

No. 17-17144 [Dist Ct. No.: 5:15-cv-03698-EJD]

IN THE
UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

LORI RODRIGUEZ; et al.,
Plaintiffs - Appellants,

vs.

CITY OF SAN JOSE; et al.,
Defendants - Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EXCERPT OF RECORD - Volume I of II
[SUBMITTED BY THE APPELLANTS]

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CORPORATE DISCLOSURE STATEMENT

SECOND AMENDMENT FOUNDATION, INC., (SAF) is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF has over 650,000 members and supporters nationwide, including California. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately owned and possess firearms, and the consequences of gun control. SAF is not a publicly traded corporation.

THE CALGUNS FOUNDATION, INC., (CGF) is a non-profit organization incorporated under the laws of California with its principal place of business in Roseville, California. CGF supports the California firearms community by promoting education for all stakeholders about California and federal firearms laws, rights and privileges, and by defending and protecting the civil rights of California gun owners. CGF is not a publicly traded corporation.

These institutional plaintiffs have provided funding for this suit.

Dated: February 26, 2018

/s/ Donald Kilmer
Donald Kilmer, Attorney for Appellants

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Tab 1

ER - 001

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9 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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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

**NOTICE OF APPEAL TO THE
UNITED STATES COURT OF
APPEALS FOR THE NINTH
CIRCUIT**

JUDGMENT ENTERED:

October 3, 2017 (Doc # 56)

Related Case: None

Priority Setting: Upon Motion by
Party

Representation: Attached
Statement

NOTICE OF APPEAL

22
23 Plaintiffs: LORI RODRIGUEZ, SECOND AMENDMENT FOUNDATION,
24 INC., and the CALGUNS FOUNDATION, INC., appeal to the United States Court
25 of Appeal for the Ninth Circuit from the final JUDGMENT (Doc # 56) of the United
26 States District Court for the Northern District of California – San Jose Division,
27 entered in this case on October 3, 2017, and all interlocutory orders that gave rise
28

1 to the Judgment, including but not limited to the ORDER GRANTING
2 DEFENDANTS' MOTION TO FOR SUMMARY JUDGMENT AND DENYING
3 PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT (Doc #55).

4 **RELATED CASES**

5 Plaintiff/Appellants are not aware of any related cases pending in this Circuit
6 Court of Appeals or in any District Court in California.

7 **PRIORITY SETTING**

8 This case may be entitled to priority setting under 28 U.S.C. § 1657 and/or
9 Circuit Rule 34-3, upon motion by any party.

10 Dated: October 20, 2017

11 /s/ Donald Kilmer

12 Donald Kilmer,
13 Attorney for Plaintiff/Appellants

14
15 **CERTIFICATE OF SERVICE**

16
17 On this, October 20, 2017, I served the foregoing NOTICE OF APPEAL by
18 electronically filing it with the Court's ECF/CM system, which generated a Notice of
19 Filing and effects service upon counsel for all parties in the case.

20 I declare under penalty of perjury that the foregoing is true and correct.
21 Executed on October 20, 2017.

22
23 /s/ Donald Kilmer

24 Attorney of Record for Plaintiff/Appellants
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Tab 2

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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LORI RODRIGUEZ, et al.,
Plaintiffs,
v.
CITY OF SAN JOSE, et al.,
Defendants.

Case No. [5:15-cv-03698-EJD](#)

JUDGMENT

Defendants' Motion for Summary Judgment having been granted and Plaintiffs' Motion for Summary Judgment having been denied,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Defendants.

IT IS SO ORDERED.

Dated: October 3, 2017



EDWARD J. DAVILA
United States District Judge

Case No.: [5:15-cv-03698-EJD](#)
JUDGMENT

Tab 3

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LORI RODRIGUEZ, et al.,
Plaintiffs,
v.
CITY OF SAN JOSE, et al.,
Defendants.

Case No. [5:15-cv-03698-EJD](#)

**ORDER GRANTING DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFFS’ CROSS-
MOTION FOR SUMMARY JUDGMENT**

Re: Dkt. Nos. 22, 28

Plaintiffs Lori Rodriguez, the Second Amendment Foundation, Inc. (“SAF”), and the Calguns Foundation, Inc. (“Calguns”) bring claims against Defendants the City of San Jose, the City of San Jose’s Police Department, Officer Steven Valentine, and several Doe defendants arising from Defendants’ confiscation and retention of firearms registered to Lori and her husband. Plaintiffs and Defendants have both moved for summary judgment. Plaintiffs’ motion will be denied and Defendants’ motion will be granted.

Case No.: [5:15-cv-03698-EJD](#)
**ORDER GRANTING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFFS’ CROSS-MOTION FOR SUMMARY JUDGMENT**

1 **I. BACKGROUND**

2 In 2013, Edward Rodriguez suffered a mental episode at his home. Defs.’ Mot. for Summ.
3 J. (“MSJ”) 2, Dkt. No. 22. His wife, Plaintiff Lori Rodriguez, called the police, and the San Jose
4 Police responded. Id. An officer detained Edward under Welfare & Institutions Code § 5150 and
5 ordered paramedics to take him to a hospital. Id. at 3; Pls.’ Mot. for Cross-Summ. J. (“Cross-
6 MSJ”) 3, Dkt. No. 28. An officer told Lori that he was required to confiscate guns in the house.
7 Cross-MSJ 3. He asked Lori to provide the combination to the gun safe in the house, and she
8 complied. Id. at 3–4. The officer confiscated eleven guns registered to Edward and one gun
9 registered to Lori. MSJ 4.

10 The City petitioned the Superior Court for a hearing under Welfare & Institutions Code
11 § 8102 to determine whether the guns should be returned to Edward. MSJ 4; Cross-MSJ 4. The
12 court decided that the guns could not be returned to Edward because he is a “prohibited person”
13 under Welfare & Institutions Code § 8103. MSJ 4–5; Cross-MSJ 4–5. Lori appealed, and the
14 California Court of Appeals affirmed. MSJ 5; Cross-MSJ 5; City of San Jose v. Rodriguez,
15 H04031, 2015 WL 1541988 (Cal. Ct. App. Apr. 2, 2015).

16 The City has not returned the guns. Plaintiffs filed this action in 2015, bringing claims for
17 violations of the Second Amendment, the Fourth Amendment, the Fifth Amendment, the
18 Fourteenth Amendment, and Cal. Penal Code §§ 33800 et seq. Compl. ¶¶ 42–56, Dkt. No. 1. Now
19 before the Court are Plaintiffs’ motion for summary judgment and Defendants’ cross-motion for
20 summary judgment.

21 **II. LEGAL STANDARD**

22 “Summary judgment is proper where no genuine issue of material fact exists and the
23 moving party is entitled to judgment as a matter of law.” Samuels v. Holland American Line—
24 USA Inc., 656 F.3d 948, 952 (9th Cir. 2011) (citing Fed. R. Civ. P. 56(a)). The Court “must draw
25 all reasonable inferences in favor of the nonmoving party.” Id. “The central issue is ‘whether the
26 evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-

27 Case No.: [5:15-cv-03698-EJD](#)

28 ORDER GRANTING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFFS’ CROSS-MOTION FOR SUMMARY JUDGMENT

1 sided that one party must prevail as a matter of law.” Id. (quoting Anderson v. Liberty Lobby,
2 Inc., 477 U.S. 242, 251–52 (1986)).

3 **III. DISCUSSION**

4 **A. Standing**

5 Defendants argue that Plaintiffs SAF and Calguns (but not Lori Rodriguez) lack Article III
6 standing to pursue their claims. “[A]n organization has ‘direct standing to sue [when] it show[s] a
7 drain on its resources from both a diversion of its resources and frustration of its mission.’ ” Fair
8 Hous. Council of San Fernando Valley v. Roommate.com, LLC, 666 F.3d 1216, 1219 (9th Cir.
9 2012) (quoting Fair Hous. of Marin v. Combs, 285 F.3d 899, 905 (9th Cir.2002)). The Court
10 agrees with SAF and Calguns that they have standing because they divert resources to assist gun
11 owners to recover their property after seizure, they engage in related public education activities,
12 they litigate cases like this one, and they have members in California that are affected. Cross-MSJ
13 7.

14 **B. Second Amendment**

15 Plaintiffs allege that Defendants have violated Plaintiffs’ “constitutional right to keep and
16 bear arms under the Second Amendment.” Compl. ¶¶ 42–44. However, despite the City’s decision
17 (under § 8102) not to return the guns it confiscated, Lori concedes that she is free to own and
18 possess other guns that she lawfully acquires.¹ Cross-MSJ 8. The Second Amendment protects the
19 right to keep and bear arms in general, but it does not protect the right to possess specific firearms.
20 See City of San Diego v. Boggess, 216 Cal. App. 4th 1494, 1503 (2013) (“[S]ection 8102 does not
21 eliminate a detainee’s right to possess any and all firearms. Rather, as City points out, it implicates
22 only the detainee’s property right in the specific firearms confiscated by law enforcement.”)

23
24 ¹ Lori could sell the firearms at issue to a licensed dealer under Cal. Penal Code § 33850(b) (“A
25 person who owns a firearm that is in the custody of a court or law enforcement agency and who
26 does not wish to obtain possession of the firearm, and the firearm is an otherwise legal firearm,
27 and the person otherwise has right to title of the firearm, shall be entitled to sell or transfer title of
28 the firearm to a licensed dealer.”) (emphasis added). Apparently, Lori could then purchase those
guns from the dealer.

1 (emphasis added); Rodriguez, 2015 WL 1541988, at *7 (“[T]he Supreme Court decisions in Heller
2 and McDonald did not state that the Second Amendment right to keep and bear arms extends to
3 keeping and bearing either any particular firearms or firearms that have been confiscated from a
4 mentally ill person.”) (emphasis added). As such, Defendants’ motion for summary judgment must
5 be granted as to Plaintiffs’ Second Amendment claim.

6 **C. Fourth Amendment**

7 Plaintiffs allege that Defendants’ confiscation of the guns and their decision not to return
8 the guns to Lori constitute an unreasonable seizure under the Fourth Amendment. Compl. ¶¶ 45–
9 47. Plaintiffs do not challenge the reasonableness of the search of Lori and Edward’s home; rather,
10 they challenge the reasonableness of Defendants’ confiscation and retention of the firearms.
11 Cross-MSJ 12–14.

12 The Court finds that, under the circumstances, the confiscation of the guns was entirely
13 reasonable. Edward was detained for mental health reasons under § 5150, and the officer on the
14 scene confiscated the guns under § 8102. This is precisely the type of scenario that § 8102 is
15 designed to address. See Welfare & Institution Code § 8102 (“Whenever a person, who has been
16 detained or apprehended for examination of his or her mental condition . . . , is found to own, have
17 in his or her possession or under his or her control, any firearm whatsoever, or any other deadly
18 weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency
19 or peace officer, who shall retain custody of the firearm or other deadly weapon.”) (emphasis
20 added). It was not unreasonable for the officer to follow the statutory procedure for confiscating
21 deadly weapons from a person “who has been detained . . . for examination of his or her mental
22 condition.” Id.

23 The City’s continued retention of the guns is likewise reasonable. Plaintiffs challenged the
24 City’s petition before the Superior Court and received a full evidentiary hearing. That court’s
25 decision received a full review and a written opinion from the California Court of Appeals, which
26 affirmed the trial court’s decision to grant the City’s petition. See Rodriguez, 2015 WL 1541988.

27 Case No.: [5:15-cv-03698-EJD](#)

28 ORDER GRANTING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFFS’ CROSS-MOTION FOR SUMMARY JUDGMENT

1 Accordingly, Defendants’ motion for summary judgment will be granted as to Plaintiffs’
2 Fourth Amendment claim.

3 **D. Fifth Amendment**

4 Plaintiffs allege that the City’s confiscation and retention of the guns is a “taking of
5 property without just compensation” under the Fifth Amendment. Compl. ¶¶ 48–50. Plaintiffs’
6 claim fails because “[t]he government may not be required to compensate an owner for property
7 which it has already lawfully acquired under the exercise of governmental authority other than the
8 power of eminent domain.” Bennis v. Michigan, 516 U.S. 442, 452 (1996). Here, Defendants
9 lawfully exercised their forfeiture authority under § 8102. That exercise does not constitute a
10 taking of property without just compensation. Defendants’ motion for summary judgment will be
11 granted as to Plaintiffs’ Fifth Amendment claim.

12 **E. Fourteenth Amendment**

13 Lori alleges that Defendants’ confiscation and retention of the guns constituted a “violation
14 her due process rights (administrative return of property) under the Fourteenth Amendment” (and
15 Calguns and SAF allege a similar claim on behalf of their members). Compl. ¶¶ 51–53. In their
16 summary judgment briefing, Plaintiffs clarify that they allege a procedural due process violation
17 based on the City’s refusal to return the firearms following the Court of Appeals’ decision. Dkt.
18 No. 43 at 12. Defendants cite the Court of Appeals’ statement that “the procedure provided by
19 section 33850 et seq. for return of firearms in the possession of law enforcement remains available
20 to Lori.” Rodriguez, 2015 WL 1541988, at *8.

21 Defendants appear to argue that this language requires the City to return the firearms to
22 Lori. But Defendants misread the court’s decision: the court did not order the City to return the
23 firearms to Lori; rather, it addressed Lori’s two challenges to the City’s petition—on the grounds
24 (1) insufficiency of evidence and (2) violation of her Second Amendment rights—and noted that
25 Lori had not yet chosen to pursue remedies under Penal Code § 33800. No procedural due process
26 violation arises from the City’s decision not to return the guns to Lori, since the Court of Appeals

27 Case No.: [5:15-cv-03698-EJD](#)

28 ORDER GRANTING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFFS’ CROSS-MOTION FOR SUMMARY JUDGMENT

1 did not require it to do so. As such, Defendants’ motion for summary judgment will be granted as
2 to Plaintiffs’ Fourteenth Amendment claim.

3 **F. Penal Code § 33800 et seq.**

4 Plaintiffs bring a claim for violation of Cal. Penal Code § 33800 et seq. However,
5 summary judgment must be granted in Defendants’ favor because that statute does not authorize
6 an independent cause of action. See Calhoun v. City of Hercules Police Dep’t, No. 14-CV-01684-
7 VC, 2014 WL 4966030, at *3 (N.D. Cal. Oct. 3, 2014), *aff’d*, 675 F. App’x 656 (9th Cir. 2017)
8 (“California Penal Code § 33855 lays out the procedures that a law enforcement agency must
9 follow before it can return a confiscated firearm, but it does not, in itself, provide a cause of action
10 to a plaintiff who believes he is entitled to his firearm.”).

11 **IV. CONCLUSION**

12 Defendants’ motion for summary judgment (Dkt. No. 22) is GRANTED. Plaintiffs’ motion
13 for summary judgment (Dkt. No. 28) is DENIED. The Clerk shall close this file.

14 **IT IS SO ORDERED.**

15 Dated: September 29, 2017

16 

17 EDWARD J. DAVILA
18 United States District Judge

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27 Case No.: [5:15-cv-03698-EJD](#)
28 ORDER GRANTING DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFFS’ CROSS-MOTION FOR SUMMARY JUDGMENT

Tab 4

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8 UNITED STATES DISTRICT COURT
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11
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
18 JOSE POLICE DEPARTMENT,
OFFICER STEVEN VALENTINE
19 and DOES 1 TO 20,

20 Defendants.

Case No.: 5:15-CV-03698

COMPLAINT

42 U.S.C. §§ 1983, 1988,

21
22
23 **INTRODUCTION**

24 1. This is an action to challenge the customs, policies, practices and procedures
25 of seizing and retaining firearms in conjunction with a mental health and
26 welfare check under California's Welfare and Institutions Code; when said
27 firearms are taken from homes that have California approved gun safes and
28 at least one responsible and qualified person to take custody of the firearms.

PARTIES

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2. Plaintiff LORI RODRIGUEZ is a natural person and citizen of the United States and of the State of California and was at all material times a resident of Santa Clara County. LORI RODRIGUEZ is married to Edward Rodriguez. Edward is not a party to this case, nor did he defend the action in state court.

3. Plaintiff SECOND AMENDMENT FOUNDATION, INC., (SAF) is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF has over 650,000 members and supporters nationwide, including California. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately owned and possess firearms, and the consequences of gun control. SAF brings this action on behalf of itself and its members. SAF brings lawsuits like this because the fees and costs of prosecuting such actions often exceeds the personal resources of individual gun owners and value of the gun collections.

4. Plaintiff CALGUNS FOUNDATION, INC., (CGF) is a non-profit organization incorporated under the laws of California with its principal place of business in Roseville, California. The purposes of CGF include supporting the California firearms community by promoting education for all stakeholders about California and federal firearms laws, rights and privileges, and defending and protecting the civil rights of California gun owners. CGF represents its members and supporters, which include California gun owners. CGF brings this action on behalf of itself and its supporters, who possess all the indicia of membership. CGF brings lawsuits like this because the fees and costs of prosecuting such actions often exceeds the personal resources of individual gun owners and value of the gun collections.

5. Defendant CITY OF SAN JOSE is municipal corporation located in the county of Santa Clara.

1 6. Defendant CITY OF SAN JOSE POLICE DEPARTMENT is a law
2 enforcement agency with the power to implement and enforce the laws
3 relevant to this action.

4 7. Defendant OFFICER STEVEN VALENTINE was a San Jose police officer
5 employed by the City of San Jose on the relevant dates. He either personally
6 seized or directed the seizure of the firearms in question pursuant to policies
7 and procedures promulgated by the Defendants CITY OF SAN JOSE and/or
8 the CITY OF SAN JOSE POLICE DEPARTMENT.

9 8. At this time, Plaintiffs are ignorant of the names of any other individuals or
10 entities responsible for the acts giving rise to the claims set forth herein, and
11 therefore names these individuals DOE Defendants and reserves the right to
12 amend this complaint when their true names are ascertained to add those
13 persons and/or entities as Defendants.

14 15 **JURISDICTION AND VENUE**

16 9. This Court has subject matter jurisdiction over this action pursuant to 28
17 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1988.

18 10. This Court has supplemental jurisdiction over any state law causes of action
19 arising from the same operative facts under 28 U.S.C. § 1367.

20 11. Venue for this action is proper under 28 U.S.C. §§ 1391 and/or the Civil Local
21 Rules for bringing an action in this district.

22 23 **CONDITIONS PRECEDENT**

24 12. All conditions precedent have been performed, and/or have occurred, and/or
25 have been excused, and/or would be futile.

26 13. If applicable, the Statute of Limitations for this action was tolled during the
27 state court proceedings which began February 22, 2013 (when the civil action
28 *City of San Jose v. Edward Rodriguez (Intervenor: Lori Rodriguez)*, case

1 number: 1-13-CV241669 was filed in Santa Clara Superior Court) through
2 and including June 2, 2015 (when the remittitur was issued by the Sixth
3 District Court of Appeal in case number: H040317).
4

5 **FACTS**

- 6 14. Edward and LORI RODRIGUEZ have been married for more than 20 years.
7 15. Prior to her marriage LORI acquired at least one firearm that was and is her
8 separate property.
9 16. During the marriage, LORI and Edward acquired several firearms that were
10 and are community property.
11 17. LORI and her husband also acquired a gun safe that meets (or exceeds) the
12 requirements of California law for the safe storage of firearms.
13 18. On January 24, 2013 the San Jose Police Department was dispatched to the
14 Rodriguez home. Edward Rodriguez was in distress. He exhibited signs of
15 erratic behavior. The police officers at the scene made a determination that
16 Edward should be taken to the Santa Clara Valley Medical Center for a
17 72-hour hold for a psychiatric and/or psychological evaluation. An
18 ambulance was called to transport him.
19 19. Over LORI's objection, and without a warrant, the Defendants seized twelve
20 firearms from a gun safe in the Rodriguez family home.
21 20. Defendant OFFICER VALENTINE either wrongfully seized Plaintiff's
22 firearms on his own initiative, or he was acting pursuant to the official
23 policies, practices and procedures of the CITY OF SAN JOSE and/or the
24 CITY OF SAN JOSE POLICE DEPARTMENT.
25 21. No firearms were used, displayed, brandished or otherwise outside of the
26 Rodriguez gun safe during the events that lead up to Edward's contact with
27 the San Jose Police. Furthermore, LORI RODRIGUEZ maintained custody
28 and control of the firearms in her home by controlling access to the gun safe.

- 1 22. On or about February 22, 2013 the CITY OF SAN JOSE filed a Petition Re:
2 Disposition of Weapons in the Santa Clara Superior Court. *City of San Jose v.*
3 *Edward Rodriguez (Lori Rodriguez)*, case number: 1-13-CV241669.
- 4 23. LORI RODRIGUEZ filed a Co-Respondent's Response and Request for
5 Hearing on April 12, 2013.
- 6 24. On June 21, 2013 a Stipulation Re: Joinder was filed with the Superior Court
7 formally joining LORI RODRIGUEZ to the action.
- 8 25. A hearing pursuant to Welfare and Institutions Code § 8102 took place in
9 Santa Clara County Superior Court on August 9, 2013 before the Honorable
10 Peter H. Kirwan.
- 11 26. LORI RODRIGUEZ testified at the hearing by way of offer of proof (which
12 was verified during the hearing) that she and Edward had owned a Liberty
13 Safe – Lincoln Model LX25 since August of 2002. This gun safe has a lock
14 that keeps the combination dial from being turned, in addition to also
15 requiring knowledge of the combination code itself.
- 16 27. Furthermore the CITY OF SAN JOSE stipulated during the hearing that the
17 gun safe in question meets all of the regulatory requirements promulgated by
18 the Office of the Attorney General of the State of California for the safe
19 storage of firearms.
- 20 28. LORI RODRIGUEZ was not (and is not now) prohibited from possessing,
21 owing or acquiring firearms, as established through a Personal Firearms
22 Eligibility Check conducted by the California Department of Justice.
- 23 29. LORI RODRIGUEZ acknowledged in her testimony that her husband is
24 currently prohibited from owning and/or possessing firearms based on his
25 psychiatric hold. She also acknowledged that she had a duty to transfer the
26 community property firearms to her own name and then store said firearms
27 (and ammunition) in a way that will prevent Edward from gaining access to
28 those firearms.

1 30. LORI RODRIGUEZ had the combination on the gun safe changed on April
2 26, 2013, to prevent unauthorized access to its contents in anticipation of
3 having her firearms returned. Prior to having the combination changed,
4 LORI maintained sole possession of the key used to unlock the combination
5 dial to the gun safe which also prevented unauthorized access to the gun safe.

6 31. The CITY OF SAN JOSE through its Attorney engaged in the following
7 exchange with the trial court at the end of the hearing: "[If] the Court agrees
8 and precludes return of the firearms. What's to prevent Ms. Rodriguez from
9 going out tomorrow and purchasing more firearms and bringing them back to
10 the house?" The City Attorney responded: "That is a correct statement.
11 There is nothing that will prevent her from doing that."

12 32. The trial court ordered the forfeiture of the firearms, but cautioned the City
13 against their destruction without attempting to recover their economic value.

14 33. An appeal was filed in The Court of Appeal of the State of California Sixth
15 Appellate District, Case No.: H040317.

16 34. The judgment of the trial court was affirmed in an unpublished opinion
17 issued on April 2, 2015. That opinion including the following language:
18 "Moreover, we believe that the record on appeal shows that the procedure
19 provided by section 33850 et seq. for return of firearms in the possession of
20 law enforcement **remains available** to Lori." (Emphasis added.)

21 35. LORI RODRIGUEZ had, at all relevant time, offered to comply with the
22 administrative procedures set forth at California Penal Code § 33850 to
23 obtain possession of the firearms in question after the Welfare and
24 Institutions Code (WIC) § 8102 action was resolved. She did not incur the
25 cost and expense of that administrative procedure prior to the adjudication of
26 the WIC action, because there is a fee for each firearm processed and the
27 release is only good for 30 days, after which the gun owner must resubmit
28 another fee and application to the California Department of Justice.

- 1 36. Immediately after the Court of Appeal decision, LORI RODRIGUEZ,
2 submitted the fees and applications for return of her firearms pursuant to
3 Penal Code § 33800 et seq.
- 4 37. On June 1, 2015, LORI RODRIGUEZ received confirmation of the transfer of
5 community property firearms to her name alone and release documents for
6 the firearms in question from the California Department of Justice.
- 7 38. The remittitur of Court of Appeal, Sixth Appellate District was issued on
8 June 2, 2015.
- 9 39. Copies of the Penal Code § 33850 releases were tendered to the CITY OF
10 SAN JOSE on or about June 11, 2015 with a request that the Defendants
11 release LORI's property to her pursuant to California law.
- 12 40. On or about July 6, 2015, the CITY OF SAN JOSE notified LORI that it still
13 would not return her firearms. However the parties do have an agreement
14 that the firearms will be held (without cost to plaintiff LORI RODRIGUEZ)
15 until this action is resolved.
- 16 41. By seizing, retaining Plaintiff RODRIGUEZ's firearms and defying state law
17 administrative procedures for return of firearms, which are valuable personal
18 property, and for which the Plaintiff LORI RODRIGUEZ had taken all
19 necessary steps to secure in accordance with state law; the Defendants have
20 violated LORI RODRIGUEZ's Second, Fourth, Fifth and Fourteenth
21 Amendment rights under the United States Constitution.

22
23 **FIRST CLAIM FOR RELIEF:**
24 **SECOND AMENDMENT, UNITED STATES CONSTITUTION**
25 **42 USC § 1983, 1988**

- 24 42. Paragraphs 1 through 41 are incorporated by reference.
- 25 43. Plaintiff LORI RODRIGUEZ claims relief under 42 U.S.C. § 1983 against
26 Defendants for violation of her constitutional right to keep and bear arms, a
27 right protected by the Second Amendment as that right is applied through
28 the 14th Amendment.

1 44. Plaintiffs CALGUNS FOUNDATION, INC., and SECOND AMENDMENT
2 FOUNDATION, INC., request injunctive relief under 42 U.S.C. § 1983
3 against the Defendants to prevent future violations of their members'
4 constitutional right to keep and bear arms under the Second Amendment to
5 the United States Constitution as that right is applied to the States through
6 the Fourteenth Amendment.

7
8 **SECOND CLAIM FOR RELIEF:**
9 **FOURTH AMENDMENT, UNITED STATES CONSTITUTION**
10 **42 USC § 1983, 1988**

11 45. Paragraphs 1 through 41 are incorporated by reference.

12 46. Plaintiff LORI RODRIGUEZ requests relief under 42 U.S.C. § 1983 against
13 the Defendants for violation of her constitutional right to be free from
14 unreasonable seizure under the Fourth Amendment to the United States
15 Constitution, as those rights are applied to the States through the
16 Fourteenth Amendment.

17 47. Plaintiffs CALGUNS FOUNDATION, INC., and SECOND AMENDMENT
18 FOUNDATION, INC., request prospective injunctive relief under 42 U.S.C. §
19 1983 against the Defendants to prevent future violations of their members'
20 constitutional right to be free from unreasonable seizure under the Fourth
21 Amendment, to the United States Constitution as those rights are applied to
22 the States through the Fourteenth Amendment.

23 **THIRD CLAIM FOR RELIEF:**
24 **FIFTH AMENDMENT, UNITED STATES CONSTITUTION**
25 **42 USC § 1983, 1988**

26 48. Paragraphs 1 through 41 are incorporated by reference.

27 49. Plaintiff LORI RODRIGUEZ requests relief under 42 U.S.C. § 1983 against
28 the Defendants for the taking of property without just compensation under
the Fifth Amendment to the United States Constitution, as those rights are
applied to the States through the Fourteenth Amendment.

1 50. Plaintiffs CALGUNS FOUNDATION, INC., and SECOND AMENDMENT
2 FOUNDATION, INC., request injunctive relief under 42 U.S.C. § 1983
3 against the Defendants to prevent the future takings of their members'
4 firearms without just compensation under the Fifth Amendment to the
5 United States Constitution as those rights are applied to the States through
6 the Fourteenth Amendment.

7
8 **FOURTH CLAIM FOR RELIEF:**
9 **FOURTEENTH AMENDMENT, UNITED STATES CONSTITUTION**
10 **42 USC § 1983, 1988**

11 51. Paragraphs 1 through 41 are incorporated by reference.

12 52. Plaintiff LORI RODRIGUEZ requests relief under 42 U.S.C. § 1983 against
13 the Defendants for violation of her due process rights (administrative return
14 of property) under the Fourteenth Amendment to the United States
15 Constitution.

16 53. Plaintiffs CALGUNS FOUNDATION, INC., and SECOND AMENDMENT
17 FOUNDATION, INC., request prospective injunctive relief under 42 U.S.C. §
18 1983 against the Defendants to prevent future violations of their members'
19 constitutional right of due process (to have firearms returned under
20 California's administrative process) while exercising their Second
21 Amendment rights.

22 **FIFTH CLAIM FOR RELIEF:**
23 **STATE LAW CLAIM**
24 **CALIFORNIA PENAL CODE §§ 33800 et seq.**

25 54. Paragraphs 1 through 41 are incorporated by reference.

26 55. Plaintiff LORI RODRIGUEZ has fully complied with the provisions of
27 California Penal Code § 33800 et seq., and in accordance with the
28 unpublished opinion of the Court of Appeal, tendered a set of approved
releases from the California Department of Justice for return of her firearms.
The Defendants' refusal to comply with the instructions set forth in the

1 appellate court opinion and the provisions of state law entitled her to
2 injunctive relief by this Court under its pendant/ancillary jurisdiction.
3 Furthermore, LORI RODRIGUEZ is entitled to recovery of attorney fees and
4 costs under Penal Code § 33885.

5 56. Plaintiffs CALGUNS FOUNDATION, INC., and SECOND AMENDMENT
6 FOUNDATION, INC., request prospective injunctive relief under 42 U.S.C. §
7 1983 against the Defendants to compel compliance with California Penal
8 Code § 33800 et seq. (to have firearms returned under California's
9 administrative process) while exercising their Second Amendment rights.

10
11 WHEREFORE, the Plaintiffs requests that this Court:

- 12 A. Compel the Defendants to return the firearms released to LORI
13 RODRIGUEZ by the California Department of Justice to her home.
14 B. An award of damages to LORI RODRIGUEZ.
15 C. Injunctive relief against the Defendants to prevent future violations.
16 D. Award costs of this action and all prior actions to all the Plaintiffs;
17 E. Award reasonable attorney fees and costs to the Plaintiffs on all
18 Claims of the complaint, and all prior litigation, including but not
19 limited to fee/cost awards under 42 USC § 1983, 1988; California Code
20 of Civil Procedure § 1021.5 and California Penal Code § 33885.
21 F. Such other and further relief as this Court may deem appropriate.

22 Dated: August 12, 2015.

23 /s/ Donald Kilmer

24 Donald Kilmer, Jr. [SBN: 179986]
25 Law Offices of Donald Kilmer, APC
26 1645 Willow Street, Suite 150
27 San Jose, California 95125
28 Voice: (408) 264-8489
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31 Attorneys for Plaintiffs

Tab 5

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7 Attorneys for Defendants CITY OF SAN JOSE, CITY
OF SAN JOSE POLICE DEPARTMENT and
8 OFFICER STEVEN VALENTINE

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

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

15 Plaintiffs,

16 v.

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

19 Defendants.
20

Case Number: 5:15-CV-03698 EJD

**DEFENDANTS' ANSWER TO
COMPLAINT AND DEMAND FOR
JURY TRIAL**

21
22 Defendants CITY OF SAN JOSE, CITY OF SAN JOSE POLICE DEPARTMENT,
23 and OFFICER STEVEN VALENTINE (collectively "Defendants") answer the Complaint of
24 Plaintiffs LORI RODRIGUEZ, THE SECOND AMENDMENT FOUNDATION, INC. and
25 THE CALGUNS FOUNDATION, INC. (collectively "Plaintiffs") as follows:

26 ///

27 ///

28 ///

1 **INTRODUCTION**

2 1. In response to the allegations contained in Paragraph 1 of said Complaint,
3 Defendants acknowledge the purpose of Plaintiffs' lawsuit, but deny that Plaintiffs' claims
4 have merit.

5 **PARTIES**

6 2. In response to the allegations contained in Paragraph 2 of said Complaint,
7 Defendants admit such allegations.

8 3. In response to the allegations contained in Paragraph 3 of said Complaint,
9 Defendants admit that Plaintiff SECOND AMENDMENT FOUNDATION, INC. (SAF) is an
10 organization with its principal place of business in Bellevue, Washington, but Defendants
11 are without information or belief as to the remaining facts contained therein, and on that
12 basis, deny such facts.

13 4. In response to the allegations contained in Paragraph 4 of said Complaint,
14 Defendants admit that CALGUNS FOUNDATION, INC. (CGF) is an organization
15 incorporated under the laws of California with a principal place of business in Roseville,
16 California, but Defendants are without information or belief as to the remaining facts
17 contained therein, and on that basis, deny such facts.

18 5. In response to the allegations contained in Paragraph 5 of said Complaint,
19 Defendants admit such allegations.

20 6. In response to the allegations contained in Paragraph 6 of said Complaint,
21 Defendants admit such allegations.

22 7. In response to the allegations contained in Paragraph 7 of said Complaint,
23 Defendants admit that Officer Steven Valentine was a San Jose police officer employed
24 by the City of San Jose on the relevant dates and seized the firearms in question pursuant
25 to California Welfare and Institutions Code section 8102, but Defendants deny the
26 remainder of the factual allegations contained therein.

27 8. In response to the allegations contained in Paragraph 8 of said Complaint,

28 ///

1 Defendants acknowledge that Plaintiffs reference the Doe pleading concept of using
2 fictitious names for purposes of future pleading, but deny that said Doe pleading is
3 available in this Court.

4 **JURISDICTION AND VENUE**

5 9. In response to the allegations contained in Paragraph 9 of said Complaint,
6 Defendants admit that the Court has jurisdiction over Plaintiffs' constitutional claims.

7 10. In response to the allegations contained in Paragraph 10 of said Complaint,
8 Defendants admit that the Court has supplemental jurisdiction over Plaintiffs' alleged state
9 claims.

10 11. In response to the allegations contained in Paragraph 11 of said Complaint,
11 Defendants admit that this action is properly venued in the Northern District of California.

12 **CONDITIONS PRECEDENT**

13 12. In response to the allegations contained in Paragraph 12 of said Complaint,
14 Defendants are without information or belief as to the facts contained therein, and on that
15 basis, deny such facts.

16 13. In response to the allegations contained in Paragraph 13 of said Complaint,
17 Defendants deny said allegations.

18 **FACTS**

19 14. In response to the allegations contained in Paragraph 14 of said Complaint,
20 Defendants admit that Edward and LORI RODRIGUEZ are married, but are without
21 information or belief as to the remaining facts contained therein, and on that basis, deny
22 such facts.

23 15. In response to the allegations contained in Paragraph 15 of said Complaint,
24 Defendants are without information or belief as to the facts contained therein, and on that
25 basis, deny such facts.

26 16. In response to the allegations contained in Paragraph 16 of said Complaint,
27 Defendants admit such allegations.

28 17. In response to the allegations contained in Paragraph 17 of said Complaint,

1 Defendants admit such allegations.

2 18. In response to the allegations contained in Paragraph 18 of said Complaint,
3 Defendants admit such allegations.

4 19. In response to the allegations contained in Paragraph 19 of said Complaint,
5 Defendants admit that twelve firearms were seized from a gun safe in the Rodriguez
6 family home, but Defendants deny the remainder of the factual allegations contained
7 therein.

8 20. In response to the allegations contained in Paragraph 20 of said Complaint,
9 Defendants deny said allegations.

10 21. In response to the allegations contained in Paragraph 21 of said Complaint,
11 Defendants admit that no firearms were used, displayed, brandished or otherwise outside
12 the Rodriguez gun safe during the events of Edward's contact with the San Jose Police,
13 but are without information or belief as to the remainder of the facts contained therein, and
14 on that basis, deny such facts.

15 22. In response to the allegations contained in Paragraph 22 of said Complaint,
16 Defendants admit such allegations.

17 23. In response to the allegations contained in Paragraph 23 of said Complaint,
18 Defendants admit such allegations.

19 24. In response to the allegations contained in Paragraph 24 of said Complaint,
20 Defendants admit such allegations.

21 25. In response to the allegations contained in Paragraph 25 of said Complaint,
22 Defendants admit such allegations.

23 26. In response to the allegations contained in Paragraph 26 of said Complaint,
24 Defendants admit such allegations.

25 27. In response to the allegations contained in Paragraph 27 of said Complaint,
26 Defendants admit such allegations.

27 28. In response to the allegations contained in Paragraph 28 of said Complaint,
28 Defendants admit such allegations.

1 29. In response to the allegations contained in Paragraph 29 of said Complaint,
2 Defendants admit such allegations.

3 30. In response to the allegations contained in Paragraph 30 of said Complaint,
4 Defendants are without information or belief as to the facts contained therein, and on that
5 basis, deny such facts.

6 31. In response to the allegations contained in Paragraph 31 of said Complaint,
7 Defendants admit such allegations.

8 32. In response to the allegations contained in Paragraph 32 of said Complaint,
9 Defendants admit that the trial court ordered forfeiture of the firearms, but Defendants
10 deny the remainder of the factual allegations contained therein.

11 33. In response to the allegations contained in Paragraph 33 of said Complaint,
12 Defendants admit such allegations.

13 34. In response to the allegations contained in Paragraph 34 of said Complaint,
14 Defendants admit such allegations.

15 35. In response to the allegations contained in Paragraph 35 of said Complaint,
16 Defendants are without information or belief as to the facts contained therein, and on that
17 basis, deny such facts.

18 36. In response to the allegations contained in Paragraph 36 of said Complaint,
19 Defendants admit such allegations.

20 37. In response to the allegations contained in Paragraph 37 of said Complaint,
21 Defendants admit such allegations.

22 38. In response to the allegations contained in Paragraph 38 of said Complaint,
23 Defendants admit such allegations.

24 39. In response to the allegations contained in Paragraph 39 of said Complaint,
25 Defendants admit such allegations.

26 40. In response to the allegations contained in Paragraph 40 of said Complaint,
27 Defendants admit such allegations.

28 41. In response to the allegations contained in Paragraph 41 of said Complaint,

1 Defendants deny such allegations.

2 **FIRST CLAIM FOR RELIEF:**
3 **SECOND AMENDMENT, UNITED STATES CONSTITUTION**
4 **42 US § 1983, 1988.**

4 42. In response to the allegations contained in Paragraph 42 of said Complaint,
5 Defendants incorporate by reference their responses to Paragraphs 1 through 41 herein.

6 43. In response to the allegations contained in Paragraph 43 of said Complaint,
7 Defendants deny said allegations.

8 44. In response to the allegations contained in Paragraph 44 of said Complaint,
9 Defendants deny said allegations.

10 **SECOND CLAIM FOR RELIEF:**
11 **FOURTH AMENDMENT, UNITED STATES CONSTITUTION**
12 **42 US § 1983, 1988.**

12 45. In response to the allegations contained in Paragraph 45 of said Complaint,
13 Defendants incorporate by reference their responses to Paragraphs 1 through 41 herein.

14 46. In response to the allegations contained in Paragraph 46 of said Complaint,
15 Defendants deny said allegations.

16 47. In response to the allegations contained in Paragraph 47 of said Complaint,
17 Defendants deny said allegations.

18 **THIRD CLAIM FOR RELIEF:**
19 **FIFTH AMENDMENT, UNITED STATES CONSTITUTION**
20 **42 US § 1983, 1988.**

20 48. In response to the allegations contained in Paragraph 48 of said Complaint,
21 Defendants incorporate by reference their responses to Paragraphs 1 through 41 herein.

22 49. In response to the allegations contained in Paragraph 49 of said Complaint,
23 Defendants deny said allegations.

24 50. In response to the allegations contained in Paragraph 50 of said Complaint,
25 Defendants deny said allegations.

26 **FOURTH CLAIM FOR RELIEF:**
27 **FOURTEENTH AMENDMENT, UNITED STATES CONSTITUTION**
28 **42 US § 1983, 1988.**

28 51. In response to the allegations contained in Paragraph 51 of said Complaint,

1 Defendants incorporate by reference their responses to Paragraphs 1 thorough 41 herein.

2 52. In response to the allegations contained in Paragraph 52 of said Complaint,
3 Defendants deny said allegations.

4 53. In response to the allegations contained in Paragraph 53 of said Complaint,
5 Defendants deny said allegations.

6 **FIFTH CLAIM FOR RELIEF:**
7 **STATE LAW CLAIM CALIFORNIA**
8 **PENAL CODE § 33800 ET SEQ.**

9 54. In response to the allegations contained in Paragraph 54 of said Complaint,
10 Defendants incorporate by reference their responses to Paragraphs 1 thorough 41 herein.

11 55. In response to the allegations contained in Paragraph 55 of said Complaint,
12 Defendants deny said allegations.

13 56. In response to the allegations contained in Paragraph 56 of said Complaint,
14 Defendants deny said allegations.

15 **AFFIRMATIVE DEFENSES**

16 AS AND FOR A FIRST AFFIRMATIVE DEFENSE, these answering Defendants
17 allege that the Complaint fails to state a claim upon which relief can be granted.

18 AS AND FOR A SECOND AFFIRMATIVE DEFENSE, these answering Defendants
19 allege that any harm Plaintiffs suffered was the result of negligent or otherwise wrongful
20 conduct of persons other than these Defendants and that the conduct of persons other
21 than these Defendants were the sole and proximate cause of the injuries and damages
22 alleged by Plaintiffs.

23 AS AND FOR A THIRD AFFIRMATIVE DEFENSE, these answering Defendants
24 allege that all actions taken, including actions of Doe Defendants, were undertaken in
25 good faith and with a reasonable belief that the actions were valid, necessary,
26 constitutionally proper and objectively reasonable for a police officer in the same
27 circumstances, entitling the individual Defendants to qualified immunity.

28 ///

1 AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, these answering Defendants
2 allege that they are immune from the state law causes of action pursuant to Government
3 Code sections 800-1000.

4 AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, these answering Defendants
5 allege they are immune from the state law causes of action pursuant to Government Code
6 sections 815.2(b) and 820.8 granting immunity for an injury caused by the act or omission
7 of another person.

8 AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, these answering Defendants
9 allege that Plaintiffs' Complaint is barred in that Plaintiffs failed to comply with the claims
10 filing provisions of Government Code section 900, et seq.

11 AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, these answering
12 Defendants allege that Plaintiffs' Complaint is barred by the applicable statutes of
13 limitation.

14 AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, these answering Defendants
15 allege that their actions towards Plaintiffs were the result of their negligence and/or
16 criminal conduct and that said actions of Plaintiffs were the sole and proximate cause of
17 their actions and any damages alleged by Plaintiffs in this case.

18 AS AND FOR A NINTH AFFIRMATIVE DEFENSE, these answering Defendants
19 allege that those individuals, who are presently designated as Does, are entitled to
20 immunity from Plaintiffs' Complaint by virtue of the provisions of Government Code
21 sections 800 through 1000, including, but not limited to Sections 820.2, 820.4, 820.6,
22 820.8, 821, 821.6 and 822.2.

23 AS AND FOR A TENTH AFFIRMATIVE DEFENSE, these answering Defendants
24 allege that their actions were lawful and justified under the facts of the case.

25 AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE, these answering
26 Defendants allege that they are protected by the affirmative defenses provided by
27 California Penal Code sections 197, 834(a), 835 and 835(a).

28 ///

1 AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE, these answering
2 Defendants allege that any damages or injuries suffered by Plaintiffs were occasioned by
3 their own wrongful actions.

4 AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE, these answering
5 Defendants allege that Plaintiffs were careless and negligent in and about the matters
6 referred to in said Complaint, and that such carelessness and negligence proximately
7 caused and contributed to the damage, detriment or injuries sustained by them, if any
8 there were, and that Plaintiffs' recovery should therefore either be barred or reduced to the
9 extent of Plaintiffs' negligence.

