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United States District Court
Central District of California

2012 DEC 17 PM 1:56
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: 

FILED

11 Charles Nichols,
12 PLAINTIFF,
13 vs.
14 KAMALA D. HARRIS, Attorney
15 General, in her official capacity as
16 Attorney General of California, CITY
17 OF REDONDO BEACH, CITY OF
18 REDONDO BEACH POLICE CHIEF
19 JOSEPH LEONARDI, OFFICER
20 TODD HEYWOOD and DOES 1 to 10,
21 Defendants.
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Case No.:
CV-11-9916 SJO (SS)

**PLAINTIFF'S RESPONSE TO
DEFENDANT KAMALA D.
HARRIS'S OBJECTIONS TO
NOVEMBER 20, 2012 REPORT
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE**

Date: N/A
Time: N/A
Courtroom: 23 – 3rd Flr.
Judge: Hon. Suzanne H. Segal
Trial Date: Not Set
Action Filed: Nov. 30, 2011

1 Comes now PLAINTIFF, in Pro Per, and hereby files this PLAINTIFF'S
2 RESPONSE TO DEFENDANT KAMALA D. HARRIS'S OBJECTIONS TO
3 NOVEMBER 20, 2012 REPORT AND RECOMMENDATION OF UNITED
4 STATES MAGISTRATE JUDGE. This response is filed pro se pursuant to L.R.
5 83-2.9.2.2 - "When an attorney of record **for any reason** ceases to act for a party,
6 such party shall appear pro se..." Plaintiff's retained counsel failed to file
7 Plaintiff's objections to some of the conclusions of law and fact in the
8 NOVEMBER 20, 2012 REPORT AND RECOMMENDATION OF UNITED
9 STATES MAGISTRATE JUDGE as Plaintiff instructed him to do. Particularly,
10 the conflation of case law concerning the carrying of loaded, concealed handguns
11 or a loaded handgun disguised as a toy in a Tennessee state park with Openly
12 Carrying an unloaded long gun in a place legal under state and Federal law, and
13 even exempt under various City of Redondo Beach Municipal ordinances. Even if
14 there were no Second Amendment, Plaintiff's First and Fourth Amendment rights
15 were clearly violated and qualified immunity does not apply. Plaintiff instructed
16 his counsel of record to file a Substitution of Attorney (Form G-01) and Order
17 (Form G-02) substituting Plaintiff as attorney (pro se) of record instead of Michael
18 F. Sisson.

19
20 Although Plaintiff does not object to filing an Amended Complaint he asks
21 that his case be stayed for 120 days against all defendants and he be granted leave
22 to file an objection to the NOVEMBER 20, 2012 REPORT AND
23 RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE and an
24 Amended Complaint against all parties. This Court can issue a stay without a
25 motion by any party:
26

27 A court has discretion in determining whether a stay is proper in light of
28 proceedings in another case. See Yong v. INS, 208 F.3d 1116, 1119 (9th Cir.

2000). In assessing the propriety of a stay, a court must “balance the length of the stay against the strength of the justification given for it.” See *id.* More specifically,

[w]here it is proposed that a pending proceeding be stayed, the competing interests which will be affected by the granting or refusal to grant a stay must be weighed. Among those competing interests are the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.

Lockyer v. State of Cal., 398 F.3d 1098, 1110 (9th Cir. 2005). “A stay should not be granted unless it appears likely the other proceedings will be concluded within a reasonable time in relation to the urgency of the claims presented to the court.” *Id.* (internal quotation marks omitted); see also *Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (noting that, “[g]enerally, stays should not be indefinite in nature”).

Plaintiff’s review of post-Heller decisions by the 9th Circuit Court of Appeals Second Amendment cases indicate that the 9th Circuit typically issues such decisions within 90 days of the case being taken under submission:

US v. Henry, 688 F. 3d 637 - Court of Appeals, 9th Circuit 2012 - Argued and Submitted June 26, 2012 - Filed August 9, 2012

Nordyke v. King, 681 F. 3d 1041 - Court of Appeals, 9th Circuit 2012 - Argued En Banc March 19, 2012 - Submitted May 24, 2012 - Filed June 1, 2012.

