

1 Victor J. Otten (SBN 165800)
vic@ottenandjoyce.com
2 OTTEN & JOYCE, LLP
3620 Pacific Coast Hwy, Suite 100
3 Torrance, California 90505
Phone: (310) 378-8533
4 Fax: (310) 347-4225

5 Donald E.J. Kilmer (SBN 179986)
LAW OFFICES OF DONALD KILMER
6 A Professional Corporation
1645 Willow Street, Suite 150
7 San Jose, California 95125
Phone: (408) 264-8489
8 Fax: (408) 264-8487

9 Attorneys for Plaintiffs

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**
12

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

18 **Plaintiffs,**

19 **v.**

20 **KAMALA HARRIS, Attorney**
General of California (in her
official capacity), and DOES 1 to
21 **20.**

22 **Defendants.**
23
24
25
26
27
28

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

PLAINTIFFS' OBJECTIONS TO
EVIDENCE CITED IN DEFENDANT'S
TRIAL BRIEF

Judge: Hon. Anthony W. Ishii
Courtroom: 8th Floor, Room 2
Trial Date: March 25, 2014
Time: 9:00 a.m.
Case Filed: Dec. 23, 2011

[Filed concurrently with Plaintiffs' Response to Defendant's Trial Brief.]

1 Plaintiffs object to evidence cited in the Attorney General’s Trial Brief on the
2 following grounds:

3 **Objections to Legislative History**

- 4 1) July 7, 1975 letter from R. James Rasmussen to Frank Murphy, Jr.
5 AG’s Trial Brief at 5:3-5.
- 6 2) September 12, 1975 letter from Rodney J. Blonien to Edmund G.
7 Brown, Jr. AG’s Trial Brief at 5:5-11.
- 8 3) Cal. Assembly Comm. on Public Safety, Assembly Analysis of Sen.
9 Bill 671 (1995-96 Reg. Sess.), Jul. 11, 1995, p. 3. AG’s Trial Brief at
10 5:17-20.
- 11 4) Cal. Senate Comm. on Crim. Proc., Report (“Firearm Dealer Record of
12 Sale—Electronic Transmission to the Department of Justice”) on Sen.
13 Bill 671 (1995-95 Reg. Sess.), Mar. 28, 1995, p.3. AG’s Trial Brief at
14 5:3-5.
- 15 5) Cal. Senate Public Safety Comm., Analysis on Third Reading of Sen.
16 Bill 1671 (1995-96 Reg. Sess.), as amended (RN9620429), p.4. AG’s Trial
17 Brief at 6:1-3.

18 Objection: Relevancy - the AG is attempting to introduce evidence that the
19 10-day waiting period is needed to perform background checks to make sure that
20 prohibited persons do not come into possession of another firearm. The AG also
21 intends to use this evidence to justify the length of time it takes the DOJ to run a
22 background check. Plaintiffs in this action, however, already have a firearm tied to
23 their identity in state databases. If an individual already possesses a firearm, then
24 nothing about this rationale would prevent that individual from acting on a sudden
25 impulse to commit gun violence with a gun already in his or her possession.

26 Objection: Foundation - Plaintiffs’ reserve their right to object on the basis of
27 lack of foundation.

28 Objection: Judicial Notice - The court may only judicially notice a fact that is

1 not subject to reasonable dispute because it: (1) is generally known within the trial
2 court's territorial jurisdiction; or (2) can be accurately and readily determined from
3 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)
4 (emphasis added); United States v. Mariscal, 285 F.3d 1127, 1131 (9th Cir. 2002).
5 See also, Oneida Indian Nation of New York v. State of New York, 691 F.2d 1070,
6 1086 (2nd Cir. 1982).

7 Objection: Hearsay-- the AG is offering a statement from the article for its
8 truth.

9 **Objections to News Articles**

- 10 1) “Brown Signs Tough Gun Control Bill,” The Sacramento Bee, Sept.
11 24, 1975. AG’s Trial Brief at 5:3-5.

