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

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

16 Plaintiffs,

17 v.

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

19 Defendant.

1:11-cv-02137-AWI-SKO

**DEFENDANT KAMALA D. HARRIS'S
 PROPOSED FINDINGS OF FACT AND
 CONCLUSIONS OF LAW**

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TABLE OF ABBREVIATIONS

- 1
- 2 ACHS – Automated Criminal History System
- 3 AFS – Automated Firearms System
- 4 APPS – Armed and Prohibited Persons System
- 5 BATFE – Bureau of Alcohol, Tobacco, Firearms, and Explosives
- 6 BFEC – Basic Firearms Eligibility Check
- 7 BOF – Bureau of Firearms
- 8 Cal. DOJ – California Department of Justice
- 9 CARPOS – California Restraining and Protective Order System
- 10 CCW Permit – Carry Conceal Weapon Permit
- 11 CFIS – Consolidated Firearms Information System
- 12 CGF – The Calguns Foundation
- 13 CII – Criminal Identification Information
- 14 CIS Analyst – Criminal Identification Specialist Analyst
- 15 COE – Certificate of Eligibility
- 16 DMV – Department of Motor Vehicles
- 17 DROS – Dealer Record of Sales
- 18 DWP – Dangerous Weapons Permit
- 19 EFP – Entertainment Firearms Permit Exemption
- 20 ICE – Immigration and Customs Enforcement
- 21 III – Interstate Identification Index
- 22 MHFPS – Mental Health Firearms Prohibition System
- 23 NCIC – National Crime Information Center
- 24 NICS – National Instant Criminal Background Check System
- 25 SAF – The Second Amendment Foundation
- 26 WPS – Wanted Persons System

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PROPOSED FINDINGS OF FACT

I. THE WAITING-PERIOD LAWS

A. The Laws at Issue in the Present Lawsuit

1. California Penal Code section 26815(a) provides, in relevant part, as follows: “No firearm shall be delivered: (a) Within 10 days of the application to purchase, or, after notice by the [California Department of Justice (“Cal. DOJ”)] pursuant to Section 28220, within 10 days of the submission to [Cal. DOJ] of any correction to the application, or within 10 days of the submission to [Cal. DOJ] of any fee required pursuant to Section 28225, whichever is later.”

2. California Penal Code section 27540(a) provides, in relevant part, as follows: “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 [Cal. DOJ] pursuant to Section 28220, within 10 days of the submission to [Cal. DOJ] of any correction to the application, or within 10 days of the submission to [Cal. DOJ] of any fee required pursuant to Section 28225, whichever is later.”¹

3. Plaintiffs herein, Jeffrey Silvester, Brandon Combs, The Calguns Foundation, Inc., and The Second Amendment Foundation, Inc., challenge, under the Second and Fourteenth Amendments to the U.S. Constitution, the constitutionality of California Penal Code sections 26815(a) and 27540(a) as applied to “[1] people who already have firearms registered to them in the AFS System [California’s Automated Firearm System], [2] people who have certificates of eligibility that must be renewed every year to have firearms[,] and [3] people that have license to carry [firearms in public in California, which licenses] must be renewed every two years by a local sheriff.” (First Am. Compl. (Dkt. #10) at ¶¶ 67, 71, & Prayer for Relief; Trial Tr. 5:23-6:12 [Kilmer].)

B. The History and Evolution of the Waiting-Period Laws

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

¹ California Penal Code sections 26815(a) and 27540(a) together are referenced herein as the “Waiting-Period Laws.”

1 5. The 1923 version of the waiting-period law was codified, with no substantive
2 changes to the law’s language, in the California Penal Code in 1953. (Def. Exh. CE [1953 Cal. Stat.
3 ch. 36 §§ 12071, 12072].)

4 6. In 1955, the California Legislature extended the waiting period from one day to three
5 days. (Def. Exh. CF [1955 Cal. Stat. ch. 1521 §§ 12071, 12072].)

6 7. In 1965, the California Legislature extended the waiting period from three days to
7 five days. (Def. Exh. CI, at AG000401-402 [1965 Cal. Stat. ch. 1007 §§ 12071, 12072].)

8 8. The California Legislature extended the waiting period from three days to five days
9 in 1965 because the three-day waiting period did not provide Cal. DOJ sufficient time to conduct
10 proper background checks on prospective concealable firearms purchasers, before delivery of the
11 firearms to their purchasers. (Def. Exh. CI, at AG000468 [Cal. Assemblymember Beilenson letter
12 to Cal. Gov. Brown Sr. (June 30, 1965)]; *People v. Bickston*, 91 Cal.App.3d Supp. 29, 32 (1979).)

13 9. In 1975, the California Legislature extended the waiting period from five days to 15
14 days. (Def. Exh. CH, at AG000232-233 [1975 Cal. Stat. ch. 997 §§ 12071, 12072].)

15 10. The California Legislature extended the waiting period from five days to 15 days in
16 1975 to “[g]ive law enforcement authorities sufficient time to investigate the records of purchasers
17 of handguns prior to delivery of the handguns.” (Def. Exh CH, at AG000298 [Cal. S. Comm. on
18 the Judiciary, 1975-76 Regular Sess., Rep. on A.B. 1441, at 1-2 (1975)].) A waiting period of five
19 days had been “shown to be inadequate for the [California] Bureau [of Firearms] to thoroughly
20 check all records of the purchasers . . .” (Def. Exh. CH, at AG000344 [Cal. Assemblymember
21 Murphy letter to Cal. Gov. Brown Jr. (Sept. 15, 1975)].)

22 11. In 1996, the California Legislature reduced the waiting period from 15 days to 10
23 days. (Def. Exh. CG, at AG000026 [Cal. S.B. 671, 1995-96 Regular Sess., ch. 128 sections
24 12071(b)(3)(A), 12072(c)(1)]; Trial Tr. 169:2-5 [Buford].)

25 12. The California Legislature reduced the waiting period from 15 days to 10 days
26 because Cal. DOJ’s Bureau of Firearms (BOF), which conducted background checks on prospective
27 firearms purchasers, switched to an electronic database system, which allowed faster processing of
28

1 background checks. (Def. Exh. CG, at AG000061 [Cal. S.B. 671, 1995-96 Regular Sess., S. Third
2 Reading, as amended Jun. 4, 1996].)

3 13. In amending the waiting period in 1996, the California Legislature made clear that
4 one purpose for the waiting period is to provide time for Cal. DOJ to conduct background checks.
5 (Def. CG at 2099-0051 (Cal. S.B. 671, 1995-96 Regular Sess.).)

6 14. The other purposes is “to provide a ‘cooling-off’ period, especially for handgun sales.
7 (Def. CG at 2099-0051 (Cal. S.B. 671, 1995-96 Regular Sess.); *see also Bickston*, 91 Cal.App.3d
8 Supp. at 32 (“[I]t appears that an original intent to provide at least an overnight cooling-off period
9 from “application for the purchase” was supplemented over the years with additional time to allow
10 the Department of Justice to investigate the prospective purchaser of the weapon”).)

11 **II. THE PARTIES**

12 **A. Plaintiff Jeffrey Silvester**

13 15. Plaintiff Jeffrey Silvester (“Silvester”) owns more than one gun and possesses a
14 Carry Conceal Weapon (“CCW”) permit in Kings County. (Trial Tr. 23:11-15, 37:7-10 [Silvester];
15 JT 6.)

16 **B. Plaintiff Brandon Combs**

17 16. Plaintiff Brandon Combs (“Combs”) owns more than one gun and possesses a
18 “Certificate of Eligibility” (“COE”) issued by Cal. DOJ. (Trial Tr. 54:20-22, 78:22-79:4 [Combs];
19 *see also* Cal. Penal Code § 26710.)

20 17. Combs is Executive Director of Plaintiff The Calguns Foundation, Inc. (“CGF.”)
21 (Trial Tr. 76:4-11 [Combs].)

22 **C. Plaintiff Second Amendment Foundation, Inc.**

23 18. Plaintiff The Second Amendment Foundation, Inc. (“SAF”) claims to have between
24 30,000 and 40,000 members, supporters, and donors in California. (Gottlieb Dep. Tr. 18:11-13.)
25 One-third to half (i.e., 10,000 to 20,000) of the total of 30,000 to 40,000 members, supporters, and
26 donors are dues-paying members. (Gottlieb Dep. Tr. 18:16-19:4.) The remaining people are non-
27 dues paying supporters and donors. (Gottlieb Dep. Tr. 16:18-17:12; 18:16-19:4.)
28

1 19. SAF has never attempted to purchase a firearm in California. (Gottlieb Dep. Tr.
2 33:17-20.)

3 20. SAF has not incurred any expenses in acquiring firearms in California. (Gottlieb
4 Dep. Tr. 62:19-13.)

5 21. SAF has not been stopped from or hindered in acquiring firearms in California
6 because of the Waiting-Period Law. (Gottlieb Dep. Tr. 33:21-25.)

7 **D. Plaintiff The Calguns Foundation, Inc.**

8 22. Plaintiff CGF claims to have approximately 30,000 members, most of whom are in
9 California. (Trial Tr. 121:11-14 [Hoffman].)

10 23. CGF has never attempted to purchase a firearm on its own behalf for self-defense.
11 (Trial Tr. 145:19-146:2 [Hoffman].)

12 **E. Defendant Attorney General Kamala D. Harris**

13 24. Defendant Kamala D. Harris, Attorney General of California (the “Attorney
14 General”), sued here in her official capacity only, is the head of Cal. DOJ. Cal. DOJ, and
15 specifically its Bureau of Firearms (“BOF”), is responsible for administering and enforcing the
16 Waiting-Period Laws. (Trial Tr. 166:22-23 [Buford].)

17 25. BOF conducts the background checks required of people seeking to purchase or
18 obtain firearms lawfully in California. (Trial Tr. 167:11-13 [Buford].)

19 **III. THE WAITING PERIOD LAW AND THE SCOPE OF SECOND AMENDMENT AS**
20 **HISTORICALLY UNDERSTOOD**

21 26. Although Plaintiffs have cited pages from the book *American Archives: Documents*
22 *of the American Revolution, 1774-76* (Northern Illinois University Libraries 2004) as evidence that
23 firearms were widely available in the United States around the time of the American Revolution,
24 the bulk of that book that addresses the topic of the prevalence of firearms proves that they were
25 scarce during those years in most parts of the United States, and, moreover, it was not possible to
26 acquire firearms instantaneously or close to instantaneously. (*See id.* at v1:463, v1:1336; v2:412,
27 v3:887, v4:1157 (*American Archives*’s online version, available at <http://dig.lib.niu.edu/amarch/>
28 (last visited June 16, 2014)).)

