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CITY OF ROHNERT PARK, OFFICER DEAN BECKER
CITY OF COTATI, ANDREW LYSSAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

KAMALA HARRIS, Attorney General of
California (in her official capacity) and
CALIFORNIA DEPARTMENT OF JUSTICE,
CITY OF ROHNERT PARK, OFFICER DEAN
BECKER (RP134), and DOES 1 TO 20,

Defendants.

CASE NO.: CV 11 2493 SI
CV 10 01255 SI
(Consolidated Cases)

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

BRENDAN JOHN RICHARDS, THE
CALGUNS FOUNDATION, INC., and THE
SECOND AMENDMENT FOUNDATION,
INC.,

Plaintiffs,

v.

KAMALA HARRIS, Attorney General of
California (in her official capacity),
CALIFORNIA DEPARTMENT OF JUSTICE,
CITY OF ROHNERT PARK, OFFICER DEAN
BECKER (RP134) and DOES 1 to 20,

Defendants.

CASE NO.: CV 11 05580 SI
CV 12 0452 LB
(Related Cases)

LAW OFFICES OF
GEARY,
SHEA,
O'DONNELL
GRATTAN &
MITCHELL
P.C.

1 MAX JOSEPH PLOG-HOROWITZ, THE
2 CALGUNS FOUNDATION, INC., and THE
3 SECOND AMENDMENT FOUNDATION,
4 INC.,

5 Plaintiffs,

6 v.

7 KAMALA HARRIS, Attorney General of
8 California (in her official capacity),
9 CALIFORNIA DEPARTMENT OF JUSTICE,
10 COTATI POLICE DEPARTMENT, CITY OF
11 COTATI, ANDREW LYSSAND (CO 0339) and
12 DOES 1 TO 20,

13 Defendants.

CASE NO.: CV 12 0452 LB

14 The parties to the above-entitled actions, all either consolidated and/or related, jointly
15 submit this JOINT CASE MANAGEMENT STATEMENT pursuant to the Standing Order for All
16 Judges of the Northern District of California.

17 **1. Jurisdiction and Service:** This Court has federal question jurisdiction over
18 plaintiffs' claims in each of the consolidated and related actions.

19 **2. Facts:**

20 *Richards v. City of Rohnert Park, et. al.* 3:11-CV-02493 SI (Richards I)

21 On May 20, 2010, at approximately 6:00 am, Officer Dean Becker responded to a call to
22 Motel 6 in Rohnert Park, California. Officer Becker approached the motel room and found
23 Brendan Richards standing out in front of the doorway. Brendan Richards admitted he had firearms
24 in the trunk and Becker inspected the trunk. Officer Becker believed that the two rifles found in the
25 trunk violated California Penal Code § 30605(a), the Assault Weapons Control Act, and placed Mr.
26 Richards under arrest.

27 After reviewing the incident report prepared by Officer Becker, the Sonoma County
28 District Attorney charged Richards with two violations of the Assault Weapons Control Act
29 ("AWCA"), as well as four counts for possession of large capacity magazines. On September 9,
30 2010, the District Attorney's office dropped all charges against Richards. California Department of
Justice Bureau of Forensic Services Senior Criminalist John Yount had prepared a report which

1 stated that it was his opinion that none of the firearms in Richards' possession at the time of his
 2 arrest were assault weapons within the meaning of the AWCA. Specifically, Yount believed that
 3 one of the rifles possessed a "bullet button," that therefore it did not have a "detachable magazine"
 4 and thus it was not an assault rifle.

5 Plaintiffs Brendan Richards, the Calguns Foundation, and the Second Amendment
 6 Foundation, have filed suit against Kamala Harris and the California Department of Justice seeking
 7 an order of this Court declaring the AWCA unconstitutional. They have also filed suit against
 8 Officer Becker and the City of Rohnert Park seeking damages predicated on 42 U.S.C. § 1983.

9 *Richards v. Harris, 3:11-CV-05580-SI (Richards II)*

10 On August 14, 2011, Richards was arrested by the Sonoma County Sheriff's Department.
 11 After searching the plaintiff's trunk, Sheriff Deputy Greg Myers located a Springfield Armory
 12 M1A rifle. Deputy Myers, thinking that the rifle was equipped with a "flash suppressor," when
 13 according to criminalist John Yount it was equipped with a "muzzle break," arrested Richards for
 14 violation of the Assault Weapons Control Act. Charges were again dismissed.

