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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JONATHAN BIRDT,
Plaintiff,

v.

CHARLIE BECK, LEE BACA, THE
LOS ANGELES POLICE
DEPARTMENT and THE LOS
ANGELES COUNTY SHERIFF'S
DEPARTMENT, and DOES 1 through
50,
Defendants.

CASE NO. CV 10-08377 JAK (JEMx)

**DEFENDANTS LOS ANGELES
COUNTY SHERIFF'S
DEPARTMENT & LEE BACA'S
REPLY SEPARATE STATEMENT
& CONCLUSIONS OF LAW;
EVIDENCE IN SUPPORT
THEREOF & RESPONSE TO
PLAINTIFF'S SEPARATE
STATEMENT**

[Filed concurrently with Reply,
Objections to Plaintiff's Evidence;
Response to Plaintiff's Objection]

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

Action Filed: November 4, 2010
Trial Date: **October 4, 2011**

Defendants Los Angeles County Sheriff's Department and Sheriff Lee Baca ("the LASD Defendants") submit their Reply Separate Statement of Uncontroverted Facts & Conclusions of Law in support of their Motion for Summary Judgment/Partial Summary Judgment pursuant to Local Rule 56-1.

LASD DEFENDANTS' UNDISPUTED FACTS AND EVIDENCE

**Moving Party's Undisputed
Material Facts and
Supporting Evidence**

**Opposing Party's
Response and
Supporting Evidence**

**Moving Party's
Rebuttal and
Supporting Evidence**

1. 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. In that role, he and members of his staff, evaluate CCW applications. While members of his staff make recommendations regarding applications, he is the final decision-maker.

Exh. A, Waldie Decl. ¶¶ 1-2.

As part of his evaluation of CCW applications, he will review the entire application packet

1. Undisputed for purposes of this motion.

2. Undisputed for purposes of this motion.

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4 and any and all supporting
5 documentation. He has been
6 involved in these decisions
7 since he became
8 Undersheriff in 2005.
9 Exh. A, Waldie Decl. ¶ 2.

10 3. In Los Angeles
11 County, there are four
12 distinct categories of CCW
13 licenses: Employment,
14 Standard, Judges, and
15 Reserve Police Officers.
16 The Employment CCW
17 license is issued only to a
18 person who spends a
19 substantial period of time in
20 his or her principal place of
21 employment or business in
22 Los Angeles County. The
23 Standard CCW license is
24 issued to residents of Los
25 Angeles County or to
26 residents of a particular city
27 within Los Angeles County.
28

3. Disputed, the
only category is
law abiding
citizen, who has
passed a
background
check, received
proper training,
and been the
victim of a
crime.
(Deposition of
Larry Waldie at
Page 22).

3. The evidence cited
by Defendants
speaks for itself.
Plaintiff's cited
evidence fails to
dispute Defendants'
fact.

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4 The Judge CCW license is
5 issued to California judges,
6 full-time commissioners,
7 and to federal judges and
8 magistrates of the federal
9 courts. The Reserve Police
10 Officer CCW license may be
11 issued to reserve police
12 officers appointed pursuant
13 to California Penal Code §
14 830.6.

15 Exh. A, Waldie Decl. ¶ 3.
16 4. If an applicant resides
17 in an incorporated city not
18 policed by the LASD, the
19 applicant must apply to the
20 chief of police of their city
21 of residence for a concealed
22 weapons license and have
23 such application acted upon.
24 Within 60 days after a denial
25 of such application, such
26 city resident may file a
27 separate application with the
28

4. LASD does not
exercise
discretion,
LASD. Has a
policy of
requiring all
permit holders
to be victims of
a crime as a
matter of policy
and no permit
will issue unless

4. Plaintiff's cited
evidence fails to
dispute Defendants'
fact.

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4 LASD, attaching a copy of
5 the application denied by the
6 chief of police. The LASD
7 will exercise independent
8 discretion in granting or
9 denying licenses to such
10 person but may review,
11 consider, and give weight to
12 the grounds upon which
13 such denial was made.

14 Exh. A, Waldie Decl. ¶ 4.
15 5. California Penal Code
16 sections 12050-12054 set
17 forth the general criteria that
18 CCW applicants must meet.
19 Applicants must be of good
20 moral character, be a
21 resident of, or spend
22 substantial time in the
23 County they apply in, take a
24 firearms course, and
25 demonstrate good cause for
26 the license.

