

NICHOLAS S. CHRISOS, COUNTY COUNSEL  
 MARIANNE VAN RIPER, Supervising Deputy (CA SBN 136688)  
 marianne.vanriper@coco.ocgov.com  
 NICOLE M. WALSH, DEPUTY (CA SBN 248222)  
 nicole.walsh@coco.ocgov.com  
 333 West Santa Ana Boulevard, Suite 407  
 Post Office Box 1379  
 Santa Ana, California 92702-1379  
 Telephone: (714) 834-6257  
 Facsimile: (714) 834-2359

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)

**ANSWER OF DEFENDANTS SHERIFF  
 SANDRA HUTCHENS AND THE  
 ORANGE COUNTY SHERIFF-  
 CORONER DEPARTMENT TO  
 PLAINTIFFS' FIRST AMENDED  
 COMPLAINT**

Defendants, Sheriff Sandra Hutchens and the Orange County Sheriff-Coroner  
 Department (collectively "Defendants"), hereby respond to the First Amended Complaint  
 ("FAC") filed by Plaintiffs, Dorothy McKay, Diana Kilgore, Phillip Willms, Fred Kogen,  
 David Weiss and the CRPA Foundation (collectively "Plaintiffs"), as follows:

1. Responding to Paragraph 1 of the FAC, Defendants submit that the Complaint  
 speaks for itself as to what Plaintiffs are challenging and attempting to enjoin in this action.  
 Defendants further submit that Defendants' official written policy speaks for itself and that  
 it does contain a "good cause" requirement. Defendants deny the remaining allegations

1 contained in Paragraph 1 of the FAC.

2 2. Responding to Paragraph 2 of the FAC, Defendants deny each and every  
3 allegation contained therein.

4 3. Responding to Paragraph 3 of the FAC, Defendants deny each and every  
5 allegation contained therein.

6 4. Responding to Paragraph 4 of the FAC, Defendants submit that the Complaint  
7 speaks for itself as to what relief Plaintiffs are seeking and deny that Sheriff Hutchens'  
8 policy and/or practice are unconstitutional.

9 5. Responding to Paragraph 5 of the FAC, Defendants lack sufficient information,  
10 knowledge, and/or belief to enable them to admit or deny the information contained therein,  
11 and on that basis, denies each and every allegation contained therein.

12 6. Responding to Paragraph 6 of the FAC, Defendants lack sufficient information,  
13 knowledge, and/or belief to enable them to admit or deny the information contained therein,  
14 and on that basis, denies each and every allegation contained therein.

15 7. Responding to Paragraph 7 of the FAC, Defendants lack sufficient information,  
16 knowledge and/or belief to enable them to admit or deny whether Plaintiff Dorothy McKay  
17 is a public school teacher and/or a National Rifle Association-certified Firearms Instructor/  
18 Range Safety officer, and on that basis, denies these allegations. Defendants admit the  
19 remaining allegations contained in Paragraph 7 of the FAC.

20 8. Responding to Paragraph 8 of the FAC, Defendants admit the allegations  
21 contained therein.

22 9. Responding to Paragraph 9 of the FAC, Defendants lack sufficient information,  
23 knowledge and/or belief to enable them to admit or deny whether Plaintiff Phillip Willms is  
24 an Orange County business owner and competitive shooter who has a Carry License issued  
25 from Arizona and Nevada, and on that basis, denies these allegations. Defendants admit the  
26 remaining allegations contained in Paragraph 9 of the FAC.

27 10. Responding to Paragraph 10 of the FAC, Defendants admit the allegations  
28 contained therein.

1           11.    Responding to Paragraph 11 of the FAC, Defendants lack sufficient  
2 information, knowledge and/or belief to enable them to admit or deny whether Plaintiff Fred  
3 Kogen is a medical doctor who travels performing infant circumcisions and whether some  
4 have threatened those doctors, including Plaintiff Kogen. Defendants further deny that his  
5 application revealed any threats against Plaintiff Kogen. Defendants admit the remaining  
6 allegations contained in Paragraph 11 of the FAC.

7           12.    Responding to Paragraph 12 of the FAC, Defendants admit the allegations  
8 contained therein.

9           13.    Responding to Paragraph 13 of the FAC, Defendants lack sufficient  
10 knowledge, information and/or belief to enable them to admit or deny whether Plaintiff  
11 David Weiss is a pastor who travels around Orange County to meet with his parishioners in  
12 need and who travels all over California to meet with parishioners in need from other  
13 churches and/or whether he has Carry Licenses issued by Arizona and New Hampshire.  
14 Defendants admit the remaining allegations contained in Paragraph 13 of the FAC.

