

No. 14-55873 [DC 2:11-cv-09916-SJO-SS]

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Charles Nichols,

Plaintiff-Appellant

v.

**Edmund Brown, Jr., in his official capacity as the Governor of California
and
Xavier Becerra in his official capacity as the Attorney General of California**

Defendants-Appellees.

**ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
[DC 2:11-cv-09916-SJO-SS]**

**PLAINTIFF-APPELLANT NICHOLS'
SUPPLEMENTAL EXCERPTS OF RECORD**

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In Pro Per**

INDEX

OBJECTION to Report and Recommendation (Dkt. No. 163).....	ASER1
REPORT AND RECOMMENDATION (Dkt. No. 162)	ASER4
Pl.'s Opp'n to Def.'s MJP (Dkt. No. 139)	ASER6
NMM for Judgment on the Pleadings (Dkt. No. 129).....	ASER14
MINUTES (IN CHAMBERS): ORDER (Dkt. No. 108).....	ASER15
Opp'n MOT., for Prelim., Injunction (Dkt. No. 104).....	ASER17
PL.'S RJN AND REPLY (Dkt. No. 101).....	ASER20
RJN re MOT., for Prelim., Injunction (Dkt. No. 88).....	ASER21
MEM., in Support of MOT., for PI (Dkt. No. 86).....	ASER29
MEM., in Opp'n to MOT., to Dismiss FAC (Dkt. No. 66)	ASER30
MEM., in Opp to Second MOT., (Dkt. No. 65)	ASER42
MEM., in Support of MOT., to Dismiss FACt (Dkt. No. 55).....	ASER44
PL.'S MEM., of P. & A. in Opp'n to MOT. (Dkt. No. 36)	ASER45
PL.'S MEM. OF P. & A. IN OPP'N TO MOT. (Dkt. No. 19)	ASER48
PL.'S MEM.OF P. & A. IN OPP'N TO MTD (Dkt. No. 18)	ASER49
Docket Sheet	ASER51

1 http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Lic
2 [ensees_By_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Lic)

3 Perhaps the MJ overlooked the Gun-Free School Zone Map of the City of
4 Redondo Beach which was included in the pleadings? No matter, it is attached to
5 this document as Exhibit A as are the "Open Carry" maps from the City of
6 Hermosa Beach (Exhibit B) -> <http://www.hermosabch.org/index.aspx?page=200>
7 and the City of Manhattan Beach (Exhibit C) ->
8 <http://www.citymb.info/home/showdocument?id=7103>

9 These cities have relatively few K-12 schools and no university or college
10 campuses and yet one can plainly see that there is very little public place left where
11 one can carry even an unloaded antique handgun without a CCW whereas those
12 with a CCW can carry a modern loaded firearm virtually everywhere.

13 If this court believes that *Peruta* is binding, that the state must permit the
14 carrying of loaded firearms but is allowed to determine the manner of carrying of
15 firearms in public then let us take a look at the ramifications in a County that is not
16 fully incorporated – Los Angeles County – Exhibit D ->
17 <http://ceo.lacounty.gov/forms/08%20Map%20&%20Cities.pdf>

18 More than 65 percent of Los Angeles County -- 2,653.5 square miles -- is
19 unincorporated. 1 million people live in those areas ->
20 <http://www.lacounty.gov/wps/portal/lac/residents/unincorporated>

21 "Los Angeles County Municipal Code 13.66.010 Use of weapons permitted
22 when.

23 This chapter, except as otherwise provided in this Part 1, does not prohibit the
24 discharge of any rifle, shotgun, pistol, revolver or firearm of any kind, or the
25 shooting of any arrow or other missile, when necessary so to do to protect life or
26 property, or to destroy or kill any predatory or dangerous animal.

27 (Ord. 7730 § 1, 1960: Ord. 7381 § 1 (part), 1958: Ord. 1769 Art. 3 § 302, 1929.)"
28

1 Take a look at Exhibit D. If *Peruta* is binding on this case then it becomes
2 legal to openly carry loaded and unloaded handguns and long guns without a
3 permit in all of those unincorporated areas shaded gray (as described above). One
4 of those gray areas is just a few blocks from where Plaintiff Nichols lives which
5 was mentioned in the pleadings. *Peruta* magnifies that particular 14th Amendment
6 equal protection claim of Plaintiff 1 million fold in Los Angeles County alone.
7 Contrary to the conclusion of the MJ that Second Amendment equal protection
8 claims are subject to rational review, they are subject to strict scrutiny pursuant to
9 *Chovan*. Of course, crossing an invisible line just a few blocks from his home on
10 one side of which it is legal to openly carry a loaded, modern firearm and on the
11 other side (where Plaintiff lives) being restricted to carrying an unloaded antique
12 does not survive rational review, even if *Heller*, *McDonald*, *Chovan*, *Peruta* or
13 *Jackson* allowed rational review which they clearly do not.

14 It is obvious that *Peruta* brought the “broad based” challenge, not Plaintiff
15 Nichols.

16 *Peruta* did not apply *Chovan*’s historical analysis and by doing so created an
17 in-circuit split as well as a circuit split with every single Federal Court which has
18 had a concealed carry case come before it, not to mention every single state court
19 of appeals. “Rather than employing the straightforward methodology prescribed by
20 *Chovan*, the majority wanders off in a different labyrinthian path, both in its
21 analysis of the Second Amendment right at issue and its analysis of the
22 government regulation in question. In doing so, it conflicts with the instruction of
23 the Supreme Court, the holdings of our sister circuits, and our own circuit
24 precedent.” *Peruta* slip op. No. 10-56971 (9th Cir. Feb. 13, 2014) at 101
25 (THOMAS, Circuit Judge, dissenting).

