14-16840

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFF SILVESTER, BRANDON COMBS, THE CALGUNS FOUNDATION, INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization,

Plaintiffs-Appellees,

v.

KAMALA HARRIS, Attorney General of California (in her official and individual capacities),

Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of California

No. 1:11-cv-02137-AWI-SKO
The Honorable Anthony W. Ishii, Judge

OPENING BRIEF OF DEFENDANT-APPELLANT

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INTRODUCTION

In this firearm regulation case, the District Court partly invalidated California's "Waiting-Period Laws" for firearm purchases under the Second Amendment.[1] Because these longstanding statutes serve California's important interest in maintaining public safety by reducing firearm violence, Appellant Kamala D. Harris, Attorney General of the State of California ("Appellant"), respectfully requests that this Court reverse the lower court's ruling and uphold the Waiting-Period Laws.

The Waiting-Period Laws mandate a 10-day delay between a prospective firearm purchaser's required application to the California Department of Justice's Bureau of Firearms ("BOF") for approval of the purchase, and, if the application is approved, delivery/receipt of the firearm. The Waiting-Period Laws help to keep firearms out of the hands of people—such as felons, violent misdemeanants, people subject to restraining orders, and the mentally ill—most apt to abuse the weapons, by providing BOF with the time needed to complete a background check on each prospective firearm purchaser, for each transaction, blocking any illegal firearm

[1] California Penal Code §§ 26815 and 27540. For purposes of the present lawsuit, the two laws are similar and thus have been treated as a single statute. The full text of each law is in the Statement of Primary Authority appendix beginning on page 67, *infra*.

transaction from being consummated. The Waiting-Period Laws also create a "cooling-off" period, which can help to prevent an impulsive act of firearm violence.

The Waiting-Period Laws do not impose a burden of constitutional significance on the Second Amendment right as historically understood, because the statutes do not prohibit, but merely delay, for a relatively short time, lawful firearm transactions and subsequent possession and use of the firearms. Even if the Waiting-Period Laws are found to implicate the Second Amendment right, the statutes survive appropriate heightened scrutiny, intermediate scrutiny, because the statutes reasonably fit with California's important interest in maintain public safety by reducing firearm violence.

After a bench trial, the District Court ruled that certain groups of people experienced with firearms, such people sometimes referred to as "subsequent purchasers," no longer have to go through the full 10-day waiting period.[2] This ruling was based on an initial erroneous conclusion

[2] As defined by the District Court, a subsequent purchaser who does not have to go through the waiting period is a prospective firearm purchaser who has (1) a transaction for at least one prior firearm acquisition listed in the person's name in California's Automated Firearms System database ("AFS"), or (2) a valid license to carry a concealed weapon (a "CCW

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that a 10-day delay in acquiring a firearm is a burden of constitutional significance, such that the Waiting-Period Laws warrant heightened Second Amendment scrutiny. The District Court further erred by rejecting Appellant's sufficient presentation of evidence demonstrating the reasonable fit between the Waiting-Period Laws and California's public-safety objective.

The District Court's mandatory injunction will require costly and complicated modifications to BOF's partly automated, partly manual background check system. Yet, after ordering Appellant to make the changes, the District Court denied (without prejudice) Appellant's motion for sufficient time to make the changes. Even if this Court affirms the District Court's ruling, this Court should require the District Court to give Appellant more time to comply with the injunction.

JURISDICTIONAL STATEMENT

The District Court had subject-matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 (federal question). In the lower court, the case proceeded on the theory that the Waiting-Period Laws, which Appellant

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permit"), or (3) both a transaction for at least one prior firearm acquisition listed in the person's name in AFS and a firearms "certificate of eligibility" ("COE").

administers and enforces, violate the Second and Fourteenth Amendments in certain circumstances.[3]

This Court has appellate jurisdiction over this case pursuant to 28 U.S.C. § 1291 (final judgment of district court). The District Court issued a final judgment partly invaliding the Waiting-Period Laws under the Second Amendment (and did not reach the Fourteenth Amendment issue). It is that judgment, which disposed of all claims of all parties, which Appellant appeals. Appellant also appeals the District Court's denial of the motion to alter or to amend that judgment.

The District Court's final judgment in this case was issued on August 25, 2014. Appellant's September 24, 2014, notice of appeal was timely pursuant to Federal Rule of Appellate Procedure ("FRAP") 4(a)(1)(A).

Meanwhile, on September 22, 2014, Appellant moved the District Court under Federal Rule of Civil Procedure 59(e) to alter or amend the judgment to enlarge the amount of time for Appellant to comply with the permanent injunction. On November 20, 2014, the District Court denied

[3] By legislative design, not every prospective purchaser of firearms in California must go through the waiting period. The Waiting-Period Laws have multiple statutory exemptions affecting various groups of people, such as gunsmiths repairing or servicing firearms. Cal. Penal Code §§ 27105, 27705. The exemptions were the subject of an equal protection challenge in the court below, but are not at issue in this appeal.

that motion without prejudice. Appellant's December 19, 2014, notice of appeal of the denial of that motion was timely pursuant to FRAP 4(a)(1)(A) and FRAP 4(a)(4)(B)(ii).

The present appeal is from the District Court's final judgment, and the denial of a motion to alter or to amend that judgment, disposing of all parties' claims.

STATEMENT OF ISSUES

1. Is it a violation of the Second Amendment for California to require a 10-day waiting period between a prospective firearm purchaser's application to BOF for approval of the transaction, and, if the application is approved, delivery/receipt of the firearm, where the prospective firearm purchaser has at least one other firearm listed in that person's name in BOF's firearm-transaction database, and/or has a valid permit to carry a concealed firearm in public in California?

2. If the answer to the previous question is yes, did the District Court err in affording Appellant only 180 days to modify BOF's system for processing background checks, to comply with the associated injunction?

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STATEMENT OF THE CASE

I. STATEMENT OF FACTS

A. History of the Waiting-Period Laws

California has had a waiting-period statute for firearm purchases continuously since 1923. EOR 222-223. The California Legislature enacted the first version of these laws as part of a broader handgun regulatory scheme, which included a prohibition on convicted felons owning or possessing handguns. *Id.* The original waiting period for handgun purchases was one day. *Id*. Although there is no formal legislative history for the 1923 iteration of the Waiting-Period Laws, one California court discerns that the intent of the one-day waiting period "was to provide at least an overnight cooling off period." *People v. Bickston*, 91 Cal. App. 3d Supp. 29 (Cal. App. Super. Ct. 1979).

In 1955, the California Legislature extended the waiting period to three days. EOR 227-229. Although the legislative history for that amendment does not reflect why it was enacted, a letter in the legislative history of the 1975 amendment (discussed below) indicates that the 1950s-era three-day waiting period was justified as a "72-hour 'cooling off' period." *See* Exh. A to Appellant's Motion to Take Judicial Notice ("MTTJN"; submitted herewith) at AG000360-61. It also appears that the waiting period was

lengthened to permit law enforcement authorities time to complete background checks on prospective firearm purchasers, in advance of the purchases. EOR 250.[4]

In 1965, the California Legislature extended the waiting period to five days. EOR 246-50. This change was made because three days was insufficient time to complete a background check; five days seemed more appropriate. EOR 250; *see also* EOR 243. According to *Bickston*:

> Five persons testifying at the [1964 California Legislature] hearing [on the bill that become the law changing the waiting period to five days] . . . commented that the Department of Justice needed more time to identify prospective purchasers. Two other witnesses recalled that [the Waiting-Period Laws were] originally enacted to cool people off. There was no testimony negating a "cooling off" intent.

91 Cal. App. 3d Supp. at 32 (footnote omitted).

In 1975, the California Legislature extended the waiting period to 15 days. See EOR 239-45. The legislative history for that amendment reflects that the proponents of the change believed that five days was too little time

[4] See California Penal Code section 28220 regarding background checks generally.

to complete a background check; 15 days was needed. *See* EOR 242-45.[5] A letter in the legislative history indicates further that "[t]he waiting period was intended to be a 'cool off' period." Exh. A to MTTJN at AG000376.

In 1995, the California Legislature reduced the waiting period to 10 days. See EOR 234. The legislative history for that amendment reflects that the California Legislature understood that BOF's development of computer technology for background checks would cause them to be expedited and thereby would allow for a shorter waiting period without jeopardizing public safety. *See* EOR 234-35, 238. The legislative history also restates the two longstanding justifications for waiting-period laws: "One is the need to allow time for the Department of Justice to do background checks. Another is the desire to provide a 'cooling off' period, especially for handgun sales." EOR 235.

In sum, over the decades, the California Legislature has experimented with different amounts of time (1, 3, 5, 10, and 15 days) for the waiting period and settled on 10 days as the appropriate amount of time consistent with maintaining public safety.

[5] California's background checks now look at multiple potentially "prohibiting events," not just felony convictions, for each prospective firearm purchaser.

B. Rationales for the Waiting-Period Laws

As just described, the Waiting-Period Laws have long had two public-safety justifications. The first justification centers on the time needed for law enforcement authorities to process a prospective firearm purchaser's background check in advance of the purchase. The second justification is the cooling-off rationale, i.e., allowing time for possible violent impulses in a person to pass away before that person obtains a new firearm. *See also* Michael J. Daponde, *New Residents and Collectors Must Register Their Out-of-state Handguns: Making a (Government) List and Checking it Twice*, 29 McGeorge L.J. 539, 547 (Spring 1998) (describing and defending these two justifications).

1. Background Checks on Prospective Firearm Purchasers

a. The Computerized Component

Each year, BOF processes up to nearly one million "Dealer Record of Sale" ("DROS") applications for firearm purchases, and thus conducts about a million background checks annually.[6] *Silvester v. Harris* ("*Silvester Judgment*"), 41 F. Supp. 3d 927, 953 (E.D. Cal. 2014). For each DROS

[6] One DROS application could cover multiple firearms to be obtained in a single transaction.

application, the processing begins with automated searching of multiple state and federal databases, including but not limited to the Automated Criminal History System ("ACHS") and the California Restraining and Protective Order System ("CARPOS"), for evidence of "prohibiting events" or incidents, such as felony convictions, restraining orders, mental health holds, and the like, which would legally disqualify the applicant from obtaining a firearm. *Id*. at 947-52. As of the time of trial, only about 20 percent of DROS applications completed the automated part of the processing with zero "hits," or items requiring further review, and were "auto-approved." *Id.* at 950, 953, 964-65. A person whose DROS application is auto-approved still has to go through the 10-day waiting period, in case, as sometimes happens, someone like a psychiatrist promptly contacts BOF with new information about the person that may disqualify him or her from obtaining a firearm. *Id*. at 954.

b. The Component Requiring Manual Review

The vast majority of DROS applications are not auto-approved and require manual processing by BOF's Criminal Intelligence Specialist ("CIS") Analysts to confirm (1) identity matches between prospective gun purchasers and purported background information about them in the different databases, and (2) the accuracy and completeness of the database

records of potential prohibiting events, among other things. *Silvester Judgment*, 41 F. Supp. 3d at 947-54.

Because numerous people at numerous government agencies in multiple jurisdictions across California and other states are continually submitting records into the relevant databases, inevitably many records have gaps and/or mistakes. *Silvester Judgment*, 41 F. Supp. 3d at 947-54. For example, many times the ACHS database contains a record of an arrest but not the disposition of the arrest. *Id*. at 951. In that situation, a CIS Analyst must track down extra information to make that record accurate and complete, through such time-consuming methods as telephone calls to law enforcement officers or court employees who may be far away as well as not immediately available to assist with the work. *Id*. at 951-52. It is "fairly routine" that such work takes longer than a day. *Id*. at 951, 953.

Moreover, "[t]here is always a backlog of DROS applications in the electronic DROS applications queue for background checks . . . ." *Silvester Judgment*, 41 F. Supp. 3d at 953. Often, a CIS Analyst will not review a DROS application requiring manual review until several days after the DROS application is first received by BOF's computer systems. *Id*. Where a DROS application has been awaiting processing by a CIS Analyst for a few days, the CIS Analyst upon accessing the application will re-run or

"refresh" the computerized part of the background check, making sure that the information is up-to-date, so as to catch any late-entered or late-modified records of criminal convictions or other prohibiting events such as mental health holds. *Id.*

c. Straw-Purchase Investigations

Another component of a small number of background checks requires extensive involvement of peace officers. BOF special agents monitor gun shows and inspect gun dealers for instances of unlawful "straw purchases" of firearms and then, if necessary, institute corrective law enforcement actions.[7] *Silvester Judgment*, 41 F. Supp. 3d at 955-56. It often takes special agents many days to complete their investigations, to obtain search warrants, and then to intercept the straw-purchased firearms before they get into prohibited people's hands. *Id*. at 956. As BOF Special Agent Supervisor Blake Graham testified at trial, without the 10-day waiting period, many more straw purchases would be completed, and the firearms would have to be retrieved from the prohibited (and, likely, dangerous) people. EOR 136:8-137:12. For reasons of public safety and peace-officer

[7] A straw purchaser is "a person who buys a gun on someone else's behalf while falsely claiming that it is for himself" or herself. *Abramski v. United States*, __ U.S. __, __, 134 S. Ct. 2259, 2263 (2014). Straw purchases are illegal. *Silvester Judgment*, 41 F. Supp. 3d at 956.

safety, it is much better to intercept a firearm before it reaches a prohibited person, as compared to trying to retrieve a firearm already in the hands of a prohibited person. EOR 137:13-138:5.

2. The Cooling-off Effect

The cooling-off effect in reducing homicides and suicides is partly based on common sense. If a person with a violent impulse cannot obtain a working firearm immediately, then there is an increased chance that the impulse will pass and the anticipated act of violence will not take place.

Scientific studies confirm that people who purchase firearms are at a high risk of committing suicide-by-firearm in the first week after purchase. *See* EOR 270 ("The rate of suicide by firearm among handgun purchasers was greatest immediately after purchase and declined thereafter.") The reason is that "suicide is often an impulsive final act by a vulnerable individual who may or may not exhibit the features of an impulsive personality." EOR 251; *accord id*. at 252; *see also* EOR 263. Significantly, it is well-established that waiting-period laws correlate with reductions in suicides by elderly people. *See* EOR 253-55; EOR 279; *see also* Frederick E. Vars, *Putting Arms at Arm's Length: Precommitment Against Suicide*, The University of Alabama School of Law Working Paper (Sept. 2014) at 13-14 (available online at

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2500291) (summarizing studies, some finding correlation and others not, and noting probable flaw in one study purporting not to find correlation).

Therefore, multiple public-health scientists have advocated the waiting period as a viable method to reduce incidence of suicide-by-firearms. *See, e.g.*, EOR 256 ("These findings suggest that the shift away from waiting periods could increase the firearm suicide rate (and potentially the overall suicide rate) among older US citizens."); *cf.* EOR 253 ("Uniform restrictions preventing immediate access to a gun can allow time for a 'cooling off' period during which the suicidal impulse may pass."; *see also* EOR 263 (similar).

II. PROCEDURAL HISTORY

In December 2011, Appellees, two individuals, Jeff Silvester ("Silvester") and Brandon Combs ("Combs"), and two firearm-rights organizations, The Calguns Foundation, Inc., and The Second Amendment Foundation, Inc., initiated the present lawsuit with a complaint filed in the

federal trial court in Fresno, California.[8] In February 2012, Appellees filed a first amended complaint, which remained the operative complaint.

Appellees mounted against the Waiting-Period Laws both a facial challenge (later abandoned) and an as-applied challenge, under the Second Amendment and the Fourteenth Amendment, with one cause of action stated under each of the amendments. EOR 318, ¶ 1, 328-29. Appellees contended that "[t]en days to allow the Department of Justice to investigate prospective purchasers and to allow repeat purchasers to cool off is an infringement on the purchaser's fundamental right to keep and bear arms in their [sic] home." EOR 325, ¶ 49.

Nonetheless, Appellees never sought preliminary injunctive relief. Moreover, Appellees did not object to background checks of prospective firearm purchasers, which checks are unassailably important for public safety, although Appellees asserted that Appellant could complete most background checks essentially instantaneously. *See* EOR 325-326, ¶¶ 50-54. Furthermore, Appellees contended, cooling-off periods serve no rational purpose for prospective firearm purchasers who previously have acquired firearms or obtained related permits. *See* EOR 325 ¶ 50.

[8] A third individual plaintiff was named in the complaint but withdrew from the case before trial.

In the fall of 2013, Appellant moved for summary judgment herein, arguing that a 10-day waiting period, even for so-called subsequent purchasers, does not impose a burden of constitutional significance on the Second Amendment, and is well-justified as allowing time for a background check of, and cooling off by, the prospective firearm purchaser. *See Silvester v. Harris* (*Silvester MSJ*), No. 1:11–CV–2137 AWI SAB, 2013 WL 6415670 at *2-*3 (N.D. Cal. Dec. 9, 2013). Appellees opposed the motion, arguing, in part, that a 10-day waiting period "can no longer be justified in light of the virtually instantaneous electronic and mental health background checks available to (and used by) the DOJ." (Trial Ct. Dkt. 32 (Plfs.' Opp. to Def.'s Mtn. for Summ. J.) at 2:4-2:6.) On December 9, 2013, the District Court denied the motion for summary judgment, concluding that Appellant had "presented insufficient evidence to justify the actual 10-day [waiting] period." *Silvester MSJ*, 2013 WL 6415670 at *5.

During the March 2014 trial proceedings, Appellant called as witnesses five senior BOF employees, who provided undisputed evidence about California's background check system, including evidence that implementing an instant background check system in California would result each year in extra firearms being placed in the hands of hundreds or thousands of extra prohibited persons, such as violent felons and people with

serious mental illnesses. EOR 115:6-121:9, 124:21-25; 192:6-14; 214; 215; 220. Separate from the live presentation of evidence, Appellant relied on the judicial notice process to present evidence, some of which items the District Court admitted, about the cooling-off effect of waiting-period laws; there was no contrary evidence presented.

On August 25, 2014, the District Court ruled that the Waiting-Period Laws violate the Second Amendment as applied "to those persons who already lawfully possess a firearm as confirmed by AFS [the Automated Firearms System], to those who possess a valid CCW [Carry Concealed Weapon] license, and to those who possess both a valid COE [Certificate of Eligibility] and a firearm as confirmed by the AFS system." *Silvester Judgment*, 41 F. Supp. 3d at 934. According to the District Court, the Waiting-Period Laws burden the Second Amendment by:

> . . . prohibit[ing] every person who purchases a firearm from taking possession of that firearm for a minimum of 10 days. One cannot exercise the right to keep and bear arms without actually possessing a firearm. The purchased firearm cannot be used by the purchaser for any purpose for at least 10 days. Also, in some cases, due to additional costs and disruptions to schedules, the 10-day waiting period may cause individuals to forego the exercise of their Second Amendment right to keep and bear arms.

Id. at 962-63 (citation omitted).

The District Court found that Appellant had demonstrated that the Waiting-Period Laws relate to California's "important interests" in "keeping firearms out of the hands of prohibited individuals." *Silvester Judgment*, 41 F. Supp. 3d at 964.

However, according to the District Court, the Waiting-Period Laws did not reasonably fit with those interests, with respect to the above-described subsequent purchasers, and so Appellant could not constitutionally enforce the 10-day waiting period on new firearm acquisitions as to people who fell into one or more of the three above-identified subsequent-purchaser groups. *Silvester Judgment*, 41 F. Supp. 3d at 964-70.

More specifically, the District Court found, regarding a person who has a firearm listed in his or her name in AFS, "this indicates a history of responsible gun ownership," warranting release of a newly purchased firearm as soon as the person passes a background check. *Silvester Judgment*, 41 F. Supp. 3d at 966. Regarding a person who has a CCW permit, the District Court held that "[t]he nature and unique requirements of CCW license holders are such that it is unlikely that CCW license holders would engage in impulsive acts of violence," again warranting release of a newly purchased firearm as soon as the person passes a background check. *Id*. at 966-70. Regarding a person who has a COE, the District Court

acknowledged that "a COE in and of itself only establishes that a person passed the background check one other time in the past," such that release of a newly purchased firearm to that person as soon as he or she passes the background check is warranted only if the person meets one or both of the other criteria (regarding AFS and CCW permits). *Id*. at 970-71.

Although the District Court affirmed Appellant's authorization to perform background checks on all prospective California firearm purchasers, Appellant was ordered to modify the process substantially. *Silvester Judgment*, 41 F. Supp. 3d at 971-72. That is because, for subsequent purchasers, the judgment replaces the 10-day waiting period with a variable waiting period—tied to how long the background check takes—of between approximately a minute or an hour and 10 days (or potentially longer, if the background check is not completed in 10 days, as sometimes happens). *Id*. As part of the background check, Appellant will now have to determine if the prospective firearm purchaser has a firearm listed in that person's name in AFS, or has a CCW permit, or has both a firearm listed in that person's name in AFS and a COE, and, if so, then "[i]f the []standard background check for such an individual is completed and approved before 10-days [sic], Defendant shall immediately release the firearm for delivery to such individual and shall not wait the full 10-days [sic]." *Id*. at *972 (emphasis

added). In other words, a firearm must be released to a subsequent purchaser on whatever day, 1 through 10, that the person passes the background check, without regard to a cooling-off break, a straw-purchase investigation, or possible new information coming in to BOF during the 10-day period.

The District Court afforded Appellant 180 days to modify the background check procedures "to comply fully and in good faith with this order." *Silvester Judgment*, 41 F. Supp. 3d at 972. However, it would likely take Appellant more than 180 days to secure funding from the California Legislature to pay for the work and to retain an appropriate vendor, and an additional six months minimum to implement the technologically difficult changes to BOF's pertinent computer systems and databases. EOR 83, ¶ 15; EOR 87, ¶¶ 17-18. Accordingly, before appealing this matter, Appellant moved the District Court for more time to comply with the judgment. The District Court denied the motion, albeit leaving open the possibility that Appellant might be able to obtain a deadline extension at some time in the future, depending on the circumstances. EOR 65-66.

SUMMARY OF ARGUMENT

As prescribed by *Chovan v. United States*, 735 F.3d 1127 (9th Cir. 2013), *Peruta v. Cnty. of San Diego*, 742 F.3d 1144 (9th Cir. 2014), *Jackson*

v. City and Cnty. of San Francisco, 746 F.3d 953 (9th Cir. 2014), and *Fyock v. City of Sunnyvale*, __ F.3d __, 2015 WL 897747 (9th Cir. Mar. 4, 2015), for Second Amendment cases in the Ninth Circuit, there is a two-step inquiry which "(1) asks whether the challenged law burdens conduct protected by the Second Amendment and[,] (2) if so, directs courts to apply an appropriate level of scrutiny." *Jackson*, 746 F.3d at 960 (quoting *Chovan*, 735 F.3d at 1136 (internal punctuation omitted)).

Proper analysis under this two-part framework should have validated the Waiting-Period Laws. However, the District Court erred at both steps of the analysis.

Under the "burden" step of the analysis, this Court should find that Appellant established, by undisputed evidence of the historical understanding of the Second Amendment, that the Waiting-Period Laws do not impose a burden of constitutional significance on the Second Amendment right. Moreover, the Waiting-Period Laws fall into two categories of firearm regulations that the Supreme Court has deemed presumptively lawful. Finally, the 90-year-old age of the Waiting-Period Laws furthers bolsters their status as constitutional. There is no burden here of constitutional significance.

This Court need not reach the "scrutiny" step of the analysis, but if the Court does reach that step, then the Court should find that the Waiting-Period Laws impose such a minor burden on the Second Amendment right as to warrant intermediate scrutiny, as opposed to strict scrutiny. As for applying intermediate scrutiny to the Waiting-Period Laws, there is no dispute from Appellees, and the District Court agreed, that California has an important public-safety objective for the statutes. This Court should conclude that there is a reasonable fit between the Waiting-Period Laws and that objective, as reflected in Appellant's presentation of a supportive mix of legislative history, empirical evidence, witness testimony, and common sense. Therefore, the Waiting-Period Laws should survive this Court's intermediate scrutiny.

If this Court instead affirms the District Court's substantive ruling, this Court nonetheless should order the District Court to give Appellant more time to comply with the mandatory injunction.

STANDARD OF REVIEW

This Court reviews constitutional challenges to statutes, like the present case's Second Amendment claim, *de novo*. *Chovan*, 735 F.3d at 1131. However, a trial court's findings of fact—such as were made in the present case, which was tried to the bench—are subject to the "clearly erroneous"

standard of review. *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011); Fed. R. Civ. P. 52(a)(6).

LEGAL STANDARDS FOR SECOND AMENDMENT ANALYSIS

For Second Amendment cases in the Ninth Circuit, as noted above, there is a two-step analysis consisting of the burden step and then the scrutiny step. *Jackson*, 746 F.3d at 960.

Under the burden step of the Second Amendment inquiry, a court must determine "whether the challenged law burdens conduct protected by the Second Amendment, based on a historical understanding of the scope of the Second Amendment right, or whether the law falls within a well-defined and limited category of prohibitions that have been historically unprotected." *Jackson*, 746 F.3d at 960.

If the challenged law does burden protected conduct, then, under the scrutiny step of the Second Amendment inquiry, when ascertaining the appropriate level of scrutiny, a court must consider (1) how close the challenged law comes to the core of the Second Amendment, and (2) the severity of the law's burden on that right. *Jackson*, 746 F.3d at 960-61. A law that imposes such a severe restriction on the core right of self-defense, specifically in the home, that it amounts to a destruction of the Second Amendment right is unconstitutional under any level of scrutiny. *Id*. at 961.

A law that implicates the core of the Second Amendment right and severely burdens that right warrants strict scrutiny. *Chovan,* 735 F.3d at 1138. "By contrast, if a challenged law does not implicate a core Second Amendment right, or does not place a substantial burden on the Second Amendment right, we may apply intermediate scrutiny." *Jackson*, 746 F.3d at 961. (emphasis added).

"Although courts have used various terminology to describe the intermediate scrutiny standard, all forms of the standard require (1) the government's stated objective to be significant, substantial, or important; and (2) a reasonable fit between the challenged regulation and the asserted objective." *Chovan*, 735 F.3d at 1139. Notably, the fit between the regulation and the harm being addressed need be only reasonable, not perfect. *United States v. Carter*, 750 F.3d 462, 464 (4th Cir. 2014). The challenged law will achieve a reasonable fit with the government's stated objective and the regulation at issue, if the proponent of the law presents "any evidence reasonably believed to be relevant" to substantiate the objective. *Fyock*, 2015 WL 897747 at *7 (citing *City of Renton v. Playtime Theatres, Inc*., 475 U.S 41, 52 (1986)).

Also, the challenged law need not be the least restrictive means of achieving the governmental interest, to survive intermediate scrutiny.

Fyock, 2015 WL 897747 at *6. The challenged law needs just to promote a "substantial government interest that would be achieved less effectively absent the regulation." *Id.*

"[T]his two-step inquiry reflects the Supreme Court's holding . . . that, while the Second Amendment protects an individual right to keep and bear arms, 'the scope of that right is not unlimited.'" *Chovan*, 735 F.3d at 1133 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008)). "[A]s nearly every other authority on the Second Amendment has recognized, regulation of the right to bear arms is not only legitimate but quite appropriate." *Peruta*, 742 F.3d at 1178 (emphasis in original).

Judicial restraint and respect for comity are appropriate in the context of a federal court's review of a state's law manifesting the police power, as the Waiting-Period Laws do. Police power is the authority of a state and its political subdivisions to impose restraints on private rights as necessary for the general welfare, including health, morals, and safety. *Cf. Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1107 (9th Cir. 2005) (discussing enforcement of "police power" laws affecting "health, welfare, morals, and safety" in context of bankruptcy proceedings). Police power justifies strong but reasonable regulation in constitutionally protected areas of conduct. *Cf. So. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003)

(observing that states have leeway to exercise police powers even in face of Contracts Clause of Constitution).

ARGUMENT

The Waiting-Period Laws should be upheld at the first step of Second Amendment analysis, and the statutes also would pass heightened scrutiny under the second step of the analysis. The District Court erred at each step of that inquiry, and accordingly the final judgment invalidating the Waiting-Period Laws as applied should be reversed.

I. THE WAITING-PERIOD LAWS DO NOT BURDEN THE SECOND AMENDMENT AND THEREFORE DO NOT WARRANT HEIGHTENED SCRUTINY

Although the Waiting-Period Laws inconvenience people in acquiring firearms, there is no burden on the core Second Amendment right warranting heightened scrutiny. Three separate justifications presented to the District Court, each one well-grounded in fact and law, support that conclusion. Accordingly, the present case could and should have been resolved in Appellant's favor at the first step, the burden step, of Second Amendment analysis.

A. The Waiting-Period Laws Fall Outside the Scope of the Second Amendment as Historically Understood

First, Appellant demonstrated with undisputed evidence from historical sources that the Waiting-Period Laws fall outside the scope of the Second Amendment, as understood by the voters on the ratification of the Constitution. *See Chovan*, 735 F.3d at 1137 (describing requisite historical analysis in Second Amendment cases); *Jackson*, 746 F.3d at 960 (same). The District Court erred in rejecting Appellant's historical evidence and subjecting the Waiting-Period Laws to heightened constitutional scrutiny.

The District Court's specific error came in the implicit holding that there are only two types of relevant evidence from history—(1) whether waiting period laws existed in the United States in the late 18th century through the early 19th century, i.e., the Founding Era, and (2) whether voters in that time period believed that waiting-period laws implicated the Second Amendment. *Silvester Judgment*, 41 F. Supp. 3d at 936-38, 945, 962. By a request for judicial notice, Appellant presented undisputed evidence that, because of analogous laws and the conditions of daily life in the Founding Era, voters in that era would not have objected to the Waiting-Period Laws as unconstitutional. This evidence, while not addressing waiting periods directly, was undisputed, was probative, and should have been considered.

1. The Waiting-Period Laws Have Analogues from the Founding Era of the United States

In the Founding Era, it was generally accepted that there could be times when the government lawfully could *temporarily* deprive law-abiding people from having possession or making use of their firearms. For example, "[b]y 1785, New York had enacted laws regulating *when* and where firearms could be used, as well as restricting the storage of gun powder." *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 84 (2d Cir. 2012) (citing Act of Apr. 22, 1785, ch. 81, 1785 Laws of N.Y. 152; Act of Apr. 13, 1784, ch. 28, 1784 Laws of N.Y. 627 (emphasis added)). See also the firearm "impressment" laws, by which the government temporarily impressed private firearms into military service, in times of public danger. *See* MTTJN, Exh. C at IX, 12, 13, 113-14; and Exh. D 54-55. In sum, governmental temporal restrictions on the use of firearms were historically understood to be acceptable under the Second Amendment, meaning that the analogous Waiting Period Laws likely would also have been accepted at that time.

In attempting to discern the historical understanding of the Second Amendment, the District Court focused too narrowly on "firearm waiting period laws that may have existed between 1790 and 1840." *Silvester*

Judgment, 41 F. Supp. 3d at 937. There does not have to be a perfect Founding Era analogue for a current firearm regulation, for that modern law to avoid invalidation under the Second Amendment. *Fyock*, 2015 WL 897747 at *4.

It follows that, in refusing to take judicial notice of the impressment laws on relevance grounds (*Silvester Judgment*, 41 F. Supp. 3d at 937-38), the District Court abused its discretion. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (describing abuse of discretion standard of review).

This Court should reverse that erroneous decision of the District Court, as requested in the accompanying motion to take judicial notice, credit Appellant's uncontradicted presentation regarding the impressment laws, and conclude that the Waiting-Period Laws fall outside the scope of the Second Amendment.

2. Voters in the Founding Era Accepted Delays in Acquiring Firearms

Moreover, the relevant inquiry here considers not just what firearm laws existed circa 1791, but also, and more precisely, how citizens eligible to vote on the ratification of the Second Amendment conceived of the scope of the Second Amendment right. *See Heller*, 554 U.S. at 576 (holding that

in interpreting Second Amendment's text, courts should try to assume outlook of Americans who voted on ratification of Bill of Rights in 1791); *id*. at 614 (giving narrow justification for reviewing post-Civil War discussions of Second Amendment to help to establish its meaning; "they do not provide as much insight into [the Second Amendment's] original meaning . . . [y]et . . . their understanding of the origins and continuing significance of the Amendment is instructive"); *id.* at 634-35 ("Constitutional rights are enshrined with the scope they were understood to have when the people adopted them . . . ."); *see also United States v. Rene E.*, 583 F.3d 8, 15-16 (1st Cir. 2009) (encouraging, in Second Amendment history analysis, review of broad array of sources of history, beyond just laws in existence in Founding Era).

According to undisputed historical evidence that Appellant presented by a request for judicial notice, throughout the Founding Era, there was no expectation or, apparently, desire that ordinary people should be able to acquire firearms for private use essentially instantaneously. *See, generally,* Exh. B to MTTJN. As this Court and the Seventh Circuit have acknowledged in Second Amendment cases, the pace of life was much slower and commerce was less bustling in the Founding Era. "At the time of the Second Amendment's enactment, the familiar image that 'bear arms'

would have painted is one of an eighteenth-century frontiersman, who 'from time to time would leave his home to obtain supplies from the nearest trading post . . . .'" *Peruta*, 742 F.3d at 1152 (emphasis added; some internal punctuation omitted) (citing *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012)). The relative difficulty in acquiring firearms was a fact of life back then. *See* Exh. B to MTTJN at xv, 6-9, 19, 212-15. Most people lived on isolated family farms, a day's horseback ride away from the nearest store, which may or may not have carried firearms and which store was typically closed during the entire harvest season. *See* Exh. B to MTTJN at xv, 6-9, 19, 212-15, and 262-65. Given this built-in, natural waiting period of up to several months for firearm acquisition, it is virtually impossible to imagine that our arms-bearing ancestors had expectations and desires that would compel them to pursue a lawsuit like the present case, aimed at being able to obtain firearms a mere day or a few days earlier than otherwise.

It follows that, in refusing to take judicial notice of this history evidence on relevance grounds (*Silvester Judgment*, 41 F. Supp. 3d at 937), the District Court once again abused its discretion.

This Court should reverse that erroneous decision of the District Court, as requested in the accompanying motion to take judicial notice, credit Appellant's uncontradicted presentation regarding the impressment laws,

and conclude that the Waiting-Period Laws fall outside the scope of the Second Amendment.

In sum, the Second Amendment, as historically understood, does not apply to the Waiting-Period Laws, and it was therefore reversible error for the District Court to hold otherwise and to apply heightened scrutiny to those laws.

B. The Waiting-Period Laws Fall into Two of the Supreme Court's Categories of Presumptively Lawful Firearm Regulations

Second, the Waiting-Period Laws fall within at least two categories of longstanding firearm regulatory measures—(1) laws imposing conditions and qualifications on the commercial sale of arms, and (2) prohibitions on the possession of firearms by felons and the mentally ill—that the Supreme Court, in *Heller*, specifically said should be spared from "doubt" as to their legality. 554 U.S. at 625-27; *United States v. Vongxay*, 594 F.3d 1111, 1115, 1117 (9th Cir. 2009) (holding that *Heller*'s list identifies laws that do not implicate the Second Amendment).

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1. The Waiting-Period Laws Are Presumptively Lawful Conditions or Qualifications on the Commercial Sale of Firearms

The Waiting-Period Laws impose not prohibitions but 10-day delays on the commercial sale of firearms in California.[9] To purchase a firearm in California, by statute, the buyer must pass a background check and wait out the 10-day waiting period. Therefore, the Waiting-Period Laws are commercial conditions or qualifications on firearm transactions and rank among *Heller*'s presumptively lawful "commercial conditions" laws. *See* 554 U.S. at 626-27; *see also Peña v. Lindley*, No. 2:09–CV–01185–KJM–CKD, 2015 WL 854694 at *1, *10-*14 (E.D. Cal. Feb. 26, 2015) (holding that California statute prohibiting manufacture, sale, gifting, or lending of certain handguns, yet leaving California's firearm marketplace robust, is presumptively lawful per *Heller*).

Statutory waiting periods are not unique to the context of firearm acquisition; there are legally imposed waiting periods in connection with other important conduct, as well. For example, the National Labor Relations Act contains a provision forbidding strikes or lock-outs for 60-day periods, if certain pre-conditions occur. *See* 28 U.S.C. § 158(d). For another

[9] Indeed, the delays apply to all lawful firearm transactions in California.

example, a California resident faces a six-month waiting period for a divorce. *See* Cal. Fam. Code § 2320(a).

In sum, the District Court should have categorized the Waiting-Period Laws as presumptively lawful "commercial conditions" laws, and summarily upheld them under the Second Amendment.

2. The Waiting-Period Laws Facilitate the Prohibition on Firearm Acquisition by Felons and the Mentally Ill and Are Thus Lawful

The Waiting-Period Laws afford time for background checks and straw-purchase investigations of prospective firearms purchasers, for the specific purpose of facilitating the prohibitions on the possession of firearms by felons and the mentally ill. If a background check of a DROS application reveals one of these (or other) prohibiting events, then the applicant is denied the applied-for firearm. The Waiting-Period Laws provide enough time for the background check and any straw-purchase investigation to be completed. *Heller* expressly approves of laws prohibiting firearm possession by felons and the mentally ill, *see* 554 U.S. at 626, and therefore *Heller* sanctions the Waiting-Period Laws, which facilitate the enforcement of those prohibitions.

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C. The Waiting-Period Laws Are Presumptively Lawful Because they Are Longstanding

Third, by virtue of being more than 90 years old, and representative of numerous other firearm waiting-period laws, the Waiting-Period Laws must also be seen as "longstanding" under *Heller*—and for that reason, as well, presumptively lawful. 554 U.S. at 626. *Fyock* elaborates on the meaning of "longstanding" here: "[E]arly twentieth century regulations might . . . demonstrate a history of longstanding regulation if their historical prevalence and significance is properly developed in the record." 2015 WL 897747 at *4.

In rejecting the Waiting-Period Laws as not longstanding, the District Court took it as a negative that "currently only ten states impose a waiting period between the time of purchase and the time of delivery of a firearm. Waiting period laws . . . are not common now." *Silvester Judgment*, 41 F. Supp. 3d at 945. However, 10 states is a significant fraction (20 percent) of all states, and reflects fairly widespread acceptance of waiting-period laws. And there are many other relevant facts about the continuity and significance of waiting-period laws in U.S. history:

- Since the early 20th century at the latest, many states have enforced laws requiring prospective firearm purchasers to have

purchase licenses, which are akin to waiting periods in temporarily delaying people from obtaining firearms. *See* Charles V. Imlay, *The Uniform Firearms Act*, 12 Amer. Bar Ass'n J. 767, 768 (1926).

- In 1938, 11 states plus the District of Columbia had waiting periods—of up to seven days—for handgun purchases. Sam B. Warner, *Uniform Pistol Act*, 29 J. of Crim. Law and Criminology 529, 547-48 nn.43, 44 (1938) (citing laws). Additionally, in Texas, it was illegal to sell a handgun to a person who was known to be in the heat of passion. *Id*. at 548 n.44 (citing Texas Penal Code, article 489a).
- In 1996, 18 states had their own waiting periods for firearm purchases. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Survey of State Procedures Related to Firearm Sales, 1996 ("*Survey of State Procedures*") at 63-65 (Sept. 1997) (available online at http://bjs.gov/content/pub/pdf/ssprfs96.pdf). Moreover, during this time, *every* state had to abide by the federal five-day waiting period ("Brady Act"; Pub. L. 103–159, 107 Stat. 1536), unless the state had an exemption for having an independent system of at least equivalent efficacy. *Survey of State Procedures* at v. *And see* Exh. E to MTTJN.

- Many localities in the United States have their own waiting periods for firearm purchases. The localities include Hartford, CT; Broward County, FL; Miami-Dade County, FL; Las Vegas, NV; Cincinnati, OH *See* U.S. Department of Treasury, Bureau of Alcohol, Tobacco, Firearms and Explosives, *State Laws and Published Ordinances – Firearms, 31st Edition* at 109-10, 136-40, 299, 304-05, 377-79 (2011) (available online at https://www.atf.gov/files/publications/download/p/atf-p-5300-5-31st-editiion/2010-2011-atf-book-final.pdf). *And see* Exh. F to MTTJN.
- Presently, many states require some form of earlier-acquired permit to purchase a firearm, or at least a handgun. *See, e.g.*, N.C. Gen. Stat. § 14-1402; Neb. Rev. Stat. § 69-2403; N.J. Rev. Stat. § 2C:58-3.
- Over all those years since 1923, the Waiting-Period Laws have mandated delays varying in only two respects, the length of the waiting period in a narrow range of one day to 15 days, and whether the delays apply to long guns. *See supra* at 6-8.
- As far as Appellant is aware, never before the present case has a waiting-period law been challenged as unconstitutional.

In sum, waiting-period laws (especially when added to purchase-permit requirements, which are sisters of the waiting-period laws) must be seen as common, prevalent, and significant in U.S. history continuously since the early 20th century—and therefore longstanding and presumptively lawful under *Heller* and *Fyock*.

Because Appellees failed to show any constitutionally cognizable burden on the Second Amendment right caused by the Waiting-Period Laws, the Second Amendment claim should have been deemed to fail at the first step of the two-step inquiry. *Cf. Kwong v. Bloomberg,* 723 F.3d 160, 166-67 (2d Cir. 2013) (rejecting Second Amendment challenge to $340 handgun license fees in part because plaintiffs were able to pay fees, obtain licenses); *see also* Wade Maxwell Rhyne, Note, *United States v. Emerson and the Second Amendment*, 28 Hastings Const. L. Q. 505, 538 (Winter 2001) (asserting that a "14-day waiting period waiting period for a background check could hardly be said to materially frustrate a lawful use of a firearm. Especially when the citizen has notice of the existence of such a waiting period."). The District Court's contrary holding warrants reversal.

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II. THE WAITING-PERIOD LAWS SURVIVE HEIGHTENED SECOND AMENDMENT SCRUTINY

Assuming *arguendo* that the Court moves on to the second step—the scrutiny step—of Second Amendment analysis in the present case, the Court should conclude that the Waiting-Period Laws impose at most a minor burden on the Second Amendment and therefore warrant intermediate, not strict, scrutiny. There is no dispute that California has an important objective, maintaining public safety by reducing firearm violence, for the Waiting-Period Laws. Appellant made a sufficient evidentiary showing, a mix of legislative history, empirical evidence, witness testimony, and common-sense argument, of the reasonable fit between the Waiting-Period Laws and that important objective. Therefore, this Court should uphold the Waiting-Period Laws at the second step of the two-part inquiry, if the second step is reached.