1 27. Although Plaintiffs have cited pages from the Henry J. Kauffman book, *The*
2 *Pennsylvania-Kentucky Rifle* (Masthof Press 2005), as evidence that the Pennsylvania-Kentucky
3 rifle was widely available in the Founding Era of the United States, the bulk of that book reveals
4 that the Pennsylvania-Kentucky rifle was handmade in a time-consuming process, in only one state
5 in the Union, and it was not possible to acquire that kind of rifle instantaneously or close to
6 instantaneously. (*See id.* at 16, 19, 25, 91, 146-47, 252, 301 306, 312, 323-24, 330, 339.)

7 28. “Every schoolboy knows about the problems the Committees of Safety encountered
8 in their attempts to have arms manufactured in America throughout the Revolution.” Henry J.
9 Kauffman, *The Pennsylvania-Kentucky Rifle* (Masthof Press 2005) at 91.

10 29. In the early 19th century in the United States, “Americans still lived in a world of
11 small scale and scarcity. People, goods and information moved slowly. The tools they used and the
12 routines of their work, their materials and sources of power, would have been immediately
13 recognizable to a man or woman of the seventeenth century.” (Def. Exh. EC (Jack Larkin, *The*
14 *Reshaping of Everyday Life: 1790-1840* (HarperPerennial 1988)) at xv.)

15 30. “American families lived well apart from each other, on their own
16 farmsteads. . . .American farmers’ houses were . . . ‘scattered all over the country.’ . . .Families in
17 the more thickly settled and cleared regions of America usually lived in sight of their nearest
18 neighbors’ houses, and at night could see the faint gleam of their candles. To the south and west
19 dwellings became dispersed ever more thinly, as an early Western settler recalled, in ‘little clearings
20 detached from each other by intervening forest, through which foot paths, bridle paths, and narrow
21 wagon roads obstructed with stumps, wound their way.” (Def. Exh. EC at 6-7.)

22 31. “In New York State and New England, the five or six weeks of the haying season,
23 between late June and early August, were the time of most concentrated effort, ‘the hardest part of
24 the labor required to be performed on a farm,’ as the Maine Farmer noted in 1832. Throughout the
25 countryside, most other work ceased as craftsmen, merchants and their clerks left shops and stores
26 to go into the field.” (Def. Exh. EC at 19.)

27 32. “For most Americans around 1800, county neighborhoods of a few dozen farms or
28 less constituted the normal boundaries for everyday movement, on visits that intertwined

1 socializing, neighborly help and economic exchange. Beyond their neighborhoods they made less
2 frequent trips to artisans' shops, stores, taverns and churches at villages or crossroads settlements.
3 In a New England town families even on the most outlying farms could make these journeys every
4 week since they were rarely more than a few hours' walk or an hour's ride away. In frontier
5 Kentucky families might go a month or more between such trips." (Def. Exh. EC at 213-14.)

6 33. "In July [in the American countryside], during the rushed, exhausting and anxious
7 labor of getting in the Northern hay crop, most other activities were suspended. Stores and shops
8 shuttered their doors or stood almost empty, visits sharply declined, few couples married and few
9 children were conceived." (Def. Exh. EC at 263.)

10 34. "Winter in the Northern states was a contradictory season, a time of growing
11 discomfort and greater leisure. Family life contracted into a room or two, and even routine outdoor
12 chores grew increasingly difficult as the temperature dropped. In severe cold and storm,
13 households could spend weeks in isolation." (Def. Exh. EC at 263-64.)

14 35. "The founding fathers enshrined the right to bear arms in the Second Amendment of
15 the U.S. Constitution, but they also supported gun control laws so extensive that few Americans
16 would today support them. They barred large portions of the population from possessing firearms,
17 required many gun owners to register their weapons, and even conditioned the right on a person's
18 political leanings. The Wild West, which occupies the very heart of America's gun culture, was
19 filled with firearms; yet frontier towns, where the civilized folks lived, had the most restrictive and
20 vigorously enforced gun laws in the nation. Gun control is as much a part of the history of guns in
21 America as the Second Amendment." (Def. Exh. EK (Adam Winkler, *Gunfight: The Battle over*
22 *the Right to Bear Arms in America* (W.W. Norton & Co. 2011)) at IX; *see also id.* at 12, 13, 113-14,
23 116.)

24 36. "The founders also declared that free white men were members of the militia and, as
25 such, were forced to appear with their guns at public 'musters' where government officials would
26 inspect the weapons and register them on the public rolls. When pressing public necessity
27 demanded it, the founding fathers were also willing to impress guns from law-abiding citizens, even
28

1 if those citizens were left without guns to defend themselves from a criminal attack.” (Def. Exh.
2 EK at 12.)

3 37. “Ten of the thirteen colonies impressed privately owned firearms for the war effort
4 against England. Impressed guns would eventually be returned to their owners, but the seizure
5 itself might leave the owner without a firearm to defend himself against an ordinary criminal attack.
6 To the founding fathers, leaving an individual without a gun to defend himself was in light of the
7 public need for that firearm.” (Def. Exh. EK at 114.)

8 38. “The founders didn’t think government should have the power to take away
9 everyone’s guns, but they were perfectly willing to confiscate weapons from anyone deemed
10 untrustworthy—a category so broadly defined that it included a majority of the people.” (Def. Exh.
11 EK at 116.)

12 39. “The U.S. Revolver Association, a pro-gun organization formed, like the NRA, to
13 promote marksmanship and competitive shooting, proposed in 1923 a Revolver Act for states to
14 adopt. Under this proposal, civilians would have to obtain a permit to carry a concealed weapon.
15 Anyone who committed a crime while in possession of a handgun would receive an extra five years
16 in prison, and noncitizens would be prohibited from possessing handguns entirely. Gun dealers
17 would have to deliver to police detailed records of all handgun sales. The proposal also included a
18 one-day waiting period that meant dealers could not deliver a handgun to the purchaser until the day
19 after the sale. While these last two types of gun control—turning over records of sales to the police
20 and waiting periods—are vigorously opposed by gun rights advocates today, the Revolver Act was
21 quickly enacted by numerous states, among them West Virginia, New Jersey, Michigan, Indiana,
22 Oregon, California, New Hampshire, North Dakota, and Connecticut.” (Def. Exh. EK at 207-08.)
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1 **IV. THE WAITING-PERIOD LAWS' ALLEGED BURDEN ON PLAINTIFFS' SECOND**
2 **AMENDMENT RIGHT**

3 **A. With the Waiting-Period Laws in Effect, Plaintiffs Silvester and Combs**
4 **Have Been Able to Acquire Multiple Firearms**

5 40. In the last five years, Combs has owned as many as 50 firearms cumulatively; all
6 firearms were acquired in California with the Waiting-Period Laws in effect. (Trial Tr. 78:9-14,
79:3-7 [Combs].)

7 41. Silvester owns more than one firearm as well. (JT 6; Trial Tr. 20:24-25 [Silvester].)

8 **B. There Are Firearms Dealers Near Where Silvester and Combs Live**

9 42. Silvester complains that the Waiting-Period Laws burden him with having to make
10 two trips, at least 10 days apart, to a gun seller to obtain a gun that he has purchased. However, the
11 closest gun dealer to Silvester's house is just two miles away. (Trial Tr. 36:14-15 [Silvester].)
12 Silvester also drives past one gun dealer or more at least once a month while on business trips.
13 (Trial Tr. 37:4-6 [Silvester].)

14 43. Combs lived 30-40 minutes away from a firearms dealer. (Trial Tr. 89:7-9 [Combs].)

15 **C. Faraway Firearms Can Be Transferred from One Dealer to Another, to**
16 **Be Near Silvester or Combs, for About \$100 Per Firearm**

17 44. Should Silvester or Combs choose to purchase firearms from faraway dealers,
18 instead of nearby dealers, guns can be shipped from one dealer to another (dealers willing). The
19 cost of having a gun transferred from one dealer to another is between \$50 to \$150 per gun, or
20 about \$100, including transfer fees, dealer fees, and shipping costs. (Trial Tr. 32:20-33:10
21 [Silvester]; 144:4-6 [Hoffman].)

22 **D. There Are Few or Minimal Costs Imposed by the Waiting-Period Laws**

23 45. Combs estimates that overall he has had to spend about \$1,500 extra in acquiring
24 firearms, because of the 10-day waiting period. (Trial Tr. 103:22-104:2 [Combs].)

25 46. On a per-firearm basis for the firearms that Combs has purchased over the last five
26 years, the extra expenses Combs has allegedly incurred as a result of the Waiting-Period Laws are
27 about \$30. (Trial Tr. 84:15-85:3 [Combs].)

1 **E. Silvester Has Obtained Firearms in California Without Going Through**
2 **the 10-Day Waiting Period**

3 47. Silvester has received firearms under circumstances in which the 10-day waiting
4 period requirement did not apply. For example, Silvester received a firearm from his father,
5 without going through the 10-day waiting period. (Trial Tr. 39:5-11 [Silvester].) People can
6 transfer firearms to their family members without going through the DROS process. (Trial Tr.
7 235:22-25 [Buford].)

8 48. Silvester has loaned his firearm to friends and also borrowed a firearm from a friend
9 without being subject to the waiting period. The 10-day waiting period does not apply to loans of
10 firearms for less than 30 days. (Trial Tr. 38:12-21, 41:8-21, 42:2-5 [Silvester]; Trial Tr. 281:17-20
11 [Buford].)

12 **V. THE WAITING-PERIOD LAWS PROVIDE TIME FOR A BACKGROUND CHECK TO BE**
13 **CONDUCTED ON A PROSPECTIVE FIREARM PURCHASER**

14 49. One purpose for the 10-day waiting period is to give Cal. DOJ enough time to
15 conduct background checks of individuals purchasing firearms. (Def. Exh. CG, at AG000055; Trial
16 Tr. 167:6-19 [Buford].)

17 **A. Cal. DOJ Processes A Heavy Volume of DROS Applications Each Year**

18 50. The Dealer Record of Sales (“DROS”) is an application form that a gun dealer
19 electronically submits to Cal. DOJ when someone seeks to purchase a firearm through that dealer.
20 The DROS application contains information about the prospective purchaser, the firearm, and the
21 dealership. (Trial Tr. 170:19-24, 171:3-18 [Buford].)

22 51. After Cal. DOJ receives a DROS application, BOF begins the background check
23 process on the prospective purchaser. (Trial Tr. 171:18-172:3 [Buford].)

24 52. On average, Cal. DOJ receives about 2,000 to 3,000 DROS applications each day.
25 (Trial Tr. 172:24-173:1 [Buford].) Some days Cal. DOJ receives 1,500 DROS applications; other
26 days Cal. DOJ receives 10,000 DROS applications. (Trial Tr. 456:6-8 [Lindley].)

27 53. Gun purchases tend to spike during holidays and on Black Fridays. Purchases also
28 tend to spike whenever there is an unusual event, such as a mass shooting, an earthquake, or a riot.
29 (Trial Tr. 204:6-20 [Buford].)

