

1 T. PETER PIERCE (Bar No. 160408)
ppierce@rwglaw.com
2 LISA BOND (Bar No. 172342)
lbond@rwglaw.com
3 AARON C. O'DELL (Bar No. 281851)
Ao'dell@rwglaw.com
4 RICHARDS, WATSON & GERSHON
A Professional Corporation
5 355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
6 Telephone: 213.626.8484
Facsimile: 213.626.0078

7 Attorneys for Defendants
8 CITY OF REDONDO BEACH, JOSEPH
LEONARDI and TODD HEYWOOD
9

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 CHARLES NICHOLS,

14 Plaintiff,

15 vs.

16 KAMALA D. HARRIS, Attorney
General, in her official capacity as
Attorney General of California, CITY
17 OF REDONDO BEACH, CITY OF
REDONDO BEACH POLICE CHIEF
18 JOSEPH LEONARDI, OFFICER TODD
HEYWOOD and DOES 1 to 10,

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS FIRST
AMENDED COMPLAINT, OR, IN
THE ALTERNATIVE, MOTION FOR
MORE DEFINITE STATEMENT**

(Pursuant to Fed. R. Civ. P. 12(b)(1),
12(b)(6) and 12(e))

**[NOTICE OF MOTION,
DECLARATION OF LISA BOND
AND [PROPOSED] ORDER FILED
CONCURRENTLY HEREWITH]**

Date: July 31, 2012
Time: 10:00 a.m.
Crm: 23

Action Filed: November 30, 2011

Magistrate: Hon. Suzanne H. Segal

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Defendants City of Redondo Beach, City of Redondo Beach Police Chief Joseph Leonardi, and Todd Heywood (collectively “Redondo Beach Defendants”) hereby submit this memorandum of points and authorities in support of their motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6), or, alternatively, motion for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e).

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Since the time this Court granted the City’s motion to dismiss the original complaint filed in this action, *pro se* Plaintiff Charles Nichols (“Plaintiff” or “Mr. Nichols”) entered a Redondo Beach public park carrying an unloaded rifle with ammunition taped to it and other related items, in an apparent attempt to perfect his standing to keep the Redondo Beach Defendants as parties to this lawsuit.

Redondo Beach police officers stopped Mr. Nichols and seized his rifle and related property, believing him to be in violation of the City’s Municipal Code section 4-35.20, which prohibits possession of firearms in its public parks (the “Ordinance”). Shortly thereafter, Plaintiff filed a First Amended Complaint, alleging that the Ordinance is unconstitutional on various grounds, that its enforcement against him violated his rights, and that he is therefore entitled to damages associated with the seizure of his rifle and related items.¹

¹ In his First Amended Complaint, Plaintiff also appears to challenge Redondo Beach City Municipal Code section “35.01,” but no such section exists. Assuming Plaintiff is referring to section 4-35.01 of the Municipal Code, that section merely provides definitions and does not restrict any activity. Since Plaintiff has failed to explain how the mere existence of definitions violate the rights he asserts in his first claim for relief, any claim to be construed against Redondo Beach City Municipal Code section 4-35.01 should be dismissed for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

1 The City is currently charging Mr. Nichols with criminal violation of the
 2 Ordinance for the same incident of carrying the rifle into its public park. With this
 3 lawsuit, Mr. Nichols is therefore necessarily asking this Court to interfere with the
 4 ongoing state court criminal prosecution of him by the City, captioned *People v.*
 5 *Nichols* (Los Angeles Superior Court) and set for arraignment on July 25, 2012. In
 6 light of this, the Court should dismiss Plaintiff's challenge to the City's ordinance
 7 pursuant to the doctrine of *Younger* abstention. *Younger v. Harris*, 401 U.S. 37
 8 (1971). "*Younger* abstention embodies a strong federal policy against federal-court
 9 interference with pending state judicial proceedings, absent extraordinary
 10 circumstances. [Citation.]" *Beltran v. State of California*, 871 F.2d 777, 781 (9th
 11 Cir. 1988) (internal quotation omitted).

