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Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

RICHARD ENOS, JEFF  
BASTASINI, LOUIE MERCADO,  
WALTER GROVES, MANUEL  
MONTEIRO, EDWARD ERIKSON  
and VERNON NEWMAN,

Plaintiffs,

vs.

ERIC HOLDER, as United States  
Attorney General, and ROBERT  
MUELLER, III, as Director of the  
Federal Bureau of Investigation,

Defendants.

CASE NO.: 2:10-CV-02911-JAM-EFB

SECOND AMENDED COMPLAINT  
AND REQUEST FOR  
INJUNCTIVE/DECLARATORY  
RELIEF

VIOLATIONS OF THE SECOND  
AMENDMENT OF THE UNITED STATES  
CONSTITUTION

18 U.S.C. § 921 *et seq.*  
18 U.S.C. § 922 *et seq.*  
18 U.S.C. § 925A  
28 U.S.C. § 2412  
42 U.S.C. § 1988

**PARTIES**

1. Plaintiff RICHARD ENOS, is an individual who is a citizen/resident of the State of California. ENOS lives in San Joaquin County.
2. Plaintiff JEFF BASTASINI, is an individual who is a citizen/resident of the State of California.
3. Plaintiff LOUIE MERCADO, is an individual who is a citizen/resident of the State of California.

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1 4. Plaintiff WALTER GROVES, is an individual who is a citizen/resident of the  
2 State of California.

3 5. Plaintiff MANUEL MONTEIRO, is an individual who is a citizen/resident of  
4 the State of California.

5 6. Plaintiff EDWARD ERIKSON, is an individual who is a citizen/resident of the  
6 State of California.

7 7. Plaintiff VERNON NEWMAN, is an individual who is a citizen/resident of the  
8 State of California.

9 8. Defendant ERIC HOLDER is the United States Attorney General and is  
10 charged with interpretation and enforcement of 18 U.S.C. §§ 921 *et seq.* and  
11 922 *et seq.*

12 9. Defendant ROBERT MUELLER, III is the Director of the Federal Bureau of  
13 Investigation and is charged with interpretation and enforcement of 18 U.S.C.  
14 §§ 921 *et seq.* and 922 *et seq.*

15 **JURISDICTION AND VENUE**

16 10. This Court has jurisdiction over the lawsuit because the action arises under  
17 18 U.S.C. §§ 921 *et seq.*, 922 *et seq.* and 925A.

18 11. As this action arises under the United States Constitution this Court also has  
19 jurisdiction pursuant to 28 U.S.C. § 1331.

20 12. As the Plaintiffs are seeking declaratory relief, this Court has jurisdiction over  
21 this action pursuant to 28 U.S.C. §§ 2201 and 2202.

22 13. Venue for this action is properly in this District pursuant to 28 U.S.C. § 1391.

23 14. All conditions precedent, including exhaustion of administrative remedies  
24 where required, have been performed, have occurred, are futile or unnecessary  
25 where the government infringes on a fundamental right.

26 **FACTS**

27 15. The State of California works in conjunction with the Federal Government to  
28 interpret statutes and implementing regulations that restrict the “right to

1 keep and bear arms” of people convicted of Misdemeanor Crimes of Domestic  
2 Violence.

3 16. The Federal Government’s definition of Misdemeanor Crimes of Domestic  
4 Violence is found at 18 U.S.C. § 921(a)(33):

5 (33) (A) Except as provided in subparagraph (C), the term "misdemeanor  
6 crime of domestic violence" means an offense that--

7 (i) is a misdemeanor under Federal or State law; and

8 (ii) has, as an element, the use or attempted use of physical force, or  
9 the threatened use of a deadly weapon, committed by a current or former  
10 spouse, parent, or guardian of the victim, by a person with whom the victim  
11 shares a child in common, by a person who is cohabiting with or has  
12 cohabited with the victim as a spouse, parent, or guardian, or by a person  
13 similarly situated to a spouse, parent, or guardian of the victim.

