

No. 13-56454

In the United States Court of Appeals
for the Ninth Circuit

EUGENE EVAN BAKER,

Plaintiff-Appellant,

v.

LORETTA E. LYNCH, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
(CV 10-3996-SVW (AJWx))

**APPELLANT'S EXCERPTS OF RECORD
VOLUME II OF II**

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Pursuant to Federal Rules of Appellate Procedure for the Ninth Circuit, rule 30-1, Plaintiff-Appellant Eugene Baker, by and through his attorney of record, hereby confirms to the contents and form of Appellant's Excerpts of Record.

Date: February 16, 2016

MICHEL & ASSOCIATES, P.C.

s/ C. D. Michel

C. D. Michel

*Counsel for Plaintiff-Appellant
Eugene Baker*

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8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 EUGENE EVAN BAKER,

11 Plaintiff,

12 vs.

13 ERIC H. HOLDER, JR., in his official
capacity as ATTORNEY GENERAL
14 OF THE UNITED STATES;
KAMALA D. HARRIS, in her
15 capacity as ATTORNEY GENERAL
FOR THE STATE OF
16 CALIFORNIA; THE STATE OF
CALIFORNIA DEPARTMENT OF
17 JUSTICE; and DOES 1 through 100,
Inclusive,

18
19 Defendants.
20
21
22
23
24
25
26
27
28

CASE NO. CV 10-3996-SVW(AJWx)
PLAINTIFF'S NOTICE OF APPEAL
AND REPRESENTATION
STATEMENT

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Eugene Evan Baker, plaintiff in the above-named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from an order granting Defendant Eric. H. Holder, Jr.'s Motion to Dismiss, which order was entered in this action on the 31st day of July, 2013 (Docket No. 48), attached as Exhibit A.

Plaintiff's Representation Statement is attached to this Notice as required by Ninth Circuit Rule 3-2(b).

Dated: August 20, 2013

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel
C. D. Michel
Attorneys for Plaintiff
Eugene Evan Baker

REPRESENTATION STATEMENT

The undersigned represents Plaintiff Eugene Evan Baker and no other party. Pursuant to Rule 12(b) of the Federal Rules of Appellate Procedure and Circuit Rule 3-2(b), Plaintiff submits this Representation Statement. The following list identifies all parties to the action, and it identifies their respective counsel by name, firm, address, telephone number, and e-mail, where appropriate.

PARTIES	COUNSEL OF RECORD
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Dated: August 20, 2013

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel
C. D. Michel
Attorneys for Plaintiff
Eugene Evan Baker

EXHIBIT “A”

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:10-cv-3996-SVW-AJW	Date	July 31, 2013
Title	Eugene Evan Baker v. Eric H. Holder, Jr., et al.		

JS-6

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE		
Paul M. Cruz	N/A		
Deputy Clerk	Court Reporter / Recorder		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
N/A		N/A	
Proceedings:	IN CHAMBERS ORDER Re MOTION TO DISMISS [36]		

I. INTRODUCTION AND FACTUAL BACKGROUND

On September 29, 1997, Plaintiff pled *nolo contendere* to, and was convicted of, a single count of violating California Penal Code Section 273.5(a), Willful Infliction of Corporal Injury on Current or Former Spouse or Cohabitant.¹ FAC ¶ 14. Plaintiff was sentenced to a three-year probationary sentence with certain terms and conditions, including a condition that barred him from possessing, owning, or accessing a firearm or dangerous weapon for a period of ten years. *Id.*

In addition to the state-law bar on Plaintiff's ability to purchase a gun, Plaintiff's Section 273.5(a) conviction barred him from possessing or receiving a gun under federal law. Specifically, 18 U.S.C. § 922(g)(9) makes it unlawful

¹ Section 273.5(a) makes it a felony to "willfully inflict[] upon a person who is his or her spouse, former spouse, cohabitant, former cohabitation, or the mother or father of his or her child, corporal injury resulting in traumatic condition," and is punishable by "imprisonmen in the state prions for two, three of four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both that fine and imprisonment." Cal. Penal Code § 273.5(a).

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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for any person . . . who has been convicted in any court of a misdemeanor crime of domestic violence to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(g)(9). Under the statute, a person who has been convicted of California Penal Code Section 273.5(a) is been convicted of a “misdemeanor crime of domestic violence.” See 18 U.S.C. § 921 (a)(33)(A) (“[T]he term ‘misdemeanor crime of domestic violence’ means an offense that is a misdemeanor under Federal, State, or Tribal law; and has an element, the use or attempted use of physical force . . . committed against a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.”); see also Enos v. Holder, 855 F. Supp. 2d 1088, 1091 (E.D. Cal. 2012) (holding that a violation of Section 273.5(a) falls under the definition of misdemeanor crime of domestic violence).

Plaintiff completed his probation in 2002; at that time, he submitted an application to withdraw his plea and have the conviction set aside pursuant to California Penal Code § 1203.4.² On June 19, 2002, the Ventura County Superior Court granted his motion; however, the ten-year bar on owning a firearm remained in effect until October of 2007. FAC ¶¶ 15-16. Plaintiff has no criminal history other than his Section 273.5(a) conviction. FAC ¶ 16.

In May of 2009, Plaintiff attempted to purchase a firearm at Ojai Valley Surplus. FAC ¶17. Ojai Valley Surplus contacted the State of California’s Department of Justice (Cal. DOJ) regarding Plaintiff’s request; in response, Cal. DOJ sent a letter to Ojai Valley Surplus stating that Plaintiff is not a person eligible to possess a firearm,” and ordered Ojai Valley Surplus that it was not to “release” the firearm to Plaintiff. Id.

Plaintiff then contacted Cal. DOJ directly, asking for an explanation as to why it had prevented Ojai Valley Surplus from selling him a firearm. FAC ¶18. In response, Cal. DOJ sent Plaintiff a letter explaining that it had “identified a record in a state or federal database which indicates that you are

² Section 1203.4 permits a court to allow a defendant to withdraw a plea of *nolo contendere* after he or she has fulfilled the conditions of probation for the entire period of probation; upon doing so, the defendant is “released from all penalties and disabilities resulting from the offense of which he or she has been convicted,” with certain listed exceptions. Cal. Penal Code § 1203.4(a).

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prohibited by state and/or federal law from purchasing or possessing firearms,” namely, Section 922(g)(9). Id.

In his FAC, Plaintiff asserts two causes of action against both the Cal. DOJ and the federal Department of Justice: first, that Section 922(g)(9), as-applied to him,³ violates his Second Amendment rights under the Supreme Court’s decision in District of Columbia v. Heller, 554, U.S. 570 (2008). Second, Plaintiff alleges that Defendants denial of his request to own a gun violates the Equal Protection Clause of the Fifth Amendment.⁴

II. LEGAL STANDARD⁵

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the claims stated in the complaint. See Fed. R. Civ. Proc. 12(b)(6). To survive a motion to dismiss, the plaintiff’s complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its

³ In his opposition to Defendants’ motion to dismiss, Plaintiff clarified that he was *only* alleging an as-applied, and not facial, challenge to Section 922(g)(9).

⁴ In his original complaint, Plaintiff asserted that he was entitled to possess a gun pursuant to 18 U.S.C. § 921(a)(33)(B)(ii), which provides that a person is *not* considered to have been convicted of an offense of domestic violence for purposes of Section 922(g)(9) if the operative conviction has been “expunged or set aside.” Plaintiff argued that the Ventura County Superior Court’s ruling that his conviction was to be set aside pursuant to California Penal Code § 1203.4 meant that his conviction was “expunged” within the meaning of the federal statute; however, as this Court ruled, and the Ninth Circuit affirmed, this argument is foreclosed by the Ninth Circuit’s decision in Jennings v. Mukasey, 511 F.3d 894, 899 (9th Cir. 2007) (“[A]lthough Jennings obtained relief under section 1203.4 by the 1999 State court order, that relief did not expunge his conviction for purposes of 18 U.S.C. § 922(g)(9).”). The Ninth Circuit specifically remanded this case to this Court to address Plaintiff’s Second Amendment argument; upon remand, Plaintiff filed his FAC in which he alleges both Second Amendment and Equal Protection claims.

⁵ At this Court’s October 15, 2012 status conference, this Court ordered the parties to file simultaneous opening briefs and simultaneous responding briefs. The Court construes Defendants’ opening brief as a motion to dismiss. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988) (“Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”).

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face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. A complaint that offers mere “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” Id.; see also Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009) (citing Iqbal, 129 S. Ct. at 1951).

In reviewing a Rule 12(b)(6) motion, the Court must accept all allegations of material fact as true and construe the allegations in the light most favorable to the nonmoving party. Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002). Accordingly, while a court is not required to accept a pleader's legal conclusions as true, the court must “draw all reasonable inferences in favor of the plaintiff, accepting the complaint's [factual] allegations as true.” Knievel v. ESPN, 393 F.3d 1068, 1080 (9th Cir. 2005).

The court may grant a plaintiff leave to amend a deficient claim “when justice so requires.” Fed. R. Civ. P. 15(a)(2). “Five factors are frequently used to assess the propriety of a motion for leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment; and (5) whether plaintiff has previously amended his Complaint.” Allen v. City of Beverly Hills, 911 F.2d 367, 373 (9th Cir. 1990) (citing Ascon Properties, Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989)).

Where a motion to dismiss is granted, “leave to amend should be granted ‘unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.’” DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992) (quoting Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)). In other words, where leave to amend would be futile, the Court may deny leave to amend. See Desoto, 957 F.2d at 658; Schreiber, 806 F.2d at 1401.

III. THE SECOND AMENDMENT

A. Legal Standard

The Second Amendment to the United States Constitution provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II. In Heller, “the Supreme Court struck down the District of

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Columbia's ban on handgun possession[.]” United States v. Henry, 688 F.3d 637, 639-40 (9th Cir. 2012). After conducting a thorough analysis of the Second Amendment’s history, “the Court held ‘that the Second Amendment conferred an individual right to keep and bear arms.’” United States v. Vongxay, 594 F.3d 1111, 1115 (9th Cir. 2010) (quoting Heller, 128 S.Ct. at 2799). Without articulating a level of scrutiny,⁶ the Supreme Court found the two statutes at issue “fail[ed] to pass constitutional muster.” Heller, 554 U.S. at 629-630.

However, the Supreme Court noted that the Second Amendment

“leaves the District of Columbia a variety of tools for combating [the problem of handgun violence in this country], *including some measures regulating handguns*. But the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the *absolute prohibition of handguns held and used for self-defense in the home*.”

Vongxay, 594 F.3d at 1115 (quoting Heller, 554 U.S. at 636). The Court expanded upon the “policy choices” that the Second Amendment left on the table, noting that

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, *nothing in our opinion should be taken to cast doubt on the longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms*.

⁶ The Court noted only “[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights,” the statutes at issue failed to pass constitutional muster. Heller 554 U.S. at 628-629. In a footnote, the Court suggested that rational basis would *not* be the appropriate standard. Id. at 628 n. 27 (“Obviously, the [rational basis] test could not be used to evaluate the extent to which a legislature may regulate a specific, enumerated right, be it the freedom of speech, the guarantee against double jeopardy, the right to counsel, or the right to keep and bear arms.”).

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Vongxay, 594 F.3d at 1115 (quoting Heller, 554 U.S. at 626-27). This list of “presumptively lawful regulatory measures” served only as examples; it “[did] not purport to be exhaustive.” Heller, 554 U.S. at 627 n. 26.

Since Heller, courts have addressed Second Amendment challenges to federal laws in two ways. Both begin by assessing whether or not the law at issue is “presumptively lawful.” For some courts, this question is the beginning and end of the constitutional inquiry: if the statute is “presumptively lawful,” it cannot be struck down under the Second Amendment. *See, e.g. Vongxay*, 594 F.3d at 1115, 1116 (finding a federal statute making it unlawful for any person convicted of a felony to possess, transport, or receive “any firearm or ammunition” presumptively constitutional under Heller, and upholding the constitutionality of the statute on that basis alone); United States v. White, 593 F.3d 1199, 1206 (11th Cir. 2010) (concluding that Section 922(g)(9) was “presumptively lawful” under Heller, and upholding a conviction for violating that provision without engaging in further scrutiny). Other courts, however, have applied a second step. After finding that the law at issue fell within the “presumptively constitutional” category, these courts have applied an additional layer of scrutiny. As the Seventh Circuit explained, applying such scrutiny is required by

Heller itself. Heller referred to felon disarmament bans only as ‘presumptively lawful,’ which, by implication, means that there must exist the possibility that the ban could be unconstitutional in the face of an as-applied challenge. Therefore, putting the government through its paces in proving the constitutionality of [the statute at issue] is only proper.

United States v. Williams, 616 F.3d 685, 692 (7th Cir. 2010). Those courts that have found that Heller requires a second step have applied “what some courts have called intermediate scrutiny.” *Id.* “To pass constitutional muster under intermediate scrutiny, the government has the burden of demonstrating that its objective is an important one and that its objective is advanced by means substantially related to that objective.” *Id.*

B. Analysis

Turning to the statute at issue here—Section 922(g)(9)—this Court need not decide which of these two methodologies is correct: using *either* methodology, Plaintiff’s claim must be dismissed. *Every* single court that has ruled upon the constitutionality of Section 922(g)(9) has upheld it against Second Amendment challenges. The Tenth and Eleventh Circuits have found that the statute “presumptively constitutional,” and rejected arguments that the statute should be found constitutional without further analysis. *See White*, 593 F.3d at 1206; In re U.S., 578 F.3d 1195, 1200 (10th Cir. 2009). Similarly, the only California district court to rule on Section 922(9)’s constitutionality upheld the

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statute as presumptively constitutional without engaging in further analysis. See Enos v. Holder, 855 F. Supp. 2d 1088, 1099 (E.D. Cal. 2012).

The other three Court of Appeals which have ruled upon the constitutionality of Section 922(g)(9)—the First, Fourth, and Seventh circuits—have all upheld the statute, concluding that the law is “presumptively constitutional” and survives intermediate scrutiny. See United States v. Staten, 666 F.3d 154, 168 (4th Cir. 2011) (“§ 922(g)(9) satisfies the intermediate scrutiny standard.”); United States v. Booker, 644 F.3d 12, 26 (1st Cir. 2011) (“[I]t is plain that § 922(g)(9) substantially promotes an important government interest in preventing domestic gun violence.”); United States v. Skoien, 614 F.3d 638, 642 (7th Cir. 2010) (“[N]o one doubts that the goal of § 922(g)(9), preventing armed mayhem, is an important governmental objective. Both logic and data establish a substantial relation between § 922(g)(9) and this objective.”).

Plaintiff attempts to evade these precedents by arguing that he is different from the typical Section 922(g)(9) offender. According to Plaintiff, he has committed no crimes other than the 1997 charge of domestic violence (either before or since), and has maintained a “peaceful and amicable relationship” with the victim of that incident. In short, Plaintiff avers that the Second Amendment requires that Section 922(g)(9) be ruled unconstitutional as applied to him because of his law-abiding record.

However, every court to consider a similar argument has rejected it. See In re U.S., 578 F.3d at 1200 (“We have already rejected the notion that Heller mandates an individualized inquiry concerning felons pursuant to § 922(g)(1). Furthermore, we have rejected, albeit in a slightly different context, the idea that § 922(g)(9) allows for individual assessments of the risk of violence.”) (internal citations and quotation marks omitted); Booker, 644 F.3d at 25 (holding that Section 992(g)(9) survived a Second Amendment challenge where the challenger’s act of domestic violence occurred ten years before his possession of a gun, and the record contained no other incidents of illegal behavior); see also Enos, 855 F. Supp. 2d at 1099 (holding that Section 922(9)(g) withstood constitutional scrutiny as-applied to seven plaintiffs, each of whom had been convicted of a misdemeanor crime more than ten years before their attempts to purchase a gun); United States v. Smith, 742 F. Supp. 2d 855, 869 (S.D.W. Va. 2010) (upholding Section 922(g)(9) against an as-applied challenge where the defendant’s domestic violence conviction occurred seven years before he was found in possession of a gun, and upholding the statute as constitutional “[e]ven assuming Defendant is permanently banned from future firearm possession”).⁷ As

⁷ In Skoien, the Seventh Circuit left open the possibility that a domestic violence misdemeanant “who has been law abiding for an extended period of time must be allowed to carry guns again[.]”

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the Tenth Circuit concluded, “a defendant whose background includes domestic violence which advances to a criminal conviction has a demonstrated propensity for the use of physical violence against others.” In re United States, 578 F.3d at 1200. Accordingly, Plaintiff’s Second Amendment claim must be dismissed.

IV. EQUAL PROTECTION

Plaintiff further argues that Section 922(g)(9) violates his equal protection right under the Due Process clause of the Fifth Amendment by classifying him into a “class of firearms purchasers who have previously been convicted of a [misdemeanor crime of domestic violence] but have fulfilled the terms of their probation or have otherwise not been convicted of a crime for a period of ten years following their [conviction].” FAC ¶ 37.

The Ninth Circuit recently rejected a similar argument in Vongxay, 594 F.3d at 1118. There, a convicted felon argued that Section 922(g)(1)—which makes it unlawful for any person who has been “convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year”—should be subject to strict scrutiny because the “right to bear arms is a fundamental right.” Id. While acknowledging that an equal protection claim can arise where a statute “unequal[ly] burden[ed] a fundamental right,” the Ninth Circuit concluded that the Supreme Court “purposefully differentiated the right to bear arms generally from the more limited right held by felons.” Id. As such, “whatever standard of review the Court implicitly applied to Heller’s right to keep arms in his home is inapplicable to Vongxay, a felon who was explicitly excluded from Heller’s holding.” Id. Accordingly, because the felon in Vongxay was not protected by Heller’s holding, the Ninth Circuit was “bound by pre-Heller case law involving equal protection challenges to § 922(g)[1],” which had upheld the statute against equal protection challenges. Id. at 1118-1119 (citing Lewis v. United States, 445 U.S. 55 (1980)).

