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

**IVAN PEÑA, ROY VARGAS, DOÑA  
CROSTON, BRETT THOMAS, SECOND  
AMENDMENT FOUNDATION, INC. and  
THE CALGUNS FOUNDATION, INC.,**

Plaintiffs,

**v.**

**STEPHEN LINDLEY,<sup>1</sup>**

Defendant.

Case No. 2:09-CV-01185-KJM-CMK

**ANSWER TO AMENDED COMPLAINT**

Dept: No. 3 – 15th Floor  
Judge Honorable Kimberly J. Mueller  
Trial Date: None  
Action Filed: April 30, 2009

<sup>1</sup> Stephen Lindley, in his official capacity as Chief of the California Department of Justice Bureau of Firearms, has been substituted for defendant Wilfredo Cid. (Minute Order filed Sept. 6, 2012.)

1 Defendant Stephen Lindley (“Lindley”) answers plaintiffs Ivan Peña, Roy Vargas, Doña  
2 Croston, Brett Thomas, Second Amendment Foundation, Inc., and The Calguns Foundation,  
3 Inc.’s amended complaint as follows:

4 **ANSWER TO PLAINTIFFS’ DESCRIPTION OF THE PARTIES**

5 1. Answering paragraphs 1 through 6 of the amended complaint, Lindley lacks sufficient  
6 information or knowledge to form a belief about the truth of each and every allegation of these  
7 paragraphs and denies them on that basis.

8 2. Answering paragraph 7 of the amended complaint, Lindley denies those allegations.  
9 Lindley alleges that he is the current Chief of the California Department of Justice Bureau of  
10 Firearms.

11 **ANSWER TO ALLEGATIONS REGARDING JURISDICTION AND VENUE**

12 3. Answering paragraph 8 of the amended complaint, Lindley avers the allegations are  
13 conclusions of law to which no response is required. To the extent that a response is required,  
14 Lindley denies each and every allegation.

15 4. Answering paragraph 9 of the amended complaint, Lindley admits these allegations.

16 **ANSWER TO PLAINTIFFS’ STATEMENT OF FACTS**

17 5. To the extent the unnumbered italicized headings contained throughout plaintiffs’  
18 statement of facts constitute material allegations of fact, Lindley denies the allegations.

19 6. Answering paragraphs 10 through 36 of the amended complaint, Lindley states that the  
20 matters asserted in those paragraphs constitute plaintiffs’ arguments regarding the law,  
21 particularly the Second Amendment to the United States Constitution, California Penal Code, and  
22 California Code of Regulations, as opposed to allegations of fact. Because the Second  
23 Amendment, state Penal Code, state regulations, and the legal authorities addressing those  
24 provisions speak for themselves, no response to the legal and policy arguments in paragraphs 10  
25 through 36 is required. To the extent those paragraphs contain any material allegations of fact,  
26 Lindley denies the allegations.  
27  
28

1           7. Answering paragraphs 37 and 38 of the amended complaint, Lindley admits that the  
2 Para USA (Para Ordnance) P1345SR / Stainless Steel .45 ACP 4.25” is not currently listed on the  
3 Roster of Handguns Certified for Sale. As to the remaining allegations of paragraphs 37 and 38,  
4 Lindley lacks sufficient information or knowledge to form a belief about the truth of each and  
5 every allegation and denies them on that basis.

6           8. Answering paragraphs 39 through 44 of the amended complaint, Lindley admits that the  
7 Glock 21 SF with an ambidextrous magazine release is not currently listed on the Roster of  
8 Handguns Certified for Sale whereas the Glock 21 SF-STD is listed. As to the remaining  
9 allegations of paragraphs 39 through 44, Lindley lacks sufficient information or knowledge to  
10 form a belief about the truth of each and every allegation of these paragraphs and denies them on  
11 that basis.

12           9. Answering paragraphs 45 through 49 of the amended complaint, Lindley admits that the  
13 Springfield Armory XD-45 Tactical 5” B-Tone stainless steel/black handgun in .45 ACP, model  
14 number XD9623, is not currently listed on the Roster of Handguns Certified for Sale. As to the  
15 remaining allegations of paragraphs 45 through 49, Lindley lacks sufficient information or  
16 knowledge to form a belief about the truth of each and every allegation of these paragraphs and  
17 denies them on that basis.

