

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 Jason A. Davis [SBN: 224250]  
Davis & Associates  
6 27281 Las Ramblas, Suite 200  
Mission Viejo, CA 92691  
7 Voice: (949) 310-0817  
Fax: (949) 288-6894  
8 E-Mail: Jason@CalGunLawyers.com

9 Attorneys for Plaintiffs

**FILED**

JAN 27 2012

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MS  
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10 UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

LB

12 MAX JOSEPH PLOG-HOROWITZ,  
13 THE CALGUNS FOUNDATION,  
INC., and THE SECOND  
14 AMENDMENT FOUNDATION,  
15 INC.,  
Plaintiffs,

Case No.:

COMPLAINT <sup>1 2 3</sup>

DEMAND FOR JURY TRIAL

42 U.S.C. §§ 1983, 1988

SECOND AMENDMENT

FOURTH AMENDMENT

FOURTEENTH AMENDMENT

16 vs.

17 KAMALA HARRIS, Attorney General  
18 of California, CALIFORNIA  
19 DEPARTMENT OF JUSTICE,  
20 COTATI POLICE DEPARTMENT,  
21 CITY OF COTATI, ANDREW  
LYSSAND (CO0339) and DOES 1 TO  
22 20,  
Defendants.

23  
24  
25 <sup>1</sup> A Notice of Related Case Re: *Haynie v. Harris*, 3:10-CV-01255 SI is filed  
concurrently with this COMPLAINT.

26 <sup>2</sup> A Notice of Related Case Re: *Richards v. Harris*, 3:11-CV-02493 SI is filed  
27 concurrently with this COMPLAINT.

28 <sup>3</sup> A Notice of Related Case Re: *Richards v. Harris*, 3:11-CV-05580 SI is filed  
concurrently with this COMPLAINT.

INTRODUCTION

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1. Plaintiff MAX PLOG-HOROWITZ is resident of Sonoma County, California. He is associated with and exercises membership rights in both the THE CALGUNS FOUNDATION, INC., and THE SECOND AMENDMENT FOUNDATION, INC.

2. On March 29, 2011, Officer ANDREW LYSSAND of the COTATI POLICE DEPARTMENT and an employee of the CITY OF COTATI, unlawfully seized two rifles from and instigated criminal proceedings against Plaintiff PLOG-HOROWITZ for possession of "assault weapons" under California law.

3. The firearms were not illegal under California law and the case against Plaintiff was dismissed. Plaintiff was unlawfully detained, and had property seized and was required to post bail, make court appearances and hire legal counsel due to Defendants' wrongful conduct.

4. Plaintiffs CALGUNS FOUNDATION, INC, and SECOND AMENDMENT FOUNDATION, INC., paid for PLOG-HOROWITZ's criminal defense.

5. Plaintiff PLOG-HOROWITZ, along with the Institutional Plaintiffs CALGUNS FOUNDATION, INC., and SECOND AMENDMENT FOUNDATION, INC., seek declaratory relief that the California Penal Codes and Regulations defining Assault Weapons are unconstitutionally vague and ambiguous and therefore result in wrongful arrests and the chilling of a fundamental right to "keep and bear" arms of ordinary and common design.

6. Plaintiff MAX PLOG-HOROWITZ, along with the Institutional Plaintiffs CALGUNS FOUNDATION, INC., and SECOND AMENDMENT FOUNDATION, INC., also seek monetary damages and injunctive relief against the COTATI POLICE DEPARTMENT, the CITY OF COTATI and ANDREW LYSSAND for their unlawful conduct that resulted in the posting of bail, lost wages and expenditures for criminal defense legal work.