27 Exh. A, Waldie Decl. ¶ 5.
28

the applicant has
been the victim
of a crime.
(Deposition of
Larry Waldie at
page 22).

5. Undisputed for
purposes of this
motion.

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4 6. The issuance of
5 licenses enabling a private
6 citizen to carry a CCW is of
7 great concern to the LASD.
8 The LASD's overriding
9 policy is that no CCW
10 license should be granted
11 merely for the personal
12 convenience of the
13 applicant. No position or
14 job application in itself shall
15 constitute good cause for the
16 issuance, or for the denial,
17 of a CCW license.
18 Exh. A, Waldie Decl. ¶ 6.

6. Disputed,
LASD is not
familiar with
any current case
law and has not
reviewed their
policy in the
past 7 years to
reflect changes
in the law.
(Deposition of
Larry Waldie at
Page 4)

6. Plaintiff's cited
evidence fails to
dispute Defendants'
fact.

20 7. The LASD defines
21 "good cause" under
22 California Penal Code
23 section 12050 as requiring
24 convincing evidence of a
25 clear and present danger to
26 life or of great bodily harm
27 to the applicant, his spouse

7. LASD requires
as an element of
"good cause"
that the
applicant be a
victim of a
crime as a
matter of policy

7. Plaintiff's cited
evidence fails to
dispute Defendants'
fact. Defendants'
evidence speaks for
itself.

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4 or dependent child, which
5 cannot be adequately dealt
6 with by existing law
7 enforcement resources and
8 which danger cannot be
9 reasonably avoided by
10 applicant's carrying of a
11 concealed firearm.

12 Exh. A, Waldie Decl. ¶ 6.

13 8. Each application is
14 individually reviewed for
15 cause. The LASD's
16 definition of good cause has
17 been in existence since
18 Undersheriff Waldie began
19 reviewing CCW applications
20 in 2005. It is the
21 Undersheriff's
22 understanding that this
23 definition of good cause, or
24 one similar to it, is utilized
25 by many other counties
26 within California, including
27 San Diego.

and no permit
will issue unless
the applicant has
been the victim
of a crime.

(Deposition of
Larry Waldie at
Page 22).

8. Disputed.
Sacramento
accepts "self-
defense" San
Diego requires
only an
articulable need,
but LASD
requires that the
applicant be a
victim of a
crime.

(Deposition of
Larry Waldie at
Page 22).

8. Plaintiff's cited
evidence fails to
dispute Defendants'
fact.

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4 Exh. A, Waldie Decl. ¶ 6
5 9. In evaluating whether
6 an applicant has presented
7 "convincing evidence of a
8 clear and present danger to
9 life or of great bodily harm
10 to the applicant, his spouse
11 or dependent child, which
12 cannot be adequately dealt
13 with by existing law
14 enforcement resources and
15 which danger cannot be
16 reasonably avoided by
17 applicant's carrying of a
18 concealed firearm," an
19 applicant's stated reason of
20 self-defense is not enough.

21 Exh. A, Waldie Decl. ¶ 7
22 10. The applicant must
23 demonstrate a credible threat
24 of violence which would
25 justify the need to possess a
26 concealed weapon. If an
27 applicant claims that he or
28

9. LASD requires
as an element of
"good cause"
that the
applicant be a
victim of a
crime as a
matter of policy
and no permit
will issue unless
the applicant has
been the victim
of a crime.
(Deposition of
Larry Waldie at
Page 4).

10. Undisputed for
purposes of this
motion.

9. Plaintiff's cited
evidence fails to
dispute Defendants'
fact.

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4 she has been threatened, the
5 LASD looks for
6 documentation of that threat,
7 such as police reports or
8 other evidence.

9 Exh. A, Waldie Decl. ¶ 7

10 11. One of the purposes
11 for the LASD's policy is to
12 protect against gun violence
13 to the community at large,
14 as well as to protect officers
15 conducting law enforcement
16 operations on the streets.