1 54. There has been a significant increase in the number of DROS applications submitted
2 to Cal. DOJ since 2003, when only 290,000 applications were submitted for processing. (Trial Tr.
3 197:25-198:4 [Buford]; 314:8-10 [Matsumoto].)

4 55. Cal. DOJ processed 498,945 DROS applications in 2010, 601,243 in 2011, and
5 817,738 in 2012. (Def. Exh. AA.)

6 56. In 2013, Cal. DOJ processed 960,179 DROS applications. (Trial Tr. 453:4-7
7 [Lindley].)

8 57. There is always a backlog of DROS applications in the Cal. DOJ “queue” for
9 background checks. The current backlog stands at about 20,000 DROS applications. (Trial Tr.
10 314:11-13, 19-20 [Matsumoto].)

11 58. Cal. DOJ analysts who review DROS applications are known as Criminal
12 Identification Specialist IIs (“CIS Analysts”). (Trial Tr. 200:12-17 [Buford].)

13 59. There are 24 CIS Analysts and they typically work well in excess of 40 hours a week
14 to keep up with the influx of DROS applications submitted by dealers. (Trial Tr. 200:18-19, 203:1-
15 8 [Buford]; 313:7-15, 314:11-13 [Matsumoto].)

16 60. BOF is unable to hire temporary workers as CIS Analysts. (Trial Tr. 204:23-205:8
17 [Buford].) It is not feasible to do so; it typically takes six to eight months to train a new CIS
18 Analyst. (Trial Tr. 326:17-327:11 [Matsumoto].) CIS Analysts have to understand complicated
19 criminal statutes and case laws to help them determine whether an applicant is prohibited from
20 owning or possessing a firearm. CIS Analysts also have to understand how to access and analyze
21 database records. (Trial Tr. 205:5-14 [Buford].)

22 **B. The Electronic DROS Application Processing System**

23 61. After a dealer submits a DROS application to Cal. DOJ, the application is sent to Cal.
24 DOJ’s Consolidated Firearms Information System (“CFIS”), a computerized system. CFIS
25 coordinates the electronic portion of the background check process, called the Basic Firearms
26 Eligibility Check (“BFEC”), by sending inquiries to other electronic databases and compiling the
27 responses. (Trial Tr. 292:7-21 [Orsi].)

28

1 62. The DROS processing system flow described below is illustrated in Defendant’s
2 Exhibit CB.

3 **1. Computer Databases Queried as Part of the Basic Firearms Eligibility**
4 **Check (BFEC)**

5 **a. Department of Motor Vehicles (DMV)**

6 63. The first database queried as part of the BFEC is California’s Department of Motor
7 Vehicles (“DMV”) database. (Trial Tr. 293:20-294:3 [Orsi].)

8 64. Under California law, firearms purchasers are required to have a valid California
9 driver license or identification card issued by DMV. (Trial Tr. 236:15-22 [Buford].)

10 65. Cal. DOJ sends a DROS applicant’s California driver license or California
11 identification number to the DMV database, which returns the person’s name, date of birth, and
12 license status to Cal. DOJ. (Trial Tr. 294:4-9 [Orsi].)

13 66. The name and date of birth returned by the DMV database are checked against the
14 name and date of birth in the DROS application to see whether the information matches. If the
15 information matches and the driver license status is valid, the system continues with next part of the
16 BFEC. (Trial Tr. 294:4-21 [Orsi].)

17 67. The identification information on the DROS application is verified with DMV to
18 ensure that the background check is conducted on the correct person, to prevent the occurrence of
19 “straw” purchases (in which the purchaser obtains a firearm for another, undisclosed person, who
20 often is legally prohibited from possessing firearms), and to prevent people from using fake
21 identification to purchase firearms. (Trial Tr. 236:23-237:9 [Buford]; Trial Tr. 343:4-14 [Graham].)

22 68. If the information does not match, a “DMV mismatch” is recorded, and the DROS
23 application is sent to a DMV mismatch queue for CIS Analysts to review. (Trial Tr. 294:22-295:6
24 [Orsi].)

25 69. A DMV mismatch does not necessarily indicate that the person is prohibited from
26 owning or possessing a firearm. A DMV mismatch could occur for an innocent reason, such as if a
27 dealer entered a typographical error into the DROS application transmission system, or if a DROS
28

1 applicant changed his or her name and is using a new name to purchase a firearm, but has not yet
2 updated that information with the DMV. (Trial Tr. 237:10-238:12 [Buford].)

3 70. DMV mismatches are reviewed by CIS Analysts who must verify the information
4 before making a final determination as to whether there is a mismatch. (Trial Tr. 238:13-239:2
5 [Buford].)

6 71. Unless a DMV mismatch can be corrected by a CIS Analyst, the DROS application
7 must be rejected. (Trial Tr. 172:4-11, 16-21, 238:17-25 [Buford].)

8 **b. Automated Firearms System (AFS)**

9 72. After being checked against the DMV database, the DROS application is queried
10 against the Automated Firearms System (“AFS”) database to determine whether the firearm being
11 purchased has been reported lost or stolen. (Trial Tr. 173:7-14 [Buford]; 295:21-296:1 [Orsi].)

12 Many firearms involved in the DROS process have been reported lost or stolen. (Trial Tr. 173:7-14
13 [Buford].)

14 73. If a firearm that is the subject of the DROS application was reported as lost or stolen
15 in AFS, Cal. DOJ notifies the local law enforcement agency that made the report and requests that
16 the agency conduct an investigation to confirm that the firearm involved in the pending DROS
17 transaction is the same firearm that was reported lost or stolen, and to further confirm that the AFS
18 record is still valid and active. The resulting investigations by local law enforcement agencies
19 require them to take an active role to confirm that the firearm on the DROS application is actually
20 the firearm that was reported lost or stolen. How soon an agency begins its investigation depends
21 on an agency’s priorities. (Trial Tr. 174:5-14, 175:5-15 [Buford].) The processing of the DROS
22 application may be affected by this delay.

23 74. AFS is not a gun registry and does not have a record of every gun in circulation in
24 California. (Trial Tr. 180:17-25 [Buford].)

25 75. California does not have a gun registry. Rather, since 1991, California has retained
26 transaction records for transfer of handguns. However, when a person dies, leaves the State of
27 California, or sells a handgun out of state, there is no requirement that the person notify Cal. DOJ
28

1 that he or she is no longer in possession of the handgun or that the handgun is no longer in
2 California. (Trial Tr. 252:25-253:7 [Buford].)

3 76. The AFS database contains information on who Cal. DOJ believes was the last
4 possessor of a particular firearm based on the most recent DROS transaction BOF processed. (Trial
5 Tr. 253:11-14 [Buford].)

6 77. AFS is considered a “leads” database. This means that it alerts a peace officer in the
7 field whether there could potentially be a firearm in a particular house. (Trial Tr. 251:19-22, 252:6-
8 10 [Buford].)

9 78. With the exception of assault weapons records, long gun records have been retained
10 by Cal. DOJ since only January 1, 2014. (Trial Tr. 181:22-182:5 [Buford].) Long gun records from
11 prior to 2014 are in AFS only if an owner voluntarily registered his or her long gun with the Cal.
12 DOJ. (Trial Tr. 339:2-6, 388:10-16 [Graham].)

13 79. The majority of AFS records are of handguns purchased after 1996, when AFS
14 records became tied to driver license numbers. (Trial Tr. 340:1-11 [Graham].)

15 80. The AFS database does not provide information about whether a firearm is in
16 working condition, whether it has been loaned out for less than 30 days, whether a possessor of a
17 firearm has working ammunition for the gun, or whether the gun was removed by a family member
18 or friend for safekeeping. (Trial Tr. 281:7-284:4 [Buford].)

19 **c. Consolidated Firearms Information System (CFIS)**

20 81. For handgun purchases, CFIS conducts a 30-day purchase-restriction check. (Trial
21 Tr. 296:6-8 [Orsi].)

22 82. Under California law, a person can lawfully purchase only one handgun in a 30-day
23 period. (Trial Tr. 206:19-21 [Buford].)

24 83. CFIS checks within its own database to determine whether the DROS applicant
25 purchased another handgun within the previous 30 days. If there has been another handgun
26 purchase within 30 days (and no applicable exception applies), the background check stops and the
27 DROS transaction is denied. (Trial Tr. 296:5-15 [Orsi].)

28

1 84. If the DROS applicant had not purchased a firearm within the previous 30 days,
2 CFIS checks whether the applicant has had a previous application denied. If so, summary
3 information regarding the previous denial is electronically appended to the background check
4 results for a CIS Analyst to review. (Trial Tr. 296:20-297:13 [Orsi].)

5 **d. Automated Criminal History System (ACHS)**

6 85. The Automated Criminal History System (“ACHS”) is queried next. ACHS contains
7 criminal history information reported to Cal. DOJ by criminal justice agencies in California. (Trial
8 Tr. 175:16-23, 176:7-13 [Buford].)

9 86. CFIS sends the name, date of birth, and any other identification information
10 contained in the DROS application to ACHS. (Trial Tr. 297:14-22 [Orsi].)

11 87. When CFIS initially transmits a DROS applicant’s information to ACHS, ACHS
12 conducts a query within itself and also of the three other California statewide databases: the
13 Wanted Persons Systems (“WPS”), the California Restraining and Protective Order System
14 (“CARPOS”), and the Mental Health Firearms Prohibition System (“MHFPS”). It does this to
15 determine whether there are relevant records in any of those databases matching the DROS
16 applicant. (Trial Tr. 297:14-298:14 [Orsi].)

17 88. In this initial inquiry, CFIS queries these databases based on variations of the name
18 on the DROS application and a range of dates based on the date of birth on the DROS application.
19 For example, if the name “Jeffrey” is on the DROS application, CFIS would query variations of the
20 name, such as “Jeff” and “Jeffrey,” in the initial inquiry. (Trial Tr. 298:22-299:20 [Orsi].)

21 89. If the name variations and possible birth dates match records in ACHS, ACHS
22 returns “criminal identification information” (“CII”) numbers associated with the records. CFIS
23 then conducts a subsequent query of ACHS based on the unique CII numbers to obtain more
24 detailed criminal history information about DROS applicant. (Trial Tr. 300:1-13 [Orsi].)

25 90. If the name variations and birth dates match records in the other California
26 statewide databases, CFIS then queries those databases a second time to retrieve records that match
27 the name variations and possible birth dates. Unlike ACHS, the other state databases do not use CII
28 numbers. They use only names and birth dates. (Trial Tr. 300:14-21, 301:3-14 [Orsi].)

1 **e. Wanted Persons System (WPS)**

2 91. WPS is a California statewide database that contains records of warrant information.
3 (Trial Tr. 184:3-5, 10-13, 19-21 [Buford].)