10 AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE, these answering
11 Defendants allege that Defendants are informed and believe, and thereon allege, that third
12 parties were careless and negligent in and about the matters referred to in said Complaint,
13 and further that these third parties failed to exercise ordinary or any care regarding
14 matters referred to in the Complaint and such carelessness and negligence on the part of
15 these third parties proximately caused and contributed to the damage, detriment or injury
16 sustained by Plaintiffs, if any there was, and that Plaintiffs' recovery from Defendants, if
17 any there is, should therefore either be barred or reduced to the extent of the third party's
18 negligence.

19 AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE, these answering
20 Defendants allege that the acts alleged to have been committed by these answering
21 Defendants were not the cause in fact, proximate or legal cause of Plaintiffs' damages, if
22 any.

23 AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE, these answering
24 Defendants allege that Defendant CITY OF SAN JOSE is immune from a claim of
25 exemplary or punitive damages by virtue of Government Code section 818.

26 AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE, these answering
27 Defendants allege that any act or omission by these Defendants alleged in said Complaint
28 was a result of the exercise of discretion vested in a public employee, and said

1 Defendants are therefore immune and not liable for such acts (Government Code
2 section 820.2).

3 AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE, these answering
4 Defendants assert the affirmative defenses provided by Penal Code sections 836 and
5 836.5.

6 AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE, these answering
7 Defendants allege that Plaintiffs have failed to mitigate their damages.

8 AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE, these answering
9 Defendants allege that Plaintiffs' claims are barred by the doctrine of res judicata.

10 AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE, these answering
11 Defendants allege that Plaintiffs, and each of them, are collaterally estopped from bringing
12 these claims.

13 AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE, Plaintiffs, and
14 each of them, do not have standing to bring all or a portion of their claims.

15 AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE, Defendants complied
16 with procedures set forth in California Welfare and Institutions Code section 8102.

17 AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE, Plaintiffs, and each
18 of them, by their words, conduct and actions, made a knowing intentional and voluntary
19 waiver of any and all claims raised in their Complaint.

20 AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE,

21 WHEREFORE, these answering Defendants pray:

- 22 1. That Plaintiffs take nothing by their Complaint;
23 2. That Plaintiffs' Complaint be dismissed with prejudice;
24 3. That Defendants be awarded their costs of suit, including attorney's fees
25 incurred herein; and

26 ///

27 ///

28 ///

Tab 6

1 RICHARD DOYLE, City Attorney (88625)
NORA FRIMANN, Assistant City Attorney (93249)
2 CLIFFORD S. GREENBERG, Sr. Deputy City Attorney (122612)
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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

11
12 LORI RODRIGUEZ, THE SECOND
AMENDMENT FOUNDATION, INC., THE
13 CALGUNS FOUNDATION, INC.,

14 Plaintiffs,

15 v.

16 CITY OF SAN JOSE, et al.,

17 Defendants.
18

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

**DECLARATION OF MARK VANNI IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

DATE: November 10, 2016

TIME: 9:00 a.m.

COURTROOM: 4

JUDGE: Hon. Edward J. Davila

19 I, Mark Vanni, hereby declare:

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

24 2. Attached hereto as Exhibit A is a true and correct copy of SJPD Duty Manual
25 section L5705 that was in effect at the time the firearms were confiscated.

26 3. Attached hereto as Exhibit B is a true and correct copy of the City's Petition
27 initiating *City of San Jose v. Edward Rodriguez, et al.* (Santa Clara Superior Court No. 1-
28 13-CV-241669).

EXHIBIT A

Line/Operations Procedures

Firearms booked for safekeeping are held for five (5) business days and then returned to its rightful owner. (12028.5 PC)

L 5703

TAKING OF AMMUNITION FOR SAFEKEEPING:

Officers will not take ammunition for safekeeping when removal of the weapon(s) alone will abate the threatened danger. Officers will exercise reasonable judgment in determining that all weapons have been removed before leaving the ammunition with the owner. When an officer reasonably believes that a person is withholding a weapon, all ammunition located may be taken into custody and booked for safekeeping.

L 5704

BOOKING FIREARMS FOR SAFEKEEPING- DOMESTIC VIOLENCE INCIDENTS

Added 06/06/05

When responding to a domestic violence incident, the officer shall as necessary for the protection of the officer or other persons present:

- Take custody of any firearm in plain sight or discovered pursuant to a consensual search or other lawful search
- Ask if there are any other firearms on the premises
- Contact Communications and request a check be made through the Automated Firearms System to determine if the subject owns a firearm
- Have Communications run a warrant check
 - The warrant check will also verify if a Domestic Violence Restraining Order (DVRO) is in effect and if there is an order prohibiting firearms
 - If the officer determines that a protective order has been issued but not served, the officer shall immediately notify the respondent of the terms of the order
 - Have Communications notify the Sheriff's Office Warrants Unit to have proof of service entered into Domestic Violence Restraining Order System
- Complete the Property Form (Form-13), listing the firearms taken from the owner/possessor
- Give the owner/possessor a copy of the Property Sheet (F-13)
- Give the owner/possessor of the firearm a report receipt (Form 200-45A)
- Advise the owner/possessor to obtain a DOJ Firearms Release Form from the DOJ webpage or contact the Firearms Division for a return application
- Firearms taken into custody must be booked in the Property Room

L 5705

BOOKING FIREARMS FOR SAFEKEEPING - MENTAL HEALTH INCIDENTS

Added 06/06/05

When detaining or apprehending a person at a W&I 5150 incident, the officer shall:

- Have Communications check DOJ Automated Firearms System to determine ownership of firearms
- Ask if there are any firearms on the premises
- Confiscate any firearm owned, in the possession or under the control of the subject

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For Official Law Enforcement Use Only
Page 392*

DM2012 v2 041812

Line/Operations Procedures

- Check DOJ Supervised Release File and Mental Health Firearms Prohibition system. If weapons are present, subject may be charged
- Complete the Property Sheet (Form-13), listing the firearms taken from the owner/possessor
- Give the owner/possessor a copy of the Property Sheet (Form-13)
- Give the owner/possessor of the firearms a report receipt (Form 200-45A)
- Advise the owner/possessor to obtain a DOJ Firearms Release Form from the DOJ webpage or contact the Firearms Division
- Firearms taken into custody must be booked in the Property Room

L 5706

BOOKING FIREARMS FOR SAFEKEEPING - ACCEPTANCE OF FIREARMS SUBJECT TO RELINQUISHMENT UNDER PROTECTIVE ORDERS

Added 02/10/08

Persons subject to protective orders are required to relinquish any firearms in their possession or control within 24 hours after service of the order, either by surrendering the firearms to a local law enforcement agency or by selling the firearms to a licensed gun dealer. A person who chooses to surrender the firearm to the Department will be directed to respond to the Information Center, and an officer in the Center will take possession of the firearm for safekeeping. The person should be in possession of a DV-800/JV-252, *Proof of Firearms Turned In or Sold*, form. The accepting officer completes sections 4 and 6 of the DV-800/JV-252 form.

The officer who takes possession of the firearms is responsible for completing a Form 2 and booking the surrendered firearms for safekeeping.

EXHIBIT B

1 RICHARD DOYLE, City Attorney (#088625)
2 NORA FRIMANN, Assistant City Attorney (#093249)
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ENDORSED
FILED
2013 FEB 22 PM 3:07
David H. [unclear] Superior Court
County of Santa Clara
Dr. [unclear]

11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

12 CITY OF SAN JOSE, a municipal
13 corporation,

14 Petitioner,

15 v.

16 EDWARD V. RODRIGUEZ,

17 Respondent.

18 CASE NO. 113CV241659

19 PETITION RE: DISPOSITION OF
20 WEAPONS

21 STATEMENT OF FACTS

22 On Thursday, January 24, 2013, officers from the San Jose Police Department were
23 dispatched to the residence of Respondent Edward V. Rodriguez (hereinafter "Respondent") and his
24 wife in San Jose, California to investigate a domestic disturbance. Respondent's wife had contacted
25 9-1-1 Emergency Response personnel to report that Respondent was seated near a window and
26 yelling in the direction of the exterior of the house. Respondent's wife claimed that Respondent had
27 not been sleeping during the past forty-eight hours and that he may be suffering from a mental illness.
28 She was fearful of Respondent's behavior as well as his access to firearms within the residence.

Upon arrival, an officer made contact with Respondent's wife. He heard odd noises similar to
grunting followed by bizarre speech and cynical laughter. When the officer entered the house and
made contact with Respondent, his laughter turned to an angry facial expression with laughter to
follow again. The officer attempted to converse with Respondent, but he did not engage the officer.

1 Respondent commenced talking about the CIA, the Army and other subjects. He claimed he was
2 affiliated with the CIA.

3 The officer queried Respondent as to whether he had ingested any drugs or prescription
4 medications. He answered that he had only ingested water. Respondent was perspiring heavily and
5 his respiration was rapid and heavy. Family members claimed that his behavior was becoming
6 increasing worse. Respondent's wife stated that after a previous visit by a police officer, he was
7 depressed. During this current police contact, she was fearful of Respondent's behavior.

8 The officer determined that Respondent was delusional and possibly suffering from a mental
9 condition. He was acting irrationally; his mannerisms were bizarre and aggressive. Respondent
10 changed personalities within seconds.

11 Based on the officer's training and experience, coupled with the officer's observations of
12 Respondent and the fact that Respondent attempted to break his own thumb when the officer asked
13 him if he wanted to hurt himself, the officer believed that Respondent was a danger to himself and
14 others. In consideration of the safety of the officer as well as Respondent, the officer awaited the
15 arrival of other officers prior to placing hand-cuffs on Respondent due to his massive girth.

16 Due to Respondent's size and apparent medical condition, San Jose Fire Department
17 personnel and medical personnel responded to the scene. Once Respondent was secured onto the
18 gurney, he continued to break the restraints. Medical personnel requested that an officer accompany
19 them within the ambulance for transport. Respondent was transported to Santa Clara Valley Medical
20 Center for medical treatment and a 72-hour hold and psychological evaluation.

21 During a protective sweep for weapons inside of Respondent's house, the officer located
22 twelve firearms within a gun safe. One firearm belonged to Respondent's wife. However, since
23 Respondent had access to all the firearms, all twelve firearms were confiscated from Respondent's
24 residence by the officers and booked into the San Jose Police Department for safekeeping.

25 The following is a description of the twelve aforementioned firearms:

- 26 1) .44 caliber Dan Wesson Magnum revolver;
- 27 2) .44 caliber Smith & Wesson Magnum revolver;
- 28 3) 12-gauge Browning single-barrel shotgun;

1 If Respondent was not admitted, Section 8103 does not apply and the Court should simply
2 make the determination under Section 8102. If Respondent was admitted, the Court may not return
3 the weapons because Respondent would not be permitted to possess such weapons, unless and until
4 Respondent petitions the Court and obtains an order pursuant to Section 8103(f)(4).

5 Even in a case implicating Section 8102, the determination should be made as to whether
6 return of the weapons would be likely to endanger Respondent or others. If the Court finds that such
7 danger exists, the Petition should be granted and the weapons forfeited. If the Court is unable to find
8 that such danger exists, the Court should rule that the City of San Jose shall retain custody of the
9 weapons until Respondent obtains a Court Order pursuant to Section 8102. If no order is obtained
10 within two (2) years, the City of San Jose should then be able to dispose of the weapons. It would be
11 unduly burdensome and it would present storage and procedural problems to require the City of San
12 Jose to retain the weapons for a period longer than two (2) years.

13 CONCLUSION

14 Based upon the above argument, the City of San Jose respectfully requests this Court to order
15 the San Jose Police Department to retain Respondent's weapons and that the weapons be forfeited.

16 DATED: February 22, 2013

RICHARD DOYLE, City Attorney

17
18 By: Mark Vanni
19 MARK J. VANNI
Associate Deputy City Attorney

20 Attorneys for Petitioner,
21 CITY OF SAN JOSE
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EXHIBIT C

1 Donald E. J. Kilmer, Jr. [SBN: 179986]
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San Jose, California 95125
3 Voice: (408) 264-8489
Fax: (408) 264-8487

4 Attorney for Respondent:
5 LORI RODRIGUEZ

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7
8 SUPERIOR COURT OF CALIFORNIA
SANTA CLARA COUNTY
9 CIVIL LAW DIVISION

10 CITY OF SAN JOSE,
11 Petitioner,

12 vs.

13 EDWARD RODRIGUEZ,
14 Respondent.

15 _____
16 LORI RODRIGUEZ,
17 Co-Respondent.

Case No.: 1-13-CV-241669

**RESPONDENT'S and/or
CO-RESPONDENT'S RESPONSE
AND REQUEST FOR HEARING**

Welfare and Institutions Code §§ 8100 et
seq

18 By and through undersigned counsel, LORI RODRIGUEZ, Co-Respondent,
19 hereby requests a hearing in the above-entitled matter.

20 1. LORI RODRIGUEZ is the Wife of Respondent EDWARD RODRIGUEZ.

21 2. The firearms that are subject to disposition by this Court in this action
22 either: (a) belong to LORI RODRIGUEZ , or (b) she has a community
23 property interest in said firearms.

24 3. LORI RODRIGUEZ is eligible to own, possess and acquire firearms.

25 4. LORI RODRIGUEZ has the means to safely store firearms and ammunition
26 in the family home and deny access to said firearms and ammunition to her
27 husband EDWARD RODRIGUEZ, who currently remains a prohibited
28 person.

1 5. LORI RODRIGUEZ reserves all of her substantive and procedural rights,
2 including the right to file supplemental pleadings, file pre-trial motions and
3 conduct discovery.
4

5 Respectfully Submitted,

6 Date: April 12, 2013

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10 Donald Kilmer
Attorney for LORI RODRIGUEZ

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Fv: 408/264-8487

EXHIBIT D

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

BEFORE THE HONORABLE PETER H. KIRWAN, JUDGE

DEPARTMENT 8

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CITY OF SAN JOSE,

PETITIONER,

-VS-

E. RODRIGUEZ,

RESPONDENT.

NO. 1-13-CV-241669

---oOo---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

AUGUST 9, 2013

---oOo---

A P P E A R A N C E S :

FOR THE PLAINTIFF:

MARK VANNI
Attorney at Law

FOR THE DEFENDANT:

DONALD KILMER
Attorney at Law

OFFICIAL COURT REPORTER:

MELISSA CRAWFORD, CSR, RPR
CSR NO. 12288

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PETITIONER'S EXHIBITS

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RESPONDENT'S EXHIBITS

DESCRIPTION

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1 San Jose, California

August 9, 2013

2 P R O C E E D I N G S

3 THE COURT: All right, we're going to go on the record
4 this morning. This is the matter of City of San Jose versus
5 Rodriguez. Can I please get appearances?

6 MR. VANNI: Yes, Your Honor. Good morning. Mark
7 Vanni on behalf of the City of San Jose.

8 MR. KILMER: Good morning, Your Honor. Donald Kilmer
9 on behalf of Lori Rodriguez. Ms. Rodriguez is seated next to me
10 at counsel table.

11 THE COURT: All right. Good morning to each of you.
12 We've got an officer here; is that correct?

13 MR. VANNI: We do, Your Honor.

14 THE COURT: Okay. Do you want state your appearance,
15 sir?

16 OFFICER VALENTINE: Officer Steven Valentine, San Jose
17 PD. Badge 3985.

18 THE COURT: All right, this matter is on calendar this
19 morning. It's a continued hearing from our law and motion
20 calendar. Relates to a disposition of firearms. Mr. Kilmer
21 requested a hearing. I want to reiterate the fact that we're
22 going to do this efficiently and we're going to streamline it.
23 To the extent that you want to provide some testimony, I'm going
24 to require that you do it by offer of proof. If the other side
25 has any questions, or whatnot, they can ask. All right? So
26 we'll start with the City of San Jose. Mr. Vanni?

27 MR. VANNI: Yes, Your Honor. We have our officer
28 present today. Do you want me to give an offer of proof as to

1 his statement?

2 THE COURT: Yes.

3 MR. VANNI: Well, as stated in the City's declaration
4 that was attached to its petition, Officer Steve Valentine
5 received a call for service at the Rodriguez family home because
6 of a -- to investigate a domestic disturbance. Officer
7 Valentine arrived on scene. Made contact with Ms. Rodriguez.
8 Then made contact with Mr. Rodriguez where he noticed, or
9 observed, that Mr. Rodriguez was acting delusional. He was
10 rambling and speaking about the CIA and the Army and individuals
11 watching him.

12 Officer Valentine was also informed, prior to
13 arriving, that there were guns in the home. So that added a
14 level of sensitivity to the matter. Although the guns were not
15 out. Officer Valentine, after observing Mr. Rodriguez and his
16 behavior, determined that he was a danger to himself and to
17 others and determined to place him on a 5150 hold and transport
18 him to Valley Medical Center. When officer Valentine, with the
19 assistance of other officers who arrived, detained
20 Mr. Rodriguez, he attempted to injure himself by pulling his
21 thumb back.

22 When Mr. Rodriguez was then transported to Valley
23 Medical Center Officer Valentine remained behind. He informed
24 Ms. Rodriguez that pursuant to the Welfare and Institutions Code
25 Section 8102 he would need to confiscate the weapons.
26 Ms. Rodriguez then went and opened the safe. It was a dual
27 combination key safe. And then Ms. Rodriguez then had to obtain
28 the key. She opened the safe and Officer Valentine saw 12

1 weapons inside. Various handguns and rifles. Those weapons
2 were confiscated and they're documented in the police report.
3 And they remain currently in the possession of the City of San
4 Jose.

5 When Mr. Rodriguez was at Valley Medical Center he was
6 evaluated and determined to be a danger to himself and was
7 admitted pursuant to 5151 and 5152, which means that he,
8 himself, was a prohibited party under Welfare and Institutions
9 Code 8103. That issue is not in dispute with the opposing party
10 and the City.

11 So the issue now before the Court is whether or not
12 weapons can be returned to the home where somebody who is a
13 prohibited party resides. And the City believes that to do so
14 would result in a likely danger to others and to Mr. Rodriguez.
15 While Lori Rodriguez has promised and pledged to maintain the
16 weapons in a safe without providing access to Mr. Rodriguez,
17 given the observations that Officer Valentine observed on that
18 evening, as well as past instances, the City of San Jose has
19 responded to that house on a number of occasions because of --
20 to do welfare checks and to look into Mr. Rodriguez's mental
21 state, the City believes that there is just too much of a risk
22 that Mr. Rodriguez would be able to access those weapons and --
23 either through coercing Ms. Rodriguez or overpowering her. And
24 unfortunately there is just no way once the weapons are back in
25 Ms. Rodriguez's possession to determine or to confirm that she's
26 indeed holding them the way that she pledges.

27 THE COURT: All right. Officer Valentine, we're going
28 to swear you in. I'm going to ask if you affirm the statements

1 that have been made for an offer of proof. Could I ask you to
2 please stand and raise your right hand.

3 MR. KILMER: You want to swear both witnesses at the
4 same time, Your Honor?

5 THE COURT: We can do that. Ms. Rodriguez, would you
6 stand up, please.

7 (Whereupon, the witnesses were duly sworn in this
8 matter.)

9 OFFICER VALENTINE: Yes, I do.

10 RESPONDENT LORI RODRIGUEZ: Yes, I do.

11 THE COURT: And, Officer Valentine, I want to ask you
12 on the record, you heard the statements that were made by
13 counsel for the City as an offer of proof to what you would
14 testify if you were here testifying under oath. Do you confirm
15 those statements and the accuracy of those statements?

16 OFFICER VALENTINE: Yes, Your Honor.

17 THE COURT: Okay. All right. Mr. Kilmer, do you have
18 any questions for Officer Valentine?

19 MR. KILMER: Just briefly, Your Honor.

20 THE COURT: Okay.

21 **CROSS-EXAMINATION**

22 BY MR. KILMER:

23 Q. Officer Valentine, you testified, by way of offer of proof,
24 that the guns were in a gun safe. Were there any guns that were
25 not in the gun safe at the house?

26 A. No, there was not.

27 Q. Did you -- in addition to removing the firearms, did you
28 remove any ammunition?

1 A. No, I did not.

2 Q. Did you see any ammunition?

3 A. I believe there was ammunition, yes.

4 Q. And you left the ammunition at the house?

5 A. Yes.

6 Q. Where was the ammunition that you left at the house stored?

7 A. In the safe.

8 Q. When -- did Ms. Rodriguez open the safe or did you open the
9 safe after she gave you the combination?

10 A. Ms. Rodriguez opened it.

11 Q. Okay. And what did she do? What was the procedure she
12 went through to open the safe?

13 A. I believe it was a two combination. She had -- couldn't
14 recall exactly what the combination was. It took her a couple
15 minutes.

16 Q. Okay.

17 A. And then she had to use a key also and she opened up the
18 safe.

19 Q. Okay. Was the key used to unlock the combination dial or
20 was it actually used to unlock the safe?

21 A. I did not observe her open the safe. I believe I was still
22 doing paperwork for the transport of Mr. Rodriguez.

23 MR. KILMER: Your Honor, may I have this brochure
24 marked for identification as Exhibit A? I have previously
25 provided a copy to opposing counsel. I have a courtesy copy for
26 the Court as well.

27 THE COURT: All right. You can hand that to my clerk.

28 THE CLERK: Marked for identification only as

1 Respondent's Exhibit Number 1.

2 (Whereupon, Respondent's Exhibit 1 was marked for
3 identification.)

4 MR. KILMER: Do I want to have the witness look at the
5 exhibit or the -- I think you have the exhibit.

6 THE COURT: Yeah.

7 Q. (By Mr. Kilmer) Officer, I'm handing you a document that
8 has been marked for identification as Exhibit 1. And I'm going
9 to turn to a page in here. It's towards the middle of the
10 brochure. It says -- unfortunately there are no page numbers.
11 It says Lincoln Series. And I'm going to ask you to take a look
12 at a safe in the lower right-hand corner that says LX 25. Does
13 that appear to be the kind of safe that you were retrieving the
14 firearms from?

15 A. To be honest with you, I couldn't even tell you what the
16 safe looked like. I just remember the door being opened when I
17 started retrieving the firearms from inside the safe. The
18 appearance, I don't -- I never saw the outside of that door.

19 Q. Okay.

20 A. I just -- like I said, I was outside doing paperwork. I
21 came in and I started inventorying the firearms.

22 Q. Okay. Does that look to you --

23 A. I wish I could tell you more.

24 Q. That's okay. I'm not asking you to testify to anything you
25 don't know.

26 MR. KILMER: Your Honor, I believe that we can enter
27 into a stipulation at this point that I previously arranged with
28 the City Attorney's office. That is that the gun safe at the

1 Rodriguez home meets all of the requirements of the regulations
2 promulgated by the Office of the Attorney General of the State
3 of California.

4 MR. VANNI: And, Your Honor, that's certainly a
5 stipulation I'd be willing to enter to. It appears if you are
6 going to purchase a gun safe this would be the safe to purchase.

7 MR. KILMER: Your Honor, I ask that this exhibit be
8 admitted.

9 THE COURT: Any objection?

10 MR. VANNI: No, Your Honor.

11 THE COURT: All right. This will be admitted as
12 Respondent's 1.

13 (Whereupon, Respondent's Exhibit 1 was admitted into
14 evidence.)

15 MR. KILMER: I will be handing it back to your clerk.
16 I have no further questions of this witness, Your Honor.

17 THE COURT: Okay. Anything further, Mr. Vanni?

18 MR. VANNI: No, Your Honor. But I would request that
19 the City's petition as well be marked as Exhibit 1 I guess.

20 THE COURT: Let's make sure that -- because -- I
21 believe I got a couple things from the City. The actual
22 petition itself you're asking that that be admitted into
23 evidence?

24 MR. VANNI: Excuse me, the declaration of Officer
25 Valentine.

26 THE COURT: Any objection?

27 MR. KILMER: No objection, Your Honor.

28 THE COURT: All right. That'll be admitted. Let's

1 just do them consecutive. That'll be next in order.

2 THE CLERK: All right.

3 (Whereupon, Petitioner's Exhibit 2 was admitted into
4 evidence.)

5 THE COURT: Anything further with respect to Officer
6 Valentine?

7 MR. VANNI: No, Your Honor.

8 THE COURT: Okay. The Court has a couple quick
9 questions. Officer Valentine, how many times, to your
10 knowledge, had the San Jose Police been out there for
11 disturbance-type calls.

12 OFFICER VALENTINE: To my knowledge, I believe it was
13 at least two times before I arrived that I knew -- that we had
14 already been there before.

15 THE COURT: All right. And these involved
16 specifically Mr. Rodriguez?

17 OFFICER VALENTINE: Yes, Your Honor.

18 THE COURT: Okay. All right. And what's the
19 timeframe, in terms of the span, between those calls?

20 OFFICER VALENTINE: Usually, if I would know, it would
21 be no more than six months. We're going through a new system.
22 So we don't have all the information available to us right away.
23 It's a lengthy process.

24 THE COURT: All right. Okay. All right, anything
25 further from the City at this point?

26 MR. VANNI: If we could maybe just get some foundation
27 from Officer Valentine about his background and dealing with
28 people with mental illness. If the Court would like me to do

1 that I can do that.

2 THE COURT: I don't know that that's necessary.

3 MR. KILMER: I don't think it is, Your Honor. I think
4 the officer is eminently qualified to determine if somebody is
5 to be taken in for a 5150 hold.

6 MR. VANNI: That's fine.

7 THE COURT: Right. Okay.

8 MR. VANNI: Nothing further.

9 THE COURT: Nothing further. All right, Mr. Kilmer?

10 MR. KILMER: If the City is closing it's evidence I'd
11 ask the Court to just go ahead and deny the petition at this
12 point because there's been no evidence presented that Ms. Lori
13 Rodriguez is either a prohibited person or that she's a danger
14 to herself or others or that she wouldn't store the firearms in
15 a safe manner.

16 THE COURT: So, in essence, you're asking for the
17 equivalent of a nonsuit at this point.

18 MR. KILMER: At this point in time, Your Honor, if the
19 Court does deny it then I'm prepared to put on a case.

20 THE COURT: Yeah, and I am going to deny it. I think
21 there is evidence. She clearly lives there. The guns were
22 there. There is an issue that's been raised, and I think it's
23 been confirmed through some of the testimony, about concern that
24 the guns being there would present a problem. So I'm going to
25 deny your motion. So if you want to present your evidence at
26 this point.

27 MR. KILMER: Thank you, Your Honor. Well, then I
28 guess I'm going to recall the officer at this point.

DIRECT EXAMINATION

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BY MR. KILMER:

Q. Officer Valentine?

A. Yes.

Q. Or is it Balentine?

A. Valentine.

Q. Officer Valentine, on the day in question -- I believe it was January 24th of this year?

A. Yes.

Q. Were there any firearms out of the safe or present during that event?

A. Not to my knowledge, no.

Q. Okay. You testified earlier that on at least one prior occasion, perhaps two, that the San Jose Police had been called out to the Rodriguez home; is that correct?

A. Yes.

Q. On any one of those prior two occasions were firearms present or out during the situation?

A. I did not respond to those prior occasions.

Q. Do you have any testimony that you can offer to this Court that firearms were out or present during any of those prior occasions?

A. No, I do not.

MR. KILMER: Nothing further of this witness, Your Honor.

THE COURT: All right. Any further testimony you want provide at this point?

MR. KILMER: I'd like to put my client on now, Your

1 Honor.

2 THE COURT: You can make an offer of proof.

3 MR. KILMER: Thank you, Your Honor.

4 THE COURT: Let me just say, Ms. Rodriguez, we've
5 sworn you in under penalty of perjury. I've asked your lawyer
6 to make an offer of proof. It's a way of really streamlining
7 the evidence. I want you to listen very carefully to it. At
8 the conclusion I'm going to ask if you agree and confirm to the
9 statements that are made. And you're going to be under oath,
10 okay? All right.

11 **DIRECT EXAMINATION**

12 BY MR. KILMER:

13 Q. Ms. Rodriguez, on June 14th we filed a declaration that you
14 filed on May 29th, 2013. And I'm going to hand you a copy of
15 what is a declaration and offer of proof and ask that you review
16 that document.

17 THE COURT: I'm sorry, counsel, what's the date?

18 MR. KILMER: It was a declaration offer of proof filed
19 on June 14th, Your Honor.

20 THE COURT: Okay.

21 Q. (By Mr. Kilmer) Ms. Rodriguez, I'd ask you to turn to what
22 is attached to your declaration as Exhibit A. I'll ask if you
23 can identify that exhibit.

24 A. This is a provisional receipt from the purchase of the
25 safe.

26 Q. All right. And could you please turn to Exhibit B. Please
27 identify that exhibit?

28 A. This is the receipt from the locksmith that I changed the

1 lock on the safe.

2 Q. And when did you have the lock changed?

3 A. April 26th of this year.

4 Q. All right. How is it that your gun safe works? You heard
5 the officer testify there is a key and a dial. Can you explain
6 to the Court how your gun safe works?

7 A. You need the key to unlock the dial to be able to enter the
8 combination. And then it's a combination lock to open the safe.

9 Q. All right. And how many numbers are required to -- first
10 of all, how many numbers are on the dial of the gun safe?

11 A. 0 to 99.

12 Q. All right. So it's a hundred possible combinations?

13 A. Probably more than that.

14 Q. And it requires three numbers?

15 A. Yes.

16 Q. You have to go left, right, left?

17 A. Yes. And several times past the number and stop, and then
18 several times the other way and stop.

19 Q. Okay. And for clarification for the Court, the key, that
20 was talked about earlier, does not open the gun safe?

21 A. No.

22 Q. All right. The key just unlocks the dial?

23 A. Correct.

24 Q. And how many keys are there for unlocking the dial?

25 A. Two.

26 Q. And where are those keys kept?

27 A. I have them.

28 Q. Okay. I'd ask you to turn to Exhibit C of your offer of

1 proof. And identify that document, please.

2 A. This is when I did the fingerprint check and sent it off so
3 that I could be approved to own firearms.

4 Q. Okay. And the date on that note? At the top of the
5 document is the State of California Department of Justice Bureau
6 of Firearms, personal firearms eligibility check notification;
7 is that correct?

8 A. Yes.

9 Q. The date on that is May 8th, 2013?

10 A. Yes.

11 Q. So on that date you were cleared to own and possess
12 firearms?

13 A. Correct.

14 Q. Since May 8th of 2013, have you committed any felonies?

15 A. No.

16 Q. Have you been taken in for a 5150 hold yourself?

17 A. No.

18 Q. Have you had any restraining orders filed against you?

19 A. No.

20 Q. As far as you know, as you sit here today, you're still
21 authorized to own, possess, acquire and own firearms and
22 ammunition?

23 A. Yes.

24 Q. Thank you. The declaration that you submitted says that
25 you're aware of the potential criminal liability if you allow
26 your husband access to the safe. You understand that's a pretty
27 serious consequence, correct?

28 A. Yes.

1 Q. And you know you can go to prison if you quite possibly
2 even negligently or intentionally allow your husband to have
3 access to firearms and ammunition?

4 A. Yes.

5 Q. And you're willing to assume that risk?

6 A. Yes.

7 Q. All right.

8 MR. KILMER: Nothing further, Your Honor.

9 THE COURT: Okay. Mr. Vanni?

10 MR. VANNI: Just one question.

11 **CROSS-EXAMINATION**

12 BY MR. VANNI:

13 Q. Ms. Rodriguez, on the date of the incident there's a
14 reference in Officer Valentine's report that you stated that you
15 were fearful of your husband's behavior. Is that an accurate
16 statement?

17 A. Fearful for myself or fearful for --

18 Q. Yes or no? The fearful -- the statement is that you were
19 fearful of your husband's behavior.

20 A. I don't know that fearful is the right word. So I can't
21 really say yes or no to that.

22 Q. Okay. Well, were you afraid for your husband's safety or
23 for your safety?

24 A. Um --

25 Q. Or for the safety --

26 A. Not afraid for safety. Just he needed help.

27 MR. VANNI: Okay. Nothing further, Your Honor.

28 THE COURT: I have a couple quick questions. Who

1 purchased the guns?

2 RESPONDENT LORI RODRIGUEZ: A combination. Some were
3 my family's guns that have been there for years. One is I
4 actually purchased. A couple he did. And some were given to
5 us. Array of different ways.

6 THE COURT: All right. And prior to the incident that
7 is at issue here involving Officer Valentine's investigation,
8 did he have access to the guns?

9 RESPONDENT LORI RODRIGUEZ: No.

10 THE COURT: All right. Has he ever had access to
11 those guns?

12 RESPONDENT LORI RODRIGUEZ: Years ago. But I had had
13 both keys for years at that point.

14 THE COURT: All right. Anything further?

15 MR. VANNI: No, Your Honor.

16 THE COURT: No. All right. What I want to do is I'm
17 going to submit it on the evidence. I want to hear from both
18 counsel. Here is obviously the issue, the issue is we've got
19 somebody living with Ms. Rodriguez, her husband, who can't -- is
20 not allowed to use the firearms. The defense is predicated upon
21 the fact that these firearms are going to be kept in a safe.
22 Kept from him. He won't have access to them. I think what I
23 want to hear from both sides is what the Court should do in this
24 situation, and any authority you have that you want the Court to
25 review, all right? So we'll start with the City.

26 MR. VANNI: Well, Your Honor, Mr. Kilmer is correct
27 that the City has no evidence that Lori, herself, is a
28 prohibited party. The issue though is with her husband. And

1 the standard under 8102 is whether or not return of the weapons
2 would be a likely danger to others, as well to Mr. Rodriguez.
3 And the unfortunate set of circumstances in these types of cases
4 is if that -- if that burden is shown, which the City believes
5 it has because the mental health professionals at Valley Medical
6 Center have determined that Mr. Rodriguez is a prohibited party.
7 That at the time that Officer Valentine took him in he was a
8 danger to himself and to others. And we haven't heard any
9 medical testimony or any offer of proof as to what Mr. Rodriguez
10 has been doing to kind of change his mental behavior or
11 remediate his mental illness. So there is just no way if these
12 weapons are returned that anybody can monitor and ensure that
13 Mr. Rodriguez will not have access to them.

14 The City has proposed a few options. Either the guns
15 be held at another location away from the home. They could also
16 be sold. The City is certainly interested or willing to enter
17 into that type of stipulation to sell them through a third party
18 gun dealer. Or they could be held in the house if they're
19 rendered inoperable. I'm not a gun expert myself, but I imagine
20 the weapons can be taken apart and the firing mechanisms can be
21 kept outside of the home. So unfortunately, however, the City
22 believes that returning these weapons to the Rodriguez family
23 home will be a likely danger to both Mr. Rodriguez, as well as
24 to Ms. Rodriguez and the community at large.

25 THE COURT: Let me ask you a question. Mr. Kilmer, I
26 believe in his brief, raised the issue of, assuming a
27 hypothetical, that the Court agrees and precludes return of the
28 firearms. What's to prevent Ms. Rodriguez from going out

1 tomorrow and purchasing more firearms and bringing them back to
2 the house?

3 MR. VANNI: That is a correct statement. There is
4 nothing that will prevent her from doing that.

5 THE COURT: Okay. Anything further?

6 MR. VANNI: No, Your Honor.

7 THE COURT: All right. Mr. Kilmer?

8 MR. KILMER: Thank you, Your Honor. That's really the
9 nub of the case, Your Honor. We really can't be sitting here
10 seriously considering that maybe the serial number on the side
11 of the weapon somehow makes it more lethal. Because if this
12 Court orders a Smith and Wesson revolver sold, that's a current
13 collection of the Rodriguez guns, and she goes out tomorrow and
14 buys a different Smith and Wesson revolver with a different
15 serial number that somehow everybody is safe.

16 The Second Amendment is fraught with peril. We're not
17 here arguing against the public policy. But this is a classic
18 case where public policy can run headlong into Constitutional
19 Rights. And the Supreme Court has instructed us on the two
20 cases cited in my brief that the decision about the individual
21 right to keep and bear arms has already been made. And it's
22 made in the Second Amendment. We're not here arguing that there
23 can't be reasonable instructions imposed. We're not here
24 arguing that we can't impose higher restrictions on
25 Ms. Rodriguez than would apply to any other gun owner. And that
26 is that she has a duty to transfer the firearms in addition to
27 keeping them in a gun safe and keeping them away from another
28 adult in the house.

1 There is no question that Mr. Rodriguez is
2 disqualified from owning firearms at this point. And I'd be a
3 stone-cold fool to come into here and argue that he should have
4 his gun rights restored so close to his recent episode.

5 THE COURT: Let me call you on that a little bit. In
6 fairness I'm doing this with everybody because I want to get to
7 the bottom here.

8 MR. KILMER: Sure.

9 THE COURT: I mean the elephant in the room is he goes
10 back and somehow he overpowers her or pressures her or something
11 to open the safe. I mean that's a real concern I have. At the
12 end of the day this is a public safety issue. The guns are
13 right there. They're low hanging fruit. Yeah, they're behind
14 the safe. But, you know, I don't know the dynamics of the
15 relationship. I know the police have been out there. I know
16 there is a history of instability. I'm real concerned about
17 releasing these weapons back to home, even behind the safe, when
18 he's got the authority -- or not the authority, I'm sorry. He's
19 got the ability to, you know, coerce her somehow into opening
20 that safe. That concerns me.

21 MR. KILMER: Your Honor, you raise a good point. But
22 here's the counter factual; Mr. Rodriguez does not have a red
23 letter painted on his forehead. Nobody knows when he's walking
24 the street that he's a prohibited person. He can walk into any
25 gun store in the city and shop for a gun. The sale will be
26 halted once he tries to fill out the paperwork and produces his
27 driver's license because that's what the system is designed to
28 do. But he can walk into any gun store and pick up a shotgun

1 and see if, you know, is this the right gun? Does this hand gun
2 fit my hand? Quite frankly, if he is mentally unstable he can
3 walk into any neighbor's house and try to overpower them and
4 have them open their gun safe.

5 THE COURT: Yeah, but there this is a distinction
6 here. I mean these are -- this is his home. This is his home.
7 And there's a history of the police being out there.

8 MR. KILMER: But it's also her home, Your Honor. And
9 she doesn't lose her rights because she is married to somebody
10 who is currently prohibited. And that's -- it's a tough
11 decision to make. No question. But this is a classic case of a
12 clash of values here. The public policy is very clear.
13 Mr. Rodriguez is prohibited and shouldn't have guns. We're not
14 here arguing that he shouldn't have them.

15 But also the public policy in the State of California,
16 guns have to be kept in gun safes. Guns have to be registered
17 to their proper owner. People have to understand that there are
18 consequences. California's gun laws are a legend in the
19 country. They're complicated. There is a lot of them. The
20 Department of Justice publishes a shorthand definition for
21 everybody about handguns and rifles and the safe storage of
22 firearms. We're sitting here saying that the public policy of
23 imposing criminal sanctions on people for misuse of firearms,
24 requiring them to have gun safes, requiring the guns to be
25 registered. And if none of that can work to prevent
26 Mr. Rodriguez from having a gun, then no gun control works.

27 THE COURT: But the underlying public policy behind
28 all of these is public safety, correct? I mean that's, at the

1 end of the day, is what my responsibility is, is public safety.
2 And that's what guides me. And I'm not saying I'm ignoring her
3 Constitutional Rights or anybody else's rights. But at the end
4 of the day it's my call. I have to determine whether it's
5 appropriate to release those guns given the facts in this
6 particular case and the situation.

7 MR. KILMER: But, again, you're going to have to
8 resolve the issue of what difference does it make which guns she
9 has in her safe. You can't order the confiscation of the gun
10 safe. Quite frankly, I'm surprised that the police didn't
11 confiscate the ammunition as well because Mr. Rodriguez is also
12 prohibited from having ammunition. They didn't think it was
13 important enough to take the ammunition.

14 Now if you rule against her today she can walk out of
15 here and into any gun store and qualify to buy a handgun or
16 shotgun and ten days later go pick it up and put in that gun
17 safe. And then the community is no safer than if you release
18 these particular guns.

19 It's her decision, Your Honor. If she makes a
20 decision at some point in the future that these guns need to be
21 sold and "I'm going to get rid of the gun safe," that's her
22 decision. If she decides she wants to keep one gun in her home
23 for her safety, that's her decision as well. That's what the
24 Constitution says. And that's why --

25 THE COURT: And I don't deny that. But that's really
26 not the issue before me. The issue before me is whether -- I
27 can't order her not to do something she's got a right to do down
28 the road. What I can do is I can prevent those guns from being

1 returned to the home.

2 MR. KILMER: Okay. So what's to prevent -- I mean,
3 Your Honor, how much sense does it make for you to order the
4 guns sold and they go on consignment sale in the gun store and
5 then she turns around and goes back and buys them?

6 THE COURT: Yeah. And I don't know the answer to that
7 question.

8 MR. KILMER: The answer is that you can't prevent
9 that.

10 THE COURT: Yeah. All right. Anything further?

11 MR. VANNI: No, Your Honor.

12 MR. KILMER: Submitted, Your Honor.

13 THE COURT: All right. So, I'm prepared to issue my
14 decision. I'm not going to order the release of the guns to the
15 respondent. I don't think it's appropriate under the
16 circumstances. I appreciate all the comments that have been
17 made. It's an interesting issue. I spent some time with this
18 ahead of time. At the end of the day there's enough concern on
19 my part about the public safety that I'm not going to do that.

20 With that said, I think there are viable alternatives
21 that need to be explored. This is the community possession of
22 the respondent and whether it's by sale or release to a separate
23 place. I'm going to let you folks work that out. So with
24 respect to the request to release the guns back to
25 Ms. Rodriguez, I'm going to deny that request, all right? I'm
26 going to ask that the City prepare the order.

27 MR. KILMER: And may we have a stay on that decision
28 for 60 days, Your Honor?

1 THE COURT: And tell me why.

2 MR. KILMER: I respectfully disagree with the Court's
3 conclusion. I'd like to take it up with the Court of Appeal and
4 the Federal Court.

5 THE COURT: I think you have to ask for the stay
6 through the Court of Appeal though. I mean the City is going to
7 hold the guns anyway. I'm not sure what affect the stay would
8 have here.

9 MR. KILMER: The problem is, Your Honor, at this point
10 in time the government can't be charging my client storage fees
11 or anything like that. Once you order disposition of the guns
12 and they have to keep them in their evidence room they can start
13 charging her fees for storage. I just don't want that to happen
14 while we resolve this.

15 THE COURT: Do you want to comment on that?

16 MR. VANNI: I believe the City can charge and
17 sometimes does charge for the storage of weapons in that
18 circumstance. I can't promise that the police department won't
19 do that, especially after a court order from this Court. So in
20 that mind -- in that vein it's a substantial likelihood that
21 Ms. Rodriguez might be charged for storage of those weapons.

22 THE COURT: So are you opposing the request for stay?

23 MR. VANNI: On the record I'll oppose it, yes, Your
24 Honor. I do think the Court's decision is a valid decision and
25 that returning the weapons will be a likely danger to the
26 community at large.

27 THE COURT: I think -- I'm going to deny the stay
28 without prejudice. I think probably the way to do this is if,

1 in fact, you appeal this, Mr. Kilmer, you can request that the
2 Court of Appeal issue a stay of the order, okay?

3 MR. KILMER: Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 (Whereupon, this matter adjourned.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA) ss.
3

4 I, MELISSA CRAWFORD, HEREBY CERTIFY:

5 That I was the duly appointed, qualified shorthand
6 reporter of said court in the above-entitled action taken on the
7 above-entitled date; that I reported the same in machine
8 shorthand and thereafter had the same transcribed through
9 computer-aided transcription as herein appears; and that the
10 foregoing typewritten pages contain a true and correct
11 transcript of the proceedings had in said matter at said time
12 and place to the best of my ability.

13 I further certify that I have complied with CCP
14 237(a)(2) in that all personal juror identifying information has
15 been redacted, if applicable.