A. The Waiting-Period Laws Warrant Intermediate, Not Strict, Scrutiny

Only intermediate scrutiny, if any heightened scrutiny, is appropriate for the Waiting-Period Laws. On this topic, *Jackson* teaches as follows:

> A law that imposes such a severe restriction on the core right of self-defense that it amounts to a *destruction* of the Second Amendment right is unconstitutional under any level of scrutiny. By contrast, if a challenged law does not implicate a core Second Amendment right, or

> does not place a substantial burden on the Second Amendment right, we may apply intermediate scrutiny.

746 F.3d at 961 (quoting *Heller*, 554 U.S. at 629) (emphasis in original). *Fyock* teaches further that a firearm regulation challenged under the Second Amendment should receive intermediate, as opposed to strict, scrutiny if the regulation *either* does not implicate a core Second Amendment right, *or* does not place a substantial burden on the Second Amendment right. 2015 WL 897747 at *5 (citing *Jackson*, 746 F.3d at 964).

1. The Waiting-Period Laws Do Not Destroy the Second Amendment Right

As to possible destruction of the Second Amendment right, it is indisputable that the Waiting-Period Laws do not destroy the Second Amendment right. Silvester and Combs admit that they have had personal firearms at all relevant times during this case. EOR 95:7-12; EOR 103:22-104:7. This is because the Waiting-Period Laws do not prohibit, but just delay for 10 days, lawful firearm transactions. By merely delaying firearm transactions, the Waiting-Period Laws contrast with the prohibition-type laws at issue in *Chovan*, 735 F.3d at 1129 (lifetime prohibition on firearm possession for person convicted of misdemeanor domestic violence) and *Jackson*, 746 F.3d at 958 (prohibition on sale of "hollow-point" bullets). Given that those prohibition-type laws were not considered destructive of

the Second Amendment right, the Waiting-Period Laws, with just their short delays, should similarly receive relatively benign scrutiny.

2. The Waiting-Period Laws Do Not Come Close to the Core of the Second Amendment Right

The Waiting-Period Laws do not come close to implicating the core of the Second Amendment right and thus warrant intermediate, not strict, scrutiny. That core, despite being a subject of considerable debate, has never been interpreted as including a right to obtain a firearm (including a second or subsequent firearm) as quickly as possible. *Cf. Heller*, 554 U.S. at 595, 626 ("[T]he right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."). Yet this is what Appellees are effectively demanding. For that reason alone, the Court should reject strict scrutiny and apply intermediate scrutiny.

3. The Waiting-Period Laws Do Not Severely Burden the Second Amendment Right

Regarding the severity of the burden on the Second Amendment right, especially as to subsequent purchasers, the Waiting-Period Laws impose at most a minor burden on the right. The lack of any implication of a Second Amendment violation is most fully revealed by the undisputed fact that Silvester and Combs, the two individual plaintiffs in the court below, have had multiple personal firearms each at all relevant times with the Waiting-

Period Laws in effect, and would not have been prohibited (but rather only delayed) by the Waiting-Period Laws in acquiring more firearms during the course of the litigation (assuming that Silvester and Combs have remained legally eligible to possess firearms). EOR 95:7-95:12; EOR 103:22-104:7. Indeed, Combs was able to acquire 50-plus firearms in a five-year period, with the Waiting-Period Laws in effect. EOR 103:22-104:7.

While there is inconvenience associated with obtaining firearms in compliance with the Waiting-Period Laws, there is no true burden. The personal situation of Silvester illustrates the truth of that assertion. He lives just two miles from a firearm dealer and drives his automobile by that store on his regular business commute. EOR 94:14-91:15. If Silvester purchases a firearm through that dealer, the Waiting-Period Laws require a 10-day delay on pick-up, necessitating a later trip to the dealer. But it is a small burden on Silvester, and little strain on his automobile, to have to make a second trip of two miles to pick up an extra firearm that he applied to purchase 10 days before. Moreover, Silvester's proximity to a firearm dealer is not atypical; there are approximately 1,800 licensed firearm dealers in California. EOR 141:23-142:3. Appellees have not shown more than a *de minimis* burden on the Second Amendment right here.

Notably, the Fifth Circuit has held that Texas statutes prohibiting people under 21 years old from carrying concealed handguns in public do not impose a substantial burden on the Second Amendment right, because the restriction of up to several *years* of time is still temporary, ending when each person turns 21 years old. *See National Rifle Ass'n of Am., Inc. v. McCraw*, 719 F.3d 338, 348 (5th Cir. 2013) (emphasizing that "the restriction here has only a temporary effect"). Compared with that scenario, a 10-day delay is *de minimis*. *Cf. Rosario v. Rockefeller*, 410 U.S. 752, 757 (1973) (contrasting elections laws which prohibit certain classes of people from voting with advance registration requirement that "merely imposed a time deadline on . . . enrollment"). For this separate and independent reason, then, the Waiting-Period Laws warrant intermediate as opposed to strict scrutiny.

It should also be recognized that, with the District Court's injunction, for which Appellees advocated, the vast majority of subsequent purchasers in California will *still* have to take two trips to their firearm dealers to complete their transactions, because, as explained above, around 80 percent of background checks will still not be completed on the first day that the DROS application is submitted. Indeed, it is virtually certain that, under the District Court's injunction, whereby BOF will have to make for each DROS

application three *extra* data queries, there will be uncovered even *more* erroneous records requiring CIS Analyst review. That means that the percentage of auto-approvals will drop even lower, and even more than 80 percent of firearm purchasers will have to make two trips to their firearm dealers to get their firearms.

Nor does the delay aspect of the Waiting-Period Laws impose a serious burden on the Second Amendment right, because there are multiple legal ways to acquire firearms without going through the 10-day waiting period. For example, Silvester has received firearms legally without going through the waiting period. One time, Silvester received a firearm from his father, without going through the 10-day waiting period. EOR 97:5-97:11. Silvester also borrowed a firearm from a friend without being subject to the waiting period. EOR 100:2-100:5. As Silvester's experience exemplifies, with the Waiting-Period Laws in place, people in California can legally transfer firearms to their family members, or borrow firearms from family members or friends for less than 30 days at a time, without going through the DROS process or the waiting period. EOR 127:22-127:25; EOR 133:17-133:20.

Finally, the Waiting-Period Laws' multiple statutory exemptions—e.g., for dealer-to-dealer transfers in advance of sales to consumers (Cal. Penal

Code §§ 27110, 27125, 27725)—lighten any burden even more, by minimizing the number of people subject to the delay. *See Chovan*, 735 F.3d at 1138 (holding that exceptions to lifetime federal ban on firearm prohibition by domestic violence misdemeanants lighten Second Amendment burden of ban); *People v. Flores*, 169 Cal. App. 4th 568, 576-77 (2008) (finding exceptions to California's open-carry firearms regulations support the constitutionality of the law, by tailoring it).[10]

In sum, intermediate, not strict, scrutiny is appropriate here.

B. The Waiting-Period Laws Survive Intermediate Scrutiny

1. The Waiting-Period Laws Serve an Important Interest in Maintaining Public Safety

The District Court correctly conducted the first part of intermediate scrutiny, regarding the significance of the governmental purpose behind the challenged law. It is "self-evident," as well as clearly evident in the legislative history, and not disputed here, that the Waiting-Period Laws have

[10] Appellees have further complained of the inconvenience of the outside window of 30 days to retrieve a firearm, before the transaction is cancelled because the background check is considered stale. *See Silvester Judgment*, 41 F. Supp. 3d at 944, 952. The 30-day window is not part of the Waiting-Period Laws being challenged here. In any event, Appellees' complaints about the outside window fail to establish a constitutionally cognizable burden on the Second Amendment right, for the same reasons already given above.

an important and indeed compelling objective of keeping firearms away from people likely to misuse them, thereby minimizing firearm violence. *Silvester Judgment*, 41 F. Supp. 3d at 964; *see also Chovan*, 735 F.3d at 1139 (recognizing "self-evident" significance of governmental objective of preventing domestic gun violence); *accord Fyock*, 2015 WL 897747 at *7.

2. The Waiting-Period Laws Reasonably Fit with the Public-Safety Objective

a. Appellant Proffered Sufficient Evidence Of a Reasonable Fit

There is a reasonable fit between the Waiting-Period Laws and the public-safety objective because the 10-day waiting period is: (a), as detailed above, the product of decades of legislative experimentation and fine-honing (which *McDonald v. City of Chicago*, 561 U.S. 742, 784 (2010), endorses legislatures to undertake), (b) not too long, i.e., not "substantially overbroad" (*cf. United States v. Tomsha-Miguel*, 766 F.3d 1041, 1049 (9th Cir. 2014)), and (c) sufficiently supported by a mix of legislative history, scientific studies, witness testimony, and common sense "reasonably believed to be relevant to substantiate [the Waiting-Period Law's] important interests." *Fyock*, 2015 WL 897747 at *7 (quoting *Playtime Theaters*, 475 U.S. at 52.)

Regarding the cooling-off justification for the Waiting-Period Laws generally, Appellant showed (as summarized at pp. 13-14, *supra*) that

waiting periods have been found to reduce instances of suicide-by-firearm among elderly people and thus overall suicides by elderly people. Common sense suggests that the effect will hold true for homicides, as well. Even Appellees conceded that a 10-day waiting period "may have a deterrent effect on impulsive suicides or homicides." Trial Ct. Dkt. 91 (Plf.'s Findings and Orders After Bench Trial) at 21:9-21:22.

Regarding the cooling-off justification for the Waiting-Period Laws as applied to subsequent purchasers, Appellant offered many items of persuasive evidence. As multiple BOF employees testified, waiting-period laws tend to inhibit firearm violence even by people who at one time in the past were known to have firearms. A person's firearms may be broken, loaned out, lost, stolen, or lacking in ammunition. EOR 95:19-96:10, 108:20-108:22. Also, a gun owner or his or her family member could surrender his or her firearms to law enforcement authorities while the gun owner seeks mental health treatment, and BOF via its databases would not necessarily know of the situation. EOR 188:22-189:3.[11] Additionally, a person who already owns firearms may choose to acquire new or additional firearms to commit acts of violence more effectively or heinously. EOR

[11] Silvester admitted at trial that one or more of his guns was sometimes unavailable for him to use. EOR 95:18-96:10.

146:1-23. Just like first-time firearm buyers, the people in these situations could not commit acts of firearm violence (or could commit only less deadly acts of firearm violence) without new firearms, making it worthwhile for Appellant to delay delivering firearms to all people subject to the Waiting-Period Laws; even for subsequent purchasers, a cooling-off period continues to serve the important public-safety objective of delaying access to firearms until a possible violent impulse can pass.[12]

Also, as Appellant cited, two Harvard School of Public Health researchers wrote, "Suicidal individuals are often ambivalent about killing themselves, and the risk period is transient. Reducing the availability of lethal instruments during this period may prevent suicide." EOR 263. Notably, the scholars spoke of "reducing," not necessarily "eliminating," the availability of lethal instruments, implying that there is a public-safety benefit to keeping extra firearms away from suicidal people who may have other firearms.

[12] Appellant should not be required to quantify the cooling-off effect here, much less establish that *every* violent impulse is quashed, and every homicide or suicide forestalled, because of the waiting period. The Waiting-Period Laws do not have to be perfectly effective to be constitutional. *See Fyock*, 2015 WL 897747 at *7 (accepting City of Sunnyvale's justification for firearm law that it merely "may decrease" firearm violence).

Regarding the background-check justification for the Waiting-Period Laws, there is (and can be) no dispute with Appellant's contention that background checks for all firearm transactions are important public-safety precautions. And as the District Court found, as Appellant had presented, "BOF employees believe that 10 days is a sufficient period of time in which to complete the background check." *Silvester Judgment*, 41 F. Supp. 3d at 954. As noted above, the 10-day period also affords CIS Analysts time to re-run certain background checks to make sure that they are based on the most up-to-date information. Yet, under the District Court's judgment, there can be no longer be any refresher of the background check information for any auto-approved DROS application. This safeguard could be especially important in an instance in which a person who just became subject to a restraining order or was just released from a mental hospital seeks to acquire a firearm right afterward, before the courts, law enforcement authorities, or mental health facilities input the new prohibiting information about this person into the relevant databases, to be discovered by a CIS Analyst. EOR 111:8-112:15.

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b. The District Court Erred in Rejecting Appellant's Evidence of the Fit

In rejecting Appellant's case for the reasonableness of the fit between the Waiting-Period Laws and the public-safety objective, the District Court erred by requiring essentially a *perfect* fit, leading inevitably but incorrectly to the invalidation of the statues.

For example, the District Court faulted Appellant for not supplying evidence that waiting periods of precisely 10 days (as opposed to, e.g., eight days or 12 days) are optimal. *Silvester Judgment*, 41 F. Supp. 3d at 969. There are no known studies addressing such fine shadings, and it was error for the District Court to require such specific information to validate the Waiting-Period Laws. So long as the statutory 10-day waiting period is not "substantially overbroad" (*cf. Tomsha-Miguel*, 766 F.3d at 1049; *Reed v. Town of Gilbert*, 707 F.3d 1057, 1074 n.16 (9th Cir. 2013)), the waiting period does not have to be as short as possible to be constitutional.

Likewise, the District Court faulted Appellant for not proffering medical-research studies focusing on how waiting periods affect, in particular, people who already have firearms. *Silvester Judgment*, 41 F. Supp. 3d at 969. It was unreasonable for the District Court to require such particularized evidence to justify the Waiting-Period Laws, instead of

accepting the proffered studies in conjunction with the testimony of BOF employees about the beneficial effects of the 10-day waiting period on people who have purchased firearms before (summarized above at pp. 47-49).

A case from the First Amendment pornography context illustrates how the District Court could and should have applied intermediate scrutiny to reach the conclusion that the Waiting-Period Laws pass such scrutiny. In *City of Los Angeles v. Alameda Books, Inc*., 535 U.S. 425 (2002), the Supreme Court ruled that a city ordinance that barred individual adult establishments from simultaneously (a) selling sexually oriented books and other products over the counter and (b) hosting booths in which customers could view erotic videos on a pay-per-view basis was adequately supported by a city study of adult establishments that concluded that concentrations of adult businesses are associated with higher rates of crime in surrounding communities. See *id*. at 431-32, 443. The study was obviously not directly on-point with respect to the ordinance, but the Supreme Court ruled that "a municipality may rely on any evidence that is 'reasonably believed to be relevant' for demonstrating a connection" between the challenged law and the governmental objective behind the law. *Id*. at 438. The plurality opinion's critique of the dissenting opinion is telling here: "In effect, [the

dissent] asks the city to demonstrate, not merely by appeal to common sense, that its ordinance will successfully lower crime. Our cases have never required that municipalities make such a showing . . . ." *Id*. at 439.

The District Court here made the same mistake by demanding scientific proof that the Waiting-Period Laws reduce firearm violence, instead of accepting that a reasonable legislature could believe in such a consequence of the law based on competent evidence, and upholding the laws on that basis.[13]

Notably, analogous waiting periods affecting First Amendment rights and other personal rights have been repeatedly upheld by courts:

- The Supreme Court has upheld a statutory waiting period of up to 50 days between when a person registers to vote in a jurisdiction and is allowed to vote there. *See, e.g.*, *Burns v. Fortson*, 410 U.S. 686, 687 (1973); *see also ACORN v. Bysiewicz*, 413 F. Supp. 2d 119, 121

[13] *See also Doe v. Wilmington Housing Auth.,* 880 F. Supp. 2d 513 (D. Del. 2012) (similar); Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1465-70 (2009) (observing that "scientific proof" of both gun-rights and gun-control theories "is very hard to get"; therefore, requiring "some substantial scientific proof to show that a [firearm] law will indeed substantially reduce crime and injury" is tantamount to applying strict scrutiny to, and almost certainly will lead to invalidation of, the law).

(D. Conn. 2005) (upholding Connecticut's requirement that prospective voters for non-presidential offices register to vote at least seven days before election).

- For another example, the right to marry is fundamental, but "reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship" are not subject to the "rigorous scrutiny" that is applied to laws that "interfere directly and substantially with the right to marry." *Zablocki v. Redhail*, 434 U.S. 374, 386-87 (1978).
- The right to vote is also fundamental, but "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).
- Exercise of the right to hold a protest march may legally be delayed for several days by a legitimate requirement of a parade permit. *See Sullivan v. City of Augusta*, 511 F.3d 16, 38-39 (1st Cir. 2007) (collecting cases).

In short, the 10-day pause on new firearm acquisitions imposed by the Waiting Period Laws is eminently reasonable and well within constitutional bounds.

c. The District Court Relied on Clearly Erroneous Findings of Fact in Holding that There Is Not a Reasonable Fit

In concluding that the Waiting-Period Laws violate the Second Amendment because of the alleged lack of a reasonable fit with the public-safety objective, the District Court relied on numerous unsupported and thus clearly erroneous findings of fact. These errors led the District Court to impose an injunction unsupported by fact or law.

As noted above, the District Court ordered Appellant to change California's background check procedures to make three additional queries for each DROS applicant, to see if the person falls within one or more of three categories of people whom the District Court has ordered exempted from any waiting period beyond the time needed to complete a background check. *Silvester Judgment*, 41 F. Supp. 3d at 971-72. The extra queries check to see if the DROS applicant already [1] has a firearm listed in the person's name in AFS, [2] possesses a valid CCW permit, and/or [3] possesses both [A] a valid COE and [B] a firearm as confirmed by AFS. *Id*.

However, the District Court relied on clearly erroneous findings of fact in holding that it violates the Second Amendment to apply the Waiting-Period Laws to people who fit into those categories.

(1) The District Court Clearly Erred in Finding Facts About California's Firearm-Transaction Database

First, the District Court mistakenly ruled as if AFS is, in effect, a firearm registry, such that any person whose name is associated with a firearm transaction listed in that database must be assumed actually to possess the firearm presently, and that possession demonstrates "responsible gun ownership" justifying an exemption from the 10-day waiting period. *Silvester Judgment*, 41 F. Supp. 3d at 966.

In developing this position, the District Court rationalized that "law enforcement officers view the AFS database as reliable" and so it should be treated as the equivalent of a reliable gun registry. *Silvester Judgment*, 41 F. Supp. 3d at 966. Yet there is insufficient, if any, support for that finding of fact, as shown immediately below.

The District Court cited the trial testimony of BOF Special Agent Supervisor Blake Graham to the effect that law enforcement officers access AFS in real time on patrol. EOR 155:3-155:20. However, Graham's full testimony showed that "probably dozens of times" during criminal

investigations he, personally, has found that a person who is listed in the AFS system as having a firearm does not have the firearm. EOR 155:20-156:8. Graham further testified that some California district attorney offices will not seek a search warrant on a crime suspect who is prohibited by law from possessing a firearm, if the warrant would be based solely on an AFS entry that the suspect purchased a firearm in the last six months. EOR 150:23-152:7. There was no contrary evidence on this topic. Therefore, the undisputed evidence is that law enforcement officers and at least some district attorneys in California consider the data in AFS to be *un*reliable for indicating whether a person currently possesses a firearm, directly contrary to the District Court's finding.

Additionally, the District Court cited the following trial testimony of BOF Assistant Bureau Chief Steven Buford stressing the limitations of AFS:

> AFS, again, it's a leads database. So it doesn't mean just because it says that, there's a firearm in that house. It doesn't mean there's an actual firearm in the house. We don't have a registration process in California. It's a lead, so it's possible. It alerts the officer to be a little bit more cautious potentially, because potentially, there could be a firearm there.

EOR 130:15-130:21.

That testimony undercuts rather than bolsters the notion that AFS is a reliable source of current information about firearm ownership and possession in California.

Relatedly, the District Court made an erroneous summation-type finding of fact: "If a person already possess [sic] a firearm, then that person will generally have access to that firearm and may commit impulsive acts of violence with it." *Silvester Judgement*, 41 F. Supp. 3d at 965. Once again, the trial record does not support that finding.

(2) The District Court Clearly Erred in Finding Facts About California's Concealed-Carry Firearm Laws

Second, the District Court made unsupported determinations that people with CCW licenses have certain positive personality traits such that there is no public-safety benefit in making them go through the waiting period. *See Silvester Judgment*, 41 F. Supp. 3d at 968-70.

The District Court's support for this position was merely a restatement of the statutory outline of the requirements ("good cause," completion of a firearm training test) for people to obtain CCW permits. *Silvester Judgment*, 41 F. Supp. 3d at 969. Without having received, or cited, any evidence of how law enforcement officers actually interpret, apply, or administer those requirements in issuing or withholding CCW permits, the District Court

determined, "The nature and requirements of CCW licenses are such that it is unlikely that CCW license holders would engage in acts of impulsive violence." *Id.* Also: "Safe handling practices could cause a gun owner to be more reflective and deliberate about using a firearm." *Id*. Also: "[A] CCW license strongly indicates that a CCW license holder is unlikely to engage in a straw purchase." *Id*.

There is no evidentiary basis for finding that CCW permit holders are unlikely to be violently impulsive, or are likely to be deliberative and reflective about firearm use, or are unlikely to engage in straw purchases. Nonetheless, the District Court, in the final judgment, essentially inserted new language into California statutory law to link the CCW permit law with the Waiting-Period Laws, such that a person's possession of a CCW permit now causes that person to be exempt from the 10-day waiting period. The California Legislature has never made that link, and neither should a court.

Moreover, the District Court's unsupported assumptions about CCW permit holders apparently are based on a misunderstanding that the "good cause" requirement for obtaining such a permit is a substantial hurdle in the process. Before *Peruta*, it was possible that different sheriffs and police chiefs could have different standards for "good cause," 742 F.3d at 1148, whereby some law enforcement jurisdictions could have been essentially

"shall issue" jurisdictions for CCW permits, and other law enforcement jurisdictions could have imposed greater restrictions. But the *Peruta* opinion has relaxed the good-cause requirement statewide, so that it is now met by any person who indicates a generalized desire to have a firearm for self-defense purposes. *Id.* at 1148-49, 1168-73, 1178-79. Although the *Peruta* opinion may be vacated and the matter reheard in this Court, the present status of *Peruta* reveals a flaw in the District Court's findings of fact as to CCW permit holders and the related injunction.

(3) The District Court Clearly Erred in Finding Facts About Certificates of Eligibility

The extra background check query that is most flawed considers whether the applicant has a COE. *See Silvester Judgment*, 41 F. Supp. 3d at 970-71. The District Court explained that it "*cannot* hold that the 10-day waiting period as applied to those who merely hold a valid COE violates the Second Amendment." *Id*. at 970 (emphasis added). Yet a COE check was ordered for the processing of every DROS application. *Id.* at 971, 972. Given the lack of a Second Amendment violation in requiring that a person with just a COE go through the 10-day waiting period, this Court should not require Appellant to modify the background check system to look for COEs for each DROS applicant.

d. The District Court Made Other Clearly Erroneous, Material Findings of Fact and Conclusions of Law

The District Court's judgment compromises two other public-safety features of the Waiting-Period Laws, yet lacks factual or legal justifications for these outcomes.

First, by ordering the release of firearms to people in the above-identified groups as soon as they pass their background checks, instead of permitting the full 10-day wait, the District Court made in effect a public-policy judgment, not a constitutional judgment, that the extra time is unnecessary for public safety. The District Court's rationale was that California has a database containing records for some people in California who are believed to be armed yet are prohibited from having firearms:

> If disqualifying information arises about an individual who has already taken possession of a newly purchased firearm, California has in place the [Armed Prohibited Persons System], which is designed to retrieve such firearms from prohibited persons. The APPS system acts as a safety net for individuals who have been previously approved to possess a firearm, but who later become prohibited.

Silvester Judgment, 41 F. Supp. 3d at 965. However, the only on-point evidence from trial, the undisputed testimony of Graham, was that APPS is incomplete, containing records for only a fraction of the people in California

who are believed to be armed yet are prohibited from having firearms, and that it is preferable from a public-safety perspective to prevent a prohibited person from obtaining a firearm than to have to take away a firearm wrongfully released to a prohibited person. EOR 137:13-138:5. In short, there is no evidentiary basis or policy rationale, let alone constitutional imperative, for modifying the Waiting-Period Laws to eliminate the full 10-day waiting period.

Second, the District Court's injunction, by modifying the Waiting-Period Laws, could lead to an unfortunate unintended consequence. It is reasonable to assume that, under the final judgment, there will emerge a certain group of subsequent purchasers who are routinely auto-approved for firearm purchases, and thus are able to obtain firearms very quickly. These people likely will come to recognize their "favored" status in firearm transactions. They will have natural incentives to become straw purchasers for the many other people who, even though legally permitted to obtain firearms, otherwise would have to wait at least several days for CIS Analysts to conduct their background checks manually and approve the purchases. There likely will be an increase in the number of illicit straw purchases, and California will have ever-less accurate and complete records about which people purchased which firearms. *See Abramski*, 134 S.Ct. at 2269 ("[T]he

[federal background check] statute's record-keeping provisions would serve little purpose if the records kept were of nominal rather than real buyers.")

III. THE DISTRICT COURT DID NOT AFFORD APPELLANT SUFFICIENT TIME TO COMPLY WITH THE JUDGMENT

The District Court granted Appellant six months to comply with the injunction. *Silvester Judgment*, 41 F. Supp. 3d at 971. Prior to obtaining a stay of the judgment from this Court (the District Court having denied that request), BOF took the steps that could be taken before actually making significant changes to the BOF computer systems or expending large amounts of money not yet available, as detailed in the declarations of BOF Chief Stephen J. Lindley and Marc St. Pierre, a BOF information technology director. Chief Lindley's declaration shows that full compliance with the injunction would require BOF to (1) obtain an additional budgetary appropriation from the California Legislature, (2) hire and to train a significant number of new employees to do extra processing of all DROS applications for three new categories of information (whether the processing is manual or computer-aided), and (3) (a) reassign in-house IT experts working on other critical projects, or (b) hire and to train an outside vendor, to modify the relevant computer systems—all expensive and time-consuming propositions. EOR 82, ¶ 11- EOR 83, ¶ 16. BOF IT Director St.

Pierre estimated that, to comply with the judgment, Appellant must modify at least seven separate data systems, which would take a vendor, working closely with Appellant's IT staff, at least six months to complete. EOR 86-87, ¶¶ 8, 18. Finally, the money to pay for all this work must come from the California Legislature, which is not a party to this case and is not subject to Appellant's control.

For all the reasons given above, the Court should reverse the District Court's final judgment. But if the Court upholds that judgment, and the case returns to the District Court, with the stay lifted, Appellant and BOF would, basically from square one, confront the onerous task of complying with the judgment. Six months' total time would not permit Appellant to complete the job. Appellant would need approximately one year to comply with the judgment, contingent on a sufficient appropriation from the California Legislature. Therefore, if the District Court's final judgment is upheld on the merits, the District Court's denial of Appellant's request for the extra time should nonetheless be reversed.

CONCLUSION

The Waiting-Period Laws have served California's public-safety objectives well for more than 90 years. These laws do not prohibit any person legally entitled to have a firearm from obtaining a firearm or even

many, many firearms. California has a thriving market for the sale and transfer of firearms to private parties. Meanwhile, it is certainly true that California could achieve its public-safety objectives only less effectively in the absence of the Waiting Period Laws. And the injunction that Appellees achieved here is unsupported by the facts or law and may well lead to more public-safety problems stemming from too-quick releases of firearms for delivery/receipt. Accordingly, Appellant respectfully requests that this Court reverse the judgment of the court below, and uphold the Waiting-

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Period Laws under the first and/or second part of Second Amendment analysis.

Dated: March 25, 2015

Respectfully submitted,

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14-16840

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFF SILVESTER, 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 and individual capacities),

Defendants.

STATEMENT OF RELATED CASES

To the best of our knowledge, there are no related cases.

Dated: March 25, 2015

Respectfully Submitted,

/s/ Jonathan M. Eisenberg
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Deputy Attorney General
Attorney for Defendant-Appellant Kamala D. Harris, Attorney General of the State of California

14-16840

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Plaintiffs-Appellees,

v.

KAMALA D. HARRIS, Attorney General of the State of California (in her official capacity),

Defendant-Appellant.

STATEMENT OF PRIMARY AUTHORITY|

(1) The Second Amendment states as follows: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

(2) California Penal Code section 26815 states as follows:

No firearm shall be delivered:

(a) Within 10 days of the application to purchase, or, after notice by the [D]epartment [of Justice] pursuant to Section 28220, within 10 days of the submission to the [D]epartment [of Justice] of any correction to the application, or within 10 days of the submission to the [D]epartment [of Justice] of any fee required pursuant to Section 28225, whichever is later.

(b) Unless unloaded and securely wrapped or unloaded and in a locked container.

(c) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of the person's identity and age to the [firearm] dealer.

(d) Whenever the [firearm] dealer is notified by the Department of Justice that the person is prohibited by state or federal law from processing, owning, purchasing, or receiving a firearm. The [firearm] dealer shall make available to the person in the prohibited class a prohibited notice and transfer form, provided by the [D]epartment [of Justice], stating that the person is prohibited from owning or possessing a firearm, and that the person may obtain from the [D]epartment [of Justice] the reason for the prohibition.

(3) California Penal Code section 27540 states as follows:

A [firearm] dealer, whether or not acting pursuant to Chapter 5 (commencing with Section 28050), shall not deliver a firearm to a person, as follows:

(a) Within 10 days of the application to purchase, or, after notice by the [D]epartment [of Justice] pursuant to Section 28220, within 10 days of the submission to the [D]epartment [of Justice] 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.

(b) Unless unloaded and securely wrapped or unloaded and in a locked container.

(c) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of the person's identity and age to the [firearm] dealer.

(d) Whenever the [firearm] dealer is notified by the Department of Justice that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(e) A handgun shall not be delivered unless the purchaser, transferee, or person being loaned the handgun presents a

handgun safety certificate. Commencing January 1, 2015, any firearm, including a handgun, shall not be delivered unless the purchaser, transferee, or person being loaned the firearm presents a firearm safety certificate to the [firearm] dealer, except that in the case of a handgun, an unexpired handgun safety certificate may be presented.

(f) A handgun shall not be delivered whenever the [firearm] dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser has made another application to purchase a handgun and that the previous application to purchase involved none of the entities specified in subdivision (b) of Section 27535.

Dated: March 25, 2015

Respectfully Submitted,

/s/ Jonathan M. Eisenberg

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Deputy Attorney General
Attorney for Defendant-Appellant Kamala D. Harris, Attorney General of the State of California

CERTIFICATE OF COMPLIANCE
PURSUANT TO FED.R.APP.P 32(a)(7)(C) AND CIRCUIT RULE 32-1
FOR 14-16840

I certify that, pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached opening brief is:

X	Proportionately spaced, has a typeface of 14 points or more and contains 13,020 words (opening, answering and the second and third briefs filed in cross-appeals must not exceed 14,000 words; reply briefs must not exceed 7,000 words

or is

	Monospaced, has 10.5 or fewer characters per inch and contains ____ words or ___ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 14,000 words or 1,300 lines of text; reply briefs must not exceed 7,000 words or 650 lines of text).

Dated: March 25, 2015

Respectfully Submitted,

/s/ Jonathan M. Eisenberg_____
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14-16840

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFF SILVESTER, BRANDON COMBS, THE CALGUNS FOUNDATION, INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization,

Plaintiffs-Appellees,

v.

KAMALA D. HARRIS, Attorney General of California (in her official and individual capacities),

Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of California

No. 1:11-cv-02137-AWI-SKO
The Honorable Anthony W. Ishii, Judge

DEFENDANT-APPELLANT'S EXCERPTS OF RECORD VOLUME 1

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEFF SILVESTER, et al.,

Plaintiffs

v.

KAMALA HARRIS, Attorney General of California, and DOES 1 to 20,

Defendants

CASE NO. 1:11-CV-2137 AWI SAB

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case deals with the constitutionality of various firearms related statutes. Plaintiffs challenge the 10-day waiting period imposed by California Penal Code § 26815(a)[1] and § 27540(a),[2] and approximately 18 categories of exemptions to the waiting period found in Penal Code § 26000 *et seq*. and § 27000 *et seq*. Plaintiffs contend that the 18 exemptions violate the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs contend that the 10-day waiting periods violate the Second Amendment. Specifically, Plaintiffs contend that the 10-day waiting periods violate the Second Amendment as applied to those who already lawfully possess a firearm as confirmed in the Automated Firearms System ("AFS"), to those who possess a valid Carry Concealed Weapon ("CCW") license, and to those who possess a valid Certificate of Eligibility ("COE"). See Doc. No. 91 at 29:23-30:8. Plaintiffs do not challenge the 10-day waiting period on

[1] Penal Code § 26815(a) reads in pertinent part: "A dealer . . . shall not deliver a firearm to a person, as follows: (a) Within 10 days of the application to purchase, or, after notice by the department pursuant to Section 28220, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission of any fee required pursuant to Section 28225, whichever is later."

[2] Penal Code § 27540(a) reads: "No firearm shall be delivered: (a) Within 10 days of the application to purchase, or, after notice by the department pursuant to Section 28220, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission of any fee required pursuant to Section 28225."

a facial basis, do not challenge the waiting period laws as applied to first time firearms purchasers, and do not challenge the requirement that firearm purchasers pass a background check. See Doc. Nos. 91 at 17:13-15; 93 at 3:1-3; 98 at 16:10-15; and 105 at 7:6-8, 13:17-20.

In March 2014, the Court conducted a bench trial in this matter. The Court has now taken live testimony, deposition testimony, and numerous exhibits. The parties have completed all briefing and made their final arguments. Given the nature of the challenges made, the Court emphasizes that it is expressing no opinion on the constitutionality of the 10-day waiting period in general or as applied to first time California firearms purchasers.

After considering the evidence and the arguments, the Court concludes that Penal Code § 26815(a) and § 27540(a)'s 10-day waiting periods impermissibly violate the Second Amendment as applied to those persons who already lawfully possess a firearm as confirmed by the AFS, to those who possess a valid CCW license, and to those who possess both a valid COE and a firearm as confirmed by the AFS system, if the background check on these individuals is completed and approved prior to the expiration of 10 days. Because of the Court's resolution of the Second Amendment issue, the Court need not reach the Fourteenth Amendment challenges.

I. REQUEST FOR JUDICIAL NOTICE

Parties' Positions

Defendant requested that the Court take judicial notice of various exhibits. Defendant argued that each of the exhibits could be judicially noticed as legislative facts because such facts are relevant to the justification for the statutes at issue, the court's legal reasoning, and to the decision making process.

Plaintiffs objected and argued that it was unclear how Defendant intended to use the information in the exhibits. Plaintiffs recognized the distinction between adjudicative facts and legislative facts, but contended that they could not determine the admissibility of the exhibits without further clarification. However, relevancy, hearsay, and contestability issues in general with Defendant's exhibits make judicial notice under Rule 201 improper. Further, as part of supplemental briefing, Plaintiffs stated that once specific portions of exhibits were identified by

Defendant in her proposed findings of fact and conclusions of law, Plaintiffs would then make arguments in their June 30, 2014 responsive briefing as to those specific exhibits.

Discussion

At the end of the last day of trial testimony, and upon the parties' agreement, the Court ordered the parties to include and to cite to specific proposed exhibits and portions of proposed exhibits as part of their proposed findings of fact and conclusions of law. See Trial Tr. at 526:9-533:13. The parties were permitted to file responsive briefing and objections to the proposed findings, including evidentiary objections to any evidence that was included in the proposed findings and the subject of Defendant's motion for judicial notice. See id. The Court would then make evidentiary rulings based on the briefing and the proposed findings of fact and conclusions of law. See id. This framework was primarily meant to address the exhibits in Defendant's request for judicial notice. The framework was designed to provide the Court and the parties with a method of determining how and for what purpose an exhibit was being used. Defendant's proposed findings of fact and conclusions of law comply with the Court's order. In fact, Defendant helpfully submitted binders with the exhibits and the specific excerpts that were cited in her proposed findings. Nevertheless, as part of Defendant's June 30, 2014 responsive briefing, Defendant defended and addressed exhibits that were part of the request for judicial notice, but were not included in her proposed findings.

If Defendant did not cite an exhibit or portion of an exhibit in her proposed findings and conclusions, then Defendant did not sufficiently rely upon such evidence. There was an inadequate demonstration of how such evidence was intended to be used and/or how the evidence is relevant. The Court will not comb through the hundreds of pages of proposed exhibits and make rulings if an exhibit is not actually cited and specifically relied upon by a party. Cf. Hargis v. Access Capital Funding, LLC, 674 F.3d 783, 792-93 (8th Cir. 2012) (courts need not take judicial notice of irrelevant evidence); Southern Cal. Gas Co. v. City of Santa Ana, 336 F.3d 885, 889 (9th Cir. 2003) (in summary judgment context court is not required to examine the entire file when specific evidence was not adequately identified); Charles v. Daley, 749 F.2d 452, 463 (7th Cir. 1984) (courts need not take judicial notice of irrelevant evidence); Rodriguez v. Bear Stearns

Cos., 2009 U.S. Dist. LEXIS 31525, *34 (D. Conn. Apr. 14, 2009) (courts need not take judicial notice of cumulative evidence).

Accordingly, the Court will limit its discussion and consideration to the exhibits and excerpts that were actually cited by Defendant in her proposed findings. Those exhibits are Defendant's Exhibits CD through CI, DG, DH, DM, DQ, DS, DT, DV, DW, DX, EC, EJ, EK, and GN. All other exhibits that were included in Defendant's March 24, 2014 request for judicial notice (Doc. No. 78), but that were not cited in Defendant's proposed findings of fact and conclusions of law, will not be considered by the Court.

The Defense exhibits at issue fall into one of four general categories – legislative history, history books, professional journal articles, and a newspaper article. The Court will examine each category of exhibits separately.

1. Legislative Histories

The Ninth Circuit has approved of taking judicial notice of legislative history. Association des Eleveurs de Canards et D'oies du Quebec v. Harris, 729 F.3d 937, 945 n.2 (9th Cir. 2013); Chaker v. Crogan, 428 F.3d 1215, 1223 n.8 (9th Cir. 2005); see also Korematsu v. United States, 584 F.Supp. 1406, 1414 (N.D. Cal. 1984). Defendant has limited the portions of legislative history that she wishes the Court to consider. In their June 30 responsive briefing, Plaintiffs did not address these specific portions of legislative history. The Court finds that the identified portions of legislative history are relevant and probative. Therefore, the Court will grant Defendant's motion with respect to the identified excerpts of legislative history.

Therefore, the Court takes judicial notice of the following portions of Exhibit CD: Cover & p. 701. The Court takes judicial notice of the following portions of Exhibit CE: Cover & p. 657. The Court takes judicial notice of the following portions of Exhibit CF: Cover & pp. 2799, 2800. Exhibit CG: Bates Numbers AG000008, AG000026, AG000052 through AG000055, and AG000059 through AG000061. The Court takes judicial notice of the following portions of Exhibit CH: Bates Numbers AG000231 through AG000233, AG000297 through AG000298, AG000343 through AG000344. The Court takes judicial notice of the following portions of Exhibit CI: Bates Numbers AG000399 through AG000402, and AG000468.

2. Category 2 – History Books

In their June 30, 2014 responsive briefing, Plaintiffs did not make any evidentiary arguments regarding the specific excerpts from Defendant's history books. Regardless, the Court has conducted an independent evaluation of the excerpts submitted.

Exhibit EC consists of excerpts from a book by Jack Larkin, *The Reshaping of Everyday Life: 1790-1840* (Harper Perennial 1988). The excerpts from this book deal with the nature of life in America from 1790 to 1840. Defendant seeks to admit these excerpts in order to demonstrate that, given the nature of the way of life between 1790 and 1840, most people would have been unable to readily obtain firearms. Because the geographic and economic conditions did not lend themselves to a person being able to immediately purchase and possess a firearm, Defendant contends that the citizens of 1790 and 1840 would have no quarrel with a government imposed waiting period before obtaining firearms. See Doc. No. 88 at ¶¶ 29-34, G.

Although it appears that Exhibit EC is the type of historical work that has been consulted in cases such as *McDonald*, *Heller*, and *Peruta*, the information contained in Exhibit EC is not particularly relevant to this case. Exhibit EC appears to be a generalized historical text that touches on many aspects of the American life as it existed between 1790 and 1840. What Exhibit EC excerpts do not contain is any information regarding firearm waiting period laws that may have existed between 1790 and 1840, or information regarding the understanding of the Second Amendment during this timeframe. It is that type of information, not American life in general or the economic and geographic conditions of the time, that are relevant. "The Constitution structures the National Government, confines its actions, and, in regard to certain individual liberties and other specified matters, confines the actions of the States." Edmonson v. Leesville Concrete Co., 500 U.S. 614, 619 (1991). "[T]he constitutional right to bear arms restricts the actions of only the federal or state governments or their political subdivisions, not private actors." Florida Retail Fed'n, Inc. v. Attorney Gen. of Fla., 576 F.Supp.2d 1281 (N.D. Fla. 2008). That naturally-occurring non-governmental forces may have limited the ability of some individuals in some parts of the country to readily obtain firearms does not show that it was understood around 1791 (the year the Second Amendment was adopted) or 1868 (the year the Fourteenth Amendment

was adopted) that the government could impose a waiting period between the time of purchase and the time of possession of a firearm.[3] The Court does not find the excerpts in Exhibit EC to be relevant, and declines to consider them.[4] See Hargis, 674 F.3d at 792-93; Charles, 749 F.2d at 463; Rodriguez, 2009 U.S. Dist. LEXIS 31525 at *34.

Exhibit EK consists of excerpts from a book by Adam Winkler, *Gunfight: The Battle over the Right to Bear Arms in America* (W.W. Norton 2013). Exhibit EK discusses some of the laws in existence around the founding era. However, there is nothing in Exhibit EK that discusses waiting period laws between 1791 and 1868. The first mention of a waiting period law was a 1923 model law that imposed a 1-day waiting period on the delivery of handguns. According to Winkler, this law was proposed by a private organization, the U.S. Revolver Association. Winkler states that this law was adopted by nine states, including California. However, like Exhibit EC, Exhibit EK does not discuss waiting period laws during 1791 or 1868.[5] Because there is no discussion of waiting periods during the relevant time periods, the Court does not find the excerpts from Exhibit EK to be relevant, and declines to consider them.[6] See Hargis, 674 F.3d at 792-93; Charles, 749 F.2d at 463; Rodriguez, 2009 U.S. Dist. LEXIS 31525 at *34.

3. Professional Articles

In their June 30, 2014 responsive briefing, Plaintiffs did not make any evidentiary arguments regarding the specific excerpts from the professional journal articles cited by Defendant. Depending on their use in a case, see Toth v. Grand Trunk R.R., 306 F.3d 335, 349 (6th Cir. 2002), social science studies can be reviewed by courts as "legislative facts."[7] See Snell

[3] If anything, given the absence of any such laws, and accepting Defendant's assertions about American life at the time, it seems more likely that the citizenry of 1791 and 1868 would not have been accepting of such laws because those laws would have created additional difficulties and barriers to obtaining a firearm.