14 (B) (i) A person shall not be considered to have been convicted of such  
15 an offense for purposes of this chapter [18 USCS § § 921 et seq.], unless--

16 (I) the person was represented by counsel in the case, or knowingly  
17 and intelligently waived the right to counsel in the case; and

18 (II) in the case of a prosecution for an offense described in this  
19 paragraph for which a person was entitled to a jury trial in the jurisdiction in  
20 which the case was tried, either

21 (aa) the case was tried by a jury, or

22 (bb) the person knowingly and intelligently waived the right to have  
23 the case tried by a jury, by guilty plea or otherwise.

24 (ii) A person shall not be considered to have been convicted of such an  
25 offense for purposes of this chapter [18 USCS §§ 921 et seq.] if the  
26 conviction has been expunged or set aside, or is an offense for which the  
27 person has been pardoned or has had civil rights restored (if the law of the  
28 applicable jurisdiction provides for the loss of civil rights under such an  
offense) unless the pardon, expungement, or restoration of civil rights  
expressly provides that the person may not ship, transport, possess, or  
receive firearms.

17. It is a federal criminal offense for any person, including a federally licensed  
firearm dealer, to sell or dispose of any firearm to a person who has been  
convicted of a Misdemeanor Crime of Domestic Violence. 18 U.S.C. § 922(d)(9).

- 1 18. It is federal criminal offense for any person who has been convicted of a  
2 Misdemeanor Crime of Domestic Violence to possess a firearm. 18 U.S.C. §  
3 922(g)(9).
- 4 19. Thus Federal Law imposes a lifetime ban on the “right to keep and bear arms”  
5 for persons convicted of Misdemeanor Crimes of Domestic Violence, subject to  
6 the individual states’ power to restore these fundamental civil rights under  
7 state law.
- 8 20. Federal Law provides a means for felons to have their “right to keep and bear  
9 arms” restored under procedures promulgated and implemented by the  
10 Attorney General. 18 U.S.C. § 925(c).
- 11 21. California Penal Code § 12021(c)(1) sets forth a list of specific crimes that  
12 subject a person convicted of certain misdemeanors to a ten (10) year  
13 prohibition against owning, possessing and purchasing firearms (and  
14 ammunition). This list includes, but is not limited to the following  
15 Misdemeanor Crimes of Domestic Violence:
- 16 a. Battery Against a Spouse/Cohabitant. CA Penal Code § 243(e).  
17 b. Corporal Injury to Spouse/Cohabitant. CA Penal Code § 273.5.
- 18 22. Pursuant to Penal Code § 12021(c)(1), the State of California has clearly and  
19 unequivocally set forth a policy of limiting firearms prohibitions, for persons  
20 convicted of Misdemeanor Crimes of Domestic Violence, to a ten (10) year  
21 period such that by the passage of time the misdemeanants’ “right to keep and  
22 bear arms” is restored, without qualification, by operation of law.
- 23 23. California Penal Code § 12021(c)(3) also provides the means for a person  
24 convicted of a Misdemeanor Crime of Domestic Violence, prior to the date the  
25 state law went into effect, to have a Superior Court Judge restore the  
26 fundamental “right to keep and bear arms” on a case by case basis.
- 27 24. Even though The State of California has a policy of restoring the “right to  
28 keep and bear arms” through a hearing process and by operation of law

(through the passage of time), the Federal Government refuses to recognize California's restoration of rights and rehabilitation policies.

25. Some time during or prior to 2004, the Federal Government informed the State of California that the federal government would not recognize that State's restoration of gun rights procedures and that California was required to deny firearms purchases and possession of firearms and ammunition to all persons convicted of misdemeanor crimes of domestic violence under the supremacy clause of the Constitution and the Federal Government's interpretation of the 18 U.S.C. §§ 921, 922 *et seq.*

26. As a direct consequence of the Federal Government's refusal to recognize California's restoration and rehabilitation policies, Plaintiffs herein (and all other persons similarly situated) continue to be subject to a lifetime prohibition of the "right to keep and bear arms" under Federal Law.