US v. Dugan, 657 F. 3d 998 – Court of Appeals, 9th Circuit 2011 - Argued and Submitted August 8, 2011 - Filed September 20, 2011

1 US v. Potter, 630 F. 3d 1260 - Court of Appeals, 9th Circuit 2011 -
2 Submitted January 10, 2011 - Filed January 26, 2011

3 US v. Vongxay, 594 F. 3d 1111 – Court of Appeals, 9th Circuit 2010 - No.
4 09-10072. Argued and Submitted January 12, 2010. Filed February 9, 2010.
5

6 On December 6, 2012 the 9th Circuit Court of Appeals heard oral arguments
7 and took under submission Adam Richards, et al v. Ed Prieto et al Case Number:
8 11-16255, and Edward Peruta, et al v. County of San Diego, et al Case Number:
9 10-56971. On December 10, 2012 the 9th Circuit Court of Appeals heard oral
10 arguments and took under submission David Mehl, et al v. Lou Blanas, et al Case
11 Number: 08-15773. Richards and Mehl are constitutional challenges to PC 26150
12 (substantially identical to PC 26155 except for whom sends the application to the
13 Attorney General and her DOJ for approval; Sheriff under PC 26150 and Police
14 Chief under PC 26155). Peruta is a challenge to the “good cause” requirement of
15 PC 26150. All three cases have filed a Notice of Supplemental Authority, pursuant
16 to Fed. R. App. P. 28(j) of the recent Seventh Circuit Court of Appeals decision
17 which struck down Illinois’ prohibition on the carrying of loaded firearms in public
18 for the purpose of self-defense. Moore v. Madigan, Nos. 12-1269, 12-1788, 2012
19 U.S. App. LEXIS 25264 (7 Cir. Dec. 11, 2012). A decision which also struck
20 down an Illinois law identical to PC 25850(a) (see Count 3 of Plaintiff’s FAC).
21 Recognizing that Judge Posner in Moore said that Illinois was free to prohibit the
22 carrying of concealed weapons in public pursuant to Heller; Amicus CRPA (a
23 Plaintiff in Peruta) filed this closing statement in its 28(j) letter in Mehl:
24

25 “If this Panel reaches the merits, it should likewise find that requiring
26 lawabiding, competent adults to prove a need beyond self-defense to obtain the
27 license required to publicly carry arms, whether **a license to carry openly** or
28

1 concealed, as California provides for either (Penal Code section 26150(b)), violates
2 the Second Amendment.” (Emphasis added)

3
4 Also noticed (28(j)) separately was the recent California State Appellate
5 decision in People v. Mitchell, 208 Cal.App.4th 1213 (2012) which recognized the
6 Second Amendment right to openly carry a weapon (a knife) in public pursuant to
7 Heller and applying intermediate scrutiny for concealed carry in public.

8
9 In short, the decisions by the 9th Circuit Court of Appeals in Richards, Peruta
10 and Mehl are very likely to be dispositive as to the state statutes and Municipal
11 ordinances at issue in this case. This court had already published a substantive
12 finding that the City of Redondo Beach Municipal ordinance is preempted by the
13 California Constitution. Since Plaintiff filed his FAC, the State of California has
14 banned the Open Carry of unloaded Long Guns (AB 1527) in addition to the
15 existing ban on the Open Carry of unloaded handguns (AB 144) as well as PC
16 25850 (the ban on carrying loaded firearms) and over 200 pages of Penal Code
17 sections regulating the use, possession and carrying of weapons; Plaintiff requests
18 that this court stand by its earlier finding of preemption of the Redondo Beach
19 Municipal ordinances.

20
21 Plaintiff’s First Amended Complaint and Declarations were submitted pro
22 se and it is well established that pro se filings are required to be liberally construed
23 in Plaintiff’s favor and a complaint can only be dismissed with prejudice if it is
24 frivolous or incapable of amendment.

