

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
WAYNE SNODGRASS, State Bar #148137  
CHRISTINE VAN AKEN, State Bar #241755  
Deputy City Attorneys  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 234  
San Francisco, California 94102-4682  
Telephone: (415) 554-4633  
Facsimile: (415) 554-4699  
E-Mail: christine.van.aken@sfgov.org

Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO and  
SAN FRANCISCO POLICE DEPARTMENT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS CHURCHILL, PETER LAU,  
THE CALGUNS FOUNDATION, INC., THE  
SECOND AMENDMENT FOUNDATION,  
INC.,

Plaintiffs,

vs.

KAMALA HARRIS – as Attorney General,  
CALIFORNIA DEPARTMENT OF JUSTICE,  
CITY/COUNTY OF SAN FRANCISCO, and  
SAN FRANCISCO POLICE DEPARTMENT,  
CITY OF OAKLAND, OAKLAND POLICE  
DEPARTMENT and Does 1 to 20,

Defendants.

Case No. C12-1740 LB

**DEFENDANTS CITY AND COUNTY OF SAN  
FRANCISCO AND SAN FRANCISCO POLICE  
DEPARTMENT'S ANSWER TO COMPLAINT**

Trial Date: None Set

1 On behalf of themselves and no other person or entity, Defendants City and County of San  
2 Francisco and the San Francisco Police Department ("San Francisco") hereby answer and respond to  
3 the Complaint and Request for Injunctive/Declaratory Relief ("Complaint"), filed by Plaintiffs  
4 Douglas Churchill, Peter Lau, the Calguns Foundation, Inc, and the Second Amendment Foundation,  
5 filed on April 6, 2012, as follows:

6 **PARTIES**

7 1. Responding to Paragraph 1 of the Complaint, San Francisco lacks information  
8 sufficient to admit or deny the allegations and on that basis denies the allegations.

9 2. Responding to Paragraph 2 of the Complaint, San Francisco lacks information  
10 sufficient to admit or deny the allegations and on that basis denies the allegations.

11 3. Responding to Paragraph 3 of the Complaint, San Francisco lacks information  
12 sufficient to admit or deny the allegations and on that basis denies the allegations.

13 4. Responding to Paragraph 4 of the Complaint, San Francisco lacks information  
14 sufficient to admit or deny the allegations and on that basis denies the allegations.

15 5. Responding to Paragraph 5 of the Complaint, San Francisco lacks information  
16 sufficient to admit or deny the allegations and on that basis denies the allegations.

17 6. Responding to Paragraph 6 of the Complaint, San Francisco admits that Kamala Harris  
18 is the Attorney General of the State of California. The remainder of Paragraph 6 of the Complaint  
19 contains legal conclusions to which no response is required.

20 7. Responding to Paragraph 7 of the Complaint, San Francisco admits that the California  
21 Department of Justice is an agency of the State of California. The remainder of Paragraph 7 of the  
22 Complaint contains legal conclusions to which no response is required.

23 8. Responding to Paragraph 8 of the Complaint, San Francisco lacks information  
24 sufficient to admit or deny the allegations and on that basis denies the allegations.

25 9. Responding to Paragraph 9 of the Complaint, San Francisco admits that the City and  
26 County of San Francisco is a unit of local government, a subdivision of the State of California in its  
27 capacity as a county, and a state actor for purposes of liability under 42 U.S.C. § 1983. San Francisco  
28 admits that officers of the City and County of San Francisco are responsible for setting the policies and

1 procedures of the San Francisco Police Department with respect to any and all duties that department  
2 has concerning implementation of sections of the California Penal Code. As to the Complaint's  
3 allegations of duties the San Francisco Police Department has with respect to implementation of  
4 California Penal Code sections 26590 and 33850 to 33895, these are legal conclusions to which no  
5 response is required.

6 10. Responding to Paragraph 10, of the Complaint, San Francisco admits that the San  
7 Francisco Police Department is an agency and an agent of the City and County of San Francisco.

8 11. Responding to Paragraph 11 of the Complaint, these allegations are not made against  
9 San Francisco and San Francisco has no response to them except to admit that the City of Oakland is a  
10 unit of local government within the State of California that, upon San Francisco's information and  
11 belief, has a police department.

12 12. Responding to Paragraph 12 of the Complaint, San Francisco admits upon information  
13 and belief that the Oakland Police Department is an agency and an agent of the City and County of  
14 San Francisco.

15 **JURISDICTION AND VENUE**

16 13. Responding to Paragraph 13 of the Complaint, this paragraph contains only legal  
17 conclusions to which no response is required.

18 14. Responding to Paragraph 14 of the Complaint, this paragraph contains legal  
19 conclusions to which no response is required.