/////

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

**PARTIES**

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7. Plaintiff MAX PLOG-HOROWITZ is a natural person and citizen of the United States and of the State of California.
8. Plaintiff THE CALGUNS FOUNDATION, INC., (CGF) is a non-profit organization incorporated under the laws of California with its principal place of business in San Carlos, 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. As part of CGF's mission to educate the public – and gun-owners in particular – about developments in California's firearm laws, CGF assists in the maintenance and contributes content to an internet site: CALGUNS FOUNDATION: Gun Rights. Civil Rights. Your Rights. [<http://www.calgunsfoundation.org/>] On that website CGF informs its members and the public at large about pending civil and criminal cases, including but not limited to: arrests, convictions and appeals relating to California gun law. The website hosts forums and publishes notices that document the concerns that California gun owners have about possible arrest, prosecution and conviction for running afoul of California's vague and ambiguous laws relating to so-called Assault Weapons. CGF represents its members and supporters, which include California gun owners and Plaintiffs HAYNIE and RICHARDS. CGF brings this action on behalf of itself and its supporters, who possess all the indicia of membership.
9. 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 Bellvue, Washtington. SAF has over 650,000 members and supporters nationwide, including California. The purposes of SAF include education, research, publishing and legal action

1 focusing on the Constitutional right to privately owned and possess firearms,  
2 and the consequences of gun control. SAF brings this action on behalf of  
3 itself and its members.

4 10. Defendant KAMALA HARRIS is the Attorney General of the State of  
5 California and she is obligated to supervise her agency and comply with all  
6 statutory duties under California Law. She is charged with enforcing,  
7 interpreting and promulgating regulations regarding California's Assault  
8 Weapons Statutes. Furthermore, California Penal Code §§ 13500 *et seq.*,  
9 establishes a commission on Peace Officer Standards and Training that  
10 requires the DEPARTMENT OF JUSTICE, with the Attorney General as an  
11 *ex officio* member of the commission, which is to provide personnel, training  
12 and training material to cities and counties to insure an effective and  
13 professional level of law enforcement within the State of California.  
14 Furthermore, California Attorney General KAMALA HARRIS has concurrent  
15 prosecutorial jurisdiction with the state's 58 District Attorneys, and she is  
16 bound by a duty to seek substantial justice and avoid the filing of criminal  
17 charges in which she knows (or should know) are not supported by probable  
18 cause. HARRIS also has an independent duty to disclose information  
19 beneficial to the accused and by extension she has a duty to prevent wrongful  
20 arrests in the first place when she has the power to do so.

21 11. Defendant CALIFORNIA DEPARTMENT OF JUSTICE is an agency of the  
22 State of California, headed by the Attorney General of the State, with a  
23 statutory duty to enforce, administer and interpret the law and promulgate  
24 regulations regarding weapons identified by the California Legislature as  
25 "Assault Weapons." This agency also has the power to issue memorandums,  
26 bulletins and opinion letters to law enforcement agencies throughout the  
27 State regarding reasonable interpretations of what constitutes an "Assault  
28 Weapon" under California Law.

1 12. Defendant CITY OF COTATI POLICE DEPARTMENT is a state actor  
2 located in a political subdivision of the State of California, Sonoma County.  
3 Defendant CITY OF COTATI POLICE DEPARTMENT is responsible for  
4 setting the policies and procedures of that office, including but not limited to  
5 setting policy and conducting training and discipline of peace officers  
6 employed by Defendant.

7 13. Defendant CITY OF COTATI is a state actor located in a political subdivision  
8 of the State of California, Sonoma County. Defendant CITY OF COTATI is  
9 responsible for setting the policies and procedures of that office, including but  
10 not limited to setting policy and conducting training and discipline of peace  
11 officers employed by Defendant.

12 14. Defendant ANDREW LYSSAND (CO0339) was employed by the CITY OF  
13 COTATI POLICE DEPARTMENT and/or THE CITY OF COTATI for all  
14 relevant time periods.

15 15. At this time, Plaintiffs are ignorant of the names any additional individual  
16 Defendants who participated in the arrests of Plaintiff MAX PLOG-  
17 HOROWITZ. Plaintiffs therefore name these individual officers as DOE  
18 Defendants and reserves the right to amend this complaint when their true  
19 names are ascertained. Furthermore, if/when additional persons and entities  
20 are discovered to have assisted and/or lent support to the wrongful conduct of  
21 the Defendants named herein, Plaintiff reserves the right to amend this  
22 complaint to add those persons and/or entities as Defendants.