Skoien, 614 F.3d at 645. However, Plaintiff has not identified—nor has this Court found—any case that has adopted Plaintiff’s argument that the Second Amendment demands that an individual who has been convicted of a crime of domestic violence be permitted to own a gun if he or she remains law abiding for a certain period of time thereafter. Rather, courts have routinely rejected this argument. See Booker, 644 F.3d at 25; Enos, 855 F. Supp. 2d at 1099; Smith, 742 F. Supp. 2d at 869; see also In re U.S., 578 F.3d at 1200 (rejecting the “notion that Heller mandates an individualized inquiry concerning felons pursuant” to Section 922(g)(9)).

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UNITED STATES DISTRICT COURT
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Similarly, as discussed above, *every* court that has ruled upon the constitutionality of Section 922(g)(9) has found that domestic violence misdemeanors are *not* protected by the Second Amendment's to bear arms. Accordingly, this Court is bound by the pre-Heller equal protection case law as to Section 922(g)(9)'s constitutionality, at least as applied to Plaintiff. In U.S. v. Hancock, the Ninth Circuit upheld Section 922(g)(9) against an equal protection challenge, concluding that the statute survived rational basis review. 231 F.3d 557, 565-566 (2000). Like the felon in Vongxay, because Plaintiff is "explicitly excluded from Heller's holding," this Court is bound by Hancock's holding.

V. CONCLUSION

For the reasons put forward in this Order, Plaintiff's FAC is DISMISSED WITH PREJUDICE.

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PROOF OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, C.D. Michel, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of:

NOTICE OF APPEAL/REPRESENTATION STMT

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 20, 2013.

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel
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9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 EUGENE EVAN BAKER,	)	NO. CV 10-3996 SVW (AJWx)
)	
15 Plaintiff,)	
)	
16 v.	)	DATE: February 25, 2013
	)	TIME: 1:30 p.m.
17 ERIC H. HOLDER, JR.,	)	CTRM: 6
Attorney General of the)	
18 United States, et al,)	
)	
19 Defendants.)	Hon. Stephen V. Wilson
)	

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23 FEDERAL DEFENDANT'S REPLY BRIEF
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FEDERAL DEFENDANT'S REPLY BRIEF

I.

INTRODUCTION

Reiterating the arguments previously made, Plaintiff sets forth nothing in his Opposition which undermines the reasons set forth in Defendant's Opening Brief and Responding Brief that 18 U.S.C. § 922(g)(9) is a constitutionally valid enactment of Congress. Every Circuit Court and the only California District Court to have considered this issue have upheld the statute. In the absence of any contrary authority, Plaintiff must argue that each case was decided wrongly¹.

Because amendment would be futile, this Court is respectfully requested to dismiss the complaint with prejudice.

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¹ The cases upholding the constitutionality of Section 922(g)(9) include decisions from the First Circuit, Fourth Circuit, Seventh Circuit (*en banc*), Tenth Circuit, Eleventh Circuit and the Eastern District of California. See United States v. White, 593 F.3d 1199, 1206 (11th Cir. 2010) ("We now explicitly hold that § 922(g)(9) is a presumptively lawful 'longstanding prohibition on the possession of firearms'"); In re United States, 578 F.3d 1195 (10th Cir. 2009) (order) ("Nothing suggests that the Heller dictum, which we must follow, is not inclusive of § 922(g)(9) involving those convicted of misdemeanor domestic violence"); United States v. Booker, 644 F.3d 12, 24 (1st Cir. 2011) ("Indeed, § 922(g)(9) fits comfortably among the categories of regulations that Heller suggested would be 'presumptively lawful.'" 554 U.S. at 627 n.26 Section 922(g)(9) is, historically and practically, a corollary outgrowth of the federal felon disqualification statute"); United States v. Staten, 666 F.3d 154, 168 (4th Cir. 2011) ("§ 922(g)(9) satisfies the intermediate scrutiny standard"); United States v. Skoien, 614 F.3d 638 (7th Cir. 2010) (*en banc*) (concluding that Section 922(g)(9) withstands intermediate scrutiny); Enos v. Holder, 855 F.Supp.2d 1088, 1099 (E.D.Cal. 2012) ("§ 922(g)(9) is a presumptively lawful categorical ban on firearm possession. Keeping guns out of the hands of those convicted of domestic violence fits squarely into the prohibitions noted by Heller").

II.

THIS COURT CAN DISMISS THE COMPLAINT

As a procedural matter, Plaintiff misconstrues this Court's Order dated October 15, 2012 and the Ninth Circuit's Order dated June 6, 2012, neither of which preclude this Court from dismissing Plaintiff's complaint; indeed, each order contemplated just such a result.

The order from the Ninth Circuit, for example, upheld this Court's determination that previous Ninth Circuit precedent barred Plaintiff's claim that he was entitled to possess a firearm under California law. See Order dated June 6, 2012, 3 (attached as Exhibit A). That same order allowed Plaintiff's claim under the Second Amendment to proceed but, in doing so, the Ninth Circuit did not foreclose this Court's ability to determine whether such a claim was legally valid. See Id. Indeed, the very purpose of the remand was for this Court to determine this very question.

Plaintiff acknowledged as much at the hearing before this Court on October 15, 2012. Addressing Plaintiff's counsel, this Court asked:

What do you understand the issue to be, assuming that the amended complaint is in place? Is it whether the Supreme Court's recent Heller decision supports the defendant's argument that notwithstanding the state conviction, he's entitled to bear a firearm?

Transcript of October 15, 2012 Hearing, 4:12-16 (attached as Exhibit B). In response, Plaintiff's counsel stated:

///

1 Yes, that's correct. In District of Columbia versus
2 Heller in 2008, the U.S. Supreme Court did declare that
3 there is a fundamental Second Amendment right to keep
4 and bear arms for self-defense purposes and -
5 Id., 4:17-20. After some discussion, the Court asked undersigned
6 counsel the following:

7 So now the question is, as [Plaintiff's counsel]
8 presented it, even if his conviction isn't expunged in
9 accordance with federal law, does Heller versus
10 District of Columbia - is that the case - give him the
11 right to bear a firearm? And what is your argument
12 there?

13 Id., 9:5-9. Undersigned counsel responded:

14 Well, at first, it's a procedural question. When
15 Jennings was decided, Heller had not been decided, and
16 so no court had ever considered the Second Amendment as
17 applying a fundamental right to an individual. And so
18 the Ninth Circuit said, We're going to punt - excuse
19 the expression - and allow the district court to
20 determine, first, the level of scrutiny to be
21 determined and then secondly, whether or not using that
22 level of scrutiny the statute passes constitutional
23 muster. Our argument is one, that this court should do
24 just that, determine the level of scrutiny, which has
25 to be either rational basis or intermediate level, and
26 then applying that level of scrutiny should find that
27 the statute, as interpreted under federal law, does not
28 violate Mr. Baker's constitutional rights.

1 Id., 9:10-23. A little later, undersigned counsel continued:

2 It's very clear that his conviction was not expunged,
3 and in the absence of Heller, [Plaintiff] would not be
4 allowed to have a firearm. The *only* question is does
5 Heller change the constitutional makeup to such a
6 degree that the federal law that prohibits his use of
7 the handgun is found to be unconstitutional.

8 Id., 10:7-12 (emphasis added).

9 This Court then observed:

10 Well, then, it seems that the way to get this before
11 [the] court is by briefing it, correct?

12 Id., 11:2-3. To which Plaintiff's counsel responded:

13 *That's correct.*

14 Id., 11:4 (emphasis added). The Court then ordered Plaintiff's
15 counsel to serve all defendants, and the Court set forth a
16 briefing schedule where the parties were ordered to submit
17 opening and responding briefs on the issue. See Id., 11:5-16:17.

18 The Department of Justice has followed this Court's
19 instructions; it has set forth in its briefs exactly what
20 undersigned counsel stated in open court; and, at the end of the
21 briefs, the Federal Defendant has made the non-controversial
22 observation that Plaintiff's complaint should be dismissed with
23 prejudice because a complaint cannot survive without a valid
24 legal claim, citing Balistreri v. Pacifica Police Department, 901
25 F.2d 696, 699 (9th Cir. 1990) ("Dismissal can be based on the

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1 lack of a cognizable legal theory or the absence of sufficient
2 facts alleged under a cognizable legal theory").²

3 Accordingly, if this Court accepts the arguments advanced by
4 the Department of Justice, then Plaintiff does not have a
5 cognizable legal theory, and dismissal should result as a matter
6 of course.

7
8 III.

9 THIS COURT SHOULD DISMISS THE COMPLAINT

10 BECAUSE THE STATUTE DOES NOT VIOLATE THE CONSTITUTION

11 This Court gave each party the opportunity to file two
12 briefs on whether Section 922(g)(9) was constitutional, with the
13 further opportunity to address the Court at a hearing on the
14 matter. As this Court instructed, and as anticipated at the
15 October 15th hearing, the Department of Justice has set forth the
16 reasons why this Court should uphold that statute in its Opening
17 and Responding Briefs.

18 As a substantive matter, those briefs address, and refute,
19 each contrary assertion made in Plaintiff's opposition. The
20 Federal Defendant respectfully refers the Court to the reasons
21 advanced in those briefs, which are hereby incorporated, rather
22 than reiterate those reasons here. In broad strokes, Plaintiff
23 has failed to explain why this Court should disregard the
24 reasoning set forth by its sister California District Court and
25

26
27 ² Plaintiff cannot maintain surprise or confusion, as
28 undersigned counsel explained all of this in a letter dated
January 14, 2013, before the responding briefs were due, in
response to a letter from Plaintiff's counsel dated January 9,
2013 (attached respectively as Exhibits D and C).

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

EUGENE EVAN BAKER,)	CASE NO. CV 10-3996-SVW(AJWx)
Plaintiff,	)	PLAINTIFF'S OPPOSITION TO
vs.	)	DEFENDANTS' MOTION TO
	)	DISMISS
ERIC H. HOLDER, JR., in his official)	
capacity as ATTORNEY GENERAL)	
OF THE UNITED STATES;)	
KAMALA D. HARRIS, in her)	
capacity as ATTORNEY GENERAL)	
FOR THE STATE OF)	
CALIFORNIA; THE STATE OF)	
CALIFORNIA DEPARTMENT OF)	
JUSTICE; and DOES 1 through 100,)	
Inclusive,)	
Defendants.)	

INTRODUCTION

Although Defendant United States Attorney General Eric Holder (“Federal Defendant”) failed to comply with the Federal Rules of Civil Procedure and Central District Local Rules in bringing his purported “motion to dismiss” Plaintiff’s complaint,¹ by its order of February 1, 2013, rescheduling the hearing in this matter until February 25, 2013, the Court signaled that it intended to nonetheless treat that hearing as one for a motion to dismiss. Scheduling Notice, Feb. 1, 2013, (Doc. No. 43). In response to that February 1, 2013 order, Plaintiff hereby opposes Federal Defendant’s Motion to Dismiss.²

ARGUMENT

In his Opening Brief / Motion to Dismiss (“Motion”), Federal Defendant misconstrues Plaintiff’s claims on multiple levels. Mainly, he describes Plaintiff’s claims as an attack on the facial validity of 18 U.S.C. § 922(g)(9). As made clear both in Plaintiff’s amended complaint and in his opening brief, Plaintiff is solely challenging the constitutionality of 18 U.S.C. § 922(g)(9) as applied to him.

And, Plaintiff prevails under the very standard Federal Defendant advances in his Motion for evaluating the validity of 18 U.S.C. § 922(g)(9) as applied to

¹ Federal Defendant failed to comply with Rules 6 and 12 of the Federal Rules of Civil Procedure and Central District Local Rules 6-1 and 7-3 by failing to include a notice of motion filed with the Clerk no later than twenty-eight days before the scheduled hearing, failed to serve said notice on each of the parties, failed to provide a concise statement of the relief sought, failed to contact opposing counsel to discuss his intent to file a FRCP Rule 12 motion, failed to meet and confer with opposing counsel in an effort to obtain an out-of-court resolution on the Rule 12 motion, and failed to include a statement in his motion confirming the conference of counsel pursuant to Local Rule 7-3.

² Defendant California Attorney General Kamala D. Harris joins Federal Defendant’s Motion. Opening Br. Def.’s Cal. Atty. Gen. Kamala D. Harris & Cal. Dept. of Justice, Jan. 1, 2013 (Doc. No. 37). This opposition applies equally to her brief, to the extent it is considered a motion.

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

EUGENE EVAN BAKER,

Plaintiff,

vs.

ERIC H. HOLDER, JR., in his official
 capacity as ATTORNEY GENERAL
 OF THE UNITED STATES;
 KAMALA D. HARRIS, in her
 capacity as ATTORNEY GENERAL
 FOR THE STATE OF
 CALIFORNIA; THE STATE OF
 CALIFORNIA DEPARTMENT OF
 JUSTICE; and DOES 1 through 100,
 Inclusive,

Defendants.

CASE NO. CV 10-3996-SVW(AJWx)

**PLAINTIFF'S REPLY TO FEDERAL
 DEFENDANT'S OPENING BRIEF**

(1955); see also *Ross v. Moffitt*, 417 U.S. 600, 609, 94 S.Ct. 2437, 41 L. Ed.2d 341 (1974) (distinguishing claims under those clauses). Although Plaintiff's claims are similar, they are not identical. While this case could be seen as primarily an Equal Protection case, since it is about a restricted person rather than a restricted act, Plaintiff's fundamental Second Amendment rights are nevertheless directly violated in violation of his substantive due process rights, and his classification as someone who is not entitled to exercise fundamental rights violates his right to equal protection.

IV. PLAINTIFF HAS STANDING TO BRING HIS EQUAL PROTECTION CLAIM

Contrary to Federal Defendant's assertion, Plaintiff is not bringing an Equal Protection claim on behalf of third parties. Rather, Plaintiff asserts that 18 U.S.C. § 922(g)(9) creates a class of people, which includes him, and impacts the class's fundamental rights, requiring strict scrutiny review. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985) (citations omitted). It is well settled that when fundamental rights are asserted under the Equal Protection Clause, an individual member of that class can bring suit. See, e.g., *Kramer v. Union Free School Dist.*, 395 U.S. 621, 633, 89 S. Ct. 1886, 1887, 23 L. Ed. 2d 583 (1969); *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073, 1075, 145 L. Ed. 2d 1060 (2000) (holding that an individual can bring an Equal Protection claim).

V. THE COURT SHOULD NOT TREAT THIS BRIEFING AS A MOTION TO DISMISS BECAUSE DEFENDANT FAILED TO COMPLY WITH BASIC PROCEDURAL REQUIREMENTS GOVERNING MOTIONS PRACTICE AND PLAINTIFF WOULD BE PREJUDICED

At the October 15, 2012 status conference, this Court ordered the parties to file opening and responsive briefs addressing issues on remand. On January 7, 2013, both parties filed their opening briefs in compliance with the Court's order. However, Defendant included with his brief a request that the complaint be

1 dismissed and a proposed order to that effect. Fed. Def.'s Br. 13-14; [Proposed]
 2 Order, Jan. 7, 2013 (Doc. No. 36-2). Defendant's request and the accompanying
 3 proposed order of dismissal attempt to transmute Defendant's court-ordered briefing
 4 into some form of Rule 12 motion. This is improper under the Local Rules and the
 5 Federal Rules of Civil Procedure, and as far as Plaintiff can tell, it was not expressly
 6 or impliedly within the ambit of the Court's requested briefing.

7 While Defendant may bring a Rule 12(b) motion to dismiss or Rule 12(c)
 8 motion for judgment on the pleadings at this stage, such motions must be made in
 9 conformance with Rule 6 of the Federal Rules of Civil Procedure and with Local
 10 Rules 6-1 and 7-3. Raising the issue without proper notice to Plaintiff, and as part of
 11 an unrelated court-ordered brief, Defendant has ignored the procedural requirements
 12 of these rules and his "motion to dismiss" should be denied.

13 Pursuant to Local Rule 6-1, every motion, including Defendant's Rule 12
 14 motion, "shall be presented by written notice of motion . . . filed with the Clerk not
 15 later than twenty-eight (28) days before the date set for hearing, and shall be served
 16 on each of the parties electronically" unless otherwise provided by rule or order of
 17 the Court. L.R. 6-1 (emphasis added). Defendant's brief is accompanied by no
 18 written notice of motion containing "a concise statement of the relief or Court
 19 action the movant seeks" as required by Local Rule 7-4. And Defendant's brief does
 20 not provide Plaintiff with the statutory basis for dismissal, which would
 21 unreasonably require Plaintiff to address all the permutations of a Rule 12 motion in
 22 his opposition.

23 Local Rule 7-3 further requires that "counsel contemplating the filing of [a]
 24 motion shall first contact opposing counsel to discuss thoroughly, preferably in
 25 person, the substance of the contemplated motion and any potential resolution. If
 26 the proposed motion is one which under the [Federal Rules of Civil Procedure] must
 27 be filed within a specified period of time (e.g., a motion to dismiss pursuant to
 28 F.R.Civ.P. 12(b) . . .), then this conference shall take place at least five (5) days

1 prior to the last day for filing the motion." Defendant neither contacted opposing
 2 counsel to discuss his intent to file a Rule 12 motion, nor did Defendant make any
 3 effort to discuss the motion in an attempt to resolve the issue outside of court. As
 4 such, Defendant violated the Local Rules by failing to meet and confer with
 5 opposing counsel prior to filing his motion to dismiss.

