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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CHARLES NICHOLS,

Plaintiff,

v.

**EDMUND G. BROWN JR., in his
official capacity as Governor of
California, KAMALA D. HARRIS, in
her official capacity as Attorney
General of California, CITY OF
REDONDO BEACH, CITY OF
REDONDO BEACH POLICE
DEPARTMENT, CITY OF
REDONDO BEACH POLICE
CHIEF JOSEPH LEONARDI and
DOES 1 to 10,**

Defendants.

2:11-cv-00916-SJO-(SS)

**DEFENDANT KAMALA D.
HARRIS'S RESPONSE TO
PLAINTIFF CHARLES
NICHOLS'S OBJECTIONS TO U.S.
MAGISTRATE JUDGE REPORT
AND RECOMMENDATION**

Date:	N/A
Time:	N/A
Ctrm.:	1 – 2nd Flr.
Judge:	Hon. S. James Otero
Trial Date:	Not Yet Set
Action Filed:	Nov. 30, 2011

Defendant Kamala D. Harris, Attorney General of California (the “Attorney General”), submits the following response to the objections (“Objection”) of Plaintiff Charles Nichols (“Nichols”) to U.S. Magistrate Judge Suzanne H. Segal’s

1 March 18, 2014, report and recommendation (“R & R”) about the potentially
2 dispositive motions pending in the present case.

3 The Attorney General agrees with the R & R and disagrees with Nichols’s
4 objections, which seem largely duplicative of his rejected contentions in the motion
5 papers. The Attorney General makes the present submission, nonetheless, in order
6 to respond to two new points that Nichols has raised in his Objection.

7 First, Nichols is incorrect in asserting that the Attorney General
8 “acknowledged her defeat on” Nichols’s supposed claim of race-based
9 discrimination in the enforcement of the firearm “open-carry” laws in question in
10 this case. Objection, 6:19-7:5; *accord, id.*, at 21:27-23:5. The Attorney General
11 has not conceded any part of Nichols’s claim, and in fact has denied that Nichols
12 has properly articulated the claim. (See, e.g., footnote 3 to the Attorney General’s
13 memorandum of points and authorities in support of her motion for judgment on the
14 pleadings (Nov. 12, 2013).) Furthermore, Nichols improperly cites to passages in
15 an *erroneously filed draft* version of the Attorney General’s opposition to Nichols’s
16 (offensive) motion for partial summary judgment. The Attorney General’s
17 corrected pleading, filed a day later with a notice of errata, does not include the
18 passages cited by Nichols. (Compare Dkt. # 140 (Dec. 2, 2013) with Dkt. # 141-1
19 (Dec. 3, 2013).)

20 Second, the Attorney General objects to Nichols’s new declaration claiming
21 that he is of (some undefined) mixed-race heritage. Opposition, 22:19-22:26.
22 Nichols did not present any evidence on this issue in the summary-judgment papers,
23 although Nichols did assert what his age and gender were (see Dkt. # 136 at 32:11-

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1 32:12). Nichols should not be allowed to introduce new evidence about his race, a
2 matter not pleaded, in an objection to the R & R.

3 Dated: April 14, 2014

Respectfully submitted,

4 KAMALA D. HARRIS
5 Attorney General of California
6 MARK R. BECKINGTON
7 Supervising Deputy Attorney General

8 /s/
9 JONATHAN M. EISENBERG
10 Deputy Attorney General
11 *Attorneys for Defendant California*
12 *Attorney General Kamala D. Harris*
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DECLARATION OF SERVICE BY U.S. MAIL

Court Name: **U.S. District Court, Central District of California**

Case Name: ***Nichols v. Brown***

Case No.: **11-cv-09916-SJO-SS**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. My business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On April 14, 2014, I served the attached **DEFENDANT KAMALA D. HARRIS'S RESPONSE TO PLAINTIFF CHARLES NICHOLS'S OBJECTIONS TO U.S. MAGISTRATE JUDGE REPORT AND RECOMMENDATION** by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the U.S. mail at Los Angeles, California, addressed as follows:

Charles Nichols
P.O. Box 1302
Redondo Beach, CA 90278

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 14, 2014, at Los Angeles, California.

Jonathan M. Eisenberg

Declarant

/s/ Jonathan M. Eisenberg

Signature