16
17 DATED: OCTOBER 17, 2013
18

19 _____
20 MELISSA CRAWFORD, CSR, RPR
21 CSR No. 12288
22

23
24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

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EXHIBIT E

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10 Attorneys for CITY OF SAN JOSE

FILED
2013 SEP 30 A 10:56
David H. Yamaguchi, Clerk of the Superior Court
County of Santa Clara, California
UCS
T. Mai

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SANTA CLARA
13 UNLIMITED JURISDICTION

14 CITY OF SAN JOSE,
15 Petitioner,
16 v.
17 EDWARD RODRIGUEZ,
18 Respondent,
19 LORI RODRIGUEZ,
20 Intervenor.

Case Number: 1-13-CV-241669

ORDER RE: DISPOSITION OF WEAPONS

(WELFARE & INSTITUTIONS CODE §8102)

21 This matter having come on for hearing in the above-captioned Court on August 9,
22 2013, the Honorable Peter Kirwan, presiding; Mark J. Vanni having appeared for Petitioner
23 CITY OF SAN JOSE; and Donald Kilmer appearing on behalf of Intervenor. Having
24 considered testimony and arguments of counsel, and for good cause shown;

25 ///
26 ///
27 ///
28 ///

THE FOREGOING INSTRUMENT IS
A CORRECT COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE
ATTEST DAVID H. YAMAGUCHI

AUG 30 2013

CHIEF EXECUTIVE OFFICER/CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
IN AND FOR THE COUNTY OF SANTA CLARA

BY *[Signature]* DEPUTY



ORDER RE: DISPOSITION OF WEAPONS

1-13-CV-241669

1005667

K. Kubo

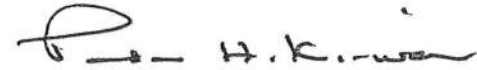
Legal Process Clerk

ER - 080

1 IT IS HEREBY ORDERED that City's Petition for Disposition of Weapons is
2 GRANTED.

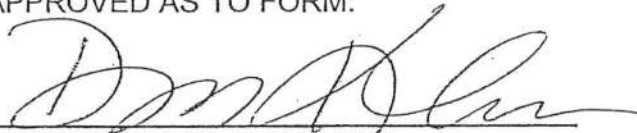
3 The City agrees to hold the weapons pending final disposition or resolution of this
4 matter in accordance with its general practices.

5
6
7 Dated: 9/10/13



8 THE HONORABLE PETER KIRWAN
9 SUPERIOR COURT JUDGE

10 APPROVED AS TO FORM:

11 

12 DONALD KILMER
13 Counsel for Intervenor

14
15
16
17
18
19
20 THE FOREGOING INSTRUMENT IS
21 A CORRECT COPY OF THE ORIGINAL
22 ON FILE IN THIS OFFICE
23 ATTEST: DAVID H. YAMASAKI

24 AUG 30 2016

25 CHIEF EXECUTIVE OFFICER/CLERK
26 SUPERIOR COURT OF THE COUNTY OF SANTA CLARA
27 IN AND FOR THE COUNTY OF SANTA CLARA

28 BY  DEPUTY

K. Kubo

Legal Process Clerk



EXHIBIT F

Filed 4/2/15 City of San Jose v. Rodriguez CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CITY OF SAN JOSE,

Plaintiff and Respondent,

v.

EDWARD V. RODRIGUEZ,

Defendant;

LORI RODRIGUEZ,

Intervener and Appellant.

H040317

(Santa Clara County

Super. Ct. No. 1-13-CV241669)

I. INTRODUCTION

The City of San Jose police officers who responded to a domestic disturbance call at the home of Edward V. Rodriguez determined that he was a danger to himself and others and had him transported to Santa Clara Valley Medical Center for 72-hour treatment and evaluation under Welfare and Institutions Code section 5150.¹ The police officers also seized 12 firearms from the home pursuant to section 8102, subdivision (a), which requires confiscation of any firearms owned by or found in the possession or control of a person detained for an examination of his or her mental condition.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The City of San Jose (City) subsequently filed a petition for disposition of the firearms in which the City requested a court order allowing forfeiture of the confiscated firearms pursuant to section 8102, subdivision (c). Edward V. Rodriguez's wife, appellant Lori Rodriguez, opposed the petition and sought return of the firearms to her.² After an evidentiary hearing, the trial court determined that return of the confiscated firearms to the Rodriguez home would be likely to result in the endangerment of Edward or others, and granted City's petition.

On appeal, Lori contends that the trial court erred because the order granting City's petition is not supported by substantial evidence of danger and also violates her right to keep and bear arms under the Second Amendment to the United States Constitution. For the reasons stated below, we determine that the trial court's order under section 8102, subdivision (a) is supported by substantial evidence. We also determine that Lori has not shown that her Second Amendment rights were violated by the trial court's order.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *City's Petition for Disposition of the Firearms*

On February 22, 2013, City filed a petition for disposition of the firearms pursuant to section 8102, subdivision (c) that named Edward as the respondent. City stated that the firearms that were the subject of the petition came into police custody on January 24, 2013, when police officers responding to a domestic disturbance call at the Rodriguez home determined that Edward was a danger to himself or others. Edward was then transported to a medical center on a 72-hour hold for medical treatment and a

² Since Edward V. Rodriguez and appellant Lori Rodriguez have the same surname, we will refer to them by their first names for purposes of clarity and meaning no disrespect.

psychological evaluation pursuant to section 5150. After Edward was transported, police officers conducted a protective sweep and confiscated 12 firearms from the home.

In its petition, City requested that the trial court make a finding under section 8102 as to whether return of the weapons would be likely to endanger Edward or others and, if the finding of danger was made, order that the petition be granted and the weapons forfeited. Alternatively, if no finding of danger was made, City requested that the San Jose Police Department retain custody of the weapons for no more than two years unless Edward obtained a court order allowing their return.

B. Lori's Response to City's Petition

Edward did not file a response to City's petition for disposition of firearms. Lori filed a response in opposition to the petition in which she designated herself as Edward's "co-respondent." In her supporting declaration, Lori stated that she had been married to Edward for nearly 20 years; Edward was placed on a psychiatric hold pursuant to section 5150 on January 24, 2013; Edward was currently prohibited from owning, acquiring, or possessing firearms or ammunition; and the confiscated firearms had been kept in a safe in their home and were community property.

Lori further declared that no firearms were involved in the event that triggered Edward's January 24, 2013 episode; she had opened the gun safe for the police officers who took all of their firearms; and she acknowledged that she had a legal duty to prevent Edward from obtaining access to any firearms or ammunition under her control while he remained a prohibited person. Additionally, Lori attached documents to her declaration that showed her ownership of a firearm safe and her April 2013 change to the safe's combination.

In her hearing brief, Lori argued that the trial court had "no power to interfere with [her] Second Amendment 'right to keep and bear arms,' " since she was not prohibited from acquiring or possessing firearms and had promised to take all steps required under California law to secure the firearms in a gun safe.

On June 21, 2013, the parties filed a stipulation and order stating that the parties agreed that “Lori Rodriguez has standing in this action in that she has at least a community property interest in the firearms at issue in these proceedings.”

C. Evidentiary Hearing

The following is a summary of the evidence presented at the August 9, 2013 evidentiary hearing on City’s petition.

On January 24, 2013, Police Officer Steven Valentine and other City of San Jose police officers arrived at the Rodriguez home to investigate a domestic disturbance. They were responding to Lori’s 911 call regarding Edward’s behavior and her concern that he might be suffering from a mental illness. Police officers had previously responded to at least two calls of a domestic disturbance at the Rodriguez home and were aware that there were firearms in the home.

Upon his arrival at the Rodriguez home on January 24, 2013, Officer Valentine observed that Edward was perspiring heavily and had rapid respiration. Officer Valentine also observed that Lori was afraid of Edward. Edward claimed that he was affiliated with the CIA, was acting irrationally, and had bizarre and aggressive mannerisms. Officer Valentine believed that Edward was delusional.

When Officer Valentine asked Edward if he wanted to hurt himself, Edward responded by attempting to break his own thumb. Based on his observations and Edward’s attempt to hurt himself, Officer Valentine determined that Edward, who weighed nearly 400 pounds, was a danger to himself and others.

San Jose Fire Department personnel and medical personnel arrived to transport Edward to Santa Clara Valley Medical Center (VMC) for a 72-hour hold and psychological evaluation pursuant to former section 5150.³ After Edward was secured on

³ At the time of Edwards’s detention, former section 5150 provided in part: “When any person, as a result of mental disorder, is a danger to others, or to himself or (continued)

the gurney, he continued to break the restraints. Medical personnel requested that a police officer accompany them in the ambulance. Edward was then transported to VMC, where he was determined to be a danger to himself and others and admitted to the hospital pursuant to former section 5151⁴ and section 5152.⁵

Officer Valentine remained at the Rodriguez home after Edward was transported. He advised Lori that that he would need to confiscate the weapons in the home pursuant to section 8102. Lori unlocked a gun safe by using the key she kept in her possession and a combination lock. Police officers then removed 12 firearms, including three revolvers, three shotguns, a handgun, a rifle, and four semi-automatic rifles. Police officers did not find any firearms outside the gun safe. The firearms had been purchased by Lori or Edward or acquired from her family. Although one firearm belonged to Lori, all 12 firearms were confiscated because Edward had access to them.

In February 2013, City filed a petition for disposition of the firearms to which Lori filed a response in April 2013. In May 2013, Lori received notification from the

herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Social Services as a facility for 72-hour treatment and evaluation.”

⁴ At the time of Edward’s detention, former section 5151 provided in part: “If the facility for 72-hour treatment and evaluation admits the person, it may detain him or her for evaluation and treatment for a period not to exceed 72 hours. . . . Prior to admitting a person to the facility for 72-hour treatment and evaluation pursuant to Section 5150, the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention.”

⁵ Section 5152, subdivision (a) provides in part: “Each person admitted to a facility for 72-hour treatment and evaluation under the provisions of this article shall receive an evaluation as soon as possible after he or she is admitted and shall receive whatever treatment and care his or her condition requires for the full period that he or she is held.”

California Department of Justice Bureau of Firearms that she is eligible to both possess and purchase firearms. At the hearing, Lori testified that she has not committed a felony and has not been detained under section 5150.

D. Trial Court Order

In its order of September 30, 2013, the trial court granted City's petition for disposition of weapons. The order also states: "The City agrees to hold the weapons pending final disposition or resolution of this matter in accordance with its general practices."

During the hearing on the petition, the trial court provided the court's reasoning for granting the petition. The court stated: "I mean the elephant in the room is [Edward] goes back and somehow he overpowers [Lori] or pressures her or something to open the safe. I mean that's a real concern I have. At the end of the day this is a public safety issue. The guns are right there. They're low hanging fruit. Yeah, they're behind the safe. But, you know, I don't know the dynamics of the relationship. I know the police have been out there. I know there is a history of instability. I'm real concerned about releasing these weapons back to home, even behind the safe, when he's got . . . the ability to, you know, coerce [Lori] somehow into opening that safe. That concerns me."

The trial court also stated: "[A]t the end of the day, is what my responsibility is, is public safety. And that's what guides me. And I'm not saying I'm ignoring her Constitutional Rights or anybody else's rights. . . . I have to determine whether it's appropriate to release those guns given the facts in this particular case and the situation." The court then ruled, "I'm not going to order the release of the guns to the respondent. I don't think it's appropriate under the circumstances."

The trial court's order did not require forfeiture or destruction of the confiscated firearms. During the hearing, City's attorney noted that other options were available for disposition of the firearms: "The City has proposed a few options. Either the guns be held at another location away from the home. They could also be sold. The City is

certainly interested or willing to enter into that type of stipulation to sell them through a third party gun dealer. Or they could be held in the house if they're rendered inoperable.”

As to Lori's claim of a community property interest in the confiscated firearms, the trial court stated: “I think there are viable alternatives that need to be explored. This is the community possession of the respondent and whether it's by sale or release to a separate place. I'm going to let you folks work that out. So with respect to the request to release the guns back to [Lori], I'm going to deny that request.”

Thereafter, Lori filed a notice of appeal from the September 30, 2013 order.

III. DISCUSSION

On appeal, we understand Lori to challenge the trial court's order granting City's petition for disposition of firearms on two grounds, insufficiency of the evidence and violation of her Second Amendment right to keep and bear arms. We will begin our evaluation of her claims with an overview of the statutory framework for the confiscation of firearms from a person who has been detained for examination of his or her mental condition and the disposition of confiscated firearms.

A. *The Statutory Framework*

“Two firearm statutes come into play when a person is detained under section 5150 as a danger to himself [or herself] or others. Section 8103 will prohibit his [or her] possession of firearms for a five-year period.^[6] Section 8102^[7] authorizes

⁶ Section 8103, subdivision (f)(1) provides in part: “No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility.” The person may request a hearing to lift the restriction. (§ 8103, subd. (f)(3).)

⁷ Section 8102, subdivision (a) provides in part: “Whenever a person, who has been detained or apprehended for examination of his or her mental condition . . . is found (continued)

confiscation of any weapons he [or she] already possesses.” (*People v. Keil* (2008) 161 Cal.App.4th 34, 37 (*Keil*)).) Section 8102 also authorizes “possible forfeiture of weapons belonging to persons detained for examination under section 5150 because of their mental condition. [Citations.]” (*City of San Diego v. Boggess* (2013) 216 Cal.App.4th 1494, 1500 (*City of San Diego*)).)

As stated in *City of San Diego*, “ [s]ection 8102 directly safeguards public health and safety by allowing law enforcement officers to confiscate any firearm in the possession or control of a person who is appropriately detained or apprehended for a mental examination. Keeping a firearm away from a mentally unstable person is a reasonable exercise of the police power. It is not unreasonable to conclude there is a significant risk that a mentally unstable gun owner will harm himself [or herself] or others with the weapon.’ [Citation.]” (*City of San Diego, supra*, 216 Cal.App.4th at p. 1500.)

The statutory scheme also provides the procedure for the return of the confiscated firearms to the person who was detained under section 5150. At the time of the August 2013 hearing on City’s petition for disposition of firearms, former section 8102, subdivision (b) (now § 8102, subd. (b)(2)) provided in part: “Where the person is released, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated.”

If the law enforcement agency that confiscated the firearms does not make the firearms available for return upon release of the detained person, the person may request

to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon.”

a hearing on return of the firearms. (§ 8102, subds. (e), (f).) The law enforcement agency may also request a hearing: “Upon the release of a person as described in subdivision (b), the confiscating law enforcement agency shall have 30 days to initiate a petition in the superior court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to send a notice advising the person of his or her right to a hearing on this issue.” (§ 8102, subd. (c).) “Section 8102 thus ‘places the onus upon law enforcement to initiate the forfeiture proceeding, and to bear the burden of proof on the issue of the danger presented by return of the weapons.’ [Citations.]” (*City of San Diego, supra*, 216 Cal.App.4th at p. 1500.)

“If, after a hearing, the court determines that the return of the firearm or other deadly weapon would likely endanger the person or others, the law enforcement agency may destroy the firearm within 180 days from the date that the court makes that determination, unless the person contacts the law enforcement agency to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Section 33870 of the Penal Code.” (§ 8102, subd. (h).)

The standard of review for the trial court’s order granting a petition for disposition of firearms under section 8102 is substantial evidence. (*City of San Diego, supra*, 216 Cal.App.4th at p. 1501.) “In determining whether a trial court’s ruling is supported by substantial evidence, the appellate court should view the whole record in the light most favorable to the ruling, resolving all evidentiary conflicts and drawing all reasonable inferences supporting the court’s decision. [Citation.]” (*Ibid.*) “We affirm if ‘substantial evidence supports the court’s determination that return of the firearms to appellant would be likely to result in endangering appellant or other persons.’ [Citation.]” (*Keil, supra*, 161 Cal.App.4th at p. 38.)

B. Analysis

1. Substantial Evidence

We understand Lori to argue on appeal that the trial court's order granting City's petition for disposition of firearms and declining to return the firearms to her is not supported by substantial evidence. According to Lori, the evidence showed that she is not prohibited from owning or possessing firearms and if the confiscated firearms were returned to her, she could secure them in a gun safe to prevent Edward from having unauthorized access. Lori also offers to have the title to the firearms transferred to her. In addition, Lori points out that City's counsel conceded during the hearing that there is nothing to prevent her from buying more firearms and bringing them to the Rodriguez home.

In response, City relies on the statement in *City of San Diego* that “[t]he court may properly consider whether the circumstances leading to the section 5150 detention might occur again and whether possession or control of those confiscated weapons in such circumstance would pose a risk of danger to appellant or to others.” [Citation.]” (*City of San Diego, supra*, 216 Cal.App.4th at p. 1502.) City asserts that the undisputed evidence shows that the circumstances here included Edward's behavior when Officer Valentine detained him, as well as Edward's size and the prior police responses to the Rodriguez home. City also asserts that return of the confiscated firearms to Lori would have “the practical effect of returning them to Edward,” who is prohibited from accessing firearms.

We begin by noting that section 8102 expressly provides the procedure for the return of firearms confiscated by a law enforcement agency only to the person who was detained under section 5150. Section 8102 is silent as to the return of the confiscated firearms to any other person. Accordingly, the only issue to be decided at a hearing under section 8102, subdivision (c) is whether return of the firearms to the previously detained person “would be likely to result in endangering the person or others.” (§ 8102,

subd. (c); see also *id.*, subd. (h).) On appeal from a trial court order denying return of confiscated firearms under section 8102, the reviewing court decides the narrow issue of whether substantial evidence supports the trial court's determination that return of the firearms to the person who was detained under section 5150 would be likely to result in endangering that person or other persons. (*Keil, supra*, 161 Cal.App.4th at p. 38.)

In this case, Edward did not oppose the City's petition for disposition of the firearms. The parties filed a stipulation and order stating that the parties agreed that "Lori Rodriguez has standing in this action in that she has at least a community property interest in the firearms at issue in these proceedings." Since the parties stipulated that Lori has standing in this matter, we will consider whether the trial court's order granting City's petition is supported by substantial evidence that return of the firearms to the Rodriguez home would be likely to result in endangering Edward or others. (§ 8102, subds. (c), (h).)

Having reviewed the record in the light most favorable to the trial court's order (*City of San Diego, supra*, 216 Cal.App.4th at p. 1501), we agree with City that the trial court's order is supported by substantial evidence. The evidence showed that there had been two prior calls of a domestic disturbance at the Rodriguez home; Lori made the 911 call regarding Edward's condition on the day of his detention; Lori appeared to be afraid of Edward; Edward's behavior was bizarre and delusional; Edward had attempted to break his own thumb; Edward weighed 400 pounds and had broken free of the gurney restraints; and medical personnel had requested that a police officer accompany them in the ambulance transporting Edward to the hospital. VMC personnel then determined that Edward was a danger to himself and others and he was admitted to the hospital pursuant to sections 5151 and 5152. Moreover, the trial court was not convinced by Lori's testimony that she could safely store the firearms and prevent Edward from having access to them. " 'A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.' [Citation.]" (*People v. Albillar* (2010) 51 Cal.4th 47, 60.)

We therefore conclude that substantial evidence supports the trial court's order granting City's petition for disposition of firearms under section 8102 on the ground that return of the confiscated firearms to the Rodriguez home would be likely to result in endangering Edward or others.

2. Constitutional Claim

Lori's chief contention on appeal is that the trial court's order granting City's petition for disposition of firearms violates her Second Amendment right to keep and bear arms for home protection. She explains that "[d]epriving an owner of her own guns deprives her of the value of the property and means of exercising the core right of self-defense. [Citation.]" City urges that Lori's constitutional and community property rights may be lawfully impacted by a lawful restriction on her husband Edward's property interest in the confiscated firearms.

At the outset, we note that Lori does not challenge the trial court's order as violating Edward's Second Amendment rights. Constitutional challenges to the trial court's refusal under section 8102 to return confiscated firearms to a person who was detained due to his or her mental condition have been rejected. (See *Rupf v. Yan* (2000) 85 Cal.App.4th 411, 427-428; *People v. One Ruger .22-Caliber Pistol* (2000) 84 Cal.App.4th 310, 312.)

Lori's constitutional claim involves only her own Second Amendment right to keep and bear arms. For several reasons, we determine that Lori has not shown that her Second Amendment rights were violated by the trial court's September 30, 2013 order granting City's petition for disposition of firearms.

First, Lori acknowledges in her opening brief that the trial court's order does not bar her from acquiring new firearms, noting the trial court's "uncontradicted finding . . . that Lori cannot be prohibited from acquiring new firearms." Lori further acknowledges that under section 8101, she may not allow Edward access to any new firearms that she may acquire. Section 8101 provides: "(a) Any person who shall knowingly supply, sell,

give, or allow possession or control of a deadly weapon to any person described in Section 8100 or 8103 shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for a period of not exceeding one year, by a fine of not exceeding one thousand dollars (\$1,000), or by both the fine and imprisonment. [¶] (b) Any person who shall knowingly supply, sell, give, or allow possession or control of a firearm to any person described in Section 8100 or 8103 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.”

Second, we understand Lori to argue that she has a Second Amendment right to return of the particular firearms that were confiscated under section 8102 for home protection. However, Lori has not provided any legal authority for the proposition that the spouse of a person whose firearms were confiscated under section 8102 has a Second Amendment right to the return of those confiscated firearms for home protection. In her briefing, she generally argues that the United States Supreme Court expanded Second Amendment rights in *District of Columbia v. Heller* (2008) 554 U.S. 570 (*Heller*) and *McDonald v. City of Chicago* (2010) 561 U.S. 742 (*McDonald*).

However, the Supreme Court decisions in *Heller* and *McDonald* did not state that the Second Amendment right to keep and bear arms extends to keeping and bearing either any particular firearms or firearms that have been confiscated from a mentally ill person. Moreover, the *Heller* and *McDonald* decisions may be read to the contrary.

The *McDonald* court reiterated that “[i]n *Heller*, we held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense.” (*McDonald, supra*, 561 U.S. 742, 791.) However, the court also stated: “It is important to keep in mind that *Heller* while striking down a law that prohibited the possession of handguns in the home, recognized *that the right to keep and bear arms is not ‘a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.’* [Citation.] We made it clear in *Heller* that our holding did not cast

doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill,’ [Citation.]” (*McDonald, supra*, 561 U.S. at p. 786, italics added.)

Third, we note that the trial court’s order does not actually require forfeiture or destruction of the confiscated firearms. Both the trial court and City’s attorney suggested there were other viable options for disposition of the firearms, such as sale or storage outside the home.

Finally, we consider whether the provisions of Penal Code section 33850 et seq. impact Lori’s Second Amendment claim. Lori has acknowledged that Penal Code section 33850 provides a procedure for the return of firearms in police custody to persons who claim ownership of the firearms.

Under Penal Code section 33850, a “person who claims title to any firearm” in law enforcement custody may seek the return of that firearm. (Pen. Code, § 33850, subd. (a).)⁸ The person seeking return of any firearms must file an application for a Penal Code section 33865 notification that specifies the make and model of the firearms that are being sought and provides detailed information about any handguns. (Pen. Code, §§ 33850, 33865, subd. (c)(3).) The firearms cannot be returned by a court or law enforcement agency unless the person seeking them obtains a Penal Code section 33865 notification that the person is eligible to possess a firearm and “the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.” (Pen. Code, § 33855, subd. (b).)

⁸ Penal Code section 33850, subdivision (a) provides in part: “Any person who claims title to any firearm that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm returned shall make application for a determination by the Department of Justice as to whether the applicant is eligible to possess a firearm.”

After oral argument, we asked the parties to provide supplemental briefing with respect to the impact of Penal Code section 33850 et seq. on Lori's Second Amendment claim, by responding to the following questions: (1) "The record on appeal includes a copy of a May 8, 2013 Department of Justice Bureau of Firearms notice stating that Lori Rodriguez is 'eligible to both possess and purchase firearms as of the date the [personal firearms eligibility] check was completed.' What evidence in the record, if any, shows that Rodriguez either has or has not sought return of the confiscated firearms under the procedure provided by Penal Code section 33850 et seq?"; (2) "Assuming that Rodriguez has not sought return of the confiscated firearms under Penal Code section 33850 et seq., what is the impact on her claim that the trial court's order of September 30, 2013, violates her rights under the Second Amendment?"; and (3) "Assuming that Rodriguez has sought return of the confiscated firearms under Penal Code section 33850 et seq., what is the impact on her claim that the trial court's order of September 30, 2013, violates her rights under the Second Amendment?"

In their supplemental briefing, the parties agree that the record does not indicate that Lori has sought return of the confiscated firearms under the procedure provided by Penal Code section 33850 et seq. We understand Lori to contend that her failure to utilize the firearms return procedure provided by Penal Code section 33850 et seq. has no impact on her Second Amendment claim, for three reasons. First, Lori asserts that she properly sought return of the confiscated firearms by intervening in City's petition for disposition of firearms under section 8102. Second, Lori maintains that she may raise a constitutional claim without exhausting the administrative remedy provided by Penal Code section 33850 et seq. Finally, Lori appears to argue that the trial court proceedings on City's section 8102 petition precluded her from seeking return of the confiscated firearms under Penal Code section 33850.

City responds that whether or not Lori has sought return of the confiscated firearms under Penal Code section 33850 et seq. has no impact on her claim that the

trial court's September 30, 2013 order violates her Second Amendment rights. City notes that prior to amendment in 2013, section 8102 was silent as to Penal Code section 33850 et seq.,⁹ and emphasizes its position that the trial court's order is constitutional because substantial evidence supports the trial court's finding that return of the confiscated firearms would likely endanger Edward and others.

The parties' supplemental briefing confirms that Lori has not sought return of the confiscated firearms under the procedure provided by Penal Code section 33850 et seq., although the firearms remain in the custody of law enforcement and Lori has obtained notification from the California Department of Justice Bureau of Firearms that she is eligible to both possess and purchase firearms. Lori has not provided any authority for the proposition that trial court proceedings on a section 8102 petition preclude a person who claims title to the confiscated firearms from seeking their return under Penal Code section 33850 et seq. Moreover, we believe that the record on appeal shows that the

⁹ As amended in 2013, section 8102, subdivision (b) provides: "(1) Upon confiscation of any firearm or other deadly weapon from a person who has been detained or apprehended for examination of his or her mental condition, the peace officer or law enforcement agency shall issue a receipt describing the deadly weapon or any firearm and listing any serial number or other identification on the firearm and shall notify the person of the procedure for the return, sale, transfer, or destruction of any firearm or other deadly weapon which has been confiscated. A peace officer or law enforcement agency that provides the receipt and notification described in Section 33800 of the Penal Code satisfies the receipt and notice requirements. [¶] (2) If the person is released, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated. [¶] (3) Health facility personnel shall notify the confiscating law enforcement agency upon release of the detained person, and shall make a notation to the effect that the facility provided the required notice to the person regarding the procedure to obtain return of any confiscated firearm. [¶] (4) For purposes of this subdivision, the procedure for the return, sale, or transfer of confiscated firearms includes the procedures described in this section and the procedures described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code." (Stats. 2013, ch. 747, § 2.)

procedure provided by section 33850 et seq. for return of firearms in the possession of law enforcement remains available to Lori.

We therefore determine that Lori has failed to show that the trial court's September 30, 2013 order violates the Second Amendment by precluding her from keeping firearms for home protection. In the absence of any evidence that Lori's Second Amendment right to keep and bear arms was actually violated by the trial court's September 30, 2013 order granting City's petition for disposition of firearms under section 8102, we conclude that her Second Amendment claim lacks merit.

Having also determined that the order may be affirmed under section 8102 because the order is supported by substantial evidence that return of the confiscated firearms to the Rodriguez home would be likely to result in endangering Edward or others, we will affirm the order.

IV. DISPOSITION

The September 30, 2013 order is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

GROVER, J.

EXHIBIT G

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 A. Willow Glen High School.

2 Q. Have you ever taken any college courses?

3 A. Yes.

4 Q. Where did you go?

5 A. San Jose State.

6 Q. What did you study while you were there?

7 A. Long time ago. General ed. It just wasn't --
8 school and me just didn't get along.

9 Q. I'm sure that's fine. How long did you spend
10 at San Jose State?

11 A. About a year and a half I think. And I'm
12 guessing because that was a long time ago.

13 Q. That's fine. I should clarify, your best
14 estimate in these types of situations is fine. We don't
15 need exact dates for this type of stuff.

16 A. Okay.

17 Q. Have you ever taken any other training and
18 certification courses?

19 A. No. Some insurance courses along the way, a
20 long time ago, maybe 25 years ago.

21 Q. Have you ever served in the military?

22 A. No.

23 Q. One question I had for you is, are you a member
24 of the Second Amendment Foundation?

25 A. No.

1 Q. How about Calguns Foundation?

2 A. No.

3 Q. And you mentioned your husband earlier, Edward
4 Rodriguez; is that correct?

5 A. Yes.

6 Q. And how long have you been married to Edward
7 Rodriguez?

8 A. 23 years.

9 Q. Have you and Edward Rodriguez ever been legally
10 separated?

11 A. No.

12 Q. In the 23 years that you've been together, have
13 you lived together, cohabitated together, during the
14 entire period?

15 A. Yes.

16 Q. And you mentioned you've lived at the Mia
17 Circle address for 24 years?

18 A. Yes.

19 Q. So during the entire time of your marriage you
20 both have lived at Mia Circle?

21 A. Yes.

22 Q. Have there been any periods of time where you
23 and Edward Rodriguez were cohabitating together, but he
24 wasn't actually there? Like on an extended trip or
25 something like that?

1 Q. Okay. Let's provide a little bit more context.
2 Let's talk about the night of the incident when these
3 firearms were confiscated.

4 You've alleged in your complaint that -- that
5 on that night which -- was it January 24th, 2013? Does
6 that seem about right?

7 A. 23rd or 24th. I think that is approximately
8 the right date.

9 Q. It was in the early morning though. Correct?

10 A. Yes.

11 Q. You allege in your complaint that at the time
12 just prior to the police arriving, your husband was in
13 distress; is that correct?

14 A. Yes.

15 Q. And you were the one that called the police
16 because of that; is that correct?

17 A. Yes.

18 Q. Why did you call the police?

19 A. He had been having problems off and on for a
20 little while. And for me trying to find a way to help
21 him, I was told that you could call the police and ask
22 for a welfare check. At that point it had been going on
23 for a couple weeks at that point. It was time.

24 Q. Prior to this incident, had you ever called the
25 police before for your husband?

1 Officer Valentine looks like. You saw him recently?

2 A. Yes.

3 Q. Was that the officer that you dealt with in the
4 confiscation of the firearms?

5 A. From what I remember, I think so.

6 Q. Okay.

7 A. Quite honestly, they could have all looked like
8 Mickey Mouse that night. I just needed them to be there
9 to help. I wasn't really paying a lot of attention to
10 them as far as what they looked like or that type of
11 thing so --

12 Q. If I was to ask you to provide a description of
13 the officer that -- or the officers that you spoke with,
14 would you be able to do that?

15 A. Officer Valentine now I could. And the only
16 other one was what I considered a young officer, and I
17 can remember him being tall. I think it was light
18 dirty-blond hair, and he was helping me with the guns at
19 the end. And I couldn't -- and there was a woman
20 paramedic. That's pretty much all.

21 Q. That tall young officer, was he Caucasian?
22 African-American?

23 A. Caucasian.

24 Q. Now, at the time of this incident, you had your
25 12 firearms. They were inside of a gun safe. Correct?

1 A. Yes.

2 Q. And that gun safe at this time was locked; is
3 that right?

4 A. Yes.

5 Q. And you know this has been alleged, and I don't
6 think there's any big dispute about it, but I want to
7 ask just to be clear that none of those 12 firearms were
8 out at the time that this incident was occurring; is
9 that correct?

10 A. No, correct.

11 Q. Now, let's talk a little bit about the gun
12 safe. I just want to ask a little bit of background
13 about it because I haven't seen the gun safe. I don't
14 know what it looks like.

15 My understanding is that you own -- excuse
16 me -- that at the time of this incident, the firearm gun
17 safe was a Liberty safe, Lincoln series?

18 A. Yes.

19 Q. LX25?

20 A. That I wouldn't know without looking at the
21 again receipt or the owner's manual.

22 Q. Sure. Sure. Let me go ahead and just -- it's
23 not a very good picture, but let me mark this as Exhibit

24 D.

25 (Defendants' Exhibit D is marked.)

1 need specifics. But does your husband work?

2 A. Currently or --

3 Q. How about at the time this safe was purchased,
4 was he working?

5 A. Yes.

6 Q. Earning a salary?

7 A. Yes.

8 MR. KILMER: This will help, Counsel. We'll
9 just stipulate that the safe is community property.

10 BY MR. VANNI:

11 Q. Okay. That's fine with me.

12 A. And.

13 Q. Go on.

14 A. It looks like this one. I'm assuming it's this
15 one because it's thinner, the thinnest one. And it's
16 not wide like that (indicating). So I'm assuming it's
17 this one. But I'd have to actually look at the actual
18 just to see. I don't know how many other models they
19 have.

20 Q. Okay. Why don't you describe the safe for me a
21 little bit. What does it look like?

22 A. Outside it looks like this (indicating). But
23 then I was reading it holds 24 guns.

24 Q. Um-hum.

25 A. I thought it weighed more than the 730. But I

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 incident occurred, did you need to use a password in
2 order to get into it?

3 A. No.

4 Q. No. It was just a key?

5 A. No. A combination.

6 Q. I'm sorry. A combination. So when you say "a
7 combination," do you mean like a combination lock, or
8 was it a dial pad?

9 A. Combination lock.

10 Q. So it was one like you use in high school where
11 you have to turn to the right and then turn to the left?

12 A. Yes.

13 Q. Now, with the combination lock, did you have
14 the password for the combination memorized or written
15 down somewhere?

16 A. Written down.

17 Q. Written down on a piece of paper?

18 A. In an address book looking like a phone number.

19 Q. Okay. How many numbers did you have to -- does
20 this particular safe require -- is it three numbers?
21 four numbers? -- in order to open it?

22 A. Three.

23 Q. This address book where you had it written
24 down, where was that located?

25 A. In the bedroom.

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 A. And it's -- on -- going forward in the area
2 there's a TV. Next -- same wall as the sink, the TV,
3 and the safe is in that corner, far corner.

4 Q. So at the time that the officers were
5 interacting with your husband in the kitchen, the safe
6 was nearby?

7 A. Opposite end of the room.

8 Q. Other than you, did anybody else have the
9 ability to open that safe?

10 A. No.

11 Q. Can you describe for me how one would go about
12 opening the safe. Do you put in the key first and then
13 do the combination? What would you do if you wanted to
14 open it?

15 A. Put in the key first and then the combination.

16 Q. Now, going back to just after your husband was
17 taken outside to the ambulance and then taken to Valley
18 Medical Center, did any of the police officers talk to
19 you afterwards?

20 A. After he left, then we started to deal with the
21 guns.

22 Q. Okay. Which officer? You mentioned maybe it
23 was Officer Valentine. But can you describe the officer
24 that spoke to you about the guns?

25 A. Again, I just keep saying the officer in

1 charge. I'm assuming it was Officer Valentine. And he
2 had told me before they took Edward that they would have
3 to take the guns.

4 Q. Okay. What did he say to you exactly?

5 A. That they would have to take the guns.

6 Q. Okay. Did he tell you why?

7 A. Not until I asked why.

8 Q. Okay. What did he say when you asked why?

9 A. I don't remember the exact wording, but it was
10 pretty much, with this situation they had no choice. It
11 was procedure.

12 Q. Okay. Did you ever ask any of the police
13 officers to take the firearms?

14 A. No.

15 Q. Did you agree with them that the firearms
16 needed to leave the house?

17 A. No.

18 Q. Let me show you Exhibit -- this form, Exhibit E
19 I'm going to mark as.

20 (Defendants' Exhibit E is marked.)

21 BY MR. VANNI:

22 Q. I'm showing you what's been marked as Exhibit
23 E. It's a yellow form. Unfortunately it's not the
24 greatest copy. But in reviewing that form, have you
25 seen that document before?

1 A. Correct.

2 Q. So then how did the safe then get opened so the
3 officers could confiscate those weapons?

4 A. I told them I had to go find the key. So I did
5 that. Then I had to go get the combination. And then I
6 tried to open the safe. And by then, I was done.

7 And after I had tried two or three times, one
8 of the officers, the young officer I think, actually
9 opened it, because I couldn't -- it's a series of turns
10 and I -- at that point I was done.

11 Q. Okay.

12 A. And that safe has always caused me problems
13 so --

14 Q. All right. Let me go back a little bit. So
15 you went to go find the key. And you had to go into
16 your filing cabinet?

17 A. Yes.

18 Q. At the time that you went to go look for the
19 key, did any officer accompany you?

20 A. No.

21 Q. So you were by yourself?

22 A. Yes.

23 Q. How about the combination, that was in your --
24 is your house a two-story house?

25 A. No.

1 Q. One-story house?

2 A. Yes.

3 Q. You had to go to your bedroom to get the

4 combination from the address book. Correct?

5 A. Yes.

6 Q. Did any officer accompany you?

7 A. No.

8 Q. And you mentioned -- you testified that you
9 tried twice to open the safe?

10 A. I think twice. It may have been three times.
11 I know that at that point I couldn't.

12 Q. When you say you mean you were "done," what do
13 you mean by that?

14 A. I was just -- as even before with this safe, I
15 would get frustrated, and I would have to just walk away
16 for a few minutes and then go back and try again.

17 Q. Prior to this incident, had you been able to
18 successfully open the safe?

19 A. Yes.

20 Q. How about your husband, was he ever able to
21 open the safe?

22 A. Yes. Not very often though. He never needed
23 to.

24 Q. Okay. Why did he never need to?

25 A. He would say he needed something out of it.

1 Q. Now, with some additional information would he
2 be able to guess the password?

3 A. Possibly part of it but not all of it.

4 Q. Not all of it. Does the gun safe still require
5 a key in order to access, or did you change that
6 function as well?

7 A. A key still.

8 Q. Where do you keep the key nowadays?

9 A. Actually the same place.

10 Q. Behind a locked file cabinet?

11 A. Right in the file cabinet. I may move it from
12 one file to another and bury it between papers but still
13 in that file cabinet.

14 Q. With regard to this combination lock, do you
15 have it written down somewhere?

16 A. No.

17 Q. So it's all up in your head now?

18 A. Yes.

19 Q. Going back to when the safe was opened, so your
20 testimony is that you didn't actually open the safe.

21 The officers -- one of the officers opened the safe?

22 A. Yes.

23 Q. But he was able to open it because you provided
24 him with the key and the combination?

25 A. I did the key. And then I gave him -- I gave

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. So your husband is in Fremont Hospital. And do
2 you know if he was evaluated or anything like that?

3 A. I would assume. I didn't -- I don't know that
4 I talked -- I might have talked to the doctors at
5 Fremont Hospital maybe a couple times. I don't know
6 that I talked to anybody at Valley Medical.

7 Q. Okay. When was your husband discharged from
8 the hospital?

9 A. I want to say it was about a week.

10 Q. And when he was discharged, did he return home,
11 or did he go anywhere else?

12 A. Home.

13 Q. But because of this evaluation, do you
14 understand that your husband is what's referred to as a
15 "prohibited party"?

16 A. What do you mean by "prohibited"?

17 Q. That's my next question. So that your husband
18 can no longer own, control, possess firearms for a
19 period of about five years from the date of this
20 incident. Do you understand that to be?

21 A. Yes.

22 Q. Is there currently any prohibition on your
23 ability to own, control, possess a firearm?

24 A. No.

25 Q. So if you wanted to go to a gun store, you

EXHIBIT H

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 in the news those days.

2 Q. Did he mention using a gun himself?

3 A. No, he did not.

4 Q. So he was talking about the school shootings.

5 Did he mention shootings in any other context?

6 A. Just shootings.

7 Q. But school shootings, correct?

8 A. He specifically said a school shooting.

9 Shooting up schools, yes.

10 Q. Did he mention guns or shooting at any other
11 time?

12 A. He talked about the guns in the gun safe.

13 Q. What did he say?

14 A. He just talked about the guns in the gun safe.

15 Q. How did he talk about them? Did he describe
16 them?

17 A. No. Just let us know that he had a gun safe
18 full of guns.

19 Q. Was that in response to a question?

20 A. I don't know.

21 Q. Did you question Mr. Rodriguez about the guns in
22 the gun safe?

23 A. Yes.

24 Q. What did you say to him?

25 A. I just asked him how many guns there were in the

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.

DEPOSITION OF OFFICER STEVEN VALENTINE

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.

DEPOSITION OF OFFICER STEVEN VALENTINE

46

1 Q. What specifically did you say to her with
2 respect to the law of firearms in 5150?

3 A. I would have shown her the form where it talks
4 about the removal of firearms on the 5150.

5 Q. Okay.

6 A. And that because he is being placed on a 5150
7 hold, the firearms need to be removed from the home
8 pursuant to the law.

9 Q. What form are we talking about?

10 A. I have a blank copy. I don't know if you can
11 read it on here.

12 MR. VANNI: Exhibit B might be better. The
13 color copy would be better.

14 THE WITNESS: If you were to look at Exhibit B,
15 Page 3 of 16, this is the application for a 72-hour
16 detention for evaluation and treatment. And if you
17 were to go to the bottom, at the very bottom there is
18 three boxes. And the first box of those three is
19 marked and then my name and badge.

20 I showed her this form. And pursuant to -- and
21 I can't read it here, but pursuant to -- I would have
22 told her pursuant to welfare and institution code -- I
23 can't read that code -- that the firearms were to be
24 confiscated and she would be notified of the procedure
25 for return.

DEPOSITION OF OFFICER STEVEN VALENTINE

47

1 Q. It's a written policy?

2 A. Yes.

3 Q. Is the policy augmented by any custom within the
4 department?

5 A. What do you mean "custom"?

6 Q. I mean, as you sit here today you don't know
7 what the written policy is. Do you know what the
8 custom or practice is of the department?

9 A. We have a written policy. We don't have a
10 custom.

11 Q. But as you sit here today, you don't know what
12 that --

13 A. I guess what I would do is I would -- if the
14 situation arose, I would read the duty manual.

15 Q. Did you read the manual that night?

16 A. Yes.

17 Q. You did?

18 A. Yes.

19 Q. And do you remember what conclusion you came to
20 after reading the policy?

21 A. The firearms would be removed from the home.

22 Q. When did you consult the duty manual?

23 A. In that same window.

24 Q. Between the situation being declared and normal
25 and the district sergeant clearing the scene?

DEPOSITION OF OFFICER STEVEN VALENTINE

55

1 A. No. And I said discussions. Not that we would
2 have. We would have just discussed it.

3 Q. Would have discussed.

4 What would have been the purpose of the
5 discussion?

6 A. Find out if the situation arises to that level.

7 Q. Would the discussion have been to get her to
8 change her mind?

9 A. No.

10 Q. At any time did you tell Ms. Rodriguez that you
11 were required to seize the guns?

12 A. I would have just told her pursuant to the law
13 we were going to need to confiscate the firearms.

14 Q. And her response was?

15 A. She understood.

16 Q. And after that, she found the combination to the
17 safe and somebody helped her open it?

18 MR. VANNI: Objection; calls for speculation.

19 Q. BY MR. KILMER: If you know.

20 A. I don't know.

21 Q. Do you know if any of the other officers at the
22 scene prepared a written report?

23 A. No, they did not.

24 Q. So the only person preparing a report was you?

25 A. Yes.

DEPOSITION OF OFFICER STEVEN VALENTINE

60

1 her cooperation.

2 MR. VANNI: Objection; misstates his testimony.
3 I think he said that pursuant to the law they had to
4 confiscate the firearms.

5 MR. KILMER: Let me rephrase the question.

6 Q. BY MR. KILMER: That you told Ms. Rodriguez that
7 pursuant to the law you had to confiscate the firearms,
8 and then after that she cooperated in opening the safe
9 and allowing the weapons to be taken into custody or
10 into police possession.

11 With regard to the timing of those events, would
12 you have any reason to contradict that, the timing of
13 that? In other words, your statement to her about the
14 law's requirements came before --

15 A. What am I contradicting? That's why I am
16 confused.

17 Q. Strike that. Let me rephrase the question.

18 Your statement to Lori Rodriguez that the law
19 required you to confiscate the weapons came before she
20 cooperated in opening the safe.

21 MR. VANNI: I'm going to object again and say
22 that misstates his testimony that he said that the law
23 required him to take the weapons.

24 Q. BY MR. KILMER: Did you say to Ms. Rodriguez
25 that you were required by law to seize the weapons?

DEPOSITION OF OFFICER STEVEN VALENTINE

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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?

