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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO VENUE

13 MARK AARON HAYNIE, BRENDAN
14 JOHN RICHARDS, THE CALGUNS
15 FOUNDATION, INC., and THE
16 SECOND AMENDMENT
FOUNDATION, INC.,

17 Plaintiffs,

18 vs.

19 KAMALA HARRIS, Attorney General
20 of California, CALIFORNIA
21 DEPARTMENT OF JUSTICE, CITY
22 OF ROHNERT PARK, and OFFICER
DEAN BECKER (RP134),

23 Defendants.

Case No.: 3:10-CV-01255 SI

SECOND AMENDED
CONSOLIDATED COMPLAINT

DEMAND FOR JURY TRIAL

42 U.S.C. §§ 1983, 1988

SECOND AMENDMENT

FOURTH AMENDMENT

FOURTEENTH AMENDMENT

24
25 **PROCEDURAL INTRODUCTION**

26 1. *Haynie v. Harris*, Case No.: 3:10-CV-01255 SI was ordered consolidated with
27 *Richards v. Harris (I)*, Case No.: 3:11-CV-02493 SI, in an ordered filed on
28 October 22, 2011. (See Documents # 42 and #15 respectively.)

- 1 2. The second *Richards v. Harris (II)*, Case No.: 3:11-CV-05580 SI was ordered
2 to be related with the first two cases in an order filed on December 21, 2011.
3 (See documents #47 and # 20 respectively.)
- 4 3. The final (4th) case, *Plog-Horowitz, et al., v. Harris, et al*, Case No.: CV-12-
5 0452 SI was ordered to be related to the first three (3) cases in an order filed
6 on March 1, 2012 (See Documents # 53, #17 and #5 respectively.)
- 7 4. In a stipulation and order filed with the Court, all four cases were
8 consolidated under *Haynie v. Harris*, Case No.: 3:10-CV-01255 SI, with the
9 remaining case numbers dismissed and the Defendants reserving the right to
10 separate trials.
- 11 5. The Defendants who have been dismissed from these consolidated actions:
12 a. City of Pleasanton and Pleasanton Police Department in *Haynie v.*
13 *Harris*, Case No.: 3:10-CV-01255 SI. See documents #6 and #7, filed on
14 June 8, 2012 and June 15, 2010, respectively.
15 b. Sonoma County Sheriff's Department and Sheriff's Deputy Greg
16 Myers. Document #23, filed on June 19, 2012.
- 17 6. Pursuant to a stipulation of the parties filed on or after October 24, 2012, this
18 Second Amended Consolidated Complaint dismisses the entire action
19 entitled: *Plog-Horowitz, et al., v. Harris, et al*, Case No.: CV-12-0452 SI.

20 **SUBSTANTIVE INTRODUCTION**

- 21 7. Plaintiff MARK AARON HAYNIE was wrongfully arrested for possession of
22 an Assault Weapon and required to make bail in a state criminal case in
23 which he was found factually innocent. He is associated with and exercises
24 membership rights in both the THE CALGUNS FOUNDATION, INC., and
25 THE SECOND AMENDMENT FOUNDATION, INC.
- 26 8. Plaintiff BRENDAN RICHARDS is an honorably discharged United States
27 Marine who saw combat duty in Iraq. He is associated with and exercises
28 membership rights in both the THE CALGUNS FOUNDATION, INC., and

1 THE SECOND AMENDMENT FOUNDATION, INC.

2 a. On May 20, 2010, RICHARDS was wrongfully arrested for possession
3 of an Assault Weapon and spent six (6) days in the Sonoma County jail
4 while his family tried to raise the funds for him to make bail in a state
5 criminal case which was dismissed. He was factually innocent of the
6 charges brought.

7 b. On August 14, 2011, RICHARDS was wrongfully arrested a second
8 time for possession of an Assault Weapon and spent four (4) days in
9 the Sonoma County jail awaiting bail. Again the charges against him
10 were dismissed. He was factually innocent of the charges brought.

11 9. Plaintiffs HAYNIE, and RICHARDS along with the Institutional Plaintiffs
12 CALGUNS FOUNDATION, INC., and SECOND AMENDMENT
13 FOUNDATION, INC., seek injunctive and declaratory relief against
14 Defendants HARRIS and the CALIFORNIA DEPARTMENT OF JUSTICE
15 that the California Penal Codes and Regulations defining Assault Weapons
16 are unconstitutionally vague and ambiguous and therefore result in wrongful
17 arrests and seizures of lawfully possessed/owned arms. The
18 unconstitutionally vague and ambiguous definitions of assault weapons and
19 the ongoing risk of arrest and seizure have a chilling on the fundamental
20 right to “keep and bear” arms of ordinary and common design as protected by
21 the Second Amendment to the United States Constitution.

22 10. Plaintiff BRENDAN RICHARDS also seeks monetary damages against the
23 CITY OF ROHNERT PARK and OFFICER BECKER for unlawful seizure of
24 his person and his firearms.

25 **PARTIES**

26 11. Plaintiff MARK AARON HAYNIE is a natural person and citizen of the
27 United States and of the State of California and was at all material times a
28 resident of Alameda County.

1 a. In a prior iteration of this action, HAYNIE had sued the City of
2 Pleasanton and the Pleasanton Police Department. Those defendants
3 were dismissed after reaching a cash settlement with Plaintiff
4 HAYNIE.

5 b. Plaintiff HAYNIE does not seek any remedies against Defendants
6 CITY OF ROHNERT PARK, or OFFICER BECKER.

7 12. Plaintiff BRENDAN RICHARDS is a natural person and citizen of the
8 United States and of the State of California. He is an honorably discharged
9 United States Marine with six months of combat duty in Iraq.