23  
24 **JURISDICTION AND VENUE**

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

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

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

3 **CONDITIONS PRECEDENT**

4 19. All conditions precedent have been performed, and/or have occurred, and/or  
5 have been excused, and/or would be futile.

6 **FACTS - Relating to Wrongful Arrest**

7 20. On or about March 29, 2011, Defendant ANDREW LYSSAND (CO0339)  
8 seized two rifles and various other firearm parts and accessories from the  
9 Plaintiff MAX PLOG-HOROWITZ.

10 21. Plaintiff PLOG-HOROWITZ was subsequently arrested pursuant to an arrest  
11 warrant on July 19, 2011.

12 22. Based on reports prepared by Defendant ANDREW LYSSAND (CO0339)  
13 Plaintiff MAX PLOG-HOROWITZ was charged with two counts of illegal  
14 possession of an "assault weapon." Penal Code § 12280(b) in Case No.: SCR-  
15 604614 in Sonoma County.

16 23. On November 22, 2011, The California Department of Justice Bureau of  
17 Forensic Services issued a report that Plaintiffs' firearms were not "assault  
18 weapons."

19 24. On December 12, 2012, the Sonoma County District Attorney's Office  
20 dismissed all charges in the above-entitled case.

21 25. Although he was cleared by the government's own expert, the Sonoma  
22 County D.A. declined to stipulate to a finding of factual innocence.

23 26. The weapons in question – were common and ordinary firearms suitable for  
24 exercising the "right to keep and bear arms" under the Second Amendment to  
25 the United States Constitution.

26 27. PLOG-HOROWITZ lost time off of work. He was required to post bail.  
27 CALGUNS FOUNDATION, INC., again paid PLOG-HOROWITZ's criminal  
28 defense lawyer in an amount according to proof.

1 28. Following this arrest on charges of violating California Penal Code § 12280(b)  
2 – possession of an Assault Weapon – Plaintiff PLOG-HOROWITZ has a  
3 reasonable fear, that by exercising a fundamental right protected by the U.S.  
4 Constitution, he is realistically threatened by a repetition of wrongful  
5 arrests. He further contends that the claim of future injury cannot be  
6 written off as mere speculation. Plaintiff PLOG-HOROWITZ also bases his  
7 fear of repeated arrests on the information he obtains from the Calguns.net  
8 website the related cases set forth herein.

9  
10 **FACTS – Relating to Vague and Ambiguous Laws Impacting  
the Second Amendment**

11 29. The CALIFORNIA DEPARTMENT OF JUSTICE is the State agency  
12 responsible for the training and education of law enforcement agencies with  
13 respect to “assault weapons” under Penal Code §§ 12276.5 and 12289.

14 a. Penal Code § 12276.5(c) states: “The Attorney General **shall** adopt  
15 those rules and regulations that **may** be necessary **or** proper to carry  
16 out the purposes and intent of this chapter.” [emphasis added]

17 b. Penal Code § 12289(a) states [in part]: “The Department of Justice  
18 **shall** conduct a public education and notification program regarding  
19 the registration of assault weapons and the definition of the weapons  
20 set forth in Section 12276.1.” [emphasis added]

21 30. California’s definitions of “assault weapons” are set forth at Penal Code §§  
22 12276 and 12276.1.

23 31. The California Code of Regulations interpreting the statutory definition of  
24 “assault weapons” are found at Title 11, Division 5, Chapters 39 & 40.

25 32. The Orange County Sheriff’s Department has issued a training bulletin about  
26 the “bullet button” to prevent wrongful arrests in that county.

27 33. The City of Sacramento has issued a training bulletin about the “bullet  
28 button” to prevent wrongful arrests in that jurisdiction.

1 34. The Calguns Foundation Inc., has published a flow-chart to identify weapons  
2 that are designated as “assault weapons” under California law.

