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15 Attorney for Plaintiffs

16 UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 MARK AARON HAYNIE, BRENDAN
19 RICAHARDS, THE CALGUNS
20 FOUNDATION, INC., and THE
21 SECOND AMENDMENT
22 FOUNDATION, INC.,

23 Plaintiffs,

24 vs.

25 KAMALA HARRIS, Attorney General
26 of California (in her official capacity),
27 CALIFORNIA DEPARTMENT OF
28 JUSTICE, CITY OF ROHNERT
PARK, OFFICER DEAN BECKER
(RP134) and DOES 1 TO 20,

Defendants.

Case No.: 3:10-CV-01255 SI

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Conference Date: November 15, 2013
Conference Time: 3:00 p.m.
Conference Place: Courtroom 10
450 Golden Gate Ave
San Francisco, CA
94102

1. **Jurisdiction & Service** – The parties stipulate that the Court has subject matter jurisdiction over the plaintiffs’ claims and there are no issues regarding personal jurisdiction or venue.

1 2. **Facts** – Mark Haynie was arrested once and Brendan Richards was arrested
2 twice for violations of California Penal Code § 12280(b)¹ [30605] – possession
3 of an unregistered assault weapon. The District Attorney in Haynie’s case
4 declined to file charges and the arresting agency issued a finding of factual
5 innocence. In Brendan Richards’ case, based upon the arresting officers’ belief
6 that he was in possession of firearms that violated Penal Code § 12280(b)
7 [30605], he was arrested and charged. Forensic experts employed by the
8 California Department of Justice, however, reviewed Richards’ weapons and
9 issued opinions that the firearms did not violate California law. Subsequently,
10 the Sonoma County District Attorney’s Office dismissed the criminal charges
11 against Richards in both cases.

12 3. **Legal Issues** –

- 13 a. Is the California Assault Weapon Control Act (and its regulatory)
14 scheme unconstitutionally vague and ambiguous?
- 15 b. Are there actions that the California Department of Justice can take
16 that will clear up any vagueness and/or ambiguity? (I.e., Can the
17 Department issue regulations or provide training material?)
- 18 c. Can this Court issue injunctive and/or declaratory relief to compel the
19 California Department of Justice to take action to mitigate any
20 vagueness and/or ambiguity in California’s Assault Weapon scheme?

21 4. **Motions** – Defendants California Department of Justice and Kamala Harris
22 filed a Motion to Dismiss which this court granted with leave to amend on
23 October 22, 2011. Defendants City of Rohnert Park and Officer Dean Becker
24 filed a Motion to Dismiss on December 23, 2011. The Court granted in part
25 and denied in part, with leave to amend in an order filed on July 30, 2012.
26 Plaintiffs and Defendants anticipate either: (1) a bench trial or (2) filing Cross-

27
28 ¹ California has renumbered its Deadly Weapon Statutes effective January 1, 2012. The old
 numbers are cited and the new numbers are bracketed.

1 Motions for Summary Judgment. Defendant California Department of
2 Justice wants to reserve the right to file another FRCP 12 Motion.

3 5. **Amendment of Pleadings** – Pursuant to an Order of the Court, the
4 Plaintiffs filed an Amended and Consolidated Complaint on September 4, 2012
5 (Doc #65). This is the current operative Complaint. However Plaintiffs
6 Ploghorowitz and Defendants City of Cotati and Officer Andrew Lyssand have
7 been dismissed from this action subsequent to that amendment. Also,
8 pursuant to this Court’s direction at the last Case Management Conference,
9 the Plaintiffs and the City of Rohnert Park Defendants have successfully
10 completed settlement discussions. The final version of settlement agreement
11 is being circulated among the parties and a dismissal with prejudice of the
12 City of Rohnert Park Defendants is anticipated forthwith. By stipulation
13 and/or motion, the Plaintiffs anticipate amending the complaint one last time.

14 6. **Evidence Preservation** – Not applicable in this case.

15 7. **Disclosures** – Plaintiffs served their FRCP 26 Disclosures on all defendants
16 on February 17, 2012 via email. The remaining parties agree to make their
17 FRCP 26 disclosures pursuant to this Court’s orders.

18 8. **Discovery**

19 a. Plaintiffs will take the following discovery.

- 20 i. Document Request.
- 21 ii. Interrogatories.
- 22 iii. Requests for Admission.
- 23 iv. Depositions.

24 b. Defendants will take the following discovery.

- 25 i. Document Request.
- 26 ii. Interrogatories.
- 27 iii. Requests for Admission.
- 28 iv. Depositions.

- 1 9. **Class Action** – Not applicable to this case.
- 2 10. **Related Case** – None. A previously related case: *Plog-Horowitz v. Harris*,
3 Case No. CV-12-0452 SI was filed and dismissed with prejudice.
- 4 11. **Relief** – Plaintiffs seek declaratory and/or prospective injunctive relief and
5 payment of attorney fees and costs.
- 6 12. **Settlement & ADR** – The California Department of Justice defendants and
7 plaintiffs have already participated in a Joint Neutral Evaluation. All of the
8 remaining municipal/county defendants have settled with the Plaintiffs and
9 have been (or will shortly be) dismissed from this action.
- 10 13. **Consent to Magistrate Judge for All Purposes** – The parties have not
11 consented to a magistrate judge.
- 12 14. **Other References** – Not applicable in this case.
- 13 15. **Narrowing the Issues** – Plaintiffs would like to discuss procedures for a
14 bench trial in this matter in conjunction with (or in lieu of) a cross motions for
15 summary judgment.
- 16 16. **Expedited Schedule** – Not applicable in this case.
- 17 17. **Scheduling** – The remaining parties wish to implement the following
18 schedule:
- 19 a. Within 14 calendar days of the Rohnert Park Dismissal, Plaintiffs shall
20 file an amended complaint.
- 21 b. After the amended complaint is filed, Defendant Harris and the
22 California Department of Justice shall file an answer and/or dis-positive
23 motion in accordance with time limits of the Federal Rules of Civil
24 Procedure and Local Rules.
- 25 c. If the Defendants answer or provide notice that they waive their right
26 to file a rule 12 motion, formal discovery shall commence and remain
27 open for 150 days.

28 ////

1 d. The Parties request either: (1) a hearing on cross-motions for summary
2 judgment and/or (2) a bench trial in late June of 2014.

3 18. **Trial** – As noted above, the parties are prepared to discuss a bench trial in
4 conjunction with, or in lieu of, a Rule 56 Motion.

5 19. **Disclosure of Non-Party Interest Entities or Persons** – None known at
6 this time.

7 RESPECTFULLY SUBMITTED.

8 Date: November 8, 2013

Date: November 8, 2013

9 _____ /s/

_____ /s/

10 Ross Moody, Counsel for Defendant

Donald Kilmer, Counsel for Plaintiffs

11 Date: November 8, 2013

12 _____ /s/

13 Robert W. Henkels²
14 County for Defendants
City of Rohnert Park & Becker

15 **ATTESTATION FOR COMPLIANCE WITH GENERAL ORDER 45 AND**
16 **LOCAL RULE VIII.B.**

17 I, Donald Kilmer, declare under penalty of perjury under the laws of California
18 and the United States that I have in my possession e-mail correspondence from Ross
19 Moody and Robert Henkels that the content of this document is acceptable to all
persons required to sign the document. I declare that this document was signed in
San Jose, CA on November 8, 2013.

20 _____ /s/
21 Donald Kilmer of
22 Attorney for for Plaintiffs

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28 ² Counsel for the Rohnert Park Defendants will not be appearing at the CMC as the
dismissal should be filed before November 15, 2013.