27. This interpretation of the law by the Federal Government results in three (3) wrongful and unconstitutional consequences:

- a. Plaintiffs (and all other persons similarly situated) are subject to federal criminal prosecution if they attempt to exercise their fundamental "right to keep and bear arms" after the State of California has restored their rights.
- b. Plaintiffs (and all other persons similarly situated) cannot lawfully purchase a firearm to exercise their fundamental "right to keep and bear arms" because they cannot pass the background check required by state and federal law.
- c. Plaintiffs, (and all other persons similarly situated) are denied a federal statutory remedy to restore their "right to keep and bear arms" even as convicted felons have a statutory remedy to restore their rights under 18 U.S.C. § 925(c), thus resulting in an irrational scheme of denying fundamental rights to persons convicted of minor crimes.

28. Plaintiff ENOS:

- a. On or about July 15, 1991, Plaintiff RICHARD ENOS plead *nolo contendere* and was convicted of a misdemeanor violation of California Penal Code § 273.5 (a).
- b. In 1993 the California Legislature amended Penal Code § 12021 and added Penal Code § 273.5 to the list of misdemeanors which prohibit a person from acquiring/possessing a firearm for 10 years after the date of conviction.
- c. On September 13, 1994, the Congress passed the Violence Against Women Act, and in 1996 Congress amended the act to impose a lifetime prohibition against the acquisition/possession of firearms by misdemeanants convicted of Domestic Violence. See: 18 U.S.C. §§ 921 and 922 *et seq.*
- d. In March of 1999, Plaintiff RICHARD ENOS, petitioned for a record clearance under Penal Code § 1203.4.
- e. On May 25, 1999, Plaintiff RICHARD ENOS's petition was granted by the Honorable Ray E. Cunningham, Superior Court Judge. Plaintiff's plea of guilty was withdrawn, a plea of not guilty was entered and the court dismissed the case.
- f. On May 12, 2000, Plaintiff RICHARD ENOS filed a PETITION FOR RESTORATION OF CIVIL RIGHTS (FIREARM POSSESSION).
- g. On Jun 16, 2000, the PETITION FOR RESTORATION OF CIVIL RIGHTS (FIREARM POSSESSION) was granted by the Honorable Thang N. Barrett.
- h. In February of 2001, Plaintiff RICHARD ENOS caused a letter to be sent to the California Department of Justice referencing the order by Judge Barrett restoring his rights. At that point in time the State of California had cleared RICHARD ENOS to own/possess firearms.

- 1 i. In August of 2004, Plaintiff RICHARD ENOS was denied a firearm
- 2 purchase and advised by the State of California that the denial was
- 3 being maintained by U.S. Department of Justice, Federal Bureau of
- 4 Investigation, National Instant Criminal Background Check System.
- 5 j. As of August 29, 2011, Plaintiff RICHARD ENOS is permitted to
- 6 acquire and possess firearms under the laws of the State of California.
- 7 k. As of August 29, 2011, Plaintiff RICHARD ENOS is prohibited from
- 8 acquiring and possessing firearms due to threat of criminal prosecution
- 9 under federal law.
- 10 l. But for Defendants' wrongful interpretation of the federal laws
- 11 regulating firearm possession and purchase by domestic violence
- 12 misdemeanants, Plaintiff RICHARD ENOS would acquire, keep and
- 13 bear arms for, among other lawful purposes, self-defense in his home.
- 14 29. Plaintiff BASTASINI:
- 15 a. On or about March 25, 1991, Plaintiff BASTASINI plead *nolo*
- 16 *contendre* in a Santa Clara County Superior Court to two counts of a
- 17 misdemeanor crime of domestic violence under Penal Code §§ 273.5 and
- 18 242. He was not represented by counsel.
- 19 b. In 1993 the California Legislature amended Penal Code § 12021 and
- 20 added Penal Code § 273.5 and 242 to the list of misdemeanors which
- 21 prohibit a person from acquiring/possessing a firearm for 10 years after
- 22 the date of conviction.
- 23 c. On September 13, 1994, the Congress passed the Violence Against
- 24 Women Act, and in 1996 Congress amended the act to impose a lifetime
- 25 prohibition against the acquisition/possession of firearms by
- 26 misdemeanants convicted of Domestic Violence. See: 18 U.S.C. §§ 921
- 27 and 922 *et seq.*
- 28 d. On or about August 21, 2000, Plaintiff BASTASINI, petitioned for a



