

ORIGINAL

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GOV'T CODE § 6183

NO FEE GOV'T CODE SEC. 6183
AMOUNT RECOVERABLE PURSUANT
TO 6103.5 GC § 103
PLUS A ONE TIME ADMINISTRATIVE FEE UPON JUDGEMENT
IF THE PARTY BECOMES A JUDGEMENT CREDITOR

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8 DEPARTMENT) & LEROY D. BACA

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

APR 23 2012

John A. Laine, Executive Officer/Clerk
BY *[Signature]* Deputy
Robena Julliano

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12 JENNIFER LYNN LU, SEAN ALLEN LU,
ROY TORIVIO VARGAS, and THE
13 CALGUNS FOUNDATION, INC.,

14 Plaintiffs and Petitioners,

15 v.

16 COUNTY OF LOS ANGELES, LOS
ANGELES COUNTY SHERIFF'S
17 DEPARTMENT, LEROY B. BACA, in his
individual capacity and official capacity, and
18 DOES 1 through 10, inclusive, ,

19 Defendants and Respondents.

CASE NO. BC480493

**DEMURRER TO PLAINTIFFS'
COMPLAINT AND PETITION FOR
WRIT OF MANDATE AND REQUEST
FOR DECLARATORY RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEROF;
SUPPORTING EVIDENCE**

Assigned to the Hon. Deirdre Hall, Dept. 49

DATE: August 24, 2012
TIME: 8:30 a.m.
DEPT.: 49

Action Filed: March 9, 2012
Trial Date: TBD

22 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

23 PLEASE TAKE NOTICE THAT on August 24, 2012 at 8:30 a.m., or as soon thereafter
24 as the matter can be heard in Department 49 of the above-entitled court located at 111 North Hill
25 Street, Los Angeles, California, the Honorable Deirdre Hall presiding, Defendants County of Los
26 Angeles (also erroneously sued as the Los Angeles County Sheriff's Department) and Lee Baca
27 will, and do hereby move this Court pursuant to Code of Civil Procedure § 430.10, for an order
28

1 sustaining their demurrer to Plaintiff's damages without leave to amend, and entering judgment in
2 favor of Defendant and against Plaintiffs.

3 Defendant's general and special demurrer is hereby brought pursuant to Code of Civil
4 Procedure section 430.10 as to the entire Complaint on the following grounds:

- 5 1. Plaintiffs fail to state a cause of action against Defendants.
6 2. Plaintiffs' action is not ripe as there is no justiciable controversy.
7 3. Plaintiffs fail to state a cause of action against Defendants as Defendants' permit
8 policies are constitutional.

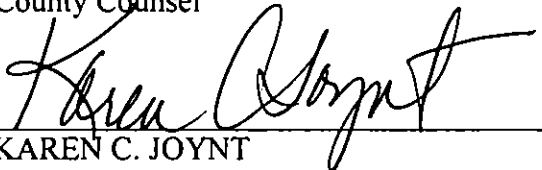
9 This motion is based on this Notice of Demurrer and Demurrer, the attached Memorandum
10 of Points and Authorities, the records on file in this action, and upon such further documents,
11 evidence and argument as may be before the Court at the time of the hearing on this motion.

12 DATED: April 19, 2012

Respectfully submitted,

13 JOHN F. KRATTLI
14 Acting County Counsel

15 By



16 KAREN C. JOYNT
17 Deputy County Counsel

18 Attorneys for Defendants
19 COUNTY OF LOS ANGELES (also erroneously
20 sued as Los Angeles County Sheriff's Department) &
21 SHERIFF LEROY D. BACA
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiffs are residents of incorporated cities in the County of Los Angeles. Even though
4 their own cities have procedures for the issuance of concealed weapons (CCW) licenses, Plaintiffs
5 claim that they should not have to apply to their own cities, and that it violates their constitutional
6 rights under the 14th amendment to be prohibited from going directly to the County.

