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10 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

15 Plaintiffs,

16 vs.

18 KAMALA HARRIS, Attorney General
of California, CALIFORNIA
19 DEPARTMENT OF JUSTICE, CITY
OF ROHNERT PARK, OFFICER
20 DEAN BECKER (RP134) and DOES
21 1 TO 20,

22 Defendants.

Case Nos.: 3:10-CV-01255 SI¹
3:11-CV-02493 SI²

AMENDED CONSOLIDATED
COMPLAINT

DEMAND FOR JURY TRIAL

42 U.S.C. §§ 1983, 1988

SECOND AMENDMENT

FOURTH AMENDMENT

FOURTEENTH AMENDMENT

23
24
25 ¹ This amended complaint would be a Second Amended Complaint in *Haynie v. Harris*.
The Court ordered the Plaintiffs to file a consolidated complaint in its Order Granting
26 Defendants' Motion to Dismiss and Granting Leave to Amend. Doc #42 in *Haynie v. Harris*.

27 ² This amended complaint would be a First Amended Complaint in *Richards v. Harris*.
The Court ordered the Plaintiffs to file a consolidated complaint in its Order Granting
28 Defendants' Motion to Dismiss and Granting Leave to Amend. Doc #15 in *Richards v. Harris*.

INTRODUCTION

1. Plaintiff MARK AARON HAYNIE was wrongfully arrested for possession of an Assault Weapon and required to make bail in a state criminal case in which he was found to be factually innocent. He is associated with and exercises membership rights in both the THE CALGUNS FOUNDATION, INC., and THE SECOND AMENDMENT FOUNDATION, INC.
2. Plaintiff BRENDAN RICHARDS is an honorably discharged United States Marine who saw combat duty in Iraq. He is associated with and exercises membership rights in both the THE CALGUNS FOUNDATION, INC., and THE SECOND AMENDMENT FOUNDATION, INC.
 - a. On May 20, 2010, RICHARDS was wrongfully arrested for possession of an Assault Weapon and spent six (6) days in the Sonoma County jail while his family tried to raise the funds for him to make bail in a state criminal case which was dismissed. He was factually innocent of the charges brought.
 - b. On August 14, 2011, RICHARDS was wrongfully arrested a second time for possession of an Assault Weapon and spent four (4) days in the Sonoma County jail awaiting bail. Again the charges against him were dismissed. He was factually innocent of the charges brought.³
3. Plaintiffs HAYNIE and RICHARDS, along with the Institutional Plaintiffs CALGUNS FOUNDATION, INC., and SECOND AMENDMENT FOUNDATION, INC., seek declaratory relief that the California Penal Codes

³ The Motion to Dismiss brought by Defendants *Harris* and *California Department of Justice* was argued on August 5, 2011. *Richards*' new arrest occurred on August 14, 2011, and the case was dismissed on September 19, 2011. Plaintiffs immediately brought this new development to the attention of the Defendants and asked if they would stipulate to a joint statement informing the Court of this new fact. The Defendants declined that invitation and the Plaintiff was not aware of any authority for alleging new facts once a Rule 12 motion has been submitted to the Court. A new case for wrongful arrest is being filed in this Court and a request to relate the cases will be made at the appropriate time.

1 and Regulations defining Assault Weapons are unconstitutionally vague and
2 ambiguous and therefore result in wrongful arrests and the chilling of a
3 fundamental right to “keep and bear” arms of ordinary and common design.
4 4. Plaintiff BRENDAN RICHARDS also seeks monetary damages and
5 injunctive relief against the CITY OF ROHNERT PARK and OFFICER
6 BECKER for unlawful seizure of his person and his firearms.

7
8 **PARTIES**

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

12 a. In a prior iteration of this action, HAYNIE had sued the City of
13 Pleasanton and the Pleasanton Police Department. Those defendants
14 were dismissed after reaching a cash settlement with Plaintiff
15 HAYNIE.

16 b. Plaintiff HAYNIE does not seek any remedies against Defendants
17 ROHNERT PARK or OFFICER BECKER.

18 6. Plaintiff BRENDAN RICHARDS is a natural person and citizen of the
19 United States and of the State of California. He is an honorably discharged
20 United States Marine with six months of combat duty in Iraq.

