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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 ROBERT THOMSON,) **CASE NO. 2:11-cv-06154-SJO-JC**
13)
14 Plaintiff,) **PLAINTIFFS’ NOTICE OF MOTION FOR**
15) **SUMMARY JUDGMENT**
16 vs.)
17)
18 TORRANCE POLICE DEPARTMENT and)
19 THE LOS ANGELES COUNTY SHERIFFS) **DATE: February 27, 2012**
20 DEPARTMENT,) **TIME: 10:00 a.m.**
21) **HON.: Judge S. James Otero**
22 Defendants.)
23)
24)
25)
26)
27)
28)

29 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

30
31 PLEASE TAKE NOTICE THAT on the date and time above, or as soon thereafter as
32 counsel can be heard, in the above-listed Court, Plaintiff Robert Thomson will, and by simultaneous
33 submission herewith of this motion hereby does, move this Court for an Order granting Plaintiffs’
34 Motion for Summary Judgment against Defendants pursuant to Federal Rule of Civil Procedure 56,
35 on the grounds that Defendants have violated Plaintiffs Rights as set forth in the Second
36 Amendment of the United States Constitution.

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This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in support thereof, the Separate Statement of Undisputed Facts lodged concurrently herewith and, the pleadings and papers on file herein, the record to date in this matter, and upon such other matters as may be presented to the Court at the time of the hearing.

December 17, 2011

_____/s/_____

Jonathan W. Birdt, Esq.

1 **JONATHAN W. BIRDT – SBN 183908**

e-filed _____

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9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 ROBERT THOMSON,

13 Plaintiff,

14 vs.

15 TORRANCE POLICE DEPARTMENT and)
16 THE LOS ANGELES COUNTY SHERIFFS)
17 DEPARTMENT,)

18 Defendants.)
19 _____)

CASE NO. 2:11-cv-06154-SJO-JC

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

(FILED CONCURRENTLY WITH SEPARATE STATEMENT OF UNDISPUTED FACT)

DATE: February 27, 2012

TIME: 10:00 a.m.

HON.: Judge S. James Otero

1 **IV. STANDARD OF REVIEW**

2 Summary judgment is proper where the pleadings and materials demonstrate “there is no
3 genuine issue as to any material fact and . . . the movant is entitled to judgment as a matter of
4 law.” FRCP 56(c)(2); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A material issue of
5 fact is a question a trier of fact must answer to determine the rights of the parties under the
6 applicable substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).
7

8
9 **V. LASD POLICY**

10 The LASD official policy on good cause states:

11 “According to Los Angeles County Sheriff’s Department policy (5-09/380.1 0) and the
12 California Supreme Court (CBS, Inc. v. Block, (1986) 42 Cal.3d 646), good cause shall
13 exist only if there is convincing evidence of a clear and present danger to life, or of great
14 bodily harm to the applicant, his spouse, or dependent child, which cannot be adequately
15 dealt with by existing law enforcement resources, and which danger cannot be reasonably
16 avoided by alternative measures, and which danger would be significantly mitigated by
17 the applicant’s carrying of a concealed firearm.”

18
19 This policy violates the Second Amendment under any stretch of the imagination as it is
20 tantamount to a ban on concealed weapon permits absent a “Clear and Present Danger.”

21
22 **VI. TORRANCE POLICY**

23 The Torrance Policy states that the applicant must document:

- 24 (i) the applicant is dealing with circumstances that distinguish the applicant from other
25 members of the public, in that there is a clear, present, and documented danger to the
26 applicant, and
27 (ii) there are no feasible alternative means of protection, either through existing law
28 enforcement resources or under the provisions of California Penal Code section 12031,
which carve out a number of exceptions that allow individuals to possess and carry
firearms in public settings for self-defense and defense of property.

This policy violates the Second Amendment under any stretch of the imagination as it is
tantamount to a ban on concealed weapon permits absent a “Clear and Present Danger.”

1 **VII. DISTRICT OF COLUMBIA V HELLER**

2 In Heller, after an exhaustive analysis of the text of the Second Amendment and the
3 founding-era sources of its original public meaning, the Supreme Court stated unequivocally that
4 the Second Amendment guarantees the right to "keep and bear arms" and is "the individual right
5 to possess and carry weapons in case of confrontation." District of Columbia v. Heller (2008)
6 128 S. Ct. 2783, 2797.

7 At the time of the founding, as now, to "bear" meant to "carry." See Johnson 161;
8 Webster; T. Sheridan, *A Complete Dictionary of the English Language* (1796); 2 Oxford
9 English Dictionary 20 (2d ed. 1989) (hereinafter Oxford). When used with "arms,"
10 however, the term has a meaning that refers to carrying for a particular purpose--
11 confrontation. In *Muscarello v. United States*, 524 U.S. 125, 118 S. Ct. 1911, 141 L. Ed.
12 2d 111 (1998), in the course of analyzing the meaning of "carries a firearm" in a federal
13 criminal statute, Justice Ginsburg wrote that "[s]urely a most familiar meaning is, as the
14 *Constitution's Second Amendment* . . . indicate[s]: 'wear, bear, or carry . . . upon the
15 person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for
16 offensive or defensive action in a case of conflict with another person.'" *Id.*, at 143, 118
17 S. Ct. 1911, 141 L. Ed. 2d 111 (dissenting opinion) (quoting Black's Law Dictionary 214
18 (6th ed. 1990)). We think that Justice Ginsburg accurately captured the natural meaning
19 of "bear arms." Although the phrase implies that the carrying of the weapon is for the
20 purpose of "offensive or defensive action," it in no way connotes participation in a
21 structured military organization. *Id.* at 2794.

