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8 **IN THE UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

SACV12 - 1458 JVS (JPRx)

11 DOROTHY McKAY, DIANA
12 KILGORE, PHILLIP WILLMS,
13 FREDERICK KOGEN, DAVID
WEISS, and THE CRPA
FOUNDATION,

14 Plaintiffs,

15 v.

16 SHERIFF SANDRA HUTCHENS,
17 individually and in her official
18 capacity as Sheriff of Orange County,
California, COUNTY OF ORANGE,
19 CALIFORNIA, and DOES 1-10,

20 Defendant.

CASE NO:

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

42 U.S.C. §§ 1983, 1988

BY _____
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA
2012 SEP -5 PM 1:26

FILED

21
22 NOW COME Plaintiffs Dorothy McKay, Diana Kilgore, Phillip Willms,
23 Frederick Kogen, David Weiss, and The CRPA Foundaton (collectively
24 “Plaintiffs”), by and through the above counsel, and allege against Defendants
25 Sheriff of Orange County Sandra Hutchens and the County of Orange, California
26 (collectively hereafter “Sheriff Hutchens” or “the Sheriff”) as follows:
27
28

1 **INTRODUCTION**

2 1. Plaintiffs bring this action to challenge the validity of, and enjoin the
3 enforcement of, Sheriff Hutchens’ policy and practice of denying law-abiding,
4 competent adults, including Plaintiffs, state-required licenses to carry handguns in
5 public (“Carry Licenses”) for the purpose of self-defense, unless the applicant can
6 show “good cause,” which Defendant essentially defines as a special or
7 contemporaneous “need” to defend oneself – something *more* than “general
8 concerns about personal safety.”

9 2. Sheriff Hutchens’ written policy and its implementation abuses her
10 discretion and violates Plaintiffs’ right to keep and bear arms under the Second
11 Amendment to the United States Constitution and, in particular, their right “to
12 possess and carry firearms in case of confrontation” for self-defense purposes, as
13 described by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570,
14 592 (2008).

15 3. Accordingly, Plaintiffs hereby seek declaratory and injunctive relief from
16 Sheriff Hutchens’ unconstitutional policy and practice, as outlined below.

17 **PARTIES**

18 **PLAINTIFFS**

19 4. All individual Plaintiffs are natural persons, citizens of the United States,
20 and current residents of Orange County, California.

21 5. All individual Plaintiffs are eligible to possess firearms under state and
22 federal law and currently own a handgun.

23 6. On October 25, 2011, Plaintiff Dorothy McKay – a public school teacher
24 and National Rifle Association-certified Firearms Instructor / Range Safety Officer
25 – applied to Sheriff Hutchens for a Carry License, asserting a general desire for
26 self-defense as her “good cause” due to her traveling alone in remote areas for her
27 paid and volunteer work.

28 7. On December 28, 2011, Plaintiff McKay’s application was denied for lack

1 of “good cause” for a Carry License.

2 8. On November 1, 2011, Plaintiff Phillip Willms – an Orange County
3 business owner and competitive shooter who has Carry Licenses issued from
4 Arizona and Nevada – applied to Sheriff Hutchens for a Carry License, asserting a
5 general desire for self-defense as his “good cause” due to his business activities
6 and hobbies requiring him to have valuable possessions on his person.

7 9. On January 24, 2012, Plaintiff Willms’ application was denied for lack of
8 “good cause.” He requested reconsideration of his denial, and on March 21, 2012,
9 his denial was confirmed.

10 10. Plaintiff Frederick Kogen – a medical doctor who travels performing
11 infant circumcisions, a procedure that some consider controversial and for which
12 some have threatened doctors, including Plaintiff Kogen, who perform it – applied
13 to Sheriff Hutchens for a Carry License, asserting a general desire for self-defense
14 as his “good cause” due to his concern about specific and general threats he has
15 received as a result of his performing infant circumcisions.

16 11. On July 10, 2012, Plaintiff Kogen’s application was denied for lack of
17 “good cause.”

18 12. Plaintiff David Weiss – a pastor who travels to meet parishioners and
19 others in need all over California and who has Carry Licenses issued by Arizona
20 and New Hampshire – applied to Sheriff Hutchens for a Carry License, asserting a
21 general desire for self-defense as his “good cause” due to frequenting unknown
22 areas to sometimes meet unknown people.

