Appellate Case No. 08-15773

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID MEHL, LOK T. LAU, FRANK FLORES

Plaintiffs-Appellants

v.

LOU BLANAS, COUNTY OF SACRAMENTO, ET AL.

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA
D.C. No. CV S-03-02682 MCE KJM

RESPONDING BRIEF OF APPELLEES COUNTY OF SACRAMENTO AND LOU BLANAS

John A. Lavra, CBN 114533
Jeri L. Pappone, CBN 210104
LONGYEAR, O'DEA & LAVRA, LLP
3620 American River Drive, Suite 230
Sacramento, California 95864
(916) 974-8500

Attorneys for Defendants-Appellees
County of Sacramento and
Lou Blanas

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STATEMENT OF JURISDICTION

Defendants/Appellees County of Sacramento and Lou Blanas, agree with Plaintiff/Appellant's Statement of Jurisdiction pertaining to the jurisdiction of the Ninth Circuit Court of Appeals and the jurisdiction of the United States District Court for the Eastern District of California.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether the District Court correctly granted summary judgment for Defendants/Appellees County of Sacramento and Lou Blanas.

STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings Below

Plaintiffs/Appellants David Mehl and Lok T. Lau brought this lawsuit alleging violation of their Federal Constitutional rights after the Sheriff's Department of the County of Sacramento denied each of them their applications for a Carry Concealed Weapon ("CCW") permit. Plaintiffs alleged that they were each denied a CCW permit because they had not contributed to the election campaign for the Sheriff, and that had they contributed, they would have received approval of their applications. Plaintiffs also alleged that they were denied CCW permits because of their race or nationality. Plaintiffs have alleged claims for

violation of the First, Second, Ninth, and Fourteenth Amendments. The undisputed material facts established that Plaintiffs were denied CCW permits for legitimate and legal reasons, Plaintiffs have no standing before the court, and Defendants were entitled to judgment as a matter of law.

Plaintiffs' first amended complaint contains six claims and a request for declaratory and injunctive relief. (SER0001-SER0021)

The first claim alleges deprivation of the United States Constitution's Fourteenth Amendment - Equal Protection Clause, based on race or national origin.[1] Plaintiff Lok Lau contends that his Equal Protection rights under the Fourteenth Amendment were violated when the Sacramento County Sheriff's Department denied his application for a CCW permit, and that this denial was based upon his race or national origin. (SER0014-SER0016)

In the second Cause of Action, Plaintiffs allege that their Equal Protection rights were violated because the standards for issuance of a CCW permit to retired law enforcement officers are different in that retired law enforcement officers do

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[1] Although both Plaintiffs have equal protection claims based upon alleged discrimination based on race, national origin, and gender, Mehl, a white male, is not pursuing a race based claim, neither party is pursuing a gender based claim, and thus only Lau, an Asian American is pursuing the Equal Protection claim based on race and national origin. (SER0137-SER0138)

not have to show good cause for a CCW permit, whereas other citizens, e.g., Plaintiffs, have to show good cause. Additionally, both Plaintiffs allege Equal Protection claims on the basis that Defendants have a policy that those individuals who contribute to political campaigns are "summarily" given CCW permit upon request. (SER0016-SER0019)

In their third claim, Plaintiffs allege that the Sacramento County Sheriff's Department has a policy of granting CCW permits to individuals who have contributed to political campaigns of the Sheriff, and denying CCW permits to those who have not contributed to the political campaigns. Both Plaintiffs allege that their First Amendment rights of freedom of expression and association have thereby been violated. (SER0019)

Plaintiffs' fourth claim is a civil rights claim under the Second Amendment. Plaintiffs allege that the Second Amendment grants them an individual right to keep and bear arms and that the denial of a permit to carry concealed firearms by the County of Sacramento, has violated that right. (SER0019)

Plaintiffs' fifth claim is an extension of the fourth claim, in that Plaintiffs' allege that their right to keep and bear arms - a purported personal right under the Constitution - also gives them a right to carry a concealed weapon and that the

denial of the permit to do so has violated the privileges and immunities clause of the Fourteenth Amendment. (SER0019-SER0020)

The sixth claim is purported to be a claim of a "right to self preservation" under the Ninth Amendment. Although not clear by way of the allegations, this claim seems to state that, again, Plaintiffs' presumed individual right to keep and bear arms, gives them a right to carry concealed weapons, and that yet again, the County of Sacramento's denial of Plaintiffs' applications for a CCW permit violated that right. (SER0020-SER0021)

Finally, Plaintiffs request the court to make a declaration as to the constitutionality of "CCW statutes and policies enforced and promulgated by Defendants," but Plaintiffs do not identify which statutes and policies this request relates. (SER0021)

Defendants' County of Sacramento and Lou Blanas moved for summary judgment on October 15, 2007, which the District Court granted on February 5, 2008. (ER00001-ER00015) Plaintiffs appealed that order and entry of judgment on March 4, 2008. (ER0001487)

B. Statement of the Facts

1. Carry Concealed Weapon Permit Application Process for the Sacramento County Sheriff's Department

The Sacramento County Sheriff's Department's has a standard process for the submission and review of Carry Concealed Weapon ("CCW") permit applications, the issuance or denial of permits, and the process for an applicant to appeal the initial denial of an application. (SER0035-SER0037; SER0178-SER0247) The process in effect while Lou Blanas was Sheriff was developed and established by Sheriff Craig in about 1996 or 1997 through input from a 8-person Citizen Advisory Committee which included members from the community as well as Sheriff's Department Staff. (SER0168-SER0177) The application procedure was designed to operate with initial review of the application by a Special Investigations and Intelligence Bureau Detective, followed by review and approval or denial by a 3-person Sheriff's Department evaluation committee, which would not include the Sheriff. (SER0168-SER0177) This process had been in place for many years, and was in place during the time Plaintiffs Mehl and Lau applied to the Department for CCW permits in 2002-2004, and involves the following steps. (SER0035-SER0037; SER0178-SER0247)

The CCW permit application process includes an initial review of the applications submitted to the Special Investigations and Intelligence Bureau ("SIIB") of the Sheriff's Department, by the Detective assigned to SIIB.

(SER0080-SER0082; SER0112-SER0115; SER00145-SER0152; SER00157-SER0159; SER0178-SER0247;) When an application is received by SIIB, the standard practice of the Sheriff's Department is for the Detective to review the application, run a criminal records check on the applicant, and if additional information is needed to complete the application, to contact the applicant either by telephone call or correspondence to obtain any additional information if necessary. (Id.) Once an application was complete, the application package is submitted to a three-person committee for review and determination of approval or denial. (SER0035-SER0037; SER0112-SER0115; SER0145-SER0152; SER0178-SER0182) The reviewing committee was comprised of three persons (which at no time included the sitting Sheriff), who reviewed application packages submitted by individuals who wanted to obtain a permit to carry a concealed weapon. (Id.) Generally the committee is comprised of two Captains and a Chief Deputy. (SER0035-SER0037; SER0112- SER0115; SER0145-SER0152) If an application is approved upon committee review, the applicant is notified by mail, and requested to submit fingerprints for a Department of Justice ("DOJ") clearance. (SER0112-SER0115; SER0145-SER0152; SER0178-SER0182) Once clearance by the DOJ is received, the applicant is also required to submit proof to

SIIB that he has qualified with his weapon(s) at an approved shooting range. (Id.) If all parameters are met, a permit is then issued by the Department. (Id.)

If an application is denied by the committee, the applicant is notified by mail of the denial and also informed that the denial may be appealed. (Id.) Upon appeal, an applicant may submit additional information to the officer handling appeals. (Id.) This appeals officer is not a member of the three-person committee, but an administrative officer assigned to conduct these appeals as a part of his duties. (Id.) The appeals officer reviews all materials in the original application as well as any additional information submitted by the applicant on appeal.(Id.) A personal interview with the applicant is also conducted by the appeals officer. (Id.) After an independent review of all the information received, the appeals officer makes a separate determination of whether to grant or deny a CCW permit to the applicant. (Id.) The applicant is thereafter notified by mail of the appeals officer's decision. (Id.)

Neither Sheriff Blanas nor Sheriff Craig requested any special consideration for the issuance of a permit to any individual by the Evaluation Committee, never attended the meetings during which the permits were evaluated, nor provided any information to Committee Members or reviewing staff concerning whether any

applicant under evaluation by the Committee was a campaign contributor, friend, or business associate of the Sheriff. (Id. SER0035-SER0070; SER0157-SER0159) In reviewing applications for CCW permits, the only issue the Committee considered was whether appropriate grounds existed pursuant to which the Department would, in its discretion and pursuant to the California Penal Code, issue a CCW permit to the applicant. (SER0112-SER0115; SER0145-SER0152; SER0157-SER0159)

2. Application by David K. Mehl

Plaintiff David K. Mehl submitted his CCW permit application in July of 2002. (SER0038-SER0070; SER0080-SER0111; SER0149-SER0152; SER0157-SER0159) His application was reviewed pursuant to the standard practice of the Department as described above. (SER0157-SER0159) Mr. Mehl's application was incomplete as it did not include a statement from him of his justification for the permit as is required by the California Penal Code. (SER0038-SER0070; SER0080-SER0111; SER0149-SER0152; SER0157-SER0159) There was no statement from Mr. Mehl describing the reasons why he felt he needed a permit to carry a concealed weapon. (Id.) The policy of the Sheriff's Department consistent with the requirements of the California Penal Code, is that applicants provide

information explaining why they feel they need a permit to carry a concealed weapon. (SER0038-SER0070; SER0157-SER0159) Mr. Mehl's application did not have this information and so it was sent back to him to complete and return. (Id.)

