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U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

APPEAL No.: 08-15773
CASE No.: CIV S 03 2682 MCE/KJM

**On Appeal from the United States District Court
Eastern District of California**

APPELLANTS' REPLY BRIEF

DAVID K. MEHL; LOK T. LAU; FRANK FLORES

Appellants/Plaintiffs

vs.

LOU BLANAS, individually and in his official capacity as SHERIFF OF COUNTY OF SACRAMENTO; COUNTY OF SACRAMENTO, SHERIFF'S DEPARTMENT; COUNTY OF SACRAMENTO; BILL LOCKYER Attorney General, State of California; RANDI ROSSI, State Firearms Director and Custodian of Records.

Appellees/Defendants.

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REPLY

First, due to the word limit for a reply, the focus of this reply will be on the facts as primarily pertaining to the County defendants, as the constitutionality of the law is primarily addressed in the Opening Brief. Appellants believe those “legal” issues have been adequately addressed already and need not be replied to with regard to the State.

The testimony of Detective McAttee (admissible per F.R.E. Rule 803(5)) outlines his arrest of a Blanas contributor, Colafrancesco. **“It is all political. It’s just a big political game. I am a major contributor of Lou Blanas and Glen Craig. And they gave me a concealed weapon permit.”** ER001028. McAttee further testifies: “While flipping through Colafrancesco’s wallet, I noticed that it was a badge wallet. ... it appeared to be a law enforcement badge adjacent to this badge was an identification card with Colafrancesco’s picture on it which stated that he was an honorary deputy sheriff ... signed by Sheriff Glen Craig.” ER001035. Colafrancesco further states “I am a major contributor ... and through my political ties, I have been given certain things.” ER001035. (Admissible under F.R.E. Rule 801(d)(1) prior inconsistent statement and F.R.E. Rule 803(1) and (2))

- 1. MEHL HAS STANDING SINCE HE 1) ACTUALLY SUBMITTED TWO APPLICATIONS OVER A YEAR OF EACH OTHER, 2) TWICE PAID A NON-REFUNDED FEE, 3) WAS PROHIBITED FROM APPLYING FOR A FULL YEAR AFTER HIS FIRST APPLICATION WAS DENIED, 4) HE WAS NEVER CONTACTED REGARDING HIS SECOND AND LAST APPLICATION REGARDING ANY DEFICIENCIES IN HIS**

APPLICATION, 5) BOTH OF MEHL'S APPLICATIONS WERE DENIED FOR NOT MEETING "GOOD CAUSE" CRITERIA FOR ISSUANCE AND NOT FOR BEING INCOMPLETE.

Unlike the Plaintiff in *Madsen v. Boise State Univ.*, 976 F.2d 1219 (9th Cir. 1992), Mehl subjected himself to the licensing process which provided Defendants the opportunity to treat Mehl the same as other well connected applicants.

The lower court completely ignored very important facts which differentiate Mehl with the facts in *Madsen*. Mehl submitted his first "application" on July 16, 2002, compared to Madsen who never submitted an application. SER0038, SER0053. The State standardized DOJ application is very clear on the CCW process, but Mehl received conflicting information from the Sheriff's department on his initial application, prompting him to challenge the process, unlike Madsen who never submitted any application. SER0136, SER0065-68.

Deponent Wong (ER000929) processed all CCW applications under Blanas at the time Lau and Mehl applied. ER000994-937. She notes that section 7 of the application is not filled out by the applicants and that she would fill it in by "contacting" the applicant herself. In fact, the procedure changed to actually having the applicant come into the station for an interview. ER000943-944. Prior procedure was to have the detective call the applicant and fill in section 7. ER000947. She also testified that returning an application with a sticky note for the applicant to complete an application is not proper procedure. ER000950:14-

21.

While processing CCW applications, Wong was also aware that applications were approved just for “self defense.” ER956:9-23. A renewal application is just essentially a rubber stamped. ER000974-975.

On October 29, 2002, Mehl was advised by Sheriff Blanas (via Dehnam) that his July 16, 2002 , “application” was denied since he had not met the good cause criteria; not that the application was incomplete or that he never submitted an application. The lower court ignored this most favorable fact! SER0070.

Mehl was also advised that he could “re-apply” after one year. SER0070. If Mehl’s application was insufficient, then why was he prohibited from applying for a full year? Since Mehl was prohibited from “applying” for a full year, the facts, viewed in a light most favorable to him, would mean that his application was accepted and denied; not that he never applied (as in *Madsen*) or that it was incomplete (as determined by the lower court).

Regardless, and ignored by the District Court; after one year, Mehl submitted a second application again pursuant to the instructions contained in the application itself. This time, no one ever contacted Mehl to complete the application per the instructions; it was just summarily denied in 2003. SER0151 ¶ 6. In 2003, Mehl should have been contacted by Amber Wong, whereby she would fill out section 7. ER 000943-ER 000944. The District Court ignored these facts, especially the fact that an investigator was purportedly assigned to interview

applicants and have the applications witnessed. ER000943-944, 947.

Madsen identifies a string of cases whereby the party challenging “never” applied. *Madsen* at 1220-1. Here, Mehl applied twice! Thus, the standing threshold is easily met. The idea that Mehl never submitted a good cause statement as a standing issue is absurd. See ER 000137 ¶ 122-124, ER 000161 ¶217, ER 000539. That is a factual defense for the proffered action, not a standing issue. Unlike *Madsen*, Mehl “actually confronted the policy.” *Madsen* at 1221. Mehl challenged the Defendants to follow the state mandated requirement by writing two letters the first time. After he was rejected, he waited a full year and applied again with no response from Blanas for the second time!

