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11 Attorneys for CITY OF SAN JOSE

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 LORI RODRIGUEZ, THE SECOND
16 AMENDMENT FOUNDATION, INC., THE
17 CALGUNS FOUNDATION, INC.,

18 Plaintiffs,

19 v.

20 CITY OF SAN JOSE, et al.,

21 Defendants.

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

**DECLARATION OF MARK VANNI IN
OPPOSITION TO CROSS-MOTION
FOR SUMMARY JUDGMENT**

DATE: November 10, 2016

TIME: 9:00 a.m.

COURTROOM: 4

JUDGE: Hon. Edward J. Davila

22 I, Mark Vanni, hereby declare:

23 1. I am a Deputy City Attorney for the City of San Jose, licensed to practice law
24 in the courts of this State and before the United States District Court for the Northern
25 District of California. I was assigned to work on this lawsuit and have personal knowledge
26 of the facts contained herein.

27 2. Attached hereto as Exhibit A is a true and correct copy of the deposition
28 testimony of Lori Rodriguez cited by Defendants in their Responsive Separate Statement
and Opposition to Cross-Motion for Summary Judgment.

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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

Plaintiffs,

CASE NO. 5:15-CV-03698-EJD

vs.

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

Defendants.

DEPOSITION OF LORI RODRIGUEZ

Date: Monday, May 23, 2016
Time: 9:56 a.m.
Location: CITY ATTORNEY'S OFFICE
200 East Santa Clara Street
16th Floor
San Jose, CA 95113
Reported by: Kim Meierotto, CSR
License Number 11602

SALOIS & ASSOCIATES
Certified Shorthand Reporters
111 North Market Street, Suite 300
San Jose, CA 95113-1112
(408) 279-DEPO

1 Q. And on the night of the incident, was the safe
2 secured?

3 A. Yes.

4 Q. In order to open it, you needed to have a key
5 and a combination in order to get in?

6 A. Yes.

7 Q. For this particular safe, at the time of the
8 incident -- and most of these questions, unless I say
9 otherwise, we can assume that it's at the time of the
10 incident. Is that fair to say?

11 A. Okay.

12 Q. So with this particular safe, it requires a
13 key. How many keys do you have or did you have at the
14 time to open this safe?

15 A. Two.

16 Q. Where did you keep those keys?

17 A. In an envelope in my file cabinet, and the file
18 cabinet was locked.

19 Q. And the file cabinet, was that in a home
20 office?

21 A. Yes.

22 Q. Did your husband, Edward, have access to that
23 office?

24 A. I don't know if he had a key to the file
25 cabinet.

1 Q. That's not my question. My question was
2 generally to the office.

3 A. Oh, yes.

4 Q. But you didn't know if he had a key to the file
5 cabinet?

6 A. Correct.

7 Q. How about the other key, where was that one
8 located?

9 A. Both keys were in the envelope.

10 Q. They were?

11 A. Um-hum.

12 Q. Now, the password at the time, did you have the
13 password memorized, or did you have it written down
14 somewhere?

15 A. Written down.

16 MR. KILMER: Objection. Misstates her
17 testimony.

18 MR. VANNI: About the password?

19 MR. KILMER: I'm not aware that there's --
20 we've established that a password is used to open the
21 safe.

22 BY MR. VANNI:

23 Q. Well, let me clarify. I think I did. It's
24 fine.

25 For this particular safe at the time the

1 Q. Where in the bedroom?

2 A. In a desk.

3 Q. Was that desk locked?

4 A. No.

5 Q. You said you had it looking like a phone
6 number. Was it under a particular person's name?

7 A. No. Written towards the front but not under a
8 name.

9 Q. Okay. At the time of the incident, did your
10 husband have access to this address book?

11 A. Yes.

12 Q. Now, this gun safe, where was it located in
13 your home?

14 A. In the kitchen.

15 Q. Like I said, I haven't been to your kitchen
16 before, but can you just provide me with just a rough
17 layout of using the stove kind of as a north star so to
18 speak. Can you tell me where it was in relation to the
19 stove.

20 A. If you walk in from the living room -- it's a
21 square room. Straight ahead is the dining room table.
22 If you turn to the left, cabinets, refrigerator. Across
23 the next wall like a U shape, the sink. And then in the
24 island, the stove.

25 Q. Okay.

1 him what was written down for a combination. I just
2 didn't know what combination of that written number was
3 the combination.

