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April 12, 2013

Mark Vanni
Associate Deputy City Attorney
City of San Jose, Office of City Attorney
200 East Santa Clara Street, 16th Floor Tower
San Jose, California 95113-1905

Via: U.S. Mail and Facsimile (408) 998-3131

Re: *City v. Rodriguez* | Case Number: 1-13-CV-241669
Next Court Appearance: TBD
Santa Clara County Superior Court - Civil Division
191 N. First Street, San Jose, CA 95113-1090

Dear Mr. Vanni:

Please be advised that my office has been retained by Lori Rodriguez in the above-entitled matter. Lori is Edward's wife. At least one of the firearms confiscated (more on that later) from the Rodriguez home belongs to her.

Lori and Edward have been married for about two decades. Furthermore, as I am sure you are aware, California is a community property state, so a presumption arises under the law that the firearms taken from the Rodriguez home are community property. Therefore Lori's property interest in the firearms confiscated are protected by the State's Constitution.

And finally, Lori's Second Amendment right to keep and bear arms, along with her Fourth Amendment right to be free from unreasonable seizure also come into play under the facts of this case.

Enclosed please find a Response and Request for Hearing that went to the Court today along with a Proof of Service.

There aren't really any formal procedural/pleading rules for these Welfare and Institutions Code (WIC) hearings. I suppose under the usual rules of Civil Procedure that technically Lori would have to file her own lawsuit, file a motion to have the matters related, then seek to have them joined/consolidated. If the City is going to object to the informal way I have tried to address my client's standing, please let me know as soon as practical.

Let me presume to offer what I see are some liability problems that the City has in this case:

1. Edward Rodriguez was the person who was subject to the WIC § 5150 hold. Setting aside for a moment whether Edward was properly detained under § 5150 and therefore subject to the WIC 8100 *et seq.*, and Penal Code firearm prohibitions, **it should be obvious that the law-abiding persons living with him do not lose their rights.**
2. My client Lori tells me that the firearms in her home (where she lives with her husband Edward) were locked in a safe. She further informs me that there is ample room in that safe for the storage of ammunition. She has also related to me that no firearms were out, possessed, brandished or even mentioned prior to the arrival of the officers or while the police were making their public welfare check on Edward.
3. From the facts I have the police were compassionate, courteous and professional in making their assessment to detain Edward under WIC § 5150. Nor will there be any challenge to their actions with regard to Edward.
4. But the police made one mistake. After Edward was in police custody and presumably on his way to the hospital for psychological evaluation, the police then informed Lori that they were **required** to confiscate all weapons at the Rodriguez home. Lori initially protested that the guns were in the safe and not an issue. However the police insisted that the law required that they seize all the firearms in the home. It was only after this insistence by the police that Lori provided the key and combination to the safe for the police officers to take the firearms.
5. I see at least two potential causes of action against the City and Police.
 - a. Violation of Lori's Fourth Amendment right to be free from an unreasonable seizure of lawfully owned and possessed property by my client Lori Rodriguez.
 - b. Violation of Lori's Second Amendment right to keep and bear arms in her home for self-defense.

Unfortunately my client was not able to provide me with an inventory or receipt for the firearms taken. (Curiously the ammunition was left behind by the police.)

Our information is that twelve guns were taken:

1. Smith & Wesson .44 Cal. Magnum. Serial No.: CFJ8200

2. Dan Wesson .44 Cal. Magnum. Serial No.: SB013398
3. Browning 12-Gauge shotgun. Serial No.: FOINP05395
4. Remington .22 Cal. Serial No.: A1657555
5. Glen Field Model 60 .22 Cal. Serial No.: 20626618
6. Browning 12-Gauge shotgun. Serial No.: 03653PP753
7. Ruger Model 10. Serial No.: 23260854
8. Ruger. Serial No.: 1401182
9. Winchester Model 120 12-Gauge shotgun. Serial No.: L1813538
10. Browning BAR II 7mm Rifle. Serial No.: 107NW32146
11. Winchester Model 290 .22 Cal. Serial No.: 52189
12. Smith and Wesson .357 Magnum. Serial No.: BFR2403

To avert a law suit in federal court under 42 U.S.C. § 1983 alleging constitutional violations as set forth above, I propose the following disposition of the civil case the City now has on file with Santa Clara Superior Court.

- I. We reach a negotiated settlement of the civil matter wherein Lori executes a stipulation that says:
 - A. She knows that Edward is currently prohibited from owning, acquiring and possessing firearms.
 - B. She knows it is a crime to knowingly and intentionally allow Edward to have access to her firearms.
 - C. She acknowledges her duty to maintain the guns and all ammunition in the gun safe that she already owns.
 - D. She provides proof that the combination to the gun safe has been changed and that she will not give that combination to Edward.
 - E. She will complete an inter-family transfer to Lori of any handguns registered to Edward, and she will satisfy the requirements for a Law Enforcement Gun Release Application (Penal Code § 33855).

- II. The City's duties under the stipulation will be:
- A. After satisfaction of the forgoing by Lori, the City of San Jose will deliver the firearms back to the Rodriguez home when Lori is there and she can supervise their placement back into the gun safe.
 - B. The City will prepare a release of all claims and Lori will promise not file the civil rights action that arose under these facts.
 - C. The City will pay \$1,500.00 in attorney fees and costs. (That's approximately \$1,000 for my time and \$435 for the filing fee for the civil action.)
 - D. The City will dismiss this civil action.

Finally, while it is not my place to give the City free legal advice, you folks might want to consider amending your procedures in cases like this. For example, you might have a warning card about the criminal liability of allowing prohibited persons access to firearms (WIC §§ 8100, 8101) that could be left with a family in a situation like this. But just taking firearms that are lawfully owned by someone because a family member (might) be prohibited is a violation of the Constitution.

I look forward to resolving this in a timely and cost effective manner.

Thank you.

Cordially,

Donald Kilmer
Attorney for Lori Rodriguez

cc: Client via email

Enc: Response, POS