

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

DAVID R. DAVIS, JACOB DANIEL HILL,  
BRIAN GOLDSTEIN, PAUL COHEN, JILL  
BROWN, CHRIS BUTLER, SCOTT AUSTIN,  
ERIC FEDER, AND LISA SIEGEL,

Case No. B241631

Plaintiffs and Appellants,

v.

CITY OF LOS ANGELES, CITY OF LOS  
ANGELES POLICE DEPARTMENT, POLICE  
CHIEF CHARLIE BECK,

Defendants and Respondents.

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Los Angeles County Superior Court, Case No. BS131915  
The Honorable James C. Chalfant

**APPELLANT'S MOTION TO AUGMENT THE RECORD AND  
DECLARATION OF JOSHUA R. DALE IN SUPPORT**

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**Attorneys for Plaintiffs/Appellants**

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BRIAN GOLDSTEIN, PAUL COHEN, JILL  
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**Attorneys for Plaintiffs/Appellants**

Appellants David R. Davis, Jacob Daniel Hill, Brian Goldstein, Paul Cohen, Scott Austin, and Eric Feder hereby move this Court to augment the record to include pleadings in this case that were not included from Appellant's Appendix, filed on February 13, 2013. This request is made pursuant to California Rules of Court, rule 8.155(a) and Local Rule 2, and is based on the attached Memorandum and Declaration of Joshua R. Dale.

### MEMORANDUM

California Rules of Court, rule 8.155, subdivision (a) states that on a motion of a party, the appellate court may order the record augmented to include any document filed in the case in superior court. Pursuant to this Court's local rule, Local Rule 2, subdivision (b), an appellant's request for augmentation of the record must occur within 40 days of filing the record.

Here, Appellant's Appendix was filed on February 13, 2013 and consisted of eight volumes of documentation that had previously been part of the trial court record. Appellants filed their Motion for Judicial Notice concurrently with their Opening Brief and Appendix. (See Declaration of Joshua R. Dale, ¶ 2.)

On February 26, 2013, Respondents served by mail their Non-Opposition and Opposition to Respondents' Motion for Judicial Notice. In that Opposition brief, Respondents claimed that certain of the documents Appellants sought judicial notice of had not been judicially noticed by the trial court, including the 1993 LAPD CCW Application Form ("1993 Form.") (See Non-Opposition and Opposition to Motion for

Judicial Notice, at 6.) This claim was false. (Dale Decl., ¶ 3.)

During the litigation in the trial court, Appellants successfully moved to compel further responses from Respondents to written discovery. As part of that motion, on November 17, 2011, Appellants requested the trial court take judicial notice of the 1993 Form. (Dale Decl., ¶ 4, & Exh. “A”.) In granting Appellants’ discovery motion, the trial court granted the request for judicial notice as to the 1993 Form. (Dale Decl., ¶ 7, Exh. “C”.)

In opposing Appellants’ discovery motion, Respondents filed a written opposition on November 30, 2011. (Dale Decl., ¶ 5, & Exh. “B”.) The opposition brief did not include any opposition to the admissibility or relevance of the 1993 Form, and no separate written opposition to the request for judicial notice was made by Respondents at that time. (Dale Decl., ¶ 5, & Exh. “B”.) No objection was made at oral argument on the motion, either. (Dale Decl., ¶ 6.)

The discovery motion and its briefing had been a minor procedural matter generated in an otherwise voluminous trial court record. In light of Respondents’ prior refusal to contest the admissibility, authenticity, or relevance of any LAPD-generated documents presented by the parties to the trial court during the litigation below (including the 1993 Form), it never occurred to Appellants that the record in this appeal should be further burdened with copies of discovery motions. As the underlying substance of those discovery motions had subsequently been made part of the trial court record, again,

including the 1993 Form, Appellants never anticipated that Respondents would later object to judicially noticing documents that they had waived such objections to noticing at the trial court level. Appellants also did not reasonably anticipate that Respondents would take issue with the fact that the 1993 Form had been judicially noticed by the trial court, especially given that it had been *expressly noticed* by the trial court. (Dale Decl., ¶ 8.)

But unfortunately Respondents did object to those previously permissible and admitted documents. Thus, given this Court's February 27, 2013 Order on Appellant's Request for Judicial Notice disallowing judicial notice for the 1993 Form (based, presumably, on Respondents' claims in opposition thereto that the 1993 Form had not been previously judicially noticed) the trial level discovery briefing and trial court's order on the same unfortunately became relevant and a necessary part of the appellate record.

Accordingly, Appellants seek to augment the appellate record with the following briefs and adopted tentative ruling:

1. Request for Judicial Notice in Support of Plaintiff/Petitioner's Motion to Compel Further Responses to Requests for Production of Documents, Set One, from (1) City of Los Angeles, (2) Los Angeles Police Department, & (3) LAPD Chief Charlie Beck.
2. Defendants'/Respondents' Opposition to Plaintiff/Petitioner Scott Austin's Motion to Compel Further Responses to Request for Production of Documents, Set One, from (1) City of Los Angeles, (2) Los Angeles Police Department, & (3) LAPD Chief Charlie Beck.
3. Adopted Tentative Ruling on Motion to Compel Further Responses granting Plaintiff/Petitioner's Joint Motion to Compel Further Responses to

Requests for Production of Documents, Set One, from (1) City of Los Angeles, (2) Los Angeles Police Department, & (3) LAPD Chief Charlie Beck.<sup>1</sup>

(Dale Decl., ¶ 9.)

Nos. 1 & 3 above are sought to be added because they evidence the fact that 1993 Form was judicially noticed and admitted by the trial court. No. 2 above is sought to be added because it evidences that Respondents had an opportunity to object to judicially noticing the 1993 Form and waived such objection.

Copies of the above-listed documents are attached to this motion. Pursuant to Local Rule 2, subdivision (h), multiple documentation must be consecutively numbered. For the convenience of the parties and this court, the attached documentation has been consecutively numbered with Bates numbers AA001603 to AA001630, to be more readily inserted at the end of Appellants' current appendix, should this motion be granted. (Dale Decl., ¶ 10.)

“The reason behind the rules for augmentation of a record is to make the record conform to the truth, so that an appellate court, in passing on the acts of a trial court, can have before it the proceedings upon which the trial court based its action.” (*Lipka v. Lipka* (1963) 60 Cal.2d 472, 480.) “Where the appropriate record is missing or incomplete, counsel must see that the defect is remedied, by requesting augmentation or correction of the appellate record (Cal. Rules of Court, rule 12) or by other appropriate

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<sup>1</sup> The portion of the order granting judicial notice as to the 1993 Form is contained within footnote 2 of the trial court's adopted tentative.

means (see, e.g., Cal.Rules of Court, rule 10(c)).” (*People v. Barton* (1978) 21 Cal.3d 513, 520.)<sup>2</sup>

Here, Appellants immediately brought this motion in good faith upon discovery that Respondents were contesting the issue of whether judicially noticed documents at the trial court level had, in fact, been judicially noticed by the trial court. (Dale Decl., ¶ 11.) This situation is unlike *Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824 where two requests to augment the record were both denied because “Appellant’s first request was filed 79 days late, presented no excuse for the late filing, and failed to demonstrate that the documents for which augmentation was sought actually were lodged or filed with the trial court. The second request was filed 269 days late and had the same deficiencies.” (*Id.* at 827, fn. 1.) (Cf. *Courtell v. McEachen* (1956) 147 Cal.App.2d 219, 221 [a portion of application to augment the record was denied because “appellants were not taken by surprise nor ha[d] they shown any excusable neglect or other good cause to secure the relief prayed for.”].)