7 While there are many problems with Plaintiffs' contentions, the biggest problem at present
8 is that by their very own admissions in their verified Complaint, none of the Plaintiffs have
9 actually applied to either their cities or the County for a CCW license. Yet here they seek to
10 challenge a policy which has not harmed them in any way. The action is not ripe, and thus bars
11 their Complaint. Notwithstanding this argument, the policies controlling the issuances of these
12 licenses are constitutional.

13 **BACKGROUND**

14 California Penal Code § 26150 et. seq authorizes a county sheriff to issue a license to carry
15 a concealed, loaded pistol, revolver, or other firearm capable of being concealed upon the person
16 (hereinafter "CCW permit") upon the existence of good cause, and provided that the applicant
17 meets other criteria provided for in the Penal Code. California is a "*may issue*" state, meaning that
18 law enforcement officials have the discretion to grant or deny a permit based on a number of
19 statutory factors. Penal Code sections 26150-26190 set forth the general criteria that California
20 CCW applicants must meet. Applicants must be of good moral character, be a resident of or spend
21 substantial time in the County in which they apply, demonstrate good cause and take a firearms
22 course. (See Penal Code §§ 26150-26190.) The language of Sections 26150, 26155 and 26170 is
23 permissive, not mandatory, and gives extremely broad discretion to a sheriff or police chief in
24 issuing concealed weapons licenses — even to individuals who meet the minimum statutory
25 requirements. *Gifford v. City of Los Angeles*, 88 Cal.App.4th 801, 805 (2001) quoting in part,
26 *Nichols v. County of Santa Clara*, 223 Cal.App.3d 1236, 1241 (1990); *CBS Inc. v. Block*, 42
27 Cal.3d 646, 655 (1986).

1 Like other counties throughout California, under the Los Angeles County Sheriff's
2 Department's (LASD) CCW policy, if an applicant resides in an incorporated city not policed by
3 the LASD, the applicant must apply to the chief of police of their city of residence for a concealed
4 weapons license and have such application acted upon. There are many reasons for this
5 requirement including but not limited to (1) the large size of Los Angeles County and (2) a
6 deference to local municipalities and law enforcement who may have a more precise
7 understanding of the citizens, businesses and crime patterns of their city.

8 Within 60 days after a denial of such application, if any, such city resident may file a
9 separate application with the LASD, attaching a copy of the application denied by the chief of
10 police. The LASD will exercise independent discretion in granting or denying licenses to such
11 person but may review, consider, and give weight to the grounds upon which such denial was
12 made.

13 LEGAL STANDARD

14 A demurrer may be sustained when a pleading fails to state facts sufficient to constitute a
15 cause of action. (Code Civil Procedure Section 430.10 (e)). A demurrer may be sustained as to an
16 entire complaint or to any of the causes of action therein. (Code of Civil Procedure Section
17 430.50 (a)). As to the issues presented by a complaint for declaratory relief, a court may sustain a
18 demurrer when the issues involve only questions of law and do not require a factual determination.
19 *Helmer v. Miller* (1993) 19 Cal 4th 1565, 1569. Where no amendment will cure the defect, it is
20 not an abuse of discretion to sustain the demurrer without leave to amend. (*Schifando v. City of*
21 *Los Angeles* (2003) 31 Cal 4th 1074, 1081.) The burden is on the plaintiff to prove that an
22 amendment will cure the defect. (*Id.*)

23 ARGUMENT

24 I. PLAINTIFFS FAIL TO STATE A CAUSE OF ACTION AGAINST DEFENDANTS

25 Code of Civil Procedure § 430.10(e) states in pertinent part:

26 The party against whom a complaint or cross-complaint has been
27 filed may object, by demurrer or answer as provided in Section
28 430.30, to the pleading [when]...:

1 (e) The pleading does not state facts sufficient to constitute a
2 cause of action.

3 As discussed more fully below, Plaintiffs fail to state facts sufficient to constitute a cause
4 of action because Plaintiff is seeking a writ of mandate, and declaratory, preliminary and
5 permanent injunctive relief for something that has yet to take place.