3 35. Defendant CALIFORNIA DEPARTMENT OF JUSTICE has promulgated an  
4 “Assault Weapons Identification Guide,” (3<sup>rd</sup> edition, Nov. 2001) an 84-page  
5 publication which describes the Assault Weapons regulated in Penal Code  
6 sections 12276, 12276.1, and 12276.5. In the Guide, the Department  
7 acknowledges that a magazine is considered detachable when it “can be  
8 removed readily from the firearm with neither disassembly of the firearm  
9 action nor use of a tool being required. A bullet or ammunition cartridge is  
10 considered a tool.”

11 36. Defendant CALIFORNIA DEPARTMENT OF JUSTICE has declined to issue  
12 a statewide bulletin or other directive regarding the “bullet button.”

13 37. Though it would not be unduly burdensome for Defendant CALIFORNIA  
14 DEPARTMENT OF JUSTICE to issue a bulletin regarding the technology of  
15 the “bullet button” and to develop a field test to insure state-wide compliance  
16 with the law, the CALIFORNIA DEPARTMENT OF JUSTICE insists:

- 17 a. That this Court does not have the power to compel issuance of such a  
18 bulletin, and/or  
19 b. That the California Assault Weapon Statutes and Regulations are  
20 sufficiently clear that the risk of arrest and prosecution should be  
21 borne by the citizens of California and/or that the risks of paying  
22 damages for false arrest should be borne by local law enforcement  
23 agencies.

24 Based on the related litigation, Plaintiffs are prepared to accept Defendants’  
25 (DOJ) characterization that the Assault Weapon Statutes and Regulations  
26 that they are charged with interpreting, educating the public about and  
27 enforcing are not subject to any further clarification by their agency.

28 38. Instead, Plaintiffs will aver that the entire California Assault Weapon



1 Statutes and the Regulations derived therefrom are vague and ambiguous on  
2 their face and as applied to PLOG-HOROWITZ's arrest.

3 39. Furthermore, Plaintiffs allege that Defendant CALIFORNIA DEPARTMENT  
4 OF JUSTICE has contributed – through its policies, procedures and customs  
5 – to a state of general confusion of California's Assault Weapons laws thus  
6 rendering them hopelessly vague and ambiguous as applied; and thus an  
7 infringement of the Second Amendment to the United States Constitution.  
8

9 **FACTS – Department of Justice Creates Confusion**

10 40. The formation of CGF was partially inspired by a desire to counteract a  
11 disinformation campaign orchestrated by the California Department of  
12 Justice (DOJ) in response to gun owners realizing the implications of the  
13 California Supreme Court Decision in *Harrot v. County of Kings* and the  
14 expiration of the Federal Assault Weapons laws.

15 41. In late 2005, various individuals and licensed gun stores began importing  
16 into California AR pattern rifles and the receivers for them.

17 42. In response to inquiries about the legality of importing and possessing  
18 certain AR and AK pattern rifles and receivers, DOJ began replying in their  
19 official letters that while THEY were of the opinion that these rifles were  
20 legal, local District Attorneys might disagree and prosecute anyway. All of  
21 these letters follow a similar pattern of declaring a certain gun part (receiver)  
22 legal to import into California and then warning the recipient that  
23 California's 58 District Attorneys may have a different opinion that could  
24 result in prosecution. Plaintiffs are in possession of the following:

- 25 i. December 12, 2005, letter from DOJ to Ms. Amanda Star  
26 rendering an opinion about the legality of a Stag-15 Lower  
27 receiver but warning that local prosecutors may disagree and  
28 prosecute accordingly.