Because Respondents had not previously contested this issue in any way at the trial court level, and had effectively waived any such objection, Appellants reasonably could not have known that Respondents would reverse course in such a manner on appeal. Thus, Appellants can demonstrate sufficient surprise and a lack of dilatoriness in bringing this motion.

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<sup>2</sup> Former rule 12 was subsequently renumbered to rule 8.155, and former rule 10 was renumbered to rule 8.147.

**CONCLUSION**

By this motion, Appellants respectfully request that the record be augmented to include these documents.

Dated: March 13, 2013

**MICHEL & ASSOCIATES, P.C.**

By:   
\_\_\_\_\_

Joshua R. Dale  
Attorney for Appellants David R. Davis,  
Jacob Daniel Hill, Brian Goldstein, Paul  
Cohen, Scott Austin, and Eric Feder



## DECLARATION OF JOSHUA R. DALE

I, Joshua R. Dale, declare:

1. I am an attorney at law licensed to practice in all courts of the State of California. I am an attorney at the law firm of Michel & Associates, P.C., appellate counsel for Appellants David R. Davis, Jacob Daniel Hill, Brian Goldstein, Paul Cohen, Scott Austin, and Eric Feder. I have personal knowledge of each fact stated in this declaration.

2. On February 13, 2013 Appellants filed their Opening Brief and Appellant's Appendix. Appellant's Appendix consisted of eight volumes of documentation. Appellants filed their Motion for Judicial Notice concurrently with their Opening Brief and Appendix.

3. On February 26, 2013, Respondents served by mail their Non-Opposition and Opposition to Respondents' Motion for Judicial Notice. In that Opposition brief, Respondents claimed that certain of the documents Appellants sought judicial notice of had not been judicially noticed by the trial court, including the 1993 LAPD CCW Application Form ("1993 Form."). (See Non-Opposition and Opposition to Motion for Judicial Notice, at 6.) This claim was false. It had been judicially noticed at the trial court level and was submitted, without objection, as part of the trial record filed in support of Appellants' trial court brief.

4. In the trial court, Appellants successfully moved to compel further

responses from Respondents to written discovery and, as part of that motion to compel, Appellants requested that the trial court take judicial notice of the 1993 Form on November 17, 2011. A true and correct copy of Appellants' Request for Judicial Notice in Support of Plaintiff/Petitioner's Motion to Compel Further Responses to Requests for Production of Documents, Set One, from (1) City of Los Angeles, (2) Los Angeles Police Department, & (3) LAPD Chief Charlie Beck, and the accompanying 1993 Form, is attached hereto as Exhibit "A."

5. In opposing Appellants' discovery motion, Respondents filed a written opposition on November 30, 2011. The opposition brief did not include any opposition to the admissibility or relevance of the 1993 Form, and no separate written opposition to the request for judicial notice was made by Respondents at that time. A true and correct copy of Defendants'/Respondents' Opposition to Plaintiff/Petitioner's Motion to Compel Further Responses to Requests for Production of Documents, Set One, from (1) City of Los Angeles, (2) Los Angeles Police Department, & (3) LAPD Chief Charlie Beck, is attached hereto as Exhibit "B."

6. The hearing on the discovery motion took place on December 13, 2011, and again, Respondents did not make any oral objections to the admissibility or relevance of such 1993 Form at the hearing. (See, *e.g.*, Reporter's Transcript ("RT") at 9:1 - 14:11.)

7. The trial court granted Appellants' discovery motion and granted Appellants' request for judicial notice as to the 1993 Form. The portion of the order

granting judicial notice as to the 1993 Form is contained within footnote 2 of the trial court's adopted tentative ruling. A true and correct copy of the adopted tentative ruling on Appellants' discovery motion is attached hereto as Exhibit "C."

8. In light of Respondents' prior refusal to contest the admissibility, authenticity, or relevance of any LAPD-generated documents presented by the parties to the trial court during the litigation below (including the 1993 Form), it never occurred to me or my clients that the record on appeal should be burdened by copies of the briefs filed on a discovery motion which had been a minor procedural matter. Because the underlying substance of those discovery motions – the documents themselves – had been subsequently made part of the trial record, including the 1993 Form, I never anticipated that Respondents would later object to judicially noticing documents that they had waived such objections to noticing at the trial court level.

9. Therefore, Appellants seek to augment the record with the following briefs and adopted tentative ruling:

- a. Request for Judicial Notice in Support of Plaintiff/Petitioner's Motion to Compel Further Responses to Requests for Production of Documents, Set One, from (1) City of Los Angeles, (2) Los Angeles Police Department, & (3) LAPD Chief Charlie Beck.
- b. Defendants'/Respondents' Opposition to Plaintiff/Petitioner Scott Austin's Motion to Compel Further Responses to Request for

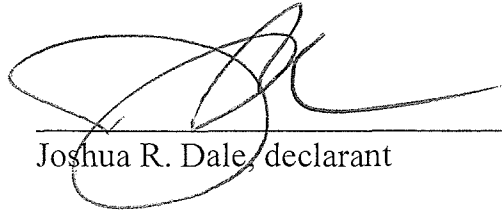
Production of Documents, Set One, from (1) City of Los Angeles, (2) Los Angeles Police Department, & (3) LAPD Chief Charlie Beck.

- c. Adopted Tentative Ruling on Motion to Compel Further Responses granting Plaintiff/Petitioner's Joint Motion to Compel Further Responses to Requests for Production of Documents, Set One, from (1) City of Los Angeles, (2) Los Angeles Police Department, & (3) LAPD Chief Charlie Beck.

10. Copies of the above-listed documents are attached to this motion, and are consecutively bates stamped AA001603 to AA001630 to be easily augmented and inserted at the end of Appellants' current Appendix. Additionally, the above-listed documents were all either presented to the trial court or generated by the trial court. (RT at 9:1 - 14:11.)

11. This motion is not brought for the purpose to cause undue hardship or delay to the court or the parties. Rather, Appellants immediately brought this motion upon learning, via receipt of Respondents' Non-Opposition and Opposition to Motion for Judicial Notice, that Respondents were contesting the issue of whether judicially noticed documents at the trial court level had, in fact, been judicially noticed by the trial court. Further, this motion brought approximately 28 days after the filing of the record, has been brought within the 40-day time period required by Local Rule 2, subdivision (b).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 13, 2013, at Long Beach, California. If called to testify, I would testify competently to the above facts.



