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9 Attorneys for COUNTY OF SACRAMENTO
10 JOHN MCGINNESS

11 UNITED STATES DISTRICT COURT EASTERN DISTRICT
12 OF CALIFORNIA SACRAMENTO DIVISION

13 DEANNA SYKES, ANDREW WITHAM,)
14 ADAM RICHARDS, SECOND)
15 AMENDMENT FOUNDATION, INC., AND)
16 THE CALGUNS FOUNDATION, INC.)

17 Plaintiffs)

18 v.)

19 JOHN MCGINNESS, COUNTY OF)
20 SACRAMENTO, ED PRIETO, AND)
21 COUNTY OF YOLO)

22 Defendants.)

23 **CASE NO. 2:09-cv-01235-MCE-KJM**
24 **ANSWER TO COMPLAINT BY JOHN**
25 **McGINNESS**
26 **DEMAND FOR JURY TRIAL**

27 COMES NOW DEFENDANT, JOHN MCGINNESS, individually and in his official
28 capacity as SHERIFF OF COUNTY OF SACRAMENTO, and in answer to Plaintiffs’ First
29 Amended Complaint admits, denies and alleges as follows:

30 1. In answering paragraph 1, Defendant lacks sufficient information or belief upon
31 which to either admit or deny the allegations, and based thereon denies all allegations contained
32 therein.

33 2. In answering paragraph 2 of Plaintiffs’ First Amended Complaint, Defendant

34 **ANSWER TO COMPLAINT BY JOHN MCGINNESS**

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1 lacks sufficient information or belief upon which to either admit or deny the allegations, and
2 based thereon denies all allegations contained therein.

3 3. In answering paragraph 3 of Plaintiffs' First Amended Complaint, Defendant
4 lacks sufficient information or belief upon which to either admit or deny the allegations, and
5 based thereon denies all allegations contained therein.
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7 4. In answering paragraph 4 of Plaintiffs' First Amended Complaint, Defendant
8 lacks sufficient information or belief upon which to either admit or deny the allegations, and
9 based thereon denies all allegations contained therein.
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11 5. In answering paragraph 5 of Plaintiffs' First Amended Complaint, Defendant
12 lacks sufficient information or belief upon which to either admit or deny the allegations, and
13 based thereon denies all allegations contained therein.

14 6. In answering paragraph 6 of Plaintiffs' First Amended Complaint, Defendant
15 admits.
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17 7. In answering paragraph 7 of Plaintiffs' First Amended First Amended Complaint,
18 Defendant admits that he is currently the Sheriff of Sacramento County, and denies all other
19 allegations contained therein.

20 8. In answering paragraph 8 of Plaintiffs' First Amended Complaint, Defendant
21 lacks sufficient information or belief upon which to either admit or deny the allegations, and
22 based thereon denies all allegations contained therein.
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24 9. In answering paragraph 9 of Plaintiffs' First Amended Complaint, Defendant
25 lacks sufficient information or belief upon which to either admit or deny the allegations, and
26 based thereon denies all allegations contained therein.

27 10. In answering paragraph 10 of Plaintiffs' First Amended Complaint, Defendant
28 admits to jurisdiction of this Court.

1 11. In answering paragraph 11 of Plaintiffs' First Amended Complaint, Defendant
2 admits to Venue in this Court.

3 12. In answering paragraph 12 of Plaintiffs' First Amended Complaint, said
4 paragraph contains argumentative, vague, and conclusory statements which are not factual
5 allegations, and which purport to be legal conclusions, which do not constitute a short plain
6 statement of the claim as required by Federal Rule of Civil Procedure 8. Therefore, Defendant
7 denies such statements.
8

9 13. In answering paragraph 13 of Plaintiffs' First Amended Complaint, said
10 paragraph contains argumentative, vague, and conclusory statements which are not factual
11 allegations, which purport to be legal conclusions, and which do not constitute a short plain
12 statement of the claim as required by Federal Rule of Civil Procedure 8. Therefore, Defendant
13 denies such statements. 14. In answering paragraph 14 of Plaintiffs' First Amended
14

15 Complaint, said paragraph contains argumentative, vague, and conclusory statements which are
16 not factual allegations, which purport to be legal conclusions, and which do not constitute a short
17 plain statement of the claim as required by Federal Rule of Civil Procedure 8. Therefore,
18 Defendant denies such statements. 15. In answering paragraph 15 of Plaintiffs' First
19 Amended Complaint, said paragraph contains argumentative, vague, and conclusory statements