record clearance under Penal Code § 1203.4.

- e. On or about September 20, 2000, the Superior Court of Santa Clara County granted Plaintiff BASTASINI's petition under Penal Code § 1203.4. Plaintiff's plea was withdrawn, a plea of not guilty was entered and the court dismissed the case.
- f. Subsequent to California's restoration of his right to "keep and bear arms" under the California law, Plaintiff BASTASINI obtained a firearm permit from the California Bureau of Security and Investigative Services.
- g. On or about February 16, 2006, Plaintiff BASTASINI was informed that his Firearm Permit was being revoked under the lifetime prohibition imposed by federal law for his conviction on March 25, 1991.
- h. On July 11, 2011, Plaintiff BASTASINI applied for a firearm purchase at federally licensed firearm dealer. Plaintiff correctly filled out the ATF Form 4473 (5300.9) and truthfully answered "YES" to question 11.i.
- i. On July 18, 2011, Plaintiff BASTASINI was denied a firearm purchase. Upon making an inquiry to the California Department of Justice for the reason for the denial, BASTASINI was informed that federal law prohibited his clearance to purchase the gun and that he should direct his questions to federal authorities.
- j. As of August 29, 2011, Plaintiff BASTASINI is permitted to acquire and possess firearms under the laws of the State of California.
- k. As of August 29, 2011, Plaintiff BASTASINI is prohibited from acquiring and possessing firearms due to threat of criminal prosecution under federal law.
- l. But for Defendants' wrongful interpretation of the federal laws regulating firearm possession and purchase by domestic violence



1           misdemeanants, Plaintiff BASTASINI would acquire, keep and bear  
2           arms for, among other lawful purposes, self-defense in his home.

3   30.   Plaintiff MERCADO:

- 4           a.    Plaintiff LOUIE MERCADO plead no contest (and/or guilty) in  
5                Sacramento Superior Court to a misdemeanor charge of California  
6                Penal Code § 273.5 on December 17, 1990. He was represented by  
7                counsel.
- 8           b.    In 1993 the California Legislature amended Penal Code § 12021 and  
9                added Penal Code § 273.5 and 242 to the list of misdemeanors which  
10              prohibit a person from acquiring/possessing a firearm for 10 years after  
11              the date of conviction.
- 12          c.    On September 13, 1994, the Congress passed the Violence Against  
13                Women Act, and in 1996 Congress amended the act to impose a lifetime  
14                prohibition against the acquisition/possession of firearms by  
15                misdemeanants convicted of Domestic Violence. See: 18 U.S.C. §§ 921  
16                and 922 *et seq.*
- 17          d.    On or about December 18, 2001, Plaintiff MERCADO petitioned the  
18                Court for relief under Penal Code § 1203.4.
- 19          e.    On January 18, 2002, the Superior Court of Sacramento granted  
20                Plaintiff MERCADO's relief under Penal Code § 1203.4. Plaintiff's plea  
21                was withdrawn, a plea of not guilty was entered and the court dismissed  
22                the case.
- 23          f.    Subsequent to California's restoration of his right to "keep and bear  
24                arms" under the California law, Plaintiff MERCADO obtained a  
25                firearm permit from the California Bureau of Security and  
26                Investigative Services.
- 27          g.    On or about May 1, 2006, Plaintiff MERCADO was informed that his  
28                Firearm Permit was being revoked under the lifetime prohibition

imposed by federal law for his conviction on December 17, 1990.