22 The Supreme Court has explained that the natural meaning of "bear arms" is to "wear,
23 bear, or carry ...upon the person or in a pocket, for the purpose ... of being armed and ready for
24 offensive or defensive action in a case of conflict with another person.'" *Id.* at 2793 (quoting
25 Muscarello v. United States (1998) 524 U.S. 125, 143). Further, Heller states that the right to
26 bear arms does not bar "laws forbidding the carrying of firearms in sensitive places such as
27 schools and government buildings." *Id.* at 2817. The obvious and inescapable implication is that
28 there is a constitutional fundamental right to carry firearms in places which are not "sensitive"
for the purpose of self-defense protected by and embodied within the Second Amendment.

1 **VIII. MCDONALD V CITY OF CHICAGO**

2 Two years later in McDonald v. City of Chicago, the United States Supreme Court made
3 it clear that the Second Amendment was applicable to the States and subject to the same
4 protection as other rights like the First Amendment. McDonald v. City of Chicago (2010) 130 S.
5 Ct. 3020, at 3027 (2010).

6
7 **IX. DEFENDANTS EXERCISE DISCRETION INCONSISTENT WITH A**
8 **FUNDAMENTAL RIGHT BY CONDITIONING EXERCISE OF A THAT RIGHT**
9 **ON DOCUEMNTATION OF A CLEAR AND PRESENT DANGER**

10 A CCW Permit issued pursuant to California Penal Code 12050 is the only mechanism in
11 California by which a Citizen can exercise their right to bear arms outside of the home. Pursuant
12 to the statutory scheme, the California Attorney General has created a form application for
13 residents of the State of California to use when applying for a permit thereunder; however, the
14 decision to issue the permit rests with Chiefs of Police and County Sheriffs.

15 In *Heller*, the Supreme Court held the Second Amendment protects an individual right
16 “to possess **and carry** weapons in case of confrontation,” unconnected with service in a
17 militia.... the court held the Second Amendment right recognized in *Heller* is “fully
18 applicable to the States.”...A plurality of the *McDonald* court concluded the Second
19 Amendment right applies to the states because it is “fundamental” to the American
20 “scheme of ordered liberty”

21 People v. Delacy (2011) 192 Cal.App.4th 1481. (emphasis added)

22 Defendants carry the burden of establishing the nexus between their need and their
23 infringement upon a Fundamental Right. Under Cantwell v. Connecticut (1940) 310 U.S. 296,
24 and progeny, States and localities may not condition a license necessary to engage in
25 constitutionally protected conduct on the grant of a license officials have *discretion to withhold*.
26 Further, a host of prior restraint cases establish that “the peaceful enjoyment of freedoms *which*
27 *the Constitution guarantees*” may not be made “contingent upon the uncontrolled will of an
28 official.” Staub v. Baxley (1958) 355 U.S. 313, 322 (emphasis added).

1 The Ninth Circuit recently found, in a prior restraint case decided on a First Amendment
2 claim that:

3 Our analysis is guided by certain well-established principles of First Amendment law. In
4 public places such as streets and sidewalks, “the State [may] enforce a content-based
5 exclusion” on speech if the “regulation is necessary to serve a compelling state interest
6 and that it is narrowly drawn to achieve that end.” *Perry Educ. Ass'n v. Perry Local
Educators' Ass'n*, 460 U.S. 37, 45 (1983). For content-neutral regulations, the State may
7 limit “the time, place, and manner of expression” if the regulations are “narrowly tailored
8 to serve a significant government interest, and leave open ample alternative channels of
9 communication.” *Id.*

10 We conclude that the Ordinance fails to satisfy the narrow tailoring element of the
11 Supreme Court's “time, place, and manner” test. The Ordinance is not narrowly tailored
12 because it regulates significantly more speech than is necessary to achieve the City's
13 purpose of improving traffic safety and traffic flow at two major Redondo Beach
14 intersections, and the City could have achieved these goals through less restrictive
15 measures, such as the enforcement of existing traffic laws and regulations. Because the
16 Ordinance does not constitute a reasonable regulation of the time, place, or manner of
17 speaking, it is facially unconstitutional.

18 Comite de Jornaleros de Redondo Beach v. City of Redondo Beach (9th Cir., Sept. 16,
19 2011, 06-55750) 2011 WL 4336667.

20 **X. CONCLUSION**

21 Our decision in *Heller* points unmistakably to the answer. Self-defense is a basic right,
22 recognized by many legal systems from ancient times to the present day, and in *Heller*,
23 we held that individual self-defense is "the central component" of the Second
24 Amendment right. McDonald v. City of Chicago (2010) 130 S. Ct. 3020, at 3037.

25 This Court is respectfully requested to find that defendants pre-condition of
26 documentation of a Clear and Present Danger before granting permission to exercise a
27 Fundamental Right does not pass Constitutional Scrutiny and Violates Plaintiffs Rights under the
28 Second Amendment. Under California Law the only way to bear a functional firearm for self-
defense is with a CCW permit. Defendants herein withhold permission to exercise this
fundamental right by requiring proof of a Clear and Present Danger. Such condition precedent to
the exercise of a fundamental offends constitutional jurisprudence and all common sense. A gun
is not a crime, it is a constitutionally protected right, and the exercise thereof by law abiding
citizens who seek training and licensing present no risk to public safety.

December 17, 2011

_____/s/_____

Jonathan W. Birdt, Esq.