25
26 Defendant Harris is an indispensable party to this suit. None of the Redondo
27 Beach defendants can stand in stead of the Attorney General when the
28 constitutionality of a state statute is challenged and it would be futile for Plaintiff

1 to apply for a license to openly carry a loaded handgun from any police chief or
2 county sheriff in the state as all are precluded by the population and residency
3 restrictions of PC 26155 from issuing a license to Plaintiff which the statute clearly
4 states.

5
6 Plaintiff's disputes all objections, allegations, conclusions and points of law
7 made by Defendant Harris in her objection in this response including, but not
8 limited to:

9
10 DEFENDANT KAMALA D. HARRIS'S OBJECTIONS TO NOVEMBER
11 20, 2012 REPORT AND RECOMMENDATION OF UNITED STATES
12 MAGISTRATE JUDGE hereinafter referred to as RTO.

13
14 RTO at 1:2-7. Plaintiff is being prosecuted for mere possession of a firearm
15 and not for "for openly carrying an unloaded shotgun in a Redondo Beach park."
16 Plaintiff's protest was conducted in an area of the city excluded from the RBMC he
17 is charged with violating. The Redondo Beach Municipal Code explicitly excludes
18 all coastal parkland and streets within parks open to the public from its ban on the
19 "use and carrying" of weapons in parks which the Redondo Beach Defendants
20 maintain (contrary to their own municipal ordinances) apply to ALL public, open
21 spaces of the city including those explicitly exempt in their own municipal code.
22 "The act of firearm possession, by itself, is innocent." People v. Jones, 278 P. 3d
23 821, *356 - Cal: Supreme Court 2012.

24 An unloaded firearm is defined as "loaded" pursuant to California Penal
25 Code PC 16840(1) which applies specifically to PC 25850 and was formerly a
26 subsection of PC 12031 now renumbered to PC 25850 et al: "A firearm shall be
27 deemed to be "loaded" when there is an unexpended cartridge or shell, consisting
28 of a case that holds a charge of powder and a bullet or shot, in, or attached in any

1 manner to, the firearm, including, but not limited to, in the firing chamber,
2 magazine, or clip thereof attached to the firearm.” See *Rupf v. Yan* 85 Cal. App.
3 4th 411 upholding this definition of a “loaded” firearm.

4 RTO at 1:8-18. Plaintiff claims he has the constitutional right to openly carry
5 a loaded firearm in non-sensitive public places throughout the state of California,
6 not just Los Angeles County.

7 RTO at 1:19-27 and at 2:1-2. It is disputed that Defendant Harris is a non-
8 participant. Plaintiff’s original complaint and first amended complaint (FAC)
9 allege and ongoing violation of Plaintiff’s constitutional rights.

10 RTO at 2:11-16. Plaintiff has agreed to file an Amended Complaint.
11 However, Defendant Harris has filed lengthy briefs demonstrating that she clearly
12 understands the factual allegations against her.

13 RTO at 3:4-8. Plaintiff has clearly established Article III standing to a
14 degree not required by any plaintiff in the 9th Circuit, or the Nation, alleging a
15 violation of his Second Amendment right.

16 RTO at 3:9-25. Plaintiff has never “sworn” that he has never violated PC
17 25850 (formerly PC 12031) and has never sworn he has never carried a gun. That
18 is a fantasy Defendant Harris has asserted since her first motion to dismiss which
19 Plaintiff has vehemently and repeatedly denied. Plaintiff does not have to be
20 arrested or prosecuted to challenge the constitutionality of a law. Plaintiff has
21 submitted a video with his FAC showing PC 25850 being enforced against him
22 when Defendant Officer Heywood informed Plaintiff that he was doing a “chamber
23 check” pursuant to subsection (b) of PC 25850. Plaintiff verbally and vocally
24 asserted his Constitutional right to refuse to voluntarily consent to a search or
25 seizure of his person or property; a refusal to which is a violation of the statute (PC
26 25850(b)) which requires that Plaintiff voluntarily give his consent to the search.
27 Defendant Officer Heywood completed his “chamber check” (PC 25850(b)) and
28 subsequently he and Officer Doe seized Plaintiff’s firearm, carrying case, padlock