- h. On July 12, 2011, Plaintiff MERCADO applied for a firearm purchase at federally licensed firearm dealer. Plaintiff correctly filled out the ATF Form 4473 (5300.9) and truthfully answered "YES" to question 11.i.
  - i. On July 12, 2011, Plaintiff MERCADO was denied a firearm purchase. Upon making an inquiry to the dealer, Plaintiff was informed that answering "YES" to question 11.i., on ATF form 4473 (5300.9) required the dealer to stop the transaction and deny the purchase.
  - j. As of August 29, 2011, Plaintiff MERCADO is permitted to acquire and possess firearms under the laws of the State of California.
  - k. As of August 29, 2011, Plaintiff MERCADO is prohibited from acquiring and possessing firearms due to threat of criminal prosecution under federal law.
  - l. But for Defendants' wrongful interpretation of the federal laws regulating firearm possession and purchase by domestic violence misdemeanants, Plaintiff MERCADO would acquire, keep and bear arms for, among other lawful purposes, self-defense in his home.
31. Plaintiff GROVES:
- a. Plaintiff WALTER GROVES plead no contest (and/or guilty) in a Monterey County Superior Court to a misdemeanor charge of California Penal Code § 273.5 on January 12, 1990. He was represented by counsel.
  - b. In 1993 the California Legislature amended Penal Code § 12021 and added Penal Code § 273.5 and 242 to the list of misdemeanors which prohibit a person from acquiring/possessing a firearm for 10 years after the date of conviction.
  - c. On September 13, 1994, the Congress passed the Violence Against

Women Act, and in 1996 Congress amended the act to impose a lifetime prohibition against the acquisition/possession of firearms by misdemeanants convicted of Domestic Violence. See: 18 U.S.C. §§ 921 and 922 *et seq.*

- d. On or about January 27, 1999, Plaintiff GROVES petitioned the Court for relief under Penal Code § 1203.4.
- e. On April 22, 1999 the Superior Court of Monterey County granted Plaintiff GROVES' relief under Penal Code § 1203.4. Plaintiff's plea was withdrawn, a plea of not guilty was entered and the court dismissed the case.
- f. On or about September 26, 2005, Plaintiff GROVES was denied a firearm purchase. He was informed that federal law prohibited California from clearing his firearm purchase.
- g. On or about July 18, 2011, Plaintiff GROVES again attempted to purchase a firearm, but the federally licensed firearms dealer refused to complete the application process because he truthfully answered "YES" to question 11.i., of the ATF Form 4473 (5300.9).
- h. As of August 29, 2011, Plaintiff GROVES is permitted to acquire and possess firearms under the laws of the State of California.
- i. As of August 29, 2011, Plaintiff GROVES is prohibited from acquiring and possessing firearms due to threat of criminal prosecution under federal law.
- j. But for Defendants' wrongful interpretation of the federal laws regulating firearm possession and purchase by domestic violence misdemeanants, Plaintiff GROVES would acquire, keep and bear arms for, among other lawful purposes, self-defense in his home.