23 13. On March 21, 2012, Plaintiff Weiss’ application was denied for lack of
24 “good cause.”

25 14. Plaintiff Diana Kilgore has refrained from applying for a Carry License
26 with Sheriff Hutchens because doing so would be futile and a waste of her time and
27 money, because she does not meet the Sheriff’s “good cause” standard articulated
28 in the Sheriff’s official written policy for issuing Carry Licenses.

1 15. Plaintiff The CRPA Foundation is a 501 (c)(3) charitable corporation.
2 The CRPA Foundation's primary place of business is in Fullerton, California.

3 16. The CRPA Foundation is an association that utilizes financial resources
4 to educate the public about firearms laws, the shooting sports, and safe practices. It
5 conducts firearms safety advocacy and advocates in court through litigation
6 brought to benefit the California Rifle and Pistol Association ("CRPA") and the
7 CRPA's approximately 35,000 dues-paying members, as well as tens of thousands
8 of additional donors and supporters, and California firearm owners in general.
9 Such judicial advocacy generally regards firearms laws and rights. It specifically
10 involves, inter alia, the ability of law-abiding adults to carry firearms for self-
11 defense. The CRPA Foundation uses its financial and human resources to counsel
12 firearms owners about their rights and duties with regard to carrying firearms for
13 self-defense and to support litigation that promotes that right.

14 17. Sheriff Hutchens' denial of Carry Licenses for general self-defense
15 purposes frustrates The CRPA Foundation's mission to promote the fundamental,
16 individual right to armed self-defense. In response to Sheriff Hutchens' unlawful
17 acts, The CRPA Foundation has been required to devote financial and human
18 resources to commence litigation to adjudicate other Plaintiffs' rights with regard
19 to the unlawful activities challenged herein. As a result of using these resources to
20 identify and counsel Plaintiffs and to fund this litigation, The CRPA Foundation
21 has had to divert resources it would use for promoting its other organizational
22 missions, such as firearm safety education.

23 18. Many CRPA members and The CRPA Foundation contributors,
24 including Plaintiff Kilgore, wish to obtain a Carry License but refrain from
25 applying because it is futile since they do not meet Sheriff Hutchens' official "good
26 cause" standard, and they do not wish to waste their time and money applying.

27 ///

1 **DEFENDANTS**

2 19. Defendant Sandra Hutchens is the elected Sheriff of Orange County,
3 California. As such, she is responsible for formulating, executing and
4 administering the laws, customs and practices that Plaintiffs challenge, and she is
5 in fact presently enforcing the challenged laws, customs, and practices against
6 Plaintiffs (and, in the case of The CRPA Foundation, those whose interests they
7 represent). Defendant Sheriff Hutchens is sued in her individual capacity and in her
8 official capacity as Sheriff.

9 20. Defendant County of Orange is a municipal entity organized under the
10 Constitution and laws of the State of California.

11 **JURISDICTION AND VENUE**

12 21. Jurisdiction of this action is founded on 28 U.S.C. § 1331 in that this
13 action arises under the Constitution and laws of the United States, and under 28
14 U.S.C. § 1343(a)(3) in that this action seeks to redress the deprivation, under color
15 of the laws, statutes, ordinances, regulations, customs and usages of the State of
16 California and political subdivisions thereof, of rights, privileges or immunities
17 secured by the United States Constitution and by Acts of Congress.

18 22. Plaintiffs' claims for declaratory and injunctive relief are authorized by
19 28 U.S.C. §§ 2201-2202.

20 23. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2)
21 because a substantial part of the events or omissions giving rise to the claims
22 occurred in this district.

23 **REGULATORY SCHEME**

24 **[California Law - Carry Licenses]**

25 24. With very few and very limited exceptions, California has banned the
26 unlicensed carrying of handguns in most public places whether loaded (Ca1. Penal
27 Code §§ 25850, 26100 and exceptions at Ca1. Penal Code §§ 25900-26060, 26300)
28 or unloaded (Ca1. Penal Code § 26350 and exceptions at Ca1. Penal Code §§

1 26361-26389), and whether carried concealed¹ (Cal. Penal Code § 25400 and
2 exceptions at Cal. Penal Code §§ 25450-25700, 26300) or exposed (Cal. Penal
3 Code § 26350 and exceptions at Cal. Penal Code §§ 26361-26389).²

4 25. Carrying a handgun without a Carry License or without meeting one of
5 the limited exceptions to the general prohibition on publicly carrying handguns can
6 be penalized as a misdemeanor or a felony. (Cal. Penal Code §§ 25400, 25850,
7 26350).

