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CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: _____

12
13 **UNITED STATES DISTRICT COURT**
14
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 EUGENE EVAN BAKER,

17 Plaintiff,

18 vs.

19 ERIC H. HOLDER, JR., in his official
20 capacity as ATTORNEY GENERAL
21 OF THE UNITED STATES;
22 KAMALA D. HARRIS, in her
23 capacity as ATTORNEY GENERAL
24 FOR THE STATE OF
25 CALIFORNIA; THE STATE OF
26 CALIFORNIA DEPARTMENT OF
27 JUSTICE; and DOES 1 through 100,
Inclusive,

28 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

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 receive, own and possess 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 ("MCDV").

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.
 25

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.



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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.



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Eugene Evan Baker

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Plaintiff,

vs.

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Inclusive,

Defendants.

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(2) **VIOLATION OF FEDERAL
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1. This is an action for declaratory and injunctive relief in order that Plaintiff EUGENE EVAN BAKER (hereinafter "Plaintiff" or "Baker") may lawfully receive, own and possess 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 ("MCDV").

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),
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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.
 25

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>>

1 §922(g)(9) in the attempted exercise of his Second Amendment rights.

2 **RELEVANT CALIFORNIA PENAL STATUTES**

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

5 Any person who willfully inflicts upon a person who is
6 his or her spouse, former spouse, cohabitant, former
7 cohabitant, or the mother or father of his or her child,
8 corporal injury resulting in a traumatic condition, is guilty
9 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.

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

13 Except as provided in Section 29855 or subdivision (a) of
14 Section 29800, any person who has been convicted of a
15 misdemeanor violation of Section . . . 273.5, . . . and who,
16 within 10 years of the conviction, owns, purchases,
17 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.

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

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

26
27 ² Because prior to January 1, 2012, the text of Section 29805 was
28 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,

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

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

14 35. At all times, Defendants Holder, Harris and DOES 1-100 were acting
15 pursuant to 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9). On information and belief,
16 Defendants, and each of them, will continue to implement and enforce 18 U.S.C.
17 §§921(a)(33)(A)(i) & 922(g)(9) in a manner that infringes upon Plaintiff's exercise
18 of his Second Amendment rights, absent the grant of the relief requested.

19 **SECOND CLAIM FOR**
20 **VIOLATION OF FEDERAL EQUAL**
21 **PROTECTION CLAUSE**
22 **(Against All Defendants)**

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

25 37. Plaintiff is of a class of firearms purchasers who have previously been
26 convicted of an MCDV but have fulfilled the terms of their probation or have
27 otherwise not been convicted of a crime for a period of ten years following their
28 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

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

PRAYER FOR RELIEF

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

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

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

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

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

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



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

**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)

**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

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 receive, own and possess 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 ("MCDV").

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.
25

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>>

1 §922(g)(9) in the attempted exercise of his Second Amendment rights.

2 **RELEVANT CALIFORNIA PENAL STATUTES**

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

5 Any person who willfully inflicts upon a person who is
6 his or her spouse, former spouse, cohabitant, former
7 cohabitant, or the mother or father of his or her child,
8 corporal injury resulting in a traumatic condition, is guilty
9 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.

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

13 Except as provided in Section 29855 or subdivision (a) of
14 Section 29800, any person who has been convicted of a
15 misdemeanor violation of Section . . . 273.5, . . . and who,
16 within 10 years of the conviction, owns, purchases,
17 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.

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

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

26
27 ² Because prior to January 1, 2012, the text of Section 29805 was
28 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

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

9
10 **FIRST CLAIM FOR**
11 **VIOLATION OF FEDERAL DUE PROCESS**
12 **CLAUSE AS TO APPLICATION OF**
13 **FEDERAL STATUTE TO DENY CORE RIGHT**
14 **(Against All Defendants)**

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

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

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

24 33. The application and enforcement of 18 U.S.C. §§921(a)(33)(A)(i) &
25 922(g)(9) to proscribe Plaintiff from receiving or possessing a firearm does not
26 comport with the historical scope of the Second Amendment at the time it was
27 enacted. Alternatively, on information and belief the application and enforcement
28 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,

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

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

14 35. At all times, Defendants Holder, Harris and DOES 1-100 were acting
15 pursuant to 18 U.S.C. §§921(a)(33)(A)(i) & 922(g)(9). On information and belief,
16 Defendants, and each of them, will continue to implement and enforce 18 U.S.C.
17 §§921(a)(33)(A)(i) & 922(g)(9) in a manner that infringes upon Plaintiff's exercise
18 of his Second Amendment rights, absent the grant of the relief requested.

19 **SECOND CLAIM FOR**
20 **VIOLATION OF FEDERAL EQUAL**
21 **PROTECTION CLAUSE**
22 **(Against All Defendants)**

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

25 37. Plaintiff is of a class of firearms purchasers who have previously been
26 convicted of an MCDV but have fulfilled the terms of their probation or have
27 otherwise not been convicted of a crime for a period of ten years following their
28 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.



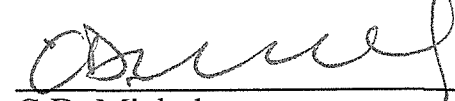
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Eugene Evan Baker

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
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Attorneys for Plaintiff
Eugene Evan Baker

