

1 Donald E. J. Kilmer, Jr. [SBN: 179986]  
LAW OFFICES OF DONALD KILMER  
2 1645 Willow Street, Suite 150  
San Jose, California 95125  
3 Voice: (408) 264-8489  
Fax: (408) 264-8487  
4 E-Mail: [Don@DKLawOffice.com](mailto:Don@DKLawOffice.com)

5 Attorneys for Plaintiffs

6  
7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE COURTHOUSE | 280 S. 1<sup>ST</sup> STREET, SAN JOSE, CA 95113

10  
11 LORI RODRIGUEZ, THE SECOND  
AMENDMENT FOUNDATION,  
12 INC., and THE CALGUNS  
FOUNDATION, INC.,

13  
14 Plaintiffs,

15 vs.

16 CITY OF SAN JOSE, CITY OF SAN  
17 JOSE POLICE DEPARTMENT,  
OFFICER STEVEN VALENTINE  
18 and DOES 1 TO 20,

19 Defendants.

Case No.: 5:15-CV-03698

JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT

Civil Local Rule 16-9

Conference Date: February 25, 2016  
Conference Time: 10:00 a.m.  
Conference Place: Courtroom 4,  
5<sup>th</sup> Floor

20  
21 Pursuant to Local Rule 16-9, the parties hereby submit this Joint Case  
22 Management Conference Statement which incorporates a Discovery Plan.

23 1. Jurisdiction and Service. The Defendants filed an answer to the Complaint  
24 on January 11, 2016. Service is not at issue. Furthermore, the parties  
25 stipulate that this Court is the proper venue for the action and this Court has  
26 jurisdiction over the claims plead in the operative Complaint.

27 2. Facts. The facts of the case concern the seizure and continued retention of  
28 firearms owned by the Plaintiff LORI RODRIGUEZ. A prior case state court

1 matter adjudicated the matter under Welfare and Institutions Code § 8102.  
2 [Santa Clara County Superior Court under Case No.: 1-13-CV-241669, and  
3 appeal to the Sixth District Court of Appeal under Case No.: H040317.]

4 a. The facts relating to the Defendants' continued dominion and control  
5 over Plaintiffs' property are undisputed, i.e.,

6 i. Lori Rodriguez is currently the registered owner of all the  
7 firearms in question.

8 (1) At the time of confiscation one or more firearms were her  
9 separate property acquired before marriage.

10 (2) The remaining firearms were community property, but  
11 registered to her husband.

12 ii. Lori Rodriguez has been eligible to both possess and purchase  
13 firearms under federal and state law for all relevant times.

14 iii. For all relevant periods, LORI RODRIGUEZ owned a California  
15 approved gun safe and, currently still owns the same gun safe.

16 b. The facts relating to the initial seizure of the firearms are disputed<sup>1</sup>:

17 i. Did Lori Rodriguez consent to their initial seizure from the gun  
18 safe, or

19 ii. Did Lori Rodriguez comply with the Police Officer's command  
20 that she open the gun safe and relinquish the firearms to the  
21 police.

22 c. The City of San Jose claims to have confiscated the firearms in  
23 question pursuant to the California Welfare and Institutions Code.

24 Their power to do so is disputed.

25 d. Lori Rodriguez's husband is currently a prohibited person under  
26

---

27 <sup>1</sup> Discovery in the case can probably be limited to the policies, procedures, customs and  
28 practices of the San Jose Police Department relating to firearm seizures (claiming to be  
conducted pursuant to CA law) and a reconstruction of the actual events during the seizure.

1 California Welfare and Institutions Code § 8100 and may not currently  
2 own, possess, control, receive, or purchase, or attempt to own, possess,  
3 control, receive, or purchase any firearm.

4 e. The San Jose Police Department had probable cause to detain Lori  
5 Rodriguez's husband pursuant to Welfare and Institutions Code §  
6 5150.

7 3. Legal Issues. The legal issues raised by this case will require interpretation  
8 of Fourth Amendment law relating to warrantless seizures and the Second  
9 Amendment rights of persons living with a prohibited person.

10 4. Motions. There are no motions currently pending. The parties have discussed a  
11 process for both parties to obtain any necessary discovery and expect to  
12 dispose of the case with cross-motions for summary judgments (or summary  
13 adjudication) if undisputed facts can be properly framed for such a motion.  
14 Because the parties anticipate possible appellate litigation in this matter,  
15 they jointly request relief from Judge Davila's standing order that cross-  
16 motions for summary judgment be handled as expanded normal pleadings.  
17 They specifically request that they be each be permitted to file:

18 a. Motion for Summary Judgment and Statement of Undisputed facts  
19 with supporting documents.