15           14.    Responding to Paragraph 14 of the FAC, Defendants admit the allegations  
16 contained therein.

17           15.    Responding to Paragraph 15 of the FAC, Defendants lack sufficient  
18 knowledge, information and/or belief to enable them to admit or deny the allegations  
19 contained therein, and on that basis, denies each and every allegation contained therein.

20           16.    Responding to Paragraph 16 of the FAC, Defendants lack sufficient  
21 knowledge, information and/or belief to enable them to admit or deny the allegations  
22 contained therein, and on that basis, denies each and every allegation contained therein.

23           17.    Responding to Paragraph 17 of the FAC, Defendants lack sufficient  
24 knowledge, information and/or belief to enable them to admit or deny the allegations  
25 contained therein, and on that basis, denies each and every allegation contained therein.

26           18.    Responding to Paragraph 18 of the FAC, Defendants deny that Sheriff  
27 Hutchens has engaged in "unlawful acts" or that the challenged acts are "unlawful  
28 activities." Defendants lack sufficient knowledge, information, and/or belief to admit or

1 deny the remaining allegations contained in Paragraph 18 of the FAC, and on that basis,  
2 denies each and every remaining allegation.

3 19. Responding to Paragraph 19 of the FAC, Defendants lack sufficient  
4 knowledge, information and/or belief to enable them to admit or deny the allegations  
5 contained therein, and on that basis, denies each and every allegation contained therein.

6 20. Responding to Paragraph 20 of the FAC, Defendants deny that Sheriff  
7 Hutchens is responsible for formulating the sections of the California Penal Code that are  
8 challenged in Plaintiffs' lawsuit, or that she is responsible for administering and/or  
9 executing the Penal Code in any part of the State other than the County of Orange.  
10 Defendants admit the remaining allegations contained in Paragraph 20 of the FAC.

11 21. Responding to Paragraph 21 of the FAC, Defendants deny that the Orange  
12 County Sheriff's Department always acts with the express authority and approval of  
13 Defendant County of Orange and its Board of Supervisors, as Sheriff Hutchens is an elected  
14 (rather than an appointed) official with her own set of duties and responsibilities. Defen-  
15 dants admit the remaining allegations contained in Paragraph 21 of the FAC.

16 22. Responding to Paragraph 22 of the FAC, Defendants admit the allegations  
17 contained therein.

18 23. Responding to Paragraph 23 of the FAC, Defendants deny that that the County  
19 of Orange is responsible for establishing, implementing or administering Sheriff Hutchens'  
20 policy for issuing Carry Licenses or are otherwise responsible for denying Plaintiffs'  
21 applications for a Carry License. Defendants lack sufficient knowledge, information, and/or  
22 belief to admit or deny the remaining allegations contained in Paragraph 23 of the FAC, and  
23 on that basis, denies each and every remaining allegation.

24 24. Responding to Paragraph 24 of the FAC, Defendants admit the allegations  
25 contained therein.

26 25. Responding to Paragraph 25 of the FAC, Defendants submit that the paragraph  
27 does not contain any charging allegations against Defendants and states only legal  
28 conclusions which do not require Defendants to admit or deny. However, to the extent said

1 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
2 each and every allegation. .

3 26. Responding to Paragraph 26 of the FAC, Defendants submit that the paragraph  
4 does not contain any charging allegations against Defendants and states only legal  
5 conclusions which do not require Defendants to admit or deny. However, to the extent said  
6 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
7 each and every allegation.

8 27. Responding to Paragraph 27 of the FAC, Defendants submit that the paragraph  
9 does not contain any charging allegations against Defendants and states only legal  
10 conclusions which do not require Defendants to admit or deny. However, to the extent said  
11 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
12 each and every allegation.

13 28. Responding to Paragraph 28 of the FAC, Defendants submit that the paragraph  
14 does not contain any charging allegations against Defendants and states only legal  
15 conclusions which do not require Defendants to admit or deny. However, to the extent said  
16 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
17 each and every allegation.

18 29. Responding to Paragraph 29 of the FAC, Defendants submit that the paragraph  
19 does not contain any charging allegations against Defendants and states only legal  
20 conclusions which do not require Defendants to admit or deny. However, to the extent said  
21 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
22 each and every allegation.