DEPOSITION OF OFFICER STEVEN VALENTINE

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Tab 7

1 RICHARD DOYLE, City Attorney (88625)
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9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 LORI RODRIGUEZ, THE SECOND
AMENDMENT FOUNDATION, INC., THE
13 CALGUNS FOUNDATION, INC.,

14 Plaintiffs,

15 v.

16 CITY OF SAN JOSE, et al.,

17 Defendants.
18

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

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF CITY'S MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

DATE: November 10, 2016
TIME: 9:00 a.m.
COURTROOM: 4
JUDGE: Hon. Edward J. Davila

19
20 Defendants City of San Jose and Officer Steven Valentine request that the Court to
21 take judicial notice pursuant to Federal Rule of Evidence 201 of the following:

22
23 1) The City filed a Petition under Section 8102 to dispose of the twelve firearms as
24 reflected in the City's Petition initiating *City of San Jose v. Edward V. Rodriguez* (Santa Clara
25 Superior Court No. 1-13-CV-241669). A true and correct copy of the City's Petition is
26 attached as Exhibit B to the Declaration of Mark Vanni, counsel for Defendants.

27 2) Lori Rodriguez intervened Plaintiff in *City of San Jose v. Edward Rodriguez et al.*
28 and argued for return of the firearms as reflected in Lori Rodriguez's Response and Request

1 for Hearing in City of San Jose v. Edward V. Rodriguez, which is attached as Exhibit C to the
2 Declaration of Mark Vanni.

3 3) The Reporter’s Transcript from the hearing before the Honorable Peter Kirwan,
4 which the parties have stipulated is an accurate account of the proceedings, and the
5 arguments, facts, and judicial findings stated therein. A true and correct copy of this
6 transcript is attached as Exhibit D to the Declaration of Mark Vanni.

7 4) Judge Kirwan’s Order, dated September 16, 2013, granting the City’s Petition for
8 Disposition of Weapons in the *City of San Jose v. Edward V. Rodriguez*, a true and correct
9 copy of which is attached as Exhibit E to the Declaration of Mark Vanni.

10 5) The decision of the Sixth District California Court of Appeal in *City of San Jose v.*
11 *Edward V. Rodriguez et al.*, 2015 WL 1541988 (April 2, 2015, H040317) and the judicial
12 findings stated therein. A true and correct copy of this decision is attached hereto as Exhibit
13 F to the Declaration of Mark Vanni.

14 The Court is permitted to take judicial notice of court documents and records, and
15 “may take notice of proceedings in other courts, both within and without the federal judicial
16 system, if those proceedings have a direct relation to matters at issue.” *U.S. ex rel. Robinson*
17 *Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992); cf. Fed. R.
18 App. P. 32.1(b) (instructing parties to submit a copy of an “opinion, order, judgment, or
19 disposition” unavailable on publicly accessible electronic databases). Because the Court
20 records included with Defendants’ motion, and the facts and findings stated therein, involve

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1 prior proceedings among the parties relating to the confiscation and return of the firearms at
2 issue, Defendants request that the Court take judicial notice.

3 Respectfully submitted,

4 Dated: September 1, 2016

RICHARD DOYLE, City Attorney

6 By: /s/ Mark Vanni

7 MARK J. VANNI
8 Deputy City Attorney

9 Attorneys for CITY OF SAN JOSE and
OFFICER STEVEN VALENTINE

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Tab 8

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

24 Defendants.

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

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

///

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

Claim or Defense	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Party's Response/Supporting Evidence
Article III Standing		
1. Second Amendment Foundation, Inc. (SAF) and Calguns Foundation, Inc. did not suffer an actual injury or immediate threat of actual injury.	Fact 1. Lori Rodriguez is not a member of SAF or Calguns. L. Rodriguez Dep. 13:23-14:2. Vanni Declaration Ex. G.	
	Fact 2. 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. Vanni Declaration ¶ 2 and Ex. A (SJPD Duty Manual § L5705) Valentine Dep. 55:6-10. Vanni Declaration Ex. H.	
First Claim For Relief: Second Amendment		
1. Defendants have not infringed upon Plaintiffs Second Amendment Rights to keep and bear arms for self-defense.	Fact 3. Lori Rodriguez can own, possess, or acquire firearms. Plaintiffs Complaint ¶ 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 Second Claim for 20 Relief: Fourth 21 Amendment</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>Third Claim For Relief: Fifth Amendment (Takings Clause)</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 Fourth Claim for 18 Relief: 19 Fourteenth 20 Amendment</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 Fifth Claim for Relief: 12 State Law Claim under 13 Cal. Penal Code §§ 14 33800 et seq.</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.

3
4 Dated: September 1, 2016

Respectfully submitted,

RICHARD DOYLE, City Attorney

5
6
7 By: /s/ Mark J. Vanni

MARK J. VANNI

Deputy City Attorney

8
9 Attorneys for CITY OF SAN JOSE and
OFFICER STEVEN VALENTINE

Tab 9

1 Donald E. J. Kilmer, Jr. [SBN: 179986]
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2 1645 Willow Street, Suite 150
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5 Attorneys for Plaintiffs
6
7
8

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

11
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

**DECLARATION OF ALAN
GOTTLIEB 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

22 **DECLARATION OF ALAN GOTTLIEB**

23 I, Alan Gottlieb, declare as follows, based on my own personal knowledge:

- 24 1. I am the founder and Executive Vice President of the Second Amendment
25 Foundation, Inc. (SAF).
26 2. The Second Amendment Foundation, Inc., is a non-profit membership
27 organization incorporated under the laws of Washington with this principal
28 place of business in Bellvue Washington.

- 1 3. SAF has over 650,000 members and supporters nationwide, including many
2 living in Santa Clara County and throughout the state of California.
- 3 4. The purposes of SAF include education, research, publishing and legal action
4 focusing on the Constitutional right to privately own and possess firearms;
5 along with the consequences of gun control and legislation that impacts the
6 “right to keep and bear arms.”
- 7 5. SAF expends their resources encouraging the exercise of the “right to keep
8 and bear arms”, and the organization advises and educates its members,
9 supporters and the general public about he legal consequences incident to the
10 ownership and possession of firearms.
- 11 6. The issues raised by the actions of Defendants in this case are of great
12 interest to SAF and its members. Part of SAF’s mission is to inform its
13 members and the general public, how to comply with various laws when they
14 have a family member, or might live with a person who is prohibited by law
15 from possessing a firearm. This is usually done through use of a gun safe, a
16 policy we approve and encourage our members to employ in circumstances
17 when they have a legal duty to prevent unauthorized access to firearms.
- 18 7. Defendants’ policies regularly cause the expenditure of resources by SAF as
19 people turn to our organization for advice, information, and when necessary
20 legal help through our association with various law firms we employ to assist
21 people in recovering their firearms.
- 22 8. In this context, economies of scale are everything. Firearms are valuable
23 property, but their value seldom exceeds the cost of hiring a lawyer to recover
24 them; while cities and counties have scores of City Attorneys and County
25 Counsel to litigate these matters, often winning through attrition.
- 26 9. Our resources are expended to level the playing field in this and many other
27 cases. In this case for example, if the City had used the Administrative
28 process set forth in California Penal § 33800 *et seq.*, after the California

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Appellate Court authorized that procedure, Lori would have her guns and this case would either be much simpler or might not have been filed at all.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 15, 2016.

Fax Signature Attached.

Alan Gottlieb
Executive Vice President / Founder
Second Amendment Foundation

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Appellate Court authorized that procedure, Lori would have her guns and this case would either be much simpler or might not have been filed at all.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 15, 2016.



Alan Gottlieb
Executive Vice President / Founder
Second Amendment Foundation

Donald Klamer
Attorney at Law
1645 Willow St.
Suite 150
San Jose, CA 95125
Vo: 408/264-8489
Fa: 408/264-8487

Tab 10

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5 Attorneys for Plaintiffs
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8

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

11
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

**DECLARATION OF BRANDON
COMBS 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

22 **DECLARATION OF BRANDON COMBS**

23 I, Brandon Combs, declare as follows, based on my own personal knowledge:

- 24 1. I am the Executive Director of the Calguns Foundation, Inc. (CGF).
25 2. Calguns Foundation Inc., is a non-profit organization incorporated under the
26 laws of California with its principal place of business in Roseville, California.
27 3. The purposes of CGF include supporting the California firearms community
28 by promoting education for all stakeholders about California and federal

1 firearms laws, rights and privileges, and defending and protecting the civil
2 rights of California gun owners.

3 4. CGF represents its members and supporters, which include California gun
4 owners.

5 5. CGF brings lawsuits like this because the fees and costs of prosecuting such
6 actions often exceeds the personal resources of individual gun owners and
7 value of the gun collections. CGF operates and maintains "Help Hotline" for
8 the specific purpose of assisting gun owners who are intimidated by the
9 complexity of California's gun laws.

10 6. Defendants' policies regularly cause the expenditure of resources by CGF as
11 people turn to our organization for advice, information, and when necessary
12 legal help through our association with various law firms we employ to assist
13 people in recovering their firearms.

14 7. In this context, economies of scale are everything. Firearms are valuable
15 property, but their value seldom exceeds the cost of hiring a lawyer to recover
16 them; while cities and counties have scores of City Attorneys and County
17 Counsel to litigate these matters, often winning through attrition.

18 8. Our resources are expended to level the playing field in this and many other
19 cases. In this case for example, if the City had used the Administrative
20 process set forth in California Penal § 33800 *et seq.*, after the California
21 Appellate Court authorized that procedure, Lori would have her guns and
22 this case would either be much simpler or might not have been filed at all.

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

25
26 

27 Brandon Combs, Executive Director
28 Calguns Foundation, Inc.

Tab 11

1 Donald E. J. Kilmer, Jr. [SBN: 179986]
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2 1645 Willow Street, Suite 150
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5 Attorneys for Plaintiffs
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7
8

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

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

**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

22
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.

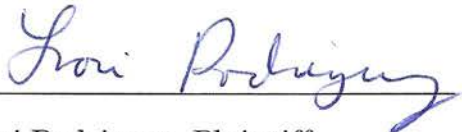
19 15. I am currently eligible to buy, acquire, own, keep and bear, firearms. I could
20 purchase new firearms and store them in the gun safe I already own. I
21 cannot afford to purchase new firearms, when I already own firearms.

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.

28 ////

- 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.

13 
14 _____

15 Lori Rodriguez, Plaintiff

Law Offices of Donald Kilmer

A Professional Corporation

1645 Willow Street, Suite 150
San Jose, California 95125-5120
Don@DKLawOffice.com
Phone: 408/264-8489
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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

State of California *≈* Department of Justice

OFFICE of the ATTORNEY GENERAL
KAMALA D. HARRIS

REGULATORY GUN SAFE STANDARDS

An acceptable gun safe is either one the following:

- a. A gun safe that meets all of the following standards:
 1. Shall be able to fully contain firearms and provide for their secure storage.
 2. Shall have a locking system consisting of at minimum a mechanical or electronic combination lock. The mechanical or electronic combination lock utilized by the safe shall have at least 10,000 possible combinations consisting of a minimum three numbers, letters, or symbols. The lock shall be protected by a case hardened (Rc 60+) drill resistant steel plate, or drill resistant material of equivalent strength.
 3. Boltwork shall consist of a minimum of three steel locking bolts of at least 1/2-inch thickness that intrude from the door of the safe into the body of the safe or from the body of the safe into the door of the safe, which are operated by a separate handle and secured by the lock.
 4. A gun safe shall be capable of repeated use. The exterior walls shall be constructed of a minimum 12-gauge thick steel for a single walled safe, or the sum of the steel walls shall add up to at least 0.100 inches for safes with two walls. Doors shall be constructed of a minimum one layer of 7-gauge steel plate reinforced construction or at least two layers of a minimum 12-gauge steel compound construction.
 5. Door hinges shall be protected to prevent the removal of the door. Protective features include, but are not limited to: hinges not exposed to the outside, interlocking door designs, dead bars, jeweler's lugs and active or inactive locking bolts.

- b. A gun safe that is able to fully contain firearms and provide for their secure storage, and is certified to/listed as meeting Underwriters Laboratories Residential Security Container rating standards by a Nationally Recognized Testing Laboratory (NRTL).

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 Attorney for Respondent:
8 LORI RODRIGUEZ

ENDORSED

2013 JUN 14 P 2:01

David H. Jennings, Clerk of the Superior Court
County of Santa Clara, California
By: _____
S. Garcia-Arias

9 SUPERIOR COURT OF CALIFORNIA
10 SANTA CLARA COUNTY
11 CIVIL LAW DIVISION

12 CITY OF SAN JOSE,
13 Petitioner,

14 vs.

15 EDWARD RODRIGUEZ,
16 Respondent.

17 LORI RODRIGUEZ,
18 Co-Respondent.

Case No.: 1-13-CV-241669

**DECLARATION AND OFFER OF
PROOF OF LORI RODRIGUEZ**

Welfare and Institutions Code §§ 8100 et
seq

Hearing: July 11, 2013
Time: 9:00 a.m.
Dept.: 8

19 I, Lori Rodriguez, declare as follows:

- 20 1. I am married to Edward Rodriguez, the named Respondent in this matter.
- 21 2. We have been married for almost 20 years.
- 22 3. My husband was taken into custody by the San Jose Police Department on or
23 about January 24, 2013. He was placed on a psychiatric hold pursuant to
24 Welfare and Institutions Code § 5150.
- 25 4. I acknowledge that Edward is currently prohibited from owning, acquiring or
26 possession firearms and/or ammunition.
- 27 5. The firearms in our home were kept in a safe.
- 28 6. The firearms in our home are community property, though they may be
"registered" in either Edward's name or my own.

Donald Kilmer
Attorney at Law
1645 Willow St.
Suite 150
San Jose, CA 95125
Vc: 408/264-8489
Fx: 408/264-8487

- 1 7. No firearms were out or used, nor was there a threatened use of firearms
2 during the event that triggered my husband's episode.
- 3 8. After the San Jose Police had my husband safely in their custody, they
4 informed me that they were required by Department Policy to confiscate all
5 firearms in the home.
- 6 9. I informed the officers that no firearms were used or threatened, and that all
7 the firearms were safely stored in a gun safe and that I preferred that they
8 leave the firearms where they were. The police insisted and claimed that the
9 seizure was required by law and Department policy. I opened the gun safe
10 and the police took all of our firearms.
- 11 10. The police took twelve (12) firearms but did not leave a receipt for them. I
12 have provided the City of San Jose with a list of the firearms taken,
13 identified by Make, Caliber and Serial Number.
- 14 11. Attached as Exhibit A is a copy of a receipt that shows the Court that I own a
15 firearm safe.
- 16 12. Attached as Exhibit B is a copy of a receipt dated April 26, 2013 showing that
17 I had the combination to the safe changed.
- 18 13. Attached as Exhibit C is a copy of a Personal Firearms Eligibility Check
19 (PFEC) Notification dated May 8, 2013 showing that I am personally eligible
20 to possess and purchase firearms.
- 21 14. If the Court grants my request to have my firearms returned to me I will:
22 a. Complete a California Department of Justice, Bureau of Firearms –
23 Report of Operation of Law or Intra-Family Handgun Transfer [Form
24 BOF 4544A] for all handguns to effect a change of registration.
25 b. As no paperwork is required to change "registration" of long guns, I
26 acknowledge that I must also complete a Law Enforcement Gun
27 Release Application [Form BOF 119] form to effectuate a transfer back
28 to me of the firearms taken by the City of San Jose.

1 15. I acknowledge that I have a duty under the Penal Code and Welfare and
2 Institutions Code to prevent Edward from obtaining access to any firearms or
3 ammunition that are under my control while he continues to be a prohibited
4 person, and I promise to store all firearms and ammunition in the gun safe
5 (which has already had the combination changed) referenced above.

6 16. I agree to be bound by my fax/scan signature set forth below with the
7 necessity of filing or retaining an original.

8 I declare under penalty of perjury under the laws of California that the
9 forgoing is true and correct, that true and correct copies of the documents identified
10 above are attached to this declaration and that this declaration was executed in San
11 Jose, California.

12 Date:

**FAX SIGNATURE
ATTACHED**


Lori Rodriguez

1 15. I acknowledge that I have a duty under the Penal Code and Welfare and
2 Institutions Code to prevent Edward from obtaining access to any firearms or
3 ammunition that are under my control while he continues to be a prohibited
4 person, and I promise to store all firearms and ammunition in the gun safe
5 (which has already had the combination changed) referenced above.

6 16. I agree to be bound by my fax/scan signature set forth below with the
7 necessity of filing or retaining an original.

8 I declare under penalty of perjury under the laws of California that the
9 forgoing is true and correct, that true and correct copies of the documents identified
10 above are attached to this declaration and that this declaration was executed in San
11 Jose, California.

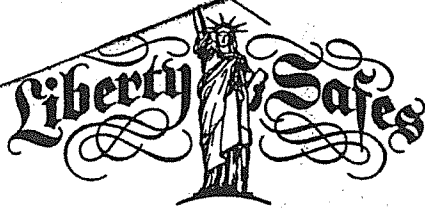
12 Date: 5-29-13



14 Lori Rodriguez

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28
Donald Kilmer
Attorney at Law
1645 Willow St.
Suite 150
San Jose, CA 95125
Vc: 408/264-8489
Fx: 408/264-8487

Exhibit A



INVOICE SJ 6796

LIBERTY SAFES OF SAN JOSE
2897 So. Bascom Ave.. • Campell, CA 95008
Phone: 408-559-5004 Fax: 408-879-9328
www.libertysafenorcal.com

DATE: AUG 24 02

SOLD TO: Edward & Lori Rodriguez
4691 Ma Circle
San Jose CA 95126

SHIP TO:

PHONE: (408) 629-6608

PHONE: ()

Payment options: CASH, CHECK, VISA/MC, CHARGE, FINANCED, COD, ROA. SPECIAL ORDER checkbox. ESTIMATED ARRIVAL DATE.

MODEL LX25 EXTERIOR COLOR GREEN
INTERIOR FABRIC-COLOR BET INTERIOR CONFIGURATION FLEX

FIRE PROTECTION: NONE, DOUBLEFIRE, TRIPLEFIRE, COMMERCIAL

SERIAL NUMBER:

OPTIONS--ACCESSORIES:

Liberty Safe - Lincoln

Serial # 217576

Table with columns: OFFICE USE, DESC., PRICE. Includes rows for SUBTOTAL, SALES TAX, INSTALLATION LABOR, TOTAL, DEPOSIT, NON REFUNDABLE DEPOSIT, BALANCE DUE.

INSTALLATION INSTRUCTIONS (Subject to Installation Policy)
Customer Pick-up, Installation Description, Total Steps, Floor Cover, Floor Structure, Driveway, Floor Level, Door Seal Adjusted, Safe Leveled, Anchored to Concrete, Lag-Bolt to Sub Floor, Installation Date, Estimated Time, Accepted By, Date.

Summary table with rows: SUBTOTAL, SALES TAX, INSTALLATION LABOR, TOTAL, DEPOSIT, NON REFUNDABLE DEPOSIT, BALANCE DUE.

CUSTOMER SIGNATURE
*Subject to installation policy. TERMS: Net 10 days. A service charge of 1.75% per month (21% annual percentage rate) will be charged on all past due accounts.

Case: 17-17144, 02/26/2018, ID: 10776786, DktEntry: 10-1, Page 173 of 222

Exhibit B



Baker's LOCK & KEY SERVICE

Contractor's Lic. 507700
 2951 Union Avenue
 SAN JOSE, CALIFORNIA 95124
 (408) 377-9210



NAME <i>Lori Rodriguez</i>		DATE <i>4/26/13</i>	
ADDRESS <i>4691 MIAC</i>			
LOCATION		RES. PHONE	
		BUS. PHONE	<i>307-0825</i>
QTY	DESCRIPTION	PRICE	AMOUNT
	<i>Service Call</i>		<i>7500</i>
	<i>Safe Combo Change</i>		<i>7500</i>
	<i>(Liberty Safe)</i>		
	LOCKSMITH		
	<i>Pay from this invoice. Statements are not sent.</i>		
	<i>Parts and Labor Guaranteed 30 days.</i>		
CUSTOMER'S SIGNATURE <i>X [Signature]</i>		TOTAL MATERIALS	
AUTHORIZATION FOR SECURITY/EMERGENCY SERVICES I hereby certify that I have the authority to order the lock, key or security work designated above. Further, I agree to absolve the locksmith who bears this authorization from any and all claims arising from the performance of such work.		TOTAL LABOR	
SIGNATURE		DATE	
ADDRESS		SUBTOTAL	
YEAR	MAKE	IF AUTO	LICENSE/SERIAL NUMBER
		TAX	
		TOTAL	<i>15000</i>

PAID VISA

B PRODUCT 619

71253

WORK ORDER INVOICE

12366
162266
162266
 DEPOSIT
 NON
 FILE

Exhibit C



State of California
 Department of Justice
 Bureau of Firearms
 P.O. Box 820200, Sacramento, CA 94203-0200



PERSONAL FIREARMS ELIGIBILITY CHECK (PFEC) NOTIFICATION

May 8, 2013
 (date check was completed)

LORI A RODRIGUEZ
 4691 MIA CIRCLE
 SAN JOSE, CA 95136

**THIS NOTICE IS FOR INFORMATION PURPOSES ONLY
 IT DOES NOT AUTHORIZE THE SALE OR TRANSFER OF ANY FIREARM**

- You are eligible to both possess and purchase firearms as of the date the check was completed.
- You are ineligible to either possess or purchase firearms as of the date the check was completed.
- You are eligible to possess firearms as of the date the check was completed, but ineligible to purchase firearms as of the date the check was completed.
- A firearms eligibility determination could not be confirmed as of the date the check was completed. Please contact (916) 227-3749 for more information.

No person or agency may require or request another person to obtain a firearms eligibility check or notification of firearms eligibility pursuant to section 30105 of the Penal Code. A violation of these provisions is a misdemeanor.

If the applicant for a firearms eligibility check purchases, transfers, or receives a firearm through a licensed dealer as required by law, a waiting period and background check are both required.

PLEASE BE AWARE OF THE FOLLOWING

If you are ELIGIBLE to purchase:

Upon application to purchase a firearm another background check will be conducted and the waiting period will apply.

A valid California Driver License or Identification Card is required at the time of purchase of any firearm.

A valid Alien Registration Card or I-94 is required at the time of purchase of any firearm if applicant is a non-U.S. citizen. The non-U.S. citizen applicant must also meet certain federal requirements to purchase a firearm, unrelated to the firearms eligibility background check.

If you are INELIGIBLE to purchase:

And if you are also ineligible to possess, you must relinquish any firearms in your possession to your local law enforcement agency or complete and follow the directions stated on the enclosed 'Prohibited Persons Notice Form and Power of Attorney Declaration for Firearms Transfer and Disposal Form.'

If you have questions regarding this notification, please contact DOJ at (916) 227-3749.

PFEC CONTROL #: 11090

1 RICHARD DOYLE, City Attorney (88625)
2 NORA FRIMANN, Assistant City Attorney (93249)
3 CLIFFORD GREENBERG, Sr. Deputy City Attorney (122612)
4 MARK J. VANNI, Deputy City Attorney (267892)
5 Office of the City Attorney
6 200 East Santa Clara Street, 16th Floor
7 San José, California 95113-1905
8 Telephone Number: (408) 535-1900
9 Facsimile Number: (408) 998-3131
10 E-Mail Address: cao.main@sanjoseca.gov

11 Attorneys for CITY OF SAN JOSE, CITY OF SAN
12 JOSE POLICE DEPARTMENT and OFFICER
13 STEVEN VALENTINE

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 LORI RODRIGUEZ, THE SECOND
18 AMENDMENT FOUNDATION, INC., THE
19 CAL GUNS FOUNDATION, INC.

20 Plaintiffs,

21 v.

22 CITY OF SAN JOSE, CITY OF SAN JOSE
23 POLICE DEPARTMENT, OFFICER STEVEN
24 VALENTINE, and DOES 1-20,

25 Defendants.

26 Case Number: 5:15-CV-03698 EJD
27 DEFENDANTS' FRCP RULE 26(A)(1)
28 INITIAL DISCLOSURES

29 Pursuant to Federal Rules of Civil Procedure 26(a)(1), Defendant hereby sets forth
30 the following disclosures:

31 **A. Persons Likely to Have Discoverable Information**

32 The persons likely to have discoverable information that Defendant may use to
33 support the claims or defenses, unless the use would be solely for impeachment, are as
34 follows:

- 35 1. Lori Rodriguez

- 1 2. Edward V. Rodriguez
- 2 3. Officer Steven Valentine, Badge No. 3985, c/o San Jose City Attorney's Office.
- 3 4. All persons named or referred to in the various documents identified in this
- 4 disclosure.
- 5 5. Various persons most knowledgeable about Police Department policies, practices,
- 6 training, personnel matters, and/or other topics relevant to this litigation.

7 **B. Documents and/or Materials that Defendant May Use to Support**
8 **Claims or Defenses**

- 9 1. All materials collected and generated by San Jose Police Department related to the
- 10 subject incident, including but not limited to, witness statements, Patrol officer records,
- 11 9-1-1 and police communications recordings, electronic dispatch information, and
- 12 communication with Plaintiffs' attorney.

13 **C. Computation of Damages**

14 This disclosure requirement does not apply to Defendant in this lawsuit.

15 **D. Insurance Agreements**

16 Defendants have no such insurance agreements.

17 **E. Copies of Documents, Video Recordings and Audio Recordings Included with**
18 **this Disclosure**

- 19 1. San Jose Police Department Report, January 24, 2013.
- 20 2. San Jose Police Department Report, January 24, 2013.
- 21 3. Declaration of Officer Steven Valentine In Support of Petition Re: Disposition of
- 22 Weapons, filed March 1, 2013.
- 23 4. State of California, Department of Justice, Bureau of Firearms Personal Firearms
- 24 Eligibility Check (PFEC) Notification for Lori A. Rodriguez, dated May 8, 2013.
- 25 5. Order Re: Disposition of Weapons, filed on September 16, 2013.
- 26 6. State of California Firearm Ownership Record for Winchester Ranger 120 (Serial #
- 27 L1813538), dated May 23, 2015.
- 28

- 1 7. State of California Receipt Confirmation for Firearm as Either Operation of Law or
2 Intrafamilial Transfer for Browning Citori (Serial # 3653PP753), dated May 23,
3 2015.
- 4 8. State of California Receipt Confirmation for Firearm as Either Operation of Law or
5 Intrafamilial Transfer for Ruger 1022 (Serial # 23260854), dated May 23, 2015.
- 6 9. State of California Receipt Confirmation for Firearm as Either Operation of Law or
7 Intrafamilial Transfer for Ruger Carbine (Serial # 1401182), dated May 23, 2015.
- 8 10. State of California Receipt Confirmation for Firearm as Either Operation of Law or
9 Intrafamilial Transfer for Browning Safari Bar (Serial # 107NW32146), dated May
10 23, 2015.
- 11 11. State of California Receipt Confirmation for Firearm as Either Operation of Law or
12 Intrafamilial Transfer for Browning Gold Hunter (Serial # F01NP05395), dated May
13 23, 2015.
- 14 12. State of California Receipt Confirmation for Firearm as Either Operation of Law or
15 Intrafamilial Transfer for Winchester 290 (Serial # 52189), dated May 23, 2015.
- 16 13. State of California Receipt Confirmation for Firearm as Either Operation of Law or
17 Intrafamilial Transfer for Remington Speedmaster (Serial # A1657555), dated May
18 23, 2015.
- 19 14. State of California Receipt Confirmation for Firearm as Either Operation of Law or
20 Intrafamilial Transfer for Smith and Wesson 629 6 Classic (Serial # CFJ8200),
21 dated May 23, 2015.
- 22 15. State of California Receipt Confirmation for Firearm as Either Operation of Law or
23 Intrafamilial Transfer for WEO 744 VH (Serial # SB013398), dated May 23, 2015.
- 24 16. State of California Firearm Ownership Record for MAR Glenfield 60 (Serial #
25 20626618), dated May 23, 2015.
- 26 17. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
27 for Smith and Wesson 586 3 (Serial # BFR2403), dated June 1, 2015.
- 28

- 1 18. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 2 for Browning Gold Hunter (Serial # F01NPO5395), dated June 1, 2015.
- 3 19. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 4 for Browning Citori (Serial # 3653PP753), dated June 1, 2015.
- 5 20. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 6 for Ruger 10 22 (serial # 23260854), dated June 1, 2015.
- 7 21. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 8 for Browning Safari Bar II (Serial # 107NW32146), dated June 1, 2015.
- 9 22. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 10 for MAR Glenfield 60 (Serial # 20626618), dated June 1, 2015.
- 11 23. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 12 for Ruger Carbine (Serial # 1401182), dated June 1, 2015.
- 13 24. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 14 for Remington Speedmaster (Serial # A1657555), dated June 1, 2015.
- 15 25. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 16 for Winchester 290 (Serial #52189), dated June 1, 2015.
- 17 26. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 18 for Winchester Ranger 120 (Serial # L1813538), dated June 1, 2015.
- 19 27. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 20 for WEO 744 VH (Serial # SB013398), dated June 1, 2015.
- 21 28. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 22 for Smith and Wesson 629 6 Classic (Serial # CFJ8200) , dated June 1, 2015.
- 23 //
- 24 //
- 25 //
- 26 //
- 27 //
- 28 //

1 29. California Sixth Appellate District Court Opinion Filed on April 2, 2015.

2
3 To the best of my knowledge, information and belief formed after an inquiry that is
4 reasonable under the circumstances, this disclosure is complete and correct as of the time
5 it is made.

6
7 Respectfully submitted,

8 Dated: November 6, 2015

RICHARD DOYLE, City Attorney

9
10 By: Mark Vanni
11 Mark Vanni
12 Deputy City Attorney

13 Attorneys for Defendants
14 CITY OF SNA JOSE, CITY OF SAN JOSE
15 POLICE DEPARTMENT and OFFICER
16 STEVEN VALENTINE;
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28

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



DIVISION OF LAW ENFORCEMENT
BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 23, 2015

Lori Anne Rodriguez
4691 Mia Circle
San Jose, CA 95136

RE: FIREARM OWNERSHIP RECORD

Dear Lori Anne Rodriguez:

Pursuant to your request, the firearm(s) listed below has been recorded by the Department of Justice as being owned by you. Please be aware that should you decide in the future to transfer ownership of any firearm(s) listed below, Penal Code sections 27545 and 28050 et seq. require that all private party transfers of firearms be completed by a licensed California firearms dealer, as defined in Penal Code sections 26700 through 26915.

<u>Serial Number</u>	<u>Make</u>	<u>Model</u>	<u>Caliber</u>
L1813538	WIN	RANGER 120	12

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, Manager
Bureau Of Firearms

BOF-LFOR001

For KAMALA D. HARRIS
Attorney General

SJ000044

ER - 178

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 23, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

RE: Receipt Confirmation for Firearm Reported as Either Operation of Law or Intrafamilial Transfer

Dear LORI ANNE RODRIGUEZ:

This letter acknowledges the Department of Justice (DOJ), Bureau of Firearms (BOF) has received your Operation of Law or Intrafamilial Transfer application, processed the application, and a firearm eligibility check has been completed confirming your eligibility to possess firearms. The following firearm has been recorded in your name in the Automated Firearms System.

<u>SERIAL NUMBER</u>	<u>MAKE</u>	<u>MODEL</u>	<u>CALIBER</u>
3653PP753	BRO	CITORI	12

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000045

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 23, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

RE: Receipt Confirmation for Firearm Reported as Either Operation of Law or Intrafamilial Transfer

Dear LORI ANNE RODRIGUEZ:

This letter acknowledges the Department of Justice (DOJ), Bureau of Firearms (BOF) has received your Operation of Law or Intrafamilial Transfer application, processed the application, and a firearm eligibility check has been completed confirming your eligibility to possess firearms. The following firearm has been recorded in your name in the Automated Firearms System.

<u>SERIAL NUMBER</u>	<u>MAKE</u>	<u>MODEL</u>	<u>CALIBER</u>
23260854	SR	1022	22

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000046

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 23, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

RE: Receipt Confirmation for Firearm Reported as Either Operation of Law or Intrafamilial Transfer

Dear LORI ANNE RODRIGUEZ:

This letter acknowledges the Department of Justice (DOJ), Bureau of Firearms (BOF) has received your Operation of Law or Intrafamilial Transfer application, processed the application, and a firearm eligibility check has been completed confirming your eligibility to possess firearms. The following firearm has been recorded in your name in the Automated Firearms System.

<u>SERIAL NUMBER</u>	<u>MAKE</u>	<u>MODEL</u>	<u>CALIBER</u>
1401182	SR	CARBINE	30

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000047

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 23, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

RE: Receipt Confirmation for Firearm Reported as Either Operation of Law or Intrafamilial Transfer

Dear LORI ANNE RODRIGUEZ:

This letter acknowledges the Department of Justice (DOJ), Bureau of Firearms (BOF) has received your Operation of Law or Intrafamilial Transfer application, processed the application, and a firearm eligibility check has been completed confirming your eligibility to possess firearms. The following firearm has been recorded in your name in the Automated Firearms System.

<u>SERIAL NUMBER</u>	<u>MAKE</u>	<u>MODEL</u>	<u>CALIBER</u>
107NW32146	BRO	SAFARI BAR II	7

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000048

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 23, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

RE: Receipt Confirmation for Firearm Reported as Either Operation of Law or Intrafamilial Transfer

Dear LORI ANNE RODRIGUEZ:

This letter acknowledges the Department of Justice (DOJ), Bureau of Firearms (BOF) has received your Operation of Law or Intrafamilial Transfer application, processed the application, and a firearm eligibility check has been completed confirming your eligibility to possess firearms. The following firearm has been recorded in your name in the Automated Firearms System.

<u>SERIAL NUMBER</u>	<u>MAKE</u>	<u>MODEL</u>	<u>CALIBER</u>
F01NP05395	BRO	GOLD HUNTER	12

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000049

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 23, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

RE: Receipt Confirmation for Firearm Reported as Either Operation of Law or Intrafamilial Transfer

Dear LORI ANNE RODRIGUEZ:

This letter acknowledges the Department of Justice (DOJ), Bureau of Firearms (BOF) has received your Operation of Law or Intrafamilial Transfer application, processed the application, and a firearm eligibility check has been completed confirming your eligibility to possess firearms. The following firearm has been recorded in your name in the Automated Firearms System.

<u>SERIAL NUMBER</u>	<u>MAKE</u>	<u>MODEL</u>	<u>CALIBER</u>
52189	WIN.	290	22

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000050

ER - 184

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 23, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

RE: Receipt Confirmation for Firearm Reported as Either Operation of Law or Intrafamilial Transfer

Dear LORI ANNE RODRIGUEZ:

This letter acknowledges the Department of Justice (DOJ), Bureau of Firearms (BOF) has received your Operation of Law or Intrafamilial Transfer application, processed the application, and a firearm eligibility check has been completed confirming your eligibility to possess firearms. The following firearm has been recorded in your name in the Automated Firearms System.

<u>SERIAL NUMBER</u>	<u>MAKE</u>	<u>MODEL</u>	<u>CALIBER</u>
A1657555	REM	SPEEDMASTER :	22

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000051

ER - 185

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 27, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

RE: Receipt Confirmation for Firearm Reported as Either Operation of Law or Intrafamilial Transfer

Dear LORI ANNE RODRIGUEZ:

This letter acknowledges the Department of Justice (DOJ), Bureau of Firearms (BOF) has received your Operation of Law or Intrafamilial Transfer application, processed the application, and a firearm eligibility check has been completed confirming your eligibility to possess firearms. The following firearm has been recorded in your name in the Automated Firearms System.

<u>SERIAL NUMBER</u>	<u>MAKE</u>	<u>MODEL</u>	<u>CALIBER</u>
CFJ8200	SW	629 6 CLASSIC	44

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000052

ER - 186

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 27, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

RE: Receipt Confirmation for Firearm Reported as Either Operation of Law or Intrafamilial Transfer

Dear LORI ANNE RODRIGUEZ:

This letter acknowledges the Department of Justice (DOJ), Bureau of Firearms (BOF) has received your Operation of Law or Intrafamilial Transfer application, processed the application, and a firearm eligibility check has been completed confirming your eligibility to possess firearms. The following firearm has been recorded in your name in the Automated Firearms System.

<u>SERIAL NUMBER</u>	<u>MAKE</u>	<u>MODEL</u>	<u>CALIBER</u>
SB013398	WEO	744 VH	44

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000053

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



DIVISION OF LAW ENFORCEMENT
BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 23, 2015

Lori Anne Rodriguez
4691 Mia Circle
San José, CA 95136

RE: FIREARM OWNERSHIP RECORD

Dear Lori Anne Rodriguez:

Pursuant to your request, the firearm(s) listed below has been recorded by the Department of Justice as being owned by you. Please be aware that should you decide in the future to transfer ownership of any firearm(s) listed below, Penal Code sections 27545 and 28050 et seq. require that all private party transfers of firearms be completed by a licensed California firearms dealer, as defined in Penal Code sections 26700 through 26915.

<u>Serial Number</u>	<u>Make</u>	<u>Model</u>	<u>Caliber</u>
20626618	MAR	GLENFIELD 60	22

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, Manager
Bureau Of Firearms

BOF-LFOR001

For KAMALA D. HARRIS
Attorney General

SJ000054

ER - 188

1 RICHARD DOYLE, City Attorney (88625)
2 NORA FRIMANN, Assistant City Attorney (93249)
3 CLIFFORD GREENBERG, Sr. Deputy City Attorney (122612)
4 MARK J. VANNI, Deputy City Attorney (267892)
5 Office of the City Attorney
6 200 East Santa Clara Street, 16th Floor
7 San José, California 95113-1905
8 Telephone Number: (408) 535-1900
9 Facsimile Number: (408) 998-3131
10 E-Mail Address: cao.main@sanjoseca.gov

11 Attorneys for CITY OF SAN JOSE, CITY OF SAN
12 JOSE POLICE DEPARTMENT and OFFICER
13 STEVEN VALENTINE

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 LORI RODRIGUEZ, THE SECOND
18 AMENDMENT FOUNDATION, INC., THE
19 CAL GUNS FOUNDATION, INC.

20 Plaintiffs,

21 v.

22 CITY OF SAN JOSE, CITY OF SAN JOSE
23 POLICE DEPARTMENT, OFFICER STEVEN
24 VALENTINE, and DOES 1-20,

25 Defendants.

Case Number: 5:15-CV-03698 EJD

**DEFENDANTS' FRCP RULE 26(A)(1)
INITIAL DISCLOSURES**

26 Pursuant to Federal Rules of Civil Procedure 26(a)(1), Defendant hereby sets forth
27 the following disclosures:

28 **A. Persons Likely to Have Discoverable Information**

The persons likely to have discoverable information that Defendant may use to support the claims or defenses, unless the use would be solely for impeachment, are as follows:

- 1. Lori Rodriguez

- 1 2. Edward V. Rodriguez
- 2 3. Officer Steven Valentine, Badge No. 3985, c/o San Jose City Attorney's Office.
- 3 4. All persons named or referred to in the various documents identified in this
- 4 disclosure.
- 5 5. Various persons most knowledgeable about Police Department policies, practices,
- 6 training, personnel matters, and/or other topics relevant to this litigation.

7 **B. Documents and/or Materials that Defendant May Use to Support**
 8 **Claims or Defenses**

- 9 1. All materials collected and generated by San Jose Police Department related to the
- 10 subject incident, including but not limited to, witness statements, Patrol officer records,
- 11 9-1-1 and police communications recordings, electronic dispatch information, and
- 12 communication with Plaintiffs' attorney.

13 **C. Computation of Damages**

14 This disclosure requirement does not apply to Defendant in this lawsuit.

15 **D. Insurance Agreements**

16 Defendants have no such insurance agreements.

17 **E. Copies of Documents, Video Recordings and Audio Recordings Included with**
 18 **this Disclosure**

- 19 1. San Jose Police Department Report, January 24, 2013.
- 20 2. San Jose Police Department Report, January 24, 2013.
- 21 3. Declaration of Officer Steven Valentine In Support of Petition Re: Disposition of
- 22 Weapons, filed March 1, 2013.
- 23 4. State of California, Department of Justice, Bureau of Firearms Personal Firearms
- 24 Eligibility Check (PFEC) Notification for Lori A. Rodriguez, dated May 8, 2013.
- 25 5. Order Re: Disposition of Weapons, filed on September 16, 2013.
- 26 6. State of California Firearm Ownership Record for Winchester Ranger 120 (Serial #
- 27 L1813538), dated May 23, 2015.

- 1 7. State of California Receipt Confirmation for Firearm as Either Operation of Law or
2 Intrafamilial Transfer for Browning Citori (Serial # 3653PP753), dated May 23,
3 2015.
- 4 8. State of California Receipt Confirmation for Firearm as Either Operation of Law or
5 Intrafamilial Transfer for Ruger 1022 (Serial # 23260854), dated May 23, 2015.
- 6 9. State of California Receipt Confirmation for Firearm as Either Operation of Law or
7 Intrafamilial Transfer for Ruger Carbine (Serial # 1401182), dated May 23, 2015.
- 8 10. State of California Receipt Confirmation for Firearm as Either Operation of Law or
9 Intrafamilial Transfer for Browning Safari Bar (Serial # 107NW32146), dated May
10 23, 2015.
- 11 11. State of California Receipt Confirmation for Firearm as Either Operation of Law or
12 Intrafamilial Transfer for Browning Gold Hunter (Serial # F01NP05395), dated May
13 23, 2015.
- 14 12. State of California Receipt Confirmation for Firearm as Either Operation of Law or
15 Intrafamilial Transfer for Winchester 290 (Serial # 52189), dated May 23, 2015.
- 16 13. State of California Receipt Confirmation for Firearm as Either Operation of Law or
17 Intrafamilial Transfer for Remington Speedmaster (Serial # A1657555), dated May
18 23, 2015.
- 19 14. State of California Receipt Confirmation for Firearm as Either Operation of Law or
20 Intrafamilial Transfer for Smith and Wesson 629 6 Classic (Serial # CFJ8200),
21 dated May 23, 2015.
- 22 15. State of California Receipt Confirmation for Firearm as Either Operation of Law or
23 Intrafamilial Transfer for WEO 744 VH (Serial # SB013398), dated May 23, 2015.
- 24 16. State of California Firearm Ownership Record for MAR Glenfield 60 (Serial #
25 20626618), dated May 23, 2015.
- 26 17. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
27 for Smith and Wesson 586 3 (Serial # BFR2403), dated June 1, 2015.
- 28

- 1 18. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 2 for Browning Gold Hunter (Serial # F01NPO5395), dated June 1, 2015.
- 3 19. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 4 for Browning Citori (Serial # 3653PP753), dated June 1, 2015.
- 5 20. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 6 for Ruger 10 22 (serial # 23260854), dated June 1, 2015.
- 7 21. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 8 for Browning Safari Bar II (Serial # 107NW32146), dated June 1, 2015.
- 9 22. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 10 for MAR Glenfield 60 (Serial # 20626618), dated June 1, 2015.
- 11 23. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 12 for Ruger Carbine (Serial # 1401182), dated June 1, 2015.
- 13 24. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 14 for Remington Speedmaster (Serial # A1657555), dated June 1, 2015.
- 15 25. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 16 for Winchester 290 (Serial #52189), dated June 1, 2015.
- 17 26. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 18 for Winchester Ranger 120 (Serial # L1813538), dated June 1, 2015.
- 19 27. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 20 for WEO 744 VH (Serial # SB013398), dated June 1, 2015.
- 21 28. State of California Law Enforcement Gun Release – Firearm(s) Eligibility Clearance
- 22 for Smith and Wesson 629 6 Classic (Serial # CFJ8200) , dated June 1, 2015.
- 23 //
- 24 //
- 25 //
- 26 //
- 27 //
- 28 //

1 29. California Sixth Appellate District Court Opinion Filed on April 2, 2015.