10 a. RICHARDS seek monetary remedies and injunctive relief against
11 Defendants CITY OF ROHNERT PARK and OFFICER BECKER.

12 b. In a prior iteration of this action, RICHARDS had sued the County of
13 Sonoma Sheriff's Department and Sheriff's Deputy Myers. Those
14 defendants were dismissed after reaching a non-cash settlement with
15 Plaintiff RICHARDS.

16 c. RICHARDS seeks only injunctive relieve against all the other
17 remaining defendants.

18 13. Plaintiff THE CALGUNS FOUNDATION, INC., (CGF) is a non-profit
19 organization incorporated under the laws of California with its principal
20 place of business in San Carlos, California. The purposes of CGF include
21 supporting the California firearms community by promoting education for all
22 stakeholders about California and federal firearms laws, rights and
23 privileges, and defending and protecting the civil rights of California gun
24 owners. As part of CGF's mission to educate the public – and gun-owners in
25 particular – about developments in California's firearm laws, CGF assists in
26 the maintenance and contributes content to an internet site called
27 Calguns.net. [<http://www.calguns.net/calgunforum/index.php>] On that
28 website CGF informs its members and the public at large about pending civil

1 and criminal cases, including but not limited to: arrests, convictions and
2 appeals relating to California gun law. The website itself contains messages,
3 forums and various posts that document the concerns that California gun
4 owners have about possible arrest, prosecution and conviction for running
5 afoul of California's vague and ambiguous laws relating to so-called Assault
6 Weapons. CGF represents its members and supporters, which include
7 California gun owners and Plaintiffs HAYNIE, and RICHARDS. CGF brings
8 this action on behalf of itself and its supporters, who possess all the indicia of
9 membership.

10 14. Plaintiff SECOND AMENDMENT FOUNDATION, INC., (SAF) is a non-
11 profit membership organization incorporated under the laws of Washington
12 with its principal place of business in Bellvue, Washtington. SAF has over
13 650,000 members and supporters nationwide, including California. The
14 purposes of SAF include education, research, publishing and legal action
15 focusing on the Constitutional right to privately owned and possess firearms,
16 and the consequences of gun control. SAF brings this action on behalf of
17 itself and its members.

18 15. Defendant KAMALA HARRIS is the Attorney General of the State of
19 California and she is obligated to supervise her agency and comply with all
20 statutory duties under California Law. She is charged with enforcing,
21 interpreting and promulgating regulations regarding California's Assault
22 Weapons Statutes. Furthermore, California Penal Code §§ 13500 *et seq.*,
23 establishes a commission on Peace Officer Standards and Training that
24 requires the DEPARTMENT OF JUSTICE, with the Attorney General as an
25 *ex officio* member of the commission, which is to provide personnel, training
26 and training material to cities and counties to insure an effective and
27 professional level of law enforcement within the State of California.

28 Furthermore, California Attorney General KAMALA HARRIS has concurrent

1 prosecutorial jurisdiction with the state's 58 District Attorneys, and she is
 2 bound by a duty to seek substantial justice and avoid the filing of criminal
 3 charges in which she knows (or should know) are not supported by probable
 4 cause. HARRIS also has an independent duty to disclose information
 5 beneficial to the accused and by extension she has a duty to prevent wrongful
 6 arrests in the first place when she has the power to do so.

7 16. Defendant CALIFORNIA DEPARTMENT OF JUSTICE is an agency of the
 8 State of California, headed by the Attorney General of the State, with a
 9 statutory duty to enforce, administer and interpret the law and promulgate
 10 regulations regarding weapons identified by the California Legislature as
 11 "Assault Weapons." This agency also has the power to issue memorandums,
 12 bulletins and opinion letters to law enforcement agencies throughout the
 13 State regarding reasonable interpretations of what constitutes an "Assault
 14 Weapon" under California Law.

15 17. Defendant CITY OF ROHNERT PARK a municipal subdivision of the State
 16 of California located in Sonoma County. Defendant CITY OF ROHNERT
 17 PARK maintains a Department of Public Safety and is responsible for setting
 18 the policies and procedures of that Department, including but not limited to
 19 the training and discipline of peace officers employed by Defendant.

20 18. Defendant OFFICER DEAN BECKER was a peace officer employed by the
 21 CITY OF ROHNERT PARK for all relevant time periods for this complaint.

22 19. Plaintiffs allege on information and belief that municipal police departments
 23 and sheriffs' offices in California conduct peace officer training on the
 24 identification and regulation of deadly weapons as defined by California law
 25 and that any failure by the Defendants CITY OF ROHNERT PARK to
 26 conduct adequate training is based on intentional or deliberate indifference
 27 to the rights of gun-owners.

28 20. Plaintiffs further allege on information and belief the following alternative

1 theories of liability against the Defendants:

- 2 a. Defendants CITY OF ROHNERT PARK, intentionally or through
3 deliberate indifference to the rights of law-abiding gun-owners, have
4 failed to conduct training as to the identification and regulation of
5 Assault Weapons as defined by California Law; and/or
6 b. Defendants HARRIS and/or CALIFORNIA DEPARTMENT OF
7 JUSTICE, intentionally or through deliberate indifference to the rights
8 of law-abiding gun-owners, have failed to promulgate appropriate
9 memoranda, industry bulletins and/or regulations to assist local law
10 enforcement agencies in properly identifying Assault Weapons as
11 defined by California Law; and/or
12 c. California Law purporting to define and regulate Assault Weapons is
13 so unconstitutionally vague and ambiguous that no reasonable person
14 (i.e., the general public, local police, etc.) can identify and/or comply
15 with California's laws regulating this class of weapons.