1 and key. Plaintiff welcomes Defendant Harris' implication that the definition of a
2 "loaded" firearm for PC 25850 is unconstitutionally vague. A person of reasonable
3 intelligence would conclude as Defendant Harris did, that a firearm which does not
4 have a cartridge in the firing chamber is unloaded. The court in Rupf did not.
5 Absent a narrowing construction by a court, which Rupf did not provide by
6 accepting the plain text definition of "loaded" for PC 25850(a) (formerly
7 PC12031(a)(1)); PC 25850(a) is facially unconstitutional for vagueness reasons
8 alone, never mind the Second Amendment.

9 Plaintiff has articulated a concrete plan to violate PC 25850(a) which is
10 unprecedented for any suit alleging an ongoing violation of a Second Amendment
11 right. Plaintiff has averred an exact location, date and place where he plans to
12 violate PC 25850 in the future as well as the manner in which he intends to violate
13 the statute.

14 RTO at 4:1-11. Plaintiff alleges an ongoing deprivation of his constitutional
15 rights. Defendant's Harris' musings regarding "Past-Acts" and citation of
16 "Oklevueha Native Am. Church of Haw., Inc. v. Holder, 676 F.3d 829,
17 833-34, 836 (9th Cir. 2012)" contradicts her position. Oklevueha figured
18 prominently in the prior Report & Recommendation [docket item 40] and Order
19 Accepting the Findings of the Magistrate Judge [docket item 46]. As the court in
20 Oklevueha plainly states at 3807 "Plaintiffs need not allege a threat of future
21 prosecution because the statute has already been enforced against them." PC 25850
22 was enforced against Plaintiff the moment Defendant Officer Heywood took
23 Plaintiff's firearm and performed his "chamber check" pursuant to the statute. An
24 undisputed fact and to which video proof was included with Plaintiff's FAC.

25 RTO at 4:12-28 and 5:1-13 Defendant Harris continues with her fantasy
26 alleging that Plaintiff avowed he has never violated PC 25850 but points to
27 nowhere in any pleading or declaration made by Plaintiff where this occurred.
28 Given that Plaintiff reported the death threat made against him (paragraph 15 of

1 original complaint) to Defendant Harris more than two months prior to filing his
2 original complaint which posited the question "Does being an Open Carry
3 advocate mean I am not entitled to file a complaint for someone making terrorist
4 threats against me?" her fanciful conclusions of Plaintiff's past activities ring
5 particularly hollow. Plaintiff's role in California's Open Carry movement (he is the
6 President of California Right to Carry, a California non-profit organization) has
7 been known to Defendant Harris long before Plaintiff filed his initial complaint.

8 RTO at 5:14-28 and 6:1-16. Defendant Harris continues to ignore the
9 undisputed fact that PC 25850 has already been enforced against Plaintiff.
10 Defendant Harris continues to make bald assertions such as vagueness and logical
11 inconsistencies but fails to point to any page, paragraph, or line of either
12 complaint, or any pleading, or any declaration made by Plaintiff to substantiate any
13 of her spurious allegations. Plaintiff submits that it is remarkable that Defendant
14 Harris understands the facts of the case so clearly that she can roll off page after
15 page in opposition to Plaintiff's suit but claims to be unable to understand the plain
16 and simple factual allegations against her.

17 RTO at 6:26-28 (footnote 1). Defendant Harris cites no case where it is
18 necessary for Plaintiff to be charged with a violation of PC 25850 to have standing
19 to challenge the statute.