A. Futility under *Madsen* at 1222.

More importantly, even had Mehl filled out section 7, it would not have been determinative. Twomey identifies many contributors who were issued CCWs for the flimsiest of reasons (e.g. ¶ 147 ER000143, or no reason at all (e.g. ER 000126 ¶ 62, ER 000161 ¶ 217; ER 000855 ¶ 8) and compared to a person like Rothery (ER000802-844), who submitted multiple applications with a compelling justification for issuance and was nonetheless denied. ER 000143:9-ER 000145:8, ER 000162, ER000208; ER000170 ¶ 262. For example, Ernest Martini (ER000216), a campaign contributor, was issued a CCW simply because he “... routinely check[s] on properties that are located in high crime areas throughout California.” ER000218. Ben Upton (ER000219), a campaign contributor (Blanas

Depo, ER000915, lines 15-25), was issued a CCW for apparently defense of his "Mini storage", even though he has "not had a problem as of yet", "never had any incidents", and "never been threatened." ER000220. His application was "denied" by the purported committee (ER000221), but it was still issued. See ER 001083, identifying that Upton's permit was set to expire "7/23/2007". ER 001105.

In sum, the idea that Mehl's application would have been approved where people like Rothery's are denied clearly demonstrates filling in section 7 would have been futile, as further demonstrated below. Compare Rothery with Roland Lewis (ER000538-9), who was issued a CCW for "Self protection Bus related" (ER000170, Twomey Decl. ¶ 260) and Jack Kimmel who was issued a CCW for simply saying "self defense" (ER000157, Twomey Decl. ¶ 204; ER000225-6; ER000858, Blanas Depo. 50:7-12, 50:24-51:5, 70:17-71:5, 88:6-8; ER000563, ER000610, ER000681 (Sacramento Rendering).

2. THERE IS A TRIABLE ISSUE OF FACT AS TO 1) THE REAL REASON WHY LAU'S APPLICATION WAS DENIED, AND 2) WHY IT WAS NOT JUDGED UNDER THE PRIMA FACIE GOOD CAUSE STANDARD FOR LAW ENFORCEMENT PER APPELLEES OWN WRITTEN POLICY.

A. The District Court erred when it viewed evidence in a light most favorable Defendants, which such evidence itself contradicted two written CCW denial letters stating the reason for Lau's application being denied.

Lau is a former FBI agent who worked deep undercover against hostile

foreign entities who, to this day, is administratively retired due to the trauma of his highly classified work. ER000850, ¶ 10; SER0330 first full paragraph.

On October 28, 2003, Lau received a letter from Blanas via Detective Steve Bray stating that “Reason(s) for application/justification did not provide convincing evidence that applicant or family members are in any immediate danger associated with everyday course of living as to justify the need to carry a concealed weapon.” SER0203. This letter is devoid of any other reason for rejection, especially those stated in the District Court’s order granting summary judgment ER000012, starting at line 5, to which Lau filed an appeal based upon the so-called lack of “good cause”, and not anything to do with moral character or psychological issues as raised in the district court’s order. See SER0203, SER0205.

Since a fundamental right is involved, due process, at a minimum, required Defendants to apprise Lau of the precise reason why his application was being denied so that he could address those issues accordingly. Regardless, the only stated reason which Lau was provided notice was failure to meet the good cause criteria (i.e. no “immediate danger”), not to mention he fell into the “prima facie good cause” category which his application was to be judged. See ER000182 for Defendants written policy. Because Blanas denied Lau’s CCW application for not meeting the so-called “good cause” standard, on December 18, 2003, Lau filed an appeal accordingly (SER0206), addressing the “good cause” issue only as that was

the stated reason for denial; not the other myriad of undocumented issues relied upon by the District Court.

B. The District Court erred when it resolved triable issues of fact by accepting Defendants *post hoc* explanation why Lau's application was denied.

There is not a single memorialized fact purportedly relied upon by Defendants to deny Lau's application. He fell under the "prima facie good cause" criteria and a letter from the FBI was not required under the "written" policy ER000181-185. At no time was Lau prohibited from owning a firearm. The loss of the highest security clearance in this country and his disability are not a disqualification under any standard.

The Sheriff's Department issued a letter to Lau, denying his appeal, signed by Chief Deputy C. Scott Harris, Jr., stating: "Reason(s) for application/justification did not provide convincing evidence that applicant or family members are in any immediate danger associated with everyday course of living as to justify the need to carry a concealed weapon." SER0205. The facts submitted by Lau belie this conclusion; Lau responded to this denial letter with a detailed appeal, outlining some of the highlights and dangers of his career. SER0206-SER0209, SER0231-SER0234. At no time did Harris document the myriad of so-called observations in his declaration. But for the word of Department officials that Lau had not met the purported vague "good moral"

character or psychological standards, there is absolutely no document memorializing the specific reason for Lau's denial other than SER0203 and SER0205. ER000849-853.

Lau appealed based upon the notice provided. The District Court went out of its way to accept *post hoc* reasoning proffered by Defendants' motion for summary judgment, completely ignoring Lau's declaration (ER000849-853). When viewed in a light most favorable to Lau, there was no evidence that Lau was ever informed of an "issue" relating to his psyche or moral character. To the contrary, the only written documentation identifying the reason for Lau's CCW application being rejected was stated by Chief Harris in SER0205.

Especially disturbing is that Defendants basically take the position that Lau is too dangerous to be possessing a firearm, but this position is contradicted in both denial letters which state clearly that Lau "may have [a] weapon at home and in business." SER0203; SER0205.