8 26. California authorizes city police chiefs and county sheriffs (“Issuing
9 Authorities”) to issue Carry Licenses to their residents, allowing those residents
10 who qualify to generally carry a loaded handgun in public.

11 27. To be eligible for a Carry License, a resident must submit a written
12 application to the respective Issuing Authority, showing that the resident meets
13 certain statutorily required criteria. Cal. Penal Code §§ 26150-26155.

14 28. A Carry License applicant must pass a criminal background check (Cal.
15 Penal Code § 26185), and is required to successfully complete a handgun training
16 course covering handgun safety and California firearm laws. (Cal. Penal Code
17 § 26165).

18 29. Even if an applicant successfully completes the background check and a
19 suitable handgun training course, under the law a Carry License may only be issued
20

21 ¹ There is an exception to the general prohibition on carrying concealed
22 when transporting an unloaded handgun in a locked container while in a vehicle,
23 or going directly to or coming directly from a vehicle for “any lawful purpose,” or
24 going directly to or from certain locations or activities for “any lawful purpose.”
(Cal. Penal Code §§ 25505, 25610).

25 ² It is currently not prohibited to carry an unloaded long-gun (rifle or
26 shotgun) in public outside of a locked container as long as it is not an “assault
27 weapon” (*see* Cal. Penal Code § 30600(a)), of illegal measurements (*see* Cal.
28 Penal Code § 33210), or in a “Gun Free School Zone” under federal law. (18
U.S.C. §§ 921(a)(25)-(26)).

1 if the applicant is additionally proven to be of “good moral character” and
2 establishes “good cause” for getting a license to carry a loaded firearm in public.
3 (Cal. Penal Code §§ 26150(a)(1) and 26150(a)(2), respectively).

4 30. Issuing Authorities currently exercise some discretion in deciding
5 whether an applicant has “good cause” to be issued a Carry License. Some Issuing
6 Authorities choose to rarely issue Carry Licenses. Others issue to virtually all law-
7 abiding, competent adult applicants seeking a Carry License for self-defense who
8 otherwise meet the requirements for a license.

9 31. In counties with populations under 200,000, Issuing Authorities may
10 issue licenses to carry a loaded handgun in an exposed, open manner (e.g., in a hip
11 holster), while in more populated counties, like Orange County, only a license to
12 carry a concealed handgun may be issued. (Cal. Penal Code § 26150(b)(2),
13 26155(b)(2)).

14 32. A license to carry openly is only valid within the county it was issued.
15 (*Id.*) A license to carry concealed is valid statewide, unless the Issuing Authority
16 expressly restricts its validity to only within the county. (Cal. Penal Code § 26200).

17 33. Because California law generally prohibits the unlicensed carrying of
18 handguns in most public places, whether loaded or unloaded, and whether in a
19 concealed or exposed manner, a Carry License is the only means by which an
20 individual can lawfully go about armed for self-defense in “non-sensitive” public
21 places within California.

22 [Second and Fourteenth Amendments]

23 34. The Second Amendment to the United States Constitution provides: “A
24 well regulated Militia being necessary to the security of a free State, the right of the
25 people to keep and bear Arms shall not be infringed.” U.S. Const amend. II.

26 35. The Supreme Court has held that the Second Amendment right to keep
27 and bear arms is a fundamental, individual right that includes at its core the right of
28 law-abiding, competent adults to “possess and carry weapons in case of

1 confrontation.” *Heller*, 554 U.S. at 592.

2 36. The Supreme Court also recently held that the Second Amendment right
3 to keep and bear arms, by way of its incorporation into the Fourteenth Amendment,
4 applies equally to prohibit infringement of that right by state and local
5 governments. *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3026 (2010).

