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

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

Plaintiffs,

v.

18 **KAMALA D. HARRIS, Attorney General of**
 19 **California (in her official capacity),**

Defendant.

Case No. 1:11-cv-02137-AWI-SKO

**REQUEST FOR JUDICIAL NOTICE RE:
 OPPOSITION TO PLAINTIFFS’
 MOTION FOR ATTORNEY FEES;
 SUPPORTING DECLARATION OF
 JONATHAN M. EISENBERG**

Hearing Date: December 8, 2014
 Hearing Time: 1:30 p.m.
 Judge: Hon. Anthony W. Ishii
 Trial Date: March 25, 2014
 Action Filed: December 23, 2011

21 Under Federal Rule of Evidence 201, Defendant Kamala D. Harris, Attorney General of the
 22 State of California (“Defendant”), requests that the Court take judicial notice of the following
 23 items in connection with Defendant’s opposition to the motion to recover attorney fees filed
 24 herein on September 8, 2014, by Plaintiffs Jeff Silvester (“Silvester”), Brandon Combs
 25 (“Combs”), The Calguns Foundation, Inc. (“CGF”), and The Second Amendment Foundation,
 26 Inc. (“SAF”; together with Silvester, Combs, and CGF, “Plaintiffs.”)

1 **ITEMS TO BE JUDICIALLY NOTICED AND ARGUMENTS FOR JUDICIAL NOTICE**

2 Exhibit A is a print-out from the Internet site register.com, particularly the “whois” function
3 there, showing publicly accessible information about which person or entity owns or operates the
4 Internet site laffeymatrix.com. There is no person or entity owner or operator named there.
5 Furthermore, the Internet site itself does not supply such information, and Plaintiffs have not
6 supplied that information. The Court should take judicial notice of the print-out as evidence that
7 Plaintiffs have not adequately justified the \$640 per hour attorney rates that Plaintiffs are trying to
8 collect for the work of Don Kilmer, Victor Otten, and Jason Davis, as per *Liberty Media*
9 *Holdings, LLC v. Vinigay.com*, No. CV-11-280-PHX-LOA, 2011 WL 7430062 at *5 (D. Ariz.
10 Dec. 28, 2011).

11 Exhibit B is a copy of a declaration of Timothy J. Buchanan that was submitted in the
12 Fresno County Superior Court case called *Children and Families Commission of Fresno County*
13 *v. Brown*, Case No. 11CECG01077, in March 2012. The Court should take judicial notice of this
14 item as evidence that, in Fresno in March 2012, reasonable hourly rates for attorneys handling
15 cases posing challenges to the constitutionality of state laws were, in the opinion of one senior
16 attorney in the community, many hundreds of dollars lower than the \$640 rate sought by
17 Plaintiffs here. The *Children* plaintiffs were attempting to recover attorney fees, and used the
18 Buchanan declaration in support of the fees claimed. The plaintiffs did not recover attorney fees
19 in that case. The Court should take judicial notice of the representations in the Buchan
20 declaration, as per *NuCal Foods, Inc. v. Quality Eggs LLC*, 887 F. Supp. 2d 977, 984-85 (E.D.
21 Cal. 2012).

22 Exhibit C is a print-out of pages 1 and 5 of a report of California’s Employment
23 Development Department about median wages for different jobs in Fresno in the first quarter of
24 2011. As can be seen, lawyers had a median hourly wage of \$63.47. The Court should take
25 judicial notice of this information from an official government report, per *AtPac, Inc. v. Aptitude*
26 *Solutions, Inc.*, 787 F. Supp. 2d 1108, 1112 & n.3 (E.D. Cal. 2011), and *Jimenez v. Domino’s*
27 *Pizza, Inc.*, 238 F.R.D. 241, 246 (C.D. Cal. 2006).

1 Exhibit D is a print-out of pages 1 and 5 of a report of California's Employment
2 Development Department about median wages for different jobs in Fresno in the first quarter of
3 2014. As can be seen, lawyers had a median hourly wage of \$63.73. The Court should take
4 judicial notice of this information from an official government report, per *AtPac*, 787 F. Supp. 2d
5 at 1112 & n.3, and *Jimenez*, 238 F.R.D. at 246.

6 Exhibit E is a print-out from the Internet site of the U.S. Department of Justice,
7 www.usdoj.gov, of the Laffey Matrix that is put out regarding attorney fee rates in Washington,
8 D.C. This print-out shows the current official Laffey Matrix rates. The Court should take judicial
9 notice of this information from an official government report, per *AtPac*, 787 F. Supp. 2d at 1112
10 & n.3, and *Jimenez*, 238 F.R.D. at 246.

11 November 24, 2014

Respectfully Submitted,

12 KAMALA D. HARRIS
13 Attorney General of California
14 MARK R. BECKINGTON
15 Supervising Deputy Attorney General

16 /s/
17 JONATHAN M. EISENBERG
18 Deputy Attorney General
19 *Attorneys for Defendant Kamala D.*
20 *Harris, Attorney General of California*

SUPPORTING DECLARATION OF JONATHAN M. EISENBERG

I, Jonathan M. Eisenberg, declare as follows:

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

2. I am an attorney admitted to practice law in all California state and federal courts, including the present Court. I am a deputy attorney general in the Office of the California Attorney General. I am one of the attorneys of record for Defendant Kamala D. Harris, Attorney General of California (“Defendant”), in the present case, *Silvester v. Harris*, Case No. 1:11-cv-02137-AWI-SKO.

3. The document that is Exhibit A, in Defendant’s request for judicial notice regarding the opposition to the pending attorney fees motion in the present case, I generated by using the “whois” feature at the Internet site register.com, to determine which person or entity owns the Internet site laffeymatrix.com. I have used this feature of that website multiple times in the past to determine the ownership of other websites.

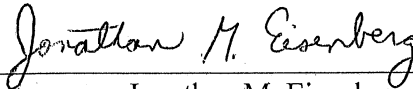
4. The document that is Exhibit B, in Defendant’s request for judicial notice regarding the opposition to the pending attorney fees motion in the present case, I obtained from files in the Office of the California Attorney General. It is my understanding that other deputy attorneys general represented California Gov. Edmund G. Brown Jr. in that case and the document, a pleading from that case, is in the files of the Office of the California Attorney General for that reason.

5. The documents that are Exhibits C and D, in Defendant’s request for judicial notice regarding the opposition to the pending attorney fees motion in the present case, I located on the Internet site for California’s Employment Development Department (“EDD”) at <http://www.edd.ca.gov/>. Each of the documents appears to be a report generated by EDD.

6. The document that is Exhibit E, in Defendant’s request for judicial notice regarding the opposition to the pending attorney fees motion in the present case, I located on the Internet site for the U.S. Department of Justice (“USDOJ”) at <http://www.doj.gov/>. The document appears to be a table generated by USDOJ.

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I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I signed this declaration on November 24, 2014, at Los Angeles, California.



Jonathan M. Eisenberg