26 The *Peruta* Court itself acknowledges that those 19th Century cases stood for
27 the proposition that concealed carry fell outside the scope of the Second
28 Amendment at the time of ratification of the 14th Amendment. *Peruta*

1 and in those public places where the carrying of at least some firearms (antiques) is
2 not prohibited. It is this which makes this subsection facially invalid under
3 *Fuentes, Patel, and Arizona v. Hicks*, 480 US 321 - Supreme Court (1987) to name
4 but a few.

5 Perhaps a Norman Rockwell example will simplify things for this court?
6 Suppose Plaintiff Nichols is setting on his front porch in a rocking chair with a
7 single barrel, single shot shotgun in his lap and perhaps the obligatory hound-dog
8 is asleep at his side. A police officer passing by sees Plaintiff, enters his yard,
9 which the California Courts have construed to be a "public place" and demands
10 that Plaintiff hand over his shot-gun for inspection to see if it is loaded. Plaintiff
11 inquires of the police officer if he has a warrant, probable cause or any exigent
12 circumstance? The police officer says he does not and does not need any of the
13 above because PC 25850(b) "authorizes" him to inspect the firearm to see if it is
14 loaded and if plaintiff does not "voluntarily" consent to the search and seizure of
15 his firearm then he will be arrested. If Plaintiff says he will not consent to the
16 search and seizure he is in violation of the law even if he says he will not
17 physically resist the police officer from taking the firearm from his person.

18 And don't forget, this particular subdivision does not require that police
19 officers inspect every firearm they see, it leaves police officers with the unbridled
20 discretion of choosing whom they will and will not search. As the record shows,
21 by a three to one margin they choose minorities over Whites, which was the sole
22 purpose of the subdivision in the first place.

23 RR:35,25-28;36,1-3 – Defendant Harris has failed to raise any triable issues
24 of fact but if this court adopts certain sections of the RR hostile to Plaintiff's case
25 then it appears that a jury trial will be necessary. For example, the MJ claims she
26 is unable to discern a racial motivation for enacting the Black Panther Loaded
27 Open Carry ban. Plaintiff is certain that a racially representative jury from the
28 County of Los Angeles will find the racist intent of PC 25850 invisible to the MJ.

Objection & Opposition to Report & Rec - 18 - Charles Nichols v. Edmund G Brown Jr et al

1 Third, Plaintiff raises a Fourteenth Amendment equal protection
 2 challenge to Sections 26150 and 26155 because they "restrict
 3 licenses to openly carry a loaded handgun only to persons [who
 4 reside] within counties of a population of fewer than 200,000
 5 persons which is [sic] valid only in those counties"
 6 (Id. at 29). Fourth, Plaintiff alleges that Section 25850's
 7 prohibition on loaded open carry of weapons is unconstitutionally
 8 vague.⁹ (Id. at 28).

9
 10 Plaintiff seeks declaratory and injunctive relief
 11 prohibiting the enforcement of the challenged California statutes
 12 "to the extent that [they are] applied to prohibit private
 13 citizens who are otherwise qualified to possess firearms" from
 14 openly carrying loaded and unloaded firearms "on their own
 15 property, in their vehicles and in non-sensitive public places,"
 16 or "prohibit or infringe private citizens" from obtaining
 17 licenses to engage in these activities. (Id. at 36-38).

18 \\
 19 \\
 20

21 ⁹ Plaintiff alleges that Section 25850 is unconstitutionally
 22 vague for three reasons. First, Plaintiff claims that it is
 23 vague because a "reasonable person would not conclude that either
 24 his private residential property or the inside of his motor
 25 vehicle is a public place." (SAC at 27). Second, it is vague
 26 because exceptions to the prohibition on open carry are
 27 "scattered throughout the California Penal Code to such an extent
 28 that . . . a reasonable person would have to spend days searching
 through the California statutes and case law and still be
 uncertain as to whether or not a particular act . . . is in
 violation of Section 25850." (Id. at 28). Third, Plaintiff
 claims the statute is vague because "[m]ere possession of
 matching ammunition cannot make an unloaded handgun [or firearm]
 'loaded.'" (Id.).

1 carry does not implicate the Second Amendment. Accordingly,
2 rational basis review applies. See Nordyke, 681 F.3d at 1043
3 n.2. It is readily apparent that restricting open carry licenses
4 to residents of sparsely-populated counties "rationally
5 further[s] a legitimate state purpose." Perry Educ. Ass'n v.
6 Perry Local Educators' Ass'n, 460 U.S. 37, 54 (1983). The
7 Legislature could rationally determine that openly carrying
8 firearms poses a greater threat to public safety in densely-
9 populated urban areas than in sparsely-populated rural areas.
10 Accordingly, Plaintiff's facial challenge to the restrictions on
11 the issuance of open carry licenses to applicants living in
12 counties of fewer than 200,000 residents fails. Defendant is
13 entitled to judgment on the pleadings on Plaintiff's equal
14 protection claim.

15 16 **4. Vagueness**

17
18 Plaintiff alleges that Section 25850, as part of a statutory
19 regime regulating the carriage of loaded firearms in public, is
20 unconstitutionally vague. (SAC at 28). However, as the Court
21 observed in denying Plaintiff's Motion for Preliminary
22 Injunction, "facial challenges on the ground of unconstitutional
23 vagueness that do not involve the First Amendment are not
24 cognizable pursuant to Ninth Circuit precedent." (PI Order at
25 10) (citing United States v. Purdy, 264 F.3d 809, 811 (9th Cir.
26 2001)). Plaintiff is mounting a facial challenge, and his claims
27 concerning Section 25850 do not implicate the First Amendment.
28 Accordingly, Defendant is entitled to judgment on the pleadings

1 such, Plaintiff Nichols is a person who falls within the scope of the Second
2 Amendment.