- 1           ii.     January 18, 2006, letter from DOJ to BST Guns also opining out  
2                     the legality of firearms, but giving the same warning the 58  
3                     county prosecutors could potentially prosecute anyway.
- 4           iii.     December 28, 2005, letter from DOJ to Matthew Masuda.
- 5           iv.     December 27, 2005, letter from DOJ to Christopher Kjellberg.
- 6           v.     December 27, 2005, letter from DOJ to Kirk Haley.
- 7           vi.     December 28, 2005, letter from DOJ to Mark Mitzel.
- 8           vii.    December 28, 2005, letter from DOJ to Jason Paige.
- 9 43.     From February to May 2006, the California Department of Justice issued a  
10           series of memorandums that were obtained as part of a California Public  
11           Records Request. Plaintiffs are in possession of these memoranda and they  
12           are remarkable because:
- 13           a.     The Department of Justice made changes to the various versions of  
14                     these memorandum due to Jason Davis, then an attorney for the  
15                     National Rifle Association, pointing out legal flaws in the various  
16                     iterations.
- 17           b.     In all versions of the memorandum, the Department of Justice directly  
18                     conflicted the previously published Assault Weapons Information  
19                     Guide by stating that owners of a firearm with features had to,  
20                     “permanently alter the firearm so that it cannot accept a detachable  
21                     magazine.” “Permanent alteration” is not required in the Penal Code,  
22                     the Assault Weapons Information Guide, or the then existing  
23                     California Code of Regulations 11 C.C.R. 5469 or the penal code.
- 24 44.     On or about May 10, 2006, DOJ counsel Alison Merrilees informed a member  
25           of the public that the DOJ wished to create a test case, “[w]e are eagerly  
26           awaiting a test case on this, because we think we’ll win.” Plaintiffs are in  
27           possession of a true and correct copy of the email that was obtained as part of  
28           a Public Records Act request.

1 45. In May 2006, DOJ issued an internal memo to phone staff that stated, "It is  
2 DOJ's opinion that under current law, a semiautomatic centerfire rifle that is  
3 modified to be temporarily incapable of accepting a detachable magazine, but  
4 can be restored to accommodate a detachable magazines, is an assault  
5 weapons if it has any of the features listed in §12276.1(a)(1)," and  
6 "Individuals who alter a firearm designed and intended to accept a  
7 detachable magazine in an attempt to make it incapable of accepting a  
8 detachable magazine do so at their legal peril," stating further, "[w]hether or  
9 not such a firearm remains capable of accepting a detachable magazine is a  
10 question for law enforcement agencies, district attorneys, and ultimately  
11 juries of twelve persons, not the California Department of Justice."  
12 Plaintiffs have a copy of this memorandum which was obtained as part of a  
13 Public Records Act Request.

14 46. On or about June 6, 2006, DOJ issued a Notice of Proposed Rulemaking. The  
15 proposed amendment would have "define[d] a sixth term, "capacity to accept  
16 a detachable magazine", as meaning "capable of accommodating a detachable  
17 magazine, but shall not be construed to include a firearm that has been  
18 permanently altered so that it cannot accommodate a detachable magazine."  
19 Plaintiffs are in possession of a true and correct copy of the notice.

20 47. On or about November 1, 2006, DOJ issued a "Text of Modified Regulations"  
21 The updated text attempted to define "detachable magazine" as "currently  
22 able to receive a detachable magazine or readily modifiable to receive a  
23 detachable magazine" and had other "permanency" requirements. Plaintiffs  
24 are in possession of a true and correct copy of the notice.

25 48. Plaintiff CGF alleges on information and belief, DOJ did not submit the  
26 aforementioned Modified Regulations to the Office of Administrative Law  
27 ("OAL") and thus the 2006 Rulemaking did not take effect.

28 49. On or about July 11, 2007, CGF (through Gene Hoffman, the Chairman of

1 CGF) petitioned the OAL to have them find that the continued publication of  
2 the "Important Notice" Memorandum after the 2006 Rulemaking that was  
3 not submitted to OAL was an "Underground Regulation."

4 50. On or about September 11, 2007, OAL accepted Hoffman's petition.

5 51. On or about September 21, 2007, OAL suspended its review as DOJ issued a  
6 certification on or about September 20, 2007, that stated, "[DOJ] reserves the  
7 right to interpret the law in any case-specific adjudication, as authorized in  
8 *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557,572."

9 Plaintiffs are in possession of true and correct copies of the letters from the  
10 OAL along with DOJ's certification relating to these rule making issues.