2
3 To the best of my knowledge, information and belief formed after an inquiry that is
4 reasonable under the circumstances, this disclosure is complete and correct as of the time
5 it is made.

6
7 Respectfully submitted,

8 Dated: November 6, 2015

RICHARD DOYLE, City Attorney

9
10 By: Mark Vanni
11 Mark Vanni
12 Deputy City Attorney

13 Attorneys for Defendants
14 CITY OF SNA JOSE, CITY OF SAN JOSE
15 POLICE DEPARTMENT and OFFICER
16 STEVEN VALENTINE;
17
18
19
20
21
22
23
24
25
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27
28

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

June 1, 2015

Lori Anne Rodriguez
4691 Mia Circle
San Jose, CA 95136

Re: Law Enforcement Gun Release - Firearm(s) Eligibility Clearance

Dear Sir/Madam:

This letter acknowledges that the California Department of Justice (the Department), Bureau of Firearms (the Bureau) has received your Law Enforcement Gun Release (LEGR) Application (BOF 119) with the following firearm information:

<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
SW	586 3	BFR2403	357

State law requires the Department to conduct a firearms eligibility check on anyone who claims title to a firearm in the custody or control of a court, or law enforcement agency (LEA) and who wishes to have that firearm returned to him or her, in order to determine whether that person is eligible under state and federal law to possess firearms pursuant to Penal Code section 33850. The Department has processed your application and determined that, as of the date of this letter, you are eligible to possess a firearm.

This letter does not establish or constitute ownership of any firearm(s), which you are attempting to redeem from the custody of a court or LEA.

It is your responsibility to prove you own or have a right to possess any firearm in the custody of a court or LEA that you wish to have returned to you. A court or LEA with direct access to the Department's Automated Firearms System (AFS) is required to check AFS to determine whether the person seeking return of a firearm is listed as the owner/purchaser of the firearm(s) sought to be redeemed pursuant to Penal Code section 33855, subdivisions (a) and (b). At the time of this eligibility check, the Department reviewed AFS and determined the following:

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- This firearm is recorded in AFS, but is not recorded as being owned by, or loaned to the individual who is seeking its return.
- There is no record of this firearm in AFS.

A firearm can only be returned to the person who is listed in AFS as the owner/possessor of the firearm, and not to any other person. (Pen. Code, § 33855, subds. (a) & (b).) However, a court or LEA may return such firearm to a person who demonstrates that the firearm was transferred to him or her in a manner that was lawful, but was not required pursuant to Penal Code sections 28150 through 28180 to be recorded in the Department's records. The court or LEA will only release the firearm(s) in question after it has determined the firearm(s) is not reported lost or stolen, and is no longer needed for official court or law enforcement purposes.

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This LEGR firearms eligibility clearance is valid for 30 days from the date of this letter. After 30 days, the approval expires and cannot be used to claim a firearm. Accordingly, you must attempt to redeem your firearm(s) within 30 days of the date of this letter, or submit a new LEGR application and required fee to the Department in order to obtain an updated LEGR approval.



Sincerely,

Julie Agcaoli

JULIE AGCAOILI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
BRO	GOLD HUNTER	F01NPO5395	12

State law requires the Department to conduct a firearms eligibility check on anyone who claims title to a firearm in the custody or control of a court, or law enforcement agency (LEA) and who wishes to have that firearm returned to him or her, in order to determine whether that person is eligible under state and federal law to possess firearms pursuant to Penal Code section 33850. The Department has processed your application and determined that, as of the date of this letter, you are eligible to possess a firearm.

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June 1, 2015
Page 2

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Sincerely,

Julie Agcaoli

JULIE AGCAOLI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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June 1, 2015

Lori Anne Rodriguez
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<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
BRO	CITORI	3653PP753	12

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June 1, 2015
Page 2

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Julie Agcaoili

JULIE AGCAOILI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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June 1, 2015

Lori Anne Rodriguez
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San Jose, CA 95136

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<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
SR	10 22	23260854	22

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Julie Agcaoli

JULIE AGCAOLI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

KAMALA D. HARRIS
Attorney General

State of California
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June 1, 2015

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BRO	SAFARI BAR II	107NW32146	7

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BOF/LEGR-0001

SJ000063

ER - 202

Case: 17-17144, 02/26/2018, ID: 10776786, DktEntry: 10-1, Page 207 of 222

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Sincerely,

Julie Agcaoili

JULIE AGCAOILI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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June 1, 2015

Lori Anne Rodriguez
4691 Mia Circle
San Jose, CA 95136

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Dear Sir/Madam:

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<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
MAR	GLENFIELD 60	20626618	22

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Sincerely,

Julie Agcaoli

JULIE AGCAOILI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

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This letter acknowledges that the California Department of Justice (the Department), Bureau of Firearms (the Bureau) has received your Law Enforcement Gun Release (LEGR) Application (BOF 119) with the following firearm information:

<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
SR	CARBINE	1401182	30

State law requires the Department to conduct a firearms eligibility check on anyone who claims title to a firearm in the custody or control of a court, or law enforcement agency (LEA) and who wishes to have that firearm returned to him or her, in order to determine whether that person is eligible under state and federal law to possess firearms pursuant to Penal Code section 33850. The Department has processed your application and determined that, as of the date of this letter, you are eligible to possess a firearm.

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It is your responsibility to prove you own or have a right to possess any firearm in the custody of a court or LEA that you wish to have returned to you. A court or LEA with direct access to the Department's Automated Firearms System (AFS) is required to check AFS to determine whether the person seeking return of a firearm is listed as the owner/purchaser of the firearm(s) sought to be redeemed pursuant to Penal Code section 33855, subdivisions (a) and (b). At the time of this eligibility check, the Department reviewed AFS and determined the following:

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June 1, 2015
Page 2

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Sincerely,

Julie Agcaoili

JULIE AGCAOILI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

June 1, 2015

Lori Anne Rodriguez
4691 Mia Circle
San Jose, CA 95136

Re: Law Enforcement Gun Release - Firearm(s) Eligibility Clearance

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<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
REM	SPEEDMASTER	A1657555	22

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JULIE AGCAOILI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

KAMALA D. HARRIS
Attorney General

State of California
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<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
WIN	290	52189	22

State law requires the Department to conduct a firearms eligibility check on anyone who claims title to a firearm in the custody or control of a court, or law enforcement agency (LEA) and who wishes to have that firearm returned to him or her, in order to determine whether that person is eligible under state and federal law to possess firearms pursuant to Penal Code section 33850. The Department has processed your application and determined that, as of the date of this letter, you are eligible to possess a firearm.

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Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

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<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
WIN	RANGER 120	L1813538	12

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For KAMALA D. HARRIS
Attorney General

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State of California
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WEO	744 VH	SB013398	44

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SW	629 6 CLASSIC	CFJ8200	44

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Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

No. 17-17144 [Dist Ct. No.: 5:15-cv-03698-EJD]

IN THE
UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

LORI RODRIGUEZ; et al.,
Plaintiffs - Appellants,

vs.

CITY OF SAN JOSE; et al.,
Defendants - Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EXCERPT OF RECORD - Volume II of II
[SUBMITTED BY THE APPELLANTS]

*Donald E. J. Kilmer, Jr.
CA State Bar No.: 179986
1645 Willow Street, Suite 150
San Jose, California 95125
Voice: 408/264-8489
Fax: 408/264-8487
Don@DKLawOffice.com

**Counsel of Record for Plaintiff - Appellants*

CORPORATE DISCLOSURE STATEMENT

SECOND AMENDMENT FOUNDATION, INC., (SAF) is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF has over 650,000 members and supporters nationwide, including California. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately owned and possess firearms, and the consequences of gun control. SAF is not a publicly traded corporation.

THE CALGUNS FOUNDATION, INC., (CGF) is a non-profit organization incorporated under the laws of California with its principal place of business in Roseville, California. CGF supports the California firearms community by promoting education for all stakeholders about California and federal firearms laws, rights and privileges, and by defending and protecting the civil rights of California gun owners. CGF is not a publicly traded corporation.

These institutional plaintiffs have provided funding for this suit.

Dated: February 26, 2018

/s/ Donald Kilmer
Donald Kilmer, Attorney for Appellants

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Trial Court Docket No.	Document Description (File Date)	ER Page #	ER Tab #
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39	ERRATA (re: Dkt Entry 36) <u>Corrected copies of Exhibits C and D attached to Declaration of DONALD KILMER (Plaintiffs' Counsel) in support of Plaintiffs' CROSS-MOTION FOR SUMMARY JUDGMENT and Opposing Defendants' MOTION FOR SUMMARY JUDGMENT.</u> (09/21/2016)	ER-349	14
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Tab 12

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

5 Attorneys for Plaintiffs

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

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

13 Plaintiffs,

14 vs.

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

19 Defendants.

Case No.: 5:15-CV-03698 EJD

**PLAINTIFFS' RESPONSIVE
 SEPARATE STATEMENT OF FACTS
 IN OPPOSITION TO DEFENDANTS'
 MOTION FOR SUMMARY
 JUDGMENT OR PARTIAL
 SUMMARY ADJUDICATION**

- and -

**SEPARATE STATEMENT IN
 SUPPORT OF PLAINTIFFS' CROSS-
 MOTION FOR SUMMARY
 JUDGMENT OR PARTIAL
 SUMMARY ADJUDICATION**

Claim or Defense	Moving Party's Undisputed Facts & Supporting Evidence	Opposing Party's Response, Additional Facts, Undisputed Fact for Cross-Motion & Supporting Evidence
Article III Standing		
1. Second Amendment Foundation, Inc. (SAF) and Calguns Foundation, Inc. did not suffer an actual injury or immediate threat of actual injury.	Fact 1. Lori Rodriguez is not a member of SAF or Calguns. L. Rodriguez Dep. 13:23-14:2. Vanni Declaration Ex. G.	Undisputed.

<p>1 Second Amendment Foundation, Inc., (SAF) meets Article III standing requirements.</p>		<p>Additional Fact A¹: See: Declaration of Alan Gottlieb, Executive Vice-President of SAF.</p>
<p>4 Calguns Foundation, Inc., (CGF) meets Article III standing requirements.</p>		<p>Additional Fact B: See: Declaration of Brandon Combs, Executive Director of CGF.</p>
	<p>8 Fact 2. 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>11 Vanni Declaration ¶ 2 and Ex. A (SJPD Duty Manual § L5705)</p> <p>14 Valentine Dep. 55:6-10. Vanni Declaration Ex. H.</p>	<p>Undisputed with respect to firearms controlled by or possessed by Edward Rodriguez.</p> <p>Disputed with respect to firearm(s) owned, registered or under the control of Lori Rodriguez.</p> <p>See: Valentine Dep. 16:8-17:1, 68:11-20</p> <p>Lori Declaration: ¶¶ 3, 4, 6, 7, 8, 12, 13, 14, 15, 16.</p> <p>Lori Dep. 18:4-20:5,</p>
<p>17 The Defendants were not authorized under any state law or decisional authority to seize firearms owned and under the control of Lori Rodriguez.</p>		<p>Additional Fact C: All of the Rodriguez firearms were stored in a California Approved Firearm Safe.</p> <p>See: Lori Declaration ¶¶ 3, 4, 6, 7, 8, 12, 13, 14, 15, 16.</p>

¹ Defendants set forth 21 numbered “facts” in support of their Motion for Summary Judgment. Based on the Court’s Standing Order IV, Plaintiffs do not appear to be authorized to submit a separate Separate Statement of Undisputed Facts in support of their Cross-Motion for Summary Judgment. Therefore Plaintiffs will incorporate their moving party “facts” under the additional facts protocol and use lettered facts (A, B, C, ...) to distinguish them as both additional facts opposing Defendant’s Motion for Summary Judgment and as moving party facts in support of Plaintiffs’ Cross-Motion for summary judgment.

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		<p>Additional Fact D:</p> <p>At the time Officer Valentine demanded surrender of the Rodriguez firearms, Edward was already on his way to the hospital and therefore unable to exercise control over any firearms in the Rodriguez’s gun safe.</p> <p>See: Valentine Dep. 28:11-24, 31:14-33:16, 54:1-4, 68:24 - 69:7</p>
		<p>Additional Fact E:</p> <p>Lori had the key to the combination dial in a secure place. The combination dial could not be turned without the key.</p> <p>See: Lori Dep. 45:20-46:21, 48:3-25, 50:8-15,</p> <p>Lori Declaration: ¶¶ 3, 4, 6, 7, 12, 13.</p>
		<p>Additional Fact F:</p> <p>Lori had the combination to the gun safe changed on April 26, 2013 and since then, has kept the key in a secure place. The key only unlocks the combination dial and she is the only person who knows the combination of the safe and it is not written down anywhere for Edward to discover.</p> <p>See: Lori Dep. 58:2-60:18.</p> <p>Lori Declaration: ¶¶ 3, 6, 7, 13.</p>

First Claim for Relief: Second Amendment 42 USC § 1983, 1988		
1. Defendants have not infringed upon Plaintiffs Second Amendment Rights to keep and bear arms for self-defense.	Fact 3. Lori Rodriguez can own, possess, or acquire firearms. Plaintiffs Complaint ¶ 28. L. Rodriguez Dep. 70:22-24. Vanni Declaration Ex. G.	Undisputed with respect to ownership, acquisition, and possession of future firearms. Disputed with respect to Lori's right to "keep and bear" firearms already owned by her. See: Lori Declaration ¶¶ 3, 11, 15, 16, 17, 18, 19.
2. The City does not have a policy, practice, or custom that violates Plaintiffs' Second Amendment Rights.	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. Vanni Declaration ¶ 2 and Ex. A (SJPD Duty Manual § L5705) Valentine Dep. 55:6-10. Vanni Declaration Ex. H.	Undisputed with respect to firearms owned, registered or under the control of Edward Rodriguez. Disputed with respect to firearm(s) owned, registered or under the control of Lori Rodriguez. See: Valentine Dep. 16:8-17:1, 68:11-20 Lori Declaration: ¶¶ 3, 4, 6, 7, 8, 12, 13, 14, 15, 16, 17, 18, 19.
	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. Vanni Declaration ¶¶ 3-7 and Exs. B-F. Defendants' Request for Judicial Notice ¶¶ 1-5.	Undisputed.

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<p>The Defendants' policies, procedures and customs violate the rights of any law-abiding citizen who has the means to secure firearms, but who live with persons unable to possess firearms.</p>		<p>Additional Facts A, B, C, D, E and F - <i>supra</i>.</p>
<p>The Defendants' policies procedure and customs as applied to Lori Rodriguez, both at the time of the seizure and as a continuing circumstance violate, Lori's right to keep and bear her own firearms.</p>		<p>Additional Facts A, B, C, D, E and F - <i>supra</i>.</p> <p>Additional Fact G:</p> <p>Lori Rodriguez was the sole registered owner of at least one of the firearms seized by the Defendants.</p> <p>See: Valentine Dep. 16:8 - 17:1</p> <p>Lori Declaration: ¶¶ 3, 15</p> <p>Lori Dep. 23:12-15.</p>
		<p>Additional Fact H:</p> <p>Officer Valentine knew that Lori Rodriguez was the registered owner of at least one of the firearms stored in the Rodriguez gun safe and he confirmed that fact with his dispatcher.</p> <p>See: Valentine Dep. 16:8 - 17:1.</p>
		<p>Additional Fact I:</p> <p>Lori objected to the seizure of her personal firearm and conveyed that objection to Officer Valentine.</p> <p>See: Valentine Dep. 68:11-20</p> <p>Lori Declaration: ¶¶ 3, 16.</p>

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		<p>Additional Fact J:</p> <p>Lori always stood ready, willing and able to execute the necessary paper work to transfer sole registration and ownership of all of the Rodriguez firearms to her name.</p> <p>See: Lori Declaration: ¶¶ 2, 4, 5, 8, 9, 10, 15, 19.</p>
		<p>Additional Fact K:</p> <p>Lori knew and understood her duty to prevent Edward from obtaining possession of the firearms under her control.</p> <p>See: Lori Declaration: ¶¶ 4, 6, 7, 12, 13, 14.</p> <p>Lori Dep. 75:9-12, 76:6-20, 84:1-17.</p>
		<p>Additional Fact L:</p> <p>The California Department of Justice approved the transfer and registration of all the Rodriguez firearms to Lori during the month of May 2015.</p> <p>See: Lori Declaration: ¶¶ 5, 6, 7, 8, 9, 10.</p>

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		<p>Additional Fact M:</p> <p>Lori Rodriguez obtained a Law Enforcement Gun Release Approval letter pursuant to California Penal Code § 33800 <i>et seq.</i>, for each and every firearm seized by the Defendants on June 1, 2015 and tendered those to the Defendants on June 11, 2015.</p> <p>See: Lori Declaration: ¶¶ 5, 6, 7, 8, 9, 10.</p>
		<p>Additional Fact N:</p> <p>On or about July 6, 2015 the Defendants refused to release firearms owned and registered to Lori Rodriguez.</p> <p>See: Lori Declaration: ¶11.</p>
		<p>Additional Fact O:</p> <p>It is not rational to refuse the return of a firearm to an owner for “safety” reasons – when the owner is eligible to purchase, own and can safely store those firearms, or can purchase new ones, in compliance with state and federal law.</p> <p>See: Lori Declaration: ¶¶ 15, 17, 19.</p> <p>Lori Dep. 70:22-71:18.</p>

Second Claim for Relief: Fourth Amendment 42 USC § 1983, 1988			
1 2 3 4 5 6 7	1. The confiscation of the firearms was reasonable under the Fourth Amendment.	Fact 6. Edward Rodriguez was detained for a 5150 hold and is a prohibited person under Section 8103. Plaintiffs' Complaint ¶ 18. L. Rodriguez Dep. 70:17-21. Vanni Declaration Ex. G.	Undisputed.
8 9 10 11 12	Warrantless seizures from the home violate the Fourth Amendment unless there is a valid exception to the warrant requirement.		Additional Fact P: The police did not have warrant to seize Lori's firearms and she did not consent to them being seized. See: Lori Declaration ¶ 17.
13 14 15 16 17 18 19 20	The warrantless seizure of the firearm registered and owned by Lori Rodriguez, even if the seizure of other firearms was valid, was unreasonable and violated the Fourth Amendment.		Additional Facts C-O, <i>supra</i> . Additional Fact Q: Lori Rodriguez was not being detained for a 5150 and is not now, nor has she ever been a prohibited person under any theory of law. See: Lori Declaration: ¶ 14.
21 22 23 24 25 26		Fact 7. Lori called the San Jose Police Department because her husband was in distress and exhibited signs of erratic behavior. Plaintiffs' Complaint ¶ 18. L. Rodriguez Dep. 28:15-17. Vanni Declaration Ex. G.	Undisputed.

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	<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>Undisputed.</p>
		<p>Additional Fact R:</p> <p>Edward Rodriguez's statements about firearms in his safe may have been in response to a question by Officer Valentine.</p> <p>See: Valentine Dep. 44:12 - 45:6.</p>
		<p>Additional Fact S:</p> <p>There were no firearms located outside of the Rodriguez gun safe at any time prior to Edward being transported to the Hospital.</p> <p>See: Valentine Dep. 43:7-15</p> <p>Lori Dep. 40:24-41:10</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>	<p>Undisputed.</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>Undisputed.</p>
<p>Defendants' warrantless seizure of Lori's Rodriguez's firearms was not consensual because it was obtained under duress.</p>		<p>Additional Fact T:</p> <p>It is a crime to obstruct, delay or interfere with a peace officer in the performance of his or her duty.</p> <p>See: Penal Code § 148.</p>
		<p>Additional Fact U:</p> <p>Lori Rodriguez was aware at time of the seizure of her firearm(s), that it was wrong to delay, obstruct or interfered with a peace officer in the performance of his/her duty.</p> <p>See: Lori Declaration: ¶ 16.</p>

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	<p>Fact 11. After being told that the Officers had [to] 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>	<p>Undisputed.</p>
<p>The seizure of the firearms was not consensual.</p>		<p>Additional Fact V:</p> <p>Officer Valentine did not use the San Jose Police Department form for documenting consensual searches.</p> <p>See: Valentine Depo 18:16-22, 46:12-15</p>
<p>There were no exigent circumstances to justify the warrantless seizure of the Rodriguez firearms.</p>		<p>Additional Fact W:</p> <p>Officer Valentine was Officer in Charge at the Rodriguez home and made the decision to seize the firearms.</p> <p>See: Valentine Dep 28: 11-24.</p>

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		<p>Additional Fact X:</p> <p>Any discussions had by Officer Valentine about seizing the firearms did not take place until after Edward Rodriguez was secured and shortly after that Edward was transported by ambulance to the hospital for a 72 hour hold pursuant to 5150.</p> <p>See: Valentine Dep 31:14-33:16, 54:1-4</p>
		<p>Additional Fact Y:</p> <p>Lori Rodriguez did not report that any domestic violence had occurred.</p> <p>Valentine Depo: 37:25 - 38:5</p>
		<p>Additional Fact Z:</p> <p>Officer Valentine filed a declaration in the state action that contained a <u>false statement</u> saying he had conducted a “protective sweep” of the Rodriguez home. He admits in his deposition that this was an error and that his report, which does not refer to a protective sweep, is the more accurate description of the events in question. Namely that there were no exigent circumstances at the Rodriguez home requiring protective sweeps.</p> <p>Valentine Depo: 38:6 - 43:6.</p>

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		<p>Additional Fact AA:</p> <p>Officer Valentine told Lori Rodriguez that he was required by law to confiscate all weapons in the Rodriguez home.</p> <p>Valentine Depo: 46:23 - 48:18, 58:20 - 59:1, 60:10-15. 62:24 - 63:15, 67:13-21</p>
<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>Undisputed.</p>
<p>Retention of the firearms registered to and cleared for release to Lori Rodriguez <i>after</i> the Sixth District Court of Appeal authorized release violates the Fourth Amendment, even if the original seizure was justified.</p>		<p>Additional Fact BB:</p> <p>The Sixth District Court of Appeal authorized release of the firearms to Lori if she complied with Penal Code § 38880.</p> <p>See Vanni Declaration Exhibit F, pg. 61-62 of Document #23, pg. 16-17 of the 6th DCA opinion.</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>Undisputed with respect to firearms owned or registered to Edward Rodriguez.</p> <p>Disputed with respect to firearm(s) owned or registered to Lori Rodriguez.</p> <p>See: Lori Declaration: ¶¶ 3, 4, 6, 7, 8, 12, 13, 14, 15, 16.</p>
<p>Seizure of of the firearm registered to Lori Rodriguez violated the Fourth Amendment.</p>		<p>See Additional Facts C-Q, <i>supra</i>.</p>
<p>Retention of the firearms registered to and cleared for release to Lori Rodriguez <i>after</i> the Sixth District Court of Appeal authorized release violates the Fourth Amendment, even if the original seizure was justified.</p>		<p>See Additional Fact BB, <i>supra</i>.</p>
<p>Third Claim for Relief: Fifth Amendment (Takings) 42 USC § 1983, 1988</p>		
<p>1. Defendants acquired the firearms under section 8102.</p>	<p>Fact 14. Edward Rodriguez was detained for a 5150 hold and is a prohibited party under Section 8103.</p> <p>Plaintiffs' Complaint ¶ 18.</p> <p>L. Rodriguez Dep. 70:17-21. Vanni Declaration Ex. G.</p>	<p>Undisputed.</p>
<p>Taking of personal property, even if justified on the grounds of Public Safety, requires just compensation if the seizure turns into a forfeiture.</p>		<p>Additional Fact Q. <i>supra</i>.</p>

<p>2. The City retains the firearms pursuant to a valid Court order.</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.</p> <p>Vanni Declaration ¶¶ 3-7 and Exs. B-F.</p> <p>Defendants' Request for Judicial Notice ¶¶ 1-5.</p>	<p>Undisputed.</p>
<p>Conversion of personal property for public use requires just compensation.</p>		<p>Additional Fact CC:</p> <p>The firearms owned and registered to Lori Rodriguez are valuable personal property.</p> <p>See: Lori Declaration: ¶ 18.</p>
<p><u>Fourth Claim for Relief: Fourteenth Amendment 42 USC § 1983, 1988</u></p>		
<p>1. Lori had Procedural Due Process under Section 8102</p>	<p>Fact 16. The City initiated a petition, City of San Jose v. Edward Rodriguez under Section 8102.</p> <p>Vanni Declaration ¶ 3 and Ex. B (City's Petition).</p> <p>Defendants' Request for Judicial Notice ¶ 1.</p>	<p>Undisputed with respect to all dates prior to June 11, 2015.</p> <p>Disputed with respect to all dates after the California Department of Justice approved the transfer and release of firearms to Lori Rodriguez.</p>
<p>The Fourteenth Amendment Procedural Due Process claim arises after the Sixth District Court of Appeal authorized the release of the firearms through the process of Penal Code ¶ 33800 <i>et seq.</i></p>		<p>See: Additional Facts L, M, N, O and BB. <i>Supra.</i></p> <p>See: Lori Declaration ¶ 5, 6, 7, 8, 9, 10, 11, 15, 19.</p>

1		Fact 17. Lori intervened into City of San Jose v. Edward Rodriguez and requested a hearing to seek return of the firearms.	Undisputed.
2		Vanni Declaration ¶ 4 and Ex. C (Lori's Request for Hearing).	
3		Defendants' Request for Judicial Notice ¶¶ 3.	
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8		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.	Undisputed.
9		Vanni Declaration ¶ 5 and Ex. D (Reporter's Transcript).	
10		Defendants' Request for Judicial Notice ¶¶ 1-5.	
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16		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.	Undisputed.
17		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>).	
18		Defendants' Request for Judicial Notice ¶ 5.	
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<p>1 Even if the original 2 seizure provided full due 3 process protection, the 4 retention of the firearms 5 after the Court of 6 Appeals authorized 7 release, violates due 8 process.</p>		<p>See: Additional Facts L, M, N, O and BB. <i>Supra.</i></p> <p>See: Lori Declaration ¶ 5, 6, 7, 8, 9, 10, 11, 15, 19.</p>
<p>9 2. The City retains the 10 firearms because Judge 11 Kirwan’s order regarding 12 the safety of returning 13 the firearms to Lori.</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.</p> <p>Vanni Declaration ¶¶ 3-7 and Exs. B-F.</p> <p>Defendants’ Request for Judicial Notice ¶¶ 1-5</p>	<p>Undisputed.</p>
<p>14 Even if the original 15 seizure provided full due 16 process protection, the 17 retention of the firearms 18 after the Court of 19 Appeals authorized 20 release, violates due 21 process.</p>		<p>See: Additional Facts L, M, N, O and BB. <i>Supra.</i></p> <p>See: Lori Declaration ¶ 5, 6, 7, 8, 9, 10, 11, 15, 19.</p>
<p><u>Fifth Claim for Relief: State Law Claim under Cal. Penal Code §§ 33800 et seq.</u></p>		
<p>22 1. The City retains the 23 firearms because Judge 24 Kirwan’s order regarding 25 the safety of returning 26 the firearms to Lori.</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.</p> <p>Vanni Declaration ¶¶ 3-7 and Exs. B-F.</p> <p>Defendants’ Request for Judicial Notice ¶¶ 1-5</p>	<p>Undisputed.</p>

Tab 13

1 Donald E. J. Kilmer, Jr. [SBN: 179986]
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3 Voice: (408) 264-8489
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5 Attorneys for Plaintiffs

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

11
12 LORI RODRIGUEZ, THE SECOND
AMENDMENT FOUNDATION,
13 INC., and THE CALGUNS
FOUNDATION, INC.,

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15 Plaintiffs,

16 vs.

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

20 Defendants.

Case No.: 5:15-CV-03698

**DECLARATION OF ATTORNEY
DONALD KILMER 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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22
23 **DECLARATION OF DONALD KILMER**

24 I, Donald Kilmer, declare as follows, based on my own personal knowledge:

- 25 1. I am the attorney for the plaintiffs in the above entitled action.
26 2. Attached as Exhibit A are true and correct copies of pages cited in Plaintiffs'
27 Separate Statement taken from Defendant Valentine's Deposition.

- 1 3. Attached as Exhibit B are true and correct copies of pages cited in Plaintiffs'
2 Separate Statement taken from Plaintiff Lori Rodriguez's Deposition.
3 4. Attached as Exhibit C is a copy of Assembly Bill 500 which became law while
4 the state case was pending.
5 5. Attached as Exhibit D is a copy of Senate Bill 363, which became law while
6 the state was pending.
7 6. The remedies sought in this case are limited to declaratory and injunctive
8 relief and payment of attorney fees and costs of Plaintiffs are deemed the
9 prevailing party.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed on September 15, 2016

12 /s/ Donald Kilmer

13 Attorney for Plaintiffs
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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

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A P P E A R A N C E S

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I N D E X O F E X A M I N A T I O N

PAGE:

By Mr. Kilmer

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I N D E X O F E X H I B I T S

PAGE:

A Notice of Deposition

4

B 16-page document entitled "San Jose Police
Department General Defense Hardcopy" Bates
numbers SJ000001 - SJ000016

9

C Five-Page document entitled "Event Details
Report" Bates numbers SJ000017- SJ000021

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D Declaration of Officer Steven Valentine

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DEPOSITION OF OFFICER STEVEN VALENTINE

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1 safe, I don't care. I mean...

2 Q. BY MR. KILMER: Your next sentence in that
3 paragraph is: "Eleven of the firearms belonged to
4 Edward Rodriguez."

5 Edward was the person you took into custody for
6 a mental health hold, correct?

7 A. Yes.

8 Q. And then your next sentence says: "One of the
9 firearms belonged to the RP."

10 Does that stand for "reporting party"?

11 A. Yes.

12 Q. And the reporting party would have been Lori
13 Rodriguez?

14 A. Yes.

15 Q. And is Lori Rodriguez the one sitting next to
16 me?

17 A. Yes.

18 Q. How did you determine that one of the firearms
19 belonged to her?

20 A. She told me.

21 Q. Were you in communication with your dispatcher
22 as to who the firearms were registered to that night?

23 A. Yes.

24 Q. And were you able to confirm that with your
25 dispatcher?

1 13?

2 A. Yes.

3 Q. When you made the improvised note -- or should

4 we call it an improvised receipt? Would that be fair?

5 A. Yes.

6 Q. -- did you make a copy for yourself as well?

7 A. Well, I would have had a copy -- I would have

8 had the same list to transcribe to the Form 13. So I

9 would say yes.

10 Q. And that would have been part of your notes that

11 you kept during the event, correct?

12 A. Yes.

13 Q. And that note would have been destroyed later

14 with the other notes that you destroyed?

15 A. Yes.

16 Q. Does the San Jose Police Department have a form

17 to document consensual searches?

18 A. Yes.

19 Q. Did you have that form with you that night?

20 A. Yes.

21 Q. Did you use one?

22 A. No.

23 Q. Why not?

24 A. It wasn't a typical situation where you would

25 use one.

1 5150."

2 What does that mean, if you know?

3 A. The event would have been dispatched as what
4 would be called a welfare check. That's your WELCK.
5 That's an abbreviation for welfare check. And then the
6 final disposition of the case was a 5150.

7 Q. And do you know who made that change from
8 welfare check to 5150?

9 A. Would have been me.

10 Q. What was your -- who was the -- strike that.

11 Was there an officer in charge of the scene that
12 night?

13 A. Yes.

14 Q. And who was that officer?

15 A. Me.

16 Q. Is that because you arrived first or because you
17 were the ranking officer?

18 A. Because it's my beat.

19 Q. So would you have made all of the command
20 decisions there that night?

21 A. Yes.

22 Q. And that would include the decision to seize any
23 weapons at the site?

24 A. Yes.

25 Q. Did you consult with anybody else about that

DEPOSITION OF OFFICER STEVEN VALENTINE

1 Q. Okay.

2 A. You can go down to -- you can go to 24 January
3 03:57 on Page 3.

4 Q. Okay. That's at the bottom of the page?

5 A. The very last entry.

6 Q. Okay.

7 A. That's a unit I.D. 71X4 calling for normal
8 traffic. That's saying that we no longer have a
9 dangerous situation occurring.

10 To go any further than that when he was in the
11 ambulance and we were all talking, that would be a
12 little bit -- that would be pretty vague. There is
13 about a 30-minute window that could have happened.

14 Q. Okay. But by 03:57 Mr. Edwards [sic] was in the
15 ambulance?

16 A. I don't know if he was in the ambulance but he
17 was at least secured. We had the situation where we
18 didn't no longer request any assistance.

19 Q. So any discussion about the firearms took place
20 after Mr. Rodriguez was secured?

21 MR. VANNI: Objection; misstates his testimony.

22 MR. KILMER: All right. I will strike the
23 question.

24 Q. BY MR. KILMER: Any discussion about seizing the
25 firearms took place after the scene was safe?

- 1 A. Yes.
- 2 Q. I will ask you to turn to Page 4 of this report.
- 3 And there is an entry at -- there is three entries at
- 4 04:21. I will direct your attention to the third one.
- 5 And the entry is by 71X4, and the entry says "VMC
- 6 following the rig. Event closed."
- 7 Would it be fair to say at that point in time
- 8 Mr. Rodriguez was in the ambulance --
- 9 A. Yes.
- 10 Q. -- on his way to VMC?
- 11 Just above that at 04:13 there is an entry by
- 12 7X10. That's your district sergeant, correct?
- 13 A. Yes.
- 14 Q. And then there is a -- letters AM next to that.
- 15 Do you know what that means?
- 16 A. He cleared the scene.
- 17 Q. He left?
- 18 A. He went back into service, yes.
- 19 Q. Did you have any conversations with him after he
- 20 cleared the scene?
- 21 A. Not that I can recall.
- 22 Q. So if you had a conversation with the district
- 23 sergeant about seizing the weapons, it would have taken
- 24 place between 03:57 and 04:13, correct?
- 25 A. Yes.

1 Q. Do you recall now whether or not you had a
2 conversation with him about that during that time
3 period?

4 A. Oh, I thought I stated I did have a conversation
5 with him.

6 Q. Do you remember now how long the conversation
7 took?

8 A. No, I do not.

9 Q. Do you remember what was said?

10 A. No, I don't.

11 Q. Do you remember who initiated the conversation?

12 A. No, I don't.

13 Q. Do you remember what conclusions you came to?

14 A. The two conclusions that we came to were the
15 5150 hold for Mr. Rodriguez and the firearms being
16 removed from the home.

17 Q. Now your conversation with 7X10, the district
18 sergeant, were you consulting with him or were you
19 asking him to make a decision about removal of the
20 firearms?

21 A. I would say more of advice.

22 Q. So you were consulting a colleague about what
23 would be the best course of action?

24 A. Yes.

25 Q. The decision, though, was yours whether to

1 Q. It was not meant to suggest that there was --
2 this was a marital disturbance or a dispute between a
3 husband and wife, was it?

4 A. Just a family disturbance.

5 Q. It wasn't meant to suggest that it was a call
6 for domestic violence, was it?

7 A. No.

8 Q. In Paragraph 3 -- I'm sorry. Strike that.
9 Paragraph 4, at lines 8 and 9, you state that:
10 "During the contact, she" -- and I am assuming you are
11 referring to Lori Rodriguez -- "was fearful of
12 respondent's behavior."

13 Do you remember writing that?

14 A. Yes.

15 Q. Did you mean that Lori was afraid of her husband
16 or that she was afraid for him?

17 A. She was fearful of her husband at the time.

18 Q. You believe that she was afraid that he would
19 hurt her?

20 A. I would speculate. I just remember her telling
21 me.

22 Q. Could that be read both ways, that she was also
23 afraid for her husband instead of her husband?

24 A. She was fearful of her husband.

25 Q. Had her husband harmed her?

- 1 A. No.
- 2 Q. Did she say he had harmed her?
- 3 A. No.
- 4 Q. Was there any evidence that he had harmed her?
- 5 A. No.
- 6 Q. At the bottom of the page, starting Paragraph 8,
7 your sentence reads: "During a protective sweep for
8 weapons inside the respondent's house, I located 12
9 firearms within a gun safe."
10 You used the term "protective sweep" in your
11 declaration, but you did not use it in your written
12 report. Why is that?
- 13 A. Difference of a couple years of language.
- 14 Q. Difference of a couple years.
- 15 Let me help you refresh your recollection. I am
16 not trying trap you here.
- 17 You prepared this report at or near the time of
18 the event, correct, the written San Jose PD report?
- 19 A. I prepared that the date of the event.
- 20 Q. And that was January 24, 2013, correct?
- 21 A. Yes.
- 22 Q. And if you look on Page 3 of your declaration,
23 you signed that on February 12, 2013, correct?
- 24 A. Yes.
- 25 Q. So it was less than three weeks later?

1 A. I thought that this was during the trial. I'm
2 sorry.

3 Q. I am not trying to trap you.

4 A. I thought this was from the trial.

5 Q. From the trial in court, yeah. You prepared
6 this in anticipation of that. It's all right.

7 So three weeks later you signed this
8 declaration; that's accurate?

9 A. Yes.

10 Q. All right.

11 MR. VANNI: Don --

12 Q. BY MR. KILMER: So my question is that you used
13 the words "protective sweep" three weeks later, but you
14 didn't use the words "protective sweep" in your report.
15 And if you have an explanation for why the difference.

16 A. No, I do not.

17 MR. VANNI: Don, I hate to stop you, but it's 2
18 o'clock --

19 MR. KILMER: Absolutely. Let's take a break and
20 go off the record.

21 (A short recess was taken.)

22 Q. BY MR. KILMER: Officer Valentine, I'm going to
23 give you a definition of "protective sweep" and ask if
24 you agree with it.

25 "Protective sweep is a properly limited

1 protective sweep in conjunction with an in-home arrest
2 when the searching officer possesses a reasonable
3 belief based on specific and articulate facts that the
4 area to be swept harbors an individual posing a danger
5 to those on the arrest scene."

6 Is that a fair and accurate description of a
7 "protective sweep"?

8 A. Yes.

9 Q. Is it a definition you would use?

10 A. Yes.

11 Q. Have you had a chance to reflect why you used
12 the word "protective sweep" in your declaration signed
13 on February 12, 2013, and you did not use the term
14 "protective sweep" in your report filed on the 24th of
15 January?

16 A. Well, first off, I would like to kind of go back
17 on this document.

18 Q. Which document?

19 A. On Exhibit D.

20 Q. Okay. Sure.

21 A. I didn't prepare this document. This document
22 was prepared for my review and approval of.

23 This is what happened.

24 Q. All right.

25 A. The language used in here wouldn't be the

1 language that I would use in a police report.

2 Q. All right.

3 A. Does that make sense when I say "language"?

4 Q. It does.

5 A. This is a true and correct depiction of what
6 occurred, just different language.

7 Q. Okay. So in Paragraph 8, when it says "during a
8 protective sweep," would your testimony today be that
9 there was no protective sweep?

10 A. Yes.

11 Q. So to be fair, that term should have been struck
12 from the declaration because it didn't accurately
13 reflect your testimony?

14 A. Yes.

15 Q. So just to be clear: There was no protective
16 sweep that night?

17 A. We never swept the house, no.

18 MR. VANNI: You want to step outside real quick?

19 THE WITNESS: Yes.

20 MR. VANNI: Don, do you mind if we take a quick
21 break and chat?

22 MR. KILMER: There is no question pending.

23 Sure.

24 MR. VANNI: We will be right back.

25 (A short recess was taken.)

1 Q. BY MR. KILMER: We've established that there was
2 no protective sweep that night, that that was a mistake
3 in the declaration?

4 MR. VANNI: Objection; misstates his testimony.

5 Q. BY MR. KILMER: Let's go back and clarify it,
6 then.

7 On Page 2 at Paragraph 8, there is a paragraph
8 that begins "During a protective sweep for weapons
9 inside of the respondent's house" -- comma, and then it
10 goes on.

11 You testified earlier that no protective sweep
12 in fact happened, correct?

13 A. Correct.

14 Q. And that your signing this under declaration of
15 penalty of perjury was just an oversight on your part
16 and that there was no protective sweep?

17 A. Yes.

18 Q. Do you know who inserted the words "protective
19 sweep" into this declaration?

20 A. No, I do not.

21 Q. Did the idea of doing a protective sweep that
22 night come up on the night in question of January 24?
23 Did anybody suggest that tactic?

24 A. No.

25 Q. Prior to you going out and having a conversation

1 with your lawyer, you were pointing to Paragraph 3 on
2 Page 1 of Exhibit D. Is there something important on
3 Paragraph 3 that you would like to tell me about?

4 A. No. We've clarified it.

5 Q. Is there another mistake on this declaration?

6 A. No.

7 Q. Now in your -- both your report and this
8 declaration you state that the firearms were located in
9 a gun safe; is that correct?

10 A. Yes.

11 Q. Was the safe open when you arrived?

12 A. No.

13 Q. Were any guns outside of the safe when you
14 arrived?

15 A. No.

16 Q. Did Mr. Rodriguez at any time threaten to use a
17 gun?

18 A. Yes.

19 Q. He did. Is that in your report?

20 A. I will go back on that. He mentioned the use of
21 guns.

22 Q. In what way did he mention the use of guns?

23 A. In a lot of his nonsense talk.

24 Q. What did he say?

25 A. Talking about shootings in schools and what was

1 in the news those days.

2 Q. Did he mention using a gun himself?

3 A. No, he did not.

4 Q. So he was talking about the school shootings.

5 Did he mention shootings in any other context?

6 A. Just shootings.

7 Q. But school shootings, correct?

8 A. He specifically said a school shooting.

9 Shooting up schools, yes.

10 Q. Did he mention guns or shooting at any other
11 time?

12 A. He talked about the guns in the gun safe.

13 Q. What did he say?

14 A. He just talked about the guns in the gun safe.

15 Q. How did he talk about them? Did he describe
16 them?

17 A. No. Just let us know that he had a gun safe
18 full of guns.

19 Q. Was that in response to a question?

20 A. I don't know.

21 Q. Did you question Mr. Rodriguez about the guns in
22 the gun safe?

23 A. Yes.

24 Q. What did you say to him?

25 A. I just asked him how many guns there were in the

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 Q. What specifically did you say to her with
2 respect to the law of firearms in 5150?

3 A. I would have shown her the form where it talks
4 about the removal of firearms on the 5150.

5 Q. Okay.

6 A. And that because he is being placed on a 5150
7 hold, the firearms need to be removed from the home
8 pursuant to the law.

9 Q. What form are we talking about?

10 A. I have a blank copy. I don't know if you can
11 read it on here.

12 MR. VANNI: Exhibit B might be better. The
13 color copy would be better.

14 THE WITNESS: If you were to look at Exhibit B,
15 Page 3 of 16, this is the application for a 72-hour
16 detention for evaluation and treatment. And if you
17 were to go to the bottom, at the very bottom there is
18 three boxes. And the first box of those three is
19 marked and then my name and badge.

20 I showed her this form. And pursuant to -- and
21 I can't read it here, but pursuant to -- I would have
22 told her pursuant to welfare and institution code -- I
23 can't read that code -- that the firearms were to be
24 confiscated and she would be notified of the procedure
25 for return.

1 Q. BY MR. KILMER: Is there a place for
2 Mrs. Rodriguez to sign this form?

3 A. No.

4 Q. Did she sign the form?

5 A. No.

6 Q. What proof do you have that she was given a copy
7 of this form?

8 A. She would not have been given a copy of this
9 form.

10 Q. What was done with the form?

11 A. Submitted with the report and a copy given to
12 EPS.

13 Q. So it's your testimony that you showed her a
14 copy of this and told her that you were required to
15 remove the weapons?

16 A. I can't say if I told her I was required. I
17 would have said pursuant to the law the weapons were to
18 be confiscated.

19 Q. Did you say that to her before or after you
20 claimed she consented to their seizure?

21 A. It would have all been in the same conversation.

22 Q. Did she voluntarily say, "I want you to remove
23 the guns"?

24 A. No.

25 Q. Did she object to the removal of the guns?

1 Q. And when did you make the decision to remove the
2 firearms?

3 A. I think we went over this. Sometime after
4 Mr. Rodriguez was secured.

5 Q. During that -- that brief conversation at 03:57
6 when the situation was declared normal and 04:13 when
7 your district sergeant cleared, correct?