[4] Even if the Court considered the excerpts of Exhibit EC, they would not change the Court's findings or conclusions.

[5] If anything, the cited excerpts indicate that waiting period laws did not exist around 1791 or 1868, that waiting periods are a relatively recent phenomena, and that most states have not had waiting periods. Exhibit EK does not show that waiting periods were outside the Second Amendment's scope.

[6] Even if the Court considered the excerpts of Exhibit EK, they would not change the Court's findings or conclusions.

[7] Legislative facts generally arise when a court is faced with a constitutional challenge to a statute. See Korematsu, 584 F.Supp. at 1414; State v. Erickson, 574 P.2d 1, 5 (Alaska 1978). Legislative facts are facts that help a tribunal or court to determine the content of law and policy and to exercise its judgment or discretion in determining what course

v. Suffolk County, 782 F.2d 1094, 1105-06 (2d Cir. 1986); Dunagin v. Oxford, 719 F.2d 738, 748 n.8 (5th Cir. 1985); cf. United States v. Carter, 669 F.3d 411, 418 (4th Cir. 2011) (government may establish the "reasonable fit" of legislation through a wide range of sources including empirical evidence). Legislative facts can be considered more liberally and are outside the structures of Federal Rule of Evidence 201. See Castillo-Villagra v. INS, 972 F.2d 1017, 1026 (9th Cir. 1992); United States v. Gould, 536 F.2d 216, 219 (8th Cir. 1976); see also Qualley v. Clo-Tex Int'l, Inc., 212 F.3d 1123, 1128 (8th Cir. 2000) (holding that trial court erroneously took judicial notice of legislative facts under Rule 201).

The Court finds that the excerpts from Defendant's Exhibits DG (pp. 27-29), DH (pp. 585, 588, 590), DS (pp. 228-231), DT (pp. 59-61, 69-72), DV (pp. 1583-1585), DW (pp. 225, 226, 229, 232, 234-236), and DX (pp. 40, 51-52) are relevant. Given the absence of additional argument from Plaintiffs on these exhibits, the Court will consider these exhibits as legislative facts. However, the Court will not take judicial notice of these exhibits under Rule 201. See Qualley, 212 F.3d at 1128.

With respect to Exhibits DM and DQ, these are portions of articles that relate to suicide studies in Australia. Exhibit DM is a 1994 study of 33 survivors of attempted firearm suicides, who were all treated at Westmead Hospital (a teaching hospital of the University of Sydney). Exhibit DQ is a 1999 study of suicide statistics from Tasmania, Australia. The Court does not find these articles to be probative. There are cultural, societal, and geographic differences between Australia and the United States. These types of differences can manifest themselves not only when comparing suicide statistics between the two countries, but also when comparing the suicide rates of the states and territories of Australia with the states of the United States. The Tasmania study, for example, highlights the fact that Tasmania had one of the highest suicide rates of all of Australia, yet made up only 2.6% of Australia's total population. In other words, there was something unique that was occurring in Tasmania. Suicide is a complex psychological

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of action to take; they are facts that are ordinarily general and do not concern the immediate parties. See United States v. Gould, 536 F.2d 216, 219 (8th Cir. 1976); Erickson, 574 P.2d at 4-5 & n.14. Legislative facts "have relevance to legal reasoning and the lawmaking process, whether in the formation of a legal principle or ruling by a judge or court or in the enactment of a legislative body." Advisory Comm. Note to Fed. R. Evid. 201(a).

occurrence. Without further expert guidance, the Court is not inclined to consider two studies that focus on two small portions of a separate country. The Court declines to consider Exhibits DM and DQ.[8] See Hargis, 674 F.3d at 792-93; Charles, 749 F.2d at 463; Rodriguez, 2009 U.S. Dist. LEXIS 31525 at *34.

With respect to Exhibit EJ, this exhibit is several pages from a book entitled "Reducing Gun Violence in America." Only one page of the excerpts has potential relevance (the other excerpts are the cover and publishing pages). The one page discusses a study that found a reduction in the firearm suicide rate for people over the age of 55, and the reduction may have been due to the Brady Act waiting period. See Defendant's Ex. EJ. The book page appears to have been written by the study's authors, Messrs. Cook and Ludwig. The Court will consider portions of the underlying study. See Defendant's Ex. DH. Because the Court will consider portions of the underlying study, additional information from the study's authors is relevant. The Court will consider Exhibit EJ, but will not take judicial notice of Exhibit EJ under Rule 201. See Qualley, 212 F.3d at 1128.

4. Newspaper Article

Exhibit GN is a 2014 newspaper article from the Washington Post, whose headline reads, "Study: Repealing Missouri's background check law associated with a murder spike." Plaintiffs did not address this exhibit as part their June 30 responsive briefing. Nevertheless, Plaintiffs are not challenging California's background check. Plaintiffs do not argue that they should be exempt from a background check nor do they argue that the background check is unconstitutional, rather they argue that they should not be subject to the full 10-day waiting period between the time of purchase and the time of possession. See Doc. No. 105 at 7:6-8, 13:17-20. The Washington Post article purports to describe the results of a study on an issue that is not before the Court. Thus, the article is not relevant, and the Court will not consider Exhibit GN.[9] See Hargis, 674 F.3d at 792-93; Charles, 749 F.2d at 463; Rodriguez, 2009 U.S. Dist. LEXIS 31525 at *34.

[8] Even if the Court did consider the excerpts from Exhibits DM and DQ, those exhibits would not change the Court's findings of fact or conclusions of law

[9] Even if the Court did consider the excerpts from Exhibit GN, the Court would not change its findings of fact or conclusions of law.

II. STANDING

Defendant contends that the two entity plaintiffs, California Guns Federation ("CGF") and the Second Amendment Foundation ("SAF") do not have standing to maintain this lawsuit. Defendant argues that there is insufficient evidence that the entities have been personally injured by the Penal Code provisions at issue, and that there is insufficient evidence that any of the entities' members have been injured. CGF and SAF contend that the evidence is sufficient to show both direct personal injuries to themselves, as well as injuries to their members.

Legal Standard

It is the plaintiff's burden to establish standing to bring a lawsuit in federal court. See Washington Envtl. Council v. Bellon, 732 F.3d 1131, 1139 (9th Cir. 2013). An organization may have representational standing, where it acts as a representative of its members, or direct standing, where it seeks to redress an injury it has suffered in its own right. See Smith v. Pacific Props. & Dev. Corp., 358 F.3d 1097, 1101 (9th Cir. 2004). "An organization has direct standing to sue when it shows a drain on its resources from both a diversion of its resources and frustration of its mission." Valle Del Sol Inc. v. Whiting, 732 F.3d 1006, 1018 (9th Cir. 2013); Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC, 666 F.3d 1216, 1219 (9th Cir. 2012). The organization's "standing must be established independent of the lawsuit filed by the plaintiff." Fair Hous., 666 F.3d at 1219. "An organization cannot manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all." Valle Del Sol, 732 F.3d at 1018. An organization may assert standing on behalf of its member if the "members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc., 528 U.S. 167, 181 (2000); Washington Envtl. Council v. Bellon, 732 F.3d 1131, 1139 (9th Cir. 2013).

Findings of Fact

SAF has between 30,000 and 40,000 members, supporters, and donors in California.

Gottlieb Dep. 18:11-13.[10] One-third to one-half of the total 30,000 to 40,000 California members, supporters, and donors are dues-paying members. See id. at 18:16-19:4.

SAF conducts research on state and federal firearms laws, including California's firearms laws. See id. at 22:3-11. Approximately 20% of SAF's research deals with California's firearms laws. See id. at 22:12-19.

SAF also expends funds in the defense of the civil rights of its members, including the prosecution of this lawsuit. See id. at 35:10-23.

SAF seeks input from its members about which litigation to pursue, and SAF members contacted SAF about challenging the California 10-day waiting period. See id. at 28:1-3, 29:2-11. Over the years, a number of SAF members have contacted SAF to complain about the 10-day waiting period. See id. at 30:1-15.

SAF has California members who are subjected to the 10-day waiting period, and has California members who wish to purchase a firearm and also have a CCW, a COE, and/or another firearm. See id. at Depo. Ex. 13, Responses to Interrogatories 5, 8-15.

SAF has publicly commented on the 10-day waiting period, and done research into the California 10-day waiting period laws for a number of years (possibly for more than a decade). See id. at 23:25-24:23.

SAF receives between 50 and 100 calls per year from California members regarding the 10-day waiting period. See id. at 43:4-9.

Aside from this lawsuit, SAF has expended resources researching the 10-day waiting period, and expended staff time and money and resources in connection with other people's calls, letters, e-mails, and discussions about the 10-day waiting period. See 35:17-36:1.

SAF has never attempted to purchase a firearm in California, nor has it incurred any expenses in acquiring firearms in California. See id. at 33:17-20, 62:19-23.

CGF is a public interest group that was created by gun owners. See id. at 117:7-8.

[10] Alan Gottlieb is the Executive Vice President of SAF. The parties stipulated to use Mr. Gottlieb's deposition testimony in lieu of live testimony. See Doc. No. 75.

CGF's purposes are to defend people whom CGF believes to be unjustly charged with violating California firearms laws, and to challenge laws that CGF believes are unconstitutional under the Second and Fourteenth Amendments. See id. at 117:8-12. CGF will file amicus briefs in various cases, including before the United States Supreme Court, but such briefs tend to be on issues that CGF believes would be useful in California. See id. at 120:2-5. CGF routinely publishes white papers, FAQ's, and WikiQ's that explain California's gun laws, including explaining legislative history. See id. at 120:23-121:4. CGF defends people who have been improperly charged for violation of various California firearms, and also engages in litigation to ensure that California's firearms laws are constitutional. See id. at 117:21-118:3.

CGF has approximately 30,000 members, most of whom are in California. See Trial Tr. 121:11-14. Almost all of CGF's members are subject to the 10-day waiting period. See id. at 121:18-19. "Quite a few" of CGF's members have written about the 10-day waiting period on CGF's blog. See id. at 143:11-19.

CGF brought this lawsuit so that its members who already have firearms in the AFS system, possess a CCW, or possess a COE, would not have to wait 10 days to obtain a firearm. See id. at 121:23-25. Although not an individual plaintiff, Gene Hoffman, the CGF's chairman, currently owns a firearm, plans to obtain a firearm in the future, and has a CCW license. See id. at 113:13-114:1, 136:1-7.

CGF has never attempted to purchase a firearm on its own behalf for self-defense. See id. at 145:19-146:2.

Conclusions of Law

1. Direct Standing

To show an injury that is sufficient for direct standing, an organization must show: (1) frustration of purpose, and (2) diversion of funds. See Valle Del Sol, 732 F.3d at 1018.

a. CGF

CGF has met the first requirement. It is within CGF's purposes to defend and advocate for Second Amendment rights, including bringing lawsuits that challenge laws that may infringe upon the Second Amendment. The 10-day waiting period is a law that CGF believes unconstitutionally

infringes upon the rights of those who have at least one gun registered in the AFS system, a CCW license, and/or a COE. CGF brought this lawsuit to remedy this perceived unconstitutional infringement. Therefore, CGF has demonstrated that the 10-day waiting period frustrates its purposes.

CGF has not met the second requirement. The testimony of CGF's chairman establishes that CGF is active in litigation in general, and has expended resources in connection with this lawsuit. However, expenditure of resources in the current lawsuit alone does not meet the requirements for direct standing. See Fair Hous., 666 F.3d at 1219. There is no evidence that deals with CGF researching, expending funds, educating or engaging in advocacy activities, or spending time addressing members' concerns about the 10-day waiting period separate and apart from this lawsuit. Cf. Valle Del Sol, 732 F.3d at 1018; Fair Hous., 666 F.3d at 1219.

Because there is no evidence that the 10-day waiting period laws have caused a diversion of CGF's resources, separate and apart from this lawsuit, CGF has not met its burden of establishing direct standing. See id.

b. SAF

SAF has met the first requirement. SAF is engaged in educational, research, and litigation efforts regarding the Second Amendment. SAF believes that the 10-day waiting period unconstitutionally infringes upon the Second Amendment rights of its members and of non-members in California, and has brought this lawsuit to remedy that perceived infringement. Therefore, SAF has demonstrated that the 10-day waiting period frustrates its purposes.

SAF has met the second requirement. SAF has been researching the 10-day waiting period for likely more than a decade. SAF yearly receives numerous complaints and questions from its members about the 10-day waiting period. SAF has had to divert time, resources, and money as part of its efforts to research the 10-day waiting period and to educate and address the concerns of its California members. Therefore, SAF has demonstrated a diversion of resources from the 10-day waiting period. Cf. Valle Del Sol, 732 F.3d at 1018; Fair Hous., 666 F.3d at 1219.

Because SAF has met both requirements, it has established its direct standing to challenge the 10-day waiting period laws. See id.

2. Representative Standing

An organization has standing to bring suit on behalf of its members if the organization shows: (1) its members would have standing to bring suit; (2) the lawsuit is germane to the organization's purpose; and (3) neither the claims asserted nor the relief requested require participation of a member. See Friends of the Earth, 528 U.S. at 181; Bellon, 732 F.3d at 1139.

CGF and SAF have met the requirements for representative standing by an organization. Both CGF and SAF have members in California who either already possess a firearm, a COE, or a CCW license, and plan on obtaining a firearm in the future. These California members' Second Amendment right to keep and bear firearms is burdened by the 10-day waiting period, see *infra*., and those members could have filed suit on their own behalf. The burden imposed by the 10-day waiting period is germane to the purposes of both CGF and SAF. These organizations actively research, publicly address/educate, and litigate on Second Amendment issues. No specific members are necessary to either determine the constitutional validity of the challenged laws or to fashion a remedy. Therefore, CGF and SAF have representative standing to sue on behalf of their members. Friends of the Earth, 528 U.S. at 181; Bellon, 732 F.3d at 1139.

III. SECOND AMENDMENT CHALLENGE

A. Contentions

Plaintiffs' Contentions

Plaintiffs argue that the 10-day waiting period interferes with the right to keep and bear arms, interferes with property rights, and causes additional expenses that may prevent a person from obtaining a firearm. Plaintiffs argue that there were no waiting period laws in existence in either 1791 or 1868, that waiting period laws are not prevalent today, and are not longstanding and presumptively lawful regulations.

Plaintiffs argue that it is unnecessary to determine whether intermediate or strict scrutiny applies because the waiting period laws will not pass intermediate scrutiny. Under intermediate scrutiny, the 10-day waiting period laws are justified as being necessary to do a background check and to provide a cooling off period. However, Plaintiffs argue that they do not contend that they

should be exempt from a background check, rather their challenge deals with timing. As for background checks, 10-days is an arbitrary figure. For 20% of all applicants, the background check is approved and completed in about one hour. For those who already own a firearm and are known to be trustworthy due to the licenses that they hold and a history of responsible gun ownership, there is no justification for imposing the full 10-day waiting period. With respect to cooling off periods, Plaintiffs aver that for those individuals who already possess a firearm, the waiting period will not prevent impulsive acts of violence because the individual already has a firearm. As to concerns about whether a person may become prohibited from possessing a firearm after the firearm has been delivered, California has implemented two "safety net" systems, APPS and rap back. These programs undercut the need to impose a full 10-day waiting period.

Plaintiffs propose that the Court should order modification of the background check system and waiting period laws as follows: Any person for whom Defendant can determine (a) has a valid and current CCW license, that person should be subject to the same background check as the 18 statutory exceptions to the 10-day waiting period and should not be subject to the 10-day waiting period; (b) has a valid and current COE and for whom the AFS system shows a firearm purchase since 1996, that person is subject to the same background check as the 18 statutory exceptions to the 10-day waiting period and should not be subject to the 10-day waiting period; and (c) has purchased a firearm that is documented in the AFS system since 1996, that person may take delivery of the firearm upon approval of the background check. See Doc. No. 91 at pp.29-30.

Defendant's Contentions

Defendant argues that the 10-day waiting period does not burden the Second Amendment. None of the organizational plaintiffs have attempted to purchase a firearm, and both Plaintiffs Jeff Silvester and Brandon Combs have possessed a firearm at all relevant times. The increased cost or minor inconvenience of having to make return trips to a gun store are *de minimis*.

Defendant also argues that the 10-day waiting period falls under one of the longstanding regulatory measures identified by the Supreme Court. The 10-day waiting period is a condition or qualification on the commercial sale of a firearm. As a longstanding and presumptively lawful regulation, the 10-day waiting period does not burden the Second Amendment.

Defendant also argues that in 1791 and 1868, the nature of production of firearms, where firearms were sold in relation to where people lived, and the relative expense of firearms made obtaining a firearm within 10 days of deciding to purchase one nearly impossible. As a result, the people of 1791 and 1868 would have accepted a 10-day waiting period before obtaining a firearm.

Defendant argues that if the Second Amendment is burdened, the 10-day waiting period's burden is not so severe as to justify strict scrutiny. Under intermediate scrutiny, the 10-day waiting period laws are constitutional. The waiting period laws serve the important interests of public safety and keeping prohibited persons from obtaining firearms.

The 10-day waiting period reasonably fits these interests in three ways. First, it provides sufficient time for the Department of Justice to perform a background check. The nature of the databases utilized often require analysts to seek out information and dispositions from other agencies, entities, and states, which can be extremely time consuming. Further, sometimes prohibiting information is entered into the system after the initial check. Without the 10-day waiting period, there could be an incomplete check and prohibited individuals could obtain firearms. Relying on a CCW license or a COE is not a substitute for the background check because new prohibiting events may have arisen after a person obtains the CCW license or COE. Second, it provides a cooling off period so that individuals will have time to re-think committing impulsive acts of violence. Suicide is often based on transient thoughts. Studies show that waiting periods limit a person's access to firearms, and allows time for the transient suicidal thoughts to pass. Even if a person has a firearm in the AFS system, there is no guarantee that the person still has the firearm. Further, a firearm may be in an inoperable condition, or a person may not have ammunition for the weapon. For those individuals, a cooling off period could be beneficial. Further, some guns are not suitable for some purposes, and a cooling off period for a newly purchased firearm is beneficial. Finally, the waiting period laws provide Department of Justice agents with additional time in which to investigate straw purchases. It is better to intercept a weapon before it is delivered to a purchaser. If the waiting period laws did not exist, law enforcement would have to perform more retrievals of firearms from straw purchasers. Therefore, the 10-day waiting period is a "reasonable fit" and constitutional.

B. Findings of Fact

1. Impact of the 10-day Waiting Period

Unless a statutory exception applies, every person who wishes to purchase a firearm in California must wait at least 10-days from the date of purchase before taking possession of a firearm. See Cal. Pen. Code §§ 26815(a), 27540(a).

The 10-day waiting period affects a person's ability to defend themselves through the use of a newly purchased firearm. See Trial Tr. at 74:2-75:1. The 10-day waiting period interferes with the exercise of dominion over property with respect to a newly purchased firearm. See Trial Tr. 29:10-13, 74:21-75:1.

Generally, the 10-day waiting period requires a firearm purchaser to make at least two trips to a firearms dealer in order to complete a firearms transaction. The multiple trips required to complete a transaction can cause disruptions in work and personal schedules, extra fuel expense, and wear and tear on a car depending upon where a firearm or a firearms dealer is located in relation to the purchaser. See id. at 26:9-14, 33:16-34:12, 35:13-36:8. This can be a financial burden on a purchaser. See id. at 26:15-18, 84:15-85:3.

The 10-day waiting period may also necessitate additional fees for the transfer of firearms between dealers, so that a person can purchase a firearm from a more distant dealer, but can retrieve the firearm from a closer dealer. See 28:2-29:1.

Schedule conflicts and dealer location may cause a person to miss the window to retrieve a firearm after the 10-day waiting period has expired. See 65:12-66:10.

The additional transfer expenses, the impact on a purchaser's schedule, and/or the location of a firearm may combine with the 10-day waiting period to cause a person to forego purchasing a firearm. See 111:2-6.

Plaintiffs Brandon Combs ("Combs") and Jeff Silvester ("Silvester") each currently possess a firearm and both intend to purchase a firearm in the future. See 20:24-21:9, 49:12-19. Neither Combs nor Silvester is prohibited from owning or possessing a firearm in California. See id. at 21:10-11, 63:4-64:21. Both Combs and Silvester have foregone opportunities to purchase a firearm, or have been unable to complete the purchase of a firearm, due to operation of the 10-day

waiting period. See id. at 27:18-28:6, 29:2-9, 35:9-36:8, 74:21-75:1, 79:11-14, 82:6-84:1.

2. Waiting Period Laws

Defendant has identified no laws in existence at or near 1791 or 1868 that imposed a waiting period of any duration between the time of purchase and the time of possession of a firearm.

Defendant has identified no historical materials at or near 1791 or 1868 that address government imposed waiting periods or the perception of government imposed waiting periods in relation to the Second Amendment.

To the Court's knowledge, ten states and the District of Columbia impose a waiting period between the time of purchase and the time of delivery of a firearm. Three states and the District of Columbia have waiting period laws for the purchase of all firearms: California (10 days), District of Columbia (10 days),[11] Illinois (3 days for pistols, 1 day for long guns),[12] and Rhode Island (7 days).[13] Four states have waiting periods for hand guns: Florida (3 days),[14] Hawaii (14 days),[15] Washington (up to 5 days from the time of purchase for the sheriff to complete a background check),[16] and Wisconsin (2 days).[17] Connecticut has a waiting period for long guns that is tied to an authorization to purchase from the Department of Emergency Services and Public Protection.[18] Minnesota and Maryland have a waiting period for the purchase of handguns and assault rifles (7 days).[19] There is no federal waiting period law. See 18 U.S.C. § 922(s) (Brady Act's 5-day waiting period expired in 1998).

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[11] D.C. Code Ann. § 22-4508.

[12] 720 Ill. Comp. Stat. 5/24-3(A)(g).

[13] R.I. Gen. Laws §§ 11-47-35(a)(1), 11-47-35.2(a).

[14] Fla. Stat. § 790.0655(1)(a).

[15] Haw. Rev. Stat. Ann. § 134-2(e).

[16] Wash. Rev. Code Ann. § 9.41.090(1)(c).

[17] Wis. Stat. Ann. § 175.35(2)(d).

[18] Conn. Gen. Stat. Ann. §§ 29-37(d), (e).

[19] Md. Code Ann., Pub. Safety §§ 5-101(r), 5-123 to 5-125; Minn. Stat. § 624.7132(Subd. 4).

In 1923, the California Legislature created a waiting period for handguns, whereby no handgun, pistol, or other concealable firearm could be delivered to its purchaser on the day of purchase. See Def. Ex. CD (1923 Cal. Stat. ch. 339 §§ 10, 11).

In 1953, the 1923 handgun waiting-period law was codified into the California Penal Code with no substantive changes. See Def. Ex. CE (1953 Cal. Stat. ch. 36 §§ 12071, 12072). One California court has cited legislative hearing testimony from 1964 in which witnesses testified that this 1953 law was "originally enacted to cool people off," but that this law was "not enforced with regard to individual transfers through magazine sales nor at swap meets."[20] People v. Bickston, 91 Cal.App.3d Supp. 29, 32 & n.4 (1979).

In 1955, the California Legislature extended the handgun waiting period from 1 day to 3 days. See Def. Ex. CF (1955 Cal. Stat. ch. 1521 §§ 12071, 12072). No legislative history has been cited that addresses why the waiting period was extended from 1 to 3 days.

In 1965, the California Legislature extended the handgun waiting period from 3 days to 5 days. See Def. Ex. CI at AG000401-402 (1965 Cal. Stat. ch. 1007 §§ 12071, 12072).

The legislative history indicates that the Legislature extended the waiting period from 3 days to 5 days in 1965 because the 3-day waiting period did not provide Cal. DOJ sufficient time to conduct proper background checks on prospective concealable firearms purchasers, before delivery of the firearms to the purchasers. See Bickston, 91 Cal.App.3d Supp. at 32; Def. Ex. CI at AG000468 (June 30, 1965 letter from Cal. Assemblymember Beilenson letter to the Governor); Def. Ex. CI at AG000470 (June 24, 1965 letter from Assistant Attorney General Barrett to the Governor). Additionally, a report from the 1975-1976 session of the Senate Judiciary Committee indicates that the "purpose of the 5-day provision is to permit the law enforcement authorities to investigate the purchaser's record, before he actually acquires the firearm, to determine whether he falls within the class of persons prohibited from possessing concealed firearms." Def. Ex. CH at AG000298 (Cal. S. Comm. on the Judiciary, 1975-76 Regular Sess., Rep. on A.B. 1441, at 1-2 (1975)). No legislative history relating to the 1965 law has been cited that relates to a "cooling off" period.

[20] The parties have not referred or cited to any hearing testimony from 1964.

In 1975, the California Legislature extended the handgun waiting period from 5 days to 15 days. See Def. Exh. CH (1975 Cal. Stat. ch. 997 §§ 12071, 12072).

The legislative history indicates that the California Legislature extended the waiting period from 5 days to 15 days in order to "[g]ive law enforcement authorities sufficient time to investigate the records of purchasers of handguns prior to delivery of the handguns." Def. Ex. CH at AG000297 (Cal. S. Comm. on the Judiciary, 1975-76 Regular Sess., Rep. on A.B. 1441, at 1-2 (1975)). A waiting period of 5 days was thought to be "inadequate for the [California] Bureau [of Firearms] to thoroughly check all records of the purchasers . . ." Id. at AG000344 (September 15, 1975 letter from Cal. Assemblymember Murphy letter to the Governor). No legislative history relating to the 1975 law has been cited that addresses a "cooling off" period.

In 1991, the California Legislature expanded the waiting period to cover all firearms. See Cal. Pen. Code §§ 12071, 12072 (1991 ed.) & Historical & Statutory Notes for 1990 Legislation.

In 1996, the California Legislature reduced the waiting period from 15 days to 10 days. See Def. Ex. CG (Cal. S.B. 671, 1995-96 Regular Sess., ch. 128 sections 12071(b)(3)(A), 12072(c)(1)); Trial Tr. 169:2-5.

The California Legislature reduced the waiting period from 15 days to 10 days because the California Department of Justice ("Cal. DOJ)'s Bureau of Firearms ("BOF") switched to an electronic database system, which allowed for faster processing of background checks. See Def. Ex. CG at AG000061, AG000212 (Cal. S.B. 671, 1995-96 Regular Sess., S. Third Reading, as amended Jun. 4, 1996); see also Def. Ex. CG at AG000057 ("This bill will assist the Department and gun dealers in expediting the background check process."). BOF is the agency within Cal. DOJ that conducts background checks on prospective firearm purchasers. See Trial Tr. 167:11-13.

A report from the Senate Committee on Criminal Procedure and a report from the Assembly Committee on Public Safety indicate that the waiting period is used to provide time to complete a background check and to provide a "cooling off" period. See Def. Ex. CG at 2099-0051 and AG000075. However, no legislative history related to the 1996 law has been cited that deals with specific findings or evidence related to the "cooling off" period.

One California court has opined: "[I]t appears that an original intent to provide at least an

overnight cooling-off period from 'application for the purchase' was supplemented over the years with additional time to allow the Department of Justice to investigate the prospective purchaser of the weapon." Bickston, 91 Cal.App.3d Supp. at 32.

3. The California Background Check

The California background check begins with the completion and submission of a Dealer Record of Sales ("DROS"). See Trial Tr. 170:21-24. The DROS is an application form that a gun dealer electronically submits to Cal. DOJ, which contains information about the prospective purchaser, the firearm, and the dealership. See id. at 171:3-19.

After Cal. DOJ receives a DROS application, BOF begins the background check process on the prospective purchaser. See id. at 171:18-172:3.

The DROS application is sent to Cal. DOJ's Consolidated Firearms Information System ("CFIS"), which is a computerized system. See id. at 292:7-16. CFIS coordinates the electronic portion of the background check process, called the Basic Firearms Eligibility Check ("BFEC"), by sending inquiries to other electronic databases and compiling the responses.[21] See id. at 292:17-294:1.

The first database queried as part of the BFEC is California's Department of Motor Vehicles ("DMV") database.[22] See id. at 294:2-3.

The identification information on the DROS application is verified with DMV for several reasons: to ensure that the background check is run on the correct person, to prevent the occurrence of "straw purchases,"[23] and to prevent people from using fake identification to purchase firearms. See id. at 236:23-237:9.

Cal. DOJ sends a DROS applicant's California driver's license or California identification number to the DMV database. See id. at 294:4-9. The DMV database then returns the person's

[21] Defendant's Exhibit CB is a chart that depicts the databases reviewed during the automated review portion of the background check process.

[22] Firearms purchasers are required to have a valid California driver license or identification card issued by DMV. See Trial Tr. 236:15-22.

[23] "Straw purchases" occur when a purchaser obtains a firearm for a separate, undisclosed, prohibited person. See Trial Tr. 343:4-14.

name, date of birth, and license status to Cal. DOJ. See id.

The name and date of birth returned by the DMV database are checked against the name and date of birth on the DROS application to see whether the information matches. See id. at 294:10-18. If the information matches and the driver license status is valid, the system continues to the next check within the BFEC process. See id. at 294:19-21. If the information does not match, a "DMV mismatch" is recorded, the background check process stops, and the DROS application is sent to a DMV mismatch queue for Cal. DOJ analysts, who are known as Criminal Identification Specialist IIs ("CIS Analysts"), to review. See id. at 200:12-17, 294:22-295:6.

CIS Analysts must verify the information before making a final determination as to whether there is a mismatch. See id. at 238:13-239:2. A DMV mismatch does not necessarily indicate that the person is prohibited from owning or possessing a firearm. See id. at 237:10-238:12. A DMV mismatch can occur for an innocent reason, such as if a dealer incorrectly enters information on the DROS application, or if the applicant has changed his/her name and is using the new name to purchase the firearm, but has not yet updated that information with the DMV. See id.

Unless a DMV mismatch can be corrected by a CIS Analyst, the DROS application must be rejected. See id. at 172:4-11, 238:17-25.

Once a DROS application successfully passes the DMV database check, the next step in the BFEC process is for the DROS application to be queried against the Automated Firearms System ("AFS") database. See id. at 295:9-12. The AFS database checks to see if the subject firearm has been reported as lost or stolen. See id. at 173:7-14, 295:19-20.

The AFS contains various firearms records, but does not contain records for every gun in circulation in California. See id. at 180:17-19. The bulk of the firearms records in the AFS database are DROS's that were made on a particular date and time. See id. at 180:21-24. DROS records from January 1, 2014 forward are kept for long guns. See id. At 181:24-182:1. Although they may go back earlier, the bulk of the DROS records for handguns are from 1996 forward. See id. at 340:1-11. Registrations of certain weapons classified as "assault weapons" from 1989 to 2001 are contained in the AFS. See id. at 181:2-7. The AFS also contains records of CCW

license holders. See id. at 181:8-9. The AFS also contains law enforcement reports of weapons that have been identified as being lost, stolen, evidence, held for safekeeping, or retained for official use. See id. at 181:9-13. Finally, the AFS contains voluntary reports of people who have obtained a firearm by various methods, such as operation of law, an inter-family transfer, or transfers relating to curios and relic collections. See id. at 181:14-21. The AFS database is not an "absolute database," but is a type of "leads database" that reflects Cal. DOJ's belief about whom the last possessor of a firearm was based on the most recent DROS transaction. See id. 253:11-14. Law enforcement personnel can access the AFS in the field in real time, and law enforcement officers view the AFS database as reliable. See id. at 251:19-22, 252:15-21, 443:3-20.

If the AFS search finds that the subject firearm has been reported as lost or stolen, Cal. DOJ notifies the local law enforcement agency that made the report and requests that the agency conduct an investigation to confirm that the firearm involved in the pending DROS transaction is the same firearm that was reported as lost or stolen, and to confirm whether the "lost or stolen" entry in the AFS database is still valid and active. See id. at 174:5-14. The resulting investigations by local law enforcement agencies require them to take an active role to confirm that the firearm on the DROS application is actually the firearm that was reported as lost or stolen. See id. at 175:5-9. How soon an agency begins its investigation depends on the agency's priorities, and the issue is rarely resolved within one day's time. See id. at 175:10-15.

If a gun passes the AFS database check, and if the subject gun is a handgun, then the CFIS conducts a 30-day purchase-restriction check.[24] See id. at 296:5-8.

CFIS checks within its own database to determine whether the DROS applicant purchased another handgun within the previous 30 days. See id. at 296:9-12. If the DROS applicant purchased another handgun within 30 days, then the background check stops and the DROS application is denied. See id. at 296:13-15.

If the DROS applicant has not purchased a handgun within the previous 30 days, CFIS continues to check whether the applicant has had a previous application denied. See id. at 296:16-

[24] Under California law, a person can lawfully purchase only one handgun in a 30-day period. See Cal. Pen. Code § 27535; Trial Tr. at 206:19-21.

23. If so, summary information regarding the previous denial is electronically appended to the background check results for a CIS Analyst to review at a later time. See id. at 296:24-297:3. The background check then continues forward. See id. at 297:3-4.

The next step in the BFEC process for all firearms is for the DROS application to be queried against the Automated Criminal History System ("ACHS"). See id. at 297:14-18. ACHS is a state database that contains criminal history information reported to Cal. DOJ by criminal justice agencies in California. See id. at 176:7-16.

The DROS applicant's name, variations on the DROS applicant's name (e.g. Robert, Bob, Bobby), date of birth, a range of dates around the date of birth, and any other identifying information from the DROS application, are all run through the ACHS database as part of an initial check. See id. at 297:19-22, 298:22-299:8. As part of the initial check, ACHS also will query three other databases: the Wanted Persons System ("WPS") database, the California Restraining and Protective Order System ("CARPOS") database, and the Mental Health Firearms Prohibition System ("MHFPS") database. See id. at 297:23-298:7.

WPS is a California state database that contains records of warrant information. See id. at 184:10-21. A person with a record in WPS could potentially be prohibited from possessing a firearm. See id. at 184:14-18. Under federal law, any warrant prohibits the wanted person from owning or possessing a firearm, and under state law, persons wanted for a felony offense are prohibited from owning or possessing a firearm. See id. at 184:22-185:6

CARPOS is a California state database that contains information on restraining and protective orders. See id. at 182:16-21, 184:6-9. CARPOS is queried in order to detect domestic violence restraining orders and certain protective orders that would prohibit the DROS applicant from owning or possessing a firearm. See id. at 182:22-25.

MHFPS is a California state database that contains mental health records and records of certain prohibited juveniles. See id. at 185:18-186:2. MHFPS is queried in order to detect prohibitions under California law relating to mental health issues. See 186:3-187:17.

The initial check is to see if there is more detailed information about the DROS applicant contained within any of the ACHS, WPS, CARPOS, and MHFPS databases. See id. at 298:17-21.

If the name variations and possible birth dates run in the initial check match records in ACHS's own database, then ACHS returns "criminal identification information" ("CII") numbers associated with the records. See id. at 300:1-13, 327:19-22. CFIS then conducts a subsequent query of the ACHS database utilizing the unique CII numbers to obtain more detailed criminal history information about the DROS applicant. See id. at 300:1-13. If any of the variant names and birth dates match information contained in the WPS, CARPOS, or MHFPS, then the CFIS system will do a subsequent check of those databases using the particular name and birthdate that generated a match during the initial search so that more detailed information/records can be obtained. See id. at 298:17-21, 300:14-301:23.

If matches are found in the ACHS, WPS, CARPOS, or MHFPS databases, the information is appended to the results of the background check. See id. at 301:18-23.

After the ACHS, WPS, CARPOS, or MHFPS queries are complete, the next step in the BFEC process is for the DROS application to be queried against the federal National Instant Criminal Background Check System ("NICS") database. See id. at 302:1-3.

NICS checks are similar to ACHS checks in that NICS does a name variant and birth date range check. See id. at 302:4-11. Also similar to ACHS, NICS will conduct a search of its own database as well as a search of three other federal databases: the Interstate Identification Index ("III") database, the National Crime Information Center ("NCIC") database, and the Immigration and Customs Enforcement ("ICE") database. See id. at 191:6-8, 193:13-14, 194:17-25, 195:1-3, 302:12-17.

The III database contains criminal history records from California and other states that share their criminal history records with the FBI. See id. at 191:6-16. If a person is convicted of a felony in any state, that person is prohibited from owning or possessing a firearm under California law. See id. at 192:1-4.

The NCIC database contains federal warrants, domestic violence restraining orders, and stolen gun information. See id. at 193:15-19.

The ICE database helps to identify people who are in the United States unlawfully. See id. at 195:1-7.

If there are matches or "hits" in the NICS system, the CFIS system goes into a response process. See id. at 303:3-7. The CIFS system will check if there is an FBI number or a state identification number from another state that was included in the NICS response. See id. at 303:7-8. If there are FBI or state identification numbers, then the CFIS system will send another transaction out specifically to the III database to see if there is additional information. See id. at 303:9-12.

After the NICS check is completed, the BFEC is considered complete. See id. at 303:13-16. All results obtained by CFIS through the BFEC's search of databases are attached to the DROS application, and those DROS applications for which there is a hit/match are placed into the DROS processing queue for a CIS Analyst to review. See id. at 200:6-11, 303:13-304:3. The processing queue is an electronic queue. See id. at 200:9-10.

CIS Analysts first review records in the DMV mismatch queue to determine whether there is a real mismatch of the applicant's identity in the DMV records, or whether the records can be fixed and a match can be made. See id. at 316:20-317:15. If the CIS Analyst is able to correct the mismatch, the CIS Analyst will then send the DROS application through the BFEC process. See id. If a match cannot be made, the DROS application is rejected. See id. at 317:3-5.

CIS Analysts then verify that each DROS applicant is the same individual matched by the computer to the criminal and other database records. See id. at 201:16-20.

CIS Analysts then look into the record to determine if the information in the record would prohibit the individual from possessing a firearm. See id. at 201:20-22. If there is information in the record that would prohibit possession of the firearm, then the CIS Analyst verifies the prohibiting information. See id. at 201:23-202:6. If the CIS Analyst determines that an individual is prohibited from purchasing or possessing a firearm, the CIS Analyst instructs the dealer not to deliver the firearm to the DROS applicant. See id. at 202:7-10.

The amount of time it takes a CIS Analyst to process a queued DROS application depends upon the size of the records involved and the number of databases for which there have been hits. See id. at 202:11-14. It is "fairly routine" for a CIS Analyst to take longer than a day to process a queued DROS application. See id. at 202:15-20.

CIS Analysts may have to confirm or discover a disposition as part of the process of verifying prohibiting information. For example, if the disposition of a prohibiting arrest was a conviction, the person would not be eligible to own or possess a firearm, but if the conviction was dismissed or reduced, the person may be eligible. See id. at 179:11-25.

In cases in which an arrest record contains no dispositional information, the CIS Analyst must obtain a final disposition on that arrest to determine whether the person is actually prohibited. See id. at 201:23-202:6. Without dispositional information, a CIS Analyst cannot determine whether an individual is eligible to own and possess a firearm because there must be a conviction for there to be a prohibition. See 323:12-21. If there is an open disposition, a CIS Analyst has to obtain the disposition, which could mean telephoning a local law enforcement agency, a district attorney, or a court to try to find out the disposition (for example, a conviction or a dismissal). See id. at 180:5-13, 201:23-202:6, 323:12-324:1. Dispositional records could be lost, missing, or purged. See 177:10-11.

In addition to obtaining and confirming in-state records, CIS Analysts routinely "chase down" out-of-state dispositions. See id. at 192:14-21. The federal III database, which contains criminal history information from other states, often does not contain complete and accurate records on out-of-state criminal convictions. See id. at 192:5-8. Dispositional information is frequently missing in the III records. See id. at 192:9-13. CIS Analysts then have to call or fax courts of other states or federal courts to obtain the disposition information. See id. at 192:22-193:12.

Obtaining the necessary dispositional information from either in-state or out-of-state courts can be a very lengthy process. See 180:11-13.

For cases in which there is a disposition, CIS Analysts review criminal history or other relevant records to confirm that Cal. DOJ is correctly approving or denying a DROS application. See id. at 178:12-20.

Further, mental health facilities get information from the patients, who may not be able to provide accurate personal information, and this may cause the CIS Analysts to contact the mental health facility to ensure that a person is not prohibited. See id. at 455:17-456:5.

CIS Analysts must also review and verify the results of the federal NCIC queries because NCIC results are based on a person's name. See 193:20-194:7. CIS Analysts may also need to contact the relevant agencies to confirm that certain warrants are still active because sometimes the warrants are no longer valid. See id. at 194:4-13.

In addition to obtaining missing dispositional information, CIS Analysts must inquire into the background or details of records to make the correct determination on a prohibition. See id. at 319:1-14. For example, an analyst may have to determine whether a felony that was reduced to a misdemeanor actually could have been reduced. See id. at 319:15-18; see also 319:23-320:7. To conduct such an investigation, the CIS Analysts must contact the arresting agency for a copy of the arrest report and review that report and determine the relationship between the offender and the victim. See 320:8-17.

Similarly, if a member of the military is arrested out of state for possession of a controlled substance, a CIS Analyst must determine the disposition, determine whether the member was subject to a court-marshal, and find out the type of discharge the individual may have received (i.e., honorable or dishonorable). See id. at 320:23-321:7. To conduct this investigation, the CIS Analyst must obtain specific information from the military. See id. at 321:16-22.

CIS Analysts may also have to decipher people's names because aliases may be used. See id. at 455:4-16.

Not all DROS applications go to the processing queue for an analyst to review. See id. at 303:19-21. If a DROS application has been checked by all of the databases, and there are no hits or matches found in any of the databases, then that DROS application is considered "auto-approved" and is not put into any queue for a CIS Analyst to review. See id. at 198:5-12, 303:22-304:3.

The BCEF currently does not check to see if a DROS applicant has a COE, a CCW license, or a firearm within the AFS system. However, it is possible for the BCEF to include an automated search to determine whether a DROS applicant has a COE, a CCW license, or a firearm in the AFS system. See id. at 279:11-281:24. Such a check would be "simple." See id. at 279:23.

The BFEC may result in one of six dispositions: approved, denied, delayed, undetermined, approved after delay, and denied after delay.[25] See id. at 505:11-17. A DROS application may be delayed for up to 30 days in order for BOF to further investigate whether the applicant is prohibited from possessing a firearm. See id. at 506:11-21. For dispositions that result in a finding of "undetermined," i.e. BOF cannot determine whether a person is prohibited from possessing a firearm, the dealer has the discretion to either refuse or permit the transfer of the firearm. See id. at 232:6-15, 506:24-507:3.