After the application was sent back to Mr. Mehl, Mr. Mehl still did not provide information to the Department regarding his justification for requesting the permit. (SER0038-SER0070; SER0149-SER0152; SER0157-SER0159) Initially his application was returned to him with a simple request to complete the application and return it to the Department. (SER0038-SER0070; SER0157-SER0159) Mr. Mehl then sent two letters to the Department declining to fill out the portion of the application which calls for the justification for the permit, as he felt that was not consistent with the form instructions that come with the application package. (Id.) Mr. Mehl in his letters explained that he felt that Part 7 under the caption of "Investigator's Notes" was to be filled out by the Department upon interviewing him, and that he was not required, per the instructions to fill out that portion of the application. (Id.)

In response to those letters, On August 1, 2002, Chief Denham wrote to Mr. Mehl asking that he provide his justification for issuance of the CCW permit, and

agreed to waive the filing fee. (SER0038-SER0070; SER0149-SER0152; SER0157-SER0159) Chief Denham informed Mr. Mehl that the Department's practice was to require that the applicant provide in writing with the application package, a statement describing why the individual wanted a CCW permit. (SER0038-SER0070; SER0157-SER0159) Chief Denham told Mr. Mehl that if he would provide that information that the application would be considered. (SER0038-SER0070) Even after being requested by correspondence in 2002 to provide his justification for issuance of the CCW permit, Mr. Mehl never did so. (SER0038-SER0070; SER0080-SER0111; SER0149-SER0152; SER0157-SER0159) No response from Mr. Mehl was received by the Department following Chief Denham's letter of August 1, 2002. (Id.) Even though Mr. Mehl was told that his application was incomplete and was requested by the Sheriff's Department to do so, he never provided any information justifying a need to carry a concealed weapon. (SER0118-SER0120; SER0133-SER0134; SER0136-SER0140)

Mr. Mehl never completed his application by providing statements to the Department regarding his justification for the permit. (SER0080-SER0111; SER0149- SER0152; SER0157- SER0159) He never provided any evidence or factual information at all as to whether he was threatened, needed to carry a gun

for self-defense, or any other information. (SER0038- SER0070;SER0149-SER0152; SER0157- SER0159) Consequently, no information was available upon which the Department could evaluate the application. (SER0149- SER0152; SER0157- SER0159) Without proper information the Department had no choice but to deny the application. (Id.) That was the reason, and the only reason, the application was denied in 2002. (SER0080- SER0111; SER0149-SER0152; SER0157-SER0159)

Mr. Mehl then re-submitted the same application to the Department in 2003, again without any statement of his justification for the permit. (SER0080-SER0111; SER0149-SER0152) Mr. Mehl never conveyed to the Department or the Evaluation Committee his reasons for requesting a CCW permit. (SER0080-SER0111; SER0149-SER0152) Mr. Mehl's application was therefore incomplete, and was denied on that basis. (Id.)

Plaintiff Mehl does not believe he was denied a CCW Permit on account of his race or national origin. (SER0118-SER0119; SER0133; SER0137-SER0138, SER0140) Mr. Mehl has no personal information that the denial of his application for a CCW permit was because he did not contribute to a Sheriff's political campaign. (SER0118-SER0119; SER0142-SER0144) Mr. Mehl also has no

personal information or knowledge of the identity of anyone who received a CCW permit in exchange for a campaign contribution. (SER0133, SER0139-SER0140)

3. Application by Lok T. Lau

Lok T. Lau submitted his CCW permit application to the Sheriff's Department in August of 2003. (SER0035-SER0037; SER0178-SER0247) His application was reviewed by Detective Stephen Bray pursuant to the standard practice of the Department as described above. (SER0035-SER0037) Mr. Lau disclosed in his application and attachments that he had a pending lawsuit against his former employer, the FBI. (Id.) Mr. Lau also disclosed that he had been arrested for shoplifting twice, and that he was currently being treated for Post Traumatic Stress Disorder and Depression. (SER0035-SER0037; SER0112-SER0115; SER0145-SER0152; SER0178-SER0247)

Mr. Lau's application was submitted to the Evaluation Committee, which at the time was comprised of Captain Bill Kelly, Captain James Cooper and Chief David Lind. (SER0035-SER0037; SER0112-0115; SER0145-SER0152) The Committee was informed by Detective Steve Bray of Mr. Lau's two arrests, his lawsuit against his employer, and also the fact that Mr. Lau did not discuss any specific personal threats to his safety. (SER0035-SER0037) The committee

reviewed all the materials presented by Mr. Lau in support of his application. (SER0112-SER0115; SER0145-SER0152) In addition, the committee reviewed Mr. Lau's criminal background along with the entire application file. (Id.) According to Mr. Lau, at the time he applied for a CCW permit he was mentally disabled from depression, post traumatic stress disorder, sleep apnea, and was unable to work. (SER0124-SER0126) In addition, Mr. Lau testified that at the time he applied for a CCW Permit he was under the care of a doctor for depression, post traumatic stress disorder, and sleep apnea, he was prescribed an antidepressant and anxiety medication, Fluoxetine. (SER0122)

The Committee denied Mr. Lau's application, and as a result he was sent a letter on October 28, 2003, informing him of that denial, as well as informing him of his option to appeal the Committee's decision. (SER0035-SER0037; SER0112-SER0115; SER0145-SER0152; SER0178-SER0247)

A unanimous determination was made to deny his application based upon the many issues raised in his application file as described above. (SER0112-SER0115; SER0145-SER0152; SER0178-SER0247) The reasons included his involuntary termination from the FBI, his two convictions for shoplifting, as well as his ongoing treatment for Post Traumatic Stress Disorder and Depression.

(SER0112-SER0115; SER0145-SER0152;) At the time Mr. Lau applied for his CCW permit, he was suffering from Post Traumatic Stress Disorder and major depression which affected his judgment. (SER0123) In addition, as a result of his arrests for shoplifting, the FBI stripped Mr. Lau of his security clearance. (SER0127) As a result of his suffering from sleep apnea while employed by the FBI, the FBI took away Mr. Lau's gun. (SER0128) At the time he applied for a CCW permit, Mr. Lau informed the Sheriff's Department that his gun had been taken away from him and his security clearance stripped by the FBI. (SER0129) All three members of the committee agreed that it was inappropriate to issue Mr. Lau a concealed weapons permit based upon the information in his file. (SER0112-SER0115; SER0145-SER0152; SER0178-SER0247)

In about January of 2004, an appeal was filed by Mr. Lau of the initial denial of his application by the review committee. (SER0178-SER0182) Chief C. Scott Harris, Jr., received Lok Lau's appeal of the denial of his application for a CCW permit. (Id.) Chief Harris reviewed Mr. Lau's original application and the documents and correspondence submitted by Mr. Lau along with his appeal. (Id.) It was Chief Harris' practice not to discuss an appeal with the Committee who had denied the permit, but to provide an independent review of the applicant's file.

(Id.) In addition, Chief Harris would not consult with others in the Department regarding any appeal which he was handling.(Id.) Mr. Lau confirmed that neither during his application process nor during his appeal did he ever speak with Sheriff Blanas. (SER0130)

In any review of a denial, there were times when the individual reviewing the appeals would over-rule the committee and grant the application, and other times when they would uphold a denial of an application. (SER0178-SER0182) After Chief Harris' review of an appeals file, he would make arrangements to personally meet with an appeals applicant, and he did so with Mr. Lau. (Id.)

Chief Harris met with Mr. Lau in his office at 711 G Street to discuss his appeal in about the end of January or beginning of February of 2004. (Id.) Mr. Lau presented as unusually nervous, drowsy, overly suspicious, and he also appeared to be somewhat paranoid. (Id.) When individuals who have been honorably retired or otherwise separated from a Federal or State law enforcement agency, such as the FBI, their employer, upon request from the former employee, provides a letter recommending that the former agent be issued a CCW permit. (Id.) Chief Harris asked Mr. Lau in that meeting why his previous employer, the FBI, had not supplied a letter approving his application for a CCW permit, as is

customary for former law enforcement applicants. (Id.) In this case, the FBI did not provide the letter, and Mr. Lau had no explanation as to why they did not. (Id.) When asked why he felt he needed a CCW permit, Mr. Lau replied he was concerned that there were still people around from his former days serving undercover for the FBI who would do him harm. (Id.) Chief Harris confirmed with Mr. Lau that he was continuing to be treated for Post Traumatic Stress Disorder and Depression, as he had stated in his application, and that he was on various medications as a part of that treatment. (Id.)

As a result of Chief Harris' personal interview of Mr. Lau and the totality of his application package, Chief Harris determined that although there could have been factors in years past which may have made Mr. Lau vulnerable, there was no current threat to this safety. (Id.) In addition, within Mr. Lau's application package, there was a letter from his former employer, the FBI, which indicated that the FBI had no knowledge or information indicating that Mr. Lau was under any threat due to his past employment activities with the FBI. (Id; SER0334-SER0335; SER0476-SER0477.)

