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 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JONATHAN BIRDT,
 13
 14 Plaintiff,
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 16 v.
 17 CHARLIE BECK, LEE BACA, THE
 18 LOS ANGELES POLICE
 DEPARTMENT and THE LOS
 ANGELES COUNTY SHERIFF'S
 DEPARTMENT, and DOES 1 through
 50,
 19 Defendants.

CASE NO. CV 10-08377 RGK (JEMx)

**LASD DEFENDANTS' MOTION
 FOR SUMMARY JUDGMENT/
 PARTIAL SUMMARY JUDGMENT
 AND CONCURRENT OPPOSITION
 TO PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT;
 MEMORANDUM OF POINTS &
 AUTHORITIES IN SUPPORT
 THEREOF**

[Filed concurrently with Defendants'
 Separate Statement of Uncontroverted
 Facts & Conclusions of Law &
 Response to Plaintiff's Separate
 Statement; Declarations & Exhibits in
 Support Thereof; Proposed Order

MSJ Date; **May 16, 2011**
 Time: **9:00 a.m.**
 Dept: **850**

Trial Date: October 4, 2011

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1 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on May 16, 2011 at 9:00 a.m., or as soon
3 thereafter as the matter can be heard in Courtroom 850 of the above-entitled court,
4 the Honorable R. Gary Klausner presiding, located at 255 West Temple Street
5 (Roybal), Los Angeles, California, Defendants Los Angeles County Sheriff's
6 Department and Sheriff Lee Baca (hereinafter "*the LASD Defendants*") will and
7 hereby do move the Court pursuant to Federal Rule of Civil Procedure 56 for
8 summary judgment or, alternatively, partial summary judgment on the grounds
9 that there are no triable issues as to any material fact and that the LASD
10 Defendants are entitled to judgment, or alternatively partial summary judgment, as
11 a matter of law.

12 The attached Memorandum also serves as the LASD Defendants' Opposition
13 to Plaintiff's Motion for Partial Summary Judgment, set for hearing on the same
14 date.

15 Specifically, the LASD Defendants move for summary judgment on the
16 following grounds:

17 1. The LASD Defendants' policies and practices in implementing
18 California Penal Code section 12050 do not violate Plaintiff's constitutional rights
19 and are otherwise lawful.

20 2. The LASD Defendants' "good cause" policy does not violate equal
21 protection.

22 If for any reason, summary judgment cannot be granted, the LASD
23 Defendants move for partial summary judgment as to each of the above issues.

24 This motion is based on this Notice of Motion and Motion, the
25 Memorandum of Points and Authorities, the Separate Statement of Uncontroverted
26 Facts, Response to Plaintiff's Separate Statement, and Conclusions of Law
27 submitted by the LASD Defendants and the exhibits attached thereto, and the
28 records, files and papers herein; and on such other matters as may be presented by

1 the other parties in this matter, and at the time of the hearing.

2 The parties have met and conferred in compliance with Local Rule 7-3.

3 Said conference took place on February 9, 10, and 14, 2011.

4

5 DATED: April 16, 2011

Respectfully submitted,

6

ANDREA SHERIDAN ORDIN

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County Counsel

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By



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JENNIFER A.D. LEHMAN

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Principal Deputy County Counsel

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Attorneys for Defendants

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DEPARTMENT and LEE BACA

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INTRODUCTION

Plaintiff Jonathan Birdt claims that he was improperly denied a concealed weapons (CCW) permit by the City of Los Angeles and moving Defendants Los Angeles County Sheriff's Department and Sheriff Lee Baca (hereinafter "the LASD Defendants"). Plaintiff alleges that the LASD Defendants' definition of "good cause" as required by California Penal Code § 12050 violates the Second and Fourteenth Amendments of the United States Constitution. His argument fails, and it is Defendants, not Plaintiff who should be entitled to summary judgment.