12 Objection: Relevancy - the AG is attempting to introduce evidence that the
13 10-day waiting period is needed to perform background checks to make sure that
14 prohibited persons do not come into possession of another firearm. Plaintiffs in this
15 action, however, already have a firearm tied to their identity in state databases. If an
16 individual already possesses a firearm, then nothing about this rationale would
17 prevent that individual from acting on a sudden impulse to commit gun violence
18 with a gun already in his or her possession.

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20 not subject to reasonable dispute because it: (1) is generally known within the trial
21 court's territorial jurisdiction; or (2) can be accurately and readily determined from
22 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)
23 (emphasis added); United States v. Mariscal, 285 F.3d 1127, 1131 (9th Cir. 2002).

24 Objection: Hearsay - The AG is offering a statement from the article for its
25 truth. Fed. R. Evid. 802(c) No exception applies because statements in periodicals
26 only fall under the exception if the statement is called to the attention of an expert
27 witness on direct or cross-examination and the called publication is established as a
28 reliable authority by the expert’s admission or testimony, by another expert’s

1 testimony, or by judicial notice. Fed. R. Evid. 803(18) Even if the court takes
2 judicial notice that the publication is established as reliable, no expert can testify
3 because “there was no expert discovery in this case.” AG’s Trial Brief at 7:10. No
4 expert witness means the periodical is inadmissible for lack of foundation. See e.g.,
5 Wilkins v. Kmart Corp., 487 F.Supp.2d 1216 (D.Kan.2007).

6 **Objections to Journal Articles**

- 7 1) David A. Brent, *Firearms and Suicide*, Annals of New York Academy
8 of Sciences, 225 (2001). AG’s Trial Brief at 22:3-5.

9 Objection: Relevancy - the AG is attempting to introduce evidence that the
10 10-day waiting period is needed to perform background checks to make sure that
11 prohibited persons do not come into possession of another firearm. Plaintiffs in this
12 action, however, already have a firearm. If an individual already possesses a
13 firearm, then nothing about this rationale would prevent that individual from acting
14 on a sudden impulse to commit gun violence with a gun already in his or her
15 possession.

16 Objection: Judicial Notice - The court may only judicially notice a fact that
17 is not subject to reasonable dispute because it: (1) is generally known within the
18 trial court's territorial jurisdiction; or (2) can be accurately and readily determined
19 from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.
20 201(b) (emphasis added); United States v. Mariscal, 285 F.3d 1127, 1131 (9th Cir.
21 2002).

22 Objection: Hearsay - The article is hearsay, and does not fall within the
23 exception for a learned treatise. Fed. R. Evid. 803(18). The AG is offering a
24 statement from the article for its truth. Fed. R. Evid. 802(c) No exception applies
25 because statements in periodicals only fall under the exception if statement is called
26 to the attention of an expert witness on direct or cross-examination and the called
27 publication is established as a reliable authority by the expert’s admission or
28 testimony, by another expert’s testimony, or by judicial notice. Fed. R. Evid.

1 803(18). Even if the court takes judicial notice that the publication is established as
2 reliable, no expert can testify because “there was no expert discovery in this case.”
3 AG’s Trial Brief at 7:10.

4 2) Greg M. de Moore, et al., *Survivors of Self-inflicted Firearm Injury*,
5 160 *The Medical Journal of Australia* (1994). AG’s Trial Brief at
6 20:21-22.

7 Objection: Relevancy- the AG is attempting to introduce evidence that the
8 10-day waiting period is needed to perform background checks to make sure that
9 prohibited persons do not come into possession of another firearm. Plaintiffs in this
10 action, however, already have a firearm. If an individual already possesses a
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18 (emphasis added); United States v. Mariscal, 285 F.3d 1127, 1131 (9th Cir. 2002).