20 RTO at 6:17-25 and 7:1-9. Plaintiff did not "admittedly" carry an unloaded
21 firearm. Early on in his protest he pointed out to the television, radio and print
22 reporters in attendance that under California law a firearm with ammunition
23 "attached in any manner" is a loaded firearm and plaintiff was legally in violation
24 of PC 25850 which, unlike other California Penal Code statutes, does not even
25 require that the ammunition attached to the firearm be matching. Video of that
26 statement to the press was included with his FAC. Defendant Harris alleges that
27 Plaintiff did not violate the law in question PC 25850(a) & (b). It is undisputed
28 that the California courts have upheld the plain text definition of an unloaded

1 firearm as it pertains to PC 25850(a) namely that if ammunition is simply attached
2 to the firearm then the firearm is "loaded." That was an obviously absurd
3 conclusion for the California courts to arrive at but it did. A firearm without
4 ammunition in the firing chamber is factually unloaded but is "loaded" as far as the
5 California courts are concerned. id Rupf v. Yan

6 It is undisputed that Plaintiff refused to consent to the "chamber check" of
7 his firearm (PC 25850 (b)) and as the R&R observed, Plaintiff can still be charged
8 for violating PC 25850. Under California criminal procedural law, the criminal
9 charge against Plaintiff can be amended as late as 30 days before trial to include a
10 violation of PC 25850. Although not explicitly charged at this time with a violation
11 of PC 25850, the criminal complaint explicitly mentions Plaintiff violating PC
12 25850. Although Defendant Harris has the duty under the California Constitution
13 to take over the criminal case and to dismiss the charges, she has not done so and
14 despite her assertions that Plaintiff has not violated PC 25850, based on her past
15 and present actions (or inaction) she cannot be expected to do so should Defendant
16 City of Redondo Beach amend the criminal complaint against Plaintiff to include a
17 violation of PC 25850.

18 RTO at 7:10-25. Plaintiff has never stated in briefs or by Declaration that
19 his plans to violate PC 25850 are confined ONLY within the City of Redondo
20 Beach and it remains to be seen if Defendant City of Redondo Beach is going to
21 dig itself into an even deeper hole than it has done so already by amending its
22 criminal complaint against Plaintiff to include a violation of PC 25850. Regardless
23 of the Second Amendment, the Redondo Beach Municipal ordinance Plaintiff is
24 charged with violating is clearly preempted by California law, something which
25 this court had already concluded. There is no reason to believe that the California
26 Courts will not come to the same conclusion regarding state preemption leaving
27 only PC 25850 available to the Redondo Beach Defendants as a remaining charge.
28

1 A statute they have shown an all to eagerness to enforce, especially against
2 Plaintiff.

3 RTO at 7:26-28 and 8:1-4. Plaintiff is not required to provide any evidence
4 at this stage of the pleadings as Defendant Harris is well aware.

5 RTO at 8:5-10. This court has already found that Defendant Harris is the
6 proper party to defend the constitutionality of PC 25850.

7 RTO at 8:11-27. This is substantially the same argument Defendant Harris
8 made in her first motion to dismiss. This court has already found that Defendant
9 Harris is the proper party to defend the constitutionality of PC 25850.

10 RTO at 9:1-20. Defendant Harris' reliance on San Diego Cnty. Gun Rights
11 Comm. v. Reno, 98 F.3d 1121, 1126 (9th Cir. 1996) is tenuous at best. To the
12 extent this pre-Heller decision has any weight, the 9th Circuit contradicts
13 Defendant's Harris position - "We also disagree with the district court's conclusion
14 that to present a case fit for review, Plaintiffs need to frame the scope of the
15 injunctive relief they seek through allegations about Oklevueha's members' use,
16 possession, cultivation, and distribution of marijuana. Such specific pleadings are
17 not required to establish fitness for review, which requires only the existence of a
18 "concrete factual situation." San Diego Cnty. Gun Rights Comm. v. Reno, 98 F.3d
19 1121, 1132 (9th Cir.1996). The scope of any injunctive relief to which Plaintiffs
20 might ultimately be entitled may be determined at a later phase of the litigation.
21 See Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S.Ct. 2130, 119
22 L.Ed.2d 351 (1992) (holding that justiciability must be supported "with the manner
23 and degree of evidence required at the successive stages of the litigation.")." **OKLEVUEHA NATIVE AMERICAN CHURCH v. Holder**, 676 F. 3d 829, *838.

25 Plaintiff emphatically objects that his enumerated, fundamental, individual
26 right under the Second Amendment to openly carry a loaded firearm for the
27 purpose of self-defense be held to the same, or higher, pleading requirements for a
28 case involving the illegal use of marijuana.