As noted in SER0187 and ER000188, captioned "Psychological Testing", Cal. Penal Code section 12054(c) states an issuing authority "may require psychological testing." At no time was Lau requested to submit to a psychological test, the purpose of which is obvious; it takes the discretion out of the hands of County officials who have no expertise or even qualified to render psychological opinions.

Somehow, Sacramento County (and the District Court) attempt to equate

revocation of the highest security clearance issued to undercover operatives as some sort of disqualification to either obtaining a CCW or exercising a fundamental right. At SER0325, the FBI's Access Review Committee (a top secret committee that reviews FBI treatment of its employees) applauded Lau's 14 years as a deep undercover operative and admitted that he was damaged by this extremely dangerous undercover work. Some of the more observable notes in that document are as follows:

SER0329 last paragraph, "The ARC unanimously agrees with appellant's counsel that Mr. Lau did not receive appropriate support or psychological treatment despite his clear manifestation of inappropriate behavior."

SER0330 first full paragraph, "The ARC finds the FBI's handling of Mr. Lau's psychological difficulties has been problematic. **SA Lau was assigned to do dangerous highly classified undercover work immediately out of the academy.** The nature of the work, the methodology of the assignment, and the work which SA Lau was assigned to complete required him to work against **aggressive and hostile entities.** The **FBI clearly failed in its obligation** to provide Mr. Lau with psychological treatment and organizational support. Based on this failure, it could be argued that the FBI contributed to his current and past psychological problems, which led to the revocation his security clearance." The ARC goes on to further note that exhibited behavior was "the by-product of the unusual work-related stress you were subjected to ..." Mr. Lau was acting

“uncharacteristically” and “the FBI did almost nothing to facilitated his recovery from the stress.” “During all its proceedings and investigations, Mr. Lau was denied access to the medical care that he so desperately sought.” SER0330.

The District Court’s assessment of the facts is that Lau was convicted of shoplifting and lied about it, which is contradicted by the FBI’s own records: (SER0326 last full paragraph) “On January 11, 1999, the Superior Court of the State of California, for the County of Sacramento, the District Attorney made a motion to dismiss the case against Mr. Lau for insufficient evidence. The Judge granted the motion to dismiss in the interest of justice.”

In sum, the FBI ARC stated: “For all these reasons, the ARC cannot endorse the actions of the FBI.” SER0331. At the footnote on SER0331, the ARC states “while we are unanimous in our disappointment with the FBI’s handling of Mr. Lau’s circumstances, ... [the] FBI assured the ARC during the July 27, 2000 hearing that it has initiated steps to correct the deficiencies that occurred in the support provided to Mr. Lau, who experienced a negative reaction to the stressful nature of his undercover assignment.”

In conclusion, Defendants were not capable, qualified, or worthy to make any judgment about Mr. Lau’s CCW application other than to summarily issue him a CCW because of his prior undercover work under the *prima facie* good cause criteria. This is clearly supported by what Twomey points out at ER000174, ¶s 278-279, noting others were issued CCWs for the flimsiest of reasons or no reason

at all, as addressed below.

Examples of Lau's highly classified dangerous undercover work can be found at SER0254, wherein the Chief of Police of the City of Sacramento commended Lau for infiltrating a notorious Asian gang, involved in "loan sharking, extortions, gang activities and assaults". SER0239, Lau infiltrated the "inner circle" of a "major criteria country diplomatic establishment". SER0236, the FBI acknowledges the "lengthy assignments" that have exacted a heavy toll upon Lau, and that his efforts were "far above the call of duty."

Undisputed is that at the appeal hearing, Harris told Lau to carry a concealed weapon and to file false reports to show "immediate danger." Harris never addressed issues at Lau's appeal hearing that he now declares to have based his decision upon. ER000849-ER000853. Not a single document has been produced showing the deliberative process of Harris, or any other member of Blanas' staff.

3. **THE FACTS VIEWED IN A LIGHT MOST FAVORABLE TO APPELLANTS CLEARLY DEMONSTRATE THAT CCWS ARE ISSUED ARBITRARILY AND CAPRICIOUSLY, THE SHERIFF AND HIS MANAGEMENT TEAM GET PERSONALLY INVOLVED IN THE CCW ISSUANCE PROCESS WHEN CLOSE FRIENDS AND CONTRIBUTORS ARE INVOLVED, AND CONTRIBUTORS RECEIVE PREFERENTIAL TREATMENT.**

Blanas states he issued 229 CCWs to individuals who never contributed, but

never denies that he personally knew them. Furthermore, of that 229, Blanas never identifies the “good cause” facts relied upon. Also note that all of Blanas’ buddies who signed declarations and purportedly asked for a CCW never submitted an application.

Regardless, Appellants’ expert witness, Twomey, nullifies Blanas’ assertions. (Twomey’s expert opinions are admissible pursuant to F.R.E. Rules 702 through 705, and the evidence relied upon are part of the record). In addition, the business records incorporated into Twomey’s opinion are also admissible as the foundation was properly laid through Twomey as well as depositions and verified discovery responses. E.g. ER001220, et seq.

Take the “oral” CCW application of one Edwin Gerber as a benchmark to judge Mehl and Lau’s application against. Twomey goes through a complete analysis of how he connects campaign contributors with those who were issued a CCW, commencing at ER000151 ¶ 182-186.

As Twomey points out at ER000177, ¶ 302-306: "Defendant Blanas testified that; (1) he personally issued a CCW to Mr. Gerber; (2) that both Mr. Gerber and his company Energetic Painting and Drywall, Inc. have contributed to his political campaigns for Sheriff of Sacramento County, and (3) that they own a vacation home together in Reno, Nevada, and in fact Sheriff Blanas flies in Mr. Gerber's airplane. Blanas Depo. 46:7-16, 47:9-48:25, 55:11-18, 63:14-67:7." ER000898-ER000900; ER000903; ER001066. ER001336 is the vacation home

owned jointly with Gerber, and sold by Reynen and Bardis. Gerber (ER000723) and Reynen and Bardis (ER000667, 671) are all campaign contributors.