19 Objection: Hearsay. The article is hearsay, and does not fall within the
20 exception for a learned treatise. Fed. R. Evid. 803(18). Fed. R. Evid. 802(c) No
21 exception applies because statements in periodicals only fall under the exception if
22 statement is called to the attention of an expert witness on direct or cross-
23 examination and the called publication is established as a reliable authority by the
24 expert’s admission or testimony, by another expert’s testimony, or by judicial
25 notice. Fed. R. Evid. 803(18) Even if the court takes judicial notice that the
26 publication is established as reliable, no expert can testify because “there was no
27 expert discovery in this case.” AG’s Trial Brief at 7:10.

28 3) Kevin Marshall, *Why Can’t Martha Stewart Have a Gun?*, 32 *Harv.*

1 J.L. & Pub. Pol’y 695, 698. AG’s Trial Brief at 20:10.

2 Objection: Relevancy- the AG is attempting to introduce evidence that the
3 10-day waiting period is needed to perform background checks to make sure that
4 prohibited persons do not come into possession of another firearm. Plaintiffs in this
5 action, however, already have a firearm tied to their identity in state databases. If an
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19 expert’s admission or testimony, by another expert’s testimony, or by judicial
20 notice. Fed. R. Evid. 803(18) Even if the court takes judicial notice that the
21 publication is established as reliable, no expert can testify because “there was no
22 expert discovery in this case.” AG’s Trial Brief at 7:10.

23 4) Julia C. Babcock, et al., *Does Batterer’s Treatment Work? A Meta-*
24 *Analytics Review of Domestic Violence Treatment*, 23 *Clinical Psych.*
25 *Rev* 1023, 1039 (2004). AG’s Trial Brief at 20:11-12.

26 Objection: Relevancy- the AG is attempting to introduce evidence that the
27 10-day waiting period is needed to perform background checks to make sure that
28 prohibited persons do not come into possession of another firearm. Plaintiffs in this

1 action, however, already have a firearm tied to their identity in state databases. If an
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16 notice. Fed. R. Evid. 803(18) Even if the court takes judicial notice that the
17 publication is established as reliable, no expert can testify because “there was no
18 expert discovery in this case.” AG’s Trial Brief at 7:10.

19 **Objections as to Books**

- 20 1) James A. Fox, et al., *The Will to Kill: Making Sense of Senseless*
21 *Murder*, 4th Ed. (Prentice Hall 2011). AG’s Trial Brief at 20:19-20.

22 Objection: Relevancy - the AG is attempting to introduce evidence that the
23 10-day waiting period is needed to perform background checks to make sure that
24 prohibited persons do not come into possession of another firearm. Plaintiffs in this
25 action, however, already have a firearm tied to their identity in state databases. If an
26 individual already possesses a firearm, then nothing about this rationale would
27 prevent that individual from acting on a sudden impulse to commit gun violence
28 with a gun already in his or her possession.

1 Objection: Foundation- The burden is on the AG to lay the foundation. Fed.
2 R. Evid. 901(a) The book here is not self-authenticating under Fed. R. Evid. 902
3 because it does not qualify as newspapers, periodicals, or a book from a “public
4 authority” See Fed. R. Evid. 902(5) and (6). A published book does not qualify as
5 self-authenticating because the word “book” is not explicitly mentioned anywhere
6 in the statute, except for books from a public authority. See Fed. R. Evid. 902(5) “A
7 book, pamphlet, or other publication purporting to be issued by a public authority
8 [is self- authenticating].” (Emphasis added).

9 Objection: Hearsay - The book is hearsay, and does not fall within the
10 exception for a learned treatise. Fed. R. Evid. 803(18), Fed. R. Evid. 802(c). No
11 exception applies because the word “book” is not mentioned anywhere within Fed.
12 R. Evid. 803 exceptions to the hearsay rule, and does not qualify as non-hearsay.

13 Objection: Judicial Notice - The court may only judicially notice a fact that is
14 not subject to reasonable dispute because it: (1) is generally known within the trial
15 court's territorial jurisdiction; or (2) can be accurately and readily determined from
16 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)
17 (emphasis added); United States v. Mariscal, 285 F.3d 1127, 1131 (9th Cir. 2002).