Based upon the totality of the circumstances from the review of Mr. Lau's application package, including his discharge from the FBI, the absence of a letter

from his former employer approving the issuance of a CCW permit, his shoplifting arrests and convictions, his lying to his employer regarding those arrests, the letter from the Department of Justice/FBI regarding no threats to the safety of Mr. Lau from his previous employment, and Mr. Lau's general presentation and behavior at the meeting with Chief Harris, as well as his on-going treatment and medications for psychiatric disorders, Mr. Lau's appeal was denied. (Id.; SER0334-SER0335; SER0476-SER0477) Chief Harris sent him a letter informing him of the denial on February 4, 2004. (SER0178-SER0182; SER0205)

Chief Harris did not discuss Mr. Lau's application with anyone in the Sheriff's Department, but made an independent review. (SER0178-SER0182) Further, in reviewing Mr. Lau's appeal, Chief Harris did not know whether or not Mr. Lau had any relationship with Sheriff Blanas, as a campaign contributor or otherwise. (Id.) In deciding Mr. Lau's appeal, as with every applicant appeal, an individual assessment was made as to whether there existed appropriate grounds for him to carry a concealed weapon. (Id.)

4. Sheriff Blanas Had no Personal Involvement in the Denial of Plaintiffs' CCW Applications and CCW Permits Were Granted to Individuals Who Did Not Contribute to the Sheriff's Political Campaign.

During Sheriff Blanas' tenure as Sheriff of Sacramento County, he had no

knowledge of or involvement in the applications for CCW permits of Plaintiffs Lok T. Lau and David Mehl, and first heard of these applicants at the time of this lawsuit. (SER0168-SER0177) While Sheriff Blanas was in office from 1999 through July of 2006, and had the authority by virtue of California Penal Code § 12050 to issue CCW permits, he was personally contacted by many personal friends and individuals who had contributed to his election campaign asking him to issue them CCW permits. (SER0071-SER0079; SER 0116-SER0117; SER0153-SER0156; SER0160-SER0177) Sheriff Blanas informed the individuals that they would not be approved for a CCW permit and/or that they needed to show justification for the permit and proceed through the normal application process established by the Department for the issuance of those permits. (Id.) In addition, during Sheriff Blanas' tenure, 229 applications for CCW permits for individuals who *did not* contribute to his campaign, were granted and issued CCW permits. (SER0168-SER0177) Election campaign contributions was not a factor in the determination of the issuance of a CCW permit by the Sacramento County Sheriff's Department or by the Sheriff, and the members of the committee had no knowledge of an applicant's contributions. (SER0035-SER0037; SER0112-SER0115; SER0145-SER0152; SER0157- SER0159; SER0178-SER0182)

During the time Lou Blanas was Chief Deputy for the Sacramento Sheriff's Department and served on the evaluations committee for the issuance of CCW permits, as well as during the time he was Undersheriff, he never approved the issuance of, issued, or authorized the issuance of a CCW permit to any individual based upon their contribution to his or any other individual's political campaign, or due to any personal, financial or familial relationship with the applicant. (SER0168-SER0177) Each and every permit issued or authorized to be issued by Lou Blanas at any time, including the time during which he was Sheriff of the County of Sacramento and held the authority to issue CCW permits, was based upon the establishment of good cause as set forth in the California Penal Code and the criteria and policies of the Sacramento County Sheriff's Department. (Id.)

SUMMARY OF THE ARGUMENT

The District Court was correct in granting summary judgment to Defendants/Appellees because Plaintiff/Appellant's Constitutional rights were not violated. Further, Plaintiff/Appellant failed to plead or present evidence in support of a Monell claim against the County of Sacramento. See Monell v. Dep't of Soc. Servs. of N.Y., 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). Even with the Court having considered all of the evidence in support of Plaintiffs'

claims, most of which Defendants objected to and asserted consisted primarily of speculation, conjecture, and hearsay without a factual basis, as well as irrelevant, inflammatory, and conclusory statements, the Court came to the conclusion that summary judgment in favor of Defendants County of Sacramento and Lou Blanas was appropriate.

I. Standard of Review

The standard of review from summary judgment is *de novo*. Caman v. Cont'l Airlines, Inc., 455 F.3d 1087 (9th Cir. 2006). *De Novo* review is a review by the Court the same as if no decision had been previously rendered. Farmingdale Supermarket, Inc. v. U.S. D.C., N.J., 336 F. Supp. 534, 536 (1971). The reviewing Court, as with the District Court's initial review, addresses this appeal of the granting of summary judgment by making a determination anew of whether there is any genuine issue as to any material fact, and if not, whether the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). However, even though the court views the evidence in a light most favorable to the non-moving party, it is not required to view *only* evidence that is favorable to the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254, 106 S. Ct. 2505 (1986) ("There is no genuine issue if the evidence presented . . . is

of insufficient caliber or quantity to allow a rational finder of fact to find" for the non-moving party.); see also Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) ("Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial'").

II. Legal Standard

The "purpose of summary judgment is to 'pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e) advisory committee note to 1963 amendment). Summary judgment is appropriate "if . . . there is no genuine issue as to any material fact, and . . . [and] the moving party is entitled to judgment as a matter of law." Rule 56(c). Disputed facts must be material (affecting the outcome of the suit under the governing law), and genuine (supported by evidence permitting a reasonable jury to return a favorable verdict). Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The moving party,

> [a]lways bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which

> it believes demonstrate the absence of a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Rule 56(c)).

The moving party without the burden of proof at trial may rely "solely on the pleadings, depositions, answers to interrogatories, and admissions on file." Id. (citations omitted). That party need only point to the absence of a genuine material factual issue, and is not required to produce evidence negating the opponent's claim. Id. at 323-24; Lujan v. National Wildlife Fed'n., 497 U.S. 871, 885 (1990).

When the moving party meets its responsibility, the burden then shifts to the opposing party. Matsushita, 475 U.S. at 586. The opposing party then must submit significant probative evidence on each element of his claims on which he bears the burden at trial.[2] Barnett v. Centoni, 31 F.3d 813, 815 (9th Cir. 1994). Although the opposing party need not conclusively establish any fact, to demonstrate a genuine dispute, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts. . . . Where the record taken as a whole could not lead a rational trier of fact to find for the

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[2] "[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Celotex, 477 U.S. at 322.

nonmoving party, there is no genuine issue for trial." Matsushita, 475 U.S. at 587. In other words, the evidence must demonstrate that a trial is required to resolve the parties' differing versions of the truth. T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n., 809 F.2d 626, 631 (9th Cir. 1987). The court believes the evidence of the opposing party, Anderson, 477 U.S. at 255, and draws all reasonable inferences in its favor. Matsushita, 475 U.S. at 587. Nevertheless, inferences are not drawn out of the air, and the opposing party must produce a factual predicate from which to draw an inference. Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985).

It is not enough for the responding party to point to the mere allegations or denials contained in the complaint or other pleadings. Buchanan v. Humbolt County, 1999 U.S. Dist. LEXIS 8326 (US Dist. Ct., No. Dist. Ca., 1999). Instead, the responding party must set forth, by affidavit or other admissible evidence, specific facts demonstrating the existence of an actual issue for trial. Id. The evidence must be more than a mere "scintilla"; the responding party must show that the trier of fact could reasonably find in its favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). If the respondent's evidence is merely colorable, or is not significantly probative, summary judgment should be granted. Eisenberg

v. Insurance Co. of North America, 915 F.2d 1285, 1288 (9th Cir. 1987). See also, Anderson, supra, at 256.

III. Argument

California Penal Code § 12025 prohibits the carrying of a concealed weapon/firearm. In order to carry a concealed weapon in the State of California, an individual must apply to a local law enforcement agency for a permit pursuant to California Penal Code § 12050. Under this code section, the California Legislature has delegated the authority to the Sheriff of a county or the Chief or other head of a municipal police department, to issue permits or permits to carry concealed weapons to individuals according to certain prescribed parameters. The statute is a permissive one which gives the discretion to the Sheriff or Chief Law Enforcement Officer to determine whether or not to issue a permit. The statute states in pertinent part:

> The sheriff of a county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, . . ., ***may*** issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person. . . . Cal. Pen. Code § 12050(a)(1)(A). (Emphasis added.)

Under 42 U.S.C. § 1983, Plaintiffs allege violations of constitutional rights with respect to the issuance of CCW permits under the First, Second, Ninth, and

Fourteenth Amendments. These claims are based on allegations centered around preference given to applicants who made campaign contributions to the Sheriff's election campaigns and those applicants who were presented Honorary Deputy Sheriff Badges, (First Amendment and Fourteenth Amendment), a generalized claim that they have a right to a concealed weapon, (Second Amendment), that rights secured by the Ninth Amendment entitle them to a permit, and that Lau's denial was based on his race or national origin (Fourteenth Amendment).