23 30. Responding to Paragraph 30 of the FAC, Defendants submit that the paragraph  
24 does not contain any charging allegations against Defendants and states only legal  
25 conclusions which do not require Defendants to admit or deny. However, to the extent said  
26 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
27 each and every allegation.

28 //



1           31.     Responding to Paragraph 31 of the FAC, Defendants submit that the paragraph  
2 does not contain any charging allegations against Defendants and states only legal  
3 conclusions which do not require Defendants to admit or deny. However, to the extent said  
4 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
5 each and every allegation.

6           32.     Responding to Paragraph 32 of the FAC, Defendants submit that the paragraph  
7 does not contain any charging allegations against Defendants and states only legal  
8 conclusions which do not require Defendants to admit or deny. However, to the extent said  
9 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
10 each and every allegation.

11           33.     Responding to Paragraph 33 of the FAC, lack knowledge, information and/or  
12 belief to enable them to admit or deny the allegations contained therein, and on that basis,  
13 denies each and every allegation.

14           34.     Responding to Paragraph 34 of the FAC, Defendants submit that the paragraph  
15 does not contain any charging allegations against Defendants and states only legal  
16 conclusions which do not require Defendants to admit or deny. However, to the extent said  
17 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
18 each and every allegation.

19           35.     Responding to Paragraph 35 of the FAC, Defendants submit that the paragraph  
20 does not contain any charging allegations against Defendants and states only legal  
21 conclusions which do not require Defendants to admit or deny. However, to the extent said  
22 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
23 each and every allegation..

24           36.     Responding to Paragraph 36 of the FAC, Defendants submit that the paragraph  
25 does not contain any charging allegations against Defendants and states only legal  
26 conclusions which do not require Defendants to admit or deny. However, to the extent said  
27 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
28 each and every allegation.

1           37.    Responding to Paragraph 37 of the FAC, Defendants submit that the paragraph  
2 does not contain any charging allegations against Defendants and states only legal  
3 conclusions which do not require Defendants to admit or deny. However, to the extent said  
4 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
5 each and every allegation.

6           38.    Responding to Paragraph 38 of the FAC, Defendants deny each and every  
7 allegation contained therein. .

8           39.    Responding to Paragraph 39 of the FAC, Defendants submit that the paragraph  
9 does not contain any charging allegations against Defendants and states only legal  
10 conclusions which do not require Defendants to admit or deny. However, to the extent said  
11 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
12 each and every allegation.

13           40.    Responding to Paragraph 40 of the FAC, Defendants submit that the paragraph  
14 does not contain any charging allegations against Defendants and states only legal  
15 conclusions which do not require Defendants to admit or deny. However, to the extent said  
16 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
17 each and every allegation.

18           41.    Responding to Paragraph 41 of the FAC, Defendants submit that the paragraph  
19 does not contain any charging allegations against Defendants and states only legal  
20 conclusions which do not require Defendants to admit or deny. However, to the extent said  
21 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
22 each and every allegation.

23           42.    Responding to Paragraph 42 of the FAC, Defendants submit that the paragraph  
24 does not contain any charging allegations against Defendants and states only legal  
25 conclusions which do not require Defendants to admit or deny. However, to the extent said  
26 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
27 each and every allegation.

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1           43.    Responding to Paragraph 43 of the FAC, Defendants submit that the paragraph  
2 does not contain any charging allegations against Defendants and states only legal  
3 conclusions which do not require Defendants to admit or deny. However, to the extent said  
4 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
5 each and every allegation.

6           44.    Responding to Paragraph 44 of the FAC, Defendants submit that the paragraph  
7 does not contain any charging allegations against Defendants and states only legal  
8 conclusions which do not require Defendants to admit or deny. However, to the extent said  
9 paragraph is construed to contain charging allegations against Defendants, Defendants deny  
10 each and every allegation.

11          45.    Responding to Paragraph 45 of the FAC, Defendants deny each and every  
12 allegation contained therein.

13          46.    Responding to Paragraph 46 of the FAC, Defendants submit that Sheriff  
14 Hutchens' official written policy regarding the applications for Carry License speaks for  
15 itself and deny that all applications that assert general concerns for personal safety are  
16 denied, but admit that general concerns about personal safety, without other facts showing  
17 good cause, does not constitute good cause under the policy.