STATEMENT OF FACTS

California Penal Code § 12050(a)(1)(A) authorizes a county sheriff to issue a license to carry a concealed pistol, revolver, or other firearm capable of being concealed upon the person (hereinafter "CCW permit") upon the existence of good cause, and provided that the applicant meets other criteria provided for in the Penal Code. California Penal Code § 12050 gives extremely broad discretion to the sheriff concerning the issuance of concealed weapons licenses, and explicitly grants discretion to the issuing officer to issue or not issue a license to applicants meeting the minimum statutory requirements. *Gifford v. City of Los Angeles*, 88 Cal.App.4th 801, 805 (2001) quoting in part, *Nichols v. County of Santa Clara*, 223 Cal.App.3d 1236, 1241 (1990).

LASD CCW Application Process

Larry L. Waldie is the Undersheriff for Los Angeles County. As part of his responsibilities as Undersheriff he has been designated to act as the Sheriff's sole authorized representative for reviewing applications for CCW licenses for the County of Los Angeles. While members of his staff make recommendations

1 regarding applications, he is the final decision-maker. (LASD UF¹ 1) As part of
2 his evaluation of CCW applications, he will review the entire application packet
3 and any and all supporting documentation. He has been involved in these
4 decisions since he became Undersheriff in 2005. (LASD UF 2)

5 In Los Angeles County, there are four distinct categories of CCW licenses:
6 Employment, Standard, Judges, and Reserve Police Officers. The Employment
7 CCW license is issued only to a person who spends a substantial period of time in
8 his or her principal place of employment or business in Los Angeles County. The
9 Standard CCW license is issued to residents of Los Angeles County or to residents
10 of a particular city within Los Angeles County. The Judge CCW license is issued
11 to California judges, full-time commissioners, and to federal judges and
12 magistrates of the federal courts. The Reserve Police Officer CCW license may
13 be issued to reserve police officers appointed pursuant to California Penal Code §
14 830.6. (LASD UF 3)

15 If an applicant resides in an incorporated city not policed by the LASD, the
16 applicant must apply to the chief of police of their city of residence for a concealed
17 weapons license and have such application acted upon. Within 60 days after a
18 denial of such application, such city resident may file a separate application with
19 the LASD, attaching a copy of the application denied by the chief of police. The
20 LASD will exercise independent discretion in granting or denying licenses to such
21 person but may review, consider, and give weight to the grounds upon which such
22 denial was made. (LASD UF 4) California Penal Code §§ 12050-12054 set forth
23 the general criteria that CCW applicants must meet. Applicants must be of good
24

25
26 ¹ The LASD Defendants' Undisputed Facts are contained in their Response
27 to Plaintiff's Separate Statement.

28

1 moral character, be a resident of, or spend substantial time in the County they
2 apply in, take a firearms course, and demonstrate good cause for the license.
3 (LASD UF 5)

4 **LASD's Good Cause Requirement**

5 The issuance of licenses enabling a private citizen to carry a CCW is of
6 great concern to the LASD. The LASD's overriding policy is that no CCW
7 license should be granted merely for the personal convenience of the applicant.
8 No position or job application in itself shall constitute good cause for the issuance,
9 or for the denial, of a CCW license. (LASD UF 6) The LASD defines "good
10 cause" under California Penal Code section 12050 as requiring convincing
11 evidence of a clear and present danger to life or of great bodily harm to the
12 applicant, his spouse or dependent child, which cannot be adequately dealt with by
13 existing law enforcement resources and which danger cannot be reasonably
14 avoided by applicant's carrying of a concealed firearm. (LASD UF 7) Each
15 application is individually reviewed for cause. The LASD's definition of good
16 cause has been in existence since Undersheriff Waldie began reviewing CCW
17 applications in 2005. This definition of good cause, or one similar to it, is utilized
18 by many other counties within California, including the cities of Los Angeles and
19 San Diego.² (LASD UF 8)

20 In evaluating whether an applicant has presented "convincing evidence of a
21 clear and present danger to life or of great bodily harm to the applicant, his spouse
22 or dependent child, which cannot be adequately dealt with by existing law
23

24
25 ² Defendant City of Los Angeles maintains the same good cause
26 requirement, as shaped by *Assenza v. City of Los Angeles*, Los Angeles Superior
27 Court Case No. BC 115813 (1994) (further discussed in the LAPD Defendants'
28 motion filed concurrently)

