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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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13 **IVAN PEÑA, ROY VARGAS, DOÑA**  
14 **CROSTON, BRETT THOMAS, SECOND**  
15 **AMENDMENT FOUNDATION, INC. and**  
**THE CALGUNS FOUNDATION, INC.,**

16 Plaintiffs,

17 v.

18 **STEPHEN LINDLEY,**

19 Defendant.  
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Case No. 2:09-CV-01185-KJM-CMK

**ANSWER TO SECOND AMENDED COMPLAINT**

Dept: No. 3 – 15th Floor  
Judge Honorable Kimberly J. Mueller  
Trial Date: None  
Action Filed: April 30, 2009

21 Defendant Stephen Lindley (“Lindley”) answers plaintiffs Ivan Peña, Roy Vargas, Doña  
22 Croston, Brett Thomas, Second Amendment Foundation, Inc., and The Calguns Foundation,  
23 Inc.’s second amended complaint as follows:

24 **ANSWER TO PLAINTIFFS’ DESCRIPTION OF THE PARTIES**

25 1. Answering paragraphs 1 through 6 of the second amended complaint, Lindley lacks  
26 sufficient information or knowledge to form a belief about the truth of each and every allegation  
27 of these paragraphs and denies them on that basis.  
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1           2. Answering paragraph 7 of the second amended complaint, Lindley admits that he is the  
2 current Chief of the California Department of Justice Bureau of Firearms, and as such is  
3 responsible for enforcing the law. To the extent the paragraph contains any other material  
4 allegations of fact, Lindley denies the allegations.

5                   **ANSWER TO ALLEGATIONS REGARDING JURISDICTION AND VENUE**

6           3. Answering paragraph 8 of the second amended complaint, Lindley avers the allegations  
7 are conclusions of law to which no response is required. To the extent that a response is required,  
8 Lindley denies each and every allegation.

9           4. Answering paragraph 9 of the second amended complaint, Lindley admits these  
10 allegations.

11                   **ANSWER TO PLAINTIFFS' STATEMENT OF FACTS**

12           5. To the extent the unnumbered italicized headings contained throughout plaintiffs'  
13 statement of facts constitute material allegations of fact, Lindley denies the allegations.

14           6. Answering paragraphs 10 through 40 of the second amended complaint, Lindley states  
15 that the matters asserted in those paragraphs constitute plaintiffs' arguments regarding the law,  
16 particularly the Second Amendment to the United States Constitution, California Penal Code, and  
17 California Code of Regulations, as opposed to allegations of fact. Because the Second  
18 Amendment, state Penal Code, state regulations, and the legal authorities addressing those  
19 provisions speak for themselves, no response to the legal and policy arguments in paragraphs 10  
20 through 40 is required. To the extent those paragraphs contain any material allegations of fact,  
21 Lindley denies the allegations.

22           7. Answering paragraphs 41 and 42 of the second amended complaint, Lindley admits that  
23 the Para USA (Para Ordnance) P1345SR / Stainless Steel .45 ACP 4.25" is not currently listed on  
24 the Roster of Handguns Certified for Sale. As to the remaining allegations of paragraphs 41 and  
25 42, Lindley lacks sufficient information or knowledge to form a belief about the truth of each and  
26 every allegation and denies them on that basis.

1 8. Answering paragraphs 43 through 48 of the second amended complaint, Lindley admits  
2 that the Glock 21 SF with an ambidextrous magazine release is not currently listed on the Roster  
3 of Handguns Certified for Sale whereas the Glock 21 SF-STD is listed. As to the remaining  
4 allegations of paragraphs 43 through 48, Lindley lacks sufficient information or knowledge to  
5 form a belief about the truth of each and every allegation of these paragraphs and denies them on  
6 that basis.

7 9. Answering paragraphs 49 through 53 of the second amended complaint, Lindley admits  
8 that the Springfield Armory XD-45 Tactical 5" B-Tone stainless steel/black handgun in .45 ACP,  
9 model number XD9623, is not currently listed on the Roster of Handguns Certified for Sale. As  
10 to the remaining allegations of paragraphs 49 through 53, Lindley lacks sufficient information or  
11 knowledge to form a belief about the truth of each and every allegation of these paragraphs and  
12 denies them on that basis.

