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**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

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,
California, ORANGE COUNTY
SHERIFF-CORONER
DEPARTMENT, COUNTY OF
ORANGE, and DOES 1-10,

Defendants.

CASE NO: SACV 12-1458JVS (JPpx)

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

42 U.S.C. §§ 1983, 1988

NOW COME Plaintiffs Dorothy McKay, Diana Kilgore, Phillip Willms,
Fred Kogen, David Weiss, and The CRPA Foundaton (collectively "Plaintiffs"), by
and through the above counsel, and allege against Defendants Sheriff Sandra
Hutchens, the Orange County Sheriff-Coroner Department, and the County of
Orange, California (collectively hereafter "Sheriff Hutchens" or "the Sheriff") as
follows:

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

FILED

INTRODUCTION

1. Plaintiffs bring this action to challenge the validity of, and enjoin the enforcement of, Sheriff Hutchens' official written policy and practice of denying licenses that California requires to generally carry handguns in public ("Carry Licenses") to most law-abiding, competent adult applicants, including Plaintiffs, who seek such licenses for the purpose of self-defense, unless the applicant can show "good cause" for the license; which Defendant essentially defines as a special or contemporaneous "need" to defend oneself – something *more* than "general concerns about personal safety."

2. Sheriff Hutchens' official written policy and its implementation abuses her discretion and violates Plaintiffs' right to keep and bear arms under the Second Amendment to the United States Constitution and, in particular, their right "to possess and carry firearms in case of confrontation" for self-defense purposes, as described by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008).

3. Sheriff Hutchens' official written policy also violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by creating a classification of law-abiding individuals, which includes Plaintiffs, who are denied the fundamental right to bear arms for constitutionally irrelevant reasons while others are not so denied.

4. Accordingly, Plaintiffs hereby seek declaratory and injunctive relief from Sheriff Hutchens' unconstitutional policy and practice, as outlined below.

PARTIES

PLAINTIFFS

5. All individual Plaintiffs are natural persons, citizens of the United States, and current residents of Orange County, California.

6. All individual Plaintiffs are eligible to possess firearms under state and federal law and currently own a handgun.

1 7. On October 25, 2011, Plaintiff Dorothy McKay – a public school teacher
2 and National Rifle Association-certified Firearms Instructor / Range Safety Officer
3 – applied to Sheriff Hutchens for a Carry License, asserting a general desire for
4 self-defense as her “good cause” due to her traveling alone in remote areas,
5 sometimes with valuables, both for her paid and volunteer work.

6 8. On December 28, 2011, Plaintiff McKay’s application for a Carry License
7 was denied for lack of “good cause” by Sheriff Hutchens.

8 9. On November 1, 2011, Plaintiff Phillip Willms – an Orange County
9 business owner and competitive shooter who has Carry Licenses issued from
10 Arizona and Nevada – applied to Sheriff Hutchens for a Carry License, asserting a
11 general desire for self-defense as his “good cause” due to his business activities
12 and hobbies requiring him to have valuable possessions on his person.

13 10. On January 24, 2012, Plaintiff Willms’ application for a Carry License
14 was denied for lack of “good cause.” He requested reconsideration of his denial,
15 and on March 21, 2012, his denial was confirmed.

16 11. Plaintiff Fred Kogen – a medical doctor who travels performing infant
17 circumcisions, a procedure that some consider controversial and for which some
18 have threatened those doctors, including Plaintiff Kogen, who perform it – applied
19 to Sheriff Hutchens for a Carry License, asserting a general desire for self-defense
20 as his “good cause” due to his concern about specific and general threats he has
21 received as a result of his performing infant circumcisions.

22 12. On July 10, 2012, Plaintiff Kogen’s application for a Carry License was
23 denied for lack of “good cause” by Sheriff Hutchens.

24 13. Plaintiff David Weiss – a pastor who travels around Orange County to
25 meet with his parishioners in need and who travels all over California to meet with
26 parishioners in need from other churches, and who has Carry Licenses issued by
27 Arizona and New Hampshire – applied to Sheriff Hutchens for a Carry License,
28 asserting a general desire for self-defense as his “good cause” due to frequenting

1 unknown areas to sometimes meet unknown people in often times emotionally
2 charged situations.