3 **C. Rational Basis Does not Apply**

4 The US Supreme Court in *District of Columbia v. Heller*, 128 S. Ct. 2783 -
5 Supreme Court (2008) took rational basis off the table. "If all that was required to
6 overcome the right to keep and bear arms was a rational basis, the Second
7 Amendment would be redundant with the separate constitutional prohibitions on
8 irrational laws, and would have no effect." *Heller* at fn 27. See also *Chovan Slip*
9 *Op.*, pgs., 20-21.

10 **D. The Laws at Issue are Bans, not Regulations.**

11 In that they are bans and not regulations, both Defendant Harris and Plaintiff
12 Nichols are in agreement. (Dkt #134, Exhibits A-1, A-2, B-1, B-2. What is at issue
13 is the constitutionality of the bans. Bans on a fundamental right fail any level of
14 judicial scrutiny and California bans not just handguns but all firearms. "As the
15 quotations earlier in this opinion demonstrate, the inherent right of self-defense has
16 been central to the Second Amendment right. The handgun ban amounts to a
17 prohibition of an entire class of "arms" that is overwhelmingly chosen by
18 American society for that lawful purpose." *Heller* at 2817.

19 **E. The Bans at Issue cannot survive Intermediate Scrutiny**

20 *US v. Chovan* No. 11-50107 (filed November 18, 2013) applied Intermediate
21 Scrutiny to 18 U.S.C. § 922(g)(9), which prohibits persons convicted of domestic
22 violence misdemeanors from possessing firearms for life in part because "Section
23 922(g)(9) establishes two exceptions under which the statute will no longer apply:
24 (1) "if the conviction has been expunged or set aside"; or (2) if the offender "has
25 been pardoned or has had civil rights restored (if the law of the applicable
26 jurisdiction provides for the loss of civil rights under such an offense)." 18 U.S.C.
27 § 921(a)(33)(B)(ii)." *Chovan*, Slip Op., at pg 4 and "California, where Chovan was
28 convicted, makes expungement of misdemeanor convictions a right." *Chovan*, Slip

Op., at pg 49. Nothing prevented Mr. Chovan from having his prohibiting misdemeanor conviction expunged. Had he done so, the law would not have applied to him. However, Plaintiff Nichols cannot even carry a firearm, loaded or unloaded, openly or concealed, in the curtilage of his own home let alone bear arms in non-sensitive public places and not because he is a convicted felon or has been convicted of a disqualifying misdemeanor or because of any other thing which would remove him from the scope of the Second Amendment. Unlike Mr. Chovan, Plaintiff Nichols has no recourse other than an injunction against the bans at issue in his Motion for Partial Summary Judgment.

“Although courts have used various terminology to describe the intermediate scrutiny standard, all forms of the standard require (1) the government’s stated objective to be significant, substantial, or important; and (2) a reasonable fit between the challenged regulation and the asserted objective.” *Chovan Slip Op.*, at 23. There is no mistaking the government’s objective in enacting California Penal Code section 25850(a)&(b). It was too disarm racial minorities as the record clearly shows. The government’s objective in enacting the bans on openly carrying unloaded handguns (PC 26350) and unloaded firearms other than handguns (PC 26400) was to close what the government referred to as a “loophole” in its ban on carrying loaded firearms in public that was enacted in July of 1967. The result is a complete ban on the right to bear arms in non-sensitive public places as applied to Plaintiff Nichols and to similarly situated individuals.

If one were to incorrectly assume that the objective in 1967 was to prohibit groups or individuals from seeking out confrontations with police, the legislature could have instead enacted a law prohibiting the brandishing of firearms in the presence of police officers, which it did and for which a conviction results in a lifetime prohibition (Dkt #134, Exhibit C).

There is no “important government interest” in depriving Plaintiff Nichols or similarly situated persons who fall within the scope of the Second Amendment

1 from openly carrying loaded or unloaded firearms for the purpose of self-defense
2 in non-sensitive public places or even in the curtilage of their homes which
3 Plaintiff Nichols has long asserted is not a “public place” contrary to the findings
4 of the California courts.

5 “The question requires us to interpret Penal Code section 654...which
6 prohibits multiple punishment for “[a]n act ... that is punishable in different ways
7 by different provisions of law.” Because different provisions of law punish in
8 different ways defendant's single act, we conclude that section 654's plain language
9 prohibits punishment for more than one of those crimes.” *People v. Jones*, 278 P.
10 3d 821 - Cal: Supreme Court (2012) at 352. In light of *Jones*, Plaintiff and other
11 similarly situated individuals who fall within the scope of the Second Amendment
12 who openly carrying loaded or unloaded firearms which are not “dangerous and
13 unusual weapons” in non-sensitive public places are punished under the bans at
14 issue whereas convicted felons and other prohibited persons who carry concealed
15 weapons and even “dangerous and unusual weapons” in sensitive public places or
16 the curtilage of their home or in or on a motor vehicle or attached camper or trailer
17 cannot be punished for both those crimes and the bans at issue.

18 Plaintiff Nichols does not want to openly carry a firearm in order to seek out
19 confrontations. Indeed, he has averred that “He finds no shame in crossing the
20 street to avoid confrontation. Unfortunately, criminals are not so inclined...” Dkt
21 #18, pg 20, lines 7-8. Plaintiff Nichols has never been convicted of any crime of
22 violence.

23 There is no “reasonable fit” between banning the right to bear arms in non-
24 sensitive public places or to prohibiting Plaintiff and similarly situated persons
25 from keeping and carrying arms in the curtilage of their homes and the
26 government’s undeniable objective in disarming racial minorities which was the
27 sole motivating factor in the enactment of former Penal Code section 12031 (PC
28 12031) (now PC 25850 in part).