1 RTO at 9:21-28. The California legislature repealed PC 12031 and
2 PC12050. PC 25850 became law on January 1, 2012. The population and
3 residency restrictions for a license to openly carry a loaded handgun in former
4 Penal Code Section 12050 went into effect on January 1, 2010. The same
5 restrictions are in PC 26150 & PC 26155 which both went into effect on January 1,
6 2012.

7 RTO at 10:1-10. The assertion by Defendant Harris that Plaintiff would not
8 be stopped where he to openly carry a firearm in public, have his firearm taken
9 against his will and then inspected to see if it is loaded (PC 25850(b)) is belied by
10 the video proof of this happening to Plaintiff submitted with his FAC. Given the
11 fact that the Los Angeles County Sheriff and the Chief of Police for the City of Los
12 Angeles both endorsed AB 144, it is laughable to postulate that none of their
13 officers, let alone Redondo Beach police officers who have already proven their
14 eagerness to enforce PC 25850, would not do so against plaintiff. That coupled
15 with the thousands of arrests and prosecutions for violations of PC 25850 and
16 former PC 12031 which are occurring throughout the state of California to this
17 very day makes inescapably preposterous Defendant Harris' assertion that Plaintiff
18 "...faces no credible threat of enforcement of Section 25850 (by the Attorney
19 General or otherwise) is inescapable.,"

20 RTO at 10:24-28. The present case is, of course, a Second Amendment
21 challenge to statutes which prevent Plaintiff from exercising his constitutional right
22 to openly carry a loaded firearm for the purpose of self-defense and for other
23 lawful purposes. Open Carry, as the Heller Court repeatedly pointed out, is the
24 right guaranteed by the Second Amendment of the Constitution of the United
25 States. The California Courts have come to the same conclusion. Id. Mitchell.

26 RTO at 10:11-23 and 11:1-6. Putting aside the fact that no evidence is
27 required at the pleading stage, the criminal complaint against Plaintiff cites PC
28 25850 and as the R&R correctly points out. The 9th Circuit has found that the

1 attorney general is the proper party because she can prosecute a violation of a state
2 penal statute regardless of whether or not she has.

3 RTO at 10:1-28 and 11:1-13. Defendant Harris and her Department of
4 Justice (DOJ) has a far more extensive role administering PC 26155 than alleged in
5 the FAC, which is one of the reasons Plaintiff does not object to filing an amended
6 complaint.

7 RTO at 11:14-28 and 12:1-15. Section 26155 is not "...operated by local
8 officials only." The only latitude granted by the statute to local law enforcement,
9 if any, is an interpretation of subsection (a)(1) "good moral character" and
10 subsection (a)(2) "good cause" clauses. Plaintiff was denied a license to openly
11 carry a loaded handgun pursuant to subsections (a)(3) "residency" and (2)
12 "population" of Los Angeles County exceeding 200,000 persons. The problem is
13 not with Defendant Leonardi's interpretation of the statute (at this point at least).
14 The statute is unconstitutional to the extent it denies Plaintiff the right to Openly
15 Carry a loaded handgun for the purpose of self-defense and putting Defendant
16 Harris' substantial role in that denial aside for the moment, a municipal police
17 chief can not stand in stead of Defendant Harris when defending the
18 constitutionality of a state statute. It is uncertain as to whether or not County
19 Sheriff's can stand in stead of Defendant Harris in a constitutional challenge to PC
20 26150 even if the Attorney General has been properly noticed pursuant to the
21 F.R.C.P. Or at least it was uncertain to the 9th Circuit three judge panel that heard
22 oral arguments in Peruta and Richards on December 6th, 2012.

