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Attorneys for Defendants, Sheriff Sandra Hutchens,
and Orange County Sheriff-Coroner Department

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION – SANTA ANA**

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

Defendants.

Case No. 8:12-cv-01458 JVS (JPRx)

**DECLARATION OF MELISSA SOTO
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO THE MOTION FOR
PRELIMINARY INJUNCTION**

**DATE: October 29, 2012
TIME: 1:30 p.m.
PLACE: Courtroom 10C**

I Melissa Soto declare:

1. I have personal knowledge of the statements contained in this declaration, and if called upon to testify, I could and would competently testify to the facts stated below.
2. I am currently an Office Specialist within the Orange County Sheriff-Coroner Department's ("OCSD") Internal Affairs Division charged with the task of intake and initial review of Carry Concealed Weapons ("CCW") license applications. I have held this assignment for five years. Prior to my current position, I worked with the Los Angeles County Probation Department as a benefits coordinator.

1 3. Lieutenant Sheryl Dubsky is my supervisor for purposes of the CCW licenses
2 and the person who makes the final decisions relating to CCW license applications and
3 therefore, makes the determination of whether an applicant has stated "good cause." As
4 described in detail in paragraph 4, Lieutenant Dubsky reviews the applications and
5 evaluates good cause on an individual basis.

6 4. I am familiar with and implement on a daily basis the application process for
7 CCW licenses as detailed in OCSD Policy 218. I am also familiar with Penal Code section
8 26150, the basis for Policy 218, which sets forth under what circumstances the sheriff of a
9 county may issue a license to an applicant to carry a concealed weapon. A true and correct
10 copy of Policy 218 is attached hereto as Exhibit A.

11 5. Application Process. The process begins when an applicant either hand-
12 delivers or mails a completed application form to my attention at OCSD. The application
13 form is available on the OCSD web site or by requesting it in person at OCSD. The
14 application OCSD uses is the standard California Department of Justice form application for
15 a license to carry a concealed weapon. OCSD also requests, in compliance with California
16 law, the submission of supporting documentation including a California Driver's license or
17 identification card or a government issued photo identification, birth certificate or proof of
18 residency in the United States, two current utility bills showing Orange County residency,
19 and a good cause statement. OCSD also suggests, but does not require, three letters of
20 reference regarding the applicant's character.

21 a. Once the application and all required documents are submitted, I conduct
22 an in-person interview with the applicant regarding their assertions of "good cause."
23 During the interview, I usually conduct a local background check on the applicant. I
24 also provide the applicant with Policy 218's list of examples of criteria that may
25 establish "good cause." After conducting the interview, I compile all of the
26 applicant's submissions and write a brief memorandum for Lieutenant Dubsky which
27 merely restates and summarizes the applicant's stated good cause. I attempt to verify
28 all of the information contained in the application, including the applicant's

1 residence, and if relevant, their business and whether it involves transport of
2 valuables or large amounts of cash, etc. If I cannot verify a claim made in the
3 application, I will ask a Sergeant within the Internal Affairs department to assist in
4 the verification and perhaps even visit the home and/or business of the applicant.

5 b. Lieutenant Dubsky and I then meet to discuss and go over each applicant
6 in person. Lieutenant Dubsky reviews each application individually and indicates
7 whether the good cause threshold has been met. If so, the applicant is conditionally
8 approved pending the Livescan results, firearm training course completion, OCSD
9 Armory weapon approval, and payment of the fee.

10 c. Once all the other requirements have been completed successfully, the
11 applicant's conditional approval becomes final and I issue a laminated hard license to
12 the applicant, which contains a photo, lists the weapon(s) that the applicant may carry
13 concealed, and lists any restrictions on the scope of the license to carry the weapon(s)
14 concealed.

15 d. If the applicant is denied a license on the basis of not demonstrating
16 good cause or for failing to complete satisfactorily the additional requirements, a
17 denial letter is sent out. Although the Penal Code does not contemplate an appeal
18 process, in Orange County, an applicant who was denied a license may appeal that
19 denial by sending either me or Lieutenant Dubsky a letter requesting an appeal and/or
20 review. The applicant may submit additional supporting materials. Lieutenant
21 Dubsky then re-reviews the application and makes a determination and the applicant
22 is notified. If the applicant is once again denied, the applicant often sends a request
23 for review directly to the PSD Captain, who will review the appeal request and
24 respond in writing.