32. Plaintiff MONTEIRO:

- a. Plaintiff MANUEL MONTEIRO plead no contest (and/or guilty) in

1 Santa Clara County Superior Court to a misdemeanor charge of  
2 California Penal Code § 273.5 on May 27, 1992.

- 3 b. In 1993 the California Legislature amended Penal Code § 12021 and  
4 added Penal Code § 273.5 to the list of misdemeanors which prohibit a  
5 person from acquiring/possessing a firearm for 10 years after the date of  
6 conviction.
- 7 c. On September 13, 1994, Congress passed the Violence Against Women  
8 Act, and in 1996 Congress amended the act to impose a lifetime ban on  
9 the acquisition/possession of firearms by misdemeanants convicted of  
10 Domestic Violence. 18 U.S.C. §§ 921 and 922 *et seq.*
- 11 d. On or about September 1, 1995 Plaintiff MONTEIRO requested relief  
12 under Penal Code § 1203.4.
- 13 e. On October 3, 1995 the Superior Court of Santa Clara County granted  
14 Plaintiff MONTEIRO's relief under Penal Code § 1203.4. Plaintiff's  
15 plea was withdrawn, a plea of not guilty was entered and the court  
16 dismissed the case.
- 17 f. On or about July 14, 2011, Plaintiff MONTEIRO was denied a firearm  
18 purchase. In a letter of explanation from the California Department of  
19 Justice, Plaintiff was informed that the denial was based on the Federal  
20 Brady Act.
- 21 g. As of August 29, 2011, Plaintiff, MONTEIRO is permitted to acquire  
22 and possess firearms under the laws of the State of California.
- 23 h. As of August 29, 2011, Plaintiff MONTEIRO is prohibited from  
24 acquiring and possessing firearms due to threat of criminal prosecution  
25 under federal law.
- 26 i. But for Defendants' wrongful interpretation of the federal laws  
27 regulating firearm possession and purchase by domestic violence  
28 misdemeanants, Plaintiff MONTEIRO would acquire, keep and bear

arms for, among other lawful purposes, self-defense in his home.

33. Plaintiff EDWARD ERIKSON:

- a. On June 3, 1996, Plaintiff ERICKSON plead no contest and/or guilty in a Santa Clara County Superior Court to a misdemeanor charge of Penal Code § 273.5.
- b. On October 25, 2006, ERICKSON was granted a petition under Penal Code § 1203.4. His plea was withdrawn, a plea of not guilty was entered and the court dismissed the case.
- c. On or about July 19, 2011, ERICKSON was denied a firearm purchase when the dealer refused to process his application for a transfer due to his truthful answer of "YES" to question 11.i., on the ATF Form 4473 (5300.9)
- d. As of August 29, 2011, Plaintiff ERICKSON is permitted to acquire and possess firearms under the laws of the State of California.
- e. As of August 29, 2011, Plaintiff ERICKSON is prohibited from acquiring and possessing firearms due to threat of criminal prosecution under federal law.
- f. But for Defendants' wrongful interpretation of the federal laws regulating firearm possession and purchase by domestic violence misdemeanants, Plaintiff ERICKSON would acquire, keep and bear arms for, among other lawful purposes, self-defense in his home.

34. Plaintiff VERNON NEWMAN:

- a. On September 17, 1998, NEWMAN plead guilty and/or no contest in a Santa Clara Superior Court to a misdemeanor charge of Penal Code § 243(e).
- b. On July 17, 2008, the Superior Court granted NEWMAN's petition under Penal Code § 1203.4. His plea was withdrawn, a plea of not guilty was entered and the court dismissed the case.

- 1 c. On or about August 1, 2011 NEWMAN was denied a firearm purchase  
2 by the California Department of Justice after truthfully answering  
3 “YES” to question 11.i., on ATF Form 4473 (5300.9).
- 4 d. As of August 29, 2011, Plaintiff NEWMAN is permitted to acquire and  
5 possess firearms under the laws of the State of California.
- 6 e. As of August 29, 2011, Plaintiff NEWMAN is prohibited from acquiring  
7 and possessing firearms due to a threat of criminal prosecution under  
8 federal law.
- 9 f. But for Defendants’ wrongful interpretation of the federal laws  
10 regulating firearm possession and purchase by domestic violence  
11 misdemeanants, Plaintiff NEWMAN would acquire, keep and bear  
12 arms for, among other lawful purposes, self-defense in their homes.

13  
14 **FIRST CLAIM - Declaratory Relief**

15 35. Paragraphs 1 through 34 are incorporated by reference as if fully set forth  
16 herein.