16 **JURISDICTION AND VENUE**

- 17 21. This Court has subject matter jurisdiction over this action pursuant to 28
18 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1988.
19 22. This Court has supplemental jurisdiction over any state law causes of action
20 arising from the same operative facts under 28 U.S.C. § 1367.
21 23. Venue for this action is proper under 28 U.S.C. §§ 1391 and/or the Civil Local
22 Rules for bringing an action in this district.

23 **CONDITIONS PRECEDENT**

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

26 **FACTS - Plaintiff HAYNIE**

- 27 25. On or about February 7, 2009, officers of the PLEASANTON POLICE
28 DEPARTMENT arrested and detained MARK HAYNIE thus depriving him

1 of his liberty. The agency case numbers for the incident are: CEN: 09-6635
2 and PFN: BHD164. The docket number was: 09318856.

3 26. MARK HAYNIE was cited for possession of an Assault Weapon under
4 California Penal Code § 30600 et seq. Bail was set at \$60,000.00. This
5 caused MARK HAYNIE to have to pay a \$6,000 fee to a bail bondsman.

6 27. MARK HAYNIE's rifle was not an Assault Weapon because it was not listed
7 in California Penal Code § 30510 et seq.

8 28. MARK HAYNIE's rifle was not an Assault Weapons because it could not be
9 identified under Penal Code § 30510 et seq. with the characteristics of an
10 assault weapon in that:

11 a. It did not have a "detachable magazine" as that term is defined by
12 California statutory law and regulations promulgated by the
13 Defendant CALIFORNIA DEPARTMENT OF JUSTICE.

14 b. MARK HAYNIE's rifle did have a "bullet button" which requires the
15 use of a tool (a bullet being defined as a tool by the California Code of
16 Regulations) to remove the magazine from the gun, thus making the
17 magazine non-detachable.

18 29. MARK HAYNIE's rifle is based on the popular and common Colt AR-15 rifle.
19 It is functionally identical to an AR-15 except that the magazine (as noted
20 above) is non-detachable and the non-detachable magazine capacity does not
21 exceed ten (10) rounds.

22 30. Several manufacturers offer several models of semi-automatic, center-fire
23 rifles that are not "assault weapons" as defined by California law. Examples:

24 a. Ruger Mini-14 Ranch Rifle. (Caliber 5.56mm NATO/.223 Rem.)

25 b. Ruger Mini Thirty Rifle. (Caliber 7.62 x 39mm)Ruger 99/44 Deerfield
26 Carbine. (Caliber .44 Remington Magnum)

27 c. Remington Model 750 Woodmaster. (Available in several calibers.)

28 d. Browning BAR. (Available in several calibers.)

- 1 e. Benelli R1 Rifle. (Available in several calibers.)
- 2 31. MARK HAYNIE made all required court appearances. The Alameda County
3 District Attorney's office declined to file an information against MARK
4 HAYNIE and the matter was formally dropped from the Alameda County
5 Superior Court Criminal Docket on March 27, 2009.
- 6 32. MARK HAYNIE was deprived of his liberty until March 27, 2009 when bail
7 was exonerated in Department 701 by Superior Court Judge Walker.
- 8 33. MARK HAYNIE lost time off from work to make court appearances and
9 incurred other losses associated with said criminal charges.
- 10 34. MARK HAYNIE was deprived of the possession and use of valuable personal
11 property (a rifle) from the date of his arrest until mid-June of 2009 when he
12 reacquired the firearm from the PLEASANTON POLICE DEPARTMENT.
- 13 35. On or about October 21, 2009, MARK HAYNIE obtained a finding of factual
14 innocence under California Penal Code 851.8 from the PLEASANTON
15 POLICE DEPARTMENT.
- 16 36. After termination of his criminal case and while this case was pending,
17 MARK HAYNIE wrestled with whether or not he should "keep and bear"
18 such a controversial weapon. He eventually sold his firearms for a number of
19 reasons, including but not limited to a reasonable fear that he would face
20 future additional arrests. This reasonable fear is based on:
- 21 a. As part of MARK HAYNIE's enjoyment of his Second Amendment
22 rights, he regularly goes to the range to shoot his rifles. These ranges
23 are public places. Because the rifle he wants to reacquire looks like a
24 contraband weapon, he draws attention to himself by possessing this
25 legal version of the rifle in these public settings. This makes it more
26 likely that HAYNIE will have future law enforcement contact and
27 possible arrest, based on possession of this particular rifle.
- 28 b. MARK HAYNIE's knowledge about the dangers of owning these

1 weapons was gained from his own experiences as set forth in this law
2 suit.

3 c. MARK HAYNIE's knowledge about the risks of exercising his rights is
4 also gained from Calguns.net, where he has learned about multiple
5 wrongful arrests of law-abiding gun owners charged under California's
6 vague and ambiguous Assault Weapon Statutes.

7 37. Based on his knowledge of these other cases – including co-plaintiff
8 RICHARDS – and his own personal experience, Plaintiff HAYNIE has a
9 reasonable fear that he may suffer repeated wrongful arrests in the future if
10 he reacquires a firearm that local law enforcement agencies continue to
11 confuse with firearms defined by California as Assault Weapons. This
12 reasonable fear results in a chilling of his fundamental right to “keep and
13 bear” arms of common use and ordinary design.

14 38. CALGUNS FOUNDATION, INC., paid for Plaintiff MARK HAYNIE'S
15 representation in the criminal matter in the amount of: \$3,713.43.

16 39. CALGUNS FOUNDATION, INC., has also paid for the defense of other
17 California residents similarly situated. (e.g., charged with possession of
18 Assault Weapons and dismissal of charges.)