18 2) Robert A. Hahn, et al., *Firearms Laws and the Reduction of Violence:*
19 *A Systematic Review*, 28 American Journal of Preventive Medicine 40
20 (2005). AG’s Trial Brief at 21:24-25.

21 Objection: Relevancy- The AG is attempting to introduce evidence that the
22 10-day waiting period is needed to perform background checks to make sure that
23 prohibited persons do not come into possession of another firearm. Plaintiffs in this
24 action, however, already have a firearm tied to their identity in state databases. If an
25 individual already possesses a firearm, then nothing about this rationale would
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9 exception for a learned treatise. Fed. R. Evid. 803(18). Fed. R. Evid. 802(c) No
10 exception applies because statements in periodicals only fall under the exception if
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13 expert’s admission or testimony, by another expert’s testimony, or by judicial
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15 publication is established as reliable, no expert can testify because “there was no
16 expert discovery in this case.” AG’s Trial Brief at 7:10. No expert witness means
17 the book is inadmissible for lack of foundation. See e.g., Wilkins v. Kmart Corp.,
18 487 F.Supp.2d 1216 (D.Kan.2007).

19 Objection: Judicial Notice - The court may only judicially notice a fact that is
20 not subject to reasonable dispute because it: (1) is generally known within the trial
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22 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)
23 (emphasis added); United States v. Mariscal, 285 F.3d 1127, 1131 (9th Cir. 2002).

24 3) Samuel Johnson, *A Dictionary of the English Language* (10th Ed.)
25 (1792) AG’s Trial Brief at 14:22-27.

26 Objection: Relevance- the definitions are not relevant

27 Objection: Foundation the Defendants have not laid a foundation for the
28 book.

1 4) Jack Larkin, *The Reshaping of Everyday Life, 1790-1840* (Harper &
2 Row 1988). AG's Trial Brief at 15:6-8.

3 Objection: Relevancy- the AG is attempting to introduce evidence that the
4 10-day waiting period is needed to perform background checks to make sure that
5 prohibited persons do not come into possession of another firearm. The plaintiffs in
6 this action, however, already have a firearm. If an individual already possesses a
7 firearm, then nothing about this rationale would prevent that individual from acting
8 on a sudden impulse to commit gun violence with a gun already in his or her
9 possession.

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11 R. Evid. 901(a). The book here is not self-authenticating under Fed. R. Evid. 902
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16 book, pamphlet, or other publication purporting to be issued by a public authority
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18 authenticating as an ancient document unless it is (a) in a condition that creates no
19 suspicion of their authenticity, (b) is found in a place where, if authentic, they
20 would likely be, and (c) is 20 years old or more. Fed. R. Evid. 901(b)(8). .

21 Objection: Hearsay - The book is hearsay, and does not fall within the
22 exception for a learned treatise. The AG is offering a statement from the book for
23 the truth. Fed. R. Evid. 803(18), Fed. R. Evid. 802(c). No exception applies
24 because the word “book” is not mentioned anywhere within Fed. R. Evid. 803
25 exceptions to the hearsay rule, and does not qualify as non-hearsay.

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1 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)
2 (emphasis added); United States v. Mariscal, 285 F.3d 1127, 1131 (9th Cir. 2002).

3 5) Matthew Miller and David Hemenway, *The Relationship Between*
4 *Firearms and Suicide: A Review of the Literature for Aggression and*
5 *Violent Behavior* 59 (1999). AG’s Trial Brief at 21:5-7.

6 Objection: Relevancy- the AG is attempting to introduce evidence that the
7 10-day waiting period is needed to perform background checks to make sure that
8 prohibited persons do not come into possession of another firearm. Plaintiffs in this
9 action, however, already have a firearm. If an individual already possesses a
10 firearm, then nothing about this rationale would prevent that individual from acting
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23 487 F.Supp.2d 1216 (D.Kan.2007).