Wong, Blanas' records clerk who processed CCW applications, states Gerber was issued a CCW before the California Department of Justice even conducted a criminal background check. ER000960. Sergeant McKeal informed her that Blanas approved Gerber's CCW, and McKeal is NOT a so-called committee member. ER000968. For Gerber, there was no so-called "committee" meeting to approve his CCW. ER000976 p.98:16-20.

Some of the proverbial buzzwords for taking care of friends are "emergency", and "SSD Aero Squadron", contributors with private planes flying Blanas to Vegas.

ER000208 is the purported committee evaluation sheet generated per the "3-person Sheriff's Department evaluation committee, which would not include the Sheriff." SER0168-0177; see Page 5 of Blanas' brief. However, Gerber's CCW application was "Approved by Sheriff Blanas" regarding an application made on "7-25-06", which is contradicted by a letter dated "July 26, 2006" that Gerber had made a "verbal application" and a CCW was issued that same day. ER000209; ER000976:16-ER000978

Substantial evidence was produced that there is no such thing as either a "verbal" application or an "emergency" CCW. ER000156, ¶ 199; "written" CCW policy ER000181-185 requires a written application.

The letter signed by Blanas "recommends" that Gerber "... work with Lieutenant Mike McKeel to ensure that formal application is made through our CCW Committee." ER000209. Gerber's written application is back dated to "7-25-06." ER000210, ER000212, ER000215. This application is witnessed a full day later by a peace officer. See also, ER000960-ER000974.

The most striking fact is that the detailed "emergency" was "Carry large sums cash \$4000-\$5000 were \$45,000 watch + rings - expensive jewelry". ER000214.

There are many examples of the so-called CCW "committee" being by-passed altogether whenever a campaign contributor is involved. Koewler's CCW was issued "PER SHERIFF CRAIG 06-10-97". ER000227, ER000158, Twomey Decl. ¶ 206. Halverstadt's CCW application was "APPROVED FOR ISSUE UNDERSHERIFF JOHN MCGINNIS 6-13-03". ER000158, Twomey Decl. ¶ 207; ER000229. Undersheriff McGinniss approves two major contributors, Fite and Halimi, with the buzzword "SSD AERO SQUAD." ER000238; ER000245. Undersheriff McGinniss approves Hill's application, and a blank Section 7. ER000254; ER000264. A chief approves Baker's CCW ("approved Chief Dan Lewis"). ER000283; ER000858, Blanas Depo. 23:20-25, 24:4-9, 26:19-20, 68:10-69:2, 69:10-13. ER000690, ER000163, Twomey Decl. ¶ 227.

Ernest Martini contributed to Blanas, and received a CCW. Justification: "I

routinely check on properties that are located in high-crime areas throughout California." ER000156, Twomey Decl. ¶ 200; ER000858, Blanas Depo. 83:2-84:24, 88:2-20; ER000216, ER000218; ER000544; ER000660.

Benjamin Upton, Valley Painting ER000634, contributed to Blanas and received a CCW. ER000156, Twomey Decl. ¶ 201; ER000219-220; ER000858, Blanas Depo. 68:10-69:2, 76:15-23, 91:22-25. Upton's CCW application states his business is "Valley Painting", and that he "[has] not had a problem", "[has] never had any incidents", and "[has] never been threatened", conclusively proving no "immediate" threat or harm.

Jim Anderson owner of Pacific Coast Building Products, Inc., a major contributor to Blanas by the way of "forgiven loans" [e.g. ER000555], and received a CCW commencing in 1994; for which there is no CCW application. ER000157, Twomey Decl. ¶ 202; ER000858, Blanas Depo. 68:10-69:2, 77:8-9, 83:2-84:24, 84:21-85:12; (see e.g. ER000571, 000589). Connected to Anderson is Michael Gilmore [ER000222](issued 2003) and Richard Merri [ER000223, approved by Harris](issued 1998) both have CCWs, and both work for "Pacific Coast Building Products, Inc.", a major campaign contributors to Blanas. The unrebutted conclusion drawn is that three men associated with one of Blanas' largest contributors received CCWs without any apparent formal application being submitted. Again, here is a pattern of minimal information, no threat of immediate danger as required, and the only common denominator is a business associated

with a major campaign contributor. ER000157, Twomey Decl. ¶ 203.

And even if Anderson, Gilmore, and Merri had submitted written applications, why would it be any different than the one actually submitted by another major contributor, Jack Kimmel? Kimmel received a CCW for simply writing the words "self defense", which is not the standard of the written policy. Obviously, everyone applying wants a CCW for "self defense." Campaign contributions were through Jack Kimmel Construction Company and "Sacramento Rendering." ER000157, Twomey Decl. ¶ 204; ER000225-6; ER000858, Blanas Depo. 50:7-12, 50:24-51:5, 70:17-71:5, 88:6-8; ER000563, ER000610, ER000681 (Sacramento Rendering).

Likewise, Michael Koewler contributed to Blanas, and received a CCW. ER000157, Twomey Decl. ¶ 205; ER000227; ER000858, Blanas Depo. 68:10-69:2, 71:12-17, 88:6-9. Like Jack Kimmel, he is also a co-owner of Sacramento Rendering, which contributes large amounts of money to Blanas (See ER000563, ER000659, ER000681, ER000728). Significantly, Harris was part of the panel that approved this application. Also note at ER000563 how Koewler and Kimmel's names are listed side by side. There is a pattern of clusters of contributors who also receive CCWs. Koewler's CCW was issued "PER SHERIFF CRAIG 06-10-97". ER000227, ER000228, ER000158, Twomey Decl. ¶ 206.