1 enforcement resources and which danger cannot be reasonably avoided by
2 applicant's carrying of a concealed firearm," an applicant's stated reason of self-
3 defense is not enough. (LASD UF 9) The applicant must demonstrate a credible
4 threat of violence which would justify the need to possess a concealed weapon. If
5 an applicant claims that he or she has been threatened, the LASD looks for
6 documentation of that threat, such as police reports or other evidence. (LASD UF
7 10)

8 One of the purposes for the LASD's policy is to protect against gun violence
9 to the community at large, as well as to protect officers conducting law
10 enforcement operations on the streets. (LASD UF 11) Gun violence is a problem
11 throughout the State of California and Los Angeles County is no exception. The
12 vast majority of homicides in Los Angeles County are committed with the use of
13 guns. Handguns are of particular concern because they are much more likely to
14 be used than shotguns and rifles. Because handguns are small, easy to conceal,
15 and deadly at short range, they are of paramount concern and danger. Further,
16 most of the violent acts committed in this County involving the use of guns are by
17 gang members. (LASD UF 12)

18 The presence of more guns on the streets of Los Angeles County creates
19 many problems for law enforcement officers. Officers are often charged with
20 monitoring public gatherings as well as with breaking up public nuisances.
21 Officers must act quickly whenever a disturbance occurs. Often times, this
22 involves isolating one or two problem individuals. However, if multiple persons
23 within a crowd are carrying concealed weapons, this creates an increased
24 likelihood that guns will be brandished or used. Thus, the increased presence of
25 guns creates not only increased safety problems for officers but also for members
26 of the community at large. (LASD UF 13) It is the LASD's position that
27 increasing the numbers of concealed weapons in the community increases the
28 threat of gun violence to the community at large, to those who use the streets and

1 go to public accommodations, and to law enforcement officers patrolling the
2 streets. Further, the increased presence of concealed handguns make law
3 enforcement operations more difficult thus taking away valuable resources which
4 would be better used conducting law enforcement operations. (LASD UF 14) Los
5 Angeles County's "good cause" requirement is intended to drastically restrict the
6 number of persons who are secretly armed in the County. (LASD UF 15) At
7 present, there are approximately 400 concealed weapons permits that were issued
8 by the LASD. The population of Los Angeles County was estimated to be
9 10,441,080 people as of January 2010. (LASD UF 16)

10 **Plaintiff's CCW Application to the LASD**

11 The LASD reviewed Mr. Birdt's first application and determined that he
12 failed to show good cause as required by LASD policy, and as defined above.
13 (LASD UF 17) In his initial application to the LASD, Plaintiff states as
14 justification:³

15 Details of Reason for Applicant Desiring a CCW
16 License.

17 Volunteer LA Superior Court Judge. Frequent Las
18 Vegas Travel with large sums of cash.
19 Unprotected/Unsecured office with threat against
20 employer. Representation of victims of violence, abuse
21 + murder.

22 (LASD UF 18.) Plaintiff never spoke with anyone from the LAPD to report
23 threats against him and to his knowledge, no report was ever generated. (LASD
24 UF 19) Plaintiff was never threatened in his capacity as a volunteer judge.
25 (LASD UF 20) Plaintiff was never specifically threatened as a result of his

26 ³ LASD has not yet responded to Mr. Birdt's second application as of the
27 date of the Undersheriff's Declaration. However, his second application provides
28 no further evidence of an imminent threat. (See Waldie Decl., Exh. 4, p. 13.)

1 position on the juvenile dependency court panel. (LASD UF 21) Plaintiff himself
2 has never been expressly threatened with harm at all. (LASD UF 15)

3 **ARGUMENT**

4 **I. THERE IS NO CONSTITUTIONAL RIGHT TO CARRY A LOADED**
5 **CONCEALED WEAPON IN PUBLIC UNDER THE SECOND**
6 **AMENDMENT.**

6 Plaintiff claims that the LASD policy requiring "good cause" for the
7 issuance of a CCW license violates the Second Amendment. In *District of*
8 *Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 2788, 2822 (2008), the United
9 States Supreme Court held that the Second Amendment protects an individual's
10 right to possess firearms in the home for self-defense and that the city's total ban
11 on handguns, as well as its requirement that firearms in the home be kept
12 nonfunctional even when necessary for self-defense, violated that right. In
13 *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3026, 3044 (2010), the court
14 evaluated restrictions similar to those in *Heller* and held that the Due Process
15 Clause of the Fourteenth Amendment incorporates the Second Amendment right to
16 possess a handgun in the home for self-defense.