20 which are not factual allegations, which purport to be legal conclusions, and which do not
21 constitute a short plain statement of the claim as required by Federal Rule of Civil Procedure 8.
22 Therefore, Defendant denies such statements. 16. In answering paragraph 16 of
23 Plaintiffs' First Amended Complaint, said paragraph contains argumentative, vague, and

24 conclusory statements which are not factual allegations, which purport to be legal conclusions,
25 and which do not constitute a short plain statement of the claim as required by Federal Rule of
26 Civil Procedure 8. Therefore, Defendant denies such statements. 17. In answering
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1 paragraph 17 of Plaintiffs' First Amended Complaint, said paragraph contains argumentative,
2 vague, and conclusory statements which are not factual allegations, which purport to be legal
3 conclusions, and which do not constitute a short plain statement of the claim as required by
4 Federal Rule of Civil Procedure 8. Therefore, Defendant denies such statements. 18.

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6 In answering paragraph 18 of Plaintiffs' First Amended Complaint, said paragraph
7 contains argumentative, vague, and conclusory statements which are not factual allegations,
8 which purport to be legal conclusions, and which do not constitute a short plain statement of the
9 claim as required by Federal Rule of Civil Procedure 8. Therefore, Defendant denies such
10 statements.

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12 19. In answering paragraph 19 of Plaintiffs' First Amended Complaint, said
13 paragraph contains argumentative, vague, and conclusory statements which are not factual
14 allegations, which purport to be legal conclusions, and which do not constitute a short plain
15 statement of the claim as required by Federal Rule of Civil Procedure 8. Therefore, Defendant
16 denies such statements. 20. In answering paragraph 20 of Plaintiffs' First Amended
17 Complaint, said paragraph contains argumentative, vague, and conclusory statements which are
18 not factual allegations, which purport to be legal conclusions, and which do not constitute a short
19 plain statement of the claim as required by Federal Rule of Civil Procedure 8. Therefore,
20 Defendant denies such statements. 21. In answering paragraph 21 of Plaintiffs' First
21 Amended Complaint, said paragraph contains argumentative, vague, and conclusory statements
22 which are not factual allegations, which purport to be legal conclusions, and which do not
23 constitute a short plain statement of the claim as required by Federal Rule of Civil Procedure 8.
24 Therefore, Defendant denies such statements. 26

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27 22. In answering paragraph 22 of Plaintiffs' First Amended Complaint, Defendant
28 lacks sufficient information or belief upon which to either admit or deny the allegations, and

1 based thereon denies all allegations contained therein.

2 23. In answering paragraph 23 of Plaintiffs' First Amended Complaint, said
3 paragraph contains argumentative, vague, and conclusory statements which are not factual
4 allegations, which purport to be legal conclusions, and which do not constitute a short plain
5 statement of the claim as required by Federal Rule of Civil Procedure 8. Therefore, Defendant
6 denies such statements.

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8 24. In answering paragraph 24 of Plaintiffs' First Amended Complaint, said
9 paragraph contains argumentative, vague, and conclusory statements and which do not constitute
10 a short plain statement of the claim as required by Federal Rule of Civil Procedure 8. Therefore,
11 Defendant denies such statements.

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13 25. In answering paragraph 25 of Plaintiffs' First Amended Complaint, Defendant
14 admits that Plaintiff Sykes' application for a CCW permit was denied, but denies all further
15 allegations contained in this paragraph.

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17 26. In answering paragraph 26 of Plaintiffs' First Amended Complaint, Defendant
18 lacks sufficient information or belief upon which to either admit or deny the allegations, and
19 based thereon denies all allegations contained therein.

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21 27. In answering paragraph 27 of Plaintiffs' First Amended Complaint, Defendant
22 lacks sufficient information or belief upon which to either admit or deny the allegations, and
23 based thereon denies all allegations contained therein.

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25 28. In answering paragraph 28 of Plaintiffs' First Amended Complaint, Defendant
26 lacks sufficient information or belief upon which to either admit or deny the allegations, and
27 based thereon denies all allegations contained therein.

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29. In answering paragraph 29 of Plaintiffs' First Amended Complaint, Defendant
lacks sufficient information or belief upon which to either admit or deny the allegations, and

1 based thereon denies all allegations contained therein.

2 30. In answering paragraph 30 of Plaintiffs' First Amended Complaint, Defendant
3 lacks sufficient information or belief upon which to either admit or deny the allegations, and
4 based thereon denies all allegations contained therein.
5

6 31. In answering paragraph 31 of Plaintiffs' First Amended Complaint, Defendant
7 lacks sufficient information or belief upon which to either admit or deny the allegations, and
8 based thereon denies all allegations contained therein.