19 40. On or about May 10, 2010, the Defendants CITY OF PLEASANTON and
20 CITY OF PLEASANTON POLICE DEPARTMENT were dismissed from this
21 case after payment to MARK HAYNIE of \$6,000 and a release of all claims.

22 41. Because Defendant CALIFORNIA DEPARTMENT OF JUSTICE has taken
23 the position that HAYNIE's arrest was indeed wrongful and that there is
24 nothing they can do to further clarify the detachable magazine feature and
25 bullet-button technology, they (DOJ) have adopted an admission that the
26 California Assault Weapon regulatory regime (statutes and regulations)
27 cannot be improved upon by any means at their disposal to prevent future
28 wrongful arrests.

1 42. Plaintiffs herein allege that if no further clarifications of California's Assault
2 Weapons statutes and regulations are desirable or (legally?) possible, yet
3 innocent gun-owners continue to be arrested by local law enforcement
4 agencies and charged with violating Penal Code § 30600 *et seq.*, then only one
5 conclusion can follow – the entire set of laws and regulations defining
6 California Assault Weapons is unconstitutionally vague and ambiguous.

7 **FACTS – Plaintiff RICHARDS (First Arrest)**

8 43. On or about May 20, 2010, Defendant BECKER arrested Plaintiff
9 RICHARDS thus depriving him of his liberty.

10 44. On or about May 20, 2010, Defendant BECKER seized firearms (2 pistols and
11 1 rifle) from Plaintiff RICHARDS, thus depriving him of the means of
12 exercising his Second Amendment rights.

13 45. The arresting agency case number for the incident is: 10-0001930. The
14 docket number for the Sonoma Superior Court Case was: SCR 583167.

15 46. Defendant BECKER investigated a disturbance at a Motel 6 located at 6145
16 Commerce Blvd., which was within his operational jurisdiction.

17 47. While both men were on the sidewalk at the motel, Defendant BECKER
18 questioned Plaintiff RICHARDS about his involvement in the disturbance,
19 and during the conversation, RICHARDS revealed that he had unloaded
20 firearms in the trunk of his vehicle.

21 48. Defendant BECKER indicated that he planned to search the trunk of
22 RICHARDS' vehicle and began to walk toward RICHARDS' car. After
23 BECKER asked a second time if Plaintiffs' firearms were loaded and
24 responding "no", RICHARDS inquired whether OFFICER BECKER needed a
25 warrant to search the trunk of his car.

26 49. Apparently relying on Penal Code § 25850, OFFICER BECKER replied that
27 since RICHARDS had admitted that firearms were in the trunk, no warrant
28 was necessary.

1 50. Only after this statement, and in obedience to BECKER'S demand, did
2 RICHARDS turn over the keys to the trunk of his vehicle.

3 51. OFFICER BECKER found two pistols and one rifle, along with other firearm-
4 related equipment in the trunk. None of the firearms were loaded.

5 52. OFFICER BECKER inquired about the registration of Plaintiff's firearms
6 and RICHARDS replied that those firearms that required registration were
7 in fact registered to him.

8 53. OFFICER BECKER placed RICHARDS under arrest for a violation of CA
9 Penal Code § 30600 *et seq.* – Possession of an unregistered Assault Weapon.

10 54. On the strength of an incident report prepared by OFFICER BECKER, who
11 claimed to be a firearm instructor and an expert witness having previously
12 testified about the identification of Assault Weapons, Plaintiff RICHARDS
13 was charged by the Sonoma County District Attorney with the following
14 crimes by way of felony complaint:

15 a. Two counts of possession of an Assault Weapon under California Penal
16 Code § 30600 *et seq.*

17 b. Four counts of possession of large capacity magazines. CA Penal Code
18 § 16590 *et seq.*

19 55. Bail was set at \$20,000.00. RICHARDS spent 6 days in jail while his family
20 tried to raise the funds for bail. Finally, a \$1,400 non-refundable fee was paid
21 to a bondsman and RICHARDS was released on bail.

22 56. On September 9, 2010, prior to a scheduled Preliminary Hearing, the Sonoma
23 County District Attorney's Office dismissed all charges against Plaintiff
24 BRENDAN RICHARDS.

25 57. The dismissal was based on an August 16, 2010, report prepared by Senior
26 Criminalist John Yount of the California Department of Justice Bureau of
27 Forensic Services. Criminalist Yount had found that none of RICHARDS
28 firearms were Assault Weapons as defined by the California Penal Code or

1 any of its regulations.

2 a. One firearm (a semi-automatic pistol) had a properly installed bullet
3 button, thus rendering the firearm incapable of accepting a detachable
4 magazine that could only be removed from the gun by the use of a tool.

5 b. The other firearm (a semi-automatic rifle) had none of the features or
6 characteristics that make a firearm subject to registration under CA's
7 Assault Weapon regime.

8 c. There was never an issue with the third firearm (another semi-
9 automatic pistol that is actually on the California safe handgun list)
10 being classified as an assault weapon and it was registered to Plaintiff.

11 58. All of RICHARDS' firearms were semi-automatic guns. California certifies
12 scores of semi-automatic pistols (including models based on the venerable .45
13 Cal. M1911 of World War II vintage) for retail sale in California.

14 Additionally, several manufacturers offer several models of semi-automatic,
15 center-fire rifles that are not "assault weapons" under California law.

16 Examples include:

17 a. Ruger Mini-14 Ranch Rifle. (Caliber 5.56mm NATO/.223 Rem.)

18 b. Ruger Mini Thirty Rifle. (Caliber 7.62 x 39mm)Ruger 99/44 Deerfield
19 Carbine. (Caliber .44 Remington Magnum)

20 c. Remington Model 750 Woodmaster. (Available in several calibers.)