6 37. The Second Amendment guarantees the right of law-abiding, competent
7 adult residents of Orange County, including Plaintiffs, some lawful manner to carry
8 a handgun for self-defense purposes in case of confrontation, at least in “non-
9 sensitive” public places.

10 38. It is the government’s burden to justify any restriction on the Second
11 Amendment right of law-abiding, competent adults to carry a handgun for self-
12 defense purposes in case of confrontation in “non-sensitive” public places.

13 39. The Fourteenth Amendment to the United States Constitution provides
14 that no state shall “deny to any person within its jurisdiction the equal protection of
15 the laws.” U.S. Const. amend. XIV, § 1.

16 40. The Equal Protection Clause puts the burden on the government to
17 justify classifications of people which restrain the exercise of the classified
18 persons’ fundamental rights.

19 GENERAL ALLEGATIONS

20 41. The ability to carry a handgun in non-sensitive public places for
21 self-defense in case of confrontation is protected by the Second Amendment.

22 42. Denial of a Carry License for self defense is an abuse of discretion and a
23 denial of the fundamental right to carry a handgun in “non-sensitive” public places
24 for self-defense in case of confrontation.

25 43. All law-abiding, competent adults are similarly situated in that they are
26 equally entitled to exercise the constitutional right to bear arms – without having to
27 first demonstrate special circumstances or needs to do so – and therefore equally
28 entitled to be issued a Carry License for self-defense.

1 **[Sheriff Hutchens' Issuance Policy]**

2 44. According to her official written policy and the denials of Plaintiffs'
3 applications for Carry Licenses, Sheriff Hutchens refuses to issue Carry Licenses
4 where an applicant asserts "general concerns about personal safety" as "good
5 cause," even if the applicant is a law-abiding, competent Orange County resident
6 who has satisfied all other requirements.

7 45. To even *potentially* satisfy Sheriff Hutchens' "good cause" standard,
8 applicants must demonstrate that they are the target of a specific threat or that they
9 engage in business that subjects them to much more danger than the general public.

10 46. Sheriff Hutchens has chosen to adopt an official written policy that
11 rejects applicants' general desire for self-defense - which the Supreme Court has
12 deemed the core of the Second Amendment - as sufficient "good cause" to exercise
13 the fundamental, Second Amendment right to bear arms in public.

14 47. Sheriff Hutchens' "good cause" policy also creates a classification of
15 individuals – those who have no evidence of a specific threat or involvement in a
16 business the Sheriff considers risky – which abrogates the class members'
17 fundamental right to bear arms.

18 48. Under the Second and Fourteenth Amendments to the United States
19 Constitution, Sheriff Hutchens' policy of prohibiting individuals with only "general
20 concerns about personal safety" from exercising their right to keep and bear arms is
21 an abuse of discretion and an unconstitutional application of California's "good
22 cause" criterion. The need for a handgun in non-sensitive public places for general
23 self-defense in case of confrontation is itself "good cause."

24 **[Plaintiffs' Carry License Denials]**

25 49. Each of the individual Plaintiffs (except Plaintiff Kilgore) has applied to
26 Sheriff Hutchens for a Carry License asserting general self-defense as their "good
27 cause" for the license.

28 50. By reason of the Second and the Fourteenth Amendments, each of the

1 Plaintiffs has “good cause” for a Carry License.

2 51. Sheriff Hutchens has not found that any of the Plaintiffs fails to satisfy
3 any other statutory criteria in California Penal Code section 26150 for issuance of a
4 Carry License.

5 52. Sheriff Hutchens denied each Plaintiff’s application for lack of “good
6 cause” alone.

7 53. Sheriff Hutchens’ policy choice regarding how to apply California’s
8 “good cause” requirement has resulted in the denial of Carry Licenses to Plaintiffs,
9 which is tantamount to a denial of their right to bear arms because a Carry License
10 is the only lawful manner in which one can generally carry arms for self-defense
11 purposes in case of confrontation within the state.

12 54. But for the lack of a Carry License, Plaintiffs (and in the case of The
13 CRPA Foundation, those they represent) would carry a handgun in non-sensitive
14 public places for self-defense as they deem appropriate.