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Joshua R. Dale, declarant

**EXHIBIT A**

1 C. D. Michel - SBN 144258  
Joshua R. Dale - SBN 209942  
2 Tamara M. Rider - SBN 267951  
**MICHEL & ASSOCIATES, P.C.**  
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424 South Beverly Drive  
Beverly Hills, California 90212-4414  
Tel: (310)553-8533

**ORIGINAL FILED**  
NOV 17 2011  
**LOS ANGELES  
SUPERIOR COURT**

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11 Attorneys for Plaintiffs/Petitioners

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF LOS ANGELES  
14 CENTRAL DISTRICT

15 DAVID R. DAVIS, *et al.* ) CASE NO.: BS131915  
16 Plaintiffs and Petitioners, )  
17 vs. ) **REQUEST FOR JUDICIAL NOTICE IN**  
18 CITY OF LOS ANGELES, *et al.* ) **SUPPORT OF PLAINTIFF/PETITIONER'S**  
19 Defendants and Respondents. ) **MOTION TO COMPEL FURTHER**  
20 ) **RESPONSES TO REQUESTS FOR**  
 ) **PRODUCTION OF DOCUMENTS, SET**  
 ) **ONE, FROM (1) CITY OF LOS ANGELES,**  
 ) **(2) LOS ANGELES POLICE**  
 ) **DEPARTMENT, & (3) LAPD CHIEF**  
 ) **CHARLIE BECK**

21 Date: December 13, 2011  
22 Time: 8:30 a.m.  
Location: Dept. 85

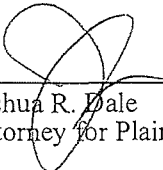
23 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:  
24 PLEASE TAKE NOTICE that Plaintiff and Petitioner Scott Austin requests that the Court  
25 take judicial notice, pursuant to Evidence Code sections 451-453, of the following document in  
26 support of his motion to compel further responses to Petitioner's Request for Production, Set One,  
27 from Defendants and Respondents (1) City of Los Angeles, (2) Los Angeles Police Department  
28 ("LAPD"), and (3) LAPD Chief Charlie Beck:

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1. *Los Angeles Police Department Concealed Weapon License Application,*  
LAPD TEMP FORM 331 (9/93), a copy of which is attached hereto as Exhibit "A".

Dated: November 17, 2011

MICHEL & ASSOCIATES, P.C.

  
\_\_\_\_\_  
Joshua R. Dale  
Attorney for Plaintiffs/Petitioners



**EXHIBIT A**

**AA001605**

**LOS ANGELES POLICE DEPARTMENT  
CONCEALED WEAPON LICENSE APPLICATION**

LAST NAME (PRINT IN INK OR TYPE)		FIRST NAME			MIDDLE NAME		
RESIDENCE ADDRESS		CITY/STATE		ZIP CODE	RESIDENCE PHONE		
BUSINESS ADDRESS		CITY/STATE		ZIP CODE	BUSINESS PHONE		
OCCUPATION	SEX	RACE	HEIGHT	WEIGHT	COLOR HAIR	COLOR EYES	
DATE OF BIRTH	PLACE OF BIRTH				CITIZENSHIP		
SOCIAL SECURITY NO.			DRIVER'S LICENSE/CALIF. ID NO.				

I CERTIFY THAT I AM KNOWLEDGEABLE IN THE USE AND SAFE HANDLING OF THE NOTED WEAPON(S), AS INDICATED BY THE FOLLOWING: (CHECK ALL APPLICABLE BOXES)

- Completion of training from an Advanced Officer Training Institute approved by the California State Bureau of Collection and Investigative Services.
- Completion of Firearm Safety Training from Department of Fish and Game or other recognized association; i.e., National Rifle Association.
- Completion of Firearm Safety Training from a private firearms instructor.
- Completion of Firearm Training in the military service.
- Other (Attach explanation).

As a condition of issuance, I agree to indemnify the Chief of Police, the City of Los Angeles and its employees from any lawsuits associated with the use of this permit, the privileges received, and/or any actions which I may take pursuant thereto.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**ADMONITION**

On October 9, 1986, the California State Supreme Court ruled, in C.B.S., INC. VS BLOCK, ET. AL., that information contained in this application is generally a matter of public record and, pursuant to the Public Records Act, a copy of the application will be provided to anyone who requests it.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Concealed Weapon License Application, page 2

- |                       |     |                       |    |  |
|-----------------------|-----|-----------------------|----|--|
| <input type="radio"/> | YES | <input type="radio"/> | NO |  |
| <input type="radio"/> |     | <input type="radio"/> |    | Do you now have, or have you ever had, a concealed weapons permit?   |
|                       |     |                       |    | Agency: _____ Date: _____  |
| <input type="radio"/> |     | <input type="radio"/> |    | If the conditions under which this permit is issued should no longer exist, do you promise to notify the Chief, and surrender the permit if necessary?   |
| <input type="radio"/> |     | <input type="radio"/> |    | 5 Have you ever been arrested for a crime (Felony, Misdemeanor, Infraction, Traffic Warrant, Accident)? If so, list the agency, date, charge, and disposition of the incident. (Use addition sheets if necessary). |
| <input type="radio"/> |     | <input type="radio"/> |    | 2 Are you currently on parole or probation from any state or jurisdiction for a conviction of any criminal offense?  |
| <input type="radio"/> |     | <input type="radio"/> |    | Are you know, or within the past three years been, under any restraining orders from any courts?   |
| <input type="radio"/> |     | <input type="radio"/> |    | Are you now, or were you ever, addicted to the use of illegal narcotics or alcohol?  |
| <input type="radio"/> |     | <input type="radio"/> |    | Have you received treatment for drug or alcohol-related abuse or illness?  |
| <input type="radio"/> |     | <input type="radio"/> |    | Have you ever suffered from or had occasions to be hospitalized for mental or emotional problems?  |
| <input type="radio"/> |     | <input type="radio"/> |    | Are you currently under the care of a doctor for any mental or physical illness?   |

Set forth a statement of facts from which the Chief of Police could establish that your needs are within the criteria used for the issuance of a concealed weapons permit, and why in your opinion there are no other means whereby your personal safety can be assured. (Use additional sheets if necessary; attach whatever supporting documents that may assist in establishing justification for this request).

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I do hereby agree to allow a background investigation of myself, and the contact of any person who may aid this investigation to determine whether a concealed weapon permit should or should not be issued, including my employer.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

I hereby certify under penalty of perjury that the answers I have given herein are true and correct to the best of my knowledge and belief. I understand and agree to the provisions and conditions herein or otherwise imposed, and I have read and understand all the applicable statutes made and provided concerning the license to carry a concealed firearm in the State of California.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**AA001607**

## CONCEALED WEAPON PERMIT POLICY

In accordance with Penal Code Section 12050, and subject to Department procedure, any resident of the City of Los Angeles may obtain an application for authorization to carry a concealed weapon. Residents may obtain these applications from any community police station, or Parker Center (150 North Los Angeles Street). All applications shall be returned to Parker Center for processing.

The issuance of permits enabling private citizens to carry concealed weapons is of great concern to our Department. Our overriding policy is that no concealed weapons permit should be granted merely for the personal convenience of the applicant. No position or job classification in itself should constitute good cause for the issuance or denial of a permit. Each application shall be individually reviewed for cause.

Each applicant must demonstrate proof of residence and good character. In addition, good cause for the purposes of Penal Code Section 12050 shall exist only if the following elements prevail:

- 1 Convincing evidence of a clear and present danger to life or great bodily harm to the applicant, his spouse, or dependent child;  
  
The danger cannot be adequately dealt with by existing law enforcement resources;  
  
The danger cannot reasonably be avoided by alternative measures; and  
  
The danger would be significantly mitigated by the carrying of a concealed firearm.
- 2 The applicant possesses a valid certificate from an advanced officer training institution approved by the California State Bureau of Collection and Investigative Services, attesting to the applicant's satisfactory completion of at least twenty-four hours of training. (Alternative proof of firearms proficiency may be submitted for review and possible acceptance in lieu of this certification).

The residency requirement will be fulfilled upon presentation of an approved, recognized identification card and at least one recent utility bill or rent receipt. The cause requirement will only be fulfilled by thoroughly justifying the applicant's need to the Chief of Police or his designee on the application form. The character requirement will be fulfilled by, but not limited to, a criminal history check and background investigation.

In addition, the Department may place special limitations further limiting the time, place, and the circumstances under which the permit is valid.