15 Plaintiffs in this matter allege that the AWCA is "vague and ambiguous" on the grounds that
 16 it is unclear "whether a device is a flash suppressor, flash hider, muzzle break, and/or recoil
 17 compensator" and thus they claim it unclear whether a rifle is an assault rifle or not. Plaintiffs filed
 18 suit against the County of Sonoma and Deputy Myers in addition to naming the State of California
 19 defendants. They have since settled with the County defendants and they are no longer party to this
 20 suit.

21 *Haynie v. Harris, 3:10-CV-01255 SI*

22 Plaintiff Mark Aaron Haynie was arrested by officers of the Pleasanton Police Department
 23 on February 7, 2009 for possession of an assault weapon under California Penal Code § 12280 et
 24 seq. Haynie paid \$6,000 to a bail bondsman. Haynie's rifle also had a "bullet button" which makes
 25 the magazine of the rifle non-detachable. His rifle was not listed in California Penal Code § 12276
 26 and could not be identified under Penal Code § 12276.1, the sections of the AWCA which define
 27 "assault weapon." The Alameda County District Attorney's Office declined to file an information
 28 against Haynie, and the matter was dropped from the Alameda County Superior Court Criminal

1 Docket on March 27, 2009. Haynie was released on that same date. Haynie obtained a finding of
 2 factual innocence under California Penal Code § 851.8 on October 21, 2009. The Calguns
 3 Foundation paid for Haynie's legal representation. Haynie originally brought suit against the City
 4 of Pleasanton, the City of Pleasanton Police Department, and Doe defendants seeking damages, but
 5 the City and police department were dismissed from the case after payment to Haynie of \$6,000 and
 6 a release of all other claims.

7 In *Haynie*, plaintiffs seek an order declaring the Deadly Weapons Statutes unconstitutional.
 8 They make no claim for civil damages.

9 *Ploghorowitz v. City of Cotati*, CV 12 0452 LB

10 In the afternoon of March 29, 2011, Officer Andrew Lyssand was dispatched to Max
 11 Ploghorowitz's residence regarding a potentially stolen firearm. After inspecting other firearms at
 12 the residence, Officer Lyssand came to believe that two other rifles violated the AWCA. He took
 13 those two firearms for further inspection and contacted a Special Agent at ATF regarding the same.
 14 Later, Judge Shelby Averill issued a warrant for Ploghorowitz's arrest and on July 19, 2011, Officer
 15 Lyssand arrested him. The Sonoma County District Attorney's Office filed charges but criminalist
 16 John Yount issued a report that it was his opinion that the rifles did not violate the AWCA.
 17 Plaintiffs have filed suit against Officer Lyssand and the City of Cotati for damages.

18 **3. Legal Issues:**

- 19 A. Did Officer Becker have probable cause to arrest Brendan Richards?
- 20 B. Did Officer Lyssand have probable cause to arrest Max Ploghorowitz?
- 21 C. Does Officer Dean Becker have qualified immunity?
- 22 D. Does Officer Lyssand have qualified immunity?
- 23 E. Did the searches of Richards' trunk violate the Fourth Amendment?
- 24 F. Are the Assault Weapons Control Act unconstitutionally vague and ambiguous?
- 25 G. Do the Assault Weapons Control Act violate the Second Amendment?
- 26 H. Does California Penal Code § 12031(e) violate the Fourth Amendment?

27 ///

1 **4. Motions:**

2 *Prior Motions.*

3 Defendant Department of Justice filed a Motion to Dismiss in *Haynie v. Harris* on May 6,
4 2011. On June 22, 2011 this Court entered an Order consolidating the *Haynie* matter and the
5 *Richards* matter for purpose of the hearing. On October 22, 2011, this Court granted the
6 Department's Motion and granted leave to amend. It also ordered that plaintiffs file a consolidated
7 complaint, thereby consolidating the two cases.

8 On December 23, 2011, the City of Rohnert Park and Officer Dean Becker filed a Motion to
9 Dismiss. On July 30, 2012, this Court issued an Order granting that motion in part and denying it
10 in part.