4 92. A person with a record in WPS could be prohibited from possessing a firearm.
5 (Trial Tr. 184:14-18 [Buford].) Under federal law, any warrant prohibits the wanted person from
6 owning or possessing a firearm. Under state law, persons wanted for a felony offense is prohibited
7 from owning or possessing a firearm. (Trial Tr. 184:22-185:6 [Buford].)

8 **f. California Restraining and Protective Order System (CARPOS)**

9 93. CARPOS is a California state database that contains information on restraining and
10 protective orders. (Trial Tr. 182:16-21, 184:6-9 [Buford].)

11 94. CFIS queries CARPOS for domestic violence restraining orders and certain
12 protective orders that prohibit the subject from owning or possessing a firearm. (Trial Tr. 182:22-
13 25 [Buford].)

14 95. The CARPOS database is queried electronically, but a CIS Analysts must manually
15 review the search results to confirm that CARPOS records are correctly matched with the individual
16 purchasing the firearm, because the database is queried using only the name and date of birth of the
17 DROS applicant. (Trial Tr. 183:1-2, 6-11 [Buford].)

18 **g. Mental Health Firearms Prohibition System (MHFPS)**

19 96. MHFPS is a California state database that contains mental health records and records
20 of certain prohibited juveniles. (Trial Tr. 185:7-17 [Buford].)

21 97. CFIS queries MHFPS for prohibitions under California law relating to mental health
22 issues. (Trial Tr. 186:3-187:7 [Buford].)

1 **h. National Instant Criminal Background Check System (NICS)**

2 98. After CFIS queries the statewide databases about a DROS application, CFIS then
3 queries the federal National Instant Criminal Background Check System (“NICS”) database. (Trial
4 Tr. 302:1-3 [Orsi].)

5 99. As part of the California DROS background check, NICS checks its own NICS
6 database and also several other federal databases. (Trial Tr. 302:12-17 [Orsi].)

7 100. NICS checks within its own database, which contains military records, citizen
8 renunciations, and other records. (Trial Tr. 194:17-25 [Buford].)

9 101. NICS checks the Interstate Identification Index (“III”), which contains criminal
10 history records from states, including California, that share their criminal history records with the
11 FBI. (Trial Tr. 191:6-16 [Buford].) If a person is convicted of a felony in any state, that person is
12 prohibited from owning or possessing a firearm under California law. (Trial Tr. 192:1-4 [Buford].)

13 102. NICS also checks the National Crime Information Center (“NCIC”) database,
14 which contains federal warrants, domestic violence restraining orders, and stolen gun information.
15 (Trial Tr. 193:15-19 [Buford].)

16 103. NICS also queries the Immigration and Customs Enforcement (“ICE”) database,
17 which helps Cal. DOJ identify people who are in the United States unlawfully. (Trial Tr. 195:1-7
18 [Buford].)

19 104. After the NICS check is completed, BFEC is considered to be complete. All results
20 obtained by CFIS are attached to the DROS application and placed into the DROS processing
21 queue for a CIS Analyst to review. (Trial Tr. 303:13-18 [Orsi].)

22 **2. Auto-Approvals**

23 105. If a DROS application returns no “hits” from any of the databases, the DROS
24 application is deemed “auto-approved.” Approximately 20 percent of DROS applications are in
25 this category. (Trial Tr. 198:5-15 [Buford].)

26 106. Auto-approved DROS applications are typically not reviewed by CIS Analysts.
27 However, CIS Analysts may review these applications if, for example, within the 10-day waiting
28 period, a psychoanalyst asks Cal. DOJ to stop a transfer because the would-be purchaser is the

1 subject of a “5150” mental health hold at a mental health facility, implemented after the DROS
2 application was submitted. When this occurs, Cal. DOJ will seek a 5150 report or a court order to
3 stop the transfer. (Trial Tr. 199:24-200:1 [Buford].)

4 107. Cal. DOJ may also be contacted by federal and local law enforcement officers or
5 agencies to stop a transfer that was auto-approved. For example, a law enforcement officer or
6 agency may inform Cal. DOJ that a background check was being processed on a person held in
7 custody for a felony. When this occurs, Cal. DOJ will seek a court order to stop the transfer. (Trial
8 Tr. 199:14-200:1 [Buford].)

9 108. For these reasons (given in the immediately preceding two paragraphs), it would be
10 inimical to public safety for Cal. DOJ to release a firearm for purchase less than 10 days after
11 application to purchase, even if the applicant was auto-approved.

12 109. Approximately 80 percent of the DROS applications are not auto-approved, and
13 therefore must be reviewed by a CIS analyst. (Trial Tr. 200:2-5 [Buford].)

14 **C. The 10-Day Waiting Period Provides Time for CIS Analysts to Track**
15 **Down Information and Refresh Records**

16 110. The results of the above-described computer database queries are collected for
17 review by CIS Analysts. (Trial Tr. 200:6-11 [Buford].)

18 111. CIS Analysts are necessary to review the results of the computer database queries.
19 (Trial Tr. 177:19-24 [Buford].)

20 **1. CIS Analysts verify that the DROS applicant was correctly matched**
21 **to a DMV record**

22 112. CIS Analysts first review records in the DMV mismatch queue to determine whether
23 there is a real mismatch of the applicant’s identity to the DMV records, or whether the records can
24 be fixed and thus allow a match to be made. A simple mismatch that occurred because the dealer
25 made a typographical error can be corrected by a CIS Analyst, who will then send the DROS
26 application through the BFEC process rather than reject the application because of the
27 typographical error. (Trial Tr. 316:17-317:15 [Matsumoto].)
28

1 **2. CIS Analysts verify that database records matched to the DROS**
2 **applicant in the electronic BFEC process were correctly matched to**
3 **the applicant**

4 113. When CIS Analysts review DROS applications, they verify that each DROS
5 applicant is the same individual matched by the computer to the criminal and other database records.
6 (Trial Tr. 201:16-20 [Buford].) For example, if a criminal history record is matched to a DROS
7 applicant, the CIS Analyst will review the identification information to confirm that it is an accurate
8 match. (Trial Tr. 178:2-11 [Buford].)

9 114. Cal. DOJ does not always have the most accurate identification information on
10 persons who are the subject of statewide database records. For example, when a person checks into
11 a mental health facility, that person often does not have a California driver license. Cal. DOJ
12 receives only whatever information the facility could glean from the patient. (Trial Tr. 254:3-11
13 [Buford]; Trial Tr. 455:17-24 [Lindley].) Cal. DOJ may also have to decipher individual's names
14 in the statewide databases because aliases may be used. (Trial Tr. 455:4-16 [Lindley].)

15 **3. CIS Analysts investigate unreported dispositions or other missing**
16 **information**

17 115. Even if the records associated with a DROS application indicate that the applicant is
18 prohibited from owning or possessing firearms, the accuracy and validity of the records must be
19 verified by a CIS Analyst. For example, if the disposition of an arrest record was a conviction, the
20 person would not be eligible to own or possess a firearm; but if the conviction was dismissed or
21 reduced, the person may be eligible. (Trial Tr. 179:11-25 [Buford].) Or an arrest may be recorded
22 with no disposition information. In that case, the CIS Analyst must obtain a final disposition on
23 that arrest to determine whether the person is prohibited. (Trial Tr. 201:23-202:6 [Buford].)

24 116. Without disposition information, a CIS Analyst cannot determine whether an
25 individual is eligible to own and possess firearms because there must be a conviction for there to be
26 a prohibition. (Trial Tr. 323:12-21 [Matsumoto].)

27 117. If there is an open disposition, a CIS Analyst has to "chase" the records. (Trial Tr.
28 201:23-202:6 [Buford].) Chasing an open disposition could mean telephoning a local law

1 enforcement agency, a district attorney, or a court to try to find out the disposition (for example, a
2 conviction, or a dismissal). (Trial Tr. 323:12-314:1 [Matsumoto].)

3 118. Disposition records could be lost. (Trial Tr. 176-177 [Buford].) The information
4 may exist but not be input into any computer database that BOF can access, and it could be some
5 time before BOF can retrieve the record. (Trial Tr. 179:8-10 [Buford].) The process to chase down
6 missing criminal history information can be a very length process. (Trial Tr. 180:4-13 [Buford].)

7 119. Similarly, mental health facilities get information from the patients, who may not be
8 able to provide accurate personal information. The CIS Analysts may have to contact the mental
9 health facility to ensure that a person is not prohibited. (Trial Tr. 455:17-456:5 [Lindley].) BOF
10 may also have to decipher people's names because aliases may be used. (Trial Tr. 455:4-16
11 [Lindley].)

12 120. In addition to chasing in-state records, CIS Analysts routinely chase out-of-state
13 dispositions. The federal III, which contains criminal history information from other states, often
14 does not contain complete and accurate records on out-of-state criminal convictions. (Trial Tr.
15 192:5-8 [Buford].) Disposition information is frequently missing in the III records. (Trial Tr.
16 192:9-13 [Buford].) CIS Analysts then have to call or fax courts of other states or federal courts to
17 obtain the disposition information. (Trial Tr. 192:22-193:12 [Buford].)

18 121. CIS Analysts must also review and verify the results of the federal NCIC queries
19 because NCIC results are based on a person's name, and not a fingerprint match. CIS Analysts may
20 also need to contact the relevant agencies to confirm that certain warrants are still active. The
21 agencies sometimes admit to Cal. DOJ that they forgot to remove expired warrants from the system.
22 (Trial Tr. 194:4-13 [Buford].)

23 122. In addition to obtaining missing disposition information, CIS Analysts must inquire
24 into the background or details of records to make the correct determination on a prohibition. For
25 example, an individual arrested for corporal injury on a spouse or cohabitant could be convicted of
26 a misdemeanor battery. (Cal. Penal Code § 273.5.) Under state law, the misdemeanor battery
27 conviction results in a 10-year prohibition against owning or possessing a firearm. Under federal
28 law, however, battery against a spouse or cohabitant is a lifetime prohibition. Thus, CIS Analysts

1 are needed to investigate the relationship between the convicted individual and the battery victim.
2 To conduct that investigation, CIS Analysts must contact the arresting agency for a copy of the
3 arrest report and review that report and determine the relationship between the offender and the
4 victim. (Trial Tr. 319:21-320:17 [Matsumoto].)

5 123. Out-of-state arrests of military personnel constitute another example of why CIS
6 Analysts are necessary to Cal. DOJ's background-check process. If a member of the military is
7 arrested out of state for possession of a controlled substance, a CIS Analyst must determine the
8 disposition, determine whether the member was subject to a court marshal, and find out the type of
9 discharge the individual received (i.e., honorable or dishonorable). The CIS Analyst's findings
10 affect the individual's eligibility to own or possess firearms. (Trial Tr. 320:23-321:7 [Matsumoto].)
11 To conduct this investigation, the CIS Analyst must obtain specific information from the military.
12 (Trial Tr. 321:16-22 [Matsumoto].)

