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2014 MAY 27 AM 10:56  
CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

Charles Nichols  
PO Box 1302  
Redondo Beach, CA 90278  
Voice: (424) 634-7381  
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In Pro Per

United States District Court  
Central District of California

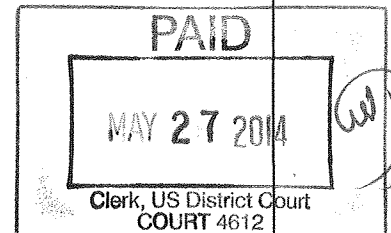
CHARLES NICHOLS,  
Plaintiff,  
v.

Case No.: CV-11-9916 SJO (SS)  
NOTICE OF APPEAL

EDMUND G. BROWN JR., in his  
official capacity as Governor of  
California, KAMALA D. HARRIS, in  
her official capacity as Attorney  
General of California

Defendants

NOTICE OF APPEAL



NOTICE IS HEREBY GIVEN that Plaintiff Charles Nichols, pro se plaintiff in the above named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order and judgment denying plaintiff's motion for partial summary judgment and granting Defendant Kamala D. Harris' motion for judgment on the pleadings entered in this action on May 1, 2014 (Dkt. Nos. 166, 167) and all interlocutory orders including, but not limited to, those that gave rise

1 to the district court's judgment including, but not limited to, the order dismissing  
2 with prejudice Defendant Edmund G. Brown Jr. in his official capacity as  
3 Governor of California and dismissing with prejudice Plaintiff Nichols' claims  
4 under the California Constitution and state law (Dkt. No. 46).

5  
6 Dkt. No. 166 is attached as "Exhibit A." Dkt. No. 167 is attached as "Exhibit B."  
7 and Dkt. No. 46 is attached as "Exhibit C."

8  
9 Pursuant to CIRCUIT RULE 3-2(a) no FRAP 12(b) Representation  
10 Statement is required.

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22 Dated: May 27, 2014

Respectfully submitted,

23  
24 

25 By: Charles Nichols  
26 PLAINTIFF in Pro Per  
27 PO Box 1302  
28 Redondo Beach, CA 90278  
Voice: (424) 634-7381  
EMail: CharlesNichols@Pykrete.info

///

**EXHIBIT A**  
**Case No.: CV-11-9916 SJO (SS)**

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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 CHARLES NICHOLS,

12 Plaintiff,

13 v.

14 KAMALA D. HARRIS, in her  
15 official capacity as Attorney  
General of California,

16 Defendant.  
17  
18

Case No. CV 11-9916 SJO (SS)

ORDER ACCEPTING FINDINGS,

CONCLUSIONS AND

RECOMMENDATIONS OF

UNITED STATES MAGISTRATE JUDGE

19 Pursuant to 28 U.S.C. § 636, the Court has reviewed the  
20 Second Amended Complaint, all the records and files herein, the  
21 Report and Recommendation of the United States Magistrate Judge,  
22 Plaintiff's Objections, and Defendant's Response to Plaintiff's  
23 Objections. After having made a de novo determination of the  
24 portions of the Report and Recommendation to which Objections  
25 were directed, the Court concurs with and accepts the findings  
26 and conclusions of the Magistrate Judge. In addition, the Court  
27 will address certain arguments raised by Plaintiff in his  
28 Objections.

1 Plaintiff asserts that the Ninth Circuit's recent decision  
2 in Peruta v. County of San Diego, 742 F.3d 1144 (9th Cir. 2014),  
3 has been "stayed" and is neither binding on this Court nor  
4 relevant to his claims. (Obj. at 8). Plaintiff is mistaken.