4 Q. But the officer who did open the safe was able
5 to figure it out in order to open the safe?

6 A. I gave him some kind of parameters -- it could
7 be this or this -- and then he opened it.

8 Q. At any point prior to the officers opening the
9 safe, did you voice any objection to them opening up the
10 gun safe?

11 A. Not after we had questioned why a couple times,
12 two or three times. It was in my mind made clear to me,
13 I did not have a choice, so why continue.

14 Q. Let me go back to that line of question about
15 why you didn't have a choice. At any point did -- and
16 this is with respect to you, not with anybody else --
17 did you at any point during this interaction with the
18 officers after Edward had left, did anyone threaten you
19 with arrest if you didn't comply?

20 A. No.

21 Q. Did anybody tell you or threaten you that you
22 were committing a crime if you didn't comply?

23 A. No.

24 Q. Did any officer draw their firearm?

25 A. No.

1 Q. How about did any officers have their hands on
2 their firearms like on the holster?

3 A. Not when dealing with me. I don't know if when
4 dealing with him. I don't think so because there really
5 wasn't a need for it, but I wasn't in there so --

6 Q. We're focusing on you at this point.

7 A. Okay.

8 Q. Did any officer swear at you?

9 A. No.

10 Q. And I assume since they never told you you were
11 committing a crime or put you under arrest, you were
12 never put in handcuffs; is that correct?

13 A. Correct.

14 Q. Did any officer touch you in an aggressive
15 manner?

16 A. No.

17 Q. Did any officer actually physically touch you?

18 A. No.

19 Q. Did any officer say to you that if you didn't
20 comply, that they would get a search warrant in order to
21 open up the safe?

22 A. No.

23 Q. Did you know a search warrant was something
24 that they could have obtained?

25 A. No. I'm assuming they can get search warrants

1 anything like that?

2 A. No.

3 Q. I'll just speak generally to any drugs or
4 anything of that nature in your system at that time?

5 A. No.

6 Q. At any point after Edward had left to when the
7 guns were confiscated, did you ask the officers to
8 leave?

9 A. No.

10 Q. Now, this tall young Caucasian officer who
11 opened up the gun safe, did he say anything to you?

12 A. Prior to opening the safe?

13 Q. Yes.

14 A. No.

15 Q. How about after opening the safe?

16 A. He made a couple comments about how nice the
17 guns were.

18 Q. Okay.

19 A. But other than that, no conversation.

20 Oh, wait. I said, "I apologize for how bad the
21 house looked." And I remember him saying, "This looks
22 fine. We've seen so much worse."

23 Q. So after the gun safe was open, you testified
24 earlier that the layout inside the gun safe, the guns
25 would have been visible. Correct?

1 A. Correct.

2 Q. And so what did the officers do once the gun
3 safe was open? Or let me backtrack here.

4 I say "officers." When the gun safe was
5 opened, did the young police officer, was he the officer
6 responsible for actually taking the firearms, or were
7 there other officers involved?

8 A. I know -- I think it was him. I know it was
9 him. And I think there was at least one other one. I
10 don't know if there was more than that. I was in and
11 out of the room a lot. My mother-in-law was in there.
12 I figured as long as she was there, what's going to
13 happen? It's police.

14 I was looking for cases. So I wasn't really in
15 the room a lot of the time when they were taking them
16 out and running the serial numbers and whatever else
17 they were doing.

18 Q. When you say "cases," what do you mean by that?

19 A. I was looking for cases for the guns because --

20 Q. Okay.

21 A. -- I figured they were going to go away for
22 what I thought was a couple days.

23 You have to understand, most of those guns,
24 especially the ones -- not the ones that maybe were
25 given to us but the ones that we purchased, were

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CERTIFICATE

I, KIM MEIEROTTO, CSR #11602, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly affirmed to testify to the truth, the whole truth and nothing but the truth;

That said witness was given opportunity to read and sign the deposition transcript;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting under my direction.

I further certify that I am not interested in the outcome of this action.

Witness my hand this _____ day of _____, 2016.

KIM MEIEROTTO, CSR

CSR #11602

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LORI RODRIGUEZ; THE
SECOND AMENDMENT
FOUNDATION, INC.; and
THE CALGUNS FOUNDATION,
INC.,

Plaintiffs,

vs.

No. 5:15-CV-03698

CITY OF SAN JOSE, CITY
OF SAN JOSE POLICE
DEPARTMENT, OFFICER
STEVEN VALENTINE, and
DOES 1 to 20,

Defendants.