17 **A. The Second Amendment Does Not Include the Right to Keep and**
18 **Carry a Weapon in Any Manner.**

19 Contrary to Plaintiff's position, these decisions do not affect the
20 constitutionality of Penal Code § 12025(a) or Penal Code § 12050 pertaining to
21 concealed weapons in public. In *Heller*, the Supreme Court acknowledged that:

22 the right secured by the Second Amendment is not
23 unlimited. From Blackstone through the 19th-century
24 cases, commentators and courts routinely explained that
the right [to keep and bear arms] was not a right to keep
and carry any weapon whatsoever in any manner
whatsoever and for whatever purpose.

25 *Id.* at __; 128 S.Ct. at 2816. Thus, the Court has specifically stated that "core
26 right" embodied in the Second Amendment *does not include the right to keep and*
27 *carry any weapon in any manner. See id.*

28 Penal Code § 12025(a) and Penal Code § 12031(a) have been upheld in

1 California against a Second Amendment challenge after *Heller*. *People v. Flores*,
2 169 Cal.App.4th 568, 575-576 (2008); *People v. Yarbrough*, 169 Cal.App.4th
3 303, 312-314 (2008). In *People v. Yarbrough*, Yarbrough was convicted of
4 violating Penal Code § 12025(a)(2), for carrying a concealed weapon on
5 residential property that was fully accessible to the public. Yarbrough challenged
6 his conviction on many grounds, including the Second Amendment. Noting that
7 *Heller* had “specifically expressed constitutional approval of the accepted statutory
8 proscriptions against carrying concealed weapons,” the *Yarbrough* court held:

9 we find nothing in Penal Code section 12025, subdivision
10 (a), that violates the limited right of the individual
11 established in *Heller* to possess and carry weapons in
12 case of confrontation. Section 12025, subdivision (a),
13 does not broadly prohibit or even regulate the possession
14 of a gun in the home for lawful purposes of confrontation
15 or self-defense, as did the law declared constitutionally
16 infirmed in *Heller*. Rather, section 12025, subdivision
17 (a), in much more limited fashion, specifically defines as
18 unlawful carrying concealed within a vehicle or
19 “concealed upon his or her person any pistol, revolver,
20 or other firearm capable of being concealed upon the
21 person.” Further, carrying a firearm concealed on the
22 person or in a vehicle in violation of section 12025,
23 subdivision (a), is not in the nature of a common use of a
24 gun for lawful purposes which the court declared to be
25 protected by the Second Amendment in *Heller*. (See
26 *People v. Wasley* 245 Cal.App.2d 383, 386 (1966) .)

18 The *Yarbrough* court held that, unlike possession of a gun for protection within a
19 residence, carrying a concealed firearm presents a recognized “threat to public
20 order,” and is “prohibited as a means of preventing physical harm to persons other
21 than the offender.’ *Id.* at 314, citing *People v. Hale*, 43 Cal.App.3d 353, 356
22 (1974). A person who carries a concealed firearm on his person or in a vehicle,
23 which permits the individual immediate access to the firearm but impedes others
24 from detecting its presence, poses an ‘imminent threat to public safety. *Id.* at 313-
25 314. Thus, Penal Code § 12050's prohibitions did not violate the Second
26 Amendment.

1 Similarly, in *People v. Flores*, 169 Cal.App.4th 568 (2008), the court
2 affirmed convictions under sections 12025 and 12031 in the face of a Second
3 Amendment challenge. With regard to the section 12031 conviction, the court
4 reasoned: "there can be no claim that section 12031 in any way precludes the use
5 of handguns held and used for self-defense in the home...[i]nstead, section 12031
6 is narrowly tailored to reduce the incidence of unlawful public shootings, while at
7 the same time respecting the need for persons to have access to firearms for lawful
8 purposes, including self-defense. *Id.* at 576.