As shown below, the undisputed facts establish that the Plaintiffs' 42 U.S.C. § 1983 claims under First, Second, Ninth, and Fourteenth Amendments have no merit, and Defendants are entitled to judgment as a matter of law for the following reasons:

1. Both Plaintiffs lack standing to bring any constitutional claim because they suffered no injury caused by any alleged constitutional violation;

2. Both Plaintiffs lack standing to bring claims under the Second, Ninth, and Fourteenth Amendments as those Amendments confer no individual rights;

3. Plaintiff Lau's Equal Protection Rights were not violated as the denial of his application was not based on his race or national origin;

4. Plaintiffs' Equal Protection claims were not violated as the denial of

their applications were not due to any policy involving issuance of CCW Permit to those who have contributed to political campaigns;

5. Both Plaintiffs' First Amendment claims fail as the denial of CCW permits was not due to activity or conduct protected by the First Amendment or violative of the First Amendment right of free speech and association;

6. The denial of a CCW permit to Plaintiffs Lau and Mehl was not caused by any unconstitutional policy, practice, or custom of Defendant Sacramento County or Defendant Blanas in his official capacity, and thus under Monell v. Department of Social Services, 436 U.S. 658 (1978), Plaintiffs' claims have no merit;

7. The denial of CCW permits to Plaintiffs Lau and Mehl was not proximately or legally caused by any unconstitutional conduct or activity of Defendant County of Sacramento or Defendant Blanas; and,

8. Defendant Blanas, sued in his individual capacity, made no decisions with respect to Plaintiff Lau's application or appeal or Plaintiff Mehl's attempt to apply for a CCW permit.

A. Plaintiffs Lack Standing

In order to proceed in a lawsuit filed under 42 U.S.C.S. § 1983, the plaintiff

must allege that he was deprived of a right secured by the Constitution or laws of the United States and that the alleged deprivation was committed by a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988). A plaintiff must allege an injury fairly traceable to the defendant's allegedly unlawful conduct and that the particular injury is likely to be redressed by the requested relief. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., et al, 454 U.S. 464, 472; 102 S. Ct. 752; 70 L. Ed. 2d 700 (1982).

Supreme court cases have established that the irreducible constitutional minimum of standing contains three elements. *First*, the plaintiff must have suffered an "injury in fact" -- an invasion of a legally protected interest which is (a) concrete and particularized, Warth v. Seldin, 422 U.S. 490, 508, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1975); Sierra Club v. Morton, 405 U.S. 727, 740-741, n. 16, 31 L. Ed. 2d 636, 92 S. Ct. 1361 (1972); and (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" Whitmore vs. Arkansas, 495 U.S. 149, 155 (1990), (quoting Los Angeles v. Lyons, 461 U.S. 95, 102, 75 L. Ed. 2d 675, 103 S. Ct. 1660 (1983)). *Second*, there must be a causal connection between the injury and the conduct complained of -- the injury has to be "fairly . . . trace[able] to the

challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court." Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26, 41-42 (1976). *Third*, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." Id., at 38, 43. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-562 (U.S. 1992). The party invoking federal jurisdiction bears the burden of establishing these elements. See FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231, 107 L. Ed. 2d 603, 110 S. Ct. 596 (1990); Warth, supra, at 508.

Since the elements are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation. See Lujan v. National Wildlife Federation, 497 U.S. 871, 883-889, 111 L. Ed. 2d 695, 110 S. Ct. 3177 (1990); Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 114-115, 60 L. Ed. 2d 66, 99 S. Ct. 1601, and n. 31 (1979); Simon, supra, at 45, n. 25; Warth, supra, at 527, and n. 6 (Brennan, J., dissenting). In response to a summary judgment motion, the plaintiff cannot rest on "mere allegations," but must "set forth" by affidavit or other evidence "specific facts,"

Fed. Rule Civ. Proc. 56(e), which for purposes of the summary judgment motion will be taken to be true. Gladstone, supra, at 115, n. 31.

1. Plaintiff Lok Lau Does Not Have Standing

With respect to Plaintiff Lau, the undisputed evidence establishes that he has no standing to bring any constitutional claim as he has not, and cannot show, any injury "fairly traceable" to any unconstitutional act by Blanas, or any unconstitutional policy, practice, or custom of Defendant County, or of Blanas acting in his official capacity. The undisputed testimony of Lau, and the declaration testimony of the officers who considered Lau's application and appeal, establish that Plaintiff Lau was denied a CCW for legal reasons not in any way connected to his race, his lack of campaign contributions, or any financial considerations. The individuals who received Lau's application and appeal did not know whether he was a campaign contributor or not, and never considered his race or national origin in denying the permit. Sheriff Blanas had no involvement with any decision related to Lau's application. Rather, Lau submitted an extensive package which contained the following information, and which was the basis of the denial of application and appeal: [3]

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[3] SER0112-SER0115; SER0145-SER0152; SER0178-SER0247.

a. Lau was a terminated FBI employee;

b. Lau was terminated after being arrested for shoplifting and lying about the arrest;

c. Lau had been arrested on two prior occasions;

d. The Sheriff's Department received no recommendation from the FBI for Lau to have a concealed weapons permit, which is the usual case with applications involving retired officers from outside agencies;

e. Correspondence from the United States Department of Justice stated that there was no threat to or against Lau as a result of his service in the FBI;

f. The FBI terminated Lau's right to carry a gun as an FBI agent;

g. The FBI stripped Lau of his security clearance as a result of his shoplifting, arrest, and mental condition;

h. At the time of his application, Lau was suffering from post traumatic stress disorder, major depression, and sleep apnea which affected his judgement;

i. At the time of his application, Lau was mentally disabled, and unable to work because of a mental disability; and

j. At the time of his application, Lau was under the care of a psychiatrist and was taking anti-anxiety and anti-depression medications.

This undisputed information was part of Lau's applications. For Lau to claim that his constitutional rights were violated when he was turned down for a

CCW permit is beyond belief. There is no evidence that Lau's denial was for any reasons other than those stated. It was not due to his race or national origin, or because he did not contribute to a sheriff's political campaign. The purpose of the constitutional requirement of standing is to prevent the federal courts from being used as a forum to air complaints or grievances about elected officials under a claim of violation of a constitutional right unless the Plaintiff can allege and show some injury traceable to a constitutional violation. Here, assuming for purposes of argument, that there was an unconstitutional practice of the Defendants favoring issuance of CCW permits to campaign contributions, or a policy regarding issuing CCW Permit or on account of race, the Plaintiff's injuries are not caused by any such theoretical conduct or policy.

Moreover, whether or not such a practice or custom existed within the Sheriff's Department, the undisputed evidence is that (1) the persons who made the decisions with respect to Mehl's and Lau's permit applications did not know whether or not these plaintiffs had contributed to any Sheriff's campaign, (2) were not acting at the direction of Sheriff Blanas in their evaluation of the plaintiffs' applications, (3) and made the decisions to deny the applications based upon reasons that had nothing to do with an alleged wrongful and unconstitutional

policy that was alleged to be in place. Plaintiffs do not have standing to litigate the issue of whether the alleged policy existed or whether or not the alleged policy was constitutional or not.

2. Plaintiff Mehl Has No Standing

With respect to Plaintiff Mehl, likewise, the undisputed facts establish that the denial of his CCW permit was not caused by or fairly traceable to any unconstitutional conduct, as he never submitted a competed application. In a case similar to this one, Madsen v. Boise State University, 976 F.2d 1219 (9th Cir. 1992), the plaintiff complained regarding unconstitutional discrimination in the issuance of handicap parking permits on the University campus. The plaintiff filed a civil rights suit under 42 U.S.C. § 1983 claiming deprivation of his right of equal protection. However, the facts revealed that Madsen never completed the formal application requirement to obtain such a permit, or a waiver of the fees for the permit. Therefore, the court ruled that since the plaintiff did not satisfy the formal application requirement, he lacked standing. "A plaintiff lacks standing to challenge a rule or policy to which he has not submitted himself by actually applying for the desired benefit." Madsen v. Boise State University, 976 F.2d 1219, 1221-22 (1992). As with the case of Madsen v. Boise State University,

Plaintiff Mehl never completed his application for a CCW permit by not providing his basis for requesting the permit, even after being asked by the Department to do so. That was the only reason Mehl's application for a CCW permit was denied. He never applied. He has no standing to claim unconstitutional conduct in the application process when he never applied.

B. There is no Triable Issue of Race/ National Origin Discrimination Alleged in First Cause of Action.

Plaintiff Lau alleges that the denial of the CCW permit violates the Fourteenth Amendment's right to equal protection. Plaintiff Lau alleges that the denial of his application for a CCW permit was because Defendant County of Sacramento and Blanas discriminated against him on account of his race and/or national origin and gender. There is no evidence to suggest that any issuance of CCW permits are based on gender, and Defendants believe that claim has been abandoned by Plaintiffs. Plaintiff Mehl acknowledges that there was no national origin or race factor related to the denial of his attempt to apply for a CCW permit.[4] The undisputed evidence is that neither race nor national origin played any role in the denial of Lau's application and appeal. Rather, the denial was based entirely on legitimate nondiscriminatory grounds, and therefore no claim

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[4] SER0137-SER0138

under the Equal Protection Clause lies.

In undertaking an equal protection analysis, the court must first identify the defendant's alleged classification of different groups of individuals. Country Classic Dairies Inc. vs. State of Montana Dep't of Commerce Milk Control Bureau, 847 F.2d 593 (9th Cir. 1988). The plaintiff is required to show that the law is applied in a discriminatory manner or imposes different burdens on different classes of people. Freeman vs. City of Santa Ana, 68 F.3d 1180, 1187 (9th Cir. 1995). Classifications based on race or national origin are subject to strict scrutiny. Clark vs. Jeter, 486 U.S. 456, 461 (1988) ; Freeman vs. City of Santa Ana, *Ibid.*

Plaintiffs' equal protection claims fail for three reasons.

