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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 SIGITAS RAULINAITIS and RIMA  
11 RAULINAITIS,  
12  
13 Plaintiffs,  
14  
15 v.  
16 THE LOS ANGELES COUNTY  
SHERIFF'S DEPARTMENT,  
17  
18 Defendant.

CASE NO. CV 11-08026 MWF(JCGx)

**REPLY IN SUPPORT OF  
DEFENDANT LASD'S MOTION  
FOR SUMMARY JUDGMENT**

[Filed concurrently with Defendant's  
Reply Separate Statement; Objections  
to Plaintiffs' Evidence]

**MSJ Date: June 11, 2012**  
**Time: 2:00 p.m.**  
**Ctrm: 790**

**Action Filed: September 25, 2011**  
**Trial Date: September 4, 2012**

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20 **INTRODUCTION**

21 The Second Amendment does not confer a constitutional right to carry a  
22 loaded concealed weapon in public. The California Legislature has given the  
23 Sheriff the discretion to issue concealed weapon permits to qualified individuals  
24 who can show good cause, and the LASD's good cause policy has already been  
25 found constitutional in the Central District. In this case, Plaintiff failed to show  
26 good cause under the LASD policy and his application was denied. Defendant is  
27 entitled to summary judgment.  
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**ARGUMENT**

**I. THE LASD DEFENDANTS' LICENSING PRACTICES WITHSTAND CONSTITUTIONAL SCRUTINY.**

Courts throughout California and in other jurisdictions have upheld similar concealed weapons policies restricting who can possess a concealed weapons permit. See *Peruta v. County of San Diego*, United States District Court Case No. 09 CV-2371, 2010 U.S. Dist. LEXIS 130878 (on appeal to 9<sup>th</sup> Cir) (upholding concealed carry weapons regulation requiring demonstration of good cause based on personal circumstances more specific than a "generalized fear of one's personal safety"); *Richards v. County of Yolo*, 2011 U.S. Dist. LEXIS 51906 (on appeal to 9<sup>th</sup> Cir.) (Yolo County good cause policy requiring credible threats of violence against the applicant constitutional). In *Pisczczatoski v. Filko*, 2012 U.S. Dist. LEXIS 4293, (D. N.J. 2012) a court found a New Jersey statute constitutional that required concealed weapons applicants to show "specific threats of previous attacks demonstrating a special danger to the applicant's life that cannot be avoided by other means" for a permit. In dismissing the plaintiffs' lawsuit challenging the statute, the court held that the interests served in "combating handgun violence and combating the dangers and risks associated with the accidental and misuse of handguns" and "reducing the use of handguns in crimes" is a substantial and significant interest, and New Jersey's requirement that an applicant show a justifiable need for a handgun reasonably meets this need. *Id.* at \*60-61; See also (*Kachalsky v. Cacace*, 2011 U.S. Dist. LEXIS 99837 (S.D.N.Y.2011) (upholding New York Permit law requiring articulable, non-speculative need for self-defense).

A United States District Court Judge has already found the LASD's CCW policy constitutional under the Second Amendment. (See LASD Request for Judicial Notice, Exh. 1.) In *Jonathan Birdt v. Charlie Beck et al.*, United States District Court Case No. CV 10-08577 JAK, the plaintiff, like the Raulinaitis'

1 here, alleged that the LASD's policy violated the Second Amendment because it  
2 required documentation of a clear and present danger to the applicant. Judge  
3 Kronstadt held that the LASD's good cause definition withstood intermediate  
4 scrutiny and was substantially related to an important government objective.<sup>1</sup> That  
5 same LASD policy is no less constitutional in this case.

6 Maintaining public safety and preventing crime are important governmental  
7 interests and the regulation of concealed firearms is critical in accomplishing these  
8 interests. *McDonald v City of Chicago* 3020, 130 S.Ct. 3126 ("2010 private gun  
9 regulation is the quintessential exercise of a State's police power."); *Medtronic,*  
10 *Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (noting that States have "great latitude" to  
11 use their police powers); *United States v. Morrison*, 529 U.S. 598, 618 (2000)  
12 ("there is no better example of the police power than the suppression of violent  
13 crime") As discussed in greater detail in Defendants' moving papers, handguns  
14 are unquestionably dangerous and contribute to the majority of criminal cases that  
15 result in a person's death. LASD UF 11-15; see also *Heller, supra*, 554 U.S. at  
16 636 (acknowledging the problem of handgun violence in the U.S.). (See LASD  
17 UF 11-15.) Unlike possession of a gun for protection within a residence, carrying  
18 a concealed firearm presents a recognized "threat to public order," and is  
19 "'prohibited as a means of preventing physical harm to persons other than the  
20 offender.'" [Citation.]" *People v. Hale*, 43 Cal.App.3d 353, 356 (1974). A  
21 person who carries a concealed firearm on his person or in a vehicle, "which  
22 permits him immediate access to the firearm but impedes others from detecting its  
23 presence, poses an 'imminent threat to public safety ....' [Citation.]" *People v.*  
24 *Hodges*, 70 Cal.App.4th 1348, 1357 (1999). The government has an important  
25 interest in reducing the number of concealed weapons in public in order to reduce  
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27 <sup>1</sup> Mr. Birdt has filed a Notice of Appeal challenging Judge Kronstadt's ruling.  
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1 the risks to other members of the public who use the streets and go to public  
2 accommodations. *Peruta*, 758 F.Supp. at 1117.