21 d. Browning BAR. (Available in several calibers.)

22 e. Benelli R1 Rifle. (Available in several calibers.)

23 f. Springfield Armory M1A with California legal muzzle break and 10-
24 round magazines.

25 g. World War II Era M1 Garand, available for mail order sales from the
26 United States Government through the Civilian Marksmanship
27 program. <http://www.thecmp.org/Sales/rifles.htm>

28 h. World War II Era M1 Carbines, also available for mail order sales from

1 the United States Government through the Civilian Marksmanship
2 program. <http://www.thecmp.org/Sales/rifles.htm>

3 Thus, Plaintiffs herein aver that semi-automatic firearms are common and
4 ordinary weapons, suitable for exercising Second Amendment rights.

5 59. After the government's release of the expert's report, the Prosecution had
6 further discussions with RICHARDS' Counsel, wherein it was pointed out
7 that California law does not criminalize mere possession of large capacity
8 magazines. Upon The People's concession that this is the state of the law in
9 California, all charges against RICHARDS were dismissed.

10 60. RICHARDS, through counsel, made several inquiries over the next several
11 months to the Sonoma County District Attorney about a stipulation of factual
12 innocence under Penal Code § 851.8. These negotiations reached an impasse
13 when the District Attorney insisted on a finding that there was probable
14 cause for the police to arrest RICHARDS as a *quid pro quo* for their
15 stipulation for a finding of factual innocence. In other words, it can be
16 inferred that the Sonoma County District Attorney still believed, after
17 dismissing the case against RICHARDS, that there is enough ambiguity in
18 the California Assault Weapon statutes and regulations that reasonable
19 minds can differ and that experts are required to interpret the law. Of course
20 this set of circumstances will still result in gun-owners continuing to be
21 arrested, having to post bail, and having to hire attorneys and experts to
22 clear their names.

23 61. BRENDAN RICHARDS made all required court appearances until the
24 matter was dismissed on September 9, 2010.

25 62. BRENDAN RICHARD was thus deprived of his liberty while he was
26 incarcerated pending the posting of bail and then through to September 9,
27 2010, when the case was dismissed and bail was exonerated.

28 63. BRENDAN RICHARDS lost time off from work and incurred travel expenses

1 to make court appearances. He also incurred other losses associated with the
2 criminal case against him.

3 64. BRENDAN RICHARDS was deprived of the possession and use of valuable
4 personal property (two pistols and a rifle), necessary for exercising his Second
5 Amendment “right to keep and bear arms.” This deprivation of
6 constitutionally protected property occurred from the date of his arrest until
7 the property was returned to him following the dismissal.

8 65. THE CALGUNS FOUNDATION, INC., paid \$11,224.86 for Plaintiff
9 BRENDAN RICHARDS’ legal representation in the first criminal matter.

10 66. THE CALGUNS FOUNDATION, INC., has also paid for the defense and
11 expert consultations for many other California residents similarly situated.
12 (e.g., possession of a “bullet button” semi-automatic rifle, arrest and
13 dismissal of charges.)

14 **FACTS – Plaintiff RICHARDS (Second Arrest)**

15 67. On or about August 14, 2011, the Sonoma County Sheriff’s Office acting
16 through Sheriff’s Deputy Greg Myers, arrested Plaintiff RICHARDS thus
17 depriving him of his liberty.

18 68. On or about August 14, 2011, the Sonoma County Sheriff’s Office acting
19 through Sheriff’s Deputy Greg Myers, made contact with RICHARDS,
20 wherein RICHARDS informed the arresting officer that there were firearms
21 located in the trunk of his vehicle. RICHARDS declined to consent to a
22 search of the trunk. The arresting officer then hand-cuffed RICHARDS and
23 proceeded to conduct a warrantless search of the vehicle in apparent reliance
24 on Penal Code § 25850. The arresting officer seized a Springfield Armory
25 M1A from the trunk of Plaintiff RICHARDS car.

26 69. The arresting officer apparently believed that the muzzle break installed on
27 RICHARDS’ rifle was a flash suppressor. RICHARDS was charged with a
28 single felony count of violating California Penal Code § 30600 *et seq.*, –

- 1 possession of an assault weapon. Bail was initially set at \$100,000.
- 2 70. A motion to reduce bail was made on or about August 18, 2011, and bail was
3 reduced to \$20,000. RICHARDS was released on bail that day after posting a
4 non-refundable fee to a bail bondman of approximately \$2,000.
- 5 71. Prior to the next court appearance, the weapon in question was examined by
6 the California Department of Justice Bureau of Forensic Services. Senior
7 Criminalist John Yount issued a report on or about August 29, 2011, that the
8 firearm was not an Assault Weapon under California law.
- 9 72. The arresting officer either lacked the training to properly distinguish a
10 muzzle break from a flash suppressor and/or the definition of a flash
11 suppressor is so vague and ambiguous that a well trained peace officer can
12 easily confuse a flash suppressor with a muzzle break.
- 13 73. The California Department of Justice has never promulgated objective
14 standards for identifying flash suppressors. Plaintiffs allege on information
15 and belief that the CALIFORNIA DEPARTMENT OF JUSTICE in fact relies
16 upon manufacturer catalogs and marketing materials, rather than objective
17 scientific tests to determine whether a device is a flash suppressor, flash-
18 hider, muzzle break and/or recoil compensator.
- 19 74. On or about September 19, 2011, the charges against RICHARDS were
20 dismissed. Although he was cleared by the government's own expert, the
21 Sonoma County D.A. declined to stipulate to a finding of factual innocence.
- 22 75. The weapon in question – Springfield Armory model M1A is a common and
23 ordinary firearm suitable for exercising the “right to keep and bear arms”
24 under the Second Amendment to the United States Constitution.
- 25 76. RICHARDS lost time off of work. He was required to post bail. CALGUNS
26 FOUNDATION, INC., again paid RICHARDS' criminal defense lawyer.
- 27 77. Following this second arrest on charges of violating California Penal Code §
28 30600 – possession of an Assault Weapon – Plaintiff RICHARDS has a

1 reasonable fear, that by exercising a fundamental right protected by the U.S.
 2 Constitution, he is realistically threatened by a repetition of wrongful
 3 arrests. He further contends that the claim of future injury cannot be
 4 written off as mere speculation. RICHARDS also bases his fear of repeated
 5 arrests on the information he obtains from the Calguns.net website.