6 **II. PLAINTIFF'S ACTION IS NOT RIPE AS THERE IS NO JUSTICIABLE
7 CONTROVERSY**

8 An action must be ripe in order to be justiciable. *Pacific Legal Foundation v. California*
9 *Coastal Commission* (1982) 33 Cal.3d 158, 170. A controversy is 'ripe' when it has "reached but
10 not passed the point where the facts have sufficiently congealed to permit an intelligent and useful
11 decision to be made. *Abbott Laboratories v. Gardner* (1967) 387 U.S. 136; *California Water &*
12 *Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 22; *Pacific Legal Foundation,*
13 *Id* at 170. The reasoning for the doctrine of ripeness was clearly enunciated in *Pacific Legal*
14 *Foundation:*

15 The ripeness requirement, a branch of the doctrine of justiciability,
16 prevents courts from issuing purely advisory opinions. (See
17 generally *People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d
18 910 [83 Cal.Rptr. 670, 464 P.2d 176].) It is rooted in the
19 fundamental concept that the proper role of the judiciary does not
20 extend to the resolution of abstract differences of legal opinion. It is
21 in part designed to regulate the workload of courts by preventing
22 judicial consideration of lawsuits that seek only to obtain general
23 guidance, rather than to resolve specific legal disputes. However, the
24 ripeness doctrine is primarily bottomed on the recognition that
25 judicial decision making is best conducted in the context of an actual
26 set of facts so that the issues will be framed with sufficient
27 definiteness to enable the court to make a decree finally disposing of
28 the controversy.
Id at 170.

Here, in their first cause of action entitled "writ of mandate," Plaintiff requests this Court
compel Defendants to review "all applications for licenses to carry, and determine whether the
applicant has "good moral character," has "good cause" for a license to carry, and is a resident of

1 the county, regardless of whether the applicant is from an incorporated city and has not applied for
2 and been denied a license from said city's chief of police..." (See Complaint, pg. 9, lines 6-9,
3 *emphasis added*.) In their second cause of action, entitled "declaratory relief," Plaintiff requests
4 "declaratory relief consistent with the [aforementioned] injunction. (See Complaint, pg. 10, line
5 1.) From this language, it is clear that what Plaintiff is seeking is a broad advisory opinion and/or
6 mandate on the County's current policies, not a response tailored to the facts pertaining to
7 Plaintiffs.

8 Moreover, none of the three individual plaintiffs have applied or even attempted to apply
9 to their local police chief for a CCW license. (See Complaint, ¶3, 4, 5, and 16.) Further, none of
10 the three individual plaintiffs have applied to the County for a CCW license. (See Complaint, ¶
11 16.) Instead, they merely assert that they "*desire* to apply to Defendants for a license to carry a
12 [concealed and loaded] handgun" but "*would be denied*." (See Complaint, ¶ 16; *emphasis added*)
13 Plaintiffs' failure to attempt these very basic, yet material steps of applying to the City and *if*
14 *necessary*, applying to the County, leaves the Court in a position to presume or speculate the
15 various outcomes of such applications. For example, how would the various cities respond to the
16 various plaintiff applicants? Would their applications be rejected at the local level and even
17 require application to the County? If they were rejected by the City, why? What would the result
18 of the various applications to County be? Would any party be barred from the permit for other
19 reasons besides the failure to apply to their Chief of Police?

20 Plaintiffs now ask the Court to make assumptions based solely on their contentions about
21 what might happen and inadmissible hearsay documents. As laid out above, this is prohibited by
22 the law on ripeness. As such, Plaintiff's Complaint should be dismissed until a proper controversy
23 exists to be considered by the Court.