When each permit is issued, the general restrictions and any special limitations will be noted on the reverse side.

## CONCEALED WEAPON APPLICATION INSTRUCTIONS

Applicants are required to complete an application in support of a concealed weapons permit, as per the policy of the Office of the Chief of Police. The applicant is advised that all pages of the application are mandatory and must be completed thoroughly and correctly. If any part of the application is incomplete or incorrect, it shall be returned to the applicant.

The applicant shall include with his/her application, proof of residency within the City of Los Angeles. Proof of residency is defined as a copy of the following two items: a recognized California identification card and at least one recent utility bill or rent receipt showing the applicant's name and residence address.

The applicant is advised to read the enclosed concealed weapon permit policy and to address the cited criteria within the application. Any copies of crime reports or other evidence that the applicant wishes to provide as support of good cause may be attached to the application.

All applications and related materials should be returned to the following address:

LOS ANGELES POLICE DEPARTMENT  
DHD - GUN DETAIL  
150 N. LOS ANGELES STREET, #308  
LOS ANGELES, CA 90012

Upon return of the completed application, the Gun Detail, Detective Headquarters Division, will then investigate the application and forward the completed investigation to the Office of the Chief of Police for consideration.

Should the Chief decide to grant a permit, the applicant will be required to proceed to a licensed fingerprinting agency for the completion of two State of California fingerprint cards (Form # BID 7.5-90). The two completed fingerprint cards, along with a check/money order (made payable to the State of California, DOJ) in the amount of \$37.00, must be returned for processing through the Department of Justice, Criminal Records Section, as per state law, before the issuance of a permit.

The applicant shall meet all conditions and requirements so ordered by the Chief of Police before receiving any permit.

**AA001609**

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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On November 17, 2011, I served the foregoing document(s) described as

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF/PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE, FROM (1) CITY OF LOS ANGELES, (2) LOS ANGELES POLICE DEPARTMENT, & (3) LAPD CHIEF CHARLIE BECK**

on the interested parties in this action by placing

the original  
 a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

**"SEE ATTACHED SERVICE LIST"**

(BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on November 17, 2011, at Long Beach, California.

X (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.

Executed on November 17, 2011, at Long Beach, California.

(OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance.

Executed on November 17, 2011, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

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CLAUDIA AYALA

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“SERVICE LIST”

*ANTHONY MARIO ASSENZA, et al. v. THE CITY OF LOS ANGELES, et al.*

Carmen A. Trutanich, City Attorney  
Carlos De La Guerra, Managing City Attorney  
Debra L. Gonzalez, Assistant City Attorney  
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200 North Main Street  
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Beverly Hills, California 90212-4414

Co-Counsel

**EXHIBIT B**



1 CARMEN TRUTANICH, City Attorney - (SBN 86629)  
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8 Attorneys for Defendants/Respondents

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11	DAVID R. DAVIS, et al.,	)	CASE NO. BS 131915
12		)	
13	<i>Plaintiffs/Petitioners,</i>	)	DEFENDANTS'/RESPONDENTS'
14		)	OPPOSITION TO PLAINTIFF/PETITIONER
15	vs.	)	SCOTT AUSTIN'S MOTION TO COMPEL
16		)	FURTHER RESPONSES TO REQUEST
17	CITY OF LOS ANGELES, et al.,	)	FOR PRODUCTION OF DOCUMENTS,
18		)	SET ONE, FROM (1) CITY OF LOS
19	<i>Defendants/Respondents</i>	)	ANGELES, (2) LOS ANGELES POLICE
20		)	DEPARTMENT, AND (3) LAPD CHARLIE
		)	BECK; MEMORANDUM OF POINTS AND
		)	AUTHORITIES; DECLARATION OF
		)	DEBRA L. GONZALES
		)	Date: December 13, 2011
		)	Time: 8:30 a.m.
		)	Court: Dept. 85

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OPPOSITION TO MOTION TO COMPEL FURTHER RESPONSES  
 TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET 1



1 counsel explained why the objections were raised and Petitioner's counsel agreed to narrow  
2 the requests to certain types of documents. (Declaration of Debra L. Gonzales, ¶ 4)

3 With regard to the remaining three requests in dispute (Nos. 25, 26 and 27),  
4 Respondents' counsel explained that although she still firmly believed that Petitioner was not  
5 entitled to the discovery sought by those requests, Respondents would be willing to provide  
6 documents responsive to the requests pertaining to CCW permits issued by Chief Beck.  
7 (Gonzales Decl., ¶ 5) Counsel discussed their respective positions regarding which records  
8 the Court could properly consider in this writ action. Respondents' position was that only the  
9 LAPD's CCW policies and procedures and records pertaining to Chief Beck's consideration  
10 of the six petitioners' CCW applications were relevant. Petitioner's position was that the  
11 records pertaining to all the CCW applications submitted to the LAPD since the *Assenza*  
12 Judgment in 1995 were relevant even if they had been considered by former Chiefs of  
13 Police. (Gonzales Decl., ¶ 5) Given that Petitioner's counsel insisted that all documents  
14 responsive to Request Nos. 25, 26 and 27 must cover the period from 1995 to the present,  
15 the dispute unfortunately could not be resolved. Both parties agreed that Respondents'  
16 primary objection that the requests sought "information that is neither relevant nor  
17 reasonably calculated to lead to the discovery of admissible evidence" illustrated the  
18 fundamental disagreement between Petitioner and Respondents concerning what  
19 constitutes the proper record for the Court to review in this writ action. Therefore, both  
20 counsel agreed it would be beneficial to bring this fundamental divergence of views to the  
21 Court for guidance on the proper scope of discovery. (Gonzales Decl., ¶ 5)

## 22 II. PETITIONER'S REQUEST NOS. 25 AND 26

23 Request No. 25 seeks the production of "all DOCUMENTATION, WRITINGS, and/or  
24 COMPUTER DATA produced, generated, created, consulted, referenced, and/or utilized,  
25 which shows YOUR evaluation, assessment, and decision to follow the positive  
26 recommendations of the CITIZENS ADVISORY REVIEW PANEL." Request No. 26 seeks  
27 the production of "all DOCUMENTATION, WRITINGS, and/or COMPUTER DATA produced,  
28 generated, created, consulted, referenced, and/or utilized, which shows YOUR evaluation,

1 assessment, and decision to not follow the positive recommendations of the CITIZENS  
2 ADVISORY REVIEW PANEL.” The requests were made to the City of Los Angeles, the Los  
3 Angeles Police Department and Chief Charlie Beck. The definition of “YOUR” included  
4 agents, officers, employees, contractors, attorneys, accountants, investigators and anyone  
5 acting on behalf of Respondents. Consequently, Respondents interpreted the requests to  
6 seek all CCW application files dating back to the creation of the Citizens Advisory Review  
7 Panel in 1995. Given Respondents’ view that only records relating to Petitioner Austin’s  
8 CCW application properly constituted the record for review by the Court, Respondents  
9 objected to the requests on various grounds. During the meet-and-confer process,  
10 Petitioner made the “vague and ambiguous” objections moot by confirming that he sought all  
11 records responsive to the requests dating back to 1995, including CCW applications  
12 reviewed by three former Chiefs of Police. Therefore, Respondents maintain that the other  
13 objections that the request (1) “seeks information that is neither relevant nor reasonably  
14 calculated to lead to the discovery of admissible evidence,” (2) is “overly broad”, and (3) is  
15 “burdensome and oppressive” are appropriate.

