

**FILED**

NOV 30 2012

No. 12-57049

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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DOROTHY MCKAY et. al.,

*Plaintiffs-Appellants,*

v.

SHERIFF SANDRA HUTCHENS, et. al.,

*Defendants-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
(SACV 12-1458JVS)

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**APPELLANTS' EXCERPTS OF RECORD  
VOLUME I of II**

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C. D. Michel (S.B.N. 144258)  
Glenn S. McRoberts (S.B.N. 144852)  
Sean A. Brady (S.B.N. 262007)  
Anna M. Barvir (S.B.N. 268728)  
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**Counsel for Plaintiffs-Appellants**

No. 12-57049

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IN THE UNITED STATES COURT OF APPEALS  
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e-mail: cmichel@michellawyers.com

**Counsel for Plaintiffs-Appellants**

Pursuant to Ninth Circuit Rule 30-1, Plaintiffs-Appellants Dorothy McKay, Diana Kilgore, Phillip Willms, Fred Kogen, David Weiss, and the CRPA Foundation, by and through their counsel of record, hereby confirm to the contents and form of Appellants' Excerpts of Record Volume I of II on appeal.

Date: November 28, 2012

**MICHEL & ASSOCIATES, P.C.**

A handwritten signature in dark ink, appearing to read "C. D. Michel", written over a horizontal line.

C. D. Michel

Attorney for Plaintiffs/Appellants

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**APPELLANTS' EXCERPTS OF RECORD  
VOLUME I of II**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 12-1458 JVS (JPRx) Date October 29, 2012

Title Dorothy McKay et al. v. Sheriff Sandra Hutchens et al.

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Present: The James V. Selna  
Honorable

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Nancy Boehme

Deputy Clerk

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Sharon Seffens

Court Reporter

Attorneys Present for Plaintiffs:

C.D. Michel  
Sean Brady

Attorneys Present for Defendants:

Nicole Walsh  
Marianne Van Riper

**Proceedings: Plaintiffs' Motion for Preliminary Injunction (Fld 9-11-12)**

**Cause called and counsel make their appearances. The Court's tentative ruling is issued. Counsel make their arguments. The Court DENIES the plaintiffs' motion and rules in accordance with the tentative ruling as follows:**

Plaintiffs Dorothy McKay ("McKay"), Diana Kilgore ("Kilgore"), Phillip Willms ("Willms"), Fred Kogen ("Kogen"), David Weiss ("Weiss"), and The CRPA Foundation ("CRPA") (collectively, "Plaintiffs") move pursuant to Federal Rule of Civil Procedure 65(a) for a preliminary injunction against Defendants Sheriff Sandra Hutchens ("Sheriff Hutchens" or "the Sheriff") and the Orange County Sheriff-Coroner Department ("OCSD") (collectively, "Defendants"). (Motion for Preliminary Injunction, Docket No. 6.) Plaintiffs seek to enjoin Defendants from enforcing Sheriff Hutchens' policy implementing the "good cause" criterion of California Penal Code § 26150(a)(2) in any manner that does not recognize "a general desire for self-defense as satisfying the 'good cause' criterion" of § 26150(a). (*Id.*) Alternatively, Plaintiffs seek to enjoin Defendants from enforcing the "good cause" requirement of § 26150(a)(2).<sup>1</sup> (*Id.*) Defendants argue that Plaintiffs are unlikely to succeed on the merits of their claims for relief based on the Second and Fourteenth Amendments. (Opposition to Motion for Preliminary Injunction ("Opp. Br."), Docket No. 15.)

For the following reasons, the Court **DENIES** Plaintiffs' Motion for Preliminary

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<sup>1</sup>The State of California is not a party to the action.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 12-1458 JVS (JPRx) Date October 29, 2012

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Injunction.

I. BACKGROUND

California law generally and with certain exceptions prohibits individuals from carrying a concealed firearm in public, whether loaded or unloaded. See Cal. Penal Code §§ 25850, 26350, 25400.<sup>2</sup> One can obtain a license to carry a firearm “capable of being concealed upon the person.” Cal. Penal Code § 26150(a).<sup>3</sup> An applicant must demonstrate that she is of “good moral character,” must provide “good cause for issuance of the license,” and must complete a training course. Id. California grants the issuing authority “extremely broad discretion” concerning the issuance of the concealed weapons license “to applicants meeting the minimum statutory requirements.” Gifford v. City of Los Angeles, 88 Cal. App. 4th 801, 805 (2005) (quotations omitted) (interpreting Cal. Penal Code § 12050); Erdelyi v. O’Brien, 680 F.2d 61, 63 (9th Cir. 1982). The sheriff must make the investigation and determination on an individual basis on every application. Gifford, 88 Cal. App. 4th at 805 (quoting Salute v. Pitchess, 61 Cal. App. 3d 557, 560–61 (1976)).

OCSD created an official written policy regulating the issuance of concealed carry licenses to Orange County residents.<sup>4</sup> (CCW License Policy.) Under the policy, “good

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<sup>2</sup>California carves out exceptions to the statute. See, e.g., Cal. Penal Code §§ 25525, 25530, 25535, 25550 (excluding transport between person’s place of business or residence or other private property owned or possessed by that person, transport related to coming and going from gun show or swap meet, transport to or from lawful camping site); 25600 (allowing for justifiable violation of § 25400 when a person who possesses a firearm reasonably believes she is in grave danger because of circumstances forming basis of current restraining order). Nothing prevents a person from carrying a handgun, concealed or otherwise, in her home, place of business, or other private property she owns or lawfully possesses. Id. § 25605.

<sup>3</sup>Cal. Penal Code § 26150 previously was codified as § 12050. Both sections contain the “good cause” requirement. “Section 26150 continues former Section 12050(a)(1)(A) & (D) without substantive change.” Law Revision Commission Comments, Cal. Penal Code § 26150.

<sup>4</sup>The Court takes judicial notice of the CCW License Policy, an official public document. See Fed. R. Evid. 201 (judicial notice of adjudicative facts permitted); Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001) (judicial notice of public documents permitted).

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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cause” is evaluated by Sheriff Hutchens and her authorized representatives “on an individual basis.” (Declaration of Lt. Sheryl Dubsky (“Dubsky Decl.”), Docket No. 15-5, at ¶¶ 3, 6.) The CCW License Policy enumerates criteria that “may establish good cause,” including but not limited to: specific evidence of a credible threat of great bodily harm against the applicant, being in a business or occupation subjecting the applicant to high personal risk and/or criminal attack “far greater” than the general population, and having business tasks requiring transportation of large sums of money. (CCW License Policy, at 1.) “Threats to personal safety [of the applicant or his/her family or employees] may be verbal or demonstrated through actual harm committed in the place of work, neighborhood or regular routes of travel for business.” (*Id.*) The applicant must “articulate the threat.” (*Id.*) Particularly relevant here, “[n]on-specific, general concerns about personal safety are insufficient.” (*Id.*)

II. LEGAL STANDARD

Plaintiffs seeking a preliminary injunction must establish: (1) a likelihood of success on the merits, (2) the possibility of irreparable injury in the absence of preliminary relief, (3) the balance of equities favors the plaintiff, and (4) an injunction is in the public interest. *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see also *Raich v. Ashcroft*, 352 F.3d 1222, 1227 (9th Cir. 2003). In the Ninth Circuit, the *Winter* factors may be evaluated on a sliding scale: “serious questions going to the merits, and a balance of hardships that tips sharply toward the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011).

A preliminary injunction is an extraordinary and drastic remedy. *Winter*, 555 U.S. at 25. The grant or denial of a preliminary injunction is within the discretion of the trial court. *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940). Additionally, the trial court need not grant all relief sought by a movant and can modify its injunctive decree as needed for the particular case presented. See e.g., *Maxam v. Lower Sioux Indian Cmty. of Minn.*, 829 F. Supp. 277, 284 (1993).

III. DISCUSSION

A. Likelihood of Success on the Merits

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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Plaintiffs argue that the Supreme Court in District of Columbia v. Heller, 554 U.S. 570 (2008), established that “the right to armed self-defense exists in both private and public settings” and that OCSD’s policy violates this right. The Court finds that there is a substantial question as to whether Plaintiffs have a likelihood of prevailing on the merits. Constitutional challenges to comparable laws and policies repeatedly have been rejected in California and other states. See, e.g., Peruta v. County of San Diego, 758 F. Supp. 2d 1106 (S.D. Cal. 2010) (declining to decide whether Second Amendment encompasses Plaintiff’s right to carry loaded handgun in public but holding that under intermediate scrutiny, sheriff’s policy requiring applicant for concealed carry license to demonstrate “good cause” did not violate right to bear arms); Richards v. County of Yolo, 821 F. Supp. 2d 1169 (E.D. Cal. 2011) (holding that Second Amendment does not create fundamental right to carry concealed weapon in public and that county’s concealed weapon licensing policy was rationally related to goal of maintaining public safety and preventing gun-related crime); Piszcatoski v. Filko, 840 F. Supp. 2d 813 (D.N.J. 2012) (holding that New Jersey law requiring permit applicants to demonstrate “justifiable need” to carry a handgun did not burden protected conduct under Second Amendment and was sufficiently tailored to governmental interests in regulating possession of firearms outside the home). Further, other courts repeatedly have declined to extend Heller beyond its core holding regarding possession in the home for self-defense. See, e.g., United States v. Masciandaro, 638 F.3d 458, 574 (4th Cir. 2011) (“On the question of Heller’s applicability outside the home environment, we think it prudent to await direction from the [Supreme] Court itself.”). Thus, at this stage, the Court finds that this factor heavily weighs against a preliminary injunction.

B. Irreparable Harm

Generally, irreparable harm is presumed if Plaintiffs show a violation of the Constitution. Goldie’s Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472 (9th Cir. 1984). Where a federal injunction is sought against a governmental entity, the party requesting relief must show a threat of “great and immediate,” not conjectural or hypothetical, irreparable harm. City of Los Angeles v. Lyons, 461 U.S. 95, 113 (1983); see also Orantes-Hernandez v. Thornburgh, 919 F.2d 549, 557 (9th Cir. 1990). Because of the substantial question about the extent of the Second Amendment right as recognized in Heller, the Court does not find that there is a likelihood of a real, immediate, and non-conjectural violation of a constitutional right. Further, California provides several exceptions to the restriction of concealed and open carry, including for self-defense and

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defense of the home. Thus, to the extent that the challenged statute and Defendants' policy burden conduct potentially falling within the scope of the Second Amendment, if at all, "the burden is mitigated by the provisions . . . that expressly permit loaded open carry for immediate self-defense." Peruta, 758 F. Supp. 2d at 1114–15 (detailing California's statutory scheme). Thus, the Court finds that this factor weighs against a preliminary injunction.

C. Balance of Equities & The Public Interest

"Given the considerable uncertainty regarding if and when the Second Amendment rights should apply outside the home," the Court finds that "the risks associated with a judicial error" in enjoining "regulation of firearms carried in public are too great" to justify a preliminary injunction. Piszczaoski, 840 F. Supp. 2d at 829; see also Masciandaro, 638 F.3d at 475 (recognizing potential consequences to public interest if court miscalculates as to Second Amendment rights). The Court will not presume that Plaintiffs' allegations of irreparable harm in the constitutional sense give rise to a presumption that the hardships entailed with a preliminary injunction favor the party claiming the constitutional violations, especially where neither California or OCSD categorically ban the public carrying of a handgun. Thus, the Court finds that the balance of equities and the public interest weigh against a preliminary injunction.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Plaintiffs' Motion for Preliminary Injunction of the CCW License Policy and/or California Penal Code § 26150(a)(2).

IT IS SO ORDERED.

Initials of Preparer

0 : 19  
kjt



PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

On November 29, 2012, I served the foregoing document(s) described as

**APPELLANTS' EXCERPTS OF RECORD  
VOLUME I of II**

on the interested parties in this action by placing

☐ the original

☒ a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

“See Attached Service List”

X (BY MAIL) As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on November 29, 2012, at Long Beach, California.

X (FEDERAL) I declare that I am employed in the office of the member of the bar of this of this court at whose direction the service was made.

  
\_\_\_\_\_  
CLAUDIA AYALA

**SERVICE LIST**

*Dorothy McKay, et al. v. Sheriff Sandra Hutchens, et. al.*

Appellate Court No. 12-57049

District Court No.: SACV 12-1458JVS (JPRx)

Nicholas S. Chrisos, County Counsel  
Marianne Van Riper, Supervising Deputy  
Elizabeth A. Pejueau, Deputy  
333 West Santa Ana Blvd., Suite 407  
Post Office Box 1379  
Santa Ana, CA 92702-1379



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**Counsel for Plaintiffs-Appellants**

No. 12-57049

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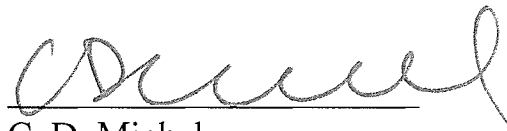
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**Counsel for Plaintiffs-Appellants**

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Date: November 28, 2012

**MICHEL & ASSOCIATES, P.C.**

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C. D. Michel

Attorney for Plaintiffs/Appellants

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

11 DOROTHY McKAY, DIANA	)	CASE NO.: SACV 12-1458JVS (JPRx)
12 KILGORE, PHILLIP WILLMS,	)	
13 FRED KOGEN, DAVID WEISS, and	)	PLAINTIFFS' NOTICE OF APPEAL
THE CRPA FOUNDATION,	)	AND REPRESENTATION
14 Plaintiffs,	)	STATEMENT
15 v.	)	
16 SHERIFF SANDRA HUTCHENS,	)	PRELIMINARY INJUNCTION
17 individually and in her official	)	APPEAL
18 capacity as Sheriff of Orange County,	)	
19 California, ORANGE COUNTY	)	
SHERIFF-CORONER	)	
20 DEPARTMENT, and DOES 1-10,	)	
21 Defendants.	)	

NOTICE IS HEREBY GIVEN that Dorothy McKay, Diana Kilgore, Phillip Willms, Fred Kogen, David Weiss, and the CRPA Foundation, plaintiffs in the above-named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from an order denying Plaintiffs' Motion for Preliminary Injunction entered in this action on the 29th day of October, 2012 (Docket No. 21) attached as Exhibit A.

Plaintiffs' Representation Statement is attached to this Notice as required by Ninth Circuit Rule 3-2(b).

Dated: November 9, 2012

**MICHEL & ASSOCIATES, PC**

/s/ C. D. Michel  
C. D. MICHEL  
Attorney for Plaintiffs

**REPRESENTATION STATEMENT**

The undersigned represents Plaintiffs-Appellants Dorothy McKay, Diana Kilgore, Phillip Willms, Fred Kogen, David Weiss, and the CRPA Foundation, and no other party. Pursuant to Rule 12(b) of the Federal Rules of Appellate Procedure and Circuit Rule 3-2(b), Plaintiffs-Appellants submit this Representation Statement. The following list identifies all parties to the action, and it identifies their respective counsel by name, firm, address, telephone number, and e-mail, where appropriate.

<b>PARTIES</b>	<b>COUNSEL OF RECORD</b>
Plaintiffs-Appellants Dorothy McKay, Diana Kilgore, Phillip Willms, Fred Kogen, David Weiss, and the CRPA Foundation	C. D. Michel (SBN 144258) Glenn S. McRoberts (SBN 144852) Sean A. Brady (SBN 262007) Anna M. Barvir (SBN 268728) MICHEL & ASSOCIATES, P.C. 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802 Tel. No. (562) 216-4444 Fax No: (562) 216-4445 <a href="mailto:cmichel@michellawyers.com">cmichel@michellawyers.com</a>
Defendants-Appellees Sheriff Sandra Hutchens, individually and in her official capacity as Sheriff of Orange County, California, and Orange County Sheriff-Coroner Department	Nicholas S. Chrisos, County Counsel Marianne Van Riper, Supervising Deputy Elizabeth A. Pejueau, Deputy 333 West Santa Ana Blvd., Suite 407 Post Office Box 1379 Santa Ana, CA 92702-1379- Tel: (714) 834-3309 Fax: (714) 834-2359 <a href="mailto:marianne.vanriper@coco.ocgov.com">marianne.vanriper@coco.ocgov.com</a>

**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,

CASE NO.: SACV 12-1458JVS (JPRx)

Plaintiffs,

**CERTIFICATE OF SERVICE**

v.

SHERIFF SANDRA HUTCHENS,  
 individually and in her official  
 capacity as Sheriff of Orange County,  
 California, ORANGE COUNTY  
 SHERIFF-CORONER  
 DEPARTMENT, and DOES 1-10,

Defendants.

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of

**PLAINTIFFS' NOTICE OF APPEAL AND  
 REPRESENTATION STATEMENT**

**PRELIMINARY INJUNCTION APPEAL**

on the following party by electronically filing the foregoing with the Clerk of the U. S. D.C. using its CM/ECF System, which electronically notifies them.

Nicholas S. Chrisos, County Counsel  
 Marianne Van Riper, Supervising Deputy  
 Elizabeth A. Pejueau, Deputy  
 333 West Santa Ana Blvd., Suite 407  
 Post Office Box 1379  
 Santa Ana, CA 92702-1379

I declare under penalty of perjury that the foregoing is true and correct.  
 Executed on November 9, 2012.

/s/ C. D. Michel

C. D. Michel

Attorneys for Plaintiffs

**EXHIBIT A**  
**Case No.: CV12-1458 JVS**

**ER000010**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. SACV 12-1458 JVS (JPRx) Date October 29, 2012

Title Dorothy McKay et al. v. Sheriff Sandra Hutchens et al.

Present: The Honorable James V. Selna

Nancy Boehme  
Deputy Clerk

Sharon Seffens  
Court Reporter

Attorneys Present for Plaintiffs:

C.D. Michel  
Sean Brady

Attorneys Present for Defendants:

Nicole Walsh  
Marianne Van Riper

**Proceedings: Plaintiffs' Motion for Preliminary Injunction (Fld 9-11-12)**

**Cause called and counsel make their appearances. The Court's tentative ruling is issued. Counsel make their arguments. The Court DENIES the plaintiffs' motion and rules in accordance with the tentative ruling as follows:**

Plaintiffs Dorothy McKay ("McKay"), Diana Kilgore ("Kilgore"), Phillip Willms ("Willms"), Fred Kogen ("Kogen"), David Weiss ("Weiss"), and The CRPA Foundation ("CRPA") (collectively, "Plaintiffs") move pursuant to Federal Rule of Civil Procedure 65(a) for a preliminary injunction against Defendants Sheriff Sandra Hutchens ("Sheriff Hutchens" or "the Sheriff") and the Orange County Sheriff-Coroner Department ("OCSD") (collectively, "Defendants"). (Motion for Preliminary Injunction, Docket No. 6.) Plaintiffs seek to enjoin Defendants from enforcing Sheriff Hutchens' policy implementing the "good cause" criterion of California Penal Code § 26150(a)(2) in any manner that does not recognize "a general desire for self-defense as satisfying the 'good cause' criterion" of § 26150(a). (*Id.*) Alternatively, Plaintiffs seek to enjoin Defendants from enforcing the "good cause" requirement of § 26150(a)(2).<sup>1</sup> (*Id.*) Defendants argue that Plaintiffs are unlikely to succeed on the merits of their claims for relief based on the Second and Fourteenth Amendments. (Opposition to Motion for Preliminary Injunction ("Opp. Br."), Docket No. 15.)

For the following reasons, the Court **DENIES** Plaintiffs' Motion for Preliminary

<sup>1</sup>The State of California is not a party to the action.



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Injunction.

**I. BACKGROUND**

California law generally and with certain exceptions prohibits individuals from carrying a concealed firearm in public, whether loaded or unloaded. See Cal. Penal Code §§ 25850, 26350, 25400.<sup>2</sup> One can obtain a license to carry a firearm “capable of being concealed upon the person.” Cal. Penal Code § 26150(a).<sup>3</sup> An applicant must demonstrate that she is of “good moral character,” must provide “good cause for issuance of the license,” and must complete a training course. Id. California grants the issuing authority “extremely broad discretion” concerning the issuance of the concealed weapons license “to applicants meeting the minimum statutory requirements.” Gifford v. City of Los Angeles, 88 Cal. App. 4th 801, 805 (2005) (quotations omitted) (interpreting Cal. Penal Code § 12050); Erdelyi v. O’Brien, 680 F.2d 61, 63 (9th Cir. 1982). The sheriff must make the investigation and determination on an individual basis on every application. Gifford, 88 Cal. App. 4th at 805 (quoting Salute v. Pitchess, 61 Cal. App. 3d 557, 560–61 (1976)).

OCSD created an official written policy regulating the issuance of concealed carry licenses to Orange County residents.<sup>4</sup> (CCW License Policy.) Under the policy, “good

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<sup>2</sup>California carves out exceptions to the statute. See, e.g., Cal. Penal Code §§ 25525, 25530, 25535, 25550 (excluding transport between person’s place of business or residence or other private property owned or possessed by that person, transport related to coming and going from gun show or swap meet, transport to or from lawful camping site); 25600 (allowing for justifiable violation of § 25400 when a person who possesses a firearm reasonably believes she is in grave danger because of circumstances forming basis of current restraining order). Nothing prevents a person from carrying a handgun, concealed or otherwise, in her home, place of business, or other private property she owns or lawfully possesses. Id. § 25605.

<sup>3</sup>Cal. Penal Code § 26150 previously was codified as § 12050. Both sections contain the “good cause” requirement. “Section 26150 continues former Section 12050(a)(1)(A) & (D) without substantive change.” Law Revision Commission Comments, Cal. Penal Code § 26150.

<sup>4</sup>The Court takes judicial notice of the CCW License Policy, an official public document. See Fed. R. Evid. 201 (judicial notice of adjudicative facts permitted); Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001) (judicial notice of public documents permitted).

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cause” is evaluated by Sheriff Hutchens and her authorized representatives “on an individual basis.” (Declaration of Lt. Sheryl Dubsky (“Dubsky Decl.”), Docket No. 15-5, at ¶¶ 3, 6.) The CCW License Policy enumerates criteria that “may establish good cause,” including but not limited to: specific evidence of a credible threat of great bodily harm against the applicant, being in a business or occupation subjecting the applicant to high personal risk and/or criminal attack “far greater” than the general population, and having business tasks requiring transportation of large sums of money. (CCW License Policy, at 1.) “Threats to personal safety [of the applicant or his/her family or employees] may be verbal or demonstrated through actual harm committed in the place of work, neighborhood or regular routes of travel for business.” (*Id.*) The applicant must “articulate the threat.” (*Id.*) Particularly relevant here, “[n]on-specific, general concerns about personal safety are insufficient.” (*Id.*)

## II. LEGAL STANDARD

Plaintiffs seeking a preliminary injunction must establish: (1) a likelihood of success on the merits, (2) the possibility of irreparable injury in the absence of preliminary relief, (3) the balance of equities favors the plaintiff, and (4) an injunction is in the public interest. *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see also *Raich v. Ashcroft*, 352 F.3d 1222, 1227 (9th Cir. 2003). In the Ninth Circuit, the *Winter* factors may be evaluated on a sliding scale: “serious questions going to the merits, and a balance of hardships that tips sharply toward the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011).

A preliminary injunction is an extraordinary and drastic remedy. *Winter*, 555 U.S. at 25. The grant or denial of a preliminary injunction is within the discretion of the trial court. *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940). Additionally, the trial court need not grant all relief sought by a movant and can modify its injunctive decree as needed for the particular case presented. See e.g., *Maxam v. Lower Sioux Indian Cmty. of Minn.*, 829 F. Supp. 277, 284 (1993).

## III. DISCUSSION

### A. Likelihood of Success on the Merits

UNITED STATES DISTRICT COURT  
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Plaintiffs argue that the Supreme Court in District of Columbia v. Heller, 554 U.S. 570 (2008), established that “the right to armed self-defense exists in both private and public settings” and that OCSD’s policy violates this right. The Court finds that there is a substantial question as to whether Plaintiffs have a likelihood of prevailing on the merits. Constitutional challenges to comparable laws and policies repeatedly have been rejected in California and other states. *See, e.g., Peruta v. County of San Diego*, 758 F. Supp. 2d 1106 (S.D. Cal. 2010) (declining to decide whether Second Amendment encompasses Plaintiff’s right to carry loaded handgun in public but holding that under intermediate scrutiny, sheriff’s policy requiring applicant for concealed carry license to demonstrate “good cause” did not violate right to bear arms); *Richards v. County of Yolo*, 821 F. Supp. 2d 1169 (E.D. Cal. 2011) (holding that Second Amendment does not create fundamental right to carry concealed weapon in public and that county’s concealed weapon licensing policy was rationally related to goal of maintaining public safety and preventing gun-related crime); *Piszczatoski v. Filko*, 840 F. Supp. 2d 813 (D.N.J. 2012) (holding that New Jersey law requiring permit applicants to demonstrate “justifiable need” to carry a handgun did not burden protected conduct under Second Amendment and was sufficiently tailored to governmental interests in regulating possession of firearms outside the home). Further, other courts repeatedly have declined to extend Heller beyond its core holding regarding possession in the home for self-defense. *See, e.g., United States v. Masciandaro*, 638 F.3d 458, 574 (4th Cir. 2011) (“On the question of Heller’s applicability outside the home environment, we think it prudent to await direction from the [Supreme] Court itself.”). Thus, at this stage, the Court finds that this factor heavily weighs against a preliminary injunction.

**B. Irreparable Harm**

Generally, irreparable harm is presumed if Plaintiffs show a violation of the Constitution. *Goldie’s Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984). Where a federal injunction is sought against a governmental entity, the party requesting relief must show a threat of “great and immediate,” not conjectural or hypothetical, irreparable harm. *City of Los Angeles v. Lyons*, 461 U.S. 95, 113 (1983); *see also Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 557 (9th Cir. 1990). Because of the substantial question about the extent of the Second Amendment right as recognized in Heller, the Court does not find that there is a likelihood of a real, immediate, and non-conjectural violation of a constitutional right. Further, California provides several exceptions to the restriction of concealed and open carry, including for self-defense and

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defense of the home. Thus, to the extent that the challenged statute and Defendants' policy burden conduct potentially falling within the scope of the Second Amendment, if at all, "the burden is mitigated by the provisions . . . that expressly permit loaded open carry for immediate self-defense." Peruta, 758 F. Supp. 2d at 1114-15 (detailing California's statutory scheme). Thus, the Court finds that this factor weighs against a preliminary injunction.

C. Balance of Equities & The Public Interest

"Given the considerable uncertainty regarding if and when the Second Amendment rights should apply outside the home," the Court finds that "the risks associated with a judicial error" in enjoining "regulation of firearms carried in public are too great" to justify a preliminary injunction. Piszcatoski, 840 F. Supp. 2d at 829; see also Masciandaro, 638 F.3d at 475 (recognizing potential consequences to public interest if court miscalculates as to Second Amendment rights). The Court will not presume that Plaintiffs' allegations of irreparable harm in the constitutional sense give rise to a presumption that the hardships entailed with a preliminary injunction favor the party claiming the constitutional violations, especially where neither California or OCSD categorically ban the public carrying of a handgun. Thus, the Court finds that the balance of equities and the public interest weigh against a preliminary injunction.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Plaintiffs' Motion for Preliminary Injunction of the CCW License Policy and/or California Penal Code § 26150(a)(2).

IT IS SO ORDERED.

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7  
 8 **IN THE UNITED STATES DISTRICT COURT**  
 9 **CENTRAL DISTRICT OF CALIFORNIA**  
 10 **SOUTHERN DIVISION**

11 DOROTHY McKAY, DIANA  
 12 KILGORE, PHILLIP WILLMS,  
 13 FRED KOGEN, DAVID WEISS, and  
 THE CRPA FOUNDATION,

14 Plaintiffs,

15 v.

17 SHERIFF SANDRA HUTCHENS,  
 18 individually and in her official  
 19 capacity as Sheriff of Orange County,  
 20 California, ORANGE COUNTY  
 21 SHERIFF-CORONER  
 22 DEPARTMENT, COUNTY OF  
 23 ORANGE, CALIFORNIA, and  
 24 DOES 1-10,

25 Defendants.

) **CASE NO.: SACV 12-1458JVS (JPRx)**

) **PLAINTIFFS' REPLY TO**  
 ) **DEFENDANTS' OPPOSITION TO**  
 ) **MOTION FOR PRELIMINARY**  
 ) **INJUNCTION**

) Date: October 29, 2012

) Time: 1:30 p.m.

) Location: Ronald Reagan Federal  
 Building  
 411 West Fourth Street  
 Room 1053  
 Santa Ana, CA 92701

) Courtroom: 10C

) Judge: James V. Selna

) Date Action Filed: September 5, 2012



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**I. PLAINTIFFS ASK THIS COURT TO UPHOLD CALIFORNIA LAW BY CONSTRUING ITS “GOOD CAUSE” REQUIREMENT IN A CONSTITUTIONAL MANNER, NOT TO HAVE IT OVERTURNED**

Sheriff Hutchens repeatedly claims Plaintiffs challenge the constitutionality of her policy *and* California’s “good cause” provision. To be clear, Plaintiffs’ challenge to California’s provision is made only in the alternative, to in the event this Court finds there is no saving construction. Plaintiffs contend there is indeed a saving construction, i.e., that a desire for self-defense satisfies the “good cause” standard, and that the Sheriff’s policy applying that standard, by not recognizing self-defense as such, causes Plaintiffs’ injury. First Amend. Compl. ¶¶ 57-60.

This approach is consistent with the doctrine of constitutional avoidance, which advises courts to consider “every reasonable construction” “to save a statute from unconstitutionality.” *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575, 108 S. Ct. 1392, 99 L. Ed. 2d 645 (1988). In this case, to avoid invalidity of the entire statute, the Court should construe the “good cause” criterion to be satisfied where Carry License applicants assert a desire for “self-defense” as their basis for a license.

This is largely in line with the approach taken in *Schubert v. DeBard*, 398 N.E.2d 1339, 1341 (Ind. Ct. App. 1980), which construed the “proper reason” requirement (virtually identical to “good cause”) in Indiana’s Carry License issuing scheme in a manner consistent with the right to bear arms as follows:

[T]he superintendent decided the application on the basis that the statutory reference to “a proper reason” vested in him the power and duty to subjectively evaluate an assignment of “self-defense” as a reason for desiring a license and the ability to grant or deny the license upon the basis of whether the applicant “needed” to defend himself.

Such an approach contravenes the essential nature of the constitutional guarantee. It would supplant a right with a mere administrative privilege which might be withheld simply on the basis that such matters as the use of firearms are better left to the organized military and police forces even where defense of the individual citizen is involved.

Ultimately, the court upheld Indiana’s licensing statute, confirming that “[e]stablishing such a licensing procedure for handguns is not violative of the right

1 to bear arms” guaranteed by the United States and Indiana constitutions. *Id.* at  
2 1340. But the court held the license could not be denied if, all other conditions  
3 being met, the applicant cited self-defense as his “proper reason.” *Id.* at 1341.

4 **II. PLAINTIFFS DO NOT ASSERT THAT THERE IS A RIGHT TO**  
5 **CARRY IN ANY MANNER AS THE SHERIFF SUGGESTS THEY DO**  
Contrary to Sheriff Hutchens’ assertions, Plaintiffs do not claim there is a

6 right to carry a firearm in *any* particular manner, let alone *concealed*. In fact, *Heller*  
7 strongly suggests there is not. 554 U.S. 570, 626, 128 S. Ct. 2783, 171 L. Ed. 2d  
8 637 (2008). Rather, Plaintiffs contend that the Second Amendment protects a  
9 fundamental right to publicly carry a firearm for self-defense in *some* manner.

10 To a degree, the legislature can constitutionally dictate that manner. In  
11 California, the legislative preference is for licensed, concealed (rather than open)  
12 carry within populous locales like Orange County. Pls.’ Mem. Supp. Mot. Prelim.  
13 Inj. (“Pls.’ Mot.”) 1:26-2:1. Plaintiffs do not contest California’s policy choice in  
14 requiring licenses to carry a handgun, and that it be carried concealed, as the only  
15 lawful manner to go about armed in public. But given that policy, Plaintiffs contend  
16 that they, and all law-abiding, competent adults, cannot be denied such a license  
17 simply because they cannot prove a *special* need to carry, beyond a general desire  
18 for self-defense – a *special* need that Sheriff Hutchens finds acceptable.

19 This is consistent with *Heller*’s detailed discussion regarding the historical  
20 acceptance of some restrictions on the right to arms, which, as Plaintiffs explain in  
21 their motion, makes clear that government may prohibit *some* manner of carrying  
22 arms (e.g., concealed), as long as some alternative manner is available. Pls.’ Mot.  
23 11:18-12:21. Sheriff Hutchens ignores this aspect of the public-carry cases cited in  
24 the *Heller* decision and leaves Plaintiffs’ analysis of those cases unrebutted.

25 ///

26 ///

27 ///

28 ///

**III. PLAINTIFFS HAVE ESTABLISHED THAT THEY ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR SECOND AMENDMENT CLAIM**

**A. The *Heller* Court Neither Expressly Nor Implicitly Limited the Second Amendment's Protections to Within the Home; Rather Its Analysis Assumes a Right to Publicly Carry**

Sheriff Hutchens claims that both the *Heller* and *McDonald* Courts “went to great lengths to explain that the scope of *Heller* extends only to the right to keep a firearm in the *home* for self-defense.” Defs.’ Opp’n Pls.’ Mot. Prelim. Inj. (“Defs.’ Opp’n”) 9:15-18. But, neither Sheriff Hutchens’ selected quotes from *Heller* and *McDonald*, nor the case law she relies upon support that proposition. Rather, they support Plaintiffs’ view that there is a right to publicly carry firearms – not in “any manner whatsoever,” but certainly in *some* manner.

**1. The Sheriff's Narrow Interpretation of *Heller* Is Unsupported by the Authority Cited**

In support of her claim that *Heller* confines Second Amendment rights to the home, Sheriff Hutchens first quotes *Heller*’s unremarkable observation that the right to arms is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” Defs.’ Opp’n 8:21-24 (quoting *Heller*, 554 U.S. at 626). But Plaintiffs make no such claims. Obviously, there are limits on all rights. The First Amendment, for example, does not protect a right to say anything, anywhere, for whatever purpose. Rather, the Court’s observation does little more than confirm there are exceptions to general rules, that all rights – even fundamental rights – are subject to some regulation. This observation does not even rise to the level of dicta, nor does it undermine Plaintiffs’ assertion that there is indeed a public right to carry *some* weapons, in *some* manner, for *some* purposes.

The Sheriff then cites to *Heller*’s observation that the majority of 19th-century courts upheld concealed carry prohibitions as lawful. Defs.’ Opp’n 9:2-5. But she provides no analysis explaining why prohibitions on *concealed* carry being lawful translates into the Second Amendment not protecting *any* form of carry, and she completely ignores Plaintiffs’ extensive analysis of *Heller*’s treatment of

1 certain 19th-century cases (and other authority) showing such concealed carry bans  
2 were only permitted when open carry was allowed. *See* Pls.’ Mot. 11:18 -12:15.

3 Finally, Sheriff Hutchens cites to the *McDonald* Court’s description of the  
4 holding in *Heller* “that the Second Amendment protects a right to keep and bear  
5 arms for lawful purposes, *most notably* for self-defense within the home.” Defs.’  
6 Opp’n 9:18-21 (quoting *McDonald v. City of Chicago*, 561 U.S. 3025, 130 S. Ct.  
7 3020, 3044, 177 L. Ed. 2d 894 (2010) (emphasis added)). Yet again, the Sheriff  
8 fails to provide any analysis explaining how this quote supports her assertion that  
9 the Supreme Court “went to great lengths” to limit the Second Amendment to the  
10 home; likely because it does not. Saying the right is “most notable” in the home is  
11 far from saying it is exclusive to the home – in fact, it implies just the opposite.

12 **2. *Heller’s Numerous References to Public Activities that Have***  
13 ***Historically Been Protected Under the Right to Arms Belies***  
***Sheriff Hutchens’ Limited Interpretation of *Heller****

14 In analyzing the historical scope of the right to arms, the *Heller* Court made  
15 repeated references to the right in public contexts. *See e.g., Heller*, 554 U.S. at 594  
16 (“by the time of the founding [, the right was] understood to be an individual right  
17 protecting against both *public* and private violence” (emphasis added); *id.* at 599  
18 (“[t]he prefatory clause does not suggest that preserving the militia was the only  
19 reason Americans valued the ancient right; most undoubtedly thought it even more  
20 important for self-defense and hunting”); *id.* at 619 (“[n]o doubt, a citizen who  
21 keeps a gun or pistol under judicious precautions, *practices in safe places the use*  
22 *of it*, and in due time teaches his sons to do the same, exercises his individual right  
23 [to bear arms]”) (citation omitted) (emphasis added). Hunting and target practice  
24 are hardly activities associated with inside the home.

25 When viewed in this context, Sheriff Hutchens’ assertion that the *Heller*  
26 Court went to “great lengths” to limit the right to within the home is simply not a  
27 serious notion. It also begs the question of why the Court did not *expressly* limit the  
28 right to the home if it intended to do so. Surely, it had to foresee that the question



1 of public carry would arise when it decided to describe the Second Amendment  
2 right as “the individual right to possess and carry weapons in case of  
3 confrontation.” *Heller*, 554 U.S. at 592. Yet, the Court chose not to limit its  
4 description of the right to “confrontation within the home.”

5 **3. The Supreme Court’s Detailed Analysis and Findings**  
6 **Concerning the Scope of the Right to Arms in Public Places**  
7 **Cannot be Disregarded as Meaningless Dicta**

8 Sheriff Hutchens conveniently ignores most of the *Heller* Court’s extensive  
9 discussion concerning the nature of the right to arms outside the home described  
10 above, and insists that “the Court in *Heller* did not hold the right to ‘bear’ as  
11 anything more than the right to defend ‘hearth and home.’ ” Defs.’ Opp’n 11. In  
12 doing so, the Sheriff conflates the Second Amendment *right* defined in *Heller* with  
13 the ultimate *application* of the right to the narrow facts of that case, asserting that  
14 the narrow holding – as opposed to the detailed analysis and findings – defines the  
15 scope of the fundamental right to arms.

16 The Sheriff seems to suggest this narrow view of *Heller* is required since, in  
17 her view, *Heller*’s detailed analysis and findings about the right outside the home  
18 were beyond the boundaries of the question before the Court, i.e, dicta. *See* Defs.’  
19 Opp’n 9:24-10:5. But this view ignores the fact that, because *Heller* was the  
20 Supreme Court’s first substantial consideration of the Second Amendment, the  
21 Court was required to outline the nature and scope of the rights protected by that  
22 amendment before it could analyze the specific laws being challenged.

23 As such, the Court’s detailed explanation of the historical understanding of  
24 the rights protected under the Second Amendment, which, as explained above and  
25 in Plaintiffs’ motion, includes repeated references to the public role of the right to  
26 arms, was not dicta, but rather a necessary analytical step in clarifying the nature of  
27 that right. Specifically, the Court had to address, and ultimately refute, the District  
28 of Columbia’s collectivist interpretation of “bear arms” in order to reach its  
holding.

1 And, it is well established that:

2 When an opinion issues for the Court, it is not only the result but also  
3 those portions of the opinion necessary to that result by which we are  
4 bound . . . the principle of *stare decisis* directs us to adhere not only to  
the holdings of our prior cases, but also to their explications of the  
governing rules of law . . . .

5 *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 67, 116 S. Ct. 1114, 134 L. Ed. 2d  
6 252 (1996) (citations and internal marks omitted). Moreover, “[e]ven if it could be  
7 considered a dictum, however, that would be of little significance because [Ninth  
8 Circuit] precedent requires that we give great weight to dicta of the Supreme  
9 Court.” *Coeur D’Alene Tribe of Idaho v. Hammond*, 384 F.3d 683 (9th Cir. 2004).

10 Plaintiffs contend that the historical understanding of the right to bear arms  
11 offered by the Supreme Court in *Heller* recognizing a right to carry arms in public  
12 in some manner, at minimum comports with the Second Amendment’s original  
13 public meaning, if such is not already binding as a matter of *stare decisis*. Either  
14 way, it supports Plaintiffs’ claims.

15 **4. It Is Not The Prevailing Judicial View that the Second**  
16 **Amendment Is Limited to the Home**

17 In her discussion concerning how courts have addressed the scope of the  
18 Second Amendment, the Sheriff misses crucial points. *United States v. Vongxay*,  
19 594 F.3d 1111, 1113 (2010), involved a Second Amendment challenge to a  
20 conviction for felon in possession of a firearm. In upholding that conviction, the  
21 Ninth Circuit noted that “the Supreme Court has purposefully differentiated the  
22 right to bear arms generally from the more limited right held by felons.” *Id.* at 1118  
23 (citations omitted). Here, Plaintiffs seek to vindicate the rights of law-abiding  
adults.

24 Sheriff Hutchens merely reiterates the holdings of *Peruta v. County of San*  
25 *Deigo*, 758 F. Supp. 2d 1106 (S.D. Cal. 2010), and *Richards v. County of Yolo*, 821  
26 F. Supp. 2d 1169 (E.D. Cal. 2011), and ignores Plaintiffs’ criticisms of those cases.



1 See Defs.’ Opp’n 10:6-21; *but see* Pls.’ Mot. 11:3-14:10.<sup>1</sup> She also fails to mention  
2 that the *Peruta* court stated “*Heller* does not preclude Second Amendment  
3 challenges to laws regulating firearm possession outside of home.” *Peruta v. San*  
4 *Diego*, 678 F. Supp. 2d 1046, 1051 (S.D. Cal. 2010).

5 Further, all of the California state cases the Sheriff cites are irrelevant here,  
6 as they review challenges to restrictions on *unlicensed* concealed carry. *See e.g.*,  
7 *People v. Yarborough*, 169 Cal. App. 4th 303, 314 (stating “in the aftermath of  
8 *Heller* the prohibition ‘on the carrying of a concealed weapon *without a permit*’ ”  
9 continues to be lawful) (emphasis added)). Plaintiffs do not dispute this.

10 Finally, upon reading the Sheriff’s description of the district court cases  
11 Plaintiffs cite in their motion as having a proper view of the right to bear arms, one  
12 would think they stand for the proposition that the right is limited to the home; but  
13 nothing could be further from reality. *See* Defs.’ Opp’n 11:13-12:24; *but see* Pls.’  
14 Mot. 13:10-14:1.

15 **B. Sheriff Hutchens Neither Rebutts Plaintiffs’ Proposed Scope-Based**  
16 **Approach Applies, Nor Argues that her Policy Could Meet that**  
**Test**

17 As Plaintiffs explain in detail in their Motion, *Heller* advances a scope-based  
18 analytical approach that determines first whether the law restricts activity within  
19 the scope of the right as originally understood, and second whether it is similar or  
20 analogous to restrictions historically understood as permissible limits on the right  
21 to bear arms, i.e., whether there is “historical justification for those regulations.”  
22 *See Heller*, 554 U.S. at 634-35; Oral Arg. at 44, *Heller*, 554 U.S. 570 (No. 07-290).  
23 Sheriff Hutchens’ opposition wholly ignores this framework and Plaintiffs’  
24 application of it. Instead, she introduces a breed of means-end analysis that  
25 necessarily requires the Court to evaluate “the costs and benefits of firearms  
26

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27  
28 <sup>1</sup> *Kachalsky v. Cacace*, 817 F. Supp. 2d 235 (S.D. N.Y. 2011), is flawed for the  
same reasons.

1 restrictions” and to make “difficult empirical judgments” about the efficacy of  
2 particular gun regulations.” *See McDonald*, 130 S. Ct. at 3050. This is an approach,  
3 as Plaintiffs point out, both the *Heller* and *McDonald* Courts explicitly reject. Pls.’  
4 Mot. 4:26-7:2. And this Court should reject the invitation to apply it here.