11 52. The reservation in the certification of September 20, 2007, leads to  
12 uncertainty over whether the DOJ would take the position that permanence  
13 was required for modifications to a firearm so that the firearm would not  
14 have "the capacity to accept a detachable magazine."

15 53. On or about September 29, 2008, DOJ responded to a letter inquiry about the  
16 legality of selling a semiautomatic center fire rifle with an alternate version  
17 of the "bullet button" colloquially known as the Prince-50 kit. DOJ stated:

18 "Since there are no statutes, case law, or regulations concerning  
19 whether a rifle that is loaded with a fixed, removeable magazine can  
20 also be considered to have the 'capacity to accept a detachable  
21 magazine,' we are unable to declare rifles configured with the 'Prince  
22 50 Kit' or 'bullet button' to be legal or illegal."

22 Plaintiffs are in possession of true and correct copies of this letter.

23 54. On or about November 3, 2008, DOJ replied to Kern County DA Edward  
24 Jagels:

25 "Since there are no statutes, case law, or regulations concerning  
26 whether a rifle that is loaded with a fixed, removeable magazine  
27 can also be considered to have the 'capacity to accept a  
28 detachable magazine,' we are unable to declare rifles configured  
with the 'Prince 50 Kit' or 'bullet button' to be legal or illegal."

1 Plaintiffs are in possession of a true and correct copy of this letter.

2 55. Not only is the CALIFORNIA DEPARTMENT OF JUSTICE claiming it has  
3 no duty to issue a clarifying bulletin to the State's District Attorneys and  
4 Law Enforcement Community, on this issue; they have apparently engaged  
5 in a pattern of disinformation and confusion on the issue of whether a rifle  
6 fitted with a device that makes it incapable of accepting a detachable  
7 magazine is legal to own in California. It could be argued that CALIFORNIA  
8 DEPARTMENT OF JUSTICE's firearms division has created such a state of  
9 confusion that the entire statutory and regulatory scheme for defining  
10 California Assault Weapons is hopelessly, and unconstitutionally vague and  
11 ambiguous.

12 **FACTS – Calguns Foundation, Inc., Ongoing Efforts to**  
13 **Assist Law Abiding Gun Owners**

14 56. The CALGUNS FOUNDATION, INC., has defended many incidents of law  
15 abiding gun owners and retailers whose firearms were either seized, the  
16 individual was arrested and/or charged with violating Assault Weapons  
17 Control Act.

- 18 a. In approximately April 2007, Matthew Corwin was arrested and  
19 charged with multiple violations of the AWCA. See *People v. Matthew*  
20 *Corwin*, Case No. GA069547, Los Angeles Superior Court.
- 21 b. In June 2008, John Contos was arrested and charged in Solano County  
22 with a violation of Penal Code § 12280 - possession/manufacturing of  
23 Assault Weapons based on the allegation that his rifle had an illegal  
24 thumb-hole stock. The case number was VCR198514-VF. CGF funded  
25 the defense of Mr. Contos. The case was dismissed and the D.A.  
26 stipulated to a finding of factual innocence.
- 27 c. In November 2008, John Crivello had a semiautomatic centerfire rifle  
28 with a "bullet button" magazine release seized from his home in Santa

1 Cruz, California by the Santa Cruz Police Department. Counsel  
 2 provided by CGF educated the Santa Cruz District Attorney's office.  
 3 Counsel to CGF was advised that DOJ stated that it was unclear  
 4 whether the bullet button was legal but that the District Attorney  
 5 should file anyway. The District Attorney (ADA Dave Genochio and/or  
 6 Charlie Baum) dropped charges and the firearm was returned to Mr.  
 7 Crivello. CGF spent \$645.00 defending Mr. Crivello.

