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7 Attorneys for CITY OF SAN JOSE

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

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12 LORI RODRIGUEZ, THE SECOND  
AMENDMENT FOUNDATION, INC., THE  
13 CALGUNS FOUNDATION, INC.,

14 Plaintiffs,

15 v.

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

18 Defendants.  
19

Case Number: 5:15-CV-03698-EJD

**MOVING SEPARATE STATEMENT  
OF MATERIAL FACTS AND  
EVIDENCE IN SUPPORT OF CITY'S  
MOTION FOR SUMMARY JUDGMENT  
OR, IN THE ALTERNATIVE,  
SUMMARY ADJUDICATION**

DATE: November 10, 2016

TIME: 9:00 a.m.

COURTROOM: 4

JUDGE: Hon. Edward J. Davila

20 Defendants will move, pursuant to Fed. Rule Civ. Proc. 56, for summary judgment  
21 or partial summary judgment, in the alternative, on all of Plaintiffs' claims because the  
22 Second Amendment Foundation, Inc. (SAF) and Calguns Foundation, Inc. (Calguns) do  
23 not have Article III standing; Plaintiffs have not stated a claim under the Second  
24 Amendment or Penal Code section 33800 *et. seq.*; there is no violation of Plaintiffs'  
25 constitutional rights, the City does not have a policy, practice, or custom that would violate  
26 the Plaintiffs' constitutional rights; Officer Valentine is entitled to qualified immunity on all  
27 constitutional claims; and Plaintiffs' State claim is inappropriate for this Court to decide.

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1 In accordance with the Court's standing order, Defendants submit the following  
 2 separate statement in support of its motion.

4 <b>Claim or Defense</b>	4 <b>Moving Party's Undisputed Facts/Supporting Evidence</b>	4 <b>Opposing Party's Response/Supporting Evidence</b>
6 <b>Article III Standing</b>		
8 1. Second Amendment Foundation, Inc. (SAF) and Calguns Foundation, Inc. did not suffer an actual injury or immediate threat of actual injury.	9 Fact 1. Lori Rodriguez is not a member of SAF or Calguns. 10 L. Rodriguez Dep. 13:23-14:2. 11 Vanni Declaration Ex. G.	
	13 Fact 2. When detaining or apprehending a person for a 14 5150 hold, officers are to confiscate any firearm owned, in 15 the possession or under the control of the subject. 16 17 Vanni Declaration ¶ 2 and Ex. A 18 (SJPD Duty Manual § L5705) 19 20 Valentine Dep. 55:6-10. Vanni 21 Declaration Ex. H.	
22 <b>First Claim For Relief: 23 Second Amendment</b>		
24 1. Defendants have not 25 infringed upon Plaintiffs 26 Second Amendment 27 Rights to keep and bear 28 arms for self-defense.	24 Fact 3. Lori Rodriguez can own, 25 possess, or acquire firearms. 26 Plaintiffs Complaint ¶ 28. 27 28 L. Rodriguez Dep. 70:22-24. Vanni Declaration Ex. G.	

<p>1 2. The City does not 2 have a policy, practice, 3 or custom that violates 4 Plaintiffs' Second 5 Amendment Rights.</p>	<p>Fact 4. When detaining or apprehending a person for a 5150 hold, officers are to confiscate any firearm owned, in the possession or under the control of the subject.</p> <p>Vanni Declaration ¶ 2 and Ex. A (SJPD Duty Manual § L5705)</p> <p>Valentine Dep. 55:6-10. Vanni Declaration Ex. H.</p>	
	<p>Fact 5. After an evidentiary hearing pursuant to Section 8102, Judge Kirwan determined that it was not safe to return the firearms to Lori Rodriguez because it would likely be dangerous to Edward Rodriguez and others</p> <p>Vanni Declaration ¶¶ 3-7 and Exs. B-F.</p> <p>Defendants' Request for Judicial Notice ¶¶ 1-5.</p>	
<p>19 <b>Second Claim for</b> 20 <b>Relief: Fourth</b> 21 <b>Amendment</b></p>		
<p>22 1. The confiscation of 23 the firearms was 24 reasonable under the 25 Fourth Amendment.</p>	<p>Fact 6. Edward Rodriguez was detained for a 5150 hold and is a prohibited person under Section 8103.</p> <p>Plaintiffs' Complaint ¶ 18.</p> <p>L. Rodriguez Dep. 70:17-21. Vanni Declaration Ex. G.</p>	

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	<p>Fact 7. Lori called the San Jose Police Department because her husband was in distress and exhibited signs of erratic behavior.</p> <p>Plaintiffs' Complaint ¶ 18.</p> <p>L. Rodriguez Dep. 28:15-17. Vanni Declaration Ex. G.</p>	
	<p>Fact 8. Edward mentioned to Officer Valentine that he had a lot of guns inside a nearby gun safe in the kitchen.</p> <p>Valentine Dep. 44:21-45:3. Vanni Declaration Ex. H.</p>	
	<p>Fact 9. All firearms were in a gun safe owned by Edward and Lori, which was located in the kitchen of their home at the opposite end of the room where Edward was located.</p> <p>Complaint ¶ 14.</p> <p>L. Rodriguez Dep. 40:24-41:1; 43: 8-11; 49:12-14; 50:4-7. Vanni Declaration Ex. G.</p>	