21 7. Plaintiff THE CALGUNS FOUNDATION, INC., (CGF) is a non-profit
22 organization incorporated under the laws of California with its principal
23 place of business in San Carlos, California. The purposes of CGF include
24 supporting the California firearms community by promoting education for all
25 stakeholders about California and federal firearms laws, rights and
26 privileges, and defending and protecting the civil rights of California gun
27 owners. As part of CGF’s mission to educate the public – and gun-owners in
28 particular – about developments in California’s firearm laws, CGF assists in

1 the maintenance and contributes content to an internet site called
2 Calguns.net. [<http://www.calguns.net/calgunforum/index.php>] On that
3 website CGF informs its members and the public at large about pending civil
4 and criminal cases, including but not limited to: arrests, convictions and
5 appeals relating to California gun law. The website itself contains messages,
6 forums and various posts that document the concerns that California gun
7 owners have about possible arrest, prosecution and conviction for running
8 afoul of California's vague and ambiguous laws relating to so-called Assault
9 Weapons. CGF represents its members and supporters, which include
10 California gun owners and Plaintiffs HAYNIE and RICHARDS. CGF brings
11 this action on behalf of itself and its supporters, who possess all the indicia of
12 membership.

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

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

1 and training material to cities and counties to insure an effective and
2 professional level of law enforcement within the State of California.

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

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

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

23 12. Defendant OFFICER DEAN BECKER was a peace officer employed by the
24 CITY OF ROHNERT PARK for all relevant time periods for this complaint.

25 13. At this time, Plaintiffs are ignorant of the names any additional individual
26 Defendants who participated in the arrests of Plaintiff BRENDAN
27 RICHARDS. Plaintiffs therefore name these individual officers as DOE
28 Defendants and reserves the right to amend this complaint when their true

1 names are ascertained. Furthermore, if/when additional persons and entities
2 are discovered to have assisted and/or lent support to the wrongful conduct of
3 the Defendants named herein, Plaintiff reserves the right to amend this
4 complaint to add those persons and/or entities as Defendants.
5

6 **JURISDICTION AND VENUE**

- 7 14. This Court has subject matter jurisdiction over this action pursuant to 28
8 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1988.
9 15. This Court has supplemental jurisdiction over any state law causes of action
10 arising from the same operative facts under 28 U.S.C. § 1367.
11 16. Venue for this action is proper under 28 U.S.C. §§ 1391 and/or the Civil Local
12 Rules for bringing an action in this district.
13

14 **CONDITIONS PRECEDENT**

- 15 17. All conditions precedent have been performed, and/or have occurred, and/or
16 have been excused, and/or would be futile.
17

18 **FACTS - Plaintiff HAYNIE**

- 19 18. On or about February 7, 2009, officers of the PLEASANTON POLICE
20 DEPARTMENT arrested and detained MARK HAYNIE thus depriving him
21 of his liberty. The agency case numbers for the incident are: CEN: 09-6635
22 and PFN: BHD164. The docket number for the Alameda Superior Court
23 Case was: 09318856.
24 19. MARK HAYNIE was cited for possession of an Assault Weapon under
25 California Penal Code § 12280 et seq. Bail was set at \$60,000.00. This
26 caused MARK HAYNIE to have to pay a \$6,000 fee to a bail bondsman.
27 20. MARK HAYNIE's rifle was not an Assault Weapon because it was not listed
28 in California Penal Code § 12276.

- 1 21. MARK HAYNIE's rifle was not an Assault Weapons because it could not be
2 identified under Penal Code § 12276.1 with the characteristics of an assault
3 weapon in that:
- 4 a. It did not have a "detachable magazine" as that term is defined by
5 California statutory law and regulations promulgated by the
6 Defendant CALIFORNIA DEPARTMENT OF JUSTICE.
 - 7 b. MARK HAYNIE's rifle did have a "bullet button" which requires the
8 use of a tool (a bullet being defined as a tool by the California Code of
9 Regulations) to remove the magazine from the gun, thus making the
10 magazine non-detachable.
- 11 22. MARK HAYNIE's rifle is based on the popular and common Colt AR-15 rifle.
12 It is functionally identical to an AR-15 except that the magazine (as noted
13 above) is non-detachable and the non-detachable magazine capacity does not
14 exceed ten (10) rounds.
- 15 23. Several manufacturers offer several models of semi-automatic, center-fire
16 rifles that are not "assault weapons" as defined by California law. Examples:
- 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 24. MARK HAYNIE made all required court appearances. The Alameda County
24 District Attorney's office declined to file an information against MARK
25 HAYNIE and the matter was formally dropped from the Alameda County
26 Superior Court Criminal Docket on March 27, 2009.
- 27 25. MARK HAYNIE was deprived of his liberty until March 27, 2009 when bail
28 was exonerated in Department 701 by Superior Court Judge Walker.