9 **B. California Penal Code Section 12050's Restrictions on Concealed**
10 **Weapons Do Not Infringe on the Right of Self-Defense in the**
11 **Home.**

12 Penal Code section 12050 does not regulate the possession of a gun in the
13 home for lawful purposes of confrontation or self-defense, as did the law declared
14 unconstitutional in *Heller*. Rather, it involves the licensing of persons in the
15 context of the regulation of the carrying of concealed weapons in public places.
16 Carrying a firearm concealed on the person or in a vehicle is not in the nature of a
17 common use of a gun for lawful purposes which the court declared to be protected
18 by the Second Amendment in *Heller*. Unlike possession of a gun for protection
19 within a residence, carrying a concealed firearm presents a recognized "threat to
20 public order," and is "prohibited as a means of preventing physical harm to
21 persons other than the offender.' [Citation.]" *People v. Hale*, 43 Cal.App.3d
22 353, 356 (1974). A person who carries a concealed firearm on his person or in a
23 vehicle, "which permits him immediate access to the firearm but impedes others
24 from detecting its presence, poses an 'imminent threat to public safety'
25 [Citation.]" *People v. Hodges*, 70 Cal.App.4th 1348, 1357 (1999).

26 Here, California law does not impede the ability of individuals to defend
27 themselves with firearms in their homes, as set forth in *Heller*. Instead, as the
28 California courts recognize above, there is no right to carry a concealed weapon in
public under the Second Amendment. California's regulation of both concealed

1 carry of firearms and carry of loaded firearms in public do not infringe on the
2 Second Amendment. See e.g. *Robertson v. Baldwin*, 165 U.S. 275, 281-282
3 (1897) ("the right of people to keep and bear arms is not infringed by laws
4 prohibiting the carrying of concealed weapons.") Similarly, the LASD
5 Defendants' policies and practices regarding the issuance of CCW permits do not
6 impact any recognized Second Amendment right.

7 **II. THE LASD DEFENDANTS' LICENSING PRACTICES WITHSTAND**
8 **CONSTITUTIONAL SCRUTINY.**

9 **A. The LASD Defendants' Policies in Limiting CCW Licenses to**
10 **Individuals With Specifically Identifiable and Documented Needs**
11 **Withstands Scrutiny.**

12 Nonetheless, even if this Court finds that the core right to keep and bear
13 arms under the Second Amendment is infringed and that *Heller's* narrow holding
14 does not reach or decide the issue in this case, the LASD Defendants' policies and
15 practices withstand constitutional scrutiny.

16 The majority of courts both before and after *McDonald* have employed an
17 intermediate scrutiny standard when evaluating gun regulations. See *Peruta v.*
18 *County of San Diego*, United States District Court Case No. 09 CV-23712010
19 U.S. Dist. LEXIS 130878 at *23-25 (citing *United States v. Skoien*, 614 F.3d 638,
20 641 (7th Cir. 2010); *United States v. Marzzarella*, 614 F.3d 85, 97 (3rd Cir. 2010);
21 *Heller v. District of Columbia (Heller II)*, 698 F.Supp.2d 179, 188 (D.D.C. 2010)
22 (surveying the landscape of post-*Heller* decisions and joining the majority of courts
23 in holding that intermediate scrutiny is the most appropriate standard).
24 Intermediate scrutiny requires that the challenged statute or regulation "be
25 substantially related to an important governmental objective." *Clark v. Jeter*, 486
26 U.S. 456, 461 (1988).

27 The LASD Defendants' policies and practices in limiting concealed carry
28 *licensing* to individuals with specifically identifiable and documented needs for
concealed carry withstand intermediate scrutiny. Maintaining public safety and

1 preventing crime are clearly important governmental interests. *Medtronic, Inc. v.*
2 *Lohr*, 518 U.S. 470, 475 (1996) (noting that States have "great latitude" to use
3 their police powers); *United States v. Morrison*, 529 U.S. 598, 618 (2000) ("there
4 is no better example of the police power than the suppression of violent crime")
5 The regulation of concealed firearms is a critical factor in accomplishing these
6 interests. *McDonald, supra*, 130 S.Ct. at 3126 ("private gun regulation is the
7 quintessential exercise of a State's police power.")