13 **4. CIS Analysts confirm that correct laws are applied**

14 124. Only certain types of arrests and convictions prohibit an applicant from owning or
15 possessing a firearm. CIS Analysts review criminal history and other records to confirm that Cal.
16 DOJ is correctly approving or disapproving DROS applications. (Trial Tr. 178:12-20 [Buford].)

17 125. For example, CIS Analysts are needed to determine whether a felony that has been
18 reduced (by a judge) to a misdemeanor was properly reduced. A straight felony that has been
19 reduced to a misdemeanor could be cleared by a computer for approval, but, as a matter of law, a
20 straight felony cannot be reduced to a misdemeanor. (*See People v. Douglas*, 79 Cal.App.4th 810,
21 812-13 (2000); *People v. Super. Ct.*, 29 Cal.App.4th 323, 330 (1994).) A CIS Analyst is needed to
22 correct this mistake to ensure the person is not mistakenly approved during the DROS process.
23 (Trial Tr. 319:5-20 [Matsumoto].)

24 **5. CIS Analysts rerun BFEC to obtain most up-to-date records**

25 126. CIS Analysts typically review the DROS applications several days after BFEC is
26 automatically run through CFIS. (Trial Tr. 322:3-5 [Matsumoto]; *see* Def. Exh. AR, first page
27 following tab (exemplar email explaining the number of days after Cal. DOJ receives DROS
28 applications that the CIS Analysts review the application.) Depending on the backlog, DROS

1 applications may not be reviewed by CIS Analysts until eight or nine days after the electronic query
2 of databases is complete. (Trial Tr. 322:3-5 [Matsumoto].)

3 127. Before CIS Analysts begin review of DROS applications, they will rerun the
4 background check in the state databases to refresh that information and to ensure that it has been
5 updated with any information that may have been entered into Cal. DOJ's databases after Cal. DOJ
6 received the DROS application. This ensures that the CIS Analysts have the best and most current
7 information possible to conduct the background check. (Trial Tr. 475:1-14 [Lindley]; 322:3-23
8 [Matsumoto].)

9 128. There are instances when an individual applied to purchase a firearm and was
10 subsequently admitted to a mental health facility during the 10-day wait. If the CIS Analyst did not
11 refresh the background check in the state databases, that person might have been erroneously
12 cleared to own and possess that firearm. (Trial Tr. 322:14-23 [Matsumoto].)

13 **D. The 10-Day Waiting Period Provides Time for Reporting Agencies to**
14 **Update Cal. DOJ Databases**

15 129. Cal. DOJ databases may not have the most up-to-date information because reporting
16 agencies may fail to submit information to the Cal. DOJ databases or may delay in submitting
17 information to Cal. DOJ databases. (Trial Tr. 324:13-16 [Matsumoto].)

18 130. For example, ACHS is not always up-to-date with criminal history records. (Trial Tr.
19 176-177 [Buford].) ACHS could contain outdated information because of the time lag between a
20 disposition and when the record is transmitted to Cal. DOJ. (Trial Tr. 176-177 [Buford].)

21 131. Records in the MHFPS are often not complete or up-to-date either. (Trial Tr. 187:8-
22 10 [Buford].)

23 132. Mental health adjudications and mental health events are underreported. (Trial Tr.
24 187:8-13 [Buford].)

25 133. A 2013 audit by the Bureau of State Auditors shows that many state courts were not
26 reporting mental health prohibition information to Cal. DOJ as required by state law. (Trial Tr.
27 187:11-18 [Buford].)

28

1 134. Courts are often understaffed and underfunded, which may lead to underreporting.
2 Furthermore, courts report prohibiting events by mail, so there is a time lag between when courts
3 mail their reports to Cal. DOJ and when Cal. DOJ receives and processes them. (Trial Tr. 188:8-15
4 [Buford].)

5 135. Mental health facilities also do not submit their records instantaneously. Even
6 though mental health facilities are required under state law to report prohibiting events immediately,
7 some facilities still submit records only periodically. (Trial Tr. 187:23-188:7 [Buford].)

8 136. In addition, even though reporting agencies (courts and law enforcement agencies)
9 are required to report disposition information within two days, they do not always do it promptly
10 because they may have backlogs or staff shortages. (Trial Tr. 324:2-16 [Matsumoto].)

11 137. BOF does not have the authority to require reporting agencies to submit reports to
12 Cal. DOJ. (Trial Tr. 341:24-342:3 [Graham].)

13 138. Providing more funding to BOF to hire more CIS Analysts to perform reviews does
14 not speed up the background check process. This is because the 10-day wait is due in part to the
15 underreporting and late-reporting of criminal history and other records. The 10-day wait provides
16 the time required for CIS Analysts to seek and obtain missing or incomplete information from in-
17 state and out-of-state law enforcement agencies, courts, and mental health facilities. (Trial Tr.
18 454:24-456:5 [Lindley].)

19 139. The 10-day waiting period provides time for Cal. DOJ to chase dispositions and
20 update records to complete the background checks. (Trial Tr. 220:23-221:7 [Buford].)

21 **E. The 10-Day Waiting Period Provides Time for Law Enforcement to**
22 **Investigate and Intercept Purchased Firearms Prior to Delivery to Prohibited**
23 **Persons**

24 140. A straw purchase is a purchase that a non-prohibited person makes for someone who
25 is prohibited from owning and possessing a firearm. The firearm is then illegally transferred by the
26 straw purchaser to the prohibited person. (Trial Tr. 343:4-14 [Graham].)

27 141. Cal. DOJ special agents attend gun shows to identify potential straw purchasers at
28 the gun shows. (Trial Tr. 342:14-343:3 [Graham].)

1 142. After Cal. DOJ special agents identify potential straw purchasers at gun shows, they
2 conduct an investigation into whether there is a straw purchase, including identifying the suspected
3 straw purchaser and the hidden buyer. (Trial Tr. 346:12-347:10, 347:19-348:13 [Graham].)

4 143. Cal. DOJ special agents have at most 10 days (i.e., the waiting period) to conduct a
5 “straw purchase” investigation. (Trial Tr. 439:3-12 [Graham].)

6 144. Cal. DOJ special agents do their best to finish their investigation within the 10-day
7 waiting period because they do not want the prohibited person to receive the firearm after the straw
8 transaction is finalized. (Trial Tr. 348:14-25 [Graham].) A shorter waiting period would make it
9 nearly impossible for Cal. DOJ special agents to complete a straw purchase investigation at gun
10 shows. There would be less time for Cal. DOJ special agents to identify the parties involved in a
11 potential straw transaction and obtain the necessary warrants. (Trial Tr. 349:1-12 [Graham].)

12 145. The federal Bureau of Alcohol, Tobacco, Firearms and Explosives (“BATFE”) and
13 gun dealers also may notify BOF of suspicious activities that could be straw purchases. (Trial Tr.
14 351:7-20, 352:24-353:5 [Graham].) The 10-day waiting period helps Cal. DOJ special agents in
15 investigating these reported straw purchases. (Trial Tr. 353:6-9 [Graham].) (Trial Tr. 352:24-353:5
16 [Graham].)

17 146. Cal. DOJ field representatives who conduct inspections of gun dealers have also
18 uncovered straw purchases. (Trial Tr. 354:10-355:7 [Graham].)

19 147. In these instances, Cal. DOJ field representatives examine sales records and denial
20 records at dealers. If they notice a denial letter and sales record with the same last name or address,
21 they would suspect that a straw purchase is being made and notify Cal. DOJ special agents of this
22 suspicious activity. Cal. DOJ special agent would then investigate the transaction. (Trial Tr.
23 353:14-16, 354:12-356:4 [Graham].)

24 148. Dealer inspections by Cal. DOJ field representatives also may reveal potential straw
25 purchases during the 10-day waiting period. If a potential straw purchase is detected during the
26 waiting period, BOF would potentially be able to intercept the firearm before it is released to the
27 straw purchaser. (Trial Tr. 356:5-356:22 [Graham].)

28

1 149. To ensure public safety, DOJ special agents prefer to intercept a firearm before it is
2 released to a straw purchaser. Once the firearm is released to a straw purchaser, it could be
3 transferred to the prohibited person, which would make it more difficult for the DOJ special agents
4 to retrieve the firearm. (Trial Tr. 348:14-25, 349:13-21, 350:2-5 [Graham].)

5 150. It is always far easier and in the public's interest to prevent a prohibited person from
6 possessing a firearm in the first place than to retrieve it from a prohibited person after a firearm has
7 been released. Retrieving a firearm from someone, especially if they have mental health issues, can
8 be very dangerous for the public and for the agents responsible for retrieving the firearm. (Trial Tr.
9 470:11-25 [Lindley].)

10 151. There are people who make repeated straw purchases for hidden buyers. If the 10-
11 day waiting period is not applied to them, Cal. DOJ special agents will almost certainly not be able
12 to intercept the firearm before the straw purchaser transfers the firearm to a prohibited person.
13 (Trial Tr. 350:15-351:2 [Graham].)

14 152. Approximately 15 percent of the straw purchases caught by Cal. DOJ were caught
15 during the 10-day waiting period. (Trial Tr. 408:16-24 [Graham].)

16 153. The 10-day waiting period is vital to the investigation of straw purchases conducted
17 by DOJ special agents. The time between the investigation and when the gun would be delivered to
18 the straw purchaser helps ensure public safety by preventing the release of the firearm to the straw
19 purchaser. (Trial Tr. 413:2-3, 8-11 [Graham].)

20 **F. The Waiting-Period Laws Must Be Applied to Subsequent Purchasers to**
21 **Ensure an Effective Background Check in the Interest of Public Safety**

22 154. In connection with each prospective firearm purchase in California, a full
23 background check is conducted for all persons, not statutorily exempt, and even for persons holding
24 COEs or CCW permits, or for persons who already have firearms registered to them in the AFS
25 system. (First Am. Compl. (Dkt. #10) at ¶ 64.)
26
27
28

1 **1. Prohibiting events may have occurred after the prior DROS**
2 **application was filed**

3 155. Simply because a person holds a COE or CCW, or has a gun already in the AFS,
4 does not mean that the person is eligible to own or possess firearms at the time of a DROS
5 application. (Trial Tr. 225:24-226:1, 279:11-280:15 [Buford].)

6 156. The DROS background check process does not consider whether a person has been
7 previously approved to own or possess firearms. That information is irrelevant because
8 circumstances change and a person who was previously approved could later become prohibited.
9 (Trial Tr. 283:6-17 [Buford].)

10 157. Some CCW licenses may also be issued long after a background check is completed.
11 CCWs are issued by local law enforcement agencies. BOF's only involvement in the CCW
12 application process is in the processing of the background checks. Some local law enforcement
13 agencies issue CCWs as late as nine months after BOF completed the background check for a
14 particular individual. (Trial Tr. 458:19-459:6, 459:19-23 [Lindley].)