9 32. In answering paragraph 32 of Plaintiffs' First Amended Complaint, Defendant
10 lacks sufficient information or belief upon which to either admit or deny the allegations, and
11 based thereon denies all allegations contained therein.
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13 33. In answering paragraph 33 of Plaintiffs' First Amended Complaint, Defendant
14 lacks sufficient information or belief upon which to either admit or deny the allegations, and
15 based thereon denies all allegations contained therein.
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17 34. In answering paragraph 34 of Plaintiffs' First Amended Complaint, Defendant
18 lacks sufficient information or belief upon which to either admit or deny the allegations, and
19 based thereon denies all allegations contained therein.

20 35. In answering paragraph 35 of Plaintiffs' First Amended Complaint, Defendant
21 lacks sufficient information or belief upon which to either admit or deny the allegations, and
22 based thereon denies all allegations contained therein.
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24 36. In answering paragraph 36 of Plaintiffs' First Amended Complaint, Defendant
25 lacks sufficient information or belief upon which to either admit or deny the allegations, and
26 based thereon denies all allegations contained therein.

27 37. In answering paragraph 37 of Plaintiffs' First Amended Complaint, Defendant
28 lacks sufficient information or belief upon which to either admit or deny the allegations, and

1 based thereon denies all allegations contained therein.

2 38. In answering paragraph 38 of Plaintiffs' First Amended Complaint, Defendant
3 lacks sufficient information or belief upon which to either admit or deny the allegations, and
4 based thereon denies all allegations contained therein.
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6 39. In answering paragraph 39 of Plaintiffs' First Amended Complaint, Defendant
7 lacks sufficient information or belief upon which to either admit or deny the allegations, and
8 based thereon denies all allegations contained therein.

9 40. In answering paragraph 40 of Plaintiffs' First Amended Complaint, Defendant
10 lacks sufficient information or belief upon which to either admit or deny the allegations, and
11 based thereon denies all allegations contained therein.
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13 41. In answering paragraph 41 of Plaintiffs' First Amended Complaint, Defendant
14 lacks sufficient information or belief upon which to either admit or deny the allegations, and
15 based thereon denies all allegations contained therein.
16

17 42. In answering paragraph 42 of Plaintiffs' First Amended Complaint, Defendant
18 lacks sufficient information or belief upon which to either admit or deny the allegations, and
19 based thereon denies all allegations contained therein.

20 43. In answering paragraph 43 of Plaintiffs' First Amended Complaint, Defendant
21 lacks sufficient information or belief upon which to either admit or deny the allegations, and
22 based thereon denies all allegations contained therein.
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24 44. In answering paragraph 44 of Plaintiffs' First Amended Complaint, Defendant
25 lacks sufficient information or belief upon which to either admit or deny the allegations, and
26 based thereon denies all allegations contained therein.

27 45. In answering paragraph 45 of Plaintiffs' First Amended Complaint, said
28 paragraph contains argumentative, vague, and conclusory statements and which do not constitute

1 a short plain statement of the claim as required by Federal Rule of Civil Procedure 8. Therefore,
2 Defendant denies such statements.

3 46. In answering paragraph 46 of Plaintiffs' First Amended Complaint, Defendant
4 lacks sufficient information or belief upon which to either admit or deny the allegations, and
5 based thereon denies all allegations contained therein.

6 47. In answering paragraph 47 of Plaintiffs' First Amended Complaint, said
7 paragraph contains argumentative, vague, and conclusory statements and which do not constitute
8 a short plain statement of the claim as required by Federal Rule of Civil Procedure 8. Therefore,
9 Defendant denies such statements.

10 48. In answering paragraph 48 of Plaintiffs' First Amended Complaint, Defendant
11 lacks sufficient information or belief upon which to either admit or deny the allegations, and
12 based thereon denies all allegations contained therein.

13 49. In answering paragraph 49 of Plaintiffs' First Amended Complaint, said
14 paragraph contains argumentative, vague, and conclusory statements and which do not constitute
15 a short plain statement of the claim as required by Federal Rule of Civil Procedure 8. Therefore,
16 Defendant denies such statements.

17 50. In answering paragraph 50 of Plaintiffs' First Amended Complaint, Defendant
18 lacks sufficient information or belief upon which to either admit or deny the allegations, and
19 based thereon denies all allegations contained therein.

20 51. In answering paragraph 51 of Plaintiffs' First Amended Complaint, Defendant
21 lacks sufficient information or belief upon which to either admit or deny the allegations, and
22 based thereon denies all allegations contained therein.

23 52. In answering paragraph 52 of Plaintiffs' First Amended Complaint, Defendant
24 lacks sufficient information or belief upon which to either admit or deny the allegations, and
25 based thereon denies all allegations contained therein.

1 based thereon denies all allegations contained therein.