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28 (emphasis added); United States v. Mariscal, 285 F.3d 1127, 1131 (9th Cir. 2002)

1 5) Linda G. Peterson, et al., *Self-inflicted Gunshot Wounds: Lethality of*
2 *Method Versus Intent*, 142 American Journal of Psychiatry 228 (Feb.
3 1985). AG’s Trial Brief at 20:27-28.

4 Objection: Relevancy- the AG is attempting to introduce evidence that the
5 10-day waiting period is needed to perform background checks to make sure that
6 prohibited persons do not come into possession of another firearm. Plaintiffs in this
7 action, however, already have a firearm. If an individual already possesses a
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25 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)
26 (emphasis added); United States v. Mariscal, 285 F.3d 1127, 1131 (9th Cir. 2002).

27 6) Charles Sellers, *The Market Revolution: Jacksonian America, 1815-1846*
28 (Oxford Univ. Press 1991). AG’s Trial Brief at 15:6-7.

1 Objection: Relevancy- the AG is attempting to introduce evidence that the
2 10-day waiting period is needed to perform background checks to make sure that
3 prohibited persons do not come into possession of another firearm. The plaintiffs in
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12 self-authenticating because the word “book” is not explicitly mentioned anywhere
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14 book, pamphlet, or other publication purporting to be issued by a public authority
15 [is self- authenticating].” (Emphasis added). Moreover, this is not self-
16 authenticating as an ancient document unless it is (a) in a condition that creates no
17 suspicion of their authenticity, (b) is found in a place where, if authentic, they
18 would likely be, and (c) is 20 years old or more. Fed. R. Evid. 901(b)(8). .

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26 exception applies because the word “book” is not mentioned anywhere within Fed.
27 R. Evid. 803 exceptions to the hearsay rule, and does not qualify as non-hearsay.

28 7) Robert J. Spitzer, *The Politics of Gun Control*, Fifth. Ed. (Paradigm

1 Publishers 2012). AG’s Trial Brief at 12:16-17.

2 Objection: Relevancy- the AG is attempting to introduce evidence that the
3 10-day waiting period is needed to perform background checks to make sure that
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28 the word “book” is not mentioned anywhere within Fed. R. Evid. 803 exceptions to

1 the hearsay rule, and does not qualify as non-hearsay.

2 8) U.S. Department of Justice, Federal Bureau of Investigation, *Criminal*
3 *Justice Information Services Division, National Instant Background*
4 *Check System (NICS) Operations 2011 (2012)*. AG’s Trial Brief at 19:11-
5 14.

6 Objection: Relevancy- the AG is attempting to introduce evidence that the
7 10-day waiting period is needed to perform background checks to make sure that
8 prohibited persons do not come into possession of another firearm. The plaintiffs in
9 this action, however, already have a firearm. If an individual already possesses a
10 firearm, then nothing about this rational would prevent that individual from acting
11 on a sudden impulse to commit gun violence with a gun already in his or her
12 possession.

13 Objection: Hearsay - The AG is offering a statement from the article for its
14 truth. Fed. R. Evid. 802(c) No exception applies because statements in public
15 records only fall under the exception if the record (A) sets out the office’s activities;
16 a matter observed while under a legal duty to report, but not including, in a criminal
17 case, a matter observed by law-enforcement personnel; or in a civil case or against
18 the government in a criminal case, factual findings from a legally authorized
19 investigation; and (B) neither the source of information nor other circumstances
20 indicate a lack of trustworthiness. Fed. R. Evid. 803(8). However, “evaluative
21 reports” or “status reports” do not qualify. See, e.g. Lomax Transp. Co. v. United
22 States, 183 F.2d 331 (9th Cir. 1950).