Kurt Halverstadt was issued a CCW on 6/13/2003; his application was

"APPROVED FOR ISSUE UNDERSHERIFF JOHN MCGINNIS 6-13-03", and as noted on the same page "Lou Blanas" was "Sheriff." ER000158, Twomey Decl. ¶ 207; ER000229. At ER000237, the good cause justification was that he handles "assets of significant value" and the "high visibility of being part of The Sullivan Group" and that it is "a reasonable business precaution." Again, no immediacy, and no specific threats.

If the standard for approval is "a reasonable business precaution", then all business owners should be issued CCWs. However, the law is clear: one may have a firearm in their place of business, thus a CCW is not needed. What is obvious is that Tom Sullivan of The Sullivan Group has a close line of communication with the Sheriff, and this cannot be disputed for Sheriff McGinniss himself appeared frequently on Tom Sullivan's talk show program before Sullivan left for the national spotlight. The three panel committee was completely bypassed - again, similar to Gerber and Koewler. ER000158, Twomey Decl. ¶ 208.

Then, after McGinniss becomes Sheriff, you see the same pattern – the Sheriff getting personally involved in the CCW approval process for select individuals. ER000159, Twomey Decl. ¶ 209.

David Bruce Fite was issued a CCW on 1/23/2007. ER000238. Pete Halimi was issued a CCW on 1/2/2007. ER000245, ER000250. Both have a business interest in D. Bruce Fite & Associates, Fite Construction & Development Co., and Fite Properties, and campaign contributions were made under these entities.

ER000159, Twomey Decl. ¶ 210. ER000240, ER000246. E.g., ER000002, 000696, 000726.

ER000238 and ER000245 shows "John McGinniss" personally overruling the so-called three panel CCW committee by approving identical applications submitted by Fite and Halimi. ER000606, 000697, 000725. These individuals are identified as members of the fictitious "SSD AERO SQUAD" right on the CCW evaluation cover sheet. ER000159, Twomey Decl. ¶ 211-¶ 212.

This is significant because there is no such thing as the SSD Aero Squad, though the Sacramento County Sheriff's Aero Squadron is purportedly located at 711 G Street and donated to Defendant Blanas' campaign. ER000566; ER000160, Twomey Decl. ¶ 213-214.

David Fite's application was originally denied, maybe because the evaluation form (ER000238) states that Fite is "Retired." But then, under the penalty of perjury, Fite apparently states that "Applicant carries large amounts of cash from business to the bank for deposit." ER000242. If Fite is retired, why is he carrying cash from a business to the bank? ER000160, Twomey Decl. ¶ 215.

Halami's evaluation form has him listed as a "real estate developer". ER000244, 000250. If it is true that the three panel committee reviews just what is in the application and the justification for issuance, then how is it that the "CCW BRIEFING SUMMARY" prepared by Amber Wong contains facts that are not in the application? ER000929 Wong Depo. 31:17-41:13 ER000955. For example,

Halami's actual application provides the stated reason for a CCW is that he "carries cash from business." ER000252, ER001412. However, at ER000246, Amber Wong writes "Applicant carries large amounts of cash home from the business located in Rancho Cordova. He also works late hours and feels vulnerable." [emphasis added] However, Halimi's real estate license has his business located in Carmichael, not Rancho Cordova. ER000546. Since there are no notes or other documents in Halimi's file, where did this additional information come from? ER000160, Twomey Decl. ¶ 216.

In 2002, Richard/Dick Hill of Lexus of Sacramento had his application approved by Undersheriff McGinniss after it was denied by the three member panel, and his **Section 7 justification is blank** (ER000264). ER000254-65, ER000257. Again, another person associated with the owner of a company that contributes and also has a CCW. ER000161, Twomey Decl. ¶ 217.

Bob Frink HEAVILY contributed by way of forgiven loans to Blanas's campaign, and received a CCW, plus he is a "friend" of Defendant Blanas. ER000858, Blanas Depo. 83:2-84:24, 86:8-14 ER000560, 000571, 000589, 000648, 000745 (RPM Management). Robert Frink is also the owner of RPM management, which also just happens to employ Hill, and a Patrick Frink is also affiliated with Bob Frink Imports, all at the same business address. ER000161, Twomey Decl. ¶ 218.

Patrick R. Frink was issued a CCW on 2/24/2000, and Robert Frink was

issued a CCW on 5/18/1995. Both of these individuals had a business interest in Bob Frink Imports, Inc, Bob Frink Management, Inc., RPM Management, all located at the same address. See ER000162, Twomey Decl. ¶ 219.

These records also identify Richard Gord Hill that was issued a CCW on 9/6/2000, and Hill was employed by Bob Frink Management, Inc. and RPM Management at the time the CCW was issued. ER000162, Twomey Decl. ¶ 220.

Ronald Yee, a dentist, contributed to Blanas, and received a CCW. ER000858, Blanas Depo. 83:2-84:24, 92:3-6; ER000566, 000635, 000666. His stated reason is essentially that "there is a real possibility of encountering life threatening situations when out alone on the street or in my parking lot." Clearly, there was no stated immediate threat. ER000266-ER000267; ER000162, Twomey Decl. ¶ 221.