24 **III. PLAINTIFFS FAIL TO STATE A CAUSE OF ACTION AGAINST DEFENDANTS**
25 **AS THEIR PERMIT POLICIES ARE CONSTITUTIONAL**

26 Plaintiffs allege in their third cause of action entitled, "Equal Protection Violation
27 [Fourteenth Amendment.]" that Defendants' "ban on accepting applications for licenses to carry
28 handguns from County residents that live within incorporated cities unless and until...[they] apply

1 for and be denied a license to carry from their respective City's Chief of Police violates Plaintiffs'
2 rights to equal protection under the Fourteenth Amendment." (See Complaint, ¶ 38.)

3 To prevail on this type of claim, the burden to establish the violation is on the challenger.
4 "Plaintiffs must establish that there is no rational reason for the statute or decision maker to
5 distinguish between particular groups." *Merrifield v. Lockyer* (2008) 547 F3d 978 (9th Cir.;
6 *emphasis added*.) Under a rational basis review, an equal protection claim must be rejected when
7 there is "any reasonably conceivable state of facts that could provide a rational basis." *FCC v.*
8 *Beach Communications, Inc.* (1993) 508 US 307 at 313. "Those challenging...must convince the
9 court that the legislative facts on which the classification is apparently based could not reasonably
10 be conceived to be true by the governmental decision maker." *Vance V. Bradley* (1979) 440 US
11 93 at 111.

12 Here, Plaintiffs, without any specificity or support, merely state the application of the law
13 (Penal Code 26150 *et seq*) is "arbitrary, capricious, irrational, and makes unjustifiable distinctions
14 between those individuals" in question. Plaintiffs have not –and cannot- provide more than these
15 blanket allegations. As such, this cause of action should be dismissed.

16 **CONCLUSION**

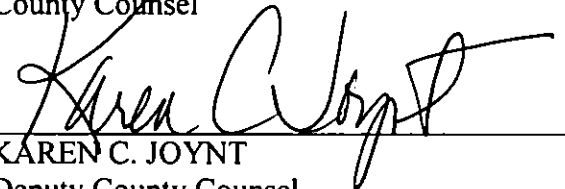
17 For the foregoing reasons, Defendants ask that the Court sustain their demurrer without
18 leave to amend.

19 DATED: April 19, 2012

Respectfully submitted,

20 JOHN F. KRATTLI
21 Acting County Counsel

22 By


23 KAREN C. JOYNT
24 Deputy County Counsel

25 Attorneys for Defendants
26 COUNTY OF LOS ANGELES (also erroneously
27 sued as Los Angeles County Sheriff's Department) &
28 SHERIFF LEROY D. BACA

1 **DECLARATION OF SERVICE**

2 Case No. BC 480493

3 STATE OF CALIFORNIA, County of Los Angeles:

4 Sandra Ruiz states: I am employed in the County of Los Angeles, State of California, over
5 the age of eighteen years and not a party to the within action. My business address is 648 Kenneth
6 Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012-2713.

7 That on April 23, 2012 I served the attached

8 **DEMURRER TO PLAINTIFFS' COMPLAINT AND PETITION FOR WRIT OF
9 MANDATE AND REQUEST FOR DECLARATORY RELIEF; MEMORANDUM OF
10 POINTS AND AUTHORITIES IN SUPPORT THEROF; SUPPORTING EVIDENCE**

11 upon Interested Party(ies) by placing the original a true copy thereof enclosed in a sealed
12 envelope addressed as follows as stated on the attached mailing list:

13 Jason A. Davis
14 Davis & Associates
15 30021 Tomas Street, Suite 300
16 Rancho Santa Margarita, CA 92688

17 (BY MAIL) by sealing and placing the envelope for collection and mailing on the date and
18 at the place shown above following our ordinary business practices. I am readily familiar
19 with this office's practice of collection and processing correspondence for mailing. Under
20 that practice the correspondence would be deposited with the United States Postal Service
21 that same day with postage thereon fully prepaid.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24 Executed on April 23, 2012, at Los Angeles, California.

25 Sandra Ruiz

26 Type or Print Name of Declarant

27 and, for personal service by a Messenger Service,
28 include the name of the Messenger Service



Signature