8 A. Yes.

9 Q. It was during that time period that you decided
10 that you were going to confiscate the weapons?

11 A. Yes.

12 Q. What is the San Jose Police Department policy
13 with regard to the seizure of firearms during a welfare
14 check?

15 MR. VANNI: Objection; lacks foundation.

16 Q. BY MR. KILMER: Is there a San Jose Police
17 Department policy with regard to the seizure of
18 firearms during a welfare check?

19 A. No, there is not a policy. No.

20 Q. Does the San Jose Police Department have a
21 policy with regard to the seizure of firearms during a
22 5150?

23 A. Yes.

24 Q. What is that policy?

25 A. I would have to read the duty manual.

DEPOSITION OF OFFICER STEVEN VALENTINE

1 A. No. You can see what page it is and then you
2 can just -- I'm very computer illiterate so maybe there
3 is a quicker way. And then you just scroll down until
4 you get to that page.

5 Q. What would be another way that you would make an
6 inquiry?

7 A. You could do a search. But I have had very
8 little success with the search. I just find it easier
9 to --

10 Q. Just do the brute force approach?

11 A. Yes.

12 Q. Do you remember how long the section was on
13 confiscation of firearms?

14 A. No.

15 Q. Couple paragraphs? Three paragraphs?

16 A. No.

17 Q. Do you remember what words you used to obtain
18 Ms. Rodriguez's consent?

19 A. No.

20 Q. Do you remember if you asked for consent to
21 search or to seize?

22 A. I would have definitely told her that we were
23 seizing them. Our intention was to seize them.

24 Q. So you made it clear to her that you were going
25 to seize the weapons?

1 A. Yes.

2 Q. With or without her consent?

3 A. No.

4 Q. So if she would have said no, you would have
5 walked away and left the guns there?

6 MR. VANNI: Objection; calls for speculation.

7 MR. KILMER: No, it doesn't.

8 THE WITNESS: No.

9 Q. BY MR. KILMER: No?

10 A. No.

11 Q. So even over her objection, you would have taken
12 the guns?

13 A. No.

14 Q. No. Okay.

15 So if she had objected and said you are not
16 getting the guns, that would have been the end of the
17 matter; you would have left and left the guns there?

18 A. No.

19 Q. All right. That's what -- what would you have
20 done?

21 A. There would have been a discussion in regards to
22 warrants, other avenues at our disposal.

23 Q. Did you convey that information to
24 Ms. Rodriguez, that you would have obtained a warrant
25 if she didn't consent?

1 A. No. And I said discussions. Not that we would
2 have. We would have just discussed it.

3 Q. Would have discussed.

4 What would have been the purpose of the
5 discussion?

6 A. Find out if the situation arises to that level.

7 Q. Would the discussion have been to get her to
8 change her mind?

9 A. No.

10 Q. At any time did you tell Ms. Rodriguez that you
11 were required to seize the guns?

12 A. I would have just told her pursuant to the law
13 we were going to need to confiscate the firearms.

14 Q. And her response was?

15 A. She understood.

16 Q. And after that, she found the combination to the
17 safe and somebody helped her open it?

18 MR. VANNI: Objection; calls for speculation.

19 Q. BY MR. KILMER: If you know.

20 A. I don't know.

21 Q. Do you know if any of the other officers at the
22 scene prepared a written report?

23 A. No, they did not.

24 Q. So the only person preparing a report was you?

25 A. Yes.

DEPOSITION OF OFFICER STEVEN VALENTINE

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1 her cooperation.

2 MR. VANNI: Objection; misstates his testimony.
3 I think he said that pursuant to the law they had to
4 confiscate the firearms.

5 MR. KILMER: Let me rephrase the question.

6 Q. BY MR. KILMER: That you told Ms. Rodriguez that
7 pursuant to the law you had to confiscate the firearms,
8 and then after that she cooperated in opening the safe
9 and allowing the weapons to be taken into custody or
10 into police possession.

11 With regard to the timing of those events, would
12 you have any reason to contradict that, the timing of
13 that? In other words, your statement to her about the
14 law's requirements came before --

15 A. What am I contradicting? That's why I am
16 confused.

17 Q. Strike that. Let me rephrase the question.

18 Your statement to Lori Rodriguez that the law
19 required you to confiscate the weapons came before she
20 cooperated in opening the safe.

21 MR. VANNI: I'm going to object again and say
22 that misstates his testimony that he said that the law
23 required him to take the weapons.

24 Q. BY MR. KILMER: Did you say to Ms. Rodriguez
25 that you were required by law to seize the weapons?

DEPOSITION OF OFFICER STEVEN VALENTINE

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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 Q. And what was the response that you expected?

2 A. I didn't expect anything.

3 Q. Didn't you expect her to cooperate and open the
4 safe?

5 A. No.

6 Q. Then why did you ask her to open it?

7 A. Because you can't remove the firearms if it's
8 not open.

9 Q. So you were going to remove the firearms -- you
10 had already made the decision to remove the firearms at
11 that point?

12 A. Yes.

13 Q. Did you convey that conviction -- that level of
14 conviction to her that you were going to remove the
15 firearms?

16 A. I told her that we're going to confiscate the
17 firearms.

18 Q. And it was after that that she gave you the
19 combination to the safe, correct, or gave one of the
20 officers the combination of the safe?

21 A. Yes.

22 Q. What else did she say? What do you recall her
23 saying?

24 MR. VANNI: Objection. Vague in terms of --

25 Q. BY MR. KILMER: After you told her you were

DEPOSITION OF OFFICER STEVEN VALENTINE

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.

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

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[2]

1 night of the incident which is January 24th, 2013. Is
2 that statement correct?

3 A. Yes.

4 Q. And you've also alleged at the time one of
5 those firearms was your separate property.

6 A. Yes.

7 Q. Is that accurate? Yes?

8 A. Yes.

9 Q. Which firearm was that?

10 A. The .357.

11 Q. When you say "357" --

12 A. Magnum, Smith & Wesson.

13 Q. Let's focus on that particular firearm first.
14 How did you acquire that firearm?

15 A. Edward and I purchased -- went to go purchase
16 it prior to living in that house. I was living with my
17 parents.

18 Q. Were you married at the time you purchased it?

19 A. Yes.

20 Q. Who purchased the firearm? Was it you or
21 Edward?

22 A. I don't remember.

23 Q. Do you have any documentation with regard to
24 that particular firearm?

25 A. I'd have to look. I think I have the receipt

[18]

1 for that.

2 Q. Okay. Any other -- I've never purchased a
3 firearm, so I don't know what other documentation that
4 you get. Other than the receipt, is there something
5 else that you would receive, a certificate or license or
6 something like that?

7 A. Not then that I remember. Just the receipt.

8 Q. Okay.

9 A. And the owner's manual. Back --

10 Q. Go on.

11 A. Back then, they didn't even make you show that
12 you could use it, that you could load it and unload it.
13 Now they do, but back then they didn't. That was a long
14 time ago.

15 Q. Do you remember where you bought it?

16 A. No. I know it was a sporting goods store, but
17 I just can't remember where.

18 Q. If you do happen to come across that receipt, I
19 ask that you don't destroy it or anything like that
20 because it may be something that we want to see over the
21 course of this litigation. Understood?

22 A. Understood.

23 Q. Okay. Thank you. With regard to that .357
24 Smith & Wesson, the Magnum, did you have that firearm
25 during the entire marriage with Edward?

[19]

1 A. Yes.

2 Q. You're still married so -- and when you did
3 have that firearm, did you store it with the other
4 firearms that you and Edward owned?

5 A. Yes.

6 Q. Okay. Let's talk about the other 11 firearms.
7 Do you recall how those firearms were acquired?

8 A. Which ones?

9 Q. That's a good question. Are you able to
10 just -- off the top of your head, are you able to name
11 the type and model of the firearm?

12 A. Okay. I know there are two Browning shotguns
13 and -- purchased.

14 Q. Um-hum.

15 A. There's --

16 Q. Let's do this. I'm going to go ahead and mark
17 as Exhibit C this document here, copy of a portion of
18 the police report in this case.

19 (Defendants' Exhibit C is marked.)

20 BY MR. VANNI:

21 Q. I want to go ahead and just scan through
22 Exhibit C. There's some additional information --

23 A. Okay.

24 Q. -- on the other pages, little bit more detail.

25 A. (Reviewing document.)

[20]

1 A. Yes.

2 Q. Were any of them given to you as gifts?

3 A. If the Glenfield is the one I'm thinking it is,
4 that was my great uncle's. That -- I guess you could
5 say given to me. Given to both of us really. My dad
6 had it. And it was from World War II. If that's the
7 one -- one of these is that, I think that's it.

8 Q. Okay. Do you know if any of the firearms Nos.
9 1 through 11, do you know if any of them were given as
10 gifts directly to Edward Rodriguez?

11 A. No.

12 Q. With regard to the Smith & Wesson .357 Magnum,
13 No. 12, the one that you said was your firearm, was that
14 one registered in your name?

15 A. Yes.

16 Q. How about the other eleven, 1 through 11, do
17 you know who those firearms were registered to?

18 MR. KILMER: Objection.

19 MR. VANNI: What's the --

20 MR. KILMER: Problem is that most of these are
21 long guns, and long guns are not registered prior to
22 January 2014.

23 BY MR. VANNI:

24 Q. Fair enough. With the exclusion of the long
25 guns, do you know who those firearms are registered to?

[23]

1 Officer Valentine looks like. You saw him recently?

2 A. Yes.

3 Q. Was that the officer that you dealt with in the
4 confiscation of the firearms?

5 A. From what I remember, I think so.

6 Q. Okay.

7 A. Quite honestly, they could have all looked like
8 Mickey Mouse that night. I just needed them to be there
9 to help. I wasn't really paying a lot of attention to
10 them as far as what they looked like or that type of
11 thing so --

12 Q. If I was to ask you to provide a description of
13 the officer that -- or the officers that you spoke with,
14 would you be able to do that?

15 A. Officer Valentine now I could. And the only
16 other one was what I considered a young officer, and I
17 can remember him being tall. I think it was light
18 dirty-blond hair, and he was helping me with the guns at
19 the end. And I couldn't -- and there was a woman
20 paramedic. That's pretty much all.

21 Q. That tall young officer, was he Caucasian?
22 African-American?

23 A. Caucasian.

24 Q. Now, at the time of this incident, you had your
25 12 firearms. They were inside of a gun safe. Correct?

[40]

1 A. Yes.

2 Q. And that gun safe at this time was locked; is
3 that right?

4 A. Yes.

5 Q. And you know this has been alleged, and I don't
6 think there's any big dispute about it, but I want to
7 ask just to be clear that none of those 12 firearms were
8 out at the time that this incident was occurring; is
9 that correct?

10 A. No, correct.

11 Q. Now, let's talk a little bit about the gun
12 safe. I just want to ask a little bit of background
13 about it because I haven't seen the gun safe. I don't
14 know what it looks like.

15 My understanding is that you own -- excuse
16 me -- that at the time of this incident, the firearm gun
17 safe was a Liberty safe, Lincoln series?

18 A. Yes.

19 Q. LX25?

20 A. That I wouldn't know without looking at the
21 again receipt or the owner's manual.

22 Q. Sure. Sure. Let me go ahead and just -- it's
23 not a very good picture, but let me mark this as Exhibit
24 D.

25 (Defendants' Exhibit D is marked.)

[41]

1 A. Correct.

2 Q. Was there any ammunition inside of the safe?

3 A. Yes.

4 Q. My understanding is that the ammunition, that
5 wasn't confiscated?

6 A. Correct.

7 Q. If you know, how much ammunition was inside of
8 that safe?

9 A. Guesstimating, probably a box for each of the
10 handguns and maybe four or five boxes of shotgun shells.
11 I'd have to actually -- it's been years since I've
12 looked at it.

13 Q. How much -- I don't know what a typical box of
14 ammunition for a handgun is, but is it 24 rounds? How
15 many rounds are in a box?

16 A. I know the boxes are like this (indicating).
17 But I really couldn't tell you how many are in there.

18 Q. That's fine. Is there a standard number?

19 A. I don't know. I never paid attention to that.

20 Q. Okay. Now, I understand with this particular
21 safe, that requires a key and a combination?

22 A. Correct.

23 Q. Was there any other method other than a key and
24 a combination to secure the safe?

25 A. No.

[45]

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.

[46]

1 incident occurred, did you need to use a password in
2 order to get into it?

3 A. No.

4 Q. No. It was just a key?

5 A. No. A combination.

6 Q. I'm sorry. A combination. So when you say "a
7 combination," do you mean like a combination lock, or
8 was it a dial pad?

9 A. Combination lock.

10 Q. So it was one like you use in high school where
11 you have to turn to the right and then turn to the left?

12 A. Yes.

13 Q. Now, with the combination lock, did you have
14 the password for the combination memorized or written
15 down somewhere?

16 A. Written down.

17 Q. Written down on a piece of paper?

18 A. In an address book looking like a phone number.

19 Q. Okay. How many numbers did you have to -- does
20 this particular safe require -- is it three numbers?
21 four numbers? -- in order to open it?

22 A. Three.

23 Q. This address book where you had it written
24 down, where was that located?

25 A. In the bedroom.

[48]

1 A. And it's -- on -- going forward in the area
2 there's a TV. Next -- same wall as the sink, the TV,
3 and the safe is in that corner, far corner.

4 Q. So at the time that the officers were
5 interacting with your husband in the kitchen, the safe
6 was nearby?

7 A. Opposite end of the room.

8 Q. Other than you, did anybody else have the
9 ability to open that safe?

10 A. No.

11 Q. Can you describe for me how one would go about
12 opening the safe. Do you put in the key first and then
13 do the combination? What would you do if you wanted to
14 open it?

15 A. Put in the key first and then the combination.

16 Q. Now, going back to just after your husband was
17 taken outside to the ambulance and then taken to Valley
18 Medical Center, did any of the police officers talk to
19 you afterwards?

20 A. After he left, then we started to deal with the
21 guns.

22 Q. Okay. Which officer? You mentioned maybe it
23 was Officer Valentine. But can you describe the officer
24 that spoke to you about the guns?

25 A. Again, I just keep saying the officer in

[50]

1 A. Since we purchased it.

2 Q. Since this incident has occurred, you've
3 alleged that the combination has been changed; is that
4 correct?

5 A. Yes.

6 Q. Did you get to pick the combination, or did you
7 use random numbers?

8 A. I got to pick the combination when the
9 locksmith came out.

10 Q. I don't need to know the combination, but is
11 there any particular significance to the number that you
12 used, like a birthday?

13 MR. KILMER: I'm going to object at this point.

14 MR. VANNI: I just want to know if there's any
15 particular significance to it.

16 MR. KILMER: Can we go off the record for a
17 minute.

18 (Discussion off the record.)

19 (Break taken from 11:13 to 11:17 a.m.)

20 MR. VANNI: So after a brief break, go back on
21 the record.

22 Mr. Kilmer, you're withdrawing any objection
23 you had to that line of questioning?

24 MR. KILMER: I objected to the particular
25 question and the inquiry for the reasons stated, that

[58]

1 the deposition may become part of a public record, and
2 hints about passwords to gun safes are -- or any safe is
3 a dangerous thing to put in the public record.

4 And we had a brief discussion about whether or
5 not we could seal this part of the deposition, and that
6 causes certain logistic problems.

7 So I had a conference with my client out in the
8 hall. She disclosed to me her method for choosing the
9 new combination. And with that stated, I'll withdraw
10 the objection to the line of questioning. Instruct my
11 client to answer. We'll take it question by question.

12 BY MR. VANNI:

13 Q. That's fair. Let me ask it this way.

14 Is the password -- the combination that was --
15 that it was changed to, is it a combination that your
16 husband Edward Rodriguez would likely know or be able to
17 guess?

18 A. Not understanding --- if he knew how I chose it,
19 would he be able to guess, or would he be able to guess
20 right now without any information?

21 Q. Let's take both questions. If he -- without
22 any information, would he be able to guess it?

23 A. No.

24 Q. So it's not your anniversary or your birthday?

25 A. No.

[59]

1 Q. Now, with some additional information would he
2 be able to guess the password?

3 A. Possibly part of it but not all of it.

4 Q. Not all of it. Does the gun safe still require
5 a key in order to access, or did you change that
6 function as well?

7 A. A key still.

8 Q. Where do you keep the key nowadays?

9 A. Actually the same place.

10 Q. Behind a locked file cabinet?

11 A. Right in the file cabinet. I may move it from
12 one file to another and bury it between papers but still
13 in that file cabinet.

14 Q. With regard to this combination lock, do you
15 have it written down somewhere?

16 A. No.

17 Q. So it's all up in your head now?

18 A. Yes.

19 Q. Going back to when the safe was opened, so your
20 testimony is that you didn't actually open the safe.

21 The officers -- one of the officers opened the safe?

22 A. Yes.

23 Q. But he was able to open it because you provided
24 him with the key and the combination?

25 A. I did the key. And then I gave him -- I gave

[60]

1 Q. So your husband is in Fremont Hospital. And do
2 you know if he was evaluated or anything like that?

3 A. I would assume. I didn't -- I don't know that
4 I talked -- I might have talked to the doctors at
5 Fremont Hospital maybe a couple times. I don't know
6 that I talked to anybody at Valley Medical.

7 Q. Okay. When was your husband discharged from
8 the hospital?

9 A. I want to say it was about a week.

10 Q. And when he was discharged, did he return home,
11 or did he go anywhere else?

12 A. Home.

13 Q. But because of this evaluation, do you
14 understand that your husband is what's referred to as a
15 "prohibited party"?

16 A. What do you mean by "prohibited"?

17 Q. That's my next question. So that your husband
18 can no longer own, control, possess firearms for a
19 period of about five years from the date of this
20 incident. Do you understand that to be?

21 A. Yes.

22 Q. Is there currently any prohibition on your
23 ability to own, control, possess a firearm?

24 A. No.

25 Q. So if you wanted to go to a gun store, you

[70]

1 could go buy one, wait, and go home with it?

2 A. Yes.

3 Q. Is that correct?

4 A. Yes.

5 Q. All right. Since this incident in 2013, have
6 you gone out and purchased a new firearm?

7 A. No.

8 Q. Have you tried to purchase a new firearm?

9 A. No.

10 Q. Are you able to afford to purchase a new
11 firearm?

12 A. Yes and no.

13 Q. Okay.

14 A. I could. I just at this point don't want to
15 spend the money on certain -- that's primarily what has
16 stopped me is don't really want to spend the money on
17 that particular item when there's other things that we
18 need to spend money on. Money has been tight lately.

19 Q. Okay. So one of your claims is that you have a
20 Second Amendment right to keep and bear arms and things
21 like that, especially in your home. Is that your
22 understanding of what your Second Amendment rights are?

23 A. Yes.

24 Q. And so other than not wanting to spend the
25 money to get a new firearm, is there any reason, other

[71]

1 conclusion. Misstates the law.

2 BY MR. VANNI:

3 Q. I'm asking if she's -- is that your
4 understanding of the law, that if you gave Edward
5 Rodriguez a firearm --

6 MR. KILMER: That's a different question.

7 BY MR. VANNI:

8 Q. Let's do it more generally.

9 What is your understanding of the law if you
10 give Edward Rodriguez a firearm?

11 A. That from my understanding, I would be
12 committing a felony.

13 Q. Okay. What's your understanding of the law if
14 you were allowed to essentially let Edward have access
15 to the firearms, not give it to him but just he could
16 get to those firearms, do you have an understanding of
17 what would occur?

18 MR. KILMER: Objection. Calls for speculation.
19 Calls for a legal conclusion.

20 BY MR. VANNI:

21 Q. Unless your attorney instructs you not to
22 answer --

23 MR. KILMER: I'm going to instruct her not to
24 answer that one.

25 MR. VANNI: Want to read back the question?

[75]

1 MR. KILMER: I'm going to instruct her not to
2 answer the question in its current form. I think it's a
3 legitimate inquiry, and I'm happy to help counsel phrase
4 the question if he wants.

5 BY MR. VANNI:

6 Q. What is your understanding of what would occur
7 or could occur to you in the event that Edward Rodriguez
8 were to gain access to these firearms if they were
9 returned to you?

10 MR. KILMER: Okay. And you're limiting the
11 question to the firearms that she would have dominion
12 and control over, not just any firearm in the universe?

13 MR. VANNI: Yes, the ones that she would have
14 dominion and control over, yes.

15 MR. KILMER: Thank you. That's a valid
16 question.

17 You can answer.

18 THE WITNESS: My understanding, as long as he's
19 prohibited, he cannot have access to the safe, to
20 anything.

21 BY MR. VANNI:

22 Q. All right. If these firearms were returned to
23 you, how would you ensure that he didn't get access to
24 these firearms?

25 A. Same as before. They would go in the safe.

[76]

1 MR. VANNI: Okay.

2 EXAMINATION BY MR. KILMER:

3 Q. Lori, do you recall when the city attorney was
4 asking you about criminal liability for allowing Edward
5 to have firearms? Do you remember that line of
6 questioning?

7 A. Yes.

8 Q. You understand that you have -- you would have
9 criminal liability if you affirmatively gave a gun to
10 Edward. And you testified to that?

11 A. Yes.

12 Q. Is it your understanding that you would also
13 have potential criminal liability if you were negligent
14 in allowing Edward to have access to the firearms that
15 you control?

16 A. Yes.

17 Q. Thank you.

18 MR. VANNI: No follow-up from there.

19 (Whereupon, the deposition of LORI RODRIGUEZ
20 was adjourned at 11:59 a.m.)

21

22

23

LORI RODRIGUEZ

24

Date: _____

25

[84]

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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 6th day of June, 2016.

Kim Meierotto
KIM MEIEROTTO, CSR
CSR #11602

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
8 Attorney for Respondent:
9 LORI RODRIGUEZ

ENDORSED

2013 JUN 14 P 2:01

David H. Jennings, Clerk of the Superior Court
County of Santa Clara, California
By: _____
S. Garcia-Arias

10 SUPERIOR COURT OF CALIFORNIA
11 SANTA CLARA COUNTY
12 CIVIL LAW DIVISION

13 CITY OF SAN JOSE,
14 Petitioner,

15 vs.

16 EDWARD RODRIGUEZ,
17 Respondent.

18 LORI RODRIGUEZ,
19 Co-Respondent.

Case No.: 1-13-CV-241669

**DECLARATION AND OFFER OF
PROOF OF LORI RODRIGUEZ**

Welfare and Institutions Code §§ 8100 et
seq

Hearing: July 11, 2013
Time: 9:00 a.m.
Dept.: 8

I, Lori Rodriguez, declare as follows:

1. I am married to Edward Rodriguez, the named Respondent in this matter.
2. We have been married for almost 20 years.
3. My husband was taken into custody by the San Jose Police Department on or about January 24, 2013. He was placed on a psychiatric hold pursuant to Welfare and Institutions Code § 5150.
4. I acknowledge that Edward is currently prohibited from owning, acquiring or possession firearms and/or ammunition.
5. The firearms in our home were kept in a safe.
6. The firearms in our home are community property, though they may be "registered" in either Edward's name or my own.

Donald Kilmer
Attorney at Law
1645 Willow St.
Suite 150
San Jose, CA 95125
Vc: 408/264-8489
Fx: 408/264-8487

- 1 7. No firearms were out or used, nor was there a threatened use of firearms
2 during the event that triggered my husband's episode.
- 3 8. After the San Jose Police had my husband safely in their custody, they
4 informed me that they were required by Department Policy to confiscate all
5 firearms in the home.
- 6 9. I informed the officers that no firearms were used or threatened, and that all
7 the firearms were safely stored in a gun safe and that I preferred that they
8 leave the firearms where they were. The police insisted and claimed that the
9 seizure was required by law and Department policy. I opened the gun safe
10 and the police took all of our firearms.
- 11 10. The police took twelve (12) firearms but did not leave a receipt for them. I
12 have provided the City of San Jose with a list of the firearms taken,
13 identified by Make, Caliber and Serial Number.
- 14 11. Attached as Exhibit A is a copy of a receipt that shows the Court that I own a
15 firearm safe.
- 16 12. Attached as Exhibit B is a copy of a receipt dated April 26, 2013 showing that
17 I had the combination to the safe changed.
- 18 13. Attached as Exhibit C is a copy of a Personal Firearms Eligibility Check
19 (PFEC) Notification dated May 8, 2013 showing that I am personally eligible
20 to possess and purchase firearms.
- 21 14. If the Court grants my request to have my firearms returned to me I will:
22 a. Complete a California Department of Justice, Bureau of Firearms –
23 Report of Operation of Law or Intra-Family Handgun Transfer [Form
24 BOF 4544A] for all handguns to effect a change of registration.
- 25 b. As no paperwork is required to change "registration" of long guns, I
26 acknowledge that I must also complete a Law Enforcement Gun
27 Release Application [Form BOF 119] form to effectuate a transfer back
28 to me of the firearms taken by the City of San Jose.

1 15. I acknowledge that I have a duty under the Penal Code and Welfare and
2 Institutions Code to prevent Edward from obtaining access to any firearms or
3 ammunition that are under my control while he continues to be a prohibited
4 person, and I promise to store all firearms and ammunition in the gun safe
5 (which has already had the combination changed) referenced above.

6 16. I agree to be bound by my fax/scan signature set forth below with the
7 necessity of filing or retaining an original.

8 I declare under penalty of perjury under the laws of California that the
9 forgoing is true and correct, that true and correct copies of the documents identified
10 above are attached to this declaration and that this declaration was executed in San
11 Jose, California.

12 Date:

**FAX SIGNATURE
ATTACHED**

13 _____
14 Lori Rodriguez
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Donald Kilmer
Attorney at Law
1645 Willow St.
Suite 150
San Jose, CA 95125
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1 15. I acknowledge that I have a duty under the Penal Code and Welfare and
2 Institutions Code to prevent Edward from obtaining access to any firearms or
3 ammunition that are under my control while he continues to be a prohibited
4 person, and I promise to store all firearms and ammunition in the gun safe
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7 necessity of filing or retaining an original.

8 I declare under penalty of perjury under the laws of California that the
9 forgoing is true and correct, that true and correct copies of the documents identified
10 above are attached to this declaration and that this declaration was executed in San
11 Jose, California.

12 Date: 5-29-13



13
14 Lori Rodriguez

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Donald Kilmer
Attorney at Law
1645 Willow St.
Suite 150
San Jose, CA 95125
Vc: 408/264-8489
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Exhibit A

Exhibit B



Baker's LOCK & KEY SERVICE

Contractor's Lic. 507700
 2951 Union Avenue
 SAN JOSE, CALIFORNIA 95124
 (408) 377-9210



NAME <i>Lori Rodriguez</i>		DATE <i>4/26/13</i>	
ADDRESS <i>4691 MIAC</i>			
LOCATION		RES. PHONE	
		BUS. PHONE	<i>307-0825</i>
QTY	DESCRIPTION	PRICE	AMOUNT
	<i>Service Call</i>		<i>7500</i>
	<i>Safe Combo Change</i>		<i>7500</i>
	<i>(Liberty Safe)</i>		
	LOCKSMITH		
	<i>Pay from this invoice. Statements are not sent.</i>		
	<i>Parts and Labor Guaranteed 30 days.</i>		
CUSTOMER'S SIGNATURE <i>X [Signature]</i>		TOTAL MATERIALS	
AUTHORIZATION FOR SECURITY/EMERGENCY SERVICES I hereby certify that I have the authority to order the lock, key or security work designated above. Further, I agree to absolve the locksmith who bears this authorization from any and all claims arising from the performance of such work.		TOTAL LABOR	
SIGNATURE		DATE	
ADDRESS		SUBTOTAL	
YEAR		IF AUTO	LICENSE/SERIAL NUMBER
		TAX	
		TOTAL <i>\$15000</i>	

PAID VISA

B PRODUCT 619

71253

WORK ORDER INVOICE

12366
162266
162266
NON
DEPOSIT

Exhibit C



State of California
 Department of Justice
 Bureau of Firearms
 P.O. Box 820200, Sacramento, CA 94203-0200



PERSONAL FIREARMS ELIGIBILITY CHECK (PFEC) NOTIFICATION

May 8, 2013
 (date check was completed)

LORI A RODRIGUEZ
 4691 MIA CIRCLE
 SAN JOSE, CA 95136

**THIS NOTICE IS FOR INFORMATION PURPOSES ONLY
 IT DOES NOT AUTHORIZE THE SALE OR TRANSFER OF ANY FIREARM**

- You are eligible to both possess and purchase firearms as of the date the check was completed.
- You are ineligible to either possess or purchase firearms as of the date the check was completed.
- You are eligible to possess firearms as of the date the check was completed, but ineligible to purchase firearms as of the date the check was completed.
- A firearms eligibility determination could not be confirmed as of the date the check was completed. Please contact (916) 227-3749 for more information.

No person or agency may require or request another person to obtain a firearms eligibility check or notification of firearms eligibility pursuant to section 30105 of the Penal Code. A violation of these provisions is a misdemeanor.

If the applicant for a firearms eligibility check purchases, transfers, or receives a firearm through a licensed dealer as required by law, a waiting period and background check are both required.

PLEASE BE AWARE OF THE FOLLOWING

If you are ELIGIBLE to purchase:

Upon application to purchase a firearm another background check will be conducted and the waiting period will apply.

A valid California Driver License or Identification Card is required at the time of purchase of any firearm.

A valid Alien Registration Card or I-94 is required at the time of purchase of any firearm if applicant is a non-U.S. citizen. The non-U.S. citizen applicant must also meet certain federal requirements to purchase a firearm, unrelated to the firearms eligibility background check.

If you are INELIGIBLE to purchase:

And if you are also ineligible to possess, you must relinquish any firearms in your possession to your local law enforcement agency or complete and follow the directions stated on the enclosed 'Prohibited Persons Notice Form and Power of Attorney Declaration for Firearms Transfer and Disposal Form.'

If you have questions regarding this notification, please contact DOJ at (916) 227-3749.

PFEC CONTROL #: 11090

1 RICHARD DOYLE, City Attorney (88625)
2 NORA FRIMANN, Assistant City Attorney (93249)
3 CLIFFORD GREENBERG, Sr. Deputy City Attorney (122612)
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9 Facsimile Number: (408) 998-3131
10 E-Mail Address: cao.main@sanjoseca.gov

11 Attorneys for CITY OF SAN JOSE, CITY OF SAN
12 JOSE POLICE DEPARTMENT and OFFICER
13 STEVEN VALENTINE

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 LORI RODRIGUEZ, THE SECOND
18 AMENDMENT FOUNDATION, INC., THE
19 CAL GUNS FOUNDATION, INC.

20 Plaintiffs,

21 v.

22 CITY OF SAN JOSE, CITY OF SAN JOSE
23 POLICE DEPARTMENT, OFFICER STEVEN
24 VALENTINE, and DOES 1-20,

25 Defendants.

Case Number: 5:15-CV-03698 EJD

**DEFENDANTS' FRCP RULE 26(A)(1)
INITIAL DISCLOSURES**

26 Pursuant to Federal Rules of Civil Procedure 26(a)(1), Defendant hereby sets forth
27 the following disclosures:

28 **A. Persons Likely to Have Discoverable Information**

The persons likely to have discoverable information that Defendant may use to
support the claims or defenses, unless the use would be solely for impeachment, are as
follows:

- 1. Lori Rodriguez

1 2. Edward V. Rodriguez

2 3. Officer Steven Valentine, Badge No. 3985, c/o San Jose City Attorney's Office.

3 4. All persons named or referred to in the various documents identified in this
4 disclosure.

5 5. Various persons most knowledgeable about Police Department policies, practices,
6 training, personnel matters, and/or other topics relevant to this litigation.

7 **B. Documents and/or Materials that Defendant May Use to Support**
8 **Claims or Defenses**

9 1. All materials collected and generated by San Jose Police Department related to the
10 subject incident, including but not limited to, witness statements, Patrol officer records,
11 9-1-1 and police communications recordings, electronic dispatch information, and
12 communication with Plaintiffs' attorney.

13 **C. Computation of Damages**

14 This disclosure requirement does not apply to Defendant in this lawsuit.

15 **D. Insurance Agreements**

16 Defendants have no such insurance agreements.

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18 **this Disclosure**

19 1. San Jose Police Department Report, January 24, 2013.

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21 3. Declaration of Officer Steven Valentine In Support of Petition Re: Disposition of
22 Weapons, filed March 1, 2013.

23 4. State of California, Department of Justice, Bureau of Firearms Personal Firearms
24 Eligibility Check (PFEC) Notification for Lori A. Rodriguez, dated May 8, 2013.

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26 6. State of California Firearm Ownership Record for Winchester Ranger 120 (Serial #
27 L1813538), dated May 23, 2015.

28

- 1 7. State of California Receipt Confirmation for Firearm as Either Operation of Law or
2 Intrafamilial Transfer for Browning Citori (Serial # 3653PP753), dated May 23,
3 2015.
- 4 8. State of California Receipt Confirmation for Firearm as Either Operation of Law or
5 Intrafamilial Transfer for Ruger 1022 (Serial # 23260854), dated May 23, 2015.
- 6 9. State of California Receipt Confirmation for Firearm as Either Operation of Law or
7 Intrafamilial Transfer for Ruger Carbine (Serial # 1401182), dated May 23, 2015.
- 8 10. State of California Receipt Confirmation for Firearm as Either Operation of Law or
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10 23, 2015.
- 11 11. State of California Receipt Confirmation for Firearm as Either Operation of Law or
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- 14 12. State of California Receipt Confirmation for Firearm as Either Operation of Law or
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17 Intrafamilial Transfer for Remington Speedmaster (Serial # A1657555), dated May
18 23, 2015.
- 19 14. State of California Receipt Confirmation for Firearm as Either Operation of Law or
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21 dated May 23, 2015.
- 22 15. State of California Receipt Confirmation for Firearm as Either Operation of Law or
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- 24 16. State of California Firearm Ownership Record for MAR Glenfield 60 (Serial #
25 20626618), dated May 23, 2015.
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1 29. California Sixth Appellate District Court Opinion Filed on April 2, 2015.

2
3 To the best of my knowledge, information and belief formed after an inquiry that is
4 reasonable under the circumstances, this disclosure is complete and correct as of the time
5 it is made.

6
7 Respectfully submitted,

8 Dated: November 6, 2015

RICHARD DOYLE, City Attorney

9
10 By: Mark Vanni
11 Mark Vanni
12 Deputy City Attorney

13 Attorneys for Defendants
14 CITY OF SNA JOSE, CITY OF SAN JOSE
15 POLICE DEPARTMENT and OFFICER
16 STEVEN VALENTINE;
17
18
19
20
21
22
23
24
25
26
27
28

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



DIVISION OF LAW ENFORCEMENT
BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 23, 2015

Lori Anne Rodriguez
4691 Mia Circle
San Jose, CA 95136

RE: FIREARM OWNERSHIP RECORD

Dear Lori Anne Rodriguez:

Pursuant to your request, the firearm(s) listed below has been recorded by the Department of Justice as being owned by you. Please be aware that should you decide in the future to transfer ownership of any firearm(s) listed below, Penal Code sections 27545 and 28050 et seq. require that all private party transfers of firearms be completed by a licensed California firearms dealer, as defined in Penal Code sections 26700 through 26915.

<u>Serial Number</u>	<u>Make</u>	<u>Model</u>	<u>Caliber</u>
L1813538	WIN	RANGER 120	12

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, Manager
Bureau Of Firearms

BOF-LFOR001

For KAMALA D. HARRIS
Attorney General

SJ000044

ER - 308

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
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SACRAMENTO, CA 94203-0200
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Facsimile: (916) 227-3744

May 23, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

RE: Receipt Confirmation for Firearm Reported as Either Operation of Law or Intrafamilial Transfer

Dear LORI ANNE RODRIGUEZ:

This letter acknowledges the Department of Justice (DOJ), Bureau of Firearms (BOF) has received your Operation of Law or Intrafamilial Transfer application, processed the application, and a firearm eligibility check has been completed confirming your eligibility to possess firearms. The following firearm has been recorded in your name in the Automated Firearms System.

<u>SERIAL NUMBER</u>	<u>MAKE</u>	<u>MODEL</u>	<u>CALIBER</u>
3653PP753	BRO	CITORI	12

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000045

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

May 23, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

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<u>SERIAL NUMBER</u>	<u>MAKE</u>	<u>MODEL</u>	<u>CALIBER</u>
23260854	SR	1022	22

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000046

ER - 310

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
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May 23, 2015

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SAN JOSE, CA 95136

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1401182	SR	CARBINE	30

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000047

ER - 311

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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May 23, 2015

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SAN JOSE, CA 95136

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107NW32146	BRO	SAFARI BAR II	7

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000048

ER - 312

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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May 23, 2015

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F01NP05395	BRO	GOLD HUNTER	12

If you have any questions, please contact the Bureau of Firearms at (916) 227-5670.

Sincerely,

A handwritten signature in black ink that reads "Lisa O'Donnell".

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000049

ER - 313

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
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May 23, 2015

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52189	WIN.	290	22

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Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000050

ER - 314

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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May 23, 2015

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A1657555	REM	SPEEDMASTER :	22

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Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000051

ER - 315

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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P.O. BOX 820200
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May 27, 2015

LORI ANNE RODRIGUEZ
4691 MIA CIRCLE
SAN JOSE, CA 95136

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CFJ8200	SW	629 6 CLASSIC	44

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Sincerely,

LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000052

ER - 316

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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SAN JOSE, CA 95136

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SB013398	WEO	744 VH	44

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Sincerely,

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LISA O'DONNELL, MANAGER
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

SJ000053

ER - 317

KAMALA D. HARRIS
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State of California
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Sincerely,

LISA O'DONNELL, Manager
Bureau Of Firearms

BOF-LFOR001

For KAMALA D. HARRIS
Attorney General

SJ000054

ER - 318

1 RICHARD DOYLE, City Attorney (88625)
2 NORA FRIMANN, Assistant City Attorney (93249)
3 CLIFFORD GREENBERG, Sr. Deputy City Attorney (122612)
4 MARK J. VANNI, Deputy City Attorney (267892)
5 Office of the City Attorney
6 200 East Santa Clara Street, 16th Floor
7 San José, California 95113-1905
8 Telephone Number: (408) 535-1900
9 Facsimile Number: (408) 998-3131
10 E-Mail Address: cao.main@sanjoseca.gov

11 Attorneys for CITY OF SAN JOSE, CITY OF SAN
12 JOSE POLICE DEPARTMENT and OFFICER
13 STEVEN VALENTINE

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 LORI RODRIGUEZ, THE SECOND
18 AMENDMENT FOUNDATION, INC., THE
19 CAL GUNS FOUNDATION, INC.

20 Plaintiffs,

21 v.

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23 POLICE DEPARTMENT, OFFICER STEVEN
24 VALENTINE, and DOES 1-20,

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26 Case Number: 5:15-CV-03698 EJD
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- 6 training, personnel matters, and/or other topics relevant to this litigation.

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1 29. California Sixth Appellate District Court Opinion Filed on April 2, 2015.

2
3 To the best of my knowledge, information and belief formed after an inquiry that is
4 reasonable under the circumstances, this disclosure is complete and correct as of the time
5 it is made.

6
7 Respectfully submitted,

8 Dated: November 6, 2015

RICHARD DOYLE, City Attorney

9
10 By: Mark Vanni
11 Mark Vanni
12 Deputy City Attorney

13 Attorneys for Defendants
14 CITY OF SNA JOSE, CITY OF SAN JOSE
15 POLICE DEPARTMENT and OFFICER
16 STEVEN VALENTINE;
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KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

June 1, 2015

Lori Anne Rodriguez
4691 Mia Circle
San Jose, CA 95136

Re: Law Enforcement Gun Release - Firearm(s) Eligibility Clearance

Dear Sir/Madam:

This letter acknowledges that the California Department of Justice (the Department), Bureau of Firearms (the Bureau) has received your Law Enforcement Gun Release (LEGR) Application (BOF 119) with the following firearm information:

<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
SW	586 3	BFR2403	357

State law requires the Department to conduct a firearms eligibility check on anyone who claims title to a firearm in the custody or control of a court, or law enforcement agency (LEA) and who wishes to have that firearm returned to him or her, in order to determine whether that person is eligible under state and federal law to possess firearms pursuant to Penal Code section 33850. The Department has processed your application and determined that, as of the date of this letter, you are eligible to possess a firearm.

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Sincerely,

Julie Agcaoli

JULIE AGCAOILI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

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Attorney General

State of California
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BRO	GOLD HUNTER	F01NPO5395	12

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June 1, 2015
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Julie Agcaoli

JULIE AGCAOLI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

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State of California
DEPARTMENT OF JUSTICE



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June 1, 2015

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BRO	CITORI	3653PP753	12

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Julie Agcaoili

JULIE AGCAOILI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

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June 1, 2015

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SR	10 22	23260854	22

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Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

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BRO	SAFARI BAR II	107NW32146	7

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BOF/LEGR-0001

SJ000063

ER - 332

Case: 17-17144, 02/26/2018, ID: 10776786, DktEntry: 10-2, Page 120 of 229

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For KAMALA D. HARRIS
Attorney General

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State of California
DEPARTMENT OF JUSTICE



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MAR	GLENFIELD 60	20626618	22

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Sincerely,

A handwritten signature in cursive script that reads 'Julie Agcaoli'.

JULIE AGCAOLI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

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SR	CARBINE	1401182	30

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REM	SPEEDMASTER	A1657555	22

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Attorney General

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WIN	290	52189	22

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A firearm can only be returned to the person who is listed in AFS as the owner/possessor of the firearm, and not to any other person. (Pen. Code, § 33855, subs. (a) & (b).) However, a court or LEA may return such firearm to a person who demonstrates that the firearm was transferred to him or her in a manner that was lawful, but was not required pursuant to Penal Code sections 28150 through 28180 to be recorded in the Department's records. The court or LEA will only release the firearm(s) in question after it has determined the firearm(s) is not reported lost or stolen, and is no longer needed for official court or law enforcement purposes.

A court or LEA is not required to retain a firearm for more than 180 days after notifying the owner of the firearm that the firearm is available for return. Therefore, if no claim for a firearm is made by its owner within 180 days of notification, the court or LEA may dispose of the firearm.

This LEGR firearms eligibility clearance is valid for 30 days from the date of this letter. After 30 days, the approval expires and cannot be used to claim a firearm. Accordingly, you must attempt to redeem your firearm(s) within 30 days of the date of this letter, or submit a new LEGR application and required fee to the Department in order to obtain an updated LEGR approval.



Sincerely,

Julie Agcaoli

JULIE AGCAOLI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Telephone: (916) 227-3752
Facsimile: (916) 227-3744

June 1, 2015

Lori Anne Rodriguez
4691 Mia Circle
San Jose, CA 95136

Re: Law Enforcement Gun Release - Firearm(s) Eligibility Clearance

Dear Sir/Madam:

This letter acknowledges that the California Department of Justice (the Department), Bureau of Firearms (the Bureau) has received your Law Enforcement Gun Release (LEGR) Application (BOF 119) with the following firearm information:

<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
WIN	RANGER 120	L1813538	12

State law requires the Department to conduct a firearms eligibility check on anyone who claims title to a firearm in the custody or control of a court, or law enforcement agency (LEA) and who wishes to have that firearm returned to him or her, in order to determine whether that person is eligible under state and federal law to possess firearms pursuant to Penal Code section 33850. The Department has processed your application and determined that, as of the date of this letter, you are eligible to possess a firearm.

This letter does not establish or constitute ownership of any firearm(s), which you are attempting to redeem from the custody of a court or LEA.

It is your responsibility to prove you own or have a right to possess any firearm in the custody of a court or LEA that you wish to have returned to you. A court or LEA with direct access to the Department's Automated Firearms System (AFS) is required to check AFS to determine whether the person seeking return of a firearm is listed as the owner/purchaser of the firearm(s) sought to be redeemed pursuant to Penal Code section 33855, subdivisions (a) and (b). At the time of this eligibility check, the Department reviewed AFS and determined the following:

- This firearm is recorded in AFS and the firearm is recorded in the name of the individual who is seeking its return.
- This firearm is recorded in AFS, but is not recorded as being owned by, or loaned to the individual who is seeking its return.
- There is no record of this firearm in AFS.