15 158. Persons with CCW permits or COEs are not subject to ongoing real-time background
16 checks. (Trial Tr. 224:21-24, 225:15-17 [Buford].)

17 159. Persons with CCW permits or COEs are subject to "rap-back" checks. (Trial Tr.
18 222:4-9, 225:15-17 [Buford].) A rap-back, or subsequent notification, refers to the notification that
19 Cal. DOJ receives whenever someone with fingerprints on file with Cal. DOJ is the subject of a
20 criminal justice agency record; for example, a notification of a subsequent arrest record. (Trial Tr.
21 221:21-222:9 [Buford].)

22 160. Many events that would prohibit a person from owning or possessing a firearm,
23 however, are not part of rap-backs. Non-fingerprint based events, such as a mental health hold,
24 would not be discovered in a rap-back check, which is based on fingerprints. (Trial Tr. 223:13-16
25 [Buford].) Other prohibiting events that would not be subject of rap-backs include the issuance of a
26 restraining order and a person's admission to a mental health facility in another state. Cal. DOJ
27 also does not receive rap-backs for persons who are arrested or convicted outside of California.
28 (Trial Tr. 224:8-20, 224:25-225:2 [Buford].)

1 **2. Records or laws may have been updated or changed after the prior**
2 **DROS application was filed**

3 161. Even if someone has been through the DROS background check previously, i.e.,
4 persons on behalf of whom plaintiffs bring the instant lawsuit, CIS Analysts cannot simply review
5 the database entries created after the previous DROS application was submitted. This is because
6 laws could have changed since the previous application that would prohibit the individual from
7 owning or possessing firearms based on a previous record. (Trial Tr. 324:20-325:4 [Matsumoto].)

8 162. For example, the law changed in 2004 for those convicted of violating Penal Code
9 section 273.5, corporal injury on spouse and cohabitant. If a purchaser had a Penal Code section
10 273.5 conviction expunged before 2004, he or she would have been eligible to possess a firearm.
11 But after 2004, the federal government no longer honored such expungements and a person with a
12 conviction under Penal Code section 273.5 would not be eligible to own or possess firearms, even
13 though they might have been prior to 2004. (Trial Tr. 325:6-13 [Matsumoto].)

14 163. For this same reason, DROS applicants with COEs or CCW licenses are not treated
15 differently than those without COEs or CCWs. Laws could have changed between when the person
16 received the COE or CCW license and when the person applies to purchase another firearm. (Trial
17 Tr. 325:18-25 [Matsumoto].)

18 **G. Cal. DOJ's DROS Processing System Cannot be Adequately Replaced**
19 **by Other Systems**

20 **1. The Armed and Prohibited Persons System (APPS) database cannot**
21 **replace BFEC**

22 164. The Armed and Prohibited Persons System ("APPS") is a database that cross-
23 references persons with firearm record in the AFS, typically a DROS record, with those who have a
24 prohibiting conviction or circumstance. (Trial Tr. 216:21-217:2 [Buford].)

25 165. APPS became active in 2007. (Trial Tr. 337:19-21 [Graham].)

26 166. APPS is a preemptive crime-fighting tool. The purpose behind APPS is to identify
27 prohibited persons who have firearms and to enable law enforcement to retrieve the firearms before
28 those persons can use the firearms to harm the public or themselves. (Trial Tr. 217:21-218:3
[Buford].)

1 167. APPS, however, is not an instant background check system and was not developed
2 for that purpose. It is a “pointer tool” that identifies persons who may be armed and prohibited in a
3 particular law enforcement agency’s jurisdiction. Information in APPS needs to be updated and
4 verified before any enforcement action is taken. (Trial Tr. 218:4-219:7 [Buford]; 337:4-10
5 [Graham].)

6 168. There are 21,000 people identified as armed and prohibited in the APPS. These
7 individuals purchased firearms prior to becoming prohibited to do so. (Trial Tr. 338:2-8 [Graham].)

8 169. Many people who should be in APPS are not in APPS. (Trial Tr. 340:15-18
9 [Graham].)

10 170. For example, there are 1.5 million records in MHFPS. Out of those, only 225,000
11 records were entered into APPS. (Trial Tr. 341:5-23 [Graham].) Of those mental health records,
12 only a tiny fraction—approximately 4,000—were matched to the 21,000 individuals in APPS.
13 (Trial Tr. 437:3-18 [Graham].)

14 171. Just as with the DROS background check process, CIS Analysts are needed to chase
15 down missing dispositions and update the information in APPS. (Trial Tr. 219:15-20 [Buford].)

16 172. In addition, APPS records-matching software searches for only an exact name and
17 date of birth match. (Trial Tr. 304:16-23 [Orsi].)

18 173. This is unlike the regular BFEC, which searches for name variants and date of birth
19 ranges. (Trial Tr. 304:24-305:10 [Orsi].)

20 174. For example, if a DROS applicant uses the name “Jeff” on the DROS application,
21 and the APPS entry is “Jeffrey,” APPS would not identify a records match. Or if “Jeffrey” is
22 spelled in a different way, APPS would not identify a records match. This is different from the
23 regular BFEC, which checks name variations. (Trial Tr. 304:24-305:18 [Orsi].)

24 175. APPS also does not query the NICS databases, as it is not permitted to do so by
25 federal law. Out-of-state convictions are thus not identified in APPS. (Trial Tr. 476:11-15
26 [Lindley]; Trial Tr. 192:5-8 [Buford].)

27 176. For all these reasons, APPS is not an adequate substitute for a DROS background
28 check, for any group of people.

1 **2. The Federal NICS check cannot replace BFEC**

2 177. NICS cannot replace Cal. DOJ's background-check system without negative
3 consequences for public safety. There are prohibiting events under California law that are not in the
4 NICS databases. For example, NICS does not contain information on violent misdemeanors,
5 certain mental health holds or violent juveniles. NICS also does not verify identification
6 information of the purchaser with the DMV to determine the validity or status of the purchaser's
7 license or identification card. (Trial Tr. 206:6-18 [Buford].) A person with any of those prohibiting
8 events would be cleared to purchase firearms, if just checked via the NICS.

9 178. NICS does not check for or enforce California's restrictions on buying one handgun
10 in a 30-day period or California's five-year prohibition on persons with a Tarasoff report. NICS
11 also does not check whether the gun associated with a DROS transaction has been reported as lost
12 or stolen. (Trial Tr. 206:19-207:2 [Buford].)

13 179. NICS does not have the authority to enforce state prohibitors (such as violent
14 misdemeanors, certain mental health holds, or violent juveniles). (Trial Tr. 206:6-18, 207:3-8
15 [Buford].)

16 180. NICS also does not check the California DMV database and therefore would not
17 catch anyone attempting to purchase a firearm with fake or invalid identification. (Trial Tr. 215:21-
18 25 [Buford].)

19 181. If California relied on NICS alone rather than BFEC, thousands of persons who are
20 prohibited from owning or possessing firearms will obtain firearms. (Trial Tr. 208-210, 212:7-9
21 [Buford].)

22 182. In 2012, over 4,000 denials were made under California law that would not have
23 been denials if the purchasers were subject only to a federal NICS check: 1,930 30-day rejects, 781
24 mental health denials, 373 violent juvenile denials, and 1,054 violent misdemeanor denials. (Def.
25 Exh. AO at AG002144 [Summary 2012 DROS statistics].)

26 183. In 2013, nearly 5,000 denials were made under California law that would not have
27 been denials if the purchasers were subject only to a federal NICS check: 2,814 30-day rejects, 802
28

1 mental health denials, 329 violent juvenile denials, and 926 violent misdemeanor denials. (Trial Tr.
2 208-210, 212:7-9 [Buford]; Def. Exh. AP at AG002394 [Summary 2013 DROS statistics].)

3 184. Under the California background check system, mistakes (i.e., prohibited persons
4 being cleared to purchase a firearm) are made only rarely—about 10 to 12 times a year. (Trial Tr.
5 482:6-14 [Lindley].)

6 185. Under the federal NICS check system, 3,166 firearm retrieval actions were referred
7 by NICS to ATF in 2011 alone. (Trial Tr. 220:17-22 [Buford]; Def. Exh. BO at AG001818 [NICS
8 Operations 2011].) This means that 3,166 persons who were prohibited from owning or possessing
9 firearms received firearms after a NICS check was conducted.

10 186. It takes time to do a quality background check that is necessary to ensure public
11 safety. (Trial Tr. 452:7-13, 456:2-5 [Lindley].) The more time BOF has to do a quality background
12 check, the better BOF can ensure that a prohibited person will not come in possession of a firearm.

13 187. If BOF is forced to do an instantaneous or near-instantaneous background check, it
14 would be a very poor quality background check. BOF would not have time to ensure that people
15 who are prohibited do not obtain a firearm. (Trial Tr. 456:9-19 [Lindley].)

16 188. Anything less than ten days makes it very difficult for Cal. DOJ to contact the
17 reporting agencies necessary to determine whether a DROS applicant is prohibited in the event that
18 the person's criminal history and other records are incomplete. (Trial Tr. 473:21-474:5 [Lindley].)

19 **VI. THE WAITING-PERIOD LAWS PROVIDE A COOLING-OFF TIME**

20 189. A primary justification for the waiting period is to provide a cooling-off time for a
21 firearms purchaser. (Trial Tr. 167:6-8 [Buford]; *Bickston*, 91 Cal.App.3d Supp. at 32 (“Thus it
22 appears that an original intent to provide at least an overnight cooling-off period from ‘application
23 for the purchase’ was supplemented over the years with the additional time to allow the Department
24 of Justice to investigate the prospective purchaser of the weapon).)

25 190. The cooling-off period serves a public safety function in preventing suicides or other
26 violent acts. (Trial Tr. 499:22-25 [Lindley].)

27 191. The cooling-off period is designed to create a period of time when a person cannot
28 get a hold of a weapon while he or she is in a state of anger. (Trial Tr. 233:4-7 [Buford]; 499:19-21

1 [Lindley].) A cooling-off period would allow persons time to rethink any potential bad acts that
2 they may be planning. (Trial Tr. 358:9-17 [Graham].)

3 **A. Cooling-off Period Reduces Violent Acts by Firearms**

4 192. Suicide attempts appear to be relatively impulsive acts. (Def. Exh. DM (Greg M. de
5 Moore, et al., *Survivors of Self-inflicted Firearm Injury*, 160 *The Medical Journal of Australia* 421
6 (Apr. 4, 1994)) at 422-23.). In one study of 33 adults who survived suicide attempts by firearms,
7 the majority of the people reported having suicidal thoughts for only three weeks or less time before
8 making their attempts. *Id.* In another study of 30 adults who survived suicide attempts by firearms,
9 more than half of the people reported having suicidal thoughts for less than 24 hours before making
10 their attempts. (Def. Exh. DS (Linda G. Peterson, et al., *Self-inflicted Gunshot Wounds: Lethality*
11 *of Method Versus Intent*, 142 *American Journal of Psychiatry* (Feb. 1985)) at 228, 230; accord Def.
12 Exh. DG (E. Michael Lewiecki, MD, and Sara A. Miller, PhD, “Suicide, Guns, and Public Policy,”
13 *American Journal of Public Health* (Jan. 2013)) at 27-28; *see also id.* at 29 (more evidence)).)