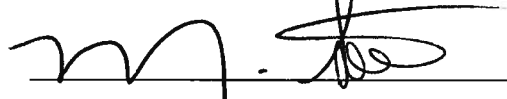
25 6. Statistics on Carry Concealed Weapon Licenses in Orange County. I record
26 and track all applications submitted to OCSD, denials, and approvals through Microsoft
27 Access. Upon request by County Counsel, I gathered data and supplied information about
28 the number of applications submitted, the number of licenses issued, and the total active

1 CCW Licenses to County Counsel for use in the declaration of Professor Frank Zimring. At
2 the end of December 2011, 896 active CCW Licenses had been issued by OCSD and/or
3 remain unexpired. At the end of August 2012, 890 active CCW Licenses have been issued
4 by OCSD and/or remain unexpired. Attached hereto as Exhibit A are true and correct
5 copies of the reports I compiled regarding CCW Licenses issued in 2011 and 2012.

6 I declare under penalty of perjury under the laws of the State of California, that the
7 foregoing is true and correct.

8 EXECUTED this 3rd day of October 2012 at Santa Ana, California.

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Melissa Soto



Orange County Sheriff-Coroner Department

Policy Manual

Carry Concealed Weapons License

218.1 PURPOSE AND SCOPE

The Sheriff is given the statutory discretion to issue a license to carry a concealed firearm to residents within the community. This policy will provide a written process for the application and issuance of such licenses. Pursuant to Penal Code § 12050.2, this policy shall be made accessible to the public.

218.1.1 APPLICATION OF POLICY

Nothing in this policy shall be construed to require the Sheriff to issue a Concealed Weapons License at any time. The issuance of any such license shall only be pursuant to the terms and conditions of this policy and applicable law.

Nothing in this policy shall preclude the Sheriff from entering into an agreement with any chief of police within the County for the Sheriff to process applications and licenses for the carrying of concealed weapons within that jurisdiction (Penal Code § 12050(g)).

218.2 QUALIFIED APPLICANTS

In order to qualify for a license to carry a concealed weapon, the applicant must meet the following requirements:

- (a) Be a resident of the County of Orange.
- (b) Be at least 21 years of age.
- (c) Fully complete an application that will include substantial personal information. Much of the information in the application may be subject to public access under the Public Records Act.
- (d) Be free from criminal convictions that would disqualify the applicant from carrying a concealed weapon. Fingerprints will be required and a complete criminal background check will be conducted.
- (e) Be of good moral character.
- (f) Show good cause for the issuance of the license.
 - Criteria that may establish good cause include the following:
 - Specific evidence that there has been or is likely to be an attempt on the part of a second party to do great bodily harm to the applicant.
 - The nature of the business or occupation of the applicant is such that it is subject to high personal risk and / or criminal attack, far greater risk than the general population.
 - A task of the business or occupation of the applicant requires frequent transportation of large sums of money or other valuables and alternative protective measures or security cannot be employed.
 - When a business or occupation is of a high-risk nature and requires the applicant's presence in a dangerous environment.
 - The occupation or business of the applicant is such that no means of protection, security or risk avoidance can mitigate the risk other than the carrying of a concealed firearm.

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- Personal protection is warranted to mitigate a threat to the applicant that the applicant is able to substantiate.
 - Good cause could include, but not be limited to, documented instances of threats to the personal safety of the applicant, his / her family or employees. Threats to personal safety may be verbal or demonstrated through actual harm committed in the place of work, neighborhood or regular routes of travel for business. The applicant should articulate the threat as it applies personally to the applicant, his / her family or employees. Non-specific, general concerns about personal safety are insufficient.
 - The finding of good cause should recognize that individuals may also face threats to their safety by virtue of their profession, business or status and by virtue of their ability to readily access materials that if forcibly taken would be a danger to society. Threats should be articulated by the applicant by virtue of his / her unique circumstances.
 - **Note:** These examples are not intended to be all-inclusive they are provided merely for your reference. Also, state and local laws do not prohibit an adult from having a concealed weapon in their home or place of business.
- (g) Pay all associated application fees. These fees are set by statute and may not be refunded if the application is denied.
- (h) Provide proof of ownership and registration of any weapon to be licensed for concealment.
- (i) In order to help establish the "good character" of the applicant, it is recommended that the applicant submit at least three reference letters from individuals in the community who are not members of the applicant's immediate family. Although this is not a requirement, it can assist in showing the applicant's good moral character.
- (j) Be free from any medical and psychological conditions that might make the applicant unsuitable for carrying a concealed weapon
- (k) Complete required training.

