lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

3. Answering enumerated paragraph no. 3 of Plaintiffs’ FAC, the Attorney General, for lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

4. Answering enumerated paragraph no. 4 of Plaintiffs’ FAC, the Attorney General, for lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

5. Answering enumerated paragraph no. 5 of Plaintiffs’ FAC, the Attorney General, for lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

6. Answering enumerated paragraph no. 6 of Plaintiffs’ FAC, the Attorney General, for lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

7. Answering enumerated paragraph no. 7 of Plaintiffs’ FAC, the Attorney General, for lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

8. Answering enumerated paragraph no. 8 of Plaintiffs’ FAC, the Attorney General ADMITS the allegations of the paragraph.

9. Answering enumerated paragraph no. 9 of Plaintiffs’ FAC, the Attorney General ADMITS that she is the Attorney General of California, that she has the duties and obligations of the holder of that office, and that she has been sued in her official capacity in the present case, but DENIES the other allegations of the paragraph.

10. Answering enumerated paragraph no. 10 of Plaintiffs’ FAC, the Attorney General, for lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

11. Answering enumerated paragraph no. 11 of Plaintiffs' FAC, for lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

12. Answering enumerated paragraph no. 12 of Plaintiffs' FAC, the Attorney General ADMITS the allegations of the paragraph.

13. Answering enumerated paragraph no. 13 of Plaintiffs' FAC, the Attorney General ADMITS that this Court generally has subject-matter jurisdiction over the allegations of the FAC, but, for lack of sufficient knowledge or information, with respect to each of the plaintiffs specifically, DENIES the other allegations of the paragraph.

14. Answering enumerated paragraph no. 14 of Plaintiffs' FAC, the Attorney General ADMITS that this Court is a proper venue for this action, but DENIES the other allegations of the paragraph.

15. Answering enumerated paragraph no. 15 of Plaintiffs' FAC, the Attorney General ADMITS that the paragraph contains the words of the Second Amendment to the U.S. Constitution, but DENIES that the paragraph states those words with the same capitalization that the Second Amendment uses.

16. Answering enumerated paragraph no. 16 of Plaintiffs' FAC, the Attorney General understands the paragraph as making assertions of law (not fact), and, on that basis, contends that no answer is required.

17. Answering enumerated paragraph no. 17 of Plaintiffs' FAC, the Attorney General understands the paragraph as making assertions of law (not fact), and, on that basis, contends that no answer is required.

18. Answering enumerated paragraph no. 18 of Plaintiffs' FAC, the Attorney General understands the paragraph as making assertions of law (not fact), and, on that basis, contends that no answer is required.

19. Answering enumerated paragraph no. 19 of Plaintiffs' FAC, the Attorney General understands the paragraph as making assertions of law (not fact), and, on that basis, contends that no answer is required.

20. Answering enumerated paragraph no. 20 of Plaintiffs' FAC, the Attorney General ADMITS that California has certain "waiting periods" applicable to certain deliveries of firearms, as stated in Cal. Penal Code sections 26815(a) and 27540, but DENIES the other allegations of the paragraph.

21. Answering enumerated paragraph no. 21 of Plaintiffs' FAC, the Attorney General ADMITS that California has certain waiting periods applicable to certain deliveries of firearms, as stated in Cal. Penal Code sections 26815(a) and 27540, but DENIES the other allegations of the paragraph.

22. Answering enumerated paragraph no. 22 of Plaintiffs' FAC, the Attorney General ADMITS that the paragraph contains some of the words of Cal. Penal Code section 26815(a), but DENIES that the paragraph states those words with the same punctuation that Cal. Penal Code section 26815(a) uses.

23. Answering enumerated paragraph no. 23 of Plaintiffs' FAC, the Attorney General ADMITS that the paragraph contains some of the words of Cal. Penal Code section 27540, but DENIES that the paragraph states those words with the same punctuation that Cal. Penal Code section 27540 uses.

24. Answering enumerated paragraph no. 24 of Plaintiffs' FAC, the Attorney General understands the paragraph as making assertions of law (not fact), and, on that basis, contends that no answer is required.

25. Answering enumerated paragraph no. 25 of Plaintiffs' FAC, the Attorney General ADMITS that there are some statutory exceptions to the waiting periods set forth in Cal. Penal Code sections 26815(a) and 27540, but DENIES the other allegations of the paragraph.

26. Answering enumerated paragraph no. 26 of Plaintiffs' FAC, the Attorney General understands the paragraph as making assertions of law (not fact), and, on that basis, contends that no answer is required.

27. Answering enumerated paragraph no. 27 of Plaintiffs' FAC, the Attorney General understands the paragraph as making assertions of law (not fact), and, on that basis, contends that no answer is required.