17 Exh. A, Waldie Decl. ¶ 8.

18 12. Gun violence is a
19 problem throughout the
20 State of California and Los
21 Angeles County is no
22 exception. The vast
23 majority of homicides in Los
24 Angeles County are
25 committed with the use of
26 guns. Handguns are of
27 particular concern because
28

11. Undisputed as to
the purpose, but
disputed that
there is any
relationship
between the
policy and the
goal.

12. Plaintiff objects
to this fact as
irrelevant since
it has nothing to
do with CCW
holders.

11. Plaintiff fails to
provide any
evidence to dispute
Defendants' fact.

12. Plaintiff fails to
provide any
evidence to dispute
Defendants' fact.
The evidence is
relevant to
Defendants' policy.

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4 they are much more likely to
5 be used than shotguns and
6 rifles. Because handguns
7 are small, easy to conceal,
8 and deadly at short range,
9 they are of paramount
10 concern and danger.

11 Further, most of the violent
12 acts committed in this
13 County involving the use of
14 guns are by gang members.
15 Exh. A, Waldie Decl. ¶ 8;
16 see also Exh, B, Zimring
17 Decl., ¶¶ 3-6.

18 13. The presence of more
19 guns on the streets of Los
20 Angeles County creates
21 many problems for law
22 enforcement officers.
23 Officers are often charged
24 with monitoring public
25 gatherings as well as with
26 breaking up public
27 nuisances. Officers must act
28

13. Plaintiff objects
to this fact as
irrelevant since
it has nothing to
do with CCW
holders.

13. Plaintiff fails to
provide any
evidence to dispute
Defendants' fact.
The evidence is
relevant to
Defendants' policy.

<u>1 Moving Party's Undisputed</u>	<u>Opposing Party's</u>	<u>Moving Party's</u>
<u>2 Material Facts and</u>	<u>Response and</u>	<u>Rebuttal and</u>
<u>3 Supporting Evidence</u>	<u>Supporting Evidence</u>	<u>Supporting Evidence</u>
4 quickly whenever a		
5 disturbance occurs. Often		
6 times, this involves isolating		
7 one or two problem		
8 individuals. However, if		
9 multiple persons within a		
10 crowd are carrying		
11 concealed weapons, this		
12 creates an increased		
13 likelihood that guns will be		
14 brandished or used. Thus,		
15 the increased presence of		
16 guns creates not only		
17 increased safety problems		
18 for officers but also for		
19 members of the community		
20 at large.		
21 Exh. A, Waldie Decl. ¶ 9;		
22 Exh., B, Zimring Decl., ¶¶		
23 3-6.		
24 14. It is the LASD's	14. Plaintiff objects	14. Plaintiff fails to
25 position that increasing the	as this is not a	provide any
26 numbers of concealed	fact, but an	evidence to dispute
27 weapons in the community	opinion that is	Defendants' fact.
28		

<u>1 Moving Party's Undisputed</u>	<u>Opposing Party's</u>	<u>Moving Party's</u>
<u>2 Material Facts and</u>	<u>Response and</u>	<u>Rebuttal and</u>
<u>3 Supporting Evidence</u>	<u>Supporting Evidence</u>	<u>Supporting Evidence</u>
4 increases the threat of gun	speculative and	
5 violence to the community at	lacks any	
6 large, to those who use the	foundation.	
7 streets and go to public		
8 accommodations, and to law		
9 enforcement officers		
10 patrolling the streets.		
11 Further, the increased		
12 presence of concealed		
13 handguns make law		
14 enforcement operations		
15 more difficult thus taking		
16 away valuable resources		
17 which would be better used		
18 conducting law enforcement		
19 operations.		
20 Exh. A, Waldie Decl. ¶ 10;		
21 Exh. B, Zimring Decl., ¶¶		
22 3-6.		
23 15. Los Angeles County's	15. Undisputed for	
24 "good cause" requirement is	purposes of this	
25 intended to drastically	motion.	
26 restrict the number of		
27 persons who are secretly		
28		

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4 armed in the County.
5 Exh. A, Waldie Decl. ¶ 10;
6 see also Exh. B, Zimring
7 Decl., ¶¶ 3-6.

8 16. At present, there are
9 approximately 400
10 concealed weapons permits
11 that were issued by the
12 LASD. The Undersheriff is
13 informed and believe that
14 the County's Chief
15 Executive Office has
16 estimated that the population
17 of Los Angeles County as of
18 January 2010 was
19 10,441,080 people.