Once BOF approves a DROS application, the DROS applicant has 30 days in which to take possession of the firearm. See 27 C.F.R. § 478.124; see also Cal. Pen. Code § 26835(f); Trial Tr. 459:10-13. Accordingly, BOF considers a completed and approved background check to "be good" for 30 days. See Trial Tr. at 459:10-13.

4. DROS Processing

Cal. DOJ can receive between 1,500 and 10,000 DROS applications per day, but on average, it currently receives between 2,000 to 3,000 DROS applications per day. See id. at 172:24-173:1, 456:6-8.

In 2010, Cal. DOJ processed 498,945 DROS applications, and had 5,026 denials. See Def. Ex. AA. Therefore, about 99% of DROS applications were approved and found to have been submitted by non-prohibited citizens in 2010.

In 2011, Cal. DOJ processed 601,243 DROS applications, and had 5,805 denials. See id. Therefore, about 99.1% of DROS applications were approved and found to have been submitted by non-prohibited citizens in 2011.

In 2012, Cal. DOJ processed 817,738 DROS applications, and had 7,524 denials. See id. Therefore, about 99.1% of DROS applications were approved and found to have been submitted by non-prohibited citizens in 2012. Of the denials, most were crime related, but 793 were due to mental health prohibitions and 405 were due to domestic violence restraining orders. See

[25] Under new legislation known as AB 500, and which appears to be codified at Penal Code § 28220(f), BOF can delay a disposition for up to 30 days in order to further investigate whether an applicant is prohibited from possessing a firearm. See Cal. Pen. Code § 28220(f); Trial Tr. 506:11-21. Plaintiffs have partially relied upon § 28220(f) in their discussion of straw purchases. Plaintiffs do not challenge the constitutionality of § 28220(f).

Defendant's Ex. AO.

In 2013, Cal. DOJ processed 960,179 DROS application, and had 7,371 denials. See Defendant's Ex. AP; 489Trial Tr. 332:4-14, 453:4-7. Therefore, about 99.3% of DROS applications were approved and found to have been submitted by non-prohibited citizens in 2013. Of the denials, most were crime related, but 810 were due to mental health prohibitions and 460 were due to domestic violence restraining orders. See Defendant's Ex. AP.[26]

There is always a backlog of DROS applications in the electronic DROS application queue for background checks, and the current backlog stands at about 20,000 DROS applications. See id. at 314:11-20. There are 24 CIS Analysts, and they typically work well in excess of 40 hours a week to keep up with the influx of DROS applications.[27] See id. at 200:18-19, 203:1-8, 313:7-314:13. CIS Analysts are required to work mandatory overtime hours (between 30 and 40 overtime hours per week) in order to address the backlog of queued DROS applications. See id. 313:7-314:3.

If a DROS application has been in the DROS application queue for an extended period of time before a CIS Analyst can review it, e.g. day 8 or 9 of the 10-day waiting period, then the CIS Analyst will re-run that DROS application through a "refresher" check of the CFIS state data bases in order to ensure that all updated information is in the CIS Analyst's possession. See id. at 322:3-23, 475:1-14. There have been instances in which additional prohibitors have arisen between the time the DROS application is submitted and the time in which the CIS Analyst reviews the application. See id. at 322:18-21. However, no evidence was presented that quantifies how many times new prohibitors have arisen between the initial check and the refresher check.

Approximately 80% of all DROS applications are not auto-approved and require the review of a CIS Analyst. See id. at 200:2-5.

[26] From 1991 to the present, there has consistently been a DROS application approval rate near 99%. See Defendant's Ex. AA.

[27] Cal. DOJ does not hire temporary employees as CIS Analysts because the California budget process does not allow the BOF to start hiring new people, and it typically takes six to eight months to train a CIS Analyst. See Trial Tr. 204:21-205:14, 326:17-327:11.

Approximately 20% of all DROS applications are auto-approved and do not go into the DROS application queue for review by a CIS Analyst. See id. at 198:13-15, 303:22-304:3.

Depending on network traffic or database maintenance issues, a DROS application can be auto-approved somewhere between 1 minute and 120 minutes, but "probably" auto approvals occur within 60 minutes.[28] See id. at 240:1-6, 307:22-309:15.

The only time that a CIS Analyst would review an auto-approved DROS application is if BOF is contacted about a particular DROS applicant by an outside source, such as a law enforcement officer or a medical professional. See 199:8-200:1. Outside requests to further investigate an auto-approved DROS application occur "occasionally." See id. at 199:14-16. No evidence was presented to quantify or explain what is meant by "occasionally." No evidence was presented concerning at what point in the 10-day waiting period the outside requests are received. No evidence was presented as to how many of the outside requests ultimately led to a denial of the auto-approved DROS applications.

There is no evidence of the average amount of time it takes to complete a "non-auto approved" DROS application. However, because of the daily applications received and the backlog, sometimes a CIS Analyst will not begin to review a queued DROS application until day 8 or 9 of the 10 day waiting period. See id. at 322:3-5.

BOF employees believe that 10 days is a sufficient period of time in which to complete a background check. See 473:25-474:5.

If a background check is completed prior to 10 days, the firearm is not released because state law mandates a 10-day waiting period. See id. at 244:5-12.

5. Information Entry In The Cal. DOJ Databases

Cal. DOJ databases may not have the most up-to-date information because reporting agencies may fail to submit information to the Cal. DOJ databases or may delay in submitting information to Cal. DOJ databases. See Trial Tr. 177:2-15, 187:8-188:15, 220:23-221:2, 324:13-16.

[28] The 1 minute figure is based on test programs that were run by BOF. See Trial Tr. 308:8-17.

ACHS is not always up-to-date with criminal history records for various reasons, including a lag time between actual disposition and entry of the disposition, and occasionally records are lost, purged, or never reported. See id. at 177:5-15.

Records in the MHFP are often not complete or up-to-date. See id. 187:8-10. Even though mental health facilities are required by law to report prohibiting events immediately, some facilities still submit records only periodically despite the ability to electronically report immediately. See id. at 187:23-188:7. Further, some courts have not been reporting mental health prohibition information as required by law, and when the state courts do report prohibiting events, the reports are done through the mail, which results in a time lag between when the courts mail the reports and when Cal. DOJ receives and processes them.[29] See id. at 187:13-188:15.

6. Cooling Off Period

A cooling off period is a period of time that is intended to provide a person with the opportunity to gather their emotions, so that they do not obtain a firearm in a state of anger and make impulsive decisions to commit acts of violence against themselves or others. See Trial Tr. 232:16-233:7, 499:16-24.

No evidence has been submitted regarding current or historical California suicide statistics or "time to crime" statistics.[30]

One study that examined 30 survivors of firearm suicide attempts indicated that suicide can be a relatively impulsive act in that more than half of the 30 survivors reported having suicidal thoughts for less than 24 hours. See Defendant's Ex. DS at 230. Other studies indicate that, of the total number of survivors studied, more than half had considered suicide for less than one hour prior to their attempt. See Defendant's Ex. DG at p.28. Another study indicates that risk periods for suicide are transient. See Defendant's Ex. DT at 61.

[29] There is currently work being done to automate the ability of the state courts to report prohibiting mental health events to the BOF. See 188:14-15. There is no indication of when those efforts will come to fruition.

[30] Time to crime statistics are kept by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives. See Trial Tr. 418:11-23. Time to crime statistics measure the elapsed time from a lawful sale of a firearm to the time of a crime committed with that firearm. See id.

In order to limit the access of a suicidal individual to a handgun, one recent study recommends a waiting period combined with a permit requirement. See Defendant's Ex. DG at 29. The study hypothesizes that for "a suicidal person who does not already own a handgun, a delay in the purchase of one allows time for suicidal impulses to pass or diminish." Id. No specific waiting period is advocated by this study.

Studies regarding suicide rates and waiting period laws conducted prior to 2005 are generally considered inconclusive. See Eugene Volokh, *Implementing the Right To Keep And Bear Arms For Self-Defense: An Analytical Framework And A Research Agenda*, 56 UCLA L. Rev. 1443, 1538 (citing Robert A. Hahn, et al., *Firearms Laws and the Reduction of Violence: A Systematic Review*, 28 Am. Jrnl. of Preventative Med. 40, 52 (2005)).

One study examined the national homicide and suicide rates between 1985 and 1997 in light of the enactment of the Brady Act. See Defendant's Ex. DH. For victims aged 21 to 55, no statistically significant differences between treatment states and controls states were found, as to either homicide rates or suicide rates. See id. at 588, 590. However, a decrease in suicide rates for individuals over the age of 55 was observed. See id. The decrease was at least partially offset by an increase in non-gun suicides, which makes it less clear that the waiting period reduced overall suicides for those over age 55. See Defendant's Ex. EJ.

One study performed in 1992 found that only 3% of suicides occur within 2 weeks of obtaining a firearm. See Defendant's Ex. DW at 235 (discussing Kellerman, A.L, et al., *Suicide In The Home In Relationship To Gun Ownership*, N. Eng. J. Med. 327:467-472 (1992)).

One study examined suicide rates for the 238,292 individuals who purchased handguns in California in 1991. See Defendant's Ex. DV. From 1991 to 1996, the waiting period in effect in California for handguns was 15 days. See id. The study concluded that those who purchase a handgun have a substantially increased risk of firearm suicide, beginning with the first week of purchase and lasting for six years. See id. Of the 238,292 purchasers, 48 committed suicide within two weeks of obtaining the firearm (after having waited 15 days), and 40 purchasers were murdered with firearms within the first month of obtaining a handgun. See id. at 1585.

7. Criminal Investigations Of Straw Purchases

A "straw purchase" is a purchase that a non-prohibited person makes for someone who is prohibited from owning and possessing a firearm. See Trial Tr. 343:4-14. Straw purchases are prohibited under federal law, and may implicate California law. See 18 U.S.C. §§ 922, 924; Abramski v. United States, 134 S.Ct. 2259 (2014); Cal. Pen. Code §§ 27545, 27590.

Some straw purchasers have never purchased a firearm in California, and some straw purchasers previously have purchased firearms in California. See id. at 350:12-16.

Gun dealers have the right to refuse to conduct a sale of a firearm. See id. at 405:1-3. Dealers can also be indicted for conspiring to facilitate straw purchases of firearms, and so have an incentive to report a suspected straw purchase. See id. at 405:18-25.

Cal. DOJ special agents attend gun shows to ensure that promoters are in compliance with the law and to prevent prohibited persons from obtaining firearms, magazines, or ammunition. See id. at 342:14-25. Special agents also look for potential straw purchases of firearms. See id. at 343:1-16.

The special agents attempt to identify the parties involved in a straw purchase, such as through license plates, business cards on tables, or observing printed forms being filled out. See id. at 346:14-347:10, 400:1-7. As many as four individuals may participate in a straw purchase at a gun show. See 346:14-347:1. Agents spend a good portion of their time attempting to determine whether any person whom they have identified at the gun show is a prohibited person. See id. at 398:9-399:2.

The special agents attempt to complete an investigation within 10 days because the agents want to be able to intercept the firearm before it is delivered to the straw purchaser. See id. at 348:14-25. Because of the nature of the investigation, if the waiting period were 3 days instead of 10, it would be nearly impossible for the special agents to complete an investigation of a gun show straw purchase prior to delivery of the firearm. See id. at 348:14-349:12. The special agents prefer to intercept a firearm before the firearm is transferred from the straw buyer to the prohibited person because it keeps the firearm off of the street and out of trouble. See id. at 349:13-21.

There are other ways in which the special agents become aware of straw purchases besides

observations at gun shows. See id. at 351:3-6. The federal Bureau of Alcohol, Tobacco, Firearms, and Explosives ("BATFE") and the gun dealers themselves may report suspicious activity, as well as special agent inspections of a gun dealer's records. See id. at 351:8-20. Depending on when the information is obtained by the special agent, the 10-day waiting period may aid the special agents in determining whether a transaction is a straw purchase and may help the agents intercept the firearm. See 353:6-9, 354:21-355:7, 356:10-16. However, sometimes the special agents must go retrieve the firearm from the straw purchaser because the firearm has already been delivered. See id. at 349:22-23, 354:21-355:7, 407:22-408:6, 408:19-24. For straw purchases detected through an inspection of a dealer's records, the firearm in question usually will have left the store by 30 to 60 days. See id. at 407:22-408:15.

There is no evidence concerning how many straw purchase arrests are made/violations determined by the special agents. There is no evidence that describes what percentage of straw purchase investigations are from gun shows or BATFE reports or dealer reports or dealer inspections. However, in approximately 15% of the straw purchase investigations, the weapon was intercepted within the 10-day waiting period. See id. at 408:16-24. Approximately 85% of straw purchase investigations do not conclude within the 10-day waiting period and a retrieval of the firearm may then be necessary. See id.

8. The APPS System

The Armed and Prohibited Persons System ("APPS") is a database that cross-references persons with firearms records in the AFS, typically a DROS record, with those who have a prohibiting conviction or circumstance. See Trial Tr. At 216:21-217:2. The APPS database consults each of the state databases involved in a BFEC, i.e. the AFS, ACHS, WPS, CARPOS, and MHFPS databases. See id. at 475:17-476:10. However, the APPS database is prohibited by law from accessing the NICS system. See id. at 475:11-15. APPS became active in 2007. See id. at 337:19-21. APPS is updated on a 24 hour 7 days a week basis. See id. at 497:25-498:7.

The purpose behind APPS is to identify prohibited persons who have firearms and to enable law enforcement to retrieve the firearms before those persons can use the firearms to harm others or themselves. See id. at 217:21-218:3. APPS is a kind of "pointer tool" that identifies

people who may be armed and prohibited in a particular law enforcement agency's jurisdiction, but the information in APPS must be updated and verified before any law enforcement action can be taken. See id. at 218:4-219:7, 337:4-10. As part of the verification process, dispositions sometimes must be "chased down" by an analyst. See id. at 219:11-20.

The BFEC and waiting period is designed to stop a prohibited person from obtaining a firearm, whereas the APPS system is designed to retrieve a firearm from someone who has subsequently become prohibited from possessing a firearm. See id. at 420:11-16, 497:10-15.

APPS records-matching software searches for only an exact name and date of birth, whereas the BFEC searches for name variants and date of birth ranges. See id. at 304:16-305:10. That is, the APPS check will only find exact matches to the name entered, but will not find variations of a name. See id. at 304:24-305:18.

There are 21,000 people identified as armed and prohibited in the APPS system, and these individuals purchased firearms prior to becoming prohibited from doing so. See id. at 338:2-8. Not every person who has become prohibited from possessing a firearm is in the APPS system. See id. at 219:7-10, 340:15-18. Most of the APPS candidates are pulled from records concerning handguns that were sold in California from 1996 forward. See id. at 340:3-11.

9. Rap-Back

A "rap-back" is a notification that Cal. DOJ receives whenever someone with fingerprints on file with Cal. DOJ is the subject of a criminal justice agency record, e.g. a notification of a subsequent arrest record. See Trial Tr. 221:21-222:9, 492:7-12. Rap-back is fingerprint based, which means the match is done by fingerprint. See id. at 223:19-20.

A non-fingerprint based event, such as a mental health hold or a restraining order, would not be discovered through rap-back. See id. at 223:13-16, 224:8-9. Cal. DOJ does not receive rap-backs for persons who are arrested or convicted outside of California. See id. at 224:25-225:2.

Rap-back mainly deals with people who are in the criminal history system and who have fingerprints on record. See 493:8-14. In contrast, APPS deals with people who may or may not have fingerprints in the criminal history system, but who nevertheless are found in a non-fingerprint database, such as the MHFP database. See id. at 493:8-12.

10. CCW Licenses

California law provides for either the sheriff of a county or the chief of police of a city to issue a CCW license to a citizen. See Cal. Pen. Code §§ 26150 (sheriff), 26155 (chief of police); Trial Tr. 458:19-20. CCW licenses apply to pistols, revolvers, or firearms that are capable of being concealed upon a person. See Cal. Pen. Code §§ 26150, 26155. A CCW license allows an individual to carry a concealed firearm in public. See id.

CCW licenses, amendments to CCW licenses, and applications for a CCW license are required to be uniform throughout California. See Cal. Pen. Code § 26175; Scocca v. Smith, 912 F.Supp.2d 875, 883 (C.D. Cal. 2012).

In order to obtain a CCW license, an applicant must prove to the sheriff or chief of police that: (1) the applicant is of good moral character; (2) good cause exists for issuance of the license; (3) the applicant either is a resident of the city or county, or has a place of business/employment within the city or county and spends a substantial period of time at the place of business/employment; and (4) the applicant has completed the training course required by Penal Code § 26165.[31] See Cal. Pen. Code §§ 26150, 26155. CCW license applicants must submit fingerprints along with the CCW license application, and those fingerprints are submitted to Cal. DOJ. See Cal. Pen. Code § 26185(a)(1); Scocca, 912 F.Supp.2d at 883. Additionally, if there is "compelling evidence," an applicant may be required to submit to psychological testing before being issued a CCW license. See Cal. Pen. Code § 26190(f).

Once Cal. DOJ receives the fingerprints, Cal. DOJ sends a report to the licensing agency relating to the CCW license applicant, including whether the person is prohibited under state or federal law from possessing, receiving, owning, or purchasing a firearm. See Cal. Pen. Code § 26185(a)(2).

The sheriff or chief of police may not issue a CCW license until he or she receives the Cal. DOJ report on the CCW applicant. See Cal. Pen. Code § 26185(a)(3). No CCW license may be issued if the Cal. DOJ "determines that the person is prohibited by state or federal law from

[31] The Court notes that in order to purchase a handgun in California, unless an exemption applies, an individual must obtain a handgun safety certificate. See Cal. Pen. Code § 31615. In order to obtain a handgun safety certificate, an individual must pay a fee and pass a written test. See Cal. Pen. Code §§ 31630, 31640, 31645, 31650, 31655.

possessing, receiving, owning, or purchasing a firearm." Cal. Pen. Code § 26195(a); Scocca, 912 F.Supp.2d at 883.

Once a CCW license is issued, it is valid for up to two years. See Cal. Pen. Code § 26220(a).

The sheriff or police chief may include reasonable restrictions or conditions that they deem warranted, including restrictions as to the time, place, manner, and circumstances under which the CCW license holder may carry a concealed handgun. See Cal. Pen. Code § 26200(a). With some exceptions, the general rule is that a CCW license has applicability throughout the state of California. See Scocca, 912 F.Supp.2d at 883-84.

A CCW license may be revoked whenever Cal. DOJ or the issuing local agency determines that the CCW license holder has become prohibited under state or federal law from possessing, owning, receiving or purchasing a firearm. See Cal. Pen. Code § 26195(b)(1). If Cal. DOJ determines that a CCW license holder has become prohibited, then Cal. DOJ is required to contact the local agency that issued the CCW license. See Cal. Pen. Code § 26195(b)(2). If the local agency revokes a CCW license, that local agency must notify Cal. DOJ. See Cal. Pen. Code § 26195(b)(3).

BOF does not issue CCW licenses, but does accept the applicant's fingerprints and runs a background check on the applicant in order to insure that the applicant is not prohibited from possessing a firearm. See Trial Tr. 458:17-459:6. The BOF forwards the results of the background check, along with a copy of the applicant's California criminal history, to the sheriff or chief of police. See id. at 459:4-6.

BOF considers an approved background check to "be good" for 30 days. See 459:7-13.

Sheriffs or chiefs of police rarely issue a CCW license within 30 days of the completed background check, and some agencies may wait as long as 9 months after the background check before issuing the CCW license. See id. at 459:14-23.

CCW license holders are subject to the "rap-back" system. See id. at 225:15-17. CCW license holders have a CII number. See id. at 488:14-489:22.

Silvester possess a CCW license issued by the City of Hanford chief of police. See Joint Ex. 6.[32]

11. Certificate Of Eligibility

A COE is a certificate issued by the California Department of Justice. See Cal. Pen. Code § 26710; Trial Tr. 60:14-17, 494:14-15.

In order to obtain a COE, a person must make a request for a COE to Cal. DOJ. See Cal. Pen. Code § 26710(a). The COE applicant is required to pay a fee. See id. § 26710(d). A COE applicant also provides a full set of live scan fingerprints and is issued a CII number. See Trial Tr. at 495:9-13. Cal. DOJ is then required to examine its records and the records in NICS "in order to determine if the applicant is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm." Cal. Pen. Code § 26710(b). If a person passes the background check, pays the filing fees, and submits the fingerprints, then Cal. DOJ is required to issue the COE. See Cal. Pen. Code § 26710(c); Trial Tr. at 511:9-12.

A COE is valid for one year. See Trial Tr. at 61:7-8. COE's may be renewed on a yearly basis by paying a fee. See id. at 60:23-25. Prior to the expiration of the COE, the holder submits a renewal form, attests to the accuracy of the date in the renewal form, and pays a fee. See id. at 61:9-22.

A COE is one component/requirement for several exceptions to the 10-day waiting period and for other firearms related activities. For example, "consultant evaluators," who are exempt from the 10-day waiting period, are required to have a COE. See Cal. Pen. Code §§ 16410, 27750. Along with a federal license, a COE is required for certain transfers of curio and relic firearms, and for the curio and firearm exception to the 10-day waiting period. See Cal. Pen. Code §§ 26585, 26970, 27670, 27966. Retail firearms dealers are required to possess *inter alia* a COE. See Cal. Pen. Code §§ 26700, 26705. A COE may also be obtained for employees of firearm dealers. See Cal. Pen. Code §§ 26915, 29120. In order to organize a gun show, an organizer or producer must have a COE. See Cal. Pen. Code §§ 16800, 27200. A COE is required for some

[32] The issuing agency is identified as the city of Hanford. Under Penal Code § 26155, Silvester's CCW license would have been approved by the Hanford chief of police.

transfers of used firearms at gun shows. See Cal. Pen. Code § 26525. A manufacturer of firearms is required *inter alia* to possess a COE. See Cal. Pen. Code § 29050. Additionally, some individuals in the entertainment industry or individuals working with the military may seek to obtain a COE. See Trial Tr. 494:25-495:8.

A COE reads: "This is to certify that [Cal. DOJ] has completed a firearms eligibility check on the above named individual. As of the date of issue, there is nothing that would prohibit the individual from acquiring or possessing a firearm." Plaintiff's Ex. 4. COE's also identify their "date of issuance" and their "date of expiration." See id.

COE holders are subject to the "rap-back" system. See id. at 224:21-24.

Combs possess a valid COE. See Joint Ex. 5.

C. Legal Standard

The Second Amendment reads: "A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The Second Amendment right to keep and bear arms is an individual right and a fundamental right that is incorporated against states and municipalities under the Fourteenth Amendment. See McDonald v. City of Chicago, 130 S.Ct. 3020, 3042 (2010); District of Columbia v. Heller, 554 U.S. 570, 595 (2008); Peruta v. County of San Diego, 742 F.3d 1144, 1149-50 (9th Cir. 2014); Nordyke v. King, 681 F.3d 1041, 1043 (9th Cir. 2012) (en banc). The Second Amendment "protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home." McDonald, 130 S.Ct. at 3044; see Heller, 554 U.S. at 630. However, the Second Amendment's protection is not unlimited, and longstanding regulatory measures such as "prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms," are presumptively lawful. McDonald, 130 S.Ct. at 3047; Heller, 554 U.S. at 626-27; United States v. Chovan, 735 F.3d 1127, 1133 (9th Cir. 2013).

The Ninth Circuit has adopted a two-step Second Amendment framework: (1) the court asks whether the challenged law burdens conduct protected by the Second Amendment, and (2) if

so, the court determines whether the law meets the appropriate level of scrutiny. See Jackson v. City & County of San Francisco, 746 F.3d 953, 960 (9th Cir. 2014); Chovan,735 F.3d at 1136; see also National Rifle Ass'n of Am. v. Bureau of Alcohol, Tobacco, Firearms and Explosives, 700 F.3d 185, 194-95 (5th Cir. 2012) ("N.R.A."); Ezell v. City of Chicago, 651 F.3d 684, 702-03 (7th Cir. 2011); United States v. Chester, 628 F.3d 673, 680 (4th Cir. 2010).

Under the first step, courts must determine "whether the challenged law burdens conduct protected by the Second Amendment, based on a historical understanding of the scope of the Second Amendment right, or whether the challenged law falls within a well-defined and narrowly limited category of prohibitions that have been historically unprotected." Jackson, 746 F.3d at 960 (citing Brown v. Entertainment Merchants Ass'n, 131 S.Ct. 2729, 2733-34 (2011)); Heller, 554 U.S. at 625; Chovan, 735 F.3d at 1136). This is accomplished by asking "whether the regulation is one of the 'presumptively lawful regulatory measures' identified in *Heller*, or whether the record includes persuasive historical evidence establishing that the regulation at issue imposes prohibitions that fall outside the historical scope of the Second Amendment." Jackson, 746 F.3d at 960 (citing Heller, 554 U.S. at 627; Chovan, 735 F.3d at 1137); see also Peruta, 742 F.3d at 1153-54; Ezell, 651 F.3d at 702-03; Chester, 628 F.3d at 680. In assessing the historical understanding, not all historical or scholarly sources are equal, and courts should focus on scholarly opinions that are consistent with *Heller* and *McDonald*, and on historical sources around the adoption of the Second Amendment (1791) and the time near the adoption of the Fourteenth Amendment (1868). See Peruta, 742 F.3d at 1155-66; Ezell, 651 F.3d at 702-03; Chester, 628 F.3d at 680. If a law burdens conduct that falls outside of the Second Amendment's scope, then the analysis ends and there is no violation. See N.R.A., 700 F.3d at 195; Ezell, 651 F.3d at 703.

As to the second step, rational basis review is not to be used. Heller, 554 U.S. at 628 n.27; Chovan, 735 F.3d at 1137. Instead, if a law burdens a right within the scope of the Second Amendment, either intermediate or strict scrutiny will be applied. See Jackson, 746 F.3d at 961; Chovan, 735 F.3d at 1138; N.R.A., 700 F.3d at 195; Chester, 628 F.3d at 682. Whether intermediate or strict scrutiny applies depends on: (1) how close the law comes to the core of the Second Amendment right, and (2) the severity of the law's burden on the right. Jackson, 746 F.3d

at 960-61; Chovan, 735 F.3d at 1138; N.R.A., 700 F.3d at 195; Ezell, 651 F.3d at 703. Generally, a regulation that threatens a core Second Amendment right is subject to strict scrutiny, while a less severe regulation that does not encroach on a core Second Amendment right is subject to intermediate scrutiny. See Jackson, 746 F.3d at 961; N.R.A., 700 F.3d at 195; Chester, 628 F.3d at 682.

The "intermediate scrutiny" standard requires: (1) that the government's stated objective must be significant, substantial, or important, and (2) that there is a reasonable fit between the challenged regulation and the government's asserted objective. Jackson, 746 F.3d at 960; Chovan, 735 F.3d at 1139; N.R.A., 700 F.3d at 195; Chester, 628 F.3d at 683. For there to be a "reasonable fit," the regulation must not be substantially broader than necessary to achieve the government's interest. See Peruta, 742 F.3d at 1177; Reed v. Town of Gilbert, 707 F.3d 1057, 1074 n.16 (9th Cir. 2013); Fantasyland Video, Inc. v. County of San Diego, 505 F.3d 996, 1004 (9th Cir. 2007); see also United States v. Marzzarella, 614 F.3d 85, 98 (3d Cir. 2010). The government cannot rely on "mere speculation or conjecture." See Edenfield v. Fane, 507 U.S. 761, 770-71 (1993); see also United States v. Carter, 669 F.3d 411, 418 (4th Cir. 2011) (government may not rely on "anecdote and supposition"). A regulation "may not be sustained if it provides only ineffective or remote support for the government's purpose," rather there must be an indication that the regulation will alleviate the asserted harms to a "material degree." Edenfield, 507 U.S. at 770-71; Valley Broadcasting Co. v. United States, 107 F.3d 1328, 1334 (9th Cir. 1997).

D. Conclusions Of Law

1. Burden On The Second Amendment

When the 10-day waiting period laws apply, they prohibit every person who purchases a firearm from taking possession of that firearm for a minimum of 10 days. One cannot exercise the right to keep and bear arms without actually possessing a firearm. Cf. Andrews v. State, 50 Tenn. 165, 178 (1871) ("The right to keep and bear arms necessarily involves the right to purchase them . . . ."). The purchased firearm cannot be used by the purchaser for any purpose for at least 10 days. Also, in some cases, due to additional costs and disruptions to schedules, the 10-day waiting period may cause individuals to forego the opportunity to purchase a firearm, and thereby

forego the exercise of their Second Amendment right to keep and bear arms. Therefore, the 10-day waiting period burdens the Second Amendment right to keep and bear arms.[33] Cf. id.

It is Defendant's burden to show that the 10-day waiting period either falls outside the scope of Second Amendment protections as historically understood or fits within one of several categories of longstanding regulations that are presumptively lawful. See Jackson, 746 F.3d at 960; Chovan, 735 F.3d at 1136-37; United States v. Greeno, 679 F.3d 510, 518 (6th Cir. 2012); Ezell, 651 F.3d at 702-03; Chester, 628 F.3d at 680. Defendant has not met her burden.

First, in terms of relevant historical understandings, Defendant has not established that waiting period laws were understood to be outside the protections of the Second Amendment. Defendant has cited no statutes or regulations around 1791 or 1868 that imposed waiting periods between the time of purchase and the time of delivery. Nor has Defendant cited historical materials or books that discuss waiting periods or attitudes towards waiting periods between 1791 and 1868. There is no evidence to suggest that waiting periods imposed by the government would have been accepted and understood to be permissible under the Second Amendment. Cf. Peruta, 742 F.3d at 1153-66.

Second, in terms of *Heller*'s longstanding presumptively lawful regulations, Defendant has not established that the 10-day waiting period is a presumptively lawful longstanding regulatory measure that imposes a condition and qualification on the commercial sale of a firearm. Such commercial regulations have been recognized as presumptively lawful by the Supreme Court. McDonald, 130 S.Ct. at 3047; Heller, 554 U.S. at 626-27. The Supreme Court did not explain what precisely it meant by the phrase "conditions and qualifications on the commercial sale of arms," and the parties have cited no cases that interpret this phrase. Through a parenthetical citation in *Nordyke*, the Ninth Circuit suggested that a county ordinance, which permitted firearms to be brought to gun shows on county property if the gun was secured or in one's personal

[33] Defendant has argued that because Combs and Silvester have each had a firearm during the relevant time period, their Second Amendment rights have not been impaired. However, that Combs and Silvester have been able to exercise their Second Amendment right with respect to at least one firearm does not mean that they have diminished rights under the Second Amendment. The Second Amendment applies to "arms" and its language does not limit its full protections to a single firearm. Some firearms are better suited for particular lawful purposes than others. Defendant has cited no authority that suggests that the Second Amendment only has application to a single firearm.

possession, was a law imposing a condition and qualification on the commercial sale of a firearm. See Nordyke, 681 F.3d at 1044. *Nordyke* did not expand on the concept beyond parenthetically quoting the relevant language from *Heller*. *Nordyke* may be read as indicating that the manner of how a firearm is displayed for sale is an acceptable commercial regulation.

Aside from *Nordyke*, and based on a plain reading of the term, longstanding commercial regulations might entail regulations about who may sell (e.g. a licensed dealer) or purchase (e.g. someone over the age of 18) a firearm, what firearms may be sold (e.g. prohibiting the sale of certain types of firearms), when a firearm may be purchased (e.g. no purchases after 8:00 p.m.), or where a firearm store may be located (e.g. zoning ordinances). In comparison to *Nordyke* and a plain reading of *Heller*'s language, it is not clear to the Court that a 10-day waiting period would qualify as a commercial regulation. Defendant cites no comparable commercial laws that apply to other goods and that require an individual to wait around 10-days before completing a purchase. The Court is not satisfied that Defendant has shown that the 10-day waiting period is one of *Heller*'s envisioned conditions and qualifications of a commercial sale.

Moreover, Defendant has not established that the waiting period law is sufficiently "longstanding" to be entitled to a presumption of lawfulness. Included in the concept of a "longstanding and presumptively lawful regulation" is that the regulation has long been accepted and is rooted in history. See N.R.A., 700 F.3d at 196; United States v. Rene E., 583 F.3d 8, 12 (1st Cir. 2008). It is true that California has had some form of a waiting period since 1923. However, as described above, the Court is aware of no waiting period laws in any states during the time periods around 1791and 1868. Consistent with these historical periods, currently only ten states impose a waiting period between the time of purchase and the time of delivery of a firearm. Waiting period laws did not exist near the time of adoption of the Second and Fourteenth Amendments, and they are not common now. That one state may have had some form of regulation for a significant period of time is insufficient for the Court to conclude that the law has been so generally accepted that it is presumptively lawful. Cf. N.R.A., 700 F.3d at 196 (". . . a longstanding measure that harmonizes with the history and tradition of arms regulation in this country would not threaten the core of the Second Amendment guarantee."). Further, the 10-day

waiting period at issue was not imposed until 1996, and it was not until 1975 that California began to impose a waiting period that extended to double digits (15 days). Prior to 1975, the waiting period was 5 days. The waiting period that was in effect the longest in California was the 1-day waiting period between 1923 and 1955 for handguns, and there is an indication that the law was not applied to all transactions. Imposition of waiting periods beyond a "single digit" period is a recent development. Cf. Church of the Am. KKK v. City of Gary, 334 F.3d 676, 682-83 (7th Cir. 2003) (noting that 30-day advance notice requirement to obtain a permit was reasonable under the circumstances of one case, but that a 45-day advance notice requirement was a substantially longer period and not reasonable). Finally, the waiting period at issue applies to all firearms. Prior to 1991, the waiting period applied only to handguns. Although the 1996 waiting period is shorter in duration than the 15-day period imposed in 1975, the 1996/1991 waiting period is wider in scope. Applying a waiting period to all firearms is a recent development. In essence, Defendant has simply pointed to the fact that California has had some form of waiting period since 1923. That is not enough.

The 10-day waiting period burdens the Second Amendment rights of the Plaintiffs.

2. Level Of Scrutiny

Defendants contend that intermediate scrutiny applies to this case. Plaintiffs contend that the Court may utilize intermediate scrutiny because, if the laws do not pass intermediate scrutiny, then they will not pass strict scrutiny. Plaintiff is correct that if the waiting period laws do not pass intermediate scrutiny, they will not pass strict scrutiny. Given the parties' focus on intermediate scrutiny, and the necessary implication if the laws do not pass intermediate scrutiny, the Court need not decide whether strict scrutiny applies. Instead, the Court will examine the waiting period laws under intermediate scrutiny.

3. Governmental Interest

Defendant contends that California has important interests in public safety/preventing gun violence and preventing prohibited individuals from obtaining firearms. Plaintiffs do not dispute that these are important interests. Courts have recognized a state's important public safety interest with respect to various firearms laws. See Jackson, 746 F.3d at 965. "It is self-evident that public

safety is an important government interest." Id. It is also self-evident that preventing people who are prohibited from possessing a firearm from obtaining one is also an important interest that goes hand in hand with public safety. Defendant has demonstrated that public safety and keeping firearms out of the hands of prohibited individuals are important interests. See id.; see also Chovan, 735 F.3d at 1139.

4. Reasonable Fit

Defendant has identified three rationales that it contends are "reasonable fits" that justify the 10-day waiting period: (1) conducting a background check; (2) providing a "cooling off period" to prevent impulsive acts of violence; and (3) investigating straw purchases. The Court will assess each of these justifications in relation to the three "as applied" groups.

a. Those Who Have A Firearm In The AFS System

The class of individuals that Plaintiffs identify within this group are those who already possess a firearm as confirmed by the AFS database, i.e. a firearm transaction is within the AFS system. See Doc. Nos. 91 at 30:5-8; and 105 at 7:15-18. Plaintiffs do not argue that this class of individuals should be exempt from further background checks. Rather, Plaintiffs contend that these individuals should not be subject to a per se 10-day waiting period, and should be able to take possession of their firearm upon passing the background check. See Doc. Nos. 98 at 16:10-15; and 105 at 7:6-8, 13:17-20, 30:25-31:12, 31:21-22. Thus, under Plaintiffs' arguments and challenges, this class of individuals will still be required to undergo and pass a background check when they attempt to purchase a firearm. See Doc. Nos. 91 at 30:5-8; and 105 at 7:6-9, 13:17-20, 30:25-31:22.

i. Background Check

Given the current BOF staffing levels, the potential additional research involved in reviewing a DROS application, and the possible response times from other agencies and states, 10-days is a sufficient period of time in the clear majority of cases for BOF to complete a background check and approve or deny a DROS application.

However, within the 10-day waiting period, background checks can be completed anywhere from 1 minute to 10 days.

20% of all DROS applications are auto-approved usually in about 1 to 2 hours, and require no further review.[34] The mandated 10-day waiting period is the only thing that stops BOF from approving the sale and releasing the firearm when a DROS application is auto-approved.

80% of all DROS applications are not auto-approved, and further review, analysis, and/or investigation is necessary to determine if a person is prohibited from possessing a firearm. For non-auto-approved DROS applications that are completed within 10-days, the 10-day mandatory waiting period is the only thing stopping BOF from approving the sale and releasing the firearm.

For all DROS applications that are approved by BOF prior to expiration of the 10-day waiting period, conducting a background check is no longer a justification for the 10-day waiting period because the DROS applicant has been approved as determined by a completed background check.

Although additional disqualifying information may come to BOF's attention during the 10-day waiting period, that can be said of any time-frame, be it 1 day or 60 days. Moreover, the requirement in essence is to pass the background check, it is not to pass the background check every day for 10 straight days. Further, 20% of all DROS applications are auto-approved in a very short period of time, and they normally are not reviewed or rechecked at any time. Finally, of the approximately 99% of DROS applications that are approved, no new disqualifying information was obtained during the 10-day waiting period. Of the approximately 1% of DROS applications that are denied, there is no evidence regarding when in the 10-day waiting period that the disqualifying information was obtained, i.e. was the disqualifying information obtained during the initial BFEC or was it obtained late in the process as part of a re-check. Requiring an approved DROS applicant to wait the full 10-days, when the application is otherwise approved and the applicant already has a firearm in the AFS system, on the chance that new information might come in, is unduly speculative and anecdotal. See Edenfield, 507 U.S. at 770-71; Carter, 669 F.3d at 418; Valley Broadcasting, 107 F.3d at 1334.

If disqualifying information arises about an individual who has already taken possession of a newly purchased firearm, California has in place the APPS system, which is designed to retrieve

[34] No evidence indicates that a material number of auto-approved DROS applications are ever rechecked.

such firearms from prohibited persons. The APPS system acts as a safety net for individuals who have been previously approved to possess a firearm, but who later become prohibited.

ii. Cooling Off Period

The rationale behind the "cooling off period" is to prevent individuals from performing impulsive acts of violence to others or to themselves. The "cooling off period" seeks to limit a person's access to a firearm.

Because 80% of DROS applications are not auto-approved, a waiting period of at least 1-day will naturally occur because CIS Analysts must obtain and review various information.

If a person already possess a firearm, then that person will generally have access to that firearm and may commit impulsive acts of violence with it.

There is no evidence that a "cooling off period," such as that provided by the 10-day waiting period, prevents impulsive acts of violence by individuals who already possess a firearm.[35] A waiting period for a newly purchased firearm will not deter an individual from committing impulsive acts of violence with a separate firearm that is already in his or her possession.

None of the submitted social science studies/excerpts advocate for a 10-day waiting period, or attempt to defend a 10-day waiting period as being supported by clinical or empirical evidence. The studies that are supportive of waiting periods are supportive in theory and seem to assume that the individual does not already possess a firearm. E.g. Defendant's Ex. DG at 29.

It is true that some individuals may not have ammunition for a firearm in their possession, or that the firearm may not be in working condition. However, no evidence attempts to quantify this, and it is unduly speculative to conclude that this is a common occurrence. See Edenfield, 507 U.S. at 770-71; Carter, 669 F.3d at 418; Valley Broadcasting, 107 F.3d at 1334.

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[35] Defendant argues that because some firearms are better suited for certain purposes than other firearms, a waiting period may prevent an impulsive act of violence with the new weapon. Relying on Agent Graham's testimony, Defendant cites the example of Shareef Allman, an individual who had several firearms, including at least one pistol, a rifle, and an assault-style weapon, and who killed nine people in Cupertino, California. See Trial Tr. at 360:13-20, 415:21-416:8. The assault-weapon was not used in the shooting. See id. at 415:17-21. The pistol was obtained legally, and it was unknown whether the rifle was legally obtained. See id. at 417:9-17, 418:3-10. However, as Agent Graham admitted, any cooling off period created by the 10-day waiting period did not work. See id. at 419:20-23. In Allman's case, Allman did not use the most dangerous firearm (the assault weapon). The firearms that Allman did have were either lawfully obtained and subjected to the 10-day waiting period, or they were obtained unlawfully and not subject to any background checks or waiting periods. Aside from Allman, Agent Graham had no other examples. See id. at 414:7-15.

If an individual already possess a firearm and then passes the background check, this indicates a history of responsible gun ownership. There has been no showing that applying the 10-day waiting period to all individuals who already possess a firearm will materially prevent impulsive acts of violence. See Valley Broadcasting, 107 F.3d at 1334.

In terms of the AFS database to confirm possession of a firearm, the BCEF can be modified to make a simple check if a DROS applicant has a firearm within the AFS database.

It is true that the AFS system does not contain every firearm in circulation in California. However, if a person has a weapon that appears within the AFS system database, and that person's application is otherwise approved, Defendant has not explained why it should be presumed that such an individual no longer possesses the firearm. Such a presumption is not supported by any identified evidence. Moreover, the AFS system is available to law enforcement personnel on a real time basis in the field, and law enforcement considers the AFS system to be reliable. If a law enforcement officer in the field who is about to confront a suspect can use and rely on the AFS system and proceed with more caution, then it is unknown why Cal. DOJ or BOF cannot also assume that an otherwise approved DROS applicant is still in possession of a firearm that is in the AFS system. Considering the absence of relevant data, law enforcement's real time reliance on the AFS system, and an otherwise approved background check, it can reasonably be assumed that a DROS applicant who has a firearm in the AFS system is still in possession of that firearm.[36]

iii. Straw Purchases

There is no evidence that the legislature implemented the waiting period laws in order to give law enforcement the opportunity to investigate straw purchases.