5  
6 On February 28, 2014, the Ninth Circuit stayed the issuance  
7 of the mandate in Peruta pending briefing and a decision on a  
8 motion for rehearing en banc. See Peruta v. County of San Diego,  
9 9th Cir. Case No. 10-56971 (Dkt. No. 126, entered Feb. 28, 2014)  
10 (order extending time for filing petition for rehearing en banc  
11 and staying mandate). However, entry of the mandate is merely a  
12 "ministerial act," White v. Klitzkie, 281 F.3d 920, 924 n.4 (9th  
13 Cir. 2002), that "formally marks the end of appellate  
14 jurisdiction." Northern California Power Agency v. Nuclear  
15 Regulatory Com'n, 393 F.3d 223, 224 (D.C. Cir. 2004) (internal  
16 quotation marks omitted). A panel decision of the Ninth Circuit  
17 is binding on lower courts as soon as it is published, even  
18 before the mandate issues, and remains binding authority until  
19 the decision is withdrawn or reversed by the Supreme Court or an  
20 en banc court. See, e.g., Gonzalez v. Arizona, 677 F.3d 383, 389  
21 n.4 (9th Cir. 2012) (en banc) ("[A] published decision of this  
22 court constitutes binding authority which 'must be followed  
23 unless and until overruled by a body competent to do so.'")  
24 (quoting Hart v. Massanari, 266 F.3d 1155, 1170 (9th Cir. 2001));  
25 United States v. Gomez-Lopez, 62 F.3d 304, 306 (9th Cir. 1995)  
26 ("The government first urges us to ignore Armstrong since we have  
27 stayed the mandate to allow filing of a petition for certiorari;  
28 this we will not do, as Armstrong is the law of this circuit.");

1 Castillo v. Clark, 610 F. Supp. 2d 1084, 1122 n.17 (C.D. Cal.  
2 2009) ("Although the Ninth Circuit has granted a stay of the  
3 mandate in Butler, the panel decision remains the law of the  
4 Circuit."). Indeed, three weeks after the stay in Peruta issued,  
5 the Ninth Circuit vacated a district court decision in another  
6 matter and remanded the case "for further proceedings consistent  
7 with Peruta." See Baker v. Kealoha, \_\_\_ Fed. Appx. \_\_\_, 2014 WL  
8 1087765 at \*1 (9th Cir. Mar. 20, 2014). As of the date of this  
9 Order, Peruta remains binding precedent on this Court.

10  
11 Plaintiff further appears to misinterpret the import of the  
12 Peruta court's clarification in footnote 19 that it was not  
13 "ruling on the constitutionality of California statutes." (Obj.  
14 at 2) (quoting Peruta, 742 F.3d at 1173 n.19). This footnote is  
15 part of the discussion in which the Ninth Circuit explained that  
16 because the Second Amendment does not protect any particular mode  
17 of carry, a claim that a state must permit a specific form of  
18 carry, such as open carry, fails as a matter of law. See id. at  
19 1172-73 ("As the California legislature has limited its  
20 permitting scheme to concealed carry -- and has thus expressed a  
21 preference for that manner of arms-bearing -- a narrow challenge  
22 to the San Diego County regulations on concealed carry, rather  
23 than a broad challenge to the state-wide ban on open carry, is  
24 permissible."). Accordingly, Peruta did not rule on the overall

1  
2 constitutionality of California statutes because it accepted the  
3 lawfulness of California's firearms regime, including the state's  
4 preference for concealed carry over open carry. Id. at 1172.

5  
6 Plaintiff suggests that the Ninth Circuit's recent decision  
7 in Jackson v. City and County of San Francisco, \_\_ F.3d \_\_, 2014  
8 WL 1193434 (9th Cir. Mar. 25, 2014), is helpful to his case as he  
9 opens his Objections with a lengthy quotation from that decision.  
10 (See Obj. at 1-2) (quoting Jackson, 2014 WL 1193434 at \*4-5).  
11 However, Plaintiff does not explain why the passages he quotes  
12 support his claims. The Jackson court found that two San  
13 Francisco Police Code regulations that prohibit the unsecured  
14 storage of handguns in residences and the sale of "hollow point"  
15 ammunition passed constitutional muster. Id. at \*1. In the  
16 passages quoted by Plaintiff, the court determined that the  
17 plaintiff could bring a facial challenge to section 4512, which  
18 requires that handguns in residences be stored in a locked  
19 container, disabled with an approved trigger lock, or carried on  
20 the person over the age of 18, despite the Jackson plaintiff's  
21 concession that locked storage is appropriate in some  
22 circumstances. Id. at \*5. Again, as Plaintiff has failed to  
23 articulate in his Objections why he believes Jackson changes the  
24 outcome here, the Objections do not alter the Court's ultimate  
25 resolution of Plaintiff's claims.