218.3 APPLICATION PROCESS

The application process for a license to carry a concealed weapon shall consist of two phases. Upon the successful completion of each phase, the applicant will advance to the next phase until the process is completed and the license is either issued or denied.

218.3.1 PHASE ONE (TO BE COMPLETED BY ALL APPLICANTS)

- (a) Any individual applying for a license to carry a concealed weapon shall first fully complete a Concealed Weapons License Application to be signed under penalty of perjury. It is against the law to knowingly make any false statements on such an application (Penal Code § 12051 (b) & (c)).
1. In the event of any discrepancies in the application or background investigation, the applicant may be required to undergo a polygraph examination.
 2. If an incomplete CCW Application package is received, the Sheriff or authorized designee may do any of the following:
 - (a) Require the applicant to complete the package before any further processing.

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- (b) Advance the incomplete package to Phase Two for conditional processing pending completion of all mandatory conditions.
 - (c) Issue a denial if the materials submitted at the time demonstrate that the applicant would not qualify for a CCW license even if the package was completed (e.g., not a resident, disqualifying criminal conviction, absence of good cause).
- (b) At the time of initial approval, the applicant shall submit a check made payable to the Orange County Sheriff's Department for the required Department of Justice application processing costs.
 - 1. Full payment of the remainder of the County's fees will be required upon issuance of a license.
 - 2. The County's fee does not include any additional fees required for training or psychological testing.
 - 3. All fees paid are non refundable
- (c) The applicant shall be required to submit Livescan fingerprints for a complete criminal background check. Photos are taken on site or a recent passport size photo (two inches by two inches) may be submitted for department use. Fingerprint fees will be collected in addition to the application fees. No person determined to fall within a prohibited class described in Penal Code §§ 12021 and 12021.1 or Welfare and Institutions Code §§ 8100 or 8103 may be issued a license to carry a concealed weapon.
- (d) The applicant may, but is not required to, submit at least three signed letters of character reference from individuals other than relatives. Once the Sheriff or authorized designee has reviewed the completed application package and relevant background information, the application will either be advanced to phase two or denied.

In the event that an application is denied at the conclusion of or during phase one, the applicant shall be notified in writing within 90 days of the initial application or within 30 days after receipt of the applicant's criminal background check from the Department of Justice, whichever is later (Penal Code § 12052.5).

218.3.2 PHASE TWO

This phase is to be completed only by those applicants successfully completing phase one.

- (a) Upon successful completion of phase one, the applicant shall be scheduled for a personal interview with the Sheriff or authorized designee. During this stage, there will be further discussion of the applicant's statement of good cause and any potential restrictions or conditions that might be placed on the license.
 - 1. The determination of good cause should consider the totality of circumstances in each individual case.
 - 2. Any denial for lack of good cause should be rational, articulable and not arbitrary in nature.
- (b) The applicant may be required to provide written evidence from a licensed physician that the applicant is not currently suffering from any medical condition that would make the individual unsuitable for carrying a concealed weapon. All costs associated with this requirement shall be paid by the applicant. Failure to provide satisfactory

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evidence of medical fitness shall result in removal of the applicant from further consideration.

- (c) The Sheriff may require that the applicant be referred to an authorized psychologist used by the Department for psychological testing in order to determine the applicant's suitability for carrying a concealed weapon. The cost of such psychological testing (not to exceed \$150) shall be paid by the applicant. This testing is not intended to certify the applicant is psychologically fit to carry a weapon. It is instead intended to determine whether an applicant has any outward indications or history of psychological problems that might render him/her unfit to carry a concealed weapon. If it is determined that the applicant is not a suitable candidate for carrying a concealed weapon, the applicant shall be removed from further consideration.
- (d) The applicant shall submit any weapon to be considered for a license to the Sergeant or other departmentally authorized gunsmith for a full safety inspection. The Sheriff reserves the right to deny a license for any weapon from an unrecognized manufacturer or any weapon that has been altered from the manufacturer's specifications.
- (e) The applicant shall successfully complete a firearms safety and proficiency examination with the weapon to be licensed, to be administered by the department Sergeant or provide proof of successful completion of another departmentally approved firearms safety and proficiency examination, including completion of all releases and other forms. The cost of any outside inspection/examination shall be the responsibility of the applicant.