3 14. On March 21, 2012, Plaintiff Weiss' application for a Carry License was
4 denied for lack of "good cause" by Sheriff Hutchens

5 15. Plaintiff Diana Kilgore has refrained from applying for a Carry License
6 with Sheriff Hutchens because doing so would be futile and a waste of her time and
7 money, because she does not meet the Sheriff's "good cause" standard articulated
8 in the Sheriff's official written policy for issuing Carry Licenses.

9 16. Plaintiff The CRPA Foundation is a 501 (c)(3) charitable corporation.
10 The CRPA Foundation's primary place of business is in Fullerton, California.

11 17. The CRPA Foundation is an association that utilizes financial resources
12 to educate the public about firearms laws, the shooting sports, and safe practices. It
13 conducts firearms safety advocacy and advocates in court through litigation
14 brought to benefit the California Rifle and Pistol Association ("CRPA") and the
15 CRPA's approximately 35,000 dues-paying members, as well as tens of thousands
16 of additional donors and supporters, and California firearm owners in general.
17 Such judicial advocacy generally regards firearms laws and rights. The CRPA
18 Foundation uses its financial and human resources to counsel firearms owners
19 about their rights and duties with regard to carrying firearms for self-defense, and
20 to support efforts, including litigation, that promotes that right.

21 18. Sheriff Hutchens' denial of Carry Licenses for general self-defense
22 purposes frustrates The CRPA Foundation's mission to promote the fundamental,
23 individual right to armed self-defense. In response to Sheriff Hutchens' unlawful
24 acts, The CRPA Foundation has been required to devote financial and human
25 resources to commence litigation to adjudicate other Plaintiffs' rights with regard
26 to the unlawful activities challenged herein. As a result of using these resources to
27 identify and counsel Plaintiffs and to fund this litigation, The CRPA Foundation
28 has had to divert resources it would use for promoting its other organizational

missions, such as firearm-safety education.

19. Many CRPA members and The CRPA Foundation contributors in Orange County, including Plaintiff Kilgore, wish to obtain a Carry License but refrain from applying because it is futile since they do not meet Sheriff Hutchens' official "good cause" standard, and they do not wish to waste their time and money applying.

DEFENDANTS

20. Defendant Sandra Hutchens is the elected Sheriff of Orange County, California. As such, she is responsible for formulating, executing and administering the laws, customs and practices that Plaintiffs challenge herein, and she is in fact presently enforcing the challenged laws, customs, and practices against Plaintiffs (and, in the case of The CRPA Foundation, those whose interests they represent). Defendant Sheriff Hutchens is sued in her individual capacity and in her official capacity as Sheriff of Orange County.

21. Defendant Orange County Sheriff-Coroner Department ("OCSD") is a law enforcement agency and a Department within the County of Orange. OCSD acts by and through Defendant Sandra Hutchens who serves as the head executive of the Department. As a Department within the governmental structure of the County of Orange, OCSD acts with the express authority and approval of Defendant County of Orange and its Board of Supervisors. Plaintiffs are informed and believe and based thereon allege that Defendant Orange County Sheriff-Coroner Department may be officially titled Orange County Sheriff's Department.

22. Defendant County of Orange is a municipal entity organized under the Constitution and laws of the State of California. Defendant County of Orange, by and through its Board of Supervisors, exercises statutorily required administrative and budget oversight with respect to Defendant Sandra Hutchens and Defendant Orange County Sheriff-Coroner Department.

23. Plaintiffs are informed and believe and based thereon allege that Does

1 1-10, and each of them, are in some manner responsible for establishing,
2 implementing, or administering Sheriff Hutchens' policy for issuing Carry
3 Licenses or are otherwise responsible for denying the natural person Plaintiffs'
4 applications for a Carry License.