23 RTO at 12:16-28 and 13:1-5. Plaintiff's city of residency does not have a
24 police chief and even if it had, it would be futile for Plaintiff to apply for his
25 license from ANY/ALL police chief(s) or ANY/ALL county sheriff(s) in the state
26 (were he challenging PC 26150) as ALL are prevented by the statute(s) from
27 issuing Plaintiff the license he has a right to be issued. Edward Peruta is the lead
28 plaintiff in Peruta v. County and Sheriff of San Diego 10-56971 and a citizen of

1 the State of Connecticut. He challenged the "residency" and "good cause" denial
2 of his application for a license to carry a handgun concealed pursuant to Section
3 26150 (formerly PC 12050) and was found to have standing. As the Honorable
4 Irma Gonzalez the then Chief Federal Judge for the Southern District of California
5 concluded in her denial of the motion to dismiss Peruta's initial complaint by San
6 Diego Sheriff Gore "Seeing as Defendant has failed to either identify an
7 "important governmental interest" or demonstrate the required "fit" between the
8 law and the interest served, the Motion to Dismiss Plaintiff's challenge to the
9 "good cause" and "residency" requirements as applied by Defendants also fails. Cf.
10 *Skoien*, 587 F.3d at 814-15." Peruta v. County of San Diego, 758 F. Supp. 2d
11 1106 - Dist. Court, SD California 2010 docket number 7, page 13, lines 4-8.
12 Neither the lead Plaintiff Peruta, nor any of his fellow Plaintiffs was required to
13 file a Declaration that they would carry a loaded firearm without a permit. The
14 same is true of Richards and Mehl.

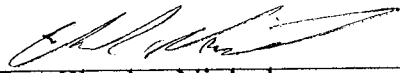
15 RTO at 13:6-28. Plaintiff has far exceeded the Article III case-or-
16 controversy requirements for a suit alleging an ongoing violation of his
17 enumerated, fundamental, individual Second Amendment Right to openly carry a
18 loaded firearm for the purpose of self-defense. From the beginning, Plaintiff has
19 sought only Declaratory and/or Prospective Injunctive Relief from the state
20 officials including Defendant Harris. There is no Eleventh Amendment Bar. The
21 Attorney General is the only proper party to defend the constitutionality of PC
22 25850 and PC 26155 and is, in fact, an indispensable party to this suit. Justice
23 demands that Plaintiff not be subjected to a pleading standing higher than the many
24 Plaintiffs who have filed suit seeking a license to carry a handgun concealed
25 pursuant to PC 26150 for which an allegation of a violation of their Second
26 Amendment has been sufficient to confer standing. This court has already found
27 that Defendant Harris is the proper party to defend PC 25850. This court should
28 stand by its earlier decision that Plaintiff Harris is the proper party for challenges

1 to the state statutes and that the Redondo Beach Municipal ordinances regulating
2 the carrying of firearm are preempted by state law.

3
4 Plaintiff requests this court to; overrule the objections of Defendant Harris,
5 grant Plaintiff leave to amend his claim against all defendants, clearly articulate
6 what it expects Plaintiff's Second Amended Complaint to contain, identify which
7 paragraphs of the FAC are "confusing" to Defendant Harris, say whether or not
8 Plaintiff can file an objection to the Report and Recommendation of the Magistrate
9 Judge and say whether or not this court will grant a stay. If this court does not
10 stand by its earlier finding of preemption then Plaintiff requests that he be granted
11 leave to file an amended complaint against all Redondo Beach Defendants at the
12 conclusion of his criminal case in addition to the above.

13
14
15
16 Dated: December 17, 2012

Respectfully submitted,

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20 By: 
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///

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PLAINTIFF'S RESPONSE TO DEFENDANT KAMALA D. HARRIS'S OBJECTIONS TO NOVEMBER 20, 2012 REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE** was served via United States Mail, postage prepaid, on this 17, day of December, 2012; on the following:

KAMALA D. HARRIS
Attorney General of California
PETER K. SOUTHWORTH
Supervising Deputy Attorney General
JONATHAN M. EISENBERG
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AND
T. PETER PIERCE
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Attorney for Defendants:
CITY OF REDONDO BEACH, CITY OF REDONDO BEACH POLICE CHIEF
JOSEPH LEONARDI, OFFICER TODD HEYWOOD and DOES 1 to 10



Charles Nichols
Plaintiff, In Pro Per