

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

8 Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE COURTHOUSE | 280 S. 1ST STREET, SAN JOSE, CA 95113

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

15 Plaintiffs,

16 vs.

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

20 Defendants.

Case No.: 5:15-CV-03698

**DECLARATION OF LORI
RODRIGUEZ IN SUPPORT OF
CROSS-MOTION FOR SUMMARY
JUDGMENT AND OPPOSING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Date: November 10, 2016

Time: 9:00 a.m.

Courtroom: 4

Judge: Hon. Edward J. Davila

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23 **DECLARATION OF LORI RODRIGUEZ**

24 I, Lori Rodriguez, declare as follows, based on my own personal knowledge:

- 25 1. I am the plaintiff in the above entitled action.
- 26 2. On September 15, 2016, I hired attorney Donald Kilmer to seek recovery
- 27 from the Defendants of firearms that are owned by me and used to be owned
- 28 by my husband Edward.

- 1 3. The firearms were seized from a gun safe, in my home, over my objection, on
2 January 24, 2013. I specifically objected to the seizure of my personal,
3 separate property, firearm at Smith & Wesson revolver.
- 4 4. April 12, 2013, at my direction, my attorney caused a letter to be sent to the
5 Defendants offering to forego unnecessary litigation. A true and correct copy
6 of the letter is attached as Exhibit A. The letter outlines the mistakes made
7 the City and the Police and proposes remedies. In that letter I acknowledged
8 my duties under the law to obtain return of the firearms, specifically:
- 9 a. That my husband Edward is currently prohibited from owning,
10 acquiring and possessing firearms.
 - 11 b. That I know it is a crime to knowingly and intentionally allow Edward
12 to have access to firearms.
 - 13 c. I acknowledged my duty to maintain the guns and all ammunition in
14 the gun safe.
 - 15 d. I offered, and did provide, proof that the combination to the gun safe
16 would be changed and that I will not give that combination to Edward.
 - 17 e. I offered to, and eventually did, complete an inter-family transfer of
18 firearms registered to Edward, and to satisfy the requirements for a
19 Law Enforcement Gun Release Application (Penal Code § 33855).
- 20 5. I did not initially seek return of the firearms through the administrative
21 process of Penal Code § 33800 *et seq.*, because the release authorization is
22 only good for 30 days and I needed to obtain release of the firearms that were
23 under the jurisdiction of the Court under the Welfare and Institutions Code §
24 8102 process first. Furthermore fees are required to be paid to the California
25 Department of Justice each and every time a transfer or release application
26 is filed. That is why I offered to complete that process only after the City
27 either dismissed the petition, or after the Judge ordered the firearms
28 released. Neither of those events happened.

- 1 6. The gun safe in my home complies with the secure storage requirements of
2 California's regulations for gun safes. A true and correct copy of those
3 regulations is attached as Exhibit B.
- 4 7. On April 26, 2013, I had a locksmith change the combination on the gun safe
5 at my home. I testified to that fact in the state court proceedings. A true and
6 correct copy of my declaration stating that fact was filed in the state action
7 on June 14, 2013. A true and correct copy is attached as Exhibit C and a copy
8 of the receipt from the locksmith is attached to that declaration.
- 9 8. To prove I was eligible to purchase or received firearms under California law,
10 I submitted to a background check and was approved by the California
11 Department of Justice in a PERSONAL FIREARMS ELIGIBILITY CHECK
12 (PFEC) NOTIFICATION on May 8, 2013. I testified to that fact in the state
13 court proceedings. A true and correct copy is attached as Exhibit C and a copy
14 of the notice is attached to that declaration.
- 15 9. After the state trial court refused to release my firearms, and after the Sixth
16 District Court of Appeals affirmed that decision; but also as part of that
17 decision held that the administrative procedures under Penal Code § 33800 *et*
18 *seq.*, remained open for recovery of the firearms, I complied with California
19 law to complete the process (including payment of fees) of transferring and
20 registering all off the firearm seized (except my personal firearm, which was
21 already registered to me). I provided documentation of those changes in
22 ownership/registration (various dates from May 13 - 27, 2015) to the City on
23 June 11, 2015. A true and correct copy of the Defendant's Rule 26 Disclosure
24 (see ¶¶ 6 -16) and the City's Bates stamped copies of those documents
25 (SJ000044-SJ000054) is attached as Exhibit D.
- 26 10. After the firearms were registered in my name, I complied with the
27 administrative procedures (including payment of fees) under Penal Code ¶
28 33800 *et seq.*, to obtain release of the firearms. Every single firearms was

1 authorized, under California law, to be released to me. I provided
2 documentation of Release Authorizations (all dated June 1, 2015) to the City
3 on June 11, 2015. A true and correct copy of the Defendant's Rule 26
4 Disclosure (see ¶¶ 17-28) and the City's Bates stamped copies of those
5 documents (SJ000055-SJ000078) is attached as Exhibit E.

6 11. On July 6, 2015 the City notified my attorney that they would not comply
7 with the Law Enforcement Gun Release procedure that is set forth in
8 California Penal Code § 33800 *et seq.*

9 12. I acknowledge now and testified in the state court proceedings that I know
10 my legal duty to keep Edward from accessing or possessing any firearms
11 while he remains a prohibited person. See Exhibit C attached hereto.

12 13. I am in possession of the only key to unlock the combination dial to the gun
13 safe located in my home. The combination dial cannot even be rotated unless
14 it is unlocked. I am the only person who has the combination (changed in
15 April of 2013) to the safe.

16 14. I was never detained or considered for detention of a Welfare and Institutions
17 Code § 5150 hold. I specifically objected to the seizure of my personal firearm
18 by the Defendant.

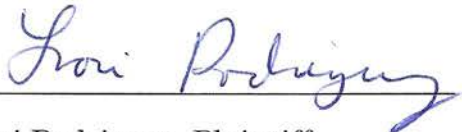
19 15. I am currently eligible to buy, acquire, own, keep and bear, firearms. I could
20 purchase new firearms and store them in the gun safe I already own. I
21 cannot afford to purchase new firearms, when I already own firearms.

22 16. When Officer Valentine told me he had a legal duty to seize my firearms and
23 he insisted that he would take them over my objection, I reflected on that and
24 concluded that I could get in trouble, if I obstructed or interfered with Officer
25 Valentine in the performance of his duties. Later my attorney confirmed to
26 me that obstructing a peace officer in the performance of his legal duties is a
27 crime under Penal Code § 148.

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- 1 17. The Defendants did not obtain a warrant to seize my firearms and I did not
2 consent to their seizure.
- 3 18. I have conducted informal research into the value of my firearms (since May
4 of 2015) and they are worth in excess of \$10,000.00.
- 5 19. In this case, if the City had complied with my earlier demand letter from
6 April of 2013, or made a reasonable counter-offer, or had later complied with
7 the Administrative processes set forth in California Penal § 33800 *et seq.*,
8 even after the California Appellate Court authorized that procedure, I would
9 have my guns and this case would either be much simpler or I might not have
10 authorized it to be filed at all.

11 I declare under penalty of perjury under the laws of the United States that
12 the foregoing is true and correct. Executed on September 15, 2016.

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15 Lori Rodriguez, Plaintiff