Both John and Steve Raptakis have CCWs, and John Raptakis contributed to Blanas's campaign under J. R. Painting & Waterproofing. See Twomey Exhibit "I", Page: 8; ER000268-ER000271; ER000591; ER000858, Blanas Depo. 68:10-69:2, 77:16-78:1, 91:2. Good cause justification is working in "dangerous neighborhoods". ER000162, Twomey Decl. ¶ 222.

Compare Raptakis' applications with Rothery's (ER000802-844) and Plaintiff Lau's, and it becomes evident even a perceived threat by a campaign contributor is good enough reason to obtain a CCW, and others who have not contributed are denied even though they have more compelling so-called

perceived "threats". ER000162, Twomey Decl. ¶ 223. Rothery Decl. ER000802-844.

John Valensin contributed to Blanas, and received a CCW; reason: defense of property (it is illegal to use deadly force to protect property). ER000272; ER000163, Twomey Decl. ¶ 224; ER000858, ER000590 (\$5,000 loan) ER000595 (\$250 contribution), Blanas Depo. 18:6-14, 21:2-15, 24:4-9, 76:17-23; Pl. Exh. 2 and 3; ER000272; ER000588, 000590, 000665 (Over \$10,000 loans made on these). (Blanas Depo, ER000915, lines 15-25) See "Non Law Enforcement-Active Permits" list at ER 001083.

Ron Sellers contributed to Blanas, and received a CCW for no immediate threat. ER000273-4; ER000163, Twomey Decl. ¶ 225; ER000858, Blanas Depo. 18:6-14, 21:2-15, 24:4-9, 91:4-6; ER000273, 000274; ER000590 (\$10,000 loan), 000631. Sellers' concerns involve dangers at work and at his residence where a CCW is unnecessary. Jack Sellers contributed to Blanas, and received a CCW. ER000858, Blanas Depo. 18:6-14, 21:2-15, 24:4-9. Steve Sellers contributed to Blanas, and received a CCW. ER000858, Blanas Depo. 18:6-14, 21:2-15, 24:4-9. They have no applications

Roman Thorntona, the personal assistant for Ron Sellers, was even issued a CCW. ER000275; ER000163, Twomey Decl. ¶ 226. Thorntona requested a CCW to guard Sellers, even though Seller's has a CCW. Again, clusters of associations with contributors equates to good cause. (E.g. Halami with Fite; Hill with Frink;

Gilmore and Merri with Anderson; Koewler with Kimmel; and now Thorntona with Sellers, not to mention the other two Sellers as well; the two Raptakis; and Halverstadt with Sullivan/McGinniss).

Also note at ER000279 how Seller's name is specifically identified with the application as the employer, when the employer is actually Sacramento Coca-Cola. Obviously, Thorntona knew something Mehl and Lau didn't – mention the name of a major contributor to obtain a CCW.

From there, it just goes on. Dave Baker, carpet business, contributed to Blanas' and received a CCW, and his application was "approved Chief Dan Lewis", bypassing the so-called committee altogether with undocumented threats. ER000283; ER000858, Blanas Depo. 23:20-25, 24:4-9, 26:19-20, 68:10-69:2, 69:10-13. ER000690, ER000163, Twomey Decl. ¶ 227.

Dr. Pasquale Montesano contributed to Blanas, and received a CCW for responding to emergencies "at late hours". ER000286, ER000290; ER000858, Blanas Depo. 83:2-84:24, 89:11-90:11; ER000613. ER000164, Twomey Decl. ¶ 228.

Chris Hansen, insurance broker, contributed to Blanas and received a CCW in 1998, though the committee sheet says denied for "no compelling reason" and it was then subsequently approved as a "renewal" in 1999 - the only statement made being "personal safety due to my business." ER000164, Twomey Decl. ¶ 229; ER000287-8; ER000858, Blanas Depo. 68:10-69:2, 69:23-70:4, 83:2-84:24,

86:21-4; ER000575, 000623, 000719, 000720.

John Christie employs Nanette Blanas (Blanas' wife), and both of these individuals also work in the same office as Angelo Tsakopoulos (i.e. AKT Development) whose name and company contributes heavily to Defendant Blanas.

ER000540, 000541, 000542. For example ER000569, \$25,000.00 "forgiven loan" with the same business address, and this pattern is repeated throughout Defendant Blanas' campaign records. John Christie had his CCW approved in October of 1998, and the \$25,000.00 loan was forgiven by 1/11/99. No other information is provided on ER000291. However, at ER000292, John Christie describes his place of employment as "Sunrise Liquors" on Greenback Lane, but his real estate license has him listed at 7700 College Town Drive, Suite 101, the same identical address and suite as Angelo Tsakopoulos. ER000164, Twomey Decl. ¶ 230.

On the face of the application, the only basis for approval is "carry large amounts of cash to the bank three to four times a week. Also, work at the above business often times late." ER000292. It is also noted that 10 years prior, in "1988", he was denied a CCW, which also happens to be 10 years after he incorporated "Sunrise Liquors, Inc." on 4/7/1978. What changed, other than contributing and employing Blanas' wife? Likewise, John Christie's wife also applied for, and received a CCW for the same purported reason. ER000295; ER000165, Twomey Decl. ¶ 231.

Chris Lee, an "attorney/farmer" contributed to Blanas and received a CCW in 1996. ER000858, Blanas Depo. 68:10-69:2, 71:7:12, 88:6-8; ER000299. Not only does Lee's application establish no "documented" threats, it is specifically stated in his application that he "lives in rural area of county - often confront trespassers on my ranch." Here, Lee's application makes clear that he wants to use deadly force to protect property. ER000300; ER000165, Twomey Decl. ¶ 232.