20 Exh. A, Waldie Decl. ¶ 11.
21 17. The LASD reviewed
22 Mr. Birdt's first application
23 and determined that he
24 failed to show good cause as
25 required by LASD policy,
26 and as defined above.
27 LASD has not yet responded
28

16. Undisputed for
purposes of this
motion.

17. Undisputed for
purposes of this
motion.

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4 to Mr. Birdt's second
5 application as of the date of
6 the Undersheriff's
7 Declaration.

8 Exh. A, Waldie Decl. ¶ 15
9 and exhibits 1-4 thereto;
10 Exh. C, Birdt Depo., p.
11 111:1-10.

12 18. In his initial
13 application to the LASD,
14 Plaintiff states as
15 justification: Details of
16 Reason for Applicant
17 Desiring a CCW License:
18 Volunteer LA Superior
19 Court Judge. Frequent Las
20 Vegas Travel with large
21 sums of cash.
22 Unprotected/Unsecured
23 office with threat against
24 employer. Representation
25 of victims of violence, abuse
26 + murder.

27 Exh, A, Waldie Decl., exh.
28

18. Undisputed,
though
incomplete.

18. Plaintiff fails to
provide any
evidence to dispute
Defendants' fact.

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4 2 thereto, p. 13.
5 19. Birdt never spoke
6 with anyone from the LAPD
7 to report threats against him
8 and to his knowledge, no
9 report was ever generated.
10 Exh. C, Birdt Depo., p.
11 31:15-p. 33:19; p. 42:4-p.
12 45:10; p. 50:10-17.

19. Undisputed for
purposes of this
motion.

13 20. Birdt was never
14 threatened in his capacity as
15 a volunteer judge.
16 Exh. C, Birdt Depo. p.
17 33:23-24; p. 37:2-7.

20. Plaintiff was
never
"expressly"
threatened. As
a Judge,
advocate, GAL
and High Profile
litigation
attorney, is
exposed to a
greater risk of
harm.
(Declaration of
Jonathan Birdt
attached hereto

20. Plaintiff's evidence
fails to dispute
Defendants' fact that
Plaintiff was never
threatened.

28

<p>1 <u>Moving Party's Undisputed</u> 2 <u>Material Facts and</u> 3 <u>Supporting Evidence</u></p>	<p><u>Opposing Party's</u> <u>Response and</u> <u>Supporting Evidence</u></p>	<p><u>Moving Party's</u> <u>Rebuttal and</u> <u>Supporting Evidence</u></p>
<p>4 5 21. Birdt was never 6 specifically threatened as a 7 result of his position on the 8 juvenile dependency court 9 panel. 10 Exh. C, Birdt Depo., p. 11 38:5-7; p. 39:8-p. 40:8. 12 13 14 15 16 17 18 19 20</p>	<p>as Paragraph 2). 21. Plaintiff was never "expressly" threatened. As a Judge, Advocate, GAL and High profile litigation attorney, is exposed to a greater risk of harm. (Declaration of Jonathan Birdt attached hereto at paragraph 2)</p>	<p>21. Plaintiff fails to provide any evidence that disputes Defendants' fact.</p>
<p>21 22. Birdt himself has 22 never been expressly 23 threatened with harm at all. 24 Exh. C, Birdt Depo., pp. 25 68:5-p. 71:1 26 27 28</p>	<p>22. Disputed, see plaintiff's deposition. As a Judge, Advocate, GAL and High Profile litigation</p>	<p>22. Plaintiff fails to provide any evidence that disputes Defendants' fact.</p>