6 Moreover, "if the parties are unable to reach a resolution which eliminates the
 7 necessity for a hearing, counsel for the moving party shall include in the notice of
 8 motion a statement to the following effect: 'This motion is made following the
 9 conference of counsel pursuant to L.R. 7-3 which took place on (date).' " L.R. 7-3
 10 (emphasis added). Here again, Defendant ignored the mandate of the Local Rules
 11 and included no such statement with his motion to dismiss and accompanying
 12 proposed order. Almost nothing about Defendant's "motion to dismiss" comports
 13 with the local procedures governing motions practice in the Central District that
 14 provide for fair play and an equal playing field for the parties.

15 Plaintiff thus requests that this court refuse consideration of Defendant's Rule
 16 12 motion until Defendant complies with all notice and procedural requirements.

17 CONCLUSION

18 Based on the above, Plaintiff will be able to show that he is entitled to the
 19 relief he seeks in this action.

20 Dated: January 16, 2013

MICHEL & ASSOCIATES, P.C.

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 23 C. D. Michel
 24 E-mail: cmichel@michellawyers.com
 25 Attorneys for Plaintiff
 26 Eugene Evan Baker
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9 *California Department of Justice*

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 **EUGENE EVAN BAKER,**

14 Plaintiff,

15 v.

16 **ERIC H. HOLDER, JR., in his official**
17 **capacity as ATTORNEY GENERAL**
18 **OF THE UNITED STATES, et al.**

19 Defendants.
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Case No. CV 10-3996-SVW(AJWx)

**OPENING BRIEF BY
DEFENDANTS CALIFORNIA
ATTORNEY GENERAL KAMALA
D. HARRIS AND CALIFORNIA
DEPARTMENT OF JUSTICE**

Date: February 4, 2013
Time: 1:30 p.m.
Dept: Courtroom No.: 6
Judge: Hon. Stephen V. Wilson
Trial Date: None
Action Filed: October 12, 2012

1 Defendants California Attorney General Kamala D. Harris and California
2 Department of Justice (“State Defendants”) join in the argument advanced in the
3 Federal Defendant’s Opening Brief that this Court should uphold the
4 constitutionality of 18 U.S.C. section 922(g)(9) and dismiss Plaintiffs’ entire
5 amended complaint with prejudice.

6 The State Defendants role in this litigation has been limited. Plaintiffs
7 initiated their Second Amendment challenge to section 922(g)(9) by filing the
8 original complaint on May 27, 2010. (Doc. no. 1.) The Court initially dismissed
9 the complaint with prejudice (Doc. no. 14), but the Ninth Circuit reversed and
10 remanded with leave to amend (Doc. no. 20). On October 11, 2012, more than two
11 years after filing suit, Plaintiffs filed an amended complaint naming the State
12 Defendants for the first time. (Doc. no. 23.)

13 According to the amended complaint, Plaintiffs have added the State
14 Defendants as parties because the California Department of Justice is the state law
15 enforcement agency that serves as the intermediary, or “Point of Contact,” between
16 a federal firearms licensee (“FFL”) and the federal databases checked by the
17 National Instant Criminal Background Check System (“NICS”), which an FFL
18 must contact for information on whether receipt of a firearm by the person
19 purchasing it would violate federal or state law. (First Am. Compl. ¶¶ 4, 11-12 &
20 29.) *See* 28 C.F.R. §§ 25.1, 25.2 & 25.6 (describing role of Point of Contact); Cal.
21 Penal Code § 28220(b) (state law authorizing California Department of Justice to
22 be Point of Contact for background checks). The amended complaint prays that
23 any order declaring section 922(g)(9) unconstitutional and enjoining its
24 enforcement encompass both the Federal and State Defendants. (First Am. Compl.
25 at pp. 13-14.)

26 The amended complaint does not challenge any state law. Rather, only a
27 federal statute, section 922(g)(9), is at issue. The United States Department of
28 Justice is charged with defending the constitutionality that law. *See* 28 U.S.C.

1 §§ 501 *et seq.* The Office of the United States Attorney having filed an opening
2 brief thoroughly and accurately defending the federal statute, the State Defendants
3 have elected simply to join in that brief.

4 Accordingly, for the reasons set forth in the Federal Defendant's Opening
5 Brief, this Court should reject Plaintiffs' constitutional challenge to 18 U.S.C.
6 section 922(g)(9) and dismiss the entire amended complaint with prejudice.

7 Dated: January 7, 2013

Respectfully submitted,

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

11 /s/ ANTHONY R. HAKL

12 ANTHONY R. HAKL
Deputy Attorney General

13 *Attorneys for Defendants California*
14 *Attorney General Kamala D. Harris*
and California Department of Justice

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CERTIFICATE OF SERVICE

Case Name: **Baker, Eugene Evan v. Eric H. Holder** No. **CV 1 03996-SVW(AJWx)**

I hereby certify that on January 7, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**OPENING BRIEF BY DEFENDANTS CALIFORNIA ATTORNEY GENERAL
KAMALA D. HARRIS AND CALIFORNIA DEPARTMENT OF JUSTICE**

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 January 7, 2013, at Sacramento, California.

Brenda Apodaca
Declarant

/s/ Brenda Apodaca
Signature

11015900.doc

CERTIFICATE OF SERVICE

Case Name: **Baker, Eugene Evan v. Eric H. Holder** No. **CV 1 03996-SVW(AJWx)**

I hereby certify that on January 7, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**OPENING BRIEF BY DEFENDANTS CALIFORNIA ATTORNEY GENERAL
KAMALA D. HARRIS AND CALIFORNIA DEPARTMENT OF JUSTICE**

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 January 7, 2013, at Sacramento, California.

Brenda Apodaca
Declarant

/s/ Brenda Apodaca
Signature

11015900.doc

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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14	EUGENE EVAN BAKER,	)	NO. CV 10-3996 SVW (AJWx)
)	
15	Plaintiff,)	
)	
16	v.	)	DATE: February 4, 2013
		)	TIME: 1:30 p.m.
17	ERIC H. HOLDER, JR.,	)	CTRM: 6
	Attorney General of the)	
18	United States, <i>et al</i> ,)	
)	
19	Defendants.)	Hon. Stephen V. Wilson
	_____)	

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23 **FEDERAL DEFENDANT'S OPENING BRIEF**
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1 in California convicted of misdemeanor domestic violence are
 2 *similarly* banned under Section 922(g)(9). See Docket No. 23, ¶
 3 38.⁵

4 Having failed to allege any distinguishing facts between
 5 himself and others similarly situated, Baker's "as-applied"
 6 challenge to the statute lacks merit.

7 IV.

8 THE COMPLAINT SHOULD BE DISMISSED

9 Because 18 U.S.C. § 922(g)(9) is a valid enactment of
 10 Congress, Plaintiff has no viable claim, and his complaint should
 11 be dismissed. See Balistreri v. Pacifica Police Department, 901
 12 F.2d 696, 699 (9th Cir. 1990) ("Dismissal can be based on the
 13 lack of a cognizable legal theory or the absence of sufficient
 14 facts alleged under a cognizable legal theory"). In addition,
 15 Plaintiff lacks standing to bring an equal protection claim on
 16 behalf of similarly situated third-party class members. See
 17 Darring v. Kincheloe, 783 F.2d. 874, 877 (9th. Cir 1986) ("The
 18 federal courts have historically been reluctant to recognize

19 _____
 20 ⁵ In his complaint, for example, Baker alleges that:

21 all California citizens of the same class as Plaintiff,
 22 i.e., who have fulfilled the requirements of Section
 23 29805 for the requisite ten-year period, are, *like*
 24 *Plaintiff*, prevented from receiving, owning or
 possessing firearms, and, *like Plaintiff*, are subject
 to arrest should they receive, own or possess a
 firearm.

25 Docket No. 23, ¶ 38 (emphases added). It should further be noted
 26 that alleging his similarity to all other Californians convicted
 of misdemeanor domestic violence is not only fatal to his as-
 27 applied challenge to the validity of Section 922(g)(9) under the
 Second Amendment, but it is also fatal to his Second Claim for a
 28 violation of the Equal Protection Clause, for the gravamen of an
 Equal Protection claim is that similarly situated individuals are
 treated *differently* not *similarly*.

1 third-party standing"). Moreover, the complaint should be
2 dismissed with prejudice because amendment would be futile.

3 V.

4 **CONCLUSION**

5 For the foregoing reasons, the Federal Defendant
6 respectfully requests this Court to uphold the constitutionality
7 of 18 U.S.C. § 922(g)(9) and, having done so, to dismiss
8 Plaintiff's complaint with prejudice.

9 Respectfully submitted,

10 DATED: January 7, 2012

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LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division

13 /s/ David A. DeJute
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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14	EUGENE EVAN BAKER,	)	NO. CV 10-3996 SVW (AJWx)
)	
15	Plaintiff,)	
)	
16	v.	)	ANSWER
)	
17	ERIC H. HOLDER, JR.,)	
	Attorney General of the)	
18	United States, <i>et al</i> ,)	
)	
19	Defendants.)	Hon. Stephen V. Wilson
	_____)	

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23 Federal Defendant Eric H. Holder, Jr., sued in his official
24 capacity as the Attorney General of the United States, hereby
25 answers Plaintiff's Complaint and admits, denies and avers as
26 follows:
27
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1 **PRELIMINARY STATEMENT**

2 1. The allegations contained in paragraph 1 constitute
3 plaintiff's characterization of his case or conclusions of law to
4 which no response is required; to the extent that they may be
5 deemed allegations of fact, they are denied.

6 2. The allegations contained in paragraph 2 constitute
7 facts about which the Defendant lacks sufficient knowledge or
8 information to form a belief as to their truth and, on that
9 basis, are denied.

10 3. The allegations contained in paragraph 3 constitute
11 plaintiff's characterization of his case or conclusions of law to
12 which no response is required; to the extent that they may be
13 deemed allegations of fact, they are denied.

14 4. Defendant admits that the California Department of
15 Justice is a "Point of Contact" for the United States Department
16 of Justice. All other allegations contained in paragraph 4 are
17 denied.

18 5. The allegations contained in paragraph 5 are denied.

19 **JURISDICTION AND VENUE**

20 6. The allegations contained in paragraph 6 constitute
21 plaintiff's characterization of his case or conclusions of law to
22 which no response is required; to the extent that they may be
23 deemed allegations of fact, they are denied.

24 7. The allegations contained in paragraph 7 constitute
25 plaintiff's characterization of his case or conclusions of law to
26 which no response is required; to the extent that they may be
27 deemed allegations of fact, they are denied.

28 ///

1 8. The allegations contained in paragraph 8 constitute
2 plaintiff's characterization of his case or conclusions of law to
3 which no response is required; to the extent that they may be
4 deemed allegations of fact, they are denied.

5 **PARTIES**

6 9. The allegations contained in paragraph 9 constitute
7 facts about which the Defendant lacks sufficient knowledge or
8 information to form a belief as to their truth and, on that
9 basis, are denied.

10 10. Defendant admits that named defendant Eric H. Holder,
11 Jr. is the Attorney General of the United States. All other
12 allegations contained in paragraph 10 are denied.

13 11. Defendant admits that named defendant Kamala D. Harris
14 is the Attorney General of the State of California. All other
15 allegations contained in paragraph 11 are denied.

16 12. Defendant admits that the California Department of
17 Justice is a political subdivision of the State of California and
18 that the California Department of Justice is a "Point of Contact"
19 for the United States Department of Justice. All other
20 allegations contained in paragraph 12 are denied.

21 13. The allegations contained in paragraph 13 constitute
22 facts about which the Defendant lacks sufficient knowledge or
23 information to form a belief as to their truth and, on that
24 basis, are denied.

25 **FACTS APPLICABLE TO ALL CLAIMS**

26 14. The allegations contained in paragraph 14 constitute
27 facts about which the Defendant lacks sufficient knowledge or

28 ///

1 information to form a belief as to their truth and, on that
2 basis, are denied.

3 15. The allegations contained in paragraph 15 constitute
4 facts about which the Defendant lacks sufficient knowledge or
5 information to form a belief as to their truth and, on that
6 basis, are denied

7 16. The allegations contained in paragraph 16 constitute
8 facts about which the Defendant lacks sufficient knowledge or
9 information to form a belief as to their truth and, on that
10 basis, are denied

11 17. The allegations contained in paragraph 17 constitute
12 facts about which the Defendant lacks sufficient knowledge or
13 information to form a belief as to their truth and, on that
14 basis, are denied.

15 18. The allegations contained in paragraph 18 constitute
16 facts about which the Defendant lacks sufficient knowledge or
17 information to form a belief as to their truth and, on that
18 basis, are denied.

19 19. The allegations contained in paragraph 19 constitute
20 facts about which the Defendant lacks sufficient knowledge or
21 information to form a belief as to their truth and, on that
22 basis, are denied.

23 20. The allegations contained in paragraph 20 constitute
24 facts about which the Defendant lacks sufficient knowledge or
25 information to form a belief as to their truth and, on that
26 basis, are denied.

27 21. The allegations contained in paragraph 21 constitute
28 facts about which the Defendant lacks sufficient knowledge or

1 information to form a belief as to their truth and, on that
2 basis, are denied.

3 **RELEVANT CALIFORNIA PENAL STATUTES**

4 22. The allegations contained in the first sentence of
5 paragraph 18 constitute facts about which the Defendant lacks
6 sufficient knowledge or information to form a belief as to their
7 truth and, on that basis, are denied. The remaining allegations
8 constitute plaintiff's characterization of his case or
9 conclusions of law to which no response is required; to the
10 extent that they may be deemed allegations of fact, they are
11 denied.

12 23. The allegations contained in paragraph 23 constitute
13 plaintiff's characterization of his case or conclusions of law to
14 which no response is required; to the extent that they may be
15 deemed allegations of fact, they are denied.

16 24. The allegations contained in paragraph 24 constitute
17 plaintiff's characterization of his case or conclusions of law to
18 which no response is required; to the extent that they may be
19 deemed allegations of fact, they are denied.

20 25. The allegations contained in paragraph 25 constitute
21 plaintiff's characterization of his case or conclusions of law to
22 which no response is required; to the extent that they may be
23 deemed allegations of fact, they are denied.

24 **RELEVANT FEDERAL & STATE FIREARMS LAWS**

25 26. The allegations contained in paragraph 26 constitute
26 plaintiff's characterization of his case or conclusions of law to
27 which no response is required; to the extent that they may be
28 deemed allegations of fact, they are denied.

27. The allegations contained in paragraph 27 constitute plaintiff's characterization of his case or conclusions of law to which no response is required; to the extent that they may be deemed allegations of fact, they are denied.

28. The allegations contained in paragraph 28 constitute plaintiff's characterization of his case or conclusions of law to which no response is required; to the extent that they may be deemed allegations of fact, they are denied.

29. The allegations contained in paragraph 29 constitute plaintiff's characterization of his case or conclusions of law to which no response is required; to the extent that they may be deemed allegations of fact, they are denied.

FIRST CLAIM

30. The allegations contained in paragraph 30 merely incorporate by reference those matters alleged in paragraphs numbered 1 through 29, to which Defendant incorporates by reference all previous responses.

31. The allegations contained in paragraph 31 are denied.

32. The allegations contained in paragraph 32 are denied.

33. The allegations contained in paragraph 33 are denied.

34. The allegations contained in paragraph 34 are denied.

35. The allegations contained in paragraph 35 are denied.

SECOND CLAIM

36. The allegations contained in paragraph 36 merely incorporate by reference those matters alleged in paragraphs numbered 1 through 29, to which Defendant incorporates by reference all previous responses.

///

1 37. The allegations contained in paragraph 37 constitute
2 facts about which the Defendant lacks sufficient knowledge or
3 information to form a belief as to their truth and, on that
4 basis, are denied.

5 38. The allegations contained in paragraph 38 are denied.

6 39. The allegations contained in paragraph 39 are denied.

7 40. The allegations contained in paragraph 40 are denied.

8 41. The allegations contained in paragraph 41 are denied.

9 42. The allegations contained in paragraph 42 are denied.

10 43. The allegations contained in paragraph 43 are denied.

11 **PRAYER FOR RELIEF**

12 Defendant further denies that Plaintiff is entitled to the
13 relief set forth in the prayer immediately following paragraph 43
14 or to any relief whatsoever. Defendant further denies each and
15 every allegation not previously admitted.

16 **AFFIRMATIVE DEFENSES**

17 1. The Complaint, and each claim alleged, fails to set
18 forth facts sufficient to state a cause of action.

19 2. Plaintiff lacks standing to assert any claim on behalf
20 of unnamed third-party individuals.

21 3. Plaintiff has failed to set forth facts sufficient to
22 assert a claim under the Second Amendment.

23 4. Plaintiff has failed to set forth facts sufficient to
24 assert a claim under the Equal Protection Clause.

25 5. 18 U.S.C. § 922(g)(9) is presumptively lawful; or, in
26 the alternative, passes constitutional muster under intermediate
27 scrutiny.

28 ///

1 WHEREFORE, the Federal Defendant prays for judgment as set
2 forth below:

3 (1) That Plaintiff's Complaint and each claim contained
4 therein be dismissed with prejudice;

5 (2) That Plaintiff take nothing by his Complaint;

6 (3) That Defendant be awarded the costs incurred herein;

7 and,

8 (4) That the Court order such other and further relief for
9 Defendant as the Court may deem just and proper.