20 15. Responding to Paragraph 15 of the Complaint, this paragraph contains legal  
21 conclusions to which no response is required.

22 16. Responding to Paragraph 16 of the Complaint, San Francisco denies the allegations.

23 **FACTS: CHURCHILL**

24 17. Responding to Paragraph 17 of the Complaint, San Francisco admits the allegations  
25 upon information and belief.

26 18. Responding to Paragraph 18 of the Complaint, San Francisco admits the allegations  
27 upon information and belief.

1           19.     Responding to Paragraph 19 of the Complaint, San Francisco lacks information  
2 sufficient to admit or deny the allegations and on that basis denies the allegations.

3           20.     Responding to Paragraph 20 of the Complaint, including its subparagraphs (a) through  
4 (f) but excluding footnote 1, San Francisco lacks information sufficient to admit or deny the  
5 allegations and on that basis denies the allegations. Responding to footnote 1 to Paragraph 20 of the  
6 Complaint, this footnote contains legal conclusions to which no response is required.

7           21.     Responding to Paragraph 21 of the Complaint: to the extent that this paragraph states  
8 the legal conclusion that the Attorney General's form letter carries the weight of the legal opinion of  
9 the California Attorney General's Office, this is a legal conclusion to which no response is required.  
10 The remainder of this paragraph is vague as to its use of the terms "prove up," "official," and "the  
11 government." Interpreting the paragraph to allege that the San Francisco Police Department has a  
12 policy of requiring gun owners to provide proof of AFS registration of a particular gun to a particular  
13 owner in every instance, San Francisco denies the factual allegations of Paragraph 21.

14           22.     Responding to Paragraph 22 of the Complaint, this paragraph contains a legal  
15 conclusion to which no response is required.

16           23.     Responding to Paragraph 23 of the Complaint, the assertion in this paragraph that the  
17 City and County of San Francisco has an independent duty to interpret California law is a legal  
18 conclusion to which no response is required. Responding to the remaining allegations of this  
19 paragraph, San Francisco denies that Plaintiff Douglas Churchill's rights have been violated and  
20 otherwise denies the allegations for lack of information or belief.

21           24.     Responding to Paragraph 24 of the Complaint, San Francisco admits that Plaintiff  
22 Douglas Churchill seeks through this lawsuit the return of the firearms listed in subparagraphs (a)  
23 through (g) of Paragraph 24 and admits that firearms that appear to match the descriptions in  
24 subparagraphs (a) through (g) of Paragraph 24 were seized from a residence on January 10, 2011 in an  
25 incident for which Plaintiff Douglas Churchill was booked. Except as otherwise admitted here, San  
26 Francisco denies the allegations of Paragraph 24.

**FACTS: LAU**

1  
2 25. Responding to Paragraph 25 of the Complaint, San Francisco lacks information  
3 sufficient to admit or deny the allegations and on that basis denies the allegations.

4 26. Responding to Paragraph 26 of the Complaint, San Francisco lacks information  
5 sufficient to admit or deny the allegations and on that basis denies the allegations.

6 27. Responding to Paragraph 27 of the Complaint, San Francisco lacks information  
7 sufficient to admit or deny the allegations and on that basis denies the allegations.

8 28. Responding to Paragraph 28 of the Complaint, San Francisco lacks information  
9 sufficient to admit or deny the allegations and on that basis denies the allegations.

**FIRST CLAIM – SECOND AMENDMENT**

10  
11 29. Responding to Paragraph 29 of the Complaint, San Francisco incorporates its response  
12 to Paragraphs 1 through 28 of the Complaint as if fully set forth herein.

13 30. Responding to Paragraph 30 of the Complaint, this paragraph contains a legal  
14 conclusion to which no response is required.

15 31. Responding to Paragraph 31 of the Complaint, this paragraph contains a legal  
16 conclusion and/or involves allegations against other Defendants as to which no response is required by  
17 San Francisco.

18 32. Responding to Paragraph 32 of the complaint, San Francisco denies the allegations of  
19 this paragraph.

**SECOND CLAIM – FOURTH AMENDMENT**

20  
21 33. Responding to Paragraph 33 of the Complaint, San Francisco incorporates its response  
22 to Paragraphs 1 through 32 of the Complaint as if fully set forth herein.

23 34. Responding to Paragraph 34 of the Complaint, this paragraph contains a legal  
24 conclusion to which no response is required.

25 35. Responding to Paragraph 35 of the Complaint, San Francisco lacks information  
26 sufficient to admit or deny the allegations and on that basis denies the allegations.

27 36. Responding to Paragraph 36 of the complaint, San Francisco denies the allegations of  
28 this paragraph.

**THIRD CLAIM – FIFTH AMENDMENT**

1  
2 37. Responding to Paragraph 37 of the Complaint, San Francisco incorporates its response  
3 to Paragraphs 1 through 32 of the Complaint as if fully set forth herein.