DEPOSITION OF OFFICER STEVEN VALENTINE

DATE: Thursday, April 28, 2016

TIME: 12:59 p.m.

LOCATION: LAW OFFICES OF DONALD KILMER
1645 Willow Street
Suite 150
San Jose, CA 95125

REPORTED BY: AUDREY KLETTKE, CSR NO. 11875

#51543

1 gun safe.

2 Q. And what did he tell you?

3 A. He said a lot.

4 Q. Did anybody else at the scene threaten to use a
5 gun?

6 A. No.

7 Q. How did the safe get opened?

8 A. I was not there when the safe was opened.

9 Q. Who was?

10 A. I don't recall who the officers were inside when
11 the safe was opened.

12 Q. Did you direct the gun safe to be opened?

13 A. Yes.

14 Q. And why did you do that?

15 A. I had gained consent to remove the firearms, and
16 had instructed the officers who were backing up or
17 filling with me to stay with the safe while it was
18 opened.

19 Q. And who did you obtain the consent from?

20 A. Ms. Rodriguez.

21 Q. She is sitting here next to me?

22 A. Yes.

23 Q. Did you attempt to obtain consent from
24 Mr. Rodriguez?

25 A. No.

1 Q. That would have been a futile act because he
2 wasn't in his right mind, was he?

3 A. I don't even know if he was there when we talked
4 about it.

5 Q. Is the consent that you obtained from
6 Mrs. Rodriguez documented anywhere in your report?

7 A. No.

8 Q. Is it documented anywhere in your declaration?

9 A. No.

10 Q. How did you obtain this consent?

11 A. Through verbal consent from Mrs. Rodriguez.

12 Q. We've already established that San Jose PD has
13 written consent forms and that you had some with you
14 that night; is that correct?

15 A. Yes.

16 Q. Why didn't you use a written consent form?

17 MR. VANNI: I think it was asked and answered.

18 THE WITNESS: The situation didn't call for it.

19 Q. BY MR. KILMER: What did you say to
20 Mrs. Rodriguez --

21 A. I --

22 Q. -- to obtain consent?

23 A. I informed her of the laws pursuant to a 5150
24 hold and requested that -- requested her consent to
25 remove the firearms, and she agreed.

1 A. I told her pursuant to the law I was to
2 confiscate the weapons.

3 Q. What is the difference between pursuant to the
4 law and required by the law?

5 A. To me pursuant is I'm conveying the law. And
6 really no difference to required.

7 Q. Okay. So when you say pursuant to the law, you
8 are going to seize --

9 A. Confiscate.

10 Q. -- you are going to confiscate the weapons.

11 I am asking you: Is it an accurate statement
12 that she cooperated in opening the safe after you told
13 her that pursuant to the law you were going to
14 confiscate the weapons?

15 A. Yes.

16 MR. KILMER: Let's take a quick break. I want
17 to confer with my client. And I have just a couple
18 more questions and we'll get you guys out of here.

19 (A short recess was taken.)

20 Q. BY MR. KILMER: During the conversation you had
21 with Ms. Rodriguez about confiscating the firearms, did
22 you inform her that she had the right to refuse?

23 A. Yes.

24 Q. You did specifically remember saying that to
25 her?

1 A. Yes, I do.

2 Q. And if she had refused, that's when you would
3 have had this discussion about warrants; is that
4 correct?

5 A. Yes.

6 Q. And you would have had that discussion with her
7 or with your other officers?

8 A. It would have been me and the sergeant.

9 Q. But the sergeant had already left at that point,
10 hadn't he?

11 A. Because she had consented, yes.

12 Q. Officer, in your experience, when you tell
13 somebody what the law is, do they typically rely upon
14 you telling them what the law is?

15 MR. VANNI: I will object and say incomplete
16 hypothetical.

17 Q. BY MR. KILMER: If you know. If you think you
18 can answer the question.

19 A. I can't answer the question in that term, no.

20 Q. If you are standing there in your uniform and
21 you're the command officer in charge of the scene and
22 you tell somebody what the law is, do you have an
23 expectation that they will comply with your
24 interpretation of the law?

25 A. I am going to have to answer no because the

1 wording of it. I have a better word for it.

2 "Understand."

3 Q. So where are you substituting the word
4 "understanding"?

5 A. Comply.

6 Q. So you expect them to comply with the law as you
7 tell it to them? Because you are the law on the scene,
8 correct?

9 A. I expect them to understand it, but I have no
10 expectations of anybody.

11 Q. If they don't comply with your interpretation of
12 the law, you're authorized to take action, correct?

13 A. No.

14 Q. You are a police officer and you are charged
15 with upholding the law at a scene where you are in
16 charge, correct?