- 1 26. MARK HAYNIE lost time off from work to make court appearances and
2 incurred other losses associated with said criminal charges.
- 3 27. MARK HAYNIE was deprived of the possession and use of valuable personal
4 property (a rifle) from the date of his arrest until mid-June of 2009 when he
5 reacquired the firearm from the PLEASANTON POLICE DEPARTMENT.
- 6 28. On or about October 21, 2009, MARK HAYNIE obtained a finding of factual
7 innocence under California Penal Code 851.8 from the PLEASANTON
8 POLICE DEPARTMENT.
- 9 29. After termination of his criminal case and while this case was pending,
10 MARK HAYNIE wrestled with whether or not he should “keep and bear”
11 such a controversial weapon. He eventually sold his firearms for a number of
12 reasons, including but not limited to a reasonable fear that he would face
13 future additional arrests. This reasonable fear is based on:
- 14 a. As part of MARK HAYNIE’s enjoyment of his Second Amendment
15 rights, he regularly goes to the range to shoot his rifles. These ranges
16 are public places. Because the rifle he wants to reacquire looks like a
17 contraband weapon, he draws attention to himself by possessing this
18 legal version of the rifle in these public settings. This makes it more
19 likely that HAYNIE will have future law enforcement contact and
20 possible arrest, based on possession of this particular rifle.
- 21 b. MARK HAYNIE’s knowledge about the dangers of owning these
22 weapons was gained from his own experiences as set forth in this law
23 suit.
- 24 c. MARK HAYNIE’s knowledge about the risks of exercising his rights is
25 also gained from Calguns.net, where he has learned about multiple
26 wrongful arrests of law-abiding gun owners charged under California’s
27 vague and ambiguous Assault Weapon Statutes.
- 28 30. Based on his knowledge of these other cases – including co-plaintiff

1 RICHARDS – and his own personal experience, Plaintiff HAYNIE has a
2 reasonable fear that he may suffer repeated wrongful arrests in the future if
3 he reacquires a firearm that local law enforcement agencies continue to
4 confuse with illegal Assault Weapons. This reasonable fear results in a
5 chilling of his fundamental right to “keep and bear” arms of common use and
6 ordinary design.

7 31. CALGUNS FOUNDATION, INC., paid for Plaintiff MARK HAYNIE’S
8 representation in the criminal matter in the amount of: \$3,713.43.

9 32. CALGUNS FOUNDATION, INC., has also paid for the defense of other
10 California residents similarly situated. (e.g., charged with possession of
11 Assault Weapons and dismissal of charges.)

12 33. On or about May 10, 2010, the Defendants CITY OF PLEASANTON and
13 CITY OF PLEASANTON POLICE DEPARTMENT were dismissed from this
14 case after payment to MARK HAYNIE of \$6,000 and a release of all other
15 claims.

16 34. Because Defendant CALIFORNIA DEPARTMENT OF JUSTICE has taken
17 the position that HAYNIE’s arrest was indeed wrongful (see Def’s MTD Doc #
18 26-1, page 8, lines 2 – 12) and that there is nothing they can do to further
19 clarify the detachable magazine feature and bullet-button technology, they
20 (DOJ) have adopted an admission that the California Assault Weapon
21 regulatory regime (statutes and regulations) cannot be improved upon by any
22 means at their disposal to prevent future wrongful arrests.

23 35. Plaintiffs herein allege that if no further clarifications of California’s Assault
24 Weapons statutes and regulations are desirable or (legally?) possible, yet
25 innocent gun-owners continue to be arrested by local law enforcement
26 agencies and charged with violating Penal Code § 12280, then only one
27 conclusion can follow – the entire set of laws defining California Assault
28 Weapons is unconstitutionally vague and ambiguous.

FACTS – Plaintiff RICHARDS (First Arrest)

1
2 36. On or about May 20, 2010, Defendant BECKER arrested Plaintiff
3 RICHARDS thus depriving him of his liberty.

4 37. On or about May 20, 2010, Defendant BECKER seized firearms (2 pistols and
5 1 rifle) from Plaintiff RICHARDS, thus depriving him of the means of
6 exercising his Second Amendment rights.