6 78. During the course of this litigation, Plaintiffs reached an agreement to
 7 dismiss the Sonoma County Defendants (the Sheriff's Office and Deputy
 8 Myer) from the case in consideration of Sonoma Sheriff-Coroner Steve
 9 Freitas' declaration that California Law defining "flash suppressor" is vague
 10 and ambiguous. [See Exhibit O attached hereto. The exhibit is pages 8 and
 11 9 of a 9-page settlement agreement.]

12 **FACTS – Relating to Vague and Ambiguous Laws Impacting**
 13 **the Second Amendment**

14 79. The CALIFORNIA DEPARTMENT OF JUSTICE is the State agency
 15 responsible for the training and education of law enforcement agencies with
 16 respect to Assault Weapons under Penal Code §§ 30520 and 31115.

17 a. Penal Code § 30520 states: "The Attorney General **shall** adopt those
 18 rules and regulations that **may** be necessary **or** proper to carry out the
 19 purposes and intent of this chapter." [emphasis added]

20 b. Penal Code § 31115 states [in part]: "The Department of Justice **shall**
 21 conduct a public education and notification program regarding the
 22 registration of assault weapons and the definition of the weapons set
 23 forth in Section 30515." [emphasis added]

24 80. California's definitions of Assault Weapons are set forth at Penal Code §§
 25 16170(a), 16250, 16790, 16970, and 30500-31115.

26 81. The California Code of Regulations interpreting the statutory definition of
 27 assault weapons are found at Title 11, Division 5, Chapters 39 & 40.

28 82. The Orange County Sheriff's Department has issued a training bulletin about

1 the “bullet button” to prevent wrongful arrests in that county. A true and
2 correct copy is attached as **Exhibit A**.

3 83. The City of Sacramento has issued a training bulletin about the “bullet
4 button” to prevent wrongful arrests in that jurisdiction. A true and correct
5 copy is attached as **Exhibit B**.

6 84. The Calguns Foundation Inc., has published a flow-chart to identify weapons
7 that are designated as assault weapons under California law. A true and
8 correct copy is attached as **Exhibit C**.

9 85. Defendant CALIFORNIA DEPARTMENT OF JUSTICE has promulgated an
10 “Assault Weapons Identification Guide,” an 84-page publication which
11 describes the Assault Weapons regulated in Penal Code (former) sections
12 12276, 12276.1, and 12276.5. In the Guide, the Department acknowledges
13 that a magazine is considered detachable when it “can be removed readily
14 from the firearm with neither disassembly of the firearm action nor use of a
15 tool being required. A bullet or ammunition cartridge is considered a tool.”

16 86. Defendant CALIFORNIA DEPARTMENT OF JUSTICE has declined to issue
17 a statewide bulletin or other directive regarding the “bullet button.”

18 87. Though it would not be unduly burdensome for Defendant CALIFORNIA
19 DEPARTMENT OF JUSTICE to issue a bulletin regarding the technology of
20 the bullet button and to develop a field test to insure state-wide compliance
21 with the law, the CALIFORNIA DEPARTMENT OF JUSTICE insists:

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

1 At this stage of the litigation, Plaintiffs are prepared to accept Defendants'
2 (DOJ) characterization that the Assault Weapon Statutes and Regulations
3 that they are charged with interpreting, educating the public about and
4 enforcing are not subject to any further clarification by their agency.

5 88. Instead, Plaintiffs will aver that the entire California Assault Weapon
6 Statutes and the Regulations derived therefrom are vague and ambiguous on
7 their face and as applied to HAYNIE and RICHARDS.

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

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

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

19 91. In late 2005, various individuals and licensed gun stores began importing
20 into California AR pattern rifles and the receivers for them.

21 92. In response to inquiries about the legality of importing and possessing
22 certain AR and AK pattern rifles and receivers, DOJ began replying in their
23 official letters that while THEY were of the opinion that these rifles were
24 legal, local District Attorneys might disagree and prosecute anyway. True
25 and correct copies of these letter are attached as **Exhibit D** and they all
26 follow a similar pattern of declaring a certain gun part (receiver) legal to
27 import into California and then warning the recipient that California's 58
28 District Attorneys may have a different opinion that could result in

1 prosecution. See:

- 2 i. December 12, 2005 letter from DOJ to Ms. Amanda Star
3 rendering an opinion about the legality of a Stag-15 Lower
4 receiver but warning that local prosecutors may disagree and
5 prosecute accordingly.
- 6 ii. January 18, 2006 letter from DOJ to BST Guns also opining out
7 the legality of firearms, but giving the same warning the 58
8 county prosecutors could potentially prosecute anyway.
- 9 iii. December 28, 2005 letter from DOJ to Matthew Masuda.
- 10 iv. December 27, 2005 letter from DOJ to Christopher Kjellberg.
- 11 v. December 27, 2005 letter from DOJ to Kirk Haley.
- 12 vi. December 28, 2005 letter from DOJ to Mark Mitzel.
- 13 vii. December 28, 2005 letter from DOJ to Jason Paige.