5 Under the scope-based approach advanced by Plaintiffs, Sheriff Hutchens  
6 bears the burden of establishing that her policy for issuing Carry Licenses, which  
7 bars the majority of law-abiding citizens from exercising the right to carry firearms  
8 for self-defense outside the home, is supported by the history and traditions of this  
9 country. Sheriff Hutchens provides *no* evidence at all that her policy can meet this  
10 test, nor does she attempt to rebut the weight of evidence presented by Plaintiffs  
11 establishing that her policy does *not* find support in history or tradition.

12 If the Court applies the *Heller* scope-based approach, Sheriff Hutchens has  
13 not carried her burden, and Plaintiffs are likely to succeed on the merits.

14 **C. If the Court Applies Means-End Review, Heightened Scrutiny, Not**  
15 **Rational Basis, Must Apply**

16 **1. Tests that Mandate Rational Basis Review Unless Protected**  
17 **Conduct Is “Substantially Burdened” Ignore *Heller* and the**  
18 **Weight of Post-*Heller* Authority**

19 The Supreme Court has described the right of the people to keep and bear  
20 arms for self-defense as fundamental. *McDonald*, 130 S. Ct. at 3036-42. As with  
21 other fundamental rights, the explicit nature of the right precludes application of  
22 rational-basis review. Whatever else *Heller* left for future courts to decide, it is  
23 explicitly clear on at least this point. *Heller*, 554 U.S. at 628 n.27. As such, law that  
24 make it more difficult to use or possess arms for self-defense (and especially those  
25 like the Sheriff’s policy that effectively ban that right) burden the Second  
26 Amendment right, and *requires* some form of heightened scrutiny. *See, e.g., Ezell v.*  
27 *City of Chicago*, 651 F.3d 684, 701 (7th Cir. 2011); *United States v. Chester*, 628  
28 F.3d 673, 680 (4th Cir. 2010); *United States v. Reese*, 627 F.3d 792, 800-01 (10th  
Cir. 2010); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010).

1 Meaningful judicial review cannot be avoided simply by calling the restriction a  
2 minor inconvenience – or not quite “substantial” enough.

3 Sheriff Hutchens ignores *Heller*’s clear direction on this point and urges the  
4 Court to apply rational basis review, arguing that “*numerous* federal circuit courts  
5 have determined that *only* regulations that substantially burden the core right to  
6 keep and bear arms trigger heightened scrutiny.” Defs.’ Opp’n 13:28-14:6 (citing  
7 *Nordyke v. King*, 644 F.3d 776, 786 (9th Cir. 2011), *vacated following rehearing*  
8 *en banc* by 681 F.3d 1041 (2012) (emphasis added)). The Sheriff is mistaken.

9 In fact, this “substantial burden” analysis has been strictly followed only by  
10 the Second Circuit in *United States v. DeCastro*, 682 F.3d 160 (2d Cir. 2012), and  
11 to a lesser extent, by the Ninth Circuit in the vacated *Nordyke* case. Contrary to the  
12 Sheriff’s claims, no other circuit court imposes a “substantial burden” threshold  
13 just to trigger heightened scrutiny. Defs.’ Opp’n 14:12-19 (citing *United States v.*  
14 *Masciandaro*, 638 F.3d 458, 470-71 (4th Cir. 2011); *Chester*, 629 F.3d at 680-83;  
15 *Marzzarella*, 614 F.3d at 89). Instead, each considers the burden imposed only in  
16 determining *which level of heightened scrutiny* – strict or intermediate – applies.<sup>2</sup>

17 Further, insofar as *DeCastro* and *Nordyke* held that heightened scrutiny is  
18 appropriate *only* as to those regulations that *substantially* burden the Second  
19 Amendment, those holdings should be disregarded by the Court. *DeCastro*, 682  
20 F.3d at 164; *Nordyke*, 644 F.3d at 786. Under the “substantial burden” analysis,  
21 rational basis review is the default standard, disregarded only if the challenger can  
22 establish that the law imposes an adequately serious burden on protected conduct.  
23 That result flies in the face of *Heller*, *McDonald*, and the great majority of post-  
24 *Heller* circuit court opinions. *Heller*, 554 U.S. at 628 n.27; *McDonald*, 130 U.S. at

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25  
26 <sup>2</sup> Indeed, recognizing that *Heller* ruled out rational basis review, these courts all  
27 applied some form of heightened scrutiny – even where they ultimately found those  
28 laws did not or might not burden core protected conduct. *Masciandaro*, 638 F.3d at  
469, 471; *Chester*, 629 F.3d at 680, 682-83; *Marzzarella*, 613 F.3d at 95-97.

1 3036-42; *see also GeorgiaCarry.org. v. Georgia*, 687 F.3d 1244, 1260 n.34 (11th  
2 Cir. 2012); *Heller v. District of Columbia*, 670 F.3d 1244, 1252 (D.C. Cir. 2011)  
3 (“*Heller II*”); *Ezell*, 651 F.3d at 706; *Masciandaro*, 638 F.3d at 469, 471; *Chester*,  
4 628 F.3d at 680; *Reese*, 627 F.3d at 800-01; *Marzzarella*, 614 F.3d at 94-95.  
5 *DeCastro* and *Nordyke* introduce a threshold requirement that appears nowhere in  
6 either the *Heller* or *McDonald* opinions. *Heller* plainly states rational basis alone  
7 cannot sufficiently justify laws regulating conduct protected by the Second  
8 Amendment. 554 U.S. at 628 n.27. The Court made this pronouncement without  
9 reference to the severity of the burden imposed. *Id.* It is simply untenable to  
10 conclude that *Heller* authorizes an approach that invokes heightened review only  
11 when a substantial burden on the right is found.

12 And the majority of other circuits to have decided the issue apply some level  
13 of heightened scrutiny to all regulations burdening activity within the scope of the  
14 Second Amendment, regardless of the severity of that burden. *See, e.g.*,  
15 *GeorgiaCarry.org. v. Georgia*, 687 F.3d at 1260 n.34; *Heller II*, 670 F.3d at 1252;  
16 *Ezell*, 651 F.3d at 706; *Chester*, 628 F.3d at 680; *Reese*, 627 F.3d at 800-01;  
17 *Marzzarella*, 614 F.3d at 94-95. Under this approach, the only threshold question is  
18 whether the challenged law burdens activity that falls within the scope of the right  
19 – a question that is answered by resort to text, history, and tradition. *See, e.g., Ezell*,  
20 651 F.3d at 701-03. If the regulation targets Second Amendment protected conduct,  
21 then heightened scrutiny is mandated. *Id.* at 703. This analysis differs critically  
22 from the Sheriff’s “substantial burden” test, which focuses on the magnitude of the  
23 burden imposed rather than the nature of the conduct regulated.

24 Thus, even if the Court rejects the *Heller* scope-based approach, it should  
25 decline the Sheriff’s invitation to adopt her misguided “substantial burden” test.  
26 But since the Sheriff’s policy imposes a high burden, in fact a ban, on conduct  
27 protected by the Second Amendment, adoption of this test would mean that  
28

1 Plaintiffs prevail or, at least, that review under the appropriate level of heightened  
2 scrutiny is required.

3 **2. Strict Scrutiny Is the Appropriate Standard of Review**  
4 **Because Sheriff Hutchens' Policy Prohibits Core Second**  
5 **Amendment Conduct**

6 Because self-defense is the "central component" of the Second Amendment  
7 right, *McDonald*, 130 S. Ct. at 3036 (quoting *Heller*, 554 U.S. at 599), the County's  
8 policy of denying permits to Plaintiffs and others seeking to exercise the right to  
9 bear arms for that very purpose must be reviewed under a strict scrutiny standard.  
10 As Plaintiffs' moving papers explain, *Heller* and *McDonald* together make clear  
11 that strict scrutiny applies. Pls.' Mot. 14:11-16:18. And *McDonald* emphatically  
12 rejects the argument that Second Amendment rights are somehow less fundamental  
13 than other enumerated, individual rights and can be given second-class treatment.  
14 *See* 130 S. Ct. at 3042. There is no legitimate basis to depart from the rule that  
15 restrictions on core areas of fundamental rights require strict scrutiny. And the  
16 Supreme Court has left no doubt that bearing arms for self-defense purposes is core  
17 conduct. *McDonald*, 130 S. Ct. at 3036 (quoting *Heller*, 554 U.S. at 599).

18 **a. *Heller's* "Presumptively Lawful" Language Does Not**  
19 **Preclude Strict Scrutiny**

20 Ignoring the points raised in Plaintiffs' motion, Sheriff Hutchens instead  
21 suggests that *Heller's* list of "presumptively lawful" regulatory measures serves as  
22 the Court's implicit rejection of strict scrutiny judicial review. Defs.' Opp'n 18:17-  
23 19 (quoting *Heller*, 554 U.S. at 626-27, n.26). Such a reading of the Supreme  
24 Court's "presumptively lawful" language makes little sense.

25 In its recent Second Amendment cases, the Supreme Court frequently cites  
26 the First Amendment as a helpful analog. *See Heller*, 554 U.S. at 635; *see also*  
27 *McDonald*, 130 S. Ct. at 3040, 3050. And, notably, the First Amendment coexists  
28 with several unprotected categories of speech – restrictions on which can be viewed  
as "presumptively lawful. For example, the freedom of speech has long been  
understood to exclude obscenity, fighting words, and defamation. *See Chaplinsky v.*



1 *New Hampshire*, 315 U.S. 568, 571-72, 62 S. Ct. 766, 86 L. Ed. 1031 (1942). That  
2 regulations on those narrow categories of speech have not been “thought to raise  
3 any Constitutional problem,” *id.* at 572, has no effect on the standard of review  
4 applied to laws regulating core conduct protected by the First Amendment, i.e.,  
5 strict scrutiny. Similarly, even if the Court’s “presumptively lawful” language is  
6 read as a list of exceptions to the Second Amendment, it says little, if anything,  
7 about the level of scrutiny that must be applied to laws that regulate conduct within  
8 the core right of law-abiding citizens to keep and bear arms for self-defense.

9 Further, the “presumptively lawful” language could also reasonably be read  
10 as a predictive judgment about which regulations are subject to, but likely to  
11 survive, strict scrutiny. A State likely has a compelling interest in prohibiting  
12 firearm possession by violent felons and the insane, as it may in keeping private  
13 firearms out of certain truly “sensitive” places. It is thus of no great significance  
14 that *Heller* suggested that, in future cases, the government might easily prove that  
15 laws prohibiting firearm possession by convicted felons or possession in sensitive  
16 places satisfy strict scrutiny. Because “[t]he fact that strict scrutiny applies ‘says  
17 nothing about the ultimate validity of any particular law,’ ” predicting that such  
18 restrictions will be upheld is in no way inconsistent with requiring strict scrutiny.  
19 *Johnson v. California*, 543 U.S. 499, 515, 125 S. Ct. 1141, 160 L. Ed. 2d 949  
20 (2005) (citation omitted); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377, 390 n.6,  
21 (1992) (stating in First Amendment context that “presumptive invalidity does not  
22 mean invariable invalidity”). This Court need not read more into the  
23 “presumptively lawful” verbiage than that.

24 **b. Sheriff Hutchens Fails to Recognize a Clear Trend**  
25 **Toward Heightened Scrutiny in Second Amendment**  
**Jurisprudence**

26 Sheriff Hutchens incorrectly claims that strict scrutiny is inappropriate  
27 because “there is no trend toward *any* heightened level of scrutiny” “[w]here  
28 regulations do not affect the possession of firearms in the home.” Defs.’ Opp’n

1 19:2-4 (emphasis added). To the contrary, nearly all circuits to decide the issue  
2 have applied some form of heightened scrutiny *whenever* conduct within the scope  
3 of the Second Amendment is regulated – even when that conduct occurs outside the  
4 home, is engaged in by prohibited persons, or involves some defect not present  
5 here. *See, e.g., Ezell*, 651 F.3d at 706 (applying “not quite” strict scrutiny to ban on  
6 public firing ranges); *United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011)  
7 (applying intermediate scrutiny to law prohibiting firearm possession by domestic  
8 violence misdemeanor); *Masciandaro*, 638 F.3d at 469 (applying intermediate  
9 scrutiny to law prohibiting possession of loaded firearm in national park); *Chester*,  
10 628 F.3d at 680 (applying intermediate scrutiny to prohibition on firearms  
11 possession by persons restrained by domestic violence restraining order); *Reese*,  
12 627 F.3d at 802 (same); *Marzzarella*, 614 F.3d at 94-95 (applying intermediate  
13 scrutiny to prohibition on unmarked firearms).

14 That these cases have not applied strict scrutiny in those contexts does not  
15 cast doubt on the propriety of strict scrutiny in the case at bar. Plaintiffs maintain  
16 that most circuits that have passed on the issue, have determined the applicable  
17 standard of review based on whether or not the law challenged regulates “core  
18 conduct.” *See Booker*, 644 F.3d at 25 n.17; *Chester*, 628 F.3d at 680, 682-83;  
19 *Reese*, 627 F.3d 792; *United States v. Skoien*, 614 F.3d 638, 641-42 (7th Cir. 2010).  
20 To the extent these courts hinted that they might also consider the severity of the  
21 burden on Second Amendment conduct, they did not yet have occasion to. Instead,  
22 each case involved conduct the reviewing court determined to be outside the core  
23 of the right, prompting the application of intermediate scrutiny. The implication is  
24 that restrictions that do implicate the core right of law-abiding citizens to keep and  
25 bear arms for self-defense require the most exacting review – strict scrutiny is that  
26 test. As described above, that the right is exercised outside the home in the present  
27 case does not make the conduct any less “core” to the Second Amendment, nor  
28 does it diminish the level of judicial scrutiny that should be applied.

1           **D. Under Any Heightened Level of Review, Sheriff Hutchens' Policy**  
2           **Violates the Second Amendment**

3 Sheriff Hutchens repeatedly asserts (without explaining why) that carrying  
4 outside the home is not "core" conduct. Defs.' Opp'n 14:20-22. While Plaintiffs  
5 disagree with that assessment, it is without much consequence because, as  
6 explained above, conduct protected under the Second Amendment need not be  
7 "core" in order to deserve heightened scrutiny. And, regardless of what heightened  
8 standard of review applies, the Sheriff has not met and cannot meet her burden.

9 In effect, the Sheriff's policy is a ban on the exercise of the right to bear arms  
10 for most law-abiding adults, including Plaintiffs. As such, this Court need not even  
11 decide the proper standard of review here because, as in *Heller*, the policy clearly  
12 could not pass muster under any heightened standard.

13 Even under the relatively relaxed scrutiny applied to indirect impositions on  
14 *less protected* speech, the Supreme Court has emphasized that "a municipality's  
15 evidence must fairly support the municipality's rationale for its ordinance" and the  
16 municipality cannot "get away with shoddy data or reasoning," *City of Los Angeles*  
17 *v. Alameda Books, Inc.*, 535 U.S. 425, 438, 122 S. Ct. 1728, 152 L. Ed. 2d 670  
18 (2002). While the Sheriff raises the admittedly compelling state interests of "public  
19 safety" and "preventing crime" as the general interests she seeks to further with her  
20 special needs "good cause" policy, Defs.' Opp'n 16:24-27, she does not and cannot  
21 offer any data or evidence connecting increased public danger or crime to people  
22 who carry firearms *pursuant to valid licenses*.

23 Instead of offering evidence making that connection, the Sheriff asserts mere  
24 platitudes about the evils of concealed weapons, relying on the declaration of Frank  
25 Zimmering. But that firearms are sometimes misused by criminals says nothing  
26 about how *Carry License holders* are connected to those evils. The Sheriff provides  
27 no evidence of licensees affecting public safety from the scores of states and  
28 California counties where licenses are issued liberally, because she cannot. In  
describing the proliferation of liberal carry laws in other states, at least one court



1 explained, “there have been no shootouts in town squares, no mass vigilante  
2 shootings or other violent outbreaks attributable to allowed concealed carry.” *State*  
3 *of Wisconsin v. Schultz*, No. 10-CM-138, slip op. at 5 (Wis. Cir. Oct. 12, 2010).

4 Nor can the Sheriff explain how requiring people to show a special need for  
5 a license, such as a specific threat, furthers her interest in reducing crime or  
6 accidents. Are people with specific threats against them somehow less prone to  
7 violence or carelessness than those who are not? The Sheriff’s rationalizations are  
8 precisely the type of shoddy reasoning based on irrelevant evidence that the  
9 Supreme Court in *Alameda Books* warned Courts not to fall for.

10 For these reasons, the Sheriff’s policy cannot pass muster under any  
11 heightened scrutiny, and Plaintiffs are therefore likely to succeed on the merits of  
12 their Second Amendment claims.

13 **IV. PLAINTIFFS HAVE ESTABLISHED THAT THEY ARE LIKELY TO**  
14 **SUCCEED ON THE MERITS OF THEIR EQUAL PROTECTION**  
**CLAIM**

15 Sheriff Hutchens correctly notes that courts should generally uphold a  
16 legislative classification so long as it “neither burdens a fundamental right nor  
17 targets a suspect class.” Defs.’ Opp’n 22:6-10 (citing *Romer v. Evans*, 517 U.S.  
18 620, 631, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996)). However, she incorrectly  
19 relies on *Thornton v. City of St. Helens*, 425 F.3d 1158 (9th Cir. 2005), for the  
20 proposition that Plaintiffs must (and cannot) prove that they are similarly situated  
21 to persons with a specific threat against them who qualify for a carry under the  
22 Sheriff’s policy. See Defs.’ Opp’n 21:21:6-20.

23 The plaintiffs in *Thornton* brought an equal protection challenge against a  
24 city, alleging it conspired to deny them a business permit because one plaintiff was  
25 a Native American. In ruling for the city, the court explained that the plaintiffs had  
26 not offered any evidence of racial discrimination. *Thornton*, 42 F.3d at 1167. So,  
27 *Thornton* requires one alleging discrimination based on membership in a suspect  
28 class to prove that was indeed the basis in order to prevail under equal protection.

1 Contrary to a claim involving a suspect class, a claim that a law violates  
2 equal protection because it burdens a fundamental right does not require the Court  
3 to determine whether any two classes are “similarly situated.” *See Kramer v. Union*  
4 *Free School Dist.*, 395 U.S. 621, 628-29, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969).  
5 In *Kramer*, the Supreme Court struck down a law limiting the right to vote in  
6 school district elections to property owners and parents of school children, finding  
7 the classification failed to survive strict scrutiny. *Id.* at 626-29. The court  
8 explained, where fundamental rights are concerned, the issue is not whether the  
9 legislative judgment and resulting classification had some basis, but whether the  
10 distinctions “do in fact sufficiently further a compelling state interest to justify  
11 denying the franchise to appellant and members of his class.” *Id.* at 633.

12 The question thus before the Court here is not whether those Carry License  
13 applicants who can prove a specific threat against them and those who cannot are  
14 “similarly situated” – indeed, all law-abiding adults are similarly situated in their  
15 worthiness to exercise fundamental rights – but rather whether the factor that is the  
16 basis for classifying them differently in their treatment (in this case, a specific  
17 threat) survives the appropriate level of judicial review.

18 As pointed out in Plaintiffs’ motion, strict scrutiny is the appropriate  
19 standard in reviewing classifications affecting fundamental rights. Pls.’ Mot. 14:11-  
20 16 (citing *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 54, 100  
21 S. Ct. 948, 74 L. Ed. 2d 794 (1983)). Sheriff Hutchens provides no argument that  
22 her Policy distinguishing between those who can prove a specific threat against  
23 them and those who cannot meets that standard. Thus, Sheriff Hutchens’ policy  
24 violates the Equal Protection Clause on its face and as applied to Plaintiffs.

25 **V. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF**  
26 **THEIR FACIAL CHALLENGES BECAUSE SHERIFF HUTCHENS’**  
**POLICY IS VOID IN ALL APPLICATIONS**

27 Plaintiffs recognize that striking a regulation on its face is “strong medicine,”  
28 and that a party must establish that the challenged law is either “unconstitutional in

1 all of its applications” or in a “substantial number” of its applications to justify  
2 such a remedy. *Wash. State Grange v. Wash. State Republican Party*, 522 U.S. 442,  
3 449 & n.6, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008) (quoting *United States v.*  
4 *Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987)). Plaintiffs  
5 are likely to prevail under either standard.

6 Sheriff Hutchens relies on *Richards*, 821 F. Supp. 2d at 1176, claiming that  
7 “this Court should not invalidate the ‘good cause’ portions of the Penal Code or the  
8 OCSD’s CCW Policy unless Plaintiffs can ‘demonstrate that there are zero  
9 circumstances under which [the Sheriff] could clearly issue a concealed weapons  
10 permit to someone who demonstrates good cause under the terms of the policy.’”  
11 Defs.’ Opp’n 19:21-25. Respectfully, the *Richards* construction of the “void-in-all-  
12 applications” standard is nonsensical.

13 The question is not whether no one could ever meet the heightened “good  
14 cause” standard Sheriff Hutchens imposes, rather the Court must consider whether  
15 Sheriff Hutchens can ever constitutionally impose such a standard. Plaintiffs assert  
16 that, *under no circumstance*, is Sheriff Hutchens’ policy valid because, *under no*  
17 *circumstance*, is she permitted to be the final arbiter of what constitutes a “good  
18 enough” reason for a law-abiding citizen to exercise his or her individual right to  
19 bear arms for self-defense. Under *all circumstances*, simply requiring “good cause”  
20 beyond self-defense is unconstitutional – regardless of whether there is one or there  
21 are hundreds of people that might meet it.

22 Further, the Sheriff recognizes that a more relaxed standard for facial  
23 challenges exists in the First Amendment and abortion contexts whereby a facial  
24 challenge will stand when a “substantial number” of the challenged law’s  
25 applications are invalid (i.e., overbreadth). However, she fails to explain why, if the  
26 Second Amendment is to be afforded the same protection as the First as the  
27 Supreme Court has directed, *Heller*, 554 U.S. at 634-35, the overbreadth doctrine  
28 should not apply to the present case. *See* Defs.’ Opp’n 19:15-20. Plaintiffs assert

1 that overbreadth must apply and that, under that standard, Sheriff Hutchens' policy  
2 must fail on its face.

3 Following the Sheriff's logic, no gun law, even the most extreme prohibition,  
4 could ever be struck on its face because there will always be at least one person  
5 who cannot legally possess firearms and to whom the law would be validly applied.  
6 Clearly, this cannot be the result. *Heller* itself confirms this. There, even though the  
7 Court acknowledged that some individuals could lawfully be denied functional  
8 firearms, e.g., convicted felons, it struck down several generally applicable firearm  
9 regulations on their face. 554 U.S. at 626-27. The Court even recognized that Mr.  
10 Heller himself might not be entitled to the necessary handgun permit. *Id.* at  
11 635. Without resort to the overbreadth doctrine, the Court would have had to uphold  
12 the law because it recognized that at least one valid application likely exists.  
13 Because it did not, it is clear the Court was focused on the laws' invalidity in the  
14 "substantial number" of applications.

15 Similarly, Sheriffs' policy acts as a complete prohibition on the right of the  
16 majority of law-abiding citizens to exercise the right to carry firearms for self-  
17 defense outside the home. That several individuals might meet the strict standard of  
18 "good cause" Sheriff Hutchens imposes cannot save the policy from facial  
19 invalidity where a "substantial number" of its applications, in fact the vast majority,  
20 are unconstitutional. *See Wash. State Grange*, 552 U.S. at 449 n.6.

21 Based on the foregoing, Plaintiffs are likely to succeed on the merits of their  
22 facial claims because the Sheriff's policy is void in all applications and in a  
23 substantial number of its applications. But regardless, Plaintiffs bring an "as  
24 applied" challenge, and there is no question the challenged policy has been  
25 unconstitutionally applied against them.

26 ///

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1 **VI. SHERIFF HUTCHENS DOES NOT DISPUTE THAT PLAINTIFFS**  
2 **WILL CONTINUE TO SUFFER IRREPARABLE HARM ABSENT**  
3 **PRELIMINARY INJUNCTION**

4 Plaintiffs' moving papers note that it is well-settled law that a deprivation of  
5 a constitutional right amounts to irreparable harm, and the Courts have specifically  
6 held so in the context of alleged deprivations of Second Amendment rights. Pls.'  
7 Mot. 22:24-23:12. Sheriff Hutchens makes no attempt to dispute Plaintiffs'  
8 irreparable harm allegations. Accordingly, should Plaintiffs establish a likelihood  
9 of success on the merits here, irreparable harm should be presumed.

10 **VII. SHERIFF HUTCHENS DOES NOT DISPUTE THAT THE BALANCE**  
11 **OF EQUITIES TIPS IN PLAINTIFFS' FAVOR OR THAT**  
12 **TEMPORARY RELIEF IS IN THE PUBLIC INTEREST**

13 Sheriff Hutchens does not dispute Plaintiffs' contention that she can point to  
14 no cognizable harm that would result if her policy were enjoined. Pls.' Mot.  
15 23:26-24:2. In fact, nowhere in the twenty-five page opposition do the Sheriff  
16 argue that she would be harmed if an injunction were issued. Any conceivable harm  
17 that might befall her did not even warrant comment. In any event, any such harm  
18 would be heavily outweighed by the ongoing deprivation of both Plaintiffs' and the  
19 public's constitutional rights, and enjoining it in the public interest.

20 **VIII. QUALIFIED IMMUNITY DOES NOT APPLY**

21 Plaintiffs are not seeking damages, therefore, Sheriff Hutchens cannot claim  
22 qualified immunity under the authority she cites. *See* Defs.' Opp'n 22:25-28 (citing  
23 *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009)).

24 **CONCLUSION**

25 Sheriff Hutchens hardly responds to Plaintiffs' moving papers directly at all.  
26 She misconstrues Plaintiffs' constitutional claims to be what she wants them to be,  
27 disregards the authority Plaintiffs cite, and simply ignores that she has the burden  
28 to justify the challenged policy; a burden she did not, and really cannot, meet.  
Instead, the Sheriff largely just recites political dogma to argue in essence that the  
newly recognized fundamental right to bear arms is too dangerous a right, and she

1 invites this Court to disregard the *Heller's* admonition and hold that the rights  
2 protected by the Second Amendment are not "really worth insisting upon." *Heller*,  
3 554 U.S. at 634-35. The Court should decline her invitation.

4 Dated: October 16, 2012

**MICHEL & ASSOCIATES, PC**

6 /s/ C. D. Michel  
7 C. D. MICHEL  
8 Attorney for Plaintiffs  
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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, CALIFORNIA, and  
DOES 1-10,

Defendants.

CASE NO.: SACV 12-1458JVS (JPRx)

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of

**PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO  
MOTION FOR PRELIMINARY INJUNCTION**

on the following party by electronically filing the foregoing with the Clerk of the U. S. D.C. using its CM/ECF System, which electronically notifies them.

Nicholas S. Chrisom, County Counsel  
Nichole M. Walsh, Deputy  
nicole.walsh@coco.ocgov.com  
Elizabeth A. Pejeau, Deputy  
liz.pejeau@coco.ocgov.com  
333 West Santa Ana Blvd., Suite 407  
Post Office Box 1379  
Santa Ana, CA 92702-1379

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on October 16, 2012.

/s/ C. D. Michel

C. D. Michel

Attorneys for Plaintiffs

NICHOLAS S. CHRISOS, COUNTY COUNSEL  
 MARIANNE VAN RIPER, Supervising Deputy (CA SBN 136688)  
 marianne.vanriper@coco.ocgov.com  
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 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)

**NOTICE OF ERRATA &  
 CORRECTION TO MELISSA SOTO'S  
 DECLARATION FILED IN SUPPORT  
 OF DEFENDANTS' OPPOSITION TO  
 THE MOTION FOR PRELIMINARY  
 INJUNCTION**

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

**TO THE HONORABLE COURT AND ALL COUNSEL OF RECORD:**

Defendants Sheriff Sandra Hutchens and the Orange County Sheriff-Coroner Department  
 submit this Notice of Errata to correct an inadvertent filing error that occurred in the electronic  
 filing of the Declaration of Melissa Soto (Docket No. 15-6.) Ms. Soto's declaration indicated that  
 two exhibits were attached to the declaration, but both were designated inadvertently as Exhibit  
 "A" and the second exhibit was not attached or filed.

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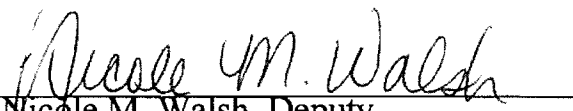
Case 8:12-cv-01458-JVS-JPR Document 16 Filed 10/11/12 Page 2 of 34 Page ID #:580

The Exhibit referred to in paragraph 6 of Ms. Soto's Declaration is corrected to be referred to as Exhibit "B." Ms. Soto's Declaration including Exhibit "B" is attached hereto.

DATED: 10/11/12

Respectfully submitted,

NICHOLAS S. CHRISOS, COUNTY COUNSEL  
and NICOLE M. WALSH, DEPUTY

By   
Nicole M. Walsh, Deputy

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

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

**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.

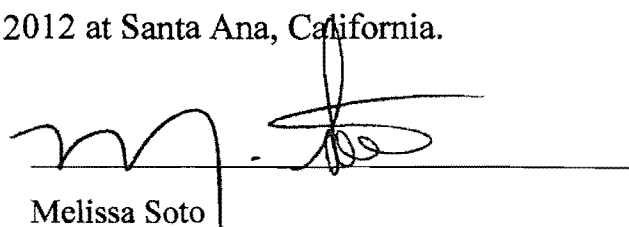
25 6. Statistics on Carry Concealed Weapon Licenses in Orange County. I record  
26 and track all applications submitted to OCSD, denials, and approvals through Microsoft  
27 Access. Upon request by County Counsel, I gathered data and supplied information about  
28 the number of applications submitted, 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 3<sup>rd</sup> day of October 2012 at Santa Ana, California.

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Melissa Soto

OFFICE OF THE COUNTY COUNSEL  
COUNTY OF ORANGE



## 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.

## Orange County Sheriff-Coroner Department

### Policy Manual

#### *Carry Concealed Weapons License*

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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.



## Orange County Sheriff-Coroner Department

### Policy Manual

#### *Carry Concealed Weapons License*

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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



## Orange County Sheriff-Coroner Department

### Policy Manual

#### *Carry Concealed Weapons License*

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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.

## Orange County Sheriff-Coroner Department

### Policy Manual

#### *Carry Concealed Weapons License*

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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

## Orange County Sheriff-Coroner Department

### Policy Manual

#### *Carry Concealed Weapons License*

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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

## Orange County Sheriff-Coroner Department

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#### Carry Concealed Weapons License

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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)).

## **CCW MONTH END STATS**

### **JANUARY 2011 STATS**

CCW Applications Submitted	<u>37</u>
	(32 Standard, 3 Judicial & 2 Reserve) (17 New & 20 Renewal)
New CCW Permits Issued	<u>14</u>
	(13 Standard, 1 Reserve)
Renewal CCW Permits Issued	<u>29</u>
	(1 90-day, 25 Standard, 3 Reserve)
Active CCW Permits	<u>881</u>
	(1 90-day, 691 Standard, 34 Judicial, 155 Reserve)

## **CCW MONTH END STATS**

### **FEBRUARY 2011 STATS**

<b>CCW Applications Submitted</b>	<b><u>39</u></b>
	(35 Standard, 2 Judicial, 2 Reserve) (17 New & 22 Renewal)
<b>New CCW Permits Issued</b>	<b><u>3</u></b>
	(1 90-day & 2 Standard)
<b>Renewal CCW Permits Issued</b>	<b><u>20</u></b>
	(15 Standard, 2 Judicial, 3 Reserve)
<b>Active CCW Permits</b>	<b><u>878</u></b>
	(2 90-day, 686 Standard, 34 Judicial, 156 Reserve)

## **CCW MONTH END STATS**

### **MARCH 2011 STATS**

CCW Applications Submitted	<u>52</u>
	(1 90 day, 46 Standard, 3 Judicial & 2 Reserve) (17 New & 35 Renewal)
New CCW Permits Issued	<u>14</u>
	(11 Standard & 3 Judicial)
Renewal CCW Permits Issued	<u>19</u>
	(18 Standard & 1 Judicial)
Active CCW Permits	<u>886</u>
	(2 90-day, 688 Standard, 39 Judicial, 157 Reserve)

## **CCW MONTH END STATS**

**FROM:** MELISSA SOTO

**RE:** MONTH END STATS

### **APRIL 2011 STATS**

CCW Applications Submitted	<u>25</u>	(23 Standard, 1 Judicial & 1 Reserve) (9 New & 16 Renewal)
New CCW Permits Issued	<u>8</u>	(7 Standard , 1 Reserve)
Renewal CCW Permits Issued	<u>40</u>	(1 90 day, 35 Standard, 1 Judicial & 3 Reserve)
Active CCW Permits	<u>888</u>	(2 90 day, 693 Standard, 37 Judicial & 156 Reserve)



## **CCW MONTH END STATS**

**FROM:** MELISSA SOTO

**RE:** MONTH END STATS

### **MAY 2011 STATS**

<b>CCW Applications Submitted</b>	<b><u>51</u></b>	(1 90 Day, 41 Standard, 3 Judicial & 6 Reserve) (12 New & 39 Renewal)
<b>New CCW Permits Issued</b>	<b><u>11</u></b>	(11 Standard)
<b>Renewal CCW Permits Issued</b>	<b><u>32</u></b>	(1 90 Day, 26 Standard, 2 Judicial & 3 Reserve)
<b>Active CCW Permits</b>	<b><u>890</u></b>	(2 90 Day, 695 Standard, 38 Judicial & 155 Reserve)

**ER000060**

## **CCW MONTH END STATS**

**FROM:** MELISSA SOTO

**RE:** MONTH END STATS

### **June 2011 STATS**

<b>CCW Applications Submitted</b>	<b><u>40</u></b> (32 Standard, 4 Judicial & 4 Reserve)(20 Renewal & 20 New)
<b>New CCW Licenses Issued</b>	<b><u>8</u></b> (7 Standard & 1 Judicial)
<b>Renewal CCW Licenses Issued</b>	<b><u>34</u></b> (29 Standard, 3 Judicial & 2 Reserves)
<b>Active CCW Licenses</b>	<b><u>887</u></b> (2 90 Day, 694 Standard, 37 Judicial & 154 Reserves)

## **CCW MONTH END STATS**

**FROM:** MELISSA SOTO

**RE:** MONTH END STATS

### **July 2011 STATS**

<b>CCW Applications Submitted</b>	<b><u>29</u></b> (23 Standard & 6 Reserves) (9 New & 20 Renewal)
<b>New CCW Licenses Issued</b>	<b><u>2</u></b> (2 Standard)
<b>Renewal CCW Licenses Issued</b>	<b><u>33</u></b> (1 90 Day, 27 Standard, 2 Judicial & 3 Reserves)
<b>Active CCW Licenses</b>	<b><u>885</u></b> (2 90 Day, 692 Standard, 36 Judicial & 155 Reserves)

## **CCW MONTH END STATS**

**FROM: MELISSA SOTO**

**RE: MONTH END STATS**

### **August 2011 STATS**

<b>CCW Applications Submitted</b>	<b><u>60</u></b>	(17 New & 43 Renewal)
		(1 90 day, 49 Standard, 1 Judicial & 9 Reserves)
<b>New CCW Licenses Issued</b>	<b><u>12</u></b>	
		(12 Standard)
<b>Renewal CCW Licenses Issued</b>	<b><u>26</u></b>	
		(21 Standard, 1 Judicial & 4 Reserves)
<b>Active CCW Licenses</b>	<b><u>884</u></b>	
		(1 90 day, 694 Standard, 35 Judicial & 154 Reserves)

## **CCW MONTH END STATS**

**FROM:** MELISSA SOTO

**RE:** MONTH END STATS

### **September 2011 STATS**

CCW Applications Submitted	<u><b>46</b></u>	(17 New & 29 Renewal)
		(1 90 day, 37 Standard & 8 Reserves)
New CCW Licenses Issued	<u><b>7</b></u>	
		(7 Standard)
Renewal CCW Licenses Issued	<u><b>29</b></u>	
		(26 Standard & 3 Reserves)
Active CCW Licenses	<u><b>895</b></u>	
		(1 90 day, 704 Standard, 36 Judicial & 154 Reserves)

## **CCW MONTH END STATS**

**FROM:** MELISSA SOTO

**RE:** MONTH END STATS

### **October 2011 STATS**

<b>CCW Applications Submitted</b>	<b><u>35</u></b>	(12 New & 23 Renewal)
		(33 Standard, 1 Judicial & 1 Reserve)
<b>New CCW Licenses Issued</b>	<b><u>10</u></b>	
		(6 Standard & 4 Reserve)
<b>Renewal CCW Licenses Issued</b>	<b><u>31</u></b>	
		(27 Standard, 1 Judicial & 3 Reserve)
<b>Active CCW Licenses</b>	<b><u>892</u></b>	
		(2 90 day, 696 Standard, 36 Judicial & 158 Reserve)

## **CCW MONTH END STATS**

**FROM:** MELISSA SOTO

**RE:** MONTH END STATS

### **November 2011 STATS**

**CCW Applications Submitted** **55** (23 New & 32 Renewal)  
(1 Judicial, 3 Reserve & 51 Standard)

**New CCW Licenses Issued** **5**  
(4 Standard & 1 Reserve)

**Renewal CCW Licenses Issued** **26**  
(1 90-Day, 21 Standard, 1 Judicial & 3 Reserve)

**Active CCW Licenses** **892**  
(1 90-day, 700 Standard, 33 Judicial, 158 Reserve)



## **CCW MONTH END STATS**

**FROM:** MELISSA SOTO

**RE:** MONTH END STATS

### **December 2011 STATS**

<b>CCW Applications Submitted</b>	<b><u>30</u></b>	13 New & 17 Renewal
		25 Standard, 2 Judicial & 3 Reserve
<b>New CCW Licenses Issued</b>	<b><u>5</u></b>	
		5 Standard
<b>Renewal CCW Licenses Issued</b>	<b><u>33</u></b>	
		32 Standard & 1 Judicial
<b>Active CCW Licenses</b>	<b><u>896</u></b>	
		1 90 Day, 707 Standard, 32 Judicial & 156 Reserve

## **CCW MONTH END STATS**

### **JANUARY 2012 STATS**

<b>CCW Applications Submitted</b>	<b><u>35</u></b>
	(1 90 day, 28 Standard, 2 Judicial & 4 Reserve) (14 New & 21 Renewal)
<b>New CCW Permits Issued</b>	<b><u>6</u></b>
	(5 Standard & 1 Reserve)
<b>Renewal CCW Permits Issued</b>	<b><u>22</u></b>
	(21 Standard & 1 Judicial)
<b>Active CCW Permits</b>	<b><u>894</u></b>
	(1 90-day, 706 Standard, 33 Judicial, 154 Reserve)

## **CCW MONTH END STATS**

### **FEBRUARY 2012 STATS**

<b>CCW Applications Submitted</b>	<b><u>34</u></b>
	(31 Standard, 1 Judicial, 2 Reserve) (16 New & 18 Renewal)
<b>New CCW Permits Issued</b>	<b><u>7</u></b>
	(6 Standard & 1 Reserve)
<b>Renewal CCW Permits Issued</b>	<b><u>20</u></b>
	(12 Standard, 3 Judicial, 5 Reserve)
<b>Active CCW Permits</b>	<b><u>895</u></b>
	(1 90-day, 709 Standard, 35 Judicial, 150 Reserve)

## **CCW MONTH END STATS**

### **MARCH 2012 STATS**

<b>CCW Applications Submitted</b>	<b><u>59</u></b>
	(50 Standard, 1 Judicial & 8 Reserve)
	(20 New & 39 Renewal)
<b>New CCW Permits Issued</b>	<b><u>6</u></b>
	(6 Standard )
<b>Renewal CCW Permits Issued</b>	<b><u>32</u></b>
	(1 90 Day, 28 Standard & 3 Reserve)
<b>Active CCW Permits</b>	<b><u>885</u></b>
	(1 90-day, 703 Standard, 35 Judicial, 146 Reserve)

## **CCW MONTH END STATS**

**FROM:** MELISSA SOTO

**RE:** MONTH END STATS

### **APRIL 2012 STATS**

<b>CCW Applications Submitted</b>	<b><u>44</u></b>	
		(41 Standard & 3 Reserve) (17 New & 27 Renewal)
<b>New CCW Permits Issued</b>	<b><u>12</u></b>	
		(12 Standard)
<b>Renewal CCW Permits Issued</b>	<b><u>31</u></b>	
		(28 Standard, 1 Judicial & 2 Reserve)
<b>Active CCW Permits</b>	<b><u>879</u></b>	
		(1 90 day, 898 Standard, 35 Judicial & 147 Reserve)

## **CCW MONTH END STATS**

**FROM: MELISSA SOTO**

**RE: MONTH END STATS**

### **MAY 2012 STATS**

<b>CCW Applications Submitted</b>	<b><u>48</u></b>
	(45 Standard & 3 Reserve) (22 New & 26 Renewal)
<b>New CCW Permits Issued</b>	<b><u>7</u></b>
	(5 Standard & 2 Judicial)
<b>Renewal CCW Permits Issued</b>	<b><u>29</u></b>
	( 27 Standard & 2 Reserve)
<b>Active CCW Permits</b>	<b><u>891</u></b>
	(1 90 Day, 707 Standard, 37 Judicial & 146 Reserve)

**ER000072**

## **CCW MONTH END STATS**

**FROM: MELISSA SOTO**

**RE: MONTH END STATS**

### **July 2012 STATS**

**CCW Applications Submitted**

**38**

(37 Standard & 1 Judicial) (11 New & 27 Renewal)

**New CCW Licenses Issued**

**5**

(4 Standard & 1 Judicial)

**Renewal CCW Licenses Issued**

**26**

(1 90 Day, 20 Standard & 5 Reserves)

**Active CCW Licenses**

**894**

(1 90 Day, 708 Standard, 38 Judicial & 147 Reserves)



## **CCW MONTH END STATS**

**FROM:** MELISSA SOTO

**RE:** MONTH END STATS

### **August 2012 STATS**

CCW Applications Submitted	<u><b>44</b></u>	(21 New & 23 Renewal)
		( 40 Standard, 2 Judicial & 2 Reserves)
New CCW Licenses Issued	<u><b>16</b></u>	
		(16 Standard)
Renewal CCW Licenses Issued	<u><b>26</b></u>	
		(24 Standard & 2 Reserves)
Active CCW Licenses	<u><b>890</b></u>	
		(1 90 day, 707 Standard, 37 Judicial & 145 Reserves)

**ER000074**

1 **CERTIFICATE OF SERVICE**

2 I do hereby declare that I am a citizen of the United States employed in the County  
3 of Orange, over 18 years old and that my business address is 333 W. Santa Ana Blvd.,  
4 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.

5 I hereby certify that I caused the foregoing **DECLARATION OF MELISSA**  
6 **SOTO IN SUPPORT OF DEFENDANTS' OPPOSITION TO THE MOTION FOR**  
7 **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:

8 C.D. Michel, Esq.  
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Attorneys for Plaintiffs, Dorothy McKay,  
Diana Kilgore, Phillip Willms, Frederick  
Kogen, David Weiss, and the CRPA  
Foundation

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

16 Executed in Santa Ana, California this 9<sup>th</sup> day of October, 2012.

17 

18 Marzette L. Lair

**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 **NOTICE OF ERRATA AND CORRECTION TO MELISSA SOTO'S DECLARATION** to be served on October 11, 2012, upon all counsel of record listed below by electronic filing utilizing the U.S.D.C.'s CM/ECF:

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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 11<sup>th</sup> day of October, 2012.