17 A. Um-hum. Yes.

18 Q. And if you explain the law to somebody, you
19 expect them to comply with your explanation, correct?

20 MR. VANNI: Objection; incomplete hypothetical.
21 It lacks context to the situation as well.

22 Q. BY MR. KILMER: Do you have an expectation that
23 people will obey your commands in a situation where you
24 are explaining the law to them?

25 A. No, because I wouldn't be explaining the law

1 going to confiscate the firearms, what do you recall
2 her saying?

3 A. I didn't tell her we were going to confiscate
4 the firearms. I explained pursuant to the law the
5 firearms needed to be confiscated.

6 Q. And what is your recollection of her response?

7 A. She was cooperative.

8 Q. Did she say anything like "I am glad you are
9 getting the guns out of here," or anything like that?

10 A. No.

11 Q. Did she object at all? Did she say, "No, they
12 are going to be fine; leave them where they are at"?

13 A. She objected to hers.

14 Q. Okay. And your earlier testimony is that you
15 had identified one of the firearms as belonging to her,
16 correct?

17 A. Yes. And she had identified it as hers.

18 Q. Did you have a discussion about leaving that
19 firearm with her?

20 A. Yes.

21 Q. And what was the discussion?

22 A. It couldn't be because he still had access to
23 it.

24 Q. Let's talk about that.

25 Mr. Rodriguez at this point in time was on his

1 way to Valley Medical, correct?

2 A. Yes. Or in the ambulance outside. One of the
3 two.

4 Q. And your understanding of a 5150 hold is that
5 the person is usually held for 72 hours observation,
6 correct?

7 A. Up to 72 hours.

8 Q. It could be longer?

9 A. Out of my hands.

10 Q. You don't know?

11 A. I have seen it for four hours.

12 Q. So Mr. Rodriguez would have not had immediate
13 access to the firearms because he would have been in
14 the hospital, right?

15 A. I don't know.

16 Q. You directed that he be transported to Valley
17 Medical, correct?

18 A. Yes.

19 Q. Okay. And so Ms. Rodriguez was being left home
20 alone with the firearms, correct?

21 A. Yes.

22 Q. And Mr. Rodriguez was going to be in the
23 hospital?

24 A. Yes.

25 Q. So in what way did he have access to the

1 firearms at that point in time?

2 A. He still lived there.

3 Q. Officer Valentine, were you made aware that the
4 plaintiffs offered to dismiss you from this case in
5 exchange for a stipulation that you were the only
6 officer that interacted with Lori with regard to the
7 seizure of the firearms?

8 A. I was the only one who interacted.

9 Q. But were you made aware that the plaintiffs
10 offered to dismiss you from the case in exchange for a
11 stipulation that you were the only officer that
12 interacted with her with regard to the seizure the
13 firearms?

14 A. No, I wasn't.

15 Q. One last thing. And this doesn't require a
16 response from you necessarily but my client wanted me
17 to convey this to you that the case is about the
18 constitution of public policy. And except for the
19 initial seizure of the firearms and the return of my
20 client's property, we don't believe that you did
21 anything wrong that night except for the issue of the
22 seizure and the failure to return them. And my client
23 did want to thank you for the compassion and
24 professional conduct yo showed to her husband.

25 A. Thank you.

1 I, AUDREY S. KLETTKE, duly authorized to
2 administer oaths pursuant to Section 2093(b) of the
3 California Code of Civil Procedure, do hereby certify
4 that the witness in the foregoing deposition was by me
5 duly sworn to testify the truth in the within-entitled
6 cause; that said deposition was taken at the time and
7 place therein cited; that the testimony of said witness
8 was reported by me and thereafter transcribed under my
9 direction into typewriting; that the foregoing is a
10 complete and accurate record of said testimony; and
11 that the witness was given an opportunity to read and
12 correct said deposition and to subscribe the same.

13 Should the signature of the witness not be
14 affixed to the deposition, the witness shall not have
15 availed himself of the opportunity to sign or the
16 signature has been waived.

17 I further certify that I am not of counsel nor
18 attorney for any of the parties in the foregoing
19 deposition and caption named nor in any way interested
20 in the outcome of the cause named in said caption.

21

22

23

24 DATED:
MAY 11, 2016

AUDREY S. KLETTKE
CSR No. 11875

25

DEPOSITION OF OFFICER STEVEN VALENTINE