1. **Application Policy Is Nondiscriminatory**

The county policy for determining issuance of CCW Permits is non-discriminatory, it does not review applications on account of or on any racial classification. There is no evidence establishing or suggesting that the application process it is carried out in an unlawful or discriminatory manner.

The policy requires submission of written applications, which are reviewed by an officer to ensure that they are complete. If they are complete, a criminal

background check is completed to determine if there is any criminal conviction history which would disqualify the applicant under state law. (California Penal Code Section 12050.) The application is then reviewed by a three person panel of management level law enforcement officers usually holding the rank of Captain. The panel does not include the sheriff. If the panel determines that good cause exists for the issuance of a CCW permit, then the applicant is informed and required to provide fingerprints for Department of Justice clearance and undergo firearms training. If the application is denied, the individual is notified and informed of the process for appealing the denial.

At the appeal, another officer at the management level, not the sheriff or one acting under the direction of the sheriff, reviews the appeal de novo. Applicants are permitted to provide any information relevant to the issue of whether they are entitled to a CCW permit. This policy was followed with Lau's application and appeal. His application and appeal did not deviate from these policies and procedures, nor were others similarly situated treated differently. There is no evidence that individuals who are not of an Asian background, were treated any differently in terms of carrying out of this process. There is no evidence that the County's policy in this case was applied in a discriminatory manner, or "imposed

different burdens on different classes of people." See Christy vs. Hodel, 857 F.2d 1324, 1331 (9th Cir. 1988), Cert. Denied, 490 U.S. 1114 (1989). In other words, the process that the Plaintiff Lau underwent, was the same process that any other individual in Mr. Lau's position who wanted a CCW permit had to follow.

2. **Denial of CCW Based upon Non Discriminatory Reasons**

The undisputed evidence is that Lau's race or national origin did not play any role or factor into the decision to deny him the CCW permit. The undisputed evidence is that Lau was denied a CCW permit for the many different reasons outlined above, all of which have no bearing upon and are not related to his race or national origin. The denial of the CCW permit to Lau was not based upon his membership in any protected classification, and therefore per se, is not a violation of Equal Protection Clause. Ibid.

3. **Sheriff Blanas Did Not Deny Plaintiff Lau's Application**

Defendant Blanas, in his individual capacity, cannot be liable, as a matter of law, for any alleged equal protection violation with respect to Lau. The undisputed evidence is that Blanas did not review Lau's application, made no decisions about his application, provided no input or direction to officers on the panel who initially reviewed the application, and did not discuss with the appeals

hearing officer (Captain Harris) anything about Lau's application. The undisputed evidence is that Blanas was not involved in the appeal, did not decide the appeal, was not given notice of the decision of Captain Harris on Lau's appeal, did not direct Captain Harris to render any particular decision about the appeal, and in fact had no involvement or knowledge of Lau's application or appeal. Sheriff Blanas did not even know of Lau until this lawsuit was filed. Sheriff Blanas was not personally involved in the alleged unconstitutional denial of Lau's application, and he is not liable on any equal protection claims. (See Declaration of Lou Blanas)

C. There is no Triable Issue Concerning Plaintiffs' Second Cause of Action Under the Equal Protection Clause.

The Plaintiffs' Second Cause of Action alleges a Fourteenth Amendment violation with respect to issuance of CCW permits on the following grounds.

Plaintiffs contend the statute allowing the issuance of CCW permits under state law to honorably retired peace officers is unconstitutional and violates the Equal Protection Clause. These issues have already been decided by this court's ruling on the 12(b)6 Motion filed by Defendants Bill Lockyer and Randy Rossi. Specifically, at pages ten through twelve of this court's September 03, 2004 Memorandum and Order, this court held that the statutory schemes challenged by

Plaintiffs allowing retired peace officers to carry concealed weapons "is rationally related to a legitimate government interest, protecting retired law enforcement officers. . . ." ER 00049 - 00051.

With this court holding that the statutes are constitutional, the Defendants' motion for summary judgment on this cause of action was correctly granted on that same basis.

The only remaining claim is that Plaintiffs were denied equal protection "since those who have contributed to political campaigns are summarily given CCW permit upon request."

This is a false allegation. The undisputed facts establish that campaign contributions are not related to the issuance of CCW permits and certainly played no role in the denial of Plaintiffs' applications.

Under the Fourteenth Amendment, local governments are prohibited from depriving any person of equal protection of the law, and requires that the governments impose their laws "impartially" . McQueary vs. Blodgett, 924 F.2d 829, 834 (9th Cir. 1991). Equal protection guarantee "is essentially a direction that all persons similarly situated should be treated alike." Oluwa vs. Sec'y of Cal., 2006 U.S. Dist. Lexis 79853; City of Cleburne vs. Cleburne Living Center, 473

U.S. 432, 439 (1985). To establish a denial of equal protection a Plaintiff must allege facts showing that Defendants acted with the intent to discriminate against him based upon his membership in a protected class, or that he was intentionally treated differently from persons similarly situated. Oluwa vs. Sec'y of Cal., Id. at 11.

1. There Is No Connection Between Political Contributions and the Denial of Plaintiffs' Applications

The undisputed facts establish that the Plaintiffs' allegations that they were denied equal protection because they did not contribute to a campaign for a sheriff's candidate, while those who did contribute were "summarily" granted permits, is simply not true. The undisputed facts establish that the vast majority of people who were issued CCW permits during the relevant years, in fact, did not make any political campaign contribution to Sheriff Blanas. During Sheriff Blanas' tenure, the Sheriff's Department issued 229 permits to applicants who did not contribute to any political campaign of Sheriff Blanas'. Thus Plaintiffs' contention that because they did not contribute to the campaign they were denied permits is simply not true, and is not supported by this statistical fact.

Further, the undisputed facts establish that persons who did request CCW permits directly from Sheriff Blanas and who had contributed to his campaign,

were not summarily granted a permit. In fact, the opposite is true. Numerous individuals who requested CCW permits from Sheriff Blanas and who had contributed to his campaign, were denied permits. This includes everyone from major contributors to Sheriff Blanas to campaign managers.[5] Sheriff Blanas informed these individuals that they would not be issued CCW permits. In some cases, he informed individuals who had requested permits and who had contributed to his campaign that they needed to file applications with the Department and go through the normal application process. Others persons who had been previously issued permits, were denied a renewal of their permit by Sheriff Blanas even after they had contributed to his political campaign, on the basis that the need for the permit no longer existed. The declarations filed in support of Defendants' motion was a partial list, a sample of campaign contributors who were denied CCW permits. Finally, Sheriff Blanas never issued a CCW permit to any person on account of a campaign contribution. All permits were issued for good cause with individuals going through the well established application process. Just because some individuals who did contribute to a

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[5] One of the best examples of this is in the declaration of David Townsend. Mr. Townsend was the campaign manager for both former Sheriff Craig and Blanas, and a financial contributor to both campaigns. His request for a permit was denied (SER0162-1063)

campaign were issued permits does not change anything, and is not relevant proof of a situation of issuance of a CCW permit in exchange for contributions. See Buckley vs. Valeo, 424 U.S. 1 (1976). The Sheriff's Department and Sheriff Blanas never issued a CCW permit to any individual because of a campaign contribution or based upon any financial considerations.

2. Plaintiffs' Applications Were Denied for Legitimate Non Discriminatory Reasons

Next, even assuming for argument that there is a policy or practice in place that those who had contributed to Sheriff Blanas' campaign were summarily given CCW permits upon request, that policy or practice was not the reason that the Plaintiffs were denied CCW permits. As set forth herein above, Plaintiff Lau was denied his CCW permit for numerous very specific, and legitimate reasons, which had nothing to do with any campaign contribution, his decision not to make a campaign contribution, or because others who were similarly situated had made a campaign contribution were granted CCW permits. Plaintiff Mehl's application was denied because he never completed the application.

3. Defendant Blanas Did Not Violate Plaintiffs' Constitutional Rights

Finally, Defendant Blanas, in his individual capacity, did not violate either

Plaintiffs' equal protection rights. The undisputed evidence is that with respect to Plaintiff Mehl, Blanas did not review the application and did not give any directions with respect to Mehl's attempt to apply for a CCW permit. The only individuals who decided to deny Mehl were Chief Denham and Captain Lind, when and because Mehl did not submit a completed application. The same is true for Plaintiff Lau. Sheriff Blanas was not involved in the review of his initial application, was not involved in his appeal, did not know about the application or the appeal, gave no direction to anyone as to how the application or appeal should be acted on, and simply had no involvement with Lau's application. There is no triable issue of material fact with respect to the alleged liability of Defendant Blanas in his individual capacity.

D. There is no Triable Issue Regarding Plaintiffs' Third Cause of Action

The Plaintiffs' Third Cause of Action alleges violation of the First Amendment Free Speech and Association Clause. The Plaintiffs allege that their First Amendment rights of freedom of expression and association have been violated because Defendants have a policy favoring campaign contributors and political supporters regarding the issuance of CCW permits. (SER0019, ¶121) Plaintiffs further allege that persons who do not financially support Defendants are

"summarily" denied CCW Permits. (SER0019, ¶120).