7 38. The arresting agency case number for the incident is: 10-0001930. The
8 docket number for the Sonoma Superior Court Case was: SCR 583167.

9 39. Defendant BECKER investigated a disturbance at a Motel 6 located at 6145
10 Commerce Blvd., which was within his operational jurisdiction.

11 40. While both men were on the sidewalk at the motel, Defendant BECKER
12 questioned Plaintiff RICHARDS about his involvement in the disturbance,
13 and during the conversation, RICHARDS revealed that he had unloaded
14 firearms in the trunk of his vehicle.

15 41. Defendant BECKER indicated that he planned to search the trunk of
16 RICHARDS' vehicle and began to walk toward RICHARDS' car. After
17 BECKER asked a second time if Plaintiffs' firearms were loaded and
18 responding "no", RICHARDS inquired whether OFFICER BECKER needed a
19 warrant to search the trunk of his car.

20 42. Apparently relying on Penal Code § 12031(e), OFFICER BECKER replied
21 that since RICHARDS had admitted that firearms were in the trunk, no
22 warrant was necessary.

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

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

27 45. OFFICER BECKER inquired about the registration of Plaintiff's firearms
28 and RICHARDS replied that those firearms that required registration were

1 in fact registered to him.

2 46. OFFICER BECKER placed RICHARDS under arrest for a violation of CA
3 Penal Code § 12280(b) – Possession of an unregistered Assault Weapon.

4 47. On the strength of an incident report prepared by OFFICER BECKER, who
5 claimed to be a firearm instructor and an expert witness having previously
6 testified about the identification of Assault Weapons, Plaintiff RICHARDS
7 was charged by the Sonoma County District Attorney with the following
8 crimes by way of felony complaint:

9 a. Two counts of possession of an Assault Weapon under California Penal
10 Code § 12280 et seq.

11 b. Four counts of possession of large capacity magazines.

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

15 49. On September 9, 2010, prior to a scheduled Preliminary Hearing, the Sonoma
16 County District Attorney’s Office dismissed all charges against Plaintiff
17 BRENDAN RICHARDS.

18 50. The dismissal was based on an August 16, 2010, report prepared by Senior
19 Criminalist John Yount of the California Department of Justice Bureau of
20 Forensic Services. Criminalist Yount had found that none of RICHARDS
21 firearms were Assault Weapons as defined by the California Penal Code or
22 any of its regulations.

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

26 b. The other firearm (a semi-automatic rifle) had none of the features or
27 characteristics that make a firearm subject to registration under CA’s
28 Assault Weapon regime.

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

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

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

9 Examples include:

- 10 a. Ruger Mini-14 Ranch Rifle. (Caliber 5.56mm NATO/.223 Rem.)
11 b. Ruger Mini Thirty Rifle. (Caliber 7.62 x 39mm)Ruger 99/44 Deerfield
12 Carbine. (Caliber .44 Remington Magnum)
13 c. Remington Model 750 Woodmaster. (Available in several calibers.)
14 d. Browning BAR. (Available in several calibers.)
15 e. Benelli R1 Rifle. (Available in several calibers.)
16 f. Springfield Armory M1A with California legal muzzle break and 10-
17 round magazines.
18 g. World War II Era M1 Garand, available for mail order sales from the
19 United States Government through the Civilian Marksmanship
20 program. <http://www.thecmp.org/Sales/rifles.htm>
21 h. World War II Era M1 Carbines, also available for mail order sales from
22 the United States Government through the Civilian Marksmanship
23 program. <http://www.thecmp.org/Sales/rifles.htm>

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

26 52. After the government's release of the expert's report, the Prosecution had
27 further discussions with RICHARDS' Counsel, wherein it was pointed out
28 that California law does not criminalize mere possession of large capacity

1 magazines. Upon The People's concession that this is the state of the law in
2 California, all charges against RICHARDS were dismissed.

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

16 54. BRENDAN RICHARDS made all required court appearances until the
17 matter was dismissed on September 9, 2010.

18 55. BRENDAN RICHARD was thus deprived of his liberty while he was
19 incarcerated pending the posting of bail and then through to September 9,
20 2010, when the case was dismissed and bail was exonerated.

21 56. BRENDAN RICHARDS lost time off from work and incurred travel expenses
22 to make court appearances. He also incurred other losses associated with the
23 criminal case against him.