14 193. Two researchers at the Harvard School of Public Health have likewise declared
15 plainly, “Suicidal individuals are often ambivalent about killing themselves, and the risk period is
16 transient. *Reducing the availability of lethal instruments during this period may prevent*
17 *suicide*. Psychiatric and penal institutions have long recognized the importance, in all age groups,
18 of restricting access to lethal means of suicide for newly admitted and potentially suicidal
19 inmates.” (Def. Exh. DT (Matthew Miller and David Hemenway, *The Relationship Between*
20 *Firearms and Suicide: A Review of the Literature*, 4 *Aggression and Violent Behavior* 59 (1999))
21 at 61 (emphasis added); Def. Exh. DG at 29 (“A waiting period of seven days could be life-saving
22 when an urge to commit suicide passes within one hour and a gun is not available in the household,
23 but it might not be helpful if the suicidal impulse continues for two weeks”); Def. Exh. GN
24 (regarding correlation between repeal of Missouri’s background-check requirement and increase in
25 murders).) The availability of only less-lethal substitutes may reduce total completed
26 suicides. (Def. Exh. DT at 61.) Reviewing another study: “Gun suicide was affected by
27 restrictions on both the buying and selling of guns. . . . Suicide rates by other methods were not
28 affected by any of the restrictions. Overall, states with tougher handgun laws had lower overall

1 suicide rates.” (*Id.* at 69.) Reviewing another study: “Firearm license to purchase or waiting
2 period to purchase laws were found to reduce the rate of white male suicides aged 20 to 64 by 3
3 suicides per 100,000 population.” (*Id.* at 70.) In Queensland, Australia, when a 28-day cooling-off
4 period, and handgun safety tests, were enacted into law, firearm suicide rates declined significantly
5 in urban areas (but not rural areas). (*Id.* at 72; Def. Exh. DH (Jens Ludwig, PhD, and Philip J. Cook,
6 PhD, “Homicide and Suicide Rates Associated with Implementation of the Brady Handgun Violence
7 Prevention Act,” *Journal of the American Medical Association* (Aug. 2, 2000)) at 583; *see also id.* at 584,
8 585, 588, 590 (more corroboration).) In Tasmania, when a 21-day cooling-off period was enacted into
9 law, the number of spontaneous acts with newly acquired firearms decreased. (Def. Exh. DQ (Kate
10 Warner, *Firearm Deaths and Firearm Crime After Gun Licensing in Tasmania* (Mar. 1999)) at 3.)

11 194. A revised study of the federal five-day waiting period in place in the 1990s found as
12 follows: “In particular, the waiting period required during phase one of [The Brady Act] may have
13 slowed handgun acquisition by some people experiencing a suicidal impulse. . . . [O]ur analysis of
14 suicide rates found some evidence that Brady may have reduced gun suicide rates among people
15 aged 55 and older” (although the gains were partially offset by an increase in non-gun suicides).
16 (Def. Exh. EJ (*Webster and Vernick, eds., Reducing Gun Violence in America* (2013)) at 26; Def.
17 Exh. DH at 588, 590; accord Def. Exh. DV (Garen J. Wintemute, M.D., M.P.H., et al., “Mortality Among
18 Recent Purchasers of Handguns,” *The New England Journal of Medicine*, vol. 341:21 (1999)) at 1585; *see id.*
19 at 1583-84 (more corroboration).)

20 195. One critical review of the relevant literature lamented the small number of available
21 studies of the effect of waiting periods, yet had to acknowledge the study that found a statistically
22 significant decrease in firearm suicides by people older than 55 years, correlated with the
23 introduction of a firearm-acquisition waiting period. (Def. Exh. DX (Robert A. Hahn, et al.,
24 *Firearms Laws and the Reduction of Violence: A Systematic Review*, 28 *American Journal of*
25 *Preventive Medicine* 40 (2005)) at 52; *see also id.* at 51 (more corroboration).)

26 196. According to another literature review:

27 Several studies have examined correlations between different aspects of firearms
28 control legislation—such as the requirement for a waiting period, requirements for
licensing, and restricted availability based on psychiatric and/or criminal records—and

1 the suicide rate. All of these studies have shown an inverse relationship between the
2 restrictiveness of firearms legislation and the overall suicide rates . . . Although there
3 was some evidence of method substitution, the overall impact on the suicide rate was
4 still favorable.

5 (Def. Exh. DW (David A. Brent, Firearms and Suicide, Annals of New York Academy of Sciences,
6 225 (2001)) at 232; *see also id.*, at 225, 228, 229, 234-36 (more corroboration)).

7 **B. Rationale and Benefits of A Cooling-off Period Apply to All Applicants,
8 Including Subsequent Purchasers**

9 197. If Cal. DOJ completes the background check of a prospective firearm purchaser
10 prior to the end of the 10-day waiting period, Cal. DOJ does not release the firearm until after the
11 waiting period ends, to give effect to the cooling-off period. (Trial Tr. 508:6-8 [Lindley].)

12 **1. Subsequent Purchasers May No Longer Possess Firearms or May
13 Possess Non-Working Firearms**

14 198. A cooling-off period for a firearm purchase may be effective to prevent an act of
15 violence to be committed by a person who previously purchased a firearm, because that person may
16 no longer possess the previously purchased firearm and thus could not use it to commit an act of
17 violence. (Trial Tr. 233:8-24 [Buford].)

18 199. The DROS system assumes that all DROS applicants do not have firearms, because,
19 even for someone who has a firearm in the AFS, Cal. DOJ does not necessarily know whether that
20 person still in fact has possession of the firearm in the AFS. (Trial Tr. 234:8-19 [Buford].)

21 200. Guns can be lost or stolen. (Trial Tr. 173:20-22 [Buford].)

22 201. The firearm already possessed by a subsequent firearm purchaser may also not be
23 available to be used for acts of violence. For example, there were times when one or more of
24 Silvester's guns were not available for him to use, because the guns were not in working condition.
25 (Trial Tr. 37:19-24 [Silvester].) There are also times when one or more of Silvester's guns were not
26 available for him to use because he lacked the proper ammunition for them. (Trial Tr. 37:25-38:10
27 [Silvester].) In some instances (not involving Silvester or Combs), a firearm owner or a family
28 member will surrender firearms to law enforcement while the firearm owner seeks mental-health
treatment. (Trial Tr. 478:22-479:3.)

1 **2. Subsequent Purchasers May Seek New Firearms for Specific**
2 **Purposes**

3 202. A cooling-off period may be effective as to persons who already own firearms
4 because such a person may choose to acquire new or additional firearms to commit a planned act of
5 violence. (Trial Tr. 359:1-4, 360:10-20 [Graham].)

6 203. Different guns are suitable for different purposes. (Trial Tr. 38:11-16 [Silvester].)

7 204. In one example, Shareef Allman, who had lawfully purchased at least one firearm,
8 decided to acquire additional firearms, including an AK-47, before using the firearms to shoot and
9 kill people in Cupertino, California, before killing himself. (Trial Tr. 360:10-20, 414:16-415:21
10 [Graham].)

11 **VII. EXEMPTIONS TO THE WAITING-PERIOD LAWS**

12 **A. Peace Officer Exemption**

13 205. In certain circumstances, peace officers may be exempt from the Waiting-Period
14 Law.

15 206. Every peace officer undergoes Peace Officers Standards Training (POST), which
16 includes an extensive psychological evaluation and background investigation that involves
17 interviewing the subject's family, friends, and neighbors. This background investigation is much
18 more extensive than a DROS background check. (Trial Tr. 227:5-12, 16-21 [Buford]; 461:10-25
19 [Lindley].)

20 207. Peace officers hired by law enforcement agencies receive between 600 and 900
21 hours of training in the police academy. After they graduate, they receive six-to-12 months of field
22 training before they are assigned out to patrol without supervision. (Trial Tr. 461:10-25 [Lindley].)

23 208. Because peace officers carry firearms as part of their duties, the California
24 Legislature did not want to hinder peace officers' access to firearms to protect themselves while on
25 and off duty. (Trial Tr. 227:13-15 [Buford].) Peace officers are not similarly situated to other
26 Californians in this respect.

27 209. To avail themselves of this exemption to the Waiting-Period Law, peace officers are
28 required to obtain a letter from the head of their law enforcement agency approving them for

1 immediate possession of the firearm. (Trial Tr. 361:5-15 [Graham].) BOF does not issue those
2 letters often. (Trial Tr. 361:16-18 [Graham].) BOF Chief Stephen Lindley has never issued such a
3 letter. (Trial Tr. 464:4-14 [Lindley].)

4 **B. Dangerous Weapons Permit Exemption**

5 210. A holder of a dangerous weapon permit (DWP) is exempted from the 10-day waiting
6 period. The reason is that Cal. DOJ conducts an extensive background investigation of each permit
7 holder prior to issuing the permit. As part of the background investigation, Cal. DOJ sends
8 investigators to the applicant's home and business, and speaks to the applicant's friends, relatives,
9 and former employers. This background investigation is much more extensive than a DROS
10 background check. (Trial Tr. 228:15-229:2 [Buford].)

11 211. DWP holders are heavily regulated by Cal. DOJ and federal BATFE, and are under
12 constant supervision. For example, Cal. DOJ inspects DWP holders' premises and firearms
13 regularly to ensure that they are in compliance with the law. (Trial Tr. 463:1-18 [Lindley].) DWP
14 holders are not similarly situated to other Californians in this respect.

15 **C. Entertainment Firearms Permit Exemption**

16 212. A holder of an entertainment firearm permit (EFP) is exempted from the 10-day
17 waiting period.

18 213. The entertainment industry in California needs the EFP exemption to obtain firearms
19 to use in television or movie productions. The EFP holders have must also have DWPs, so they
20 have undergone full background investigations discussed above. Additionally, most of the firearms
21 used by EFP holders have been gunsmithed to fire only blank ammunition. EFP holders are also
22 subject to inspection by Cal. DOJ. (Trial Tr. 468:21-469:15 [Lindley].) EFP holders are not
23 similarly situated to other Californians in this respect.

24 **D. Dealer Exemptions**

25 214. A firearms dealer may transfer firearms to another dealer or himself or herself
26 without going through a waiting period. (Trial Tr. 362:5-10 [Graham].)

1 215. A dealer eligible for the exemption to the Waiting-Period Law has to have both a
2 federal firearms license from BATFE and a COE from Cal. DOJ. (Trial Tr. 462:8-22 [Lindley]; see
3 also Penal Code § 26700.)