1 Although Defendant Harris and this Court have made light of the
 2 documented death threat against Plaintiff Nichols (Dkt # 10), Plaintiff submits that
 3 had the same threats been made against Defendant Harris or this Court the
 4 perpetrator would have been quickly arrested, prosecuted and in all likelihood
 5 convicted of a felony and sent to prison.

6 **F. The Bans at Issue cannot survive Strict Scrutiny**

7 “Generally, legislation is presumed to pass constitutional muster and will be
 8 sustained if the classification drawn by the statute or ordinance is rationally related
 9 to a legitimate state interest. *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473
 10 U.S. 432, 439-40, 105 S.Ct. 3249, 3253-55, 87 L.Ed.2d 313 (1985). If the
 11 classification disadvantages a "suspect class" or impinges a "fundamental right,"
 12 the ordinance is subject to strict scrutiny. *Plyler v. Doe*, 457 U.S. 202, 216-17, 102
 13 S.Ct. 2382, 2394-95, 72 L.Ed.2d 786 (1982).” *Nunez v. City of San Diego*, 114 F.
 14 3d 935 - Court of Appeals, 9th Circuit (1997) at 944.

15 “Strict scrutiny is a searching examination, and it is the government that
 16 bears the burden to prove...” *Fisher v. University of Texas at Austin*, 133 S. Ct.
 17 2411 - Supreme Court (2013) at 2419. “[A] regulation "is valid only if it is the
 18 least restrictive means available to further a compelling government interest.”
 19 *Berger v. City of Seattle*, 569 F.3d 1029, 1050 (9th Cir. 2009) (en banc).” *Dex*
 20 *Media West, Inc. v. City of Seattle*, 696 F. 3d 952 - Court of Appeals, 9th Circuit
 21 (2012) at 965. “[S]trict scrutiny...means that the law must be narrowly tailored to
 22 serve a compelling governmental interest...” *Ezell v. City of Chicago*, 651 F. 3d
 23 684 - Court of Appeals, 7th Circuit (2011) at 707.

24 As applied to Plaintiff Nichols, California has subjected him to a complete
 25 ban on his carrying loaded and unloaded firearms in non-sensitive public places for
 26 the purpose of self-defense. And not just in public places but also in the curtilage
 27 of his home, in and on his motor vehicle and any attached camper or trailer.
 28 California bans not just handguns, but long guns as well. Significantly, California

1 has banned the manner of carry guaranteed by the Constitution (Open Carry) and
 2 even concealed carry, which generally falls outside the scope of the Second
 3 Amendment, is also banned without a permit, a permit which is not available to
 4 Plaintiff because it is against the policy of the Los Angeles Sheriff's department to
 5 issue concealed carry permits to persons such as Plaintiff which this court is well
 6 aware having upheld the Sheriff's policy in *Thompson v. Torrance PD and LASD*
 7 (NO. CV 11-06154 SJO (JCx)). It has already been briefed that Defendant Harris
 8 has instructed all County Sheriffs and Chiefs of Police not to issue licenses to
 9 openly carry handguns to Plaintiff and California does not provide for the issuance
 10 of permits to private persons to openly carry long guns for the purpose of self-
 11 defense.

12 "Because the statute regulates but does not completely ban the carrying of a
 13 sharp instrument, we subject it to intermediate scrutiny." *People v. Mitchell*, 209
 14 Cal. App. 4th 1364 (2012) at 1374. Since California completely bans the carrying
 15 of loaded and unloaded firearms openly and, as-applied to Plaintiff Nichols,
 16 concealed as well, the bans are subject to a "minimum" of strict scrutiny even
 17 under California judicial constructions. "Minimum" because as in *District of*
 18 *Columbia v. Heller*, 128 S. Ct. 2783 - Supreme Court (2008), *McDonald v. City of*
 19 *Chicago, Ill.*, 130 S. Ct. 3020 - Supreme Court (2010), *Moore v. Madigan*, 702 F.
 20 3d 933 - Court of Appeals, 7th Circuit (2012) bans, and near total bans, fail any
 21 level of judicial review.

22 **2. PLAINTIFF NICHOLS OPPOSITION TO DEFENDANT HARRIS'** 23 **MOTION FOR JUDGMENT ON THE PLEADINGS**

24 **A. Harris's Introduction**

25 Memorandum of Points and Authorities in Support of [her] Motion for
 26 Judgment on the Pleadings (MJP) Dkt #129-1, pg., 1, lines 6-17: (MJP 1:6-17)
 27 Plaintiff argues to vindicate his Second Amendment right to Openly Carry a
 28 firearm for the purpose of self-defense and other lawful purposes in non-sensitive

1 public places. It is *Heller* that states that Open Carry is the right guaranteed by the
2 Constitution and California common-law has always recognized the right to Open
3 Carry and has never recognized a right to concealed carry except in certain limited
4 situations such as for travelers while on a journey. It is Defendant Harris who has
5 taken the extreme position that somehow the Heller Court eliminated the Second
6 Amendment Right to openly carry firearms in public.

7 **B. Harris' Summary Of The Operative Complaint**

8 MJP 1:18-5:1-21. Plaintiff objects to the out-of-context, partial, fragmentary
9 and misleading summary put forth by Defendant Harris. Plaintiff Nichols
10 operative Second Amendment Complaint (SAC) is on file with this court (Dkt #83)
11 as is Defendant Harris' Answer to Plaintiff's SAC (Dkt #91). It is these documents
12 which are relevant to her MJP.

13 **C. Harris' Summary of Plaintiff's Motion For Preliminary Injunction**

14 MJP 5:1-22-6:1-7. Defendant Harris hinges her case on this Court's denial
15 of Plaintiff Nichols as-applied Motion for a Preliminary Injunction which this
16 Court "liberally construed" as a facial challenge citing *John Doe No. 1 v. Reed*,
17 130 S. Ct. 2811, 2817 (2010) but instead of limiting the "facial challenge to the
18 extent of that reach." *Id.*, at 2817 this Court relied on *United States v. Salerno*, 481
19 U.S. 739, 745 (1987) "no set of circumstances" standard.

