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Orange County Sheriff-Coroner Department

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION – SANTA ANA**

DOROTHY McKAY, DIANA KILGORE,  
PHILLIP WILLMS, FRED KOGEN,  
DAVID WEISS, and THE CRPA  
FOUNDATION,

Plaintiffs,

v.

SHERIFF SANDRA HUTCHENS,  
individually and in her official capacity as  
Sheriff of Orange County; ORANGE  
COUNTY SHERIFF-CORONER  
DEPARTMENT; COUNTY OF ORANGE;  
and DOES 1-10,

Defendants.

Case No. 8:12-cv-01458 JVS (JPRx)

**DECLARATION OF COMMANDER  
DONALD BARNES IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO THE  
MOTION FOR PRELIMINARY  
INJUNCTION**

**DATE: October 29, 2012  
TIME: 1:30 p.m.  
PLACE: Courtroom 10C**

I, Donald Barnes, declare:

1. Unless stated on information and belief, I have personal knowledge of the statements contained in this declaration, and if called upon to testify, I could and would competently testify to the facts stated below. Where statements are made on information and belief, I believe those statements to be true.

2. I am currently Commander of the Professional Services Command of the Orange County Sheriff-Coroner Department, which includes five divisions: Professional Services, Training, S.A.F.E, Coroner's Office, and the Orange County Crime Lab. I have

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1 been with the OCSD for approximately 23 years. I took command of the Professional  
2 Services Command at the end of September 2012. As the Commander, I oversee the units  
3 within Professional Services Division, including Internal Affairs, Backgrounds, Recruiting  
4 and Human Resources, and the Carry Concealed Weapons (“CCW”) and Business License  
5 desks.

6 3. Prior to my current command position, beginning in February 2011, I served as  
7 Commander of Field Operations and Investigations. This involved the administrative  
8 oversight of five divisions comprising Field Operations and Investigations; North and South  
9 Operations (or patrol for North and South County contract cities and unincorporated areas),  
10 Homeland Security, John Wayne Airport, Investigations, as well as the Field Training  
11 Bureau. Prior to taking command of Field Operations and Investigations, I served OCSD in  
12 a variety of capacities including as Captain of South Operations, as the Sheriff’s Executive  
13 Aid, and as Chief of Police Services for the City of Lake Forest. I also served as a patrol  
14 Deputy, Sergeant, Field Training Officer and Investigation Sergeant. My experience in the  
15 field making arrests, responding to calls, and dealing with crime, and commanding those in  
16 the field has spanned nearly my entire career.

17 4. I am familiar with the policies and practices of deputies in the field when guns  
18 or other potentially deadly weapons are brandished or used.

19 5. I am familiar with OCSD’s Policy 218 relating to the issuance of CCW  
20 Licenses. I am also familiar with Penal Code section 26150, the basis for Policy 218, which  
21 sets forth under what circumstances the sheriff of a county may issue a license to an  
22 applicant to carry a concealed weapon. Moreover, I am familiar with the Penal Code  
23 sections criminalizing the carrying of a concealed firearm, and the exceptions thereto –  
24 Penal Code sections 25400, *et seq.*

25 6. One of the main purposes for Sheriff Sandra Hutchens’ CCW policy  
26 incorporating the “good cause” provision as mandated by the Penal Code is to protect  
27 against gun violence as well as to protect officers in the field conducting patrol and law  
28 enforcement operations.

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1           7.     If the “good cause” requirement were eliminated from Policy 218 and from the  
2 Penal Code, thereby increasing the numbers of persons eligible to carry concealed  
3 handguns, neither the citizens of Orange County nor its law enforcement officers would be  
4 safer.

5           8.     An increased presence of guns in the community heightens the risk for law  
6 enforcement officers and citizens. It is inherently dangerous for officers to answer a call  
7 even if the use and/or brandishing of a firearm is known at the time the call to law  
8 enforcement is made. The presence of a firearm at any scene immediately escalates the  
9 potential for conflict at the scene, which increases the risk to officers and the surrounding  
10 public. This danger is only heightened when officers are unaware that a firearm that is  
11 concealed could become involved. An officer answering a call would have no warning that  
12 a concealed firearm could be brandished and so, is subject to surprise when it is brandished.

13           9.     Calls involving known use and/or brandishing of firearms already entail high  
14 levels of risk and uncertainty for officers and for members of the community surrounding  
15 the area. In those situations where it is known that a firearm is involved, the response is  
16 elevated, more personnel are dispatched to the scene, the response is a priority and an  
17 emergency response may be designated to get to the scene quickly, which itself presents a  
18 heightened risk to the public, and officers must calmly sort out the probable conflict that  
19 they will discover upon arrival in an effort to dissuade the use of the firearm.