11 *Expected Motions.*

12 Plaintiffs are to file amended complaint(s) on September 4, 2012. Each party intends to file
13 motions for summary judgment under Rule 56 and will coordinate the filing and hearings of the
14 motions. Further, defendants, although they have no current intention, reserve the right to
15 challenge any amended complaint pursuant to Rule 12. The local entity defendants also may move
16 for separate trials if necessary, and for bifurcation.

17 **5. Amendment of Pleadings:**

18 Pursuant to stipulation of the parties, plaintiffs will file an amended complaint, responsive to
19 this Court's October 22, 2011 Order by September 4, 2012. In that amended pleading, plaintiffs
20 will dismiss their claims for injunctive relief against the City of Rohnert Park and amend their
21 claims for civil liability against the same. Defendants will then answer the amended complaint in
22 accordance with the Federal Rules of Civil Procedure.

23 **6. Evidence Preservation:**

24 Defense counsel for the City of Rohnert Park has instructed defendants preserve all relevant
25 evidence. Plaintiffs and the California Department of Justice have preserved evidence known to
26 them.

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1 **7. Disclosures:**

2 The parties will comply with initial disclosure requirements pursuant to FRCP 26 by the
3 date of the CMC.

4 **8. Discovery:**

5 No discovery has been taken to date. The parties anticipate 5 to 10 depositions and written
6 discovery pursuant to code for each case consolidated and related in this matter.

7 **9. Class Actions:**

8 Not applicable.

9 **10. Related Cases:**

10 All cases have been related.

11 **11. Relief:**

12 Plaintiffs seek injunctive relief against the State of California defendants in the form of an
13 order declaring the AWCA is unconstitutional.

14 Plaintiffs seek civil damages against Officer Dean Becker and the City of Rohnert Park and
15 Officer Lyssand and the City of Cotati.

16 **12. Settlement and ADR:**

17 Plaintiffs have already participated in Early Neutral Evaluation with the State of California
18 Defendants and do not feel that further ADR will be beneficial. Plaintiffs and the local entity
19 defendants are currently conducting informal settlement negotiations and will seek the Court's
20 assistance if that becomes necessary.

21 **14. Consent to Magistrate Judge For All Purposes**

22 Not Applicable.

23 **15. Other References:**

24 None.

25 **16. Narrowing of Issues:**

26 Not applicable at this time.

27 **17. Expedited Trial Procedure:**

28 Not necessary.

18. Scheduling:

The parties request another Case Management Conference in approximately 60 days, or as soon thereafter as is reasonable for the Court, in order to schedule hearings for dispositive motions and trial dates if trials prove necessary.

19. Trial:

The parties demand a trial by jury on all claims against the local public entity defendants. All remaining claims are equitable in nature. The Cotati defendants and the Rohnert Park defendants each demand separate trials.

20. Other:

None.

DATED: August 17, 2012

GEARY, SHEA, O'DONNELL, GRATTAN & MITCHELL, P.C.

By /s/
ROBERT W. HENKELS
Attorneys for Defendants
CITY OF ROHNERT PARK, OFFICER
DEAN BECKER, CITY OF COTATI, and
ANDREW LYSSAND

DATED: August 17, 2012

LAW OFFICE OF DONALD KILMER

By /s/
DONALD E.J. KILMER, JR.
Attorneys for Plaintiffs
BRENDAN JOHN RICHARDS, THE
CALGUNS FOUNDATION, INC. and THE
SECOND AMENDMENT FOUNDATION,
INC.

DATED: August 17, 2012

OFFICE OF THE ATTORNEY GENERAL

By /s/
ROSS C. MOODY
Attorney for Defendants
KAMALA HARRIS AND THE
CALIFORNIA DEPARTMENT OF JUSTICE

LAW OFFICES OF
GEARY,
SHEA,
O'DONNELL
GRATTAN &
MITCHELL
P.C.

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**ATTESTATION FOR COMPLIANCE WITH GENERAL
ORDER 45 AND LOCAL RULE VIII.B.**

I, Robert W. Henkels, declare under penalty of perjury under the laws of California and the United States that I have in my possession e-mail correspondence from plaintiffs' counsel that the content of this document is acceptable to all persons required to sign the document. I declare that this document was signed in Santa Rosa, California, on August 9, 2012.

DATED: August 17, 2012

GEARY, SHEA, O'DONNELL, GRATTAN &
MITCHELL, P.C.

By /s/
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