<p>1 <u>Moving Party's Undisputed</u> 2 <u>Material Facts and</u> 3 <u>Supporting Evidence</u></p>	<p><u>Opposing Party's</u> <u>Response and</u> <u>Supporting Evidence</u></p>	<p><u>Moving Party's</u> <u>Rebuttal and</u> <u>Supporting Evidence</u></p>
	<p>attorney, is exposed to a greater risk of harm. (Declaration of Jonathan Birdt attached hereto at paragraph 2).</p>	
<p>12 23. In 2009, there were 13 126,352 adults arrested by 14 the LASD, and 46,329 15 felony arrests. 16 Exh. D, LASD Arrest 17 Statistics 2009, 18 www.lasd.org</p>	<p>23. Plaintiff objects to this fact as irrelevant since it has nothing to do with CCW holders.</p>	<p>23. The evidence relates to the opinion offered by Defendants' expert and is thus relevant.</p>
<p>19 24. In that same year, 20 23,001 LASD arrests 21 involved those with prior 22 felony convictions. 23 Exh. E, Enbom Decl. ¶3.</p>	<p>24. Plaintiff objects to this fact as irrelevant since it has nothing to do with CCW holders.</p>	<p>24. The evidence relates to the opinion offered by Defendants' expert and is thus relevant.</p>

CONCLUSIONS OF LAW

1
2
3 1. California Penal Code § 12050(a)(1)(A) authorizes a county sheriff to
4 issue a license to carry a concealed pistol, revolver, or other firearm capable of
5 being concealed upon the person (hereinafter "CCW permit") upon the existence
6 of good cause, and provided that the applicant meets other criteria provided for in
7 the Penal Code.

8 2. Penal Code § 12050 gives extremely broad discretion to the sheriff
9 concerning the issuance of concealed weapons licenses, and explicitly grants
10 discretion to the issuing officer to issue or not issue a license to applicants meeting
11 the minimum statutory requirements. *Gifford v. City of Los Angeles*, 88
12 Cal.App.4th 801, 805 (2001).

13 3. In *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783,
14 2788, 2822 (2008) and *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3026,
15 3044 (2010), the United States Supreme Court held that the Second Amendment
16 protects an individual's right to possess firearms in the home for self-defense.

17 4. The right to keep and bear arms is not a right to keep and carry any
18 weapon whatsoever in any manner whatsoever and for whatever purpose. *Heller*,
19 128 S.Ct. at 2816.

20 5. Penal Code sections 12025(a) and 12031(a) have been upheld in
21 California against a Second Amendment challenge after *Heller*. *People v. Flores*,
22 169 Cal. App. 4th 568, 575-576 (2008); *People v. Yarbrough*, 169 Cal. App. 4th
23 303, 312-314 (2008).

24 6. Unlike possession of a gun for protection within a residence, carrying
25 a concealed firearm presents a recognized "threat to public order," and is
26 "prohibited as a means of preventing physical harm to persons other than the
27 offender." *Yarbrough*, 169 Cal.App.4th at 314, citing *People v. Hale*, 43
28 Cal.App.3d 353, 356 (1974).

1 7. A person who carries a concealed firearm on his person or in a
2 vehicle, which permits the individual immediate access to the firearm but impedes
3 others from detecting its presence, poses an ‘imminent threat to public safety. *Id.*
4 at 313-314.

5 8. Intermediate scrutiny requires that the challenged statute or regulation
6 “be substantially related to an important governmental objective.” *Clark v. Jeter*,
7 486 U.S. 456, 461 (1988).

8 9. Maintaining public safety and preventing crime are clearly important
9 (if not paramount) government interests and the regulation of concealed firearms is
10 a critical factor in accomplishing that interest. *See, e.g., United States v. Salerno*,
11 481 U.S. 739, 750 (1987).

12 10. The denial of a concealed weapons permit is not a deprivation of the
13 right to travel. *See Pencak v. Concealed Weapons Licensing Bd.*, 872
14 F.Supp.410, 414 (E.D. Mich. 1994).

15 11. When a government’s action does not involve a suspect classification
16 or implicate a fundamental right, even intentional discrimination will survive
17 constitutional scrutiny for an equal protection violation as long as it bears a
18 rational relation to a legitimate state interest. *New Orleans v. Dukes*, 427 U.S.
19 297, 303-04 (1976); *Lockary v. Kayfetz*, 917 F.2d 1150, 1155 (9th Cir. 1990).

20 DATED: May 2, 2011

Respectfully submitted,

21 OFFICE OF THE COUNTY COUNSEL

22 By


23 JENNIFER A.D. LEHMAN

24 Principal Deputy County Counsel

25 Attorneys for Defendants

26 LOS ANGELES COUNTY SHERIFF'S
27 DEPARTMENT & LEE BACA
28