23 Objection: Judicial notice - The court may only judicially notice a fact that is
24 not subject to reasonable dispute because it: (1) is generally known within the trial
25 court's territorial jurisdiction; or (2) can be accurately and readily determined from
26 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)
27 (emphasis added); United States v. Mariscal (9th Cir. 2002) 285 F3d 1127, 1131]

28 9) Daniel W. Webster and Jon S. Vernick, Eds., *Reducing Gun Violence*

1 *in America: Informing Policy with Evidence and Analysis* (The Johns
2 Hopkins Univ. Press 2013). AG’s Trial Brief at 19:1-5.

3 Objection: Relevancy- the AG is attempting to introduce evidence that the
4 10-day waiting period is needed to perform background checks to make sure that
5 prohibited persons do not come into possession of another firearm. The plaintiffs in
6 this action, however, already have a firearm. If an individual already possesses a
7 firearm, then nothing about this rational would prevent that individual from acting
8 on a sudden impulse to commit gun violence with a gun already in his or her
9 possession.

10 Objection: Foundation. The burden is on the AG to lay the foundation. Fed.
11 R. Evid. 901(a). The book here is not self-authenticating under Fed. R. Evid. 902
12 because it does not qualify as newspapers periodical, or book from a “public
13 authority”. See Fed. R. Evid. 902(5) and (6). A published book does not qualify as
14 self-authenticating because the word “book” is not explicitly mentioned anywhere
15 in the statute, except for books from a public authority. See Fed. R. Evid. 902(5)
16 (“A book, pamphlet, or other publication purporting to be issued by a public
17 authority [is self- authenticating].” (Emphasis added). Moreover, this is not self-
18 authenticating as an ancient document unless it is (a) in a condition that creates no
19 suspicion of their authenticity, (b) is found in a place where, if authentic, they
20 would likely be, and (c) is 20 years old or more. Fed. R. Evid. 901(b)(8). .

21 Objection: as to judicial notice. The court may only judicially notice a fact
22 that is not subject to reasonable dispute because it: (1) is generally known within
23 the trial court's territorial jurisdiction; or (2) can be accurately and readily
24 determined from sources whose accuracy cannot reasonably be questioned.” Fed. R.
25 Evid. 201(b) (emphasis added); United States v. Mariscal (9th Cir. 2002) 285 F3d
26 1127, 1131.

27 Objection: Hearsay - The article is hearsay, and does not fall within the
28 exception for a learned treatise. The AG is offering a statement from the book for

1 its truth. Fed. R. Evid. 803(18), Fed. R. Evid. 802(c). No exception applies because
2 the word “book” is not mentioned anywhere within Fed. R. Evid. 803 exceptions to
3 the hearsay rule, and does not qualify as non-hearsay.

4 10) Adam Winkler, *Gunfight: The Battle over the Right to Bear Arms in*
5 *America* (W.W. Norton 2011). AG’s Trial Brief at 4:20-21; 15:16-18.

6 Objection: Relevancy- the AG is attempting to introduce evidence that the
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5 and does not qualify as non-hearsay.

6 12) Garen J. Wintemute, et al., *Subsequent Criminal Activity Among*
7 *Violent Misdemeanants Who Seek to Purchase Handguns: Risk*
8 *Factors and Effectiveness of Denying Handgun Purchase*, 285 Journal
9 of the American Medical Association 1019 (Feb. 2001). AG’s Trial
10 Brief at 19:15-18.

11 Objection: Relevancy- the AG is attempting to introduce evidence that the
12 10-day waiting period is needed to perform background checks to make sure that
13 prohibited persons do not come into possession of another firearm. The plaintiffs in
14 this action, however, already have a firearm tied to their identity in state databases.
15 If an individual already possesses a firearm, then nothing about this rational would
16 prevent that individual from acting on a sudden impulse to commit gun violence
17 with a gun already in his or her possession.