4 216. Firearms dealers are also heavily regulated by both BOF and federal BATFE.
5 Dealers are required to apply for a federal firearm license from the ATF and a COE from the DOJ.
6 (Trial Tr. 462:8-22 [Lindley].) Dealers are also subject to inspection by BOF and the federal
7 BATFE. (Trial Tr. 362:20-24 [Graham]; 462:8-22 [Lindley].) Dealers are not similarly situated
8 to other Californians in this respect.

9 **E. Curio and Relic Exemption**

10 217. A person with a federal curio and relic license and a COE issued in California is
11 exempt from the waiting period when he or she purchases curio and relic firearms. (Trial Tr. 270:2-
12 24 [Buford].)

13 218. Both BATFE and Cal. DOJ are involved in granting the curio and relic permit.
14 (Trial Tr. 463:1-3 [Lindley].)

15 219. Curio and relic firearms are generally not as readily available as other types of
16 firearms. Curio and relic firearms comprise of a small segment of firearm purchases. (Trial Tr.
17 465:12-15 [Lindley].) Curio and relic license holders with COEs are not similarly situated to other
18 Californians in this respect.

19 **F. Gunsmith Exemption**

20 220. There is no waiting period for a gunsmith to return a repaired firearm to the owner of
21 the firearm. This is because the law considers the owner to still retain constructive possession of
22 that firearm even while the firearm is in the hands of the gunsmith. (Trial Tr. 261: 18-22, 262:2-3
23 [Buford].)

24 221. Gunsmiths are also regulated by BATFE and are subject to inspection. (Trial Tr.
25 466:16-467:2 [Lindley].) Gunsmiths are not similarly situated to other Californians in this respect.

26 **G. Wholesaler Exemption**

27 222. A firearm wholesaler may be exempted from the 10-day waiting period.
28

1 **II. STANDING OF ORGANIZATIONAL PLAINTIFFS**

2 B. Because CGF, the organization, cannot legally purchase firearms in
3 California and has not tried to do so, CGF does not have an injury in fact necessary for
4 standing to maintain the present lawsuit on its own behalf, challenging the constitutionality
5 of the Waiting-Period Laws. *Wash. Env'tl. Council v. Bellon*, 732 F.3d 1131, 1139-40 (9th
6 Cir. 2013). Moreover, CGF lacks standing to sue on its own behalf because of the lack of
7 evidence that CGF has had to divert resources to avoid being injured by the Waiting-Period
8 Laws, and has been frustrated in its mission because of the Waiting-Period Laws. *La*
9 *Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 &
10 n.4 (9th Cir. 2010).

11 C. CGF does not have members whose interests CGF has the capacity to
12 represent in this civil action. *See Bellon*, 732 F.3d at 1139 (*citing Friends of the Earth, Inc.*
13 *v. Landlaw Env'tl. Servs., Inc.*, 528 U.S. 167, 181 (2000)).

14 D. Even assuming, *arguendo*, that CGF has supporters whose interests CGF has
15 the capacity to represent in this civil action, CGF does not have standing to maintain the
16 present lawsuit on behalf of CGF's supporters, because of the lack of evidence that they
17 have been subject to the Waiting-Period Laws or have had their Second Amendment right
18 burdened thereby. *Bellon*, 732 F.3d at 1139 (*citing Landlaw*, 528 U.S. 181); *Ecological*
19 *Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1147 (9th Cir. 2000) (*citing Hunt v.*
20 *Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

21 E. Because SAF, the organization, cannot legally purchase firearms in
22 California and has not tried to do so, SAF does not have an injury in fact necessary for
23 standing to maintain the present lawsuit on its own behalf, challenging the constitutionality
24 of the Waiting-Period Laws. *Bellon*, 732 F.3d at 1139-40. Moreover, SAF lacks standing to
25 sue on its own behalf because of the lack of evidence that SAF has had to divert resources to
26 avoid being injured by the Waiting-Period Laws, and has been frustrated in its mission
27 because of the Waiting-Period Laws. *La Asociacion*, 624 F.3d at 1088 & n.4.

28

1 F. SAF does not have standing to maintain the present lawsuit on behalf of
2 SAF's members, because of the lack of evidence that they have been subject to the Waiting-
3 Period Laws or have had their Second Amendment right burdened thereby. *Bellon*, 732
4 F.3d at 1139 (citing *Landlaw*, 528 U.S. at 181); *Ecological Rights*, 230 F.3d at 1147(citing
5 *Hunt*, 432 U.S. at 343).

6 **III. SECOND AMENDMENT ANALYSIS**

7 **A. The Waiting-Period Laws' Alleged Burden on the Second Amendment**
8 **Right**

9 G. The Second Amendment, as historically understood, did not protect the
10 alleged right of a person, not forbidden by law from acquiring a firearm, to acquire a firearm
11 within 10 days of deciding to acquire the firearm. *See Jackson v. City and Cnty. of San*
12 *Francisco*, 746 F.3d 953, 960 (9th Cir. 2014) (holding that in first step of two-step Second
13 Amendment Inquiry, court asks whether challenged law burdens conduct protected by
14 Second Amendment based on historical understanding of scope of right or whether
15 challenged law falls within one or more of categories of longstanding presumptively lawful
16 regulations recognized by U.S. Supreme Court in *District of Columbia v. Heller*, 554 U.S.
17 570, 626-27 & n.26 (2008)). The reason is that it was a fact of life that most people in the
18 Founding Era of the United States who were not forbidden by law from acquiring a firearm
19 usually could not purchase one within 10 days of deciding to acquire one, and would have
20 accepted a 10-day waiting period as lawful. There is no contrary evidence, and thus good
21 reason to *disbelieve*, that a person in the Founding Era who both was legally entitled to own
22 a firearm and already owned a firearm would have objected to a 10-day waiting period on
23 the acquisition of an additional firearm.

24 H. The Waiting-Period Laws, as prohibitions on the possession of firearms by
25 felons and the mentally ill, are longstanding and presumptively lawful regulatory measures
26 that do not fall within the scope of the Second Amendment. *See Jackson*, 746 F.3d at 960.
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1 I. The Waiting-Period Laws, as laws imposing conditions or qualifications on
2 the commercial sale of arms, are longstanding and presumptively lawful regulatory
3 measures that do not fall within the scope of the Second Amendment. *See Jackson*, 746
4 F.3d at 960.

5 J. At all relevant times, while subject to the Waiting-Period Laws, Combs has
6 been able to acquire firearms without any burden more than a de minimis burden on his
7 Second Amendment right. *See Jackson*, 746 F.3d at 960.

8 K. At all relevant times, while subject to the Waiting-Period Laws, Silvester has
9 been able to acquire firearms without any burden more than a de minimis burden on his
10 Second Amendment right. *See Jackson*, 746 F.3d at 960.

11 L. The Waiting-Period Laws do not burden conduct protected by the Second
12 Amendment. *See Jackson*, 746 F.3d at 960.

13 M. The Waiting-Period Laws do not violate the Second Amendment right of any
14 plaintiff herein. *See Jackson*, 746 F.3d at 960.

15 **B. Heightened Scrutiny of The Waiting-Period Laws Under the Second**
16 **Amendment²**

17 N. The Waiting-Period Laws do not amount to a destruction of the Second
18 Amendment right. *See Jackson*, 746 F.3d at 961.

19 O. Rather, the Waiting-Period Laws mandate a 10-day temporal restriction on
20 the exercise of the Second Amendment right.

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26 ² If the Court finds, as the Attorney General believes, that the Waiting-Period Laws do not
27 burden the Second Amendment right of any plaintiff herein, then the Court does not need apply
28 heightened scrutiny to the Waiting-Period Laws. The proposed conclusions of law regarding
heightened scrutiny are offered for adoption in case the Court does find that heightened scrutiny is
warranted.

1 P. The Waiting-Period Laws do not come close to burdening the core of the
2 Second Amendment right because the Waiting-Period Laws pertain only to the acquisition
3 of firearms and do not prevent their possession or use. *See Jackson*, 746 F.3d at 961
4 (holding that in second step of two-step Second Amendment inquiry, court determines
5 appropriate level of scrutiny of challenged law by considering (1) how close law comes to
6 core of Second Amendment right and (2) severity of law’s burden on right).

7 Q. The Waiting-Period Laws do not impose a severe burden on the Second
8 Amendment right; on the contrary, a 10-day waiting period is a non-severe burden on the
9 Second Amendment right, especially for a person who already has a firearm. *See Jackson*,
10 746 F.3d at 961.

11 R. Therefore, the Waiting-Period Laws are appropriately subject to intermediate,
12 not strict, scrutiny under the Second Amendment. *See Jackson*, 746 F.3d at 961.

13 S. The California Legislature sought to advance significant, substantial, or
14 important governmental objectives in enacting the Waiting-Period Laws. *See United States*
15 *v. Chovan*, 735 F.3d 1127, 1139 (9th Cir. 2013) (“Although courts have used various
16 terminology to describe the intermediate scrutiny standard, all forms of the standard require
17 (1) the government’s stated objective to be significant, substantial, or important; and (2) a
18 reasonable fit between the challenged regulation and the asserted objective”). Those
19 objectives were increasing public safety; reducing firearms violence; and keeping firearms
20 out of the hands of dangerous people, such as felons and the mentally ill, forbidden by law
21 from having them (collectively, “public safety”). *See id.* (recognizing as significant for
22 Second Amendment purposes governmental objective of keeping guns away from
23 dangerous people).

1 T. The Waiting-Period Laws’ 10-day waiting period between application to
2 purchase and delivery of a firearm is reasonably related to the advancement of the
3 governmental objective of public safety, because the 10-day waiting period affords BOF
4 sufficient time to conduct an adequate background check of each applicant to purchase a
5 firearm—including for people who are “auto-approved” by California’s background-check
6 system, who already have a firearm registered in AFS, or who have a valid COE or a CCW
7 permit. *See Jackson*, 746 F.3d at 961.

8 U. The Waiting-Period Laws’ 10-day waiting period between application to
9 purchase and delivery of a firearm is reasonably related to the advancement of the
10 governmental objective of public safety, because the 10-day waiting period creates a
11 “cooling-off” period to prevent people who may have impulses to commit acts of violence
12 with firearms from doing so. *See Jackson*, 746 F.3d at 961.

13 V. California cannot be forced to use just the federal NICS background-check
14 system, or just California’s APPS, instead of the full California background-check system
15 (which encompasses NICS and APPS and more). If California were forced to use the
16 alternative background-check systems suggested by Plaintiffs, instead of the existing
17 California background-check system, California would be unjustifiably hindered in
18 advancing the governmental objective of public safety, by being unable to check on all
19 prohibiting events that might prevent a prospective firearms purchaser from being allowed
20 to have firearms.

21 W. The Waiting-Period Laws do not violate the Second Amendment right of any
22 plaintiff herein. *See Jackson*, 746 F.3d at 960.

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