James Grey contributed to Blanas and received a CCW. ER000858, Blanas Depo. 83:2-84:24, 87:19-23. ER000561, 000578, 000627, 000645; ER000301-302. Again, no specific threats, just a generalized feeling of vulnerability. ER000301-302; ER000165, Twomey Decl. ¶ 233.

Hatim Shariff contributed to Blanas and received a CCW for protection of business. ER000858, Blanas Depo. 68:10-69:2, 76:2-7, 91:1-3; ER000303-306; ER000165, Twomey Decl. ¶ 234.

Julie Rollofson contributed to Blanas, and received a CCW, plus her father Dr. Rollofson also donated. ER000594; ER000858, Blanas Depo. 68:10-69:2, 77:13-78:1, 91:2; Pl. Exh. 2; ER000307-308 Exhibit J. She was "denied" for "no compelling reason", but then it is written, "O.K. permit do amend review if status changes Chief B Roberts." ER000308. Again, the so-called committee is overruled by a higher authority. ER000307-308, ER000165, Twomey Decl. ¶ 235.

Alvin and Gary Ricci contributed to Blanas and received a CCW and the records were destroyed by Defendants. ER000309-311; ER000166, Twomey

Decl. ¶ 236; ER000858, Blanas Depo. 68:10-69:2, 75:1-2; Pl. Exh. 2; ER000572, 000620, 000638.

Kermit Schayltz, owner of Lucky Derby Casino, was issued a CCW in 1996 for "course of business - to and from bank" with only two members present on the three member review panel. ER000312-314; ER000166, Twomey Decl. ¶ 237; ER000580, 000611, 000628, 000646, 000703 (Point Walker, Inc. dba Lucky Derby Casino), 000196. It is important to note that he had a CCW since 1996 and was suddenly denied in 2007 by McGinniss, apparently because Schayltz did not contribute to McGinniss' campaign even though this individual has been operating the same business for years. At a minimum, this shows an arbitrary and capricious policy with absolutely no standard for the reviewing committee members to abide by. Gerry Harris has a CCW with no application and he too is affiliated with Lucky Derby. ER000166, Twomey Decl. ¶ 238..

Bill Myers, "the Padillas" (i.e. Alejandro, Anselmo, Greg, Jess, Michael a.k.a. Padilla Bail Bonds) contributed to Blanas and received a CCW. ER000332; ER000166, Twomey Decl. ¶ 239; ER000858, Blanas Depo. 68:10-69:2, 74:21-25. More importantly, here again, the "SSD Air Squadron" is named as the only justification for issuance in 1997. ER000332, ER000334; ER000573, 000630; Pl. Exh. 2 and 3. One of the Padilla's states "self protection" with no immediate threats. ER000344.

Dave Mastagni, an attorney located in a safe area of Sacramento,

contributed to Blanas and received a CCW in 1989 for "course of business".
ER000167, Twomey Decl. ¶ 240; Blanas Depo. 68:10-69:2, 72:16, 88:6-8.

Bill Spurgin gave Blanas jewelry, donated, and received a CCW issued in
1996. ER000858, Blanas Depo. 68:10-69:2, 76:8-14; ER000167, Twomey Decl. ¶
241.

Joseph Mohamed, Asghar Mohamed, Ahmed, and John Mohamed were all
issued CCWs in 2001 and 2005 respectively. Their files were purged and Joseph
also happens to be very heavy contributor to Blanas. ER000336; ER000167,
Twomey Decl. ¶ 242. The application states: "My concealed weapon has provided
me with a sense of security in these situations." ER000337.

Attorney John Virga contributed to Blanas, and received a CCW.
ER000167, Twomey Decl. ¶ 243; ER000858, Blanas Depo. 68:10-69:2, 76:15-23.

Margaret A. Abrate of Capitol Steel, Co. contributed to Blanas and
received a CCW. ER000167, Twomey Decl. ¶ 244; ER000599, 622, 654.

John Morgan contributed to Blanas, and received a CCW. ER000168,
Twomey Decl. ¶ 245. ER000858, Blanas Depo. 83:2-84:24, 89:1-6. ER000580,
630, 661.

Jerry a.k.a. George Brannigan contributed to Blanas commencing in 1995
and received a CCW. ER000168, Twomey Decl. ¶ 246. ER000858, Blanas Depo.
18:6-14; 21:2-15.

Jack Kearns a.k.a. John Kearns contributed to Blanas and received a CCW.

ER000168, Twomey Decl. ¶ 247; ER000858, Blanas Depo. 67:9, 70:9-16.

Bill Mosier contributed to Blanas and received a CCW. ER000168, Twomey Decl. ¶ 248; ER000858, Blanas Depo. 25:17-25, 26:23-25.

A CCW was issued on 8/28/93 to Steve Beneto of Beneto Petroleum Products whom also forgave a \$15,000.00 loan to Defendant Blanas. ER000168, Twomey Decl. ¶ 249; ER000556 (\$15,000 loan forgiven) ER000571, 000589, 000647.

On 8/12/1998, Spencer Bole was issued a CCW and contributed to Blanas' in 1999. ER000168, Twomey Decl. ¶ 250 ER000557, 000602, 000639.

John Manikas was issued a CCW in October 1994 and contributed to Blanas under Color Core Incorporated and Five Star in 1999. ER000168, Twomey Decl. ¶ 251. ER000558, 000575, 000640, 000644, 000648, 000660.

Dave Commons was issued a CCW in 1996 and contributed to Blanas' campaigns. ER000168, Twomey Decl. ¶ 252. ER000575.

David S. Smith of Eagle Ridge Construction was issued a CCW in October 1994 and contributed to Blanas. ER000168, Twomey Decl. ¶ 253; ER000576, 000624, 000656.