5 **JURISDICTION AND VENUE**

6 24. Jurisdiction of this action is founded on 28 U.S.C. § 1331 in that this
7 action arises under the Constitution and laws of the United States, and under 28
8 U.S.C. § 1343(a)(3) in that this action seeks to redress the deprivation, under color
9 of the laws, statutes, ordinances, regulations, customs and usages of the State of
10 California and political subdivisions thereof, of rights, privileges or immunities
11 secured by the United States Constitution and by Acts of Congress.

12 25. Plaintiffs' claims for declaratory and injunctive relief are authorized by
13 28 U.S.C. §§ 2201-2202.

14 26. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2)
15 because a substantial part of the events or omissions giving rise to the claims
16 occurred in this district.

17 **REGULATORY SCHEME**

18 **[California Law - Carry Licenses]**

19 27. With very few and very limited exceptions, California has banned the
20 unlicensed carrying of handguns in most public places whether loaded (Cal. Penal
21 Code §§ 25850, 26100 and exceptions at Cal. Penal Code §§ 25900-26060, 26300)
22 or unloaded (Cal. Penal Code § 26350 and exceptions at Cal. Penal Code §§
23 26361-26389), and whether carried concealed¹ (Cal. Penal Code § 25400 and
24

25 ¹ There is an exception to the general prohibition on carrying concealed
26 when transporting an unloaded handgun in a locked container while in a vehicle,
27 or going directly to or coming directly from a vehicle for "any lawful purpose," or
28 going directly to or from certain locations or activities for "any lawful purpose."
(Cal. Penal Code §§ 25505, 25610).

1 exceptions at Cal. Penal Code §§ 25450-25700, 26300) or exposed (Cal. Penal
2 Code § 26350 and exceptions at Cal. Penal Code §§ 26361-26389).²

3 28. Carrying a handgun in public without a Carry License or without
4 meeting one of the limited exceptions to the general prohibition on publicly
5 carrying handguns can be penalized as a misdemeanor or a felony. (Cal. Penal
6 Code §§ 25400, 25850, 26350).

7 29. California authorizes city police chiefs and county sheriffs (“Issuing
8 Authorities”) to issue Carry Licenses to their residents, allowing those residents
9 who qualify to go about in most public places carrying a loaded handgun.

10 30. To be eligible for a Carry License, a resident must submit a written
11 application to the respective Issuing Authority, showing that the resident meets
12 certain statutorily required criteria. Cal. Penal Code §§ 26150-26155.

13 31. Before a Carry License can issue, an applicant must pass a criminal
14 background check (Cal. Penal Code § 26185), and is required to successfully
15 complete a handgun training course covering handgun safety and California
16 firearm laws. (Cal. Penal Code § 26165).

17 32. Even if an applicant successfully completes the background check and a
18 suitable handgun training course, under the law a Carry License may only be issued
19 if the applicant is additionally proven to be of “good moral character” and
20 establishes “good cause” for getting a license to carry a loaded firearm in public.
21 (Cal. Penal Code §§ 26150(a)(1) and 26150(a)(2), respectively).

22 33. Issuing Authorities currently exercise discretion in deciding whether an
23 applicant has “good cause” to be issued a Carry License. Some Issuing Authorities
24

25 ² It is currently not prohibited to carry an unloaded long-gun (rifle or
26 shotgun) in public outside of a locked container as long as it is not an “assault
27 weapon” (*see* Cal. Penal Code § 30600(a)), of illegal measurements (*see* Cal.
28 Penal Code § 33210), or in a “Gun Free School Zone” under federal law. (18
U.S.C. §§ 921(a)(25)-(26)).

1 choose to rarely issue Carry Licenses. Others issue them to virtually all law-
2 abiding, competent adult applicants who seek a Carry License for self-defense and
3 who otherwise meet the requirements for such a license.

4 34. In counties with populations under 200,000, Issuing Authorities may
5 issue licenses to carry a loaded handgun in an exposed, open manner (e.g., in a hip
6 holster), while in more populated counties, like Orange County, only a license to
7 carry a handgun in a concealed manner may be issued. (Cal. Penal Code §
8 26150(b)(2), 26155(b)(2)).

