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CITY AND COUNTY OF SAN FRANCISCO
8 and ITS OFFICIALS

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 THERESE MARIE PIZZO,
13 Plaintiff,
14 vs.
15

Case No. C09-4493 CW

**DECLARATION OF CAPTAIN KATHERINE
JOHNSON IN SUPPORT OF CITY AND
COUNTY OF SAN FRANCISCO'S CROSS-
MOTION FOR SUMMARY JUDGMENT**

16 CITY AND COUNTY OF SAN FRANCISCO
MAYOR EDWIN LEE, in his official
capacity; SAN FRANCISCO POLICE
17 DEPARTMENT CHIEF OF POLICE GREG
SUHR, in his official capacity; SAN
18 FRANCISCO SHERIFF VICKI
HENNESSEY, in her official capacity; CITY
19 AND COUNTY OF SAN FRANCISCO; and
20 STATE OF CALIFORNIA ATTORNEY
GENERAL KAMALA D. HARRIS, in her
official capacity,
21

Hearing Date: July 26, 2012
Time: 2:00 p.m.
Place: Courtroom 2, 4th Fl.
Oakland Courthouse

22 Defendants.
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1 I, Katherine Johnson, declare as follows:

2 1. I am a Captain of the San Francisco Sheriff's Department ("SFSD"). I am currently the
3 commanding officer of the administrative units of the SFSD. The matters stated in this declaration are
4 true of my own personal knowledge except where otherwise stated. I could and would testify
5 competently to the matters stated in this declaration.

6 2. I have been a peace officer with the SFSD for 16 years. I originally served as a sheriff's
7 deputy and then a senior deputy and a sergeant assigned to the county jails. In approximately 2001,
8 while I held the rank of sergeant, I became the department's personnel manager. I served in that
9 position for a few years. In late 2004 or early 2005, I was promoted to lieutenant and again assigned
10 to the county jails. In 2008, I was promoted to my current rank of captain and served as a facility
11 commander at the San Francisco jails' intake/release facility as well as what is now County Jail No. 2.
12 In late 2010, I was assigned as the commanding officer of the administrative units of the SFSD, which
13 perform the department's personnel and administrative functions. My responsibilities in this role
14 include supervising the Background Investigation Unit, which processes civilian applications for
15 licenses to carry concealed firearms (also known as "CCW licenses") pursuant to California Penal
16 Code § 26150. I am personally familiar with the procedures the SFSD employs to issue CCW
17 licenses, and I am familiar with SFSD's policies concerning CCW licenses.

18 **CCW Issuance Policy and Application Procedures**

19 3. The Sheriff of the City and County of San Francisco is authorized to issue a license to
20 carry concealed firearms to residents of the City and County of San Francisco and persons who are
21 employed in the City and County of San Francisco under the conditions stated in California Penal
22 Code § 26150, including that the applicant be of good moral character and that good cause exists for
23 issuance of the license. Penal Code § 26150 states that the Sheriff of a county "may" issue CCW
24 licenses to qualified applicants.

25 4. Pursuant to California Penal Code § 26160, the Sheriff is required to have a written
26 policy summarizing the relevant requirements. A true and correct copy of the Sheriff's current policy
27 is attached to this declaration as Exhibit A. This policy was issued by Sheriff Ross Mirkarimi and is
28 dated January 12, 2012.

1 5. The current sheriff of the City and County of San Francisco is Interim Sheriff Vicki
2 Hennessy (who is not related to the prior Sheriff Hennessey). Interim Sheriff Hennessy was appointed
3 by San Francisco Mayor Ed Lee to fill the role of Sheriff after Mayor Lee suspended Sheriff
4 Mirkarimi and filed official misconduct charges against him. Interim Sheriff Hennessy has not issued
5 a new CCW policy but has instead implemented the policy issued by Sheriff Mirkarimi and attached to
6 this declaration as Exhibit A.

7 6. Before Ross Mirkarimi became Sheriff, the elected Sheriff of the City and County of
8 San Francisco was Sheriff Michael Hennessey. Sheriff Hennessey held his position for over 30 years.
9 He issued the SFSD's first CCW policy, which was dated June 23, 2011. A true and correct copy of
10 this policy is attached to this declaration as Exhibit B. Before June 23, 2011, SFSD did not have a
11 written CCW policy.