1 28. Answering enumerated paragraph no. 28 of Plaintiffs' FAC, the Attorney General
2 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
3 no answer is required.

4 29. Answering enumerated paragraph no. 29 of Plaintiffs' FAC, the Attorney General
5 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
6 no answer is required.

7 30. Answering enumerated paragraph no. 30 of Plaintiffs' FAC, the Attorney General
8 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
9 no answer is required.

10 31. Answering enumerated paragraph no. 31 of Plaintiffs' FAC, the Attorney General
11 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
12 no answer is required.

13 32. Answering enumerated paragraph no. 32 of Plaintiffs' FAC, the Attorney General
14 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
15 no answer is required.

16 33. Answering enumerated paragraph no. 33 of Plaintiffs' FAC, the Attorney General
17 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
18 no answer is required.

19 34. Answering enumerated paragraph no. 34 of Plaintiffs' FAC, the Attorney General
20 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
21 no answer is required.

22 35. Answering enumerated paragraph no. 35 of Plaintiffs' FAC, the Attorney General
23 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
24 no answer is required.

25 36. Answering enumerated paragraph no. 36 of Plaintiffs' FAC, the Attorney General
26 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
27 no answer is required.
28

1 37. Answering enumerated paragraph no. 37 of Plaintiffs' FAC, the Attorney General
2 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
3 no answer is required.

4 38. Answering enumerated paragraph no. 38 of Plaintiffs' FAC, the Attorney General
5 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
6 no answer is required.

7 39. Answering enumerated paragraph no. 39 of Plaintiffs' FAC, the Attorney General
8 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
9 no answer is required.

10 40. Answering enumerated paragraph no. 40 of Plaintiffs' FAC, the Attorney General
11 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
12 no answer is required.

13 41. Answering enumerated paragraph no. 41 of Plaintiffs' FAC, the Attorney General
14 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
15 no answer is required.

16 42. Answering enumerated paragraph no. 42 of Plaintiffs' FAC, the Attorney General
17 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
18 no answer is required.

19 43. Answering enumerated paragraph no. 43 of Plaintiffs' FAC, the Attorney General
20 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
21 no answer is required.

22 44. Answering enumerated paragraph no. 44 of Plaintiffs' FAC, the Attorney General
23 ADMITS the allegations of the paragraph.

24 45. Answering enumerated paragraph no. 45 of Plaintiffs' FAC, the Attorney General
25 ADMITS the allegations of the paragraph.

26 46. Answering enumerated paragraph no. 46 of Plaintiffs' FAC, the Attorney General
27 ADMITS that over the years the lengths of the waiting periods set forth in Cal. Penal Code
28

1 sections 26815(a) and 27540 and predecessor or related laws have varied, but DENIES the other
2 allegations of the paragraph.

3 47. Answering enumerated paragraph no. 47 of Plaintiffs' FAC, the Attorney General
4 ADMITS the allegations of the paragraph.

5 48. Answering enumerated paragraph no. 48 of Plaintiffs' FAC, the Attorney General
6 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
7 no answer is required.

8 49. Answering enumerated paragraph no. 49 of Plaintiffs' FAC, the Attorney General
9 DENIES the allegations of the paragraph.

10 50. Answering enumerated paragraph no. 50 of Plaintiffs' FAC, the Attorney General
11 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
12 no answer is required. To the extent that the paragraph makes implications about the relationship
13 between federal gun laws and California gun laws, the Attorney General DENIES that such
14 federal legislation precludes California's regulation of firearms.

15 51. Answering enumerated paragraph no. 51 of Plaintiffs' FAC, the Attorney General
16 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
17 no answer is required. To the extent that the paragraph makes implications about the relationship
18 between federal gun laws and California gun laws, the Attorney General DENIES that such
19 federal legislation precludes California's regulation of firearms.

20 52. Answering enumerated paragraph no. 52 of Plaintiffs' FAC, the Attorney General
21 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
22 no answer is required.

23 53. Answering enumerated paragraph no. 53 of Plaintiffs' FAC, the Attorney General, for
24 lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

25 54. Answering enumerated paragraph no. 54 of Plaintiffs' FAC, the Attorney General
26 ADMITS that "NICS" is "located at the FBI's Criminal Justice Information Services Division in
27 Clarksburg, West Virginia," and that California "maintains [its] own background check system,"
28 but, for lack of sufficient knowledge or information, DENIES that NICS "provides fully service

1 to FFLs in 30 states, five U.S. territories, and the District of Columbia,” and DENIES the other
2 allegations of the paragraph.

