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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.

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.

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PARTIES

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).

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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.

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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

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