Plaintiffs contend that their First Amendment rights under the United States Constitution have been violated because they did not receive a concealed weapons permit, while other persons who contributed to Sheriff Blanas' political campaign have received such permits. The Plaintiff cannot, as a matter of law, state a claim for violation of the First Amendment under the circumstances for the following reasons:

1. **There Is No First Amendment Implication Based upon Not Contributing to a Political Campaign.**

The cases that pertain to the connection between the First Amendment and campaign contributions, and when the First Amendment is implicated, deal with whether or not the First Amendment right to speech and association is violated by state or local statutes which limit campaign contributions and expenditures. For instance, in Nixon vs. Shrink Missouri Government Pac. et al., 528 U.S. 377 (2000), the United States Supreme Court reversed a decision that held that a Missouri state statute violated the First Amendment by limiting campaign contributions to state political candidates. The plaintiff in that case was a candidate for the nomination for Missouri State Auditor. Similarly, in the case of Union Steel Workers of America vs. Sadlowski, 457 U.S. 102 (1982), the court

held that a union's decision to adopt a rule prohibiting candidates for union office from accepting campaign contributions from non-members does not violate the First Amendment. In Buckley vs. Valeo, 424 U.S. 1 (1976), the court found that the Federal Election Campaign Act of 1971's expenditure ceiling violated the First Amendment. These and similar federal cases dealing with the issue of whether the First Amendment was violated in connection with campaign contributions have dealt with statutes or ordinances which limit campaign contributions or expenditures. Defendants know of no reported decision which holds the First Amendment is violated when someone decides not to make a campaign contribution and later feels that he or she was not treated fairly by the government entity represented by the candidate.

2. **There is No Connection Between Political Contributions and Issuance of CCW Permits**

Please see authorities and argument under section C(1).

3. **Denial of Plaintiffs' Application is Not Related to Not Contributing to Campaign**

Please see authorities and argument under section C(2).

4. **Sheriff Blanas Had No Involvement in Plaintiffs' Applications**

Please see authorities and argument under section C(3).

E. There is no Triable Issue of Material Fact to Plaintiffs' Fourth Cause of Action, as Plaintiffs Lack Standing Under the Second Amendment

Plaintiffs' Fourth Cause of Action alleges that by reason of the denial of their applications for a CCW permit, that Plaintiffs' Second Amendment Rights have been infringed. Plaintiffs' claims fail as a matter of law, as there is no individual right under the Second Amendment, and therefore, Plaintiffs have no standing to challenge gun possession issues.

In Nordyke vs. Kane, 319 F.3d 1185 (9th Cir. 2003), the plaintiffs were gun traders who brought a suit against a county to prevent enforcement of a county ordinance which made it a misdemeanor to be in possession of a gun on county property. The plaintiffs brought claims under the First and Second Amendments. The court found that the Second Amendment guarantees collective rights of the states to maintain an armed militia, but does not confer individual protection for a person's right to bear arms. As a result, the court found that there is no individual standing to bring a claim under the Second Amendment against a local entity based upon its regulations with respect to gun ownership or possession. The court held at page 1191-1192 in pertinent part:

> We recognize that our sister circuit engaged in a very thoughtful

> and extensive review of both the text and historical records surrounding the enactment of the Second Amendment. And if we were writing on a blank slate, we may be inclined to follow the approach of the Fifth Circuit in *Emerson*. However, we have squarely held that the Second Amendment guarantees a collective right for the states to maintain an armed militia and offers no protection for the individuals right to bear arms. In *Hickman vs. Block,* 81 F.3d 98, 102 (9th Cir. 1996) we held that "it is clear that the Second Amendment guarantees a collective rather than an individual right. Because the Second Amendment guarantees the right of the states to maintain armed militia, the states alone stand in the position to show legal injury when this right is infringed." (Citation omitted).
>
> As a result our holding in *Hickman* forecloses *Nordycke's* Second Amendment argument. We specifically held there that individuals lack standing to raise a Second Amendment challenge to a law regulating firearms. (Citation) Because "Article III standing is a jurisdictional prerequisite," (Citation), we have no jurisdiction to hear *Nordycke's* Second Amendment challenge to the ordinance.
> [Nordyke vs. Kane, supra at pgs. 1191-1192.]

See also March vs. Rupf, 2001 U.S. Dist. Lexis 14708, wherein the court held that denial of concealed weapons permit is not a violation of the Second Amendment because the right to bear arms is a collective right and not an individual right.

In addition, in Silveira vs. Lockyer, 312 F.3d 1052 (9th Cir. 2002), the Ninth Circuit affirmed the collective rights rather than the individual rights approach for

Second Amendment claims, and dismissed individual Second Amendment claims.[6]

Finally, Plaintiffs-Appellants now on Appeal cite the case of District of Columbia v. Heller to support their assertion that a basis for remand to the District Court exists based upon application of new law set forth in that case. However, the court in Heller ruled that the Second amendment rights are not unlimited. The Court stated:

> Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and court routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. [Citations omitted.] For example, the majority of the 19th-century court to consider the question held that prohibitions on carry concealed weapons were lawful under the Second Amendment or state analogues. [Citations omitted.]
> District of Columbia v. Heller, 128 S.Ct. 2783, 2816; 171 L.Ed. 637, 678 (2008).

It is obvious that the Supreme Court ruling in Heller confirms that the reasonable regulations placed by the State of California and the County of Sacramento, for the carrying of concealed weapons is a reasonable regulation acceptable under the Second Amendment of the United States Constitution. The Heller case does not in

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[6] Plaintiff David Mehl was a plaintiff in Silveira, and yet through his same counsel, Gary Gorski, he has filed and continues to maintain this claim.

any way affect the ruling made by the Eastern District Court on summary judgment for Defendants Blanas and the County of Sacramento.

Based on the foregoing, the Plaintiffs' Fourth Cause of Action fails as a matter of law.

F. There Is No Triable Issue of Material Fact Regarding Plaintiffs' Sixth Cause of Action Under the Ninth Amendment

The Plaintiffs contend that their Ninth Amendment rights were violated by denial of a CCW permit to them. The Ninth Amendment does not encompass an individual right to bear arms, and a Plaintiff lacks standing to challenge local government regulations dealing with fire arm possession on Ninth Amendment grounds. San Diego Gun Rights Committee vs. Reno, 98 F.3d 1121 (9th Cir. 1996). As a matter of law, Plaintiffs do not have standing to assert a Ninth Amendment claim.

G. No Triable Issue of Fact Exists under Plaintiffs' Claim of Monell Liability and the County and Blanas are Entitled to Judgment as a Matter of Law.

To impose municipal liability under 42 U.S.C. § 1983 for violation of constitutional rights, the plaintiff must show (1) that the plaintiff possessed a constitutional right of which he was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's

constitutional rights; and (4) that the policy was the moving force behind the constitutional violation. Warns v. Vermazen, 2003 U.S. Dist. LEXIS 23107 (N.D. Ca. 2003). The plaintiff has this burden of proof.

The analysis of section 1983 claims against a public entity falls under Monell v. Department of Social Services, 436 U.S. 658 (1978). In order to find the County, or Blanas in his official capacity, liable under Monell, Plaintiffs must show a constitutional violation caused by a policy, practice, or custom of Sacramento County. Monell v. Department of Social Services, holds that a municipality may not be held liable under respondeat superior for claims pursuant to 42 U.S.C. § 1983; but only when the execution of a government policy or custom inflicted the injury to plaintiff, could the entity be responsible. Id. at 694. Plaintiff can show no such policy here.

According to Monell, a local public entity may only be liable in a Section 1983 action where there is an official policy, custom, or practice of the public entity of *deliberate indifference* to the rights of individuals, and as a result thereof, the plaintiff in the particular litigation suffered a deprivation of his rights. Monell v. New York City Dep't. of Social Services, 436 U.S. 658 (1978) (italics added). Further, Collins v. City of Harker Heights held that a municipality can only be

held liable if it is shown that:

> 1. An agent of the municipality, acting under the color of state law, violated a federal right of the plaintiff;
>
> 2. There is an affirmative link between the policy and the constitutional violation. City of Oklahoma v. Tuttle, 471 U.S. 808, 823 (1985); ***and***
>
> 3. The conduct of the policy or decision makers, or the policy itself, must have resulted from a "deliberate indifference" to the rights of the plaintiff. City of Canton v. Harris, 489 U.S. 378 (1989).

Collins v. City of Harker Heights, 503 U.S. 115 (1992).

The plaintiff has the burden of establishing "deliberate indifference" in order to create liability in the public entity, and:

> "The existence of a policy, without more, is insufficient to trigger local government liability under Section 1983. City of Canton v. Harris, 486 U.S. 378, 388-89 (1989). Under City of Canton, before a local government entity may be held liable for failing to act to preserve a constitutional right, plaintiff must demonstrate that the official policy 'evidences a "deliberate indifference"' to his constitutional rights. [Citation omitted.] This occurs when the need for more or different action is 'so obvious, and the inadequacy of the current procedure is so likely to result in the violation of constitutional rights, that the policy makers . . . can be reasonably said to have been deliberately indifferent to the need.'" Oviatt by and through Waugh v. Pearce, 954 F.2d 1470, 1477-78 (9th Cir. 1992).

Plaintiffs have the burden of proof with respect to any "Monell" claims against the County of Sacramento.