20 b. Opposition to the motion.

21 c. Reply to the Opposition.

22 5. Amended Pleadings. At time neither party anticipates amending their  
23 pleadings.

24 6. Evidence Preservation. By and through counsel, the parties certify, that they  
25 have reviewed the Guidelines Relating to the Discovery of Electronically  
26 Stored Information (ESI Guidelines), and they further certify, that where  
27 applicable they have taken the necessary steps to preserve electronic  
28 evidence relevant in this action.

1 7. Disclosures. The parties have complied with the Disclosure Requirements of  
2 Fed.R.Civ.P. 26 and disclosed documents relating to the status of Lori  
3 Rodriguez as an eligible gun owner, registration of her firearms and the  
4 qualifications of her gun safe.

5 8. Discovery. As noted above, the parties anticipate that discovery will be  
6 necessary as to the policies, procedures, customs and practices of the San  
7 Jose Police Department relating to firearm seizures and a reconstruction of  
8 the actual events that occurred during the seizure of the Plaintiffs firearms.  
9 The parties do not anticipate, at this time, any discovery disputes.

10 a. Depositions:

11 i. The officer who seized the firearms from Plaintiffs on the day in  
12 question.

13 ii. Lori Rodriguez and her mother-in-law.

14 b. Request for Admission to establish foundational facts.

15 c. Interrogatories to clarify factual controversies relating to Defendants'  
16 policies, procedures, customs and practices.

17 9. Class Action. Not applicable.

18 10. Related Case. There are no related cases or proceedings pending before an  
19 other judge of this court or before any other court or administrative body.  
20 The initial proceeding under California Welfare and Institutions Code § 8102  
21 arose in Santa Clara County Superior Court under Case No.: 1-13-CV-  
22 241669, and was appealed to the Sixth District Court of Appeal under Case  
23 No.: H040317.

24 11. Relief. The primary relief sought is injunctive and/or declaratory relief along  
25 with a request for an award of damages, attorney fees and costs.

26 12. Settlement and ADR. Counsel have discussed settlement with their clients.  
27 Based on the legal issues, this case does not appear to be conducive to  
28 settlement. There remains an open offer to the Defendants for a stipulation

1 to exclude the individual officer (Steven Valentine) from any exposure to  
2 money damages in consideration evidentiary stipulations. (e.g., An admission  
3 that the officer acted in accordance with the policies, procedures, customs and  
4 practices of the City of San Jose and the City of San Jose Police Department  
5 by demanding (compelling) LORI RODRIGUEZ to open her gun safe and  
6 permit the seizure of the firearms in question.

7 13. Consent to Magistrate. Plaintiffs consented. Defendants did not.

8 14. Other References. Not Applicable.

9 15. Narrowing Issues. Not Applicable.

10 16. Expedited Trial Procedure. By and through counsel, the parties request that  
11 this issue be reserved until after the cross motions for summary judgment  
12 have been adjudicated.

13 17. Scheduling. The parties propose the following deadlines:

14 a. Fact Discovery Cut-Off - July 1, 2016.

15 b. Dispositive Motions filed on or before September 1, 2016.

16 c. Hearing on Cross-Motions at the Court's convenience.

17 18. Trial. Plaintiffs have not requested a jury trial. Defendants have demanded  
18 a jury trial. Anticipated length of trial is 5 court days, including picking a  
19 jury.

20 19. Disclosure of Non-party Interested Entities or Persons. As of the date of the  
21 Case Management Conference, Plaintiff has filed a "Certification of  
22 Interested Entities or Persons." Defendants are exempt.

23 a. Plaintiffs contend that there are no interested entities or persons,  
24 other than the named parties, with a financial interest in this  
25 proceeding.

26 b. Plaintiffs are unable to make any certification or declaration as to the  
27 existence of persons or entities with a non-financial interest in this  
28 proceeding as the matter is a public interest case that seeks to clarify

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

the law with regard to the exercise of fundamental constitutional rights and therefore has broad non-financial applications to unknown persons, unknown classes of person and unknown interested entities.

20. Professional Conduct. Undersigned attorney declare that they have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Other Matters. Not applicable.

Date: February 16, 2016

Date: February 16, 2016

/s/ Mark Vanni

/s/ Donald Kilmer

For Defendants

For Plaintiffs