16 A. Relevance

17 The cases Petitioner cites for the propositions that discovery is broad and that  
18 relevance is determined by potential, not actual, issues in the case do not provide helpful  
19 guidance in this writ action. Those cases concerned discovery disputes in traditional tort  
20 actions such as a traffic collision, a bank action to recover a debt, a personal injury claim for  
21 damages, and an invasion of privacy claim. Those tort actions are fundamentally different  
22 from a petition for writ of mandate under Code of Civil Procedure section 1085 (traditional  
23 madamus). The only actual or potential issues in this writ action are whether Chief Beck  
24 failed to exercise his discretion or abused his discretion under Penal Code section 12050  
25 when he denied Petitioner Austin’s CCW permit application. Respondents have provided all  
26 documents pertaining to Chief Beck’s review and subsequent denial of Petitioner’s CCW  
27 application; those are the only documents that can shed light as to whether Chief Beck failed  
28 to exercise his discretion or abused his discretion.

1           **B. Overly Broad, Burdensome and Oppressive**

2           Additionally, the request is overly broad, burdensome and oppressive because it  
3 seeks records for a 16-year period and would necessitate the review of over 500 CCW  
4 application files. CCW files normally contain the CCW application, including letters of  
5 reference, training certificates, proof of residency, correspondence, Citizens Advisory  
6 Review Panel recommendations, etc. LAPD's CCW files are not automated and a search  
7 for records responsive to Request Nos. 25 and 26 would require LAPD personnel to conduct  
8 a hand-search through thousands of pages of documents. (Gonzales Decl., ¶¶ 6) The  
9 imposition of such a burden on the LAPD's scarce law enforcement resources is not  
10 warranted when the only issue is whether Chief Beck failed to exercise his discretion or  
11 abused his discretion in denying Petitioner's CCW application.

12           **C. Attorney-Client Communications and Attorney Work Product**

13           Since Petitioner's requests included documents "consulted, referenced, and/or  
14 utilized" by Chief Beck and three former Chiefs of Police, it was certainly conceivable that  
15 the universe of responsive documents included documents protected by the attorney-client  
16 and attorney work product privileges. Therefore, Respondents objected to the requests "to  
17 the extent" they called for privileged records; the objection was intended to preserve those  
18 privileges. However, because the requests were so incredibly broad, no actual search of the  
19 more than 500 CCW application files could reasonably be conducted in order to prepare a  
20 privilege log.

21           **D. California Public Records Act**

22           Respondents are well aware of their obligations under the California Public Records  
23 Act (CPRA). Cal. Govt. Code § 6250 *et seq.* The LAPD receives and responds to hundreds  
24 of CPRA requests per year. (Gonzales Decl., ¶¶ 8) Although the CPRA is a statutory  
25 scheme enacted in order to maximize citizen access to the workings of government, it does  
26 not mandate the disclosure of all documents within the government's possession. Rather,  
27 the CPRA exempts from disclosure records that are privileged or confidential or otherwise  
28 exempt under either express provisions of the CPRA or pursuant to applicable federal or

1 state law. For example, records containing privileged attorney-client communications or  
2 attorney work product need not be disclosed to the public because they are "[r]ecords the  
3 disclosure of which is exempted or prohibited pursuant to federal or state law, including but  
4 not limited to, provisions of the Evidence Code relating to privilege." Cal. Govt. Code §  
5 6254(k). Additionally, an agency may claim an exemption from disclosure if the burden of  
6 complying with a CPRA request is so onerous that it clearly outweighs the public interest in  
7 disclosure. Cal. Govt. Code § 6255.

8 Respondents have always acknowledged that Petitioner may be entitled to certain  
9 records under the CPRA, subject to specific exemptions and the case law interpreting them.  
10 However, the CPRA and California's Civil Discovery Act (Cal. Code of Civ. Pro. § 2016.010  
11 *et seq.*) are two completely different statutory schemes with fundamentally different  
12 purposes. As Petitioner acknowledges, the purpose of the CPRA is to enable citizens to  
13 review the government's conduct of its business. However, the purpose of the Civil  
14 Discovery Act is to facilitate discovery of information relevant to the subject matter involved  
15 in the pending action. Therefore, sometimes litigants may be entitled to more records in  
16 litigation than under the CPRA; other times litigants may be entitled to fewer records in  
17 litigation than under the CPRA.

18 Petitioner argues that because he might be able to obtain certain records under the  
19 CPRA, he is entitled to receive them in response to his Request for Production of  
20 Documents without regard to whether or not they properly discoverable in the writ litigation.  
21 Under the CPRA, except under the balancing test of section 6255, the reason for the  
22 records request has no bearing on whether it must be disclosed by the agency. But under  
23 the Civil Discovery Act the reason for the request does matter --- civil discovery rules require  
24 that the information sought be relevant to the subject matter of the litigation.

25 Furthermore, it is odd that during the meet-and-confer discussion on November 7,  
26 2011, Petitioner insisted that he was entitled to discovery of all records responsive to the  
27 requests dating back to 1995, including CCW applications reviewed by three former Chiefs  
28 of Police. However, unbeknownst to Respondents' counsel, Petitioner's counsel had

1 already sent a CPRA request to Chief Beck on November 4, 2011. (Gonzales Decl., ¶ 7)  
2 Curiously, the CPRA request addressed specifically to Chief Beck seems to request only  
3 those records pertaining to CCW permits issued by Chief Beck himself and any records  
4 relating to denials of applications for CCW permit renewals by Chief Beck himself. These  
5 are the very same records that Respondents' counsel had offered to produce in an attempt  
6 to resolve the discovery dispute even though Respondents believed Petitioner was not  
7 entitled to them in discovery.

### 8 III. PETITIONER'S REQUEST NO. 27

9 Request No. 27 seeks "all DOCUMENTATION, WRITINGS, and/or COMPUTER  
10 DATA which shows what persons in the City and County of Los Angeles currently are  
11 issued, and have active, CCW licenses issued by YOU." The requests were made to the  
12 City of Los Angeles, the Los Angeles Police Department and Chief Charlie Beck. The  
13 definition of "YOUR" included agents, officers, employees, contractors, attorneys,  
14 accountants, investigators and anyone acting on behalf of Respondents. Consequently,  
15 Respondents interpreted the requests to seek all records relating to CCW permits issued by  
16 any of the Chiefs of Police since 1995. During the meet-and-confer process with Petitioner's  
17 counsel on November 7, 2011, Respondents' counsel understood that all of the outstanding  
18 Requests for Production of Documents sought records dating back to 1995. For that  
19 reason, Respondents stood on their original objections. However, during the preparation of  
20 this Opposition, Respondents' counsel has noticed one very important word in Request No.  
21 27 that Respondents had previously overlooked --- that word is "active." If Respondents  
22 understand Request No. 27 correctly, Petitioner is seeking records which show who  
23 currently possesses an active (as opposed to expired) CCW permit issued by Chief Beck.  
24 Because there 17 individuals who possess valid CCW permits issued by Chief Beck,  
25 Respondents withdraw their previous objections that Request No. 27 calls for privileged  
26 documents, is vague and ambiguous, overly broad, burdensome and oppressive. (Gonzales  
27 Decl., ¶ 9) However, Respondents maintain that records which show the persons who  
28 currently possess an active CCW permit are not relevant to the only issue before this Court:

1 whether Chief Beck failed to exercise his discretion or abused his discretion under Penal  
2 Code 12050 in denying Petitioner's CCW application.