10 DATED: December 13, 2012

ANDRÉ BIROTTE JR.
United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division

13 /s/ David A. DeJute
14 David A. DeJute
15 Assistant United States Attorney
Attorneys for the Federal Defendant
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KAMALA D. HARRIS
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*Attorneys for Defendants California
Attorney General Kamala D. Harris and
California Department of Justice*

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

EUGENE EVAN BAKER,

Plaintiff,

v.

**ERIC H. HOLDER, JR., in his official
capacity as ATTORNEY GENERAL
OF THE UNITED STATES, et al.**

Defendants.

CV 1 03996-SVW(AJWx)

**ANSWER TO FIRST AMENDED
COMPLAINT BY DEFENDANTS
CALIFORNIA ATTORNEY
GENERAL KAMALA D.
HARRIS AND CALIFORNIA
DEPARTMENT OF JUSTICE**

Judge: Hon. Stephen V. Wilson
Trial Date: None
Action Filed: 10/12/2012

Defendants California Attorney General Kamala D. Harris and California
Department of Justice answer Plaintiffs' First Amended Complaint ("complaint")
as follows:

ANSWER TO PLAINTIFFS' PRELIMINARY STATEMENT

1. Answering paragraph 1, Defendants admit that the complaint speaks for
itself. Defendants admit that federal law speaks for itself. Except as specifically
admitted, Defendants deny the allegations of paragraph 1.

2. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 2, and on that basis deny the allegations of paragraph 2.

3. Answering paragraph 3, Defendants admit that the relevant state and federal laws and court order speak for themselves. Except as specifically admitted, Defendants deny the allegations of paragraph 3.

4. Answering paragraph 4, Defendants admit that the California Department of Justice is a “Point of Contact” for the United States Department of Justice. Except as specifically admitted, Defendants deny the allegations of paragraph 4.

5. Defendants deny the allegations of paragraph 5.

ANSWER TO PLAINTIFFS’ ALLEGATIONS REGARDING JURISDICTION AND VENUE

6. Answering paragraphs 6 through 8, Defendants admit that the relevant state and federal laws speak for themselves. Except as specifically admitted, Defendants deny the allegations of paragraphs 6 through 8.

ANSWER TO PLAINTIFFS’ DESCRIPTION OF PARTIES

7. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 9, and on that basis deny the allegations of paragraph 9.

8. Answering paragraph 10, Defendants admit that Defendant Holder is the Attorney General of the United States. Except as specifically admitted, Defendants deny the allegations of paragraph 10.

9. Answering paragraph 11, Defendants admit that Defendant Harris is the Attorney General of California. Except as specifically admitted, Defendants deny the allegations of paragraph 11.

10. Answering paragraph 12, Defendants admit that the California Department of Justice is a political subdivision of the State of California. Defendants admit that the California Department of Justice is a “Point of Contact”

1 for the United States Department of Justice. Except as specifically admitted,
2 Defendants deny the allegations of paragraph 12.

3 11. Defendants lack sufficient knowledge or information to form a belief as to
4 the truth of the allegations of paragraph 13, and on that basis deny the allegations of
5 paragraph 13.

6 **ANSWER TO PLAINTIFFS' DESCRIPTION OF**
7 **FACTS APPLICABLE TO ALL CLAIMS**

8 12. Defendants lack sufficient knowledge or information to form a belief as to
9 the truth of the allegations of paragraphs 14 through 21, and on that basis deny the
10 allegations of paragraphs 14 through 21.

11 **ANSWER TO PLAINTIFFS' DESCRIPTION OF**
12 **RELEVANT CALIFORNIA PENAL STATUTES**

13 13. Answering the first sentence of paragraph 22, Defendants lack sufficient
14 knowledge or information to form a belief as to the truth of the allegations of that
15 sentence, and on that basis deny the allegations of the sentence. Answering the
16 second sentence of paragraph 22, Defendants admit that the relevant state law
17 speaks for itself. Except as specifically admitted, Defendants deny the allegations
18 of the second sentence of paragraph 22.

19 14. Answering paragraphs 23 through 25, Defendants admit that the relevant
20 state laws speak for themselves. Except as specifically admitted, Defendants deny
21 the allegations of paragraphs 23 through 25.

22 **ANSWER TO PLAINTIFFS DESCRIPTION OF RELEVANT**
23 **FEDERAL & STATE FIREARMS LAWS**

24 15. Answering paragraphs 26 through 29, Defendants admit that the relevant
25 state and federal laws speak for themselves. Except as specifically admitted,
26 Defendants deny the allegations of paragraphs 26 through 29.

ANSWER TO PLAINTIFFS' FIRST CLAIM

16. Answering paragraph 30, Defendants incorporate by reference their responses to paragraphs 1 through 29 of the complaint to the same extent Plaintiffs have incorporated the allegations of those paragraphs into the first claim.

17. Defendants deny the allegations of paragraphs 31 through 35.

ANSWER TO PLAINTIFFS' SECOND CLAIM

18. Answering paragraph 36, Defendants incorporate by reference their responses to paragraphs 1 through 29 of the complaint to the same extent Plaintiffs have incorporated the allegations of those paragraphs into the second claim.

19. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 37, and on that basis deny the allegations of paragraph 37.

20. Defendants deny the allegations of paragraphs 38 through 43.

ADDITIONAL DEFENSES

ONE

The complaint, and each claim for relief therein, fails to state facts sufficient to constitute a cause of action.

TWO

The Defendants deny that they have subjected Plaintiffs to the deprivation of any rights, privileges or immunities secured by the Constitution or laws of the United States or the State of California.

THREE

Plaintiffs' claims in this action are barred in that they do not have standing to assert them.

FOUR

There is no case or controversy in this action as required by Article III of the United States Constitution.

FIVE

Defendants affirmatively state that any actions they have taken with respect to Plaintiffs have been in good faith, have been reasonable and prudent, and have been consistent with all applicable legal and constitutional standards.

SIX

Plaintiffs' claims in this action are barred by the equitable doctrines of waiver, laches, unclean hand, and/or estoppel.

SEVEN

Plaintiffs' claims in this action are uncertain, vague, ambiguous, improper, and unintelligible.

EIGHT

The Eleventh Amendment bars part or all of the relief requested by Plaintiffs.

PRAYER FOR RELIEF

Accordingly, Defendants pray as follows:

1. That judgment be entered in favor of the Defendants and against Plaintiffs on the complaint as a whole, and on each claim therein, and that Plaintiffs take nothing by way of the complaint;

2. That the complaint, and each claim of relief therein, be dismissed with prejudice;

3. That the Defendants be awarded the costs, expenses, and attorneys' fees incurred in this action; and

///

///

1 4. That the Court grant the Defendants such additional relief as it deems
2 proper.

3
4 Dated: November 9, 2012

Respectfully submitted,

5 KAMALA D. HARRIS
6 Attorney General of California
7 PETER K. SOUTHWORTH
8 Supervising Deputy Attorney General

/s/ ANTHONY R. HAKL

9 ANTHONY R. HAKL
10 Deputy Attorney General
11 *Attorneys for Defendants California*
12 *Attorney General Kamala D. Harris*
13 *and California Department of Justice*

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CERTIFICATE OF SERVICE

Case Name: **Baker, Eugene Evan v. Eric H. Holder** No. **CV 1 03996-SVW(AJWx)**

I hereby certify that on November 9, 2012, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

ANSWER TO FIRST AMENDED COMPLAINT BY DEFENDANTS CALIFORNIA ATTORNEY GENERAL KAMALA D. HARRIS AND CALIFORNIA DEPARTMENT OF JUSTICE

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 November 9, 2012, at Sacramento, California.

Brenda Apodaca
Declarant

/s/ Brenda Apodaca
Signature

10992588.doc

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:10-cv-03996-SVW-AJW	Date	October 15, 2012
Title	Eugene Evan Baker v. Eric H. Holder, Jr.		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE
-------------------------------	--

Paul M. Cruz

Deborah Gackle

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Tamara Rider

David DeJute, AUSA

Proceedings: STATUS CONFERENCE

Conference held. The Court sets the following schedule:

Filing of Simultaneous Opening Briefs December 6, 2012

Filing of Simultaneous Responding Briefs December 17, 2012

Hearing January 7, 2013 at 1:30 p.m.

The Court further orders that plaintiff shall effectuate service of the amended complaint within twenty days of this hearing.

	:	23
Initials of Preparer		PMC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE STEPHEN V. WILSON, U.S. DISTRICT JUDGE PRESIDING

EUGENE EVAN BAKER,)	
)	
Plaintiff,)	
)	
vs.	)	No. CV 2010-3996-SVW
)	
)	
ERIC H. HOLDER, JR.,)	
)	
Defendant.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, OCTOBER 15, 2012

DEBORAH K. GACKLE, CSR, RPR
United States Courthouse
312 North Spring Street, Room 402A
Los Angeles, California 90012
(213) 620-1149

APPEARANCES OF COUNSEL:

For the Plaintiff:

MICHEL & ASSOCIATES
BY: TAMARA M. RIDER
Los Angeles Office
180 E. Ocean Boulevard, Suite 200
Long Beach, California 90802
trider@michellawyers.com

For the Defendant:

U.S. DEPARTMENT OF JUSTICE
BY: DAVID A. DeJUTE
ASSISTANT UNITED STATES ATTORNEY
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012

- - - - -

1 doesn't offend federal law, it seems like Ms. Rider is
2 presenting it as a constitutional question.

3 MR. DeJUTE: It is, Your Honor.

4 THE COURT: When you mean "federal law," you mean the
5 Constitution.

6 MR. DeJUTE: No, I meant the federal law which
7 interprets expungement. It's very clear that his conviction
8 was not expunged, and in the absence **Heller**, he would not be
9 allowed to have a firearm. The only question is does **Heller**
10 change the constitutional makeup to such a degree that the
11 federal law that prohibits his use of the handgun is found to
12 be unconstitutional.

13 THE COURT: Is there something -- I'm a little out of
14 sync with **Heller**. What specifically was before the court in
15 **Heller**, other than the issue of right to bear arms?

16 MR. DeJUTE: In both **Heller** and -- I think it's
17 **McDermott** -- one for Chicago and one for D.C. -- the court
18 found that the state's absolute ban without distinction for
19 everyone to possess a handgun was unconstitutional because
20 there as a fundamental Second Amendment right for personal use
21 of a handgun. But in doing so, they limited it to law-abiding
22 citizens; they limited it by the very terms of the order to
23 cases where there were no -- not a convicted felon. That's
24 been held to be upheld -- and they have language in there that
25 longstanding prohibitions on gun use and gun control are not

1 affected by the statute.

2 THE COURT: Well, then, it seems that the way to get
3 this before court is by briefing it, correct?

4 MS. RIDER: That's correct.

5 THE COURT: So maybe the best way to brief it would
6 to be have opening simultaneous briefs and then opposing
7 simultaneous briefs. In other words -- that way you're
8 opposing each other's arguments. It isn't someone going first,
9 second and third, and then at the hearing we can take up
10 whatever thoughts you have, you know, that relate to the mutual
11 or simultaneous oppositions.

12 When can you file the briefs? It sounds like an
13 interesting question.

14 MR. DeJUTE: It sounds like a very interesting
15 question. I just have two procedural points: One, we have not
16 been served, so the first time I've seen the complaint was in
17 the hallway and glancing over to. Secondly, this time, unlike
18 the first time, Baker is adding two new defendants: The
19 California Department of Justice, and Kamala Harris as Attorney
20 General of California. So my suggestion is that the complaint
21 should be properly served, and everyone should appear and
22 perhaps then a different --

23 THE COURT: But what would the court's jurisdiction
24 be over them? I mean, in other words, you're saying that they
25 are the -- what relief do you want from the Attorney General?

1 MS. RIDER: Our understanding is that California is a
2 point-of-contact state where the California Department of
3 Justice is able to interpret and implement the laws -- the
4 federal laws. As Kamala Harris is the Attorney General of
5 California, she also is able to enforce those laws. Because
6 California is prohibiting Mr. Baker from obtaining a firearm --
7 or from purchasing a firearm, we also amended the complaint to
8 ensure that all of the adequate parties for defendants were
9 included.

10 THE COURT: So the arguments -- the essential
11 argument is the same or different with respect to the U.S.
12 defendant and the California defendant.

13 MS. RIDER: The complaint is against all of the
14 defendants with the same arguments against all the defendants.

15 THE COURT: So the complaint is against the Attorney
16 General because the Attorney General has interpreted the Heller
17 case in a way that prohibits your client from bearing a
18 firearm.

19 MS. RIDER: That's correct.

20 THE COURT: But -- I see.

21 If Holder's actions were unconstitutional, would they
22 automatically mean that the State Attorney General's actions
23 are unconstitutional, too?

24 MS. RIDER: We believe so, solely to the effect that
25 to the extent Mr. Holder is acting unconstitutionally, so is

1 the California Department of Justice in interpreting what he's
2 directing them to do as a point-of-contact state for firearms
3 dealers. And in addition to that, Ms. Kamala Harris is the
4 Attorney General of California.

5 THE COURT: How do you -- you have no position
6 regarding -- would your thinking be that, at least
7 preliminarily, that the decision regarding the United States
8 Attorney General would necessarily dictate the result as to the
9 California Attorney General?

10 MR. DeJUTE: I appreciate the ability to wiggle out
11 if we change our position --

12 THE COURT: Yes.

13 MR. DeJUTE: -- but I just saw the complaint, and I
14 just learned about these two new defendants.

15 (Pause in the proceedings)

16 THE COURT: In any event, the amended complaint does
17 name the State Attorney General, right?

18 MS. RIDER: Yes.

19 THE COURT: And so in terms of service, have you gone
20 about serving the government as you have to?

21 MS. RIDER: Not at this point, no. The complaint we
22 filed last week on the 11th, and we just received the conformed
23 summons today. So we're planning on effectuating service.

24 THE COURT: Then you have to do that by what?
25 Sending a certified copy to the Attorney General in Washington?

1 Are you with the Justice Department?

2 MR. DeJUTE: Yes, sir -- I'm with the U.S. Attorney's
3 Office across the street.

4 THE COURT: So you -- in order to serve the
5 government, you have to serve the U.S. attorney in the
6 district, and you have to send -- what -- a certified copy of
7 the complaint to the Attorney General in Washington?

8 MR. DeJUTE: That's correct. And in this instance,
9 only those two because you always have to serve the Attorney
10 General and the agency. In this case, the agency and the
11 Attorney General are the same.

12 THE COURT: So all that the plaintiff has to do is
13 send -- is send a certified copy to the Attorney General.

14 MR. DeJUTE: And serve the U.S. Attorney's Office,
15 which has not yet been done. I'm right here.

16 THE COURT: But you can accept service?

17 MR. DeJUTE: I what?

18 THE COURT: You can accept service?

19 MR. DeJUTE: I can't under federal statute.

20 THE COURT: I see. How does she do it, then? Send a
21 certified copy to you?

22 MR. DeJUTE: Not to me personally -- it's in the
23 rules -- to the mail processing clerk, I believe, or by
24 personal service by walking across the street --

25 THE COURT: What about the -- California? How do you

1 plan to serve them?

2 MS. RIDER: I need to look at the rules and make sure
3 I do it right. I haven't --

4 THE COURT: Well, I would like you to effectuate
5 service within 20 days, and I'm going to set up a briefing
6 schedule on the assumption that that is accomplished, and the
7 opening briefs should be exchanged, and within 30 days of the
8 end of the 20-day period. So that means 50 days from today.

9 THE CLERK: Simultaneous opening briefs will be due
10 December 3rd.

11 THE COURT: And then I'll give you ten days to file
12 simultaneous oppositions. It would helpful, Ms. Rider, if you
13 could get going with service as soon as you can. Thank you.

14 THE CLERK: I was wrong. Opening briefs will be due
15 December 6th, and opposing briefs would then be due ten days
16 later, which would be December 17th.

17 Will there be a hearing?

18 THE COURT: Yes, a hearing. Let's say the hearing
19 will be -- first week in January.

20 THE CLERK: Hearing will be January 7th at 1:30.

21 THE COURT: Look forward to it.

22 MR. DeJUTE: Thank you very much, Your Honor.

23 MS. RIDER: One last point, just so I'm clear. On
24 the briefs, you want us to specifically address the affect of
25 the California Department of Justice and the State Attorney

1 General of California being involved in this?

2 THE COURT: Excuse me?

3 MS. RIDER: I'm confused.

4 THE COURT: I'm assuming that you're seeking relief
5 against the Attorney General. My concern is assume you didn't
6 name Holder, what jurisdiction would I have over a lawsuit
7 against the Attorney General of the State of California?

8 MS. RIDER: I believe federal question as to whether
9 or not the state's --

10 THE COURT: You mean the same issue? You're saying
11 the same issue?

12 MS. RIDER: Yes.

13 THE COURT: Okay. So include the Attorney General in
14 any argument you make as to them, or if it's an argument that
15 just maintains that whatever relief is imposed on Holder
16 follows to the Attorney General of California. Okay. Thank
17 you.

18 MR. DeJUTE: Thank you, Your Honor.

19 MS. RIDER: Thank you.

20 (Proceedings concluded at 2:10 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the stenographic record of the proceedings in the foregoing matter.

November 13, 2012

/S/ _____

Deborah K. Gackle
Official Court Reporter

Date

1 C. D. Michel - Calif. SBN 144258
 2 Joshua R. Dale - Calif. SBN 209942
 3 MICHEL & ASSOCIATES, P.C.
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6 Attorneys for Plaintiff
 Eugene Evan Baker

FILED
 2012 OCT 11 PM 3:10
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES
 BY: _____

8 **UNITED STATES DISTRICT COURT**
 9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 EUGENE EVAN BAKER,

11 Plaintiff,

12 vs.