  
Marzette L. Lair

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COUNTY OF ORANGE

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

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

16 DOROTHY McKAY, DIANA KILGORE, ) Case No. 8:12-cv-01458 JVS (JPRx))  
 17 PHILLIP WILLMS, FRED KOGEN, )  
 18 DAVID WEISS, and THE CRPA )  
 19 FOUNDATION, )

20 Plaintiffs,

21 v.

22 SHERIFF SANDRA HUTCHENS,  
 23 individually and in her official capacity as  
 24 Sheriff of Orange County; ORANGE  
 25 COUNTY SHERIFF-CORONER  
 26 DEPARTMENT; COUNTY OF ORANGE;  
 27 and DOES 1-10,

28 Defendants.

**DEFENDANTS' OPPOSITION TO  
 PLAINTIFFS' MOTION FOR  
 PRELIMINARY INJUNCTION; AND  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT**

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

21 Defendants, Sheriff Sandra Hutchens ("Sheriff Hutchens") and the Orange County  
 22 Sheriff-Coroner Department ("OCSD") (sometimes collectively referred to herein as  
 23 "Defendants"), by and through their attorneys of record Nicholas S. Chrisos, County  
 24 Counsel, Marianne Van Riper Supervising Deputy, and Nicole M. Walsh, Deputy,  
 25 respectfully oppose the Motion for Preliminary Injunction filed by Plaintiffs Dorothy  
 26 McKay, Phillip Willms, Fred Kogen, David Weiss and the California Pistol and Rifle  
 27 Association Foundation ("CPRA") (collectively, "Plaintiffs"). This Opposition is based  
 28 upon the attached Memorandum of Points and Authorities, the Declarations of Commander

1 Donald Barnes, Lieutenant Sheryl Dubsky, Melissa Soto, Kathleen Raley, Vicki Sands, and  
2 Franklin E. Zimring (all submitted and filed herewith), and whatever oral or documentary  
3 evidence that may be submitted prior to or at the hearing on this motion.

4 DATED: October 9, 2012

Respectfully submitted,

5 NICHOLAS S. CHRISOS, COUNTY COUNSEL  
6 and NICOLE M. WALSH, DEPUTY

7  
8 By   
Nicole M. Walsh, Deputy

9 Attorneys for Defendants, Sheriff Sandra  
10 Hutchens, and Orange County Sheriff-Coroner  
11 Department  
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OFFICE OF THE COUNTY COUNSEL  
COUNTY OF ORANGE

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs are unlikely to succeed on the merits of any of their claims for relief based  
 4 on the Second and Fourteenth Amendments. Contrary to Plaintiffs' contentions, the Second  
 5 Amendment right to keep and bears arms does not encompass the right to carry a loaded,  
 6 concealed handgun in public. Neither California Penal Code<sup>1</sup> section 26150 nor the  
 7 OCSD's Carry Concealed Weapon ("CCW") License Policy ("CCW Policy") substantially  
 8 burden the right to bear arms in self-defense of the home, as articulated by *District of*  
 9 *Columbia v. Heller*, 554 U.S. 570, 635 (2008). Under a proper rational basis analysis, both  
 10 the statute and OCSD's CCW Policy survive. Moreover, both are facially constitutional  
 11 under the Second and Fourteenth Amendments.

12 The primary focus of Plaintiffs' challenge is on Second Amendment grounds, based  
 13 on the argument that the right to "keep and bear arms" includes the right to carry a loaded,  
 14 concealed handgun in public. Plaintiffs challenge both the County's Sheriff's implementa-  
 15 tion of the California statutes governing the licensing of persons to carry loaded, concealed  
 16 weapons in public and the statutes themselves on the basis of the Second and Fourteenth  
 17 Amendments. Cal. Penal Code §§ 26150-26225. As stated, because Plaintiffs are not likely  
 18 to succeed on the merits of their claims, the Motion for Preliminary Injunction should be  
 19 denied.

20 **II. STATEMENT OF FACTS**

21 Plaintiffs challenge both the constitutionality of Penal Code section 26150(a), which  
 22 directs the Sheriff (with certain exceptions) to require good cause to be shown prior to the  
 23 issuance of a CCW License, and of the Sheriff's implementation of the Penal Code through  
 24 OCSD's CCW Policy, Policy 218, which, consistent with Penal Code section 26150(a),  
 25 requires applicants to show good cause as a prerequisite to the issuance of a CCW License.  
 26 Prior to discussing Plaintiffs' individual claims, both the Penal Code and CCW Policy will  
 27  
 28

---

<sup>1</sup> References to "Penal Code" hereinafter refer to the California Penal Code.

1 be briefly described below.

2 **A. The California Penal Code.**

3 Penal Code section 26150(a)<sup>2</sup> provides in relevant part:

4 (a) When a person applies for a license to carry a pistol,  
5 revolver, or other firearm capable of being concealed upon the  
6 person, the sheriff of a county may issue a license to that  
7 person upon proof of all of the following:

8 (1) The applicant is of good moral character.

9 (2) Good cause exists for issuance of the license.

10 (3) The applicant is a resident of the county or a city within the  
11 county, or the applicant's principal place of employment or  
12 business is in the county or a city within the county and the  
13 applicant spends a substantial period of time in that place of  
14 employment or business.

15 (4) The applicant has completed a course of training as described in Section  
16 26165.

17 The licensing statute authorizes a procedure for a limited number of persons who meet the  
18 statutory criteria to be excepted from California's prohibition on the concealed carry of  
19 firearms as contained in Penal Code section 25400(a).

20 Penal Code section 25400(a) prohibits the carrying of a concealed firearm, but the  
21 Penal Code contains a variety of exceptions. [*E.g.* Cal. Penal Code § 25450 (excluding  
22 peace officers, honorably retired peace officers), § 25505 (excluding transport of unloaded  
23 firearm in locked container), § 25515 (excluding possession of firearm in locked container

24 \_\_\_\_\_  
25 <sup>2</sup> Penal Code section 26150, operative January 1, 2012, was previously codified in  
26 former Penal Code section 12050. Both the current and former section contains the "good  
27 cause" requirement and similar licensing requirements. In fact, the Law Revision  
28 Committee notes state that section 25400(a) continues former section 12025(a) "without  
substantive change."



by member of organization or club that collect and displays firearms), §§ 25525, 25530, 25535, 25550, (excluding transport between the person's place of business and residence or other private property owned or possessed by that person, transport related to repair, sale, loan or transfer, transportation related to coming and going from gun show or swap meet, transport to or from lawful camping site), § 25600 (allowing for justifiable violation of the statute when a person who possesses a firearm reasonably believes that person is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person), § 25605 (exempting 25400 from application to any person "who carries, either openly or concealed, anywhere within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident, any handgun."))]

Section 26150(a)'s predecessor, section 12025, has been interpreted to give "extremely broad discretion" to the sheriff concerning the issuance of concealed weapons licenses." *Gifford v. City of Los Angeles*, 88 Cal.App.4th 801, 805 (2001) (quoting *Nichols v. County of Santa Clara*, 223 Cal.App.3d 1236, 1241 (1990)). The section "explicitly grants discretion to the issuing officer to issue or not issue a license to applicants meeting the minimum statutory requirements." *Erdelyi v. O'Brien*, 680 F.2d 61, 63 (9th Cir. 1982). Under state law, this discretion must be exercised in each individual case. "It is the duty of the sheriff to make such an investigation and determination, on an individual basis, on every application under section 12050." *Salute v. Pitchess*, 61 Cal.App.3d 557, 560-561 (1976).

**B. Orange County's Licensing Program.**

Plaintiffs challenge the "good cause" provision of OCSD's CCW Policy. Pursuant to the CCW Policy, "good cause" is determined by OCSD on an individual basis. See Decl. of Lt. Sheryl Dubsky ("Dubsky Decl.") at ¶¶ 3, 6; Decl. of Melissa Soto ("Soto Decl.") at ¶3. However "non-specific, general concerns about personal safety are insufficient." See, Ex. A, Policy 218, to Dubsky Decl.; Dubsky Decl. at ¶ 5. On the point of "good cause" the OCSD Policy specifically states as follows:

//

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.

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

1 materials that if forcibly taken would be a danger to society. Threats  
2 should be articulated by the applicant by virtue of his / her unique  
3 circumstances.

4 Note: These examples are not intended to be all-inclusive they  
5 are provided merely for your reference. Also, state and local laws  
6 do not prohibit an adult from having a concealed weapon in their  
7 home or place of business. Ex. A to Dubsky Decl.

8 Contrary to Plaintiffs' allegations, the CCW Policy does not state that an applicant  
9 has to be a target of a specific threat or engage in a business that subjects them to much  
10 more danger than the general public. The policy's language is broader than that. Indeed,  
11 the policy specifically provides that good cause can be found when "[p]ersonal protection is  
12 warranted to mitigate a threat to the applicant that the applicant is able to substantiate." Ex. A to  
13 Dubsky Decl.

14 **C. Plaintiffs' Claims.**

15 Plaintiffs, McKay, Kilgore, Willms, Kogen, and Weiss, allege that they are residents  
16 of Orange County and each is eligible to possess firearms under state and federal law and  
17 currently own a handgun. First Amended Complaint ("FAC"), ¶ 6. Each of Plaintiff's  
18 individual claims, are briefly described below.

19 **1. Dorothy McKay.**

20 Dorothy McKay alleges that she is a public school teacher and National Rifle  
21 Association-Certified Firearms Instructor/Range Safety Officer who on October 25, 2011,  
22 applied for a CCW License from Sheriff Hutchens, asserting a general desire for self-  
23 defense as her "good cause" due to her traveling alone in remote areas, sometimes with  
24 valuables, for her work. Her CCW License was denied on December 28, 2011. FAC, ¶ 7.  
25 McKay's CCW License application was denied for failure to establish good cause because  
26 she demonstrated merely a generalized fear for her safety. Dubsky Decl. at ¶ 12; Ex. B to  
27 Dubsky Decl.

28 //

1                   **2. Phillip Willms**

2           Phillip Willms alleges that he is an Orange County business owner and a professional  
3 shooter and that he applied to Sheriff Hutchens on November 1, 2011, for a CCW License  
4 asserting a general desire for self-defense as his “good cause” due to his business activities  
5 and hobbies requiring him to have valuable possessions on his person. FAC, ¶ 9. Willms  
6 further alleges that on January 24, 2012, his application was denied for lack of good cause.  
7 FAC, ¶10. Plaintiff Willms requested reconsideration of his denial and on March 21, 2012,  
8 his denial was confirmed. *Id.* Willms’ CCW License application was denied for failure to  
9 establish good cause because he expressed a concern that he *may* be a target due to his  
10 business activities, but then stated that “[w]ith what I have told you so far, this is still not  
11 the reason I feel I need a CCW.” Dubsky Decl. at ¶ 13; Ex. C to Dubsky Decl.

12                   **3. Fred Kogen**

13           Plaintiff Kogen alleges that he is a medical doctor who travels performing infant  
14 circumcisions, which some consider controversial and for which some have threatened  
15 those doctors, including Kogen. (FAC, ¶11). Kogen alleges that he submitted an  
16 application for a CCW License which was denied on July 10, 2012, for lack of good cause.  
17 FAC, ¶ 12. Kogen’s CCW License application was denied for failing to establish good  
18 cause because the alleged threat to him constituted an unverified email that denounced his  
19 profession and contained no imminent threat. Dubsky Decl. at ¶ 15; Ex. E to Dubsky Decl.

20                   **4. David Weiss**

21           Plaintiff Weiss alleges he is a pastor who travels around the County to meet with  
22 church members. He applied to Sheriff Hutchens for a CCW License asserting a general  
23 desire for self-defense as his “good cause” due to frequenting unknown areas to sometimes  
24 meet unknown people in often times emotionally charged situations. FAC, ¶13. On March  
25 21, 2012, Plaintiff Weiss CCW License application was denied for lack of good cause. *Id.*  
26 at ¶ 14. Weiss’ CCW License application was denied for failing to establish good cause  
27 because there was no showing of a particular incident or threat and instead, Mr. Weiss  
28 stated he need a CCW License “due to the changing times.” Dubsky Decl. at ¶ 14; Ex. D to

1 Dubsky Decl.

2 **5. Diana Kilgore**

3 Diana Kilgore did not apply for a CCW license, alleging that doing so would be futile  
4 because she does not meet the Sheriff's standard of "good cause" articulated in the Sheriff's  
5 written policy. (FAC, ¶ 15.)

6 **6. The CRPA Foundation**

7 Plaintiff CPRA Foundation is an association that conducts firearm safety advocacy  
8 and advocates in court through litigation brought to benefit the CPRA Foundation. CPRA  
9 Foundation alleges that the OCSD's CCW Policy frustrates the CPRA Foundation's mission  
10 to promote the right to armed self-defense. FAC, ¶¶ 17 and 18. The CPRA Foundation  
11 represents the interests of its members who reside in the County and desire to obtain a CCW  
12 License but have been denied based upon lack of good cause or have refrained from  
13 applying for a license because they do not meet the good cause requirement. FAC, ¶ 19 and  
14 Decl. of Silvio Montanarella filed in Support of Motion for Preliminary Injunction, ¶8.

15 **III. ARGUMENT**

16 **A. Plaintiffs' Request for a Preliminary Injunction Should be Denied.**

17 A preliminary injunction is extraordinary equitable relief that should not be granted  
18 unless plaintiff can establish the following: "that he is likely to succeed on the merits, that  
19 he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of  
20 equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural*  
21 *Resources Defense Council, Inc., et al.*, 555 U.S. 7, 20 (2008) (citing *Munaf v. Geren*, 553  
22 U.S. 674, 689-690 (2008) and *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542  
23 (1987)). "A preliminary injunction is an extraordinary remedy never awarded as of right."  
24 *Winter*, 555 U.S. at 24, citing *Munaf*, 553 U.S., at 689-690.

25 **1. Plaintiffs Are Not Likely to Succeed on the Merits of Their First and**  
26 **Third Claims for Violation of the Second Amendment.**

27 Plaintiffs' first claim essentially alleges that OCSD's CCW Policy that does not  
28 recognize a general desire for self-defense as "good cause" for the issuance of a CCW



1 License deprives Plaintiffs of their Second Amendment right to bear arms. *See generally*,  
2 FAC, ¶¶ 65-69. Plaintiffs' third claim alleges that Penal Code section 26150(a)(2)'s "good  
3 cause" provision is also unconstitutional under the Second Amendment and that Sheriff's  
4 Hutchens cannot require, under Penal Code 26150(a)(2), that good cause be shown prior to  
5 issuance of a CCW License. FAC, ¶¶ 76-80. As discussed below, neither Penal Code  
6 section 26150(a)(2) nor OCSD's CCW Policy violate the Second Amendment.

7 ***a. The Scope of the Second Amendment Right Does Not Extend to***  
8 ***Carrying Concealed Weapons Outside the Home***

9 In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court considered  
10 "whether a District of Columbia prohibition on the possession of usable handguns in the  
11 home violates the Second Amendment to the Constitution." *Id.* at 573-576. A majority of  
12 the court held "that the District's ban on handgun possession *in the home* violates the  
13 Second Amendment, as does its prohibition against rendering any lawful firearm in the  
14 home operable for the purpose of immediate self-defense." *Id.* at 635 (italics added). The  
15 Court in *Heller* did not go beyond the limited facts of the case and beyond the issue – a  
16 complete ban on usable handgun possession in the home – and this Court should decline to  
17 expand *Heller's* ruling in accordance with Plaintiffs' arguments. The right articulated by  
18 *Heller and McDonald v. City of Chicago*, \_\_\_ U.S. \_\_\_, 130 S.Ct. 3020, 177 L.Ed.2d 894  
19 (2010), does not extend to carrying a concealed and loaded handgun in public.

20 The court emphasized the limited nature of its ruling: "Like most rights, the right  
21 secured by the Second Amendment is not unlimited. From Blackstone through the 19th-  
22 century cases, commentators and courts routinely explained that the right [to keep and bear  
23 arms] was not a right to keep and carry any weapon whatsoever in any manner whatsoever  
24 and for whatever purpose." *Heller*, 554 U.S. at 626. Thus, the Court specifically stated that  
25 the "core right" embodied in the Second Amendment does not include the right to keep and  
26 carry in any manner.

27 *Heller* enumerated a nonexclusive list of the many "presumptively lawful regulatory  
28 measures" related to firearms. *Heller*, 554 U.S. at 627, n. 26 ("We identify these

1 presumptively lawful regulatory measures only as examples; our list does not purport to be  
2 exhaustive”). The Court declared:

3 [T]he majority of the 19th-century courts to consider the question held that  
4 *prohibitions on carrying concealed weapons were lawful* under the Second  
5 Amendment or state analogues. [Citations.] Although we do not undertake  
6 an exhaustive historical analysis today of the full scope of the Second  
7 Amendment, nothing in our opinion should be taken to cast doubt on  
8 longstanding prohibitions on the possession of firearms by felons and the  
9 mentally ill, or laws forbidding the carrying of firearms in sensitive places  
10 such as schools and government buildings, or laws imposing conditions and  
11 qualifications on the commercial sale of arms.

12 *Heller*, 554 U.S. at 626-627 (fn. omitted, italics added). Thus, *Heller* recognizes that  
13 throughout history prohibitions on carrying concealed weapons were declared lawful.

14 Plaintiffs’ arguments are premised on the notion that *Heller* stands for the general  
15 right to carry a loaded weapon in public for self-defense purposes. To the contrary, the  
16 Court in both *Heller*, and later in *McDonald*, 130 S.Ct. at 3036, 3044, 3047, went to great  
17 lengths to explain that the scope of *Heller* extends only to the right to keep a firearm in the  
18 *home* for self-defense. In *McDonald*, the Supreme Court specifically identified its prior  
19 holding: “our central holding in *Heller*: [was] that the Second Amendment protects a  
20 personal right to keep and bear arms for lawful purposes, most notably for self-defense  
21 within the home.” 130 S.Ct. at 3044. The Supreme Court in *McDonald* did not expand the  
22 scope of the right articulated in *Heller*, rather, the *McDonald* Court held that the Second  
23 Amendment was incorporated by the Fourteenth Amendment and thus, applied to the states.

24 The prevailing judicial interpretation of the scope of the Second Amendment right  
25 after *Heller* confirms that *Heller* limits the core Second Amendment right to the right to  
26 bear arms for self-defense in the home. *See Penuliar v. Mukasky*, 528 F.3d 603, 614 (9th  
27 Cir. 2008) (Supreme Court decisions are limited to the boundaries of the question before the  
28 Court.) Numerous courts have recognized the limited scope of the Second Amendment

1 right articulated by *Heller* and *McDonald*. The Ninth Circuit Court of Appeals has  
2 indicated *Heller*'s limited scope in *United States v. Vongxay*, 594 F.3d 1111, 1114-1115  
3 (9th Cir. 2010) (describing the *Heller* right as "the right to register and keep a loaded  
4 firearm in [the] home for self-defense and noting "Courts often limit the scope of their  
5 holdings, and such limitations are integral to those holdings").

6 Two California District Courts have ruled similarly regarding *Heller*'s scope in  
7 *Peruta v. County of San Diego*, 758 F.Supp.2d 1106, 1111-1112 (S.D. Cal. 2010); *Richards*  
8 *v. County of Yolo*, 821 F.Supp.2d 1169, 1174-1175 (E.D. Cal. 2011) ("*Heller* cannot be read  
9 to invalidate Yolo County's concealed weapon policy, as the Second Amendment does not  
10 create a fundamental right to carry a concealed weapon in public.") These two decisions  
11 involved Second Amendment challenges similar to those presented here. In *Peruta*, the  
12 sheriff's policy at issue specifically stated, much like OCSD's CCW Policy, that "good  
13 cause" for obtaining a concealed carry license did not include a "[g]eneralized fear for one's  
14 personal safety." 785 F.Supp.2d at 1110. In *Richards*, the sheriff's policy also excluded as  
15 "good cause" the reason of self-defense "without credible threats of violence." In both  
16 *Richards* and *Peruta*, the courts upheld the validity of Penal Code section 26150 (formerly  
17 12050) and the sheriff's policies implementing that section against Second Amendment  
18 challenges. *Peruta*, 758 F.Supp.2d at 1113-1117; *Richards*, 821 F.Supp.2d at 1174-1177.)  
19 A New York District Court case has also agreed that the right articulated by *Heller* does not  
20 extend to carrying a concealed and loaded handgun in public. *Kachalsky v. Cacace*, 817  
21 F.Supp.2d 235, 262-265 (S.D. N.Y. 2011).

22 California state courts have uniformly reached the same conclusion regarding the  
23 scope of the Second Amendment right. *People v. Mitchell*, 2012 WL 3660270, --  
24 Cal.Rptr.3d -- (2012) (stating "the *Heller* opinion specifically expressed constitutional  
25 approval of the accepted statutory proscriptions against carrying concealed weapons.");  
26 *People v. Flores*, 169 Cal.App.4th 568, 576-577 (2008) ("[T]he *Heller* opinion emphasizes,  
27 with apparent approval, that "the majority of the 19th-century courts to consider the  
28 question held that prohibitions on carrying concealed weapons were lawful under the



1 Second Amendment or state analogues.”); *People v. Yarbrough*, 169 Cal.App.4th 303, 312-  
2 314. (2008) (stating “in the aftermath of *Heller* the prohibition ‘on the carrying of a  
3 concealed weapon without a permit, continues to be a lawful exercise by the state of its  
4 regulatory authority notwithstanding the Second Amendment.”); *People v. Ellison*, 196  
5 Cal.App.4th 1342, 1350-1351 (2011) (similar).

6 Contrary to Plaintiffs’ argument, the Court in *Heller* did not hold the right to “bear”  
7 as anything more than the right to defend “hearth and home.” The Seventh Circuit has  
8 cautioned that the language of *Heller* “warns readers not to treat *Heller* as containing  
9 broader holdings than the Court set out to establish . . . . The opinion is not a comprehen-  
10 sive code; it is just an explanation of the Court’s disposition. Judicial opinions must not be  
11 confused with statutes, and general expressions must be read in light of the subject under  
12 consideration.” *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc).

13 Plaintiffs cite three out-of-state district cases to support their assertion of the scope of  
14 the right articulated in *Heller* as extending to carrying loaded concealed handguns in public.  
15 However; none of the cases cited actually go that far. In *Wollard v. Sheridan*, 2012 WL  
16 6975674 (D. Md. Mar. 2, 2012), the district court considered whether Maryland’s prohibit-  
17 tion on the carrying of a handgun outside the home, openly or concealed, without a permit,  
18 unless “good and substantial cause” could be shown violated the Second Amendment. *Id.*  
19 at \*1.

20 The district court recognized that the “core right” articulated in *Heller* was the right  
21 to keep and bear arms in the home. *Id.* at \* 5 (the court noted that the right to keep and bear  
22 arms outside the home was a non-core right.) Despite this recognition of the “core right”  
23 articulated in *Heller*, the *Wollard* court inexplicably, and in reliance on the opinion of a  
24 Fourth Circuit Judge that they recognized was not in the majority, concluded that the  
25 “signposts” contained in the *Heller* decision indicated that the right extends beyond the  
26 home. *Id.* at \*7 (citing *United States v. Masciandaro*, 638 F.3d 458, 468 (4th Cir. 2011).  
27 This interpretation is not supported by the specific reasoning in *Wollard*. Moreover, the  
28 court in *Wollard* made clear that it was not considering the constitutional question involved

1 in this case: “Nor does the Court speculate as to whether a law that required a “good and  
2 substantial reason” only of law-abiding citizens who wish to carry a *concealed* handgun  
3 would be constitutional.” *Wollard*, at \*12. For the foregoing reasons, *Wollard* should not  
4 be considered by this court as evidence of the “growing consensus that there is a right to  
5 armed self-defense in public.” Plaintiffs’ Brief at p. 13 fn. 7.

6 The other two cases cited by Plaintiffs also do not expand the scope of *Heller* in the  
7 manner Plaintiffs request – to the right to carry a concealed handgun in public. In *United*  
8 *States v. Weaver*, 2012 WL 727488 (S.D. W. VA. Mar. 6, 2012), the district court in  
9 addressing a Second Amendment challenge to a federal law prohibiting a person from  
10 possessing firearms while being employed by a convicted felon, recognized that the *Heller*  
11 Court articulated the “core right” as ““the right of law-abiding, responsible citizens to use  
12 arms in the defense of hearth and home.”” *Id.* at \* 2. Recognizing that the law did not  
13 burden the core right, the district court in *Weaver* refused to apply strict scrutiny. *Id.* at \*\*  
14 5-6.

15 In *Bateman v. Perdue*, 2012 WL 3068580 (E.D. N.C. Mar. 29, 2012), the district  
16 court admitted that “considerable uncertainty exists regarding the scope of the Second  
17 Amendment right to keep and bear arms.” *Id.* at \* 4. However, without citation to authority  
18 or providing reasoning concluded, “it undoubtedly is not limited to the confines of the  
19 home.” *Id.* at \* 4. In *Bateman*, Plaintiffs challenged a North Carolina statute making it a  
20 misdemeanor “for any person to transport or possess off his own premises any dangerous  
21 weapon or substance in any area” in which a state of emergency has been declared. *Id.* at \*  
22 1. *Bateman* cites *Heller*’s historical review and textual analysis of the “right to keep and  
23 bear arms” for militia purposes, self-defense, and hunting as indicative that the Second  
24 Amendment right extends beyond the home. *Id.* at \* 4.

25 Such reliance on the Supreme Court’s textual analysis has been criticized and should  
26 not serve as a basis for reading *Heller* in an expansive manner:

27 This textual interpretation does not stand on its own, however,  
28 but rather appears within the context of, and is provided solely

1 to support, the Court's holding that the Second Amendment  
 2 gives rise to an individual right, rather than a collective right  
 3 connected to service in a militia . . . . Nor does this textual  
 4 interpretation somehow expand the Court's holding, as such a  
 5 reading overlooks the opinion's pervasive limiting language  
 6 discussed above. *See, e.g., People v. Dawson*, 403 Ill.App.3d  
 7 499, 343 Ill.Dec. 274, 934 N.E.2d 598, 605 (2010) ("The  
 8 specific limitations in *Heller* and *McDonald* applying only to a  
 9 ban on handgun possession in a home cannot be overcome by  
 10 defendant's pointing to the *Heller* majority's discussion of the  
 11 natural meaning of 'bear arms' including wearing or carrying  
 12 upon the person or in clothing."), *cert. denied*, — U.S. —,  
 13 131 S.Ct. 2880, 179 L.Ed.2d 1194 (2011). *Kachalsky*, 817  
 14 F.Supp.2d at 262.

15 The weight of California federal and state authority demonstrates that the scope of the  
 16 Second Amendment right is limited to handgun possession in the home, but does not extend  
 17 to possession and carrying of a concealed handgun in public. Thus, OCSD's CCW Policy  
 18 concerning carrying of concealed weapons falls outside the scope of the "core right"  
 19 established by the Second Amendment. Thus, the CCW Policy does not burden the core  
 20 Second Amendment right to possession of handguns in the home.

21 ***b. Because OCSD's CCW Policy Does Not Burden the Second***  
 22 ***Amendment Right Articulated in Heller, Rational Basis Review is***  
 23 ***Appropriate***

24 The Court in *Heller*, contrary to Plaintiffs' assertion, did suggest that some form of a  
 25 means-end test is appropriate in analyzing Second Amendment challenges to policies or  
 26 statutes. *Heller*, 554 U.S. 570, at 628-629. While the Court in *Heller* declined to adopt a  
 27 level of scrutiny within the means-end test to be used when evaluating laws regulating the  
 28 "core" Second Amendment right, post-*Heller* numerous federal circuit courts have

1 determined that only regulations that substantially burden the core right to keep and bear  
2 arms trigger heightened scrutiny under the Second Amendment. *Nordyke v. King*, 644 F.3d  
3 776, 786 (9th Cir. 2011), vacated following hearing en banc by 681 F.3d (2012) (holding  
4 that only regulations which substantially burden the right to keep and to bear arms trigger  
5 heightened scrutiny under the Second Amendment and where no such substantial burden is  
6 imposed, rational basis review will apply.) Although the *Nordyke* decision was vacated by  
7 the en banc panel, a recent District Court found its holding remains persuasive authority on  
8 the issue of the level of scrutiny that should apply. *See Scocca v. Smith*, 2012 WL 2375203  
9 \*6 (June 22, 2012) (“Although the *Nordyke* panel decision is no longer binding authority (in  
10 light of the en banc decision), the reasoning of the panel decision is still persuasive—*i.e.*,  
11 that “heightened scrutiny does not apply unless a regulation substantially burdens the right  
12 to keep and to bear arms for self-defense.”); *see Masciandaro*, 638 F.3d at 470-471  
13 (finding that strict scrutiny did not apply to a federal statute prohibiting the carrying or  
14 possession of a loaded handgun in a motor vehicle within a national park area); *United*  
15 *States v. Chester*, 628 F.3d 673, 680-683 (4th Cir. 2010) (employing a two prong analysis;  
16 first considering whether the law imposes a substantial burden on conduct falling within the  
17 scope of the Second Amendment and if the challenged law is not within the scope then the  
18 law is valid, and second determining the level of scrutiny); *United States v. Marzzarella*,  
19 614 F.3d 85, 89 (3d Cir. 2010) (same).

20 Because concealed carry outside the home is not a Second Amendment right and the  
21 licensing practice does not burden the core right articulated in *Heller* of self-defense in the  
22 home, no heightened scrutiny is appropriate in this case. There is no substantial burden on  
23 the exercise of Second Amendment rights by the good cause requirement set forth in Penal  
24 Code section 26150 or the Sheriff’s policy requiring a showing of good cause. *See,*  
25 *Richards*, 821 F.Supp.2d at 1174-1775; *Ellison*, 196 Cal.App.4th at 1350-1351; *Flores*, 169  
26 Cal.App.4th at 576-577; *Yarbrough*, 169 Cal.App.4th at 312-314. Recently, in *Richards*, a  
27 California district court concluded in a case challenging a similar “good cause” policy  
28 related to concealed carry licenses that rational basis or reasonableness review applies to

1 laws that regulate, but do not significantly burden, fundamental rights. Here, as in  
 2 *Richards*, neither California law nor the Sheriff's policy impedes the ability of individuals  
 3 to defend themselves with firearms in their homes. The Sheriff's policies and practices in  
 4 limiting concealed carry licensing to individuals with specifically identifiable and  
 5 documented needs for concealed carry have no impact on the Second Amendment's core  
 6 right of self-defense in the home.

7 Under rational basis review, a statute will be "upheld if [it is] rationally related to a  
 8 legitimate governmental purpose." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1137 (9th Cir.  
 9 2009; see also *United States v. Whitlock*, 639 F.3d 935, 941 (9th Cir. 2011). "To invalidate  
 10 a law reviewed under this standard, '[t]he burden is on the one attacking the legislative  
 11 arrangement to negative every conceivable basis which might support it.'" *Stormans*, 586  
 12 F.3d at 1137 (citation omitted). Plaintiffs cannot meet this burden. Because the OCSD's  
 13 CCW Policy requiring a specific showing of good cause does not substantially burden the  
 14 Second Amendment right articulated in *Heller*, and because regulating concealed firearms is  
 15 an essential part of Orange County's efforts to maintain public safety and reduce gun-  
 16 related crime, the policy is more than rationally related to legitimate governmental goals.  
 17 Decl. of Franklin E. Zimring ("Zimring Decl.") at ¶¶ 7, 13-22, 29-31; Decl. of Donald  
 18 Barnes ("Barnes Decl.") at ¶¶ 6-8, 13-16; see *Richards*, 821 F.Supp.2d at 1175 (holding that  
 19 Yolo County's concealed carry policy requiring a showing of "good cause" survives  
 20 rational basis scrutiny).

21 **c. *Intermediate Scrutiny is Appropriate if This Court Finds that OCSD's***  
 22 ***CCW Policy Substantially Burdens a Second Amendment Right***

23 If this court were to depart from the limited holding of *Heller* and *McDonald* and  
 24 conclude that the concealed carry policy at issue here substantially burdens the Second  
 25 Amendment right to possess handguns in the home, then intermediate scrutiny would be the  
 26 appropriate level of review. The CCW Policy clearly meets this standard.

27 To survive intermediate scrutiny, the challenged provision must be substantially  
 28 related to the achievement of important government interests. *Craig v. Boren*, 429 U.S.

1 190, 197 (1976); *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982); *see also*  
2 *Clark v. Jeter*, 486 U.S. 456, 461 (1988) (“To withstand intermediate scrutiny, a statutory  
3 classification must be substantially related to an important government objective.”). It  
4 requires only that the fit between the challenged regulation and the stated objective must be  
5 reasonable, not perfect, and does not require that the regulation be the least restrictive  
6 means of serving the interest. *See, e.g. Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 556  
7 (2001).

8 Even where courts have determined that the regulation at issue substantially burdens  
9 the right to bear arms, post-*Heller* courts have applied intermediate scrutiny, not strict  
10 scrutiny. *See Skoien*, 614 F.3d at 641 (intermediate scrutiny applied for statute prohibiting  
11 possession of firearm by persons convicted of domestic violence misdemeanors);  
12 *Marzzarella*, 614 F.3d at 98-99 (applying intermediate scrutiny to statute prohibiting  
13 possession of guns with obliterated serial numbers); *Chester*, 628 F.3d at 680-683  
14 (intermediate scrutiny applied for statute prohibiting possession of firearm by persons  
15 convicted of domestic violence misdemeanors); *Peruta*, 758 F.Supp.2d at 1116-1117  
16 (intermediate scrutiny applied to sheriff’s concealed weapons license policy, that in accord  
17 with California Penal Code section 26150, required a “good cause” showing to obtain a  
18 license); *Kachalsky*, 817 F.Supp.2d at 268 (intermediate scrutiny applied to New York  
19 statute providing that licenses to have and carry concealed handguns shall be issued to any  
20 person when proper cause exists for the issuance thereof); *Mitchell*, 2012 WL 3660270 at \*  
21 4-6 (intermediate scrutiny applied to prohibition on the carrying of concealed dirk or  
22 dagger); *Ellison*, 196 Cal.App.4th at 1347 (applying intermediate scrutiny to statutory  
23 prohibition against carrying a concealed weapon in a vehicle).

24 If intermediate scrutiny applied, the Sheriff’s policy should be upheld, as maintaining  
25 public safety and preventing crime are clearly important (if not paramount) government  
26 interests and the regulation of concealed firearms in public is a critical factor in  
27 accomplishing that interest. *See*, Zimring Decl.; Barnes Decl.; *see, e.g., United States v.*  
28 *Salerno*, 481 U.S. 739, 750 (1987); *Schall v. Martin*, 467 U.S. 253, 264 (1984); *Kelley v.*



1 *Johnson*, 425 U.S. 238, 247 (1976) (“The promotion of safety of persons and property is  
 2 unquestionably at the core of the State’s police power . . . .”); *Yarbrough*, 169 Cal.App.4th  
 3 at 312-314 (recognizing that “Unlike possession of a gun for protection within a residence,  
 4 carrying a concealed firearm presents a recognized “threat to public order,” and is  
 5 “prohibited as a means of preventing physical harm to persons other than the offender.”  
 6 [Citation.]”); *People v. Hodges*, 70 Cal.App.4th 1348, 1357 (1999) (stating that a person  
 7 who carries a concealed firearm on his person or in a vehicle “which permits him immediate  
 8 access to the firearm but impedes other from detecting its presence, poses an ‘imminent  
 9 threat to public safety . . . .’ [Citation.]”.)

10 Plaintiffs cite to a discredited researcher, John R. Lott, for the proposition that  
 11 OCSD’s CCW Policy does not serve any government interest because restricting access to  
 12 concealed carry licenses does not further any public safety interest. Out of a total of 60  
 13 footnotes in the 2012 article cited by Plaintiffs, Lott cites his own previous research, which  
 14 is detailed in John R. Lott and David B. Mustard, *Crime, Deterrence, and Right-to-Carry*  
 15 *Concealed Handguns*, 26 J Leg Stud 1, 12 (1997), 22 times. He also includes footnotes  
 16 stating; “taken from conversations with... during 2002-2003” or, “my own extensive  
 17 research.” See e.g. John R. Lott, *What a Balancing Test Will Show for Right-to-Carry*  
 18 *Laws*, 71 Md. L. Rev. 1205, 1210 fn. 25, 1210 fn. 26, 1211 fn. 30.

19 Lott’s 1997 research on use of guns and the effect of “shall issue” licensing laws on  
 20 violent crimes (referred to as the “more guns, less crime” hypothesis) has been widely  
 21 criticized and discredited. See, e.g. Ian Ayres & John J. Donohue III, *Shooting Down the*  
 22 *"More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1193 (2003); Dan A. Black &  
 23 Daniel S. Nagin, *Do Right-to-Carry Laws Deter Violent Crime?*, 27 J. Legal Stud. 209  
 24 (1998) (“John R. Lott and David B. Mustard conclude that right-to-carry laws deter violent  
 25 crime. Our reanalysis of Lott and Mustard’s data provides no basis for drawing confident  
 26 conclusions about the impact of right-to-carry laws on violent crime.”); Jens Ludwig,  
 27 *Concealed-Gun-Carrying Laws and Violent Crime: Evidence from State Panel Data*, 18  
 28 Int’l Rev. L. & Econ. 239, 240, 241 (1998) (concluding that Lott’s 1997 study concluding

1 that “concealed handguns are the most cost-effective method of reducing crime thus far  
2 analyzed by economists” was incorrect and that instead, the “results [of reanalysis of Lott’s  
3 data] suggest that shall-issue laws have resulted, if anything, in an *increase* in adult  
4 homicide rates.”)

5 As stated by a recent District Court, reasonable and effective gun regulations are  
6 integral to the exercise of the police power and the government has “an important and  
7 substantial interest in public safety and in reducing the rate of gun use in crime. In  
8 particular, the government has an important interest in reducing the number of concealed  
9 weapons in public in order to reduce the risks to other members of the public who use the  
10 streets and go to public accommodations.” *Peruta*, 758 F.Supp.2d at 1117 (upholding under  
11 the intermediate scrutiny standard a similar policy requiring “good cause” for issuance of a  
12 concealed carry license). Sheriff Hutchens’ CCW Policy and Penal Code section 26150’s  
13 “good cause” requirement help to maintain public safety and prevent crime which are  
14 clearly important (if not paramount) government interests.

15 ***d. Strict Scrutiny Does Not Apply***

16 Plaintiffs argue that the Second Amendment guarantees a “fundamental right,” hence  
17 “strict scrutiny” should apply. The *Heller* decision implicitly rejected strict scrutiny by  
18 asserting that certain regulations are “presumptively lawful regulatory measures.” *Heller*,  
19 554 U.S. at 626-627 & fn. 26. Strict scrutiny’s requirement that a law be narrowly tailored  
20 to serve a compelling government interest is also inconsistent with *Heller*’s recognition that  
21 legislatures be allowed to employ a variety of tools for combating the problem of gun  
22 violence. *Heller*, 554 U.S. at 636.

23 It appears that only one federal decision after *Heller* has applied strict scrutiny –  
24 where the defendant, who was convicted of domestic violence, was charged with violating  
25 the law in possession of a firearm in his own home -- but it still upheld the challenged  
26 regulation. *See United States v. Engstrum*, 609 F.Supp.2d 1227, 1231 (D.Utah 2009)  
27 (applying strict scrutiny, but rejecting challenge to federal statute prohibiting possession of  
28 firearms by those with domestic violence convictions). The OCSD’s CCW Policy here has



1 no regulatory effect on guns in the home and does not rise to the level of burdening a  
 2 fundamental right that would require strict scrutiny. Where regulations do not affect the  
 3 possession of firearms in the home, such as the subject licensing procedures, there is no  
 4 trend toward any heightened level of scrutiny.

5 **e. Neither OCSD's CCW Policy nor Penal Code Section**  
 6 **26150(a(2)) are Unconstitutional in All of Their Applications,**  
 7 **Therefore, Plaintiffs' Facial Challenges Are Not Likely to**  
 8 **Succeed**

9 Plaintiffs also allege a facial challenge to OCSD's CCW Policy's and Penal Code  
 10 section 26150(a)(2)'s good cause provision.<sup>3</sup> The Supreme Court has recognized that there  
 11 are generally two types of facial challenges to a law's constitutionality. First, a party  
 12 ordinarily "can only succeed in a facial challenge by 'establish[ing] that no set of circum-  
 13 stances exists under which the [law] would be valid,' i.e., that the law is unconstitutional in  
 14 all of its applications." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442,  
 15 128 S. Ct. 1184, 1190 (2008) (quoting *Salerno*, 481 U.S. at 745.) The Supreme Court's  
 16 "cases recognize a second type of facial challenge in the First Amendment context under  
 17 which a law may be overturned as impermissibly overbroad because a 'substantial number'  
 18 of its applications are unconstitutional, 'judged in relation to the statute's plainly legitimate  
 19 sweep.'" *Id.* at 1190 n.6 (quoting *New York v. Ferber*, 458 U.S. 747, 769-71, 102 S. Ct.  
 20 3348, 73 L. Ed. 2d 1113 (1982)).

21 As in *Richards*, 821 F.Supp.2d at 1176, which involved a similar challenge to a  
 22 sheriff's "good cause" policy, this Court should not invalidate the "good cause" portions of  
 23 the Penal Code or the OCSD's CCW Policy unless Plaintiffs "can demonstrate that there are  
 24 zero circumstances under which [the Sheriff] could clearly issue a concealed weapons  
 25 permit to someone who demonstrate plausible good cause under the terms of the policy . . .

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27 <sup>3</sup> The State has not been named as a party, which seems to be necessary when directly  
 28 challenging the constitutionality of a state statute, but Defendants leave this issue for  
 another day.

1 .” As the court in *Richards* stated, “[a]ny inquiry into the facial constitutionality . . . is  
2 futile, for it is both ‘undesirable’ and near impossible for the Court to ‘consider every  
3 conceivable situation which might possibly arise in the application of complex and  
4 comprehensive legislation.” *Id.* at 1176 (quoting *Gonzales v. Carhart*, 500 U.S. 124, 168,  
5 127 S.Ct. 1610, 167 L.Ed.2d 480 (2007)).

6 Plaintiffs simply cannot establish that “no set of circumstances exists” under which  
7 Penal Code section 26150(a)(2)’s or the OCSD’s CCW Policy’s “good cause” requirement  
8 would be constitutionally valid and thus, will likely fail to satisfy the essence of a facial  
9 challenge. *Salerno*, 481 U.S. at 745.

10 **B. Plaintiffs are Not Likely to Succeed on their First and Fourth Claims For**  
11 **Alleged Violation of the Equal Protection**

12 Plaintiffs’ second claim alleges that OCSD’s CCW Policy that does not recognize  
13 “the general desire for self defense as good cause” for issuance of a CCW License under  
14 Penal Code section 26150(a)(2), creates a classification of Orange County residents whose  
15 Second Amendment rights are abrogated while other Orange County’s residents’ rights are  
16 not so infringed. Plaintiffs further claim that OCSD’s CCW Policy is unconstitutional as  
17 applied to Plaintiffs because its implementation puts them in a classification of adults who  
18 are precluded from obtaining a CCW License because they cannot demonstrate the special  
19 need to carry concealed weapons. FAC, ¶ 74.