24 57. BRENDAN RICHARDS was deprived of the possession and use of valuable
25 personal property (two pistols and a rifle), necessary for exercising his Second
26 Amendment "right to keep and bear arms." This deprivation of
27 constitutionally protected property occurred from the date of his arrest until
28 the property was returned to him following the dismissal.

- 1 58. THE CALGUNS FOUNDATION, INC., paid \$11,224.86 for Plaintiff
2 BRENDAN RICHARDS' legal representation in the first criminal matter.
- 3 59. THE CALGUNS FOUNDATION, INC., has also paid for the defense and
4 expert consultations for many other California residents similarly situated.
5 (e.g., possession of a "bullet button" semi-automatic rifle, arrest and
6 dismissal of charges.)
7

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

- 9 60. On or about August 14, 2011, the Sonoma County Sheriff's Office acting
10 through Sheriff's Deputy Greg Myers, arrested Plaintiff RICHARDS thus
11 depriving him of his liberty.
- 12 61. On or about August 14, 2011, the Sonoma County Sheriff's Office acting
13 through Sheriff's Deputy Greg Myers, made contact with RICHARDS,
14 wherein RICHARDS informed the arresting officer that there were firearms
15 located in the trunk of his vehicle. RICHARDS declined to consent to a
16 search of the trunk. The arresting officer then hand-cuffed RICHARDS and
17 proceeded to conduct a warrantless search of the vehicle in apparent reliance
18 on Penal Code § 12031(e). The arresting officer seized a Springfield Armory
19 M1A from the trunk of Plaintiff RICHARDS car.
- 20 62. The arresting officer apparently believed that the muzzle break installed on
21 RICHARDS' rifle was a flash suppressor. RICHARDS was charged with a
22 single felony count of violating California Penal Code § 12280(b) – possession
23 of an assault weapon. Bail for RICHARDS was initially set at \$100,000.
- 24 63. A motion to reduce bail was made on or about August 18, 2011, and bail was
25 reduced to \$20,000. RICHARDS was released on bail that day after posting a
26 non-refundable fee to a bail bondman of approximately \$2,000.
- 27 64. Prior to the next court appearance, the weapon in question was examined by
28 the California Department of Justice Bureau of Forensic Services. Senior

1 Criminalist John Yount issued a report on or about August 29, 2011, that the
2 firearm was not an Assault Weapon under California law.

3 65. The arresting officer either lacked the training to properly distinguish a
4 muzzle break from a flash suppressor and/or the definition of a flash
5 suppressor is so vague and ambiguous that a well trained peace officer can
6 easily confuse a flash suppressor with a muzzle break.

7 66. The California Department of Justice has never promulgated objective
8 standards for identifying flash suppressors. Plaintiffs allege on information
9 and belief that the CALIFORNIA DEPARTMENT OF JUSTICE in fact relies
10 upon manufacturer catalogs and marketing materials, rather than objective
11 scientific tests to determine whether a device is a flash suppressor, flash-
12 hider, muzzle break and/or recoil compensator.

13 67. On or about September 19, 2011, the charges against RICHARDS were
14 dismissed. Although he was cleared by the government's own expert, the
15 Sonoma County D.A. declined to stipulate to a finding of factual innocence.

16 68. The weapon in question – Springfield Armory model M1A is a common and
17 ordinary firearm suitable for exercising the “right to keep and bear arms”
18 under the Second Amendment to the United States Constitution.

19 69. RICHARDS lost time off of work. He was required to post bail. CALGUNS
20 FOUNDATION, INC., again paid RICHARDS' criminal defense lawyer.

21 70. Following this second arrest on charges of violating California Penal Code §
22 12280(b) – possession of an Assault Weapon – Plaintiff RICHARDS has a
23 reasonable fear, that by exercising a fundamental right protected by the U.S.
24 Constitution, he is realistically threatened by a repetition of wrongful
25 arrests. He further contends that the claim of future injury cannot be
26 written off as mere speculation. RICHARDS also bases his fear of repeated
27 arrests on the information he obtains from the Calguns.net website.