9 35. A license to carry openly is only valid within the county it was issued.
10 (*Id.*) A license to carry concealed is valid statewide, unless the Issuing Authority
11 expressly restricts its validity to only within the county. (*See* Cal. Penal Code §
12 26200).

13 36. Because California law generally prohibits the unlicensed carrying of
14 handguns in most public places, whether loaded or unloaded, and whether in a
15 concealed or exposed manner, a Carry License is the only means by which an
16 individual can lawfully go about armed for self-defense in “non-sensitive” public
17 places within California.

18 [Second and Fourteenth Amendments]

19 37. The Second Amendment to the United States Constitution provides: “A
20 well regulated Militia being necessary to the security of a free State, the right of the
21 people to keep and bear Arms shall not be infringed.” U.S. Const amend. II.

22 38. The Supreme Court has held that the Second Amendment right to keep
23 and bear arms is a fundamental, individual right that includes at its core the right of
24 law-abiding, competent adults to “possess and carry weapons in case of
25 confrontation.” *Heller*, 554 U.S. at 592.

26 39. The Supreme Court also held that the Second Amendment right to keep
27 and bear arms, by way of its incorporation into the Fourteenth Amendment, applies
28 equally to prohibit infringement of that right by state and local governments.

1 *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3026 (2010).

2 40. The Fourteenth Amendment to the United States Constitution provides
3 that no state shall “deny to any person within its jurisdiction the equal protection of
4 the laws.” U.S. Const. amend. XIV, § 1.

5 41. The Equal Protection Clause puts the burden on the government to
6 justify classifications of people which restrain the exercise of the classified
7 persons’ fundamental rights.

8 **GENERAL ALLEGATIONS**

9 42. The Second Amendment guarantees the right of law-abiding, competent
10 adult residents of Orange County, including Plaintiffs, some lawful manner to carry
11 a handgun for self-defense purposes in case of confrontation, at least in “non-
12 sensitive” public places.

13 43. Denial of a Carry License sought for self-defense purposes is an abuse
14 of discretion and a denial of the fundamental right to carry a handgun in “non-
15 sensitive” public places for self-defense in case of confrontation.

16 44. It is the government’s burden to justify any restriction on the Second
17 Amendment right of law-abiding, competent adults to carry a handgun for self-
18 defense purposes in case of confrontation in “non-sensitive” public places.

19 45. All law-abiding, competent adults are similarly situated in that they are
20 equally entitled to exercise the constitutional right to bear arms – without having to
21 first demonstrate special circumstances or needs to do so – and are therefore
22 equally entitled to be issued a Carry License for self-defense purposes.

23 **[Sheriff Hutchens’ Issuance Policy]**

24 46. According to her official written policy and the denials of Plaintiffs’
25 applications for Carry Licenses, Sheriff Hutchens refuses to issue Carry Licenses
26 where an applicant asserts “general concerns about personal safety” as the “good
27 cause” for a Carry License, even if the applicant is a law-abiding, competent
28 Orange County resident who satisfies all other statutory requirements for a license.

47. To even *potentially* satisfy Sheriff Hutchens’ “good cause” standard, applicants must demonstrate that at least they are the target of a specific threat or that they engage in business that subjects them to much more danger than the general public.

48. Sheriff Hutchens has chosen to adopt an official written policy that rejects applicants' general desire for self-defense - which the Supreme Court has deemed the core of the Second Amendment - as sufficient "good cause" to exercise the fundamental, Second Amendment right to bear arms in public.

49. Sheriff Hutchens’ “good cause” policy also creates a classification of individuals – those who have no evidence of a specific threat or involvement in a business the Sheriff considers risky – which abrogates the class members’ fundamental right to bear arms.

50. Under the Second and Fourteenth Amendments to the United States Constitution, Sheriff Hutchens' policy and practice of prohibiting individuals who cannot show they have more than "general concerns about personal safety" from exercising their right to keep and bear arms is an abuse of discretion and an unconstitutional application of California's "good cause" criterion. The need for a handgun in non-sensitive public places for general self-defense in case of confrontation is itself "good cause."