8 Handguns are unquestionably dangerous and contribute to the majority of
9 criminal cases that result in a person's death. LASD UF 11-15; see also *Heller*,
10 *supra*, 554 U.S. at 636 (acknowledging the problem of handgun violence in the
11 U.S.). A 2001 study revealed that a ten percent increase in handgun ownership
12 correlates with a two percent increase in homicides. See Michael B. de Leeuw et
13 al., *Beyond the Final Frontier: a "Post-Racial" America?: The Obligations of*
14 *Lawyers, the Legislature, and The Court: Ready Aim, Fire? District of Columbia*
15 *v. Heller and Communities of Color*, 25 Harv.BlackLetter J. 133, 149 (Spring
16 2009). Handgun possession is a particular problem in Los Angeles County due to
17 the influx of gang members in recent years. (See LASD UF 11-15.)

18 Concealed handguns, in particular pose an obvious threat to the public as a
19 concealed handgun generates no special notice until the weapon is brandished.
20 (LASD UF 11-15.) As more than 90% of police officer killings are caused by
21 guns, high rates of concealed gun carry especially endanger police officers. *Id.*
22 Of the 536 law enforcement officers killed in the line of duty between 2000 and
23 2009 (including 47 in California), 490 were killed with firearms and of those,
24 handguns were used by the perpetrator 73% of the time. See Fed. Bureau of
25 Investigations, U.S. Dep't of Justice, *Law Enforcement Officers Killed and*
26 *Assaulted* (2009), tables 1 and 27, available at [http://www.fbi.gov/about-](http://www.fbi.gov/about-us/cjis/ucr/leoka/2009/leoka-2009)
27 [us/cjis/ucr/leoka/2009/leoka-2009](http://www.fbi.gov/about-us/cjis/ucr/leoka/2009/leoka-2009).

28

1 In *Peruta*, the Southern District of California found that the San Diego
2 Sheriff had "an important and substantial interest in public safety and in reducing
3 the rate of gun use in crime;" "in reducing the number of concealed weapons in
4 public in order to reduce the risks to other members of the public who use the
5 streets and go to public accommodations;" and "in reducing the number of
6 concealed handguns in public because of their disproportionate involvement in life-
7 threatening crimes of violence, particularly in streets and other public places."
8 *Peruta, supra*, 2010 U.S. Dist. LEXIS at *26-27. The court also held that the
9 Sheriff's policy which differentiated between "individuals who have a bona fide
10 need to carry a concealed handgun for self-defense and individuals who do not"
11 was reasonably related to the government's important and substantial interest in
12 public safety. *Id.* at *27. Accordingly, the court in *Peruta* upheld the San Diego
13 Sheriff's concealed weapon permitting policy.

14 That interest is no different in Los Angeles County. Los Angeles County's
15 practices in limiting CCW licenses to those with specific and documented needs is
16 consistent with the compelling and significant legislative goals underlying Penal
17 Code sections 12025 and 12031: the protection of the public from widespread and
18 unchecked public carry of concealed and loaded firearms. For the exact reasons
19 expressed by the court in *Peruta*, this Court should likewise uphold LASD's
20 policy. LASD's policy creates a balance between the competing Second
21 Amendment interests in self-defense and public safety. The LASD enables those
22 with a clear and present need for self-defense to obtain a concealed weapon
23 permit, so long as they also meet the requirements enumerated in California Penal
24 Code section 12050. The LASD's policy is reasonably related to the
25 government's important and substantial interest in public safety and concealed
26 weapon control. Therefore, the policy satisfies the intermediate scrutiny standard.