20 In 1996, the United States Supreme Court denied a petition for certiorari in a
21 case entitled *Janklow v. Planned Parenthood, Sioux Falls Clinic* (1996) 517 U.S.
22 1174, [116 S.Ct. 1582]. Justice John Paul Stevens issued a concurring
23 memorandum in conjunction with the denial of certiorari for the sole purpose of
24 criticizing the language used in *Salerno*. He wrote that the "no set of
25 circumstances" statement "was unsupported by citation or precedent. . .[,] does not
26 accurately characterize the standard for deciding facial challenges, and neither
27 accurately reflects the Court's practice with respect to facial challenges, nor is it
28 consistent with a wide array of legal principles." (*Janklow*, *supra*, 116 S.Ct. at p.

1 1583, citations and quotations omitted.) Justice Stevens further noted this "rigid
2 and unwise dictum has been properly ignored in subsequent cases. . . ." (Ibid.).
3 *Heller* at 2861-2852, 2854 and 2861 rejected *Salerno* as did *McDonald* at 3126.

4 In short, this Court incorrectly applied the *Salerno* facial standard which has
5 never been applied to a Second Amendment case in this circuit and simply did not
6 evaluate the constitutionality of the bans as-applied to Plaintiff Nichols.

7 **D. Defendant Harris does not argue that the Bans are Constitutional As-**
8 **Applied to Plaintiff Nichols**

9 Even if *Salerno* were the correct facial standard to apply, and Plaintiff
10 submits that it is not, Defendant Harris has never proven the case that the bans are
11 constitutional as-applied to Plaintiff Nichols or even to similarly situated
12 individuals. Instead, in her MJP, Defendant Harris makes the bald, unsupported
13 claim that "In sum, Nichols has no viable facial or as-applied theory (the second
14 theory) of a Fourth Amendment violation in this case" in her Memorandum of
15 Points and Authorities in Support of [her] Motion for Judgment on the Pleadings
16 (MJP) Dkt #129-1 on pg., 13, lines 1-2.

17 **E. Harris' Standard For Motions For Judgment On The Pleadings**

18 MJP 6:8-24 Harris' "standard" is incomplete (see Plaintiff's standard
19 above). Also, "Judicial notice is taken of the existence and authenticity of the
20 public and quasi public documents listed. To the extent their contents are in
21 dispute, such matters of controversy are not appropriate subjects for judicial
22 notice." *Del Puerto Water Dist. v. U.S. Bureau of Reclamation*, 271 F.Supp.2d
23 1224, 1234 (E.D.Cal.2003). See also, *California ex rel. RoNo, LLC v. Altus*
24 *Finance S.A.*, 344 F.3d 920, 931 (9th Cir.2003) ("requests for judicial notice are
25 GRANTED to the extent that they are compatible with Fed. Rule Evid. 201 and do
26 not require the acceptance of facts 'subject to reasonable dispute.'" quoting Lee,
27 250 F.3d at 690); *Kent v. Daimlerchrysler Corp.*, 200 F.Supp.2d 1208, 1219
28 (N.D.Cal.2002); *Weizmann Institute of Science v. Neschis*, 229 F.Supp.2d 234,

246-47 (S.D.N.Y.2002); *Happy Inv. Group v. Lakeworld Properties, Inc.*, 396 F.Supp. 175, 183 (N.D.Cal.1975); and *Chloe Z Fishing Co. v. Odyssey Re (London) Ltd.*, 109 F.Supp.2d 1236, 1242-43 (S.D.Cal.2000)."

The facts of "Exhibit A" and exhibits attached to "Exhibit A" of Defendant Harris' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS Dkt # 129-2 were and are very much in dispute and the Redondo Beach and Doe Defendants were voluntarily dismissed, without prejudice, by Plaintiff Nichols.

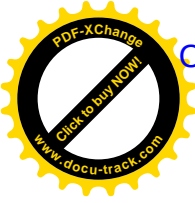
F. Harris' Argument

MJP 7:1-4. Plaintiff's sole count against Defendant Harris in his SAC raises claims under the Second, Fourth and Fourteenth Amendments. The ramifications of those claims far exceeds the "seven" Defendant Harris purports Plaintiff to have raised. More to the point, Defendant Harris did not file a Motion for Summary Judgment, she filed a Motion for Judgment on the Pleadings. Her argument for each of her points could be correct (they aren't) but she would have still failed to meet her burden.

G. Harris' Argument I

MJP 7:5-23. Defendant Harris has hinged her MJP on the theory that because Plaintiff Nichols sole count challenges the bans both facially and as-applied he has forfeited his as-applied challenge. If this were true, Plaintiff could easily amend his complaint to separate his as-applied and facial challenges into separate counts. "Dismissal without leave to amend is appropriate only when the Court is satisfied that an amendment could not cure the deficiency. See *Eminence Capital*, 316 F.3d at 1052." See *Harris id.*, at 1135.

Defendant Harris overlooks the extent of the reach of Plaintiff's facial challenge. Although in light of *Jones* limiting the scope of the applicability of the bans at issue and *Mitchell's* requirement for strict scrutiny of bans, the bans would still fall under *Salerno's* "no set of circumstances" test.



1 *Third*, the SAC asserts that Section 25850 is unconstitutionally vague in how
2 it defines the places where open carrying is prohibited, as well as how the law
3 defines whether a firearm is loaded. (SAC, ¶ 61.)