3 CONCLUSION

4 For the reasons stated above, Respondents urge the Court to deny Petitioner's  
5 request for further responses to Request Nos. 25, 26 and 27.

6 Date: November 30, 2011

7 Respectfully submitted,

8  
9 CARMEN A. TRUTANICH, City Attorney  
10 CARLOS DE LA GUERRA, Managing Assistant City Attorney  
11 DEBRA L. GONZALES, Assistant City Attorney

12 By:   
13 DEBRA L. GONZALES  
14 Assistant City Attorney  
15 Attorneys for Defendants/Respondents  
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DECLARATION OF DEBRA L. GONZALES

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I, DEBRA L. GONZALES, declare as follows:

1. I am employed as an Assistant City Attorney with the Los Angeles City Attorney's Office. I have personal knowledge of all the facts set forth herein and if called upon to testify, I could and would do so competently. As to those matters of which I am informed and believe, I believe them to be true and accurate.

2. I am the attorney representing the Defendants/Respondents in *David R. Davis, et al. v. City of Los Angeles, et al.* Case No. BS131915.

3. On September 7, 2011, I received a Request for Production of Documents, Set One, propounded to Defendants/Respondents City of Los Angeles, Los Angeles Police Department (LAPD), and Chief Charlie Beck from Plaintiffs/Petitioners David R. Davis, Jacob Daniel Hill, Brian Goldstein, Paul Cohen, Scott Austin and Eric Feder. Each Request for Production of Documents contained 29 separate requests. I met with LAPD personnel to determine how to properly respond to the discovery requests. On October 13, 2011, I provided Respondents' Responses to the Request for Production of Documents to Petitioners' counsel, Mr. Joshua Dale and Ms. Tamara M. Rider of Michel & Associates. The responses contained copies of all of the records relating to the Carry Concealed Weapon (CCW) permit applications of the six Petitioners. However, Respondents objected to Request Nos. 24 through 28 on various grounds.

4. I received a letter from Mr. Joshua Dale concerning Respondents objections to Request Nos. 24 through 28. I contacted Mr. Dale and we scheduled an in-person meet-and-confer for November 7, 2011. On that date, I met with Mr. Dale and Ms. Tamara Rider in an attempt to resolve the discovery dispute concerning the five requests for production of documents for which Respondents had asserted objections. After receiving clarification from Mr. Dale concerning the types of documents he was seeking in Request Nos. 24 and 28, we were able to come to an agreement with regard to further responses to be provided by Respondents. Respondents have provided the agreed upon further responses and those requests are no longer at issue.

1           5.       With regard to Request Nos. 25, 26 and 27, I explained to Mr. Dale why I firmly  
2 believed the discovery requests were too broad, burdensome and not reasonably calculated to lead to  
3 the discovery of admissible evidence given that the only issue was whether Chief Beck exercised his  
4 discretion or abused his discretion under California Penal Code 12050 in denying Petitioners' CCW  
5 applications. I further explained that although I did not think Petitioners were entitled to more  
6 discovery than what they were already provided, in an attempt to resolve the discovery dispute,  
7 Respondents would be willing to provide documents pertaining to CCW permits issued by Chief  
8 Beck. Mr. Dale explained why he believed that Petitioners were entitled to discovery of all CCW  
9 applications considered by all of the LAPD Chiefs of Police dating back to the entry of the 1995  
10 Judgment in *Assenza, et al. v. City of Los Angeles, et al.*, Los Angeles Superior Court Case No.  
11 BC115813. Mr. Dale and I discussed our respective positions regarding which records would be  
12 appropriate for the Court to consider in this writ action. My position was that only the LAPD's  
13 CCW policies and procedures and records pertaining to Chief Beck's consideration of the CCW  
14 applications of each of the six petitioners were relevant in a mandamus action. Mr. Dale's  
15 maintained his position was that the records pertaining to all the CCW applications submitted to the  
16 LAPD since the 1995 *Assenza* Judgment were relevant even if they had been considered by former  
17 Chiefs of Police. Our discussion highlighted to us that we had a fundamental disagreement  
18 concerning what constitutes the proper record for the Court's review in this writ action.  
19 Consequently, Mr. Dale and I agreed that it would be beneficial to bring this fundamental divergence  
20 of views to the Court for guidance on the proper scope of discovery.

21           6. I am informed and believe that the LAPD has in excess of 500 CCW application files for  
22 the period from 1995 to present. I have reviewed many CCW application files and they generally  
23 contain the CCW application, letters of reference regarding character of the applicant, training  
24 certificates, proof of residency, correspondence, Citizen Advisory Review Panel recommendations,  
25 and various other documents. I am further informed and believe that LAPD's CCW files are not  
26 automated but rather the documents relating to each CCW application are maintained in manila  
27 folders.

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7. When I received Mr. Dale's letter dated November 7, 2011, I was alerted that a California Public Records Act (CPRA) Request from the Law Office of C.D. Michel seeking records relating to CCW permits had been delivered to Chief Beck's office. A true and correct copy of the CPRA request is attached hereto as Exhibit 1.

8. As counsel to the LAPD, I provide legal assistance to the LAPD with regard to its legal obligations under the CPRA. Therefore, I am aware that the LAPD receives and responds to hundreds of CPRA requests each year.

I swear under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30th day of November, 2011 at Los Angeles, California.

*Debra L. Gonzales*  
Debra L. Gonzales, Declarant



Writer's Direct Contact  
(562) 216-4444  
cayala@michellawyers.com

FAX TRANSMITTAL SHEET

TO: Chief Charlie Beck  
FIRM: Los Angeles Police Department  
FAX NO.: (213) 486-0168  
TEL. NO.  
FROM: Claudia Ayala  
DATE: November 4, 2011  
RE: Public Records Act Request - PRAR #11.4.11 - "CCW's Issued"

THIS FAX CONTAINS COVER PAGE PLUS 2 PAGES. IF YOU DO NOT RECEIVE ALL PAGES PLEASE CONTACT Claudia Ayala AT (562) 216-4444.

SPECIAL INSTRUCTIONS

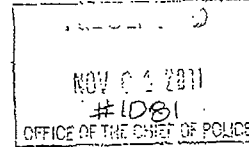
Original will follow via U S. Mail

THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS BELOW VIA THE U.S. POSTAL SERVICE. THANK YOU.

C. D. MICHEL  
SPECIAL COUNSEL  
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W. LEE SMITH

ASSOCIATES  
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SCOTT M. FRANKLIN  
HILARY J. GIBSEN  
THOMAS E. MANDREWSKI  
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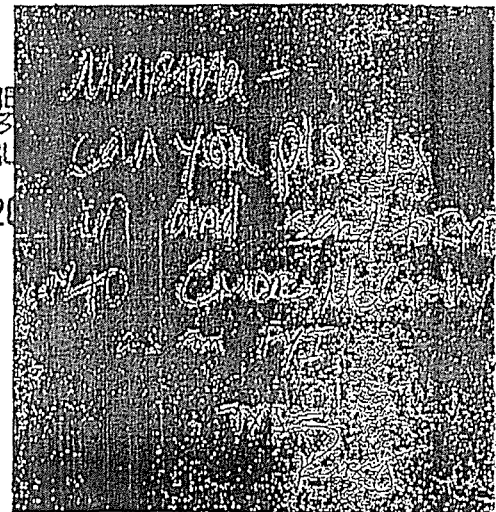
DAVID T. HARDY  
TUCSON, AZ

November 4, 2011

Chief Charlie Beck  
Los Angeles Police Department  
100 West 1st Street Room  
Los Angeles, CA 90012  
VIA FAX: (213) 486-0168 & U. S. MAIL

DETECTIVE BUREAU  
ID #3  
DETECTIVE BUREAU

NOV 08 2011



Re: Public Records Act Request  
PRAR # 11.4.11 - "CCW's Issued"

Dear Chief Beck:

This letter constitutes a request under the California Public Records Act (CPRA), California Government Code Section 6250, *et seq.* (the "Act")<sup>1</sup>, as well as any pertinent Sunshine Ordinance. When responding, please include the above reference number for internal tracking purposes.