20 Plaintiffs’ fourth claim alleges that California Penal Code section 26150(a)(2)’s  
21 “good cause” provision violates the Equal Protection Clause of the Fourteenth Amendment  
22 on its face because it “creates a classification of competent and law-abiding adults whose  
23 Second Amendment right to bear arms generally in non-sensitive public place is abrogated  
24 because they do not have ‘good cause’ for a Carry License, while those rights of other  
25 classes of competent, law-abiding adults are not so infringed.” FAC, ¶ 83. Plaintiff also  
26 alleges that Sheriff Hutchens’ policy of enforcing this good cause requirement also violates  
27 the Equal Protection Clause of the Fourteenth Amendment. *See generally*, FAC, ¶¶ 84-86.  
28 As explained herein, there is not a likelihood of success on the merits on Plaintiffs’ claims

1 based upon Equal Protection.

2 The Equal Protection Clause of the Fourteenth Amendment prohibits states from  
3 denying “to any person within its jurisdiction the equal protection of the laws.” The Equal  
4 Protection Clause “is essentially a directive that all persons similarly situated should be  
5 treated alike.” *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985).  
6 To identify the proper classification, both groups must be comprised of similarly situated  
7 persons so that the factor motivating the alleged discrimination can be identified. *Thornton*  
8 *v. City of Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005). “The goal of identifying a similarly  
9 situated class . . . is to isolate the factor allegedly subject to impermissible discrimination.”  
10 *United States v. Aguilar*, 883 F.2d 662, 706 (9th Cir. 1989) (overruled by statute on other  
11 grounds); *see also Freeman v. City of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir. 1996).

12 In the present case, Plaintiffs’ allegation of the class of similarly situated individuals  
13 would have been properly defined as all law abiding persons who applied to OCSD for a  
14 CCW License, regardless of whether they were approved or denied. As the Ninth Circuit  
15 noted, however, “[a]n equal protection claim will not lie by ‘conflating all persons not  
16 injured into a preferred class receiving better treatment’ than the plaintiff.” *Thornton*, 425  
17 F.3d at 1166 (quoting *Joyce v. Mavromatis*, 783 F.2d 56, 57 (6th Cir. 1986)).

18 Here, Plaintiffs cannot meet the threshold showing of an equal protection clause since  
19 they cannot prove that they are similarly situated to those persons that were granted CCW  
20 Licenses, yet are treated differently. They are not in fact similarly situated. As noted by the  
21 court in *Peruta*, 758 F.Supp.2d at 1118, where San Diego County had a virtually identical  
22 policy to OCSD’s CCW Policy here:

23 [T]he policy does not treat similarly situated individuals  
24 differently because not all law-abiding citizens are similarly  
25 situated, as Plaintiffs contend. Those who can document  
26 circumstances demonstrating “good cause” are situated  
27 differently than those who cannot. Therefore, Defendant’s  
28 “good cause” policy does not violate equal protection.

1 Hence, Plaintiffs' claim that both Penal Code section 26150(a)(2) and OCSD's CCW  
2 Policy are facially invalid under the Equal Protection Clause is unfounded. And, as  
3 explained below, Plaintiffs' "as applied" is equally unfounded.

4 Even if Plaintiffs were similarly situated and treated differently, requiring  
5 documentation showing good cause for self-defense would not violate the Equal Protection  
6 Clause. The Supreme Court has held that because most legislation classifies for one  
7 purpose or another, with resulting disadvantage to various groups, the Court will uphold a  
8 legislative classification so long as it "neither burdens a fundamental right nor targets a  
9 suspect class," and "bears a rational relation to some legitimate end." *Romer v. Evans*, 517  
10 U.S. 620, 631 (1996). As discussed previously, there is no fundamental right to carry a  
11 concealed weapon in public. And there is certainly no evidence that a suspect class had  
12 been targeted here.

13 Nevertheless, even assuming *arguendo* that heightened scrutiny is required, the good  
14 cause requirement does not violate the Equal Protection Clause under any form of scrutiny.  
15 Regardless of the level of constitutional scrutiny, Plaintiffs' as-applied challenge fails. The  
16 governmental interest furthered by Penal Code section 25400 (prohibiting concealed carry  
17 weapons subject to exceptions and licensing) and the licensing process set forth in 26150 as  
18 administered by the Sheriff – the safety of the public from unknown persons carrying  
19 concealed, loaded firearms – is both important and compelling. *See Zimring Decl.*; *Barnes*  
20 *Decl.* In addition, the Penal Code provision and OCSD's CCW Policy are both narrowly  
21 tailored and substantially related to furthering public safety. *See generally* Argument Sec.  
22 III.1.c, d. above. As such, Plaintiffs' as applied challenge fails as well.

23 **C. Plaintiffs Are Not Likely to Succeed on Claims Against Sheriff Hutchens**  
24 **in Her Individual Capacity Because She is Immune from Suit**

25 Qualified immunity shields government officials "from liability for civil damages  
26 insofar as their conduct does not violate clearly established statutory or constitutional rights  
27 of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231  
28 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "[W]hether an official

1 protected by qualified immunity may be held personally liable for an allegedly unlawful  
2 official action generally turns on the 'objective legal reasonableness' of the action."  
3 *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (quoting *Harlow*, 457 U.S. at 819).  
4 Applying an objective reasonableness test to the conduct of public officials in determining  
5 whether qualified immunity is a defense "avoids the unfairness of imposing liability on a  
6 defendant who 'could not reasonably be expected to anticipate subsequent legal develop-  
7 ments, nor...fairly be said to 'know' that the law forbade conduct not previously identified  
8 as unlawful.'" *Crawford-El v. Britton*, 523 U.S. 574, 590 (1998) (quoting *Harlow*, 457 U.S.  
9 at 818). Under the objective reasonableness test, "evidence concerning the defendant's  
10 subjective intent is simply irrelevant" to the defense of qualified immunity. *Crawford-El*,  
11 523 U.S. at 588.

12 The Supreme Court historically mandated a two-part analysis to determine whether  
13 qualified immunity protects individual law enforcement officers from liability. *See Saucier*  
14 *v. Katz*, 533 U.S. 194 (2001). The first part of the test was to determine whether the alleged  
15 facts showed that the officer's conduct violated a constitutional right. *Id.* at 201. Then, if a  
16 colorable claim for a constitutional violation appeared from the alleged facts, in the second  
17 part of the test the court determined whether the constitutional right was clearly established  
18 in the particular context of the case. *Id.* at 201-202. In 2009, the Supreme Court ruled that  
19 the first step of the *Saucier* analysis could be omitted at the discretion of the court. Instead,  
20 courts could choose to focus primarily or even solely on the second prong of the analysis.  
21 *See Pearson*, 555 U.S. at 236. In this prong, when an officer is alleged to have acted  
22 unconstitutionally, this is determined based on "whether it would be clear to a reasonable  
23 officer that his conduct was unlawful in the specific situation he confronted." *Saucier*, 533  
24 U.S. at 202.

25 "Clearly established" for purposes of qualified immunity means that 'the contours of  
26 the right must be sufficiently clear that a reasonable official would understand that what he  
27 is doing violates that right.'" *Wilson v. Layne*, 526 U.S. 603, 614-615 (1999) (quoting  
28 *Anderson*, 483 U.S. at 640.) "This is not to say that an official action is protected by

1 qualified immunity unless the very act in question has previously been held unlawful, but it  
 2 is to say that in the light of pre-existing law the unlawfulness must be apparent.” *Hope v.*  
 3 *Pelzer*, 536 U.S. 730, 739 (2002) (quoting *Anderson*, 483 U.S. at 640) (internal quotation  
 4 marks and citations omitted). “Qualified immunity operates to ensure that before they are  
 5 subjected to suit, officers are on notice that their conduct is unlawful.” *Hope*, 536 U.S. at  
 6 731. Thus, the “salient question” is whether the state of law gave the deputies fair warning  
 7 that their actions were unconstitutional. *See id.* at 741; *see also Devereaux v. Abbey*, 263  
 8 F.3d 1070, 1075 (9th Cir. 2001) (*en banc*) (“What is required is that government officials  
 9 have ‘fair and clear warning’ that their conduct is unlawful.”) (Emphasis added; citation  
 10 omitted).

11 Qualified immunity is “an immunity from suit rather than a mere defense to  
 12 liability.” *Pearson*, 555 U.S. at 231 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526  
 13 (1985).) Based on the Supreme Court precedent prior to *Heller* that there was no individual  
 14 right to bear arms under the Second Amendment, and given that courts nationwide and in  
 15 this Circuit are in the midst of identifying the scope of the right to bear arms after *Heller*,  
 16 and most recently have upheld similar good cause policies in *Peruta*, 758 F.Supp.2d 1106,  
 17 and *Richards*, 821 F.Supp.2d, Sheriff Hutchens is entitled to qualified immunity from suit.  
 18 The state of the Second Amendment law on CCW Licenses, and the law on the constitution-  
 19 ality of the “good cause” standards for these permits, could not have given Sheriff Hutchens  
 20 fair and clear warning that her actions were unconstitutional. Thus, qualified immunity  
 21 applies and Plaintiffs are not likely to prevail on their claims against Sheriff Hutchens in her  
 22 individual capacity.

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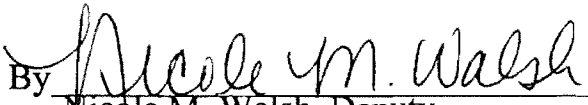
1 **IV. CONCLUSION**

2 Based on the foregoing, Plaintiffs are unlikely to succeed on the merits of any of their  
3 claims for relief based on the Second and Fourteenth Amendments. Defendants respectfully  
4 request that the Court deny the Motion for Preliminary Injunction.

5 DATED: October 9, 2012

Respectfully submitted,

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7 and NICOLE M. WALSH, DEPUTY

8 By   
9 Nicole M. Walsh, Deputy

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

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OFFICE OF THE COUNTY COUNSEL  
COUNTY OF ORANGE

1 **CERTIFICATE OF SERVICE**

2 I do hereby declare that I am a citizen of the United States employed in the County  
3 of Orange, over 18 years old and that my business address is 333 W. Santa Ana Blvd.,  
4 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.

5 I hereby certify that I caused the foregoing **DEFENDANTS' OPPOSITION TO**  
6 **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION; AND**  
7 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** to be served on  
October 9, 2012, upon all counsel of record listed below by electronic filing utilizing the  
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Attorneys for Plaintiffs, Dorothy McKay,  
Diana Kilgore, Phillip Willms, Frederick  
Kogen, David Weiss, and the CRPA  
Foundation

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

21 Executed in Santa Ana, California this 9<sup>th</sup> day of October, 2012.

22   
23 Marzette L. Lair

24  
25  
26  
27  
28 **CERTIFICATE OF SERVICE**

ER000112



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 Department and County of Orange

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

DOROTHY McKAY, DIANA KILGORE, ) Case No. 8:12-cv-01458 JVS (JPRx)  
 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.

**DECLARATION OF FRANKLIN E.  
 ZIMRING IN SUPPORT OF  
 DEFENDANTS' OPPOSITION TO THE  
 MOTION FOR PRELIMINARY  
 INJUNCTION**

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

I, Franklin E. Zimring, declare:

1. Unless stated on information and belief, 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. Where statements are made on information  
 and belief, I believe those statements to be true.

2. My current academic appointment is William G. Simon Professor of Law,  
 Wolfen Distinguished Scholar and Chair of the Criminal Justice Research Program at the  
 University of California, Berkeley. I have been studying the relationship between firearms

1 and violence, strategies of firearms control, and patterns of gun commerce and civilian gun  
2 usage since 1967. I have served as director of research of the task force on firearms of the  
3 National Commission on the Causes and Prevention of Violence in 1968-1969 and as a  
4 firearms and federal criminal law expert for the National Commission on Reform of Federal  
5 Criminal Laws. I have published several empirical studies of firearms and violence and on  
6 gun control, and I have co-authored three books with firearms issues at their center, in 1969,  
7 1986 and 1997. I have served as an expert both on the relationship between firearms and  
8 violence and on the design and evaluation of firearms control. I am providing expert  
9 opinions on both of these topics in this declaration. I was elected a Fellow of the American  
10 Academy of Criminology in 1993 and to the American Academy of Arts and Sciences in  
11 1990. A full curriculum vitae is Appendix A of this declaration.

12 3. This declaration will summarize the empirical evidence and my expert  
13 opinions concerning four issues arising out of this litigation.

14 (1) The relationship between firearms and violence and the governmental  
15 interest in reducing the rate of gun use in crime.

16 (2) The particular governmental concerns with handguns and other  
17 concealable weapons because of their disproportionate involvement in life-threatening  
18 crimes of violence, particularly in streets and other public places.

19 (3) The special threat posed by concealed handguns as weapons used by  
20 criminals in streets and other public spaces. Persons using the streets cannot avoid and  
21 police patrolling the streets cannot detect persons who carry concealed handguns and later  
22 will find victims who are at risk when concealed guns are displayed in robberies or assaults  
23 and not infrequently discharged. The governmental interest in limiting the number of  
24 persons licensed to carry weapons hidden on their persons in public places is substantially  
25 related to reducing the volume and deadliness of street robberies and assaults.

26 (4) A robust right to own a handgun in the privacy of one's own home  
27 imposes whatever risks the gun poses on the owner and his family and those who choose to  
28 visit those premises as long as the gun stays home. But unlimited freedom given to a

1 person to carry a hidden handgun on the streets subjects everybody else on the street to  
2 whatever risks that gun may pose, and the others on the public fare have neither notice of  
3 the risk nor power to control it. This “externality” of unrestricted street carrying of  
4 concealed weapons is probably the root cause of the longstanding and broadly based history  
5 of restricting use of concealed weapons in public places.

6 Firearms and the Death Rate from Violence.

7 4. The overlap between firearms and crime in the United States is a partial but  
8 important one. Of all so-called “index” crimes reported to the police nationwide (willful  
9 homicide, forcible rape, robbery, burglary, aggravated assault, larceny over \$50, motor  
10 vehicle theft, and arson), guns are known to be involved in only about 4%. But gun use is  
11 concentrated in violent crime, where about 20% of all offenses involve guns. And when  
12 only criminal acts that kill are counted, guns account for almost 70% of all cases. Why are  
13 gun cases seven out of every ten lethal crimes, if firearms are used in only one out of five  
14 violent criminal acts? Commonsense suggests that the greater dangerousness of guns when  
15 compared to other frequently used instruments of attack such as knives and blunt  
16 instruments, plays a major role in increasing the death rate from crimes, but there is an  
17 alternative hypothesis, that robbers and assaulters who truly want to kill will choose guns  
18 more often, and therefore that the greater death rate simply reflects the more lethal  
19 intentions of those who use guns. Which theory is better supported by studying patterns of  
20 violent assault?

21 5. A series of studies that were conducted under my supervision addressed this  
22 issue from 1967 to 1988. The first study compared knife and gun attacks in Chicago over  
23 four police periods in 1967. I found that when one only compared gun and knife assaults to  
24 the same part of the body and controlled for the number of wounds inflicted, the gun attacks  
25 were five times as likely to kill.<sup>1</sup> Yet knives were the second most deadly instruments used  
26

---

27 <sup>1</sup> Zimring, Franklin E. “Is Gun Control Likely to Reduce Violent Killings?” *University of Chicago*  
28 *Law Review* 35:721 (1968).

1 in violent assault. A second study found that guns that fired smaller bullets were much less  
2 likely to kill than guns firing larger bullets, again controlling for both the number of and the  
3 location of the most life-threatening wound. The central finding was that instrumentality  
4 effects – the influences of weapon dangerousness independent of measurable variations in  
5 the attacker's intent was an important influence in the death rate from assault.<sup>2</sup>

6 6. A second set of studies generated the same general results for the weapons  
7 used in robberies. Since the robber usually doesn't mean to inflict harm if his demands are  
8 met, the death rate from all forms of robbery is much lower than from aggravated assault,  
9 but robberies with firearms are much more likely to produce a victim's death than robberies  
10 using knives or personal force.<sup>3</sup> The availability of guns may or may not influence the rate  
11 of robberies, but the proportion of robberies that involve guns will have a major impact on  
12 the number of victims who die in robberies, and lethal robberies are a major element in the  
13 life-threatening violence that sets U.S. cities apart from the major metropolitan areas of  
14 other developed nations.

15 7. The governmental interest in restricting the use of guns in violent crime is in  
16 reducing the number of deaths and life-threatening injuries that are produced when guns  
17 rather than less deadly weapons became instruments of robbery and assault. This interest is  
18 clear, appropriate and important for both the State of California and the County and City of  
19 Los Angeles.

20 The Special Risks of Handguns.

21 8. All forms of firearms are very dangerous to life if they are used in assaults and  
22 robberies, but the handgun is the major hazard, particularly in big cities, because handguns  
23 are much more likely to be used in criminal violence than shotguns and rifles. Handguns  
24 are slightly more than one-third of all firearms owned by civilians in the United States, but  
25

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26  
27 <sup>2</sup> Zimring, Franklin E. "The Medium is the Message: Firearms Caliber as a Determinant of the  
28 Death Rate from Assault," *Journal of Legal Studies* 1:97 (1972). See Philip J. Cook, "The Technology of  
Personal Violence," *Crime and Justice* 14:1 (1991).

<sup>3</sup> Zimring, Franklin E. and James Zuehl. "Victim Injury and Death in Urban Robbery: A Chicago  
Study," *Journal of Legal Studies* 15:1 (1986).

1 they are used in more than 75% of all gun killings and in even larger portions of robberies.  
2 The handgun is small, easy to carry and conceal, and deadly at short range. Handguns are  
3 the priority concern of law enforcement everywhere.<sup>4</sup>

4 9. The special dangers of handgun use in violence have produced a wide variety  
5 of different legal strategies to minimize the rate of handgun misuse. Many nations attempt  
6 to restrict both the number of such firearms owned by citizens and reasons why citizens  
7 might be permitted to own them. But California, like most U.S. states, allows competent  
8 adults to own handguns if they have no major record of criminal conviction.

9 10. Because California does not restrict eligibility of most citizens to own  
10 handguns or the volume of guns owned, the state's first line of defense against the use of  
11 such weapons in street crime is a series of restrictions on the time, place and manner of  
12 handgun use. California law prohibits the carrying of concealed deadly weapons in public  
13 without a special permit. The state law delegates the authority to establish standards and  
14 make individual decisions in Orange County to the county sheriff. The goal here is to  
15 distinguish uses of handguns that do not pose a special threat to the public (such as storage  
16 and use in the owner's home) from uses that pose greater threats to public safety (such as  
17 the carrying of concealed weapons in streets and public places). The special danger of a  
18 hidden handgun is that it can be used against persons in public robbery and assault. The  
19 concealment of a handgun means that other citizens and police don't know it is in their  
20 shared space until it is brandished. Concealed handguns are a special problem for police  
21 because an armed police officer has no warning that persons carrying concealed handguns  
22 are doing so. A police officer will be vulnerable to an element of surprise that will not be  
23 present if a person is openly carrying a firearm.

24 11. Of course not all of those carrying concealed handguns intend to use them as  
25 instruments of public harm. But the existence of a loaded weapon is a hidden danger.

26 \_\_\_\_\_  
27 <sup>4</sup> Zimring, Franklin E. and Gordon Hawkins. Crime Is Not the Problem: Lethal Violence in  
28 America, New York: Oxford University Press (1997), Chapters 1, 3 and 7. See also Zimring, Franklin E.  
and Gordon Hawkins, The Citizen's Guide to Gun Control, New York: McMillan (1986), at Chapter 5, p.  
38.

1 California's emphasis on controlling this risky use of guns rather than restricting ownership  
 2 itself is exactly opposite to the policy formerly pursued by Washington, D.C. and  
 3 disapproved in the *Heller* decision in 2008. The distinction between restricting ownership  
 4 and restricting dangerous uses is fundamental in the design of firearms control. And no  
 5 public law regulation of firearms is as old or as pervasive as restrictions on public space use  
 6 of firearms.

7 "The earliest and most numerous state and local laws relate to the carrying or use of  
 8 firearms. In the 1600s, Massachusetts prohibited the carrying of defensive firearms in  
 9 public places. Kentucky in 1813, Indiana in 1819, Arkansas and Georgia in 1837 passed  
 10 laws prohibiting the carrying of concealed weapons. Many states and most cities today  
 11 have laws attempting to regulate what has been called the place and manner in which  
 12 firearms may be carried or used."<sup>5</sup>

13 Almost all places make special rules for concealed handguns in public places.  
 14 "Most often, state law prohibits the carrying of concealable firearms without a special  
 15 permit and the discharge of guns within city limits...Forty-nine states now impose some sort  
 16 of restrictions on carrying a concealed gun."<sup>6</sup>

#### 17 The Public Danger of Concealed Firearms.

18 12. The previous section of this declaration documented the statistical dominance  
 19 of handguns in life-threatening violence but did not explain it. Why are handguns, a  
 20 minority of all firearms, responsible for three-quarters of all firearms deaths? Why are  
 21 handguns the overwhelmingly predominant firearm used in armed robbery?

22 13. This is a matter of simple criminal logistics. Most firearms assaults and almost  
 23 all firearms robberies take place outside the offender's home, so that using a firearm in  
 24 crime requires transporting it to a non-home location. But carrying a loaded shotgun to a  
 25

26 <sup>5</sup> Newton, George and Franklin E. Zimring, *Firearms and Violence in American Life*, staff report  
 27 submitted to the National Commission on Causes and Prevention of Violence, Washington D.C.:  
 Government Printing Office (1969) at p. 87 (citations in original omitted).

28 <sup>6</sup> Zimring, Franklin E. and Gordon Hawkins, *The Citizen's Guide to Gun Control* (1986) at p. 123.  
 A more recent compendium lists 47 states with special permits, see [www.lcav.org](http://www.lcav.org).



1 commercial location for a robbery or to somebody else's home or on the street while  
2 looking for a target is a warning to potential victims and a red flag to passersby and to any  
3 law enforcement personnel that the armed pedestrian is not on an ordinary errand. Other  
4 pedestrians and motorists can avoid the visibly armed person and police can ask questions  
5 and subject the visibly armed person to identity checks and surveillance.

6 14. But the person with a concealed handgun in his pocket generates no special  
7 notice until the weapon appears at his criminal destination. The robber or assaulter looks no  
8 different from any other user of common public spaces. And this ability to escape special  
9 scrutiny is the advantage that makes the concealed handgun the dominant weapon of choice  
10 for gun criminals and a special danger to government efforts to keep public spaces safe and  
11 secure.

12 15. The necessity of carrying guns to crime sites without detection is one reason  
13 why the National Violence Commission research reported that 86% of all the firearms used  
14 in all assaults were handguns and an astonishing 96% of all firearms robberies were  
15 committed with handguns in the ten large cities the task force surveyed.<sup>7</sup> What that robbery  
16 percentage means is that the problem of gun robbery in American cities is almost  
17 exclusively a problem of concealable handguns.

18 16. The stringent requirements that California and Orange County impose on  
19 persons wishing to have permits to carry loaded and concealed guns (hereafter CCW  
20 permits) have two strategic objectives. The first is screen out high-risk groups. The second  
21 and most important is to restrict drastically the number of persons secretly armed on the  
22 streets of Orange County. Orange County's Sheriff has published a "policy manual" that  
23 clearly states both the substantive standards and the procedures it uses in considering  
24 applications to obtain these permits. I received this manual from the Orange County  
25 counsel and carefully reviewed it. The office requires a "good cause" that is an indication  
26 of a special need that places the applicant apart from most citizens—a special threat or high  
27

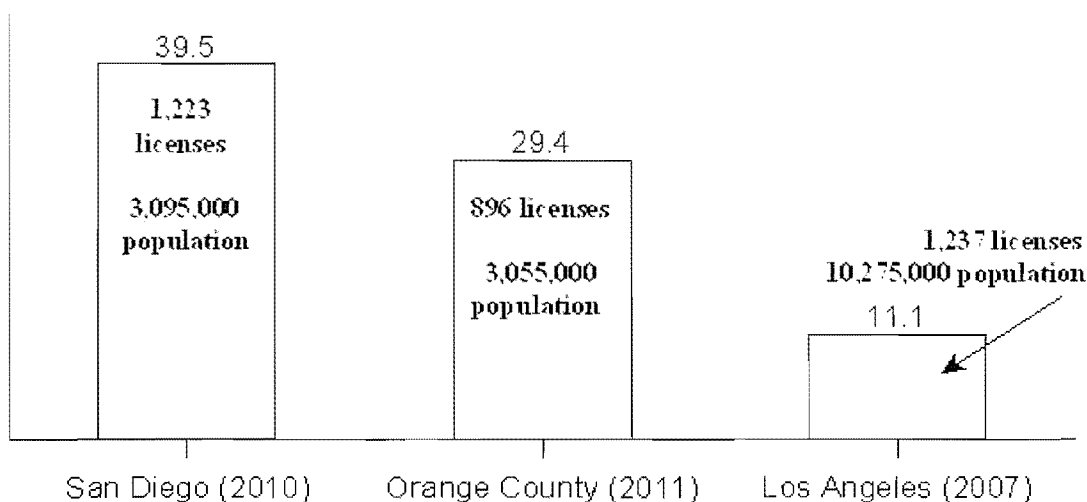
28 <sup>7</sup> Newton, George and Franklin E. Zimring (1969), *Firearms and Violence in American Life*, at Figure 8-1, p. 49.

1 risk. Unlike systems where most citizens qualify for carrying licenses—what are  
 2 commonly called “shall issue” regimes—California law allows and the Orange County  
 3 system implements a highly restrictive approach to the license to carry.

4 17. The sharp distinction between the California “may issue” policy and the  
 5 broadly “shall issue” entitlement can best be seen in examining the proportion of the  
 6 population that is permitted to carry weapons if they wish to pursue the license. The “shall  
 7 issue” assumption is that most citizens qualify for carrying concealed handguns if they wish  
 8 to and the only real function of the license is to screen out persons with serious criminal  
 9 records. A high rate of carrying concealed weapons is tolerated in this system if not  
 10 encouraged.

11 The “may issue” approach regards a high level of carrying loaded handguns as a  
 12 problematic outcome and tries to keep the number of CCWs to a minimum. Figure 1 shows  
 13 the rate of CCW licenses per hundred thousand population in three Southern California  
 14 counties.

15 Figure 1. Rates of CCW Licenses per 100,000, Three Urban California Counties.



16 Sources: (Licenses) Zimring declaration in Birdt v. Beck, et al., 2:10 CV 08377; Zimring  
 17 declaration in Peruta v. County of San Diego; Orange County Sheriff's Office,  
 18 provided by Orange County counsel. (Population) U.S. Census Bureau.



1 Because licenses to carry are so infrequent in all three counties, the rates in Figure 1  
2 are per 100,000 citizens. Only a tiny fraction of civilians have CCW licenses in all three  
3 counties. Fewer than one for every 2,000 population in San Diego (with the highest rate)  
4 and fewer than one for every 8,000 citizens in Los Angeles, with the lowest rate. Orange  
5 County is in the middle on this measure, with fewer than one license per 3,000 population.  
6 But far more important than the small differences in county level rates reported in Figure 1  
7 is the similarity in license rate and the large gap between this less than one in 1,000 rate and  
8 the “shall issue” pattern which would make more than 90% of all adults eligible for  
9 licenses.

10 18. So the pattern and rate of CCW licenses in force in Orange County is similar to  
11 that of its two neighboring urban counties, Los Angeles and San Diego. There is also a  
12 good fit between the description of standards provided by the Sheriff’s policy memo and the  
13 rate of licenses in force. The low level of licenses in force can only be sustained if ordinary  
14 self-defense circumstances are not sufficient for a license.

15 19. Both the Los Angeles and San Diego CCW systems have been upheld against  
16 federal court challenges based on Second Amendment claims to entitlement for concealed  
17 weapon carrying. In my opinion, the statement of standards and system to process  
18 applications in Orange County is at least as good as those in Los Angeles and San Diego  
19 and the system is better in one respect—the clear statements of principle in the policy  
20 manual for Policy 218. So the attack on the Orange County system is based on a theory that  
21 the Bill of Rights prohibits significant restrictions on the carrying of concealed weapons in  
22 public places rather than any specific objection to the criteria in force or the persons granted  
23 permits.

24 20. Making the carrying of hidden deadly weapons into a very rare privilege  
25 enables citizens not to worry that they must choose between carrying a gun themselves or  
26 being unarmed in public spaces where many strangers are secretly armed. Restricting the  
27 publicly entitled carriers of concealed handguns to a tiny number also reinforces the  
28 practical monopoly of armed force by the police. And the police are one of the primary

1 groups protected by small rates of carrying concealed guns since more than 90% of killings  
2 of police are with guns.<sup>8</sup>

3 21. The special vulnerability of police to weapons concealed on a person is the  
4 element of surprise in the event of an attack. An openly carried firearm is a special danger  
5 to an officer, but it is a known danger. The police officer can be prepared to draw or use his  
6 weapon when a weapon is on display. But the person carrying a concealed handgun is a  
7 hidden danger to an officer. High rates of carrying concealed weapons put the police on the  
8 horns of a dangerous dilemma—either they (1) make no assumptions about persons being  
9 armed (in which case they are surprised and at a disadvantage when a concealed weapon is  
10 drawn) or (2) assume everybody is carrying a loaded gun in which case they will be much  
11 quicker to draw and fire their own guns even if no weapons are in fact held by the person  
12 being approached. So once a high rate of CCW takes place, the relationship between armed  
13 police and citizens without any visible evidence of carrying guns will get more dangerous  
14 for the police, for the citizen, or for both.

15 22. The second strategic aim of a permit-to-carry requirement is to screen those  
16 persons who do have special needs for concealed guns to make sure they will not misuse the  
17 guns they carry. This kind of risk screening explains the good character, minimum age and  
18 lack of criminal record requirements. But the central reason to require a good reason for  
19 needing a gun is to reduce the number of secretly armed citizens on the streets and  
20 sidewalks of a major urban county.

21 23. There is one factual dispute of central importance in the distinction between  
22 small and large volumes of CCW permits—the degree to which criminal conduct is  
23 concentrated among formally identified felons. It is sometimes claimed that simply  
24 excluding former felons would prevent persons with high risks of future crime from being  
25 eligible to carry hidden handguns. This claim is false. A majority of criminal homicides  
26 and other serious crimes are committed by individuals who have not been convicted of a  
27

28 <sup>8</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted* (2008), Table 27.

1 felony. The first published study on this question found that in Chicago, 57% of those  
2 adults arrested for homicide did not have a felony record.<sup>9</sup>

3 24. It has more recently been reported that for all of New York State only 33% of  
4 all persons arrested for felonies have a felony conviction at the time of arrest. Thus, about  
5 two-thirds of current felons would not be prohibited from eligibility under “shall issue”  
6 criteria (meaning criteria wherein if a person has no prior felony conviction, domestic  
7 violence conviction, or recent psychiatric commitment, said person would automatically be  
8 entitled to a CCW permit).<sup>10</sup>

9 25. Data is available from Southern California to document that many citizens  
10 without prior records commit serious crimes. Julie Basco of the California Department of  
11 Justice supervised an analysis of all 122,948 adult felony arrests in Los Angeles County for  
12 2010 and divided these persons by whether they had a pre-2010 felony conviction. A total  
13 of 43,440 subjects had a prior felony that would keep them from being eligible in a “shall  
14 issue” mandate or constitutional rule. These statistics indicate that almost two-thirds of the  
15 known current felons would not be screened out by a prior felony from CCW permits  
16 without further barriers. This shows Los Angeles County has the same pattern as New  
17 York State.

18 26. What about Orange County? The pattern is nearly identical. The County  
19 counsel’s office asked Vicki Sands of the California Department of Justice to produce an  
20 analysis of all felony arrests for 2011 to determine how many Orange County suspects  
21 arrested for felonies lack a prior conviction to remove them from CCW eligibility under a  
22 “shall issue” system.

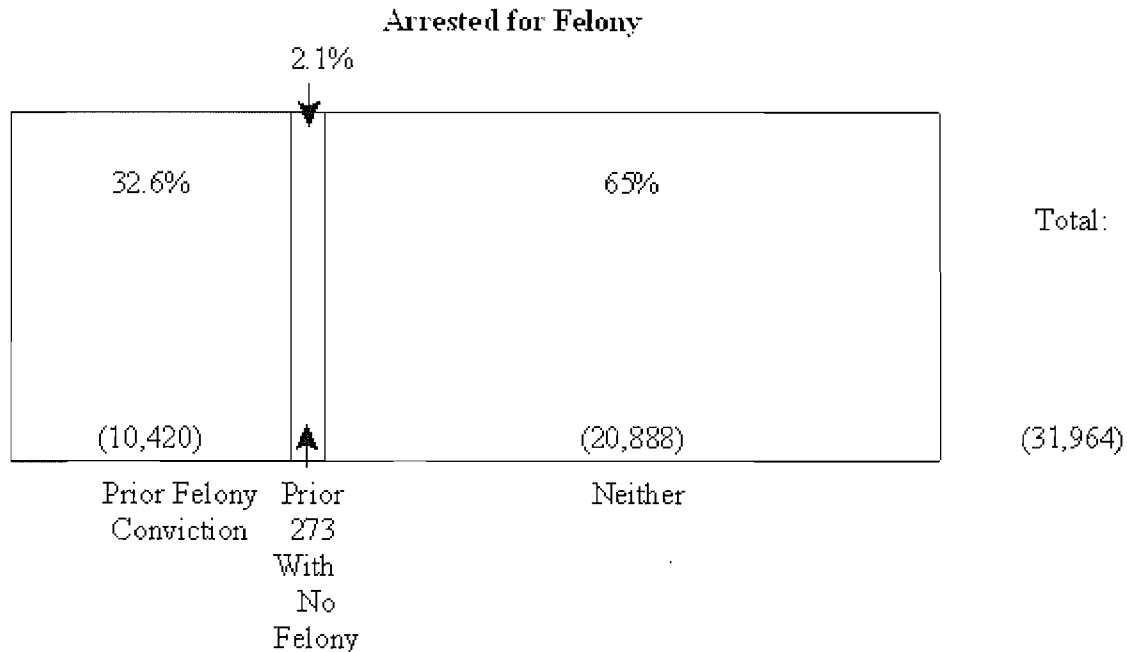
23 Figure 2 shows the pattern for the almost 32,000 persons arrested for felonies in  
24 Orange County that year, the best sample of the county’s felony crime problem. The figure  
25 shows both the person with prior felony convictions (32.6%) and the additional felony  
26

27 <sup>9</sup> P.J. Cook, J. Ludwig and A. Braqa, “Criminal Records of Homicide Offenders,” *Journal of the*  
28 *American Medical Association* 294(5), August 3, 2005.

<sup>10</sup> Reported in expert’s declaration of Philip J. Cook in *Kachalsky v. Cacase*, Civil Action 10-cv-  
5413, Southern District of New York (2011).

1 suspects with a 273.5 conviction which current California law provides as a prohibition for

2 Figure 2. Felony Suspects by Criminal Record, Orange County, 2011.



15 Source: California Department of Justice; see declaration of Vicki Sands.

16 firearms ownership (2.1%).

17

18 The data from Figure 2 show that two-thirds of Orange County's felony suspects

19 would have been eligible for CCW permits under a "shall issue" entitlement. So the

20 overlap between crime and "shall issue" eligibility is more than extensive.

21 27. The State of California and the Orange County believe that it would threaten

22 the public health and safety to have hundreds of thousands of people in the county carrying

23 loaded handguns that the people who share the streets and stores and parks of Orange

24 County cannot see.

25 28. Is this public choice consistent with *D.C. v. Heller*'s conferral of a right to

26 handgun ownership under the Second Amendment? Orange County has never tried to

27 restrict home possession, so it obviously believes that public places call for different

28 presumptive policies, and history is on Orange County's side. Special restrictions on

1 carrying concealed weapons are venerable and almost universal. Even the plaintiff in this  
2 suit does not question the legitimacy of a special license for carrying weapons. The central  
3 question is whether publicly concealed weapons can be restricted even if possession in the  
4 home is protected by *Heller*.

5 The External Dangers of Concealed Weapons in Public Spaces.

6 29. The right of home possession announced in the *Heller* case does not require  
7 citizens to purchase and own handguns in their houses but rather confers on individuals the  
8 right to decide for themselves if the benefits of gun possession in the home outweigh the  
9 risks. So the Second Amendment liberty announced in *Heller* puts the homeowner in a  
10 position of power to determine what risks to take. As long as the guns owned in the home  
11 stay there, Mr. Smith's gun is no risk to his neighbors. But the presence of loaded and  
12 concealed guns in public spaces is an act where Mr. Smith's decision will generate risks to  
13 others who use the streets, and go to public accommodations. And if the guns are  
14 concealed, the people who are exposed to these risks won't have notice or any ability to  
15 avoid the armed presence they confront.

16 30. This "externality" means that the implications of concealed carrying are spread  
17 over the community of users of public space and the only method of deciding policy is a  
18 collective determination of whether concealed weapon carrying should be allowed and  
19 under what circumstances.

20 31. So government must be involved in public space regulation in a way that is not  
21 necessary in the privacy of individual homes. This is why concealed weapons laws are the  
22 oldest form of legal regulation of gun use and the most common. There is a public choice  
23 that must be made to reduce the number of persons carrying concealed weapons by limiting  
24 licenses. But without a general rule on the standard for licenses, there is no way that  
25 individual preferences for or against high rates of permits can be translated into a regulatory  
26 framework.

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

EXECUTED this 9th day of October 2012 at Berkeley, California.



---

Franklin E. Zimring



**FRANKLIN E. ZIMRING**

8 October 2012

**PERSONAL** Born 1942, Los Angeles, California; married; two adult children.

**EDUCATION** Los Angeles Public Schools; B.A. with Distinction, Wayne State University (1963); J.D. *cum laude*, University of Chicago (1967).

**PRESENT POSITION** **WILLIAM G. SIMON PROFESSOR OF LAW; WOLFEN DISTINGUISHED SCHOLAR** and **CHAIR**, Criminal Justice Research Program, Institute for Legal Research (formerly the Earl Warren Legal Institute), Boalt Hall School of Law, University of California, Berkeley.

**OTHER WORK** **Principal Investigator**, Center on Culture, Immigration and Youth Violence Prevention (2005-2011).

**DIRECTOR**, Earl Warren Legal Institute (1983-2002).

**FACULTY OF LAW**, University of Chicago (1967-85): **KARL N. LLEWELLYN PROFESSOR OF JURISPRUDENCE** (1982-85) and **DIRECTOR**, Center for Studies in Criminal Justice (1975-85).

**MEMBER**, MacArthur Foundation Research Program on Adolescent Development and Juvenile Justice (1997-2007).

**FELLOW**, Center for Advanced Studies in the Behavioral Sciences, Stanford, California (1979-80).

**RAPPORTEUR**, Task Force on Sentencing Policy for Young Offenders, Twentieth Century Fund (1978).

**VISITING PROFESSOR OF LAW**, University of California, Irvine (2004), University of South Africa (1993), University of California, Berkeley (1983-85), Yale University (1973), and University of Pennsylvania (1972).

**DIRECTOR OF RESEARCH**, Task Force on Firearms, National Commission on the Causes and Prevention of Violence (1968-69).

**CONSULTANT**: American Bar Foundation, Police Foundation, National Commission on Reform of Federal Criminal Laws, Institute for Defense Analysis, Department of Justice, Rand Corporation, Abt Associates, Federal Parole Commission, Federal Bureau of Prisons, Federal Bureau of Investigation, General Accounting Office, Canadian Institute for Advanced Studies, States of Alaska, California, Nebraska, Illinois, Virginia, and Washington, Cities of Chicago, New York and San Francisco.

**ADVISORY POSTS** **CURRENT**: Campaign for Youth Justice (2007-); California Attorney General's Office (2001-); National Policy Committee, American Society of Criminology (1989-91 and 1993-); Board of Directors, Illinois Youth Services Association (Honorary) (1977-); Advisory Committee, National Pre-Trial Services Association (1975-).

**PAST**: Asian Pacific Violence Prevention Center, National Council on Crime and Delinquency (2001-2005); Advisory Committee, Sentencing Project, American Law Institute (2001-2003); Criminal Justice Policy Group, Advisory Board, National Campaign Against Youth Violence (2000-2002); Expert Panel Member, U.S. Department of Transportation, National Highway Traffic Safety Administration Panel on Crash Risk of Alcohol-Involved Driving (1994-2002); Expert Panel Member, U.S. Department of Education Panel on Safe, Disciplined, and Drug-Free Schools (1998-2001); National Research Council Panel on Juvenile Crime: Prevention, Intervention, and Control (1998-2001); Advisory Board, Center on Crime, Communities, and Culture, Open Society Institute (1998-2000); Affiliated Expert, Center for Gun Policy and Research, Johns Hopkins University (1995-98); Gun Violence Advisory Group, American College of Physicians (1995-98); Advisory Committee, Violent and Serious

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Juvenile Offender Project, National Council on Crime and Delinquency (1994-1997); Panel on NIH Research on Anti-Social, Aggressive, and Violence-Related Behaviors and their Consequences (1997-); Task Force on Future Directions for the National Archive of Criminal Justice Data, Bureau of Justice Statistics, Department of Justice (1995); Panel on Antisocial, Aggressive, and Violence-Related Behaviors and Their Consequences, National Institute of Health (1993-94); Panel on Understanding and Control of Violent Behavior, National Research Council, National Academy of Sciences (1989-91); Research Advisory Committee, California Attorney General (1983-1990); Law Enforcement Committee, California Governor's Policy Council on Drug and Alcohol Abuse (1989-91); National Research Council, Working Group Crime and Violence (1985-88); Internal Revenue Service, Advisory Group Taxpayer Compliance Research (1983-87); Board of Directors, Eisenhower Foundation for the Prevention of Violence (1981-84); U.S. Secret Service Advisory Committee on Protection of the President (1981-82); Assembly of Behavioral and Social Sciences, National Academy of Sciences (1977-80); Executive Committee, Illinois Academy of Criminology (1968-71, 1977-78); Advisory Committee, Assessment Center for Alternatives to Juvenile Courts (1977-78) (chairman); Advisory Committee, Law and Social Science Program, National Science Foundation (1976-77); Advisory Committee, Vera Institute of Justice, Court Employment Project Evaluation (1976-77) (chairman); Panel on Deterrence and Incapacitation, National Academy of Sciences (1975-77); Legal Committee, American Civil Liberties Union, Illinois Branch (1967-70).

**EDITORIAL  
BOARDS**

CURRENT: Punishment and Society (1998-); Crime and Justice: An Annual Review of Research (1979-90, 1998-); Western Criminology Review (1997-); Buffalo Criminal Law Review (1996-); Homicide Studies (1996-); The Prison Journal (1992-); Journal of Research in Crime and Delinquency (1976-84, 1990-); Federal Sentencing Reporter (1988-); Studies in Crime and Justice (1980-); Journal of Criminal Justice (1978-).

PAST: Law and Society Review (1988-1998); British Journal of Criminology (1988-1996); Journal of Quantitative Criminology (1984-1989); Ethics, (1985-87); Encyclopedia of Crime and Justice (1979-83); Evaluation Quarterly (1976-84); Law and Behavior (1976-85).

**HONORS**

Edwin H. Sutherland Award, American Society of Criminology (2007); August Vollmer Award, American Society of Criminology (2006); Notable Book of the Year, *The Economist* (2003); Society of Research on Adolescence, Biannual Book Award (2002); Pass Award, National Council on Crime and Delinquency (1999); Donald Cressey Award, National Council on Crime and Delinquency (1995); Choice, Outstanding Academic Book Citation (1995 and 1982); Paul Tappan Award, Western Society of Criminology (1994); Fellow, American Society of Criminology (1993); Distinguished Alumni Award, Wayne State University (1989); Bustin Prize for Legal Research, University of Chicago (1981); Cooley Lecturer, University of Michigan Law School (1980); National Distinguished Alumnus Award, Delta-Sigma-Rho (1977); Ten Law Professors Who Shape the Future, *Time Magazine* (1977); Civilian Award of Merit for 1975, Chicago Crime Commission; Gavel Award Certificate of Merit, American Bar Association (1973).