12 Moreover, jurisdiction by this Court over Plaintiff's second claim for relief for
 13 damages depends on resolution of his state criminal proceeding. Before this Court
 14 can assert jurisdiction, the state court system must first determine whether the City's
 15 ordinance is lawful under the United State Constitution and, if so, whether it is
 16 lawful under California law (to the extent Plaintiff is asserting a state preemption
 17 claim here). Until then, it is not proper for this Court to address Plaintiff's claim for
 18 damages, and those claims should be stayed.

19 In any event, Plaintiff's claim for damages against the individual Redondo
 20 Beach police officers he names as defendants must be dismissed. Even if those
 21 individuals are found to have violated Plaintiff's constitutional rights by seizing his
 22 rifle (which they do not concede), they are entitled to qualified immunity for doing
 23 so. Whether the Ordinance violates the Second Amendment is by no means clearly
 24 established under the law, such that a reasonable officer would know so.

25 Additional grounds for granting the motion to dismiss include (1) Plaintiff
 26 lacks standing; and (2) Plaintiff has failed to allege facts sufficient to state claims for
 27 relief.
 28

II.

STATEMENT OF FACTS

Plaintiff Charles Nichols filed his original complaint *pro se* in this action on November 30, 2011, challenging both state laws and City of Redondo Beach Municipal Code section 4-25.01. Upon motion by the City pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), this Court dismissed that complaint without prejudice as to defendants the City of Redondo Beach and Redondo Beach Chief of Police Joseph Leonardi, and with prejudice as to the Redondo Beach Police Department, for lack of standing and failure to state a claim upon which relief can be granted. (See Order Accepting Findings, Conclusions and Recommendations of U.S. Magistrate Judge, 2-3, May 7, 2012.)

Mr. Nichols notified the City of his intent to carry an unloaded “long-gun” in public within the City of Redondo Beach at some time between May 21 and May 24, 2012. Per his notification, on May 21, 2012, Mr. Nichols appeared in public within the City’s limits carrying an unloaded rifle. Peace officers for the City of Redondo Beach, including named defendant Todd Heywood, observed Mr. Nichols and followed him as he walked through public areas.

Upon Mr. Nichols entering a City of Redondo Beach public park, police officers approached him and informed him that he was violating City law. The officers seized Mr. Nichols’ rifle and related property, and they informed him that they would be filing a report with the Redondo Beach City Prosecutor’s Office for determination of whether criminal charges should be filed.

Thereafter, on May 30, 2012, Mr. Nichols filed a First Amended Complaint in this action. The First Amended Complaint adds a challenge to the City’s Ordinance against carrying firearms in a public park (and its ordinance defining certain terms, including “park”). Mr. Nichols’ amended claims seem to be mostly based on the seizure of his rifle by the City’s police officers in a public park, but include a facial challenge to the City’s Ordinance on various constitutional grounds. Mr. Nichols

1 also added as a defendant the City's police officer who seized his rifle. He
2 additionally seeks monetary damages from them and the City for the seizure of his
3 rifle and related items.

4 Shortly thereafter, prosecutors for the City filed misdemeanor charges against
5 Mr. Nichols for violation of the City's Ordinance challenged in this lawsuit, based on
6 his actions on May 21, 2012, when he entered a public park carrying an unloaded
7 rifle.

8 9 III.

10 ARGUMENT

11 A. Pursuant to *Younger*, This Court Should Abstain from Exercising 12 Jurisdiction Over the Subject Matter Presented in This Action

13 Under the doctrine of *Younger* abstention, this Court should refrain from
14 exercising jurisdiction as to Plaintiff's claims for relief asserted against the Redondo
15 Beach Defendants here because there is a state court criminal proceeding currently
16 pending against Plaintiff for his actions that form the basis of those claims. *Younger*
17 *v. Harris*, 401 U.S. 37, 43 (1971). Based on the notion of comity, *Younger* and its
18 progeny "espouse a strong federal policy against federal-court interference with
19 pending state judicial proceedings absent extraordinary circumstances."
20 *Woodfeathers, Inc. v. Washington County, Oregon*, 180 F.3d 1017, 1020 (9th Cir.
21 1999) (quoting *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S.
22 423, 431 (1982)).