18 Objection: Hearsay - The article is hearsay, and does not fall within the
19 exception for a learned treatise. The AG is offering a statement from the book for
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26 circumstances indicate a lack of trustworthiness. Fed. R. Evid. 803(8). However,
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5 (emphasis added); United States v. Mariscal (9th Cir. 2002) 285 F3d 1127, 1131]

6 **Information Obtained From Internet**

7 1) Law Center to Prevent Gun Violence, Waiting Periods Policy Summary,
8 June 24, 2013 (available online at [http://smartgunlaws.org/waiting-](http://smartgunlaws.org/waiting-periods-policy-summary/)
9 [periods-policy-summary/](http://smartgunlaws.org/waiting-periods-policy-summary/)). AG’s Trial Brief at 12:17-20.

10 2) Law Center to Prevent Gun Violence, Licensing Gun Owners &
11 Purchasers Policy Summary, Aug. 23, 2013 (available online at
12 [http://smartgunlaws.org/licensing-gun-owners-purchasers-policy-](http://smartgunlaws.org/licensing-gun-owners-purchasers-policy-summary)
13 [summary](http://smartgunlaws.org/licensing-gun-owners-purchasers-policy-summary)). AG’s Trial Brief at 12:20-24.

14 Objection: Relevancy - the AG is attempting to introduce evidence that the
15 10-day waiting period is needed to perform background checks to make sure that
16 prohibited persons do not come into possession of another firearm. The plaintiffs in
17 this action, however, already have a firearm. If an individual already possesses a
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23 court's territorial jurisdiction; or (2) can be accurately and readily determined from
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25 (emphasis added); United States v. Mariscal 285 F3d 1127, 1131(9th Cir. 2002).

26 Objection: Hearsay - The article is hearsay, and does not fall within the
27 exception for a learned treatise. Fed. R. Evid. 803(18). The AG is offering a
28 statement from the article for its truth. Fed. R. Evid. 802(c) No exception applies

1 because statements in periodicals only fall under the exception if statement is called
2 to the attention of an expert witness on direct or cross-examination and the called
3 the publication is established as a reliable authority by the expert's admission or
4 testimony, by another expert's testimony, or by judicial notice. Fed. R. Evid.
5 803(18). Even if the court takes judicial notice that the publication is established as
6 reliable, no expert can testify because "there was no expert discovery in this case."
7 AG's Trial Brief at 7:10.

8 **Deposition Testimony**

9 1) Deposition of Jeff Silvester. AG's Trial Brief at 7:14-26; 8:1-7.

10 2) Deposition of Brandon Combs. AG's Trial Brief at 8:8-28; 9:1-6.

11 Objection: Relevancy - the AG is attempting to introduce evidence that the
12 10-day waiting period is needed to perform background checks to make sure that
13 prohibited persons do not come into possession of another firearm. The plaintiffs in
14 this action, however, already have a firearm. If an individual already possesses a
15 firearm, then nothing about this rational would prevent that individual from acting
16 on a sudden impulse to commit gun violence with a gun already in his or her
17 possession.

18 **CONCLUSION**

19 Based on the foregoing objections, Plaintiff's respectfully request that the
20 evidence cited in Defendant's trial brief be excluded from evidence at trial.

21 DATED: March 18, 2014

22 OTTEN & JOYCE, LLP

23
24 /s/

25

Victor Otten, Esq.
26 Attorneys for Plaintiffs
27
28

DECLARATION OF E-SERVICE

Case Name: Silvester v. Harris

Court Name: U.S. District Court, Eastern District of California (Fresno)

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

I, Donald Kilmer, declare:

I am employed in the at 1645 Willow Street, Suite 150, San Jose, CA . I am 18 years of age or older and not a party to this matter.

I understand that all parties to the above-entitled case are represented by at least one attorney who is registered for electronic filing and service in the above-entitled court.

On March 18, 2014, I electronically filed and, therefore, to the best of my understanding, caused to be electronically service through the Court's ECF system the attached PLAINTIFFS' OBJECTIONS TO EVIDENCE CITED IN DEFENDANTS' TRIAL BRIEF.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 18, 2014, at San Jose, California.

/s/ Donald Kilmer

Attorney for Plaintiffs.