Ed Rincon was issued a CCW in 1997 and contributed to Blanas. ER000169, Twomey Decl. ¶ 254. ER000577, 606, 625.

Doug Barkdull was issued a CCW and contributed to Blanas. ER000169, Twomey Decl. ¶ 255; ER000601, 000653;.

Darrell Dettling was issued a CCW in 1994 and contributed to Blanas. ER000169, Twomey Decl. ¶ 256. ER000559, 000576, 000604, 000655, 000722.

ER000667 is a list of outstanding loans to Blanas in the year 2001. Out of nine loans consisting of eight individuals (two loans are by Manikas under different companies, i.e. Color Core and Five Star.), five individuals have CCWs (Beneto, Brannigan, Manikas, Cummings, and Frink), one indirectly employs Defendant Blanas' wife (Angelo Tsakoploulos through Christie and Christie and his wife have CCWs), and Bardis sold a house to Blanas and co-owner Gerber who also has CCW. This is just an example of what the volumes of evidence shows. ER000169, Twomey Decl. ¶ 258.

In fact, it is more likely than not that on every page of Blanas' campaign records, commencing at ER000553, and comparing it with the lists of CCW permit holders at ER001065 through 001106, there is at least one CCW permit holder who has contributed to Blanas. For instance, ER000671, two of three contributors have CCWs (i.e. Beneto and Brannigan) and the third sold a house to Defendant Blanas (i.e. Bardis). At ER000672, four of five contributors have CCWs (Brannigan, Manikas under Color Core and Five Star, and Frink). At ER000673, three of five contributors have CCWs (Jack, Ron, and Steve Sellers). There is also a Manolakas that has a CCW and it is more likely than not under a totality of circumstance that this person is related. Then, ER000674, one of two individuals has a CCW (Valensin), and the other (Tsakopoulos) indirectly employs Defendant

Blanas' wife. ER000169, Twomey Decl. ¶ 259.

The application of Roland Lewis (ER000538-9) is particularly puzzling because here is a man that has absolutely no records connecting him to any company or individual, and he was issued a CCW for "Self protection Bus related"; a reason that is more cryptic than anything. ER000170, Twomey Decl. ¶ 260. This is a very good example of the capriciousness and arbitrariness that Plaintiffs, at a minimum, were subjected to.

Twomey marshaled the above evidence (CR 150, ER 117-180) to establish his unrebutted opinions "to a degree of reasonable certainty that there is no 'good cause' policy or criteria for issuance or denial of a CCW application, and at a minimum, it is simply arbitrary and capricious with absolutely no sense objectivity or baseline criteria being used." (CR 150, ER 145, ¶153).

In sum, what the facts show is that the statute and policy are unconstitutional since unabridged discretion is bestowed to the local sheriff. The state only requires a minimum standard (i.e. good cause and moral character), and even if that criteria is met, Blanas still had the discretion to deny with no set criteria as to how he is to exercise such judgement.

Just imagine if the director of the DMV were given the same discretion for the issuance of a drivers license? Currently, the DMV requires a license applicant to 1) attend a school, 2) pass a driving test, 3) a vision test, 4) a written test, 5) pay a fee, and 6) not have any physical limitations like epilepsy. If all these conditions

are met, a citizen is summarily issued a drivers license – and that is the standard for a regulated “privilege.” Here, there is a fundamental right involved. To obtain a CCW one is subjected to an arbitrary statute that requires “good moral character” (a vague and subjective term) and “good cause” (a vague and subjective term). If that threshold is met, Blanas “may” issue a CCW, but he does not have to. If there is going to be a licensing scheme for the free exercise of a fundamental right, it must be made available to all citizens equally, or not at all. Absolute discretion must be removed from the process for any discretion in the process that is not relegated to a ministerial duty to issue a CCW is, and will always be, corrupt and abused.

A constitutional licensing scheme would be more akin to obtaining a drivers license. Attend a class, pass an objective background check for convictions and mental institution commitments, take a shooting test, and pay a fee – this would apply to all citizens and retired law enforcement officers ALIKE. In other words, IF government is to undertake the regulation of carrying firearms, it must be done in an objective manner, similar to how permits are issued that regulate speech, which is never left up to an absurdly subjective criteria.

In sum, the people are granted a “privilege” to drive the most deadliest weapon in America using a basic objective criteria. When it comes to a fundamental right, a single individual is granted the power under a state statute unrestricted and limitless discretion for the issuance of CCWs. If there is ever a

case subject to government abuse and corruption under a statute, this is it!

CONCLUSION

The CCW statute as written is unconstitutional, and it is applied in an arbitrary and capricious manner. Appellants have standing to challenge the unconstitutional application of the law and the County's policy for issuance of CCWs.

Likewise, the retired peace officer exemption, and prima facie good standards violate the equal protection clause.

Date: 10/29/08

Respectfully submitted,

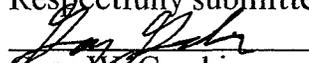
Gary W. Gorski

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CERTIFICATE OF COMPLIANCE CIRCUIT RULE FRAP 32(a)(7)(B)

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Date: 10/29/08

Respectfully submitted,

Gary W. Gorski

Certificate of Service

The undersigned hereby is a U.S. Citizen over 18 years of age and not a party to this action. The foregoing Appellant's Reply Brief in this case was served this date by regular U.S. Mail, first class postage prepaid, and delivered to a U.S. Post office box, addressed to:

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I declare under penalty of perjury that the foregoing is true and correct, and that this certificate was executed in Sacramento, California on

October 29, 2008



Gary W. Gorski