

1 BURTON C. JACOBSON - #27529
2 WILLIAM ARTHUR CRAWFORD - #125429
3 Beverly Hills Law Building
4 424 South Beverly Drive
5 Beverly Hills, CA 90212-4414
6 (310) 553-8533

FILED
LOS ANGELES SUPERIOR COURT

SEP 24 1998

JOHN A. CLARKE, CLERK
P. Cortez
BY P. CORTEZ, DEPUTY

7
8 Attorneys for Plaintiffs/Petitioners

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 ANTHONY MARIO ASSENZA,) CASE NO. BC 115813
12 et al.,)
13 Plaintiffs/Petitioners,)
14 vs.) PLAINIFFS AND/OR APPLICANTS'
15 CITY OF LOS ANGELES, et al.,) OPENING BRIEF AS PER COURT
16 Defendants/Respondents,) ORDER OF JULY 27, 1998 AMENDED
17) PURSUANT TO ORDER OF SEPTEMBER
18) 14, 1998; MEMORANDUM OF POINTS
19) AND AUTHORITIES IN SUPPORT
20) THEREOF

21 Additional Attorneys for Plaintiffs:

22 Don B. Kates, Jr.
23 920 Arlene Way
24 Novato, CA 94947
25 (415)883-5323

26 COME NOW PLAINTIFFS who submit the following Opening Brief
27 and Memorandum of Points and Authorities pursuant to this Court's
28 Order of July 27, 1998 regarding the issue of appointment of
experts and the standard for review; and amended pursuant to the
Order filed September 14, 1998.

///

TABLE OF CONTENTS

<u>TITLE</u>	<u>PAGE</u>
MEMORANDUM OF POINTS AND AUTHORITIES	2
1. INTRODUCTION	2
2. RES JUDICATA	3
3. STANDARD FOR REVIEW	6
4. CONCLUSION	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGES</u>
Bixby v. Pierno (1971) 4 Cal. 3d 130	7
California State Auto Assn. Inter-Ins Bureau v. Superior Court (1990) 50 Cal.3d. 658, 664 [268 Cal.Rptr. 284, 788 P.2d 1156]	5, 6
Causey v. Board of Pension Commissioners (1984) 152 Cal.App.3d 484; 199 Cal.Rptr. 535	6
Citizens for Open Access etc., Tide, Inc. v. Seadrift Assn. 60 Cal.App.4th 1053, 1065	5
City and County of San Francisco v. County of San Mateo (1995) 10 Cal. 4th 554	7
County of Los Angeles v. County of Los Angeles Assessment Appeals Bd. (1993) 13 Cal.App.4th 102, 108 [16 Cal.Rptr.2d 479	6
DeWeese v. Unick [(1980)] 102 Cal.App.3d [100,] 105 [162 Cal.Rptr. 259].)	6
Fukuda v. City of Angeles Camp, (1998) 63 Cal. App. 4th 1426	7,8
Gates v. Superior Court (1986) 178 Cal.App.3d 301,311 [223 Cal.Rptr. 678]	5
Johnson v. American Airlines, Inc. (1984) 157 Cal.App.3d 427, 431 [203 Cal.Rptr. 638]	6
McLaughlin v. National Union Fire Ins. Co. (1994) 23 Cal.App.4th 1132, 1152 [29 Cal.Rptr. 2d 559]	5
McMillen v. Civil Service Comm., supra, 6 Cal. App. 4th at p. 129, 301	7
Ocean Ave. Corp. v. Santa Monica Rent Control Bd., supra 228 Cal. App. 3d at p. 1555	7,8
San Dieguito Union High School Dist. v. Commisssion On Professinal Competence, supra, 174 Cal. App. 3d at p. 1180	8
Sandoval v. Superior Court (1983) 140 Cal.App.3d 932, 936 [190 Cal.Rptr.29	5

CASES

PAGES

Victa v. Merle Norman Cosmetics, Inc. (1993) 19 Cal.App.4th, 454	6
Webster v. Trustees of Cal. State University (1993) 19 Cal. App. 4th 1456, 1462	7
Western Mutual Ins. Co. v. Yamamoto (1994) 29 Cal.App.4th 1474, 1482-1483 [35 Cal.Rptr.2d 698]	5

CITATIONS

California Constitution, Article 1, §1	7
California Penal Code Section 12050	4
4 Witkin Cal.Procedure (2d ed. 1971	6
7 Witkin, Cal. Procedure (3d ed. 1985) Judgment §219, p.656	6
9 Witkin California Procedure, 4th Edition, Section 122 at page 1166	7

///
///
///

1 issues, in the instant case, which have been decided by final
2 judgment.