Once the Sheriff or authorized designee has verified the successful completion of phase two, the license to carry a concealed weapon will either be granted or denied.

Whether an application is approved or denied at the conclusion of or during phase two, the applicant shall be notified in writing within 90 days of the initial application or within 30 days after receipt of the applicant's criminal background check from the Department of Justice, whichever is later. (Penal Code § 12052.5).

218.4 LIMITED BUSINESS LICENSE TO CARRY A CONCEALED WEAPON

The authority to issue a limited business license to carry a concealed weapon to a non-resident applicant is granted only to the Sheriff of the county in which the applicant works. A chief of a municipal police department may not issue limited licenses (Penal Code § 12050(a)(2)(ii)). Therefore, such applicants may be referred to the Sheriff for processing .

An individual who is not a resident of the County of Orange, but who otherwise successfully completes all portions of phases one and two above, may apply for and be issued a limited license subject to approval by the Sheriff and subject to the following:

- (a) The applicant physically spends a substantial period of working hours in the applicant's principal place of employment or business within the County of Orange.
- (b) Such a license will be valid for a period not to exceed 90 days from the date of issuance and will be valid only in the County of Orange.
- (c) The applicant shall provide a copy of the license to the licensing authority of the city or county in which the applicant resides.
- (d) Any application for renewal or re-issuance of such a license may be granted only upon concurrence of the original issuing authority and the licensing authority of the city or county in which the applicant resides.

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218.5 ISSUED CONCEALED WEAPONS LICENSE

In the event a license to carry a concealed weapon is issued by the Sheriff, the following shall apply:

- (a) The license will not be valid outside the State of California, unless recognized by another State.
- (b) The license will be subject to any and all reasonable restrictions or conditions the Sheriff has deemed warranted, including restrictions as to the time, place, manner and circumstances under which the person may carry the concealed firearm.
 - 1. All such restrictions or conditions shall be conspicuously noted on any license issued (Penal Code § 12050(c)).
 - 2. The licensee will be required to sign a Terms of License Agreement. Any violation of any of the restrictions and conditions may result in the immediate revocation of the license.
- (c) The license shall be laminated, bearing a photograph of the licensee with the expiration date, type of weapon, restrictions and other pertinent information clearly visible.
 - 1. Each license shall be numbered and clearly identify the licensee.
 - 2. All licenses shall be subjected to inspection by the Sheriff or any law enforcement officer.
- (d) The license will be valid for a period not to exceed two years from the date of issuance.
 - 1. A license issued to state or federal magistrate, commissioner or judge will be valid for a period not to exceed three years.
 - 2. A license issued to any reserve peace officer as defined in Penal Code § 830.6(a) or (b), or a custodial officer employed by the Sheriff as provided in Penal Code § 831.5 will be valid for a period not to exceed four years, except that such license shall be invalid upon the individual's conclusion of service as a reserve officer or custodial officer.
- (e) The licensee shall notify this department in writing within ten days of any change of place of residency. If the licensee moves out of the County of Orange, the license shall expire ninety (90) days after the licensee has moved.

218.5.1 LICENSE RESTRICTIONS

- (a) The Sheriff may place special restrictions limiting time, place and circumstances under which any license shall be valid. In general, these restrictions will prohibit the licensee from any of the following:
 - 1. Consuming any alcoholic beverage while armed
 - 2. Falsely representing himself or herself as a peace officer
 - 3. Unjustified or unreasonable displaying of a weapon
 - 4. Committing any crime
 - 5. Being under the influence of any medication or drug while armed
 - 6. Interfering with any law enforcement officer's duties
 - 7. Refusing to display his/her license or weapon for inspection upon demand of any peace officer

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- (b) The Sheriff reserves the right to inspect any license or licensed weapon at any time.
- (c) The alteration of any previously approved weapon including, but not limited to adjusting trigger pull, adding laser sights or modifications shall void any license and serve as grounds for revocation.