18           10. Answering paragraphs 50 through 51 of the amended complaint, Lindley admits that a  
19 “High Standard Buntline style revolver” is not currently listed on the Roster of Handguns  
20 Certified for Sale. As to the remaining allegations of paragraphs 50 through 51, Lindley lacks  
21 sufficient information or knowledge to form a belief about the truth of each and every allegation  
22 of these paragraphs and denies them on that basis.

23                           **ANSWER TO FIRST CLAIM FOR RELIEF**

24           11. Answering paragraph 52 of the amended complaint, Lindley incorporates by reference  
25 his responses to paragraphs 1 through 51 of the amended complaint to the same extent plaintiffs  
26 have incorporated the allegations of those paragraphs into the First Claim For Relief.

1           12. Answering paragraphs 53 through 57 of the amended complaint, Lindley states that the  
2 matters asserted in those paragraphs constitute plaintiffs' arguments regarding the law,  
3 particularly the Second Amendment to the United States Constitution, California Penal Code, and  
4 California Code of Regulations, as opposed to allegations of fact. Because the Second  
5 Amendment, state Penal Code, state regulations, and the legal authorities addressing those  
6 provisions speak for themselves, no response to the legal and policy arguments in paragraphs 53  
7 through 57 is required. To the extent those paragraphs contain any material allegations of fact,  
8 Lindley denies the allegations.

9                                   **ANSWER TO SECOND CLAIM FOR RELIEF**

10           13. Answering paragraph 58 of the amended complaint, Lindley incorporates by reference  
11 his responses to paragraphs 1 through 57 of the amended complaint to the same extent plaintiffs  
12 have incorporated the allegations of those paragraphs into the First Claim For Relief.

13           14. Answering paragraph 59 of the amended complaint, Lindley states that the matters  
14 asserted in the paragraph constitutes plaintiffs' arguments regarding the law, particularly the  
15 Second Amendment to the United States Constitution, California Penal Code, and California  
16 Code of Regulations, as opposed to allegations of fact. Because the Second Amendment, state  
17 Penal Code, state regulations, and the legal authorities addressing those provisions speak for  
18 themselves, no response to the legal and policy arguments in paragraph 59 is required. To the  
19 extent those paragraphs contain any material allegations of fact, Lindley denies the allegations.

20                                   **FIRST AFFIRMATIVE DEFENSE**

21                                   (No Ripe Controversy)

22           The complaint fails to present a case or controversy that is ripe for this Court's  
23 consideration.

24           ///

25           ///

26           ///

**SECOND AFFIRMATIVE DEFENSE**

(Lack of Standing)

All of the plaintiffs lack standing to bring this action because there is no injury or credible threat of injury. Second Amendment Foundation, Inc., and The Calguns Foundation, Inc. also lack associational standing.

**THIRD AFFIRMATIVE DEFENSE**

(Eleventh Amendment Immunity)

Plaintiffs' claims are barred by the Eleventh Amendment.

**PRAYER FOR RELIEF**

Lindley prays for judgment as follows:

1. That plaintiffs take nothing by way of their complaint;
2. That the Court enter judgment in favor of Lindley on all claims and causes of action alleged in the complaint;
3. For costs incurred in the defense of this action; and
4. For such other and further relief as the Court may deem proper.

Dated: March 26, 2012

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
PETER K. SOUTHWORTH  
Supervising Deputy Attorney General

/s/ ANTHONY R. HAKL

ANTHONY R. HAKL  
Deputy Attorney General  
*Attorneys for Defendant Stephen Lindley*

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## CERTIFICATE OF SERVICE

Case Name: Ivan Pena, et al. v. Wilfredo Cid No. 2:09-CV-01185-KJM-CKD

I hereby certify that on March 26, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**ANSWER TO AMENDED COMPLAINT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 26, 2013, at Sacramento, California.

Brenda Apodaca

Declarant

/s/ Brenda Apodaca

Signature