20           10.    If an officer arrives at a scene where it is not known or believed that a firearm  
21 is involved, the response will likely involve the dispatch of fewer personnel. Thus, if after  
22 the arrival of officers, a firearm is brandished that had been concealed officers would have  
23 to await the arrival of more personnel before addressing the conflict, which puts the officers  
24 and public at an increased risk. Additionally, the brandishing of a firearm from an  
25 individual who is unknown to the officer, regardless of their ability to lawfully carry a  
26 concealed weapon, creates significant safety risks to the officer, the surrounding public, and  
27 the individual brandishing the firearm.

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1 11. Based on my patrol and command experience, firearms are often used in  
2 crimes of passion, robberies, assaults and gang activities.

3 12. I am informed and believe that Kathleen Raley of OCSD Support Services  
4 compiles data regarding the use of weapons in certain categories of offenses including  
5 robbery and assault for monthly Department of Justice (“DOJ”) crime reporting purposes  
6 statistics. I am informed and believe that Ms. Raley pulled crime statistics for 2011 that had  
7 previously been reported to the DOJ. I reviewed the data. The data retrieved reflected  
8 crime statistics for areas patrolled by OCSD, including unincorporated areas of Orange  
9 County and contract cities: Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Laguna  
10 Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, San Juan  
11 Capistrano, Stanton, and Villa Park. I reviewed that data and concluded that of the 229  
12 robberies committed in 2011, 33 or 14% involved a firearm. In addition, of the 853 assaults  
13 committed in 2011, 50 or 6% involved a firearm. While these numbers are not shockingly  
14 high, OCSD has an interest in assuring that this remains the case to protect public safety.  
15 See Declaration of Kathleen Raley and Exhibit A attached thereto.

16 13. Because of the element of surprise necessarily involved in perpetrating robbery  
17 and assault, having legal access to a concealed firearm would be an attractive advantage. A  
18 concealed firearm could more easily be obtained and used in robberies and assaults if the  
19 “good cause” requirement were eliminated.

20 14. At my request, the Investigations Division, Gang Enforcement Teams,  
21 assembled data regarding the seizure of firearms in relation to gang crimes. Based on the  
22 information provided, I am informed and believe that the number of firearms seized over the  
23 last four years in crimes related to gang activity has increased. A “shall issue” CCW policy  
24 would increase that number further, presenting a threat to the public and law enforcement.

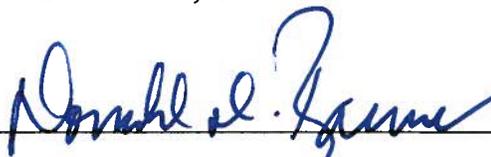
25 15. Based on my experience in the field and as commander of field operations, I  
26 am aware that it is common for gangs to engage lesser known associates, ie. those without  
27 significant or any criminal histories, to carry weapons to the locations where criminal  
28 activity is planned to occur. Under a “shall issue” CCW policy these lesser known

1 associates would likely be able to legally obtain a CCW License because they would pass  
2 the criminal background. This means more firearms could legally be carried to locations  
3 where criminal activity is planned to occur, increasing the likelihood that such weapons  
4 could be used.

5 16. The "good cause" requirement allows Orange County and the State to limit the  
6 number of weapons that the public at large has access to immediately, which protects both  
7 officers and the public. Increasing the numbers of concealed weapons increases the threat  
8 and possibility of firearm violence to the community at large and to law enforcement  
9 officers.

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

12 EXECUTED this 4th day of October 2012 at Santa Ana, California.

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15 Commander Donald Barnes  
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**CERTIFICATE OF SERVICE**

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I do hereby declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 333 W. Santa Ana Blvd., Suite 407, Santa Ana, California 92702-1379, and my email address is marz.lair@coco.ocgov.com. I am not a party to the within action.

I hereby certify that I caused the foregoing **DECLARATION OF COMMANDER DONALD BARNES IN SUPPORT OF DEFENDANTS' OPPOSITION TO THE MOTION FOR PRELIMINARY INJUNCTION** to be served on October 9, 2012, upon all counsel of record listed below by electronic filing utilizing the U.S.D.C.'s CM/ECF:

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Attorneys for Plaintiffs, Dorothy McKay, Diana Kilgore, Phillip Willms, Frederick Kogen, David Weiss, and the CRPA Foundation

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed in Santa Ana, California this 9<sup>th</sup> day of October, 2012.

  
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Marzette L. Lair

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