June 1, 2015
Page 2

A firearm can only be returned to the person who is listed in AFS as the owner/possessor of the firearm, and not to any other person. (Pen. Code, § 33855, subs. (a) & (b).) However, a court or LEA may return such firearm to a person who demonstrates that the firearm was transferred to him or her in a manner that was lawful, but was not required pursuant to Penal Code sections 28150 through 28180 to be recorded in the Department's records. The court or LEA will only release the firearm(s) in question after it has determined the firearm(s) is not reported lost or stolen, and is no longer needed for official court or law enforcement purposes.

A court or LEA is not required to retain a firearm for more than 180 days after notifying the owner of the firearm that the firearm is available for return. Therefore, if no claim for a firearm is made by its owner within 180 days of notification, the court or LEA may dispose of the firearm.

This LEGR firearms eligibility clearance is valid for 30 days from the date of this letter. After 30 days, the approval expires and cannot be used to claim a firearm. Accordingly, you must attempt to redeem your firearm(s) within 30 days of the date of this letter, or submit a new LEGR application and required fee to the Department in order to obtain an updated LEGR approval.



Sincerely,

Julie Agcaoli

JULIE AGCAOLI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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Facsimile: (916) 227-3744

June 1, 2015

Lori Anne Rodriguez
4691 Mia Circle
San Jose, CA 95136

Re: Law Enforcement Gun Release - Firearm(s) Eligibility Clearance

Dear Sir/Madam:

This letter acknowledges that the California Department of Justice (the Department), Bureau of Firearms (the Bureau) has received your Law Enforcement Gun Release (LEGR) Application (BOF 119) with the following firearm information:

<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
WEO	744 VH	SB013398	44

State law requires the Department to conduct a firearms eligibility check on anyone who claims title to a firearm in the custody or control of a court, or law enforcement agency (LEA) and who wishes to have that firearm returned to him or her, in order to determine whether that person is eligible under state and federal law to possess firearms pursuant to Penal Code section 33850. The Department has processed your application and determined that, as of the date of this letter, you are eligible to possess a firearm.

This letter does not establish or constitute ownership of any firearm(s), which you are attempting to redeem from the custody of a court or LEA.

It is your responsibility to prove you own or have a right to possess any firearm in the custody of a court or LEA that you wish to have returned to you. A court or LEA with direct access to the Department's Automated Firearms System (AFS) is required to check AFS to determine whether the person seeking return of a firearm is listed as the owner/purchaser of the firearm(s) sought to be redeemed pursuant to Penal Code section 33855, subdivisions (a) and (b). At the time of this eligibility check, the Department reviewed AFS and determined the following:

- This firearm is recorded in AFS and the firearm is recorded in the name of the individual who is seeking its return.
- This firearm is recorded in AFS, but is not recorded as being owned by, or loaned to the individual who is seeking its return.
- There is no record of this firearm in AFS.

A firearm can only be returned to the person who is listed in AFS as the owner/possessor of the firearm, and not to any other person. (Pen. Code, § 33855, subs. (a) & (b).) However, a court or LEA may return such firearm to a person who demonstrates that the firearm was transferred to him or her in a manner that was lawful, but was not required pursuant to Penal Code sections 28150 through 28180 to be recorded in the Department's records. The court or LEA will only release the firearm(s) in question after it has determined the firearm(s) is not reported lost or stolen, and is no longer needed for official court or law enforcement purposes.

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This LEGR firearms eligibility clearance is valid for 30 days from the date of this letter. After 30 days, the approval expires and cannot be used to claim a firearm. Accordingly, you must attempt to redeem your firearm(s) within 30 days of the date of this letter, or submit a new LEGR application and required fee to the Department in order to obtain an updated LEGR approval.



Sincerely,

Julie Agcaoli

JULIE AGCAOILI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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Facsimile: (916) 227-3744

June 1, 2015

Lori Anne Rodriguez
4691 Mia Circle
San Jose, CA 95136

Re: Law Enforcement Gun Release - Firearm(s) Eligibility Clearance

Dear Sir/Madam:

This letter acknowledges that the California Department of Justice (the Department), Bureau of Firearms (the Bureau) has received your Law Enforcement Gun Release (LEGR) Application (BOF 119) with the following firearm information:

<u>Make</u>	<u>Model</u>	<u>Serial Number</u>	<u>Caliber</u>
SW	629 6 CLASSIC	CFJ8200	44

State law requires the Department to conduct a firearms eligibility check on anyone who claims title to a firearm in the custody or control of a court, or law enforcement agency (LEA) and who wishes to have that firearm returned to him or her, in order to determine whether that person is eligible under state and federal law to possess firearms pursuant to Penal Code section 33850. The Department has processed your application and determined that, as of the date of this letter, you are eligible to possess a firearm.

This letter does not establish or constitute ownership of any firearm(s), which you are attempting to redeem from the custody of a court or LEA.

It is your responsibility to prove you own or have a right to possess any firearm in the custody of a court or LEA that you wish to have returned to you. A court or LEA with direct access to the Department's Automated Firearms System (AFS) is required to check AFS to determine whether the person seeking return of a firearm is listed as the owner/purchaser of the firearm(s) sought to be redeemed pursuant to Penal Code section 33855, subdivisions (a) and (b). At the time of this eligibility check, the Department reviewed AFS and determined the following:

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- This firearm is recorded in AFS, but is not recorded as being owned by, or loaned to the individual who is seeking its return.
- There is no record of this firearm in AFS.

June 1, 2015
Page 2

A firearm can only be returned to the person who is listed in AFS as the owner/possessor of the firearm, and not to any other person. (Pen. Code, § 33855, subs. (a) & (b).) However, a court or LEA may return such firearm to a person who demonstrates that the firearm was transferred to him or her in a manner that was lawful, but was not required pursuant to Penal Code sections 28150 through 28180 to be recorded in the Department's records. The court or LEA will only release the firearm(s) in question after it has determined the firearm(s) is not reported lost or stolen, and is no longer needed for official court or law enforcement purposes.

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Sincerely,

Julie Agcaoili

JULIE AGCAOILI, Manager
Bureau Of Firearms

For KAMALA D. HARRIS
Attorney General

Tab 14

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

5 Attorneys for Plaintiffs

6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE COURTHOUSE | 280 S. 1ST STREET, SAN JOSE, CA 95113

11
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
18 JOSE POLICE DEPARTMENT,
OFFICER STEVEN VALENTINE
19 and DOES 1 TO 20,

20 Defendants.
21

Case No.: 5:15-CV-03698

**PLAINTIFFS' ERRATA
MEMORANDUM RE DOC #36**

Date: November 10, 2016
Time: 9:00 a.m.
Courtroom: 4
Judge: Hon. Edward J. Davila

22 On September 16, 2016 undersigned Plaintiffs' Counsel filed a declaration
23 with Exhibits A thru D as attachments. [Doc #36]

24 The declaration is not in error. Attachments A and B are correct.
25 Attachments C and D are not the documents designated in the declaration.

26 The correction and substitution of Exhibits C and D is as follows:

- 27 1. Attached as Exhibit C is a copy of Assembly Bill 500 which became law while
28 the state case was pending.

1 2. Attached as Exhibit D is a copy of Senate Bill 363, which became law while
2 the state was pending.

3 Respectfully Submitted on September 21, 2016.

4 /s/ Donald Kilmer

5 Attorney for Plaintiffs

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Assembly Bill No. 500

CHAPTER 737

An act to amend Sections 11106, 16520, 16540, 16850, 23510, and 28220 of, and to add Sections 17060, 25135, and 28255 to, the Penal Code, relating to firearms.

[Approved by Governor October 11, 2013. Filed with Secretary of State October 11, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 500, Ammiano. Firearms.

(1) Existing law requires the Department of Justice, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. Existing law prohibits the delivery of a firearm within 10 days of the application to purchase, or, after notice by the department, within 10 days of the submission to the department of any corrections to the application to purchase, or within 10 days of the submission to the department of a specified fee. Existing law generally requires firearms transactions to be completed through a licensed firearms dealer. If a dealer cannot legally deliver a firearm, existing law requires the dealer to return the firearm to the transferor, seller, or person loaning the firearm.

This bill would require the department to immediately notify the dealer to delay the transfer of a firearm to a purchaser if the records of the department, or if specified records available to the department, indicate that the purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation, that he or she has been arrested for, or charged with, a crime, or that the purchaser is attempting to purchase more than one firearm within a 30-day period, and the department is unable to ascertain whether the purchaser is ineligible to possess, receive, own, or purchase the firearm as a result of the determination of the purchaser's mental health, the final disposition of the arrest or criminal charge, or whether the purchaser is ineligible to purchase the firearm because he or she is attempting to purchase more than one firearm within a 30-day period, prior to the conclusion of the 10-day waiting period. If the department is unable to ascertain the final disposition of the arrest or criminal charge, the outcome of the mental health treatment or evaluation, or whether the purchaser is ineligible to purchase the firearm because he or she is attempting to purchase more than one firearm within a 30-day period, within 30 days of the dealer's submission of purchaser information, the bill would require the department to notify the firearms dealer, and would authorize the dealer to then immediately transfer the firearm to the purchaser. The bill would also enact similar provisions additionally requiring, among other things, the dealer

and the purchaser to sign the register or record of electronic transfer, to take effect if AB 538 is enacted and amends Section 28160 of the Penal Code.

(2) Existing law requires a firearm purchaser to present the dealer with clear evidence of the person's identity and age, and requires the dealer to make a permanent record of the transaction. Existing law requires the dealer to transmit the record of applicant information to the Department of Justice by electronic or telephonic transfer.

Commencing January 1, 2015, this bill would also require a dealer to notify the department that the person in an application to purchase actually took possession of the firearm, as specified.

(3) Under existing law certain persons are prohibited from owning or possessing a firearm, including persons convicted of certain violent offenses, and persons who have been adjudicated as having a mental disorder, among others.

This bill would prohibit a person who is residing with someone who is prohibited by state or federal law from possessing a firearm from keeping a firearm at that residence unless the firearm is either kept within a locked container, locked gun safe, locked trunk, locked with a locking device, disabled by a firearm safety device, or carried on the person. The bill would make a violation of this provision a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

(4) The bill would incorporate additional changes to Section 11106 of the Penal Code, made by this bill, AB 539, and SB 53, and additional changes to Section 16520 of the Penal Code made by this bill and SB 299, to take effect if one or more of those bills are chaptered and this bill is chaptered last.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 11106 of the Penal Code, as added by Section 2.5 of Chapter 745 of the Statutes of 2011, is amended to read:

11106. (a) In order to assist in the investigation of crime, the prosecution of civil actions by city attorneys pursuant to paragraph (3) of subdivision (b), the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215, information reported to the Department of Justice pursuant to Section 26225, dealers' records of sales of firearms, reports provided pursuant to Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, or pursuant to any provision listed in subdivision (a) of Section

16585, forms provided pursuant to Section 12084, as that section read prior to being repealed, reports provided pursuant to Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6, that are not dealers' records of sales of firearms, information provided pursuant to Section 28255, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish this information to the officers referred to in Section 11105.

(b) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to the following provisions as to firearms and maintain a registry thereof:

(A) Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6.

(B) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6.

(C) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6.

(D) Any provision listed in subdivision (a) of Section 16585.

(E) Former Section 12084.

(F) Section 28255.

(G) Any other law.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular firearm as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in former Section 12084, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585, Section 28255, or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular firearm and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular firearm acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm, model name or number if stamped on the firearm, and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not have a

serial number or any identification number or mark assigned to it, that shall be noted.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105, to a city attorney prosecuting a civil action, solely for use in prosecuting that civil action and not for any other purpose, or to the person listed in the registry as the owner or person who is listed as being loaned the particular firearm.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

(c) (1) Any officer referred to in paragraphs (1) to (6), inclusive, of subdivision (b) of Section 11105 may disseminate the name of the subject of the record, the number of the firearms listed in the record, and the description of any firearm, including the make, model, and caliber, from the record relating to any firearm's sale, transfer, registration, or license record, or any information reported to the Department of Justice pursuant to Section 26225, Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6, Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6, Article 2 (commencing with Section 28150) of Chapter 6 of Division 6 of Title 4 of Part 6, Article 5 (commencing with Section 30900) of Chapter 2 of Division 10 of Title 4 of Part 6, Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6, or any provision listed in subdivision (a) of Section 16585, if the following conditions are met:

(A) The subject of the record has been arraigned for a crime in which the victim is a person described in subdivisions (a) to (f), inclusive, of Section 6211 of the Family Code and is being prosecuted or is serving a sentence for the crime, or the subject of the record is the subject of an emergency protective order, a temporary restraining order, or an order after hearing, which is in effect and has been issued by a family court under the Domestic Violence Protection Act set forth in Division 10 (commencing with Section 6200) of the Family Code.

(B) The information is disseminated only to the victim of the crime or to the person who has obtained the emergency protective order, the temporary restraining order, or the order after hearing issued by the family court.

(C) Whenever a law enforcement officer disseminates the information authorized by this subdivision, that officer or another officer assigned to

the case shall immediately provide the victim of the crime with a “Victims of Domestic Violence” card, as specified in subparagraph (H) of paragraph (9) of subdivision (c) of Section 13701.

(2) The victim or person to whom information is disseminated pursuant to this subdivision may disclose it as he or she deems necessary to protect himself or herself or another person from bodily harm by the person who is the subject of the record.

SEC. 1.1. Section 11106 of the Penal Code, as added by Section 2.5 of Chapter 745 of the Statutes of 2011, is amended to read:

11106. (a) In order to assist in the investigation of crime, the prosecution of civil actions by city attorneys pursuant to paragraph (3) of subdivision (b), the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215, information reported to the Department of Justice pursuant to Section 26225 or 29830, dealers’ records of sales of firearms, reports provided pursuant to Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, or pursuant to any provision listed in subdivision (a) of Section 16585, forms provided pursuant to Section 12084, as that section read prior to being repealed, reports provided pursuant to Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6, that are not dealers’ records of sales of firearms, information provided pursuant to Section 28255, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish this information to the officers referred to in Section 11105.

(b) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to the following provisions as to firearms and maintain a registry thereof:

(A) Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6.

(B) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6.

(C) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6.

(D) Any provision listed in subdivision (a) of Section 16585.

(E) Former Section 12084.

(F) Section 28255.

(G) Any other law.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular firearm as listed on the information provided to the department on the Dealers’ Record of Sale, the Law Enforcement Firearms Transfer (LEFT),

as defined in former Section 12084, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585, Section 28255, or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular firearm and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular firearm acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm, model name or number if stamped on the firearm, and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not have a serial number or any identification number or mark assigned to it, that shall be noted.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105, to a city attorney prosecuting a civil action, solely for use in prosecuting that civil action and not for any other purpose, or to the person listed in the registry as the owner or person who is listed as being loaned the particular firearm.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

(c) (1) Any officer referred to in paragraphs (1) to (6), inclusive, of subdivision (b) of Section 11105 may disseminate the name of the subject of the record, the number of the firearms listed in the record, and the description of any firearm, including the make, model, and caliber, from the record relating to any firearm's sale, transfer, registration, or license record, or any information reported to the Department of Justice pursuant to Section 26225, Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6, Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6, Article 2 (commencing with Section 28150) of Chapter 6 of Division 6 of Title 4 of Part 6, Article 5 (commencing with

Section 30900) of Chapter 2 of Division 10 of Title 4 of Part 6, Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6, or any provision listed in subdivision (a) of Section 16585, if the following conditions are met:

(A) The subject of the record has been arraigned for a crime in which the victim is a person described in subdivisions (a) to (f), inclusive, of Section 6211 of the Family Code and is being prosecuted or is serving a sentence for the crime, or the subject of the record is the subject of an emergency protective order, a temporary restraining order, or an order after hearing, which is in effect and has been issued by a family court under the Domestic Violence Protection Act set forth in Division 10 (commencing with Section 6200) of the Family Code.

(B) The information is disseminated only to the victim of the crime or to the person who has obtained the emergency protective order, the temporary restraining order, or the order after hearing issued by the family court.

(C) Whenever a law enforcement officer disseminates the information authorized by this subdivision, that officer or another officer assigned to the case shall immediately provide the victim of the crime with a “Victims of Domestic Violence” card, as specified in subparagraph (H) of paragraph (9) of subdivision (c) of Section 13701.

(2) The victim or person to whom information is disseminated pursuant to this subdivision may disclose it as he or she deems necessary to protect himself or herself or another person from bodily harm by the person who is the subject of the record.

SEC. 1.2. Section 11106 of the Penal Code, as added by Section 2.5 of Chapter 745 of the Statutes of 2011, is amended to read:

11106. (a) In order to assist in the investigation of crime, the prosecution of civil actions by city attorneys pursuant to paragraph (3) of subdivision (b), the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215, information reported to the Department of Justice pursuant to Section 26225, copies of ammunition purchaser authorizations pursuant to Section 30370, ammunition vendor license information pursuant to Article 5 (commencing with Section 30380) of Chapter 1 of Division 10 of Title 4 of Part 6, information required by Section 30352, dealers’ records of sales of firearms, reports provided pursuant to Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, or pursuant to any provision listed in subdivision (a) of Section 16585, forms provided pursuant to Section 12084, as that section read prior to being repealed, reports provided pursuant to Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6, that are not dealers’ records of sales of firearms, information provided pursuant to Section 28255, and reports of stolen, lost, found, pledged, or pawned

property in any city or county of this state, and shall, upon proper application therefor, furnish this information to the officers referred to in Section 11105.

(b) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to the following provisions as to firearms and maintain a registry thereof:

(A) Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6.

(B) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6.

(C) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6.

(D) Any provision listed in subdivision (a) of Section 16585.

(E) Former Section 12084.

(F) Section 28255.

(G) Any other law.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular firearm as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in former Section 12084, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585, Section 28255, or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular firearm and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular firearm acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm, model name or number if stamped on the firearm, and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not have a serial number or any identification number or mark assigned to it, that shall be noted.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105, to a city attorney prosecuting a civil action, solely for use in prosecuting that civil action and not for any other purpose, or to the person

listed in the registry as the owner or person who is listed as being loaned the particular firearm.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

(c) (1) Any officer referred to in paragraphs (1) to (6), inclusive, of subdivision (b) of Section 11105 may disseminate the name of the subject of the record, the number of the firearms listed in the record, and the description of any firearm, including the make, model, and caliber, from the record relating to any firearm's sale, transfer, registration, or license record, or any information reported to the Department of Justice pursuant to Section 26225, Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6, Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6, Article 2 (commencing with Section 28150) of Chapter 6 of Division 6 of Title 4 of Part 6, Article 5 (commencing with Section 30900) of Chapter 2 of Division 10 of Title 4 of Part 6, Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6, or any provision listed in subdivision (a) of Section 16585, if the following conditions are met:

(A) The subject of the record has been arraigned for a crime in which the victim is a person described in subdivisions (a) to (f), inclusive, of Section 6211 of the Family Code and is being prosecuted or is serving a sentence for the crime, or the subject of the record is the subject of an emergency protective order, a temporary restraining order, or an order after hearing, which is in effect and has been issued by a family court under the Domestic Violence Protection Act set forth in Division 10 (commencing with Section 6200) of the Family Code.

(B) The information is disseminated only to the victim of the crime or to the person who has obtained the emergency protective order, the temporary restraining order, or the order after hearing issued by the family court.

(C) Whenever a law enforcement officer disseminates the information authorized by this subdivision, that officer or another officer assigned to the case shall immediately provide the victim of the crime with a "Victims of Domestic Violence" card, as specified in subparagraph (H) of paragraph (9) of subdivision (c) of Section 13701.

(2) The victim or person to whom information is disseminated pursuant to this subdivision may disclose it as he or she deems necessary to protect

himself or herself or another person from bodily harm by the person who is the subject of the record.

SEC. 1.3. Section 11106 of the Penal Code, as added by Section 2.5 of Chapter 745 of the Statutes of 2011, is amended to read:

11106. (a) In order to assist in the investigation of crime, the prosecution of civil actions by city attorneys pursuant to paragraph (3) of subdivision (b), the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215, information reported to the Department of Justice pursuant to Section 26225 or 29830, copies of ammunition purchaser authorizations pursuant to Section 30370, ammunition vendor license information pursuant to Article 5 (commencing with Section 30380) of Chapter 1 of Division 10 of Title 4 of Part 6, information required by Section 30352, dealers' records of sales of firearms, reports provided pursuant to Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, or pursuant to any provision listed in subdivision (a) of Section 16585, forms provided pursuant to Section 12084, as that section read prior to being repealed, reports provided pursuant to Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6, that are not dealers' records of sales of firearms, information provided pursuant to Section 28255, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish this information to the officers referred to in Section 11105.

(b) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to the following provisions as to firearms and maintain a registry thereof:

(A) Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6.

(B) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6.

(C) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6.

(D) Any provision listed in subdivision (a) of Section 16585.

(E) Former Section 12084.

(F) Section 28255.

(G) Any other law.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular firearm as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in former Section 12084, or reports made to the department

pursuant to any provision listed in subdivision (a) of Section 16585, Section 28255, or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular firearm and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular firearm acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm, model name or number if stamped on the firearm, and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not have a serial number or any identification number or mark assigned to it, that shall be noted.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105, to a city attorney prosecuting a civil action, solely for use in prosecuting that civil action and not for any other purpose, or to the person listed in the registry as the owner or person who is listed as being loaned the particular firearm.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

(c) (1) Any officer referred to in paragraphs (1) to (6), inclusive, of subdivision (b) of Section 11105 may disseminate the name of the subject of the record, the number of the firearms listed in the record, and the description of any firearm, including the make, model, and caliber, from the record relating to any firearm's sale, transfer, registration, or license record, or any information reported to the Department of Justice pursuant to Section 26225, Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6, Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6, Article 2 (commencing with Section 28150) of Chapter 6 of Division 6 of Title 4 of Part 6, Article 5 (commencing with Section 30900) of Chapter 2 of Division 10 of Title 4 of Part 6, Chapter 2

(commencing with Section 33850) of Division 11 of Title 4 of Part 6, or any provision listed in subdivision (a) of Section 16585, if the following conditions are met:

(A) The subject of the record has been arraigned for a crime in which the victim is a person described in subdivisions (a) to (f), inclusive, of Section 6211 of the Family Code and is being prosecuted or is serving a sentence for the crime, or the subject of the record is the subject of an emergency protective order, a temporary restraining order, or an order after hearing, which is in effect and has been issued by a family court under the Domestic Violence Protection Act set forth in Division 10 (commencing with Section 6200) of the Family Code.

(B) The information is disseminated only to the victim of the crime or to the person who has obtained the emergency protective order, the temporary restraining order, or the order after hearing issued by the family court.

(C) Whenever a law enforcement officer disseminates the information authorized by this subdivision, that officer or another officer assigned to the case shall immediately provide the victim of the crime with a "Victims of Domestic Violence" card, as specified in subparagraph (H) of paragraph (9) of subdivision (c) of Section 13701.

(2) The victim or person to whom information is disseminated pursuant to this subdivision may disclose it as he or she deems necessary to protect himself or herself or another person from bodily harm by the person who is the subject of the record.

SEC. 2. Section 16520 of the Penal Code is amended to read:

16520. (a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

- (1) Section 16550.
- (2) Section 16730.
- (3) Section 16960.
- (4) Section 16990.
- (5) Section 17070.
- (6) Section 17310.
- (7) Sections 26500 to 26588, inclusive.
- (8) Sections 26600 to 27140, inclusive.
- (9) Sections 27400 to 28000, inclusive.
- (10) Section 28100.
- (11) Sections 28400 to 28415, inclusive.
- (12) Sections 29010 to 29150, inclusive.
- (13) Sections 29610 to 29750, inclusive.
- (14) Sections 29800 to 29905, inclusive.
- (15) Sections 30150 to 30165, inclusive.
- (16) Section 31615.
- (17) Sections 31705 to 31830, inclusive.

- (18) Sections 34355 to 34370, inclusive.
- (19) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.
- (c) As used in the following provisions, “firearm” also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:
- (1) Section 16750.
 - (2) Subdivision (b) of Section 16840.
 - (3) Section 25400.
 - (4) Sections 25850 to 26025, inclusive.
 - (5) Subdivisions (a), (b), and (c) of Section 26030.
 - (6) Sections 26035 to 26055, inclusive.
- (d) As used in the following provisions, “firearm” does not include an unloaded antique firearm:
- (1) Subdivisions (a) and (c) of Section 16730.
 - (2) Section 16550.
 - (3) Section 16960.
 - (4) Section 17310.
 - (5) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.
 - (6) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.
 - (7) Sections 26500 to 26588, inclusive.
 - (8) Sections 26700 to 26915, inclusive.
 - (9) Section 27510.
 - (10) Section 27530.
 - (11) Section 27540.
 - (12) Section 27545.
 - (13) Sections 27555 to 27570, inclusive.
 - (14) Sections 29010 to 29150, inclusive.
 - (15) Section 25135.
- (e) As used in Sections 34005 and 34010, “firearm” does not include a destructive device.
- (f) As used in Sections 17280 and 24680, “firearm” has the same meaning as in Section 922 of Title 18 of the United States Code.
- (g) As used in Sections 29010 to 29150, inclusive, “firearm” includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.
- SEC. 2.5. Section 16520 of the Penal Code is amended to read:
16520. (a) As used in this part, “firearm” means any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion or other form of combustion.
- (b) As used in the following provisions, “firearm” includes the frame or receiver of the weapon:
- (1) Section 16550.
 - (2) Section 16730.
 - (3) Section 16960.

- (4) Section 16990.
 - (5) Section 17070.
 - (6) Section 17310.
 - (7) Sections 25250 to 25275, inclusive.
 - (8) Sections 26500 to 26588, inclusive.
 - (9) Sections 26600 to 27140, inclusive.
 - (10) Sections 27400 to 28000, inclusive.
 - (11) Section 28100.
 - (12) Sections 28400 to 28415, inclusive.
 - (13) Sections 29010 to 29150, inclusive.
 - (14) Sections 29610 to 29750, inclusive.
 - (15) Sections 29800 to 29905, inclusive.
 - (16) Sections 30150 to 30165, inclusive.
 - (17) Section 31615.
 - (18) Sections 31705 to 31830, inclusive.
 - (19) Sections 34355 to 34370, inclusive.
 - (20) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.
- (c) As used in the following provisions, “firearm” also includes any rocket, rocket propelled projectile launcher, or similar device containing any explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:
- (1) Section 16750.
 - (2) Subdivision (b) of Section 16840.
 - (3) Section 25400.
 - (4) Sections 25850 to 26025, inclusive.
 - (5) Subdivisions (a), (b), and (c) of Section 26030.
 - (6) Sections 26035 to 26055, inclusive.
- (d) As used in the following provisions, “firearm” does not include an unloaded antique firearm:
- (1) Subdivisions (a) and (c) of Section 16730.
 - (2) Section 16550.
 - (3) Section 16960.
 - (4) Section 17310.
 - (5) Division 4.5 (commencing with Section 25250) of Title 4.
 - (6) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.
 - (7) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.
 - (8) Sections 26500 to 26588, inclusive.
 - (9) Sections 26700 to 26915, inclusive.
 - (10) Section 27510.
 - (11) Section 27530.
 - (12) Section 27540.
 - (13) Section 27545.
 - (14) Sections 27555 to 27570, inclusive.
 - (15) Sections 29010 to 29150, inclusive.
 - (16) Section 25135.

(e) As used in Sections 34005 and 34010, “firearm” does not include a destructive device.

(f) As used in Sections 17280 and 24680, “firearm” has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, inclusive, “firearm” includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

SEC. 3. Section 16540 of the Penal Code is amended to read:

16540. As used in Section 25135 and Division 2 (commencing with Section 23620) of Title 4, “firearm safety device” means a device other than a gun safe that locks and is designed to prevent children and unauthorized users from firing a firearm. The device may be installed on a firearm, be incorporated into the design of the firearm, or prevent access to the firearm.

SEC. 4. Section 16850 of the Penal Code is amended to read:

16850. As used in Sections 17740, 23925, 25105, 25205, 25135, and 25610, in Article 3 (commencing with Section 25505) of Chapter 2 of Division 5 of Title 4, in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, and in Chapter 7 (commencing with Section 26400) of Division 5 of Title 4, “locked container” means a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device. The term “locked container” does not include the utility or glove compartment of a motor vehicle.

SEC. 5. Section 17060 is added to the Penal Code, to read:

17060. As used in Section 25135, “residence” means any structure intended or used for human habitation, including, but not limited to, houses, condominiums, rooms, motels, hotels, time-shares, and recreational or other vehicles where human habitation occurs.

SEC. 6. Section 23510 of the Penal Code is amended to read:

23510. (a) For purposes of Sections 25400 and 26500, Sections 27500 to 27590, inclusive, Section 28100, Sections 29610 to 29750, inclusive, Sections 29800 to 29905, inclusive, and Section 31615 of this code, and any provision listed in subdivision (a) of Section 16585 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, notwithstanding the fact that the term “any firearm” may be used in those sections, each firearm or the frame or receiver of each firearm constitutes a distinct and separate offense under those sections.

(b) For purposes of Section 25135, notwithstanding the fact that the term “any firearm” may be used in that section, each firearm constitutes a distinct and separate offense under that section.

SEC. 7. Section 25135 is added to the Penal Code, to read:

25135. (a) A person who is 18 years of age or older, and who is the owner, lessee, renter, or other legal occupant of a residence, who owns a firearm and who knows or has reason to know that another person also residing therein is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm shall not keep in that residence any firearm that he or she owns unless one of the following applies:

(1) The firearm is maintained within a locked container.

- (2) The firearm is disabled by a firearm safety device.
 - (3) The firearm is maintained within a locked gun safe.
 - (4) The firearm is maintained within a locked trunk.
 - (5) The firearm is locked with a locking device as described in Section 16860, which has rendered the firearm inoperable.
 - (6) The firearm is carried on the person or within close enough proximity thereto that the individual can readily retrieve and use the firearm as if carried on the person.
- (b) A violation of this section is a misdemeanor.
- (c) The provisions of this section are cumulative, and do not restrict the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

SEC. 8. Section 28220 of the Penal Code is amended to read:

28220. (a) Upon submission of firearm purchaser information, the Department of Justice shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(b) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(c) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subdivision (a) of Section 27535, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(d) If the department determines that the copies of the register submitted to it pursuant to subdivision (d) of Section 28210 contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the handgun or other firearm to be purchased, or if any fee required pursuant to Section 28225 is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to Section 28225, or both, as appropriate and, if notification by the department is received by the dealer at any time

prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(e) If the department determines that the information transmitted to it pursuant to Section 28215 contains inaccurate or incomplete information preventing identification of the purchaser or the handgun or other firearm to be purchased, or if the fee required pursuant to Section 28225 is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to Section 28225, or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(f) (1) (A) The department shall immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in the National Instant Criminal Background Check System, indicate one of the following:

(i) The purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation and may be a person described in Section 8100 or 8103 of the Welfare and Institutions Code and the department is unable to ascertain whether the purchaser is a person who is prohibited from possessing, receiving, owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(ii) The purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(iii) The purchaser may be a person described in subdivision (a) of Section 27535, and the department is unable to ascertain whether the purchaser, in fact, is a person described in subdivision (a) of Section 27535, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(B) The dealer shall provide the purchaser with information about the manner in which he or she may contact the department regarding the delay described in subparagraph (A).

(2) The department shall notify the purchaser by mail regarding the delay and explain the process by which the purchaser may obtain a copy of the criminal or mental health record the department has on file for the purchaser. Upon receipt of that criminal or mental health record, the purchaser shall report any inaccuracies or incompleteness to the department on an approved form.

(3) If the department ascertains the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), after the waiting period described in Sections 26815 and 27540, but within 30 days of the dealer's original submission of the purchaser information to the department pursuant to this section, the department shall do the following:

(A) If the purchaser is not a person described in subdivision (a) of Section 27535, and is not prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer of that fact and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred.

(B) If the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer and the chief of the police department in the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact in compliance with subdivision (c) of Section 28220.

(4) If the department is unable to ascertain the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), within 30 days of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately notify the dealer and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred.

SEC. 8.1. Section 28220 of the Penal Code is amended to read:

28220. (a) Upon submission of firearm purchaser information, the Department of Justice shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(b) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in

which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(c) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subdivision (a) of Section 27535, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(d) If the department determines that the copies of the register submitted to it pursuant to subdivision (d) of Section 28210 contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the handgun or other firearm to be purchased, or if any fee required pursuant to Section 28225 is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to Section 28225, or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(e) If the department determines that the information transmitted to it pursuant to Section 28215 contains inaccurate or incomplete information preventing identification of the purchaser or the handgun or other firearm to be purchased, or if the fee required pursuant to Section 28225 is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to Section 28225, or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(f) (1) (A) The department shall immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in the National Instant Criminal Background Check System, indicate one of the following:

(i) The purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation and may be a person described in Section 8100 or 8103 of the Welfare and Institutions Code and the department is unable to ascertain whether the purchaser is a person who is prohibited from possessing, receiving, owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, prior

to the conclusion of the waiting period described in Sections 26815 and 27540.

(ii) The purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(iii) The purchaser may be a person described in subdivision (a) of Section 27535, and the department is unable to ascertain whether the purchaser, in fact, is a person described in subdivision (a) of Section 27535, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(B) The dealer shall provide the purchaser with information about the manner in which he or she may contact the department regarding the delay described in subparagraph (A).

(2) The department shall notify the purchaser by mail regarding the delay and explain the process by which the purchaser may obtain a copy of the criminal or mental health record the department has on file for the purchaser. Upon receipt of that criminal or mental health record, the purchaser shall report any inaccuracies or incompleteness to the department on an approved form.

(3) If the department ascertains the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), after the waiting period described in Sections 26815 and 27540, but within 30 days of the dealer's original submission of the purchaser information to the department pursuant to this section, the department shall do the following:

(A) If the purchaser is not a person described in subdivision (a) of Section 27535, and is not prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer of that fact and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

(B) If the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer and the chief of the police department in the city or county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county

in which the sale was made, of that fact in compliance with subdivision (c) of Section 28220.

(4) If the department is unable to ascertain the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), within 30 days of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately notify the dealer and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

SEC. 9. Section 28255 is added to the Penal Code, to read:

28255. Commencing January 1, 2014, if after the conclusion of the waiting period described in Sections 26815 and 27540, the individual named in the application as the purchaser of the firearm takes possession of the firearm set forth in the application to purchase, the dealer shall notify the Department of Justice of that fact in a manner and within a time period specified by the department, and with sufficient information to identify the purchaser and the firearm that the purchaser took possession of.

SEC. 10. (a) Section 1.1 of this bill incorporates amendments to Section 11106 of the Penal Code proposed by both this bill and Assembly Bill 539. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 11106 of the Penal Code, and (3) SB 53 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 539, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 11106 of the Penal Code proposed by both this bill and Senate Bill 53. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 11106 of the Penal Code, (3) Assembly Bill 539 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 53 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 11106 of the Penal Code proposed by this bill, Assembly Bill 539, and Senate Bill 53. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2014, (2) all three bills amend Section 11106 of the Penal Code, and (3) this bill is enacted after Assembly Bill 539 and Senate Bill 53, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 11. Section 2.5 of this bill incorporates amendments to Section 16520 of the Penal Code proposed by both this bill and Senate Bill 299. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 16520 of the

Penal Code, and (3) this bill is enacted after Senate Bill 299, in which case Section 2 of this bill shall not become operative.

SEC. 12. Section 8.1 of this bill shall only become operative if Assembly Bill 538 of the 2013–14 Regular Session is enacted and becomes effective on or before January 1, 2014, and Assembly Bill 538, as enacted, amends Section 28160 of the Penal Code, in which case Section 8 of this bill shall not become operative.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

Senate Bill No. 363

CHAPTER 758

An act to amend Sections 25100, 25200, 32000, and 32015 of the Penal Code, relating to firearms.

[Approved by Governor October 11, 2013. Filed with
Secretary of State October 11, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 363, Wright. Firearms: criminal storage: unsafe handguns: fees.

(1) Existing law requires the Department of Justice to maintain a roster listing all pistols, revolvers, and other firearms capable of being concealed on the person that have been tested by a certified testing laboratory and have been determined not to be unsafe handguns. Existing law allows the department to charge manufacturers of firearms an annual fee not to exceed the costs of preparing, publishing, and maintaining the roster.

This bill would require the annual fee, commencing on January 1, 2015, to be paid on January 1, or the next business day, of every year.

(2) Existing law makes it a misdemeanor punishable with specified penalties if a person keeps a handgun at the person's premises and knows or reasonably should know that a child is likely to gain access to the handgun without permission, as specified, and the child gains access to the handgun and carries it off-premises or off-premises to a school, as specified.

This bill would make that prohibition apply to a person who keeps a handgun at the person's premises and knows or reasonably should know that a prohibited person, as specified, is likely to gain access to the handgun, and the prohibited person gains access to the handgun and carries it off-premises or off-premises and to a school, as specified.

(3) Existing law makes it an offense for any person in this state to manufacture or cause to be manufactured, import into the state for sale, keep for sale, offer or expose for sale, give, or lend any unsafe handgun, as defined. Existing law exempts from those prohibitions, the sale of handguns to, or the purchase of handguns by, specified law enforcement entities, among others.

This bill would exempt the sale of handguns to, or the purchase of handguns by, federal law enforcement agencies from the application of those prohibitions.

(4) Existing law, subject to exceptions, provides that the offense of criminal storage of a firearm is committed when a person who keeps any loaded firearm within any premises that are under the person's custody or control knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, and the child obtains access to the firearm and thereby causes death or injury

to the child or any other person, as specified, or carries the firearm to a public place, or unlawfully displays or uses the firearm, as specified.

This bill would expand these provisions to include the circumstance of when the person who keeps the firearm knows or reasonably should know that a person prohibited from owning or possessing a firearm or deadly weapon, as specified, is likely to gain access to the firearm, and that person gains access to the firearm and thereby causes death or injury to himself or herself or any other person, as specified, or carries the firearm to a public place, or unlawfully displays or uses the firearm, as specified.

(5) This bill would incorporate additional changes to Section 25100 of the Penal Code proposed by AB 231 that would become operative if this bill and AB 231 are both enacted and this bill is enacted last. This bill would incorporate additional changes to Section 32000 of the Penal Code proposed by AB 169 that would become operative if this bill and AB 169 are both enacted and this bill is enacted last.

(6) By expanding the scope of existing crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 25100 of the Penal Code is amended to read:

25100. (a) Except as provided in Section 25105, a person commits the crime of “criminal storage of a firearm of the first degree” if all of the following conditions are satisfied:

(1) The person keeps any loaded firearm within any premises that are under the person’s custody or control.

(2) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm.

(3) The child obtains access to the firearm and thereby causes death or great bodily injury to the child or any other person, or the person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law obtains access to the firearm and thereby causes death or great bodily injury to himself or herself or any other person.

(b) Except as provided in Section 25105, a person commits the crime of “criminal storage of a firearm of the second degree” if all of the following conditions are satisfied:

(1) The person keeps any loaded firearm within any premises that are under the person’s custody or control.

(2) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm.

(3) The child obtains access to the firearm and thereby causes injury, other than great bodily injury, to the child or any other person, or carries the firearm either to a public place or in violation of Section 417, or the person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law obtains access to the firearm and thereby causes injury, other than great bodily injury, to himself or herself or any other person, or carries the firearm either to a public place or in violation of Section 417.

SEC. 1.5. Section 25100 of the Penal Code is amended to read:

25100. (a) Except as provided in Section 25105, a person commits the crime of "criminal storage of a firearm in the first degree" if all of the following conditions are satisfied:

(1) The person keeps any loaded firearm within any premises that are under the person's custody or control.

(2) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm.

(3) The child obtains access to the firearm and thereby causes death or great bodily injury to the child or any other person, or the person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law obtains access to the firearm and thereby causes death or great bodily injury to himself or herself or any other person.

(b) Except as provided in Section 25105, a person commits the crime of "criminal storage of a firearm in the second degree" if all of the following conditions are satisfied:

(1) The person keeps any loaded firearm within any premises that are under the person's custody or control.

(2) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm.

(3) The child obtains access to the firearm and thereby causes injury, other than great bodily injury, to the child or any other person, or carries the firearm either to a public place or in violation of Section 417, or the person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law obtains access to the firearm and thereby causes injury, other than great bodily injury, to himself or herself or any other person, or carries the firearm either to a public place or in violation of Section 417.

(c) Except as provided in Section 25105, a person commits the crime of "criminal storage of a firearm in the third degree" if the person keeps any

loaded firearm within any premises that are under the person's custody or control and negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, unless reasonable action is taken by the person to secure the firearm against access by the child.

SEC. 2. Section 25200 of the Penal Code is amended to read:

25200. (a) If all of the following conditions are satisfied, a person shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine:

(1) The person keeps a pistol, revolver, or other firearm capable of being concealed upon the person, loaded or unloaded, within any premises that are under the person's custody or control.

(2) The person knows or reasonably should know that a child is likely to gain access to that firearm without the permission of the child's parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm.

(3) The child or the prohibited person obtains access to that firearm and thereafter carries that firearm off-premises.

(b) If all of the following conditions are satisfied, a person shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding five thousand dollars (\$5,000), or by both that imprisonment and fine:

(1) The person keeps any firearm within any premises that are under the person's custody or control.

(2) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm.

(3) The child or the prohibited person obtains access to the firearm and thereafter carries that firearm off-premises to any public or private preschool, elementary school, middle school, high school, or to any school-sponsored event, activity, or performance, whether occurring on school grounds or elsewhere.

(c) A pistol, revolver, or other firearm capable of being concealed upon the person that a child or prohibited person gains access to and carries off-premises in violation of this section shall be deemed "used in the commission of any misdemeanor as provided in this code or any felony" for the purpose of Section 29300 regarding the authority to confiscate firearms and other deadly weapons as a nuisance.

(d) As used in this section, "off-premises" means premises other than the premises where the firearm was stored.

SEC. 3. Section 32000 of the Penal Code is amended to read:

32000. (a) Commencing January 1, 2001, any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.

(b) This section shall not apply to any of the following:

(1) The manufacture in this state, or importation into this state, of a prototype handgun when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice pursuant to Section 32010 to conduct an independent test to determine whether that handgun is prohibited by Sections 31900 to 32110, inclusive, and, if not, allowing the department to add the firearm to the roster of handguns that may be sold in this state pursuant to Section 32015.

(2) The importation or lending of a handgun by employees or authorized agents of entities determining whether the weapon is prohibited by this section.

(3) Firearms listed as curios or relics, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

(4) The sale or purchase of a handgun, if the handgun is sold to, or purchased by, the Department of Justice, a police department, a sheriff's official, a marshal's office, the Department of Corrections and Rehabilitation, the California Highway Patrol, any district attorney's office, any federal law enforcement agency, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. This section does not prohibit the sale to, or purchase by, sworn members of these agencies of a handgun.

(c) Violations of subdivision (a) are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, but the penalty to be imposed shall be determined as set forth in Section 654.

SEC. 3.5. Section 32000 of the Penal Code is amended to read:

32000. (a) Commencing January 1, 2001, any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.

(b) This section shall not apply to any of the following:

(1) The manufacture in this state, or importation into this state, of a prototype handgun when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice pursuant to Section 32010 to conduct an independent test to determine whether that handgun is prohibited by Sections 31900 to 32110, inclusive, and, if not, allowing the department to add the firearm to the roster of handguns that may be sold in this state pursuant to Section 32015.

(2) The importation or lending of a handgun by employees or authorized agents of entities determining whether the weapon is prohibited by this section.

(3) Firearms listed as curios or relics, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

(4) The sale or purchase of a handgun, if the handgun is sold to, or purchased by, the Department of Justice, a police department, a sheriff's official, a marshal's office, the Department of Corrections and Rehabilitation, the California Highway Patrol, any district attorney's office, any federal law enforcement agency, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. This section does not prohibit the sale to, or purchase by, sworn members of these agencies of a handgun. A person who, under this paragraph, acquires a handgun that is not on the roster required by Section 32015, shall not sell or otherwise transfer ownership of the handgun to a person who is not exempted under this paragraph.

