

1 **JONATHAN W. BIRDT**  
2 18252 Bermuda St.  
3 Porter Ranch, CA 91326  
4 Telephone: (818) 400-4485  
5 Facsimile: (818) 428-1384  
6 jon@jonbirdt.com

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

10  
11 JONATHAN BIRDT, ) **CASE NO. EDCV 13-00673-VAP**  
12 )  
13 Plaintiff, ) **REPLY RE MOTION FOR SUMMARY**  
14 ) **JUDGMENT**  
15 vs. )  
16 )  
17 SAN BERNARDINO SHERIFFS )  
18 DEPARTMENT, )  
19 Defendants. )  
\_\_\_\_\_ )

20 Defendant admits that it exercised broad discretion to deny Plaintiff the right to  
21 exercise a fundamental civil liberty because of State Bar matter that resulted in  
22 plaintiffs full reinstatement, including a review by the supervising Judge of this  
23 District (OSC Issued and Discharged by Judge Audrey Collins 12/23/09 and 1/2/10  
24 respectively in 2:09-mc-00367-ABC). The Defendant makes no effort to justify its'  
25 exercise of discretion that admittedly denies Plaintiff his fundamental rights and  
26 instead simply proclaims that the legislature made him King to decide as he sees fit.

1 Defendant does not dispute any of Plaintiffs proffered evidence, but submits  
2 that he can rely on a stipulation between Plaintiff and the State Bar as a basis for  
3 denying Plaintiff a Fundamental Civil Liberty. The evidence shows that Plaintiff has  
4 previously been found to be of good moral character by this District, the United  
5 States Supreme Court (first admission 2012, 3 years after the discipline relied upon  
6 by defendant and reviewed by the court in its decision making process), the State of  
7 Texas (first Admission 2013), the State of California (since 1996) and the State of  
8 Nevada since 2003; it seems impossible to imagine how this exercise of discretion by  
9 an elected official over a fundamental right could in any way be countenanced by this  
10 court.

11 Finally Defendant doesn't offer any evidence that he even personally exercised  
12 his discretion in this matter, I, but appears to be in violation of the applicable Penal  
13 Code which notably contains no mention of discretion, including:

14 26175. (a) (1) Applications for licenses, applications for amendments to  
15 licenses, amendments to licenses, and licenses under this article shall be  
16 uniform throughout the state, upon forms to be prescribed by the Attorney  
17 General.

18 (g) An applicant shall not be required to complete any additional application  
19 or form for a license, or to provide any information other than that necessary to  
20 complete the standard application form described in subdivision (a), except to  
21 clarify or interpret information provided by the applicant on the standard  
22 application form.

23 Section (g) above relating to information that the Sheriff can inquire about  
24 notably does not include licensing issues with any state not related to domestic  
25 violence, mental health or prohibiting crimes. More importantly, Plaintiff was not  
26 convicted of any crime as the State Bar is an administrative agency under the  
27 direction of the Supreme Court of California with whom Plaintiff is in good standing,  
28 thus establishing as a matter of law that he is of good moral character according to the  
licensing scheme administered by the California Supreme Court.

1 Defendant makes no effort in his moving papers to address his burden in this  
2 case of justifying his decision and instead simply insists he has discretion to make  
3 any decision he wants under the licensing scheme despite Plaintiff and that Court  
4 having already pointed out their Due Process failings. When a fundamental right is  
5 recognized, substantive due process forbids infringement of that right “at all, no  
6 matter what process is provided, unless the infringement is narrowly tailored to serve  
7 a compelling state interest.” *Reno v. Flores*, 507 U.S. 292 (1993) at 301-02 (citations  
8 omitted).

9 Having shifted the burden to Defendant and Defendant having conceded to a  
10 broad discretionary act that deprived Plaintiff of a Fundamental Civil Right in direct  
11 contradiction to determinations by Courts referenced herein, Plaintiff respectfully  
12 requests that this Court find that Defendant abused his discretion in denying Plaintiff  
13 his ability to exercise a fundamental Civil Liberty and enter an order requiring  
14 Defendant to issue Plaintiff his license needed to exercise his rights within 10 days of  
15 the Courts order hereon.

16  
17 July 22, 2014

/s/

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19 Jonathan W. Birdt  
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