23 1. Standards for a Motion to Dismiss Pursuant to *Younger*

24 The Ninth Circuit has held that *Younger* abstention is generally required where
25 (1) there are ongoing state judicial proceedings, (2) the proceedings implicate
26 important state interests, and (3) there is an adequate opportunity in the state
27 proceedings to raise the federal questions. *Dubinka v. Judges of Sup. Ct.*, 23 F.3d
28 218, 223 (9th Cir. 1994). Where a claim meets the criteria for a *Younger* abstention,

1 jurisdiction over the subject matter cannot be retained absent extraordinary
 2 circumstances (*Beltran v. State of California*, 871 F.2d 777, 781 (9th Cir. 1988)), or
 3 where the state proceeding is in bad faith or for harassment (*Younger*, 401 U.S. at
 4 54).

5 If a court lacks subject matter jurisdiction over a claim, the claim must be
 6 dismissed. *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983) (“The
 7 defense of lack of subject matter jurisdiction cannot be waived, and the court is under
 8 a continuing duty to dismiss an action whenever it appears that the court lacks
 9 jurisdiction”); 5A Wright & Miller, Federal Practice and Procedure § 1393 (2nd Ed.
 10 1990). So, once it has been determined that the *Younger* abstention doctrine applies,
 11 a federal court is required to dismiss any claim for declaratory or injunctive relief
 12 (*Gibson v. Berry Hill*, 411 U.S. 564, 577 (1973)) and to stay any claim for damages
 13 pending resolution of the state court proceeding (*Gilbertson v. Albright*, 381 F. 3d
 14 965 (9th Cir. 2004)).

15 a. Ongoing State Judicial Proceedings

16 Under the first prong of the *Younger* abstention test, “[w]hether the state
 17 proceedings are ‘pending’ is not determined by comparing the commencement dates
 18 of the federal and state proceedings.” *Polykoff v. Collins*, 816 F.2d 1326, 1332 (9th
 19 Cir. 1987). Rather, this prong is satisfied as long as the state court proceedings are
 20 initiated “before any proceedings of substance on the merits have taken place in the
 21 federal court,” even where the state proceedings are initiated *after* the filing of a
 22 federal complaint. *Hicks v. Miranda*, 422 U.S. 332, 349 (1975), overruled on other
 23 grounds in *Mandel v. Bradley*, 432 U.S. 173 (1977).

24 b. Important State Interests

25 *Younger* abstention is required when the state proceeding “implicates
 26 important state interests.” *Gilbertson v. Albright*, 381 F.3d 965, 978 (9th Cir. 2004).
 27 “The importance of the interest is measured by considering its significance broadly,
 28 rather than by focusing on the state’s interest in the resolution of an individual’s

1 case.” *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 618 (9th Cir. 2003).
 2 “Whether the state proceedings are ‘judicial in nature’ . . . also plays a role in
 3 assessing the significance of the state interest.” *Id.* at 618. Proceedings “which are
 4 judicial in nature are the type of proceeding that does implicate an important state
 5 interest.” *Gilbertson*, 381 F.3d at 977 (citations omitted).

6 **c. Opportunity to Raise Federal Question in State**
 7 **Proceeding**

8 All that is required to satisfy the third prong of *Younger* is that an opportunity
 9 to raise the federal questions be available at some point in the state proceedings.
 10 *Juidice v. Vail*, 430 U.S. 327, 337 (1977). “Where vital state interests are involved, a
 11 federal court should abstain ‘unless state law clearly bars the interposition of
 12 constitutional claims.’ [Citation.]” *Middlesex County Ethics Comm. v. Garden State*
 13 *Bar Ass’n*, 457 U.S. 423, 432 (1982) (internal citations omitted). The burden is on
 14 the plaintiff seeking to avoid abstention to show that state procedural law bars
 15 presentation of the plaintiff’s federal claims in the state proceeding. *Pennzoil Co. v.*
 16 *Texaco, Inc.* 481 U.S. 1, 15 (1987). Moreover, “when a litigant has not attempted to
 17 present his federal claims in related state-court proceedings, a federal court should
 18 assume that state procedures will afford an adequate remedy, in the absence of
 19 unambiguous authority to the contrary.” *Id.* at 15.