[Plaintiffs' Carry License Denials]

51. Each of the individual Plaintiffs (except Plaintiff Kilgore) has applied to Sheriff Hutchens for a Carry License asserting general self-defense as their “good cause” for the license.

52. By reason of the Second and the Fourteenth Amendments, each of the Plaintiffs has “good cause” for a Carry License.

53. Sheriff Hutchens has not found that any of the Plaintiffs fails to satisfy any other statutory criterion in California Penal Code section 26150 for issuance of a Carry License.

1 54. Sheriff Hutchens denied each Plaintiff's application for lack of "good
2 cause" alone.

3 55. Sheriff Hutchens' policy choice regarding how to apply California Penal
4 Code section 26150(a)(2)'s criterion has resulted in the denial of Carry Licenses to
5 Plaintiffs, which is tantamount to a denial of their right to bear arms because a
6 Carry License is the only lawful manner in which one can generally carry arms for
7 self-defense purposes in case of confrontation within the state.

8 56. But for the lack of a Carry License, Plaintiffs (and in the case of The
9 CRPA Foundation, those they represent) would carry a handgun in non-sensitive
10 public places for self-defense as they deem appropriate.

11 **[California's "Good Cause" Standard]**

12 57. While Plaintiffs believe it is Sheriff Hutchens' application of California
13 Penal Code section 26150(a)(2)'s "good cause" provision that causes their injury,
14 and not the provision itself, in the alternative, the "good cause" provision itself
15 places a precondition on the right of competent, law-abiding adults to carry arms in
16 public for general self-defense purposes in case of confrontation, without any
17 textual or historical justification for doing so.

18 58. In the alternative, California Penal Code section 26150(a)(2)'s "good
19 cause" provision is an unconstitutional precondition because it requires competent,
20 law-abiding adults like Plaintiffs to prove they have a good reason for a Carry
21 License, which, because such license are the only lawful means to generally carry a
22 handgun for self-defense in most public places in California, is effectively
23 requiring competent, law-abiding adults to prove they have a good reason to
24 exercise a fundamental right. Such a precondition violates the Second and
25 Fourteenth Amendments.

26 59. In the alternative, California Penal Code section 26150(a)(2)'s "good
27 cause" provision unconstitutionally allows Issuing Authorities like Sheriff
28 Hutchens to exercise unbridled discretion in determining who has "good cause" for

1 a Carry License, and thus “good cause” to exercise the fundamental right to bear
2 arms.

3 60. In the alternative, California Penal Code section 26150(a)(2)’s “good
4 cause” provision necessarily creates a classification of Orange County residents,
5 including Plaintiffs, who can be denied a Carry License for self-defense purposes,
6 regardless of whether they are competent and law-abiding, while other classes of
7 competent, law-abiding Orange County residents are not so denied, thereby
8 violating the Equal Protection Clause of the Fourteenth Amendment.

9 **DECLARATORY RELIEF**

10 61. Plaintiffs hereby re-allege and incorporate by reference the allegations
11 set forth in the foregoing paragraphs as if set forth herein in full.

12 62. There is an actual and present controversy between the parties in that
13 Plaintiffs contend Sheriff Hutchens’ official written policy for implementing
14 California Penal Code section 26150(a)(2)’s “good cause” criterion for the issuance
15 of Carry Licenses is unconstitutional on its face and as applied to Plaintiffs because
16 it does not, and in the case of Plaintiffs did not, recognize the fundamental right to
17 armed self-defense as “good cause” for a Carry License. Defendants deny and
18 dispute this contention. Plaintiffs desire a judicial declaration of their rights and
19 Sheriff Hutchens’ duties in this matter.

20 63. Plaintiffs specifically desire a Decree from this Court that the Second
21 Amendment commands Sheriff Hutchens to recognize a desire for general self-
22 defense as “good cause” for an otherwise qualified applicant to be issued a Carry
23 License. Alternatively, Plaintiffs desire a Decree from this Court that Sheriff
24 Hutchens’ enforcement of California Penal Code section 26150(a)(2)’s “good
25 cause” provision in any manner whatsoever violates the Second and Fourteenth
26 Amendments to the United States Constitution.