15 **[California’s “Good Cause” Standard]**

16 55. While Plaintiffs believe it is Sheriff Hutes’s application of
17 California’s “good cause” provision, Penal Code section 26150(a)(2) that causes
18 their injury, and not the provision itself, in the alternative, California’s Penal Code
19 section 26150(a)(2) places a precondition on the right of competent, law-abiding
20 adults to carry arms in public for general self-defense purposes in case of
21 confrontation, without any textual or historical justification for doing so.

22 56. In the alternative, California’s “good cause” provision, Penal Code
23 section 26150(a)(2), unconstitutionally allows for competent, law-abiding adults to
24 be denied a Carry License, which is the only lawful means to generally carry a
25 handgun in public for self-defense in California, based on the failure to meet the
26 unconstitutional precondition, in violation of the Second and Fourteenth
27 Amendments.

28 57. In the alternative, California’s “good cause” provision, Penal Code

1 section 26150(a)(2), allows for Issuing Authorities like Sheriff Hutchens to
2 exercise unbridled discretion in determining who has “good cause” for a Carry
3 License.

4 58. In the alternative, California’s “good cause” provision, Penal Code
5 section 26150(a)(2), necessarily creates a classification of Orange County
6 residents, including Plaintiffs, who can be denied a Carry License for self-defense
7 purposes, regardless of whether they are competent and law-abiding, while other
8 classes of competent, law-abiding Orange County residents are not so denied,
9 thereby violating the Equal Protection Clause of the Fourteenth Amendment.

10 **DECLARATORY RELIEF**

11 59. Plaintiffs hereby re-allege and incorporate by reference the allegations
12 set forth in the foregoing paragraphs as if set forth herein in full.

13 60. There is an actual and present controversy between the parties in that
14 Plaintiffs contend Sheriff Hutchens’ official written policy for implementing the
15 “good cause” criterion of California Penal Code section 26150(a)(2) for the
16 issuance of Carry Licenses is unconstitutional because it does not recognize the
17 fundamental right to armed self-defense as “good cause” for a license. Defendants
18 deny and dispute this contention. Plaintiffs desire a judicial declaration of their
19 rights and Sheriff Hutchens’ duties in this matter.

20 61. Plaintiffs specifically desire a Decree from this Court that the Second
21 Amendment commands Sheriff Hutchens to recognize a desire for general self-
22 defense as “good cause” for an otherwise qualified applicant to be issued a Carry
23 License. Alternatively, Plaintiffs desire a Decree from this Court that Sheriff
24 Hutches’ enforcement of California Penal Code section 26150(a)(2)’s “good cause”
25 provision in any manner whatsoever violates the Second Amendment.

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1 **FIRST CLAIM FOR RELIEF**
2 **SECOND AND FOURTEENTH AMENDMENTS**
3 **RIGHT TO BEAR ARMS**
4 **42 U.S.C. § 1983**
5 **AGAINST ALL DEFENDANTS**

6 62. Plaintiffs hereby re-allege and incorporate by reference the allegations
7 set forth in the foregoing paragraphs as if set forth herein in full.

8 63. By choosing to adopt and adhere to an official written policy that does
9 not recognize a desire for general self-defense as “good cause” for issuance of a
10 Carry License under California Penal Code section 26150(a)(2), Sheriff Hutchens
11 is propagating customs, policies, and practices that deprive Orange County
12 residents, including Plaintiffs, of their right to generally carry firearms for self-
13 defense in non-sensitive public places as guaranteed by the Second and Fourteenth
14 Amendments.

15 64. Sheriff Hutchens cannot satisfy her burden of justifying these customs,
16 policies, and practices that preclude Plaintiffs from exercising their rights protected
17 under the Second and Fourteenth Amendments.

18 65. Sheriff Hutchens’ official written “good cause” policy is therefore
19 unconstitutional on its face because it expressly does not, and in the case of
20 Plaintiffs did not, recognize a desire for general self-defense as “good cause” for
21 issuance of a Carry License.

22 66. Sheriff Hutchens’ official written “good cause” policy is therefore
23 unconstitutional as applied to Plaintiffs because its implementation precluded them
24 from being issued a Carry License which, in turn, prevented them from exercising
25 their fundamental right to bear arms in non-sensitive public places for general self-
26 defense purposes in the only manner allowed under state law.

27 67. Plaintiffs are entitled to declaratory and preliminary and permanent
28 injunctive relief against such unconstitutional customs, policies, and practices.