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

- 1
- 2
- 3 71. The CALIFORNIA DEPARTMENT OF JUSTICE is the State agency
- 4 responsible for the training and education of law enforcement agencies with
- 5 respect to Assault Weapons under Penal Code §§ 12276.5 and 12289.
- 6 a. Penal Code § 12276.5(c) states: “The Attorney General **shall** adopt
- 7 those rules and regulations that **may** be necessary **or** proper to carry
- 8 out the purposes and intent of this chapter.” [emphasis added]
- 9 b. Penal Code § 12289(a) states [in part]: “The Department of Justice
- 10 **shall** conduct a public education and notification program regarding
- 11 the registration of assault weapons and the definition of the weapons
- 12 set forth in Section 12276.1.” [emphasis added]
- 13 72. California’s definitions of Assault Weapons are set forth at Penal Code §§
- 14 12276 and 12276.1.
- 15 73. The California Code of Regulations interpreting the statutory definition of
- 16 assault weapons are found at Title 11, Division 5, Chapters 39 & 40.
- 17 74. The Orange County Sheriff’s Department has issued a training bulletin about
- 18 the “bullet button” to prevent wrongful arrests in that county. A true and
- 19 correct copy is attached as **Exhibit A**.
- 20 75. The City of Sacramento has issued a training bulletin about the “bullet
- 21 button” to prevent wrongful arrests in that jurisdiction. A true and correct
- 22 copy is attached as **Exhibit B**.
- 23 76. The Calguns Foundation Inc., has published a flow-chart to identify weapons
- 24 that are designated as assault weapons under California law. A true and
- 25 correct copy is attached as **Exhibit C**.
- 26 77. Defendant CALIFORNIA DEPARTMENT OF JUSTICE has promulgated an
- 27 “Assault Weapons Identification Guide,” an 84-page publication which
- 28 describes the Assault Weapons regulated in Penal Code sections 12276,

1 12276.1, and 12276.5. In the Guide, the Department acknowledges that a
2 magazine is considered detachable when it “can be removed readily from the
3 firearm with neither disassembly of the firearm action nor use of a tool being
4 required. A bullet or ammunition cartridge is considered a tool.”

5 78. Defendant CALIFORNIA DEPARTMENT OF JUSTICE has declined to issue
6 a statewide bulletin or other directive regarding the “bullet button.”

7 79. Though it would not be unduly burdensome for Defendant CALIFORNIA
8 DEPARTMENT OF JUSTICE to issue a bulletin regarding the technology of
9 the bullet button and to develop a field test to insure state-wide compliance
10 with the law, the CALIFORNIA DEPARTMENT OF JUSTICE insists:

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

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

22 80. Instead, Plaintiffs will aver that the entire California Assault Weapon
23 Statutes and the Regulations derived therefrom are vague and ambiguous on
24 their face and as applied to HAYNIE and RICHARDS.

25 81. Furthermore, Plaintiffs allege that Defendant CALIFORNIA DEPARTMENT
26 OF JUSTICE has contributed – through its policies, procedures and customs

27
28 ⁴ This Amended Complaint omits any request for prospective injunctive relief to force
DOJ to issue any clarifying bulletins.

1 – to a state of general confusion of California’s Assault Weapons laws thus
2 rendering them hopelessly vague and ambiguous as applied; and thus an
3 infringement of the Second Amendment to the United States Constitution.
4

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

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

11 83. In late 2005, various individuals and licensed gun stores began importing
12 into California AR pattern rifles and the receivers for them.

13 84. In response to inquiries about the legality of importing and possessing
14 certain AR and AK pattern rifles and receivers, DOJ began replying in their
15 official letters that while THEY were of the opinion that these rifles were
16 legal, local District Attorneys might disagree and prosecute anyway. True
17 and correct copies of these letter are attached as **Exhibit D** and they all
18 follow a similar pattern of declaring a certain gun part (receiver) legal to
19 import into California and then warning the recipient that California’s 58
20 District Attorneys may have a different opinion that could result in
21 prosecution. See:

- 22 i. December 12, 2005 letter from DOJ to Ms. Amanda Star
23 rendering an opinion about the legality of a Stag-15 Lower
24 receiver but warning that local prosecutors may disagree and
25 prosecute accordingly.
- 26 ii. January 18, 2006 letter from DOJ to BST Guns also opining out
27 the legality of firearms, but giving the same warning the 58
28 county prosecutors could potentially prosecute anyway.

- 1 iii. December 28, 2005 letter from DOJ to Matthew Masuda.
- 2 iv. December 27, 2005 letter from DOJ to Christopher Kjellberg.
- 3 v. December 27, 2005 letter from DOJ to Kirk Haley.
- 4 vi. December 28, 2005 letter from DOJ to Mark Mitzel.
- 5 vii. December 28, 2005 letter from DOJ to Jason Paige.

