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9 *Attorney for Plaintiffs*

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 KNIFE RIGHTS, INC., ELIOT  
13 KAAGAN, JIM MILLER, GARRISON  
14 HAM, NORTH COUNTY SHOOTING  
15 CENTER, INC., and PWGG L.P.,

16 Plaintiffs,

17 vs.

18 CALIFORNIA ATTORNEY  
19 GENERAL ROB BONTA, ET AL.,

20 Defendants.  
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Case No. 23-CV-0474-JES-DDL

**PLAINTIFFS’ OPPOSITION TO  
DEFENDANT’S OBJECTIONS TO  
REBUTTAL REPORT AND  
DECLARATION OF DAVID T. HARDY**

Date: April 22, 2024  
Time: 10:00 a.m.  
Dept: 4B  
Judge: The Honorable James E.  
Simmons, Jr.  
Trial Date: None set  
Action filed: March 15, 2023

1 **I. INTRODUCTION**

2 Plaintiffs submit this opposition to Defendant’s objections to the rebuttal  
3 report and declaration of David T. Hardy, filed March 6, 2024. Defendant objections  
4 are improper, as Mr. Hardy’s report and the opinions contained in the report are  
5 based on his experience and expertise as both an attorney and a Second Amendment  
6 historian. Notably, Defendant does not object to Mr. Hardy’s expertise in either  
7 respect. Instead, Defendant claims that certain of Mr. Hardy’s expert opinions  
8 consist of inadmissible legal conclusions. Not so.

9 **II. ARGUMENT**

10 Plaintiffs provide the following responses to specific portions of Defendant’s  
11 objections to the rebuttal declaration of David T. Hardy.

12 **Opposition to objections to Paragraphs 5, 6, 7, and 8 “in [their] entirety:”**  
13 The objections are without merit. Mr. Hardy’s statements are foundational and  
14 provide the basis for his expert opinion based on his knowledge, skill, experience,  
15 training, and education, all of which is permissible under Federal Rule of Evidence  
16 702.

17 **Opposition to objection to “Paragraph 9 in its entirety:”** The objection is  
18 without merit. Mr. Hardy’s statements are foundational and provide the basis for his  
19 expert opinion, based on his knowledge, skill, experience, training, and education,  
20 all of which is permissible under Federal Rule of Evidence 702. Mr. Hardy’s  
21 statements provide historical facts regarding whether the Supreme Court originally  
22 treated the Bill of Rights as binding to the states. His statements also provide  
23 factual summary of whether state courts ever applied the Bill of Rights to state law  
24 in the context of the Second Amendment. Mr. Hardy’s statements discuss historical  
25 facts, not legal conclusions.

26  
27 **Opposition to objection to “Paragraph 10 in its entirety:”** The objection  
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1 is without merit. Mr. Hardy’s statements are foundational and provide the basis for  
2 his expert opinion, based on his knowledge, skill, experience, training, and  
3 education, all of which is permissible under Federal Rule of Evidence 702.  
4 Moreover, the statements made in paragraph 10 provide an historical summary of  
5 the whether certain states had constitutional rights guarantees in their state  
6 constitutions or whether certain states placed limitations on their arms guarantees  
7 within their state constitutions. Mr. Hardy’s statements discuss historical facts, not  
8 legal conclusions.

9 **Opposition to objection to “Paragraph 11, with the exception of the**  
10 **second, third, and fourth sentences:”** The objection is without merit. Mr. Hardy’s  
11 statements are foundational and provide the basis for his expert opinion, based on  
12 his knowledge, skill, experience, training, and education, all of which is permissible  
13 under Federal Rule of Evidence 702. Mr. Hardy’s statements provide his expert  
14 opinion on whether restrictions for pistols or blunt weapons are factually analogous  
15 to regulations on knives.

16 **Opposition to objection to “The second sentence of Paragraph 15:”** The  
17 objection is without merit. Mr. Hardy’s statements are foundational and provide the  
18 basis for his expert opinion, based on his knowledge, skill, experience, training, and  
19 education, all of which is permissible under Federal Rule of Evidence 702.

20 **Opposition to objection to the “last sentence of Paragraph 15:”** The  
21 objection is without merit. Mr. Hardy’s statements focus on his expert opinion in  
22 responding to Professor Spitzer’s highly generalized interpretation that any  
23 historical arms restriction on one specific issue justifies outright prohibitions on  
24 arms. After reviewing the historical record provided by Mr. Spitzer, Mr. Hardy’s  
25 disagrees with Spitzer’s unsupported conclusion.  
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27 **Opposition to objection to the “portion of Paragraph 17 that reads: “and**  
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1 not to be considered under *Bruen*. *Bruen*, 142 S. Ct. 2111, 2136-37, 2153-54  
2 (2022):” The objection is without merit. Mr. Hardy’s statements are foundational  
3 and provide the basis for his expert opinion, based on his knowledge, skill,  
4 experience, training, and education, all of which is permissible under Federal Rule  
5 of Evidence 702.

6 **Opposition to objection to portions of Paragraphs 19, 23, and 28:** The  
7 objections are without merit. Mr. Hardy’s statements are foundational and provide  
8 the basis for his expert opinion, based on his knowledge, skill, experience, training,  
9 and education, all of which is permissible under Federal Rule of Evidence 702.

10 **Opposition to objection to “The second sentence of Paragraph 31:”** The  
11 objection is without merit. Mr. Hardy’s statements are foundational and provides the  
12 basis for his expert opinion, based on his knowledge, skill, experience, training, and  
13 education, all of which is permissible under Federal Rule of Evidence 702.  
14 Moreover, Mr. Hardy’s statement, “the time period is also inconsistent with *Bruen*,”  
15 is not a legal conclusion, but a factual statement comparing the time periods  
16 reviewed by the Supreme Court in *Bruen* with the time period presented by  
17 Defendant’s expert.

18 **Opposition to objections to portions of paragraphs 37 and 38:** The  
19 objection is without merit. Mr. Hardy’s statements are foundational and provide the  
20 basis for his expert opinion based on his knowledge, skill, experience, training, and  
21 education, all of which is permissible under Federal Rule of Evidence 702.

22 **Opposition to objection to “Mr. Hardy’s characterization of 1776-1870  
23 as the ‘relevant time period:”** The objection is without merit. Mr. Hardy’s  
24 statements are foundational and provides the basis for his expert opinion based on  
25 his knowledge, skill, experience, training, and education, all of which is permissible  
26 under Federal Rule of Evidence 702.

27 **Opposition to objection to “The portion of Mr. Hardy’s third conclusion  
28**

1 **that begins with ‘and we know’ and ends with ‘switchblades:’**” The objection is  
2 without merit. Mr. Hardy’s statements are foundational and provide the basis for his  
3 expert opinion, based on his knowledge, skill, experience, training, and education,  
4 all of which is permissible under Federal Rule of Evidence 702.

5 **Opposition to objection to “The portion of Mr. Hardy’s fourth conclusion**  
6 **that begins with ‘rendering’ and ends with ‘ratification.’**” The objection is  
7 without merit. Mr. Hardy’s statements are foundational and provide the basis for his  
8 expert opinion, based on his knowledge, skill, experience, training, and education,  
9 all of which is permissible under Federal Rule of Evidence 702.

10

11 April 15, 2024

Respectfully submitted,

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DILLON LAW GROUP, APC

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/s/ John W. Dillon

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John W. Dillon

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