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2 **SECOND CLAIM FOR RELIEF**
3 **FOURTEENTH AMENDMENT - EQUAL PROTECTION**
4 **42 U.S.C. § 1983**
5 **AGAINST ALL DEFENDANTS**

6 68. Plaintiffs hereby re-allege and incorporate by reference the allegations
7 set forth in the foregoing paragraphs as if set forth herein in full.

8 69. In adopting and adhering to an official written policy that does not
9 recognize a desire for general self-defense as “good cause” for issuance of a Carry
10 License under California Penal Code section 26150(a)(2), Sheriff Hutchens is
11 creating a classification of Orange County residents, which includes Plaintiffs,
12 whose Second Amendment right to generally bear arms for self-defense in public is
13 abrogated because they cannot meet the Sheriff’s “good cause” standard for a Carry
14 License, regardless of whether they are competent and law-abiding, while the rights
15 of other classes of competent, law-abiding Orange County residents are not so
16 infringed.

17 70. Sheriff Hutchens cannot satisfy her burden of justifying such a
18 classification that unequally deprives Plaintiffs of their right to bear arms, and she
19 is therefore propagating customs, policies, and practices that deprive Orange
20 County residents, including Plaintiffs, of their right to equal protection under the
21 law as guaranteed by the Fourteenth Amendment.

22 71. Sheriff Hutchens’ official written “good cause” policy is therefore
23 unconstitutional on its face because it expressly classifies those individuals who
24 assert a desire for general self-defense as “good cause” for issuance of a Carry
25 License but who cannot show additional special circumstances as not qualified for
26 issuance of a Carry License, while others who can make such a constitutionally
27 irrelevant showing may be issued a Carry License.

28 72. Sheriff Hutchens official written “good cause” policy is therefore
unconstitutional as applied to Plaintiffs because its implementation put them in a
classification of adults who are precluded from being issued a Carry License

1 regardless of whether they are competent or law-abiding.

2 73. Plaintiffs are entitled to declaratory and preliminary and permanent
3 injunctive relief against such unconstitutional customs, policies, and practices.

4 **THIRD CLAIM FOR RELIEF – IN THE ALTERNATIVE**
5 **SECOND AND FOURTEENTH AMENDMENTS - RIGHT TO BEAR ARMS**
6 **42 U.S.C. § 1983**
7 **AGAINST ALL DEFENDANTS**

8 74. Plaintiffs hereby re-allege and incorporate by reference the allegations
9 set forth in the foregoing paragraphs as if set forth herein in full.

10 75. California's "good cause" provision, California Penal Code section
11 26150(a)(2), violates the Second and Fourteenth Amendments because it imposes
12 preconditions on the individual, fundamental right of competent, law-abiding
13 adults to carry arms in public for general self-defense purposes in case of
14 confrontation, without any textual or historical justification for doing so.

15 76. Local Issuing Authorities like Sheriff Hutchens cannot require, under
16 California Penal Code section 26150(a)(2) or any other state provision, law-
17 abiding, competent adults to prove they have "good cause" before they are allowed
18 to exercise a fundamental constitutional right; or, at least, they cannot
19 constitutionally exercise unbridled discretion in determining who has "good cause"
20 to do so. The right to keep and bear arms is a right, not a privilege. Plaintiffs are
21 constitutionally entitled to exercise that right, unless somehow disqualified for
22 constitutionally acceptable reasons.

23 77. Sheriff Hutchens cannot satisfy her burden of justifying her enforcement
24 of the state's "good cause" provision, which precludes Plaintiffs from exercising
25 their rights protected under the Second and Fourteenth Amendments.

26 78. Therefore, California's "good cause" precondition provision, California
27 Penal Code section 26150(a)(2), is unconstitutional on its face.

28 79. Therefore, Plaintiffs are entitled to declaratory relief declaring
California's "good cause" provision an unconstitutional restriction on the People's

1 right to keep and bear arms, and preliminary and permanent injunctive relief
2 enjoining Sheriff Hutchens' from implementing *any* such "good cause"
3 precondition on the right to keep and bear arms.