218.5.2 MODIFICATIONS TO LICENSES

Any licensee may apply to modify a license at any time during the period of validity by completing and submitting a written Application for License Modification along with the current processing fee to the Department in order to accomplish one or more of the following:

- (a) Add or delete authority to carry a firearm listed on the license
- (b) Change restrictions or conditions previously placed on the license
- (c) Change the address or other personal information of the licensee

In the event that any modification to a valid license is approved by the Sheriff, a new license will be issued reflecting the modification(s). A modification to any license will not serve to extend the original expiration date and an application for a modification will not constitute an application for renewal of the license.

218.5.3 REVOCATION OF LICENSES

Any license issued pursuant to this policy may be immediately revoked by the Sheriff for any reason, including but not limited to:

- (a) If the licensee has violated any of the restrictions or conditions placed upon the license; or
- (b) If the licensee becomes medically or psychologically unsuitable to carry a concealed weapon; or
- (c) If the licensee is determined to be within a prohibited class described in Penal Code §§ 12021 or 12021.1 or Welfare and Institutions Code §§ 8100 or 8103; or
- (d) If the licensee engages in any conduct which involves a lack of good moral character or might otherwise remove the good cause for the original issuance of the license.

The issuance of a license by the Sheriff shall not entitle the holder to either a property or liberty interest as the issuance, modification or revocation of such license remains exclusively within the discretion of the Sheriff as set forth herein.

If any license is revoked, the Department will immediately notify the licensee and the Department of Justice pursuant to Penal Code § 12053.

218.5.4 LICENSE RENEWAL

No later than 90 days prior to the expiration of any valid license to carry a concealed weapon, the licensee may apply to the Sheriff for a renewal by completing the following:

- (a) Verifying all information submitted in the renewal application under penalty of perjury;
- (b) The renewal applicant shall complete a 4 hour community college course certified by the Commission on Peace Officer Standards and Training (POST). The course will minimally include firearms safety and the laws regarding the permissible use of a firearm;
- (c) Submitting any weapon to be considered for a license renewal to the department's armorer for a full safety inspection. The renewal applicant shall also successfully

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complete a firearms safety and proficiency examination with the weapon to be licensed by the license renewal, to be administered by the armorer, including completion of all releases and other forms; and

- (d) Payment of a non-refundable renewal application fee.

Once the Sheriff or authorized designee has verified the successful completion of the renewal process, the renewal of the license to carry a concealed weapon will either be granted or denied. Prior issuance of a license shall not entitle any licensee to any property or liberty right to renewal.

Whether an application for renewal is approved or denied, the applicant shall be notified in writing within 90 days of the renewal application or within 30 days after receipt of the applicant's criminal background check from DOJ, whichever is later (Penal Code § 12052.5).

218.6 DEPARTMENT REPORTING AND RECORDS

Pursuant to Penal Code § 12053, the Sheriff shall maintain a record of the following and immediately provide copies of each to the Department of Justice:

- (a) The denial of a license
- (b) The denial of a modification to a license
- (c) The issuance of a license
- (d) The modification of a license
- (e) The revocation of a license

The Sheriff shall annually submit to the State Attorney General the total number of licenses to carry concealed weapons issued to reserve peace officers and judges.

218.7 CONFIDENTIAL RECORDS

The home address and telephone numbers of any peace officer, magistrate, commissioner or judge contained in any application or license shall not be considered public record (Government Code § 6254(u)(2)).

Any information in any application or license which tends to indicate when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of his/her family shall not be considered public record (Government Code § 6254(u)(1)).

CERTIFICATE OF SERVICE

I do hereby declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 333 W. Santa Ana Blvd., Suite 407, Santa Ana, California 92702-1379, and my email address is marz.lair@coco.ocgov.com. I am not a party to the within action.

I hereby certify that I caused the foregoing **DECLARATION OF MELISSA SOTO IN SUPPORT OF DEFENDANTS' OPPOSITION TO THE MOTION FOR PRELIMINARY INJUNCTION** to be served on October 9, 2012, upon all counsel of record listed below by electronic filing utilizing the U.S.D.C.'s CM/ECF:

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Foundation

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed in Santa Ana, California this 9th day of October, 2012.



Marzette L. Lair