H. There Is No Triable Issue of Material Fact on all Constitutional Claims Based upon Lack of Causation

All of the Plaintiffs' constitutional claims set forth in the complaint fail, because there is no actual and proximate causation between the alleged constitutional wrongdoing or activity and the denial of the Plaintiffs' CCW permits.

To sustain an action under Section 1983, the plaintiff must show (1) that the conduct complained of was committed by a person acting under color of state law; (2) that the conduct deprived the plaintiff of a federal constitutional right. Venegas vs. Wagner, 831 F.2d 1514, 1518 (9th Cir. 1987).

Liability under section 1983 is shown when the defendants either personally participated in conduct which deprived the plaintiff of a federal protected right, or caused the deprivation of the right to occur. Arnold vs. International Business Machines Corp., 637 F.2d 1350 (9th Cir. 1981). In Arnold vs. International Business Machines Corp., the court held:

> Causation is a concept that is not often discussed or explicitly stated in civil rights cases. When courts examine the elements of civil rights causes of action, they tend to focus on the substantive aspects of liability under the statutes. (*e.g., Sykes vs. California* 497 F.2d 197, 200 (9th Cir. 1974). Although causation is not stated explicitly in the formulations, it is an implicit requirement. A Section 1985 cause of action requires the Plaintiff to show that "the acts done in furtherance of a conspiracy

> resulted" in his injury. (Citation) This is equivalent of saying the Plaintiff must show that the Defendants caused his injury. In a Section 1983 cause of action, a Plaintiff must show that the Defendants have deprived him of a right. (Citation) The language of the statute shows this can be a direct or indirect deprivation. It creates liability for any person who "subjects or causes to be subjected" particular persons to the deprivation of particular rights. Thus liability under section 1983 can be established by showing that the Defendant personally participated in a deprivation of the Plaintiff's rights, or caused such a deprivation to occur. [Arnold supra, at 1355.]

The Arnold court further held that causation requirements under section 1983 are not satisfied by showing mere causation in fact, rather the plaintiff must establish proximate or legal causation. Id. On a Motion for Summary Judgment, non-moving parties may not rest on mere allegations, rather they are required to produce evidence linking alleged injuries with the alleged wrongful conduct sufficient to create an issue of fact as to causation. Cutler vs. Sed Minik, 1999 U.S. App. Lexis 21540.

Action or inaction which is described as "but for" cause is not enough to prove a causal connection, rather the wrongdoing must be the proximate cause of the Section 1983 injury. Mann vs. City of Tucson Department of Police, 782 F.2d 790, 793 (9th Cir. 1986). To prevail on a section 1983 claim, a plaintiff must show conduct or action which is factually and proximately a cause of the violation of a civil right. Arnold vs. IBM, supra, 637 F.2d 1350 at 1355 (9th Cir. 1981).

There must be a sufficiently close relationship to the claimed violation of the plaintiff's right and the wrongful conduct in order to conclude that a defendant subjected the plaintiff to the deprivation of federally protected rights. Martinez vs. California, 444 U.S. 277 (1980).

When applying these principles to this case, Defendants are entitled to summary judgment. The bottom line is that all the constitutional wrong doings, actions, and/or inactions Plaintiffs allege played no role whatsoever in the ultimate denial of the CCW permit to each Plaintiff. The undisputed facts establishing the reasons for the denials of the permits as set forth above are uncontroverted. Even assuming for the purpose of argument that some illegal or unconstitutional activity occurred with respect to the application process, the review process, or the conduct of Sheriff's Department or Blanas, and issuance of CCW permits, or denial of permits, was unconstitutional, there is no causal connection between any of those alleged actions and the basis of the denial of the Plaintiffs' permits.

For instance, in the case of Plaintiff Mehl, the reason his application was denied, was not because he did not contribute to the political campaign for the sheriff, or because others did, but rather because he failed to complete the application process even when given explicit instructions on how to do so. In fact,

the officers who were acting upon Lau's application, or in Mehl's case, his attempted application, did not know whether either of them had even contributed to the campaign. Blanas was not involved in the process of deciding either individual's application or matters related thereto, so how could any alleged conduct of Blanas or the County pertaining to the manner in which permits were given to third parties, have any relation to the denial of permits to the Plaintiffs? There is no relationship whatsoever between the alleged wrong doing and the denial of Plaintiffs' CCW permit applications.

Plaintiffs' constitutional claims against the County fail for the following reasons:

1. The policy regarding issuance of CCW permits is not deliberately indifferent to the rights of Plaintiffs. The policy is constitutional, applied to all applicants, does not involve decision making by the sheriff, has a built in appeal process, and is subject to judicial review;

2. Plaintiffs suffered no violation of their constitutional rights as shown above; and,

3. Even if some policy or practice of the County or Sheriff Blanas was unconstitutional, it did not cause a deprivation of these Plaintiffs' constitutional

rights.

I. Documents Pursuant to Court's March 27, 2007 Order Were Produced for *In Camera* Review.

Defendants submitted documents to the court for *in camera* review pursuant to the Court's March 27, 2007 Order. (SER0022) No prejudice to Plaintiffs occurred regarding evidence which consisted entirely of an individual Deputy Sheriff's Personnel file. Further, the incident to which Plaintiff refers occurred in 1994 and the conclusions which Plaintiffs aver to regarding the incident are directly refuted by the Declaration of Mr. Colafrancesco, which declaration, Plaintiffs cannot refute. (ER001445)

J. The Plaintiffs' Purported Expert Testimony by Timothy Twomey Is Improper and Unqualified.

Defendants moved to strike the Declaration of Plaintiff's purported expert as well as objected to the declaration in detail. (SER0490-0525) To the extent that Plaintiffs attempt to used Mr. Twomey's declaration to support their appeal in this matter, the court should be directed to Defendants' motion to strike and objections thereto. Although the underlying court did not make separate rulings on Defendants' Motion to Strike or the objections to Twomey's declaration, it is clear that the declaration was irrelevant in it's entirety to the Court's ruling on

Defendants' Motion for Summary Judgment.

CONCLUSION

As shown above, Defendants are entitled to summary judgment for any number of reasons. The Plaintiffs believe they should have received CCW permits, and their civil rights were violated when they did not get the CCW permit. It is well established law that an individual has no constitutional right to receive a "Carry Concealed Weapons" permit. Erdelyi vs. O'Brien, 680 F.2d 61 (9th Cir. 1982). Nichols vs. County of Santa Clara (1990) 223 Cal. App. 1236, the court held:

> Penal Code Section 12050 gives extremely wide discretion to the sheriff concerning the issuance of such licenses. (Citation). In *CBS Inc. vs. Block* (1986) 42 Cal. 3d 646, 655[230 Cal Rptr. 362, 725 p.2d 470] that discretion was described as unfettered.
>
> In light of this statute's delegation of such broad discretion to the sheriff, it is well established that an applicant for a license to carry a concealed firearm has no legitimate claim of entitlement to it under state law, and therefore has no "property" interest to be protected by the due process clause of the United States Constitution.

Moreover, in Erdelyi vs. O'Brien, 680 F.2d 61, 63 (9th Cir. 1982), the plaintiff applied for a permit to carry a concealed weapon. After a review by the Chief of Police, her application was denied. Plaintiff then brought an action in Federal District Court under 42 U.S.C. § 1983 alleging that the denial of the

concealed weapons permit violated her constitutional rights to due process and equal protection of the laws. The District Court granted summary judgment for defendants, which was upheld by the Ninth Circuit. The court's holding in Erdelyi spoke to the fact that there was no property or liberty interest in a concealed weapons permit, and the court also focused on the fact that under state law, concealed weapons are closely regulated, and explicitly grants discretion to the issuing officer whether or not to issue a permit to a particular applicant, even to those meeting the minimum statutory requirements. On that basis the court dismissed the due process and equal protection claims.

It is obvious that neither Plaintiff can cross the threshold of legal standing, nor support any good cause for issuance of a concealed weapons permit. With that said, one has to ask why this case was filed and continues to be maintained.

For the foregoing reasons, the District Court correctly granted County of Sacramento and Lou Blanas's Motion for Summary Judgment. Even though the Court considered the hearsay, conjecture, speculation, and conclusions by Plaintiffs which Defendants objected to, the Court correctly found that Plaintiffs had not provided evidence which could lead the trier of fact to reasonably find that Plaintiffs' Constitutional rights had been violated. Therefore, Appellees County

of Sacramento and Lou Blanas respectfully request that this Court affirm the District Court's ruling in granting Defendants' Motion for Summary Judgment.

DATED this 25th day of September, 2008.

By _____
Jeri L. Pappone, CBN 210104
LONGYEAR, O'DEA & LAVRA, LLP
3620 American River Drive, Suite 230
Sacramento, California 95864
Attorneys for Defendants-Appellees
County of Sacramento and
Lou Blanas

CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP. 32(a)(7)(C) AND CIRCUIT RULE 32-1

CASE NUMBER

I certify that the foregoing brief is Monospaced, has 10.5 or fewer characters per inch and contains fewer than 14,000 words.

Dated: September 25, 2008.

Jeri L. Pappone
LONGYEAR, O'DEA & LAVRA, LLP
3620 American River Drive
Suite 230
Sacramento, California 95864

Attorneys for Defendants-Appellees
County of Sacramento and
Lou Blanas

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Appellees County of Sacramento and Lou Blanas state that they are not aware of any related cases pending in this Court.