4 **FOURTH CLAIM FOR RELIEF – IN THE ALTERNATIVE**
5 **FOURTEENTH AMENDMENT - EQUAL PROTECTION**
6 **42 U.S.C. § 1983**
7 **AGAINST ALL DEFENDANTS**

8 80. Plaintiffs hereby re-allege and incorporate by reference the allegations
9 set forth in the foregoing paragraphs as if set forth herein in full.

10 81. California's "good cause" provision, California Penal Code section
11 26150(a)(2), violates the Equal Protection Clause of the Fourteenth Amendment
12 because it necessarily creates a classification of Orange County residents, including
13 Plaintiffs, whose Second Amendment right to bear arms generally in public is
14 abrogated because they cannot meet the Sheriff's standard of "good cause" for a
15 Carry License, regardless of whether they are competent and law-abiding, while the
16 rights of other classes of competent, law-abiding Orange County residents are not
17 so infringed.

18 82. Sheriff Hutchens cannot satisfy her burden of justifying her enforcement
19 of a standard that precludes Plaintiffs and other competent, law-abiding adults from
20 exercising their rights protected under the Second and Fourteenth Amendments,
21 while allowing others to exercise them, simply because they have what the Sheriff
22 considers "good cause" to do so.

23 83. Therefore, California's "good cause" precondition provision, California
24 Penal Code section 26150(a)(2), is unconstitutional on its face.

25 84. Therefore, Plaintiffs are entitled to declaratory relief declaring
26 California's "good cause" provision, Penal Code section 26150(a)(2), as creating
27 unconstitutional classifications of people in the enjoyment of their fundamental
28 rights, and preliminary and permanent injunctive relief enjoining Sheriff Hutchens'
from implementing *any* such "good cause" precondition on the right to keep and

1 bear arms.

2 **PRAYER**

3 WHEREFORE, Plaintiffs request that judgment be entered in their favor and
4 against Sheriff Hutchens as follows:

5 85. Declaratory relief that Sheriff Hutchens' policy implementing the "good
6 cause" criterion of California Penal Code section 26150(a)(2) for the issuance of
7 Carry Licenses is unconstitutional on its face and as applied to Plaintiffs because it
8 rejects "general concerns about personal safety" and a desire to exercise one's
9 fundamental right to keep and bear arms for self-defense in case of confrontation as
10 "good cause" and, instead, requires applicants to demonstrate they are the target of
11 a specific threat or engage in business that subjects them to far more danger than
12 the general public to qualify for a Carry License;

13 86. An order permanently enjoining Sheriff Hutchens, her officers, agents,
14 servants, employees, and all persons in active concert or participation with her,
15 from enforcing Sheriff Hutchens' policy implementing the "good cause" criterion
16 of California Penal Code section 26150(a)(2) for the issuance of Carry Licenses in
17 any manner that does not recognize a general desire for self-defense as satisfying
18 the "good cause" criterion of California Penal Code section 26150(a)(2);

19 87. Alternatively, Plaintiffs seek declaratory relief that the "good cause"
20 provision of California Penal Code section 26150(a)(2) itself is unconstitutional on
21 its face under the Second and Fourteenth Amendments, in that a requirement that
22 law-abiding, competent adults prove they have a "good cause" to exercise a
23 fundamental constitutional right before they may do so cannot pass muster under
24 any applicable standard of review;

25 88. Alternatively, Plaintiffs seek declaratory relief that the "good cause"
26 provision of California Penal Code section 26150(a)(2) itself is unconstitutional on
27 its face under the Equal Protection Clause of the Fourteenth Amendment because it
28 creates an impermissible classification of Orange County residents, including

1 Plaintiffs, who are categorically and improperly denied their Second Amendment
2 right to bear arms generally in public.

3 89. Alternatively, Plaintiffs seek an order permanently enjoining Sheriff
4 Hutchens, her officers, agents, servants, employees, and all persons in active
5 concert or participation with her, from enforcing the “good cause” requirement of
6 California Penal Code section 26150(a)(2).

7 90. Costs of suit, including attorney fees and costs pursuant to 42 U.S.C. §
8 1988 and California law; and

9 91. Any further or alternative relief as the Court deems just and proper.

10
11 Respectfully Submitted,

12
13 Date: September 4, 2012

MICHEL & ASSOCIATES, P.C.

14
15 
16 _____
17 C.D. Michel
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19 Counsel for Plaintiffs