27 ///

28 ///

**FIRST CLAIM FOR RELIEF
SECOND AND FOURTEENTH AMENDMENTS
RIGHT TO BEAR ARMS
42 U.S.C. § 1983
AGAINST ALL DEFENDANTS**

64. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth in the foregoing paragraphs as if set forth herein in full.

65. By choosing to adopt and adhere to an official written policy that does not recognize a desire for general self-defense as “good cause” for issuance of a Carry License under California Penal Code section 26150(a)(2), Sheriff Hutchens is propagating customs, policies, and practices that deprive Orange County residents, including Plaintiffs, of their right to generally carry a handgun for self-defense in non-sensitive public places as guaranteed by the Second and Fourteenth Amendments.

66. Sheriff Hutchens cannot satisfy her burden of justifying these customs, policies, and practices that preclude Plaintiffs from exercising their rights protected under the Second and Fourteenth Amendments.

67. Sheriff Hutchens’ official written “good cause” policy is therefore unconstitutional on its face because it expressly does not, and in the case of Plaintiffs did not, recognize a desire for general self-defense as “good cause” for issuance of a Carry License.

68. Sheriff Hutchens’ official written “good cause” policy is therefore unconstitutional as applied to Plaintiffs because its implementation precluded them from being issued a Carry License which, in turn, prevents them from exercising their fundamental right to bear arms in non-sensitive public places for general self-defense purposes in the only manner allowed under state law.

69. Plaintiffs are entitled to declaratory and preliminary and permanent injunctive relief against such unconstitutional customs, policies, and practices.

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**SECOND CLAIM FOR RELIEF
FOURTEENTH AMENDMENT - EQUAL PROTECTION
42 U.S.C. § 1983
AGAINST ALL DEFENDANTS**

70. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth in the foregoing paragraphs as if set forth herein in full.

71. In adopting and adhering to an official written policy that does not recognize a desire for general self-defense as “good cause” for issuance of a Carry License under California Penal Code section 26150(a)(2), Sheriff Hutchens is creating a classification of Orange County residents, which includes Plaintiffs, whose Second Amendment right to generally bear arms for self-defense in public is abrogated because they cannot meet the Sheriff’s “good cause” standard for a Carry License, regardless of whether they are competent and law-abiding, while the rights of other classes of competent, law-abiding Orange County residents are not so infringed.

72. Sheriff Hutchens cannot satisfy her burden of justifying such a classification that unequally deprives Plaintiffs of their right to bear arms, and she is therefore propagating customs, policies, and practices that deprive Orange County residents, including Plaintiffs, of their right to equal protection under the law as guaranteed by the Fourteenth Amendment.

73. Sheriff Hutchens’ official written “good cause” policy is therefore unconstitutional on its face because it expressly classifies those individuals who cannot show the additional special circumstances required for issuance of a Carry License described therein as not qualified for issuance of a Carry License, while others who can make such a constitutionally irrelevant showing may be issued a Carry License.

74. Sheriff Hutchens’ official written “good cause” policy is therefore unconstitutional as applied to Plaintiffs because its implementation put them in a classification of adults who are precluded from being issued a Carry License, solely

1 for the constitutionally irrelevant reason that they cannot demonstrate a special
2 need for wanting to exercise the right to bear arms.

3 75. Plaintiffs are entitled to declaratory and preliminary and permanent
4 injunctive relief against such unconstitutional customs, policies, and practices.

5 **THIRD CLAIM FOR RELIEF – IN THE ALTERNATIVE**
6 **SECOND AND FOURTEENTH AMENDMENTS - RIGHT TO BEAR ARMS**
7 **42 U.S.C. § 1983**
8 **AGAINST ALL DEFENDANTS**

9 76. Plaintiffs hereby re-allege and incorporate by reference the allegations
10 set forth in the foregoing paragraphs as if set forth herein in full.

11 77. California Penal Code section 26150(a)(2)'s "good cause" provision
12 violates the Second and Fourteenth Amendments because it imposes preconditions
13 on the individual, fundamental right of competent, law-abiding adults to carry arms
14 in public for general self-defense purposes in case of confrontation, without any
15 textual or historical justification for doing so.