3 2. RES JUDICATA

4 The only issue the City is contesting is that of the "good
5 cause" of the plaintiffs renewal applicants.

6 The following colloquy occurred between the Court and Mr.
7 Boeckman, at the hearing on July 27, 1998:

8 "The Court: Very well. Who then, sir, will testify on
9 behalf of the defendants on the issue of what the plaintiff
10 applicants claim to be a lack of good cause for the denial?

11 Mr. Boeckman: Your honor, we don't claim that there is a
12 lack of good cause in this proceeding. What we are claiming in
13 this proceeding is that the plaintiffs have a burden under Code of
14 Civil Procedure Section 1085 to come forward and establish good
15 cause.

16 The Court: Other than in their declarations?

17 Mr. Boeckman: No, your Honor. What I am saying is that we
18 are not challenging what is said in their declaration. ..."
19 (Reporter's Transcript at page 11, lines 7-20).

20 The Judgment before the Court for enforcement, contains the
21 following provisions, which are now res judicata:

22 "The allegations of the complaint showed good cause as to all
23 of the plaintiffs who sought to be issued licenses." (Amended
24 Judgment, Exhibit 3 of Exhibits in Support of Order to Show Cause
25 at page 2 lines 26-27).

26 The allegations referred to above are contained in the
27 complaint in this action at paragraph 3 thereof: "3. Each of the
28 plaintiffs has submitted an application to the defendant for a

1 Concealed Weapons Permit. Each of the plaintiffs is, as above
2 stated, a person who is entitled a permit and has completed the
3 requisites of California Penal Code Section 12050, i.e., they are
4 residents of the County of Los Angeles, of good moral character,
5 and in their application have exhibited the facts that good cause
6 exists for the issuance of the license/permit." Therefore, the
7 "good cause" as stated by the plaintiffs in their original
8 applications prior to suit has been adjudged, decreed and entered
9 and is a final judgment in this action. As long as the facts
10 giving rise to that "good cause" have not changed materially, the
11 plaintiffs still have "good cause." It is res judicata that the
12 plaintiffs had "good cause" at the time of the Judgment and
13 defendants should be estopped from denying it absent a change in
14 circumstances. The five plaintiffs at issue in the present
15 proceeding were among the original plaintiffs and have submitted
16 evidence in a declaration, as provided for in the Judgment, of
17 their continued "good cause." Expert testimony cannot change that
18 which is res judicata. Particularly, where the Judgment was a
19 stipulated judgment, as in the instant case. Expert testimony can
20 only be helpful to the court in determining whether or not there
21 has been a change in the "good cause" of the plaintiffs.
22 Plaintiffs submit that it is the obligation of the defendants to
23 present evidence impeaching the plaintiffs' declarations to show
24 that the plaintiffs are not "credible" or present "credible"
25 evidence to the contrary (See Judgment at Section 7, page 8).

26 ///

27 ///

28 ///

1 Additionally, paragraph "E" of the Judgment is, as the Court
2 correctly noted, ambiguous at best. This is understandable where
3 a complex policy is reduced to a paragraph of approximately 74
4 words. That is why paragraph "F" was included for "interpretation
5 and implementation" and constitutes approximately 1412 words. It
6 is exceedingly important for the Court to note that paragraph "E"
7 cannot be interpreted or implemented without "F". In other words,
8 "E" is unintelligible without "F."