12 7. The current procedure for applying for a CCW license is as follows. The California
13 Department of Justice publishes a standard CCW license application, which all counties must use. An
14 applicant fills out Sections 1 through 5 of the standard CCW license application and submits it to the
15 SFSD's Background Investigations Unit. The applicant must complete Sections 6 through 8 of the
16 Application in the presence of an SFSD investigator. He or she must also provide a letter explaining
17 the good cause the applicant believes justifies issuance of the CCW license. The investigator meets
18 with the applicant and reviews the application packet and the applicant's letter of good cause. The
19 investigator then submits the file for the Sheriff's review. The Sheriff then makes a preliminary
20 determination, based on the completed application, whether the applicant has shown good cause to
21 obtain a CCW license. If the applicant has shown good cause, then the SFSD's Background
22 Investigations Unit is assigned to conduct a background check of the applicant, which may include
23 verifying application information, checking the applicant's criminal history (including convictions and
24 arrests), and interviewing the applicant's references and employer. The assigned investigator then
25 makes a written report to the Sheriff of this information. The Sheriff then considers all the facts and
26 circumstances presented by the application and exercises her discretion in accordance with the written
27 CCW policy. If she conditionally grants the CCW license, then the applicant must complete additional
28 requirements set out in the policy, including completing a psychological examination, completing

1 firearms training, and completing a range qualification class, before receiving a CCW license. If the
2 Sheriff denies the application, SFSD sends the applicant written notification of the denial and explains
3 the reasons for the denial.

4 8. To obtain a renewal of his or her CCW license, the CCW licensee must submit a
5 request for renewal with documentation of continuing good cause and good moral character to possess
6 a CCW license. The Sheriff's determination whether to renew the CCW license is discretionary.

7 9. Currently, there are no civilians with active CCW licenses issued by the Sheriff. I have
8 reviewed the SFSD's records of CCW applications and licenses for the last several years. Based on
9 my review, it appears that Sheriff Mirkarimi and Interim Sheriff Hennessey have not issued any CCW
10 licenses to civilian applicants. Sheriff Hennessey issued CCW licenses to a few retired federal law
11 enforcement officers. These licenses have expired and are not currently active. On or about October
12 3, 2008, Sheriff Hennessey issued a CCW license to James Harrigan, who was Legal Counsel to
13 Sheriff Hennessey and an employee of SFSD. That license expired on October 3, 2010 and was not
14 renewed. Mr. Harrigan retired from and is no longer employed by SFSD.

15 10. On or about November 17, 2006, Sheriff Hennessey issued a CCW license to Machaela
16 Hoctor, a Deputy City Attorney in the San Francisco City Attorney's Office who was responsible for
17 civil gang injunction prosecutions and reporting receiving threats in connection with those
18 prosecutions. On March 5, 2007, Sheriff Hennessey notified Ms. Hoctor that because she was leaving
19 employment with the City Attorney's Office, the CCW license he had issued to her in connection with
20 her duties would be revoked effective May 1, 2007. A true and correct copy of Sheriff Hennessey's
21 revocation letter to Ms. Hoctor is attached to this declaration as Exhibit C.

22 11. Since this lawsuit was filed, I have reviewed SFSD's administrative files for materials
23 related to CCW applications and licenses. In my review of SFSD's files, I did not find any materials
24 related to any CCW application made by Therese Pizzo, the plaintiff in this case, or any materials
25 showing whether Sheriff Michael Hennessey made any determination whether to grant or deny her a
26 CCW license.

27 12. I have reviewed the complaint and its exhibits in this case. The complaint states that
28 Ms. Pizzo's attorney, Gary Gorski, contacted SFSD by letter and by email on or about May 26, 2009

1 requesting information about CCW licenses. According to the complaint, Mr. Gorski sent the
2 correspondence attached as Exhibits 1 and 2 to the complaint. These exhibits do not contain Ms.
3 Pizzo's name or otherwise identify the person for whom Mr. Gorski sought a CCW license except to
4 describe her as a "gay female." According to the complaint, Mr. Gorski received a letter in response,
5 dated May 29, 2009 from James Harrigan stating that Sheriff Hennessey was not obligated to issue a
6 CCW to any private citizen and that applying for a CCW application was a useless exercise. (A copy
7 of this letter was attached as Exhibit 4 to Ms. Pizzo's complaint.) Because Mr. Harrigan had been
8 issued a CCW license, and because Sheriff Hennessey had issued a CCW license to Ms. Hoctor, I do
9 not know why Mr. Harrigan informed Mr. Gorski that Sheriff Hennessey would not issue a CCW
10 license to someone who was not a law enforcement officer.

