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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KEVIN M. HALL, an individual,

Plaintiff,

v.

CARLOS A. GARCIA, in his official  
capacity as Superintendent of the  
San Francisco Unified School  
District,

Defendant.

CV 10 3799

Case No.: \_\_\_\_\_

COMPLAINT

Plaintiff Kevin M. Hall hereby states as follows:

INTRODUCTION

1. This case is about the Second Amendment rights of Kevin M. Hall, a resident of San Francisco, who wishes to openly carry an unloaded handgun outside of his residence for purposes of self-defense. Defendant denied granting an exemption to the Gun Free School Zone Act of 1995 after the incorporation of the Second Amendment in McDonald v. City of Chicago. This is a violation of the Second and Fourteenth Amendments to the United States Constitution for which Mr. Hall seeks declaratory relief, injunctive relief, and reasonable costs and expenses.

FILED  
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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO  
EMC

### **JURISDICTION AND VENUE**

2. This action raises federal questions under the Second Amendment to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983.
3. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.
4. This Court has authority to award the requested declaratory relief under 28 U.S.C. § 2201; injunctive relief under 28 U.S.C. § 1343(3).
5. Venue is proper in the Northern District of California because the defendant is an official in this District and the actions giving rise to this case occurred within this District.

### **INTRADISTRICT ASSIGNMENT**

6. Pursuant to Civil L.R. 3-2(c)-(d) & 3-5, this is a civil rights case, in a nonexcepted category, suitable for assignment to the San Francisco or Oakland divisions because the civil action arose in San Francisco County.

### **PLAINTIFF**

7. Kevin M. Hall is a San Francisco resident.

### **DEFENDANT**

8. Carlos A. Garcia is the Superintendent of the San Francisco Unified School District (SFUSD).

### **FACTUAL ALLEGATIONS**

9. Plaintiff owns a handgun and desires to carry it openly holstered and unloaded outside of his residence for purposes of self-defense.
10. The Second Amendment to the United States Constitution states:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

11. The 2008 United States Supreme Court case *District of Columbia v. Heller* held that the Second Amendment to the United States Constitution protects an individual's "right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes".

12. The 2010 United States Supreme Court case *McDonald v. Chicago* concluded that "the Fourteenth Amendment incorporates the Second Amendment right, recognized in *Heller*, to keep and bear arms for the purpose of self-defense."

13. Subdivision (b) of California's Gun Free School Zone Act of 1995, enumerated as California Penal Code 626.9, states:

Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (1) of subdivision (e), unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, shall be punished as specified in subdivision (f).

14. Paragraph (1) of subdivision (e) of California Penal Code 626.9 states:

"School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

15. Plaintiff knows that he resides within 1000 feet of Grattan Elementary School.

16. Approximately 925 feet from Plaintiff's front door is the property line of Grattan Elementary School.

17. Grattan Elementary School provides instruction in kindergarten to fifth grade and is a school in the SFUSD.

18. Defendant is the Superintendent of the San Francisco School District.

19. On July 9<sup>th</sup>, 2010, Plaintiff sent a certified first class letter to Defendant. A copy of the letter is attached hereto, marked as Exhibit "A", and incorporated herein.

20. Plaintiff's letter requested the Defendant grant him an exemption to California Penal Code 626.9, which is allowed under section (b) of the aforementioned code.

21. On August 14<sup>th</sup>, 2010, Plaintiff received a response from the SFUSD's Senior Deputy Legal Counsel, Angela Miller, who was acting on the behalf of Defendant.

22. Angela Miller's letter stated in part that:

The San Francisco Unified School District ("District") has considered your citation of the Supreme Court's recent decision in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). After close consideration, however, the Superintendent has made the determination not to grant your request for an exemption under California Penal Code section 626.9(b).

23. Defendant has acted under color of law to deny Plaintiff his right protected by the United States Constitution, and thus violating 18 U.S.C. § 242.

24. As a direct result of the Defendant's acts, Plaintiff has been denied his right to keep and bear arms.


### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Kevin M. Hall respectfully requests that the Court enter a judgment against Defendant Carlos A. Garcia and provide Plaintiff the following relief:

- A. A declaratory judgment stating that the Defendant's denial of an exemption to California Penal Code 626.9 is unconstitutional and violates Plaintiff's right to keep and bear arms as guaranteed by the Second and Fourteenth Amendments to the United States Constitution;
- B. An order requiring Defendant to grant Plaintiff an exemption to California Penal Code 626.9;
- C. Plaintiff's reasonable costs and expenses of this action; and
- D. Any other relief that the Court deems fair and just.

Respectfully submitted,

Kevin M. Hall



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## EXHIBIT A

To:

San Francisco Unified School District  
Superintendent Carlos Garcia  
555 Franklin Street, 3<sup>rd</sup> Floor  
San Francisco, CA 94102

From:

Kevin Hall  
4626 17<sup>th</sup> Street  
San Francisco, CA 94117

Superintendent Garcia,

Earlier this year your representative denied me an exemption to California Penal Code 626.9. This law prohibits the carrying of unlocked, unloaded pistols or revolvers from being transported within 1000 feet of a private or public K-12 school. However, it is still perfectly lawful for a person to carry a locked pistol or revolver, or an unlocked and exposed shotgun or rifle within 1000 feet of any school.

On June 28, 2010, the Supreme Court of the United States incorporated the second amendment of the U.S. Constitution to the states in the case *McDonald v. Chicago*. What this means is that the second amendment now applies to the states, whereas before it only applied to the federal government. The second amendment states that "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

Since I now have a civil right to not only keep, but also to bear firearms, I now request an exemption to CA PC 626.9 once again.

Sincerely,  
Kevin Hall