- 8 d. On or about November 3, 2009, Deputy J. Finley of Orange County  
 9 Sheriff's Department seized a "bullet button" equipped Stag Arms AR-  
 10 15 style firearm from Stan Sanders. CGF counsel was engaged to  
 11 explain the legality of the firearm to the Orange County Sheriff's  
 12 Department and the firearm was subsequently returned to Mr.  
 13 Sanders. The Orange County Training Bulletin was issued partially in  
 14 response to this incident. CGF spent \$650.00 defending Mr. Sanders.
- 15 e. On or about March 30, 2010, Robert Wolf was arrested by the  
 16 Riverside County Sheriff's Department for possession of a  
 17 semiautomatic centerfire rifle with a "Prince 50 Kit." CGF counsel  
 18 intervened and had the case dismissed on or about November 11, 2010.  
 19 CGF spent \$5,975.00 defending Mr. Wolf.

20 f. Please also see the related actions including but not limited to:

- 21 i. *Haynie v. Harris*, 3:10-CV-01255 SI.  
 22 ii. *Richards v. Harris*, 3:11-CV-02493 SI.  
 23 iii. *Richards v. Harris*, 3:11-CV-05580 SI.

24 57. Plaintiffs allege on information and belief that there may be other innocent  
 25 gun owners, who without the resources of THE CALGUNS FOUNDATION,  
 26 INC., and/or THE SECOND AMENDMENT FOUNDATION, were charged  
 27 under these vague and ambiguous statutes/regulations and plead guilty (or  
 28 no contest) to lesser charges to avoid a felony conviction.

**FACTS – Semi-Automatic, Center-Fire Rifles and Handguns  
are “Arms” Protected by the Second Amendment.**

1  
2  
3 58. Plaintiffs herein allege that semi-automatic center-fire rifles and handguns  
4 with detachable magazines and any number of additional features (e.g., pistol  
5 grips, collapsible stocks, flash suppressors, etc...) are “arms” protected by the  
6 Second Amendment to the United States Constitution. Furthermore, to the  
7 extent that California seeks to regulate the manufacturing, acquisition and  
8 possession of semi-automatic, center-fire rifles with detachable magazines, it  
9 must define them in a way that is not vague and ambiguous.

10 59. Even assuming *arguendo* that Plaintiffs are wrong and some semi-automatic,  
11 center-fire rifles and handguns with detachable magazines are not protected  
12 by the Second Amendment – California’s “assault weapon” laws are still  
13 unconstitutional because innocent gun owners continue to be arrested for  
14 mere possession of the sub-class of these weapons that are legal and therefore  
15 absolutely protected by the Second Amendment.

16 60. Plaintiff herein allege that the state of confusion caused by the current vague  
17 and ambiguous statutes/regulations continues to result in the wrongful  
18 arrests of innocent gun-owners while they are exercising a fundamental  
19 “right to keep and bear” lawful firearms. These wrongful arrests and the  
20 chilling of fundamental rights violates the Second Amendment to the United  
21 States Constitution as that right is incorporated against state action through  
22 the Fourteenth Amendment.

23 **FIRST CLAIM FOR RELIEF:**  
24 **SECOND AMENDMENT, UNITED STATES CONSTITUTION**  
25 **42 USC § 1983, 1988 - INJUNCTIVE/DECLARATORY RELIEF**  
26 **ALL PLAINTIFFS vs DEFENDANTS: HARRIS AND**  
27 **CALIFORNIA DEPT OF JUSTICE**

28 61. Paragraphs 1 through 60 are incorporated by reference as though fully set  
forth.

62. California’s “assault weapon” Statutes and Regulations are

1 unconstitutionally vague and ambiguous and have resulted in the wrongful  
2 arrest, detention and prosecution of law-abiding citizens exercising their  
3 Second Amendment right to 'keep and bear arms' that are in common use for  
4 lawful purposes.

5 63. California's "assault weapon" statutes and regulations are unconstitutionally  
6 vague and result in the wrongful confiscation of common and ordinary  
7 firearms, that are protected by the Second Amendment, from their law-  
8 abiding owners.