13 10. Answering paragraphs 54 through 55 of the second amended complaint, Lindley admits  
14 that a "High Standard Buntline style revolver" is not currently listed on the Roster of Handguns  
15 Certified for Sale. As to the remaining allegations of paragraphs 54 through 55, Lindley lacks  
16 sufficient information or knowledge to form a belief about the truth of each and every allegation  
17 of these paragraphs and denies them on that basis.

18 11. Answering paragraph 56 of the second amended complaint, Lindley lacks sufficient  
19 information or knowledge to form a belief about the truth of each and every allegation of that  
20 paragraph and denies them on that basis.

21 **ANSWER TO FIRST CLAIM FOR RELIEF**

22 12. Answering paragraph 57 of the second amended complaint, Lindley incorporates by  
23 reference his responses to paragraphs 1 through 56 of the second amended complaint to the same  
24 extent plaintiffs have incorporated the allegations of those paragraphs into the First Claim For  
25 Relief.

26 13. Answering paragraphs 58 through 63 of the second amended complaint, Lindley states  
27 that the matters asserted in those paragraphs constitute plaintiffs' arguments regarding the law,  
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1 particularly the Second Amendment to the United States Constitution, California Penal Code, and  
2 California Code of Regulations, as opposed to allegations of fact. Because the Second  
3 Amendment, state Penal Code, state regulations, and the legal authorities addressing those  
4 provisions speak for themselves, no response to the legal and policy arguments in paragraphs 58  
5 through 63 is required. To the extent those paragraphs contain any material allegations of fact,  
6 Lindley denies the allegations.

7 **ANSWER TO SECOND CLAIM FOR RELIEF**

8 14. Answering paragraph 64 of the second amended complaint, Lindley incorporates by  
9 reference his responses to paragraphs 1 through 63 of the second amended complaint to the same  
10 extent plaintiffs have incorporated the allegations of those paragraphs into the First Claim For  
11 Relief.

12 15. Answering paragraph 65 of the second amended complaint, Lindley states that the  
13 matters asserted in the paragraph constitutes plaintiffs' arguments regarding the law, particularly  
14 the Second Amendment to the United States Constitution, California Penal Code, and California  
15 Code of Regulations, as opposed to allegations of fact. Because the Second Amendment, state  
16 Penal Code, state regulations, and the legal authorities addressing those provisions speak for  
17 themselves, no response to the legal and policy arguments in paragraph 65 is required. To the  
18 extent those paragraphs contain any material allegations of fact, Lindley denies the allegations.

19 **FIRST AFFIRMATIVE DEFENSE**

20 (No Ripe Controversy)

21 The complaint fails to present a case or controversy that is ripe for this Court's  
22 consideration.

23 **SECOND AFFIRMATIVE DEFENSE**

24 (Lack of Standing)

25 All of the plaintiffs lack standing to bring this action because there is no injury or credible  
26 threat of injury. Second Amendment Foundation, Inc., and The Calguns Foundation, Inc. also  
27 lack associational standing.  
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**THIRD AFFIRMATIVE DEFENSE**

(Eleventh Amendment Immunity)

Plaintiffs' claims are barred by the Eleventh Amendment.

**PRAYER FOR RELIEF**

Lindley prays for judgment as follows:

1. That plaintiffs take nothing by way of their complaint;
2. That the Court enter judgment in favor of Lindley on all claims and causes of action alleged in the complaint;
3. For costs incurred in the defense of this action; and
4. For such other and further relief as the Court may deem proper.

Dated: July 1, 2013

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
PETER K. SOUTHWORTH  
Supervising Deputy Attorney General

/s/ ANTHONY R. HAKL

ANTHONY R. HAKL  
Deputy Attorney General  
*Attorneys for Defendant Stephen Lindley*

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**CERTIFICATE OF SERVICE**

Case **Ivan Pena, et al. v. Stephen Lindley** No. **2:09-CV-01185-KJM-CKD**  
Name: \_\_\_\_\_

I hereby certify that on July 1, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**ANSWER TO SECOND AMENDED COMPLAINT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 1, 2013, at Sacramento, California.

\_\_\_\_\_  
Brenda Apodaca  
Declarant

\_\_\_\_\_  
/s/ Brenda Apodaca  
Signature