This request is directed to the Public Records Act Clerk or custodian of records for each entity identified in the addressee section above. If the items listed below are under the control of another department or agency, please forward this letter accordingly and so advise us.

This request seeks the information listed below, whether in the form of a writing,<sup>2</sup> email (including attachments), computer file, photograph, audio or video tape, or however kept.

<sup>1</sup> All references to standards for compliance are pursuant to the Act, as amended by California Assembly Bill 2799, effective January 1, 2001, and further informed by the heightened right to information as provided by the California Constitution, art. 1, section 3, amended by Proposition 59.

<sup>2</sup> WRITING, whether singular or plural, includes those items listed in the paragraph above, as well as those items described in the definition provided by Evidence Code section 250, which provides as follows:

"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Chief Beck  
November 4, 2011  
Page 2

### INFORMATION REQUESTED

The following public records and all "writings" related thereto are requested:

1. Any and all documents, writings, and/or computer data which shows and/or refers or relates to the persons in the City and County of Los Angeles that are currently issued, and have active, CCW licenses issued by YOU.
2. Any and all documents, writings, and/or computer data which shows and/or refers or relates to the persons in the City and County of Los Angeles who were issued CCW licenses, but failed to have their licenses renewed due to YOUR denial.

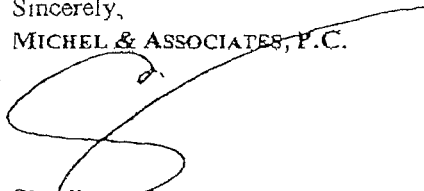
### TIME TO RESPOND & COST REIMBURSEMENT

As the CPRA requires, we expect to receive notification of your compliance with this request within ten (10) days of your receipt of this letter. If you need additional time, please simply notify us in writing as the code requires. If practical circumstances further prohibit a timely response, please contact us so we may attempt to agree on a reasonable deadline for production.

Pursuant to section 6253(b) of the CPRA, we are willing to pay reasonable costs to reimburse you for direct costs of duplication, or to pay statutory fees. If you estimate that the direct copying costs will exceed one hundred dollars (\$100.00), notify us of the cost estimate so that we may determine how to proceed.

Thank you for your anticipated cooperation. Please contact me if you have questions or concerns.

Sincerely,  
MICHEL & ASSOCIATES, P.C.



Claudia Ayala  
Senior Paralegal

CA/s

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, the undersigned, declare: I am employed in the County of Los Angeles. I am over  
4 the age of 18 and not a party to this action or proceeding. My business address is Los  
5 Angeles City Attorney's Office, 200 North Main Street, 800 City Hall East, Los Angeles, CA.  
90012.

6 On November 30, 2011, I served the document(s) described as  
7 **DEFENDANTS'/RESPONDENTS' OPPOSITION TO PLAINTIFF/PETITIONER SCOTT**  
8 **AUSTIN'S MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR**  
9 **PRODUCTION OF DOCUMENTS, SET ONE, FROM (1) CITY OF LOS ANGELES, (2) LOS**  
10 **ANGELES POLICE DEPARTMENT, AND (3) LAPD CHARLIE BECK; MEMORANDUM OF**  
11 **POINTS AND AUTHORITIES; DECLARATION OF DEBRA L. GONZALES** in Los Angeles  
Superior Court Case No. BS 131915 on all interested parties in this action by transmitting true  
copies thereof addressed as follows:

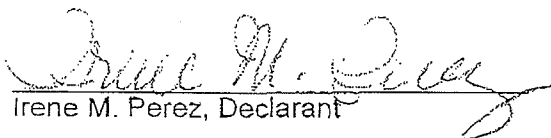
11 C.D. Michel  
12 Joshua R. Dale  
13 Tamara M. Rider  
14 Michel & Associates, P.C.  
15 180 East Ocean Blvd., Suite 200  
16 Long Beach, CA 90802  
17 (562) 216-4445 Fax

18  **BY MAIL** – I caused each envelope with postage fully prepaid, to be placed in the  
19 United States Mail at Los Angeles, California. I thereafter caused such envelope to be  
20 deposited in the mail at Los Angeles, California, with first class postage thereon fully  
21 prepaid. I am readily familiar with the business practice for collection and processing  
22 of correspondence for mailing. Under that practice, it is deposited with the United  
23 States Postal Service on that same day, at Los Angeles, California, in the ordinary  
24 course of business

25  **BY FACSIMILE TRANSMISSION** – I caused such documents to be transmitted to the  
26 offices of the addressee(s) via facsimile machine, prior to 5:00 p.m. on the date  
27 specified above. The facsimile machine I used was in compliance with Rule 2003(3)  
28 and the transmission was reported as complete without error. Pursuant to Rule  
2008(e), I caused a copy of the transmission report to be properly issued by the  
transmitting facsimile machine.

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

Dated: November 30, 2011

  
Irene M. Perez, Declarant

OPPOSITION TO MOTION TO COMPEL FURTHER RESPONSES  
TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET 1

**AA001626**

**EXHIBIT C**



HST

Davis, et al. v. City of Los Angeles  
BS 131915

Tentative decision on motion to compel  
further responses: granted

Petitioners David Davis, Jacob Hill, Brian Goldstein, Paul Cohen, Jill Brown, Chris Butler, Scott Austin, Eric Feder and Lisa Siegel move for an order compelling Respondents City of Los Angeles, Los Angeles Police Department (“LAPD”), and LAPD Chief Charlie Beck (collectively, the “City”) to provide further responses to requests for production of documents. The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

**A. Statement of the Case**

Petitioners commenced this proceeding on May 18, 2011. The Petition<sup>1</sup> alleges that in March 1995, a stipulated judgment was entered in Anthony Mario Assenza, et al. v. City of Los Angeles, et al., (“Assenza”) Los Angeles Superior Court case no. BC 115813. The Assena judgment governs the policies, procedures, and guidelines the City must follow in issuing or denying concealed weapon permits (“CCW permits”) pursuant to Penal Code section 12050 *et seq.*

As part of the judgment, the City agreed to promulgate a negotiated written policy regarding the issuance of CCW permits, and to provide a copy of that policy and a CCW application at LAPD precincts and station houses to all members of the public who requested it. According to Petitioners, the City has continuously and repeatedly failed to provide the required CCW application and a copy of the policy to members of the public when so requested.

The City is also required to inform all CCW permit applicants of the existence of an Advisory Review Panel (“ARP”) and its ability to review files of applicants who were denied a CCW permit. The City is obligated to respond in a reasonable and timely manner to the ARP’s questions and promptly reconsider any application for which the ARP reaches a different decision than the City. The City has failed to fulfill these requirements and applicants are left for extended and unreasonable periods of time not knowing if their applications have been granted, denied, or reconsidered after a recommendation was provided by the ARP.

Petitioners seek a Writ of Mandate to enforce the judgment in the Assenza case and to compel the City to issue them CCW permits.

