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9 Attorneys for Plaintiffs

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

21 **Defendants.**

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

DECLARATION OF DON KILMER,
ESQ. IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEY'S FEES

Date: TBD
Time: TBD
Courtroom: TBD

23 I, Donald Kilmer, declare the following based on my own personal
24 knowledge and a diligent review of the records kept at my firm in the normal course
25 of business.

26 1. I earned my Bachelor of Arts Degree (with distinction) from San Jose State
27 University in 1991. I earned my Juris Doctor degree from Lincoln Law School of
28

1 San Jose in 1995. I am a member in good standing of the California State Bar
2 Association. I am admitted to practice in the Northern and Eastern Districts of
3 California and the Ninth Circuit Court of Appeals.

4 2. I have been a sole practitioner since being licensed to practice law. My firm
5 represents clients in civil and criminal matters in both the state and federal courts in
6 California. I have also been a faculty member at Lincoln Law School of San Jose
7 since 2001 where I currently teach an elective in Constitutional Adjudication and
8 Firearms Law.

9 3. I have published articles in the San Francisco Daily Journal on firearm
10 policy. I have co-authored an article published in the Lincoln Law Review.

11 4. My fee agreement with Calguns Foundation, Inc. (CGF), and Second
12 Amendment Foundation, Inc. (SAF), was for representation at a reduced hourly rate
13 due to my clients' limited financial resources and my commitment to protecting gun
14 rights as an important constitutional component of the fundamental "right to keep
15 and bear arms." No fees were paid to my office by the individual plaintiffs.

16 5. My hourly rate charged to CGF was \$135.00 per hour with total hours spent
17 representing CGF equal to 214.00 hours as of August 15, 2014. My hourly rate
18 charged to SAF was \$135.00 per hour with total hours spent representing SAF
19 equal to 211 hours as of August 15, 2014. The combined hourly rate was \$270.00.
20 Most of the hours overlap each other for a total combined time spent of 214 hours.
21 An office copy of my cumulative statements to both clients showing hours worked
22 and costs incurred are attached.

23 6. Although perhaps (now) deserving of only a footnote in the history of
24 Second Amendment jurisprudence, I was lead counsel in first case in the nation to
25 incorporate the Second Amendment as against state action through the Fourteenth
26 Amendment's "due process" clause. *Nordyke v. King*, 563 F.3d 439 (9th Cir.
27 2009), vacated, 611 F.3d 1015 (9th Cir. 2010)(en banc). This was exactly the same
28 result achieved in *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010).

1 7. I have several published opinions as lead or co-counsel in other firearms
2 cases have been resolved by or are pending in the Ninth Circuit and/or the
3 California Court of Appeals, including the California Supreme Court. A full list of
4 those published cases can be provided upon request.

5 7. I currently bill retail clients at a rate of \$360 per hour based on an agreement
6 of payment in full within 30 days of billing.

7 8. The Laffey Matrix rates for the Washington, D.C., area (which is
8 approximately equivalent to San Francisco) is available at
9 <http://www.laffeymatrix.com/see.html>.

10 9. I have been practicing law since January 1, 1996, therefore I fall into the 11-
11 19 year category of the Laffey Matrix at a rate of \$640.00 per hour during the
12 relevant time periods.

13 10. At 214 hours of billable work the Defendants should be required to pay
14 attorney fees for work I performed in this case in the amount of \$136,960.00. A
15 true and correct copy of our firm's billing records is attached to this declaration as
16 **Exhibit 5.**

17 11. I incurred billable costs for hotel expenses during the trial and final
18 argument in the amount of \$572.29.

19
20 DATED: September 8, 2014

LAW OFFICES OF DONALD
KILMER

/s/ Don Kilmer, Esq.

23
24 Don Kilmer, Esq.
Attorneys for Plaintiffs

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