13 ERIC H. HOLDER, JR., in his official
 capacity as ATTORNEY GENERAL
 14 OF THE UNITED STATES;
 KAMALA D. HARRIS, in her
 15 capacity as ATTORNEY GENERAL
 FOR THE STATE OF
 16 CALIFORNIA; THE STATE OF
 CALIFORNIA DEPARTMENT OF
 17 JUSTICE; and DOES 1 through 100,
 Inclusive,

18
 19 Defendants.

CASE NO. CV 10-3996-SVW(AJWx)

**FIRST AMENDED COMPLAINT
 FOR:**

(1) **VIOLATION OF FEDERAL
 DUE PROCESS CLAUSE AS
 TO APPLICATION OF
 FEDERAL STATUTE TO
 DENY CORE RIGHT;**

AND

(2) **VIOLATION OF FEDERAL
 EQUAL PROTECTION
 CLAUSE;**

DEMAND FOR JURY TRIAL

21 **PRELIMINARY STATEMENT**

22 1. This is an action for declaratory and injunctive relief in order that
 23 Plaintiff EUGENE EVAN BAKER (hereinafter "Plaintiff" or "Baker") may
 24 lawfully receive, own and possess a firearm in the exercise of his rights under the
 25 Second Amendment to the Constitution of the United States although he was
 26 convicted in the State of California of a misdemeanor crime of domestic violence
 27 ("MCDV").

28 2. Plaintiff was convicted of an MCDV in 1997. In 2002, Plaintiff was

1 allowed to withdraw his prior guilty plea and have the conviction set aside under
2 California Penal Code section 1204.3. In 2007, the effect of the conclusion in
3 October of that year of a mandatory ten-year ban on Plaintiff's ownership and
4 possession of firearms was that Plaintiff was considered by the state from that point
5 forward to be able to receive, own and possess firearms. Plaintiff later received an
6 order from a Ventura County Superior Court adjudging all of Plaintiff's firearms
7 rights to have been restored in 2007 for purposes of state law.

8 3. Notwithstanding the effect of the state law restoring Plaintiff's right to
9 receive, own and possess firearms, as well as an order of the state's judiciary
10 affirming the restoration of Plaintiff's right to receive, own and possess firearms,
11 the application of federal law, i.e., 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9),
12 prevents Plaintiff from receiving or possessing firearms.

13 4. In furtherance of enforcing 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9),
14 the State of California has expressly assumed the role of a "Point of Contact" of the
15 U.S. Department of Justice for purposes of enforcing these sections against
16 California firearms' purchasers. In this role, the state defendants have denied
17 Plaintiff the opportunity to purchase firearms by these state defendants declaring
18 Plaintiff a person prohibited to receive and possess firearms under Sections
19 921(a)(33)(A)(i) & 922(g)(9), and instructing California firearms dealers to not
20 release firearms to Plaintiff.

21 5. The effect of the application of these federal statutes by the federal and
22 state defendants to deny Plaintiff the right to keep and bear arms for self-defense
23 violates Plaintiff's Second Amendment right to self-defense.

24 **JURISDICTION AND VENUE**

25 6. Jurisdiction of this action is founded on 28 U.S.C. §1331 in that this
26 action arises under the Constitution and laws of the United States, and under 28
27 U.S.C. §1343(3) in that this action seeks to redress the deprivation, under color of
28 the laws, statute, ordinances, regulations, customs and usages of the United States,

1 the State of California, and political subdivisions thereof, of rights, privileges or
2 immunities secured by the United States Constitution and by Acts of Congress.

3 7. Plaintiffs' claims for declaratory and injunctive relief are authorized
4 by 28 U.S.C. §§2201 & 2202. Plaintiffs' claims for a writ of mandate directed to
5 Defendants are authorized pursuant to 28 U.S.C. §1651.

6 8. Venue in this judicial district is proper under 28 U.S.C. §1391(b)(1)-
7 (2), because Plaintiff Baker is a resident of this judicial district, all defendants have
8 offices within this judicial district, and the deprivation of rights and other conduct
9 alleged herein occurred within this judicial district.

10 PARTIES

11 9. Plaintiff Baker is a citizen of the United States and a resident of the
12 Somis, California.

13 10. Defendant Holder is the Attorney General of the United States, and as
14 the chief law enforcement officer of the government of the United States would be
15 responsible for the prosecution of Baker pursuant to 18 U.S.C. §922(g)(9) should
16 Baker be found to have received or possess a firearm in violation of Sections
17 921(a)(33)(A)(i) & 922(g)(9). On information and belief, were Baker to exercise
18 his Second Amendment rights by receiving, owning or possessing a firearm,
19 Defendant Holder, through his agents and employees, would arrest and prosecute
20 Plaintiff. Holder is being sued in his official capacity as U.S. Attorney General.

21 11. Defendant Kamala D. Harris is the elected Attorney General of the
22 State of California. In her role as the Attorney General, Defendant Harris is
23 responsible for interpreting, implementing and executing the policies and
24 procedures of the California Department of Justice ("Cal. DOJ") including the Cal.
25 DOJ's policies and procedures as a Point of Contact. As such, she is responsible
26 for formulating, executing and administering the laws, customs and practices that
27 Plaintiff challenges, and is in fact presently enforcing the challenged laws, customs,
28 and practices against Plaintiff. Defendant Harris is sued in her official capacity as

1 California Attorney General.

2 12. Defendant The State of California Department of Justice is a political
3 subdivision of the State of California, and is the designated Point of Contact for
4 California Federal Firearms Licensees ("FFL") to determine whether California
5 purchasers, including Plaintiff, are prohibited persons under 18 U.S.C.
6 §§921(a)(33)(A)(i) & 922(g)(9). Cal. DOJ is obligated under Sections
7 921(a)(33)(A)(i) & 922(g)(9) and analogous California law to assess the criminal
8 backgrounds of firearms purchasers, and is the final authority as to whether
9 California FFLs can release purchased firearms to purchasers, including Plaintiff.
10 As such, Cal. DOJ is responsible for formulating, executing and administering the
11 laws, customs and practices that Plaintiff challenges, and is in fact presently
12 enforcing the challenged laws, customs, and practices against Plaintiff.

13 13. On information and belief, Defendants DOES 1-100 are employees or
14 agents of defendants Holder, Harris, or Cal. DOJ, or of local governmental
15 agencies, who are responsible for formulating, executing and administering the
16 laws, customs and practices that Plaintiff challenges, and are in fact presently
17 enforcing the challenged laws, customs, and practices against Plaintiff. On
18 information and belief, Defendants DOES 1-100 have facilitated, participated in, or
19 otherwise furthered the denial of the receipt of, ownership of, and possession of
20 firearms by Plaintiff. Plaintiff is unaware of the identities of Defendants DOES 1-
21 100 at the time of the filing of this complaint, and shall seek leave of court to
22 substitute the true names of such defendants when their identities are ascertained.

23 **FACTS APPLICABLE TO ALL CLAIMS**

24 14. On September 29, 1997, in the Ventura County Municipal Court,
25 Plaintiff was convicted upon his plea of *nolo contendere* of violating California
26 Penal Code §273.5(a), Infliction of Corporal Injury on Current or Former Spouse or
27 Cohabitant. Such conviction was a MCDV for purposes of 18 U.S.C.
28 §§921(a)(33)(A)(i) & 922(g)(9). On October 20, 1997, Plaintiff was sentenced to a

1 three-year probationary sentence with certain terms and conditions; among which
2 was a condition that he “not own, possess, or have access to any firearm or
3 dangerous weapon” for a period of ten years pursuant to former California Penal
4 Code §12021(c)(1).

5 15. Plaintiff successfully completed all of the terms of his probation, and
6 on February 24, 2002, submitted his application for expungement and set-aside
7 pursuant to California Penal Code §1203.4. On June 19, 2002, the Ventura County
8 Superior Court granted the motion under Section 1203.4 and signed an Order,
9 thereby ordering Plaintiff’s 1997 conviction be set aside, the *nolo contendere* plea
10 be withdrawn, a plea of not guilty be entered, and the original criminal complaint
11 be deemed dismissed. The 2002 Order did not contain any language that Plaintiff
12 was thereafter uniquely prohibited from personally shipping, transporting,
13 possessing, or receiving firearms once the ten-year suspension of Plaintiff’s
14 firearms’ ownership and possession rights pursuant to former Section 12021(c)(1)
15 ended.

16 16. The ten-year suspension of Plaintiff’s firearm ownership and
17 possession rights remained in force until it expired on October 20, 2007. From the
18 date of his 1997 arrest to the present, including his probationary term and the entire
19 ten-year term of former Section 12021(c)(1), Plaintiff has never been convicted of
20 any other criminal behavior, including any crime which would disqualify Plaintiff
21 from receiving, owning or possessing a firearm under federal or state law.

22 17. In or about May 2009, Plaintiff attempted to effect a firearms purchase
23 at Ojai Valley Surplus, a federal firearms licensee (“FFL”) located in Ojai,
24 California, Ojai Valley Surplus contacted Cal. DOJ to submit Plaintiff’s purchase.
25 On June 8, 2009, Defendant Cal. DOJ sent a letter to Ojai Valley Surplus which
26 stated that Plaintiff “is a person not eligible to posses (sic) a firearm.” Cal. DOJ
27 further ordered Ojai Valley Surplus to not release the firearm to Plaintiff.

28 18. On August 25, 2010, in response to an inquiry from Plaintiff’s

1 attorney, Defendant Cal. DOJ sent Plaintiff a letter explaining why Plaintiff's
 2 attempted 2009 firearms purchase had been denied. The letter stated that Cal. DOJ
 3 has "identified a record in a state or federal database which indicates that you are
 4 prohibited by state and/or federal law from purchasing or possessing firearms." The
 5 letter further states that the disqualifying record is a conviction for "Misdemeanor
 6 domestic violence convictions (273.5PC, 243(E)(1)PC Convictions over 10 years
 7 old)-Federal Brady Act, effected November 30, 1998."

8 19. On information and belief, Cal. DOJ's denial of Plaintiff's 2009
 9 firearms purchase was due to Cal. DOJ fulfilling its role as a Point of Contact, and
 10 adjudging that Plaintiff was prohibited receiving and possessing a firearm pursuant
 11 to 18 U.S.C. §922(g)(9). On information and belief, as a Point of Contact, as part
 12 of performing the above-mentioned check, Cal. DOJ submitted Plaintiff's name and
 13 other identifying information to the U.S. Department of Justice's Federal Bureau of
 14 Investigation ("FBI") to check whether Plaintiff was prohibited from receiving or
 15 possessing a firearm based on information within the National Instant Criminal
 16 Background Check System ("NICS")¹.

17 20. On March 11, 2010, plaintiff appeared in the Ventura County Superior
 18 Court and moved for an order declaring that he was legally entitled under both state
 19 and federal law to purchase and own a firearm. The Hon. Judge Edward Brodie
 20 granted the order, declaring that Plaintiff "is entitled to purchase, own and possess
 21 firearms consistent with the laws of the State of California."

22 21. Plaintiff desires to purchase one or more firearms for his personal
 23 protection and the protection of his family and property but does not wish to run
 24 the risk of being arrested, charged, convicted and punished pursuant to 18 U.S.C.

26 ¹ National Instant Criminal Background Check System (NICS)
 27 Operations 2011. *See*
 28 <<http://www.fbi.gov/about-us/cjis/nics/reports/2011-operations-report/operations-report-2011>>

§922(g)(9) in the attempted exercise of his Second Amendment rights.

RELEVANT CALIFORNIA PENAL STATUTES

22. Plaintiff was convicted of violating California Penal Code §273.5(a) on October 29, 1997. Section 273.5(a), in relevant part, provides:

Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000.00) or by both that fine and imprisonment.

23. All persons convicted of violating Section 273.5(a) are subject to a statutory ten-year ban on firearm possession pursuant to Penal Code §29805 (formerly Penal Code §12021(c)(1))²:

Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section . . . 273.5, . . . and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

24. California Penal Code §1203.4 provides the means whereby those who have successfully completed a grant of probation after having been convicted of certain penal offenses may petition the court to grant expungement and set-aside relief. As to the effect of a Section 1203.4 motion on a firearms prohibition, Section 1203.4 provides in relevant part:

(a)(2) Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2

² Because prior to January 1, 2012, the text of Section 29805 was contained in Penal Code §12021., all references in Plaintiff's sentencing order are to former Section 12021. See Paragraph 14, *supra*.

(commencing with Section 29800) of Division 9 of Title 4 of Part 6.

25. An order granted under Section 1203.4 does not end or shorten the ten-year ban imposed under Section 29805. But an order granted under Section 1203.4 does not increase or make permanent the Section 29805 ban. Once the ten-year period under Section 29805 has ended, and assuming no further criminal behavior by the person during that period, by law California considers the MCDV convict to have been fully restored his or her rights under California law to receive, own or possess a firearm at the conclusion of the ten-year period.

RELEVANT FEDERAL & STATE FIREARMS LAWS

26. The Second Amendment to the U.S. Constitution of the United States reads: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." The Fourteenth Amendment to the U.S. Constitution incorporates the Second Amendment to the citizens of the states. The Fourteenth Amendment also guarantees states' citizens equal protection of the laws and that core rights of the citizens under the Constitution may not be infringed upon without, at a minimum, due process.

27. 18 U.S.C. §922(g)(9) reads: "It shall be unlawful for any person...who has been convicted in any court of a misdemeanor crime of domestic violence (MCDV), to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

28. 18 U.S.C. §921(a)(33)(A)(i) defines an "MCDV." The California crime for which Plaintiff was convicted in 1997 is a disqualifying MCDV for purposes of that statute and Section 922(g)(9).

29. The Gun Control Act and the Brady Handgun Violence Prevention Act, of which 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9) are a part, are implemented and interpreted by the U.S. Department of Justice through regulations

published at 28 C.F.R., Part 25. The U.S. Department of Justice has adopted regulations published at 28 C.F.R. §§25.1 & 25.6 which allow state law enforcement agencies to act as a Point of Contact for querying the federal NICS database to determine whether a firearm purchaser is prohibited from receiving or possessing a firearm, in lieu of the FBI conducting such searches. California's legislature has agreed to have Cal. DOJ act as the Point of Contact for all purchases and transfer of firearms by California residents, by its adoption of California Penal Code §28220(b).

**FIRST CLAIM FOR
VIOLATION OF FEDERAL DUE PROCESS
CLAUSE AS TO APPLICATION OF
FEDERAL STATUTE TO DENY CORE RIGHT
(Against All Defendants)**

30. Plaintiff fully reincorporates Paragraphs 1-29, *supra*, as though fully alleged hereinafter.

31. Without due process of law, Defendants, in applying and enforcing 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9) as to Plaintiff to proscribe him from receiving or possessing firearms, have denied Plaintiff the exercise of his right to keep and bear arms under the Second Amendment to the Constitution, a core right.

32. On information and belief, Defendants, and each of them, have implemented and enforced 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9) in the manner described herein for the governmental purpose of general crimefighting

33. The application and enforcement of 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9) to proscribe Plaintiff from receiving or possessing a firearm does not comport with the historical scope of the Second Amendment at the time it was enacted. Alternatively, on information and belief the application and enforcement of 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9) to proscribe Plaintiff from receiving or possessing a firearm does not further a compelling governmental interest,

insomuch as Defendants do not have a compelling interest in preventing Plaintiff, a person adjudged by California to be fit to own and possess a firearm, from receiving, owning or possessing a firearm. Alternatively, Defendants' proffered basis for implementing and enforcing Sections 921(a)(33)(A)(i) & 922(g)(9) is neither narrowly tailored nor the least restrictive means for achieving the government's general crimefighting interest.

34. Alternatively, on information and belief the application and enforcement of 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9) to proscribe Plaintiff from receiving or possessing a firearm is not substantially related to achieving an important governmental interest, insomuch as Defendants do not have a important interest in preventing Plaintiff, a person adjudged by California to no longer be a danger such that California deems such person fit to receive, own and possess a firearm as a matter of law, from receiving, owning or possessing a firearm.

35. At all times, Defendants Holder, Harris and DOES 1-100 were acting pursuant to 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9). On information and belief, Defendants, and each of them, will continue to implement and enforce 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9) in a manner that infringes upon Plaintiff's exercise of his Second Amendment rights, absent the grant of the relief requested.

**SECOND CLAIM FOR
VIOLATION OF FEDERAL EQUAL
PROTECTION CLAUSE
(Against All Defendants)**

36. Plaintiff fully reincorporates Paragraphs 1-29, *supra*, as though fully alleged hereinafter.

37. Plaintiff is of a class of firearms purchasers who have previously been convicted of an MCDV but have fulfilled the terms of their probation or have otherwise not been convicted of a crime for a period of ten years following their MCDV conviction.

1 38. By Defendants, and each of them, implementing and enforcing 18
2 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9) in a manner to deny Plaintiff the receipt,
3 ownership or possession of firearms despite Plaintiff having been adjudged by
4 California to be fit to receive, own and possess a firearm, Defendants have
5 prevented Plaintiff, and all other California citizens of Plaintiff's class, from
6 exercising their core right to keep and bear arms for self-defense under the Second
7 Amendment. On information and belief, all California citizens of the same class as
8 Plaintiff, i.e., who have fulfilled the requirements of Section 29805 for the requisite
9 ten-year period, are, like Plaintiff, prevented from receiving, owning or possessing
10 firearms, and, like Plaintiff, are subject to arrest should they receive, own or
11 possess a firearm. As such, on information and belief, even if Plaintiff should be
12 granted such relief as requested herein as to himself, unless Plaintiff is granted the
13 relief requested as to the further implementation and enforcement of Sections
14 921(a)(33)(A)(i) & 922(g)(9) against all California citizens by Defendants, the
15 constitutional violations complained of herein are capable of repetition while
16 evading review.