16 78. Local Issuing Authorities like Sheriff Hutchens cannot require, under
17 California Penal Code section 26150(a)(2) or any other state provision, law-
18 abiding, competent adults to prove they have "good cause" before they are allowed
19 to exercise a fundamental constitutional right; or, at least, they cannot
20 constitutionally exercise unbridled discretion in determining who has "good cause"
21 to do so, as California Penal Code section 26150(a)(2) permits. The right to keep
22 and bear arms is a right, not a privilege. Plaintiffs are constitutionally entitled to
23 exercise that right, unless somehow disqualified for constitutionally acceptable
24 reasons.

25 79. Sheriff Hutchens cannot satisfy her burden of justifying her enforcement
26 of California Penal Code section 26150(a)(2)'s "good cause" provision, which
27 precludes Plaintiffs, and most competent, law-abiding Orange County adults, from
28 exercising their rights protected under the Second and Fourteenth Amendments.

80. Therefore, California Penal Code section 26150(a)(2)'s "good cause"

1 provision, is a facially unconstitutional precondition on Plaintiffs' rights protected
2 under the Second and Fourteenth Amendments.

3 81. Therefore, Plaintiffs are entitled to declaratory relief declaring
4 California Penal Code section 26150(a)(2)'s "good cause" provision to be an
5 unconstitutional precondition on the People's right to bear arms, and to preliminary
6 and permanent injunctive relief enjoining Sheriff Hutchens' from implementing
7 *any* such "good cause" precondition on the right to keep and bear arms.

8
9 **FOURTH CLAIM FOR RELIEF – IN THE ALTERNATIVE**
10 **FOURTEENTH AMENDMENT - EQUAL PROTECTION**
11 **42 U.S.C. § 1983**
12 **AGAINST ALL DEFENDANTS**

13 82. Plaintiffs hereby re-allege and incorporate by reference the allegations
14 set forth in the foregoing paragraphs as if set forth herein in full.

15 83. California Penal Code section 26150(a)(2)'s "good cause" provision
16 violates the Equal Protection Clause of the Fourteenth Amendment because it
17 necessarily creates a classification of competent and law-abiding adults whose
18 Second Amendment right to bear arms generally in non-sensitive public places is
19 abrogated because they do not have "good cause" for a Carry License, while those
20 rights of other classes of competent, law-abiding adults are not so infringed.

21 84. Sheriff Hutchens cannot satisfy her burden of justifying her enforcement
22 of a standard that precludes competent, law-abiding adults like Plaintiffs from
23 exercising their rights protected under the Second and Fourteenth Amendments,
24 while allowing others to exercise them, simply because they have what the Sheriff
25 considers "good cause" to do so.

26 85. Therefore, California Penal Code section 26150(a)(2)'s "good cause"
27 provision is unconstitutional on its face.

28 86. Therefore, Plaintiffs are entitled to declaratory relief declaring
California Penal Code section 26150(a)(2)'s "good cause" provision as creating
unconstitutional classifications of people in the enjoyment of their fundamental

1 right to bear arms, and to preliminary and permanent injunctive relief enjoining
2 Sheriff Hutchens' from implementing *any* such "good cause" precondition on that
3 right.

4 PRAYER

5 WHEREFORE, Plaintiffs request that judgment be entered in their favor and
6 against Sheriff Hutchens as follows:

7 87. Declaratory relief that Sheriff Hutchens' policy implementing California
8 Penal Code section 26150(a)(2)'s "good cause" criterion for the issuance of Carry
9 Licenses is unconstitutional on its face and as applied to Plaintiffs because it rejects
10 "general concerns about personal safety" and a desire to exercise one's
11 fundamental right to bear arms for self-defense in case of confrontation as "good
12 cause" for a Carry License and, instead, requires applicants to at least demonstrate
13 they are the target of a specific threat or engage in business that subjects them to
14 far more danger than the general public to qualify for a Carry License;