4 *Fourth*, the SAC asserts that Section 26350 violates the Second Amendment
5 by criminalizing the open carrying of unloaded handguns in public places. (SAC, ¶
6 62.)

7 *Fifth*, the SAC asserts that Section 26400 violates the Second Amendment by
8 criminalizing the open carrying of unloaded firearms, other than hand guns, in
9 public places. (SAC, ¶ 63.)

10 *Sixth*, the SAC asserts that Section 26150 et seq. violate the Second
11 Amendment by criminalizing the unlicensed open carrying of firearms in public
12 places. (SAC, ¶ 64.)

13 *Seventh*, the SAC asserts that Section 26150 et seq. violate the Fourteenth
14 Amendment's Equal Protection Clause by authorizing local law-enforcement
15 leaders to issue open-carry licenses to people residing in counties with populations
16 of less than 200,000 people, but not authorizing law-enforcement officials to issue
17 open-carry licenses to people residing in counties with populations of more than
18 200,000 people. (SAC, ¶ 65.)

19 As can be seen, the first, fourth, fifth, and sixth legal theories stated above are
20 essentially identical, positing a violation of the alleged Second Amendment open-
21 carry right.

22 **SUMMARY OF THE MOTION FOR PRELIMINARY INJUNCTION**

23 On April 10, 2013, Nichols moved for a preliminary injunction against
24 enforcement of California Penal Code sections 25850, 26350, and 26400. The
25 Attorney General opposed the motion, and Nichols submitted a reply. By a ruling
26 dated July 3, 2013, the present Court denied the motion. Thereafter, Nichols
27 appealed the ruling to the U.S. Court of Appeals, Ninth Circuit, where the appeal
28

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

CIVIL MINUTES - GENERAL

CASE NO.: CV 11-09916 SJO (SS)

DATE: July 3, 2013

Cal. Penal Code § 26350(a). Finally, Section 26400 prohibits "carrying an unloaded firearm that is not a handgun in an incorporated city or city and county when that person carries upon his or her person an unloaded firearm that is not a handgun outside a vehicle while in the incorporated city or city and county." Cal Penal Code § 26400(a).

A. Likelihood of Success on the Merits

Plaintiff argues that a preliminary injunction is appropriate for the following reasons: (1) the Challenged Statutes violate the Second Amendment because they infringe Plaintiff's right to openly carry a firearm in public; (2) the Challenged Statutes violate the Fourteenth Amendment because their application depends on numerous factors including county population and statutory exemptions for certain classes of people; (3) Section 25850(b) violates the Fourth Amendment because it provides that refusal to comply with a police officer's request to ascertain whether a firearm is loaded provides the officer probable cause to effect an arrest; and (4) Section 25850 is unconstitutionally vague. (*See generally* Mot.)

The Court notes at the outset that Plaintiff is mounting a facial challenge. In his Reply Plaintiff alludes to a "death threat against Plaintiff" and argues that this death threat and the Los Angeles County Sheriff's Department's purportedly lackluster response to this threat somehow converts Plaintiff's challenge into an as-applied challenge. (Reply 3.) Plaintiff also argues that "Plaintiff's [M]otion . . . explicitly states that his challenge is both facial and as-applied." (Reply 2.) These arguments are without merit. A "claim is 'facial' [if] . . . it is not limited to plaintiffs' particular case, but challenges application of the law more broadly." *John Doe No. 1 v. Reed*, 130 S. Ct. 2811, 2817 (2010). When such a claim "reach[es] beyond the particular circumstances of the[] plaintiff[] . . . [it] must . . . satisfy our standards for a facial challenge to the extent of that reach." *Id.* Thus, an example of an as-applied challenge would be if Plaintiff were being prosecuted by the state of California for violation of Section 25850, and Plaintiff then challenged the constitutionality of the statute as applied to him. This is not the case here, where Plaintiff contends that the Challenged Statutes are unconstitutional generally.⁴ (*See* Mot. 1.)

Facial challenges to the constitutionality of statutes are disfavored. The Supreme Court has explained that:

Facial challenges are disfavored for several reasons. Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of premature interpretation of statutes on the basis of factually barebones records. Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity

⁴ In any event, Plaintiff has provided no fact pattern in his Motion for the Court to analyze.

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

CIVIL MINUTES - GENERAL

CASE NO.: CV 11-09916 SJO (SS)

DATE: July 3, 2013

grounds under Section 25850(a) to check a firearm openly carried in public, to determine if it is loaded." (Opp'n 15.)

Harris is incorrect that there can be no Fourth Amendment violation as a matter of law if the Challenged Statutes are constitutional under the Second Amendment. "Under the Fourth Amendment, a warrantless arrest requires probable cause." *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007). The Ninth Circuit has defined probable cause as "knowledge or reasonably trustworthy information sufficient to lead a person of reasonable caution to believe that an offense has been or is being committed by the person being arrested." *Id.* As such, determining whether there is probable cause to effectuate an arrest is an inherently fact-intensive inquiry that depends on the totality of the circumstances confronting the arresting officers.

Here, however, Plaintiff is mounting a facial challenge to the constitutionality of Section 25850(b). "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see also Alphonsus v. Holder*, 705 F.3d 1031, 1042 n.10 (9th Cir. 2013) (affirming the validity of the rule announced in *Salerno* "[o]utside the First Amendment and abortion contexts"). Plaintiff has not demonstrated that Section 25850(b) violates the Fourth Amendment in all possible circumstances. To the contrary, the Court can envision any number of scenarios in which a police officer would have probable cause to arrest someone after they have refused to allow the officer to determine if their firearm was loaded. Accordingly, the Court finds that Plaintiff is not likely to succeed on his claim that Section 25850(b) violates the Fourth Amendment.