**MEMBER**

American Academy of Arts and Sciences (1990-); California Bar Association (1968-); Order of the Coif (1967-); Phi Beta Kappa (1964-).

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## BOOKS AND MONOGRAPHS

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(with David T. Johnson) *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia*, New York: Oxford University Press (January 2009).

(with Bernard E. Harcourt) *Criminal Law and the Regulation of Vice*, American Casebook Series, St. Paul: Thompson/West Publishers (2007).

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1 **CERTIFICATE OF SERVICE**

2 I do hereby declare that I am a citizen of the United States employed in the County  
3 of Orange, over 18 years old and that my business address is 333 W. Santa Ana Blvd.,  
4 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.

5 I hereby certify that I caused the foregoing **DECLARATION OF FRANKLIN E.**  
6 **ZIMRING IN SUPPORT OF DEFENDANTS' OPPOSITION TO THE MOTION**  
7 **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:

8 C.D. Michel, Esq.  
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Diana Kilgore, Phillip Willms, Frederick  
Kogen, David Weiss, and the CRPA  
Foundation

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

16 Executed in Santa Ana, California this 9<sup>th</sup> day of October, 2012.

17 

18 Marzette L. Lair

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

10 DOROTHY McKAY, DIANA KILGORE,  
 11 PHILLIP WILLMS, FRED KOGEN,  
 12 DAVID WEISS, and THE CRPA  
 FOUNDATION,

13 Plaintiffs,

14 v.

15 SHERIFF SANDRA HUTCHENS,  
 individually and in her official capacity as  
 16 Sheriff of Orange County; ORANGE  
 COUNTY SHERIFF-CORONER  
 17 DEPARTMENT; COUNTY OF ORANGE;  
 and DOES 1-10,

18 Defendants.  
 19

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

**DECLARATION OF VICKI SANDS IN  
 SUPPORT OF DEFENDANTS'  
 OPPOSITION TO THE MOTION FOR  
 PRELIMINARY INJUNCTION**

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

20  
 21 I, Vicki Sands, declare:

22 1. Unless stated on information and belief, I have personal knowledge of the  
 23 statements contained in this declaration, and if called upon to testify, I could and would  
 24 competently testify to the facts stated below. Where statements are made on information  
 25 and belief, I believe those statements to be true.

26 2. I am an Information Systems Analyst with the California Department of Justice  
 27 (“DOJ”) and have worked with the State for 36 years.

28 //

1 3. As a business and systems analyst, I develop and implement design  
2 requirements, system specifications and enhancements for the Automated Criminal History  
3 System ("ACHS"). I assist in the development of needs assessments and feasibility study  
4 reports; perform multiple activities and provide technical skills for special projects which  
5 include, but not limited to ACHS and its sub-files; monitor and respond to ACHS  
6 information requests from user groups; write and maintain specifications for automated  
7 interfaces with agencies; perform analysis and testing in the development and  
8 implementation of design requirements and system enhancements.

9 4. The DOJ maintains a data warehouse copy of the ACHS for extracting  
10 statistical information. The County of Orange, through the Office of County Counsel,  
11 requested that the DOJ complete a statistical run from the ACHS database to determine the  
12 number of criminal identification and index (CII) subjects originating in Orange County  
13 with a felony arrest from January 1, 2011 – December 31, 2011. Based on this criteria, I  
14 developed queries to search the system and extract appropriate numbers. From this run,  
15 31,964 subjects at the time of arrest had an Orange County Originating Agency Identifier  
16 (ORI).

17 5. Of these 31,964 subjects with a felony arrest, 10,420 had a felony conviction  
18 prior to January 1, 2011, which includes 383 convicted of felony domestic violence  
19 pursuant to Penal Code section 273.5.

20 6. Of these 31,964 subjects with a felony arrest, 1,332 had a misdemeanor  
21 domestic violence conviction pursuant to Penal Code section 273.5 prior to January 1, 2011,  
22 of which 676 also had a prior felony conviction.

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

25 EXECUTED this 9<sup>th</sup> day of October 2012 at Sacramento, California.

26   
27 \_\_\_\_\_

28 Vicki Sands, Declarant

**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 VICKI SANDS 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 9<sup>th</sup> day of October, 2012.

  
Marzette L. Lair

Case 8:12-cv-01458-JVS-JPR Document 15-3 Filed 10/09/12 Page 1 of 17 Page ID #:523

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

DOROTHY McKAY, DIANA KILGORE, ) Case No. 8:12-cv-01458 JVS (JPRx)  
 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.

**DECLARATION OF KATHLEEN  
 RALEY IN SUPPORT OF  
 DEFENDANTS' OPPOSITION TO THE  
 MOTION FOR PRELIMINARY  
 INJUNCTION**

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

I Kathleen Raley 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 a Senior Office Supervisor within the Orange County Sheriff-Coroner Department's ("OCSD") Support Services Division. I specifically supervise staff within both the Statistical and Quality Assurance Units within the Support Services Division. I have held this assignment for five years and have been with OCSD for 26 years. In my current position, I supervise staff responsible for inputting data from OCSD crime

1 and incident reports into the Records Management System ("RMS"). These crime statistics  
2 are then submitted by OCSD to the State of California Department of Justice ("DOJ")  
3 monthly. The State DOJ submits the crime statistics to the United States Department of  
4 Justice. I also supervise the quality assurance staff that image OCSD crime and incident  
5 reports and all supporting documents, process registrant paperwork (registrants are those  
6 required by law to register with the chief of police in the city where they reside or with the  
7 sheriff within the county where they reside), and incoming bookings, and make corrections  
8 to criminal history records as required. Prior to my current assignment, I supervised the  
9 Statistical Unit staff for 17 years.

10 3. Through my experience working in the Statistical Unit, I am familiar with the  
11 crime reporting computing programs used by OCSD to track and report criminal  
12 information. OCSD utilizes two computing systems, the RMS and the Crime Tracking and  
13 Enhanced Reporting ("CTER") system. The CTER system is used to compile the statistics  
14 submitted to the DOJ. The system extracts the number of crimes in each of our law  
15 enforcement jurisdictions, applies the Uniform Crime Reporting hierarchy, compiles the  
16 crime totals, allows us to make manual adjustments, and produces forms for submission to  
17 the DOJ. I compile statistics from these systems upon request at least twice a month.

18 4. I have during my career at OCSD inputted data into both the RMS and CTER  
19 systems, verified totals of crimes reported, and prepared final reports for submission to the  
20 DOJ.

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28 //

EXECUTED this 4<sup>th</sup> day of October 2012 at Santa Ana, California.

Kathleen Raley



Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: Aliso Viejo(CA030490X)

SANDRA HUTCHENS, SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	0	0	0	0	0	0%	0	0%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	1	0	1	2	4	0	0	3	150%	0	0%
a. Rape By Force	1	0	1	2	4	0	0	3	150%	0	0%
b. Attempts to Commit Forcible Rape	0	0	0	0	0	0	0	0	0%	0	0%
3. ROBBERY TOTAL	0	0	0	8	8	0	0	6	75%	8	100%
a. Firearm	0	0	0	1	1	0	0	0	0%	1	100%
b. Knife or Cutting Instrument	0	0	0	1	1	0	0	1	100%	1	100%
c. Other dangerous weapons	0	0	0	0	1	0	0	0	0%	1	100%
d. Strong-arm (hands, fists, etc)	0	0	0	6	5	0	0	5	83%	5	100%
4. ASSAULT TOTAL	4	0	4	20	25	3	1	15	75%	23	92%
a. Firearm	1	0	1	3	2	0	0	2	67%	0	0%
b. Knife or Cutting Instruments	0	0	0	0	5	0	0	0	0%	5	100%
c. Other Dangerous Weapons	3	0	3	13	9	3	1	9	69%	10	111%
d. Hands, Fists, etc - Aggravated Injury	0	0	0	4	9	0	0	4	100%	8	89%
5A. BURGLARY TOTAL RESIDENCE	3	0	3	49	67	0	0	9	18%	10	15%
a. Forcible Entry	0	0	0	16	34	0	0	6	38%	4	12%
b. Unlawful Entry - No Force	3	0	3	31	29	0	0	2	7%	6	21%
c. Attempted Forcible Entry	0	0	0	2	4	0	0	1	50%	0	0%
5B. BURGLARY TOTAL NON-RESIDENCE	0	0	0	26	20	0	0	3	12%	4	20%
a. Forcible Entry	0	0	0	20	13	0	0	1	5%	2	15%
b. Unlawful Entry - No Force	0	0	0	6	7	0	0	2	33%	2	29%
c. Attempted Forcible Entry	0	0	0	0	0	0	0	0	0%	0	0%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	33	0	33	349	324	3	4	77	22%	74	23%
7. MOTOR VEHICLE THEFT TOTAL	2	2	0	13	28	1	0	3	23%	8	29%
a. Autos	0	1	-1	7	20	0	0	2	29%	6	30%
b. Trucks And Buses	1	1	0	2	4	0	0	0	0%	1	25%
c. Other Vehicles	1	0	1	4	4	1	0	1	25%	1	25%
GRAND TOTAL	43	2	41	467	476	7	5	116	25%	127	27%

Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: Dana Point(CA0303600)

SANDRA HUTCHENS, SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	0	0	0	0	0	0%	0	0%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	0	1	-1	-1	2	0	0	0	0%	1	50%
a. Rape By Force	0	0	0	0	1	0	0	0	0%	1	100%
b. Attempts to Commit Forcible Rape	0	1	-1	-1	1	0	0	0	0%	0	0%
3. ROBBERY TOTAL	1	0	1	5	13	0	0	2	40%	10	77%
a. Firearm	0	0	0	0	0	0	0	0	0%	2	0%
b. Knife or Cutting Instrument	0	0	0	0	1	0	0	0	0%	1	100%
c. Other dangerous weapons	0	0	0	1	1	0	0	0	0%	1	100%
d. Strong-arm (hands, fists, etc)	1	0	1	4	11	0	0	2	50%	6	55%
4. ASSAULT TOTAL	5	0	5	48	52	3	1	35	73%	46	89%
a. Firearm	1	0	1	4	5	1	0	4	100%	4	80%
b. Knife or Cutting Instruments	1	0	1	9	6	1	0	9	100%	6	100%
c. Other Dangerous Weapons	0	0	0	17	16	0	1	12	71%	16	100%
d. Hands, Fists, etc - Aggravated Injury	3	0	3	18	25	1	0	10	56%	20	80%
5A. BURGLARY TOTAL RESIDENCE	6	0	6	79	104	2	1	18	23%	21	20%
a. Forcible Entry	3	0	3	34	43	1	0	8	24%	12	28%
b. Unlawful Entry - No Force	3	0	3	43	57	1	1	10	23%	8	14%
c. Attempted Forcible Entry	0	0	0	2	4	0	0	0	0%	1	25%
5B. BURGLARY TOTAL NON-RESIDENCE	4	0	4	22	25	1	0	5	23%	3	12%
a. Forcible Entry	2	0	2	14	15	0	0	2	14%	1	7%
b. Unlawful Entry - No Force	1	0	1	6	6	1	0	3	50%	2	33%
c. Attempted Forcible Entry	1	0	1	2	4	0	0	0	0%	0	0%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	43	0	43	489	438	5	1	98	20%	67	15%
7. MOTOR VEHICLE THEFT TOTAL	2	1	1	37	28	1	2	13	35%	13	46%
a. Autos	1	1	0	26	16	0	2	10	39%	10	63%
b. Trucks And Buses	1	0	1	6	5	1	0	2	33%	0	0%
c. Other Vehicles	0	0	0	5	7	0	0	1	20%	3	43%
GRAND TOTAL	61	2	59	679	662	12	5	171	25%	161	24%

Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: Laguna Hills(CA0304200)

SANDRA HUTCHENS, SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	0	0	0	0	0	0%	0	0%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	0	0	0	2	4	0	0	0	0%	3	75%
a. Rape By Force	0	0	0	1	4	0	0	0	0%	3	75%
b. Attempts to Commit Forcible Rape	0	0	0	1	0	0	0	0	0%	0	0%
3. ROBBERY TOTAL	2	0	2	11	14	1	0	5	46%	9	64%
a. Firearm	2	0	2	3	3	1	0	1	33%	2	67%
b. Knife or Cutting Instrument	0	0	0	0	1	0	0	0	0%	0	0%
c. Other dangerous weapons	0	0	0	0	1	0	0	0	0%	1	100%
d. Strong-arm (hands, fists, etc)	0	0	0	8	9	0	0	4	50%	6	67%
4. ASSAULT TOTAL	3	0	3	32	25	1	1	29	91%	21	84%
a. Firearm	0	0	0	0	0	0	0	0	0%	0	0%
b. Knife or Cutting Instruments	0	0	0	13	8	0	0	12	92%	7	88%
c. Other Dangerous Weapons	1	0	1	12	12	1	0	11	92%	10	83%
d. Hands, Fists, etc - Aggravated Injury	2	0	2	7	5	0	1	6	86%	4	80%
5A. BURGLARY TOTAL RESIDENCE	4	0	4	50	41	0	0	4	8%	9	22%
a. Forcible Entry	3	0	3	27	19	0	0	2	7%	4	21%
b. Unlawful Entry - No Force	1	0	1	21	22	0	0	2	10%	5	23%
c. Attempted Forcible Entry	0	0	0	2	0	0	0	0	0%	0	0%
5B. BURGLARY TOTAL NON-RESIDENCE	3	0	3	45	37	0	0	6	13%	8	22%
a. Forcible Entry	3	0	3	34	30	0	0	5	15%	7	23%
b. Unlawful Entry - No Force	0	0	0	8	4	0	0	0	0%	0	0%
c. Attempted Forcible Entry	0	0	0	3	3	0	0	1	33%	1	33%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	52	0	52	475	404	13	0	159	34%	172	43%
7. MOTOR VEHICLE THEFT TOTAL	0	0	0	27	28	0	1	6	22%	3	11%
a. Autos	0	0	0	17	22	0	1	5	29%	3	14%
b. Trucks And Buses	0	0	0	3	6	0	0	1	33%	0	0%
c. Other Vehicles	0	0	0	7	0	0	0	0	0%	0	0%
GRAND TOTAL	64	0	64	642	553	15	2	209	33%	225	41%

Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: Laguna Niguel(CA0303900)

SANDRA HUTCHENS, SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	0	2	0	0	0	0%	1	50%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	0	0	0	3	0	0	0	3	100%	1	0%
a. Rape By Force	0	0	0	3	0	0	0	3	100%	1	0%
b. Attempts to Commit Forcible Rape	0	0	0	0	0	0	0	0	0%	0	0%
3. ROBBERY TOTAL	2	0	2	13	10	0	0	3	23%	4	40%
a. Firearm	0	0	0	1	3	0	0	1	100%	1	33%
b. Knife or Cutting Instrument	0	0	0	1	0	0	0	0	0%	0	0%
c. Other dangerous weapons	0	0	0	0	2	0	0	0	0%	0	0%
d. Strong-arm (hands, fists, etc)	2	0	2	11	5	0	0	2	18%	3	60%
4. ASSAULT TOTAL	2	0	2	27	28	2	0	19	70%	21	75%
a. Firearm	0	0	0	0	3	0	0	0	0%	3	100%
b. Knife or Cutting Instruments	1	0	1	8	5	1	0	7	88%	5	100%
c. Other Dangerous Weapons	1	0	1	11	7	1	0	8	73%	5	71%
d. Hands, Fists, etc - Aggravated Injury	0	0	0	8	13	0	0	4	50%	8	62%
5A. BURGLARY TOTAL RESIDENCE	8	0	8	99	80	0	0	3	3%	10	13%
a. Forcible Entry	4	0	4	34	30	0	0	0	0%	4	13%
b. Unlawful Entry - No Force	4	0	4	56	45	0	0	3	5%	5	11%
c. Attempted Forcible Entry	0	0	0	9	5	0	0	0	0%	1	20%
5B. BURGLARY TOTAL NON-RESIDENCE	3	0	3	19	27	0	0	0	0%	2	7%
a. Forcible Entry	3	0	3	16	16	0	0	0	0%	0	0%
b. Unlawful Entry - No Force	0	0	0	1	8	0	0	0	0%	2	25%
c. Attempted Forcible Entry	0	0	0	2	3	0	0	0	0%	0	0%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	49	1	48	524	504	3	0	99	19%	108	21%
7. MOTOR VEHICLE THEFT TOTAL	3	0	3	24	30	0	0	6	25%	12	40%
a. Autos	3	0	3	16	22	0	0	4	25%	11	50%
b. Trucks And Buses	0	0	0	3	4	0	0	2	67%	1	25%
c. Other Vehicles	0	0	0	5	4	0	0	0	0%	0	0%
GRAND TOTAL	67	1	66	709	681	5	0	133	19%	159	23%



Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: Laguna Woods(CA030470X)

SANDRA HUTCHENS, SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	0	2	0	0	1	0%	1	50%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	0	0	0	0	0	0	0	0	0%	0	0%
a. Rape By Force	0	0	0	0	0	0	0	0	0%	0	0%
b. Attempts to Commit Forcible Rape	0	0	0	0	0	0	0	0	0%	0	0%
3. ROBBERY TOTAL	1	0	1	5	7	1	0	2	40%	4	57%
a. Firearm	0	0	0	0	0	0	0	0	0%	0	0%
b. Knife or Cutting Instrument	0	0	0	0	0	0	0	0	0%	0	0%
c. Other dangerous weapons	0	0	0	0	1	0	0	0	0%	1	100%
d. Strong-arm (hands, fists, etc)	1	0	1	5	6	1	0	2	40%	3	50%
4. ASSAULT TOTAL	0	0	0	3	6	0	0	2	67%	5	83%
a. Firearm	0	0	0	0	1	0	0	0	0%	1	100%
b. Knife or Cutting Instruments	0	0	0	0	0	0	0	0	0%	0	0%
c. Other Dangerous Weapons	0	0	0	3	0	0	0	2	67%	0	0%
d. Hands, Fists, etc - Aggravated Injury	0	0	0	0	5	0	0	0	0%	4	80%
5A. BURGLARY TOTAL RESIDENCE	3	0	3	17	11	0	0	0	0%	2	18%
a. Forcible Entry	1	0	1	6	3	0	0	0	0%	0	0%
b. Unlawful Entry - No Force	1	0	1	10	5	0	0	0	0%	2	40%
c. Attempted Forcible Entry	1	0	1	1	3	0	0	0	0%	0	0%
5B. BURGLARY TOTAL NON-RESIDENCE	0	0	0	8	3	0	0	0	0%	0	0%
a. Forcible Entry	0	0	0	5	3	0	0	0	0%	0	0%
b. Unlawful Entry - No Force	0	0	0	3	0	0	0	0	0%	0	0%
c. Attempted Forcible Entry	0	0	0	0	0	0	0	0	0%	0	0%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	22	1	21	116	82	0	0	7	6%	16	20%
7. MOTOR VEHICLE THEFT TOTAL	0	0	0	4	8	0	0	1	25%	3	38%
a. Autos	0	0	0	2	6	0	0	1	50%	3	50%
b. Trucks And Buses	0	0	0	0	1	0	0	0	0%	0	0%
c. Other Vehicles	0	0	0	2	1	0	0	0	0%	0	0%
GRAND TOTAL	26	1	25	153	119	1	0	13	9%	31	26%

Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: Lake Forest(CA0304300)

SANDRA HUTCHENS. SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	2	0	0	0	2	100%	0	0%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	0	0	0	1	8	0	0	1	100%	5	63%
a. Rape By Force	0	0	0	1	5	0	0	1	100%	2	40%
b. Attempts to Commit Forcible Rape	0	0	0	0	3	0	0	0	0%	3	100%
3. ROBBERY TOTAL	3	0	3	22	32	1	0	9	41%	20	63%
a. Firearm	2	0	2	3	8	1	0	2	67%	4	50%
b. Knife or Cutting Instrument	1	0	1	3	2	0	0	2	67%	2	100%
c. Other dangerous weapons	0	0	0	3	3	0	0	1	33%	3	100%
d. Strong-arm (hands, fists, etc)	0	0	0	13	19	0	0	4	31%	11	58%
4. ASSAULT TOTAL	5	0	5	64	52	3	2	49	77%	57	110%
a. Firearm	0	0	0	1	1	0	0	1	100%	2	200%
b. Knife or Cutting Instruments	0	0	0	11	9	0	0	11	100%	10	111%
c. Other Dangerous Weapons	2	0	2	27	25	2	0	18	67%	29	116%
d. Hands, Fists, etc - Aggravated Injury	3	0	3	25	17	1	2	19	76%	16	94%
5A. BURGLARY TOTAL RESIDENCE	10	0	10	88	98	0	0	11	13%	16	16%
a. Forcible Entry	2	0	2	35	44	0	0	5	14%	10	23%
b. Unlawful Entry - No Force	8	0	8	48	46	0	0	6	13%	5	11%
c. Attempted Forcible Entry	0	0	0	5	8	0	0	0	0%	1	13%
5B. BURGLARY TOTAL NON-RESIDENCE	3	0	3	52	63	0	0	5	10%	2	3%
a. Forcible Entry	2	0	2	37	46	0	0	3	8%	1	2%
b. Unlawful Entry - No Force	0	0	0	12	10	0	0	2	17%	1	10%
c. Attempted Forcible Entry	1	0	1	3	7	0	0	0	0%	0	0%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	76	1	75	763	736	10	2	120	16%	148	20%
7. MOTOR VEHICLE THEFT TOTAL	4	0	4	44	62	1	0	18	41%	14	23%
a. Autos	3	0	3	30	38	1	0	10	33%	9	24%
b. Trucks And Buses	1	0	1	8	9	0	0	1	13%	3	33%
c. Other Vehicles	0	0	0	6	15	0	0	7	117%	2	13%
GRAND TOTAL	101	1	100	1036	1057	15	4	215	21%	262	25%

Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: Mission Viejo(CA0303500)

SANDRA HUTCHENS. SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	0	0	0	0	0	0%	0	0%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	0	0	0	3	5	0	0	3	100%	4	80%
a. Rape By Force	0	0	0	3	5	0	0	3	100%	4	80%
b. Attempts to Commit Forcible Rape	0	0	0	0	0	0	0	0	0%	0	0%
3. ROBBERY TOTAL	2	0	2	30	19	1	1	20	67%	7	37%
a. Firearm	0	0	0	6	1	0	0	0	0%	0	0%
b. Knife or Cutting Instrument	0	0	0	2	0	0	0	0	0%	0	0%
c. Other dangerous weapons	1	0	1	2	3	1	0	2	100%	1	33%
d. Strong-arm (hands, fists, etc)	1	0	1	20	15	0	1	18	90%	6	40%
4. ASSAULT TOTAL	5	0	5	46	47	4	1	37	80%	40	85%
a. Firearm	0	0	0	4	4	0	0	3	75%	4	100%
b. Knife or Cutting Instruments	0	0	0	11	9	0	0	8	73%	9	100%
c. Other Dangerous Weapons	1	0	1	12	21	2	0	13	108%	14	67%
d. Hands, Fists, etc - Aggravated Injury	4	0	4	19	13	2	1	13	68%	13	100%
5A. BURGLARY TOTAL RESIDENCE	16	0	16	134	131	1	0	14	10%	15	12%
a. Forcible Entry	9	0	9	62	57	1	0	9	15%	7	12%
b. Unlawful Entry - No Force	7	0	7	66	68	0	0	4	6%	8	12%
c. Attempted Forcible Entry	0	0	0	6	6	0	0	1	17%	0	0%
5B. BURGLARY TOTAL NON-RESIDENCE	9	0	9	59	37	0	0	0	0%	8	22%
a. Forcible Entry	8	0	8	41	29	0	0	0	0%	4	14%
b. Unlawful Entry - No Force	0	0	0	12	4	0	0	0	0%	4	100%
c. Attempted Forcible Entry	1	0	1	6	4	0	0	0	0%	0	0%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	100	2	98	983	917	21	0	225	23%	274	30%
7. MOTOR VEHICLE THEFT TOTAL	4	0	4	40	50	1	1	13	33%	13	26%
a. Autos	4	0	4	30	39	1	1	11	37%	11	28%
b. Trucks And Buses	0	0	0	6	8	0	0	2	33%	2	25%
c. Other Vehicles	0	0	0	4	3	0	0	0	0%	0	0%
GRAND TOTAL	136	2	134	1291	1201	28	3	312	24%	361	30%



Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: Orange County Sheriff Department(CA0300)

SANDRA HUTCHENS, SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	1	0	0	0	1	100%	0	0%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	2	0	2	11	8	1	1	7	64%	5	63%
a. Rape By Force	2	0	2	11	8	1	1	7	64%	5	63%
b. Attempts to Commit Forcible Rape	0	0	0	0	0	0	0	0	0%	0	0%
3. ROBBERY TOTAL	6	0	6	42	32	0	0	15	36%	13	41%
a. Firearm	2	0	2	5	7	0	0	3	60%	3	43%
b. Knife or Cutting Instrument	0	0	0	3	5	0	0	0	0%	2	40%
c. Other dangerous weapons	1	0	1	3	1	0	0	0	0%	0	0%
d. Strong-arm (hands, fists, etc)	3	0	3	31	19	0	0	12	39%	8	42%
4. ASSAULT TOTAL	18	0	18	197	148	3	12	129	66%	122	82%
a. Firearm	1	0	1	22	15	0	0	10	46%	6	40%
b. Knife or Cutting Instruments	1	0	1	20	18	2	0	16	80%	13	72%
c. Other Dangerous Weapons	8	0	8	66	44	1	5	47	71%	39	89%
d. Hands, Fists, etc - Aggravated Injury	8	0	8	89	71	0	7	56	63%	64	90%
5A. BURGLARY TOTAL RESIDENCE	25	0	25	240	214	0	1	27	11%	30	14%
a. Forcible Entry	8	0	8	105	84	0	1	18	17%	12	14%
b. Unlawful Entry - No Force	14	0	14	116	113	0	0	7	6%	16	14%
c. Attempted Forcible Entry	3	0	3	19	17	0	0	2	11%	2	12%
5B. BURGLARY TOTAL NON-RESIDENCE	3	0	3	37	41	0	0	8	22%	4	10%
a. Forcible Entry	3	0	3	27	33	0	0	7	26%	3	9%
b. Unlawful Entry - No Force	0	0	0	8	3	0	0	1	13%	1	33%
c. Attempted Forcible Entry	0	0	0	2	5	0	0	0	0%	0	0%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	79	0	79	935	910	9	6	99	11%	115	13%
7. MOTOR VEHICLE THEFT TOTAL	5	0	5	89	110	0	2	20	23%	17	16%
a. Autos	3	0	3	66	87	0	0	17	26%	16	18%
b. Trucks And Buses	2	0	2	17	19	0	2	2	12%	1	5%
c. Other Vehicles	0	0	0	6	4	0	0	1	17%	0	0%
GRAND TOTAL	138	0	138	1557	1467	13	22	306	20%	306	21%

Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: Rancho Santa Margarita(CA030480X)

SANDRA HUTCHENS, SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	0	3	0	0	0	0%	2	67%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	0	0	0	1	4	0	0	1	100%	4	100%
a. Rape By Force	0	0	0	1	3	0	0	1	100%	4	133%
b. Attempts to Commit Forcible Rape	0	0	0	0	1	0	0	0	0%	0	0%
3. ROBBERY TOTAL	1	0	1	9	5	0	0	4	44%	1	20%
a. Firearm	0	0	0	0	0	0	0	0	0%	0	0%
b. Knife or Cutting Instrument	0	0	0	2	1	0	0	0	0%	0	0%
c. Other dangerous weapons	1	0	1	1	0	0	0	0	0%	0	0%
d. Strong-arm (hands, fists, etc)	0	0	0	6	4	0	0	4	67%	1	25%
4. ASSAULT TOTAL	2	0	2	22	14	0	1	21	96%	11	79%
a. Firearm	0	0	0	4	1	0	0	4	100%	0	0%
b. Knife or Cutting Instruments	0	0	0	4	4	0	0	4	100%	3	75%
c. Other Dangerous Weapons	2	0	2	7	8	0	0	6	86%	7	88%
d. Hands, Fists, etc - Aggravated Injury	0	0	0	7	1	0	1	7	100%	1	100%
5A. BURGLARY TOTAL RESIDENCE	2	1	1	54	64	1	0	6	11%	8	13%
a. Forcible Entry	1	1	0	26	21	1	0	6	23%	4	19%
b. Unlawful Entry - No Force	1	0	1	24	33	0	0	0	0%	3	9%
c. Attempted Forcible Entry	0	0	0	4	10	0	0	0	0%	1	10%
5B. BURGLARY TOTAL NON-RESIDENCE	0	0	0	12	19	0	0	1	8%	7	37%
a. Forcible Entry	0	0	0	10	15	0	0	1	10%	6	40%
b. Unlawful Entry - No Force	0	0	0	2	2	0	0	0	0%	1	50%
c. Attempted Forcible Entry	0	0	0	0	2	0	0	0	0%	0	0%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	30	2	28	284	272	7	3	89	31%	67	25%
7. MOTOR VEHICLE THEFT TOTAL	1	0	1	18	9	1	0	7	39%	1	11%
a. Autos	1	0	1	15	7	1	0	7	47%	1	14%
b. Trucks And Buses	0	0	0	1	2	0	0	0	0%	0	0%
c. Other Vehicles	0	0	0	2	0	0	0	0	0%	0	0%
GRAND TOTAL	36	3	33	400	390	9	4	129	32%	101	26%

Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: San Clemente(CA0301700)

SANDRA HUTCHENS, SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	0	3	0	0	0	0%	3	100%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	0	0	0	5	1	0	1	5	100%	2	200%
a. Rape By Force	0	0	0	5	1	0	1	5	100%	2	200%
b. Attempts to Commit Forcible Rape	0	0	0	0	0	0	0	0	0%	0	0%
3. ROBBERY TOTAL	3	0	3	15	24	1	0	9	60%	9	38%
a. Firearm	0	0	0	2	6	0	0	1	50%	2	33%
b. Knife or Cutting Instrument	0	0	0	3	0	0	0	1	33%	0	0%
c. Other dangerous weapons	0	0	0	0	0	0	0	0	0%	0	0%
d. Strong-arm (hands, fists, etc)	3	0	3	10	18	1	0	7	70%	7	39%
4. ASSAULT TOTAL	4	0	4	35	33	1	1	25	71%	32	97%
a. Firearm	0	0	0	1	4	0	0	0	0%	3	75%
b. Knife or Cutting Instruments	0	0	0	5	5	0	0	5	100%	6	120%
c. Other Dangerous Weapons	1	0	1	14	10	1	0	11	79%	9	90%
d. Hands, Fists, etc - Aggravated Injury	3	0	3	15	14	0	1	9	60%	14	100%
5A. BURGLARY TOTAL RESIDENCE	10	1	9	162	136	2	3	20	12%	27	20%
a. Forcible Entry	1	0	1	51	40	1	0	8	16%	9	23%
b. Unlawful Entry - No Force	9	1	8	103	90	1	3	12	12%	16	18%
c. Attempted Forcible Entry	0	0	0	8	6	0	0	0	0%	2	33%
5B. BURGLARY TOTAL NON-RESIDENCE	2	0	2	44	63	2	0	5	11%	6	10%
a. Forcible Entry	1	0	1	30	48	2	0	3	10%	3	6%
b. Unlawful Entry - No Force	1	0	1	10	12	0	0	1	10%	2	17%
c. Attempted Forcible Entry	0	0	0	4	3	0	0	1	25%	1	33%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	59	0	59	631	526	33	4	141	22%	137	26%
7. MOTOR VEHICLE THEFT TOTAL	4	0	4	42	57	1	0	15	36%	8	14%
a. Autos	4	0	4	26	36	0	0	10	39%	5	14%
b. Trucks And Buses	0	0	0	10	11	1	0	5	50%	3	27%
c. Other Vehicles	0	0	0	6	10	0	0	0	0%	0	0%
GRAND TOTAL	82	1	81	934	843	40	9	220	24%	224	27%

Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: San Juan Capo(CA0301800)

SANDRA HUTCHENS, SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	1	0	1	2	0	1	0	2	100%	0	0%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	0	0	0	4	3	0	0	3	75%	3	100%
a. Rape By Force	0	0	0	4	2	0	0	3	75%	2	100%
b. Attempts to Commit Forcible Rape	0	0	0	0	1	0	0	0	0%	1	100%
3. ROBBERY TOTAL	1	0	1	16	15	0	0	6	38%	5	33%
a. Firearm	0	0	0	5	2	0	0	1	20%	0	0%
b. Knife or Cutting Instrument	0	0	0	1	1	0	0	0	0%	0	0%
c. Other dangerous weapons	1	0	1	2	0	0	0	1	50%	0	0%
d. Strong-arm (hands, fists, etc)	0	0	0	8	12	0	0	4	50%	5	42%
4. ASSAULT TOTAL	3	0	3	34	23	3	0	25	74%	14	61%
a. Firearm	-1	0	-1	2	1	0	0	1	50%	1	100%
b. Knife or Cutting Instruments	2	0	2	5	5	1	0	2	40%	4	80%
c. Other Dangerous Weapons	1	0	1	12	7	1	0	9	75%	3	43%
d. Hands, Fists, etc - Aggravated Injury	1	0	1	15	10	1	0	13	87%	6	60%
5A. BURGLARY TOTAL RESIDENCE	2	1	1	46	70	1	0	4	9%	5	7%
a. Forcible Entry	1	1	0	16	31	1	0	3	19%	4	13%
b. Unlawful Entry - No Force	1	0	1	28	36	0	0	1	4%	1	3%
c. Attempted Forcible Entry	0	0	0	2	3	0	0	0	0%	0	0%
5B. BURGLARY TOTAL NON-RESIDENCE	2	0	2	25	46	0	0	0	0%	1	2%
a. Forcible Entry	1	0	1	18	37	0	0	0	0%	1	3%
b. Unlawful Entry - No Force	1	0	1	3	7	0	0	0	0%	0	0%
c. Attempted Forcible Entry	0	0	0	4	2	0	0	0	0%	0	0%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	38	0	38	345	348	7	0	69	20%	71	20%
7. MOTOR VEHICLE THEFT TOTAL	10	1	9	34	39	0	4	14	41%	17	44%
a. Autos	5	1	4	22	20	0	3	10	46%	10	50%
b. Trucks And Buses	2	0	2	8	12	0	1	4	50%	2	17%
c. Other Vehicles	3	0	3	4	7	0	0	0	0%	5	71%
GRAND TOTAL	57	2	55	506	544	12	4	123	24%	116	21%



Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: Stanton(CA0302100)

SANDRA HUTCHENS, SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	1	2	0	0	0	0%	0	0%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	2	0	2	7	1	0	0	4	57%	3	300%
a. Rape By Force	2	0	2	7	1	0	0	4	57%	3	300%
b. Attempts to Commit Forcible Rape	0	0	0	0	0	0	0	0	0%	0	0%
3. ROBBERY TOTAL	3	0	3	53	63	1	0	25	47%	16	25%
a. Firearm	0	0	0	7	22	0	0	5	71%	5	23%
b. Knife or Cutting Instrument	0	0	0	9	9	0	0	3	33%	1	11%
c. Other dangerous weapons	0	0	0	7	5	0	0	4	57%	1	20%
d. Strong-arm (hands, fists, etc)	3	0	3	30	27	1	0	13	43%	9	33%
4. ASSAULT TOTAL	2	0	2	80	88	1	1	52	65%	53	60%
a. Firearm	0	0	0	9	11	0	0	4	44%	4	36%
b. Knife or Cutting Instruments	0	0	0	26	21	0	1	14	54%	12	57%
c. Other Dangerous Weapons	1	0	1	24	36	1	0	20	83%	25	69%
d. Hands, Fists, etc - Aggravated Injury	1	0	1	21	20	0	0	14	67%	12	60%
5A. BURGLARY TOTAL RESIDENCE	8	0	8	84	83	0	0	10	12%	10	12%
a. Forcible Entry	2	0	2	37	40	0	0	6	16%	7	18%
b. Unlawful Entry - No Force	4	0	4	39	40	0	0	3	8%	3	8%
c. Attempted Forcible Entry	2	0	2	8	3	0	0	1	13%	0	0%
5B. BURGLARY TOTAL NON-RESIDENCE	7	0	7	55	68	0	0	4	7%	8	12%
a. Forcible Entry	5	0	5	40	54	0	0	3	8%	4	7%
b. Unlawful Entry - No Force	2	0	2	13	10	0	0	1	8%	3	30%
c. Attempted Forcible Entry	0	0	0	2	4	0	0	0	0%	1	25%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	30	0	30	390	405	7	2	83	21%	69	17%
7. MOTOR VEHICLE THEFT TOTAL	5	1	4	100	87	0	3	22	22%	15	17%
a. Autos	4	1	3	79	66	0	1	16	20%	9	14%
b. Trucks And Buses	1	0	1	17	17	0	2	6	35%	4	24%
c. Other Vehicles	0	0	0	4	4	0	0	0	0%	2	50%
GRAND TOTAL	57	1	56	770	797	9	6	200	26%	174	22%

Date Printed: 10/04/2012

## ORANGE COUNTY SHERIFF'S DEPARTMENT, CA

City: Villa Park(CA0302300)

SANDRA HUTCHENS, SHERIFF-CORONER

Santa Ana, CA

Month: December 2011

PART I OFFENSES	REPORTED	UNFOUNDED	ACTUAL OFFENSES			OFFENSES CLEARED					
			THIS MONTH	THIS YEAR	LAST YEAR	THIS MONTH		THIS YEAR		LAST YEAR	
						ARREST	OTHER	NO.	%	NO.	%
1. CRIMINAL HOMICIDE	0	0	0	0	0	0	0	0	0%	0	0%
a. MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report.											
b. MANSLAUGHTER BY NEGLIGENCE	0	0	0	0	0	0	0	0	0%	0	0%
2. FORCIBLE RAPE	0	0	0	0	0	0	0	0	0%	0	0%
a. Rape By Force	0	0	0	0	0	0	0	0	0%	0	0%
b. Attempts to Commit Forcible Rape	0	0	0	0	0	0	0	0	0%	0	0%
3. ROBBERY TOTAL	0	0	0	0	1	0	0	0	0%	0	0%
a. Firearm	0	0	0	0	0	0	0	0	0%	0	0%
b. Knife or Cutting Instrument	0	0	0	0	0	0	0	0	0%	0	0%
c. Other dangerous weapons	0	0	0	0	0	0	0	0	0%	0	0%
d. Strong-arm (hands, fists, etc)	0	0	0	0	1	0	0	0	0%	0	0%
4. ASSAULT TOTAL	1	0	1	2	5	0	0	1	50%	5	100%
a. Firearm	0	0	0	0	0	0	0	0	0%	0	0%
b. Knife or Cutting Instruments	0	0	0	0	1	0	0	0	0%	1	100%
c. Other Dangerous Weapons	0	0	0	1	1	0	0	1	100%	1	100%
d. Hands, Fists, etc - Aggravated Injury	1	0	1	1	3	0	0	0	0%	3	100%
5A. BURGLARY TOTAL RESIDENCE	4	0	4	10	18	1	0	1	10%	1	6%
a. Forcible Entry	2	0	2	8	13	1	0	1	13%	0	0%
b. Unlawful Entry - No Force	1	0	1	1	3	0	0	0	0%	1	33%
c. Attempted Forcible Entry	1	0	1	1	2	0	0	0	0%	0	0%
5B. BURGLARY TOTAL NON-RESIDENCE	0	0	0	2	2	0	0	1	50%	0	0%
a. Forcible Entry	0	0	0	2	2	0	0	1	50%	0	0%
b. Unlawful Entry - No Force	0	0	0	0	0	0	0	0	0%	0	0%
c. Attempted Forcible Entry	0	0	0	0	0	0	0	0	0%	0	0%
6. LARCENY - THEFT TOTAL (EXCEPT MOTOR VEHICLE THEFT)	5	0	5	59	48	0	0	4	7%	6	13%
7. MOTOR VEHICLE THEFT TOTAL	1	0	1	4	1	0	1	2	50%	1	100%
a. Autos	1	0	1	3	1	0	1	2	67%	1	100%
b. Trucks And Buses	0	0	0	1	0	0	0	0	0%	0	0%
c. Other Vehicles	0	0	0	0	0	0	0	0	0%	0	0%
GRAND TOTAL	11	0	11	77	75	1	1	9	12%	13	17%

**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 KATHLEEN RALEY 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:

C.D. Michel, Esq.  
Email: cmichel@michellawyers.com  
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**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 9<sup>th</sup> day of October, 2012.



Marzette L. Lair



NICHOLAS S. CHRISOS, COUNTY COUNSEL  
 1 MARIANNE VAN RIPER, Supervising Deputy (CA SBN 136688)  
 Marianne.vanriper@coco.ocgov.com  
 2 NICOLE M. WALSH, DEPUTY (CA SBN 248222)  
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 4 Santa Ana, California 92702-1379  
 Telephone: (714) 834-6257  
 5 Facsimile: (714) 834-2359

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

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

10 DOROTHY McKAY, DIANA KILGORE, ) Case No. 8:12-cv-01458 JVS (JPRx)  
 11 PHILLIP WILLMS, FRED KOGEN, )  
 12 DAVID WEISS, and THE CRPA )  
 FOUNDATION, )

13 Plaintiffs,

14 v.

15 SHERIFF SANDRA HUTCHENS,  
 individually and in her official capacity as  
 16 Sheriff of Orange County; ORANGE  
 COUNTY SHERIFF-CORONER  
 17 DEPARTMENT; COUNTY OF ORANGE;  
 and DOES 1-10,

18 Defendants.

**DECLARATION OF COMMANDER  
 DONALD BARNES IN SUPPORT OF  
 DEFENDANTS' OPPOSITION TO THE  
 MOTION FOR PRELIMINARY  
 INJUNCTION**

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

19  
 20  
 21 I, Donald Barnes, declare:

22 1. Unless stated on information and belief, I have personal knowledge of the  
 23 statements contained in this declaration, and if called upon to testify, I could and would  
 24 competently testify to the facts stated below. Where statements are made on information  
 25 and belief, I believe those statements to be true.

26 2. I am currently Commander of the Professional Services Command of the  
 27 Orange County Sheriff-Coroner Department, which includes five divisions: Professional  
 28 Services, Training, S.A.F.E, Coroner's Office, and the Orange County Crime Lab. I have

1 been with the OCSD for approximately 23 years. I took command of the Professional  
2 Services Command at the end of September 2012. As the Commander, I oversee the units  
3 within Professional Services Division, including Internal Affairs, Backgrounds, Recruiting  
4 and Human Resources, and the Carry Concealed Weapons ("CCW") and Business License  
5 desks.

6 3. Prior to my current command position, beginning in February 2011, I served as  
7 Commander of Field Operations and Investigations. This involved the administrative  
8 oversight of five divisions comprising Field Operations and Investigations; North and South  
9 Operations (or patrol for North and South County contract cities and unincorporated areas),  
10 Homeland Security, John Wayne Airport, Investigations, as well as the Field Training  
11 Bureau. Prior to taking command of Field Operations and Investigations, I served OCSD in  
12 a variety of capacities including as Captain of South Operations, as the Sheriff's Executive  
13 Aid, and as Chief of Police Services for the City of Lake Forest. I also served as a patrol  
14 Deputy, Sergeant, Field Training Officer and Investigation Sergeant. My experience in the  
15 field making arrests, responding to calls, and dealing with crime, and commanding those in  
16 the field has spanned nearly my entire career.

17 4. I am familiar with the policies and practices of deputies in the field when guns  
18 or other potentially deadly weapons are brandished or used.