17 39. On information and belief, Defendants, and each of them, have
18 implemented and enforced 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9) in the manner
19 described herein for the governmental purpose of general crimefighting. On
20 information and belief, in no instance does Defendants' proffered basis for
21 implementing and enforcing Sections 921(a)(33)(A)(i) & 922(g)(9) in such manner
22 comport with the historical scope of the Second Amendment, in that as
23 implemented Sections 921(a)(33)(A)(i) & 922(g)(9) unlawfully restrict the right to
24 bear arms for self-defense as that right was understood by those who drafted and
25 enacted both the Second and Fourteenth Amendments.

26 40. Alternatively, on information and belief, in no instance does
27 Defendants' proffered basis implementing and enforcing 18 U.S.C.
28 §§921(a)(33)(A)(i) & 922(g)(9) comply with the Fourteenth Amendment to the

1 United States Constitution, inasmuch as Defendants' proffered basis for
 2 implementing and enforcing Sections 921(a)(33)(A)(i) & 922(g)(9) in such manner
 3 does not further a compelling governmental interest. Alternatively, Defendants'
 4 proffered basis for implementing and enforcing Sections 921(a)(33)(A)(i) &
 5 922(g)(9) is neither narrowly tailored nor the least restrictive means for achieving
 6 the government's general crimefighting interest.

7 41. Alternatively, on information and belief, in no instance does
 8 Defendants' proffered basis implementing and enforcing 18 U.S.C.
 9 §§921(a)(33)(A)(i) & 922(g)(9) comply with the Fourteenth Amendment to the
 10 United States Constitution, inasmuch as Defendants' proffered basis for
 11 implementing and enforcing Sections 921(a)(33)(A)(i) & 922(g)(9) in such manner
 12 does not further an important governmental interest. Alternatively, Defendants'
 13 proffered basis for implementing and enforcing Sections 921(a)(33)(A)(i) &
 14 922(g)(9) is not substantially related to achieving the government's general
 15 crimefighting interest, inasmuch as Defendants do not have a important interest in
 16 preventing Plaintiff, a person adjudged by California to no longer be a danger such
 17 that California deems fit to receive, own and possess a firearm as a matter of law,
 18 from receiving or and possessing a firearm.

19 42. By reason of the Defendants' interpretation and implementation of 18
 20 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9), and the resultant denial to Plaintiff of the
 21 receipt, ownership or possession of firearms for self-defense, Defendants have
 22 unlawfully interfered with Plaintiff's exercise of his core self-defense right under
 23 the Second Amendment to the United States Constitution, thereby denying Plaintiff
 24 the equal protection of the Second Amendment as is afforded to other citizens.

25 43. At all times, Defendants Holder, Harris and DOES 1-100 were acting
 26 pursuant to 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9). On information and belief,
 27 Defendants, and each of them, will continue to implement and enforce Sections
 28 921(a)(33)(A)(i) & 922(g)(9) in a manner that infringes upon Plaintiff's exercise of

1 his Second Amendment rights, absent the grant of the relief requested.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff respectfully asks that this Court enter a judgment in
4 his favor and against the Defendants as follows:

5 1. For a declaration that Defendants' implementation and enforcement of
6 Sections 921(a)(33)(A)(i) & 922(g)(9), as applied to Plaintiff, is unconstitutional;

7 2. That a writ of mandate be issued from this Court pursuant to 28 U.S.C.
8 §1651 directing Defendants to cease implementation and enforcement of Sections
9 921(a)(33)(A)(i) & 922(g)(9) in such manner as prevents Plaintiff, and all other
10 California citizens who have fulfilled the requirements of California Penal Code
11 §29805 and who do not otherwise labor under any other disqualifying
12 circumstance, from receiving, owning or possessing firearms;

13 3. For a judicial declaration that since October 20, 2007, Eugene Evan
14 Baker has been entitled to exercise his rights under the Second Amendment to the
15 Constitution of the United States and that he is entitled under federal law to receive
16 and possess firearms and ammunition without risk and threat of prosecution by
17 Defendants and their representatives or agents;

18 3. For an order enjoining Defendants, and their representatives and
19 agents, from arresting and prosecuting Eugene Evan Baker for any future alleged
20 violation of 18 U.S.C. §922(g)(9) for so long as he remains free of any
21 disqualifying conviction or circumstance;

22 4. For an order that all computers and other records relied upon by
23 Defendants and their representatives or agents, concerning those persons allegedly
24 prohibited from receiving, owning or possessing a firearm pursuant to 18 U.S.C.
25 §922(g)(9), be purged of all information and content concerning the arrest,
26 conviction and sentencing of Eugene Evan Baker, or, alternatively, for an order that
27 all computers and other records relied upon by Defendants and their representatives
28 or agents, concerning those persons allegedly prohibited from receiving, owning or

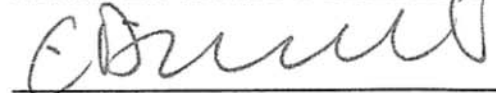
1 possessing a firearm pursuant to 18 U.S.C. §922(g)(9), include a notation that
2 notwithstanding Plaintiff's arrest, conviction and sentencing in 1997 for an MCDV,
3 Plaintiff is not disqualified thereby from receiving, owning or possessing a firearm;

4 5. For attorney's fees and costs of suit pursuant to 28 U.S.C. §2412; and

5 6. Any further relief as the Court deems just and proper.

6 Dated: October 11, 2012

MICHEL & ASSOCIATES, P.C.



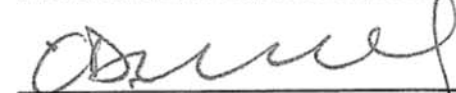
C.D. Michel
E-mail:cmichel@michellawyers.com
Attorneys for Plaintiff
Eugene Evan Baker

11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a trial by a jury of his peers.

14 Dated: October 11, 2012

MICHEL & ASSOCIATES, P.C.



C.D. Michel
E-mail:cmichel@michellawyers.com
Attorneys for Plaintiff
Eugene Evan Baker

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 18 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EUGENE EVAN BAKER,

Plaintiff - Appellant,

v.

ERIC H. HOLDER, Jr., Attorney
General, in his official capacity as
Attorney General of the United States,

Defendant - Appellee.

No. 11-55067

D.C. No. 2:10-cv-03996-SVW-AJW
U.S. District Court for Central
California, Los Angeles

MANDATE

RECEIVED
CLERK, U.S. DISTRICT COURT

SEP 18 2012

CENTRAL DISTRICT OF CALIFORNIA
BY *DM* DEPUTY

The judgment of this Court, entered July 25, 2012, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:
Molly C. Dwyer
Clerk of Court

Lee-Ann Collins
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EUGENE EVAN BAKER,

Plaintiff - Appellant,

V.

ERIC H. HOLDER, Jr., in his official capacity as Attorney General of the United States,

Defendant - Appellee.,

No. 11-55067

D.C. No. 2:10-cv-03996-SVW-AJW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Argued and Submitted June 6, 2012
Pasadena, California

Before: B. FLETCHER, WARDLAW, and BYBEE, Circuit Judges.

Eugene Baker appeals from the district court's order dismissing his complaint under Federal Rules of Civil Procedure 12(b)(1) and (b)(6). We affirm in part, reverse in part, and remand for further proceedings.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The district court dismissed the complaint without prejudice under Rule 12(b)(1), concluding that Baker's complaint fails to state facts sufficient to present a "case or controversy" under Article III, § 2 of the Constitution. At the outset, we note a disparity between the complaint as filed on the district court's electronic docket and the complaint as it appears in Baker's excerpts of record. The complaint found in the electronic docket consists of only the first and last pages of the complaint in Baker's excerpts. It is not clear from the record whether the district court had the opportunity to review the complaint in its entirety. The two pages of the complaint available on the electronic docket clearly fail to assert facts sufficient to satisfy the justiciability requirements of Article III, as they do not allege that Baker has taken any steps to acquire a firearm. It is unclear whether the full complaint is adequate.

It is apparent, however, that Baker is capable of amending his complaint to include additional facts that would confer standing. In his opposition to the motion to dismiss, Baker attached a letter from the California Department of Justice ("CA DOJ") informing him that his application to purchase a firearm had been denied because his prior conviction for a misdemeanor crime of domestic violence barred him from purchasing or possessing firearms under federal law. Baker also attached a letter sent by the CA DOJ to a firearms dealer, ordering the dealer not to release

Second Amendment, and therefore does not control Baker's Second Amendment claim.

We therefore affirm the Rule 12(b)(1) dismissal without prejudice, reverse the Rule 12(b)(6) dismissal, and remand with leave to amend the complaint.

Each party shall bear its own costs on appeal.

AFFIRMED in part; **REVERSED** in part; **REMANDED**.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EUGENE EVAN BAKER,	)	NO. CV 10-3996-SVW (AJWx)
)	
Plaintiff,)	
)	
v.	)	ORDER GRANTING DEFENDANT'S
	)	MOTION TO DISMISS COMPLAINT
ERIC H. HOLDER, JR.,	)	WITH PREJUDICE [6]
ATTORNEY GENERAL)	
	)	JS6
Defendants.)	
_____)	
)	
)	
)	
)	
)	
)	

I. BACKGROUND

On May 27, 2010, Eugene Evan Baker ("Plaintiff") filed a Complaint seeking declaratory and injunctive relief from the Attorney General so he could purchase a firearm. Plaintiff was convicted of a misdemeanor crime of domestic violence ("MCDV") in California in 1997. Compl. ¶ 1. Under 18 U.S.C. § 922(g)(9) ("The Gun Control Act"), Congress has made it "unlawful for any person who has been convicted in any court of a misdemeanor crime of domestic violence . . . to possess . . . any firearm." Title 18, U.S.C. § 921(33)(B)(ii) carves out an exception to this general rule, stating, "A person shall not be considered to have

1 been convicted of such an offense for purposes of this chapter if the
 2 conviction has been expunged or set aside . . . unless the pardon,
 3 expungement, or restoration of civil rights expressly provides that the
 4 person may not . . . possess . . . firearms."

5 In 2002, that conviction was set aside, or "expunged" under Cal.
 6 Penal Code § 1203.4.¹ Compl. ¶ 1. The expungement order was silent as
 7 to Plaintiff's rights to possess firearms. Based solely on these facts
 8 alone in his Complaint, Plaintiff asks this Court to "Issue a judicial
 9 Declaration that since October 20th, 2007, [Plaintiff] has been
 10 entitled to exercise his rights under the Second Amendment to the
 11 Constitution of the United States and that he is entitled under federal
 12 law to purchase . . . firearms . . . without risk and threat of
 13 prosecution. . . ." Compl. ¶ 2.

14 The Attorney General ("Defendant") then filed a Motion to Dismiss
 15 Under FRCP 12(b)(1), arguing Plaintiff had suffered no injury in fact
 16 and the case was not ripe. In addition, under FRCP 12(b)(6), Defendant
 17 argued that Jennings v. Mukasey, 511 F.3d 894 (9th Cir. 2007), squarely
 18 disposed of Plaintiff's Complaint.

19 In response, Plaintiff improperly supplemented the facts in his
 20 Complaint in his Opposition to Defendant's Motion. Plaintiff added
 21 that on June 8th, 2009, Plaintiff went to a gun show and attempted to
 22

23 ¹The Court notes that Plaintiff's briefs and complaint assert the
 24 position that the set aside was completed under California Penal Code
 25 Section 1203.4 subdivision (a), not Section 1203.4a. In relevant
 26 part, California Penal Code Section 1203.4(a) states:

27 "In any case in which a defendant has fulfilled the conditions
 28 of probation . . . the court shall set aside the verdict of guilty .
 . . and dismiss the accusations . . . against the defendant and . . .
 he or she shall thereafter be released from penalties and
 disabilities resulting from the offense of which he or she has been
 convicted. . . ."

1 purchase a firearm. Upon tendering the payment and applying for the
2 weapon, Plaintiff was rejected because of his prior MCDV. After
3 Plaintiff's counsel requested a response from the California Department
4 of Justice, Plaintiff discovered that he was on a list of people
5 prohibited from purchasing firearms under the Gun Control Act and state
6 laws. Plaintiff then went to Superior Court, requested, and received,
7 a declaration stating he was free to purchase firearms under the laws
8 of the State of California under the terms of his expungement.
9 However, he is currently still barred from purchasing a firearm under
10 the Federal Gun Control Act.

11 **II. MOTION TO DISMISS**

12 **A. Legal Standard**

13 A challenge to the Court's jurisdiction is brought under Federal
14 Rule of Civil Procedure 12(b)(1). A Rule 12(b)(1) motion may be based
15 on a facial challenge to the sufficiency of the jurisdictional
16 allegations in the complaint. "[W]hen this type of attack is mounted,
17 the court must accept as true all well-pleaded facts and draw all
18 reasonable inferences in favor of the plaintiff." Nasoordeen v. FDIC,
19 No. CV 08-05631 MMM (AJWx), 2010 WL 1135888 at *5 (C.D. Cal., Mar. 17,
20 2010) (citing Ass'n of Am. Med. Colleges v. United States, 217 F.3d
21 770, 778-79 (9th Cir. 2000)).

22 On a 12(b)(6) Motion to Dismiss, a plaintiff's complaint "must
23 contain sufficient factual matter, accepted as true, to 'state a claim
24 to relief that is plausible on its face.'" Ashcroft v. Iqbal, __ U.S.
25 __, 129 S.Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v.
26 Twombly, 550 U.S. 544 (2007)). "A claim has facial plausibility when
27 the plaintiff pleads factual content that allows the court to draw the
28

1 reasonable inference that the defendant is liable for the misconduct
2 alleged." Id. A complaint that offers mere "labels and conclusions"
3 or "a formulaic recitation of the elements of a cause of action will
4 not do." Id.; see also Moss v. U.S. Secret Service, 572 F.3d 962, 969
5 (9th Cir. 2009) (citing Iqbal, 129 S.Ct. at 1951).

6 When a court grants a motion to dismiss, ordinarily "any
7 dismissal[,] . . . except one for lack of jurisdiction, improper venue,
8 or failure to join a party under Rule 19[,] operates as an adjudication
9 on the merits." Fed. R. Civ. P. 41(b). However, the court may specify
10 that the dismissal is without prejudice to refiling the claim in a
11 separate action. See, e.g., Swaida v. Gentiva Health Services, 238 F.
12 Supp. 2d 325, 328 (D. Mass. 2002) ("dismissal [is] presumed to be with
13 prejudice unless the order explicitly states otherwise"); Seaweed, Inc.
14 v. DMA Product & Design & Marketing LLC, 219 F. Supp. 2d 551, 554
15 (S.D.N.Y. 2002) (when dismissal "does not operate on the merits" it
16 "should not issue with prejudice"). In addition, the court may grant
17 the plaintiff leave to amend a deficient claim "when justice so
18 requires." Fed. R. Civ. P. 15(a)(2).

19 **B. Standing and Ripeness as a Basis to Dismiss Under FRCP**
20 **12(b)(1)**

21 The Court finds that the Complaint, as currently pled, is
22 insufficient in presenting a live controversy under Article III, §2.
23 See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). To
24 establish a "case or controversy," Plaintiff must show an "injury in
25 fact" that is concrete and not conjectural. Lujan, 504 U.S. at 560-61.
26 Similarly, "A claim is not ripe for adjudication if it rests upon
27 contingent future events that may not occur as anticipated." Texas v.
28 United States, 523 U.S. 296, 300 (internal quotation marks omitted).

1 Here, Plaintiff's Complaint only states that he was convicted of a
2 prior misdemeanor crime of domestic violence and that this crime had
3 been "expunged" by the State of California. As discussed above,
4 Plaintiff's Complaint does not allege that he ever attempted to
5 purchase a firearm or that he was ever denied. These facts are instead
6 improperly included in Plaintiff's arguments in the Opposition to
7 Defendant's Motion to Dismiss. As discussed in Part II.A., a complaint
8 must plead sufficient facts to establish the Court's jurisdiction to
9 survive a 12(b)(1) motion to dismiss. Here, Plaintiff's complaint does
10 not establish Article III jurisdiction because he fails to allege that
11 he faces any concrete injury in fact or that Defendant may ever attempt
12 to hinder his rights to own a firearm.

13 Plaintiff has not sought to amend his Complaint. Thus, the
14 Complaint should be dismissed without prejudice for this reason alone.

15 **C. *Jennings* as a Basis to Dismiss With Prejudice Under FRCP**
16 **12(b)(6)**

17 Defendant also argues that regardless of whether Plaintiff's
18 additional facts in his Opposition are included in the Complaint, under
19 the Ninth Circuit's recent interpretation of this very issue,
20 Plaintiff's complaint cannot state a claim upon which relief can be
21 granted under FRCP 12(b)(6).

22 In Jennings, a petitioner sought a review of the Bureau of
23 Alcohol, Tobacco, and Firearms' ("ATF") denial of his application for a
24 renewal of a firearms license. Jennings, 511 F.3d at 896. The
25 petitioner had previously been convicted in California of a MCDV and
26 had his conviction expunged by a 1999 expungement order, similar to the
27 Plaintiff's expungement order in this case. Id. The petitioner argued
28 that under 18 U.S.C. § 921(33)(B)(ii) and because of his expungement

1 pursuant to California Penal Code Section 1203.4 subd. (a), he was not
2 prohibited by the Federal Gun Control Act in possessing firearms. Id.
3 Nonetheless, the Ninth Circuit found that a state court order under §
4 1203.4 subd. (a) did not "expunge" the petitioner's conviction for the
5 purposes of 18 U.S.C. § 922(g)(9), which prohibits those convicted of a
6 misdemeanor crime of domestic violence from possessing firearms.² Id.
7 at 898-99.