14 93. From February to May 2006, the California Department of Justice issued a
15 series of memorandums that were obtained as part of a California Public
16 Records Request. A true and correct copy of that disclosure is Attached as
17 **Exhibit E**. The memorandums are remarkable because:

- 18 a. The Department of Justice made changes to the various versions of
19 this memorandum due to Jason Davis, then an attorney for the
20 National Rifle Association, pointing out legal flaws in the various
21 iterations.
- 22 b. In all versions of the memorandum, the Department of Justice directly
23 conflicted the previously published Assault Weapons Information
24 Guide by stating that owners of a firearm with features had to,
25 “permanently alter the firearm so that it cannot accept a detachable
26 magazine.” “Permanent alteration” is not required in the Penal Code,
27 the Assault Weapons Information Guide, or the then existing
28 California Code of Regulations 11 C.C.R. 5469.

1 94. On or about May 10, 2006, DOJ counsel Alison Merrilees informed a member
2 of the public that the DOJ wished to create a test case, “[w]e are eagerly
3 awaiting a test case on this, because we think we’ll win.” A true and correct
4 copy of the email that was obtained as part of a Public Records Act request is
5 attached as **Exhibit F**.

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

19 96. On or about June 6, 2006, DOJ issued a Notice of Proposed Rulemaking. The
20 proposed amendment would have “define[d] a sixth term, “capacity to accept
21 a detachable magazine”, as meaning “capable of accommodating a detachable
22 magazine, but shall not be construed to include a firearm that has been
23 permanently altered so that it cannot accommodate a detachable magazine.”
24 A true and correct copy of the notice is attached as **Exhibit H**.

25 97. On or about November 1, 2006, DOJ issued a “Text of Modified Regulations”
26 The updated text attempted to define “detachable magazine” as “currently
27 able to receive a detachable magazine or readily modifiable to receive a
28 detachable magazine” and had other “permanency” requirements. A true and

1 correct copy of the notice is attached as **Exhibit I**.

2 98. Plaintiff CGF alleges on information and belief, DOJ did not submit the
3 Modified Regulations to the Office of Administrative Law (“OAL”) and thus
4 the 2006 Rulemaking did not take effect.

5 99. On or about July 11, 2007, CGF (through Gene Hoffman, the Chairman of
6 CGF) petitioned the OAL to have them find that the continued publication of
7 the “Important Notice” Memorandum after the 2006 Rulemaking that was
8 not submitted to OAL was an “Underground Regulation.” See **Exhibit J**.

9 100. On or about September 11, 2007, OAL accepted Hoffman’s petition. See
10 **Exhibit K**.

11 101. On or about September 21, 2007, OAL suspended it’s review as DOJ issued a
12 certification on or about September 20, 2007, that stated, “[DOJ] reserves the
13 right to interpret the law in any case-specific adjudication, as authorized in
14 *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557,572.” A
15 true and correct copy of the letter from the OAL along with DOJ’s
16 certification is attached as **Exhibit L**.

17 102. The reservation in the certification of September 20, 2007, leads to
18 uncertainty over whether the DOJ would take the position that permanence
19 was required for modifications to a firearm so that the firearm would not
20 have “the capacity to accept a detachable magazine.”

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

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

See **Exhibit M**, with special attention to Attachment A, which is the letter

1 dated September 29, 2008.

2 104. On or about November 3, 2008, DOJ replied to Kern County DA Edward
3 Jagels:

4 “Since there are no statutes, case law, or regulations concerning
5 whether a rifle that is loaded with a fixed, removeable magazine
6 can also be considered to have the ‘capacity to accept a
7 detachable magazine,’ we are unable to declare rifles configured
8 with the ‘Prince 50 Kit’ or ‘bullet button’ to be legal or illegal.”

9 A true and correct copy of this letter is attached as **Exhibit N**. The letter is
10 hard to read due to multiple copies. If discovery proceeds in this matter,
11 Plaintiff would expect to obtain a cleaner copy.

12 105. Not only is the CALIFORNIA DEPARTMENT OF JUSTICE claiming it has
13 no duty to issue a clarifying bulletin to the State’s District Attorneys and
14 Law Enforcement Community, on this issue; they have apparently engaged
15 in a pattern of disinformation and confusion on the issue of whether a rifle
16 fitted with a device that makes it incapable of accepting a detachable
17 magazine is legal to own in California. It could be argued that CALIFORNIA
18 DEPARTMENT OF JUSTICE’s firearms division has created such a state of
19 confusion that the entire statutory and regulatory scheme for defining
20 California Assault Weapons is hopelessly, and unconstitutionally vague and
21 ambiguous.

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

24 106. The CALGUNS FOUNDATION, INC., has defended many incidents of law
25 abiding gun owners and retailers whose firearms were either seized, the
26 individual was arrested and/or charged with violating Assault Weapons
27 Control Act.

28 a. In approximately April 2007, Matthew Corwin was arrested and
charged with multiple violations of the AWCA. See *People v. Matthew
Corwin*, Case No. GA069547, Los Angeles Superior Court.

