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15 Attorneys for Plaintiffs

16 UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA
18 FRESNO DIVISION
19 2500 TULARE STREET | FRESNO, CA 93721

20 JEFF SILVESTER, BRANDON
21 COMBS, THE CALGUNS
22 FOUNDATION, INC., a non-profit
23 organization, and THE SECOND
24 AMENDMENT FOUNDATION,
25 INC., a non-profit organization,

26 Plaintiffs,

27 vs.

28 KAMALA HARRIS, Attorney General
of California, and DOES 1 to 20,

Defendants.

Case No.: 1:11-CV-2137 AWI SAB
PLAINTIFFS MOTION IN LIMINE RE:
TO EXCLUDE WITNESSES FROM
COURTROOM

Hearing Date: March 11, 2014
Hearing Time: 1:30 p.m.
Courtroom: 2

29 By and through undersigned counsel, Plaintiffs hereby move this Court for an
30 order that witnesses be excluded from the Courtroom under FRE 615.

31 At the request of any party, the court 'must' order witnesses excluded 'so that
32 they cannot hear other witnesses' testimony.' It may also exclude witnesses sua
33 sponte. FRE 615; *Geders v. United States* (1976) 425 U.S. 80, 87, 96 S.Ct. 1330,
34 1335.

1 Statement of Law

2 FRE 615 serves both to reduce the danger that a witness' testimony will be
3 influenced by hearing the testimony of other witnesses, and to increase the
4 likelihood that the witness' testimony will be based on his or her own recollections.
5 See: FRE 615, Adv. Comm. Notes; *United States v. Hobbs* (9th Cir. 1994) 31 F.3d
6 918, 921; and *Perry v. Leeke* (1989) 488 U.S. 272, 282, 109 S.Ct. 594, 601, fn. 4 –>
7 Rule 615 designed to prevent shaping of testimony by hearing what other witnesses
8 say.

9 Rule 615 makes the exclusion of witnesses mandatory if requested by a party.
10 *Government of Virgin Islands v. Edinborough* (3rd Cir. 1980) 625 F.2d 472, 474;
11 *United States v. Collins* (8th Cir. 2003) 340 F.3d 672, 680.

12 The court cannot exclude the following persons from the courtroom under
13 FRE 615:

- 14 -a party who is a natural person;
- 15 -an officer or employee of a corporate party (or other artificial entity) who has
16 been designated as its representative;
- 17 -a person whose presence is shown to be essential to a party's presentation of
18 its case; or
- 19 -a person authorized by statute. FRE 615; *United States v. Phibbs* (6th Cir.
20 1993) 999 F.2d 1053, 1072-1073; *Milicevic v. Fletcher Jones Imports, Ltd.* (9th Cir.
21 2005) 402 F.3d 912, 915-916.

22 An officer or employee of a corporate party who has been designated as that
23 party's representative is not excludible. FRE 615; *Nanoski v. General Motors*
24 *Acceptance Corp.* (8th Cir. 1989) 874 F.2d 529, 531.

25 Argument/ Conclusion

26 Plaintiffs hereby seek an order excluding all percipient witnesses who have
27 not been designated as a party, officer or employee of a corporate party or otherwise
28 authorized under FRE 615.

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Respectfully Submitted on February 18, 2014 by:

/s/ Victor Otten

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