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

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

17 **Plaintiffs,**

18 **v.**

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

21 **Defendants.**

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

PLAINTIFFS' REPLY TO
DEFENDANT'S OPPOSITION TO
MOTION IN LIMINE RE BURDENS
OF PROOF

1 Several recent Ninth Circuit decisions have demonstrated that the courts are
2 finally taking the Second Amendment seriously and treating it like other
3 Constitutional rights. (See U.S. v. Chovan, No. 11-50107, 2013 WL 6050914 (C.A.
4 9 (Cal.) Nov. 18, 2013; Peruta v. County of San Diego, 2014 WL 555862 (C.A.9
5 (Cal.)).

6 On December 6, 2013, this Court issued its Order denying Defendants'
7 Motion for Summary Judgment ("Order") in its entirety. In doing so, the Court
8 applied the analysis set forth in U.S. v. Chovan. In Chovan, a two-step framework
9 in determining the constitutionality of a Second Amendment law was adopted:
10 "[t]he two-step Second Amendment inquiry we adopt (1) asks whether the
11 challenged law burdens conduct protected by the Second Amendment and (2) if so,
12 directs courts to apply an appropriate level of scrutiny." Id. citing U.S. v. Chester,
13 628 F.3d 673, 680 (4th Cir. 2010), U.S. v. Marzzarella, 614 F.3d 85, 89 (3d Cir.
14 2010). Accepting the three undisputed facts, the Court determined that "there can
15 be no question that the actual possession of a firearm is a necessary prerequisite to
16 exercising the right to keep and bear arms." (Order at 7:22-27). Accordingly,
17 Plaintiffs are entitled to a ruling that based upon the undisputed facts, the burden to
18 justify the waiting period laws as challenged shifts to Defendants.

19 DATED: March 7, 2014

20 OTTEN & JOYCE, LLP

21
22 /s/ Victor Otten
23 Victor Otten, Esq.
24 Attorneys for Plaintiffs
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