18          47.    Responding to Paragraph 47 of the FAC, Defendants submit that Sheriff  
19 Hutchens' official written policy regarding the applications for Carry License speaks for  
20 itself and deny the remaining allegations contained therein.

21          48.    Responding to Paragraph 48 of the FAC, Defendants submit that Sheriff  
22 Hutchens' official written policy regarding the applications for Carry License speaks for  
23 itself and deny that all applications that assert general concerns for personal safety are  
24 denied, but admit that general desire for self defense, without other facts showing good  
25 cause, does not constitute good cause under the policy.

26          49.    Responding to Paragraph 49 of the FAC, Defendants deny each and every  
27 allegation contained therein.

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1           50.    Responding to Paragraph 50 of the FAC, Defendants deny each and every  
2 allegation contained therein.

3           51.    Responding to Paragraph 51 of the FAC, Defendants admit the allegations  
4 contained therein.

5           52.    Responding to Paragraph 52 of the FAC, Defendants deny each and every  
6 allegation contained therein.

7           53.    Responding to Paragraph 50 of the FAC, Defendants admit that other than lack  
8 of good cause, Sheriff Hutchens has not found that any of the Plaintiffs fail to satisfy any  
9 other statutory criteria in California Penal Code section 26150 for issuance of a Carry  
10 License.

11          54.    Responding to Paragraph 54 of the FAC, Defendants admit the allegations  
12 contained therein.

13          55.    Responding to Paragraph 55 of the FAC, Defendants admit that Plaintiffs were  
14 denied a Carry License. Other than expressly admitted, Defendants deny each and every  
15 remaining allegation contained in Paragraph 55 of the FAC.

16          56.    Responding to Paragraph 56 of the FAC, Defendants lack sufficient  
17 knowledge, information and/or belief to enable them to admit or deny the allegations  
18 contained therein, and on that basis, denies each and every allegation contained therein.

19          57.    Responding to Paragraph 57 of the FAC, Defendants deny each and every  
20 allegation contained therein.

21          58.    Responding to Paragraph 58 of the FAC, Defendants deny each and every  
22 allegation contained therein.

23          59.    Responding to Paragraph 59 of the FAC, Defendants deny each and every  
24 allegation contained therein.

25          60.    Responding to Paragraph 60 of the FAC, Defendants deny each and every  
26 allegation contained therein.

27          61.    Responding to Paragraph 61 of the FAC, Defendants hereby incorporate their  
28 responses to Paragraphs 1 through 60 of the FAC as though set forth herein.

62. Responding to Paragraph 62 of the FAC, Defendants deny that Sheriff Hutchens' official written policy for implementing California Penal Code section 26150(a)(2)'s "good cause" criteria for the issuance of Carry Licenses is unconstitutional on its face and/or as applied. Defendants admit the remaining allegations contained in Paragraph 62 of the FAC.

63. Responding to Paragraph 63 of the FAC, Defendants submit that the FAC speaks for itself as to what Decree Plaintiffs are seeking.

64. Responding to Paragraph 64 of the FAC, Defendants hereby incorporate their responses to Paragraphs 1 through 63 of the FAC as though set forth herein.

65. Responding to Paragraph 65 of the FAC, Defendants deny each and every allegation contained therein.

66. Responding to Paragraph 66 of the FAC, Defendants deny each and every allegation contained therein.

67. Responding to Paragraph 67 of the FAC, Defendants deny each and every allegation contained therein.

68. Responding to Paragraph 68 of the FAC, Defendants deny each and every allegation contained therein.

69. Responding to Paragraph 69 of the FAC, Defendants deny each and every allegation contained therein.

70. Responding to Paragraph 70 of the FAC, Defendants hereby incorporate their responses to Paragraphs 1 through 69 of the FAC as though set forth herein.

71. Responding to Paragraph 71 of the FAC, Defendants deny each and every allegation contained therein.

72. Responding to Paragraph 72 of the FAC, Defendants deny each and every allegation contained therein.

73. Responding to Paragraph 73 of the FAC, Defendants deny each and every allegation contained therein.

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1       74.    Responding to Paragraph 74 of the FAC, Defendants deny each and every  
2 allegation contained therein.

3       75.    Responding to Paragraph 75 of the FAC, Defendants deny each and every  
4 allegation contained therein.

5       76.    Responding to Paragraph 76 of the FAC, Defendants hereby incorporate their  
6 responses to Paragraphs 1 through 75 of the FAC as though set forth herein.