In a straw purchase, although it might be easier to intercept a weapon prior to delivery, this only occurs in about 15% of investigations. There is no evidence regarding the number of straw purchase investigations that lead to arrests or convictions or retrievals of firearms relative to the number of DROS applications. Further, although some straw purchasers have purchased other

[36]To the extent that there are unarticulated concerns about whether an individual still possess a firearm within the AFS system, it may be possible to add a question on the DROS application in order for the applicant to confirm that the individual still possess a firearm that was either voluntarily registered, a handgun purchased on or after January 1, 1996, or any firearm purchased on or after January 1, 2014. However, the parties have not addressed the issue, and the Court expresses no opinion on the matter, other than to say that an additional question may be a possibility.

guns in the past, there is no evidence regarding how often this occurs.

Straw purchase investigations begin when law enforcement officers review paperwork at gun shops, observe behavior and interactions at gun shows, or receive a tip from BATFE or a gun shop owner. Not all of the transactions observed or paperwork examined create a reasonable belief that a straw purchase is occurring. The agents only investigate a transaction if they have reason to believe that a straw purchase is occurring. Given Agent Graham's description of straw purchase investigations, the vast majority of transactions do not appear to be straw purchases.

Applying the full 10-day waiting period to all transactions for purposes of investigating a straw purchase, in the absence of any reason to suspect that a straw purchase is in fact occurring, is too overbroad. See Peruta, 742 F.3d at 1177.

If law enforcement officers personally observe what they believe to be a straw purchase, be it at a gun show or at a gun store, they may intercede during the purchase process.

If the legislature believes that law enforcement should have additional time in which to investigate a straw purchase, then a statute could be enacted that permits law enforcement to cause a delay in the approval of a DROS application, if law enforcement has reason to believe that a straw purchase is occurring.[37]

iv. Conclusion

As applied to individuals who already possess a firearm as confirmed by the AFS system, Defendant has not established that applying the full 10-day waiting period when the background check is completed prior to 10-days is a "reasonable fit." The 10-day waiting period laws as applied to individuals who already lawfully possess a firearm as confirmed by the AFS system, and who pass the background check prior to 10-days, violates the Second Amendment.[38] See Edenfield, 507 U.S. at 770-71; Peruta, 742 F.3d at 1177; Valley Broadcasting, 107 F.3d at 1334.

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[37] California has provided for additional delays if there is difficulty in determining whether an individual is prohibited from possessing a firearm. Cal. Pen. Code § 28220(f). Plaintiffs suggest that law enforcement may utilize AB 500/§ 28220(f) in the context of straw purchases. The parties have not briefed this issue extensively, and the Court does not express an opinion on the question, other than to note that such an interpretation of § 28220(f) may be possible.

[38] Again, the Court emphasizes that this as applied challenge is not one that challenges the requirement that a purchaser pass a background check. These individuals must still pass the background check when they attempt to purchase a firearm. They may not, however, be required to wait the full 10-days if the background check is completed and approved prior to 10-days.

b. Those Who Have A CCW License

i. Background Check

Plaintiffs do not contend that CCW license holders should not have to undergo and pass the background check. First, Plaintiffs' proposed injunctive relief requests that CCW license holders undergo the same background check as other individuals who are exempt from the 10-day waiting period. Police officers who are exempt from the 10-day waiting period pursuant to California Penal Code § 26950(a) and § 27650(a) must still pass the BFEC. See Trial Tr. 501:17-19. Therefore, the BFEC/standard background check would apply to CCW license holders when they attempt to purchase a firearm. Second, Plaintiffs have expressly confirmed that all members of the as applied challenges would still be required to pass a background check when they attempt to purchase a firearm. See Doc. No. 105 at 7:6-8, 13:17-20, 30:25-31:22.

The Court's above analysis with respect to background checks for those who have a firearm in the AFS system also applies to CCW license holders. If the background check is completed in less than 10-days, then a background check is no longer a justification to make a CCW license holder wait the full 10-days.

Also, the BFEC can be modified to make a simple check through the AFS system to determine if a person has a valid CCW license.

Additionally, not only does the APPS system act as a safety net for any CCW license holder who may become prohibited from possessing a firearm, the rap back program acts as a further safety net with respect to California criminal conduct by a CCW license holder.

ii. Cooling Off Period

For CCW license holders who already possess a firearm as confirmed by the AFS system, the above analysis regarding a cooling off period (for those who already have a firearm as confirmed in the AFS system) also applies to CCW license holders.

For CCW license holders who do not already possess a firearm as confirmed by the AFS system, there is no evidence regarding unlawful firearm violence committed by CCW license holders. There is no evidence regarding suicide attempts by CCW license holders or how long after purchase of a firearm that suicides by CCW license holders generally occur. The social

science studies regarding waiting periods in general are inconclusive at best. None of the submitted social science studies presented to the Court address suicide as it relates to individuals who must meet the type of requirements of a CCW license,[39] and none of the excerpts advocate for or defend a 10-day cooling off period.

The nature and unique requirements of CCW licenses are such that it is unlikely that CCW license holders would engage in impulsive acts of violence. CCW license applicants must demonstrate good moral character. Engaging in unlawful acts of violence is inconsistent with good moral character. CCW license applicants must take a statutorily mandated class and demonstrate proficiency and safe handling of a firearm. Safe handling practices could cause a gun owner to be more reflective and deliberate about using a firearm. CCW license applicants must pass the BFEC, which searches databases that deal with criminal and mental health prohibitions. If the person does not pass the background check, they cannot obtain a CCW license. CCW license applicants must demonstrate good cause to either a sheriff or a police chief in order to obtain the CCW license, and a sheriff or chief of police may impose reasonable restrictions on as part of a CCW license. Thus, CCW licenses are not issued without reason and individual consideration. If there is sufficient cause to believe that an applicant has or is experiencing mental health problems, then a sheriff or police chief may require that applicant to undergo psychological testing. If a person is mentally unstable with respect to themselves or others, the psychological testing could detect that problem. With the exception of passing the BFEC/standard background check, none of these CCW license requirements must be met by an ordinary California firearms purchaser. Finally, once issued, a CCW license allows its holder to carry a concealed handgun in public for 2 years, generally throughout the entire State of California.

If an individual has met the requirements for obtaining a CCW license, and thereby has demonstrated that he or she can be expected and trusted to carry a concealed handgun in public for 2 years, it is unknown why that person would have to wait 10-days before being permitted to take

[39] The Court notes that one professional article endorsed waiting periods, prohibiting certain individuals from purchasing firearms, and permits for handgun purchasers. See Defendant's Ex. DG. California has such a prohibition and conducts a background check to enforce those prohibitions. Also, CCW license holders who purchase a handgun will have gone through two certification-type processes: the process to obtain the CCW license and the process to obtain a handgun safety certificate. See Cal. Pen. Code §§ 26150, 26155, 31615.

possession of newly purchased firearm.[40] Imposing the 10-day waiting period as a cooling off period on a CCW license holder is speculative and its effects appear remote at best.[41] See Edenfield, 507 U.S. at 770-71; Peruta, 742 F.3d at 1177; Valley Broadcasting, 107 F.3d at 1334.

iii. Straw Purchase

The Court's above analysis with respect to straw purchases for those who have a firearm in the AFS system also applies to CCW license holders.

There is no data or evidence regarding CCW license holders engaging in straw purchases.

The requirements for obtaining a CCW license strongly indicate that a CCW license holder is unlikely to engage in a straw purchase. A CCW license holder must demonstrate to either a sheriff or a police chief that he or she is of good moral character. Engaging in a straw purchase so that a prohibited person may obtain a firearm is not compatible with good moral character. A CCW license holder must also demonstrate good cause for issuance of a CCW license. If there is good cause to obtain the CCW license, it seems unlikely that a CCW license holder would jeopardize the CCW license for the purpose of helping a prohibited individual obtain a firearm. See Edenfield, 507 U.S. at 770-71; Valley Broadcasting, 107 F.3d at 1334.

iv. Conclusion

As applied to individuals who hold a valid CCW license, Defendant has not established that applying the full 10-day waiting period when the background check is completed prior to 10-days is a "reasonable fit." The 10-day waiting period laws as applied to individuals who possess a valid CCW license, and who pass the background check prior to 10 days, violates the Second Amendment.[42] See Edenfield, 507 U.S. at 770-71; Peruta, 742 F.3d at 1177; Valley Broadcasting, 107 F.3d at 1334.

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[40] The Court notes that the submitted legislative history regarding the California waiting periods generally support the conclusion that the waiting period laws were modified to 5 days, 15 days, and 10 days in response to concerns about the background check process. There is little evidence to suggest that the waiting periods were modified for the purpose of expanding or retracting a cooling off period.

[41] The Court notes that the state of Florida excepts its CCW license holders from the 3-day waiting period for handguns. See Fla. Stat. § 790.0655(2)(a).

[42] Again, the Court emphasizes that this as applied challenge is not one that challenges the requirement that a

c. Those Who Have A COE

Plaintiffs do not contend that COE holders should not have to undergo and pass a background check. First, Plaintiffs' proposed injunctive relief requests that COE holders undergo the same background check as other individuals who are exempt from the 10-day waiting period. Police officers who are exempt from the 10-day waiting period pursuant to California Penal Code §§ 26950(a) and 27650(a) must still pass the BFEC/standard background check. See Trial Tr. 501:17-19. Therefore, the BFEC/standard background check would apply to COE holders when they attempt to purchase a firearm. Second, Plaintiffs have expressly confirmed that all members of the as applied challenges would still be required to pass a background check when they attempt to purchase a firearm. See Doc. No. 105 at 7:6-8, 13:17-20, 30:25-31:22.

The class of COE holders under this as applied challenge was somewhat unclear. Plaintiffs indicated that the class consisted of those who merely hold a valid COE. See id. at 7:11-13.

However, a COE in and of itself only establishes that a person passed the background check one other time in the past. Unlike a CCW license holder, a COE holder does not have to establish good moral character, good cause, take a mandated course, or be subject to possible psychological testing. That is, COE holders are not subject to nearly the same level of scrutiny as are CCW license holders. At oral argument, Plaintiffs acknowledged that the process to obtain a CCW license is more demanding than that required to obtain a COE. See id. at 8:12-21.

If a COE holder does not already possess a firearm, they are very similar to a first time firearms purchaser. Plaintiffs do not challenge the waiting period laws for first time firearms purchasers without a COE. Plaintiffs stated at oral argument that while it is theoretically possible for a COE holder to not possess a firearm, it was highly unlikely. See id. at 8:21-9:1. However, Plaintiffs conceded that "if somebody has a COE, but there is no evidence that they also own a gun, it may be appropriate to subject them to a 10-day waiting period." Id. at 10:8-12.

Given the Plaintiffs' concessions at oral argument and the nature of merely holding a COE, the Court cannot hold that the 10-day waiting period as applied to those who merely hold a valid

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purchaser pass a background check. These individuals must still pass the background check when they attempt to purchase a firearm. They may not, however, be required to wait 10-days if the background check is completed and approved prior to 10-days.

COE violates the Second Amendment.

However, Plaintiffs stated that any concerns about whether a COE holder already possess a firearm could be addressed through the remedy issued, essentially by fashioning "a remedy that says COE and possess a firearm." Id. at 9:22-10:3. This is consistent with the relief requested by Plaintiffs in their proposed findings of fact and conclusions of law. Plaintiffs requested injunctive relief for those who hold a valid COE and also have a firearm as confirmed by the AFS system. See Doc. No. 91 at 30:1-4.

Consideration of the waiting period laws as applied to those who possess both a valid COE and a firearm as confirmed by the AFS system leads to a finding that the waiting period laws violate the Second Amendment. For those who have both a valid COE and already possess a firearm as confirmed by the AFS system, the constitutional analysis would be the same as detailed above for those who already possess a firearm as confirmed by the AFS system. The only distinction between the two "as applied groups" is that the COE holder has made himself or herself more identifiable in terms of the state criminal law firearms prohibitions through the rap back program and the issuance of a CII number.

The BFEC can be modified to make a simple check through the AFS system to determine if a DROS applicant has a valid COE and also to determine if the DROS applicant has a firearm within the AFS database.

The Court will accept Plaintiffs' concessions and suggestions. For the reasons stated above with respect to those who have a firearm as confirmed by the AFS system, the Court finds that the 10-day waiting period laws as applied to those who possess both a valid COE and a firearm as confirmed by the AFS system, and who pass the background check prior to 10 days, is not a reasonable fit and thus, violates the Second Amendment. See Edenfield, 507 U.S. at 770-71; Peruta, 742 F.3d at 1177; Valley Broadcasting, 107 F.3d at 1334.

IV. FOURTEENTH AMENDMENT CHALLENGE

Plaintiffs state that the Court need not address their Fourteenth Amendment challenges if the Court finds merit to their three as applied challenges to the 10-day waiting period. Plaintiffs

contend that if a violation of the Second Amendment is found, then the appropriate injunctive relief would essentially create additional exceptions to the waiting period and the Fourteenth Amendment issues would not need to be addressed. Because the Court has found violations of the Second Amendment as discussed above, the Court will follow Plaintiffs' recommendation and decline to reach the Fourteenth Amendment issues.

V. ORDER

The Court has found that the 10-day waiting periods of Penal Code § 26815(a) and § 27540(a) violate the Second Amendment as applied to certain groups. Plaintiffs urge the Court to follow the approach of *Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012), in which the Seventh Circuit stayed its ruling for 180-days in order to give the Illinois legislature the opportunity to craft new laws in light the unconstitutionality of various Illinois firearms laws. The Court finds *Moore*'s approach to be appropriate.

Accordingly, IT IS HEREBY ORDERED that:

1. The 10-day waiting periods of California Penal Code § 26815(a) and § 27540(a) violate the Second Amendment as applied to those individuals who successfully pass the BFEC/standard background check prior to 10 days and who are in lawful possession of an additional firearm as confirmed by the AFS system;
   a. If the BFEC/standard background check for such an individual is completed and approved before 10-days, Defendant shall immediately release the firearm for delivery to such individual and shall not wait the full 10-days;
2. The 10-day waiting periods of California Penal Code § 26815(a) and § 27540(a) violate the Second Amendment as applied to those individuals who successfully pass the BFEC/standard background check prior to 10 days and who possess a valid CCW license issued pursuant to California Penal Code § 26150 or § 26155;
   a. If the BFEC/standard background check for such an individual is completed and approved before 10-days, Defendant shall immediately release the firearm for delivery to such individual and shall not wait the full 10-days;

3. The 10-day waiting periods of California Penal Code § 26815(a) and § 27540(a) violate the Second Amendment as applied to those individuals who successfully pass the BFEC/standard background check prior to 10 days and who possess both a valid COE issued pursuant to California Penal Code § 26710 and a firearm as confirmed by the AFS system.

   a. If the BFEC/standard background check for such an individual is completed and approved before 10-days, Defendant shall immediately release the firearm for delivery to such individual and shall not wait the full 10-days;

4. Defendant shall modify their BFEC procedures as they deem necessary so as to be able to comply fully and in good faith with this order;[43]

5. Nothing in this order is to be construed as interfering with Defendant's authority to deny a transfer or sale of a firearm to those who are prohibited by state or federal law from possessing a firearm;

6. Nothing in this order is to be construed as interfering with the Defendant's ability to delay a transfer or sale of a firearm when further investigation is required to confirm that a buyer or transferee is not prohibited by state or federal law from possessing a firearm;

7. Paragraphs 1 through 6 of this order are stayed for a period of 180 days from entry of this order;

8. The parties shall appear for a status conference on December 8, 2014 in Courtroom No. 2 at 1:30 p.m.;[44] and

9. The Clerk shall enter judgment in favor of Plaintiffs and against Defendant.

IT IS SO ORDERED.

Dated: August 22, 2014

SENIOR DISTRICT JUDGE

[43] The Court particularly directs Defendant's attention to the testimony Assistant Bureau Chief Buford and the "simple" checks within AFS to determine if an individual has a firearm, has a valid CCW license, or has a valid COE.

[44] The parties shall file a joint status conference report on December 1, 2014. If the parties agree upon a different date for a status conference, they may file a stipulation with the Court to move the status conference.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEFF SILVESTER, et al., **Plaintiffs** **v.** **KAMALA HARRIS, Attorney General of California, and DOES 1 to 20,** **Defendants**	**CASE NO. 1:11-CV-2137 AWI SAB** **ORDER ON DEFENDANT'S MOTION TO STAY AND MOTION TO ALTER JUDGMENT** **(Doc. Nos. 110, 114)**

This case involved a Second Amendment challenge to statutes that imposed a 10-day waiting period between the time of purchase and time of possession of a firearm. Following a bench trial, the Court issued findings of fact and conclusions of law. The Court held that the 10-day waiting period violated the Second Amendment as applied to three classes of individuals. The Court also enjoined Defendant from enforcing the 10-day waiting period with respect to the three classes of individuals. However, as suggested by Plaintiffs, the Court stayed its order for a period of 180 days. Defendant later filed a motion to amend judgment, a notice of appeal, and a motion for a stay pending appeal. For the reasons that follow, Defendant's motions will be denied.

I. Motion To Stay

Defendant's Argument

Defendant argues that the relevant factors all favor a granting a stay. First, this case is the first of its kind to challenge a firearm waiting period law. The law surrounding the Second

Amendment is evolving, and issues such as of what sort of waiting period a state may impose on the acquisition of a firearm, and on what grounds, are of nationwide importance. The Ninth Circuit could reach different conclusions than those reached by the Court. Thus, this case involves "serious legal questions." Second, California will suffer irreparable harm if an injunction is not issued. A state suffers irreparable injury whenever an enactment of its representatives is enjoined. Furthermore, irreparable injury occurs if a party will not be able to recoup significant time and resources to comply with an injunction if the injunction is later overturned. The declarations of Bureau of Firearms ("BOF") Chief Stephen Lindley and BOF employee Marc St. Pierre show that it will likely take at least 12-months to comply with an injunction, either to hire and train additional personnel or to change the relevant computer system. Current BOF computer personnel are working on other critical tasks that have firm legislative deadlines. It is thus undesirable to pull those personnel off of their current projects. Past experience with upgrading BOF computers through outside vendors indicates that 12 months likely will be needed, including the bidding process and installation of new software. In terms of additional personnel (which is not the preferred method of compliance), BOF would need to obtain additional funding from the Legislature, go through the process of hiring, and then go through a 6 to 8 month training period process. If the Ninth Circuit reverses this Court's order, there is no realistic prospect that California will be able to recover any compensation for the efforts it was forced to undertake. BOF would have to go through a process to undo the changes to the system that were done, and may be left with additional personnel. Third, the balance of harms favors a stay. Combs and Silvester already have a firearm, and they may still obtain a firearm during the pendency of this suit. The Court continued to allow BOF to conduct a background check on every prospective firearm purchaser, and that check can take up to 10-days in any event. The injunction may or may not reduce the 10-day waiting period for a particular purchaser, and a second trip to obtain the firearm could still be required. This harm is outweighed by the harm to California. Finally, the public interest favors a stay. The waiting period law was enacted for the important purpose of keeping firearms out of the hands of people who might have a propensity to misuse them. A stay would preserve the status quo for a system that processes 1 million firearm applications a year.

Plaintiffs' Opposition

Plaintiffs argue that a stay is not justified. Defendant argues that this case raises "serious legal questions" because it involves issues of first impression. However, in order to issue a stay based on "serious legal questions," Defendant must show that the balance of hardships tips sharply in her favor. Defendant has not done so. Defendant argues that California is harmed because one of its laws will be enjoined and because it will incur associated fiscal and administrative costs. The Ninth Circuit has recognized that simply because an enactment is being enjoined is not dispositive, because the basis of enjoining the state law is a violation of either a federal statute or the federal Constitution, which also represent enactments of the people. Defendant has also not explained why it cannot simply allow delivery of firearms to the three as-applied classes once the background check is complete. Defendant does not adequately appreciate the nature and magnitude of the harm suffered by Plaintiffs, especially because the deprivation of a constitutional right is recognized to be an irreparable harm. Finally, the public interest does not lie in favor of a stay. When the state is asserting harm, there is no interest in enforcing an unconstitutional law.

Legal Standard

Federal Rule of Civil Procedure 62(c) allows a district court to suspend, modify, restore, or grant an injunction during the pendency of an appeal. See Fed. R. Civ. P. 62(c); Natural Res. Def. Council, Inc. v. S.W. Marine, Inc., 242 F.3d 1163, 1166 (9th Cir. 2001). "A stay is not a matter of right, even if irreparable injury might otherwise result," rather, a stay is "an exercise of judicial discretion" and the "propriety of its issue is dependent upon the circumstances of the particular case." Nken v. Holder, 556 U.S. 418, 433 (2009); Lair v. Bullock, 697 F.3d 1200, 1203 (9th Cir. 2012). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." Nken, 556 U.S. at 433-34; Lair, 697 F.3d at 1203. In determining whether to issue a stay pending an appeal, courts consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Nken, 556 U.S. at 434; Lair, 697 F.3d at 1203. The first two factors "are the most critical."

Nken, 556 U.S. at 434. With respect to the first factor, the Ninth Circuit has characterized a "strong showing" in various ways, including "reasonable probability," "fair prospect," "substantial case on the merits," and "serious legal questions . . . raised." Leiva-Perez v. Holder, 640 F.3d 962, 967-68 (9th Cir. 2011). These formulations are "largely interchangeable," and each indicate that, "'at a minimum,' a petitioner must show that there is a 'substantial case for relief on the merits.'" Lair, 697 F.3d at 1204; Leiva-Perez, 640 F.3d at 967-68. With respect to the second factor, the proponent of the stay must demonstrate that there is a probability that she will suffer an irreparable injury if the stay is not granted. Lair, 697 F.3d at 1215; Leiva-Perez, 640 F.3d at 969.

Discussion

1. First Factor – Strong Showing Of Success

There is no dispute that the first factor may be met if the stay applicant has raised "serious legal questions." Lair, 697 F.3d at 1204. "Serious questions are substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation." Gilder v. PGA Tour, Inc., 936 F.2d 417, 422 (9th Cir. 1991); Republic of the Phil. v. Marcos, 862 F.2d 1355, 1362 (9th Cir.1988). Plaintiffs do not dispute that this case and Defendant's appeal raise "serious legal questions." The Court agrees that Second Amendment law is evolving, although the framework for evaluating laws under the Second Amendment has now been established. See United States v. Chovan, 735 F.3d 1127 (9th Cir. 2013). In the absence of an argument on this point from Plaintiffs, the Court is satisfied that this case raises "serious legal questions."[1] See Gilder, 936 F.2d at 422.

2. Second Factor – Harm To The Applicant

Defendant has identified as an irreparable harm the harm that befalls a state when one of its laws has been held unconstitutional. Citing a chambers order from then Justice Rehnquist, the Ninth Circuit in *Coalition for Economic Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) stated that this as an irreparable injury. However, very recently the Ninth Circuit noted that the Supreme Court has never adopted Justice Rehnquist's opinion that this form of harm is an

[1] The Court notes that Defendant has not identified any error of law or any erroneous factual finding. The Court stands by its analysis and its findings that the waiting period laws violate the Second Amendment as applied to three classes of individuals.

irreparable injury. See Latta v. Otter, - - - F.3d - - -, 2014 U.S. App. LEXIS 19828, *19 n.1 (9th Cir. 2014). Further, the Ninth Circuit has characterized the relevant language from *Coalition* as "dicta." Independent Living Ctr. of S. Cal. v. Maxwell-Jolly, 572 F.3d 644, 658 (9th Cir. 2009).[2] *Independent* explained that to the extent a state suffers an abstract form of harm whenever one of its acts is enjoined, that harm is not dispositive because such a rule would eviscerate the balancing of competing claims of injury. See id. In *Latta*, the Ninth Circuit recognized *Coalition*'s statement and *Independent*'s characterization of *Coalition*. See Latta, - - - F.3d - - -, 2014 U.S. App. LEXIS 19828 at *19. *Latta* did not expressly address how to apply *Coalition* and *Independent*, but it nevertheless found that lifting a stay on an injunction that prohibited the enforcement of an Idaho law was appropriate in light of other factors. Given *Latta*'s methodology, the Court finds that a state suffers an abstract harm whenever one of its duly enacted laws is enjoined, but this abstract harm is not a dispositive harm and it may be outweighed by other factors. Therefore, the Court concludes that California will suffer an abstract injury if the Court's injunction is not stayed.

With respect to administrative and fiscal costs, the Court agrees with Defendant that hiring and training additional personnel, as well as hiring outside contractors, would represent an additional expenditure of funds that Defendant would likely not be able to recover. However, Defendant (through Chief Lindley's declaration) acknowledges that she has computer personnel who could modify the system.[3] See Lindley Dec. ¶ 15. The problem is that Defendant believes that other projects are deserving of greater priority. See id. There is no description of what these critical projects are or when the deadlines might be, nor is there an explanation of why outside contractors cannot be utilized for some of those projects, nor is there an explanation of why computer personnel from different departments or agencies cannot be utilized. A bench trial has concluded, and a law that is actively being enforced has been found to be unconstitutional. The Court does not know how Defendant or the BOF prioritizes projects, but dealing with an

[2] Vacated on other grounds, Douglas v. Independent Living Ctr. of So. Cal, Inc., 132 S. Ct. 1204 (2012).

[3] The Court notes that Assistant Bureau Chief Steve Buford was heavily involved in the background check system design and process, as well as former BOF employee Donnette Orsi. See Doc. No. 85 at 168:7-170:6, 279:8-24, 307:13-308:17. No declaration from Assistant Bureau Chief Buford was submitted by Defendant.

unconstitutional law should be towards the top of the list.[4] It is true that redirecting personnel may cause difficulties, but there is not enough before the Court for it to conclude that Defendant probably would suffer irreparable harm from such redirection.[5] The Court is not satisfied that Defendant has demonstrated irreparable fiscal or administrative harm.[6]

3. Third Factor – Harm To Others

In this case, the Court determined that the 10-day waiting period laws burden the Second Amendment right to keep and bear arms because they prohibit the exercise of that right for all purposes with respect to a newly purchased firearm. The Court also determined that the 10-day waiting period laws have caused additional expense and inconvenience, and that they have caused individuals to forego exercising their Second Amendment rights. The Court examined the historical evidence submitted by the parties and concluded that there were no comparable laws in existence during the relevant historical periods, and that waiting period laws exist today in only a distinct minority of States. The Court also found that no evidence justified a 10-day waiting period under intermediate scrutiny.[7] Therefore, the Court has determined that the 10-day waiting period laws, as applied to those who have a Carry Concealed Weapons permit ("CCW"), those who already have a firearm, or those who have a firearm and a Certificate of Eligibility ("COE"), violate the Second Amendment. It has been held that a deprivation of constitutional rights, "for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976); Latta, - - - F.3d - - -, 2014 U.S. App.

[4] It may be that the nature of the resources available to Defendant, combined with the tasks that need to be completed in order to comply with the injunction, make hiring outside vendors the best choice. However, there is insufficient information before the Court on this issue.

[5] Defendant suggests that if the background check system was modified, and the Ninth Circuit later reverses the injunction, time and resources would need to be spent to restore the system to its prior configuration. However, there is no evidence regarding how difficult, time consuming, or costly such a process would be.

[6] The Court notes that Chief Lindley's declaration indicates that under a manual approach, i.e. analysts review each application, the CCW, COE, and AFS databases would have to be separately queried for each applicant. However, Chief Lindley does not discuss how additional questions (e.g. whether the applicant currently has a valid CCW permit) to the DROS application form might change how applications would be reviewed. Nevertheless, the issue is not before the Court, and it may be that additional questions or changes to the DROS application are undesirable. The Court merely notes that Chief Lindley's declaration does raise questions.

[7] Defendant made various arguments to justify the waiting period, but the evidence did not actually support a 10-day waiting period. The arguments were more in line with "rational basis scrutiny" than with "intermediate scrutiny."

LEXIS 19828 at *19-*20; Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012). Because the waiting period laws violate their constitutional rights, the named Plaintiffs and all those who fit within the as-applied classes will suffer irreparable injury if a stay pending appeal is granted.[8]

4. Public Interest

It has been recognized that enforcement of an unconstitutional law is contrary to the public interest. See Gordon v. Holder, 721 F.3d 638, 653 (D.C. Cir. 2013); Melendres, 695 F.3d at 1002; Scott v. Roberts, 612 F.3d 1279, 1297 (11th Cir. 2010); Tyson Foods, Inc. v. McReynolds, 865 F.2d 99, 103 (6th Cir. 1989); Levine v. Fair Political Practices Comm'n, 222 F.Supp.2d 1182, 1191 (E.D. Cal. 2002). Because the waiting period law is unconstitutional with the respect to the three as applied classes, this factor weighs against a stay.[9] See id.

5. Conclusion

When an applicant relies on "serious legal questions," she must demonstrate that the balance of equities tips sharply in her favor. See Leiva-Perez, 640 F.3d at 966; Tribal Village of Akutan v. Hodel, 859 F.2d 662, 663 (9th Cir. 1988); Lopez v. Heckler, 713 F.2d 1432, 1435 (9th Cir. 1983). Given the on-going constitutional violations that are occurring to the likely thousands of Californians by operation of the 10-day waiting period laws, the Court cannot conclude that the balance of equities tips sharply in Defendant's favor. Combined with the public interest that weighs against granting an injunction, the Court does not find that issuing a stay is appropriate. Defendant's motion for a stay under Rule 62(c) will be denied.

II. Motion To Alter Judgment

Defendant's Argument

Defendant argues that to comply with the Court's order, BOF will either have to change the computer system to automatically search the CCW database, the COE database, and the AFS

[8] The extent of the harm will vary from person to person, because everyone must pass the background check. As discussed in the Court's prior opinion, it could take less than 2-hours or more than 10-days to complete the check.

[9] Defendant's motion suggests that the public has an interest in preventing violence and keeping firearms out of the hands of those who have a propensity to commit violence. However, Defendant submitted no evidence that demonstrated that the 10-day waiting period will have that effect on the three as-applied classes to any appreciable degree, and all persons wishing to purchase a firearm will still have to pass the background check.

database, or hire additional staff to manually check these databases. A significant number of staff would have to be added, and it takes 6 to 8 months to train these individuals. Further, auto-approved applications would no longer be "auto-approved" because an analyst would have to review the additional databases. Finally, BOF cannot hire additional staff until it receives funding from the Legislature, which is currently in recess. To hire and train more staff would likely require 12 months. However, BOF prefers the automated computer approach. Under this approach, fewer analysts would be needed and a firearm could be released much sooner, assuming all appropriate criteria are met. BOF personnel are currently performing other critical tasks, and an outside vendor would be necessary. Given the history of past projects, the bidding and completion of computer modification would likely take at least 12-months. Finally, if the Court's intent was to give the Legislature time to act, more time is needed as the Legislature is in recess.

Plaintiffs' Argument

Plaintiffs argue that Defendant has not shown why additional time is needed. Although Defendant claims that more time is needed to hire personnel and reconfigure the system, no effort to comply been demonstrated since the Court's order. To the extent that Defendant needs to improve systems and hire staff, she should make efforts to do so now rather than induce urgency by waiting until expiration of the stay. Further, the Department of Justice has had millions of dollars appropriated to it, which should be sufficient to comply with Court's order without further legislative involvement. Also, Defendant has made it clear that she can comply with the Court's order without any legislative action. Even if a legislative "fix" were enacted, Defendant would presumably return to the Court and ask for more time to implement a new law. Relying on the legislative calendar to drag out the process is not appropriate. If it becomes clear that the Legislature wishes to address the problem, Defendant can request additional time from the Court. Finally, if the injunction is modified, Defendant should be required to file periodic status conferences to ensure that all efforts are being made to meet the new deadline.

Legal Standard

Federal Rule of Civil Procedure 59(e) provides a mechanism for a court to reconsider and alter or amend a prior order. See Fed. R. Civ. P. 59(e); Kona Enters. v. Estate of Bishop, 229 F.3d

877, 883 n.6, 890 (9th Cir. 2000). "While Rule 59(e) permits a district court to reconsider and amend a previous order, the rule offers an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Wood v. Ryan, 759 F.3d 1117, 1121 (9th Cir. 2014); Kona Enters., 229 F.3d at 890. Rule 59(e) amendments are appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law. Wood, 759 F.3d at 1121; Kona Enters., 229 F.3d at 890. In "unusual circumstances," the Court may grant a Rule 59(e) motion on additional grounds. See Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011). The Rule 59(e) standard is a "high hurdle." Weeks v. Bayer, 246 F.3d 1231, 1236 (9th Cir. 2001). Rule 59(e) motions "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." Kona Enters., 229 F.3d at 890.

Discussion

The arguments made in favor of altering judgment are extremely similar to those made in support of the motion for stay. For similar reasons discussed with respect to the stay motion, the Court will not alter the judgment. Defendant has the personnel within BOF to make changes to the background check system. Defendant just does not want to reassign those personnel to change the background check at this time. Insufficient information has been provided to the Court as to why reassignment is so undesirable.[10] Furthermore, it is unclear why other Department of Justice (other state agencies) computer personnel cannot be utilized to work on the other "critical projects" or on the Court's injunction.[11]

The Court accepts that Defendant has reviewed the Court's order/injunction and has made efforts to determine what is necessary to comply. The Reply Declaration of Chief Lindley indicates the BOF is taking steps to implement that computer/automated approach, including: (1) analyzing the technology changes that must occur; (2) finalizing a Request for Proposal to solicit

[10] The Court emphasizes that it is not holding that Defendant cannot utilize outside vendors as part of complying with the injunction.

[11] The Court does accept that additional funding from the Legislature is needed to hire additional analysts.

bids from prospective vendors; (3) identifing the equipment needed for new employees and identified trainers for those new employees; (4) preparing new written procedures that will be necessary for analysts to implement the Court's order; and (5) working on recruitment. See Lindley Reply Dec. ¶ 7. However, Chief Lindley declares that any further steps beyond what has occurred will require significant expenditures that cannot be recovered. See id. at ¶ 8. For example, any payments made to vendors could not be recovered, BOF might have to pay vendors to undo changes, and BOF might be left with excess staffing.[12] See id. at ¶¶ 9, 10. In light of Chief Lindley's declaration, the Court cannot find that Defendant is ignoring its order.

The Court is not unsympathetic to the changes that BOF is required to make in order to follow the Court's injunction. That was the primary reason why the Court stayed its order for 180 days.[13] The Court also understands that technological changes can take time. If additional information shows that outside vendors are necessary, and that they require additional time, and assuming that Defendant exercises due diligence in attempting to follow the Court's injunction, the Court will likely grant requests for additional time for Defendant to comply. For now, the Court's order remains stayed for a total of 180 days, and Defendant has time to request a stay pending appeal from the Ninth Circuit. See Fed. R. Civ. P. 62(g); Fed. R. App. P. 8(a).

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. Defendant's motion to stay (Doc. No. 114) is DENIED; and
2. Defendant's motion to alter judgment (Doc. No. 110) is DENIED.

IT IS SO ORDERED.

Dated: November 20, 2014

SENIOR DISTRICT JUDGE

[12] It is not clear to the Court that BOF would have excess staffing. Defendant has argued that BOF requires its staff to work overtime as a matter of course, and that analysts are extremely busy under current staffing levels. Also, it is unclear why termination of employment would not occur if an employee is truly not necessary.

[13] To give the Legislature time to review the order and the absence of an objection or a reply from Defendant during the briefing process were the other considerations.

14-16840

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFF SILVESTER, BRANDON COMBS, THE CALGUNS FOUNDATION, INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization,

Plaintiffs-Appellees,

v.

KAMALA D. HARRIS, Attorney General of California (in her official and individual capacities),

Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of California

No. 1:11-cv-02137-AWI-SKO
The Honorable Anthony W. Ishii, Judge

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Attorneys for Defendant Kamala D. Harris, Attorney General of California

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

JEFF SILVESTER, 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),** Defendant.	1:11-cv-02137-AWI-SKO **AMENDED NOTICE OF APPEAL** Judge: Hon. Anthony W. Ishii Trial Date: March 25, 2014 Action Filed: December 23, 2011

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Kamala D. Harris, Attorney General of California, defendant in the above-named case, hereby appeals to the U.S. Court of Appeals for the Ninth Circuit from the Final Judgment entered on August 25, 2014 and this Court's order denying Defendant's post-judgment Motion to Alter or Amend Judgment entered on November 20, 2014.

Defendant previously filed a Notice of Appeal to appeal the Court's final judgment entered on August 25, 2014. Subsequently on November 20, 2014, the Court denied Defendant's post-judgment Motion to Alter or Amend Judgment. Defendant files this Amended Notice of Appeal to appeal both the Final Judgment and the order denying Defendant's Motion to Alter or Amend Judgment.

Dated: December 19, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General

/s/ Peter H. Chang

PETER H. CHANG
Deputy Attorney General
Attorneys for Defendant Kamala D. Harris, Attorney General of California

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No. 14-16840

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFF SILVESTER, BRANDON COMBS, THE CALGUNS FOUNDATION, INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization,

Plaintiffs and Appellees,

v.

KAMALA HARRIS, Attorney General of California (in her official capacity),

Defendant and Appellant.

On Appeal from the United States District Court
for the Eastern District of California

Case No. 1:11-cv-02137-AWI-SKO
The Honorable Anthony W. Ishii, Judge

NOTICE OF RULING ON MOTION TO AMEND JUDGMENT AND STATEMENT OF INTENT TO PROSECUTE APPEAL

KAMALA D. HARRIS
Attorney General of California
DOUGLAS J. WOODS
Senior Assistant Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General
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Attorneys for Appellant Kamala D. Harris, Attorney General of California

Appellant Kamala D. Harris, Attorney General of California ("Appellant"), hereby notifies the Court that, on November 20, 2014, the trial court decided, by denying, Appellant's motion to amend the judgment in the present case.

Appellant also advises the Court that Appellant intends to prosecute the appeal that was originally noticed on September 24, 2014.

Appellant makes these statements in response to the Court's October 7, 2014, order.

Dated: November 25, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
DOUGLAS J. WOODS
Senior Assistant Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General

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

FILED

OCT 07 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFF SILVESTER; et al., Plaintiffs - Appellees, v. KAMALA D. HARRIS, Attorney General of the State of California, in her official capacity, Defendant - Appellant.	No. 14-16840 D.C. No. 1:11-cv-02137-AWI-SKO Eastern District of California, Fresno ORDER

The notice of appeal was filed during the pendency of a timely filed motion listed in Federal Rule of Appellate Procedure 4(a)(4). The notice of appeal is therefore ineffective until entry of the order disposing of the last such motion outstanding. *See* Fed. R. App. P. 4(a)(4). Accordingly, appellant's motion to hold this appeal in abeyance is granted. Appellate proceedings other than mediation shall be held in abeyance pending the district court's resolution of the motion to amend the judgment. *See Leader Nat'l Ins. Co. v. Indus. Indem. Ins. Co.*, 19 F.3d 444, 445 (9th Cir. 1994).

AT/MOATT

Within 5 days after the district court's ruling on the pending motion, appellant shall notify this court in writing of the ruling and shall advise whether appellant intends to prosecute this appeal.

To appeal the district court's ruling on the post-judgment motion, appellant must file an amended notice of appeal within the time prescribed by Federal Rule of Appellate Procedure 4.

The Clerk shall serve this order on the district court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Allison Taylor
Motions Attorney/Deputy Clerk

KAMALA D. HARRIS, State Bar No. 146672
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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

JEFF SILVESTER, BRANDON COMBS, THE CALGUNS FOUNDATION, INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization, Plaintiffs, **v.** **KAMALA D. HARRIS, Attorney General of California (in her official capacity),** Defendant.	1:11-cv-02137-AWI-SKO **NOTICE OF APPEAL, INCLUDING REPRESENTATION STATEMENT** Judge: Hon. Anthony W. Ishii Trial Date: March 25, 2014 Action Filed: December 23, 2011

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Kamala D. Harris, Attorney General of California (the "Attorney General"), defendant in the above-named case, hereby appeals to the U.S. Court of Appeals for the Ninth Circuit from this Court's final judgment entered in this action on August 25, 2014.

By a motion filed on September 22, 2014, the Attorney General also is seeking, under Federal Rule of Civil Procedure 59(e), to amend the judgment to adjust this Court's remedial order for injunctive relief entered in this action; that order also issued on August 25, 2014. The instant notice of appeal will become effective upon the disposition of that motion. *See* Fed. R. App. P. 4(a)(4)(B)(i) ("If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered."). A motion to amend a judgment is one of the motions that has this effect. *See* Fed. R. App. P. 4(a)(4)(A)(v).

Dated: September 24, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General
PETER H. CHANG
Deputy Attorney General

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

REPRESENTATION STATEMENT

The undersigned represents Kamala D. Harris, Attorney General of California, defendant and appellant in this matter, and no other party. Below is a service list that shows all of the parties in this lawsuit, and identifies their counsel by name, firm/office, U.S. mail address, telephone number, and e-mail address.

Plaintiff (and Putative Appellee) **Jeff Silvester** is represented by Victor J. Otten, Otten Law, PC, 3620 Pacific Coast Hwy., Ste. 100, Torrance, CA 90505; (310) 378-8533; vic@ottenlawpc; and also by Donald E.J. Kilmer, Law Offices of Donald Kilmer, APC, 1645 Willow St., Ste. 150, San Jose, CA 95125; (408) 264-8489; don@dklaawoffice.com.

Plaintiff (and Putative Appellee) **Brandon Combs** is represented by Victor J. Otten, Otten Law, PC, 3620 Pacific Coast Hwy., Ste. 100, Torrance, CA 90505; (310) 378-8533; vic@ottenlawpc; and also by Donald E.J. Kilmer, Law Offices of Donald Kilmer, APC, 1645 Willow St., Ste. 150, San Jose, CA 95125; (408) 264-8489; don@dklaawoffice.com.

Plaintiff (and Putative Appellee) **The Calguns Foundation, Inc.**, is represented by Victor J. Otten, Otten Law, PC, 3620 Pacific Coast Hwy., Ste. 100, Torrance, CA 90505; (310) 378-8533; vic@ottenlawpc; and also by Donald E.J. Kilmer, Law Offices of Donald Kilmer, APC, 1645 Willow St., Ste. 150, San Jose, CA 95125; (408) 264-8489; don@dklaawoffice.com.

Plaintiff (and Putative Appellee) **The Second Amendment Foundation, Inc.**, is represented by Victor J. Otten, Otten Law, PC, 3620 Pacific Coast Hwy., Ste. 100, Torrance, CA 90505; (310) 378-8533; vic@ottenlawpc; and also by Donald E.J. Kilmer, Law Offices of Donald Kilmer, APC, 1645 Willow St., Ste. 150, San Jose, CA 95125; (408) 264-8489; don@dklaawoffice.com.