9  
10 **SECOND CLAIM FOR RELIEF:**  
11 **FOURTH AMENDMENT | UNITED STATES CONSTITUTION**  
12 **42 USC § 1983, 1988 - INJUNCTIVE RELIEF**  
13 **ALL PLAINTIFFS vs DEFENDANTS: CITY OF COTATI,**  
14 **CITY OF COTATI POLICE DEPARTMENT and ANDREW LYSSAND.**

15 64. Paragraphs 1 through 63 are incorporated by reference as though fully set  
16 forth.

17 65. Plaintiffs MAX PLOG-HOROWITZ, THE CALGUNS FOUNDATION, INC.,  
18 and THE SECOND AMENDMENT FOUNDATION, INC., seek injunctive  
19 relief against the Defendants CITY OF COTATI and CITY OF COTATI  
20 POLICE DEPARTMENT and ANDREW LYSSAND that will require  
21 amendments to their policies and training to address:

- 22 a. Identification of "assault weapons" under California law.
- 23 b. Compliance with the Fourth Amendments.

24 66. Said injunctive relief will insure uniform and just application the Fourth  
25 Amendment and of California's Weapons Control Laws. Uniform and just  
26 enforcement of these laws are important because these laws effect the  
27 fundamental Second Amendment right of every law abiding citizen to keep  
28 and bear arms that are in common use for lawful purposes.

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1 **THIRD CLAIM FOR RELIEF:**  
2 **FOURTH AMENDMENT | UNITED STATES CONSTITUTION**  
3 **42 USC § 1983, 1988 - DAMAGES**  
4 **PLAINTIFFS vs DEFENDANTS: CITY OF COTATI,**  
5 **CITY OF COTATI POLICE DEPARTMENT and ANDREW LYSSAND.**

6 67. Paragraphs 1 through 66 are incorporated by reference as though fully set  
7 forth.

8 68. Plaintiffs MAX PLOG-HOROWITZ and THE CALGUNS FOUNDATION,  
9 INC., seek damages against the Defendants CITY OF COTATI, CITY OF  
10 COTATI POLICE DEPARTMENT and ANDREW LYSSAND in an amount  
11 according to proof for losses incurred as a result of the wrongful seizure and  
12 prosecution of PLOG-HOROWITZ, including but not limited to expenditures  
13 (fees/costs) associated with the defense of the criminal charges and lost  
14 wages.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, the Plaintiffs requests that this Court:

- 17 A. Issue a declaratory judgment and/or injunctive relief that California's  
18 "assault weapon" statutes and regulations are unconstitutional.
- 19 B. Injunctive relief against CITY OF COTATI, CITY OF COTATI  
20 POLICE DEPARTMENT and ANDREW LYSSAND. to prevent future  
21 violations of the Second and Fourth Amendment.
- 22 C. Damages from CITY OF COTATI, CITY OF COTATI POLICE  
23 DEPARTMENT and ANDREW LYSSAND in an amount according to  
24 proof.
- 25 D. Award costs of this action to all the Plaintiffs.
- 26 E. Award reasonable attorney fees and costs to the Plaintiffs on all  
27 Claims of the complaint, including but not limited to fee/cost awards  
28 under 42 USC § 1983, 1988 and California Code of Civil Procedure §  
1021.5.

1 F. Such other and further relief as this Court may deem appropriate.

2  
3 Respectfully Submitted.

4 Dated: January 27, 2012,

5 */s/ Donald Kilmer, Jr.*

6 Donald Kilmer, Jr. [SBN: 179986]  
7 Law Offices of Donald Kilmer, APC  
8 1645 Willow Street, Suite 150  
9 San Jose, California 95125  
10 Voice: (408) 264-8489  
11 Fax: (408) 264-8487  
12 E-Mail: Don@DKLawOffice.com

*/s/ Jason A. Davis*  
13 Jason A. Davis [SBN: 224250]  
14 Davis & Associates  
15 27281 Las Ramblas, Suite 200  
16 Mission Viejo, CA 92691  
17 Voice: (949) 310-0817  
18 Fax: (949) 288-6894  
19 E-Mail: Jason@CalGunLawyers.com

20 Attorneys for Plaintiffs

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