8 It is undisputed that Plaintiff makes the same argument that the
9 petitioner made in Jennings. Opp'n at 15-16. Instead, Plaintiff
10 suggests that this court should not follow binding Ninth Circuit
11 precedent because "the Jennings opinion is worthless as precedent."
12 Opp'n at 16. Plaintiff cites to Supreme Court cases and Ninth Circuit
13 decisions predating Jennings, urging the Court to decide the issue
14 differently. However, none of these cases change the fact that
15 Jennings precisely controls this case. Plaintiff also cites to two
16 Supreme Court cases after Jennings, District of Columbia v. Heller, 544
17 U.S. ____ (2008) and McDonald v. City of Chicago, 561 U.S. ____ (2010),
18 which hold that rights under the Second Amendment are fully applicable
19 to the states. Plaintiff claims these cases "evidence a growing
20 acceptance and expansion of the right to bear arms." Opp'n 21.
21 Whether or not this is true, as Plaintiff himself admits, "neither case
22 specifically addresses the issues brought forth herein." Opp'n 21.

23
24
25
26 ²The Court notes that the Jennings court did not reach the issue of
27 whether 1203.4a, rather than 1203.4 subd. (a), would require the same
28 result. Id. at 899-900. However, it is undisputed in this case that
Plaintiff received an "expungement" under 1203.4 subd. (a), which was
in fact addressed by Jennings.


1 **III. CONCLUSION**

2 Plaintiff's Complaint is initially deficient for failing to plead
3 facts establishing a case or controversy under Article III, §2.
4 However, even if the additional facts stated in Plaintiff's Opposition
5 were pled in Plaintiff's Complaint, Plaintiff's arguments are directly
6 controlled by Jennings.

7 Having cited no contravening authority on point after Jennings,
8 Plaintiff cannot succeed in this case. The Court has no power to
9 disregard binding precedent as the Plaintiff urges. Thus, Plaintiff's
10 Complaint is DISMISSED WITH PREJUDICE.

11
12
13 IT IS SO ORDERED.

14 DATED: October 26, 2010

15 
16 _____
17 STEPHEN V. WILSON
18 UNITED STATES DISTRICT JUDGE
19
20
21
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25
26
27
28

LAW OFFICES OF FRANKLIN S. ADLER
State Bar Number: 056417
424 South Beverly Drive
Beverly Hills, California 90212
Office: (310) 553-8533
FAX: (310) 553-8237
E-Mail Address: FSAdlerLaw@aol.com

Attorney for Plaintiff
EUGENE EVAN BAKER

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EUGENE EVAN BAKER,

Plaintiff,

vs.

ERIC R. HOLDER, JR., in his
official capacity as ATTORNEY
GENERAL OF THE UNITED STATES,
with offices at 950
Pennsylvania Avenue, N.W.,
Washington, D.C., 20530-0001

Defendant.

Case No: CV 10-3996-SVW(AJWx)

**PLAINTIFF'S RESPONSE TO
DEFENSE MOTION TO DISMISS
COMPLAINT**

**Complaint Served On USAO:
5/27/10**

**Current Response Date:
10/4/10**

**Current Hearing Date:
10/25/10**

**Hon. Stephen V. Wilson
United States District Judge**

Plaintiff EUGENE EVAN BAKER herewith submits his Response to
the defense Motion to Dismiss the within Complaint.

Dated: September 25, 2010.

Respectfully submitted,

LAW OFFICES OF FRANKLIN S. ADLER

/s/

FRANKLIN S. ADLER
Attorney for Plaintiff
EUGENE EVAN BAKER

VENTURA
SUPERIOR COURTS
FILED

RECEIVED

FEB 24 2001

Superior Court Clerk
Ventura County

The people of the State of California,

VENTURA COUNTY MUNICIPAL COURT
State of California

JUN 19 2002

VENTURA/SIMI VALLEY DEPARTMENT

MICHAEL D. PLANET

Executive Officer and Clerk
BY: *[Signature]*, Deputy

Case Number 97C008304

**DECLARATION AND
APPLICATION BY DEFENDANT --
PENAL CODE SECTION 1203.4/1203.4a**

Plaintiff,

vs.

EUGENE RYAN BAKER

Defendant.

1. My date of birth is 10 - 5 - 61, my driver's license number is X587794154 CM
2. On the date of September 29, 1997, I was convicted of the misdemeanor offense(s) of violation of Section(s) 273.5(A) - Penal Code
3. I was:
 - ☒ placed on probation, and I have fulfilled all the conditions of probation for the entire time required.
 - ☐ sentenced more than one year ago, without probation, and I have fully complied with the sentence.
4. I am not now charged with, serving a sentence for, or on probation for any offense. Since being sentenced or placed on probation in this case, I have lived an honest and upright life, have conformed to and obeyed the laws of the land, and have not been convicted, arrested, or given a citation (ticket) except _____
5. I request that the conviction be set aside, that a plea of not guilty be entered, and that the court dismiss this action pursuant to the provisions of Section 1203.4/1203.4a of the Penal Code.
6. I understand that the requested dismissal: (a) will not affect any revocation or suspension of my driving privilege, (b) will not prevent this conviction from being pleaded and proved in any subsequent prosecution, and (c) will not relieve me of the obligation to disclose the conviction in response to a direct question in any questionnaire or application for public office or for licensure by any state or local agency.

I declare under penalty of perjury that the foregoing is true and correct. Signed on X 2/24/01 (DATE)
at X SOMES (PLACE), California.

X *[Signature]*
SIGNATURE OF DEFENDANT

EUGENE RYAN BAKER

TYPE OR PRINT NAME OF DEFENDANT

X
ADDRESS

46 Bristol St. Worcester, MA 01606

CII and DMV cleared on _____

by *[Signature]*

ORDER

Pursuant to Penal Code Section 1203.4/1203.4a, it is ordered that the conviction be set aside, a plea of not guilty be entered, and the complaint is dismissed.

ER096

1 LAW OFFICES OF FRANKLIN S. ADLER
2 State Bar Number: 056417
3 424 South Beverly Drive
4 Beverly Hills, California 90212
5 (310) 553-8533

6 Attorney for Defendant
7 EUGENE EVAN BAKER

VENTURA
SUPERIOR COURT
FILED

MAR 10 2010

MICHAEL D. PLANET
Executive Officer and Clerk
Michael D. Planet Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF VENTURA

10
11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 EUGENE EVAN BAKER,
16 (Originally filed as
17 EUGENE RYAN BAKER)

18 Defendant.

Case No: 97C008304

ORDER RESTORING SECOND
AMENDMENT RIGHTS TO EUGENE
EVAN BAKER

19 This matter came on regularly for hearing on 3-11-10,
20 pursuant to a notice of motion filed herein by defendant. Counsel
21 for the defendant and for the People both appeared. Counsel for
22 the defendant moved in open court for an Order restoring the
23 Second Amendment right to bear arms to defendant.

24 The Court, having read the moving papers submitted in this
25 matter and having heard the arguments of counsel on the motion,
26 and being advised in the premises;

27 / / /

28 / / /

ORDER RESTORING 2nd AMEND. RIGHTS TO EUGENE EVAN BAKER

ER097

1 GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED that Mr.
2 EUGENE EVAN BAKER's ~~Second Amendment Right to Possess Firearms is~~
3 ~~restored and he is~~ is entitled to purchase, own and
4 possess firearms consistent with the laws of the State of
5 California.

6 A copy of this Order shall have the same force and effect as
7 the original.

8 Dated: MARCH 11, 2010

9
10
11
12 (Seal)


JUDGE OF THE SUPERIOR COURT

COPY

10 MAY 27 PM 12:51
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

LAW OFFICES OF FRANKLIN S. ADLER
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E-Mail Address: FSAdlerLaw@aol.com

Attorney for Plaintiff
EUGENE EVAN BAKER

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SW AJWx

EUGENE EVAN BAKER,

Plaintiff,

vs.

ERIC H. HOLDER, JR., in his
official capacity as ATTORNEY
GENERAL OF THE UNITED STATES,
with offices at 950
Pennsylvania Avenue, N.W.,
Washington, D.C., 20530-0001

Defendant.

Case No:

CV 10 3996

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief in order that plaintiff EUGENE EVAN BAKER (hereinafter "plaintiff" or "BAKER") may lawfully own, possess and use a firearm in the exercise of his rights under the Second Amendment to the Constitution of the United States although he was convicted in the State of California of a misdemeanor crime of domestic violence in 1997, because, in 2002, that state conviction was expunged and set-aside without permanent restriction pursuant to California law, and said

/ / /

1 by a competent California Court removes EUGENE EVAN BAKER from the
2 stricture of 18 U.S.C. §922(g)(9).

3 2. Issue a judicial Declaration that since October 20th, 2007,
4 EUGENE EVAN BAKER has been entitled to exercise his rights under the
5 Second Amendment to the Constitution of the United States and that
6 he is entitled under federal law to purchase, own and possess
7 firearms and ammunition without risk and threat of prosecution by
8 Defendant and his representatives.

9 3. Enjoin the Defendant and his representatives from arresting
10 and prosecuting EUGENE EVAN BAKER for any future alleged violation
11 of 18 U.S.C. §922(g)(9) for so long as he remains free of any
12 disqualifying conviction.

13 4. Order that all computers and other repositories of
14 information relied upon by Defendant and his representatives
15 concerning those allegedly prohibited from purchasing, owning and
16 possessing a firearm pursuant to 18 U.S.C. §922(g)(9) be purged of
17 all information and content concerning the person, arrest,
18 conviction and sentencing of EUGENE EVAN BAKER.

19 5. Award Plaintiff costs and fees pursuant to 28 U.S.C. §2412.

20 6. Provide such other relief as may be proper.

21 Dated: May 25, 2010.

22 Respectfully submitted,

23 LAW OFFICES OF FRANKLIN S. ADLER

24 

25 FRANKLIN S. ADLER
26 Attorney for Plaintiff
27 EUGENE EVAN BAKER
28

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
EUGENE EVAN BAKER

DEFENDANTS
ERIC H. HOLDER, JR., in his official capacity as ATTORNEY
GENERAL OF THE UNITED STATES, with offices at 950 Pennsylvania
Avenue, N.W., Washington, D.C., 20530-0001

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

LAW OFFICES OF FRANKLIN S. ADLER
424 South Beverly Drive
Beverly Hills, CA 90212 (310) 553-8533

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No

MONEY DEMANDED IN COMPLAINT: \$ 28 U.S.C. 2412 Costs and Fees

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. 1331, 2201, 2202 (Declaratory Relief). Eligibility to own firearms after state conviction and set-aside of Misdemeanor Crime of Domestic Violence.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input checked="" type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 465 Other Immigration Actions			FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

CV10 3996

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s):

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
EUGENE EVAN BAKER - VENTURA COUNTY	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☒ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

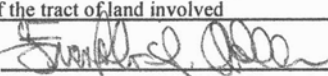
- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
 Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
VENTURA COUNTY	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):



Date

5/25/10

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Name & Address:

LAW OFFICES OF FRANKLIN S. ADLER

State Bar Number: 056417

424 S. Beverly Drive

Beverly Hills, CA 90212

(310) 553-8533

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EUGENE EVAN BAKER

PLAINTIFF(S)

v.

ERIC H. HOLDER, JR., in his official
capacity as ATTORNEY GENERAL OF THE
UNITED STATES, with offices at 950
Pennsylvania Avenue, N.W., Washington
D.C., 20530-0001

DEFENDANT(S).

CASE NUMBER

CV 10 3996 SVW AJWx

SUMMONS

TO: DEFENDANT(S): ERIC H. HOLDER, JR., in his official capacity as
ATTORNEY GENERAL OF THE UNITED STATES, with offices at 950 Pennsylvania
Avenue, N.W., Washington, D.C., 20530-0001

A lawsuit has been filed against you.

Within 60 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, FRANKLIN S. ADLER, whose address is 424 S. Beverly Drive, Beverly Hills, CA 90212. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 27 MAY 2010By: [Signature]Deputy **SEAL**

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Stephen V. Wilson and the assigned discovery Magistrate Judge is Andrew J. Wistrich.

The case number on all documents filed with the Court should read as follows:

CV10- 3996 SVW (AJWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[] Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[] Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

(AJWx),APPEAL,CLOSED,DISCOVERY,REOPENED

UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:10-cv-03996-SVW-AJW

Eugene Evan Baker v. Eric H. Holder, Jr.
Assigned to: Judge Stephen V. Wilson
Referred to: Magistrate Judge Andrew J. Wistrich
Case in other court: 9th CCA, 11-55067
9TH CCA, 13-56454
Cause: 28:2201 Declaratory Judgment

Date Filed: 05/27/2010
Date Terminated: 07/31/2013
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: U.S. Government Defendant

Plaintiff

Eugene Evan Baker

represented by **Joshua R Dale**
Michel & Associates PC
180 East Ocean Blvd Suite 200
Los Angeles, CA 90802
562-216-4444
Fax: 562-216-4445
Email: jdale@michellawyers.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Carl Dawson Michel
Michel and Associates PC
180 East Ocean Boulevard Suite 200
Long Beach, CA 90802
562-216-4444
Fax: 562-216-4445
Email: cmichel@michellawyers.com
ATTORNEY TO BE NOTICED

Franklin S Adler
Law Offices of Franklin S Adler
424 South Beverly Drive
Beverly Hills, CA 90212-4414
310-553-8533
Fax: 310-553-8237
Email: fsadlerlaw@aol.com
TERMINATED: 10/15/2012
ATTORNEY TO BE NOTICED

V.

Defendant**Eric H. Holder, Jr.***in his official capacity as Attorney General
of the United States*represented by **David A DeJute**

AUSA - Office of US Attorney
300 North Los Angeles Street Room 7516
Los Angeles, CA 90012
213-894-2574
Fax: 213-894-7819
Email: USACAC.Civil@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ira A Daves , III

AUSA - Office of US Attorney
Federal Building - Civil Division
300 North Los Angeles Street Suite 7516
Los Angeles, CA 90012
213-894-2443
TERMINATED: 09/23/2010
ATTORNEY TO BE NOTICED

Defendant**Kamala D Harris***in her capacity as ATTORNEY GENERAL
FOR THE STATE OF CALIFORNIA;*represented by **Anthony R Hakl , III**

Office of the Attorney General
1300 I Street, 16th Floor
Sacramento, CA 95814
916-322-9041
Email: anthony.hakl@doj.ca.gov
ATTORNEY TO BE NOTICED

Defendant**State of California Department of
Justice**represented by **Anthony R Hakl , III**

(See above for address)
ATTORNEY TO BE NOTICED

Defendant**Does***1 through 100, Inclusive*

Date Filed	#	Docket Text
05/27/2010	<u>1</u>	COMPLAINT against Defendant Eric H. Holder, Jr. Case assigned to Judge Stephen V. Wilson for all further proceedings. Discovery referred to Magistrate Judge Andrew J. Wistrich.(Filing fee \$ 350: PAID), filed by plaintiff Eugene Evan Baker.(ghap) (mg). (Entered: 05/27/2010)