3 Los Angeles County's practices in limiting CCW licenses to those with  
4 specific and documented needs is consistent with the compelling and significant  
5 legislative goals underlying California Penal Code sections 12025 and 12031, and  
6 the protection of the public from widespread and unchecked public carry of  
7 concealed and loaded firearms, as discussed above and in Defendant's moving  
8 papers. LASD's policy creates a balance between the competing Second  
9 Amendment interests in self-defense and public safety. The LASD enables those  
10 with a clear and present need for self-defense to obtain a concealed weapon  
11 permit, so long as they also meet the requirements enumerated in California Penal  
12 Code section 12050. The LASD's policy is substantially related to the  
13 government's important interest in public safety and concealed weapon control.

14 Plaintiffs offer the declaration of a firearms instructor to support the  
15 unconstitutionality of the LASD's policy, which Defendants have objected to.  
16 Plaintiff also argues that the LASD's policy is unconstitutional because the  
17 Undersheriff could not name a specific study at his deposition to support the policy,  
18 and imply that the LASD's policy (and perhaps the others that mirror it) are simply  
19 the "uncontrolled will of an official." (See Plaintiff's Opposition, p. 10:17-18.) That  
20 is simply not true, and courts have already rejected similar arguments. As Judge  
21 Kronstadt noted in finding the LASD's policy constitutional:

22 [T]o prevail on their motion for summary judgment,  
23 Defendants need not prove that California's approach to  
24 concealed weapons is more empirically sound, that  
25 Plaintiff's expert is incorrect, or that California's  
26 approach is otherwise the correct one ... Defendants need  
27 only show a sufficient "fit," which they have done. The  
28 Legislature's decision in balancing or addressing

1 competing views will be upheld where, as here, it is  
2 substantially related to the important objectives  
3 described. (RJN, Exh. 1, p.8.)

4 For intermediate scrutiny, what is required is a "fit" between the Legislature's ends  
5 and the "means chosen to accomplish those ends – a fit that is not necessarily  
6 perfect, but reasonable ... within those bounds we leave it to governmental decision-  
7 makers to judge what manner of regulation may best be employed." *Board of*  
8 *Trustees of the State University of New York v. Fox*, 492 U.S. 469, 480 (1989).  
9 Here, the LASD, like the various other jurisdictions whose similar policies have  
10 been upheld, has made the requisite showing.<sup>2</sup>

11 Finally, contrary to Plaintiffs' contentions, Plaintiffs did and continue to  
12 have other avenues to possess a gun without a concealed weapons permit. First,  
13 they could: (1) open-carry or carry concealed a loaded weapon at their place(s) of  
14 business and home; (Cal. Penal Code §§ 12026, 12031(h), (l); now §§ 25605,  
15 26035); (2) open carry a loaded weapon while making a lawful arrest (§ 12031(k),  
16 now § 26050); (3) open carry a loaded weapon if they believed they were in  
17 immediate, grave danger and the firearm was needed for self-defense (§  
18 12031(j)(1); § 12025.5; now §§ 25600, 26045); and (4) open-carry an unloaded  
19 firearm and ammunition ready for instant loading (§ 12031(g)).  
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23 <sup>2</sup> However, to the extent that Plaintiffs want to engage in the battle of the  
24 studies, Defendant would point them to the following: *Shooting Down the More*  
25 *Guns, Less Crime Hypothesis*, 55 Stanford Law Review 1193 (2003), See Michael  
26 B. de Leeuw et al., *Beyond the Final Frontier: a "Post-Racial" America?: The*  
27 *Obligations of lawyers, the Legislature, and The Court: Ready Aim, Fire? District*  
28 *of Columbia v. Heller and Communities of Color*, 25 Harv.BlackLetter J. 133, 149  
(Spring 2009).

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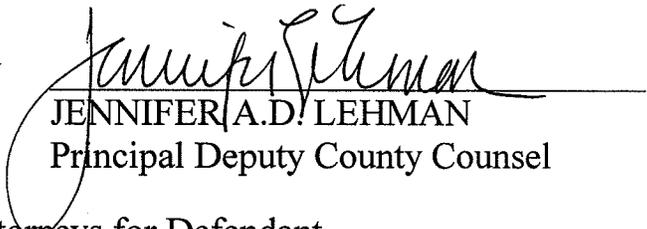
CONCLUSION

For the foregoing reasons, the LASD asks that the Court grant its Motion.

DATED: May 25, 2012

Respectfully submitted,

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