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

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

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

26 87. In May 2006, DOJ issued an internal memo to phone staff that stated, “It is
27 DOJ’s opinion that under current law, a semiautomatic centerfire rifle that is
28 modified to be temporarily incapable of accepting a detachable magazine, but

1 can be restored to accommodate a detachable magazines, is an assault
2 weapons if it has any of the features listed in §12276.1(a)(1),” and
3 “Individuals who alter a firearm designed and intended to accept a
4 detachable magazine in an attempt to make it incapable of accepting a
5 detachable magazine do so at their legal peril,” stating further, “[w]hether or
6 not such a firearm remains capable of accepting a detachable magazine is a
7 question for law enforcement agencies, district attorneys, and ultimately
8 juries of twelve persons, not the California Department of Justice.” A copy of
9 this memorandum was obtained as part of a Public Records Act Request and
10 is attached as **Exhibit G**.

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

17 89. On or about November 1, 2006, DOJ issued a “Text of Modified Regulations”
18 The updated text attempted to define “detachable magazine” as “currently
19 able to receive a detachable magazine or readily modifiable to receive a
20 detachable magazine” and had other “permanency” requirements. A true and
21 correct copy of the notice is attached as **Exhibit I**.

22 90. Plaintiff CGF alleges on information and belief, DOJ did not submit the
23 Modified Regulations to the Office of Administrative Law (“OAL”) and thus
24 the 2006 Rulemaking did not take effect.

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

1 92. On or about September 11, 2007, OAL accepted Hoffman’s petition. See
2 **Exhibit K**.

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

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

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

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

21 See **Exhibit M**, with special attention to Attachment A, which is the letter
22 dated September 29, 2008.

23 96. 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.”

A true and correct copy of this letter is attached as **Exhibit N**. The letter is

1 hard to read due to multiple copies. If discovery proceeds in this matter,
2 Plaintiff would expect to obtain a cleaner copy.

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

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

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

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

23 b. In June 2008, John Contos was arrested and charged in Solano County
24 with a violation of Penal Code § 12280 - possession/manufacturing of
25 Assault Weapons based on the allegation that his rifle had an illegal
26 thumb-hole stock. The case number was VCR198514-VF. CGF funded
27 the defense of Mr. Contos. The case was dismissed and the D.A.
28 stipulated to a finding of factual innocence.

- 1 c. In November 2008, John Crivello had a semiautomatic centerfire rifle
2 with a bullet button magazine release seized from his home in Santa
3 Cruz, California by the Santa Cruz Police Department. Counsel
4 provided by CGF educated the Santa Cruz District Attorney's office.
5 Counsel to CGF was advised that DOJ stated that it was unclear
6 whether the bullet button was legal but that the District Attorney
7 should file anyway. The District Attorney (ADA Dave Genochio and/or
8 Charlie Baum) dropped charges and the firearm was returned to Mr.
9 Crivello. CGF spent \$645.00 defending Mr. Crivello.
- 10 d. On or about November 3, 2009, Deputy J. Finley of Orange County
11 Sheriff's Department seized a bullet button equipped Stag Arms AR-15
12 style firearm from Stan Sanders. CGF counsel was engaged to explain
13 the legality of the firearm to the Orange County Sheriff's Department
14 and the firearm was subsequently returned to Mr. Sanders. The
15 Orange County Training Bulletin was issued partially in response to
16 this incident. CGF spent \$650.00 defending Mr. Sanders.
- 17 e. On or about March 30, 2010, Robert Wolf was arrested by the
18 Riverside County Sheriff's Department for possession of a
19 semiautomatic centerfire rifle with a "Prince 50 Kit." CGF counsel
20 intervened and had the case dismissed on or about November 11, 2010,
21 with the firearm subsequently returned to Mr. Wolf. CGF spent
22 \$5,975.00 defending Mr. Wolf.
- 23 f. Confusion about the legality of semiautomatic center-fire rifles with a
24 bullet buttons continues. On or about March 29, 2011, the Cotati
25 Police Department seized a semiautomatic center-fire rifle with a
26 bullet button from Max Horowitz. CGF counsel has been retained to
27 defend Mr. Horowitz who was arraigned on August 8, 2011, in Sonoma
28 County. The case is still pending.