4 38. Responding to Paragraph 38 of the Complaint, this paragraph contains a legal  
5 conclusion to which no response is required.

6 39. Responding to Paragraph 39 of the Complaint, San Francisco lacks information  
7 sufficient to admit or deny the allegations and on that basis denies the allegations.

8 40. Responding to Paragraph 40 of the complaint, San Francisco denies the allegations of  
9 this paragraph.

**FOURTH CLAIM – FOURTEENTH AMENDMENT**

10  
11 41. Responding to Paragraph 41 of the Complaint, San Francisco incorporates its response  
12 to Paragraphs 1 through 40 of the Complaint as if fully set forth herein.

13 42. Responding to Paragraph 42 of the Complaint, this paragraph contains a legal  
14 conclusion to which no response is required.

15 43. Responding to Paragraph 43 of the Complaint, San Francisco lacks information  
16 sufficient to admit or deny the allegations and on that basis denies the allegations.

17 44. Responding to Paragraph 44 of the complaint, San Francisco denies the allegations of  
18 this paragraph.

**FIFTH CLAIM – STATE LAW: CONVERSION**

19  
20 45. Responding to Paragraph 45 of the Complaint, San Francisco incorporates its response  
21 to Paragraphs 1 through 44 of the Complaint as if fully set forth herein.

22 46. Responding to Paragraph 46 of the Complaint, San Francisco lacks information  
23 sufficient to admit or deny the allegations and on that basis denies the allegations.

24 47. Responding to Paragraph 47 of the complaint, San Francisco denies the allegations of  
25 this paragraph.

**SIXTH CLAIM – STATE LAW: CALIFORNIA PENAL CODE §§ 33850 ET SEQ.**

26  
27 48. Responding to Paragraph 48 of the complaint, San Francisco incorporates its response  
28 to Paragraphs 1 through 47 of the Complaint as if fully set forth herein.

1 49. Responding to Paragraph 49 of the Complaint, this paragraph contains a legal  
2 conclusion to which no response is required.

3 50. Responding to Paragraph 50 of the Complaint, San Francisco lacks information  
4 sufficient to admit or deny the allegations and on that basis denies the allegations.

5 51. Responding to Paragraph 51 of the Complaint, San Francisco lacks information  
6 sufficient to admit or deny the allegations and on that basis denies the allegations and denies that  
7 Plaintiffs are entitled to receive attorneys' fees or costs from San Francisco.

8 **PRAYER FOR RELIEF**

9 San Francisco denies that Plaintiffs have been injured or have suffered any harm or damages,  
10 and further deny that Plaintiffs are entitled to any relief requested in the Complaint, or to any relief in  
11 any amount or of any kind whatsoever.

12 **AFFIRMATIVE DEFENSES**

13 San Francisco asserts the following separate and affirmative defenses, without conceding that it  
14 has the burden of persuasion or the burden of proof as to any affirmative defense set forth herein:

15 1. The Complaint, and each purported cause of action contained therein, fails to state facts  
16 sufficient to constitute a cause of action under applicable law.

17 2. The Complaint fails because it is not ripe for adjudication or because it does not  
18 presently present a case or controversy.

19 3. The Complaint fails because is moot in whole or in part.

20 4. San Francisco did not deprive plaintiffs of any right or privilege guaranteed by the  
21 Constitution or laws of the United States.

22 5. Plaintiffs lack standing to bring each purported cause of action contained in the  
23 Complaint.

24 6. Plaintiffs have failed to exhaust their administrative remedies.

25 7. This Court should abstain from hearing and deciding this action.

26 8. The Court lacks jurisdiction over Plaintiffs' state law claims.

27 ///

28 ///

1 WHEREFORE, San Francisco prays for judgment as follows:

2 1. That Plaintiffs take nothing by the Complaint.

3 2. That the Complaint be dismissed with prejudice and judgment entered in favor of the  
4 San Francisco.

5 3. That San Francisco be awarded its costs, including reasonable attorneys' fees, incurred  
6 in the defense of this action.

7 4. For such other and further relief as the Court may deem just.

8 **DEMAND FOR JURY TRIAL**

9 Defendants demand a jury trial.

10  
11 Dated: July 27, 2012

12 DENNIS J. HERRERA  
13 City Attorney  
14 WAYNE SNODGRASS  
15 CHRISTINE VAN AKEN  
16 Deputy City Attorneys

17 By: s/Christine Van Aken  
18 CHRISTINE VAN AKEN

19 Attorneys for Defendants CITY AND COUNTY OF  
20 SAN FRANCISCO and SAN FRANCISCO POLICE  
21 DEPARTMENT  
22  
23  
24  
25  
26  
27  
28