4. Vagueness

Plaintiff also contends that Section 25850 is unconstitutionally vague as to what constitutes a "public place" and because "[t]he California [c]ourts cannot agree on what constitutes a loaded firearm." (Mot. 12, 16.) This claim fails at the outset, however, because facial challenges on the ground of unconstitutional vagueness that do not involve the First Amendment are not cognizable pursuant to Ninth Circuit precedent. *See United States v. Purdy*, 264 F.3d 809, 811 (9th Cir. 2001). Plaintiff here is mounting a facial challenge to Section 25850. Accordingly, the Court finds that Plaintiff is not likely to succeed on this claim.

B. Irreparable Harm

Plaintiff fails to demonstrate that he is likely to suffer irreparable harm in the absence of a preliminary injunction. Plaintiff contends that he will suffer such harm because the Challenged Statutes constitute a deprivation of his constitutional rights. (Mot. 17-18 (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976))). This argument fails, however, because Plaintiff is unlikely to establish that his constitutional rights have been infringed for the reasons articulated above. Moreover, Plaintiff's "long delay before seeking a preliminary injunction implies a lack of urgency and irreparable

ASER 16

1 degree of scrutiny based on the degree of burden on the Second Amendment right
2 and the extent to which the regulation impinges on the “core” of the right. *Id.*

3 The *DeCastro* substantial-burden test accommodates *Heller*’s caution that the
4 scope of the Second Amendment right is not unlimited, as well as *Heller*’s
5 recognition of the many and varied forms of valid firearms regulations that have
6 existed throughout our country’s history (such as concealed weapons prohibitions,
7 storage laws, and felon-possession prohibitions). *Heller*, 554 U.S. at 626-27 & n.
8 26, 632. A similar threshold showing is needed to trigger heightened scrutiny of
9 laws alleged to infringe other fundamental constitutional rights. *Id.*, 681 F.3d at
10 167. For example, the right to vote is fundamental, but “the rigorousness of our
11 inquiry into the propriety of a state election law depends upon the extent to which a
12 challenged regulation burdens First and Fourteenth Amendment rights.” *Burdick v.*
13 *Takushi*, 504 U.S. 428, 434 [112 S. Ct. 2059; 119 L.Ed.2d 245] (1992).

14 Other circuit courts have joined *DeCastro* in holding that courts must consider
15 the severity of the burden on Second Amendment rights in deciding what level of
16 scrutiny to apply. See, e.g., *Heller v. District of Columbia*, 670 F.3d 1244, 1261,
17 1252 (D.C. Cir. 2011); *Ezell v. City of Chicago*, 651 F.3d 684, 703 (7th Cir. 2011);
18 *Masciandaro*, 638 F.3d at 470. In the absence of such a severe burden, lenient
19 rational-basis review should be applied. *DeCastro*, 682 F.3d at 166-67.

20 This Court should take a similar approach and apply a substantial-burden test
21 like the one used in *DeCastro*.

22 California’s open-carry laws do not trigger heightened scrutiny because they
23 do not substantially burden the Second Amendment right to possess a handgun in
24 the home for self-defense. As a California appellate court has explained:

25 Section [25850] prohibits a person from “carr[ying] a loaded firearm on
26 his or her person...while in any public place or on any public street.”

27 The statute contains numerous exceptions. There are exceptions for
28 security guards, police officers and retired police officers, private

1 investigators, members of the military, hunters, target shooters, persons
 2 engaged in “lawful business” who possess a loaded firearm on business
 3 premises and persons who possess a loaded firearm on their own private
 4 property. A person otherwise authorized to carry a firearm is also
 5 permitted to carry a loaded firearm in a public place if the person
 6 “reasonably believes that the person or property of himself or herself or
 7 of another is in immediate, grave danger and that the carrying of the
 8 weapon is necessary for the preservation of that person or property.”

9 Another exception is made for a person who “reasonably believes that
 10 he or she is in grave danger because of circumstances forming the basis
 11 of a current restraining order issued by a court against another person or
 12 persons who has or have been found to pose a threat to his or her life or
 13 safety.” Finally, the statute makes clear that “[n]othing in this section
 14 shall prevent any person from having a loaded weapon, if it is otherwise
 15 lawful, at his or her place of residence, including any temporary
 16 residence or campsite.”

17 [G]iven the exceptions for self-defense (both inside and outside the
 18 home), there can be no claim that [S]ection [25850] in any way
 19 precludes the use “of handguns held and used for self-defense in the
 20 home.”

21 *People v. Flores*, 169 Cal. App. 4th 568, 576-77 [86 Cal. Rptr. 3d 804] (2008)
 22 (emphasis in original; some citations and internal punctuation omitted; obsolete
 23 Penal Code section number references updated). Section 26350 and Section 26400
 24 contain essentially the same exceptions (§§ 26361-26391, 26405), including self-
 25 defense exceptions. (§§ 26362, 26378, 26405, subds. (d), (f) and (u)).

26 As can be seen, all three laws are carefully tailored to achieve their ends, and
 27 do not substantially burden Second Amendment rights. Therefore, the Court should
 28 apply rational-basis review to the laws. Under this form of scrutiny, a legislative

1 As to the second prong, the “fit,” the three laws’ many, detailed, thoughtful
 2 exceptions, summarized above, narrowly tailor the laws to ban only unjustifiable,
 3 dangerous open carrying, while permitting justified open carrying. The fit between
 4 the laws and their objectives is more than reasonable.

5 Therefore, even if the Court were to apply an intermediate scrutiny test, each
 6 of the three laws would survive that standard of review.