20 **2. There Are Ongoing State Judicial Proceedings Against**
 21 **Plaintiff Involving the Same Subject Matter as This Action**

22 Though Plaintiff filed his First Amended Complaint shortly before the City
 23 formally charged him in state court for violation of the Ordinance, this Court has not
 24 yet considered the substantive merits of Plaintiff’s claims.

25 Because state court criminal proceedings are currently proceeding against
 26 Mr. Nichols for violations of the Ordinance that he challenges in his federal action
 27 before this Court, and because no proceedings of substance on the merits of his
 28 action had taken place prior to Redondo Beach Defendants filing those criminal

charges against him (and still have not), prong one of *Younger* abstention is satisfied. *Hicks v. Miranda*, 422 U.S. at 349-50.

3. The State Proceeding Against Plaintiff Implicates the Important State Interest of Criminal Justice Administration

The United States Supreme Court has recognized that the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief. *Younger*, 401 U.S. at 44-45. The Ordinance that Plaintiff challenges here is the basis for the criminal proceedings against him in state court. Since this Court's assertion of jurisdiction over Plaintiff's claims against the Redondo Beach Defendants would generally interfere with the City's administration of its criminal justice system by preventing it from enforcing its lawfully adopted ordinance in a state judicial proceeding, prong two of *Younger* abstention is also satisfied.

4. The State Proceedings Provide Plaintiff Adequate Opportunity to Raise His Constitutional Challenges

The third *Younger* prong is also met here. In defending the criminal charges against him, the California Constitution and state law provide Plaintiff with the ability to assert in the state trial court and on appeal that his Second, Fourth, and Fourteenth Amendment rights were violated. *Moore v. Sims*, 442 U.S. 415, 425-26 (1979) ("abstention is appropriate unless state law clearly bars the interposition of the constitutional claims.").

Mr. Nichols therefore cannot meet his burden of showing that there is no opportunity in the state criminal proceedings to raise the federal questions at issue in this action. This Court should assume state procedures will afford Mr. Nichols an adequate opportunity to do so absent evidence to the contrary. *Pennzoil Co. v. Texaco, Inc.*, supra, 481 U.S. at 15.

5. Younger's Application Requires Dismissal of Plaintiff's Claim for Declaratory and Injunctive Relief and a Stay on His Claim for Damages

Because the City is not acting in bad faith or engaging in harassment by prosecuting Plaintiff, and because "extraordinary circumstances" do not exist as to why the *Younger* doctrine should not apply to Plaintiff's claims, for the reasons explained above, Plaintiff's claim for declaratory and injunctive relief as to the Redondo Beach Defendants (first claim for relief) should be dismissed with prejudice. *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973); *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 538 (9th Cir. 1989) ("Leave to amend need not be given if a complaint, as amended, is subject to dismissal"). Likewise, Plaintiff's claim for damages (second claim for relief) should be stayed pending resolution of the state court proceedings. *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 720-1 (1996).

Moreover, the only basis for federal subject matter jurisdiction over this action are the federal questions presented by Plaintiff's constitutional claims—based on the Second, Fourth, and Fourteenth Amendments. Because this Court should abstain from exercising jurisdiction over Plaintiff's federal claims, to the extent Plaintiff asserts any state law claims (though it is unclear, it appears Plaintiff may be asserting a state preemption claim), pendent jurisdiction over any state claims Plaintiff may assert is not appropriate. *Les Shockley Racing, Inc. v. National Hot Rod Ass'n*, 884 F.2d 504, 509 (9th Cir. 1989) ; 28 U.S.C. § 1367(c)(3).

B. Chief Leonardi, Heywood and Officer Doe Have Qualified Immunity

The doctrine of qualified immunity protects police officers "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231(2009) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

1 A police officer’s “conduct violates clearly established law when, at the time
 2 of the challenged conduct, ‘[t]he contours of [a] right [are] sufficiently clear’ that
 3 every ‘reasonable official would have understood that what he is doing violates that
 4 right.’” *Ashcroft v. al-Kidd*, 2011 U.S. LEXIS 4021, 131 S. Ct. 2074, 2083 (2011)
 5 (alterations in original) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).
 6 Courts “do not require a case directly on point, but existing precedent must have
 7 placed the statutory or constitutional question beyond debate.” *Id.* The *al-Kidd*
 8 Court emphasized that “[q]ualified immunity gives government officials breathing
 9 room to make reasonable but mistaken judgments about open legal questions.” *Id.* at
 10 2085.