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1 Finally, Plaintiff asserts that he does in fact have  
2 standing to assert an equal protection challenge to California  
3 Penal Code Section 25850 due to its allegedly racist origin and  
4 application because contrary to the criminal complaint on which  
5 the Magistrate Judge relied, he is not white but of "mixed race"  
6 heritage. (Obj. at 16). Plaintiff's equal protection claim  
7 still fails, however, because as the Magistrate Judge observed,  
8 Plaintiff did not squarely raise a race-based challenge to  
9 Section 25850 against the Attorney General. (Report and  
10 Recommendation at 26-27).

11  
12 To state an equal protection claim under section 1983, a  
13 plaintiff typically must allege that "'defendants acted with an  
14 intent or purpose to discriminate against the plaintiff based  
15 upon membership in a protected class.'" Furnace v. Sullivan, 705  
16 F.3d 1021, 1030 (9th Cir. 2013) (quoting Barren v. Harrington,  
17 152 F.3d 1193, 1194 (9th Cir. 1998) (emphasis added)). Even  
18 liberally construed, the Second Amended Complaint fails to make  
19 any connection between Plaintiff's race and the allegedly racist  
20 design motivating the passage of the facially race-neutral  
21 predecessor to Section 25850. Indeed, the record in this case,  
22 including Plaintiff's Second Amended Complaint and Plaintiff's  
23 Motion for Partial Summary Judgment, is devoid of any allegation  
24 that Plaintiff is a member of a racial minority whose members  
25 were the intended target of the legislature's alleged racial  
26 animus in enacting the predecessor to Section 25850. Despite  
27 three opportunities to state his claims, Plaintiff simply did not  
28 raise a race-based Fourteenth Amendment claim in this action.



1 Assertion of a new claim on summary judgment is improper.  
2 Coleman v. Quaker Oats Co., 232 F.3d 1271, 1294 (9th Cir. 2000).  
3 Accordingly, even if Plaintiff is of "mixed race" heritage, he  
4 may not raise new claims at this late stage of the litigation.

5  
6 **IT IS ORDERED** that Plaintiff's Motion for Partial Summary  
7 Judgment is DENIED.

8  
9 **IT IS FURTHER ORDERED** that Defendant's Motion for Judgment  
10 on the Pleadings is GRANTED and that Judgment be entered in favor  
11 of Defendant Kamala D. Harris.

12  
13 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

14  
15 DATED: May 1, 2014.

*S. James Otero*

16 S. JAMES OTERO  
17 UNITED STATES DISTRICT JUDGE  
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**EXHIBIT B**  
**Case No.: CV-11-9916 SJO (SS)**

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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 CHARLES NICHOLS,

12 Plaintiff,

13 v.