Defendant and Appellant **Kamala D. Harris**, Attorney General of California, is represented by Jonathan M. Eisenberg, Office of the California Attorney General, 300 South Spring St., Ste. 1702, Los Angeles, CA 90013; (213) 897-6505; jonathan.eisenberg@doj.ca.gov; and also by

Peter H. Chang, Office of the California Attorney General, 455 Golden Gate Ave., Ste. 11000, San Francisco, CA 94102; (415) 703-5939; peter.chang@doj.ca.gov.

Dated: September 24, 2014

Respectfully submitted,

KAMALA D. HARRIS
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Deputy Attorney General

/s/
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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

JEFF SILVESTER, BRANDON COMBS, THE CALGUNS FOUNDATION, INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization, Plaintiffs, **v.** **KAMALA D. HARRIS, Attorney General of California (in her official capacity),** Defendant.	1:11-cv-02137-AWI-SKO **SUPPLEMENTAL DECLARATION OF STEPHEN J. LINDLEY IN SUPPORT OF DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT**

DECLARATION OF STEPHEN J. LINDLEY

I, Stephen J. Lindley, declare:

1. I have personal knowledge of the following facts, and, if I am called as a witness at a relevant proceeding, I could and would testify competently to the following facts.

2. I am the Chief of the California Department of Justice (DOJ)'s Bureau of Firearms (BOF).

3. Funds already appropriated by the Legislature to BOF, including the DROS Special Account and the Firearms Safety and Enforcement Special Fund, are used to pay for current BOF operations. Funds in the DROS Special Account are used to maintain BOF's DROS operations with the current level of staffing. That money is used to pay for salaries and benefits of existing employees, maintenance of facilities, equipment and systems, training costs, and other program costs.

4. In addition to the DROS program, BOF currently administers more than 30 other programs mandated by the California Legislature. These programs include the Armed Prohibited Persons System (APPS), the Automated Firearm System (AFS), Dealer Inspection, and Personal Firearms Eligibility Check. Funds now appropriated to BOF are used to pay for the operations of these programs as well.

5. I am also aware that plaintiffs assert that DOJ has made no material progress toward complying with the Court's order. This is untrue.

6. Since the Court issued its order, the DOJ has taken steps to implement the automated approach that I discussed in my September 24, 2014 declaration (in paragraphs 14 and 15). We have been analyzing the technology changes that must be made to DROS and other DOJ systems to comply with the Court's Order and have taken steps to make those changes. Specifically, we have designed the business rules and processes to implement the Court's order and are finalizing a Request for Proposal to solicit bids from prospective vendors in order to implement the necessary changes to DOJ's systems.

7. On the personnel side, we have identified the equipment needed for new employees and identified trainers for those new employees. We are currently preparing job fliers, identifying

workspace for new employees, preparing written procedures for CIS analysts for the new process necessary to implement the Court's order, and working on a recruitment plan to bring in qualified applicants.

8. Any further steps beyond what we have already taken will require significant expenditures that cannot be recovered if BOF is later relieved from complying with the Court's order.

9. For example, once BOF procures a vendor to make changes to DOJ's systems, the payments made to the vendor cannot be later be recovered. Furthermore, once changes to DOJ's systems are made, should those changes be not necessary later, BOF may have to pay a vendor to undo those changes.

10. Additionally, once BOF hires additional analysts to perform the extra steps in DROS processing required to implement the Court's order, BOF would be left with excess staffing should those analysts not be needed later.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 3, 2014 at Sacramento, California.

Stephen J. Lindley

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

JEFF SILVESTER, ET AL.,

CASE NO: **1:11–CV–02137–AWI–SKO**

v.

KAMALA D. HARRIS, ET AL.,

XX –– Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER FILED ON 8/25/2014

Marianne Matherly
Clerk of Court

ENTERED: **August 25, 2014**

by: /s/ T. Lundstrom
Deputy Clerk

"READY REFERENCE" TABLE

(Providing citations to specific portions of each jurisdiction's laws; please see the endnotes and fully review the sections cited.)

JURISDICTION NAME	PURCHASER WAITING PERIOD	LICENSE: DEALER, MANUFACTURER, ETC.	LOCAL GOVERNMENT LIMITS (PREEMPTION)	LIMITS TO INTERSTATE PURCHASE AND SALE
ALABAMA		13A-11-78 [pistols]; 40-12-143 [handguns] & 40-12-158 [long guns]	11-45-1.1; 11-80-11	
ALASKA			18.65.778 [concealed handguns]; 29.35.145	
AMERICAN SAMOA		46.4222 [import]; 46.4223 [sale]		46.4222 [importation]
ARIZONA			13-3108, but see 15-341	13-3106 & 13-3112(U)(V)(W)
ARKANSAS			14-16-504; 14-54-1411	5-73-125
CALIFORNIA	Penal Code 12072(c)	Penal Code 12070 et seq.; 12086 [firearm manufacture]; 12095 [short-barreled shotguns]; 12250 [machine guns]; 12287 [assault weapons & .50 BMG rifles]; 12305 [destructive devices]	Gov't Code 53071 & 53071.5	Penal Code 12071(b)(8)(C); 12071(b)(3)(A); 12076
COLORADO			18-12-105.6 [firearms in vehicles]; 29-11.7-101 et seq.	12-27-101 to 104
CONNECTICUT	29-37a [2 weeks: long guns]	29-28 [handguns]		
DELAWARE		Title 24,§§ 901 to 905	Title 9, §330(c); Title 22, §111	
DISTRICT OF COLUMBIA	22-4508 [48 hrs: pistols]	7-2504.01 et seq.; 22-4509 & 4510		7-2505.02(b)(1)
FLORIDA	790.0655 [3 days: handguns]		790.33; 790.335 [registration]	790.28
GEORGIA		43-16-1 et seq. [handguns & arms <15"]	16-11-173	10-1-100 & 101
GUAM		60104 & 60115 [register]		
HAWAII	134-2 [14 to 20 days to obtain a license to purchase any handgun]	134-31 et seq.		
IDAHO				18-3314 & 3315
ILLINOIS	Ch. 720, 5/24-3(A)(g) [72 hrs: concealable; 24 hrs: long guns, stunguns and tasers]		Ch. 430, 65/13.1 [not preempted] Ch. 720, 5/24-10 [affirmative defense]	Ch. 430, 65/3a
INDIANA		35-47-2-14 to 16 & 21	35-47-11	35-47-5-6
IOWA			724.28	
KANSAS				48-1901 to 1904
KENTUCKY			65.870; 237.110(19)	237.020
LOUISIANA		40:1787 [register]	40:1796	40:1801 to 1804
MAINE			Tit. 25, §2011	
MARYLAND	Pub. Safety Art. 5-123 & 124 [7 days: regulated firearms]	Pub. Safety Art. 5-106 et seq. [regulated firearms] & 11-105 [explosives]	Crim. Law Art. 4-209; Pub. Safety Art. 5-104, 133(a) & 134(a) [regulated firearms]	Pub. Safety Art. 5-204 [long guns]
MASSACHUSETTS		Ch. 140, §122 et seq.		
MICHIGAN			123.1101 to 123.1104	3.111 & 3.112
MINNESOTA	624.7132, subd. 4 [5 business days: pistols, assault weapons]		471.633 & 634; 609.67 subd. 6; 624.7131 subd. 12; 624.7132 subd. 16; 624.717; 624.74 subd. 4	624.71
MISSISSIPPI			45-9-51 & 53	
MISSOURI	Section Repealed		21.750	407.500 & 407.505
MONTANA			45-8-351	
NEBRASKA	69-2405 [3 days; handgun]		69-2425 [no preemption]	28-1211
NEVADA		202.440 [local license]		
NEW HAMPSHIRE		159.8 & 159.10 [handguns]	159:26	159:8-a
NEW JERSEY	2C:58-3 [up to 30 days for permit]	2C:58-1 & 58-2	2C:1-5.d.	
NEW MEXICO				30-7-9

"READY REFERENCE" TABLE

JURISDICTION NAME	PURCHASER WAITING PERIOD	LICENSE: DEALER, MANUFACTURER, ETC.	LOCAL GOVERNMENT LIMITS (PREEMPTION)	LIMITS TO INTERSTATE PURCHASE AND SALE
NEW YORK	400.00 (4.a) [up to 6 months for permit]	Penal Law 400.00	Penal Law 400.00.6 [licenses]	Penal Law 265.40
NORTH CAROLINA	14-404 [up to 30 days for handgun permit]		14-409.40; 14-415.23 [concealed handguns]	14-409.10
NORTH DAKOTA			62.1-01-03	
NORTHERN MARIANA IS.		2209; 2210; 2217	2227 [no preemption]	
OHIO			Note after 2923.12: 2004 Ohio Laws File 53 (HB 12) §9 [concealed handguns]	2923.22
OKLAHOMA			Title 21, §1289.24	Title 21, §1288
OREGON			166.170 to 176	166.490
PENNSYLVANIA	6111(a) [48 hrs]	6112 & 6113	6120	6141.1
PUERTO RICO		Tit. 25, §§ 456, 456g, 458		
RHODE ISLAND	11-47-35 & 35.2 [7 days]	11-47-19 [machine gun manufacturers]; 11-47-38 & 39 [retail dealers]	11-47-58	11-47-36 [concealable firearm]
SOUTH CAROLINA		23-31-130 & 150 [pistols]; 23-31-370 [machine guns]	23-31-510 & 520	23-31-10 & 20
SOUTH DAKOTA	23-7-9 [48 hrs: pistols (concealed permit holders exempt)]		7-18A-36; 8-5-13; 9-19-20	23-7-40
TENNESSEE	39-17-1316		39-17-1314	
TEXAS			Local Gov't Code 229.001 & 235.021 to 024	Penal Code 46.07
UTAH			76-10-500	76-10-524
VERMONT			Title 24, §2295	Title 13, §§ 4014 & 4015
VIRGINIA			15.2-915 to 915.4; 15.2-1206 to 1209.1	
VIRGIN ISLANDS	466 [48 hrs]	461-462 & 467-468		470 [importation]
WASHINGTON	9.41.090(1) [5 days: pistols]	9.41.100 & 9.41.110	9.41.290	9.41.122 & 9.41.124
WEST VIRGINIA			8-12-5a	
WISCONSIN	175.35 [48 hrs: handguns]		66.0409	175.30
WYOMING			6-8-401	

ENDNOTES

(N.B.: The text of the above-cited provisions should be thoroughly examined in context to ascertain their TRUE effect.**)**

1. Blank spaces indicate no relevant statutes were located.
2. Jurisdictions include the 50 States, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands.
3. "PURCHASER WAITING PERIOD" – generally refers to the period between purchaser application for firearms and allowable receipt or delivery. Exceptions exist among the jurisdictions.
4. "LICENSE: DEALER, MANUFACTURER, ETC." – generally means the person must have BOTH a Federal and State license.
5. "LOCAL GOVERNMENT LIMITS (PREEMPTION)" – means that the jurisdiction overrides its subordinate jurisdictions in whole or in part.
6. "LIMITS TO INTERSTATE PURCHASE AND SALE" (also known as "Contiguous State Provisions") – those legislative limits to interstate purchase and sale enacted by jurisdictions based on the GCA are cited, if available.

NOTICE: For an official interpretation of a jurisdiction's law, consult the appropriate government officials of that jurisdiction.

THE COURT: If not already, Plaintiffs' 4 and 5 are admitted into evidence if they have not already been.

(Plaintiffs' Exhibits 4, 5, received in evidence.)

THE COURT: So we're basically dealing with Plaintiffs' 1, 2, and 3?

Okay, let me turn, then, to defense exhibits. If I can just get an update on the status of the defense exhibits which have not already been addressed.

MR. EISENBERG: There are none. The remaining documents are all the ones that are subject to the request for judicial notice. And the parties have not been able to reach an agreement on whether those documents are admissible. And those documents would include Exhibit 1, 2, and 3 on the plaintiffs' side, I believe. They're the same kind of documents as the historical materials that the defense submitted. We've talked about ways to reach an agreement, including proposals for stipulations, but we have not been able to reach an agreement. The only thing we have been able to reach an agreement on is that we will -- we will provide you excerpts of documents that you deem admitted.

MR. KILMER: That is the agreement, Your Honor.

THE COURT: All right. Let me just -- in terms of the defense exhibits, I have seven binders here of the defense exhibits. Obviously probably about three of the binders have already been resolved, but I don't necessarily want to have to

go through as to each binder, each exhibit one by one to get argument. What I want to try to do is do this as efficiently as possible. I recognize, and counsel has noted that in the various fairly recent cases of the Circuit, including the *Peruta* case and the *Chovan* case, there was a discussion regarding information that the courts really need to look at.

And, for example, in the *Peruta* case, the Court made it very clear in criticizing contrary decisions on other circuits, that they didn't do the full research that the Court in *Peruta* did, and the Court reviewed -- and, of course, this is on the issue of whether or not the Second Amendment applies to the issue at hand, which is the right to bear arms essentially outside the home. And the Court does go through the history of case authority. The Court goes through historical legislation, and the Court goes through commentaries. And the case authority dates back to what the Court called 19th century case law. The historical legislation dated back to post civil war legislative scene. And the commentaries, be considered post civil war commentators, understanding of the right. So it is fairly clear that I have to consider each of those aspects in terms of historical context.

So let me just say in general parameters -- and, again, with respect to weight of the evidence as opposed to admissibility, I am proposing to admit Law Review articles.

Courts generally cite to Law Review articles fairly frequently. Legislative histories, the courts can take judicial notice of legislative histories.

To the extent that certain proposed exhibits are dealing with public agency reports, notices, statistics, to the extent that they are public records, I would consider admitting those.

The big concern I have is with respect to articles, because, frankly, with respect to articles, if it's one person or a small body, a group of people's opinions, personal opinions in the form of an article, I'm not sure that those are the things that courts can take judicial notice of. Certainly if they are in dispute, then that is one of the factors on judicial notice because basically the Court can only take judicial notice of those items or exhibits for which they are relatively uncontroverted. So that's problematic in terms of taking judicial notice.

I also recognize, however, that I do need some background information. The only question is with these various proposed exhibits, which ones are really helpful and authoritative items of background information that are not primarily editorial comment by one or more individuals regarding their personal opinions regarding primarily, in this case, any waiting periods or the impact of various state laws.

I'm certainly open to any suggestions with those sort

of parameters as to how we're going to deal with this. If it comes down to, okay, we're just going to set aside a couple days, I'll start with exhibit whatever -- and I'll just use this hypothetical -- Exhibit 1, and we will go through Exhibit 1 through 100, and take up every page to see what's relevant or not. We can do that. I don't propose to do that.

What I propose to do is allow defense counsel to submit as to each exhibit for which there is a dispute the basis for taking judicial notice; the -- a very brief summary of what the exhibit states that would be relevant to the particular issues at hand here; give plaintiff's counsel an opportunity to respond, and then I would conduct another hearing after I've had a chance to review that. But I -- again, I'm not otherwise inclined to go through each exhibit and hear arguments on each exhibits. That would take arguably days. And I just don't see doing that.

So with that little bit of my thoughts, defense?

MR. EISENBERG: Yes, Your Honor. We certainly agree, and the things like legislative history, Law Review articles, early case law, legislation should come in. We have submitted some of those materials, and I would think, then, that you would just deem them admitted without need of document by document review.

THE COURT: Right.

MR. EISENBERG: So we certainly do not have a

negative response to that commentary.

As far as some of the other categories, we believe that history books were cited, the Malcolm were cited -- Joyce Lee Malcolm, the professor of history, her books have been cited in either Heller or -- and McDonald or both. Scholarly works of history seem to be something that is definitely relied on in these kinds of cases.

I also want to draw your attention to an advisory committee comment about Federal Rule of Evidence 201, because we're talking about legislative facts as opposed to adjudicative facts, and the standard of not controverted does not apply.

Quote, "In determining the content or applicability of the rule in domestic law, the judge is unrestricted in his investigation and conclusion. He may reject the propositions of either party or of both parties. He may consult the sources of pertinent data to which they refer, or he may refuse to do so. He may make an independent search for persuasive data or rest content with what he has or what the parties present.

"The parties do no more than to assist. They control no part of the process."

That, and the case that we cited to *Daggett*, and just simply the practice of the Ninth Circuit is that in a case where you're considering the constitutionality of a law, a

wide range of materials come in even if there are, say, two sides of a scholarly dispute. The Heller opinion, you know, showcased a scholarly dispute, and all of those materials were considered. They were not rejected on the grounds that they were uncontroverted.

I don't think you're going to find very many books about the history of the Second Amendment or the meanings that are not controverted by one side or the other. So, therefore we have proposed excerpts from history books to be considered, and the plaintiffs in their submission have done the same thing. You know, the Founders Amendment book by Stephen Halbrook, a well-known NRA lawyer who definitely has a strong position on the issue. We're not going to say that you should not even look at that material just because the author has a perspective that a lot of people disagree with. We believe that our materials are ultimately going to be more persuasive to you, but we think that they all should be admitted and given the weight that you deem just.

And to back up my point, I actually want to quote from the response of the plaintiffs to our motion on this topic. Now, we're dealing with the historical materials, not the medical science studies that go to the second part of the *Chovan* test.

But they wrote here, "Given that the United States Supreme Court in both *District of Columbia v. Heller*" -- and

they give the cite, "and the *McDonald v. City of Chicago*" -- and then they give the site, "engaged in a survey of historical evidence of the scope and meaning of the Second" -- well, they skipped the word "of" -- "scope and meaning of the Second Amendment, the plaintiffs herein cannot and do not object to that kind of evidence being derived from academic studies and law journal articles."

MR. KILMER: May I respond to that, Your Honor?

THE COURT: Sure. Are you done on that, then?

MR. EISENBERG: Yeah, I would just submit that they have already essentially conceded the point.

MR. KILMER: Your Honor, I think the point we were trying to make there, and I don't -- I'm not contradicting our statement, but the kind of analysis that the Supreme Court engaged in in the *District of Columbia v. Heller* and *McDonald v. City of Chicago*, is that they did survey the historical data, and they did derive some of the historical data from Law Review articles. That's without question.

However, the problem is that the defendants are trying to admit as evidence the opinions and analysis of law professors, and that's just not appropriate. Now, if those articles contain excerpts of law journals or statutes or writings on the meaning of the Second Amendment at the time of its ratification and at the time of its incorporation, those obviously are relevant for the Court to look at, but there's a

difference between a court reading a case or reading a law review article that is cited in a brief in order to have an informed opinion and then calling the Law Review article evidence. It's not evidence.

THE COURT: All right.

MR. KILMER: Further comment on the suicide studies, Your Honor --

MR. EISENBERG: We haven't even addressed that issue.

THE COURT: All right. Okay, and I'm not sure how the lower courts or Supreme Court did their survey, whether -- whether the trial court level documents were submitted as exhibits as evidence, or whether or not there were simply a list given -- I don't know. I guess part of the problem is certainly, it's sort of like, okay, I'm not sure how each of these articles fit in. I can obviously tell once there are proposed findings of facts as articles are referred to and the specific citations to specific articles would obviously be helpful. Of course, then it's what I allow first. Do I admit provisionally or otherwise these as exhibits and then take a look and see when there are proposed findings of facts? Just whether or not I'm going to give -- then it's just a matter of how much weight I would give to those references.

MR. KILMER: Your Honor, if I may be somewhat presumptuous in inquiring about how the Court is going to -- we're going to proceed with the findings of facts is my

suggested solution. My understanding of how we're going to proceed once the evidence is closed is that the parties will -- the Court will set a briefing schedule. We'll get copies from the transcripts from this matter. We'll each prepare a proposed findings of facts and conclusions of law. I'm assuming we're going to be able to also support that with the memorandum of points and authorities, and then we'll also be able to each submit what we -- excerpts of records, almost like a Court of Appeal, we'll submit excerpts of record of those exhibits and those portions of testimony that we want the Court to focus on instead of just giving you a whole bunch of documents.

I have no objection to the Court simply taking under submission the admissibility of the contested exhibits and then ruling on their admissibility in a separate memorandum after you've taken a look at our proposed findings of facts and conclusions of law and read our memorandum in support and taken a look at the specific exhibits we think are important. And then the Court can simply make its evidentiary ruling at that time. That may be the most efficient way to proceed.

THE COURT: Defense?

MR. EISENBERG: Mr. Kilmer, are you proposing to do that for both the historical materials and the medical studies?

MR. KILMER: I'm proposing that -- that the parties

simply tender their arguments in their proposed findings of fact and conclusions of law from exhibits that have been marked. I mean, I'm not in the business of censoring district court judges. If the judge wants to look at it and then say, "No, this isn't admissible, I'm not going to allow it," and it's always subject to a motion to strike, I suppose.

MR. EISENBERG: Okay, with the understanding that all of the submitted exhibits could be considered, and there's not a category that you're saying that we're not permitted to even cite to the judge, then we will agree to this proposal, which, by the way, I have just heard for the first time.

THE COURT: All right. Okay.

MR. KILMER: That's because I just thought of it for the first time.

THE COURT: That may be the most pragmatic thing to do, understanding, then, that really your proposed findings of facts will be essentially drafts because I may make certain rulings that might cause you to modify them. But that certainly would be probably cleaner than saying, okay, defense, instead of that, you're going to prepare little brief excerpts of each of the documents here so that we can take a look at that and I can rule on it. Because it could well be as we're going through your proposed findings of fact that you may be able to really pinpoint more as to a particular exhibit which portions of that exhibit that you want the Court to

refer to in terms of a proposed findings of fact. And there might be some that you might decide, well, we really don't need that, it's duplicative. Or this person's article is really covered by this particular Law Review article, or something like that, so it's really cumulative or redundant. So that's a possibility, and I certainly don't have a problem with that.

I will tell you, Miss Thomas, my court reporter, has indicated that she can probably get to you a certified copy of the transcript, if you ordered them in three weeks. So that's something --

MR. KILMER: That's good. So, Your Honor, the status of the contested exhibits at this point is that they are basically being that each of the exhibits are at this point in time an offer of proof, subject to -- perhaps a motion to strike, that the Court will rule on at the same time it renders its decision in this case.

THE COURT: I can take it -- each of the exhibits under submission, and then once I've had a chance to take a look at your proposed findings of fact, which would include references to specific exhibits including the Plaintiffs' Exhibits 1 through 3, and the various defense exhibits for which have not yet been submitted or withdrawn. That might be a workable solution. Defense?

MR. EISENBERG: Your Honor, we are in agreement with

what we're hearing. Thank you very much, Your Honor.

THE COURT: Now -- and let me do this: So right now, what I would propose to do is just set a schedule. Now, as it turns out, as you think about this and start drafting your proposed findings of facts, you're thinking, you know, there's a problem here, then I don't have a problem in coming back and we can talk about it further. And in all candor, if at some point in time, it's, "Judge, I'm sorry, we're going to have to go through 1 through 100 before we continue on with our proposed findings of facts," we can certainly do that. I don't have a problem with that because obviously this is something that has been suggested, and it seems to be workable. It might turn out not to be. But if it is workable, obviously it's probably the cleanest way to do it.

So with that understanding, then, as far as preparing proposed findings of facts and conclusions of law, and assuming -- and I'm not sure if you're going to be requesting or ordering transcripts. If you are, that will be about three weeks. With that understanding, let me get a time frame for submitting proposed findings of facts and conclusions of law. If you want to chat first briefly about scheduling it, it might be more productive to do that.

So let me just take a quick break. You can meet and confer, and if you can agree on a schedule and then a date that I can set aside for essentially what would be closing

arguments, it would be after the parties have submitted your proposed findings of facts and conclusions of law and that will give us all frameworks to deal with closing arguments.

So let me take a quick break, and you can check. Mr. Nazaroff will have my schedule, and obviously whatever time frame, we'll just work it in.

MR. KILMER: One quick question, Your Honor, just so we understand the format. So that we're going to agree on a date where each party submits a proposed findings of facts and conclusions of law, the excerpts that we want the Court to look at, and then a legal memorandum addressing the points we want to argue. Will the parties then have an option to also file simultaneous responses, and then we'll come back for oral argument if necessary?

THE COURT: Yeah, if you wish. You can file a response to the other side's proposed findings of facts and conclusions of law and the memorandum. That's fine. Go ahead and build that in.

MR. KILMER: And I'm going to be the rude one and ask what page limits does the Court want to impose on us?

THE COURT: I'm not going to impose any page limits. As I said, it's important, I said this at the outset, and I still believe that we need to make sure that both sides within the framework of the rules, et cetera, that you make as clear and as complete record as possible.

MR. KILMER: Thank you, Your Honor.

THE COURT: I'm perfectly fine with that.

Let me take a quick break. As soon as you're ready, meet and confer. Figure out on your schedules, check with Mr. Nazaroff, make sure that we can carve out some time if you think that we need a day, we need two days, or whatever, to do the closing arguments, that's fine. We'll just work out a time frame. And then figure out your own calendars as to what will work out best. As I've indicated, Miss Thomas, your three weeks is --

(The court reporter nods.)

THE COURT: As soon as you're ready to come back on the record with a briefing schedule, I'll come back on the record. You can cite it on the record, and I'll be okay with that.

MR. KILMER: Thank you, Your Honor.

MR. EISENBERG: Thank you, Your Honor.

THE COURT: We'll take a brief recess.

(Recess.)

THE COURT: All right, back on the record, update on the status of the case, briefing schedule, et cetera.

MR. KILMER: Yes, Your Honor. I think we have agreed on a schedule. And that is that -- that madam reporter will have until the 21st of April, which is a Monday, to have the transcripts to us by then or sooner. That the parties will

then file their initial findings of fact and proposed findings of facts and conclusions of law, any memorandum of law that they wish to accompany that, and then the excerpt of record that they want the Court to consider, basically pinpointing what they want the Court to look at. And that filing date will be June 16th. And then each party will be entitled to file a response on June 30th. And then the parties would return on July 21st for oral argument or closing argument.

THE COURT: All right. Defense?

MR. EISENBERG: We agree with that schedule, Your Honor.

THE COURT: That will be the order of the Court, then. And if it turns out, when I get the initial briefing, that it might take some further time, what I might do is just move it to a separate date. Monday is my law and motion day, and if I think it needs more time, then I would try to move it over to a different day rather than a Monday. But I'll give you plenty of notice so you can plan accordingly. I'm not just going to tell you a week before to show up on a Tuesday instead of Monday.

MR. EISENBERG: Your Honor, I'll be on a family vacation July 26th to August 2nd. If I don't tell you that, my wife will be very angry with me.

THE COURT: If I move it to a day other than the 21st, I'll obviously make sure it's a day that everyone is

CERTIFICATE OF ELIGIBILITY

License To Carry Concealed Pistol, Revolver, or Other Firearm
Within the State of California

Issued By: Hanford Police — Date of Issue: 11-02-13 — Expiration Date: 11-02-15

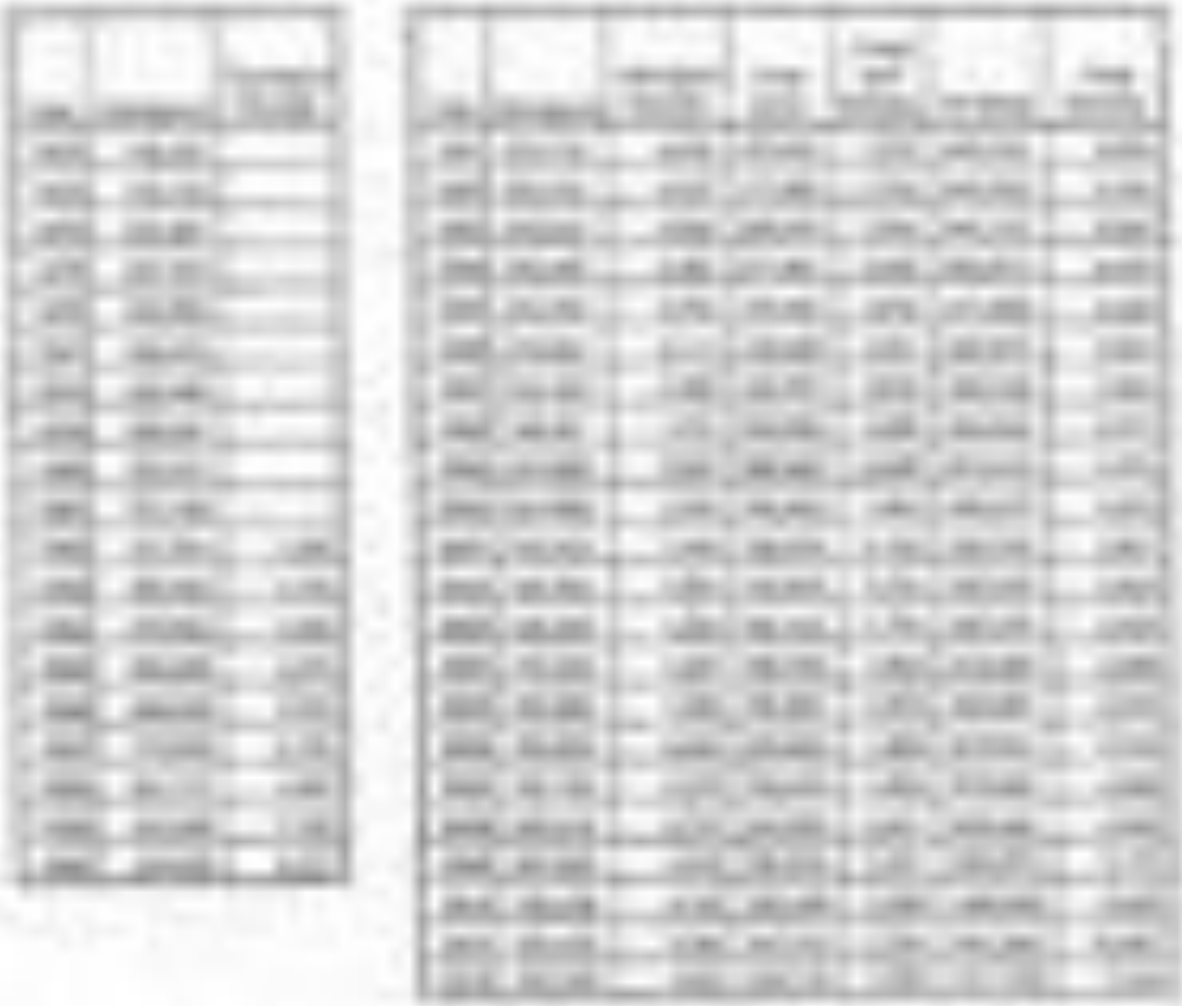
Name: Jeffrey Sherman Sylvester — Address: [redacted] — City: Hanford — Zip: 93230 — County: Kings

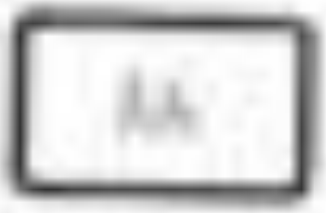
Date of Birth: [redacted] — Sex: M — Race: W — Height: 6-1 — Weight: 280 — Hair: BLU — Eyes: Brn

Social Security Number: [redacted] — Driver License Number: [redacted]

Photo: [redacted] — Signature of Licensee: [redacted]

Title: COP — Signature of Issuing Authority: [redacted]





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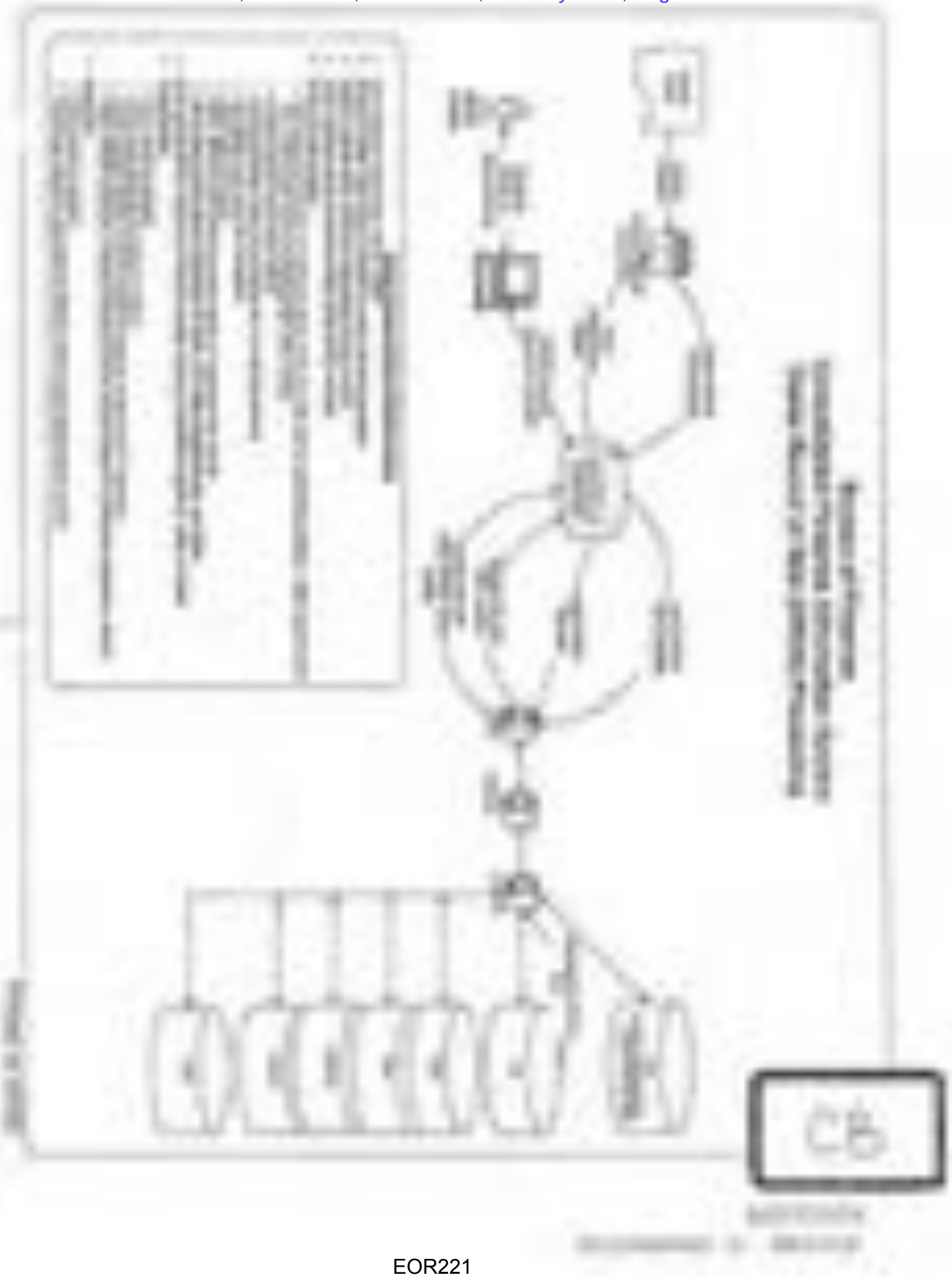
Our Mission



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Sections 1372 to End

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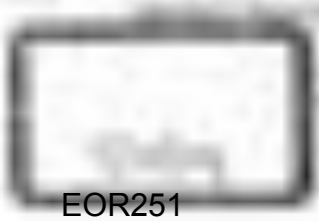
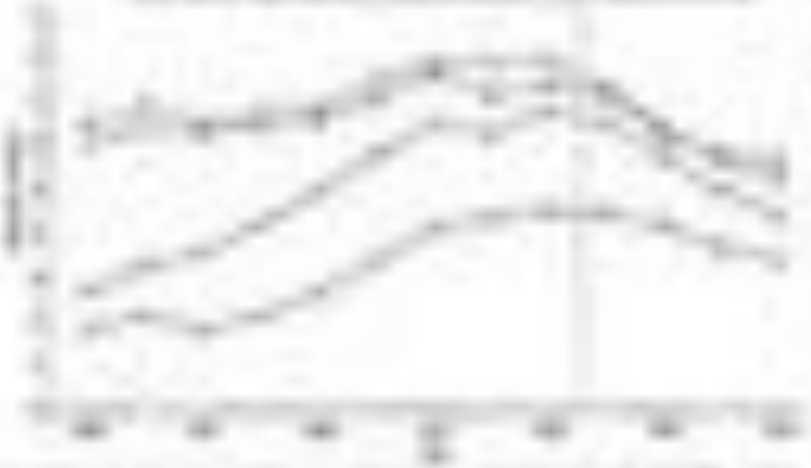
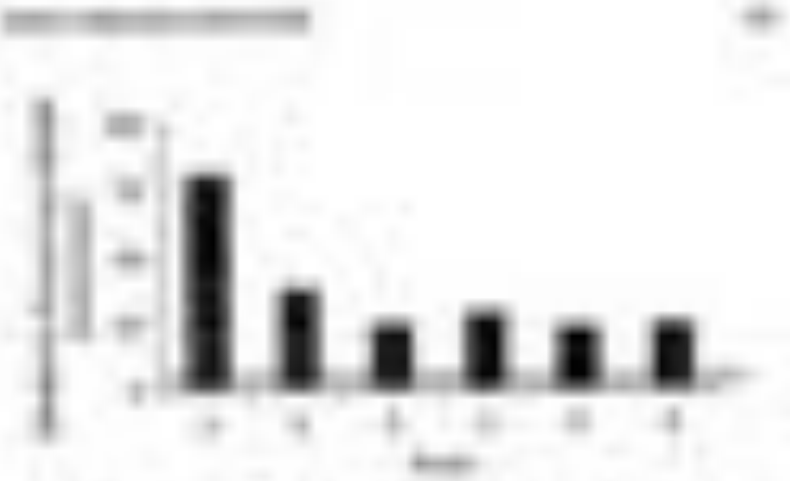


Homicide and Suicide Rates Associated With Implementation of the Brady Handgun Violence Prevention Act





UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEFF SILVESTER, BRANDON COMBS, THE CALGUNDS FOUNDATION, INC., a non-profit organization, and THE SECOND AMENDMENT FOUNDATION, INC., a non-profit organization, **Plaintiffs** **v.** **KAMALA HARRIS, Attorney General of California, and DOES 1 to 20,** **Defendants**	**CASE NO. 1:11-CV-2137 AWI SAB** **PRETRIAL ORDER** **Motions In Limine Hearing and Trial Confirmation:** **MARCH 11, 2014** **1:30 p.m., Courtroom 2** **Trial: MARCH 25, 2014** **8:30 a.m., Courtroom 2** **RULES OF CONDUCT**

The pretrial conference was held on February 3, 2014. The trial in this matter is set for March 25, 2014. The parties currently estimate that the trial shall take eight court days or less.

I. Jurisdiction and Venue

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

II. Trial

This matter shall be tried as a bench trial without a jury.

III. Facts

A. Undisputed Facts

(a) At all relevant times, one effect of the Waiting Period law has been that all California residents lawfully purchasing firearms must wait a minimum of 10 days between applying to purchase the firearms and receiving delivery of them (unless the purchasers are statutorily exempt

from the waiting period);

(b) At all relevant times, Plaintiff Jeff Silvester ("Silvester") has owned at least one firearm;

(c) At all relevant times, Brendon Combs ("Combs") has owned at least one firearm.

B. Disputed Facts

Plaintiffs submit the following disputed facts:

(a) The DOJ needs at least 10-days to conduct every background check;

(b) A minimum 10-day "cooling off" period is necessary;

(c) Requirement to wait 10-days deprives Plaintiffs of the use, custody, control and ability to defend self, family and home; it mandates a brief window of 20 days from which Plaintiffs must return to obtain physical possession of property that Plaintiffs already own;

(d) Plaintiffs are forced to incur expenses including: opportunity costs to engage in business and other activities during the each and every time Plaintiffs have to make a second trip to the licensed firearm dealer to take possession, custody and control of each firearm, lost opportunity to purchase firearms due to an inability to make a second trip, additional shipping expenses, additional dealer transfer fees, increased firearm prices due to lack of local competition, additional fuel costs, additional wear and tear on Plaintiffs' vehicles necessary for a return trip to the licensed dealer to retrieve a firearm Plaintiffs already own, and additional costs of having to resubmit a DROS application due to scheduling conflicts preventing Plaintiffs from returning to the store to retrieve the firearm within the temporary window of availability.

Defendant submits the following disputed facts:

1. Whether Silvester has lacked a firearm with which to defend himself in his home, at any relevant time.

2. Whether Combs has lacked a firearm with which to defend himself in his home, at any relevant time.

3. Whether Silvester has, by law, been unable to have sufficient firearm weaponry with which to defend himself in his home, at any relevant time.

4. Whether Combs has, by law, been unable to have sufficient firearm weaponry with

which to defend himself in his home, at any relevant time.

5. Whether Silvester has been unduly burdened or merely inconvenienced by the Waiting Period Law in acquiring firearms.

6. Whether Combs has been unduly burdened or merely inconvenienced by the Waiting Period Law in acquiring firearms.

7. Whether the ability of most people to acquire firearms very quickly, i.e., within about 10 days of deciding to obtain them, was historically understood to be within the scope of the Second Amendment to the U.S. Constitution.

8. Whether the State of California ("California"), through its Bureau of Firearms ("BOF"), could complete, and communicate to interested persons, the results of statutorily-required background checks on prospective firearms purchasers, who previously have been through the waiting period imposed by the Waiting Period Law for other firearms purchases, essentially instantaneously after BOF receives the prospective purchasers' Dealer Record of Sale ("DROS") applications for the current proposed purchases.

9. Whether California's rates of firearm-related deaths, with the Waiting Period Law, can be legitimately compared to the same types of rates in other U.S. states that do not have waiting-period laws affecting purchases of firearms.

10. How California's rates of firearm-related deaths, with the Waiting Period Law, compare to the same types of rates in other U.S. states that do not have waiting-period laws affecting purchases of firearms.

11. Whether it is possible to determine accurately what effects, if any, "cooling off" periods affecting firearms purchases have on rates of firearm-related deaths.

12. What effects, if any, cooling-off periods affecting firearms purchases have on rates of firearm-related deaths.

13. Whether the California Legislature arbitrarily and/or irrationally selected 10 days, as opposed to some other period of time, as the current waiting period in the Waiting Period Law.

14. What other rationales and facts justify the 10-day waiting period in the Waiting Period Law.

C. Disputed Evidentiary Issues

Plaintiffs submit the following disputed facts:

(a) Plaintiffs will dispute Defendants' request for judicial notice of studies, books or other evidence pertaining to the effectiveness of the "cooling off period;"

(b) Plaintiffs will object to the introduction of any expert witness testimony as neither of the parties have disclosed, received written reports or deposed experts.

(c) Plaintiffs reserve the right to tender rebuttal experts if the Defendants tender any lay opinion testimony based on their status as a government agency;

(d) Plaintiffs will attempt to exclude any studies that the Defendant attempts to admit into evidence related to the issue of the necessity of the 10-day waiting period.