CERTIFICATE OF SERVICE

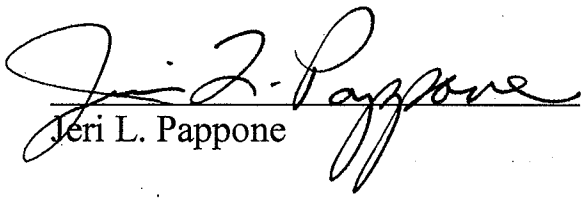
I certify that an original and fifteen (15) copies of Appellees' Brief were sent, via overnight mail, to the Clerk of the United States Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, California 94110-3939, and two (2) copies were sent, via United States mail, postage prepaid to:

Gary W. Gorski
Law Office of Gary W. Gorski
8549 Nephi Way
Fair Oaks, CA 95628

Daniel M. Karalash
1207 Front Street, Suite 15
Sacramento, CA 95814

Jeffrey Graybill
Deputy Attorney General
1300 "I" Street,
Sacramento, California 94244-2550

Dated this 25th day of September 2008, at Sacramento, California.



Jeri L. Pappone

ADDENDUM

ADDENDUM

STATUTES

California Penal Code § 12025
California Penal Code § 12050

Cal Pen Code § 12025

*** THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED THROUGH ***
2007-2008 THIRD EXTRA. SESSION CH. 7 AND CH. 267 OF THE 2008 REGULAR
SESSION APPROVED 8/26/08, AND PROPOSITION 99 APPROVED BY VOTERS 6/3/08

PENAL CODE
Part 4. Prevention of Crimes and Apprehension of Criminals
Title 2. Control of Deadly Weapons
Chapter 1. Firearms
Article 2. Unlawful Carrying and Possession of Weapons

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pen Code § 12025 (2008)

§ 12025. Carrying concealed firearm; Misdemeanor or felony offense; Sentencing

(a) A person is guilty of carrying a concealed firearm when he or she does any of

the following:

(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Carrying a concealed firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) Where the person is not in lawful possession of the firearm, as defined in this section, or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) By imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment if both of the following conditions are met:

(A) Both the pistol, revolver, or other firearm capable of being concealed upon the person and the unexpended ammunition capable of being discharged from that firearm are either in the immediate possession of the person or readily accessible to that person, or the pistol, revolver, or other firearm capable of being concealed upon the person is loaded as defined in subdivision (g) of Section 12031.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106, as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (b) if the peace officer has probable cause to believe that the person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, and one or more of the conditions in subparagraph (A) of paragraph (6) of subdivision (b) is met.

(d) (1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 12001.6 shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by this chapter, if probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than

three months.

(e) The court shall apply the three-month minimum sentence as specified in subdivision (d), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (d) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (d), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(f) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(g) For purposes of this section, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully owns the firearm or has the permission of the lawful owner or a person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

(h) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).

(3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

Cal Pen Code § 12050

*** THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED THROUGH ***
2007-2008 THIRD EXTRA. SESSION CH. 7 AND CH. 267 OF THE 2008 REGULAR
SESSION APPROVED 8/26/08, AND PROPOSITION 99 APPROVED BY VOTERS 6/3/08

PENAL CODE
Part 4. Prevention of Crimes and Apprehension of Criminals
Title 2. Control of Deadly Weapons
Chapter 1. Firearms
Article 3. Licenses to Carry Pistols and Revolvers

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pen Code § 12050 (2008)

§ 12050. Issuance; Revocation; Amendment

(a) (1) (A) The sheriff of a county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying satisfies any one of the conditions specified in subparagraph (D) and has completed a course of training as described in subparagraph (E), may issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

(i) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(ii) Where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of that city and has completed a course of training as described in subparagraph (E), may issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

(i) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(ii) Where the population of the county in which the city is located is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(C) The sheriff of a county or the chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a person who has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 by that sheriff or that chief of police or other head of a municipal police department, may issue to that person a license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person. Direct or indirect fees for the issuance of a license pursuant to this subparagraph may be waived. The fact that an applicant for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 shall be considered only for the purpose of issuing a license pursuant to this subparagraph, and shall not be considered for the purpose of issuing a license pursuant to subparagraph (A) or (B).

(D) For the purpose of subparagraph (A), the applicant shall satisfy any one of

the following:

(i) Is a resident of the county or a city within the county.

(ii) Spends a substantial period of time in the applicant's principal place of employment or business in the county or a city within the county.

(E) (i) For new license applicants, the course of training may be any course acceptable to the licensing authority, shall not exceed 16 hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. Notwithstanding this clause, the licensing authority may require a community college course certified by the Commission on Peace Officer Standards and Training, up to a maximum of 24 hours, but only if required uniformly of all license applicants without exception.

(ii) For license renewal applicants, the course of training may be any course acceptable to the licensing authority, shall be no less than four hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. No course of training shall be required for any person certified by the licensing authority as a trainer for purposes of this subparagraph, in order for that person to renew a license issued pursuant to this section.

(2) (A) (i) Except as otherwise provided in clause (ii), subparagraphs (C) and (D) of this paragraph, and subparagraph (B) of paragraph (4) of subdivision (f), a license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed two years from the date of the license.

(ii) If the licensee's place of employment or business was the basis for issuance of the license pursuant to subparagraph (A) of paragraph (1), the license is valid for any period of time not to exceed 90 days from the date of the license. The license shall be valid only in the county in which the license was originally issued. The licensee shall give a copy of this license to the licensing authority of the city, county, or city and county in which he or she resides. The licensing authority that originally issued the license shall inform the licensee verbally and in writing in at least 16-point type of this obligation to give a copy of the license to the licensing authority of the city, county, or city and county of residence. Any application to

renew or extend the validity of, or reissue, the license may be granted only upon the concurrence of the licensing authority that originally issued the license and the licensing authority of the city, county, or city and county in which the licensee resides.

(B) A license issued pursuant to subparagraph (C) of paragraph (1) to a peace officer appointed pursuant to Section 830.6 is valid for any period of time not to exceed four years from the date of the license, except that the license shall be invalid upon the conclusion of the person's appointment pursuant to Section 830.6 if the four-year period has not otherwise expired or any other condition imposed pursuant to this section does not limit the validity of the license to a shorter time period.

(C) A license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed three years from the date of the license if the license is issued to any of the following individuals:

(i) A judge of a California court of record.

(ii) A full-time court commissioner of a California court of record.

(iii) A judge of a federal court.

(iv) A magistrate of a federal court.

(D) A license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed four years from the date of the license if the license is issued to a custodial officer who is an employee of the sheriff as provided in Section 831.5, except that the license shall be invalid upon the conclusion of the person's employment pursuant to Section 831.5 if the four-year period has not otherwise expired or any other condition imposed pursuant to this section does not limit the validity of the license to a shorter time period.

(3) For purposes of this subdivision, a city or county may be considered an applicant's "principal place of employment or business" only if the applicant is physically present in the jurisdiction during a substantial part of his or her working

hours for purposes of that employment or business.

(b) A license may include any reasonable restrictions or conditions which the issuing authority deems warranted, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(c) Any restrictions imposed pursuant to subdivision (b) shall be indicated on any license issued.

(d) A license shall not be issued if the Department of Justice determines that the person is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(e) (1) The license shall be revoked by the local licensing authority if at any time either the local licensing authority is notified by the Department of Justice that a licensee is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, or the local licensing authority determines that the person is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) If at any time the Department of Justice determines that a licensee is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, the department shall immediately notify the local licensing authority of the determination.

(3) If the local licensing authority revokes the license, the Department of Justice shall be notified of the revocation pursuant to Section 12053. The licensee shall also be immediately notified of the revocation in writing.

(f) (1) A person issued a license pursuant to this section may apply to the licensing authority for an amendment to the license to do one or more of the following:

(A) Add or delete authority to carry a particular pistol, revolver, or other firearm capable of being concealed upon the person.

(B) Authorize the licensee to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(C) If the population of the county is less than 200,000 persons according to the most recent federal decennial census, authorize the licensee to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(D) Change any restrictions or conditions on the license, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) When the licensee changes his or her address, the license shall be amended to reflect the new address and a new license shall be issued pursuant to paragraph (3).

(3) If the licensing authority amends the license, a new license shall be issued to the licensee reflecting the amendments.

(4)(A) The licensee shall notify the licensing authority in writing within 10 days of any change in the licensee's place of residence.

(B) If the license is one to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person, then it may not be revoked solely because the licensee changes his or her place of residence to another county if the licensee has not breached any conditions or restrictions set forth in the license or has not fallen into a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. However, any license issued pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a) shall expire 90 days after the licensee moves from the county of issuance if the licensee's place of residence was the basis for issuance of the license.

(C) If the license is one to carry loaded and exposed a pistol, revolver, or other firearm capable of being concealed upon the person, the license shall be revoked immediately if the licensee changes his or her place of residence to another county.

(5) An amendment to the license does not extend the original expiration date of the license and the license shall be subject to renewal at the same time as if the license had not been amended.

(6) An application to amend a license does not constitute an application for renewal of the license.

(g) Nothing in this article shall preclude the chief or other head of a municipal police department of any city from entering an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses, renewals of licenses, and amendments to licenses, pursuant to this article.