17 36. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiff RICHARD ENOS has not been  
18 convicted of a crime of domestic violence under any one of three possible  
19 theories:

- 20 a. RICHARD ENOS was not apprized of the possibility of losing his  
21 firearm rights when he plead no contest to a misdemeanor crime of  
22 Domestic Violence back in 1991, as there was no federal or state law  
23 prohibiting Domestic Violence misdemeanants from  
24 acquiring/possessing firearms upon conviction. Therefore he could not  
25 make a knowing/intelligent waiver of his right to a trial.
- 26 b. RICHARD ENOS applied for and was granted a restoration of his  
27 rights under California Penal Code § 12021(c)(3) by a Superior Court  
28 Judge in Santa Clara County California.

1 c. And finally, the State of California restores the right to possess firearms  
2 for Domestic Violence misdemeanants 10 years after conviction, by  
3 operation of law.

4 37. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive  
5 Plaintiff RICHARD ENOS of the “right to keep and bear arms” he would  
6 otherwise enjoy if the Defendants correctly applied the law.

7  
8 **SECOND CLAIM – Declaratory Relief**

9 38. Paragraphs 1 through 34 are incorporated by reference as if fully set forth  
10 herein.

11 39. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiffs JEFF BASTASINI, LOUIE  
12 MERCADO, WALTER GROVES and MANUEL MONTEIRO have not been  
13 convicted of a crime of domestic violence under any one of two possible  
14 theories:

15 a. JEFF BASTASINI, LOUIE MERCADO, WALTER GROVES and  
16 MANUEL MONTEIRO were not apprized of the possibility of losing  
17 their firearm rights when they plead no contest to a misdemeanor crime  
18 of Domestic Violence as there was no federal or state law prohibiting  
19 Domestic Violence misdemeanants from acquiring/possessing firearms  
20 upon conviction. Therefore they could not make a knowing/intelligent  
21 waiver of their right to a trial.

22 b. And, the State of California restores the right to possess firearms for  
23 Domestic Violence misdemeanants 10 years after conviction, by  
24 operation of law.

25 40. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive  
26 Plaintiffs JEFF BASTASINI, LOUIE MERCADO, WALTER GROVES and  
27 MANUEL MONTEIRO of the “right to keep and bear arms” they would  
28 otherwise enjoy if the Defendants correctly applied the law.



**THIRD CLAIM – Declaratory Relief**

41. Paragraphs 1 through 34 are incorporated by reference as if fully set forth herein.

42. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiffs EDWARD ERIKSON and VERNON NEWMAN have not been convicted of a crime of domestic violence because California restores the right to possess firearms for Domestic Violence misdemeanants 10 years after conviction, by operation of law.

43. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive Plaintiffs EDWARD ERIKSON and VERNON NEWMAN of the “right to keep and bear arms” they would otherwise enjoy if the Defendants correctly applied the law.

**FOURTH CLAIM – Second Amendment**

44. Paragraphs 1 through 43 are incorporated by reference as if fully set forth herein.

45. The Second Amendment to the United States Constitution provides in part that: *“the right of the people to keep and bear Arms shall not be infringed.”*

46. On its face, 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the Plaintiffs’ Second Amendment rights because it imposes a lifetime ban on the exercise of a fundamental constitutional “right to keep and bear arms” after conviction of a minor crime.

47. As applied to the facts of this case, the Defendants’ interpretations of 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the Plaintiffs’ Second Amendment rights because it imposes a lifetime ban on the exercise of a fundamental constitutional “right to keep and bear arms” after conviction of a minor crime.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs prays that this Court will enter judgment as follows:

- A. Declaratory and injunctive relief that all Plaintiffs are not subject to the prohibitions set forth in 18 U.S.C. §§ 922(d)(9) and 922(g)(9).
- B. Declaratory and injunctive relief that 18 U.S.C. §§ 922(d)(9) and 922(g)(9) are unconstitutional on their face and as applied to all Plaintiffs.
- C. Award Plaintiffs their reasonable attorney fees and costs under 28 U.S.C. § 2412, 42 U.S.C. § 1988 and/or 18 U.S.C. § 925A.
- D. Such other and further relief as this Court deems just and proper.

Respectfully Submitted on August 29, 2011,

/s/

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