

1 KAMALA D. HARRIS, State Bar No. 146672  
Attorney General of California  
2 MARK R. BECKINGTON, State Bar No. 126009  
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 (FRE 602), INC., a non-**  
16 **profit organization, and THE SECOND**  
**AMENDMENT FOUNDATION (FRE 602),**  
**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.  
22  
23  
24  
25  
26  
27  
28

1:11-cv-02137-AWI-SKO

**OBJECTIONS OF DEFENDANT  
KAMALA D. HARRIS TO PLAINTIFFS'  
SEPARATE STATEMENT OF FACTS IN  
OPPOSITION TO DEFENSE MOTION  
FOR SUMMARY JUDGMENT**

Hearing Date: October 28, 2013  
Hearing Time: 1:30 p.m.  
Trial Date: March 25, 2014  
Action Filed: December 23, 2011

1 Under Federal Rule of Civil Procedure 56(c), Defendant Kamala D. Harris, Attorney  
 2 General of the State of California (the “Attorney General”), submits the following objections to  
 3 the separate statement of facts in opposition to summary judgment submitted herein by Plaintiffs  
 4 Jeffrey A. Silvester (“Silvester”), Brandon S. Combs (“Combs”), The Calguns Foundation (FRE  
 5 602), Inc. (“CGF”), and The Second Amendment Foundation (FRE 602), Inc. (“SAF”; together  
 6 with Silvester, Combs, and CGF, “Plaintiffs.”)

<b>PLAINTIFFS’ ADDITIONAL MATERIAL DISPUTED AND UNDISPUTED FACTS AND SUPPORTING EVIDENCE</b>	<b>ATTORNEY GENERAL OBJECTIONS</b>	<b>ATTORNEY GENERAL EVIDENTIARY OBJECTIONS</b>
10 4. Requirement to wait 10 11 days deprives Plaintiffs of the 12 use, custody, control and 13 ability to defend self, family 14 and home; it mandates a brief 15 window of 20 days from 16 which Plaintiffs must return to 17 obtain physical possession of 18 property that Plaintiffs already 19 own. (See Combs' and 20 Silvester's Response to Special 21 Interrogatories #7).	-- not an assertion of fact, but rather (in part) an abstract argument -- not an assertion of fact, but rather (in part) an interpretation of law -- immaterial	-- Combs’s response to special interrogatory no. 7 is not in evidence (Regarding Silvester’s response to special interrogatory no. 7) -- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602) -- confusing and/or misleading (FRE 403)
22 5. Plaintiffs are forced to 23 incur expenses including: 24 opportunity costs to engage in 25 business and other activities 26 during the each and every time 27 Plaintiffs have to make a 28 second trip to the licensed firearms 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	-- immaterial	-- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602) -- confusing and/or misleading (FRE 403)

1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12	1 2 3 4 5 6 7 8 9 10 11 12
<b>PLAINTIFFS' ADDITIONAL MATERIAL DISPUTED AND UNDISPUTED FACTS AND SUPPORTING EVIDENCE</b>	<b>ATTORNEY GENERAL OBJECTIONS</b>	<b>ATTORNEY GENERAL EVIDENTIARY OBJECTIONS</b>
<p>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. (See e.g. Responses to Special Rogs. #16-17 for Combs, and Silvester).</p>		
<p>6. When purchasing a firearm, Plaintiffs go through a background check at the state and federal levels. (See Deposition Transcript of Second Amendment Foundation (FRE 602), through Alan Gottlieb (“SAF Depo.”) p. 80, line 19 – p. 81, line 3).</p>	<p>-- immaterial</p>	<p>-- cited evidence does not support asserted fact -- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602)</p>
<p>7. At the State level, the California Attorney General maintains an online database called the Prohibited Armed Persons File</p>	<p>-- immaterial</p>	<p>(Regarding Combs’s response to special interrogatory no. 10) -- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602)</p>

1 2 3 4 5 6 7	ATTORNEY GENERAL OBJECTIONS	ATTORNEY GENERAL EVIDENTIARY OBJECTIONS
<p>8. The information contained in the PAPF is available for the purpose of determining if persons are armed and prohibited from possessing firearms. (Combs' Response to Special Interrog. No. 10; See also Penal Code § 30000 <i>et seq.</i>)</p>		<p>-- lack of personal knowledge (FRE 602)</p>
<p>9. At the federal level, the National Instant Check System (NICS) is controlled by the Federal Bureau of Investigation (FBI). (See, e.g. Combs' and Silvester's Response to Special Interrog. No. 11).</p>	<p>-- immaterial</p>	<p>(Regarding Combs's response to special interrogatory no. 10) -- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602) -- lack of personal knowledge (FRE 602) -- confusing and/or misleading (FRE 403)</p>
<p>10. The information in the databases that are used to conduct background checks can be accessed immediately.</p>	<p>-- immaterial</p>	<p>-- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602) -- lack of personal knowledge (FRE 602)</p>