- 1 b. In June 2008, John Contos was arrested and charged in Solano County
2 with a violation of (then) Penal Code § 12280 - possession and/or
3 manufacturing of Assault Weapons based on the allegation that his
4 rifle had an illegal thumb-hole stock. The case number was
5 VCR198514-VF. CGF funded the defense of Mr. Contos. The case was
6 dismissed and the D.A. stipulated to a finding of factual innocence.
- 7 c. In November 2008, John Crivello had a semiautomatic centerfire rifle
8 with a bullet button magazine release seized from his home in Santa
9 Cruz, California by the Santa Cruz Police Department. Counsel
10 provided by CGF educated the Santa Cruz District Attorney's office.
11 Counsel to CGF was advised that DOJ stated that it was unclear
12 whether the bullet button was legal but that the District Attorney
13 should file anyway. The District Attorney (ADA Dave Genochio and/or
14 Charlie Baum) dropped charges and the firearm was returned to Mr.
15 Crivello. CGF spent \$645.00 defending Mr. Crivello.
- 16 d. On or about November 3, 2009, Deputy J. Finley of Orange County
17 Sheriff's Department seized a bullet button equipped Stag Arms AR-15
18 style firearm from Stan Sanders. CGF counsel was engaged to explain
19 the legality of the firearm to the Orange County Sheriff's Department
20 and the firearm was subsequently returned to Mr. Sanders. The
21 Orange County Training Bulletin was issued partially in response to
22 this incident. CGF spent \$650.00 defending Mr. Sanders.
- 23 e. On or about March 30, 2010, Robert Wolf was arrested by the
24 Riverside County Sheriff's Department for possession of a
25 semiautomatic centerfire rifle with a "Prince 50 Kit." CGF counsel
26 intervened and had the case dismissed on or about November 11, 2010,
27 with the firearm subsequently returned to Mr. Wolf. CGF spent
28 \$5,975.00 defending Mr. Wolf.

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

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

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

15 109. Even assuming *arguendo* that Plaintiffs are wrong and some semi-automatic,
 16 center-fire rifles and handguns with detachable magazines are not protected
 17 by the Second Amendment – California’s Assault Weapon laws are still
 18 unconstitutional because innocent gun owners continue to be arrested for
 19 mere possession of the sub-class of these weapons that are legal and therefore
 20 absolutely protected by the Second Amendment.

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

28 *////*

**FIRST CLAIM FOR RELIEF:
SECOND AMENDMENT, UNITED STATES CONSTITUTION
42 USC §§ 1983, 1988; 28 USC § 2201, 2202
INJUNCTIVE/DECLARATORY RELIEF
ALL PLAINTIFFS vs DEFENDANTS: HARRIS AND
CALIFORNIA DEPT OF JUSTICE**

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111. Paragraphs 1 through 110 are incorporated by reference as though fully set
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forth.

112. California’s Assault Weapon Statutes and Regulations are unconstitutionally
vague and ambiguous and have resulted in the wrongful arrest, detention
and prosecution of law-abiding citizens exercising their Second Amendment
right to ‘keep and bear arms’ that are in common use for lawful purposes.

113. California’s Assault Weapon Statutes and Regulations are unconstitutionally
vague and result in the wrongful confiscation of common and ordinary
firearms, that are protected by the Second Amendment, from their law-
abiding owners.

**SECOND CLAIM FOR RELIEF:
FOURTH AMENDMENT, UNITED STATES CONSTITUTION
42 USC §§ 1983, 1988; 28 USC § 2201, 2202
INJUNCTIVE/DECLARATORY RELIEF
RICHARDS vs DEFENDANTS: HARRIS AND
CALIFORNIA DEPT OF JUSTICE**

114. Paragraphs 1 through 110 are incorporated by reference as though fully set
forth.

115. California Penal Code § 25850(b) is unconstitutional on its face, and as
applied in this case. Mere possession of a firearm, (i.e., exercising a
fundamental right) when otherwise lawful, cannot support a finding of
probable cause to believe a crime has been committed, such that the Fourth
Amendment’s warrant requirement can be legislatively disregarded.

116. Plaintiff BRENDAN RICHARDS requests declaratory and/or prospective
injunctive relief under 42 U.S.C. § 1983 that Penal Code § 25850(b) – on its
face and as applied – is a violation of his constitutional right to be free from

1 unreasonable seizure under the Fourth Amendment to the United States
 2 Constitution, while he is exercising his Second Amendment rights to “keep
 3 and bear” lawful firearms.

4 117. Plaintiffs THE CALGUNS FOUNDATION, INC., and THE SECOND
 5 AMENDMENT FOUNDATION, INC., also requests declaratory and/or
 6 prospective injunctive relief under 42 U.S.C. § 1983 that Penal Code §
 7 25850(b) is unconstitutional on its face. It is tantamount to a legislatively
 8 issued general warrant applicable only against gun owners transporting
 9 firearm on public roads and highways. General warrants were a particular
 10 evil that the Fourth Amendment was adopted to prevent.

11 **THIRD CLAIM FOR RELIEF:**
 12 **FOURTH AMENDMENT | UNITED STATES CONSTITUTION**
 13 **42 USC § 1983, 1988 - DAMAGES**
RICHARDS vs DEFENDANTS: CITY OF ROHNERT PARK
AND OFFICER BECKER

14 118. Paragraphs 1 through 110 are incorporated by reference as though fully set
 15 forth.

16 119. Plaintiffs BRENDAN RICHARDS and THE CALGUNS FOUNDATION,
 17 INC., seek damages against the Defendants CITY OF ROHNERT PARK and
 18 OFFICER BECKER in an amount according to proof for losses incurred as a
 19 result of the warrantless search of RICHARDS’ vehicle, his arrest and the
 20 subsequent illegal seizure of his person and of the valuable property
 21 (firearms); and for expenditures (fees/costs) associated with the defense of the
 22 criminal charges.

23
 24 WHEREFORE, the Plaintiffs requests that this Court:

- 25 A. Issue a declaratory judgment and/or injunctive relief that California’s
 26 Assault Weapon Statutes and Regulations are unconstitutional.
 27 B. Issue a declaratory judgment and/or injunctive relief that California
 28 Penal Code § 25850(b) is unconstitutional.