**B. Applicable Law**

If the party demanding inspection, on receipt of a response to an inspection demand, deems that (1) a statement of compliance with the demand is incomplete, (2) a representation of inability to comply is inadequate, incomplete, or evasive, or (3) an objection in the response is without merit or too general, that party may move for an order compelling further response to the demand. CCP §2031.310(a). Unless notice of this motion is given within 45 days of the service of the response, or any supplemental response, or on or before any specific later date to which the propounding party and the responding party have agreed in writing, the propounding party

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<sup>1</sup>Technically speaking, there is no pleading on file for this case. A Petition pleads ultimate facts. Petitioners’ initial “pleading” is nothing more than a memorandum of points and authorities.

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waives any right to compel further response to the inspection demand. CCP §2031.310(c).

The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by it. CCP §2031.310(b)(2). It also shall be accompanied by a separate document which sets forth each demand to which a further response is requested, the response given, and the factual and legal reasons for compelling it. Material shall not be incorporated by reference, except that in the separate document the moving party may incorporate identical responses and factual and legal reasons previously stated in that document. No other statements or summaries shall be required as part of this motion. CRC 335(a).

The moving party on a motion to compel further responses to a production demand bears the initial burden of demonstrating “good cause” for discovery of the requested information. CCP §2031.310(b)(1). This burden is met by a demonstration (a) that the responsive documents contain information which is relevant to the subject matter of the action, and (b) of specific facts indicating the information is necessary. See Glenfed Development Corp. v. Superior Court, (1997) 53 Cal. App. 4<sup>th</sup> 1113, 1117. Good cause is normally established by submission of a declaration made on “information and belief.” Weil & Brown, Civil Procedure Before Trial, (2000) 8:1495. 8H-26; See Grannis v. Board of Medical Examiners, (1971) 19 Cal. App. 3d 551, 564. Good cause may be found to justify discovery where specific facts show that the discovery is necessary for effective trial preparation or to prevent surprise at trial. Associated Brewers Dist. Co. v. Superior Court (1967) 65 Cal.3d 583, 588. So, where there is no privilege issue or claim of attorney work product, the burden to show “good cause” is met simply by a fact-specific showing of relevance. Glenfed Development Corp. v. Superior Court (1997) 53 Cal.App.4th 1113, 1117. Once good cause is shown, the burden shifts to the opposing party to justify any objections or failure to fully respond. Coy v. Superior Court, (1962) 58 Cal.2d 210, 220-21.

The court shall impose a monetary sanction under CCP section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. CCP §2030.310(e).

### **C. Analysis**<sup>2</sup>

In this proceeding, Petitioners seek mandamus relief both to overturn the City’s decisions denying them CCW permits, and also to compel the City to comply with the terms of the Assenza judgment.

On September 2, 2011, Petitioners served the City with Petitioners’ Request for Production of Documents, Set One. The City responded with boilerplate objections to requests

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<sup>2</sup>Petitioners ask the court to judicially notice: (1) a CCW application form issued by LAPD, and a July 14, 1997 “Note from” LAPD Deputy Chief Bernard C. Parks. The form is an official act of LAPD and judicial notice is granted. Ev. Code §452(c). Not every action of an agency employee is an official act subject to judicial notice, and the request to judicially notice the July 1997 Note is denied.

Nos. 24 through 28, which sought documents responsive to the following categories: (24) documents which show the City's distribution of LAPD's CCW policy; (25) documents which show the City's evaluation, assessment, and decision to follow the positive recommendations of the ARP; (26) documents which show the City's evaluation, assessment, and decision refusal to follow the positive recommendations of the ARP; (27) documents which identify the persons with active City-issued CCW permits; and (28) documents which identify the persons who were issued CCW permits, but to whom the City denied a renewal application.

The City objected to these requests on the following grounds: (1) the requests seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, (2) the requests call for the production of documents protected by the attorney-client privilege and work product doctrines, and (3) the requests are vague, ambiguous, overly broad, burdensome, and oppressive.

Through the meet and confer process, the City's concerns over vagueness and ambiguity were addressed. This left only relevance, privilege, overbreadth, burden, and oppression as a basis to avoid discovery of the approximate 500 CCW permit application files that LAPD has received since the 1995 Assena judgment and the 17 persons who currently possess valid CCW permits.

The City justifies its relevancy objection by claiming that this case involves nothing more than a challenge to the City's decision not to issue a CCW permit to one of the Petitioners (Austin).

The Petition is more than a challenge to one decision on a CCW permit application. Petitioners contend that LAPD has not complied with the terms of the Assenza judgment in handling their applications, and has a *de facto* policy of denying all CCW permit applications without exercising discretion, except for applications from retired police officers and judicial officers. The discovery requested directly corresponds to investigating whether LAPD has complied with the Assenza procedures and the requirements of Penal Code section 12050. It does not matter for discovery purposes whether the Assenza judgment was a consent decree upon which Petitioners may rely; that is a factual issue for resolution on the Petition's merits. It is sufficient that Petitioners allege that LAPD is obligated to comply with the procedures required by Assenza, and is not doing so. Additionally, Petitioners contend that LAPD has a *de facto* policy of denying all CCW permit requests without exercising case-by-case discretion in violation of Penal Code section 12050. Requests Nos. 25-27 are reasonably calculated to lead to the discovery of admissible evidence on these issues.

The City admits that it has not attempted to search the 500 CCW permit application files and 17 active permit files to determine if there are any documents covered by privilege. In opposition a motion to compel further responses, the burden is on the responding party to justify any objection. Coy v. Superior Court, (1962) 58 Cal.2d 210, 220-21; Fairmont Ins. Co. v. Superior Court, (2000) 22 Cal.4th 245, 255. Because the City has presented no evidence to support its privilege claim (and admittedly did not assert the objection in good faith), the objection is waived.

The City continues its overbreadth, burden, and oppression objections, noting that there are 500 CCW permit application files which are hard copies only, and 17 active permit files.

These objections are not well taken. There is always some burden involved in responding

to discovery; a request is objectionable only if it is unduly burdensome. The objecting party must show that the burden of answering is so unjust that it amounts to oppression. West Pico Furn. Co. v. Superior Court, 1961) 26 Cal.2d 407. Petitioners have agreed to reduce Request Nos. 25 and 26 to the CCW applications presented during LAPD Chief Beck's tenure. This is presumably will result in a number fewer than 500. Petitioners also are willing to pay the cost of organizing and producing these files. Given these facts, there is little or no prospect of undue burden, and these objections are overruled.<sup>3</sup>

The motion to compel further responses is granted. The City is ordered to provide full and complete responses to requests 24-28, without objections, within ten days of this ruling.

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<sup>3</sup>The issue of whether Petitioners can obtain this same information through their CPRA request is irrelevant to this motion. The CPRA is a separate statutory scheme serving a different purpose.

PROOF OF SERVICE

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I, Christina Sanchez, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802.

On March 13, 2013, I served the foregoing document(s) described as

**APPELLANT'S MOTION TO AUGMENT THE RECORD AND  
DECLARATION OF JOSHUA R. DALE IN SUPPORT**

on the interested parties in this action by placing

the original

a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

“SEE ATTACHED SERVICE LIST”

X (BY MAIL) As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on March 13, 2013, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 13, 2013, at Long Beach, California.

  
CHRISTINA SANCHEZ

SERVICE LIST

*DAVID R. DAVIS ET AL. v. CITY OF LOS ANGELES ET AL.*

CASE NO. B241631

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