27 Maintaining public safety and preventing crime are clearly important (if not
28 paramount) government interests and the regulation of concealed firearms is a

1 critical factor in accomplishing that interest. (LASD UF 11-15) *See, e.g., United*
2 *States v. Salerno*, 481 U.S. 739, 750 (1987); *Schall v. Martin*, 467 U.S. 253, 264
3 (1984); *Kelley v. Johnson*, 425 U.S. 238, 247 (1976) (“The promotion of safety of
4 persons and property is unquestionably at the core of the State’s police power
5 ...”); *People v. Yarbrough, supra*, 169 Cal.App.4th at 312-314. The relevant
6 Penal Code provisions are narrowly tailored and substantially related to furthering
7 public safety and reducing crime. Concealed handguns are the priority of law
8 enforcement everywhere because of the use of the concealed handgun in vast
9 numbers of criminal offenses. See (LASD UF 11-15.) Concealed carry of
10 handguns allows for stealth and surprise. Limiting the number of loaded and
11 concealed firearms in public places helps to keep the balance in favor of law
12 enforcement and avoids the necessity for every place that is open to the public –
13 restaurants, malls, theaters, parks, etc.-- to be equipped with metal detectors,
14 fencing and other forms of security, in order to protect patrons from the fear of
15 widespread and unchecked concealed firearms.

16 Numerous courts have discussed the need for firearm regulation and the
17 need for imposing restrictions on their use:

18 ...[A]ccidents with loaded guns on public streets or the
19 escalation of minor public altercations into gun battles or,
20 as the legislature pointed out, the danger of a police
21 officer stopping a car with a loaded weapon on the
22 passenger seat. ... [T]hus, otherwise “innocent”
23 motivations may transform into culpable conduct because
24 of the accessibility of weapons as an outlet for
25 subsequently kindled aggression. ... [T]he underlying
26 activity of possessing or transporting an accessible and
27 loaded weapon is itself dangerous and undesirable,
28 regardless of the intent of the bearer since it may lead to
the endangerment of public safety. ... [A]ccess to a
loaded weapon on a public street creates a volatile
situation vulnerable to spontaneous lethal aggression in
the event of road rage or any other disagreement or
dispute. The prevention of the potential metamorphosis of
such “innocent” behavior into criminal conduct is
rationally related to the purpose of the statute, which is to
enhance public safety. Because the legislature has a
compelling interest in preventing the possession of guns
in public under any such circumstances, the statute is

1 reasonably related to the legislature’s purpose of
2 “mak[ing] communities in this state safer and more
secure for their inhabitants.”

3 *People v. Marin*, 795 N.E.2d 953, 958–59 (Ill. App. 2003) (citations omitted); see
4 also *Marshall v. Walker*, 958 F.Supp. 359, 365 (N.D. Ill. 1997) (individuals
5 should be able to walk in public “without apprehension of or danger from violence
6 which develops from unauthorized carrying of firearms and the policy of the
7 statute to conserve and maintain public peace on sidewalks and streets within the
8 cities ...”) (quoting *People v. West*, 422 N.E.2d 943, 945 (Ill.App. 1981)).

9 While the LASD Defendants contend their policy passes intermediate
10 scrutiny, assuming arguendo that a different level of scrutiny applies, the LASD
11 policy still passes constitutional muster. Strict scrutiny requires that a statute or
12 regulation “be narrowly tailored to serve a compelling governmental interest” in
13 order to survive a constitutional challenge. *Abrams v. Johnson*, 521 U.S. 74, 91
14 (1997). Finally, a statute or regulation survives an “undue burden” analysis where
15 it does not have the “‘purpose or effect [of] plac[ing] a substantial obstacle in the
16 path’” of the individual seeking to engage in constitutionally protected conduct.
17 *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007) (quoting *Planned Parenthood of*
18 *Southeastern Penn. v. Casey*, 505 U.S. 833, 878 (1992)). Regardless of the level
19 of constitutional scrutiny, Plaintiff’s challenge fails. The LASD’s policy to limit
20 CCW licenses to those with specific and documented needs is consistent with the
21 compelling and significant legislative goals underlying sections 12025 and 12031,
22 i.e. the protection of the general public from widespread and unchecked public
23 carry of concealed and loaded firearms. There is a “compelling state interest in
24 protecting the public from the hazards involved with certain types of weapons,
25 such as guns.” *State v. Cole*, 665 N.W.2d 328, 344 (2003).