2 **AFFIRMATIVE DEFENSES**

3 As separate and affirmative defenses, this answering Defendant alleges as follows:

4 **FIRST AFFIRMATIVE DEFENSE**

5 Plaintiffs' First Amended Complaint, and each and every claim therein, fails to state facts
6 sufficient to constitute a claim for relief.

7 **SECOND AFFIRMATIVE DEFENSE**

8 Defendant acted reasonably and in good faith without violating any known constitutional
9 rights of Plaintiffs and Plaintiffs' Federal claims are barred by the qualified immunity of
10 Defendant.

11 **THIRD AFFIRMATIVE DEFENSE**

12 Plaintiffs' claims are barred by the applicable statute of limitations.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 Plaintiffs' claims are barred as Plaintiffs lack legal standing.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 Plaintiffs' claims are barred by the *doctrine of laches*.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 Plaintiffs' claims fail to adequately state a claim for which injunctive relief can be
19 granted.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Plaintiffs' damages, if any, were caused in whole or part by others and any alleged
22 conduct of Defendant was not a legal or proximate cause of any of Plaintiffs' claimed injuries or
23 damages.

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EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the Eleventh Amendment to the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

That Plaintiffs' own conduct estops Plaintiffs from claiming that defendant caused them harm and from claiming the damages alleged in the complaint.

TENTH AFFIRMATIVE DEFENSE

That some or all of Plaintiffs' claims are barred by estoppel and/or waiver occasioned by Plaintiffs' own conduct.

ELEVENTH AFFIRMATIVE DEFENSE

That Defendant is not vicariously liable for any act or omission of any other person, by way of respondeat superior or otherwise.

TWELFTH AFFIRMATIVE DEFENSE

That the complaint, and each claim for relief are uncertain.

THIRTEENTH AFFIRMATIVE DEFENSE

At all times herein, Defendant had a good faith belief that his conduct did not violate any established state or federal statutory or constitutional right, and further acted in good faith, and Defendant is hereby immune from liability for the acts, omissions, and damages claimed by Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant is immune from liability by virtue of the provisions of Title I, Division 3.6 of the Government Code of the State of California, all as set forth in Government Code §§810, et seq., including, but not limited to, Government Code Sections 815.2, 818.8, 820.2, 820.4, 821.6 and 822.2.

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WHEREFORE, Defendant prays for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing from their First Amended Complaint filed herein;
2. That attorneys' fees and costs be awarded to this answering Defendant; and;
3. For such other and further relief as this court may deem just and proper.

Dated: June 3, 2009

LONGYEAR, O'DEA & LAVRA, LLP

/s/ Jeri L. Pappone

By: _____

JOHN A. LAVRA
JERI L. PAPPONE
AMANDA L. BUTTS
Attorneys for County of Sacramento and
John McGinness

DEMAND FOR JURY TRIAL

DEFENDANT JOHN MCGINNESS, hereby demands a trial by jury.

Dated: June 3, 2009

LONGYEAR, O'DEA & LAVRA, LLP

/s/ Jeri L. Pappone

By: _____

JOHN A. LAVRA
JERI L. PAPPONE
AMANDA L. BUTTS
Attorneys for County of Sacramento and
John McGinness

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PROOF OF SERVICE

CASE NAME: Sykes et al. vs. County of Sacramento et al.
CASE NO.: 2:09-cv-01235-MCE-KJM

I am employed in the County of Sacramento. I am over the age of eighteen years and not a party to the within above-entitled action. My business address is 3620 American River Dr. Suite 230, Sacramento, CA 95864.

I am familiar with this office's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a United States mailbox after the close of each day's business.

On, JUNE 3, 2009, I served the following:

ANSWER TO COMPLAINT BY JOHN MCGINNESS

— United States Mail - on all parties in said action by placing a true copy of the above-described document(s) enclosed in a sealed envelope in the designated area for outgoing mail addressed as set forth below.

— By FACSIMILE (telecopier) - by personally sending to the addressee's facsimile number a true copy of the above-described document(s).

— Personal Service - By personally delivering or causing to be delivered a true copy of the above-described document to the person(s) and at the address(es) set forth as shown below.

Alan Gura
Gura & Possessky
101 N. Columbus Street
Suite 405
Alexandria , VA 22301

Donald E. J. Kilmer , Jr.
Law Offices Of Donald Kilmer, APC
1645 Willow Street, Suite 150
San Jose , CA 95125

X FEDERAL: I declare that I am employed in the office of a member of the bar of this Court at whose direction service was made.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on, June 3, 2009, at Sacramento, California.

/s/ Lorie Dawn Wharton
Lorie Dawn Wharton

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