Defendant submits the following disputed facts:

(1) whether certain witnesses have personal knowledge and experiences making them competent to testify as to certain facts and/or opinions;

(2) which party bears the burden of proof with respect to bolstering or undermining the rationales and justifications for the Waiting Period Law;

(3) whether it is appropriate for the Court to take judicial notice of certain materials reflecting, positively or negatively, on the rationales and justifications for the Waiting Period Law. If there are such disputes, and they are significant, they probably should be resolved by written motions in limine.

D. Special Factual Information

None.

IV. Relief Sought

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

(a) An order preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, and all persons who receive action notice of the injunction, from enforcing Penal Code sections 26815 and 27540 as against those persons that may lawfully possess and acquire a firearm and possess proof of firearms possession or ownership in their name within the

State of California from enacting, publishing, promulgating, or otherwise enforcing policies, rules, or procedures prohibiting or otherwise restricting the immediate delivery of firearms to plaintiffs and individuals similarly situated (i.e., persons in possession of a current Certificate of Eligibility and/or a license to carry a concealed firearm) upon completion of a background check at the point of sale indicating that they may own, possess and acquire firearms;

(b) Attorney fees and costs pursuant to 42 U.S.C. section 1988;

(c) Declaratory relief consistent with the injunction;

(d) Costs of suit; and

(e) Any other relief as the Court deems just and appropriate.

The Attorney General seeks to have Plaintiffs' prayer for injunctive and any other relief denied in full.

V. Points of Law

A. Plaintiffs' Contentions

Point of Law 1: California Penal Code § 26815 and § 27540, which imposes a 10-day waiting period between the purchase and delivery of a firearm, violates the Second Amendment facially and as applied to individuals who: (1) are not prohibited from acquiring or possessing firearms, and (2) who currently possess registered firearms and/or who hold certain valid state licenses that require the successful passage of background checks.

Point of Law 2: The eighteen exceptions to the 10-day waiting period violate the Fourteenth Amendment's Equal Protection Clause.

Relevant cases and statutes:

(1) The Second Amendment of the United States Constitution;

(2) The Fourteenth Amendment of the United State Constitution;

(3) 18 U.S.C. § 922(a)(3);

(4) 28 U.S.C. §§ 1331, 1343, 1391, 2201;

(5) 42 U.S.C. §§ 1983, 1988;

(6) The Brady Handgun Prevention Act (Pub.L. 103-159, 107 Stat. 1536);

(7) California Penal Code §§ 11106, 16520, 18900, 21740, 26150, 26185, 26195, 26815, 26950,

26955, 26960, 26965, 26970, 27000, 27005, 27050, 27055, 27060, 27065, 27100, 27105, 27110, 27115, 27120, 27125, 27130, 27135, 27140, 27540, 27600, 27605, 27610, 27615, 27650, 27665, 27655, 27660, 27665, 27670, 27700, 27705, 27710, 27715, 27720, 27725, 27735, 27740, 27743, 27745, 27750, 28200, 28220, 28255, 29800, 29900, et seq., 30000, et seq. 30500, et seq., 32650, et seq. 32700, 33300;

(8) California Code of Regulation § 4036(b);

(9) California Welfare and Institutions Code §§ 8100 an 8103;

(10) 56 UCLA L. Rev. 1343, 1376 (2009);

(11) California Assembly Bill 500;

(12) Board of Trustees v. Fox, 492 U.S. 469, 480, 491 U.S. at 782-83 (1980);

(13) Citizens United v. FEC, 538 U.S. 310, 130 S. Ct. 876, 898 (1996);

(14) City of Cleburne v. Cleburne Living Ctr., 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996);

(15) Clark v. Jeter, 286 U.S. 570, 624-25 (1988);

(16) District of Columbia v. Heller, 554 U.S. 570, 630 (2008);

(17) Mcdonald v. Chicago, 130 S. Ct. 3020, 3036 (2010);

(18) Nordlinger v. Hahn, 505 U.S. 1,10 (1992);

(19) Planned Parenthood v. Casey, 833 U.S. 833, 873-74 (1992);

(20) Ward v. Rock Against Racism, 434 U.S. 781, 791 (1989);

(21) Zablocki v. Redhail, 434 U.S. 432, 440, 105 S.Ct. 3249, 87 L.Ed.2d. 313 (1986);

(22) Romer v. Evans, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996);

(23) Shapiro v. Thomspon, 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969);

(24) Anderson v. City of Hermosa Beach, 621 F.3d 1051 (9th Cir. 2010);

(25) Barns-Wallace v. City of San Deigo, 704 F.3d 1067, 1084 (9th Cir. 2013);

(26) Ezell v. Chicago, 651 F.3d 684 (7th Cir. 2011);

(27) Fantasyland Video, Inc. v. County of San Deigo, 505 F.3d 996, 1004 (9th Cir. 2007);

(28) Kasler v. Lockyer, 23 Cal.4th 472 (2000);

(29) Moore v. Madigan, 702 F.3d 933 (9th Cir. 2012);

(30) Nat'l Rifle Ass'n of Am. v. Bureau of Alcohol, Tobacco, Firearms and Explosives, 700 F.3d

185, 194-95 (5th Cir. 2012);

(31) Nissan Fire and Marine Ins. Co. v. Fritz Cos., 201 F.3d 1099, 1105-6 (9th Cir. 2000).

(32) Nordyke v. King, 681 F.3d 1041, 1043 (9th Cir. 2012) (en banc.);

(33) Reed v. Town of Gilbert, 707 F.3d 1057, 1074 n.16 (9th Cir. 2013);

(34) Silveira v. Lockyer, 312 F.3d 1052, 1087 (9th Cir. 2002);

(35) Stop H-3 Ass'n v. Dole, 870 F.2d 1419, 1429 n.18 (9th Cir. 1989);

(36) U.S. v. Chester, 628 F.3d 673, 680 (4th Cir. 2010);

(37) U.S. v. Decastro, 682 F.3d 160, 164 (2d Cir. 2012);

(38) U.S. v. Marzzarella, 614 F.3d 85, 89 (3d Cir. 2010);

(39) U.S. v. Reese, 627 F.3d 792, 800-01 (10th Cir. 2010);

(40) People v. Bickston, 91 Cal.App3d.Supp. 29 (1979);

(41) U.S. v. Chovan, No. 11-50107, 2013 WL 6050914, 735 F.3d 1127 (C.A. 9 (Cal.) Nov. 18, 2013).

B. Defendants' Contentions

Issue No. 1: Whether the Waiting Period Law unconstitutionally burdens the historically understood Second Amendment right of people who must go through the waiting period in connection with firearms acquisition transactions, after having previously gone through the waiting period in connection with other firearms acquisition transactions in California.

Points of Law for Issue No. 1: The Waiting Period Law imposes at most an inconvenience or a minor burden on people in acquiring firearms, and does not have constitutional significance. The Second Amendment right was not historically understood to mean that people could acquire firearms essentially instantaneously. Sources of law: See, e.g., McDonald v. Chicago, 130 S.Ct. 3020 (2010); District of Columbia v. Heller, 554 U.S. 570 (2008); Burdick v. Takushi, 504 U.S. 428 (1992); Zablocki v. Redhail, 434 U.S. 374 (1978); Town of Lockport v. Citizens for Community Action at Local Level, Inc., 430 U.S. 259 (1977); Burns v. Fortson, 410 U.S. 686 (1973); People of State of N.Y. v. O'Neill, 359 U.S. 1 (1959); Ala. State Fed. of Labor, Local Union No. 103 v. McAdory, 325 U.S. 450 (1945); Robinson v. Marshall, 66 F.3d 249 (9th Cir. 1995); U.S. ex rel. Madden v. Gen. Dynamics Corp., 4 F.3d 827 (9th Cir. 1993); Karlin v. Foust,

188 F.3d 446 (7th Cir. 1999) Dittus v. Cranston, 186 Cal. App. 2d 837 (1960).

Issue No. 2: If the Waiting Period Law is found to burden the Second Amendment right, in the way just discussed, what level of heightened scrutiny the Court should use in evaluating the constitutionality of the Waiting Period Law, based on how close the Waiting Period Law comes to the core of the Second Amendment right, and the severity of the burden on the right.

Points of Law for Issue No. 2: If heightened scrutiny is called for in evaluating the Waiting Period Law, the level of scrutiny should be a permissive form of intermediate scrutiny, close to rational-basis review, and certainly not strict scrutiny. Because the Waiting Period Law does not confiscate or otherwise affect firearms that people, such as the individual plaintiffs herein, already lawfully have, the Waiting Period does not come close to the core Second Amendment right. Because the Waiting Period Law merely delays, for a short time, people's acquisition of firearms, the burden of the law is not severe. Sources of law: See, e.g., cases cited above, as well as United States v. Chovan, 735 F.3d 1127 (9th Cir. 203); Fantasyland Video, Inc. v. Cnty. of San Diego, 505 F.3d 996 (9th Cir. 2007); Coyote Publ'g v. Miller, 598 F.3d 592 (9th Cir. 2010); Ass'n of Nat'l Advertisers, Inc. v. Lungren, 44 F.3d 726 (9th Cir. 1994); Drake v. Filko, 724 F.3d 426 (3d Cir. 2013); Peterson v. Martinez, 707 F.3d 1197 (10th Cir. 2013); Heller v. District of Columbia, 670 F.3d 1244 (D.C. Cir. 2011); Ezell v. City of Chicago, 651 F.3d 684 (7th Cir. 2011); United States v. Masciandaro, 638 F.3d 458 (4th Cir. 2011); United States v. Marzzarella, 614 F.3d 85 (3d Cir. 2010); United States v. White, 593 F.3d 1199 (11th Cir. 2010); Young v. Hawaii, 911 F. Supp. 2d 972 (D. Haw. 2012); Doe v. Wilmington Housing Auth., 880 F. Supp. 2d 513 (D. Del. 2012).

Issue No. 3: If the Waiting Period Law is found to burden the Second Amendment right, in the way just discussed, whether there is a sufficient relationship or "fit" between the Waiting Period Law and California's objective of minimizing firearm violence and thereby increasing public safety.

Points of Law for Issue No. 3: If heightened scrutiny is called for in evaluating the Waiting Period Law, the 10-day waiting period will be justifiable because of the time needed to

complete meaningful background checks and investigations of prospective firearms purchasers, and the efficacy of "cooling off" periods in helping to achieve California's compelling interest in public safety. Sources of law: See, e.g., cases cited above, as well as United States v. Call, 874 F. Supp. 2d 969 (D. Nev. 2012); Peruta v. County of San Diego, 758 F. Supp. 2d 1106 (S.D. Cal. 2010); Jackson v. Dep't of Justice, 85 Cal. App. 4th 1334 (2001).

Issue No. 4: Whether the statutory exemptions to the Waiting Period Law differentiate between people in ways that are impermissible under the Fourteenth Amendment's Equal Protection Clause.

Points of Law for Issue No. 4: The exemptions serve to tailor the Waiting Period Law and thus bolster its constitutionality. The exemptions all have sufficient justifications. Sources of Law: See, e.g., cases cited above, as well as Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009); Vacco v. Quill, 521 U.S. 793 (1995); Miller v. Johnson, 515 U.S. 900 (1995); Fed. Commc'ns Comm'n v. Beach Commc'ns, Inc., 508 U.S. 307 (1993); Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981); Kahawaiolaa v. Norton, 386 F.3d 1271 (9th Cir. 2005); Giano v. Senkowski, 54 F.3d 1050 (2d Cir. 1995); Rivkin v. Dover Tp. Rent Leveling Bd., 671 A.2d 567 (N.J. 1996).

Issue No. 5: If the Court determines that the Waiting Period Law or its exemptions are unconstitutional, in whole or in part, what remedy should the Court fashion.

Points of Law for Issue No. 5: If the Court determines that the Waiting Period Law is unconstitutional under the Second Amendment, the Court should outline its concerns and give the California Legislature guidance and time to reformulate the law to address the concerns. If the Court determines that an exemption is unconstitutional, the Court should invalidate the exemption only. Sources of Law: See, e.g., cases cited above, as well as Regan v. Taxation With Representation of Wash., 461 U.S. 540 (1983); Am. Power & Light Co. v. Sec. and Exch. Comm'n, 329 U.S. 90 (1946); Sec. Ins. Co. of Hartford v. Kevin Tucker & Assocs., Inc., 64 F.3d 1001 (6th Cir. 1995); Vote Choice, Inc. v. DiStefano, 4 F.3d 26 (1st Cir. 1993).

VI. Abandoned Issues

None.

VII. Witnesses

The following is a list of witnesses that the parties expect to call at trial, including rebuttal and impeachment witnesses. NO WITNESS, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE CALLED AT TRIAL UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS ORDER SHOULD BE MODIFIED TO PREVENT "MANIFEST INJUSTICE." Fed. R. Civ. P. 16(e); Local Rule 16-281(b)(10).

A. Plaintiffs' Witnesses

1. Jeff Silvester
2. Brendon Combs
3. Gene Hoffman
4. Alan Gottlieb

B. Defendants' Witnesses

1. Stephen Lindley
2. Steve Buford
3. Blake Graham
4. Mitch Matsumoto
5. Donnette Orsi
6. Rick Lopes (possibly)
7. Karen Milami (possibly)
8. Jeff Silvester (possibly)
9. Brandon Coombs (possibly).

VIII. Exhibits

The following is a list of documents or other exhibits that the parties expect to offer at trial. NO EXHIBIT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS ORDER SHOULD BE MODIFIED TO PREVENT "MANIFEST INJUSTICE." Fed. R. Civ. P. 16(e); Local Rule 16-281(b)(11).

A. Plaintiffs' Exhibits

AB497 Processing Alternative Feasibility Study – Report of Findings, State of California Department of Justice Division of Law Enforcement, May 1991.

Plaintiffs may use discovery responses and documents produced by Defendants.

Plaintiffs may use the Armed Persons With Mental Illness Report produced by the California State Auditor October 2013.

Depending on how the Court rules on the evidentiary issues raised by Defendants, Plaintiff may introduce: Legislative history of Cal. Penal Code sections 12010, 12011, 12021, 12021.1, 12071, 12076, 12078, 21740, 26950, 26955, 26960, 26965, 26970, 27000, 27050, 27055, 27060, 27065, 27100, 27105, 27110, 27715, 27120, 27125, 27130, 27135, 27140, 27600, 27605, 27610, 27615, 27650, 27655, 27660, 27665, 27670, 27700, 27705, 27710, 27720, 27715, 27725, 27730, 27735, 27740, 27750, 28220, 29800, 29805, 29810, 29815, 29820, 29825, 29830, 29855, 29900, 30000, and 30005.

B. Defendants' Exhibits

-- Discovery Documents

Documents disclosed in discovery with Bates numbers AG000001-765, AG000827-990, AG001244-351, AG001491-78, AG001643-58, and AG001755-26

-- Legislative History

Legislative history of Cal. Penal Code sections 12010, 12011, 12021, 12021.1, 12071, 12076, 12078, 21740, 26950, 26955, 26960, 26965, 26970, 27000, 27050, 27055, 27060, 27065, 27100, 27105, 27110, 27715, 27120, 27125, 27130, 27135, 27140, 27600, 27605, 27610, 27615, 27650, 27655, 27660, 27665, 27670, 27700, 27705, 27710, 27720, 27715, 27725, 27730, 27735, 27740, 27750, 28220, 29800, 29805, 29810, 29815, 29820, 29825, 29830, 29855, 29900, 30000, and 30005

Legislative history of Cal. Bus. & Prof. Code sections 7583.23, 7583.24, 7583.25, 7583.27, 7583.29, 7583.32, 7583.37, 7583.45, 7596.3, 7596.4, 7596.7, 7596.8, 7596.81, and 7596.83

Legislative history of Cal. Code of Civil Procedure section 527.9

Legislative history of Cal. Fam. Code section 6389

-- Court Filings

Goodin, Brief for English/American Historians as Amicus Curiae [Etc.], in *McDonald v. City of Chicago* (2010)

Bogus, Brief of Amici Curiae Jack N. Rakove [Etc.], in *District of Columbia v. Heller* (2008)

Webster, Declaration of Daniel Webster, in *Jackson v. City and County of San Francisco* (2012)

-- Books

Bogus, ed., The Second Amendment in Law and History (2002)

Cooley, Constitutional Limitations (1868)

Cornell, A Well-regulated Militia (2008)

Cornell and Kozuskanich, The Second Amendment on Trial (2013)

Fox, Will to Kill (2011)

Hawke, Everyday Life in Early America (1989)

Larkin, The Reshaping of Everyday Life: 1790-1840 (1989)

Nisbet, ed., The Gun Control Debate: You Decide (1990)

Rakove, Original Meanings (1997)

Russell, Guns on the Early Frontiers (2005)

Sellers, The Market Revolution (1994)

Spitzer, Gun Control: A Documentary and Reference Guide (2009)

Spitzer, The Politics of Gun Control, 5th Ed. (2012)

Uviller and Merkel, The Militia and the Right to Arms (2003)

Webster and Vernick, eds., Reducing Gun Violence in America (2013)

Winkler, Gun Fight: The Battle Over the Right to Bear Arms in America (2013)

-- Government and NGO Reports

California Department of Justice, Crime and Delinquency in California (Various Years)

California Department of Justice, Daily DROS Tactical Reports (many issues; 2013)

California Department of Justice, Dealer Record of Sale Statistics (Various Years)

California Department of Justice, Firearms Prohibiting Categories (2012)

California Department of Justice, Report on Firearms Used in the Commission of Crimes (Various Years)

California State Auditor, Armed Persons with Mental Illness (2013)

Centers for Disease Control, Injury Fact Book (2006)

Federal Bureau of Investigation, Crime in the United States (Various Years)

Federal Bureau of Investigation, National Instant Criminal Background Check System (NICS) Operations (2011)

Federal Bureau of Investigation, NICS Point of Contact States & Territories (2008)

Office of the U.S. President, Now is the Time; The President's Plan to Protect Our Children and our Communities by Reducing Gun Violence (2013)

Legal Community Against Violence, Model Laws for a Safer America (2012)

U.S. Department of Justice, Draft Report on Systems for Identifying Felons Who Attempts to Purchase Firearms; Notice and Request for Comment, in Federal Register (1989)

Violence Policy Center, States with High Gun Ownership and Weak Gun Laws Lead Nation in Gun Deaths (2013)

-- Scholarly Articles

Bangalore, et al, Gun Ownership and Firearm-related Deaths, in American Journal of Medicine (2013)

Brent and Bridge, Firearms Availability and Suicide, in American Behavioral Scientist (2003)

Blodgett-Ford, The Changing Meaning of the Right to Bear Arms, in Seton Hall Constitutional Law Journal (1995)

Cantor and Slate, The Impact of Firearm Control Legislation on Suicide in Queensland: Preliminary Findings, in Medical Journal of Australia (1995)

Carrington and Moyer, Gun Control and Suicide in Ontario, in American Journal of Psychiatry (1994)

Cornell, The Ironic Second Amendment, in Albany Law Review (2008)

Cornell and De Dino, A Well Regulated Right: The Early American Origins of Gun Control, in Fordham Law Review (2004)

Cozzolino, Gun Control: The Brady Handgun Violence Prevention Act, in Seton Hall Legislative Journal (1992)

Daponde, New Residents and Collectors Must Register Out-of-state Handguns, in McGeorge Law Review (1998)

de Moore, et al., Survivors of Self-inflicted Firearm Injury: A Liaison Psychiatry Perspective, in Medical Journal of Australia (1994)

Frierson, Women who Shoot Themselves, in Hospital Community Psychiatry (1989)

Frierson and Lippmann, Psychiatric Consultation for Patients with Self-inflicted Gunshot Wounds, in Psychosomatics (1990)

Hahn, et al., Firearms Laws and the Reduction of Violence: A Systematic Review, in American Journal of Preventive Medicine (2005)

Lewiecki, Suicide, Guns, and Public Policy, in American Journal of Public Health (2013)

Ludwig and Cook, Homicide and Suicide Rates Associated with Implementation of the Brady Handgun Violence Prevention Act, in Journal of the American Medical Association (2000)

Miller and Hemenway, The Relationship Between Firearms and Suicide: A Review of the Literature, in Aggression and Violent Behavior (1998)

Novak, Why the New York State System for Obtaining a License to Carry a Concealed Weapon Is Unconstitutional, in Fordham Urban Law Journal (1988)

Peterson, et al., Self-Inflicted Gunshot Wounds: Lethality of Method Versus Intent, in American Journal of Psychiatry (1985)

Vigdor and Mercy, Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Violence?, in Evaluation Review (2012)

Volokh, Implementing the Right to Keep and Bear Arms for Self-defense: An Analytical Framework and a Research Agenda, in UCLA Law Review (2009)

Warner, Firearm Deaths and Firearm Crime After Gun Licensing in Tasmania, presented at the Third National Outlook Symposium on Crime, Canberra, Australia (1999)

Winkler, Heller's Catch 22, in UCLA Law Review (2009)

Wintemute, et al., Mortality Among Recent Purchasers of Handguns, in New England Journal of Medicine (1999)

Wintermute, Subsequent Criminal Activity Among Violent Misdemeanants Who Seek to Purchase Handguns; Risk Factors and Effectiveness of Denying Handgun Purchase, in Journal of the American Medical Association (2001)

Wright, et al., Effectiveness of Denial of Handgun Purchase to Persons Believed to be at High Risk for Firearm Violence, in American Journal of Public Health (1999)

Zeoli and Webster, Effects of Domestic Violence Policies, Alcohol Taxes, and Police Staffing Levels on Intimate Partner Violence, in Injury Prevention (2010)

-- Magazine and Newspaper Articles

Amar and Amar, Guns and the Constitution: Telling the Right Constitutional Story, in FindLaw – Legal Commentary (2001)

Cornell, The Second Amendment You Don't Know, in New York Daily News (2012)

Emberton, The Real Origin of America's Gun Culture, in History News Network (2013)

Ifill, 7-day Wait for Gun Purchases Hits Crucial Obstacle in House, in New York Times (1991)

Koerner, Californians Buying Guns at Record Rate, in Orange County Register (2012)

Leger, Obama Demand Could End Research Blackout into Gun Violence, in USA Today (2013)

Marois, California's Gun Repo Men Have a Nerve-racking Job, in Businessweek (2013)

Platt, New York Banned Handguns 100 Years Ago… Will We Ever See that Kind of Gun Control Again?, In History News Network (2011)

Pugh, Baltimore Gun Violence Summit Conclude with Recommendations, in McClatchy DC (2013)

Richman, California's Gun Background-Check System Could Be National Model, in San Jose Mercury News (2013)

Robinson, Delay for Buying Guns OK'd by Legislature, in San Jose Mercury News (1991)

Sweeney and Cornell, All Guns Are Not Created Equal, in The Chronicle Review (2013)

Winkler, The Secret History of Guns, in Atlantic (2001

IX. Discovery Documents To Be Used At Trial

Plaintiffs may offer discovery responses provided by Defendants.

The Attorney General does not presently expect to offer any discovery materials at trial, assuming that all deposed witnesses will be available at trial, and that there is no need to use interrogatory responses or deposition transcripts in place of live witness or to impeach live witnesses.

X. Further Discovery or Motions

Plaintiffs contend:

Defendants may request that the Court take judicial notice of certain studies pertaining to the effectiveness of the "cooling off period." Plaintiffs will object to any request for judicial notice of said studies. Plaintiffs will likely challenge the admissibility of studies attempted to be

used by Defendants.

Defendants contend:

When the discovery period in this case was open, and before briefing on the motion for summary judgment was completed, there was no binding case law suggesting that the Attorney General would have to proffer any evidence, much less expert-witness evidence, of the historical understanding of the Second Amendment or the efficacy of the Waiting Period Law in achieving California's objective of minimizing firearm violence and thereby increasing public safety. Under established case law, the Waiting Period Law enjoyed the usual strong presumption of constitutionality, with the burden on Plaintiffs to disprove the constitutionality of the law. Although the Attorney General continues to believe that Plaintiffs bear the ultimate burden of proof here, recent case law, as interpreted by the Court, raises the question of whether the Court will expect the Attorney General to proffer any evidence and/or expert-witness evidence on these issues. (See, e.g., Chovan, supra.) The Attorney General believes that if she bears the burden of proof on these issues, there is sufficient competent evidence of which the Court may and should take judicial notice, such that the Attorney General will meet that burden. However, if Court expects the Attorney General to produce expert-witness evidence on these topics, and judicial notice will not be taken of other relevant evidence, then the Attorney General may need to have expert-witness discovery reopened and seeks the Court's guidance on this issue.

XI. Stipulations

None at this time.

XII. Amendments/Dismissals

Plaintiff Michael Poeschl has been dismissed from this case.

XIII. Settlement Negotiations

Because Plaintiffs seek to invalidate, at least partially, the Waiting Period Law, and the Attorney General must enforce and not compromise that law, settlement negotiations and/or a

court settlement conference will be unlikely to lead to resolution of this case.

XIV. Agreed Statement

None at this time.

XV. Separate Trial Of Issues

Plaintiffs believe the issues should not be tried separately.

The Attorney General believes that it is advisable and feasible to try first the issue of whether the Waiting Period Law imposes a burden on Plaintiffs' Second Amendment right. If the Court finds that there is no such burden, then the inquiry ends and the case is over. The Court is not inclined at this time to order a separate trial of issues.

XVI. Impartial Experts - Limitation Of Experts

Neither party has disclosed experts, received expert reports or deposed experts. The Plaintiffs believe that retained experts should be excluded from trial and lay opinion testimony should be severely restricted. The parties do not favor having impartial experts appointed in this matter.

XVII. Attorneys' Fees

Plaintiffs request attorney fees and costs pursuant to 42 U.S.C. § 1988 and cost of suit.

XVIII. Further Trial Preparation

A. Final Witness List

The parties are ordered to file and serve their final list of witnesses by March 20, 2014. Additionally, at that time Plaintiffs shall disclose the order of witnesses so that Defendant will be prepared for cross-examination.

Except upon the showing set forth above in section VII, a party may not add witnesses to the final list of witnesses, or to any other updated witness list, who are not disclosed in this Order

in Section VII.

B. Trial Briefs

The parties are directed to file and serve a Trial Brief by March 10, 2014. Local Rule 16-285. The parties need not include in the Trial Brief any issue that is adequately addressed in a motion in limine, or in an opposition brief to a motion in limine. Any response to a Trial Brief shall be filed and served by March 18, 2014.

C. Duty of Counsel to Pre-Mark Exhibits

The parties are ordered to confer no later than February 18, 2014, for purposes of pre-marking and examining each other's exhibits. All joint exhibits must be pre-marked with numbers preceded by the designation JT/-- (e.g., JT/1, JT/2). All of Plaintiffs' exhibits shall be pre-marked with numbers. All of Defendants' exhibits shall be pre-marked with letters.

1. Counsel shall create four (4) complete, legible sets of exhibits in binders as follows:

(a) Two sets of binders to be delivered to Courtroom Clerk Harold Nazaroff March 20, 2014, one for use by the Courtroom Clerk and the other for the court; and

(b) One set for each counsel's own use.

If the parties desire, they may have a fifth set of binders to be used for the purposes of questioning witnesses.

2. Counsel are to confer and make the following determination with respect to each proposed exhibit to be introduced into evidence, and to prepare separate indexes - one listing joint exhibits, and one listing each party's separate exhibits:

(a) Duplicate exhibits, i.e., documents which both sides desire to introduce into evidence, shall be marked as a joint exhibit, and numbered as directed above. Joint exhibits shall be listed on a separate index, and shall be admitted into evidence on the motion of any party, without further foundation.

(b) As to exhibits that are not jointly offered, and to which there is no objection to introduction, those exhibits will likewise be appropriately marked, e.g., Plaintiffs' Exhibit 1 or Defendants' Exhibit A, and shall be listed in the offering party's index in a column entitled "Admitted In Evidence." Such exhibits will be admitted upon

introduction and motion of the party, without further foundation.

(c) Those exhibits to which the only objection is a lack of foundation shall be marked appropriately, e.g., Plaintiffs' Exhibit 2 - For Identification, or Defendants' Exhibit B - For Identification, and indexed in a column entitled "Objection Foundation."

(d) Remaining exhibits as to which there are objections to admissibility not solely based on a lack of foundation shall likewise be marked appropriately, e.g., Plaintiffs' Exhibit 3 - For Identification or Defendants' Exhibit C - For Identification, and indexed in a third column entitled "Other Objection" on the offering party's index.

3. Each separate index shall consist of the exhibit number or letter, a brief description of the exhibit, and the three columns outlined above, as demonstrated in the example below:

INDEX OF EXHIBITS

EXHIBIT #	DESCRIPTION	ADMITTED IN EVIDENCE	OBJECTION FOUNDATION	OTHER OBJECTION

Two sets of the completed joint index and the separate indexes shall be delivered to the Courtroom Clerk with the two sets of binders.

The court has no objection to counsel using copies. However, the copies must be legible. If any document is offered into evidence that is partially illegible, the court may sua sponte exclude it from evidence.

D. Discovery Documents

By March 20, 2014, each party shall file a list of all discovery documents the party intends to use at trial. The list shall indicate whether each discovery document has previously been lodged with the Clerk. If the discovery document has not been previously lodged, the party shall so lodge the document with the Courtroom Clerk by March 20, 2014.

E. Motions In Limine Hearing and Briefing Schedule

The hearing for motions in limine will be held on March 11, 2014. In addition to

addressing any filed motions in limine, at that time the court will also settle, to the extent possible, any other matter pertaining to the conduct of the trial.

Counsel are expected to be fully cognizant of the legal issues involved in the case by the date of the hearing for motions in limine.

By 4:00 p.m. on February 18, 2014, all motions in limine, with supporting points and authorities, shall be filed and served either personally or by facsimile upon opposing counsel.

By 4:00 p.m. on March 3, 2014, opposition to any motion in limine shall be filed and served either personally or by facsimile upon opposing counsel. If a party does not oppose a motion in limine, that party shall file and serve in the same manner a Statement of Non-Opposition to that motion in limine.

By 4:00 p.m. on March 7, 2014, any reply to an opposition shall be filed and served either personally or by facsimile upon opposing counsel. Because the court will need time to prepare for the hearing on March 11, 2014, the court is not inclined to consider late reply briefs.

F. Morning Conferences During Trial

During the trial, it is the obligation of counsel to meet with the court each morning to advise the court and opposing counsel as to what documents are proposed to be put into evidence that have not previously been admitted by stipulation, court order, or otherwise ruled upon. The court will rule on those documents, to the extent possible, prior to the commencement of trial each day. If the ruling depends upon the receipt of testimony, the court will rule as requested upon the receipt of such testimony.

The court shall consider any other legal matter at morning conferences as well.

G. Use Of Videotape and Computers

Any party wishing to use a videotape for any purpose during trial shall lodge a copy of the videotape with the Courtroom Clerk by 4:00 p.m. on Thursday, March 20, 2014. If a written transcript of audible words on the tape is available, the court requests that the transcript be lodged with the court, solely for the aid of the court.

If counsel intends to use a laptop computer for presentation of evidence, they shall contact the courtroom deputy at least one week prior to trial. The courtroom deputy will then arrange a

time for counsel to bring the laptop to the courtroom, and meet with a representative of the Information and Technology Department and receive a brief training session on how counsel's equipment interacts with the court's audio/visual equipment. If counsel intends to use PowerPoint, the resolution should be set no higher than 1024 x 768 when preparing the presentation.

H. Order of Witnesses

In order to make the trial operate efficiently and smoothly, each counsel has the continuing obligation to advise opposing counsel as to what witnesses he or she intends to call twenty-four (24) hours prior to calling that witness.

XIX. Objections to Pretrial Order

Any party may, within ten (10) calendar days after the date of service of this order, file and serve written objections to any of the provisions of this order. Local Rule 16-283. Such objection shall specify the requested corrections, additions or deletions.

XX. Rules of Conduct During Trial

A. General Rules

1. All participants in the trial shall conduct themselves in a civil manner. There shall be no hostile interchanges between any of the participants.

2. All oral presentations shall be made from the podium, unless otherwise permitted by the court.

B. Opening Statements

1. Counsel may, but are not required, to make an opening statement in this bench trial.

2. Counsel may use visual aids in presenting the opening statement. However, any proposed visual aids shall be shown to opposing counsel before opening statement.

C. Case in Chief

1. Counsel shall have his/her witnesses readily available to testify so that there are no delays in the presentation of evidence to the trier of fact.

2. At the close of each trial day, counsel shall disclose his/her anticipated witnesses and order of presentation for the next day, so that any scheduling or evidentiary issues may be raised at that time.

D. Witnesses

1. Before approaching a witness, counsel shall secure leave of court to approach the witness.

2. Before approaching a witness with a writing, counsel shall first show the writing to opposing counsel.

E. Exhibits

1. All exhibits shall be marked and identified in accordance with the instructions in the Pretrial Order.

2. The court usually will conduct an on the record review of the exhibits that have been admitted in evidence at the conclusion of each party's case in chief and after each party has rested its entire case.

G. Objections

1. No speaking objections or arguments are permitted. Counsel shall state the specific legal ground(s) for the objection, and the court will rule based upon the ground(s) stated. The court will permit counsel to argue the matter at the next recess.

2. The court will not assume that any objection made also implies with it a motion to strike an answer that has been given. Therefore, counsel who has made an objection, and who also wishes to have an answer stricken, shall also specifically move to strike the answer.

FAILURE TO COMPLY WITH ALL PROVISIONS OF THIS ORDER MAY BE GROUNDS FOR THE IMPOSITION OF SANCTIONS, INCLUDING POSSIBLE DISMISSAL OF THIS ACTION OR ENTRY OF DEFAULT, ON ANY AND ALL COUNSEL AS WELL AS ON ANY PARTY WHO CAUSES NON-COMPLIANCE WITH THIS ORDER.

IT IS SO ORDERED.

Dated: February 3, 2014

SENIOR DISTRICT JUDGE

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PETER K. SOUTHWORTH, State Bar No. 160522
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Attorneys for Defendant Kamala D. Harris, Attorney General of California

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.

28. Answering enumerated paragraph no. 28 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.

29. Answering enumerated paragraph no. 29 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.

30. Answering enumerated paragraph no. 30 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.

31. Answering enumerated paragraph no. 31 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.

32. Answering enumerated paragraph no. 32 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.

33. Answering enumerated paragraph no. 33 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.

34. Answering enumerated paragraph no. 34 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.

35. Answering enumerated paragraph no. 35 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.

36. Answering enumerated paragraph no. 36 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.

37. Answering enumerated paragraph no. 37 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.

38. Answering enumerated paragraph no. 38 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.

39. Answering enumerated paragraph no. 39 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.

40. Answering enumerated paragraph no. 40 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.

41. Answering enumerated paragraph no. 41 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.

42. Answering enumerated paragraph no. 42 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.

43. Answering enumerated paragraph no. 43 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.

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

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

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

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

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

48. Answering enumerated paragraph no. 48 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.

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

50. Answering enumerated paragraph no. 50 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. To the extent that the paragraph makes implications about the relationship between federal gun laws and California gun laws, the Attorney General DENIES that such federal legislation precludes California's regulation of firearms.

51. Answering enumerated paragraph no. 51 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. To the extent that the paragraph makes implications about the relationship between federal gun laws and California gun laws, the Attorney General DENIES that such federal legislation precludes California's regulation of firearms.

52. Answering enumerated paragraph no. 52 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.

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

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

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

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

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

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

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

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

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

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

62. Answering enumerated paragraph no. 62 of Plaintiffs' FAC, the Attorney General DENIES the allegations of the paragraph.

63. Answering enumerated paragraph no. 63 of Plaintiffs' FAC, the Attorney General DENIES the allegations of the paragraph.

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

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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Attorneys for Plaintiffs

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

FIRST AMENDED COMPLAINT

42 U.S.C. §§ 1983, 1988

SECOND AMENDMENT

FOURTEENTH AMENDMENT

FIRST AMENDED COMPLAINT

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

INTRODUCTION

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

THE PARTIES

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

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

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

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

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

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

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

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

9. Defendant KAMALA HARRIS ("HARRIS") is the Attorney General of the State of California and is obligated to supervise her agency and comply with all statutory duties under

California law. She is charged with enforcing, interpreting and promulgating regulations regarding the transfer of firearms under California law, including California's ten-day waiting period. HARRIS responsible for executing and administering California's laws, customs, practices, and policies at issue in this lawsuit. Defendant HARRIS is sued in her official capacity.

10. At this time, Plaintiffs are ignorant of the names of any additional individuals responsible for implementing or enforcing the ten-day waiting periods. Plaintiffs therefore name these individuals as DOE Defendants and reserve the right to amend this Complaint when their true names are ascertained.

11. Furthermore, if and when additional persons and entities are discovered to have assisted and/or lent support to the enforcement alleged herein, Plaintiffs reserve the right to amend this Complaint to add those persons and/or entities as Defendants.

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

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. sections 331, 1343, 2201, 2201, and 42 U.S.C. section 1983.

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

STATEMENT OF FACTS

Second Amendment in the Home

15. The Second Amendment to the United States Constitution states that: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

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

17. In 2010, the United States Supreme Court held that "the Second Amendment right to

keep and bear arms" is "fundamental to our scheme of ordered liberty" and, therefore, incorporated against the states through the Due Process Clause of the Fourteenth Amendment. *McDonald v. Chicago*, 130 S. Ct. 3020, 3036 (2010).

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

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

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

California's Ten-Day Waiting Period Laws

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

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

> No firearm shall be delivered . . . [w]ithin 10 days of the application to purchase, or, after notice by the department pursuant to Section 28220, 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.

23. Similarly, Penal Code section 27540 states:

> No dealer . . . shall deliver a firearm to a person as follows: . . . [w]ithin 10 days of the application to purchase, or, after notice by the department pursuant to Section 28220, 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.

24. Neither of these two provisions can be construed to apply solely to the first purchase of a firearm and are therefore unconstitutional in all applications. These provisions apply regardless of whether the first firearm purchased by Plaintiffs and associational Plaintiffs' members was purchased not as protection for the home, but for one of many other alternatives, including: (1) as a personal protection firearm for the business; (2) a pistol for target practice and match competitions; (3) a pistol for carrying pursuant to a LTC thereby leaving the home undefended in the absence of the LTC holder; (4) a rifle for use in hunting or shooting sports; or (5) otherwise deemed insufficient for personal protection in the home by the purchaser afterwards.

Exemptions to the Ten-Day Waiting Periods

25. The ten-day waiting periods have multiple exemptions.

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

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

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

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

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

31. Sixth, the ten-day waiting periods generally do not apply to persons who have a "short barrel rifle" or "short barrel shotgun" permit pursuant to Penal Code section 33300. Penal Code §§26965 and 21740 (exempts from §26815); §§27665 and 27740 (exempts from §27540).

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

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

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

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

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

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

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

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

40. 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).

41. 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).

42. 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).

43. 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

44. 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 California Department of Justice.

The Legislative Intent of the Ten- Day Waiting Period

45. California has had a waiting period regarding the delivery of firearms since 1923.[1]

46. 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.

47. Today the waiting period in California is ten days.[2]

48. The alleged reasoning behind the different waiting period varies. At least one case (*People v. Bickston* (*1979*) 91 Cal. App. 3d Supp. 29) described the legislative intent behind the

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[1] 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.

[2] In 1990, the 15-day waiting period for long guns was shortened to its current ten-day term. 1990 Cal AB 497. In 1996, the 15-day waiting period for handguns was shortened to its current ten-day term. 1996 Cal. SB 671.

dynamic nature of the waiting period. *Bickston* states as follows:

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

Id. (Emphasis added.)

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

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

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

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

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

53. More than 100 million such checks have been made in the last decade, leading to more

than 700,000 denials.

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

California's Enforcement of the Ten-Day Waiting Period

55. Plaintiffs already have firearms, but seek to have additional firearms for protection of themselves and their families, *inter alia*, within the home pursuant to their Second Amendment right to "keep and bear *arms*." (Emphasis added to note the use of the plural.)

56. Plaintiffs have lawfully purchased a handgun within the State of California or can otherwise demonstrate proof of ownership and lawful possession of said firearms. For example, some firearms are registered in the California Automated Firearms System database pursuant to, *inter alia*, Penal Code section 28200, *et seq*. In purchasing their firearms, Plaintiffs were already once subjected to the ten-day waiting period prior to physically receiving their firearms. As a result of the ten-day waiting period, Plaintiffs were obligated to endure a ten-day ban on the acquisition of their constitutionally protected firearms and incur additional expense by being forced to make a second visit to the firearms dealer that sold Plaintiffs their firearms.

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

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

59. Additionally, as a holder of a valid license to carry pursuant to Penal Code section 26150 *et seq*. SILVESTER and other such holders represented by CGF and SAF are, *per se*, not in a class of persons described in Penal Code sections 29800, *et seq*., 29900, *et seq*. or Welfare and

Institutions Code 8100 or 8103. Penal Code section 26195(a)-(b).

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

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

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

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

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

/ / /

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

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

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

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

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

69. By maintaining and enforcing a set of laws banning Plaintiffs access to firearms whose possession is protected by the Second Amendment, Defendants are propagating customs, policies, and practices that violate the Second Amendment to the United States Constitution, facially and as applied against the individual plaintiffs in this action, thereby harming plaintiffs in violation of U.S.C. section 1983. The Second Amendment applies to the states, including California, through the Fourteenth Amendment. Plaintiffs are therefore entitled to declaratory, preliminary, and permanent injunctive relief against the improper customs, policies, and practices.

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

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

71. Defendants' policies and enforcement of Penal Code sections 26815 and 27540 violate Plaintiffs' rights to equal protection under the law as guaranteed by the Fourteenth Amendment to the United States Constitution, in that Defendants allow some people, such as destructive device collectors, movie prop houses, auction purchasers, "consultants-evaluators," and others,

instant access to firearms, which instant access is denied to Plaintiffs and the general public. Such misapplication of the law is arbitrary, capricious, irrational, and makes unjustifiable distinctions between those individuals that Defendants deign to exclude from immediate delivery of firearms and those they do not. Defendants are thereby propagating customs, policies, and practices that violate the Fourteenth Amendment to the United States Constitution, facially and as applied against the individual plaintiffs in this action, thereby harming Plaintiffs in violation of 42 U.S.C. section 1983. Plaintiffs are therefore entitled to declaratory, preliminary and permanent injunctive relief against continued enforcement and maintenance of Penal Code section 27540 subdivision (a) and Defendants' unconstitutional customs, policies, and practices.