19 5. I am familiar with OCSD's Policy 218 relating to the issuance of CCW  
20 Licenses. I am also familiar with Penal Code section 26150, the basis for Policy 218, which  
21 sets forth under what circumstances the sheriff of a county may issue a license to an  
22 applicant to carry a concealed weapon. Moreover, I am familiar with the Penal Code  
23 sections criminalizing the carrying of a concealed firearm, and the exceptions thereto –  
24 Penal Code sections 25400, *et seq.*

25 6. One of the main purposes for Sheriff Sandra Hutchens' CCW policy  
26 incorporating the "good cause" provision as mandated by the Penal Code is to protect  
27 against gun violence as well as to protect officers in the field conducting patrol and law  
28 enforcement operations.

1 7. If the "good cause" requirement were eliminated from Policy 218 and from the  
2 Penal Code, thereby increasing the numbers of persons eligible to carry concealed  
3 handguns, neither the citizens of Orange County nor its law enforcement officers would be  
4 safer.

5 8. An increased presence of guns in the community heightens the risk for law  
6 enforcement officers and citizens. It is inherently dangerous for officers to answer a call  
7 even if the use and/or brandishing of a firearm is known at the time the call to law  
8 enforcement is made. The presence of a firearm at any scene immediately escalates the  
9 potential for conflict at the scene, which increases the risk to officers and the surrounding  
10 public. This danger is only heightened when officers are unaware that a firearm that is  
11 concealed could become involved. An officer answering a call would have no warning that  
12 a concealed firearm could be brandished and so, is subject to surprise when it is brandished.

13 9. Calls involving known use and/or brandishing of firearms already entail high  
14 levels of risk and uncertainty for officers and for members of the community surrounding  
15 the area. In those situations where it is known that a firearm is involved, the response is  
16 elevated, more personnel are dispatched to the scene, the response is a priority and an  
17 emergency response may be designated to get to the scene quickly, which itself presents a  
18 heightened risk to the public, and officers must calmly sort out the probable conflict that  
19 they will discover upon arrival in an effort to dissuade the use of the firearm.

20 10. If an officer arrives at a scene where it is not known or believed that a firearm  
21 is involved, the response will likely involve the dispatch of fewer personnel. Thus, if after  
22 the arrival of officers, a firearm is brandished that had been concealed officers would have  
23 to await the arrival of more personnel before addressing the conflict, which puts the officers  
24 and public at an increased risk. Additionally, the brandishing of a firearm from an  
25 individual who is unknown to the officer, regardless of their ability to lawfully carry a  
26 concealed weapon, creates significant safety risks to the officer, the surrounding public, and  
27 the individual brandishing the firearm.

28 //

1 11. Based on my patrol and command experience, firearms are often used in  
2 crimes of passion, robberies, assaults and gang activities.

3 12. I am informed and believe that Kathleen Raley of OCSD Support Services  
4 compiles data regarding the use of weapons in certain categories of offenses including  
5 robbery and assault for monthly Department of Justice ("DOJ") crime reporting purposes  
6 statistics. I am informed and believe that Ms. Raley pulled crime statistics for 2011 that had  
7 previously been reported to the DOJ. I reviewed the data. The data retrieved reflected  
8 crime statistics for areas patrolled by OCSD, including unincorporated areas of Orange  
9 County and contract cities: Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Laguna  
10 Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, San Juan  
11 Capistrano, Stanton, and Villa Park. I reviewed that data and concluded that of the 229  
12 robberies committed in 2011, 33 or 14% involved a firearm. In addition, of the 853 assaults  
13 committed in 2011, 50 or 6% involved a firearm. While these numbers are not shockingly  
14 high, OCSD has an interest in assuring that this remains the case to protect public safety.  
15 See Declaration of Kathleen Raley and Exhibit A attached thereto.

16 13. Because of the element of surprise necessarily involved in perpetrating robbery  
17 and assault, having legal access to a concealed firearm would be an attractive advantage. A  
18 concealed firearm could more easily be obtained and used in robberies and assaults if the  
19 "good cause" requirement were eliminated.

20 14. At my request, the Investigations Division, Gang Enforcement Teams,  
21 assembled data regarding the seizure of firearms in relation to gang crimes. Based on the  
22 information provided, I am informed and believe that the number of firearms seized over the  
23 last four years in crimes related to gang activity has increased. A "shall issue" CCW policy  
24 would increase that number further, presenting a threat to the public and law enforcement.

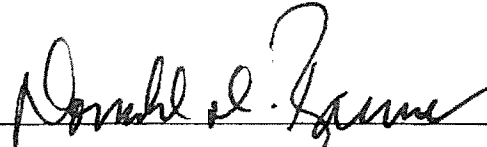
25 15. Based on my experience in the field and as commander of field operations, I  
26 am aware that it is common for gangs to engage lesser known associates, ie. those without  
27 significant or any criminal histories, to carry weapons to the locations where criminal  
28 activity is planned to occur. Under a "shall issue" CCW policy these lesser known

1 associates would likely be able to legally obtain a CCW License because they would pass  
2 the criminal background. This means more firearms could legally be carried to locations  
3 where criminal activity is planned to occur, increasing the likelihood that such weapons  
4 could be used.

5 16. The "good cause" requirement allows Orange County and the State to limit the  
6 number of weapons that the public at large has access to immediately, which protects both  
7 officers and the public. Increasing the numbers of concealed weapons increases the threat  
8 and possibility of firearm violence to the community at large and to law enforcement  
9 officers.

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

12 EXECUTED this 4th day of October 2012 at Santa Ana, California.

13  
14 

15 Commander Donald Barnes  
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**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 COMMANDER DONALD BARNES 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:

C.D. Michel, Esq.  
Email: cmichel@michellawyers.com  
Glenn S McRoberts, Esq.  
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562-216-4444  
Fax: 562-216-4445

Attorneys for Plaintiffs, Dorothy McKay,  
Diana Kilgore, Phillip Willms, Frederick  
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 9<sup>th</sup> day of October, 2012.

  
Marzette L. Lair

OFFICE OF THE COUNTY COUNSEL  
COUNTY OF ORANGE



Case 8:12-cv-01458-JVS-JPR Document 15-5 Filed 10/09/12 Page 1 of 21 Page ID #:546

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

**DECLARATION OF LIEUTENANT  
SHERYL DUBSKY IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO THE  
MOTION FOR PRELIMINARY  
INJUNCTION**

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

I, Lieutenant Sheryl Dubsky, 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 a Lieutenant with the Orange County Sheriff's Department ("OCSD"), and have been with the OCSD for 24 years. I am currently assigned to the Professional Standards Division ("PSD") and have held that assignment for approximately 15 months. In my role as Lieutenant of PSD, I manage and supervise the Internal Affairs,



1 Backgrounds, and Recruiting and Human Resources units, and the Carry Concealed  
2 Weapons ("CCW") and Business License desks. Prior to joining PSD, I served as Watch  
3 Commander at the Theo Lacy Jail Facility.

4 3. In my capacity in PSD, I also serve as Sheriff Sandra Hutchens' sole  
5 authorized designee to review and make final determinations on the issuance of CCW  
6 Licenses in the County. I review all completed submitted applications and evaluate good  
7 cause on an individual basis.

8 4. As the sole authorized designee to make final determinations with regard to  
9 CCW licenses, I am familiar with and implement on a daily basis OCSD's Policy 218. I am  
10 also familiar with Penal Code section 26150, the basis for Policy 218, which sets forth  
11 under what circumstances the sheriff of a county may issue a license to an applicant to carry  
12 a concealed weapon. Moreover, I am familiar with the Penal Code sections criminalizing  
13 the carrying of a concealed firearm, and the exceptions thereto – Penal Code sections  
14 25400, *et seq.* A true and correct copy of Policy 218 is attached hereto as Exhibit "A."

15 5. California is not a "shall issue" or "right to carry" State, but is instead a "may  
16 issue" State. The Penal Code sets forth the requirements that applicants for CCW licenses  
17 must meet. Of the requirements, the "good cause" requirement affords sheriffs or their  
18 authorized designees, discretion. Policy 218 is OCSD's implementation of the Penal  
19 Code's requirements. Policy 218 provides guidance and sets forth examples of criteria that  
20 establish "good cause":

21 Specific evidence that there has been or is likely to be an attempt  
22 on the part of a second party to do great bodily harm to the  
applicant.

23 The nature of the business or occupation of the applicant is such  
24 that it is subject to high personal risk and/or criminal attack, far  
greater risk than the general population.

25 A task of the business or occupation of the applicant requires  
26 frequent transportation of large sums of money or other valuables  
and alternative protective measures or security cannot be  
employed.

27 When a business or occupation is of a high-risk nature and  
28 requires the applicant's presence in a dangerous environment.  
The occupation or business of the applicant is such that no means

1 of protection, security or risk avoidance can mitigate the risk other  
2 than the carrying of a concealed firearm.

3 Personal protection is warranted to mitigate a threat to the  
4 applicant that the applicant is able to substantiate.

5 Good cause could include, but not be limited to, documented  
6 instances of threats to the personal safety of the applicant, his/her  
7 family or employees. Threats to personal safety may be verbal or  
8 demonstrated through actual harm committed in the place or work,  
9 neighborhood or regular routes of travel for business. The  
10 applicant should articulate the threat as it applies personally to the  
11 applicant, his/her family or employees. Non-specific, general  
12 concerns about personal safety are insufficient.

13 The finding of good cause should recognize that individuals may  
14 also face threats to their safety by virtue of their profession,  
15 business or status and by virtue of their ability to readily access  
16 materials that if forcibly taken would be a danger to society.  
17 Threats should be articulated by the applicant by virtue of his/her  
18 unique circumstances.

19 **Note:** These examples are not intended to be all-inclusive they  
20 are provided merely for your reference. Also, state and local laws  
21 do not prohibit an adult from having a concealed weapon in their  
22 home or place of business.

23 6. In considering good cause, I analyze the criteria listed in Policy 218. Good  
24 cause is evaluated on an individual basis. In Orange County, general, non-specific concerns  
25 about personal safety are not sufficient to establish good cause.

26 7. Melissa Soto, an Office Specialist in the Internal Affairs Division is charged  
27 with the task of intake and initial review of CCW license applications. After Ms. Soto  
28 intakes all application materials, assures completeness of the application, conducts an  
applicant interview, and writes a summarizing memorandum, she delivers the applications  
to me for initial review and a good cause determination. I meet with Ms. Soto to review  
each application individually and discuss them. On occasion, I will ask Ms. Soto to verify  
statements and/or documents in the application prior to making a decision. On these  
occasions, a second meeting takes place before I make the decision to conditionally grant or

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1 deny an application. If the application does not require any follow up, I make the decision  
2 to conditionally approve the application or to deny it after the initial review and meeting.  
3 This initial determination includes a determination of whether good cause has been  
4 demonstrated.

5 8. If I conditionally approve the application, Ms. Soto works with the applicant to  
6 assure that the remaining requirements for issuance of the license pursuant to Penal Code  
7 section 26150 are satisfied. If they are, I grant final approval of the application and a  
8 license is issued.

9 9. If the application is denied, I sign a denial letter, which is sent to the applicant.  
10 The applicant may request review of the determination, and submit additional support for  
11 the application. I review the application again and make a determination. An applicant may  
12 also request review directly to the Captain of PSD. Occasionally, an applicant will send  
13 their appeal request directly to the Sheriff, who will then designate an Assistant Sheriff,  
14 Commander, or Captain to review the application again. Nothing in the law or Policy 218  
15 prevents an applicant from re-applying at any time.

16 10. I have been provided with a copy of the First Amended Complaint and Motion  
17 for Preliminary Injunction in the matter of *McKay, et al. v. Sheriff Sandra Hutchens, et al.*  
18 Case No. SACV 12-1458JVS. I am familiar with the allegations of the named Plaintiffs,  
19 Dorothy McKay, Diana Kilgore, Phillip Willms, Fred Kogen and David Weiss. After  
20 reviewing the court documents, I had each application and file for each Plaintiff pulled to  
21 refresh my memory regarding these applicants. I reviewed and made the final  
22 determination to deny Ms. McKay, Mr. Willms, Mr. Kogen, and Mr. Weiss's applications.

23 11. Plaintiff Ms. Kilgore did not apply for a CCW license.

24 12. Plaintiff Ms. McKay's CCW license was denied because she did not establish  
25 sufficient good cause. She demonstrated no particularized threat to her personal safety, but  
26 instead stated a generalized fear due to her travelling. Attached hereto as Exhibit "B" is a  
27 true and correct copy of Ms. McKay's redacted good cause statement submitted with her  
28 application. The statement has been redacted for Court filing pursuant to the right to

1 privacy and California Government Code section 6254(u)(1): “(u)(1) Information contained  
2 in applications for licenses to carry firearms issued pursuant to Section 26150, 26155,  
3 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a  
4 municipal police department that indicates when or where the applicant is vulnerable to  
5 attack or that concerns the applicant's medical or psychological history or that of members  
6 of his or her family.”

7 13. Plaintiff Mr. Willms’ CCW license was denied because he did not establish  
8 sufficient good cause. Mr. Willms is the owner of a business who sometimes transports  
9 cash for deposit to his bank. He expressed a concern that he may be targeted while moving  
10 cash. However, in his written good cause statement provided November 1, 2011 he writes  
11 in the last sentence of the second paragraph, “With that I have told you so far, this is still not  
12 the reason I feel I need a CCW.” His letter then detailed his competitive shooting  
13 background. After the initial denial, Mr. Willms asked for reconsideration, again  
14 expressing that he could be targeted due to his making cash deposits. I again denied the  
15 application for failure to establish good cause. Attached hereto as Exhibit “C” are true and  
16 correct copies of Mr. Willms’ redacted original good cause statement submitted with his  
17 initial application and his redacted letter requesting an appeal and reiterating his asserted  
18 good cause. The statements have been redacted for Court filing pursuant to the right to  
19 privacy and California Government Code section 6254(u)(1) as noted in paragraph 12.

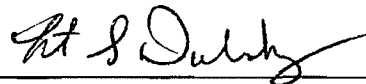
20 14. Plaintiff Mr. Weiss has applied for a CCW license twice recently, once in 2011  
21 and again in 2012. In 2011, I was not the Lieutenant that denied the application, but after  
22 reviewing the notes from the prior authorized designee and the summary of the application,  
23 it appears that addresses and telephone numbers could not be verified and good cause was  
24 not established. In 2012, Mr. Weiss re-applied and was denied because he did not establish  
25 good cause. Mr. Weiss stated that he was a pastor, whose church has approximately 20  
26 members, and that he travelled to visit church members and other congregations sometimes  
27 in “undesirable” areas. He had no particularized threats, but felt he needed a CCW License  
28 due to “the changing times” and media reports about attacks on other citizens. Attached

1 hereto as Exhibit "D" are true and correct copies of Mr. Weiss' redacted good cause  
2 statements from his 2011 and 2012 applications. The statements have been redacted for  
3 Court filing pursuant to the right to privacy and California Government Code section  
4 6254(u)(1) as noted in paragraph 12.

5 15. Plaintiff Mr. Kogen's CCW license was denied because he did not establish  
6 sufficient good cause. Mr. Kogen is a medical doctor who regularly acts a *mohel*,  
7 conducting newborn circumcisions in homes. Mr. Kogen submitted with his application an  
8 email he received in April 2012. The emailed denounced his chosen profession and  
9 implored him to stop. Neither the email nor its sender could be verified, and no imminent  
10 threat against Mr. Kogen was made. Attached hereto as Exhibit "E" is a true and correct  
11 copy of Mr. Kogen's redacted good cause statement. The statement has been redacted for  
12 Court filing pursuant to the right to privacy and California Government Code section  
13 6254(u)(1) as noted in paragraph 12.

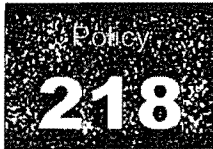
14 I declare under penalty of perjury under the laws of the State of California, that the  
15 foregoing is true and correct.

16 EXECUTED this 2 day of October 2012 at Santa Ana, California.

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19 Lieutenant Sheryl Dubsky  
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## Orange County Sheriff-Coroner Department

Policy Manual

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# 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.

## Orange County Sheriff-Coroner Department

### Policy Manual

#### *Carry Concealed Weapons License*

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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)).



## GOOD CAUSE STATEMENT FOR ISSUANCE OF A CONCEALED CARRY PERMIT

Dear Sheriff Hutchens:

I am a resident of the City of [REDACTED] in Orange County. My positions and duties include:

Public school teacher in the City of [REDACTED]

- To be clear, my intent is not to carry on school grounds, but merely to provide my background
- I am a full time Middle School Humanities teacher

Private tutor

- Attend clients' homes or public meeting places, often at later hours after school and in rural areas where cell coverage is minimal or non-existent

Professional (NRA Certified) Firearms Instructor and Range Safety Officer:

- Teach Basic Pistol course per NRA course guidelines
- Teach introduction to pistol at Women On Target clinics (an NRA sanctioned program)
- Oversee and coordinate shooting range activities
- Conduct Range Safety Briefings for new shooter events

President, NRA Members' Council of South Orange County:

- Speak before government bodies, private organizations, and public forums
- Organize and manage political interest groups that work in elections, gun shows, and public events
- Host membership meetings that are publicly advertised, identifying me as the point of contact
- [REDACTED] for use as exhibits or to be given away as prizes at NRA events
- Collect and/or [REDACTED] that may be given to the NRA
- Visit and build relationships with firearms-related businesses (gun shops, gun manufacturers, gun clubs, and firing ranges, etc.)
- Assist in the development, operation, and/or participation of firearms training seminars for elected officials, civilians (example: youth and women's groups, etc.), and other organizations

To fulfill my professional and volunteer duties, I am required to travel extensively and must operate in both urban and rural areas that are inherently unsafe. I travel by car throughout Orange County and the state, and I am often traveling alone along isolated roads. It is not unusual for me to [REDACTED] as part of my work, volunteer activities, and recreation.

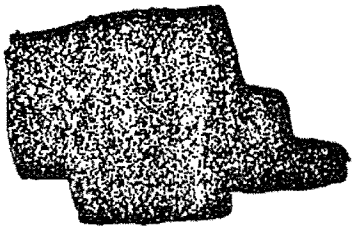
Because of my work and position as a volunteer, my personal contact information is available to almost anyone that desires to seek it out. My status as a Firearms Instructor and Range Safety Officer makes me a target of those who might assume I am transporting or carrying firearms for them to steal.

My experience with firearms comprises several years as a recreational shooter, as well as being an NRA Certified Pistol Instructor and NRA Certified Range Safety Officer. As such, I am extremely familiar with the proper usage of and safety protocol for firearms. I understand the responsibilities associated with carrying a firearm.

With recent legislation banning the open carrying of unloaded firearms being signed into law by Governor Brown (Assembly Bill 144, Portantino), the only lawful alternative available to me for carrying a firearm for self-defense purposes, which is my right guaranteed by the Second Amendment to the U.S. Constitution, is pursuant to a permit issued from the Orange County Sheriff's Office under California Penal Code section 12050 (to be section 26150 starting January 1, 2012).

In conclusion, for the reasons contained herein, I need a Concealed Carry Weapons Permit for personal protection and seek one from the Orange County Sheriff's Office.

Dorothy McKay



Wednesday, February 22,  
2012



To Sheriff Sandra Hutchens;

You recently notified me that my application for a ccw was turned down. I would like to appeal that decision and I have included more [REDACTED] deposits. As our advertising budget has grown larger over the last few months our showroom and oc marketplace sales have grown also. This has generated larger [REDACTED], and I am sure they will get even bigger with time. People may be using more cash instead of using plastic. No mater how large or small the deposit is, I still go to the bank and make a deposit [REDACTED]. Bad guys don't really know how much cash is in any deposit bag. I think the success of the company and its founders are important factors to consider. If those same bad guys have a brain they are going to go after some one who is worth taking the chance for; someone with deeper pockets. Someone who might go to an A.T.M. after dark. I really try not to do that, but I am trying to give you examples of what could happen. My business is very successful, thank god, many businesses are struggling. I guess what I am trying to say is, I could be targeted.

I am a good citizen, involved with the community. If you would like any more info please let me know.

Phillip H Willms

A handwritten signature in black ink, appearing to be 'Phillip H Willms', written over the typed name.





Tuesday, November 01, 2011

To  
Sheriff Sandra Hutchens

My name is Phillip H Willms I live at [REDACTED] ca. I would like to apply for a ccw. I realize That this is very difficult to obtain, but I will try to explain why I would think this is important to me, and my Safety.

I have a successful company here in [REDACTED] where we manufacture waterproof sport seatcovers for cars and Trucks. We also manufacture other products for hunting and fishing, some for firearms. Everything we make is Made from neoprene. We have a very successful retail showroom here and at our original location in [REDACTED]. We opened our showroom in [REDACTED] in 1992. One of our biggest cash generators is [REDACTED]. We have almost 90 employees working in our facility Here and [REDACTED]. Most of my employees have been with us a long time and I trust most of them. I have helped many become legal. Recently one of my most trusted employees who I helped Get papers, embezeled 37,000 dollars from our business. I look at this as a lesson and a cheap lesson at that. things Happen. With what I have told you so far, this is still not the reason I feel I need a ccw.

I am a competitive shooter. I shoot IPSC every [REDACTED]. I shoot all national Matches, or most anyway. My competition pistol is worth about \$[REDACTED] and I have a back up worth the same.

I also do 3 gun, I just returned from the nationals in Vegas, I did OK for my super senior class. I also travel Up and down the state and out of state for these matches. When you add the modified shotgun and rifle plus Pistol, in [REDACTED]. I have a special compartment built into [REDACTED]. I built it myself, when locked its very secure. I still have to carry them from my safe to [REDACTED] and all my employees and all the people they have told know about them. [REDACTED] is one of our Biggest customers in the Midwest. Last week while talking to their customer service rep he even mentioned He knew I was a very competitive shooter. I don't think I am being paranoid, but I am not dumb, lots of people Know I have guns.

If you google (3 gun nation) you will get an idea what I do.

In answering question section 2 I do have some ccw's from some of the other states I compete in, I go to Arizona And Nevada the most, I have heard you look down on this, but I have to be honest.

If you have any question please call

Phillip H Willms

[REDACTED] or [REDACTED]



[REDACTED]  
[REDACTED]  
[REDACTED] California [REDACTED]

O.C. Sheriff Department  
320 N. Flower St.  
Santa Ana, CA. 92703-0449  
Attn: Melissa Soto

I respectfully request your consideration in granting me a permit to carry a concealed weapon. As a pastor, I am frequently called upon to assist members in emergency situations. This requires me to travel to their homes, meet them at the hospital or help them if they are stranded. Often, these situations occur in the evening or early morning hours. In addition, the members in the congregation live in different cities and I am required to travel through questionable areas at night in order to assist them with the emergency at hand.

Also, as a member of the clergy my wife and I travel throughout the state and across country multiple times a year in order to attend conferences, speak to assemblies and assist sister churches who are in crisis. Your consideration concerning this request is greatly appreciated.

David E. Weiss, Sr.

December 12, 2011

O.C. Sheriff Department  
Attn: Melissa Soto  
320 N. Flower St.  
Santa Ana, CA. 92703-0449

Re: Application for CWP – David E. Weiss Sr.

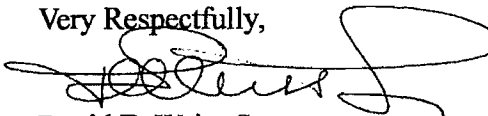
Earlier this year, I submitted a request for a CWP and it was subsequently declined for “good cause”. Due to my position as a pastor, I continue to do a significant amount of traveling both up and down the state of California as well as, across the states. During these travels, I frequently have to pass through undesirable areas in order to attend to a variety of church members needs at all hours of the day.

At [REDACTED] years old, I grew up in a time when nobody locked their doors or windows and you certainly never heard of drive by shootings. Therefore, the need to carry a weapon was never a consideration. However, times have changed considerably in the last 50 to 60 years. We are now told by the news media as well as, police departments to lock our doors and windows to ensure the safety of our loved ones. During the past year, a Congress woman and many others were shot outside a grocery store campaigning, an angry and upset husband committed mass murder in a local hair salon, criminals breaking into an 80 year old woman's house and robbing her at gun point and just a few days ago, a man was in the middle of Hollywood and Vine shooting wildly at unsuspecting citizens. The only reason there weren't more injuries sustained is because the person was thankfully a bad shot.

While I served this great country for [REDACTED] years in the United States Navy and continue to service the community as a Pastor, I do not consider myself a hero, nor am I a radical gun freak or a Rambo want to be. All I want to be able to do is protect my family, my congregation and myself as we strive to serve The Lord in a world that grows more dangerous by the day.

I respectfully request that you reconsider my application and issue me a CWP.

Very Respectfully,

 12/14/2011  
David E. Weiss Sr.

Dear Sir/Madam,

I am a California licensed physician requesting a permit to carry a concealed weapon. I do not make this request lightly. In recent days, I have received a frightening threat. It has made me re-examine the dangers inherent in my career, which as I will explain, often leads me into unknown places with no protection. I have always been reasonably concerned about my own safety, but now with this latest threat, the potential that I or my family may suffer harm seems all too present.

I am 45 years old and have been a practicing physician for most of my adult life. I currently make my living as a professional mohel. That is, I perform ritual circumcisions for newborn male children of the Jewish faith. My work over the past 27 years, has taken me to cities and towns throughout California, from glitzy Beverly Hills to dodgy desert border towns. The ceremonies are performed in private homes, and the arrangements are typically made over the telephone. Thus, when I arrive on the scene I am often meeting my clients for the first time. There have been occasions in the past in which I have felt uncomfortable, but so far no harm has befallen me.

However, as you are undoubtedly aware, the practice of circumcision has lately become very controversial. There are anti-circumcision activists who claim that this centuries old, medically certified procedure is a violent assault on children. Like many extremists, their outrage is manifest in threats. Mohels like me have been condemned in publications, broadcasts and on-line. But when I received the following letter, addressed to me personally, the imminent danger was instantly brought home.

*"What right do you or does anyone have to violate the bodily security of a vulnerable and unconsenting human being? None at all. You are a violent criminal and you belong in jail. Cease and desist from all mohel training activities, all bris ceremonies, and kill yourself. You deserve to die. You are guilty of the crime of assault with a weapon, against infants. One day the victims of what it is you are doing will stand up and hold you accountable, and I hope they burn you alive, literally burn you on a stake over a flaming heap. This is not a death threat, it is a plea that you reconsider the moral implications of the practice of circumcision, that you reconsider the validity of whatever religious nonsensical double think has driven you to adopt such a life course, and that you come to the rational realization that you have done such tremendous wrong to so many people that you kill yourself to make amends for your crimes. I am a victim of circumcision and I am speaking out to discourage the perpetrators from harming any more innocent people as I myself have been, and will have to cope with for the rest of my life. If there were no repercussions I would kill every mohel I could myself, but because the law forbids it, I will merely implore you to stop what you are doing. For every circumcision you perform there will be more and more people who grow up with a righteous vendetta against you and one day you will face the consequences of your actions at their hands." --Mr. Nat Taggart*

Let's examine this letter. While the writer claims it is not a death threat, the tone of his writing is clear. He is angry, even fanatical. He hypothesizes about "killing mohels." He uses the word "vendetta." As a sworn law enforcement officer, this not-so-thinly veiled warning certainly must seem familiar. How many times have ugly missives like this preceeded a crime? You must agree that the "Nat Taggarts" of this world need to be taken seriously.

That being said, when I duly reported this threat to the authorities, I was told (perhaps rightly so) that little could be done in response to provide me with protection at this stage. The author's address could not be traced. Indeed, his name seems to be an alias.

This note, and today's political climate is why I feel compelled to request this permit.

You should know that I am a trained gun owner who practices regularly at my local shooting range. As a family man, I am extraordinarily careful when it comes to my weapons and keep

them properly protected and stored. And, it should be noted, that while working as an emergency room physician in South El Monte years ago, I was granted a permit to carry by the police chief at the time. It has since expired.

In my community (and indeed the greater Los Angeles area) I have a unblemished reputation as a skilled doctor and religious official. In the Southern California Jewish community, I am fairly well known. This also presents a potential danger. I carry [REDACTED] [REDACTED] A number of my clients are celebrities. My contact information is public, and I am afraid that someone bent on doing me harm could easily find me. I would hate to arrive at a heretofore unknown client's home only to find someone like "Nat Taggart" waiting for me.

As I said before, I do not make this request lightly. I am fully aware of the responsibility that comes with a concealed weapons permit. But my life's record speaks for itself. (Indeed I am enclosing several letters of reference.) I am hoping that you will give my urgent request very careful consideration.

Sincerely,

Fred Kogen, MD

**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 LIEUTENANT SHERYL DUBSKY 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:

C.D. Michel, Esq.  
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562-216-4444  
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Attorneys for Plaintiffs, Dorothy McKay,  
Diana Kilgore, Phillip Willms, Frederick  
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 9<sup>th</sup> day of October, 2012.

  
Marzette L. Lair

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Attorneys for Plaintiffs / Petitioners

**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, CALIFORNIA, and  
 DOES 1-10,

Defendants.

**CASE NO.: SACV 12-1458JVS (JPRx)**

**NOTICE OF ERRATA AND  
 CORRECTION TO PLAINTIFFS'  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 PLAINTIFFS' MOTION FOR  
 PRELIMINARY INJUNCTION**

Date: October 29, 2012  
 Time: 1:30 p.m.  
 Location: Ronald Reagan Federal  
 Building  
 411 West Fourth Street  
 Room 1053  
 Santa Ana, CA 92701  
 Courtroom: 10C  
 Judge: James V. Selna  
 Date Action Filed: September 5, 2012



1 **TO THE COURT AND ALL PARTIES TO THIS ACTION:**

2 PLEASE TAKE NOTICE that Plaintiffs Dorothy Mackay, Diana Kilgore,  
3 Phillip Willms, Fred Kogen, David Weiss, and The CRPA Foundation (collectively  
4 “Plaintiffs”) hereby provide notice of errata and correction as follows:

5 On September 11, 2012, Plaintiffs filed their “Memorandum of Points and  
6 Authorities In Support of Plaintiffs’ Motion for Preliminary Injunction” and,  
7 unbeknownst to Plaintiffs’ counsel, when the memorandum was converted from  
8 Word Perfect to PDF, the memorandum was produced with font inconsistencies.  
9 Plaintiffs’ counsel also reformatted the header “Introduction” from having it on the  
10 left side of the document to making it centered. A corrected 14-point font version of  
11 their “Memorandum of Points and Authorities In Support of Plaintiffs’ Motion for  
12 Preliminary Injunction” is attached hereto as Exhibit A.

13 Respectfully Submitted,

14 Date: September 18, 2012

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**EXHIBIT “A”**

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7  
 8 **IN THE UNITED STATES DISTRICT COURT**  
 9 **CENTRAL DISTRICT OF CALIFORNIA**  
 10 **SOUTHERN DIVISION**

11 DOROTHY McKAY, DIANA )  
 KILGORE, PHILLIP WILLMS, )  
 12 FRED KOGEN, DAVID WEISS, and )  
 THE CRPA FOUNDATION, )

13 Plaintiffs, )

14 v. )

15 SHERIFF SANDRA HUTCHENS, )  
 16 individually and in her official )  
 capacity as Sheriff of Orange County, )  
 17 California, ORANGE COUNTY )  
 SHERIFF-CORONER )  
 18 DEPARTMENT, COUNTY OF )  
 ORANGE, and DOES 1-10, )

19 Defendants. )  
 20 )  
 21 )

**CASE NO: SACV 12-1458JVS**  
**(JPRx)**

**MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT OF**  
**PLAINTIFFS' MOTION FOR**  
**PRELIMINARY INJUNCTION**

**[Fed. R. Civ. P. 65]**

Date: October 15, 2012

Time: 1:30 p.m.

Location: Ronald Reagan Federal  
 Building  
 411 West Fourth Street  
 Room 1053  
 Santa Ana, CA 92701

Courtroom: 10C

Judge: James V. Selna

Date Action Filed: September 5, 2012

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## INTRODUCTION

Defendants Orange County Sheriff Sandra Hutchens, Orange County Sheriff-Coroner Department, and the County of Orange (hereinafter “Sheriff Hutchens”) have adopted and implement an official written policy for issuing licenses to publicly carry a handgun that requires the applicants to prove they have a special need for such a license beyond a general desire for self-defense. This standard disqualifies most Orange County residents, including Plaintiffs, from obtaining such a license.

These licenses are the only lawful means to generally carry a handgun for self-defense in public. As such, Sheriff Hutchens’ policy deprives law-abiding adults like Plaintiffs of their right to bear arms under the Second Amendment to the United States Constitution; particularly, their right, as the Supreme Court described it, “to possess and carry firearms in case of confrontation” for self-defense purposes. *District of Columbia v. Heller*, 554 U.S. 570, 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

There is no textual or historical support for Sheriff Hutchens’ policy of prohibiting *most* people from exercising in *most* public places their fundamental, constitutional right to armed self-defense. Sheriff Hutchens’ policy is thus unconstitutional on its face and as applied to Plaintiffs, and by operation of law causes Plaintiffs irreparable harm. Enjoining implementation of her policy will restore Plaintiffs’ constitutional rights and also restore those rights to all Orange County residents, thereby serving the public interest as well as equity.

Injunctive relief preventing Sheriff Hutchens from continuing to implement her current unconstitutional policy pending resolution of this lawsuit is warranted.

## STATEMENT OF FACTS

With few and very limited exceptions, California has banned the unlicensed carrying of handguns in most public places whether loaded (Cal. Penal Code § 25850) or unloaded (Cal. Penal Code § 26350), and whether concealed (Cal. Penal

1 Code § 25400) or exposed (Cal. Penal Code § 26350).

2 California law vests in Sheriff Hutchens the authority to issue licenses that  
3 allow for carrying loaded handguns about generally in public (a “Carry License”)  
4 to Orange County residents who submit a written application showing they meet  
5 certain statutorily required criteria. Cal. Penal Code § 26150.

6 A Carry License applicant must successfully complete a handgun training  
7 course covering handgun safety and California firearm laws (Cal. Penal Code  
8 § 26165), and must pass a criminal background check (Cal. Penal Code § 26185).  
9 And, even if an applicant successfully completes the background check and a  
10 suitable handgun training course, a Carry License may only be issued if the  
11 applicant is additionally proven to be of “good moral character” and to have “good  
12 cause” for carrying a loaded handgun in public. Cal. Penal Code § 26150.

13 Carry License issuing authorities currently exercise discretion in deciding  
14 whether an applicant has “good cause” to be issued a license. While most issue  
15 such licenses to virtually all law-abiding, competent adult applicants seeking one  
16 for self-defense who meet the other criteria, some choose to rarely issue them.

17 California law requires that each issuing authority publish an official written  
18 policy articulating, among other things, what the sheriff has chosen to consider  
19 “good cause” for a Carry License. Cal. Penal Code § 23160. Sheriff Hutchens has  
20 chosen to adopt an official written policy that rejects as “good cause” applicants’  
21 “general concerns about personal safety.” (Pls.’ Req. Judicial Notice, Ex. OO.) To  
22 even *potentially* satisfy Sheriff Hutchens’ “good cause” standard, applicants must  
23 at minimum prove they are the target of a specific threat or engage in business that  
24 subjects them to “far greater risk than the general population.” (Pls.’ Req. Judicial  
25 Notice, Ex. OO.)

26 Because California law generally prohibits the unlicensed, public carrying  
27 of handguns, a Carry License is the only means by which an individual can  
28 lawfully go about armed for self-defense in most public places in California. In

1 short, the Sheriff's policy of denying such licenses denies *most* individuals the  
2 ability to lawfully carry a firearm for self-defense in *most* public places.

3 Plaintiffs Dorothy McKay, a public school teacher and National Rifle  
4 Association-certified Firearms Instructor / Range Safety Officer who often travels  
5 to remote areas to provide tutoring and training services (Decl. of Dorothy McKay  
6 Supp. Mot. Prelim. Inj. ["McKay Decl."] ¶¶ 4-5); Phillip Willms, a businessman  
7 and competitive shooter (Willms Decl. ¶¶ 3-6); Fred Kogen, a medical doctor who  
8 travels performing the controversial procedure of infant circumcision (Kogen  
9 Decl. ¶¶ 4-5); and David Weiss, a pastor who travels providing ministry services  
10 often to unknown parishioners in unfamiliar areas (Weiss Decl. ¶ 4); each applied  
11 to Sheriff Hutchens for a Carry License, asserting a desire for general self-defense  
12 as their "good cause." (McKay Decl. ¶¶ 7-8; Willms Decl. ¶¶ 8-9; Kogen Decl. ¶¶  
13 7-8; Weiss Decl. ¶¶ 6-7.) Sheriff Hutchens denied each of them for lack of "good  
14 cause." (McKay Decl. ¶ 9; Willms Decl. ¶ 10; Kogen Decl. ¶ 9; Weiss Decl. ¶ 8.)<sup>1</sup>

15 Supporters of Plaintiff The CRPA Foundation, such as Plaintiff Diana  
16 Kilgore, refrain from applying for a Carry License from Sheriff Hutchens because  
17 they do not meet her official heightened "good cause" standard, and it would be  
18 futile to do so. (Kilgore Decl. ¶¶ 4-7; Silvio Decl. ¶¶ 7-8.)

### 19 ARGUMENT

20 Plaintiffs seeking a preliminary injunction must establish that: (1) they are  
21 likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the  
22 absence of preliminary relief; (3) the balance of equities tips in their favor; and (4)  
23 an injunction is in the public interest. *Am. Trucking Ass'ns v. City of Los Angeles*,  
24 559 F.3d 1046, 1052 (9th Cir. 2009)). Plaintiffs can satisfy their showing under  
25 each prong. A preliminary injunction is thus appropriate here.

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26  
27 <sup>1</sup> Plaintiff Willms requested reconsideration of his denial, and on March 21,  
28 2012, his denial was confirmed. (Willms Decl. ¶¶ 11-12.)

1 **I. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS**  
2 **BECAUSE SHERIFF HUTCHENS' POLICY ABROGATES THEIR**  
3 **FUNDAMENTAL SECOND AND FOURTEENTH AMENDMENT**  
4 **RIGHTS**

5 **A. Carrying Arms for Self-Defense, Whether in Private or Public,**  
6 **Is Core Activity Protected Under the Second Amendment**

7 At the end of its detailed parsing of the Second Amendment's operative  
8 clause in *Heller*, the Supreme Court concluded that "[p]utting all of these textual  
9 elements together, we find that they guarantee the individual right to possess *and*  
10 *carry* weapons in case of confrontation." *Heller*, 554 U.S. at 592 (emphasis  
11 added). In defining what it means to "bear" or "carry" arms, the Court adopted  
12 Justice Ginsburg's definition from an earlier case, finding "the most familiar  
13 meaning" is to "wear, bear, or carry . . . upon the person or in the clothing or in a  
14 pocket, for the purpose . . . of being armed and ready for offensive or defensive  
15 action in a case of conflict with another person." *Id.* at 584 (citation omitted).

16 As the Court explained in *McDonald v. City of Chicago*, 561 U.S. 3025, 130  
17 S. Ct. 3020, 177 L. Ed. 2d 894 (2010): "Self-defense is a basic right, . . . and in  
18 *Heller*, we held that individual self-defense is 'the central component' of the  
19 Second Amendment right." *Id.* at 3036 (citation omitted). The Court thus  
20 characterized the right to bear arms for self-defense as part of the holding, not  
21 mere dictum. *Heller* and *McDonald* repeatedly confirm this. *See, e.g., Heller*, 554  
22 U.S. at 628 ("the inherent right of self-defense has been central to the Second  
23 Amendment right"); *McDonald*, 130 S. Ct. at 3023 ("[*Heller*] concluded that  
24 citizens must be permitted 'to use handguns for the core lawful purpose of self-  
25 defense' "). Further, the right to armed self-defense exists in both private and  
26 public settings. As discussed in detail, *infra*, *Heller* and *McDonald* expressly,  
27 implicitly, and repeatedly make this point – even the dissent in *Heller* concedes it.

28 Here, Sheriff Hutchens' Carry License policy completely deprives Plaintiffs  
and *most* Orange County residents from carrying arms for self-defense purposes in  
*almost all* public places. Such a comprehensive prohibition of a fundamental right



1 is necessarily unconstitutional. So, while important, this case is simple.

2 As explained below, the proper test – and the only test approved by the  
3 Supreme Court – for analyzing broad-based prohibitions on the exercise of Second  
4 Amendment rights is the scope-based test applied in *Heller* and *McDonald*. So this  
5 Court need not wade into the standard of review quagmire. In any event, whatever  
6 standard ultimately applies here, the burden is on Sheriff Hutchens to prove her  
7 policy survives *some* form of heightened judicial review. And that she cannot do.

8 **B. *Heller* and *McDonald* Endorse a Scope-Based Analysis for Second**  
9 **Amendment Challenges, Not a Means-Ends Approach That**  
**Necessarily Entails a Balancing of Interests**

10 The Supreme Court, while not settling on a framework for reviewing all  
11 Second Amendment challenges, has left little doubt that courts are to assess gun  
12 laws based on “both text and history,” *Heller*, 554 U.S. at 595, and not by  
13 resorting to interest-balancing tests. The Supreme Court rejects the “tiers-of-  
14 scrutiny” framework. *Id.* at 628 n.27, 634-35. *Heller* advances an analytical  
15 approach that first focuses on “examination of a variety of legal and other sources  
16 to determine *the public understanding* of [the] legal text,” *id.* at 605, with  
17 particular focus on “the founding period,” *id.* at 604, to determine whether the  
18 restricted activity falls within the scope of the Second Amendment. If it does, the  
19 court again turns to “text and history” to determine whether the particular  
20 restriction is nevertheless permissible because it is similar or analogous to  
21 restrictions historically understood as permissible limits on the right to bear arms,  
22 i.e., whether there is “historical justification for those regulations.” *Id.* at 635.

23 In short, where sufficient historical justifications exist for a restriction on  
24 activity falling within the scope of the right, then the restriction is valid; if not, it  
25 is invalid. *See id.* at 634-35. The presumption, of course, is that activity falling  
26 within the scope of the right to arms “shall not be infringed,” with the burden on  
27 the government to justify the challenged restriction, *based on text, history, and*  
28 *tradition. See id.* at 634-36.

1 The Supreme Court's reliance upon text and history rather than judicial  
2 balancing is also reflected in what *Heller* did *not* examine. Notably absent from its  
3 analysis is any reference to "compelling interests," "narrowly tailored" laws, or  
4 any other means-ends scrutiny jargon. Nor was there talk of "legislative findings"  
5 purporting to justify the District's restrictions. Instead, *Heller* focused on whether  
6 the challenged laws restricted the right to arms as it was understood by those who  
7 drafted and enacted the Second and Fourteenth Amendments. *Id.* at 626-34.

8 The Court gleaned its understanding from an extensive examination of the  
9 textual and historical narrative of the right to arms, *id.* at 605-19, emphasizing that  
10 "[c]onstitutional rights are enshrined with the scope they were understood to have  
11 when the people adopted them, whether or not future legislatures or (yes) even  
12 future judges think that scope too broad." *Id.* at 634-35.

13 The *Heller* Court ultimately found that handguns are arms protected by the  
14 Second Amendment, *id.* at 629, and held that keeping handguns in one's home for  
15 self-defense purposes is core conduct protected by the same, *id.* at 635. Because  
16 the District's handgun ban and locked-storage requirement directly conflicted with  
17 or precluded protected conduct, and because there was no historical antecedent for  
18 such restrictions, the laws were deemed per se unconstitutional. *Id.* at 628-30.