3 55. Answering enumerated paragraph no. 55 of Plaintiffs’ FAC, the Attorney General, for
4 lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

5 56. Answering enumerated paragraph no. 56 of Plaintiffs’ FAC, the Attorney General, for
6 lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

7 57. Answering enumerated paragraph no. 57 of Plaintiffs’ FAC, the Attorney General, for
8 lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

9 58. Answering enumerated paragraph no. 58 of Plaintiffs’ FAC, the Attorney General, for
10 lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

11 59. Answering enumerated paragraph no. 59 of Plaintiffs’ FAC, the Attorney General, for
12 lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

13 60. Answering enumerated paragraph no. 60 of Plaintiffs’ FAC, the Attorney General, for
14 lack of sufficient knowledge or information, DENIES the allegations of the paragraph.

15 61. Answering enumerated paragraph no. 61 of Plaintiffs’ FAC, the Attorney General
16 ADMITS that the California Department of Justice has established and maintains an online
17 database referred to in the California Penal Code as the “Prohibited Armed Persons File,” but
18 understands the rest of the paragraph as making assertions of law (not fact), and, on that basis,
19 contends that no further answer is required.

20 62. Answering enumerated paragraph no. 62 of Plaintiffs’ FAC, the Attorney General
21 DENIES the allegations of the paragraph.

22 63. Answering enumerated paragraph no. 63 of Plaintiffs’ FAC, the Attorney General
23 DENIES the allegations of the paragraph.

24 64. Answering enumerated paragraph no. 64 of Plaintiffs’ FAC, the Attorney General, for
25 lack of sufficient knowledge or information, DENIES the allegations of the paragraph concerning
26 Plaintiffs’ ownership of and access to firearms, and whether a California agency has recorded
27 possession of any such firearms, and DENIES the other allegations of the paragraph.
28

65. Answering enumerated paragraph no. 65 of Plaintiffs' FAC, the Attorney General understand the paragraph as being a summary of prior paragraphs and not requiring a separate substantive answer.

66. Answering enumerated paragraph no. 66 of Plaintiffs' FAC, the Attorney General understands the paragraph as making assertions of law (not fact), and, on that basis, contends that no answer is required.

67. Answering enumerated paragraph no. 67 of Plaintiffs' FAC, the Attorney General DENIES the allegations of the paragraph.

68. Answering enumerated paragraph no. 68 of Plaintiffs' FAC, the Attorney General DENIES the allegations of the paragraph.

69. Answering enumerated paragraph no. 69 of Plaintiffs' FAC, the Attorney General DENIES the allegations of the paragraph.

70. Answering enumerated paragraph no. 70 of Plaintiffs' FAC, the Attorney General understand the paragraph as being a summary of prior paragraphs and not requiring a separate substantive answer.

71. Answering enumerated paragraph no. 71 of Plaintiffs' FAC, the Attorney General DENIES the allegations of the paragraph.

SEPARATE AND ADDITIONAL DEFENSES

FIRST SEPARATE AND ADDITIONAL DEFENSE

1. Plaintiffs, and each of them, have failed to state a claim upon which relief can be granted.

SECOND SEPARATE AND ADDITIONAL DEFENSE

2. Plaintiffs, and each of them, should be barred from pursuing or obtaining relief in this case on the grounds of estoppel.

THIRD SEPARATE AND ADDITIONAL DEFENSE

3. Plaintiffs, and each of them, should be barred from pursuing or obtaining relief in this case on the grounds of laches.

FOURTH SEPARATE AND ADDITIONAL DEFENSE

4. Plaintiffs, and each of them, have failed to join to this case at least one indispensable party.

FIFTH SEPARATE AND ADDITIONAL DEFENSE

5. Plaintiffs, and each of them, lack standing to pursue this case.

PRAYER FOR RELIEF

Answering Plaintiffs' FAC's prayer for relief, the Attorney General DENIES that any preliminary or permanent injunction against the Attorney General (or any defendant in this case) should be entered in this case, that any declaratory or other relief should be given to Plaintiffs, or any of them, in this case, or that Plaintiffs, or any of them, should recover attorney fees or any costs of pursuing this lawsuit.

The Attorney General prays, instead, as follows:

1. This case should be dismissed with prejudice;
2. Plaintiffs, including each of them individually, should garner no relief in this case;
3. Plaintiffs, including each of them individually, should take nothing by this case;
4. Plaintiffs, including each of them individually, should be ordered to and should reimburse the Attorney General for her costs of suit;
5. This Court should grant such other and further relief to the Attorney General as the Court deems just and proper.

Dated: March 15, 2012

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
PETER K. SOUTHWORTH
Supervising Deputy Attorney General

/s/ Jonathan M. Eisenberg
JONATHAN M. EISENBERG
Deputy Attorney General
Attorneys for Defendant Kamala D. Harris,
Attorney General of California

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