9 In Citizens for Open Access etc., Tide, Inc. v. Seadrift
10 Assn. 60 Cal.App.4th 1053, 1065 the court states:

11 "The settlement agreement, as incorporated into the judgments
12 in the Kelly and federal court actions, meets the first
13 requirement of res judicata that there was a final decision on the
14 merits, which " ' " . . . includes any prior adjudication of an
15 issue in another action that is determined to be sufficiently firm
16 to be accorded conclusive effect." ' (Sandoval v. Superior Court
17 (1983) 140 Cal.App.3d 932, 936 [190 Cal.Rptr.29], quoting Rest. 2d
18 Judgments, §13, italics added by Sandoval court.)" (Western Mutual
19 Ins. Co. v. Yamamoto (1994) 29 Cal.App.4th 1474, 1482-1483 [35
20 Cal.Rptr.2d 698].) "[A] Stipulated Judgment may properly be given
21 collateral estoppel effect, at least when the parties manifest an
22 intent collaterally bound by its terms." (California State Auto
23 Assn. Inter-Ins Bureau v. Superior Court (1990) 50 Cal.3d. 658,
24 664 [268 Cal.Rptr. 284, 788 P.2d 1156]; See also McLaughlin v.
25 National Union Fire Ins. Co. (1994) 23 Cal.App.4th 1132, 1152 [29
26 Cal.Rptr. 2d 559]; Gates v. Superior Court (1986) 178 Cal.App.3d
27 301,311 [223 Cal.Rptr. 678].) " 'A judgment entered . . . by
28 consent or stipulation, is as conclusive a . . . bar as a judgment

1 rendered after trial.' (4 Witkin Cal.Procedure (2d ed. 1971)
2 Judgment, §170 p. 3312; DeWeese v. Unick [(1980)] 102 Cal.App.3d
3 [100,] 105 [162 Cal.Rptr. 259].)" (Johnson v. American Airlines,
4 Inc. (1984) 157 Cal.App.3d 427, 431 [203 Cal.Rptr. 638].)"

5 In Victa v. Merle Norman Cosmetics, Inc. (1993) 19
6 Cal.App.4th, 454 the court stated at page 459 as follows:

7 "Res Judicata and its component of collateral estoppel
8 foreclose relitigation of a cause of action or issue that was
9 determined in a prior case involving the same party or one in
10 privity to it, and which ended in a final judgment on the merits.
11 (E.g., County of Los Angeles v. County of Los Angeles Assessment
12 Appeals Bd. (1993) 13 Cal.App.4th 102, 108 [16 Cal.Rptr.2d 479].)"

13 In Victa, supra, the court went on to say, at page 460-461:

14 "The first element required for res judicata in California is
15 a final judgment on the merits. Although the judgment in the EEOC
16 case was rendered by consent and stipulation, it so qualifies (7
17 Witkin, Cal. Procedure (3d ed. 1985) Judgment §219, p.656; see
18 California State Auto Assn. Inter-Ins Bureau v. Superior Court
19 (1990) 50 Cal.3d. 658, 664 [268 Cal.Rptr. 284, 788 P.2d 1156]; id.
20 at pp. 666-667 (conc. opn. of Broussard, J.).)

21 The second requisite is that the same claim be asserted in
22 both actions." See also, Causey v. Board of Pension Commissioners
23 (1984) 152 Cal.App.3d 484; 199 Cal.Rptr. 535.

24

25 3. STANDARD FOR REVIEW

26 The standard for review in this action, as well as for
27 similar cases, is that of independent judgment on the basis of a
28 limited trial "de novo" because a fundamental right is involved.

1 A fundamental right is involved here. The California
2 Constitution, Article 1, §1 states:

3 "All people are by nature free and independent and have
4 inalienable rights. Among these are enjoying and defending life
5 and liberty, acquiring, possessing and protecting property, and
6 pursuing and obtaining safety, happiness and privacy."

7 California Constitution, Article 1, Section 1.

8 "Constitutional provisions should be construed according to
9 natural and ordinary meaning of its words." City and County of
10 San Francisco v. County of San Mateo (1995) 10 Cal. 4th 554.

11 9 Witkin California Procedure, 4th Edition, Section 122 at
12 page 1166, states as follows:

13 "In reviewing factual determinations by an agency without
14 judicial power under the California Constitution, courts exercises
15 independent judgment and weigh the evidence if the proceeding
16 substantially deprives a party of fundamental vested right"
17 (emphasis added). See also, Bixby v. Pierno (1971) 4 Cal. 3d 130.