19 The Court's later decision in *McDonald* further underscored the notion that  
20 history and tradition, rather than burdens and benefits, should guide analyses of  
21 the Second Amendment's scope. Like *Heller*, *McDonald* did not use balancing  
22 tests, and it expressly rejected judicial assessment of "the costs and benefits of  
23 firearms restrictions," stating that courts should not make "difficult empirical  
24 judgments" about the efficacy of particular gun regulations. *McDonald*, 130 S. Ct.  
25 at 3050. This language is compelling. Means-ends tests, like strict or intermediate  
26 scrutiny, necessarily require assessing the "costs and benefits" of regulations, as  
27 well as "difficult empirical judgments" about their effectiveness.

28 As such, those tests are inappropriate here. This court should evaluate

1 Sheriff Hutchens' policy using the same scope-based, historical test employed by  
2 the Supreme Court in both *Heller* and *McDonald*.

3 **C. Sheriff Hutchens' Policy and Application Thereof Cannot**  
4 **Survive a *Heller* Scope-Based Analysis**

5 In California, with limited exceptions, the only lawful way one can carry a  
6 handgun in public generally for self-defense purposes is with a Carry License.  
7 This means Sheriff Hutchens' policy bars those, including Plaintiffs, who do not  
8 cite a "good cause" that she finds acceptable from being able to legally go about  
9 armed for self-defense outside of their homes. For her policy to be valid, the  
10 Sheriff must show that prohibiting law-abiding, competent adults from exercising  
11 their right to go about armed for self-defense in public, unless they can prove  
12 some special need for doing so that she subjectively agrees with, is commonplace  
13 in our history and traditions. Sheriff Hutchens can make no such showing.

14 The text of the Second Amendment does not limit the carry-right to within  
15 the home. As *Heller* noted, "the Second Amendment, like the First and Fourth  
16 Amendments, codified a *pre-existing* right . . . declar[ing] only that it 'shall not be  
17 infringed.' " *Heller*, 554 U.S. at 592. And nothing in the historical record suggests  
18 this "[pre-existing] individual right to possess and carry weapons in case of  
19 confrontation," *id.*, has been regarded as limited to the home.

20 Moreover, *Heller* did *not* suggest that carrying firearms could be generally  
21 banned in public or that the right to arms was limited to one's home. It did suggest  
22 that laws restricting possession in "sensitive places" might be lawful, *id.* at 626,  
23 and it cited several cases indicating that regulations on the manner of public carry  
24 (open versus concealed) might also pass constitutional muster, *id.* at 629. But, as  
25 discussed in detail below, both observations support an historical understanding  
26 that public carry may be regulated to some extent but must be permitted, generally.

27 **1. There Is No Historical Support for Bans on the General**  
28 **Carrying of Firearms in Public for Self-defense**

Firearms carried for self-defense have historically been ubiquitous in  
American public life. See *Judy v. Lashley*, 50 W.Va. 628, 41 S.E. 197, 200 (1902)

1 (citing 5 *The American & English Encyclopedia of Law* 729 (David S. Garland &  
2 Lucius P. McGehee, 2d ed. 1896)) (“So remote from a breach of the peace is the  
3 carrying of weapons, that at common law it was not an indictable offense, nor any  
4 offense at all.”) As the *Heller* Court noted, “the right [to arms] secured in 1689 as  
5 a result of the Stuarts’ abuses was by the time of the founding understood to be an  
6 individual right protecting against both *public* and private violence.” *Heller*, 554  
7 U.S. at 594 (emphasis added). Our Founding Fathers certainly seem to have been  
8 of this understanding.<sup>2</sup> Many jurisdictions even “required individual arms-bearing  
9 for public-safety reasons.” *Id.* at 601.<sup>3</sup>

10 Typical regulations of arms-bearing during the founding era were narrowly  
11 tailored for specific purposes, such as laws prohibiting slaves from bearing arms<sup>4</sup>  
12 or, the most prevalent, laws codifying the common-law offense of carrying  
13 unusual arms to the terror of the people.<sup>5</sup> This narrow limit on the right to bear  
14

15 <sup>2</sup> Thomas Jefferson wrote a nephew, “Let your gun therefore be the constant  
16 companion of your walks.” Thomas Jefferson, *Writings* 816-17 (Merrill D.  
17 Peterson ed., 1984). John Adams publicly carried arms Anne H. Burleigh, *John*  
18 *Adams* 8-9 (1969), as did George Washington Benjamin O. Tayloe, *Our Neighbors*  
19 *on LaFayette Square: Anecdotes and Reminiscences* 47 (1872).

20 <sup>3</sup> For example, In 1623, Virginia forbade its colonists to travel unless they  
21 were “well armed”; in 1631 it required target practice on Sunday and for people to  
22 “bring their peeces to church.” *The Right To Keep And Bear Arms: Report of the*  
23 *Subcommittee on the Constitution of the Committee on the Judiciary*, U.S. Senate,  
24 97th Cong., 2d Sess. 3 (1982) (footnotes omitted).

25 <sup>4</sup> See, e.g., *An Act for the Better Ordering and Governing Negroes and Other*  
26 *Slaves in this Province, and to Prevent the Inveigling or Carrying Away Slaves from*  
27 *Their Masters or Employers* (Ga. 1765), in *Statutes Enacted by the Royal Legislature*  
28 *of Georgia* 668 (1910) (making it generally unlawful for “any slave, unless in the  
presence of some white person, to carry and make use of firearms”).

<sup>5</sup> See *An Act Forbidding and Punishing Affrays* (Va. 1786), in *A Collection*  
*of All Such Acts of the General Assembly of Virginia* 33 (Augustine Davis ed.,  
1794).

1 arms in the last-mentioned regulation does not apply “unless such [firearm]  
2 wearing be accompanied with such circumstances as are apt to terrify the people;  
3 consequently the wearing of common weapons, or having the usual number of  
4 attendants, merely for ornament or defence, where it is customary to make use of  
5 them, will not subject a person to the penalties of this act.” William W. Hening,  
6 *The New Virginia Justice, in The Commonwealth of Virginia* 50 (2d ed. 1810).  
7 Thus, although “going armed with dangerous or unusual weapons, is a crime  
8 against the public peace, by terrifying the people of the land . . . it should be  
9 remembered, that in this country the constitution guaranties to all persons the right  
10 to bear arms; then it can only be a crime to exercise this right in such a manner as  
11 to terrify the people unnecessarily.” Charles Humphreys, *A Compendium of the*  
12 *Common Law in Force in Kentucky* 482 (1822).<sup>6</sup>

13 While this widely accepted prohibition on bearing arms with the purpose to  
14 terrify confirms some limitations on the right were – and still are – tolerated by the  
15 Second Amendment, its prevalence militates against the validity of policies like  
16 Sheriff Hutchens’ that broadly prohibit law-abiding citizens from peaceably  
17 carrying operable firearms in non-sensitive public places for their self protection.

18 Those who wrote and ratified the Fourteenth Amendment understood the  
19 right to bear arms in precisely the same way. In 1866, a Senator remarking on the  
20 Freedmen’s Bureau Act said “the founding generation ‘were for every man bearing  
21 his arms about him and keeping them in his house, his castle, for his own defense.’  
22 ” *Heller*, 554 U.S. at 616 (quoting Cong. Globe, 39th Cong., 1st Sess., 362, 371  
23 (1866)); *see also id.* at 614-15 (citing Stephen P. Halbrook, *Freedmen, the*  
24 *Fourteenth Amendment, and the Right to Bear Arms, 1866-1876*, at 19 (1998)).

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25  
26 <sup>6</sup> *See also State v. Huntly*, 25 N.C. 418, 422-23 (1843) (“[I]t is to be  
27 remembered that the carrying of a gun *per se* constitutes no offence. For any  
28 lawful purpose . . . the citizen is at perfect liberty to carry his gun. It is the wicked  
purpose – and the mischievous result – which essentially constitute the crime.”)

1           Additionally, an 1866 report to Congress from the Freedmen's Bureau  
2       stated: "There must be 'no distinction of color' in the right to carry arms, any more  
3       than in any other right." H.R. Exec. Doc. No. 70, 39th Cong., 1st Sess., 297  
4       (1866). A Mississippi court recognized this in 1866 when it struck down a state  
5       ban on carrying a firearm without a license: "While, therefore, the citizens of the  
6       State and other white persons are allowed to carry arms, the freedmen can have no  
7       adequate protection against acts of violence unless they are allowed the same  
8       privilege." Halbrook, *supra*, at 57-58 (quoting *State v. Wash Lowe*, reprinted in  
9       N.Y. Times, Oct. 26, 1866, at 2). Thus, carrying arms for personal defense was  
10      widely understood as a right enjoyed by all free people.

11          The *McDonald* Court embraced this view when it cited as an example of  
12      laws that would be nullified by the Fourteenth Amendment, a statute providing  
13      "no freedman, free negro or mulatto, not in the military service of the United  
14      States government, and not licensed so to do by the board of police of his or her  
15      county, shall keep *or carry* fire-arms of any kind." 130 S. Ct. at 3038 (internal  
16      quotation omitted) (emphasis added). The *McDonald* Court likewise condemned  
17      "Regulations for Freedman in Louisiana" which stated no freedman "shall be  
18      allowed to carry firearms, or any kind of weapons, within the parish, without the  
19      written special permission of his employers, approved and indorsed by the nearest  
20      and most convenient chief of patrol." *Id.* (citing 1 Walter L. Fleming,  
21      *Documentary of History of Reconstruction* 279-80 (1950)).

22          Further evidence that a right to publicly carry arms for self-defense has been  
23      historically recognized is found in the numerous state court cases interpreting  
24      constitutional right to arms provisions. "A large body of relevant precedent affirms  
25      that the right to bear arms extends outside the home. Thus, courts already have  
26      many of the resources they need to resolve the carry rights cases." Michael P.  
27      O'Shea, *Modeling the Second Amendment Right to Carry Arms (I): Judicial*  
28      *Tradition and the Scope of "Bearing Arms" for Self-Defense*, 61 Am. U. L. Rev.



1 585, 623-32 (2012) (discussing body of case law from state courts articulating  
2 right to carry firearms outside of the home for self-defense purposes).

3 **2. Neither *Heller* Nor *McDonald* Limit Bearing Arms to Inside**  
4 **the Home; Both Assume Public Carry in Some Manner**

5 Despite this historical record, some district courts have limited the Second  
6 Amendment's protections to the home or, to the extent they recognize a right  
7 outside the home (or assume one for purposes of analysis), afford it very little  
8 protection. The California district courts to have considered Second Amendment  
9 challenges to sheriffs' policies that reject general self-defense as "good cause"  
10 have upheld them by either limiting the right to the home, *see, e.g., Richards v.*  
11 *County of Yolo*, 821 F. Supp. 2d 1169, 1174-75 (E.D. Cal. May 16, 2011), or by  
12 remaining agnostic on whether the right extends beyond the home and upholding  
13 such policies because they nevertheless meet "intermediate scrutiny," *see, e.g.,*  
14 *Civil Minutes - General, Thomson v. Torrance Police Dept.* 7-10, No. 11-06154  
15 (C.D. Cal. July 2, 2012), ECF No. 70; Order Re: Plaintiff's and Defendants'  
16 Motions for Summary Judgment 5-7, *Birdt v. Beck*, No. 10-08377 (C.D. Cal. Jan.  
17 13, 2011), ECF No. 96; *Peruta v. County of San Diego*, 758 F. Supp. 2d 1106,  
18 1116-17 (S.D. Cal. 2010).

19 Those courts confining the Second Amendment, or at least its core, to the  
20 home based on *Heller*'s specific facts not only ignore the historical record, but  
21 also *Heller*'s detailed analysis and findings on the right's scope. For instance, in  
22 noting the right – like all rights – is not unlimited, *Heller* cited two nineteenth  
23 century state court cases that upheld *concealed* carry prohibitions, *State v.*  
24 *Chandler*, 5 La. Ann. 489, 489-90 (1850) and *Nunn v. State*, 1 Ga. 243, 251  
25 (1846). *Heller*, 554 U.S. at 626. But both cases involved prohibitions where the  
26 right to arms was still readily available by way of *open* carry. *Chandler*, 5 La.  
27 Ann. at 490 (noting the prohibition on carrying concealed weapons "interfered  
28 with no man's right to carry arms . . . 'in full view,' which places men upon an  
equality"); *Nunn*, 1 Ga. at 251 ("[S]o far as the act . . . seeks to suppress the



1 practice of carrying certain weapons *secretly*, that it is valid, inasmuch as it does  
2 not deprive the citizen of his *natural* right of self-defence, or of his constitutional  
3 right to keep and bear arms. But that so much of it, as contains a prohibition  
4 against bearing arms *openly*, is in conflict with the Constitution, and *void*; . . .”)   
5 Thus both cases acknowledge a right to public carry in some manner.

6 This same view of the right to public carry is reflected in *Heller*’s  
7 discussion of two other state supreme court opinions holding open carry  
8 prohibitions invalid. *See Heller*, 554 U.S. at 629 (citing *Andrews v. State*, 50 Tenn.  
9 165, 187 (1871); *State v. Reid*, 1 Ala. 612, 616-17 (1840)).

10 In *Andrews v. State*, the Tennessee Supreme Court likewise held that a  
11 statute that forbade openly carrying a pistol “publicly or privately,  
12 without regard to time or place, or circumstances,” violated the state  
13 constitutional provision (which the court equated with the *Second*  
14 *Amendment*). That was so even though the statute did not restrict the  
15 carrying of long guns. *See also State v. Reid*, (“A statute which, under  
16 the pretence of regulating, amounts to a destruction of the right, or  
17 which requires arms to be so borne as to render them wholly useless for  
18 the purpose of defence, would be clearly unconstitutional”).

19 *Id.* (internal citations omitted).

20 Further support for the right to public carry in some manner, either open or  
21 concealed, appears in legal treatises cited by *Heller*. *See, e.g.*, William Blackstone,  
22 *The American Students’ Blackstone* 84 n.11 (G. Chase ed. 1884) (“[I]t is generally  
23 held that statutes prohibiting the carrying of *concealed* weapons are not in conflict  
24 with these constitutional provisions, since they merely forbid the carrying of arms  
25 *in a particular manner . . .*”), cited in *Heller*, 554 U.S. at 626 (emphasis added).

26 So *Heller* confirms that this country has historically required government to  
27 make available to all law-abiding, competent adults some manner to generally be  
28 armed for self-defense in public. And, in noting that “laws forbidding the carrying  
of firearms in sensitive places such as schools and government buildings” would  
be “presumptively lawful,” *Heller* reaffirms a right to publicly bear arms exists  
today. 554 U.S. at 627 n.26. For, it implies that forbidding the carrying of firearms  
in “non-sensitive” places is *not* “presumptively lawful” and that even in “sensitive

1 places” the “presumption” may be overcome. If the right were limited to the home,  
2 this “sensitive places” qualifier to public carry would be superfluous. Even Justice  
3 Stevens concedes the *Heller* majority’s view of the Second Amendment includes a  
4 right of law-abiding adults to carry arms in public for self-defense purposes and  
5 that laws broadly denying that right are likely to fail: “Given the presumption that  
6 most citizens are law abiding, and the reality that the need to defend oneself may  
7 suddenly arise in a host of locations outside the home, I fear that the District’s  
8 policy choice may well be just the first of an unknown number of dominoes to be  
9 knocked off the table.” *Heller*, 554 U.S. at 679-80 (Stevens, J., dissenting).

10 Recognizing *Heller*’s observations correctly, several district courts have  
11 definitively confirmed the right of law-abiding adults to publicly bear arms.<sup>7</sup> See  
12 e.g., *Bateman v. Perdue*, No. 10-265, 2012 WL 3068580, at \*4 (E.D. N.C. Mar.  
13 29, 2012) (the right to bear arms “is not strictly limited to the home environment  
14 but extends in some form to wherever [militia] activities or [self-defense or  
15 hunting] needs occur”) (citations omitted); *United States v. Weaver*, No. 09-00222,  
16 2012 WL 727488, at \*4 n.7 (S.D. W. Va. Mar. 6, 2012) (“The fact that courts may  
17 be reluctant to recognize the protection of the Second Amendment outside the  
18 home says more about the courts than the Second Amendment. Limiting this  
19 fundamental right to the home would be akin to limiting the protection of First  
20 Amendment freedom of speech to political speech or college campuses”);  
21 *Woollard v. Sheridan*, No. 10-02068, 2012 WL 695674, at \*7 (D. Md. Mar. 2,

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22  
23  
24  
25 <sup>7</sup> Plaintiffs cite district court cases from other jurisdictions because, due to  
26 its nascent state, Second Amendment jurisprudence offers little by way of binding  
27 precedent beyond *Heller* and *McDonald*. And, Plaintiffs wish to provide this Court  
28 cases showing the California district courts to have ruled on this issue conflict  
with a growing consensus that there is a right to armed self-defense in public.

2012) (“the right to bear arms is not limited to the home.”).<sup>8</sup>

While some courts have gone astray by either limiting the right to the home, accepting the non sequitur that because in-home firearm possession is a “core right” public possession cannot be, and/or wrongly applying means-ends scrutiny (or the wrong version thereof), this Court now has the opportunity to adopt an approach consistent with *Heller* and *McDonald*. In doing so, this Court should find that, while government may regulate carrying arms, the Second Amendment as historically recognized requires allowing law-abiding, competent adults some manner to be publicly “armed and ready” “in case of confrontation.” In California, that manner is a Carry License, which Sheriff Hutchens wrongly denies Plaintiffs.

**D. If the Court Employs a Means-Ends Test, Strict Scrutiny Must Apply Because Core Second Amendment Activity Is Involved**

**1. Laws Impinging Upon Fundamental Rights Warrant Strict Scrutiny**

When a law interferes with fundamental constitutional rights, it is subject to “strict judicial scrutiny.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 54, 100 S. Ct. 948, 960, 74 L. Ed. 2d 794 (1983) (“strict scrutiny [is] applied when government action impinges upon a fundamental right protected by the Constitution”). *McDonald* laid to rest any doubt about the fundamental nature of the right to bear arms, declaring “the right to bear arms was fundamental to the newly formed system of government.” 130 S. Ct. at 3037; *accord id.* at 3042. And the Supreme Court has made clear the Second Amendment does not deserve a lesser status from other rights. *See id.* at 3043 (plurality op.) (“what [respondents] must mean is that the Second Amendment should be singled out for special—and specially unfavorable—treatment. We reject that suggestion.”); *see also id.* at 3044 (rejecting plea to “treat the right recognized in *Heller* as a second-class right,

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<sup>8</sup> Though these courts mostly interpreted the Second Amendment’s scope accurately, they incorrectly applied means-ends scrutiny.

1 subject to an entirely different body of rules than the other Bill of Rights  
2 guarantees”). In short, the “default” standard of review for restrictions on  
3 fundamental rights must be strict scrutiny. The right to bear arms is no exception.

## 4 **2. *Heller* Rejects Rational Basis and Interest Balancing Tests**

5 *Heller* did not explicitly state strict scrutiny is required of laws that restrict  
6 rights protected by the Second Amendment because the Court eschewed levels of  
7 scrutiny in favor of the scope-based, historical approach outlined above. *Heller*  
8 nonetheless points clearly to strict scrutiny as the standard that *would* be required  
9 in a levels-of-scrutiny framework, if ever appropriate. *McDonald*’s confirming the  
10 fundamental nature of the right to arms eliminated any doubt on that score. So,  
11 while *Heller* and *McDonald* *might* leave open a debate between strict scrutiny and  
12 the sui generis historical approach they applied, they foreclose any debate between  
13 strict scrutiny and some lesser standard, at least where core conduct is at issue.

14 Even before *McDonald* confirmed the right to arms as fundamental, the  
15 inadequacy of intermediate scrutiny was clear from *Heller*, itself. *Heller* explicitly  
16 rejected not only rational basis review, but also Justice Breyer’s “interest-  
17 balancing” approach. 544 U.S. at 628 n.27; *see also McDonald*, 130 S. Ct. at 3050  
18 (plurality op.) (“while [Justice Breyer’s] opinion in *Heller* recommended an  
19 interest-balancing test, the Court specifically rejected that suggestion”). Justice  
20 Breyer’s approach assumes the government’s interest in regulating firearms—  
21 some version of protecting public safety—would always be compelling. Thus, in  
22 his view, whether the level of scrutiny were strict (requiring a compelling  
23 government interest) or intermediate (requiring only an important one), the  
24 government interest would always qualify, and the analysis would really turn on a  
25 search for the appropriate degree of fit, which Justice Breyer described as interest-  
26 balancing. *See Heller*, 554 U.S. at 687-90 (Breyer, J., dissenting).

27 Terminology aside, however, Justice Breyer’s approach in substance is  
28 simply intermediate scrutiny. Justice Breyer relied on cases such as *Turner*

1 *Broadcasting Systems, Inc. v. FCC*, 520 U.S. 180, 114 S. Ct. 2445, 129 L. Ed. 2d  
2 497 (1997), and *Thompson v. Western States Medical Center*, 535 U.S. 357, 122 S.  
3 Ct. 1497, 152 L. Ed. 2d 563 (2002), which explicitly apply intermediate scrutiny.  
4 *See Heller*, 554 U.S. at 687-90 (Breyer, J., dissenting). Even more revealingly,  
5 Justice Breyer invoked *Burdick v. Takushi*, 504 U.S. 428, 112 S. Ct. 2059, 119 L.  
6 Ed. 2d 245 (1992), the case on which the United States principally relied in  
7 advocating that the Court adopt intermediate scrutiny. *Heller*, 554 U.S. at 690  
8 (Breyer, J., dissenting); Brief for United States as Amicus Curiae at 8, 24, 28,  
9 *Heller*, 554 U.S. 570 (No. 07-290). Because Justice Breyer's interest-balancing  
10 amounted to intermediate scrutiny and the Court rejected it (and reaffirmed that  
11 rejection in *McDonald*), it would be inappropriate for this Court to adopt  
12 intermediate scrutiny as the standard for judging Sheriff Hutchens' policy.

13 In short, because Sheriff Hutchens' policy intentionally and directly denies  
14 most law-abiding, competent adults their right to bear arms for self-defense in  
15 most public places, this Court need not adopt any particular standard of review or  
16 venture beyond the scope-based analysis applied in *Heller* and *McDonald* to  
17 determine Plaintiffs will likely prevail in striking down that policy. But if the  
18 Court finds a means-ends approach is warranted, strict scrutiny must apply.

19 **E. Sheriff Hutchens' Policy Cannot Survive Any Heightened**  
20 **Standard of Review Because It Is Not Tailored to Serve,**  
**Nor Does It Serve, a Legitimate Government Interest**

21 **1. The Sheriff's Policy Prohibits Almost All Residents from**  
22 **Exercising Their Right to Carry Arms in Public for Self-**  
**Defense; It Is Not Tailored to Serve Any Interest**

23 Under heightened scrutiny, the presumption of validity is reversed, with the  
24 challenged law presumed unconstitutional. *See R.A.V. v. City of St. Paul*, 505 U.S.  
25 377, 382, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992) (content-based speech  
26 regulations are presumptively invalid). As the party with the burden of proof,  
27 Sheriff Hutchens must establish "beyond controversy" that her policy satisfies  
28 each element of the applicable heightened scrutiny test to pass constitutional

1 muster. *See S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir.  
2 2003); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010) (“[U]nless the  
3 conduct at issue is not protected by the Second Amendment at all, the Government  
4 bears the burden of justifying the constitutional validity of the law.”).

5 To prevail under strict scrutiny, Sheriff Hutchens must prove that her policy  
6 of denying Carry Licenses to responsible, law-abiding people like Plaintiffs –  
7 unless they demonstrate a special need for one – is “narrowly tailored to serve a  
8 compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 302, 113 S. Ct. 1439, 123  
9 L. Ed. 2d 1 (1993). Under this standard, the Sheriff is not unbound in asserting  
10 her compelling interest. Courts do not generally allow legislative fact-finding to  
11 undermine a fundamental right. *See Landmark Commc’ns v. Virginia*, 435 U.S.  
12 829, 843, 98 S. Ct. 1535, 56 L. Ed. 2d 1 (1978) (“Deference to a legislative  
13 finding cannot limit judicial inquiry when First Amendment rights are at stake.”).

14 Under intermediate scrutiny, Sheriff Hutchens must prove her policy “is  
15 substantially related to achievement of an important governmental purpose.” *Stop*  
16 *H-3 Ass’n v. Dole*, 870 F.2d 1419, 1429 n.20 (9th Cir. 1989). Although the means  
17 she chooses to advance her goal need not be the *least* restrictive alternative, they  
18 must nevertheless be “narrowly tailored” to the state’s goal. *Ward v. Rock Against*  
19 *Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989). To  
20 be valid, a regulation must “directly advance[] the governmental interest asserted,  
21 and . . . not [be] more extensive than is necessary to serve that interest.” *C. Hudson*  
22 *Gas & Elec. Corp. v. Public Serv. Comm’n of N.Y.*, 447 U.S. 557, 566, 100 S. Ct.  
23 2343, 65 L. Ed. 2d 341 (1980).

24 Even this relatively relaxed standard does not tolerate “categorical  
25 exclusion . . . in total disregard of . . . individual merit.” *United States v. Virginia*,  
26 518 U.S. 515, 546, 116 S. Ct. 2264, 5 L. Ed. 2d 735 (1996). Sheriff Hutchens’  
27 policy denies Carry Licenses to most people, even if they (i) are trained, (ii) are  
28 law-abiding, (iii) pass a criminal background check, and (iv) are found to be of



1 “good moral character,” merely because they have not been targeted for violence  
2 recently. That last condition – the only thing standing between Plaintiffs and a  
3 Carry License – sweeps far too broadly to be considered “narrowly tailored” – or  
4 tailored at all – under intermediate or strict scrutiny.

5 In sum, even if Sheriff Hutchens were able to show her policy furthers some  
6 compelling government interest, she would be unable to show that it is tailored to  
7 that end. The policy effectively bans public carry for most residents, including  
8 Plaintiffs. Additionally, if the goal is to reduce accidental or unlawful shootings,  
9 then there are less restrictive means to do so including, e.g., requiring applicants to  
10 pass background checks and safety-oriented handgun training courses. Finally, the  
11 Sheriff’s policy directly conflicts with the right to arms. The constitutional  
12 “default position” is that all law-abiding citizens have a right to carry arms for  
13 self-defense, subject to some reasonable restrictions tailored to a specific  
14 government interest – restrictions that still allow most citizens a manner in which  
15 to exercise their right. Sheriff Hutchens’ policy gets things backward. It assumes  
16 all residents are prohibited from carrying arms and then grants exceptions to  
17 certain persons who meet her subjective “good cause” standard. That is the  
18 opposite of tailoring, thus rendering the policy invalid regardless of its purpose.

19 **2. Sheriff Hutchens’ Policy Does Not Actually Serve Any**  
20 **Legitimate Governmental Interest**

21 The Supreme Court has emphasized that, even under intermediate scrutiny,  
22 government cannot “get away with shoddy data or reasoning” and “evidence must  
23 fairly support [its] rationale for its ordinance.” *City of Los Angeles v. Alameda*  
24 *Books, Inc.*, 535 U.S. 425, 438, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002). Mere  
25 “lawyers’ talk” unsupported by evidence is insufficient. *Annex Books, Inc. v. City*  
26 *of Indianapolis*, 581 F.3d 460, 463 (7th Cir. 2009). Even a case cited approvingly  
27 by the *Heller* dissent states government “must demonstrate that the recited harms  
28 are real, not merely conjectural, and that the regulation will in fact alleviate these  
harms in a direct and material way.” *Turner Broad. Sys., Inc.*, 512 U.S. at 235.



1 Sheriff Hutchens thus cannot simply assert that the compelling interest of  
2 public safety is furthered by her policy. She must prove it. If this Court holds the  
3 Sheriff to that burden of proof, she cannot meet it. There simply is no evidence her  
4 policy furthers public safety. Concern about license-holders committing crimes or  
5 accidents is “mere conjecture” and has been repudiated, repeatedly. Empirical  
6 evidence gathered over many years shows such public safety concerns are  
7 unfounded. While gun crime is a serious problem, issuing Carry Licenses to law-  
8 abiding adults does not exacerbate it and, in fact, may reduce crime.

9 A recently published law review article, examining whether restricting law-  
10 abiding individuals’ access to Carry Licenses furthers the government’s public  
11 safety interest, finds overwhelmingly that it does not:

12 There have been a total of 29 peer reviewed studies by economists  
13 and criminologists, 18 supporting the hypothesis that shall-issue  
14 laws reduce crime, 10 not finding any significant effect on crime,  
15 including the NRC report, and [Aneja, Donohue, and Zhang]’s  
paper, using a different model and different data, finding that  
right-to-carry laws temporarily increase one type of violent crime,  
aggravated assaults.

16 John R. Lott, Jr., *What a Balancing Test Will Show for Right-to-Carry*  
17 *Laws*, 71 Md. L. Rev. 1205, 1206 (2012). Based on its extensive research on  
18 the issue, the article concludes that:

19 If right-to-carry laws either reduce crime or leave it unchanged and  
20 if no one argues that they lead to more accidental gun deaths or  
suicides, regulations prohibiting people from carrying concealed  
handguns cannot withstand either strict or intermediate scrutiny.

21 *Id.*

22 Likewise, the *Woollard* court, even when applying the incorrect  
23 “intermediate scrutiny” standard, held that:

24 A law that burdens the exercise of an enumerated constitutional  
25 right by simply making that right more difficult to exercise cannot  
26 be considered ‘reasonably adapted’ to a government interest, no  
27 matter how substantial that interest may be. Maryland’s goal of  
28 ‘minimizing the proliferation of handguns among those who do  
not have a demonstrated need for them,’ is not a permissible  
method of preventing crime or ensuring public safety; it burdens  
the right too broadly.

1 *Woollard*, 2012 WL 695674, at \*11.

2 Thus, the Sheriff's policy fails heightened scrutiny on multiple grounds.  
3 First, it is not narrowly tailored to serve *any* particular purpose. Rather, it operates  
4 as a broad ban on public carry. Second, the public safety rationale (fewer Carry  
5 Licenses equals less crime) lacks any evidentiary support; in fact, the evidence  
6 cuts the other way. Finally, the Sheriff's policy generally seeks to bar law-abiding  
7 citizens from carrying firearms for self-defense unless they show a "special need,"  
8 while the Second Amendment seeks to protect the right of all law-abiding citizens  
9 "to possess and carry [firearms] in case of confrontation" for self-defense. *Heller*,  
10 554 U.S. at 592. The two cannot be reconciled, as explained by the *Woollard*  
11 court. *Woollard*, 2012 WL 695674, at \*11-12. One protects a citizen's right to  
12 carry arms, the other strips citizens of that right.

13 **F. Sheriff Hutchens' Policy Violates the Equal Protection Clause**  
14 **Facially and as Applied to Plaintiffs Regardless of Whether It**  
**Violates the Second Amendment Per Se**

15 The Equal Protection Clause "is essentially a direction that all persons  
16 similarly situated should be treated alike." *City of Cleburne v. Cleburne Living*  
17 *Ctr.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313 (1985) (citation  
18 omitted). Strict scrutiny applies to government classifications that "impinge on  
19 personal rights protected by the Constitution." *Id.* at 440 (citations omitted).  
20 "Where fundamental rights and liberties are asserted under the Equal Protection  
21 Clause, classifications which might invade or restrain them must be closely  
22 scrutinized." *Hussey v. City of Portland*, 64 F.3d 1260, 1265 (9th Cir. 1995)  
23 (quoting *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670, 86 S. Ct. 1079, 1083,  
24 16 L. Ed. 169 (1966), and citing *Kramer v. Union Free School Dist.*, 395 U.S. 621,  
25 633, 89 S. Ct. 1886, 1892, 23 L. Ed. 2d 583 (1969)).

26 As these cases make clear, all law-abiding persons are similarly situated in  
27 their worthiness to exercise fundamental rights. Since carrying arms is  
28 undisputably protected activity under the Second Amendment, *Heller*, 554 U.S. at

595, even if assuming *arguendo* that curtailing *all* peoples' ability to generally carry arms in public is a valid government power, by allowing some people to generally carry a handgun in public (i.e., exercise a *superior form* of the right) while limiting all others to only carrying within their homes or in an emergency, Sheriff Hutchens' policy still violates the Equal Protection Clause unless it meets strict scrutiny; once certain people are granted the right to carry publicly, all qualified persons are entitled to do so. *Cf. Kramer*, 395 U.S. at 628-29 (holding that even though it need not be granted, once the franchise is granted to the electorate, lines inconsistent with the Equal Protection Clause may not be drawn). The classification created by the Sheriff's policy cannot meet strict scrutiny for the reasons described above. It is exactly the type of ill the authors of the Fourteenth Amendment sought to remedy. The Freedmen's Bureau bill guaranteed "full and equal benefit of all laws and proceedings [for the security of person and estate], including the constitutional right to bear arms." *See McDonald*, 130 S. Ct. at 3040.

Thus, even if this Court finds Plaintiffs unlikely to prevail on their Second Amendment claim, they are still likely to do so on their Equal Protection claim because no legitimate governmental interest is furthered by treating law-abiding, competent persons differently in their access to the fundamental right to armed defense based on their current threat level subjectively determined by the Sheriff.

**G. Alternatively, California's "Good Cause" Provision Itself Facially Violates the Second Amendment and Equal Protection Clause**

While Plaintiffs believe it is Sheriff Hutchens' chosen policy for applying California Penal Code section 26150(a)(2)'s "good cause" provision that causes their injury and not that provision itself, even if the Court finds Sheriff Hutchens' policy blameless, the Court should find section 26150(a)(2) to be a facially unconstitutional precondition on the right to armed self-defense for the same reasons provided against Sheriff Hutchens' policy explained above. For, requiring competent, law-abiding adults like Plaintiffs to prove they have "good cause" to exercise a right beyond self-defense is anathema to the nature of a right; it instead

1 constitutes a privilege granted at the behest of the Sheriff. No textual or historical  
2 justification exists for doing so with any fundamental right, let alone the Second  
3 Amendment. And, drawing on the First Amendment (as the Supreme Court has  
4 done), construing California Penal Code section 26150(a)(2) as conferring  
5 discretion on Sheriff Hutchens to determine what constitutes “good cause” to  
6 exercise the right to bear arms may create the equivalent of an unlawful prior  
7 restraint. A permissible prior restraint must not place “unbridled discretion in the  
8 hands of a government official or agency” and must not allow “a permit or license  
9 [to] be granted or withheld in the discretion of such official.” *Staub v. City of*  
10 *Baxley*, 355 U.S. 313, 322, 78 S. Ct. 277, 2 L. Ed. 2d 302 (1958).

11 Moreover, the “good cause” provision necessarily creates a classification of  
12 Orange County residents, including Plaintiffs, who are deprived of their Second  
13 Amendment right to bear arms generally in public because they cannot meet the  
14 Sheriff’s standard of “good cause” for a Carry License, regardless of whether they  
15 are competent and law-abiding, while the rights of other classes of competent,  
16 law-abiding Orange County residents are not so infringed. As such, it facially  
17 violates the Equal Protection Clause, for the same reasons explained above.

18 In sum, whether the Court finds that it is Plaintiffs’ facial or as applied  
19 challenge to Sheriff Hutchens’ policy on either Second Amendment or Equal  
20 Protection Clause grounds, or their facial challenge to California Penal Code  
21 section 26150(a)(2)’s “good cause” provision on either Second Amendment or  
22 Equal Protection Clause grounds, to be the proper one here, Plaintiffs are likely to  
23 succeed on the merits regardless.

## 24 **II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF A** 25 **PRELIMINARY INJUNCTION IS NOT ISSUED**

26 Generally speaking, once a plaintiff shows a likelihood of success on the  
27 merits for a constitutional claim, irreparable harm is presumed. 11A Charles Alan  
28 Wright et al., *Federal Practice and Procedure* § 2948.1 (2d ed. 1995) (“When an  
alleged deprivation of a constitutional right is involved, most courts hold that no

1 further showing of irreparable injury is necessary.”) Federal courts have routinely  
2 imported the First Amendment’s “irreparable-if-only-for-a-minute” concept to  
3 cases involving other constitutional rights and, in doing so, have held a  
4 deprivation of these rights constitutes irreparable harm, per se. *Monterey Mech.*  
5 *Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997) (citing *Associated Gen.*  
6 *Contractors v. Coal. For Econ. Equity*, 950 F.2d, 1401, 1412 (9th Cir. 1991)).  
7 Further, the Supreme Court has made clear the Second Amendment should be  
8 treated no differently. *See McDonald*, 130 S. Ct. at 3043, 3044; *see also Ezell v.*  
9 *City of Chicago*, 651 F.3d 684, 700 (7th Cir. 2011) (holding deprivations of  
10 Second Amendment rights “irreparable and having no adequate remedy at law.”)

11 Here, Plaintiffs have established a likelihood of success on the merits of  
12 their constitutional claims, and irreparable harm should be presumed.

13 **III. THE BALANCE OF EQUITIES TIPS IN PLAINTIFFS’ FAVOR AND**  
14 **PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST**

15 Plaintiffs have suffered and, if this motion is not granted, will continue to  
16 suffer the deprivation of their fundamental Second Amendment rights. They are  
17 likely to succeed on the merits of their constitutional claims, and the harm invited  
18 upon them is irreparable. *See supra* Parts I-II. Yet, not only are Plaintiffs’ Second  
19 Amendment rights at stake in this action. Any Orange County residents wishing to  
20 exercise their Second Amendment right to bear arms who cannot show a “special  
21 need” to do so that is acceptable to Sheriff Hutchens can also be unconstitutionally  
22 prohibited from exercising that right by the Sheriff’s “good cause” policy.

23 The Ninth Circuit has held that when plaintiffs challenge state action that  
24 affects the general public seeking to exercise constitutional rights, as Plaintiffs do  
25 here for Orange County residents seeking a Carry License, “the balance of equities  
26 and the public interest thus tip sharply in favor of enjoining the ordinance.” *Klein*  
27 *v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). And the Sheriff  
28 “cannot reasonably assert that [she] is harmed in any legally cognizable sense by  
being enjoined from constitutional violations.” *Haynes v. Office of the Attorney*



1 *General Phill Kline*, 298 F. Supp. 2d 1154, 1160 (D. Kan. Oct. 26, 2004) (citing  
2 *Zepeda v. U.S. Immig. & Naturaliz. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983)).

3 Moreover, as explained above, no valid interest is actually furthered by  
4 Sheriff Hutchens' policy because there is no evidence that restricting issuance of  
5 Carry Licenses to law-abiding, competent adults actually increases public safety.  
6 And little burden is imposed on the Sheriff by the temporary relief Plaintiffs seek.  
7 She would merely be precluded from denying self-defense as "good cause" for a  
8 Carry License.<sup>9</sup> Doing so would actually entail *less* work for her department, since  
9 investigation and scrutiny concerning applicants' cause for a license would  
10 generally be unnecessary.

11 The relief Plaintiffs seek is not extreme. To the contrary, Plaintiffs are  
12 merely asking that Sheriff Hutchens join the overwhelming majority of Carry  
13 License issuing authorities throughout the nation, in recognizing that law-abiding  
14 people are entitled to carry a handgun for self-defense. At least forty states issue  
15 Carry Licenses in the manner Plaintiffs assert Sheriff Hutchens must issue them,  
16 while four states do not even require licenses to carry handguns at all. (Lott, *supra*,  
17 at 1208 n.16; *see also* Pls.' Req. Judicial Notice, Exs. A through PP.) Only Illinois  
18 and the District of Columbia do not issue Carry Licenses in any manner. Lott,  
19 *supra*, at 1207. In issuing so restrictively, Sheriff Hutchens shares company with  
20 only a few states and maybe a dozen or so California counties. She is in a marked  
21 minority.

## 22 CONCLUSION

23 Once it is acknowledged that the Supreme Court has declared armed self-  
24 defense as the very core of Second Amendment rights and that the right to be  
25 "armed and ready" for a self-defense confrontation extends beyond the home, the

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26  
27 <sup>9</sup> Plaintiffs are informed and believe and herein allege that the *majority* of  
28 California sheriffs already issue Carry Licenses in this manner.

1 outcome of this case is obvious – at least if the Second Amendment right to arms  
2 is afforded the same respect as other fundamental, enumerated rights. For, while it  
3 is certainly true that a legislature may impose limited restrictions on the exercise  
4 of constitutional rights, e.g., limiting its exercise to virtuous, competent citizens to  
5 possess arms in common use and in non-sensitive places, it cannot deny such  
6 rights generally. Sheriff Hutchens’ “good cause” policy does just that. It bars *all*  
7 otherwise qualified, law-abiding applicants from obtaining a Carry License unless  
8 they can show an “extraordinary need” to exercise their Second Amendment right  
9 to be “armed and ready” for a self-defense confrontation outside the home, a need  
10 beyond a general desire for self protection. No other fundamental, enumerated  
11 right requires such a showing before one can exercise it.

12 Consequently, Plaintiffs are likely to prevail on their complaint challenging  
13 the constitutionality of Sheriff Hutchens’ “good cause” policy for the reasons and  
14 on the grounds stated herein. Irreparable harm is presumed because Plaintiffs seek  
15 to vindicate their fundamental rights. And, the temporary relief they seek furthers  
16 both the public interest, by restoring their fellow Orange County residents’ Second  
17 Amendment rights, and equity, by treating law-abiding, competent people equally  
18 in the enjoyment of their fundamental rights without detriment to the Sheriff.

19 Plaintiffs respectfully ask the Court to grant this motion and enjoin Sheriff  
20 Hutchens’ enforcement of her “good cause” policy pending the outcome of this  
21 litigation to the extent her policy requires Carry License applicants to show “good  
22 cause” for a Carry License beyond a desire for general self-defense.

23 Date: September 11, 2012

**MICHEL & ASSOCIATES, P.C.**

24  
25 / s /C. D. Michel

C.D. Michel

E-mail:cmichel@michellawyers.com

Counsel for Plaintiffs



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 6 Attorneys for Plaintiffs

7  
 8 **IN THE UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **SOUTHERN DIVISION**

11 DOROTHY McKAY, DIANA	)	CASE NO.: SACV 12-1458JVS (JPRx)
12 KILGORE, PHILLIP WILLMS,	)	
13 FRED KOGEN, DAVID WEISS, and	)	NOTICE OF MOTION AND MOTION
THE CRPA FOUNDATION,	)	FOR PRELIMINARY INJUNCTION
14 Plaintiffs,	)	
15 v.	)	Date: October 15, 2012
	)	Time: 1:30 p.m.
16 SHERIFF SANDRA HUTCHENS,	)	Location: Ronald Reagan Federal
17 individually and in her official	)	Building
capacity as Sheriff of Orange County,	)	411 West Fourth Street
18 California, ORANGE COUNTY	)	Room 1053
SHERIFF-CORONER	)	Santa Ana, CA 92701
19 DEPARTMENT, COUNTY OF	)	Courtroom: 10C
ORANGE, CALIFORNIA, and	)	Judge: James V. Selna
DOES 1-10,	)	Date Action Filed: September 5, 2012
20 Defendants.	)	

**TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

Notice is hereby given that on October 15, 2012, at 1:30 p.m., or as soon thereafter as counsel may be heard by the above-entitled Court, located at 411 West Fourth Street, Santa Ana, California, in the courtroom of the Honorable Judge James V. Selna, Plaintiffs Dorothy McKay, Diana Kilgore, Phillip Willms, Fred Kogen, David Weiss, and The CRPA Foundation (collectively, "Plaintiffs") will and hereby do move for preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure.