15 88. Declaratory relief that Sheriff Hutchens' policy implementing California
16 Penal Code section 26150(a)(2)'s "good cause" criterion for the issuance of Carry
17 Licenses is unconstitutional on its face and as applied to Plaintiffs because it
18 creates an impermissible classification of competent, law-abiding adults, which
19 includes Plaintiffs, who are categorically and improperly denied their Second
20 Amendment right to bear arms generally in public in case of confrontation;

21 89. An order permanently enjoining Sheriff Hutchens, her officers, agents,
22 servants, employees, and all persons in active concert or participation with her,
23 from enforcing Sheriff Hutchens' policy implementing California Penal Code
24 section 26150(a)(2)'s "good cause" criterion for the issuance of Carry Licenses in
25 any manner that does not recognize a general desire for self-defense as satisfying
26 that criterion;

27 90. Alternatively, Plaintiffs seek declaratory relief that California Penal
28 Code section 26150(a)(2)'s "good cause" criterion itself is unconstitutional on its

1 face under the Second and Fourteenth Amendments, in that any requirement that
2 law-abiding, competent adults prove they have a “good cause” to exercise a
3 fundamental constitutional right before they may do so cannot pass muster under
4 any applicable standard of review;

5 91. Alternatively, Plaintiffs seek declaratory relief that California Penal
6 Code section 26150(a)(2)’s “good cause” criterion itself is unconstitutional on its
7 face under the Equal Protection Clause of the Fourteenth Amendment because it
8 creates an impermissible classification of competent, law-abiding adults who are
9 categorically and improperly denied their Second Amendment right to bear arms
10 generally in public in case of confrontation;

11 92. Alternatively, Plaintiffs seek an order permanently enjoining Sheriff
12 Hutchens, her officers, agents, servants, employees, and all persons in active
13 concert or participation with her, from enforcing California Penal Code section
14 26150(a)(2)’s “good cause” criterion in any manner;

15 93. Costs of suit, including attorney fees and costs pursuant to 42 U.S.C. §
16 1988 and California law; and

17 94. Any further or alternative relief as the Court deems just and proper.

18
19 Respectfully Submitted,

20
21 Date: September 7, 2012

MICHEL & ASSOCIATES, P.C.

22
23 
24 C.D. Michel
25 E-mail: cmichel@michellawyers.com
26 Counsel for Plaintiffs
27
28

FIRM:

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SUITE 200
LONG BEACH CA 90802
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ATTORNEY SERVICE
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DATE

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ATTORNEY

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ATTORNEY FILE #

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Torrance 310-316-1256
Fax 562-595-6294

PLAINTIFF:

McKay et al.

VS.

COURT:

USDC

JUDICIAL DIST:

Central - Southern Division

DEFENDANT:

Sheriff Sandra Hutchins
et al.

CITY:

Santa Ana

CASE #: SACV 12-158

APPROVED DIRECT BILLING:

CARRIER NAME:

ADDRESS:

CITY, STATE, & ZIP:

ADJUSTER:

INSURED:

CLAIM NUMBER:

DATE OF LOSS:

LIST ALL DOCUMENTS:

HEARING
DATEFEES PAID/
DATEFEES
ATTACHED

1) Amended Complaint

1) Amended Certificate of Interested Parties

2) Amended Summons

3) Amended Civil Cover Sheet ← Not needed

INSTRUCTIONS: FILE BY 9/7/12 SERVE BY

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Please file today
Thank you

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MALE _____ FEMALE _____ RACE _____ AGE _____ HT _____ WT _____ HAIR _____

ORIGINAL SUBMIT

DATE 9/7

RUNNER

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to 608

2nd SUBMIT

DATE

RUNNER

For the Summons
they only issue
original + one

OKAY ☐BACK TO COURT ☐REJECTED ☐OKAY ☐BACK TO COURT ☐REJECTED ☐

TOTAL

SPECIAL ASSIGNMENT #

531907

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NO CONFORM	SHERIFF	COURTESY	DROP C/W	DROP DP	RCV C/W	RCV DP	FILE C/W	FILE DP	ATTY CK	OUR CK	CASH
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