18 In Fukuda v. City of Angeles Camp, (1998) 63 Cal. App. 4th
19 1426 the court stated, at page 1430, as follows:

20 "The scope of review in mandamus proceedings defines the
21 deference to be accorded administrative decisions or the degree to
22 which the correctness of the administrative determination is to be
23 presumed. When a decision substantially affects a fundamental
24 right, courts consistently have held that the judiciary is to
25 exercise a vigilant and expansive role in reviewing the
26 administrative decision. (Webster v. Trustees of Cal. State
27 University (1993) 19 Cal. App. 4th 1456, 1462 . . .; McMillen v.
28 Civil Service Comm., supra, 6 Cal. App. 4th at p. 129, 301; Ocean

1 Ave. Corp. v. Santa Monica Rent Control Bd., supra 228 Cal. App.
2 3d at p. 1555; San Dieguito Union High School Dist. v. Commission
3 On Professional Competence, supra, 174 Cal. App. 3d at p. 1180).

4 The court must exercise its independent judgment on the evidence
5 and the administrative decision is entitled to less deference when
6 a fundamental right is implicated.

7 In this context, the trial court supplants the administrative
8 agency as the ultimate finder of fact. [cite omitted] It is at
9 liberty to independently assess credibility. [cites omitted]"

10 The court in Fukuda, supra, at page 1431, went on to note
11 that ". . . burden of proof as the burden producing evidence
12 rarely applies in mandamus proceedings because evidence is rarely
13 produced in superior court."

14 ///

15 ///

16 ///

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. CONCLUSION


In the case at bar, the only evidence before the court is the uncontradicted and uncontroverted and admittedly credible evidence presented by plaintiffs in their renewal applications and declarations in support thereof. These declarations and applications establish that the plaintiffs were issued permits based upon the "good cause" enunciated in the five categories of criteria for licensure contained in the Judgment as was correctly stated by the court at page 20 of the Reporters Transcript of Proceedings before this Court on July 27, 1998; further that the plaintiffs' circumstances giving rise to that "good cause" remain the same or are now greater. Those circumstances were agreed by stipulation and judgment. Defendants have produced no evidence controverting the facts contained in plaintiffs' applications and declarations. Therefore, plaintiffs' evidence contained therein must be considered proved.

Based on the current record in the case at bar, and the above stated authorities, it is respectfully requested that this Court order the defendants to immediately issue the permits to the five plaintiffs.

Dated: September 22, 1998

Respectfully submitted,

BURTON C. JACOBSON
WILLIAM A. CRAWFORD

By: 
BURTON C. JACOBSON
Attorneys for
Plaintiffs/Petitioners

(PROOF OF SERVICE BY MAIL--CCP 1013a, 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, JENNIFER HANSEN, declare:

I am over the age of 18 years, employed in the county of Los Angeles, and am not a party to the within action; my business address is 424 South Beverly Drive, Beverly Hills, California 90212.

On September 23, 1998, I served the foregoing document described as PLAINTIFFS AND/OR APPLICANTS' OPENING BRIEF AS PER COURT ORDER OF JULY 27, 1998 AMENDED PURSUANT TO ORDER OF SEPTEMBER 14, 1998; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, with postage fully prepaid, in the United States mail at Beverly Hills, California 90212, addressed as follows:

James K. Hahn, City Attorney
Frederick N. Merkin, Senior Assistant City Attorney
Byron Boeckman, Assistant City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, CA 90012

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 23, 1998, at Beverly Hills, California.



JENNIFER HANSEN

1 JAMES K. HAHN, City Attorney
FREDERICK N. MERKIN, Senior Assistant City Attorney
2 BYRON R. BOECKMAN, Assistant City Attorney (SBN # 043240)
1800 City Hall East
3 200 North Main Street
Los Angeles, California 90012
4 Telephone: (213) 485-6499; Fax No.: (213) 485-8898

FILED
LOS ANGELES SUPERIOR COURT

SEP 24 1998

5 Attorneys for Defendants
CITY OF LOS ANGELES
6

JOHN A. CLARKE, CLERK
P. Cortez
BY P. CORTEZ, DEPUTY

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 ANTHONY MARIO ASSENZA,)
12 Plaintiff/Petitioner,)
13 vs.)
14 CITY OF LOS ANGELES, et al.,)
15 Defendants/Respondents.)

CASE NO. BC 115813
DATE: SEPTEMBER 25, 1998
TIME: 9:30 A.M.
DEPT: 14
NOTICE OF LODING OF EXTRA
COPY OF DEFENDANTS AND/OR
RESPONSES BRIEF PURSUANT
TO THE COURT'S ORDER OF
AUGUST 19, 1998

16
17
18
19
20
21
22
23
24
25
26
27
28