11 Second Amendment jurisprudence remains in its infancy. The first major
 12 United States Supreme Court to construe it was in 2008. *District of Columbia v.*
 13 *Heller*, 554 U.S. 570 (2008). At this point, there is less known about the contours of
 14 the right protected by the Second Amendment than what is settled. In fact, it appears
 15 that only the following are settled with respect to the Second Amendment: It protects
 16 a fundamental right of an individual to possess a handgun in the home for self-
 17 defense, and the right acts as a constraint on Congress, and State and local
 18 governments. *Heller*, 544 U.S. at 592; *McDonald v. City of Chicago*, 210 U.S.
 19 LEXIS 5523, 130 S. Ct. 3020, 3047 (2010). Beyond that, court rulings are
 20 inconsistent at best. And as with the *al-Kidd* case, at the time Nichols’ weapon was
 21 taken, there was not and there still is not a single judicial opinion holding that the
 22 Second Amendment protects the unlocked, open carrying of an unloaded rifle with
 23 ammunition at hand in a public park. *al-Kidd*, 131 S.Ct. at 2083.

24 Even if Plaintiff’s conduct is ultimately found to be protected, as of now it is
 25 still an open question. Therefore, to the extent Defendants Leonardi, Heywood and
 26 Officer Doe (see allegations in First Amended Complaint ¶ 33) conceivably violated
 27 Plaintiff’s constitutional rights (which they do not concede), they still enjoy qualified
 28 immunity from Plaintiff’s claim for damages because there is no existing precedent

1 placing “beyond debate” the question of whether the Ordinance the officers were
 2 enforcing violates the Second Amendment (on which Plaintiff’s Fourth Amendment
 3 claim also relies).²

4 **C. Plaintiff Lacks Standing to Bring This Lawsuit**

5 Plaintiff still does not have standing to challenge the Ordinance for the same
 6 reasons his previous complaint was dismissed. The alleged injury Plaintiff seeks to
 7 redress with this lawsuit (i.e., the restriction on him openly carrying a loaded firearm
 8 in public) cannot be redressed in this lawsuit. As explained in the City’s previous
 9 motion to dismiss Plaintiff’s original complaint and as accepted by this Court in
 10 granting that motion, even if the City’s Ordinance were enjoined, Plaintiff would still
 11 be prohibited from openly carrying a loaded firearm under state law. (Report and
 12 Recommendation of U.S. Magistrate Judge, 26, April 5, 2012; *see also* Cal. Penal
 13 Code § 26350.)

14 **D. Plaintiff Has Failed to Allege Facts Sufficient to State a Claim for** 15 **Relief**

16 The first and second claims for relief fail to allege facts sufficient to state
 17 claims upon which can be granted.

18 Plaintiff’s Second Amendment claim must be dismissed because the Second
 19 Amendment, as construed by the Supreme Court thus far, protects the possession of
 20 handguns for self-defense only within the home. In *Heller*, 554 U.S. 570, the
 21 Supreme Court held that possession in the home for self-defense is the core right
 22 protected. *Id.* at 627-28, 636. That right acts as a constraint not only upon the
 23 Federal government, but also upon the States and their municipalities. *McDonald*,
 24 130 S.Ct. 3020 (Second Amendment is incorporated through Due Process Clause of
 25

26 ² Plaintiff’s Fourteenth Amendment Equal Protection Clause claim may also depend
 27 on application of the Second Amendment here, but is unclear, because Plaintiff
 28 pleads no facts explaining how his rights under that clause were violated by the City.