Plaintiffs will seek an order preliminarily enjoining Defendant Sheriff Hutchens, her officers, agents, servants, employees, attorneys, and all other persons who are in active concert or participation with her and who receive actual notice of the injunction from:

1. Enforcing Sheriff Hutchens' policy implementing the "good cause" criterion of California Penal Code section 26150(a)(2) for the issuance of licenses that allow for the carrying of loaded handguns generally in public ("Carry Licenses") in any manner that does not recognize a general desire for self-defense as satisfying the "good cause" criterion of California Penal Code section 26150(a)(2) pending resolution of this case on the merits; or, in the alternative,

2. Enforcing the "good cause" requirement of California Penal Code section 26150(a)(2) for the issuance of Carry Licenses in any manner pending resolution of this case on the merits.

This Motion will be made on the grounds that immediate and irreparable injury will result to Plaintiffs unless the activities described above are enjoined pending resolution of this action, Plaintiffs are likely to succeed on the merits because Sheriff Hutchens' policy and practice of denying Carry Licenses to law-abiding, competent citizens violates Plaintiffs' right to keep and bear arms under the Second Amendment and, in particular, their right to "possess and carry firearms in case of confrontation" for self-defense purposes, as well as their rights under the

1 Equal Protection Clause.

2 Further, this motion will be based on this notice of motion and motion, the  
3 accompanying memorandum of points and authorities, the declarations and  
4 materials filed concurrently herewith, any matters of which the court may or is  
5 required to take judicial notice, the papers on file, and upon any further matters the  
6 Court deems appropriate.

7 Dated: September 11, 2012

**MICHEL & ASSOCIATES, PC**

8  
9 /s/ C. D. Michel  
10 C. D. MICHEL  
11 Attorney for Plaintiffs  
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11 Attorneys for Plaintiffs / Petitioners

12 **IN THE UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **SOUTHERN DIVISION**

15 DOROTHY McKAY, DIANA  
16 KILGORE, PHILLIP WILLMS,  
17 FRED KOGEN, DAVID WEISS, and  
18 THE CRPA FOUNDATION,

19 Plaintiffs,

20 v.

21 SHERIFF SANDRA HUTCHENS,  
22 individually and in her official  
23 capacity as Sheriff of Orange County,  
24 California, ORANGE COUNTY  
25 SHERIFF-CORONER  
26 DEPARTMENT, COUNTY OF  
27 ORANGE, and DOES 1-10,

28 Defendants.

**CASE NO: SACV 12-1458JVS (JPRx)**

**DECLARATION OF DOROTHY  
McKAY IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Date: October 15, 2012  
Time: 1:30 p.m.  
Location: Ronald Reagan Federal  
Building  
411 West Fourth Street  
Room 1053  
Santa Ana, CA 92701  
Courtroom: 10C  
Judge: James V. Selna  
Date Action Filed: September 5, 2012

**DECLARATION OF DOROTHY McKAY**

I, Dorothy McKay, submit this declaration in support of Plaintiffs' Motion for a Preliminary Injunction. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

1. I am a resident of Orange County, California and a United States Citizen over 21 years of age.

3. I am not prohibited under federal or California law from receiving or possessing firearms.

4. I work in Orange County as a public school teacher and additionally provide tutoring to students outside of regular school hours. As a tutor, I often visit pupils at their residences at late hours in the evening and in rural areas where cellular telephone coverage is either minimal or non-existent.

5. I am certified as a Firearms Instructor and a Range Safety Officer by the National Rifle Association ("NRA"). In this capacity, I teach a basic pistol course in accordance with NRA guidelines and provide introductory pistol handling instruction to women through the Women On Target clinics, which is an NRA sanctioned program. I am qualified to, and in fact do, oversee and coordinate shooting range activities and conduct range safety briefings for persons seeking to acquire familiarity with firearms. As such, I am well versed in safe firearm handling procedures and I practice target shooting regularly at my local shooting range.

6. I own a handgun and would carry a handgun in public for self-defense on occasions I deem appropriate, but do not do so because I fear prosecution since I do not possess a valid license to publicly carry a handgun pursuant to California Penal Code section 26150.

7. On or about October 25, 2011, I submitted an official Department of

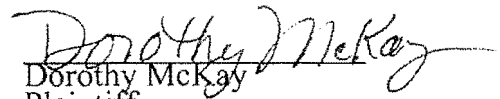
1 Justice application to the Orange County Sheriff's Department for a license to  
2 publicly carry a handgun.

3 8. In my application for a license to publicly carry a handgun, my asserted  
4 "good cause" was based upon self-defense. Particularly, my asserted "good cause"  
5 was based upon travels as a professional tutor, firearms instructor and a volunteer  
6 to remote and/or inherently unsafe locations that are sometimes without cellular  
7 telephone reception, and the possibility that I may be a target for crime based upon  
8 my volunteer and business activities that include transporting valuable items and  
9 significant quantities of money.

10 9. On or about December 28, 2011, my application for a Carry License was  
11 denied by the Orange County Sheriff's Department for lack of "good cause."  
12 Exhibit "1" that is attached hereto is a true and correct copy of the letter I received  
13 from the Orange County Sheriff's Department.

14 I declare under penalty of perjury, under the laws of the United States and of  
15 the state of California, that the foregoing is true and correct.

16 Executed in the United States on September 6, 2012.

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19 Dorothy McKay  
20 Plaintiff  
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11 Attorneys for Plaintiffs / Petitioners

12 **IN THE UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **SOUTHERN DIVISION**

15 DOROTHY McKAY, DIANA  
 16 KILGORE, PHILLIP WILLMS,  
 17 FRED KOGEN, DAVID WEISS, and  
 18 THE CRPA FOUNDATION,

19 Plaintiffs,

20 v.

21 SHERIFF SANDRA HUTCHENS,  
 22 individually and in her official  
 23 capacity as Sheriff of Orange County,  
 24 California, ORANGE COUNTY  
 25 SHERIFF-CORONER  
 26 DEPARTMENT, COUNTY OF  
 27 ORANGE, and DOES 1-10,

28 Defendants.

**CASE NO: SACV 12-1458JVS (JPRx)**

**DECLARATION OF DAVID WEISS  
 IN SUPPORT OF PLAINTIFFS'  
 MOTION FOR PRELIMINARY  
 INJUNCTION**

Date: October 15, 2012  
 Time: 1:30 p.m.  
 Location: Ronald Reagan Federal  
 Building  
 411 West Fourth Street  
 Room 1053  
 Santa Ana, CA 92701

Courtroom: 10C  
 Judge: James V. Selna  
 Date Action Filed: September 5, 2012



**DECLARATION OF DAVID WEISS**

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4 1. I, David Weiss, submit this declaration in support of Plaintiffs' Motion  
5 for a Preliminary Injunction. I make this declaration of my own personal  
6 knowledge and, if called as a witness, I could and would testify competently to the  
7 truth of the matters set forth herein.

8 2. I am a resident of Orange County, California and a United States Citizen  
9 over 21 years of age.

10 3. I am not prohibited under federal or California law from receiving or  
11 possessing firearms.

12 4. I am a Pastor who frequently visits parishioners of my own church both  
13 on and off my church's property within Orange County. I also frequently visit  
14 various churches all over the state, and meet with their members in private off  
15 those churches' property. I often travel very early morning or late evening for these  
16 visits. My obligations as a pastor often take me to unknown locations or to  
17 situations of crisis where emotions may run high.

18 5. I own a handgun and would carry a handgun in public for self-defense on  
19 occasions I deem appropriate, but do not do so because I fear prosecution since I  
20 do not possess a valid license to publicly carry a handgun pursuant to California  
21 Penal Code section 26150.

22 6. I submitted an official Department of Justice application to the Orange  
23 County Sheriff's Department for a license to publicly carry a handgun. Exhibit "1"  
24 that is attached hereto is a true and correct copy of the relevant pages of my  
25 completed application, which has been partially redacted by the Orange County  
26 Sheriff's Department.

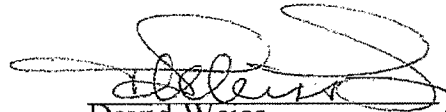
27 7. In my application for a license to publicly carry a handgun, my asserted  
28 "good cause" was based upon self-defense and defense of my spouse. In my

1 including the unusual times and unknown locations that I am required to travel, and  
2 the emergency situations that I am called upon to confront. See Exhibit "1".

3 8. In a letter dated March 21, 2012, my application for a Carry License was  
4 denied by the Orange County Sheriff's Department for lack of "good cause."  
5 Exhibit "2" that is attached hereto is a true and correct copy of the letter I received  
6 from the Orange County Sheriff's Department, which they have partially redacted.

7 I declare under penalty of perjury, under the laws of the United States and of  
8 the state of California, that the foregoing is true and correct.

9 Executed in the United States on September 6, 2012.

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12 David Weiss  
13 Plaintiff  
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7 Attorneys for Plaintiffs / Petitioners

8 **IN THE UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **SOUTHERN DIVISION**

11 DOROTHY McKAY, DIANA  
12 KILGORE, PHILLIP WILLMS,  
13 FRED KOGEN, DAVID WEISS, and  
THE CRPA FOUNDATION,

14 Plaintiffs,

15 v.

16 SHERIFF SANDRA HUTCHENS,  
17 individually and in her official  
capacity as Sheriff of Orange County,  
18 California, ORANGE COUNTY  
SHERIFF-CORONER  
19 DEPARTMENT, COUNTY OF  
ORANGE, and DOES 1-10,

20 Defendants.  
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**CASE NO: SACV 12-1458JVS (JPRx)**

**DECLARATION OF DIANA  
KILGORE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Date: October 15, 2012  
Time: 1:30 p.m.  
Location: Ronald Reagan Federal  
Building  
411 West Fourth Street  
Room 1053  
Santa Ana, CA 92701

Courtroom: 10C  
Judge: James V. Selna  
Date Action Filed: September 5, 2012

**DECLARATION OF DIANA KILGORE**

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3 1. I, Diana Kilgore, submit this declaration in support of Plaintiffs' Motion  
4 for a Preliminary Injunction. I make this declaration of my own personal  
5 knowledge and, if called as a witness, I could and would testify competently to the  
6 truth of the matters set forth herein.

7 2. I am a resident of Orange County, California and a United States Citizen  
8 over 21 years of age.

9 3. I am not prohibited under federal or California law from receiving or  
10 possessing firearms.

11 4. I am a member of The California Rifle and Pistol Association and a  
12 contributor to The CRPA Foundation.

13 5. I own a handgun and I would carry a handgun in public for self-defense  
14 on occasions I deem appropriate, but do not do so because I fear prosecution since  
15 I do not possess a valid license to publicly carry a handgun pursuant to California  
16 Penal Code section 26150.

17 6. I have not applied to the Orange County Sheriff's Department for a  
18 license to publicly carry a handgun pursuant to California Penal Code section  
19 26150 because I do not meet the "good cause" standard articulated in the Orange  
20 County Sheriff's Department's official written policy for issuing such licenses, as I  
21 have no specific threat against me nor engage in any particular business indicated  
22 in the policy as possibly warranting a license. (See Exhibit #)

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1 7. Since "general concerns about personal safety" are not considered "good  
2 cause" by Sheriff Hutchens (*see* Exhibit 1), and I only have general concerns about  
3 my safety, any attempt by me to obtain a license to publicly carry a handgun from  
4 Sheriff Hutchens pursuant to California Penal Code section 26150 would be futile  
5 and a waste of my time and money.

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

8 Executed in the United States on September 5, 2012.

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12 Diana Kilgore  
13 Plaintiff  
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Attorneys for Plaintiffs / Petitioners

**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 (JPRx)**

**DECLARATION OF FRED KOGEN  
 IN SUPPORT OF PLAINTIFFS'  
 MOTION FOR PRELIMINARY  
 INJUNCTION**

Date: October 15, 2012  
 Time: 1:30 p.m.  
 Location: Ronald Reagan Federal  
 Building  
 411 West Fourth Street  
 Room 1053  
 Santa Ana, CA 92701  
 Courtroom: 10C  
 Judge: James V. Selna  
 Date Action Filed: September 5, 2012

**DECLARATION OF FRED KOGEN**

1  
2  
3 1. I, Fred Kogen, submit this declaration in support of Plaintiffs' Motion for  
4 a Preliminary Injunction. I make this declaration of my own personal knowledge  
5 and, if called as a witness, I could and would testify competently to the truth of the  
6 matters set forth herein.

7 2. I am a resident of Orange County, California and a United States Citizen  
8 over 21 years of age.

9 3. I am not prohibited under federal or California law from receiving or  
10 possessing firearms.

11 4. I am a California licensed physician and a mohel. A mohel is a person  
12 that performs circumcisions of newborn male children. As a mohel, I often travel to  
13 various cities and am often meeting my clients for the very first time upon my  
14 arrival.

15 5. My occupation as a mohel is controversial and I have received threats.  
16 One such threat was in the form of a letter that was sent to me at my home, in  
17 which the individual called me a criminal, characterized my professional activities  
18 as crimes, and - in effect - called for my death. In the letter, he said he would kill  
19 every mohel if there would be no repercussions for doing so.

20 6. I own a handgun and I would carry a handgun in public for self-defense  
21 on occasions I deem appropriate, but do not do so because I fear prosecution since  
22 I do not possess a valid license to publicly carry a handgun pursuant to California  
23 Penal Code section 26150.

24 7. I submitted to the Orange County Sheriff's Department an official  
25 Department of Justice application for a license to publicly carry a handgun.  
26 Exhibit "1" that is attached hereto is a true and correct copy of the relevant pages  
27 of my completed application, which has been partially redacted by the Orange  
28 County Sheriff's Department.

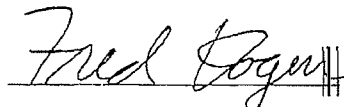


1 8. My application for a license to publicly carry a handgun asserted "good  
2 cause" based upon self-defense and the defense of members of my immediate  
3 family, due to the controversial nature of my occupation, the sometimes remote  
4 locations to which I am required to travel, a lack of prior familiarity with the  
5 people I am meeting, receiving direct and indirect threats for my occupation, and a  
6 genuine fear for my own safety and the safety of the members of my family. See  
7 Exhibit "1."

8 9. On or about July 10, 2012, my application for a Carry License was denied  
9 by the Orange County Sheriff's Department for lack of "good cause." Exhibit "2"  
10 that is attached hereto is a true and correct copy of the letter I received from the  
11 Orange County Sheriff's Department, which they have partially redacted.

12  
13 I declare under penalty of perjury, under the laws of the United States and of  
14 the state of California, that the foregoing is true and correct.

15  
16 Executed in the United States on September 4, 2012.

17  
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19 

20 Fred Kogen

21 Plaintiff  
22  
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Attorneys for Plaintiffs / Petitioners

**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 (JPRx)**

**DECLARATION OF PHILLIP  
 WILLMS IN SUPPORT OF  
 PLAINTIFFS' MOTION FOR  
 PRELIMINARY INJUNCTION**

Date: October 15, 2012  
 Time: 1:30 p.m.  
 Location: Ronald Reagan Federal  
 Building  
 411 West Fourth Street  
 Room 1053  
 Santa Ana, CA 92701  
 Courtroom: 10C  
 Judge: James V. Selna  
 Date Action Filed: September 5, 2012

**DECLARATION OF PHILLIP WILLMS**

1  
2  
3 1. I, Phillip Willms, submit this declaration in support of Plaintiffs' Motion  
4 for a Preliminary Injunction. I make this declaration of my own personal  
5 knowledge and, if called as a witness, I could and would testify competently to the  
6 truth of the matters set forth herein.

7 2. I am a resident of Orange County, California and a United States Citizen  
8 over 21 years of age.

9 3. I am not prohibited under federal or California law from receiving or  
10 possessing firearms.

11 4. I practice shooting firearms regularly at my local shooting range and I  
12 belong to a club where I regularly engage in shooting competitions. As such, I am  
13 well versed in safe firearm handling procedures.

14 5. I often have expensive handguns that I transport unloaded and in locked  
15 containers for recreation and competition purposes.

16 6. I own a successful business in Orange County, California.

17 7. I own a handgun and would carry a handgun in public for self-defense on  
18 occasions I deem appropriate, but do not do so because I fear prosecution since I  
19 do not possess a valid license to publicly carry a handgun pursuant to California  
20 Penal Code section 26150.

21 8. On or about November 1, 2011, I submitted to the Orange County  
22 Sheriff's Department an official Department of Justice application for a license to  
23 publicly carry a handgun. Exhibit "1" that is attached hereto is a true and correct  
24 copy of the relevant pages of my completed application, which has been partially  
25 redacted by the Orange County Sheriff's Department.

26 9. In my application to the Orange County Sheriff's Department for a  
27 license to publicly carry a handgun, my asserted "good cause" was based upon self-  
28 defense. Particularly, my asserted "good cause" was based upon my safety due to

1 expanding business sales, my handling of significant cash deposits, and protection  
2 of myself while transporting my own expensive firearms to and from shooting  
3 competitions. See Exhibit "1".

4 10. On or about January 24, 2012, my application for a Carry License was  
5 denied by the Orange County Sheriff's Department for lack of "good cause."  
6 Exhibit "2" that is attached hereto is a true and correct copy of the letter I received  
7 from the Orange County Sheriff's Department, which they have partially redacted.

8 11. In a letter dated February 22, 2012, I provided additional information in  
9 support of my application for the license to publicly carry a handgun. Exhibit "3"  
10 that is attached hereto is a true and correct copy of that letter.

11 12. On March 21, 2012, the Orange County Sheriff's Department again  
12 denied my request for a license to publicly carry a handgun. Exhibit "4" that is  
13 attached hereto is a true and correct copy of the second denial letter I received from  
14 the Orange County Sheriff's Department.

15 I declare under penalty of perjury, under the laws of the United States and of  
16 the state of California, that the foregoing is true and correct.

17 Executed in the United States on September 10, 2012.

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20 Phillip Wilms  
21 Plaintiff  
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25  
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27  
28

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11 Attorneys for Plaintiffs / Petitioners

12 **IN THE UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **SOUTHERN DIVISION**

15 DOROTHY McKAY, DIANA  
16 KILGORE, PHILLIP WILLMS,  
17 FRED KOGEN, DAVID WEISS, and  
18 THE CRPA FOUNDATION,

19 Plaintiffs,

20 v.

21 SHERIFF SANDRA HUTCHENS,  
22 individually and in her official  
23 capacity as Sheriff of Orange County,  
24 California, ORANGE COUNTY  
25 SHERIFF-CORONER  
26 DEPARTMENT, COUNTY OF  
27 ORANGE, and DOES 1-10,

28 Defendants.

**CASE NO: SACV 12-1458JVS (JPRx)**

**DECLARATION OF SILVIO  
MONTANARELLA ON BEHALF  
OF CALIFORNIA RIFLE AND  
PISTOL ASSOCIATION  
FOUNDATION IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Date: October 15, 2012  
Time: 1:30 p.m.  
Location: Ronald Reagan Federal  
Building  
411 West Fourth Street  
Room 1053  
Santa Ana, CA 92701

Courtroom: 10C  
Judge: James V. Selna  
Date Action Filed: September 5, 2012

**DECLARATION OF SILVIO MONTANARELLA**

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3 1. I, Silvio Montanarella, submit this declaration in support of Plaintiffs'  
4 Motion for a Preliminary Injunction. I make this declaration of my own personal  
5 knowledge and, if called as a witness, I could and would testify competently to the  
6 truth of the matters set forth herein.

7 2. I am the President of The CRPA Foundation, which is a Plaintiff in this  
8 case.

9 3. The CRPA Foundation is a nonprofit entity classified as a 501(c)(3)  
10 charitable corporation and has its primary place of business in Fullerton,  
11 California.

12 4. The CRPA Foundation is an association that seeks to: raise awareness  
13 about unconstitutional laws, defend and expand the legal recognition of the rights  
14 protected by the Second Amendment via litigation and other means, promote  
15 firearms and hunting safety, protect hunting rights, enhance marksmanship skills of  
16 those participating in shooting sports, and educate the public about firearms.

17 5. To achieve its goals The CRPA Foundation conducts firearms safety  
18 advocacy and advocates in court through litigation brought on behalf and for the  
19 benefit of the California Rifle and Pistol Association ("CRPA"), the CRPA's  
20 approximate 35,000 dues-paying members, the tens of thousands of additional  
21 donors and supporters, and California firearm owners in general. Such judicial  
22 advocacy generally regards firearm laws and rights and specifically involves, inter  
23 alia, the ability of law-abiding adults to publicly carry firearms for self-defense.  
24 The CRPA Foundation uses its financial and human resources to counsel firearms  
25 owners about their rights and duties with regard to carrying firearms for self-  
26 defense while also supporting litigation that promotes the right to carry a firearm.

27 6. In response to Sheriff Hutchens' policy for issuing licenses to carry a  
28 handgun pursuant to California Penal Code section 26150 The CRPA Foundation

1 has been required to devote financial and human resources to commence litigation  
2 to adjudicate the other Plaintiffs' rights with regard to the unlawful activities  
3 challenged herein. As a result of The CRPA Foundation's use of its resources to  
4 identify and counsel Plaintiffs, and to fund this litigation, it has had to divert  
5 resources it would have otherwise used for promoting its other organizational  
6 missions, such as firearm safety education.

7 7. CRPA members and contributors to The CRPA Foundation have  
8 communicated to me that they wish to obtain a Carry License, but refrain from  
9 applying on the basis of futility because they do not meet Sheriff Hutchens' official  
10 "good cause" standard and applying would be a waste of their time and money.

11 8. In this suit, The CRPA Foundation represents the interests of its many  
12 citizen and taxpayer supporters, and tens of thousands of members of the CRPA  
13 who reside in Orange County and desire to obtain a license to publicly carry a  
14 handgun, but who have been denied such a license for a supposed lack of "good  
15 cause" or have refrained from applying for a license because they do not meet  
16 Sheriff Hutchens' "good cause" requirements.

17 I declare under penalty of perjury that the foregoing is true and correct.  
18 Executed within the United States on September 7, 2012.

19  
20   
21 Silvio Montanarella  
22 President, CRPA Foundation  
23  
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25  
26  
27  
28



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 10 Facsimile: (714) 834-2359

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

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

16 DOROTHY McKAY, DIANA KILGORE, ) Case No. 8:12-cv-01458 JVS (JPRx)  
 17 PHILLIP WILLMS, FRED KOGEN, )  
 18 DAVID WEISS, and THE CRPA )  
 19 FOUNDATION, )

20 Plaintiffs,

21 v.

22 SHERIFF SANDRA HUTCHENS,  
 23 individually and in her official capacity as  
 24 Sheriff of Orange County; ORANGE  
 25 COUNTY SHERIFF-CORONER  
 26 DEPARTMENT; COUNTY OF ORANGE;  
 27 and DOES 1-10,

28 Defendants.

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

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

33 1. Responding to Paragraph 1 of the FAC, Defendants submit that the Complaint  
 34 speaks for itself as to what Plaintiffs are challenging and attempting to enjoin in this action.  
 35 Defendants further submit that Defendants' official written policy speaks for itself and that  
 36 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.

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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.

28 //

OFFICE OF THE COUNTY COUNSEL  
COUNTY OF ORANGE



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.

//

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

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

5 **AFFIRMATIVE DEFENSES**

6 **First Affirmative Defense**

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

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

10 **Second Affirmative Defense**

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

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

14 **Third Affirmative Defense**

15 **(Qualified Immunity)**

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

20 **Third Affirmative Defense**

21 **(Immunity of State Actor)**

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

25 WHEREFORE, Defendants pray as follows:

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

3. That defendant recover their costs of suit incurred herein; and
4. For such other and further relief as the Court deems proper and just.

DATED: October 25, 2012

Respectfully submitted,

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

By Marianne Van Riper  
Marianne Van Riper, Supervising Deputy

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

OFFICE OF THE COUNTY COUNSEL  
COUNTY OF ORANGE

1 **CERTIFICATE OF SERVICE**

2 I do hereby declare that I am a citizen of the United States employed in the County  
3 of Orange, over 18 years old and that my business address is 333 W. Santa Ana Blvd.,  
4 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.

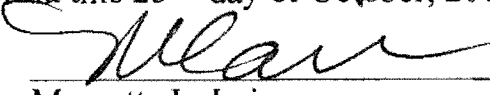
5 I hereby certify that I caused the foregoing **ANSWER OF DEFENDANTS**  
6 **SHERIFF SANDRA HUTCHENS AND THE ORANGE COUNTY SHERIFF-**  
7 **CORONER DEPARTMENT TO PLAINTIFFS' FIRST AMENDED COMPLAINT**  
to be served on October 25, 2012, upon all counsel of record listed below by electronic  
filing utilizing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

8 C.D. Michel, Esq.  
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Attorneys for Plaintiffs, Dorothy McKay,  
Diana Kilgore, Phillip Willms, Fred  
Kogen, David Weiss, and the CRPA  
Foundation

14  
15 I declare that I am employed in the office of a member of the Bar of this Court at  
16 whose direction the service was made.

17 Executed in Santa Ana, California this 25<sup>TH</sup> day of October, 2012.

18   
19 \_\_\_\_\_  
20 Marzette L. Lair  
21  
22  
23  
24  
25  
26  
27  
28



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Attorneys for Plaintiffs / Petitioners

**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:

## 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 concealed<sup>1</sup> (Cal. Penal Code § 25400 and  
 24

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25 <sup>1</sup> 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).<sup>2</sup>

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

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25 <sup>2</sup> 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.

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

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

9 49. Sheriff Hutchens' "good cause" policy also creates a classification of  
10 individuals - those who have no evidence of a specific threat or involvement in a  
11 business the Sheriff considers risky - which abrogates the class members'  
12 fundamental right to bear arms.

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

20 **[Plaintiffs' Carry License Denials]**

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

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

26 53. Sheriff Hutchens has not found that any of the Plaintiffs fails to satisfy  
27 any other statutory criterion in California Penal Code section 26150 for issuance of  
28 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 **FOURTH CLAIM FOR RELIEF – IN THE ALTERNATIVE**  
9 **FOURTEENTH AMENDMENT - EQUAL PROTECTION**  
10 **42 U.S.C. § 1983**  
**AGAINST ALL DEFENDANTS**

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

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

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

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

26 86. Therefore, Plaintiffs are entitled to declaratory relief declaring  
27 California Penal Code section 26150(a)(2)'s "good cause" provision as creating  
28 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

**UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA**  
**(Southern Division - Santa Ana)**  
**CIVIL DOCKET FOR CASE #: 8:12-cv-01458-JVS-JPR**

Dorothy McKay et al v. Sheriff Sandra Hutchens et al  
Assigned to: Judge James V. Selna  
Referred to: Magistrate Judge Jean P Rosenbluth  
Case in other court: 9TH CCA, 12-57049  
Cause: 42:1983 Civil Rights Act

Date Filed: 09/05/2012  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

Date Filed	#	Docket Text
09/05/2012	<u>1</u>	COMPLAINT against Defendants County of Orange, California, Does, Sheriff Sandra Hutchens. Case assigned to Judge James V. Selna for all further proceedings. Discovery referred to Magistrate Judge Jean P Rosenbluth.(Filing fee \$350 Paid), filed by plaintiffs Phillip Willms, Frederick Kogen, The CRPA Foundation, David Weiss, Dorothy McKay, Diana Kilgore.(nca) Modified on 9/12/2012 (twdb). (Entered: 09/07/2012)
09/05/2012		21 DAY Summons Issued re Complaint - (Discovery), Complaint - (Discovery) <u>1</u> as to Defendants County of Orange, California, Does, Sheriff Sandra Hutchens. (nca) (Entered: 09/07/2012)
09/05/2012	<u>2</u>	CERTIFICATE of Interested Parties filed by Plaintiff Diana Kilgore, Frederick Kogen, Dorothy McKay, The CRPA Foundation, David Weiss, Phillip Willms. (nca) Modified on 9/12/2012 (twdb). (Entered: 09/07/2012)
09/05/2012	<u>3</u>	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed.(nca) (Entered: 09/07/2012)
09/07/2012	<u>4</u>	FIRST AMENDED COMPLAINT against defendants County of Orange, California, Does, Sheriff Sandra Hutchens, Sandra Hutchens individually, Orange County Sheriff Coroner Department amending Complaint - (Discovery) <u>1</u> , filed by plaintiffs Phillip Willms, Frederick Kogen, The CRPA Foundation, David Weiss, Dorothy McKay, Diana Kilgore (Attachments: # <u>1</u> summons)(twdb) Modified on 9/12/2012 (twdb). (Entered: 09/11/2012)
09/07/2012		Amended 21 DAY Summons Issued re First Amended Complaint, <u>4</u> as to defendants County of Orange, California, Sandra Hutchens individually, Orange County Sheriff Coroner Department, Sheriff Sandra Hutchens. (twdb) Modified on 9/11/2012 (twdb). (Entered: 09/11/2012)
09/07/2012	<u>5</u>	AMENDED CERTIFICATE of Interested Parties filed by plaintiffs Diana Kilgore, Frederick Kogen, Dorothy McKay, The CRPA Foundation, David Weiss, Phillip Willms (twdb) Modified on 9/12/2012 (twdb). (Entered: 09/11/2012)
09/11/2012	<u>6</u>	NOTICE OF MOTION AND MOTION for Preliminary Injunction re Enforcement of Defendants' policy re: issuance of Concealed Carry Weapons Licenses.. If this is filed during normal business hours, please contact the courtroom deputy assigned to the judge. If you are filing this document after 5:00 Monday through Friday, on a weekend or holiday, and need immediate judicial review, please call 213-894-2485 to advise that a Preliminary Injunction has been electronically filed. Failure to call the courtroom deputy, or the after hours filing contact number, may result in a delay of judicial review. Motion filed by Plaintiffs Diana Kilgore, Frederick Kogen, Dorothy McKay, The CRPA Foundation, David Weiss, Phillip Willms. Motion set for hearing on 10/15/2012 at 01:30 PM before Judge James V. Selna. (Attachments: # <u>1</u> Memorandum of Points and Authorities In Support of Plaintiffs Motion



		For Preliminary Injunction, # <u>2</u> Declaration of Dorothy McKay, # <u>3</u> Declaration of David Weiss, # <u>4</u> Declaration of Diana Kilgore, # <u>5</u> Declaration of Fred Kogen, # <u>6</u> Declaration of Phillip Willms, # <u>7</u> Declaration of Silvio Montanarella)(Michel, Carl) Modified on 9/12/2012 (twdb). (Entered: 09/11/2012)
09/12/2012	<u>7</u>	REQUEST FOR JUDICIAL NOTICE re MOTION for Preliminary Injunction re Enforcement of Defendants' policy re: issuance of Concealed Carry Weapons Licenses.. If this is filed during normal business hours, please contact the courtroom deputy assigned to the judge. If you are filing <u>6</u> filed by Plaintiffs Diana Kilgore, Fred Kogen, Dorothy McKay, The CRPA Foundation, David Weiss, Phillip Willms. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S, # <u>20</u> Exhibit T, # <u>21</u> Exhibit U, # <u>22</u> Exhibit V, # <u>23</u> Exhibit W, # <u>24</u> Exhibit X, # <u>25</u> Exhibit Y, # <u>26</u> Exhibit Z, # <u>27</u> Exhibit AA, # <u>28</u> Exhibit BB, # <u>29</u> Exhibit CC, # <u>30</u> Exhibit DD, # <u>31</u> Exhibit EE, # <u>32</u> Exhibit FF, # <u>33</u> Exhibit GG, # <u>34</u> Exhibit HH, # <u>35</u> Exhibit II, # <u>36</u> Exhibit JJ, # <u>37</u> Exhibit KK, # <u>38</u> Exhibit LL, # <u>39</u> Exhibit MM, # <u>40</u> Exhibit NN, # <u>41</u> Exhibit OO, # <u>42</u> Exhibit PP) (Michel, Carl) (Entered: 09/12/2012)
09/13/2012	<u>8</u>	STIPULATION to Continue Hearing on Motion for Preliminary Injunction from October 15, 2012 to October 29, 2012 Re: MOTION for Preliminary Injunction re Enforcement of Defendants' policy re: issuance of Concealed Carry Weapons Licenses.. If this is filed during normal business hours, please contact the courtroom deputy assigned to the judge. If you are filing <u>6</u> , STIPULATION for Hearing re MOTION for Preliminary Injunction re Enforcement of Defendants' policy re: issuance of Concealed Carry Weapons Licenses.. If this is filed during normal business hours, please contact the courtroom deputy assigned to the judge. If you are filing <u>6</u> , Request for Judicial Notice, Request for Relief,,,,,, <u>7</u> filed by Defendants County of Orange, California, Sandra Hutchens, Orange County Sheriff Coroner Department, Sheriff Sandra Hutchens. (Attachments: # <u>1</u> Proposed Order Order Re: Continuance of Hearing on Motion for Preliminary Injunction)(Walsh, Nicole) (Entered: 09/13/2012)
09/17/2012	<u>9</u>	STIPULATION Extending Time to Answer the complaint as to County of Orange, California answer now due 10/26/2012; Sandra Hutchens answer now due 10/26/2012; Orange County Sheriff Coroner Department answer now due 10/26/2012; Sheriff Sandra Hutchens answer now due 10/26/2012, re Amended Complaint, <u>4</u> filed by Defendants County of Orange, California; Sandra Hutchens; Orange County Sheriff Coroner Department; Sheriff Sandra Hutchens.(Walsh, Nicole) (Entered: 09/17/2012)
09/17/2012	<u>10</u>	ORDER by Judge James V. Selna: granting <u>6</u> Motion for Preliminary Injunction. IT IS HEREBY ORDERED THAT: The Motion for Preliminary Injunction shall be continued from October 15, 2012, at 1:30 p.m. in Department 10-C to October 29, 2012, at the same time and place. Defendants Opposition is due October 9, 2012 and Plaintiffs Reply is due October 16, 2012. (twdb) (Entered: 09/18/2012)
09/18/2012	<u>11</u>	NOTICE OF ERRATA filed by Plaintiffs Diana Kilgore, Fred Kogen, Dorothy McKay, The CRPA Foundation, David Weiss, Phillip Willms. correcting MOTION for Preliminary Injunction re Enforcement of Defendants' policy re: issuance of Concealed Carry Weapons Licenses.. If this is filed during normal business hours, please contact the courtroom deputy assigned to the judge. If you are filing <u>6</u> <i>Notice of Errata and Correction to Plaintiffs' Memorandum of Points and Authorities In Support of Plaintiffs' Motion for Preliminary Injunction</i> (Attachments: # <u>1</u> Exhibit A)(Michel, Carl) (Entered: 09/18/2012)
09/19/2012	<u>12</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: MOTION for Preliminary Injunction re Enforcement of Defendants' policy re: issuance of Concealed Carry Weapons Licenses.. If this is filed during normal business hours, please contact the courtroom deputy assigned to the judge. If you are filing <u>6</u> . The following error(s) was found: Local Rule 7.1-1 No Certification of Interested Parties and or no copies. In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. You need not take ER000287

		in response to this notice unless and until the court directs you to do so. (db) (Entered: 09/19/2012)
09/27/2012	<u>13</u>	INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE SELNA. (jlen) (Entered: 09/27/2012)
10/02/2012	<u>14</u>	ORDER SETTING RULE 26(f) SCHEDULING CONFERENCE by Judge James V. Selna. Scheduling Conference set for 1/14/2013 11:30 AM before Judge James V. Selna. (jlen) (Entered: 10/02/2012)
10/09/2012	<u>15</u>	MEMORANDUM in Opposition to MOTION for Preliminary Injunction re Enforcement of Defendants' policy re: issuance of Concealed Carry Weapons Licenses.. If this is filed during normal business hours, please contact the courtroom deputy assigned to the judge. If you are filing <u>6</u> filed by Defendants Sandra Hutchens, Orange County Sheriff Coroner Department, Sheriff Sandra Hutchens. (Attachments: # <u>1</u> Declaration Declaration of Franklin E. Zimring, # <u>2</u> Declaration Declaration of Vicki Sands, # <u>3</u> Declaration Declaration of Kathleen Raley, # <u>4</u> Declaration Declaration of Commander Donald Barnes, # <u>5</u> Declaration Declaration of Lieutenant Sheryl Dubsky, # <u>6</u> Declaration Declaration of Melissa Soto)(Walsh, Nicole) (Entered: 10/09/2012)
10/11/2012	<u>16</u>	NOTICE OF ERRATA filed by Defendants Sandra Hutchens, Orange County Sheriff Coroner Department, Sheriff Sandra Hutchens. correcting MEMORANDUM in Opposition to Motion,, <u>15</u> Declaration of Melissa Soto (Walsh, Nicole) (Entered: 10/11/2012)
10/16/2012	<u>17</u>	REPLY Opposition MOTION for Preliminary Injunction re Enforcement of Defendants' policy re: issuance of Concealed Carry Weapons Licenses.. If this is filed during normal business hours, please contact the courtroom deputy assigned to the judge. If you are filing <u>6</u> <i>Plaintiffs' Reply to Defendants' Opposition to Motion for Preliminary Injunction</i> filed by Plaintiffs Diana Kilgore, Fred Kogen, Dorothy McKay, The CRPA Foundation, David Weiss, Phillip Willms. (Michel, Carl) (Entered: 10/16/2012)
10/24/2012	<u>18</u>	STIPULATION to Dismiss Defendant County of Orange, California filed by Plaintiff Phillip Willms, Fred Kogen, The CRPA Foundation, David Weiss, Dorothy McKay, Diana Kilgore. (Michel, Carl) (Entered: 10/24/2012)
10/25/2012	<u>19</u>	ANSWER to Amended Complaint, <u>4</u> filed by Defendants Sandra Hutchens, Orange County Sheriff Coroner Department, Sheriff Sandra Hutchens.(Van Riper, Marianne) (Entered: 10/25/2012)
10/25/2012	<u>20</u>	<i>Certification and Notice</i> of Interested Parties filed by Defendants Sandra Hutchens, Orange County Sheriff Coroner Department, Sheriff Sandra Hutchens, (Van Riper, Marianne) (Entered: 10/25/2012)
10/29/2012	<u>21</u>	MINUTES OF Motion Hearing held before Judge James V. Selna: Cause called and counsel make their appearances. The Courts tentative ruling is issued. Counsel make their arguments. The Court DENIES the plaintiffs motion and rules in accordance with the tentative ruling as follows: See minute order for more information. Court Reporter: Sharon Seffens. (twdb) (Entered: 11/01/2012)
11/01/2012	<u>22</u>	NOTICE of Change of Attorney Information for attorney Nicole Walsh counsel for Defendants Sandra Hutchens, Orange County Sheriff Coroner Department, Sheriff Sandra Hutchens.Nicole M. Walsh is no longer attorney of record for the aforementioned party in this case for the reason indicated in the G-06 Notice. Filed by Defendants Sheriff Sandra Hutchens, individually and in her official capacity as Sheriff of Orange County, and Orange County Sheriff-Coroner Department (Walsh, Nicole) (Entered: 11/01/2012)
11/01/2012	<u>23</u>	NOTICE of Change of Attorney Information for attorney Marianne Van Riper counsel for Defendants Sandra Hutchens, Orange County Sheriff Coroner Department, Sheriff Sandra Hutchens. Adding Marianne Van Riper as attorney as counsel of record for Sheriff Sandra Hutchens, individually and in her official capacity as Sheriff of Orange County, and Orange



		County Sheriff-Coroner Department for the reason indicated in the G-06 Notice. Filed by Defendants Sheriff Sandra Hutchens, individually and in her official capacity as Sheriff of Orange County, and Orange County Sheriff-Coroner Department (Van Riper, Marianne) (Entered: 11/01/2012)
11/05/2012	<u>24</u>	NOTICE of Change of Attorney Information for attorney Elizabeth Anne Pejeau counsel for Defendants Sandra Hutchens, Orange County Sheriff Coroner Department, Sheriff Sandra Hutchens. Adding Elizabeth A. Pejeau as attorney as counsel of record for Defendants, Sheriff Sandra Hutchens, individually and in her official capacity as Sheriff of Orange County, and Orange County Sheriff-Coroner Department for the reason indicated in the G-06 Notice. Filed by Defendants Sheriff Sandra Hutchens, individually and in her official capacity as Sheriff of Orange County, and Orange County Sheriff-Coroner Department (Pejeau, Elizabeth) (Entered: 11/05/2012)
11/09/2012	<u>25</u>	NOTICE OF APPEAL to the 9th CCA filed by Plaintiffs' Diana Kilgore, Fred Kogen, Dorothy McKay, The CRPA Foundation, David Weiss, Phillip Willms. Appeal of Motion Hearing, <u>21</u> (Appeal fee of \$455 receipt number 0973-11236727 paid.) (Attachments: # <u>1</u> Exhibit A)(Michel, Carl) (Entered: 11/09/2012)
11/09/2012	<u>26</u>	NOTIFICATION by Circuit Court of Appellate Docket Number 12-57049, 9TH CCA regarding Notice of Appeal to 9th Circuit Court of Appeals, <u>25</u> as to Plaintiffs Diana Kilgore, Fred Kogen, Dorothy McKay, The CRPA Foundation, David Weiss, Phillip Willms. (car) (Entered: 11/13/2012)
11/13/2012	<u>27</u>	DESIGNATION of Record on Appeal by Plaintiffs' Diana Kilgore, Fred Kogen, Dorothy McKay, The CRPA Foundation, David Weiss, Phillip Willms re <u>25</u> (Michel, Carl) (Entered: 11/13/2012)
11/13/2012	<u>28</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, <u>25</u> filed by David Weiss, Fred Kogen, Dorothy McKay, Phillip Willms, Diana Kilgore, The CRPA Foundation, CCA # 12-57049. The appeal filed 11/9/12 is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply. The mediation questionnaire is due three days after the date of this order. [See document for further details]. Order received in this district on 11/13/12. (car) (Entered: 11/14/2012)
11/16/2012	29	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Designation of Record on Appeal <u>27</u> . The following error(s) was found: Other Form AO435 Transcript Order Form must be amended to address the Incorrect event selected. Please file under Transcript > G-120. Transcript deadline terminated. You must electronically refile the above referenced Request for Transcript in this case to correct this deficiency. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(mw) TEXT ONLY ENTRY (Entered: 11/16/2012)
11/16/2012	<u>30</u>	TRANSCRIPT ORDER as to Plaintiffs' Diana Kilgore, Fred Kogen, Dorothy McKay, The CRPA Foundation, David Weiss, Phillip Willms Court Reporter. Court will contact C. D. Michel at CMichel@michellawyers.com with any questions regarding this order. Transcript portion requested: Other: Motion for Preliminary Injunction Hearing 10/29/2012. Transcript preparation will not begin until payment has been satisfied with the court reporter/recorder. (Michel, Carl) (Entered: 11/16/2012)

PACER Service Center			
Transaction Receipt			
11/19/2012 07:08:56			
PACER Login:	tm0137	Client Code:	McKay]
Description:	Docket	Search	8:12-cv-01458-JVS-

ER000289

	Report	Criteria:	JPR
Billable Pages:	5	Cost:	0.50

ER000290

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

On November 29, 2012, I served the foregoing document(s) described as

**APPELLANTS' EXCERPTS OF RECORD  
VOLUME II of II**

on the interested parties in this action by placing

☐ the original

☒ a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

“See Attached Service List”

X (BY MAIL) As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on November 29, 2012, at Long Beach, California.

X (FEDERAL) I declare that I am employed in the office of the member of the bar of this of this court at whose direction the service was made.

  
\_\_\_\_\_  
CLAUDIA AYALA

FILED  
MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOV 29 2012

**SERVICE LIST**

FILED	DOCKETED	DATE	INITIAL

*Dorothy McKay, et al. v. Sheriff Sandra Hutchens, et. al.*

Appellate Court No. 12-57049

District Court No.: SACV 12-1458JVS (JPRx)

Nicholas S. Chrisos, County Counsel  
Marianne Van Riper, Supervising Deputy  
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