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	<p>Fact 10. Officer Valentine informed Lori of the laws pursuant to a 5150 hold and that, pursuant to the law, he was to confiscate the firearms.</p> <p>L. Rodriguez Dep. 51:4-11. Vanni Declaration Ex. G.</p> <p>Valentine Dep. 46:23-47:25; 60:10-13; 62:24-63:2. Vanni Declaration Ex. H.</p>	
	<p>Fact 11. After being told that the Officers had confiscate any firearms, Lori went, by herself, to retrieve the key to the gun safe from a locked filed cabinet in a home office. She then went to get the combination that was written down inside an address book located inside a desk in a bedroom. She then gave this information to an officer so they could open the safe and confiscate the firearms.</p> <p>L. Rodriguez Dep. 46:12-21; 48:13-49:4; 54:2-22; 55:3-7; 60:19-61:7. Vanni Declaration Ex. G.</p>	

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<p>2. The retention of the firearms is reasonable under the Fourth Amendment.</p>	<p>Fact 12. After an evidentiary hearing pursuant to Section 8102, Judge Kirwan determined that it was not safe to return the firearms to Lori Rodriguez because it would likely be dangerous to Edward Rodriguez and others.</p> <p>Vanni Declaration ¶¶ 3-7 and Exs. B-F.</p> <p>Defendants' Request for Judicial Notice ¶¶ 1-5.</p>	
<p>3. Plaintiffs cannot identify a policy, practice, or custom that infringes their Fourth Amendment Rights.</p>	<p>Fact 13. When detaining or apprehending a person for a 5150 hold, officers are to confiscate any firearm owned, in the possession or under the control of the subject.</p> <p>Vanni Declaration ¶ 2 and Ex. A (SJPD Duty Manual L5705)</p> <p>Valentine Dep. 55:6-10. Vanni Declaration Ex. H.</p>	
<p><b>Third Claim For Relief: Fifth Amendment (Takings Clause)</b></p>		

<p>1 1. Defendants acquired 2 the firearms under 3 section 8102 4 5 6</p>	<p>Fact 14. Edward Rodriguez was detained for a 5150 hold and is a prohibited party under Section 8103.  Plaintiffs' Complaint ¶ 18.  L. Rodriguez Dep. 70:17-21. Vanni Declaration Ex. G.</p>	
<p>7 8 2. The City retains the 9 firearms pursuant to a 10 valid Court order. 11 12 13 14 15 16</p>	<p>Fact 15. After an evidentiary hearing pursuant to Section 8102, Judge Kirwan determined that it was not safe to return the firearms to Lori Rodriguez because it would likely be dangerous to Edward Rodriguez and others.  Vanni Declaration ¶¶ 3-7 and Exs. B-F.  Defendants' Request for Judicial Notice ¶¶ 1-5.</p>	
<p>17 <b>Fourth Claim for</b> 18 <b>Relief:</b> 19 <b>Fourteenth</b> 20 <b>Amendment</b></p>		
<p>21 1. Lori had Procedural 22 Due Process under 23 Section 8102 24 25 26 27 28</p>	<p>Fact 16. The City initiated a petition, <i>City of San Jose v.</i> <i>Edward Rodriguez</i> under Section 8102.  Vanni Declaration ¶ 3 and Ex. B (City's Petition).  Defendants' Request for Judicial Notice ¶ 1.</p>	

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	<p>Fact 17. Lori intervened into <i>City of San Jose v. Edward Rodriguez</i> and requested a hearing to seek return of the firearms.</p> <p>Vanni Declaration ¶ 4 and Ex. C (Lori’s Request for Hearing).</p> <p>Defendants’ Request for Judicial Notice ¶¶ 3.</p>	
	<p>Fact 18. Judge Kirwan conducted a full evidentiary hearing where Lori argued that the Court should order the City to return the firearms to her.</p> <p>Vanni Declaration ¶ 5 and Ex. D (Reporter’s Transcript).</p> <p>Defendants’ Request for Judicial Notice ¶¶ 1-5.</p>	
	<p>Fact 19. Lori appealed Judge Kirwan’s decision to the California Sixth District Court of Appeal, which issued a decision finding that Judge Kirwan’s decision was supported by substantial evidence.</p> <p>Vanni Declaration ¶ 7 and Ex. F (Decision of Sixth District Court of Appeal in <i>City of San Jose v. Edward Rodriguez et al.</i>).</p> <p>Defendants’ Request for Judicial Notice ¶ 5.</p>	



<p>1 2. The City retains the 2 firearms because Judge 3 Kirwan’s order 4 regarding the safety of 5 returning the firearms to 6 Lori. 7 8 9</p>	<p>Fact 20. After an evidentiary hearing pursuant to section 8102, Judge Kirwan determined that it was not safe to return the firearms to Lori Rodriguez because it would likely be dangerous to Edward Rodriguez and others.  Vanni Declaration ¶¶ 3-7 and Exs. B-F.  Defendants’ Request for Judicial Notice ¶¶ 1-5</p>	
<p>10 11 <b>Fifth Claim for Relief:</b> 12 <b>State Law Claim under</b> 13 <b>Cal. Penal Code §§</b> 14 <b>33800 et seq.</b></p>		
<p>15 1. The City retains the 16 firearms because Judge 17 Kirwan’s order 18 regarding the safety of 19 returning the firearms to 20 Lori. 21 22 23</p>	<p>Fact 21. After an evidentiary hearing pursuant to Section 8102, Judge Kirwan determined that it was not safe to return the firearms to Lori Rodriguez because it would likely be dangerous to Edward Rodriguez and others.  Vanni Declaration ¶¶ 3-7 and Exs. B-F.  Defendants’ Request for Judicial Notice ¶¶ 1-5</p>	

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1 I attest that the evidence cited herein fairly and accurately supports or disputes the  
2 facts as asserted.

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4 Dated: September 1, 2016

Respectfully submitted,  
RICHARD DOYLE, City Attorney

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6 By: /s/ Mark J. Vanni  
7 MARK J. VANNI  
8 Deputy City Attorney

9 Attorneys for CITY OF SAN JOSE and  
10 OFFICER STEVEN VALENTINE  
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