(c) Violations of subdivision (a) are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, but the penalty to be imposed shall be determined as set forth in Section 654.

SEC. 4. Section 32015 of the Penal Code is amended to read:

32015. (a) On and after January 1, 2001, the Department of Justice shall compile, publish, and thereafter maintain a roster listing all of the handguns that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state pursuant to this part. The roster shall list, for each firearm, the manufacturer, model number, and model name.

(b) (1) The department may charge every person in this state who is licensed as a manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, or offers or exposes for sale any handgun in this state, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster pursuant to subdivision (a) and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs necessary to implement Sections 31900 to 32110, inclusive. Commencing January 1, 2015, the annual fee shall be paid on January 1, or the next business day, of every year.

(2) Any handgun that is manufactured by a manufacturer who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, or offers or exposes for sale any handgun in this state, and who fails to pay any fee required pursuant to paragraph (1), may be excluded from the roster.

(3) If a purchaser has initiated a transfer of a handgun that is listed on the roster as not unsafe, and prior to the completion of the transfer, the handgun is removed from the roster of not unsafe handguns because of failure to pay the fee required to keep that handgun listed on the roster, the handgun shall be deliverable to the purchaser if the purchaser is not otherwise

prohibited from purchasing or possessing the handgun. However, if a purchaser has initiated a transfer of a handgun that is listed on the roster as not unsafe, and prior to the completion of the transfer, the handgun is removed from the roster pursuant to subdivision (d) of Section 32020, the handgun shall not be deliverable to the purchaser.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 25100 of the Penal Code proposed by both this bill and Assembly Bill 231. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 25100 of the Penal Code, and (3) this bill is enacted after Assembly Bill 231, in which case Section 1 of this bill shall not become operative.

SEC. 6. Section 3.5 of this bill incorporates amendments to Section 32000 of the Penal Code proposed by both this bill and Assembly Bill 169. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 32000 of the Penal Code, and (3) this bill is enacted after Assembly Bill 169, in which case Section 3 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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Tab 15

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2 NORA FRIMANN, Assistant City Attorney (93249)
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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

CERTIFICATE

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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.

DEPOSITION OF OFFICER STEVEN VALENTINE

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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.

DEPOSITION OF OFFICER STEVEN VALENTINE

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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?

DEPOSITION OF OFFICER STEVEN VALENTINE

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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

DEPOSITION OF OFFICER STEVEN VALENTINE

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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

DEPOSITION OF OFFICER STEVEN VALENTINE

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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.

DEPOSITION OF OFFICER STEVEN VALENTINE

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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.

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DATED:
MAY 11, 2016

AUDREY S. KLETTKE
CSR No. 11875

DEPOSITION OF OFFICER STEVEN VALENTINE

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Tab 16

1 RICHARD DOYLE, City Attorney (88625)
2 NORA FRIMANN, Assistant City Attorney (93249)
3 CLIFFORD S. GREENBERG, Sr. Deputy City Attorney (122612)
4 MARK J. VANNI, Deputy City Attorney (267892)
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9 Facsimile Number: (408) 998-3131
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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, CITY OF SAN
21 JOSE POLICE DEPARTMENT, OFFICER
22 STEVEN VALENTINE, and DOES 1-20,
23 inclusive,

24 Defendants.

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

**MOVING RESPONSIVE SEPARATE
STATEMENT OF MATERIAL FACTS
AND EVIDENCE IN REPLY AND
OPPOSITION TO PLAINTIFFS
CROSS-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

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

1 Plaintiffs opposed Defendants’ motion for summary judgment, and filed a cross-
 2 motion asserting additional facts. In reply and opposition to Plaintiffs’ additional facts, an in
 3 accordance with the Court’s standing order, Defendants submit the following separate
 4 statement in opposition to Plaintiffs’ cross-motion for summary judgment.
 5

Claim or Defense	Moving Party’s Undisputed Facts/Supporting Evidence	Opposing Party’s Response/Supporting Evidence	Moving Party’s Response/Supporting Evidence
Article III Standing			
1. Second Amendment Foundation, Inc. (SAF) and Calguns Foundation, Inc. did not suffer an actual injury or immediate threat of actual injury.	Fact 1. Lori Rodriguez is not a member of SAF or Calguns. L. Rodriguez Dep. 13:23-14:2. Vanni Declaration Ex. G.	Undisputed	
Second Amendment Foundation, Inc., (SAF) meets Article III standing requirements.		Additional Fact A: See: Declaration of Alan Gottlieb, Executive Vice-President of SAF. Additional Fact B: See: Declaration of Brandon Combs, Executive Director of CGF.	Undisputed

<p>1 Calguns 2 Foundation, Inc., 3 (CGF) meets 4 Article III standing requirements.</p>		<p>Additional Fact B: See: Declaration of Brandon Combs, Executive Director of CGF.</p>	<p>Undisputed</p>
	<p>5 6 Fact 2. When detaining or apprehending a 7 person for a 5150 hold, 8 officers are to confiscate any firearm owned, in the 9 possession or under the control of the subject. 10 Vanni Declaration ¶ 2 11 and Ex. A (SJPD Duty Manual § L5705) 12 Valentine Dep. 55:6-10. 13 Vanni Declaration Ex. H.</p>	<p>Undisputed with respect to firearms controlled by or possessed by Edward Rodriguez. Disputed with respect to firearm(s) owned, registered or under the control of Lori Rodriguez. See: Valentine Dep. 16:8- 17:1, 68:11-20 Lori Declaration: ¶¶ 3, 4, 6, 7, 8, 12, 13, 14, 15, 16. Lori Dep. 18:4-20:5.</p>	<p>See Defendants' Objections Nos. 1, 4, 6</p>
<p>16 The Defendants 17 were not authorized under 18 any state law or 19 decisional authority to seize 20 firearms owned and under the 21 control of Lori Rodriguez.</p>		<p>Additional Fact C: All of the Rodriguez firearms were stored in a California Approved Firearm Safe. See: Lori Declaration ¶¶ 3, 4, 6, 7, 8, 12, 13, 14, 15, 16.</p>	<p>See Defendants' Objections Nos. 1, 4, 6</p>

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		<p>Additional Fact D:</p> <p>At the time Officer Valentine demanded surrender of the Rodriguez firearms, Edward was already on his way to the hospital and therefore unable to exercise control over any firearms in the Rodriguez's gun safe.</p> <p>See: Valentine Dep. 28:11-24, 31:14-33:16, 54:1-4, 68:24 - 69:7</p>	<p>Disputed.</p> <p>Additional Fact 22:</p> <p>Officer Valentine did not know if Edward could access the firearms when he returned from the 5150 hold.</p> <p>Valentine Dep. 68:18-25; 69:1-70:2.</p>
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		<p>Additional Fact E:</p> <p>Lori had the key to the combination dial in a secure place. The combination dial could not be turned without the key.</p> <p>See: Lori Dep. 45:20-46:21, 48:3-25, 50:8-15,</p> <p>Lori Declaration: ¶¶ 3, 4, 6, 7, 12, 13.</p>	<p>Disputed.</p> <p>Additional Fact 23:</p> <p>The key and combination were not in a secure place at the time as Edward had access to both rooms and Lori did not know if Edward had a key to the file cabinet.</p> <p>Lori Dep. 46:22-47:6; 49:9-11.</p> <p>See Defendants' Objections Nos. 1, 4</p>
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		<p>Additional Fact F:</p> <p>Lori had the combination to the gun safe changed on April 26, 2013 and since then, has kept the key in a secure place. The key only unlocks the combination dial and she is the only person who knows the combination of the safe and it is not written down anywhere for Edward to discover.</p> <p>See: Lori Dep. 58:2-60:18.</p> <p>Lori Declaration: ¶¶ 3, 6, 7, 13</p>	<p>Undisputed</p>
<p>First Claim For Relief: Second Amendment</p>			
<p>1. Defendants have not infringed upon Plaintiffs Second Amendment Rights to keep and bear arms for self-defense.</p>	<p>Fact 3. Lori Rodriguez can own, possess, or acquire firearms.</p> <p>Plaintiffs Complaint ¶ 28.</p> <p>L. Rodriguez Dep. 70:22-24. Vanni Declaration Ex. G.</p>	<p>Undisputed with respect to ownership, acquisition, and possession of future firearms.</p> <p>Disputed with respect to Lori’s right to “keep and bear” firearms already owned by her.</p> <p>See: Lori Declaration ¶¶ 3, 11, 15, 16, 17, 18, 19.</p>	

<p>1 2. The City does 2 not have a policy, 3 practice, or 4 custom that 5 violates Plaintiffs' 6 Second 7 Amendment 8 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>Undisputed with respect to ownership, acquisition, and possession of future firearms.</p> <p>Disputed with respect to Lori's right to "keep and bear" firearms already owned by her.</p> <p>See: Lori Declaration ¶¶ 3, 11, 15, 16, 17, 18, 19.</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>Undisputed</p>	

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<p>The Defendants' policies, procedures and customs violate the rights of any law-abiding citizen who has the means to secure firearms, but who live with persons unable to possess firearms.</p>		<p>Additional Facts A, B, C, D, E and F - <i>supra</i>.</p>	<p>See Defendants' responses to Additional Facts A-F.</p>
<p>The Defendants' policies procedure and customs as applied to Lori Rodriguez, both at the time of the seizure and as a continuing circumstance violate, Lori's right to keep and bear her own firearms.</p>		<p>Additional Facts A, B, C, D, E and F - <i>supra</i>.</p> <p>Additional Fact G:</p> <p>Lori Rodriguez was the sole registered owner of at least one of the firearms seized by the Defendants.</p> <p>See: Valentine Dep. 16:8 - 17:1</p> <p>Lori Declaration: ¶¶ 3, 15</p> <p>Lori Dep. 23:12-15.</p>	<p>See Defendants' responses to Additional Facts A-F.</p> <p>Additional Fact G: Undisputed</p>
		<p>Additional Fact H:</p> <p>Officer Valentine knew that Lori Rodriguez was the registered owner of at least one of the firearms stored in the Rodriguez gun safe and he confirmed that fact with his dispatcher.</p> <p>See: Valentine Dep. 16:8 - 17:1.</p>	<p>Undisputed</p>

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		<p>Additional Fact I:</p> <p>Lori objected to the seizure of her personal firearm and conveyed that objection to Officer Valentine.</p> <p>See: Valentine Dep. 68:11-20</p> <p>Lori Declaration: ¶¶3, 16.</p>	<p>Undisputed</p>
		<p>Additional Fact J:</p> <p>Lori always stood ready, willing and able to execute the necessary paper work to transfer sole registration and ownership of all of the Rodriguez firearms to her name.</p> <p>See: Lori Declaration: ¶¶2, 4, 5, 8, 9, 10, 15, 19.</p>	<p>Undisputed</p> <p>See Defendants' Objections Nos. 1, 3, 5, 8</p>
		<p>Additional Fact K:</p> <p>Lori knew and understood her duty to prevent Edward from obtaining possession of the firearms under her control.</p> <p>See: Lori Declaration: ¶¶4, 6, 7, 12, 13, 14.</p> <p>Lori Dep. 75:9-12, 76:6-20, 84:1-17.</p>	<p>Undisputed</p>

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		<p>Additional Fact L:</p> <p>The California Department of Justice approved the transfer and registration of all the Rodriguez firearms to Lori during the month of May 2015.</p> <p>See: Lori Declaration: ¶¶ 5, 6, 7, 8, 9, 10.</p>	<p>Undisputed</p> <p>See Defendants' Objections Nos. 3-5</p>
		<p>Additional Fact M:</p> <p>Lori Rodriguez obtained a Law Enforcement Gun Release Approval letter pursuant to California Penal Code § 33800 et seq., for each and every firearm seized by the Defendants on June 1, 2015 and tendered those to the Defendants on June 11, 2015.</p> <p>See: Lori Declaration: ¶¶ 5, 6, 7, 8, 9, 10.</p>	<p>Undisputed</p> <p>See Defendants' Objections Nos. 3-5</p>
		<p>Additional Fact N:</p> <p>On or about July 6, 2015 the Defendants refused to release firearms owned and registered to Lori Rodriguez.</p> <p>See: Lori Declaration: ¶11.</p>	<p>Undisputed</p>

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		<p>Additional Fact O:</p> <p>It is not rational to refuse the return of a firearm to an owner for “safety” reasons – when the owner is eligible to purchase, own and can safely store those firearms, or can purchase new ones, in compliance with state and federal law.</p> <p>See: Lori Declaration: ¶¶ 15, 17, 19.</p> <p>Lori Dep. 70:22-71:18.</p>	<p>Disputed. Legal Argument</p> <p>See Defendants’ Objections Nos. 8</p>
<p>Second Claim for Relief: Fourth Amendment</p>			
<p>1. The confiscation of the firearms was reasonable under the 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>	<p>Undisputed</p>	

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<p>Warrantless seizures from the home violate the Fourth Amendment unless there is a valid exception to the warrant requirement.</p>		<p>Additional Fact P:</p> <p>The police did not have warrant to seize Lori's firearms and she did not consent to them being seized.</p> <p>See: Lori Declaration ¶ 17.</p>	<p>Undisputed</p> <p>Additional Fact 24: Officer Valentine did not threaten, harm, or coerce Lori.</p> <p>Rodriguez Dep.61:14-62:22</p> <p>Additional Fact 25: Officer Valentine informed Lori of her right to refuse.</p> <p>Valentine Dep. 63:20-64:5.</p>
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			<p>Additional Fact 26:</p> <p>Officer Valentine believed Lori consented.</p> <p>Valentine Dep. 45:12-46:25.</p> <p>Additional Fact 27:</p> <p>The firearms were visible when the safe was open.</p> <p>Rodriguez Dep. 64:23-65:1</p>
<p>The warrantless seizure of the firearm registered and owned by Lori Rodriguez, even if the seizure of other firearms was valid, was unreasonable and violated the Fourth Amendment.</p>		<p>Additional Facts C-O, <i>supra</i>.</p> <p>Additional Fact Q:</p> <p>Lori Rodriguez was not being detained for a 5150 and is not now, nor has she ever been a prohibited person under any theory of law.</p> <p>See: Lori Declaration: ¶ 14.</p>	<p>See Defendants' responses to Additional Facts C-O.</p> <p>Additional Fact Q: Undisputed</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>Undisputed</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>Undisputed</p>	
		<p>Additional Fact R:</p> <p>Edward Rodriguez's statements about firearms in his safe may have been in response to a question by Officer Valentine.</p> <p>See: Valentine Dep. 44:12 - 45:6.</p>	<p>Undisputed</p>

<p>1 2 3 4 5 6 7 8</p>		<p>Additional Fact S:</p> <p>There were no firearms located outside of the Rodriguez gun safe at any time prior to Edward being transported to the Hospital.</p> <p>See: Valentine Dep. 43:7-15</p> <p>Lori Dep. 40:24-41:10</p>	<p>Undisputed</p>
<p>9 10 11 12 13 14 15 16 17 18 19</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>	<p>Undisputed</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>Undisputed</p>	
<p>Defendants' warrantless seizure of Lori's Rodriguez's firearms was not consensual because it was obtained under duress.</p>		<p>Additional Fact T:</p> <p>It is a crime to obstruct, delay or interfere with a peace officer in the performance of his or her duty.</p> <p>See: Penal Code § 148.</p>	<p>Disputed. Misstates law. Penal Code section 148 requires willfulness.</p> <p>See Additional Fact 25.</p>
		<p>Additional Fact U:</p> <p>Lori Rodriguez was aware at time of the seizure of her firearm(s), that it was wrong to delay, obstruct or interfered with a peace officer in the performance of his/her duty.</p> <p>See: Lori Declaration: ¶ 16.</p>	<p>Undisputed.</p> <p>See Additional Fact 25.</p> <p>See City Objection No. 6</p>

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	<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>	<p>Undisputed</p>	
<p>The seizure of the firearms was not consensual.</p>		<p>Additional Fact V:</p> <p>Officer Valentine did not use the San Jose Police Department form for documenting consensual searches.</p> <p>See: Valentine Depo 18:16-22, 46:12-15</p>	<p>Undisputed</p> <p>See Additional Fact 24-27, <i>supra</i>.</p>
<p>There were no exigent circumstances to justify the warrantless seizure of the Rodriguez firearms.</p>		<p>Additional Fact W:</p> <p>Officer Valentine was Officer in Charge at the Rodriguez home and made the decision to seize the firearms.</p> <p>See: Valentine Dep 28: 11-24.</p>	<p>Undisputed</p>

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		<p>Additional Fact X:</p> <p>Any discussions had by Officer Valentine about seizing the firearms did not take place until after Edward Rodriguez was secured and shortly after that Edward was transported by ambulance to the hospital for a 72 hour hold pursuant to 5150.</p> <p>See: Valentine Depo 31:14-33:16, 54:1-4</p>	<p>Undisputed</p> <p>Additional Fact 28: In Officer Valentine's experience, 5150 holds can last as few as four hours.</p> <p>Valentine Dep. 69:4-11.</p>
		<p>Additional Fact Y:</p> <p>Lori Rodriguez did not report that any domestic violence had occurred.</p> <p>Valentine Depo: 37:25 - 38:5</p>	<p>Undisputed</p>

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		<p>Additional Fact Z:</p> <p>Officer Valentine filed a declaration in the state action that contained a false statement saying he had conducted a “protective sweep” of the Rodriguez home. He admits in his deposition that this was an error and that his report, which does not refer to a protective sweep, is the more accurate description of the events in question. Namely that there were no exigent circumstances at the Rodriguez home requiring protective sweeps.</p> <p>Valentine Depo: 38:6 - 43:6.</p>	<p>Undisputed that Officer Valentine did not conduct a protective sweep.</p>
		<p>Additional Fact AA:</p> <p>Officer Valentine told Lori Rodriguez that he was required by law to confiscate all weapons in the Rodriguez home.</p> <p>Valentine Depo: 46:23 - 48:18, 58:20 - 59:1, 60:10-15. 62:24 - 63:15, 67:13-21</p>	<p>Undisputed</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>Undisputed</p>	
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<p>Retention of the firearms registered to and cleared for release to Lori Rodriguez <i>after</i> the Sixth District Court of Appeal authorized release violates the Fourth Amendment, even if the original seizure was justified.</p>		<p>Additional Fact BB:</p> <p>The Sixth District Court of Appeal authorized release of the firearms to Lori if she complied with Penal Code § 38880.</p> <p>See Vanni Declaration Exhibit F, pg. 61-62 of Document #23, pg. 16-17 of the 6th DCA opinion.</p>	<p>Disputed</p> <p>See Vanni Declaration Exhibit F, pg. 61-62 of Document #23, pg. 16-17 of the 6th DCA opinion.</p> <p>Defendants' Request for Judicial Notice ¶¶ 1-5.</p> <p>Defendants' Additional Fact 29:</p> <p>Judge Kirwan determined that return of all the firearms to Lori was not safe.</p> <p>Defendants' Request for Judicial Notice ¶ 3-5.</p>
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<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>Undisputed with respect to firearms owned or registered to Edward Rodriguez.</p> <p>Disputed with respect to firearm(s) owned or registered to Lori Rodriguez.</p> <p>See: Lori Declaration: ¶¶ 3, 4, 6, 7, 8, 12, 13, 14, 15, 16.</p>	
<p>Seizure of the firearm registered to Lori Rodriguez violated the Fourth Amendment.</p>		<p>See Additional Facts C-Q, supra.</p>	<p>See Defendants response to Additional Facts C-Q.</p>
<p>Retention of the firearms registered to and cleared for release to Lori Rodriguez after the Sixth District Court of Appeal authorized release violates the Fourth Amendment, even if the original seizure was justified.</p>		<p>See Additional Fact BB, supra.</p>	<p>See Defendants response to Additional Fact BB.</p>
<p>Third Claim For Relief: Fifth Amendment (Takings Clause)</p>			

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<p>1. Defendants acquired the firearms under section 8102</p>	<p>Fact 14. Edward Rodriguez was detained for a 5150 hold and is a prohibited party under Section 8103.</p> <p>Plaintiffs' Complaint ¶ 18.</p> <p>L. Rodriguez Dep. 70:17-21. Vanni Declaration Ex. G.</p>	<p>Undisputed</p>	
<p>Taking of personal property, even if justified on the grounds of Public Safety, requires just compensation if the seizure turns into a forfeiture.</p>		<p>Additional Fact Q. <i>supra</i>.</p>	<p>See Defendants' response to Additional Fact Q.</p>
<p>2. The City retains the firearms pursuant to a valid Court order.</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.</p> <p>Vanni Declaration ¶¶ 3-7 and Exs. B-F.</p> <p>Defendants' Request for Judicial Notice ¶¶ 1-5.</p>	<p>Undisputed</p>	

1	Conversion of personal property for public use requires just compensation.		Additional Fact CC: The firearms owned and registered to Lori Rodriguez are valuable personal property. See: Lori Declaration: ¶ 18.	Undisputed See Defendants' Objection No. 7.
6	Fourth Claim for Relief: Fourteenth Amendment			
10	1. Lori had Procedural Due Process under Section 8102	Fact 16. The City initiated a petition, <i>City of San Jose v. Edward Rodriguez</i> under Section 8102. Vanni Declaration ¶ 3 and Ex. B (City's Petition). Defendants' Request for Judicial Notice ¶ 1.	Undisputed with respect to all dates prior to June 11, 2015. Disputed with respect to all dates after the California Department of Justice approved the transfer and release of firearms to Lori Rodriguez.	
19	The Fourteenth Amendment Procedural Due Process claim arises after the Sixth District Court of Appeal authorized the release of the firearms through the process of Penal Code ¶ 33800 et seq.		See: Additional Facts L, M, N, O and BB. <i>supra</i> . See: Lori Declaration ¶ 5, 6, 7, 8, 9, 10, 11, 15, 19.	See See Defendants' response and Objections to Additional Facts L, M, N, O and BB.

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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>Undisputed</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>Undisputed</p>	

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	<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>Undisputed</p>	
<p>Even if the original seizure provided full due process protection, the retention of the firearms after the Court of Appeals authorized release, violates due process.</p>		<p>See: Additional Facts L, M, N, O and BB. Supra.</p> <p>See: Lori Declaration ¶ 5, 6, 7, 8, 9, 10, 11, 15, 19.</p>	<p>See Defendants' response and Objections to Additional Facts L, M, N, O and BB.</p>

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<p>2. The City retains the firearms because Judge Kirwan's order regarding the safety of returning the firearms to Lori.</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.</p> <p>Vanni Declaration ¶¶ 3-7 and Exs. B-F.</p> <p>Defendants' Request for Judicial Notice ¶¶ 1-5</p>	<p>Undisputed</p>	
<p>Even if the original seizure provided full due process protection, the retention of the firearms after the Court of Appeals authorized release, violates due process.</p>		<p>See: Additional Facts L, M, N, O and BB. Supra.</p> <p>See: Lori Declaration ¶ 5, 6, 7, 8, 9, 10, 11, 15, 19.</p>	<p>See Defendants' response and Objections to Additional Facts L, M, N, O and BB.</p>
<p>Fifth Claim for Relief: State Law Claim under Cal. Penal Code §§ 33800 et seq.</p>			

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<p>1. The City retains the firearms because Judge Kirwan’s order regarding the safety of returning the firearms to Lori.</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.</p> <p>Vanni Declaration ¶¶ 3-7 and Exs. B-F.</p> <p>Defendants’ Request for Judicial Notice ¶¶ 1-5</p>	<p>Undisputed</p>	
<p>The Sixth District Court of Appeals authorized the release of firearms to Lori Rodriguez upon her compliance with Penal Code § 33800 et seq., and the Defendants have violated that code section by refusing to return said firearms.</p>		<p>See: Additional Facts L, M, N, O and BB. Supra.</p> <p>See: Lori Declaration ¶ 5, 6, 7, 8, 9, 10, 11, 15, 19.</p>	<p>See Defendants’ response and Objections to Additional Facts L, M, N, O and BB.</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 30, 2016

Respectfully submitted,

RICHARD DOYLE, City Attorney

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7 By: /s/ Mark J. Vanni

MARK J. VANNI

Deputy City Attorney

8
9 Attorneys for CITY OF SAN JOSE and
OFFICER STEVEN VALENTINE

Tab 17

**U.S. District Court
California Northern District (San Jose)
CIVIL DOCKET FOR CASE #: 5:15-cv-03698-EJD**

Rodriguez et al v. City of San Jose et al
Assigned to: Hon. Edward J. Davila
Referred to: Magistrate Judge Howard R. Lloyd
Case in other court: 9th Circuit Court of Appeals, 17-17144
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 08/12/2015
Date Terminated: 10/03/2017
Jury Demand: Defendant
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Lori Rodriguez

represented by **Donald E.J. Kilmer , Jr**
Offices of Donald Kilmer
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San Jose, CA 95125
408/264-8489
Fax: 408/264-8487
Email: Don@DKLawOffice.com
ATTORNEY TO BE NOTICED

Plaintiff

Second Amendment Foundation, Inc.

represented by **Donald E.J. Kilmer , Jr**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Calguns Foundation, Inc.

represented by **Donald E.J. Kilmer , Jr**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

City Of San Jose

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ATTORNEY TO BE NOTICED

Mark Vanni
(See above for address)
ATTORNEY TO BE NOTICED

Defendant**Steven Valentine**

represented by **Clifford S. Greenberg**
(See above for address)
ATTORNEY TO BE NOTICED

Mark Vanni
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/12/2015	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$ 400, receipt number 0971-9754005.). Filed byLori Rodriguez, Calguns Foundation, Inc., Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons)(Kilmer, Donald) (Filed on 8/12/2015) (Entered: 08/12/2015)
08/13/2015	<u>2</u>	Case assigned to Magistrate Judge Howard R. Lloyd. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. (as, COURT STAFF) (Filed on 8/13/2015) (Entered: 08/13/2015)
08/13/2015	<u>3</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 11/3/2015. Case Management Conference set for 11/10/2015 01:30 AM in Courtroom 2, 5th Floor, San Jose. (cv, COURT STAFF) (Filed on 8/13/2015) (Entered: 08/13/2015)
08/13/2015	<u>4</u>	Summons Issued as to City Of San Jose, City of San Jose Police Department, Steven Valentine. (cv, COURT STAFF) (Filed on 8/13/2015) (Entered: 08/13/2015)
08/27/2015	<u>5</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc... (Kilmer, Donald) (Filed on 8/27/2015) (Entered: 08/27/2015)
10/21/2015	<u>6</u>	WAIVER OF SERVICE Returned Executed filed by Lori Rodriguez, Calguns Foundation, Inc., Second Amendment Foundation, Inc.. Service waived by All Defendants. (Kilmer, Donald) (Filed on 10/21/2015) (Entered: 10/21/2015)
10/21/2015	<u>7</u>	STIPULATION WITH PROPOSED ORDER <i>to continue Case Management Conference and other due dates</i> filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 10/21/2015) (Entered: 10/21/2015)
10/28/2015	<u>8</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by City Of San Jose, City of San Jose Police Department.. (Vanni, Mark) (Filed on 10/28/2015) (Entered: 10/28/2015)
10/28/2015	<u>9</u>	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned.

		ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED. <i>This is a text only docket entry; there is no document associated with this notice.</i> (pmc, COURT STAFF) (Filed on 10/28/2015) (Entered: 10/28/2015)
10/28/2015	<u>10</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Edward J. Davila for all further proceedings and Magistrate Judge Howard R. Lloyd remains the Referral Judge for this case. Signed by the Executive Committee on 10/29/15. (srnS, COURT STAFF) (Filed on 10/28/2015) (Entered: 10/29/2015)
11/04/2015	<u>11</u>	STIPULATION WITH PROPOSED ORDER (<i>revised after reassignment</i>) filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 11/4/2015) (Entered: 11/04/2015)
11/04/2015	<u>12</u>	ORDER granting <u>11</u> Stipulation TO CONTINUE INITIAL CASE MANAGEMENT CONFERENCE, ADR CERTIFICATION AND RULE 26(f)REPORT. The Initial Case Management Conference is continued to February 25, 2016 at 10:00 a.m. Signed by Judge Edward J. Davila on 11/4/2015. (ejdlc1S, COURT STAFF) (Filed on 11/4/2015) (Entered: 11/04/2015)
11/04/2015		Set Deadlines/Hearings: Case Management Statement due by 2/18/2016. Initial Case Management Conference set for 2/25/2016 10:00 AM in Courtroom 4, 5th Floor, San Jose. (ejdlc1S, COURT STAFF) (Filed on 11/4/2015) (Entered: 11/04/2015)
01/11/2016	<u>13</u>	ANSWER to Complaint with Jury Demand by City Of San Jose, City of San Jose Police Department, Steven Valentine. (Vanni, Mark) (Filed on 1/11/2016) (Entered: 01/11/2016)
01/20/2016	<u>14</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Vanni, Mark) (Filed on 1/20/2016) (Entered: 01/20/2016)
01/20/2016	<u>15</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Kilmer, Donald) (Filed on 1/20/2016) (Entered: 01/20/2016)
01/20/2016	<u>16</u>	Certificate of Initial Disclosure (Kilmer, Donald) (Filed on 1/20/2016) Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 01/20/2016)
02/11/2016	<u>17</u>	Certificate of Interested Entities by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc. (Kilmer, Donald) (Filed on 2/11/2016) (Entered: 02/11/2016)
02/16/2016	<u>18</u>	JOINT CASE MANAGEMENT STATEMENT (<i>for both parties</i>) filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 2/16/2016) (Entered: 02/16/2016)
02/22/2016	<u>19</u>	CASE MANAGEMENT ORDER. Based on the parties' Joint Case Management Statement and proposed schedule, the Court has determined an appearance is unnecessary at this time. Accordingly, the 2/25/2016 Case Management Conference is VACATED and the parties are ordered to comply with the following schedule: The deadline for joinder of any additional parties, or other amendments to the pleadings, is sixty days after entry of this order. The parties' request for relief from the undersigned's standing order with respect to summary judgment briefing is DENIED. All motions for summary judgment, partial summary judgment or summary adjudication must comply with Section IV of the Standing Order for Civil Cases MOTIONS FOR SUMMARY JUDGMENT, PARTIAL SUMMARY JUDGMENT OR SUMMARY ADJUDICATION. Fact Discovery cutoff 7/1/2016. Deadline to File Dispositive Motions due by 9/1/2016. Expert Discovery cutoff 10/28/2016. Motion Hearing set for 11/10/2016 09:00 AM in Courtroom 4, 5th Floor, San Jose before Hon. Edward J. Davila. Signed by Judge Edward J. Davila on 2/19/2016. (ecg, COURT STAFF) (Filed on 2/22/2016) Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 02/22/2016)
04/28/2016	<u>20</u>	STIPULATION WITH PROPOSED ORDER <i>re: Doe Defendants</i> filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 4/28/2016) (Entered: 04/28/2016)

04/29/2016	<u>21</u>	Order Granting <u>20</u> Stipulation re: Doe Defendants. The time for amendment of the pleadings for purposes of substitution of Doe Defendants is modified to July 14, 2016. All other orders and deadlines remain in effect. Signed by Hon. Edward J. Davila on 4/29/2016(ecg, COURT STAFF) (Filed on 4/29/2016) Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 04/29/2016)
09/01/2016	<u>22</u>	MOTION for Summary Judgment or, in the Alternative MOTION for partial Summary Judgment filed by City Of San Jose, Steven Valentine. Motion Hearing set for 11/10/2016 09:00 AM in Courtroom 4, 5th Floor, San Jose before Hon. Edward J. Davila. Responses due by 9/15/2016. Replies due by 9/22/2016. (Vanni, Mark) (Filed on 9/1/2016) Modified on 9/1/2016,(counsel failed to select multiple motions.) (cv, COURT STAFF). (Entered: 09/01/2016)
09/01/2016	<u>23</u>	Declaration of MARK VANNI <i>in support of <u>22</u> MOTION FOR SUMMARY JUDGMENT</i> filed by City Of San Jose, Steven Valentine. (Vanni, Mark) (Filed on 9/1/2016) Modified on 9/1/2016, Not Linked (cv, COURT STAFF). (Entered: 09/01/2016)
09/01/2016	<u>24</u>	Request for Judicial Notice <i>in support of <u>22</u> MOTION FOR SUMMARY JUDGMENT</i> filed by City Of San Jose, Steven Valentine. (Vanni, Mark) (Filed on 9/1/2016) Modified on 9/1/2016 (cv, COURT STAFF). (Entered: 09/01/2016)
09/01/2016	<u>25</u>	Moving Separate Statement of Material Facts and Evidence in support of <u>22</u> Motion for Summary Judgment by City Of San Jose, Steven Valentine. (Vanni, Mark) (Filed on 9/1/2016) Modified on 9/1/2016 (cv, COURT STAFF). Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 09/01/2016)
09/01/2016	<u>26</u>	Proposed Order <i>Granting City's <u>22</u> Motion for Summary Judgment</i> by City Of San Jose, Steven Valentine. (Vanni, Mark) (Filed on 9/1/2016) Modified on 9/1/2016 (cv, COURT STAFF). (Entered: 09/01/2016)
09/14/2016	<u>27</u>	ERRATA Table of Authorities is missing a page number. That citation is found on page 6. re <u>22</u> MOTION for Summary Judgment by City Of San Jose, Steven Valentine. (Vanni, Mark) (Filed on 9/14/2016) Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 09/14/2016)
09/16/2016	<u>28</u>	OPPOSITION to <u>22</u> Def's Motion for Summary Judgment or partial summary adjudication and Plaintiff's CROSS-MOTION for summary judgment or partial summary adjudication filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. Motion Hearing set for 11/10/2016 09:00 AM in Courtroom 4, 5th Floor, San Jose before Hon. Edward J. Davila. Responses due by 9/30/2016. Replies due by 10/7/2016. (Kilmer, Donald) (Filed on 9/16/2016) Modified text on 9/16/2016, to conform with document posted by counsel.) (cv, COURT STAFF). Modified on 9/16/2016 (amkS, COURT STAFF). (Entered: 09/16/2016)
09/16/2016	<u>29</u>	Declaration of Alan Gottlieb <i>in Support of Cross-Motion for Summary Judgment and Opposing <u>22</u> Def's Motion for Summary Judgment</i> filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 9/16/2016) Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 09/16/2016)
09/16/2016	<u>30</u>	Declaration of Brandon Combs <i>in Support of Cross-Motion for Summary Judgment and Opposing <u>22</u> Def's Motion for Summary Judgment</i> filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 9/16/2016) Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 09/16/2016)
09/16/2016	<u>31</u>	Declaration of Lori Rodriguez <i>in Support of Cross-Motion for Summary Judgment and Opposing <u>22</u> Def's Motion for Summary Judgment</i> filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Kilmer, Donald) (Filed on 9/16/2016) Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 09/16/2016)
09/16/2016	<u>32</u>	RESPONSE Sep Statement of Facts in opposition to <u>22</u> Def's Motion for Summary Judgment and Separate Statement in support of cross-motion for summary judgment or partial summary adjudication filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 9/16/2016) Modified on 9/16/2016 (cv, COURT STAFF). Modified text on 9/16/2016,(to conform with document posted by counsel. (cv, COURT STAFF). (Entered: 09/16/2016)

09/16/2016	<u>33</u>	*** POSTED IN ERROR *** please see <u>36</u> Declaration of Donald Kilmer filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Kilmer, Donald) (Filed on 9/16/2016) Modified on 9/16/2016 (cv, COURT STAFF). Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 09/16/2016)
09/16/2016	<u>34</u>	STIPULATION to extend time and substitute – Opposition to <u>22</u> Defendants Motion for Summary Judgment and/or Partial Summary Judgment filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 9/16/2016) Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 09/16/2016)
09/16/2016	<u>35</u>	OPPOSITION to (re <u>22</u> MOTION for Summary Judgment) <i>and Plaintiffs' Cross–Motion for Summary Judgment</i> filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 9/16/2016) Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 09/16/2016)
09/16/2016	<u>36</u>	DECLARATION of Attorney Kilmer in Opposition to <u>35</u> Opposition/Response to Motion <i>and in Support of Cross–Motion (Replaces Doc <u>33</u>)</i> filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Related document(s) <u>35</u>) (Kilmer, Donald) (Filed on 9/16/2016) Modified on 9/16/2016 (cv, COURT STAFF). (Entered: 09/16/2016)
09/16/2016	<u>37</u>	Proposed Order <i>Re: Summary Judgment</i> by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 9/16/2016) (Entered: 09/16/2016)
09/16/2016		***CORRECTED/Reset Hearing as to <u>28</u> Opposition to Def's Motion for Summary Judgment. Motion Hearing set for 11/10/2016 09:00 AM in Courtroom 4, 5th Floor, San Jose before Hon. Edward J. Davila. (amkS, COURT STAFF) (Filed on 9/16/2016) (Entered: 10/18/2016)
09/20/2016	<u>38</u>	ORDER re <u>34</u> Stipulation to extend time for plaintiff's filing of opposition and cross motion for summary judgment. Signed by Judge Edward J. Davila on 9/20/2016. (amkS, COURT STAFF) (Filed on 9/20/2016) (Entered: 09/20/2016)
09/21/2016	<u>39</u>	ERRATA re <u>36</u> Declaration in Opposition, <i>Correct copies of Exhibits C and D</i> by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Attachments: # <u>1</u> Exhibit C, # <u>2</u> Exhibit D)(Kilmer, Donald) (Filed on 9/21/2016) (Entered: 09/21/2016)
09/30/2016	<u>40</u>	RESPONSE (re <u>28</u> OPPOSITION to Def's Motion for Summary Judgment) <i>Cross–MSJ</i> filed by City Of San Jose, Steven Valentine. (Vanni, Mark) (Filed on 9/30/2016) (Entered: 09/30/2016)
09/30/2016	<u>41</u>	DECLARATION of Mark Vanni in Opposition to <u>40</u> Opposition/Response to Motion <i>Cross MSJ</i> filed by City Of San Jose, Steven Valentine. (Related document(s) <u>40</u>) (Vanni, Mark) (Filed on 9/30/2016) (Entered: 09/30/2016)
09/30/2016	<u>42</u>	Statement <i>Moving Responsive Separate Statement in Opposition to Cross MSJ</i> by City Of San Jose, Steven Valentine. (Vanni, Mark) (Filed on 9/30/2016) (Entered: 09/30/2016)
10/07/2016	<u>43</u>	REPLY (re <u>28</u> OPPOSITION to Def's Motion for Summary Judgment) filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 10/7/2016) (Entered: 10/07/2016)
11/10/2016	44	Minute Entry for proceedings held before Hon. Edward J. Davila: Motion Hearing held on 11/10/2016 re <u>22</u> Motion for Summary Judgment. The Court heard oral argument. The Court took the matter under submission. Court to issue order. Plaintiff Attorney Don Kilmer. Defendant Attorney Clifford Greenberg. Total Time in Court:9:54–10:44am(50 Mins.) Court Reporter: Irene Rodriguez. This is a text only Minute Entry (amkS, COURT STAFF) (Date Filed: 11/10/2016) (Entered: 11/10/2016)
05/08/2017	<u>45</u>	ADMINISTRATIVE MOTION that the Court permit the parties to submit letter briefs & <i>Notice of Supplemental Authority</i> filed by Calguns Foundation, Inc., Lori

		Rodriguez, Second Amendment Foundation, Inc.. Responses due by 5/12/2017. (Kilmer, Donald) (Filed on 5/8/2017) Modified on 5/8/2017 (cv, COURT STAFF). (Entered: 05/08/2017)
05/08/2017	<u>46</u>	Proposed Order re <u>45</u> ADMINISTRATIVE MOTION & <i>Notice of Supplemental Authority</i> by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 5/8/2017) (Entered: 05/08/2017)
05/16/2017	<u>47</u>	ORDER GRANTING <u>45</u> ADMINISTRATIVE MOTION FOR LEAVE TO BRIEF RECENT DEVELOPMENT. Signed by Judge Edward J. Davila on 5/16/2017. (ejdlc2S, COURT STAFF) (Filed on 5/16/2017) (Entered: 05/16/2017)
05/25/2017	<u>48</u>	Letter Brief re <u>47</u> Order on Motion for Miscellaneous Relief filed by City Of San Jose, City of San Jose Police Department, Steven Valentine. (Related document(s) <u>47</u>) (Greenberg, Clifford) (Filed on 5/25/2017) (Entered: 05/25/2017)
05/30/2017	<u>49</u>	Letter Brief on Supplemental Authority re <u>48</u> Letter Brief, <u>47</u> Order on Motion for Miscellaneous Relief filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 5/30/2017) Modified on 5/31/2017 (bwS, COURT STAFF). (Entered: 05/30/2017)
07/26/2017	<u>50</u>	MOTION for Leave to File Letter Brief <i>re: Notice of supplemental authority Panzella v. Sposato, et al.</i> , filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. Responses due by 7/31/2017. (Kilmer, Donald) (Filed on 7/26/2017) Modified on 7/26/2017 (cv, COURT STAFF). (Entered: 07/26/2017)
07/26/2017	<u>51</u>	Proposed Order re <u>50</u> MOTION for Leave to File Letter Brief <i>re: Panzella v. Sposato, et al.</i> , by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 7/26/2017) Modified on 7/26/2017 (cv, COURT STAFF). (Entered: 07/26/2017)
07/26/2017		Electronic filing error. Incorrect event used. [err101]Corrected by Clerk's Office. No further action is necessary. Re: <u>50</u> ADMINISTRATIVE MOTION Notice of Supplemental Authority, Leave to File Letter Brief <i>re: Panzella v. Sposato, et al.</i> , filed by Lori Rodriguez, Second Amendment Foundation, Inc., Calguns Foundation, Inc. (cv, COURT STAFF) (Filed on 7/26/2017) (Entered: 07/26/2017)
08/01/2017	<u>52</u>	ORDER GRANTING <u>50</u> MOTION FOR LEAVE TO FILE LETTER BRIEF RE: SUPPLEMENTAL AUTHORITY. Signed by Judge Edward J. Davila on 8/1/2017. (ejdlc2S, COURT STAFF) (Filed on 8/1/2017) (Entered: 08/01/2017)
08/15/2017	<u>53</u>	Letter Brief <i>Ltr. Brief to Court Panzella</i> filed by City Of San Jose, City of San Jose Police Department, Steven Valentine. (Greenberg, Clifford) (Filed on 8/15/2017) (Entered: 08/15/2017)
08/15/2017	<u>54</u>	Letter Brief <i>of Plaintiffs</i> filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Kilmer, Donald) (Filed on 8/15/2017) (Entered: 08/15/2017)
09/29/2017	<u>55</u>	ORDER GRANTING <u>22</u> DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING <u>28</u> PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT. The Clerk shall close this file. (ejdlc2S, COURT STAFF) (Filed on 9/29/2017) (Entered: 10/02/2017)
10/03/2017	<u>56</u>	JUDGMENT. Signed by Judge Edward J. Davila on 10/3/2017. (ejdlc2S, COURT STAFF) (Filed on 10/3/2017) (Entered: 10/03/2017)
10/20/2017	<u>57</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Calguns Foundation, Inc., Lori Rodriguez, Second Amendment Foundation, Inc.. (Appeal fee of \$505 receipt number 0971-11813760 paid.) w/ <i>Representation Statement Attached</i> (Kilmer, Donald) (Filed on 10/20/2017) (Entered: 10/20/2017)
10/20/2017	<u>58</u>	USCA Case Number 17-17144 9th Circuit Court of Appeals for <u>57</u> Notice of Appeal, filed by Lori Rodriguez, Second Amendment Foundation, Inc., Calguns Foundation, Inc.. (cv, COURT STAFF) (Filed on 10/20/2017) (Entered: 10/20/2017)

CERTIFICATE OF SERVICE

Rodriguez, et al., v. City of San Jose, et al.

Case No.: 17-17144

On February 26, 2018, I served the foregoing EXCERPT OF RECORD, VOLUMES I & II [Submitted by Appellants], by electronically filing it with the Court's ECF/CM system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.

I declare under penalty of perjury that the foregoing is true and correct. Executed February 26, 2018.

/s/ Donald Kilmer

Attorney for Appellants