1 99. 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
 7 **FACTS – Semi-Automatic, Center-Fire Rifles and Handguns**
 8 **are “Arms” Protected by the Second Amendment.**

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

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

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

1 **FIRST CLAIM FOR RELIEF:**
2 **SECOND AMENDMENT, UNITED STATES CONSTITUTION**
3 **42 USC § 1983, 1988 - INJUNCTIVE/DECLARATORY RELIEF**
4 **ALL PLAINTIFFS vs DEFENDANTS: HARRIS AND**
5 **CALIFORNIA DEPT OF JUSTICE**

6 103. Paragraphs 1 through 102 are incorporated by reference as though fully set
7 forth.

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

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

16 **SECOND CLAIM FOR RELIEF:**
17 **FOURTH AMENDMENT, UNITED STATES CONSTITUTION**
18 **42 USC § 1983, 1988 - INJUNCTIVE/DECLARATORY RELIEF**
19 **RICHARDS vs DEFENDANTS: HARRIS AND**
20 **CALIFORNIA DEPT OF JUSTICE**

21 106. Paragraphs 1 through 102 are incorporated by reference as though fully set
22 forth.

23 107. California Penal Code § 12031(e) is unconstitutional on its face, and as
24 applied in this case. Mere possession of a firearm, (i.e., exercising a
25 fundamental right) when otherwise lawful, cannot support a finding of
26 probable cause to believe a crime has been committed, such that the Fourth
27 Amendment's warrant requirement can be legislatively disregarded.

28 108. Plaintiff BRENDAN RICHARDS requests declaratory and/or prospective
injunctive relief under 42 U.S.C. § 1983 that Penal Code § 12031(e) – 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.

4 109. 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 12031(e) 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
12 **THIRD CLAIM FOR RELIEF:**
13 **FOURTH AMENDMENT | UNITED STATES CONSTITUTION**
14 **42 USC § 1983, 1988 - INJUNCTIVE RELIEF**
RICHARDS vs DEFENDANTS: CITY OF ROHNERT PARK
AND OFFICER BECKER

15 110. Paragraphs 1 through 102 are incorporated by reference as though fully set
16 forth.

17 111. Plaintiffs BRENDAN RICHARDS, THE CALGUNS FOUNDATION, INC.,
18 and THE SECOND AMENDMENT FOUNDATION, INC., seek injunctive
19 relief against the Defendants CITY OF ROHNERT PARK and OFFICER
20 BECKER that will require amendments to their policies and training to
21 address:

- 22 a. Identification of Assault Weapons under California law.
- 23 b. Compliance with the Fourth Amendments.

24 112. 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.

1 **FOURTH CLAIM FOR RELIEF:**
2 **FOURTH AMENDMENT | UNITED STATES CONSTITUTION**
3 **42 USC § 1983, 1988 - DAMAGES**
4 **RICHARDS vs DEFENDANTS: CITY OF ROHNERT PARK**
5 **AND OFFICER BECKER**

6 113. Paragraphs 1 through 102 are incorporated by reference as though fully set
7 forth.

8 114. Plaintiffs BRENDAN RICHARDS and THE CALGUNS FOUNDATION,
9 INC., seek damages against the Defendants CITY OF ROHNERT PARK and
10 OFFICER BECKER in an amount according to proof for losses incurred as a
11 result of the warrantless search of RICHARDS' vehicle, his arrest and the
12 subsequent illegal seizure of his person and of the valuable property
13 (firearms); and for expenditures (fees/costs) associated with the defense of the
14 criminal charges.

15 WHEREFORE, the Plaintiffs requests that this Court:

- 16 A. Issue a declaratory judgment and/or injunctive relief that California's
17 Assault Weapon Statutes and Regulations are unconstitutional.
- 18 B. Issue a declaratory judgment and/or injunctive relief that California
19 Penal Code § 12031(e) is unconstitutional.
- 20 C. Injunctive relief against CITY OF ROHNERT PARK and OFFICER
21 BECKER to prevent future violations of the Fourth Amendment.
- 22 D. Damages from CITY OF ROHNERT PARK and OFFICER BECKER in
23 an amount according to proof.
- 24 E. Award costs of this action to all the Plaintiffs.
- 25 F. Award reasonable attorney fees and costs to the Plaintiffs on all
26 Claims of the complaint, including but not limited to fee/cost awards
27 under 42 USC § 1983, 1988 and California Code of Civil Procedure §
28 1021.5.
- G. Such other and further relief as this Court may deem appropriate.

