

1 KAMALA D. HARRIS, State Bar No. 146672
 Attorney General of California
 2 PETER K. SOUTHWORTH, State Bar No. 160522
 Supervising Deputy Attorney General
 3 JONATHAN M. EISENBERG, State Bar No. 184162
 Deputy Attorney General
 4 300 South Spring Street, Suite 1702
 Los Angeles, CA 90013
 5 Telephone: (213) 897-6505
 Fax: (213) 897-1071
 6 E-mail: Jonathan.Eisenberg@doj.ca.gov
Attorneys for Defendant Kamala D. Harris, Attorney
 7 *General of California*

8
 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA
 11 FRESNO DIVISION

12
 13 **JEFF SILVESTER, MICHAEL POESCHL,**
 14 **BRANDON COMBS, THE CALGUNS**
 15 **FOUNDATION, INC., a non-profit**
 16 **organization, and THE SECOND**
AMENDMENT FOUNDATION, INC., a
non-profit organization,

17 Plaintiffs,

18 v.

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

21 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

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

5 **SUBSTANTIVE ANSWER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 19. Answering enumerated paragraph no. 19 of Plaintiffs' FAC, the Attorney General
26 understands the paragraph as making assertions of law (not fact), and, on that basis, contends that
27 no answer is required.
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **SEPARATE AND ADDITIONAL DEFENSES**

19 FIRST SEPARATE AND ADDITIONAL DEFENSE

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

22 SECOND SEPARATE AND ADDITIONAL DEFENSE

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

25 THIRD SEPARATE AND ADDITIONAL DEFENSE

26 3. Plaintiffs, and each of them, should be barred from pursuing or obtaining relief in this
27 case on the grounds of laches.
28

1 FOURTH SEPARATE AND ADDITIONAL DEFENSE

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

4 FIFTH SEPARATE AND ADDITIONAL DEFENSE

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

6 **PRAYER FOR RELIEF**

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

12 The Attorney General prays, instead, as follows:

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

20 Dated: March 15, 2012

Respectfully Submitted,

21 KAMALA D. HARRIS
22 Attorney General of California
23 PETER K. SOUTHWORTH
24 Supervising Deputy Attorney General

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

60748119.docx