14 KAMALA D. HARRIS, in her  
15 official capacity as Attorney  
General of California,

16 Defendant.  
17

Case No. CV 11-9916 SJO (SS)

JUDGMENT

18 Pursuant to the Court's Order Accepting Findings,  
19 Conclusions and Recommendations of United States Magistrate  
20 Judge,  
21

22 IT IS HEREBY ADJUDGED that the above-captioned action is  
23 dismissed with prejudice.  
24

25 DATED: May 1, 2014.

*S. James Otero*  
26 S. JAMES OTERO  
27 UNITED STATES DISTRICT JUDGE  
28

**EXHIBIT C**  
**Case No.: CV-11-9916 SJO (SS)**

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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 CHARLES NICHOLS, ) NO. CV 11-09916 SJO (SS)  
12 Plaintiff, )  
13 v. ) ORDER ACCEPTING FINDINGS,  
14 EDMUND G. BROWN, in his official ) CONCLUSIONS AND RECOMMENDATIONS  
15 capacity as Governor of ) OF UNITED STATES MAGISTRATE JUDGE  
16 California, et al., )  
17 Defendants. )

18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaint  
19 in the above-captioned matter, Plaintiff's Motion for Review of  
20 Magistrate Judge's Report and Recommendation, which the Court construes  
21 as Objections, Plaintiff's Notice of Errata, the Response of Defendants  
22 Gov. Edmund G. Brown, Jr. and Atty. Gen. Kamala D. Harris to Plaintiff's  
23 Objections, all the records and files herein, and the Report and  
24 Recommendation of the United States Magistrate Judge. After having made  
25 a de novo determination of the portions of the Report and Recommendation  
26 to which Objections were directed, the Court accepts and adopts the  
27 findings, conclusions and recommendations of the Magistrate Judge,  
28 excluding the citation to Oklevueha Native American Church of Hawai'i,

1 Inc. v. Holder, 719 F. Supp. 2d 1217 (D. Hawaii 2010) on page 15, lines  
2 15-23.

3  
4 Accordingly, IT IS ORDERED THAT:

5  
6 1. Plaintiff's claims against Attorney General Kamala D. Harris  
7 are DISMISSED WITH LEAVE TO AMEND for lack of subject matter  
8 jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).

9  
10 2. Plaintiff's claims against Governor Edmund G. Brown, Jr. are  
11 DISMISSED WITH PREJUDICE for lack of subject matter jurisdiction  
12 pursuant to Rule 12(b)(1) and the Eleventh Amendment.

13  
14 3. Plaintiff's claims against the City of Redondo Beach and City  
15 of Redondo Beach Police Chief Leonardi are DISMISSED WITH LEAVE TO AMEND  
16 for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) and  
17 for failure to state a claim pursuant to Rule 12(b)(6).

18  
19 4. Plaintiff's claims against City of Redondo Beach Police  
20 Department are DISMISSED WITH PREJUDICE for lack of subject matter  
21 jurisdiction pursuant to Rule 12(b)(1) and for failure to state a claim  
22 pursuant to Rule 12(b)(6).

23  
24 5. Plaintiff's Seventh Claim for Relief alleging a violation of  
25 state constitutional law is DISMISSED WITH PREJUDICE pursuant to the  
26 Eleventh Amendment.

1           6.    If Plaintiff desires to proceed with his claims against  
2 Attorney General Harris, City of Redondo Beach, and Police Chief  
3 Leonardi, Plaintiff shall file a First Amended Complaint within thirty  
4 (30) days of the date of this Order.

5  
6           The Clerk shall serve copies of this Order by United States mail on  
7 Plaintiff and on counsel for Defendants.

8  
9 DATED: May 7, 2012.

*S. James Otero*

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S. JAMES OTERO  
UNITED STATES DISTRICT JUDGE



### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of plaintiff's **NOTICE OF APPEAL** was served via United States Mail, postage prepaid, on this 27, day of May, 2014 on the following:

Jonathan Michael Eisenberg  
Office of the California Attorney General  
Government Law Section  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
213-897-6505  
213-897-5775 (fax)  
jonathan.eisenberg@doj.ca.gov

Assigned: 01/30/2012

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Representing Kamala D Harris (Defendant) and Edmund G Brown, Jr (Defendant)

Executed this the 27<sup>th</sup> Day of May, 2014 in Los Angeles County by:



Charles Nichols

Plaintiff, In Pro Per

Case No. CV-11-9916 SJO (SS)