Fourteenth Amendment). To be sure, the Supreme Court has not foreclosed the possibility that the Second Amendment might protect conduct outside of the home. But lower courts have refused to extend the Second Amendment beyond the home without the Supreme Court expressly stating so. The Redondo Beach Defendants are not aware of any Ninth Circuit authority on the issue of whether the right extends beyond the home. In *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011), the majority refused even to opine whether the Second Amendment applies outside of the home. “This case underscores the dilemma faced by lower courts in the post-*Heller* world: how far to push *Heller* beyond its undisputed core holding. On the question of *Heller*’s applicability outside the home environment, we think it prudent to await direction from the Court itself.” *Id.* at 475. Judge Niemeyer parted company with the *Masciandaro* majority and concluded that the Second Amendment “right extends to public areas beyond the home.” *Id.* at p. 468. Like the *Masciandaro* majority, the State of Maryland’s highest court refused to recognize that the right extends beyond the home: “If the Supreme Court . . . meant its holding to extend beyond home possession, it will need to say so more plainly.” *Williams v. State of Maryland*, 10 A.3d 1167, 1177, 417 Md. 479 (Md. 2011). The Redondo Beach Defendants urge this Court to exercise its discretion not to extend the Second Amendment beyond the home setting until a higher court squarely does so. Because Plaintiff’s Second Amendment claim alleges only that he wishes to possess his gun in a public park setting, he fails to state a claim on which relief may be granted. That claim should be dismissed with prejudice.

Plaintiff’s Fourth Amendment claim rises and falls with his Second Amendment claim. He alleges a violation of the Fourth Amendment on the basis that his gun was unconstitutionally seized because he enjoys a Second Amendment right to carry it on public property. If Plaintiff has no Second Amendment right to carry a gun on public property, and he has not articulated any other legal source for such a right, it follows that the mere act of seizing his gun could not itself have been

1 unconstitutional. The Court should therefore dismiss with prejudice the Fourth
2 Amendment claim as well.

3 The claims also fail to allege facts sufficient to support an Eleventh
4 Amendment Equal Protection claim. The first step in an Equal Protection analysis is
5 to identify how the regulation under review classifies groups of people. The plaintiff
6 must establish at the outset “that the law is applied in a discriminatory manner or
7 imposes different burdens on different classes of people.” *Freeman v. City of Santa*
8 *Ana*, 68 F.3d 1180, 1187 (9th Cir. 1995). The classification of groups is not
9 actionable on an Equal Protection theory, however, unless the group to which
10 plaintiffs belong is similarly situated to the group to which plaintiffs compare
11 themselves. “Once the plaintiff establishes governmental classification, it is
12 necessary to identify a ‘similarly situated’ class against which the plaintiff’s class
13 can be compared.” *Freeman*, 68 F.3d at 1187, citing *Attorney General v. Irish*
14 *People, Inc.*, 684 F.2d 928, 946 (D.C.Cir. 1982) (“Discrimination cannot exist in a
15 vacuum; it can be found only in the unequal treatment of people in similar
16 circumstances”).

17 Plaintiff has failed to allege that the law in question was applied in a
18 discriminating manner or imposes different burdens on different classes of people.
19 Plaintiff has failed to allege government classification or any similarly situated class
20 that may be compared to the class to which Plaintiff contends he belongs. Plaintiff
21 has failed to allege he has been treated differently than any similarly situated group.
22 Accordingly, the First Amended Complaint fails to properly allege an Equal
23 Protection claim.

24 As a result, the first and second claims for relief should be dismissed for
25 failure to state claims upon which relief may be granted.

E. The First Amended Complaint Fails to Comply with Federal Rule of Civil Procedure 10(b), Making It Subject to a Motion for More Definite Statement

To the extent the Court does not grant the motion to dismiss without leave to amend, the Court should order a more definite statement as to the jumbled first and second claims for relief.

Federal Rule of Civil Procedure 10(b) requires that each claim founded on a separate transaction or occurrence must be stated in a separate count if doing so would promote clarity. Where several separate causes of action are jumbled together in a “shotgun pleading,” a motion for more definite statement may be used to require pleading separate counts under Rule 10(b), particularly where the failure to do so prevents defendant from preparing an adequate response. *Anderson v. District Bd. of Trustees of Central Florida Comm. College*, 77 F. 3d 364, 366 (11th Cir. 1996).

Here, Plaintiff has lumped multiple claims under a single claim for relief in both the first and second claims for relief. The Redondo Beach Defendants request that the Court require Plaintiff to separate the jumbled claims into distinct claims for relief with proper factual allegations supporting each claim. The manner of pleading will prevent the Redondo Beach Defendants from preparing an adequate response because the claims are all lumped together in a single claim for relief and incorporate all of the preceding alleged facts.