11 13. As I noted above, Sheriff Hennessey issued a written CCW policy dated June 23, 2011,
12 and this policy was updated by Sheriff Mirkarimi on or about January 12, 2012. Mr. Harrigan is now
13 retired. He has no continuing responsibilities at SFSD and plays no role in processing CCW
14 applications. Sheriff Mirkarimi and Interim Sheriff Hennessey do not have a policy of denying all
15 civilian CCW applications. Instead, they evaluate each CCW application on a case-by-case basis and
16 make a determination whether to issue a CCW license based on the totality of the facts and
17 circumstances presented by the application in accordance with the written CCW policy.

18 14. According to Ms. Pizzo's complaint, she mailed a CCW application to SFSD on or
19 about June 4, 2009, and a copy of that application is attached as Exhibit 5 to the complaint (and also
20 attached as Exhibit D to this declaration). As noted, I located no record that SFSD received or
21 processed this application. The application states Ms. Pizzo's name and date of birth but does not
22 provide her contact information such as address or telephone number. It also does not include Mr.
23 Gorski's name or state that Ms. Pizzo was the client on whose behalf Mr. Gorski was facilitating a
24 CCW application. Although Sections 1 through 5 of the standard California Department of Justice
25 CCW application do not contain a space for applicants to include their contact information, applicants
26 typically provide their contact information in a cover letter or in person when they fill out Sections 6-8
27 of the application in the presence of an investigator. Exhibit 5 to the complaint also does not contain
28 any indication that Ms. Pizzo submitted the application fee required by the California Department of

1 Justice for processing CCW applications. SFSD's procedure, where a CCW application is deficient, is
2 to contact the applicant and inform him or her of the deficiency so that it can be corrected. In this
3 instance, it does not appear that SFSD had sufficient information to process Ms. Pizzo's application.

4 15. The complaint states that Mr. Gorski faxed a copy of Ms. Pizzo's application to the
5 SFSD on June 29, 2009. The complaint attaches a transmission verification report as Exhibit 6 (and
6 that exhibit is also attached to this declaration as Exhibit E.) It appears from the transmission
7 verification report showing a Sheriff's Department fax number (415 554-7050) that Mr. Gorski faxed
8 the application without a cover page to SFSD. If so, and if he faxed the application that was attached
9 to the complaint as an exhibit without any additional information, then the fax also did not contain Ms.
10 Pizzo's contact information.

11 16. SFSD has files of CCW applications and licenses, including copies of the application,
12 supporting materials, the Sheriff's letter granting or denying the application, and any CCW license that
13 is issued. As I noted above, there is no indication in SFSD's files that Ms. Pizzo's application for a
14 CCW license was processed. There are also no CCW files that I located containing only an
15 application and no indication of action taken on the application.

16 17. As the commanding officer of the administrative units of SFSD, I am generally familiar
17 with the administration of personnel matters in this department, and as noted above I previously acted
18 as the personnel manager for the SFSD.

19 18. When an individual applies to be a Sheriff's Deputy, SFSD conducts an extensive
20 background investigation that includes computer checks for arrests or convictions, interviews with
21 references and past employers, drug testing, polygraph examinations, and psychological testing. This
22 background investigation is more extensive than that undertaken for civilian applicants for CCW
23 licenses.

24 19. A peace officer employed by SFSD receives a duty weapon and an identification card
25 that allows him or her to carry a concealed weapon on or off duty. When SFSD learns information
26 that calls into question the officer's fitness to carry a firearm, the Sheriff exercises her discretion
27 whether or not to disarm the officer, unless the law requires that the officer be disarmed, in which case
28 the Sheriff follows the law. While an officer is disarmed, he or she is also not permitted to carry

1 concealed weapons while off duty. The officer may also be subject to disciplinary procedures that
2 could result in his or her termination. When an officer is terminated, or if he or she resigns, he or she
3 does not receive the privilege of carrying a concealed firearm.

4 20. When a peace officer employed by SFSD retires honorably, he or she receives an
5 identification card pursuant to California Penal Code § 26300 that permits the retired peace officer to
6 carry a concealed firearm. However, SFSD's endorsement of a retired peace officer's privilege to carry
7 a concealed firearm may be revoked for good cause. The good cause determination is initially made
8 by the Sheriff. When circumstances have come to SFSD's attention that call into question a retired
9 peace officer's suitability for a CCW endorsement, such as an arrest or conviction or a failure to
10 qualify with his or her firearm at the firing range, the Sheriff exercises her discretion whether to
11 revoke the retired peace officer's CCW endorsement.

12 I declare under penalty of perjury under the laws of the State of California that the foregoing is
13 true and correct. Executed this 27th day of June, 2012, in San Francisco, California.

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17 CAPTAIN KATHERINE JOHNSON
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