<b>PLAINTIFFS' ADDITIONAL MATERIAL DISPUTED AND UNDISPUTED FACTS AND SUPPORTING EVIDENCE</b>	<b>ATTORNEY GENERAL OBJECTIONS</b>	<b>ATTORNEY GENERAL EVIDENTIARY OBJECTIONS</b>
(See, e.g. SAF Depo., p. 81, lines 13-20).		(FRE 602) -- confusing and/or misleading (FRE 403)
11. Defendants deliberately make background checks go ten days even though the information used in background checks to determine eligibility to purchase a firearm can be accessed instantaneously. (See, e.g. SAF Depo., p. 81, lines 4-12, and p. 86, line 23 – p. 87 line 6).	-- not an assertion of fact, but rather a (conspiracy) theory -- immaterial	-- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602) -- lack of personal knowledge (FRE 602) -- confusing and/or misleading (FRE 403)
12. California's gun homicide rates continue to be higher than similarly situated states, e.g. Texas, that do not have a waiting period. (See, e.g. Hoffman Depo., p. 99, lines 5-12, and p. 102, line 5 – p. 103 line 5).	-- immaterial	-- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602) -- lack of personal knowledge (FRE 602) -- confusing and/or misleading (FRE 403)
13. There is no evidence that the 10-Day “cooling off period” effectively deters	-- not an assertion of fact, but rather an opinion -- immaterial	-- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602)

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	PLAINTIFFS' ADDITIONAL MATERIAL DISPUTED AND UNDISPUTED FACTS AND SUPPORTING EVIDENCE	ATTORNEY GENERAL OBJECTIONS	ATTORNEY GENERAL EVIDENTIARY OBJECTIONS
	crime. (See, e.g., Hoffman Depo., p. 103).		-- lack of personal knowledge (FRE 602) -- improper opinion (FRE 701) -- confusing and/or misleading (FRE 403)
	14. Because of California's 10-day wait period, a purchaser of a firearm <u>must</u> make multiple trips before taking possession. (Hoffman Depo., p. 117).	-- not an assertion of fact, but rather an interpretation of law -- immaterial	-- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602) -- lack of personal knowledge (FRE 602)
	15. The 10-day waiting period has proven to be a hindrance by preventing people from effectively defending themselves. (Hoffman Depo., p. 134, and 137-138).	-- not an assertion of fact, but rather an opinion -- immaterial	-- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602) -- lack of personal knowledge (FRE 602) -- improper opinion (FRE 701) -- confusing and/or misleading (FRE 403)
	16. The time period of 10 days to conduct a background check is arbitrarily set by the legislature. (See, e.g., Hoffman Depo., p. 151, lines 23-25).	-- not an assertion of fact, but rather an opinion -- immaterial	-- irrelevant (FRE 401, 402) -- lack of foundation (FRE 602) -- lack of personal knowledge (FRE 602) -- improper opinion (FRE 701)

<b>PLAINTIFFS' ADDITIONAL MATERIAL DISPUTED AND UNDISPUTED FACTS AND SUPPORTING EVIDENCE</b>	<b>ATTORNEY GENERAL OBJECTIONS</b>	<b>ATTORNEY GENERAL EVIDENTIARY OBJECTIONS</b>
		-- confusing and/or misleading (FRE 403)
<p>17. For a person who has been through the 10-day waiting period once, California can check to see if that person appears on the Armed Prohibited Persons List and thereby make a decision about whether the person should be allowed to obtain an additional firearm. (Hoffman Depo., p. 153, lines 18-24).</p>	<p>-- not an assertion of fact, but rather an argument</p> <p>-- immaterial</p>	<p>-- irrelevant (FRE 401, 402)</p> <p>-- lack of foundation (FRE 602)</p> <p>-- lack of personal knowledge (FRE 602)</p> <p>-- confusing and/or misleading (FRE 403)</p>
<p>18. Where the need to acquire a firearm is more urgent, the 10-day waiting period effectively prevents individuals from being able to defend themselves. (See, e.g., Hoffman Depo., p. 134).</p>	<p>-- not an assertion of fact, but rather an argument</p> <p>-- not an assertion of fact, but rather an opinion</p> <p>-- immaterial</p>	<p>-- irrelevant (FRE 401, 402)</p> <p>-- lack of foundation (FRE 602)</p> <p>-- lack of personal knowledge (FRE 602)</p> <p>-- improper opinion (FRE 701)</p> <p>-- confusing and/or misleading (FRE 403)</p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: October 22, 2013

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

/s/  
\_\_\_\_\_  
JONATHAN M. EISENBERG  
Deputy Attorney General  
*Attorneys for Defendant Kamala D. Harris,  
Attorney General of California*