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1 **B. The LASD Defendants Did Not Improperly Deny Plaintiff's**
2 **Application.**

3 Further, LASD's good cause policies, were constitutionally applied to
4 Plaintiff. Plaintiff's application was reviewed like every other application and
5 underwent the same evaluation every other application did. (LASD UF 8, 17-18.)
6 Plaintiff's application was denied because he did not present evidence of a clear
7 and present danger, as required under the LASD's good cause policy. (LASD UF
8 8, 17-18.) Plaintiff has provided no evidence that he was protected by a
9 restraining or other court order, or that he had any police reports to support his
10 claimed threats. In fact, Plaintiff acknowledged during his deposition that he
11 never spoke with anyone from the LAPD to report threats against him and to his
12 knowledge, no report was ever generated. (LASD UF 12) He was never
13 threatened in his capacity as a volunteer judge, nor in his position on the juvenile
14 dependency court panel. (LASD UF 13, 14) Birdt himself has never been
15 expressly threatened with harm at all. (LASD UF 15)

16 **C. The Denial of Plaintiff's CCW Application Did Not Violate His**
17 **Right to Interstate Travel.**

18 To the extent that Plaintiff claims that his right to interstate travel was
19 violated because he could not pass from Nevada where he has a CCW permit to
20 California, his claim similarly fails. A state law implicates the right to travel
21 when it actually deters travel, when impeding travel is its primary objective, or
22 when it uses a classification that penalizes the exercise of that right. *Attorney*
23 *General of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986). Only activities
24 "sufficiently basic to the livelihood of the Nation" are encompassed in the right.
25 *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 64 (1988) (quoting *Baldwin*
26 *v. Montana Fish & Game Comm'n*, 436 U.S. 371, 388 (1978)). The denial of a
27 concealed weapons permit is not a deprivation of the right to travel. See *Pencak*
28 *v. Concealed Weapons Licensing Bd.*, 872 F.Supp.410, 414 (E.D. Mich. 1994.)
As such, summary judgment on this issue is warranted.

1 **III. THE LASD POLICY DOES NOT VIOLATE EQUAL PROTECTION.**

2 As his second cause of action, Plaintiff alleges a violation of equal
3 protection by application of the “good cause” requirements. Under the Equal
4 Protection Clause of the Fourteenth Amendment, no state shall “deny to any
5 person within its jurisdiction the equal protection of the laws.” The Equal
6 Protection Clause “is essentially a directive that all persons similarly situated
7 should be treated alike.” *City of Cleburne v. Cleburne Living Center, Inc.*, 473
8 U.S. 432, 439 (1985). When a government’s action does not involve a suspect
9 classification or implicate a fundamental right, even intentional discrimination will
10 survive constitutional scrutiny for an equal protection violation as long as it bears a
11 rational relation to a legitimate state interest. *New Orleans v. Dukes*, 427 U.S.
12 297, 303-04 (1976); *Cleburne, supra*, 473 U.S. at 439; *Lockary v. Kayfetz*, 917
13 F.2d 1150, 1155 (9th Cir. 1990).

14 To prevail on this cause of action, Plaintiff must show actual evidence that
15 others similarly situated have not been treated in a like manner, and that the denial
16 of Plaintiff's concealed weapons permit was based on impermissible ground.
17 Plaintiff has no such evidence. In fact, the evidence shows that the LASD applies
18 its policy equally. (LASD UF 17-22) As such, it is Defendants, not Plaintiff,
19 who are entitled to summary judgment.

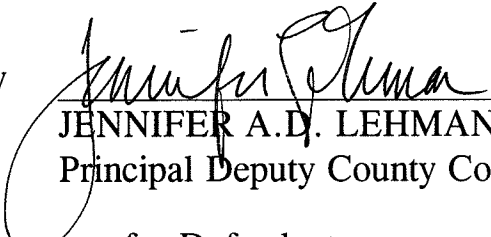
20 **CONCLUSION**

21 For the foregoing reasons, the LASD Defendants ask that the Court grant
22 their Motion, and deny Plaintiff's Motion for Summary Judgment.
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1 DATED: April 18 , 2011

Respectfully submitted,

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