05/27/2010		60 DAY Summons Issued re Complaint - (Discovery) 1 as to Defendant Eric H. Holder, Jr. (ghap) (Entered: 05/27/2010)
05/27/2010	2	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Eugene Evan Baker. (ghap) (mg). (Entered: 05/27/2010)
05/28/2010	3	NEW CASE ORDER (See document for further details) by Judge Stephen V. Wilson. (ir) (Entered: 05/28/2010)
06/24/2010	4	PROOF OF SERVICE Executed by Plaintiff Eric H. Holder, Jr, upon Defendant Eric H. Holder, Jr in his official capacity served on 5/27/2010, answer due 7/26/2010. Service of the Summons and Complaint Executed upon the Attorney Generals Office of the United States by delivering a copy to Flabia De La Rosa authorized person to receive service of process. Service was executed in compliance with Federal Rules of Civil Procedure. Due diligence declaration NOT attached. Registered or certified mail return receipt NOT attached. Original Summons NOT returned. (pj) (Entered: 06/28/2010)
07/20/2010	5	FIRST STIPULATION Extending Time to Answer the complaint as to Eric H. Holder, Jr answer now due 8/25/2010, filed by Defendant Eric H. Holder, Jr.(Daves, Ira) (Entered: 07/20/2010)
08/20/2010	6	NOTICE OF MOTION AND MOTION to Dismiss Case <i>Memorandum Of Points And Authorities</i> filed by Defendant Eric H. Holder, Jr. Motion set for hearing on 10/4/2010 at 01:30 PM before Judge Stephen V. Wilson. (Attachments: # 1 Proposed Order) (Daves, Ira) (Entered: 08/20/2010)
09/15/2010	7	NOTICE OF MOTION AND MOTION to Continue Response Date for Opposition to Defendant's Motion to Dismiss and Continue Hearing Date on Motion to Dismiss from Response Date: September 13, 2010; Hearing Date: October 4, 2010 to Response Date: October 4, 2010; Hearing Date: October 25, 2010 filed by Plaintiff Eugene Evan Baker. Motion set for hearing on 10/4/2010 at 01:30 PM before Judge Stephen V. Wilson. (Adler, Franklin) (Entered: 09/15/2010)
09/15/2010	8	NOTICE OF MOTION AND MOTION for Order for Proposed Order Granting Plaintiff Continuance to File Response to Motion to Dismiss and Continuance of Hearing Date on Motion <i>to Dismiss presently set 10/04/10 to date of 10/25/10</i> filed by Plaintiff Eugene Evan Baker. Motion set for hearing on 10/4/2010 at 01:30 PM before Judge Stephen V. Wilson. (Adler, Franklin) (Entered: 09/15/2010)
09/15/2010	9	ORDER Granting Plaintiff's Unopposed Motion to Continue Plaintiff's Response Date to Defendant's Motion to Dismiss and Continuance of Hearing Date 7 by Judge Stephen V. Wilson. IT IS HEREBY ORDERED that the Response Date for Plaintiff to file his opposition to Defendant's Motion to Dismiss is continued from 9/13/2010 to 10/4/2010, and the within Hearing date is continued from 10/4/2010 to 10/25/2010 at 1:30 pm. (csi) (Entered: 09/17/2010)
09/23/2010	10	NOTICE of Change of Attorney Information for attorney David A DeJute counsel for Defendant Eric H. Holder, Jr. Adding David A. DeJute as attorney as counsel of record for Eric H. Holder, Jr. for the reason indicated in the G-06 Notice. Ira A. Daves will no longer receive service of documents from the Clerks Office for the reason indicated in the G-06 Notice.Ira A. Daves is no longer attorney of record for the aforementioned

		party in this case for the reason indicated in the G-06 Notice. Filed by Defendant Eric H. Holder, Jr. (DeJute, David) (Entered: 09/23/2010)
09/29/2010	11	OPPOSITION To Defendant's Motion To Dismiss (without Exhibits 1-7 which could not be scanned into document - they will be faxed to all parties and submitted to Judge's Courtesy Box on 9/30/10) filed by Plaintiff Eugene Evan Baker. (Adler, Franklin) (Entered: 09/29/2010)
10/08/2010	12	REPLY in support MOTION to Dismiss Case Memorandum Of Points And Authorities 6 filed by Defendant Eric H. Holder, Jr. (DeJute, David) (Entered: 10/08/2010)
10/25/2010	13	MINUTES OF Motion Hearing held before Judge Stephen V. Wilson: GRANTING MOTION to Dismiss Case 6 . Order to issue.Court Reporter: Margaret Babykin. (rrey) (Entered: 10/25/2010)
10/26/2010	14	ORDER by Judge Stephen V. Wilson: GRANTING Defendant's 6 Motion to Dismiss Complaint With Prejudice. (MD JS-6. Case Terminated) (mg) (Entered: 10/27/2010)
01/07/2011	15	NOTICE OF APPEAL to the 9th CCA filed by Plaintiff Eugene Evan Baker. Appeal of Order on Motion to Dismiss Case 14 Filed On: 10/26/2010; Entered On: 10/27/2010; Filing fee \$455, Paid. receipt number LA007143. (lr) Modified on 1/10/2011 (lr). (Entered: 01/10/2011)
01/11/2011	16	NOTIFICATION by Circuit Court of Appellate Docket Number 11-55067, 9th CCA regarding Notice of Appeal to 9th Circuit Court of Appeals 15 as to Plaintiff Eugene Evan Baker. (lr) (Entered: 01/12/2011)
03/23/2011	17	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 15 filed by Eugene Evan Baker CCA # 11-55067. The appellant's motion for an extension of time to file the transcript designation is granted. If the appellant has not already done so, the appellant shall designate the transcript on or before March 30, 2011. The transcript is due May 2, 2011. The opening brief is due June 13, 2011. The answering brief is due July 14, 2011. The optional reply brief is due 14 days after the service of the answering brief. Appellant shall provide a copy of this order to the court reporter(s) at the district court. Within 7 days after the date of this order, the appellant shall file the Mediation Questionnaire with this court. Order received in this district on 3/23/2011. (dmap) (Entered: 03/24/2011)
03/24/2011	18	TRANSCRIPT DESIGNATION AND ORDERING FORM For Dates: 10/25/2010; Court Reporter: Margaret Babykin; Court of Appeals Case Number: 11-55067; Re: 15 (Landau, Karen) (Entered: 03/24/2011)
05/05/2011	19	TRANSCRIPT for proceedings held on October 25, 2010 1:46 P.M. to 1:48 P.M. Court Reporter/Electronic Court Recorder: Margaret J. Babykin, phone number (626) 963-0566. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/26/2011. Redacted Transcript Deadline set for 6/5/2011. Release of Transcript Restriction set for 8/3/2011. (Babykin, Margaret) (Entered: 05/05/2011)

09/18/2012	20	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 15 , CCA # 11-55067. The Judgment of the district court is Affirmed in part; Reversed in part; Remanded. Mandate received in this district on 9/18/12. (car) (Entered: 09/20/2012)
09/21/2012	21	MINUTE ORDER IN CHAMBERS by Judge Stephen V. Wilson: re: USCA Mandate 20 : THE COURT REVIEWS the mandate (judgment or order) of the Ninth Circuit Court of Appeals: Remanding. The plaintiff shall file his amended complaint, consistent with the Ninth Circuit Mandate, within twenty days from the date of this order. The matter is set for a status conference on October 15, 2012 at 1:30 p.m. (Case reopened. MD JS-5.) (pj) (Entered: 09/26/2012)
10/08/2012	22	REQUEST to Substitute attorney Joshua R. Dale in place of attorney Franklin S. Adler filed by Plaintiff Eugene Evan Baker. (Attachments: # 1 Proposed Order)(Dale, Joshua) (Entered: 10/08/2012)
10/11/2012	23	FIRST AMENDED COMPLAINT against Defendants Eric H. Holder, Jr, Kamala D Harris, State of California Department of Justice, Does a) 1 ; JURY DEMAND, filed by Plaintiff Eugene Evan Baker (Attachments: # 1 21 day summons Issued as to first amended complaint)(pj) (Entered: 10/16/2012)
10/11/2012	26	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Eugene Evan Baker, (pj) (Entered: 10/18/2012)
10/15/2012	24	ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY by Judge Stephen V. Wilson: The Court hereby orders that the request of: Eugene Evan Baker Plaintiff to substitute Joshua R. Dale Retained Counsel as attorney of record instead of Franklin S. Adler 22 . Attorney Franklin S Adler terminated (pj) (Entered: 10/16/2012)
10/15/2012	25	MINUTES OF Status Conference held before Judge Stephen V. Wilson:, Conference held. The Court sets the following schedule: Filing of Simultaneous Opening Briefs December 6, 2012; Filing of Simultaneous Responding Briefs December 17, 2012; Hearing January 7, 2013 at 1:30 p.m. The Court further orders that plaintiff shall effectuate service of the amended complaint withintwenty days of this hearing. Court Reporter: Deborah Gackle. (pj) (Entered: 10/18/2012)
11/02/2012	27	PROOF OF SERVICE Executed by Plaintiff Eugene Evan Baker, upon Defendant State of California Department of Justice served on 10/19/2012, answer due 11/9/2012. Service of the Summons and Complaint were executed upon The State of California Department of Justice in compliance with Federal Rules of Civil Procedure by substituted service at business address and by also mailing a copy. Original Summons returned. (Michel, Carl) (Entered: 11/02/2012)
11/02/2012	28	PROOF OF SERVICE Executed by Plaintiff Eugene Evan Baker, upon Defendant Kamala D Harris served on 10/19/2012, answer due 11/9/2012. Service of the Summons and Complaint were executed upon Kamala D. Harris In Her Capacity as Attorney General for the State of California in compliance with Federal Rules of Civil Procedure by substituted service at business address and by also mailing a copy. Original Summons returned. (Michel, Carl) (Entered: 11/02/2012)

11/02/2012	29	PROOF OF SERVICE Executed by Plaintiff Eugene Evan Baker, upon Defendant Eric H. Holder, Jr served on 10/16/2012, answer due 12/15/2012. Service of the Summons and Complaint were Executed upon the Attorney Generals Office of the United States by delivering a copy to Steffon Edmonds, Authroized Agent. The officer agency or corporation was NOT served. Service was executed in compliance with Federal Rules of Civil Procedure. Due diligence declaration attached. Registered or certified mail return receipt NOT attached. Original Summons returned. (Michel, Carl) (Entered: 11/02/2012)
11/09/2012	30	ANSWER to Amended Complaint, 23 filed by Defendants Kamala D Harris, State of California Department of Justice. (Attachments: # 1 Certificate of Service)(Hakl, Anthony) (Entered: 11/09/2012)
11/15/2012	31	TRANSCRIPT for proceedings held on 10/15/2012 1:30 pm. Court Reporter: Deborah K. Gackle, phone number (213) 620-1149. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through DEBORAHGACKLE.COM or PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 12/6/2012. Redacted Transcript Deadline set for 12/16/2012. Release of Transcript Restriction set for 2/13/2013. (Gackle, Deborah) (Entered: 11/15/2012)
11/15/2012	32	NOTICE OF FILING TRANSCRIPT filed for proceedings 10/15/2012 1:30 p.m. re Transcript 31 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (Gackle, Deborah) TEXT ONLY ENTRY (Entered: 11/15/2012)
11/30/2012	33	Joint STIPULATION for Extension of Time to File Simultaneous Opening and Responding Briefs and Resetting of Hearing filed by Plaintiff Eugene Evan Baker. (Attachments: # 1 Proposed Order)(Michel, Carl) (Entered: 11/30/2012)
11/30/2012	34	ORDER by Judge Stephen V. Wilson, re Stipulation for Extension of Time to File 33 , The parties simultaneous Opening Briefs are due on January 7, 2013.2. The parties simultaneous Responding Briefs are due on January 16, 2013. 3. The hearing shall proceed on February 4, 2013 at 1:30 p.m. (pj) (Entered: 12/03/2012)
12/13/2012	35	ANSWER to Amended Complaint, 23 filed by DEFENDANT Eric H. Holder, Jr.(DeJute, David) (Entered: 12/13/2012)
01/07/2013	36	BRIEF filed by DEFENDANT Eric H. Holder, Jr. (<i>OPENING</i>) regarding Order, Set/Reset Deadlines/Hearings,, 34 . (Attachments: # 1 EXHIBIT A, # 2 Proposed Order)(DeJute, David) (Entered: 01/07/2013)
01/07/2013	37	BRIEF filed by Defendants Kamala D Harris, State of California Department of Justice. regarding Order, Set/Reset Deadlines/Hearings,, 34 . (Attachments: # 1 Certificate of Service)(Hakl, Anthony) (Entered: 01/07/2013)
01/07/2013	38	BRIEF filed by Plaintiff Eugene Evan Baker. <i>Plaintiff's Brief Re Issues On Remand</i> (Michel, Carl) (Entered: 01/07/2013)
01/16/2013	39	RESPONSE filed by Defendant Eric H. Holder, Jrto Brief (non-motion non-appeal) 38 (<i>FEDERAL DEFENDANT'S RESPONDING BRIEF</i>) (DeJute, David) (Entered: 01/16/2013)

		01/16/2013)
01/16/2013	40	BRIEF filed by Defendants Kamala D Harris, State of California Department of Justice. regarding Brief (non-motion non-appeal) 38 . (Attachments: # 1 Certificate of Service) (Hakl, Anthony) (Entered: 01/16/2013)
01/16/2013	41	RESPONSE filed by Plaintiff Eugene Evan Bakerto Brief (non-motion non-appeal) 36 <i>Plaintiff's Reply To Federal Defendant's Opening Brief</i> (Michel, Carl) (Entered: 01/16/2013)
01/24/2013	42	TRANSCRIPT ORDER as to Defendant Eric H. Holder, Jr DCN number: M 8 0185. Court Reporter. Transcript portion requested: Other: 10/15/2012. Transcript preparation will not begin until payment has been satisfied with the court reporter/recorder. (DeJute, David) (Entered: 01/24/2013)
02/01/2013	43	SCHEDULING NOTICE by Judge Stephen V. Wilson: The hearing on a motion to dismiss previously scheduled for 02/04/2013 1:30 PM has been rescheduled to 2/25/2013 at 1:30 PM before Judge Stephen V. Wilson. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(pc) TEXT ONLY ENTRY (Entered: 02/01/2013)
02/04/2013	44	MEMORANDUM of Points and Authorities in Opposition to <i>Motion to Dismiss</i> Re: Brief (non-motion non-appeal) 36 (Michel, Carl) (Entered: 02/04/2013)
02/11/2013	45	REPLY <i>BRIEF</i> filed by Defendant Eric H. Holder, Jr. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(DeJute, David) (Entered: 02/11/2013)
02/21/2013	46	SCHEDULING NOTICE by Judge Stephen V. Wilson: The hearing previously scheduled for 02/25/13 at 1:30 PM has been rescheduled to 3/11/2013 at 1:30 PM. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(pc) TEXT ONLY ENTRY (Entered: 02/21/2013)
03/08/2013	47	IN CHAMBERS ORDER-TEXT ONLY ENTRY by Judge Stephen V. Wilson: Upon review of the parties' briefs, the Court concludes that the Motion is suitable for determination without oral argument. Fed. R. Civ. P. 78(b); Local Rule 7-15. The hearing scheduled for Monday, March 11, 2013, is VACATED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(pc) TEXT ONLY ENTRY (Entered: 03/08/2013)
07/31/2013	48	MINUTE ORDER IN CHAMBERS Re MOTION TO DISMISS 36 I. by Judge Stephen V. Wilson: For the reasons put forward in this Order, Plaintiffs FAC is DISMISSED WITH PREJUDICE. (Made JS-6. Case Terminated.) (pj) (Entered: 08/01/2013)
08/20/2013	49	NOTICE OF APPEAL to the Federal Circuit filed by Plaintiff Eugene Evan Baker. Appeal of Minutes of In Chambers Order/Directive - no proceeding held, Terminated Case 48 (Appeal fee of \$455 receipt number 0973-12576609 paid.) (Michel, Carl) (Entered: 08/20/2013)
08/20/2013	50	NOTICE OF ERRATA filed by Plaintiff Eugene Evan Baker. correcting Notice of Appeal to Federal Circuit Court of Appeals 49 (Michel, Carl) (Entered: 08/20/2013)

08/20/2013	51	NOTICE OF APPEAL to the 9th CCA filed by Plaintiff Eugene Evan Baker. Appeal of Minutes of In Chambers Order/Directive - no proceeding held, Terminated Case 48 (Appeal fee FEE NOT PAID.) (Michel, Carl) (Entered: 08/20/2013)
08/21/2013	52	NOTIFICATION by Circuit Court of Appellate Docket Number 13-56454, 9TH CCA regarding Notice of Appeal to 9th Circuit Court of Appeals 51 as to Plaintiff Eugene Evan Baker. (car) (Entered: 08/21/2013)
09/17/2013	53	TRANSCRIPT ORDER as to Plaintiff Eugene Evan Baker Court Reporter. Court will contact Joshua R. Dale at jdale@michellawyers.com with any questions regarding this order. Transcript portion requested: Other: transcript for proceedings held on 10/25/10; transcript for proceedings held on 10/15/12.. Transcript preparation will not begin until payment has been satisfied with the court reporter/recorder. (Dale, Joshua) (Entered: 09/17/2013)
05/06/2014	54	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 51 filed by Eugene Evan Baker, CCA # 2:10-cv-03996. is The appellant's unopposed motion to further stay appellate proceedings 180 days pending the filing of the petition for writ of certiorari with the United States Supreme Court in United States v. Chovan, Ninth Circuit Docket No. 11-50107, is granted. Appellate proceedings are stayed until November 3, 2014. At or prior to the expiration of the stay of appellate proceedings, the appellant shall file the opening brief or file a motion for appropriate relief. If the opening brief is filed, the answering brief is due December 3, 2014. The optional reply brief is due within 14 days after service of the answering brief. No. 13-56454 In the absence of a motion, the stay of appellate proceedings will terminate without further notice.. (dmap) (Entered: 05/08/2014)
10/10/2014	55	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 51 filed by Eugene Evan Baker, CCA # 13-56454. Appellant's unopposed motion to stay proceedings pending this Court's disposition of Enos v. Holder, Jr. appeal no. 12-15498, is granted in part. The brief schedules have been set. This case is stayed until January 2, 2015. Order received in this district on 10/10/14. [See document for more details] (mat) (Entered: 10/15/2014)
11/17/2014	56	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 51 filed by Eugene Evan Baker, CCA # 13-56454. The petitioners motion to stay appellate proceedings for 180 days pending Enos v. Holder, No. 12-15498, is granted. Appellate proceedings are stayed until July 2, 2015. The brief schedules have been set. Order received in this district on 11/17/14. [See document for details] (mat) (Entered: 11/18/2014)
06/08/2015	57	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 51 filed by Eugene Evan Baker. CCA # 13-56454. The petitioner's motion to further stay appellate proceedings for 90 days pending United States Supreme Courts disposition of the petition for writ of certiorari in Enos v. Holder, No. 14-1216, is granted. (car) (Entered: 06/10/2015)
01/08/2016	58	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 51 filed by Eugene Evan Baker. CCA # 13-56454. Appellant's motion for full remand to the district court for further proceedings is denied without prejudice

	to raising the arguments in the opening brief. (car) (Entered: 01/11/2016)
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PACER Service Center			
Transaction Receipt			
02/16/2016 14:54:14			
PACER Login:	tm0137:2646583:0	Client Code:	1763
Description:	Docket Report	Search Criteria:	2:10-cv-03996-SVW-AJW End date: 2/16/2016
Billable Pages:	8	Cost:	0.80

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2016, an electronic PDF of APPELLANT'S EXCERPTS OF RECORD was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: February 16, 2016

MICHEL & ASSOCIATES, P.C.

s/ C. D. Michel

C. D. Michel

*Counsel for Plaintiff-Appellant
Eugene Baker*