F. Compliance with Local Rule 7-3

Central District Local Rule 7-3 provides that counsel contemplating filing a motion should contact the opposing party to discuss the matter. Counsel for the Redondo Beach Defendants used best efforts to meet and confer with Mr. Nichols, but he refused. Counsel for the Redondo Beach Defendants telephoned Mr. Nichols on July 26, 2012, to meet and confer on this motion. (Bond Decl. ¶ 2.) Mr. Nichols did not answer the phone and counsel left a voicemail indicating the intent to file the motion in question and left her office contact information. (Bond Decl. ¶ 2.)

1 Counsel for the Redondo Beach Defendants also sent an email to Mr. Nichols on July
 2 26, 2012, requesting that Mr. Nichols meet and confer as to the substance of this
 3 motion. (Bond Decl. ¶ 3; Ex. 1 to Bond Decl.) Mr. Nichols sent an email back
 4 refusing to meet and confer on the motion. (Bond Decl. ¶ 4; Ex. 2. to Bond Decl.)
 5 Counsel for the Redondo Beach Defendants again sent an email on July 27, 2012,
 6 requesting to meet and confer on this motion. (Bond Decl. ¶ 5; Ex. 3 to Bond Decl.)
 7 As of the filing of this motion, Mr. Nichols still refused to meet and confer. (Bond
 8 Decl. ¶ 6.) Although Mr. Nichols refused to meet and confer as to this motion, we
 9 note that Michael Webb, prior counsel for the City of Redondo Beach and Chief
 10 Leonardi, conducted a meet and confer with Mr. Nichols on similar issues on
 11 January 25, 2012, in connection with the motion to dismiss the original complaint.
 12 (Bond Decl. ¶ 7.)

13 IV.

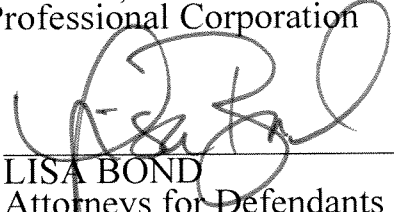
14 CONCLUSION

15 Plaintiff's lawsuit presents a textbook scenario of when the *Younger* abstention
 16 doctrine applies. As such, Plaintiff's first claim for relief for declaratory and
 17 injunctive relief should be dismissed and his second claim for relief for damages
 18 should be stayed pending resolution of his state criminal proceedings, but dismissed
 19 as to the Redondo Beach police officer defendants because they enjoy qualified
 20 immunity here. To the extent Plaintiff's First Amended Complaint asserts any state
 21 law claims for declaratory or injunctive relief, this Court should dismiss them as
 22 well. Alternate grounds for granting the motion to dismiss are (1) Plaintiff lacks
 23 standing to challenge the City's Ordinance because invalidating the Ordinance would
 24 not redress his grievance of not being able to openly carry a loaded firearm in public;
 25 and (2) Plaintiff has failed to allege sufficient facts to state claims for relief.

1 For these reasons, the Redondo Beach Defendants' motion to dismiss should
2 be granted. Alternatively, to the extent the Court does not dismiss the claims without
3 leave to amend, the Court should require Plaintiff to make a more definite statement
4 by separating out the jumbled claims.

5
6 Dated: June 29, 2012

T. PETER PIERCE
LISA BOND
AARON C. O'DELL
RICHARDS, WATSON & GERSHON
A Professional Corporation

7
8
9
10 By: 
11 LISA BOND
12 Attorneys for Defendants
13 CITY OF REDONDO BEACH, JOSEPH
14 LEONARDI and TODD HEYWOOD
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RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

PROOF OF SERVICE

I, Emily Hayes, declare:

I am a resident of the state of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On June 29, 2012, I served the within document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO DISMISS FIRST AMENDED COMPLAINT, OR, IN
THE ALTERNATIVE, MOTION FOR MORE DEFINITE
STATEMENT

on the interested parties in this action as stated below:

Charles Nichols
P.O. Box 1302
Redondo Beach, CA 90278

☒ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, 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 or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on June 29, 2012, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Emily Hayes
(Type or print name)

(Signature)

PROOF OF SERVICE