7       77.    Responding to Paragraph 77 of the FAC, Defendants deny each and every  
8 allegation contained therein.

9       78.    Responding to Paragraph 78 of the FAC, Defendants deny each and every  
10 allegation contained therein.

11       79.    Responding to Paragraph 79 of the FAC, Defendants deny each and every  
12 allegation contained therein.

13       80.    Responding to Paragraph 80 of the FAC, Defendants deny each and every  
14 allegation contained therein.

15       81.    Responding to Paragraph 81 of the FAC, Defendants deny each and every  
16 allegation contained therein.

17       82.    Responding to Paragraph 82 of the FAC, Defendants hereby incorporate their  
18 responses to Paragraphs 1 through 81 of the FAC as though set forth herein.

19       83.    Responding to Paragraph 83 of the FAC, Defendants deny each and every  
20 allegation contained therein.

21       84.    Responding to Paragraph 84 of the FAC, Defendants deny each and every  
22 allegation contained therein.

23       85.    Responding to Paragraph 85 of the FAC, Defendants deny each and every  
24 allegation contained therein.

25       86.    Responding to Paragraph 86 of the FAC, Defendants deny each and every  
26 allegation contained therein.

27       87.    Responding to Paragraphs 87 through 94 of the FAC (Plaintiffs' Prayer),  
28 Defendants deny that Defendants' Concealed weapons policy and/or the California Penal

Code section 26150(a)(2)'s good cause requirement are either unconstitutional either on their face or as applied and/or that Plaintiffs' rights have been violated by any acts of Defendants. Defendants further deny that Plaintiffs are entitled to any of the relief they seek in their prayer.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

##### **(Failure to State a Claim for Relief)**

1. As a first, separate and distinct affirmative defense, Defendants allege that the FAC fails to state facts sufficient to constitute a claim upon which relief can be granted.

#### **Second Affirmative Defense**

##### **(Failure to Name an Indispensible Party)**

2. As a second, separate and distinct affirmative defense, Defendants allege that Plaintiffs have failed to sue a proper and indispensable party.

#### **Third Affirmative Defense**

##### **(Qualified Immunity)**

3. As a third, separate and distinct affirmative defense, Defendant Sandra Hutchens alleges that she is entitled to qualified immunity from liability under Title 42, United States Code Section 1983 and that Plaintiffs' claims do not arise out of any clearly established Constitutional right.

#### **Third Affirmative Defense**

##### **(Immunity of State Actor)**

4. As a fourth, separate and distinct affirmative defense, Defendant Sandra Hutchens alleges that she is a state actor who is immune from liability under 42 U.S.C. Section 1983.

WHEREFORE, Defendants pray as follows:

1. That the action be dismissed with prejudice;
2. That the request for injunctive relief be denied and Plaintiffs take nothing by their action;

1           3.     That defendant recover their costs of suit incurred herein; and

2           4.     For such other and further relief as the Court deems proper and just.

3     DATED: October 25, 2012

Respectfully submitted,

4           NICHOLAS S. CHRISOS, COUNTY COUNSEL  
5           and MARIANNE VAN RIPER,  
6           SUPERVISING DEPUTY

7           By Marianne Van Riper  
8           Marianne Van Riper, Supervising Deputy

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

OFFICE OF THE COUNTY COUNSEL  
COUNTY OF ORANGE



**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 **ANSWER OF DEFENDANTS SHERIFF SANDRA HUTCHENS AND THE ORANGE COUNTY SHERIFF-CORONER DEPARTMENT TO PLAINTIFFS' FIRST AMENDED COMPLAINT** to be served on October 25, 2012, upon all counsel of record listed below by electronic filing utilizing the U.S.D.C.'s CM/ECF:

C.D. Michel, Esq.  
Email: cmichel@michellawyers.com  
Glenn S McRoberts, Esq.  
Email: gmcroberts@michellawyers.com  
Sean Anthony Brady, Esq.  
Email: sbrady@michellawyers.com  
**MICHEL & ASSOCIATES PC**  
180 East Ocean Blvd., Ste. 200  
Long Beach, CA 90802  
562-216-4444  
Fax: 562-216-4445

Attorneys for Plaintiffs, Dorothy McKay,  
Diana Kilgore, Phillip Willms, Fred  
Kogen, David Weiss, and the CRPA  
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 25<sup>TH</sup> day of October, 2012.

  
Marzette L. Lair

**CERTIFICATE OF SERVICE**