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9 UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE COURTHOUSE | 280 S. 1<sup>ST</sup> STREET, SAN JOSE, CA 95113  
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12 LORI RODRIGUEZ, THE SECOND  
AMENDMENT FOUNDATION,  
13 INC., and THE CALGUNS  
FOUNDATION, INC.,  
14

15 Plaintiffs,

16 vs.

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

20 Defendants.  
21

Case No.: 5:15-CV-03698

**[PROPOSED] ORDER ON THE  
PARTIES CROSS-MOTIONS FOR  
SUMMARY JUDGMENT**

Date: November 10, 2016

Time: 9:00 a.m.

Courtroom: 4

Judge: Hon. Edward J. Davila

22 The matter came regularly before this court on November 10, 2016 for the  
23 parties' Cross-Motions for Summary Judgment and/or Summary Adjudication.

24 Having considered the record presented to the Court and arguments set forth in  
25 briefs and oral argument the Court:

- 26 1. Denies Defendant's Motion for Summary Judgment and/or Summary  
27 Adjudication.  
28

1 2. Grants Plaintiffs' Motion for Summary Judgment and further orders:

2 A. That upon Lori Rodriguez tendering an updated Law Enforcement  
3 Gun Release approved by the California Department of Justice, that  
4 the City return her firearms to her forthwith as presentation of said  
5 release.

6 B. That San Jose and the San Jose Police Department implement changes  
7 to their Policies and Procedures Manual relating to the seizure of  
8 firearms during non-criminal welfare checks, including checks under  
9 the Welfare and Institutions Code. Specifically:

- 10 1. The police are only authorized to seize weapons during a  
11 Welfare and Institutions Code § 5150 contact if the firearm is in  
12 plain site and is registered to the detainee.
- 13 2. The police are only authorized to seize weapons if the detainee  
14 lives alone, or there are no law-abiding competent adults  
15 present, and willing, to take charge of the weapons.
- 16 3. If a responsible, law-abiding adult, can assume control over  
17 firearms, and an appropriate firearms safety/storage device is in  
18 use (i.e., a gun safe), the police shall seek a warrant, supported  
19 by probable cause in accordance with the Fourth Amendment  
20 decisional law, before seizing firearms from otherwise law-  
21 abiding citizens with the means to store said firearms in  
22 compliance with California law.

23 C. Plaintiffs are the prevailing party. The court will issue a briefing  
24 schedule for determination of any award of attorney fees and costs  
25 association with bringing this action.

26 **SO ORDERED.**

27 \_\_\_\_\_  
28 United States District Court Judge