PRAYER FOR RELIEF

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

1. An order preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Penal Code sections 26815 and 27540 as against those persons that may lawfully possess and acquire a firearm and possess proof of firearm possession or ownership in their name within the State of California and from enacting, publishing, promulgating, or otherwise enforcing any polices, rules, or procedures prohibiting or otherwise restricting the delivery of firearms to said individuals within ten-days of applying for the purchase of any firearms;
2. Attorney fees and costs pursuant to 42 U.S.C. section 1988;
3. Declaratory relief consistent with the injunction;
4. Costs of suit; and
5. Any other relief as the Court deems just and appropriate.

Date: February 24, 2011,

Respectfully submitted,
Davis & Associates
/s/ Jason A. Davis
Jason A. Davis
Jason@CalGunLawyers.com
Attorneys for plaintiffs

CIVIL,APPEAL,CLOSED

U.S. District Court
Eastern District of California – Live System (Fresno)
CIVIL DOCKET FOR CASE #: 1:11–cv–02137–AWI–SKO

Silvester, et al. v. Harris, et al.
Assigned to: District Judge Anthony W. Ishii
Referred to: Magistrate Judge Sheila K. Oberto
Case in other court: Ninth Circuit, 14–16840
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 12/23/2011
Date Terminated: 08/25/2014
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
01/12/2015	141	ORDER of USCA as to 137 Notice of Appeal filed by Kamala D. Harris: *Appellant's motion to stay the district court's August 25, 2014 order pending appeal is granted. The briefing schedule established previously remains in effect.* (Hellings, J) (Entered: 01/13/2015)
01/12/2015	140	MINUTE ORDER: (Text Entry Only) signed by District Judge Anthony W. Ishii on 1/12/2015; In light of the 9th Circuit granting Defendant's motion to stay the district court's August 25, 2014 order pending appeal, the Further Status Conference set for 2/9/2015, before District Judge Anthony W. Ishii is ORDERED VACATED. (Gaumnitz, R) (Entered: 01/12/2015)
12/24/2014	139	TRANSCRIPT of Proceedings held on 12/15/2014, TELEPHONIC STATUS CONFERENCE, before District Judge Anthony W. Ishii, filed by Court Reporter Gail Thomas, Phone number 559–266–0609 E–mail gthomascrr@sbcglobal.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 1/15/2015. Redacted Transcript Deadline set for 1/26/2015. Release of Transcript Restriction set for 3/26/2015. (Thomas, G) (Entered: 12/24/2014)
12/19/2014	138	APPEAL PROCESSED to Ninth Circuit re 137 Notice of Appeal filed by Kamala D. Harris. Notice of Appeal filed *12/19/2014*, Complaint filed *12/23/2011* and Appealed Order / Judgment filed *11/20/2014*. Court Reporter: *G. Thomas*. *Fee Status: Paid on 12/19/2014 in the amount of $505.00* (Attachments: # 1 Appeal Information) (Verduzco, M) (Entered: 12/19/2014)
12/19/2014	137	NOTICE of APPEAL by Kamala D. Harris as to 123 Order on Motion to Amend the Judgment,, Order on Motion to Stay,. (Filing fee $ 505, receipt number 0972–5666432) (Chang, Peter) (Entered: 12/19/2014)
12/17/2014	136	ORDER on Plaintiffs' 108 Motion for Attorneys' Fees, signed by District Judge Anthony W. Ishii on 12/17/2014. (IT IS HEREBY ORDERED that: 1. Plaintiffs motion for attorneys fees is GRANTED in the amount of 192,073.00; and 2. Plaintiffs motion for costs is GRANTED in the amount of $2,006.45 ($1,434.16 + $572.29).) (Gaumnitz, R) (Entered: 12/17/2014)
12/16/2014	135	RESPONSE by Kamala D. Harris to 130 Brief. (Chang, Peter) (Entered: 12/16/2014)
12/15/2014	134	MINUTES (Text Only) for proceedings held before District Judge Anthony W. Ishii: STATUS CONFERENCE held on 12/15/2014. Court and Counsel discussed status of case, Court will proceed unless there is a ruling from the 9th Circuit or an order to stay. Defendant may file a Response to Plaintiff's 130 Supplemental Brief re 108 Motion for Attorneys Fees by the close of business on 12/16/2015; After the response is filed the matter is deemed submitted for decision on the papers pursuant to Local Rule 230(g). Parties to meet and confer then file an updated status report by 2/2/2015. **Further Status Conference set for 2/9/2015, at 02:00 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii.** The parties may appear telephonically by coordinating a conference call (either through an operator or on an internal phone system). After all parties appearing telephonically are on one line, please call Judge Ishii's chambers at (559) 499–5660 at the time of the hearing. Advise Courtroom

		Deputy Renee Gaumnitz at rgaumnitz@caed.uscourts.gov who will be appearing by phone and provide a contact number of the party who is initiating the conference call. Plaintiff's Counsel Bradley Benbrook and Stephen Duvernay telephonically present. Defendant's Counsel Peter Chang present. Court Reporter/CD Number: G. Thomas. (Gaumnitz, R) (Entered: 12/15/2014)
12/12/2014	133	TRANSCRIPT REQUEST by Kamala D. Harris for proceedings held on March 25, 26, 27, 2014 and August 15, 2014 before Judge Anthony W. Ishii, (Chang, Peter) (Entered: 12/12/2014)
12/12/2014	132	NOTICE *of Errata* by Kamala D. Harris re 125 Status Report. (Chang, Peter) (Entered: 12/12/2014)
12/09/2014	131	DECLARATION of Stephen Duvernay re 130 Brief. (Benbrook, Bradley) (Entered: 12/09/2014)
12/09/2014	130	BRIEF *Supplemental Brief Re Attorneys' Fees Re Post Trial Motions and Fee App* by Calguns Foundation, Inc., Brandon Combs, Jeff Silvester, The Second Amendment Foundation, Inc.. (Benbrook, Bradley) (Entered: 12/09/2014)
12/03/2014	129	ORDER Permitting Plaintiffs to Submit Additional Evidence Regarding Attorney's Fees, signed by District Judge Anthony W. Ishii on 12/3/2014. (IT IS HEREBY ORDERED that: 1. Plaintiffs will file supplemental briefing and evidence regarding attorneys fees for the time spent on post–trial motions and for the fee application as soon as possible, but no later than December 10, 2014; and 2. Defendant may file a response to Plaintiffs supplemental briefing within seven (7) days of service of Plaintiffs supplemental briefing and evidence.)(Gaumnitz, R) (Entered: 12/03/2014)
12/03/2014	128	DECLARATION of Kilmer, Duvernay in SUPPORT OF 108 MOTION for ATTORNEY FEES . (Kilmer, Donald) (Entered: 12/03/2014)
12/02/2014	127	MINUTE ORDER: (Text Entry Only) The hearing set 12/8/2014 on the pending 108 Motion for Attorneys Fees is **ORDERED VACATED;** the matter is submitted for decision on the papers pursuant to Local Rule 230(g). The Status Conference set 12/8/2014 is **CONTINUED to 12/15/2014, at 02:00 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii.** The parties may appear telephonically by coordinating a conference call. After all parties appearing telephonically are on one line, please call Judge Ishii's chambers at (559) 499–5660 at the time of the hearing. Advise Courtroom Deputy Renee Gaumnitz at rgaumnitz@caed.uscourts.gov who will be appearing by phone and provide a contact number of the party who is initiating the conference call. Minute Order signed by District Judge Anthony W. Ishii on 12/2/2014.(Gaumnitz, R) (Entered: 12/02/2014)
12/01/2014	126	REPLY by Calguns Foundation, Inc., Brandon Combs, Jeff Silvester, The Second Amendment Foundation, Inc. re 108 MOTION for ATTORNEY FEES , 115 Minute Order,, Set/Reset Deadlines and Hearings, 124 Opposition to Motion. (Kilmer, Donald) (Entered: 12/01/2014)
12/01/2014	125	JOINT STATUS REPORT by Kamala D. Harris. (Chang, Peter) (Entered: 12/01/2014)
11/24/2014	124	OPPOSITION by Kamala D. Harris to 108 MOTION for ATTORNEY FEES . (Attachments: # 1 Request for Judicial Notice, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E)(Eisenberg, Jonathan) (Entered: 11/24/2014)
11/20/2014	123	ORDER on Defendant's 114 Motion to Stay and 110 Motion to Alter Judgment, signed by District Judge Anthony W. Ishii on 11/20/2014. (IT IS HEREBY ORDERED that: 1. Defendant's motion to stay (Doc. No. 114) is DENIED; and 2. Defendant's motion to alter judgment (Doc. No. 110) is DENIED.) (Gaumnitz, R) (Entered: 11/20/2014)
11/04/2014	122	MINUTE ORDER: (Text Entry Only) The hearing set 11/10/2014 on the pending 114 Motion to Stay and 110 Motion to Alter or Amend the Judgment is **ORDERED VACATED;** the motions are submitted for decision on the papers pursuant to Local Rule 230(g). Minute Order signed by District Judge Anthony W. Ishii on 11/4/2014. (Gaumnitz, R) (Entered: 11/04/2014)
11/03/2014	121	REPLY by Kamala D. Harris re 114 MOTION to STAY re 106 Findings of Fact & Conclusions of Law, Set/Reset Deadlines and Hearings, Terminate Civil Case,,, 107 Judgment, 110 MOTION to AMEND the JUDGMENT amending 106 Findings of

		Fact & Conclusions of Law, Set/Reset Deadlines and Hearings, Terminate Civil Case,,, 107 Judgment *re Paragraph 7 of Order and Judgment*. (Attachments: # 1 Declaration of Stephen J. Lindley (Supplemental))(Eisenberg, Jonathan) (Entered: 11/03/2014)
10/27/2014	120	OPPOSITION by Calguns Foundation, Inc. to 114 MOTION to STAY re 106 Findings of Fact & Conclusions of Law, Set/Reset Deadlines and Hearings, Terminate Civil Case,,, 107 Judgment, 110 MOTION to AMEND the JUDGMENT amending 106 Findings of Fact & Conclusions of Law, Set/Reset Deadlines and Hearings, Terminate Civil Case,,, 107 Judgment *re Paragraph 7 of Order and Judgment*. (Benbrook, Bradley) (Entered: 10/27/2014)
10/20/2014	119	ASSOCIATION of ATTORNEY: Added attorney Stephen Duvernay for Calguns Foundation, Inc.,Stephen Duvernay for Brandon Combs,Stephen Duvernay for Jeff Silvester,Stephen Duvernay for The Second Amendment Foundation, Inc.. (Kilmer, Donald) (Entered: 10/20/2014)
10/20/2014	118	ASSOCIATION of ATTORNEY: Added attorney Bradley A. Benbrook for Calguns Foundation, Inc.,Bradley A. Benbrook for Brandon Combs,Bradley A. Benbrook for Jeff Silvester,Bradley A. Benbrook for The Second Amendment Foundation, Inc.. (Kilmer, Donald) (Entered: 10/20/2014)
10/07/2014	117	ORDER of USCA as to 111 Notice of Appeal filed by Kamala D. Harris. *Appellate proceedings other than mediation shall be held in abeyance pending the district courts resolution of the motion to amend the judgment*. (Marrujo, C) (Entered: 10/07/2014)
10/06/2014	116	MINUTE ORDER: (Text Entry Only) Due to the availability of the Court and the press of business, Defendants 114 Motion to Stay and 110 Motion to Alter or Amend the Judgment previously set for 10/27/2014, have been **CONTINUED to 11/10/2014, at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii.** Minute Order signed by District Judge Anthony W. Ishii on 10/6/2014. (Gaumnitz, R) (Entered: 10/06/2014)
10/03/2014	115	MINUTE ORDER: (Text Entry Only) Hearing on the 108 Motion for Attorney's Fees previously set for 12/15/2014, has been **ADVANCED to 12/8/2014, at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii.** Minute Order signed by District Judge Anthony W. Ishii on 10/3/2014. (Gaumnitz, R) (Entered: 10/03/2014)
09/29/2014	114	MOTION to STAY re 106 Findings of Fact & Conclusions of Law, Set/Reset Deadlines and Hearings, Terminate Civil Case,,, 107 Judgment by Kamala D. Harris. Motion Hearing set for 10/27/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii. (Attachments: # 1 Memorandum of Points and Authorities in Support of Stay Motion, # 2 Declaration of S. Lindley (from Mtn. to Amend Judgment), # 3 Declaration of M. St. Pierre (from Mtn. to Amend Judgment))(Eisenberg, Jonathan) (Entered: 09/29/2014)
09/25/2014	113	USCA CASE NUMBER 14–16840 for 111 Notice of Appeal filed by Kamala D. Harris. (Martin–Gill, S) (Entered: 09/25/2014)
09/25/2014	112	APPEAL PROCESSED to Ninth Circuit re 111 Notice of Appeal filed by Kamala D. Harris. Notice of Appeal filed *9/24/2014*, Complaint filed *12/23/2011* and Appealed Order / Judgment filed *8/25/2014*. Court Reporter: *G. Thomas*. *Fee Status: Paid on 9/24/2014 in the amount of $505.00* (Attachments: # 1 Appeal Information) (Jessen, A) (Entered: 09/25/2014)
09/24/2014	111	NOTICE of APPEAL by Kamala D. Harris as to 106 Findings of Fact & Conclusions of Law, Set/Reset Deadlines and Hearings, Terminate Civil Case,,, 107 Judgment. (Filing fee $ 505, receipt number 0972–5532477) (Eisenberg, Jonathan) (Entered: 09/24/2014)
09/22/2014	110	MOTION to AMEND the JUDGMENT amending 106 Findings of Fact & Conclusions of Law, Set/Reset Deadlines and Hearings, Terminate Civil Case,,, 107 Judgment *re Paragraph 7 of Order and Judgment* by Kamala D. Harris. Motion Hearing set for 10/27/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii. (Attachments: # 1 Declaration Stephen J. Lindley, # 2 Declaration Marc St. Pierre)(Chang, Peter) (Entered: 09/22/2014)

09/09/2014	109	NOTICE to RESCHEDULE HEARING on 108 MOTION for ATTORNEY FEES : Motion Hearing set for 12/15/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii. (Otten, Victor) (Entered: 09/09/2014)
09/08/2014	108	MOTION for ATTORNEY FEES by Calguns Foundation, Inc., Brandon Combs, Michael Poeschl, Jeff Silvester, The Second Amendment Foundation, Inc.. Motion Hearing set for 12/16/2016 at 10:00 AM in 8th floor courtroom (JFM) before District Judge Anthony W. Ishii. (Attachments: # 1 Affidavit Bill of Costs, # 2 Declaration Declaration of Victor Otten, # 3 Declaration Declaration of Jason Davis, # 4 Declaration Declaration of Don Kilmore, # 5 Notice Notice of Motion for Fees and Costs, # 6 Exhibit Plaintiffs' Exhibit 1, # 7 Exhibit Plaintiffs' Exhibit 2, # 8 Exhibit Plaintiffs' Exhibit 3, # 9 Exhibit Plaintiffs' Exhibit 4, # 10 Exhibit Plaintiffs' Exhibit 5, # 11 Exhibit Plaintiffs' Exhibit 6)(Otten, Victor) (Entered: 09/08/2014)
08/25/2014	107	JUDGMENT dated *8/25/2014* in favor of Plaintiff and against Defendant pursuant to order signed by District Judge Anthony W. Ishii on 8/22/2014. (Lundstrom, T) (Entered: 08/25/2014)
08/25/2014	106	FINDINGS of FACT and CONCLUSIONS of LAW signed by District Judge Anthony W. Ishii on 8/22/2014. Judgment to be entered in favor of Plaintiff and against Defendant. (Status Conference set for 12/8/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii). (Lundstrom, T) (Entered: 08/25/2014)
08/20/2014	105	TRANSCRIPT of Proceedings held on 8/15/2014, CLOSING ARGUMENTS, before District Judge Anthony W. Ishii, filed by Court Reporter Gail Thomas, Phone number 559–266–0609 E–mail gthomascrr@sbcglobal.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 9/11/2014. Redacted Transcript Deadline set for 9/22/2014. Release of Transcript Restriction set for 11/20/2014. (Thomas, G) (Entered: 08/20/2014)
08/15/2014	104	MINUTES (Text Only) for proceedings held before District Judge Anthony W. Ishii: BENCH TRIAL completed on 8/15/2014. Closing arguements by counsel. Matter stands submitted. Plaintiffs Counsel D. Kilmer present. Defendants Counsel J. Eisenberg, P. Chang present. Court Reporter/CD Number: G. Thomas. (Nazaroff, H) (Entered: 08/15/2014)
08/12/2014	103	NOTICE to Parties Regarding Consideration of Laws and ORDER for Docket Correction, signed by District Judge Anthony W. Ishii on 8/12/14. (Verduzco, M) (Entered: 08/12/2014)
07/22/2014	102	ORDER on Motion to File an Amicus Curiae Brief 101 , signed by District Judge Anthony W. Ishii on 7/22/14: *Center's motion is DENIED*. (Hellings, J) (Entered: 07/22/2014)
07/21/2014	101	MOTION Amicus Curiae Brief in Support of Defendant Kamala Harris by Brady Center to Prevent Gun Violence. Attorney O'Hanlon, Neil R. added. (O'Hanlon, Neil) (Entered: 07/21/2014)
07/15/2014	100	OBJECTIONS by Defendant Kamala D. Harris to 98 Response. (Eisenberg, Jonathan) (Entered: 07/15/2014)
07/09/2014	99	MINUTE ORDER: Due to calendar conflicts of the court and the concurrence of counsel the closing arguments set for 7/21/14 are continued to 8/15/2014 at 10:00 AM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii.) signed by District Judge Anthony W. Ishii on 7/9/14. (Nazaroff, H) (Entered: 07/09/2014)
06/30/2014	98	RESPONSE by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc. to 89 Trial Brief. (Attachments: # 1 Exhibit A)(Kilmer, Donald) (Entered: 06/30/2014)
06/30/2014	97	TRIAL EXHIBIT *(Contingent Rebuttal)* by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc..(Kilmer, Donald) (Entered: 06/30/2014)

06/30/2014	96	RESPONSE by Kamala D. Harris to 93 Memorandum,. (Eisenberg, Jonathan) (Entered: 06/30/2014)
06/30/2014	95	RESPONSE by Kamala D. Harris to 91 Proposed Order. (Eisenberg, Jonathan) (Entered: 06/30/2014)
06/30/2014	94	OPPOSITION by Defendant Kamala D. Harris to 92 Objections. (Chang, Peter) (Entered: 06/30/2014)
06/16/2014	93	MEMORANDUM by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc. in Support of Proposed Findings of Fact and Conclusions of Law Submitted by Plaintiffs re 91 Proposed Order filed by Jeff Sylvester, Brandon Combs, Calguns Foundation, Inc., The Second Amendment Foundation, Inc.. (Kilmer, Donald) (Entered: 06/16/2014)
06/16/2014	92	OBJECTIONS by Plaintiffs Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc.. (Kilmer, Donald) (Entered: 06/16/2014)
06/16/2014	91	PROPOSED ORDER re Findings of Fact and Conclusions of Law After Bench Trial by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc.. (Kilmer, Donald) (Entered: 06/16/2014)
06/16/2014	90	REQUEST for JUDICIAL NOTICE by Kamala D. Harris in re 89 Trial Brief, 88 Proposed Findings of Fact. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit)(Eisenberg, Jonathan) (Entered: 06/16/2014)
06/16/2014	89	TRIAL BRIEF by Kamala D. Harris.(Eisenberg, Jonathan) (Entered: 06/16/2014)
06/16/2014	88	PROPOSED FINDINGS of FACT by Kamala D. Harris.(Eisenberg, Jonathan) (Entered: 06/16/2014)
04/10/2014	87	TRANSCRIPT of Proceedings held on 3/27/2014, COURT TRIAL, DAY 3, before District Judge Anthony W. Ishii, filed by Court Reporter Gail Thomas, Phone number 559–266–0609 E–mail gthomascrr@sbcglobal.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 5/1/2014. Redacted Transcript Deadline set for 5/12/2014. Release of Transcript Restriction set for 7/10/2014. (Thomas, G) (Entered: 04/10/2014)
04/10/2014	86	TRANSCRIPT of Proceedings held on 3/26/2014, COURT TRIAL, DAY 2, before District Judge Anthony W. Ishii, filed by Court Reporter Gail Thomas, Phone number 559–266–0609 E–mail gthomascrr@sbcglobal.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 5/1/2014. Redacted Transcript Deadline set for 5/12/2014. Release of Transcript Restriction set for 7/10/2014. (Thomas, G) (Entered: 04/10/2014)
04/10/2014	85	TRANSCRIPT of Proceedings held on 3/25/2014, COURT TRIAL, DAY 1, before District Judge Anthony W. Ishii, filed by Court Reporter Gail Thomas, Phone number 559–266–0609 E–mail gthomascrr@sbcglobal.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 5/1/2014. Redacted Transcript Deadline set for 5/12/2014. Release of Transcript Restriction set for 7/10/2014. (Thomas, G) (Entered: 04/10/2014)
03/27/2014	84	MINUTES (Text Only) for proceedings held before District Judge Anthony W. Ishii: BENCH TRIAL THIRD DAY held on 3/27/2014. Witnesses, Blake Graham and Stephen Lindley testify. Exhibits admitted. Parties rest. Transcripts to be submitted to counsel no later than April 21, 2014. The parties shall file Proposed Findings of Fact and COnclusions of Law by June 16, 2014. Any opposition shall be filed by June 30, 2014. Closing argument is set for July 21, 2014 at 1:30 pm Plaintiffs Counsel D. Kilmer, V. Otten present. Defendants Counsel J. Eisenberg, P. Chang present. Court

		Reporter/CD Number: G. Thomas. (Nazaroff, H) (Entered: 03/28/2014)
03/27/2014	82	NOTICE *Re: Exhibits* by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc.. (Kilmer, Donald) (Entered: 03/27/2014)
03/26/2014	83	MINUTES (Text Only) for proceedings held before District Judge Anthony W. Ishii: BENCH TRIAL SECOND DAY held on 3/26/2014. Witnesses Steven Buford, Donnette Orsi, Gilbert Matsumoto and Blake Graham testify. Exhibits admitted. Court recess to 3/27/14 at 9:00 a.m. Plaintiffs Counsel V. Otten, D. Kilmer present. Defendants Counsel P. Chang, J. Eisenberg present. Court Reporter/CD Number: G. Thoma. (Nazaroff, H) (Entered: 03/27/2014)
03/26/2014	80	NOTICE *of Plaintiffs' Withdrawal of Objections to Certain Exhibits Offered by Defendants* by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc.. (Kilmer, Donald) (Entered: 03/26/2014)
03/25/2014	81	MINUTES (Text Only) for proceedings held before District Judge Anthony W. Ishii: BENCH TRIAL FIRST DAY held on 3/25/2014. Opening statements. Witnesses Jeff Silvester, Brandon Combs, Gene Hoffman sworn and testify. Court recess to 3/26/14 at 9:00 a.m. Plaintiffs Counsel D. Kilmer, V. Otten present. Defendants Counsel J. Eisenberg, P. Chang present. Court Reporter/CD Number: G. Thomas. (Nazaroff, H) (Entered: 03/26/2014)
03/25/2014	79	OBJECTIONS by Plaintiffs Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc. to 78 Request for Judicial Notice. (Kilmer, Donald) (Entered: 03/25/2014)
03/24/2014	78	REQUEST for JUDICIAL NOTICE by Kamala D. Harris. Attorney Nguyen, Kim Le added. (Attachments: # 1 Exhibit Defendant Exhibit List)(Nguyen, Kim) (Entered: 03/24/2014)
03/21/2014	77	ORDER on stipulation regarding testimony of Alan Gottlieb signed by District Judge Anthony W. Ishii on 3/21/14. (Nazaroff, H) (Entered: 03/21/2014)
03/20/2014	76	WITNESS LIST by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc..(Kilmer, Donald) (Entered: 03/20/2014)
03/20/2014	75	STIPULATION and PROPOSED ORDER for Depo TX in Lieu of Testimony: Gottlieb by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc.. (Kilmer, Donald) (Entered: 03/20/2014)
03/20/2014	74	OBJECTIONS by Defendant Kamala D. Harris to 69 Trial Brief. (Chang, Peter) (Entered: 03/20/2014)
03/20/2014	73	WITNESS LIST by Kamala D. Harris.(Chang, Peter) (Entered: 03/20/2014)
03/20/2014	72	NOTICE OF LODGING DOCUMENT IN PAPER by Kamala D. Harris: Certified Copies of Deposition Transcripts. (Eisenberg, Jonathan) (Entered: 03/20/2014)
03/18/2014	71	TRIAL BRIEF by Kamala D. Harris.(Chang, Peter) (Entered: 03/18/2014)
03/18/2014	70	OBJECTIONS by Plaintiffs Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc. to 65 Trial Brief. (Kilmer, Donald) (Entered: 03/18/2014)
03/18/2014	69	TRIAL BRIEF by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Kilmer, Donald) (Entered: 03/18/2014)
03/12/2014	67	ORDER ON MOTIONS IN LIMINE (Docs. 51 , 53 , 54 , 55 , 56), Signed by District Judge Anthony W. Ishii on 3/12/2014. (Arellano, S.) (Entered: 03/12/2014)
03/11/2014	68	MINUTES (Text Only) for proceedings held before District Judge Anthony W. Ishii: IN COURT HEARING on Motions in Limine held on 3/11/2014. Court to issue order. Plaintiffs Counsel V. Otten, D. Kilmer present. Defendants Counsel J. Eisenberg, P. Chang present. Court Reporter/CD Number: G. Thomas. (Nazaroff, H) (Entered: 03/13/2014)

03/10/2014	66	TRIAL BRIEF by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc..(Kilmer, Donald) (Entered: 03/10/2014)
03/10/2014	65	TRIAL BRIEF by Kamala D. Harris.(Eisenberg, Jonathan) (Entered: 03/10/2014)
03/07/2014	64	REPLY by Jeff Sylvester re 62 Opposition to Motion. (Attachments: # 1 PLAINTIFFS' REPLY TO DEFENDANT'S OPPOSITION TO MOTION IN LIMINE RE BURDENS OF PROOF)(Otten, Victor) (Entered: 03/07/2014)
03/07/2014	63	REPLY by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc. re 59 Opposition to Motion. (Kilmer, Donald) (Entered: 03/07/2014)
03/03/2014	62	OPPOSITION by Kamala D. Harris to 55 MOTION IN LIMINE *RE BURDENS OF PROOF*. (Chang, Peter) (Entered: 03/03/2014)
03/03/2014	61	OPPOSITION by Kamala D. Harris to 56 MOTION IN LIMINE *TO EXCLUDE DOCUMENTS*. (Attachments: # 1 Declaration of Peter H. Chang, # 2 Exhibit 1)(Chang, Peter) (Entered: 03/03/2014)
03/03/2014	60	RESPONSE by Calguns Foundation, Inc., Brandon Combs, Jeff Sylvester, The Second Amendment Foundation, Inc. to 51 MOTION IN LIMINE . (Kilmer, Donald) (Entered: 03/03/2014)
03/03/2014	59	OPPOSITION by Kamala D. Harris to 54 MOTION IN LIMINE *TO EXCLUDE OPINION EVIDENCE*. (Attachments: # 1 Declaration of Peter H. Chang, # 2 Exhibit 1)(Chang, Peter) (Entered: 03/03/2014)
03/03/2014	58	STATEMENT of NON–OPPOSITION by Kamala D. Harris to 53 MOTION to PROCEED IN FORMA PAUPERIS MOTION IN LIMINE *TO EXCLUDE WITNISSES*. (Chang, Peter) (Entered: 03/03/2014)
02/19/2014	57	NOTICE *OF ERRATA* by All Plaintiffs re 54 MOTION IN LIMINE *TO EXCLUDE OPINION EVIDENCE*, 53 MOTION to PROCEED IN FORMA PAUPERIS MOTION IN LIMINE *TO EXCLUDE WITNISSES*, 55 MOTION IN LIMINE *RE BURDENS OF PROOF*. (Otten, Victor) (Entered: 02/19/2014)
02/18/2014	56	MOTION IN LIMINE *TO EXCLUDE DOCUMENTS* by Jeff Sylvester. Motion Hearing set for 3/11/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii. (Otten, Victor) (Entered: 02/18/2014)
02/18/2014	55	MOTION IN LIMINE *RE BURDENS OF PROOF* by Jeff Sylvester. Motion Hearing set for 3/11/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii. (Otten, Victor) (Entered: 02/18/2014)
02/18/2014	54	MOTION IN LIMINE *TO EXCLUDE OPINION EVIDENCE* by Jeff Sylvester. Motion Hearing set for 3/11/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii. (Otten, Victor) (Entered: 02/18/2014)
02/18/2014	53	MOTION to PROCEED IN FORMA PAUPERIS, MOTION IN LIMINE *TO EXCLUDE WITNISSES* (Motion Hearing set for 3/11/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii.) by Jeff Sylvester. (Otten, Victor) (Entered: 02/18/2014)
02/18/2014	52	DECLARATION of Jonathan M. Eisenberg in SUPPORT OF 51 MOTION IN LIMINE . (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Chang, Peter) (Entered: 02/18/2014)
02/18/2014	51	MOTION IN LIMINE by Kamala D. Harris. Motion Hearing set for 3/11/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii. (Chang, Peter) (Entered: 02/18/2014)
02/18/2014	50	NOTICE of APPEARANCE by Peter H. Chang on behalf of Kamala D. Harris. Attorney Chang, Peter H. added. (Chang, Peter) (Entered: 02/18/2014)
02/04/2014	48	PRETRIAL ORDER, signed by District Judge Anthony W. Ishii on 2/3/14:*Motions In Limine Hearing and Trial Confirmation Hearing set for 3/11/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii; Bench Trial set for 3/25/2014 at 08:30 AM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii.* (Hellings, J) (Entered: 02/04/2014)

02/03/2014	49	MINUTES (Text Only) for proceedings held before District Judge Anthony W. Ishii: PRETRIAL CONFERENCE held on 2/3/2014. The Court set the following motions schedule: Motions filed by 2/18/2014; Opposition filed by 3/3/2014; Replies due by 3/7/2014; **Motion Hearing set for 3/11/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii.** Plaintiffs Counsel Victor Otten present. Defendants Counsel Jonathan Eisenberg present. Court Reporter/CD Number: Gail Thomas. (Figueroa, O) . (Entered: 02/05/2014)
01/23/2014	47	NOTICE *of Errata* by Kamala D. Harris re 45 Pretrial Statement. (Attachments: # 1 Appendix Amended/Corrected Exhibit List)(Eisenberg, Jonathan) (Entered: 01/23/2014)
01/23/2014	46	MINUTE ORDER: Due to a Calendar Conflict the Pretrial Conference currently set for 1/29/2014 is continued to 2/3/2014 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii. Personal appearance by counsel is mandatory. signed by District Judge Anthony W. Ishii on 1/23/14. (Nazaroff, H) (Entered: 01/23/2014)
01/22/2014	45	PRETRIAL STATEMENT by Plaintiff Jeff Sylvester. (Attachments: # 1 AG Attachment)(Otten, Victor) (Entered: 01/22/2014)
12/09/2013	44	ORDER on Defendant's Motion for Summary Judgment 31 , signed by District Judge Anthony W. Ishii on 12/6/13: *Defendant's Motion for Summary Judgment is DENIED*. (Hellings, J) (Entered: 12/09/2013)
11/25/2013	43	SUPPLEMENT by Calguns Foundation, Inc. re 34 Opposition to Motion. (Otten, Victor) (Entered: 11/25/2013)
11/01/2013	42	RESPONSE by Jeff Sylvester to 37 Reply. (Otten, Victor) (Entered: 11/01/2013)
11/01/2013	41	NOTICE *OF ERRATA* by All Plaintiffs. Attorney Otten, Victor John added. (Attachments: # 1 Exhibit Errata to Sylvester interrogatory responses, missing page 7)(Otten, Victor) (Entered: 11/01/2013)
10/26/2013	40	NOTICE *of Errata* by Kamala D. Harris re 37 Reply. (Eisenberg, Jonathan) (Entered: 10/26/2013)
10/25/2013	39	DECLARATION of Victor Otten in OPPOSITION TO 31 MOTION for SUMMARY JUDGMENT. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit)(Otten, Victor) (Entered: 10/25/2013)
10/24/2013	38	ORDER Vacating October 28, 2013 Hearing signed by District Judge Anthony W. Ishii on 10/23/2013. (Flores, E) (Entered: 10/24/2013)
10/22/2013	37	REPLY by Kamala D. Harris re 31 MOTION for SUMMARY JUDGMENT. (Attachments: # 1 Statement Objections to Plaintiffs' Separate Statement)(Eisenberg, Jonathan) (Entered: 10/22/2013)
10/22/2013	36	STIPULATION and ORDER to Extend by One Day the Reply–Brief Deadline on Kamala Harris' Motion for Summary Judgment (Doc. 35), Signed by District Judge Anthony W. Ishii on 10/18/2013. Filing deadline: 10/22/2013. (Arellano, S.) (Entered: 10/22/2013)
10/17/2013	35	STIPULATION and PROPOSED ORDER for One–Day Deadline Extension Re: MSJ Reply Brief re 32 Opposition to Motion, 31 MOTION for SUMMARY JUDGMENT, 34 Opposition to Motion, 33 Opposition to Motion by Kamala D. Harris. (Eisenberg, Jonathan) (Entered: 10/17/2013)
10/16/2013	34	OPPOSITION by Calguns Foundation, Inc. to 31 MOTION for SUMMARY JUDGMENT. (Otten, Victor) (Entered: 10/16/2013)
10/15/2013	33	OPPOSITION by Calguns Foundation, Inc. to 31 MOTION for SUMMARY JUDGMENT. (Otten, Victor) (Entered: 10/15/2013)
10/15/2013	32	OPPOSITION by Calguns Foundation, Inc. to 31 MOTION for SUMMARY JUDGMENT. (Otten, Victor) (Entered: 10/15/2013)
09/25/2013	31	MOTION for SUMMARY JUDGMENT by Kamala D. Harris. Motion Hearing set for 10/28/2013 at 01:30 PM in Courtroom 2 (AWI) before District Judge Anthony W. Ishii. (Attachments: # 1 Points and Authorities, # 2 Declaration, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Proof of Service)(Eisenberg, Jonathan) (Entered:

		09/25/2013)
06/24/2013	30	ORDER SUBSTITUTING ATTORNEY. Added attorney Victor John Otten for The Second Amendment Foundation, Inc., in place of Jason Davis, signed by Magistrate Judge Sheila K. Oberto on 6/24/13. (Hellings, J) (Entered: 06/25/2013)
06/24/2013	29	ORDER SUBSTITUTING ATTORNEY. Added attorney Victor John Otten for Jeff Sylvester, in place of Jason Davis, signed by Magistrate Judge Sheila K. Oberto on 6/24/13. (Hellings, J) (Entered: 06/25/2013)
06/24/2013	28	ORDER SUBSTITUTING ATTORNEY. Added attorney Victor John Otten for Brandon Combs, in place of Jason Davis, signed by Magistrate Judge Sheila K. Oberto on 6/24/13. (Hellings, J) (Entered: 06/25/2013)
06/24/2013	27	ORDER SUBSTITUTING ATTORNEY. Added attorney Victor John Otten for The Calguns Foundation, Inc., in place of Jason Davis, signed by Magistrate Judge Sheila K. Oberto on 6/24/13. (Hellings, J) (Entered: 06/25/2013)
06/21/2013	26	CLERKS NOTICE TO Jason Davis: (TEXT ENTRY ONLY) The docket indicates that you docketed proposed orders 22 23 24 & 25 (Substitution of Attorneys). Please also submit the documents in Word or WordPerfect format to Judge Oberto's order box, skoorders@caed.uscourts.gov for signature. (Gaumnitz, R) (Entered: 06/21/2013)
06/20/2013	25	SUBSTITUTION of ATTORNEY – PROPOSED, submitted by Brandon Combs. (Davis, Jason) (Entered: 06/20/2013)
06/20/2013	24	SUBSTITUTION of ATTORNEY – PROPOSED, submitted by The Calguns Foundation, Inc.. (Davis, Jason) (Entered: 06/20/2013)
06/20/2013	23	SUBSTITUTION of ATTORNEY – PROPOSED, submitted by The Second Amendment Foundation, Inc.. (Davis, Jason) (Entered: 06/20/2013)
06/20/2013	22	SUBSTITUTION of ATTORNEY – PROPOSED, submitted by Jeff Sylvester. (Davis, Jason) (Entered: 06/20/2013)
04/23/2013	21	STIPULATION of DISMISSAL *of Plaintiff Michael Poeschl* by Michael Poeschl. (Attachments: # 1 Proof of Service Proof of Service of Stipulated Dismissal of Michael Poeschl)(Davis, Jason) (Entered: 04/23/2013)
04/18/2013	20	**ORDER** *GRANTING* STIPULATION for Protective Order. Order signed by Magistrate Judge Sheila K. Oberto on 4/18/2013. (Timken, A) (Entered: 04/18/2013)
04/12/2013	19	STIPULATION and PROPOSED ORDER for Protective Order by Brandon Combs, Michael Poeschl, Jeff Sylvester, The Calguns Foundation, Inc., The Second Amendment Foundation, Inc.. (Attachments: # 1 Proof of Service Proof of Service of Stipulated Protective Order)(Davis, Jason) (Entered: 04/12/2013)
12/10/2012	18	MINUTE ORDER: ***TEXT ENTRY ONLY*** At the agreement of Counsel, the Mid–Discovery Status Conference set 12/13/2012, at 9:30am in Courtroom 7 before Magistrate Judge Sheila K. Oberto is ORDERED VACATED. Minute Order signed by Magistrate Judge Sheila K. Oberto on 12/10/2012. (Gaumnitz, R) (Entered: 12/10/2012)
12/07/2012	17	NOTICE of CHANGE of ADDRESS by Jason Andrew Davis. (Davis, Jason) (Entered: 12/07/2012)
12/07/2012	16	JOINT STATUS REPORT by Brandon Combs, Michael Poeschl, Jeff Sylvester, The Calguns Foundation, Inc., The Second Amendment Foundation, Inc.. (Davis, Jason) (Entered: 12/07/2012)
05/15/2012	15	SCHEDULING ORDER: signed by Magistrate Judge Sheila K. Oberto on 5/15/2012. Non–Dispositive Motions filed by 9/25/2013. Dispositive Motions filed by 10/30/2013, Pretrial Conference set for 1/29/2014 at 08:30 AM in Courtroom 2 (AWI) before Chief Judge Anthony W. Ishii. Bench Trial (7 Days) set for 3/25/2014 at 08:30 AM in Courtroom 2 (AWI) before Chief Judge Anthony W. Ishii (Kusamura, W) (Entered: 05/15/2012)
05/15/2012	14	MINUTES (Text Only) for proceedings held before Magistrate Judge Sheila K. Oberto: TELEPHONIC SCHEDULING CONFERENCE held on 5/15/2012. Court to

		issue Order with Schedule. Plaintiffs Counsel J. Davis Defendants Counsel J. Eisenberg (Kusamura, W) (Entered: 05/15/2012)
05/04/2012	13	JOINT SCHEDULING REPORT by Brandon Combs, Michael Poeschl, Jeff Sylvester, The Calguns Foundation, Inc., The Second Amendment Foundation, Inc.. (Davis, Jason) (Entered: 05/04/2012)
04/10/2012	12	NOTICE of CHANGE of ADDRESS by Jason Andrew Davis. (Davis, Jason) (Entered: 04/10/2012)
03/15/2012	11	ANSWER to 10 Amended Complaint by Kamala D. Harris.(Eisenberg, Jonathan) (Entered: 03/15/2012)
02/24/2012	10	FIRST AMENDED COMPLAINT against Kamala D. Harris by Jeff Sylvester, Michael Poeschl, The Calguns Foundation, Inc., The Second Amendment Foundation, Inc., Brandon Combs.(Davis, Jason) (Entered: 02/24/2012)
02/14/2012	9	STIPULATION and ORDER *EXTENDING* Defendants' time to respond to complaint. Order signed by Magistrate Judge Sheila K. Oberto on 2/14/2012. (Timken, A) (Entered: 02/14/2012)
02/09/2012	8	STIPULATION and PROPOSED ORDER for Extending Defendants' Time to Respond to Complaint by Kamala D. Harris. Attorney Eisenberg, Jonathan Michael added. (Eisenberg, Jonathan) (Entered: 02/09/2012)
01/25/2012	7	SUMMONS RETURNED EXECUTED: California Department of Justice served on 1/24/2012, answer due 2/14/2012. (Davis, Jason) (Entered: 01/25/2012)
01/25/2012	6	SUMMONS RETURNED EXECUTED: Kamala D. Harris served on 1/24/2012, answer due 2/14/2012. (Davis, Jason) (Entered: 01/25/2012)
12/27/2011	5	CIVIL NEW CASE DOCUMENTS ISSUED; Initial Scheduling Conference set for 5/15/2012 at 09:30 AM in Courtroom 7 (SKO) before Magistrate Judge Sheila K. Oberto. (Attachments: # 1 Consent Form, # 2 VDRP Form) (Hellings, J) (Entered: 12/27/2011)
12/27/2011	4	SUMMONS ISSUED as to *Kamala D. Harris* with answer to complaint due within *21* days. Attorney *Jason Andrew Davis* *Davis and Associates* *27281 Las Ramblas, Suite 200* *Mission Viejo, CA 92691*. (Hellings, J) (Entered: 12/27/2011)
12/27/2011	3	SUMMONS ISSUED as to *California Department of Justice* with answer to complaint due within *21* days. Attorney *Jason Andrew Davis* *Davis and Associates* *27281 Las Ramblas, Suite 200* *Mission Viejo, VA 92691*. (Hellings, J) (Entered: 12/27/2011)
12/23/2011		RECEIPT number #CAE100017341 $350.00 fbo Jeff Sylvester by Jeff Sylvester on 12/23/2011. (Flores, E) (Entered: 12/23/2011)
12/23/2011	1	COMPLAINT against All Defendants by JEFF SYLVESTER, MICHAEL POESCHL, THE CALGUNS FOUNDATION, INC., THE SECOND AMENDMENT FOUNDATION, INC., BRANDON COMBS. (Attachments: # 1 Civil Cover Sheet)(Davis, Jason) (Entered: 12/23/2011)

9th Circuit Case Number(s) 14-16840

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

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CERTIFICATE OF SERVICE
When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) March 25, 2015 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) s/ Jonathan M. Eisenberg

****

CERTIFICATE OF SERVICE
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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format) s/Jonathan M. Eisenberg