7 **2. On The Fourth Amendment Claim**

8 Nichols’s Fourth Amendment claim rises or falls with his Second Amendment
 9 claim. If Nichols has not stated a claim for relief under the Second Amendment, his
 10 objection to enforcement of Section 25850(b) must fail as well. Given that, as
 11 shown above, Nichols has *not* established that the open-carry statutes contradict
 12 individual-person rights under the Second Amendment, then Nichols has no basis to
 13 object that Section 25850(b) is facially invalid. A peace officer would have
 14 reasonable, legitimate grounds under Section 25850(a) to check a firearm openly
 15 carried in public, to determine if it is loaded, etc. § 25850, subd. (b).

16 **3. On The Fourteenth Amendment Claim**

17 Nichols perceives a Fourteenth Amendment Equal Protection Clause violation
 18 herein because, allegedly, the open-carry laws are interpreted and applied
 19 differently in different counties within California, and certain classes of people
 20 have statutory exemptions from the laws. (P.I. Mtn. Brief at 10-11.) *Nordyke*
 21 considered and quickly dismissed a similar claim, in a footnote: where a gun
 22 regulation does not discriminate among people based on suspect-class status (such
 23 as ethnicity, national origin, or race), a court should evaluate the equal-protection
 24 claim under lenient rational-basis review. 681 F.3d at 1043 n.2; see also
 25 *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 489 [75 S. Ct. 461; 99
 26 L.Ed.2d 563] (1955).

27 This Court should follow the *Nordyke* approach here. For example, it would
 28 have been rational for the California Legislature to have considered it more

1 1. In response to Defendant Harris' EVIDENTIARY OBJECTIONS TO
2 DECLARATION OF CHARLES NICHOLS Nichols Decl., ¶ 2, page 2, lines
3 11-12. See ¶ 48 of DEFENDANT KAMALA D. HARRIS'S ANSWER TO
4 PLAINTIFF CHARLES NICHOLS'S SECOND AMENDED COMPLAINT
5 (docket #91) where she admits to issuing Plaintiff a Law Enforcement Gun
6 Release" letter (<http://ag.ca.gov/firearms/forms/pdf/legr.pdf>) from her California
7 Department of Justice pursuant to California Penal Code section 33855 which
8 states in relevant part: "33855. No law enforcement agency or court that has taken
9 custody of any firearm may return the firearm to any individual unless the
10 following requirements are satisfied: (a) The individual presents to the agency or
11 court notification of a determination by the department pursuant to Section 33865
12 that the person is eligible to possess firearms." California Penal Code section
13 33865 states in relevant part: 33865. (a) When the Department of Justice receives
14 a completed application pursuant to Section 33850 accompanied by the fee
15 required pursuant to Section 33860, it shall conduct an eligibility check of the
16 applicant to determine whether the applicant is eligible to possess a firearm. (b)
17 The department shall have 30 days from the date of receipt to complete the
18 background check, unless the background check is delayed by circumstances
19 beyond the control of the department. The applicant may contact the department to
20 inquire about the reason for a delay. (c) If the department determines that the
21 applicant is eligible to possess the firearm, the department shall provide the
22 applicant with written notification that includes the following:" See
23 [http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=33001-](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=33001-34000&file=33850-33895)
24 [34000&file=33850-33895](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=33001-34000&file=33850-33895).

25 2. In response to Defendant Harris' EVIDENTIARY OBJECTIONS TO
26 DECLARATION OF CHARLES NICHOLS Nichols Decl., ¶ 2, page 2, lines
27 11-12. See ¶ 40 of DEFENDANT KAMALA D. HARRIS'S ANSWER TO
28

RE AB 1591

Proposed Amendments:

Any firearm that has a cartridge in the chamber, the magazine or clip thereof.

(I am seeking a more accurate description of "loaded" because present law indicates one in the chamber.)

Amend:

line 15 to read "Persons who are using target ranges for the purpose of practice shooting with a firearm, shooting clubs, but only on the premises thereof, for the purpose of hunting."

(Exclusion to protect one's self on one's own property)

EXHIBIT 26 – 4

DONALD L. GRUNSKY
Chairman

ANTHONY G. BEILENSON
CLARK L. BRADLEY
GORDON COLOGNE
GEORGE E. DANIELSON
GEORGE DEUKMEJIAN

California Legislature

SENATE COMMITTEE ON JUDICIARY

ROOM 2191, STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
TELEPHONE: 445-8887

R. BLAIR REYNOLDS, COUNSEL

JUL 31 1967

ROBERT S. STEVENS
Vice Chairman

RICHARD J. DOLWIG
JOHN L. HARMER
ROBERT J. LAGOMARSINO
GEORGE R. MOSCONE
LEWIS F. SHERMAN
ALFRED H. SONG

July 28, 1967

TO: The Honorable Don Mulford

FROM: Blair Reynolds

SUBJ: AB 1591

Dear Mr. Mulford:

In response to the call from the Governor's office concerning the wire service story of yesterday leading people to think that AB 1591 makes it illegal to carry ammunition in near proximity to an otherwise unloaded weapon I thought this memo might be helpful.

Section 4 of this bill states that a firearm shall be deemed loaded whenever both the firearm and ammunition therefor are in the immediate possession of the same person, i.e., in near proximity. However, this section is expressly limited to the simultaneous possession of the firearm and its ammunition in the following places: the State Capitol, any Legislative office, any office of the Governor or other constitutional officer, any hearing room in which any Committee of the Senate or Assembly is conducting a hearing, the State Capitol grounds, the Governor's Mansion or other residence of the Governor, the residence of any other constitutional officer or Legislator, the grounds of any public school, the University of California or the state colleges.

Other than these specifically mentioned places, the possession of ammunition in near proximity to an unloaded firearm is no violation under the provisions of AB 1591. Therefore, it would be perfectly legal under this bill to carry ammunition and firearms together while on a public street while enroute to a place of hunting, etc.

Although I have not personally seen the wire service story, it is my impression from discussions with your office and people in Senator Grunsky's district that this story raised the implication that in all cases the gun and ammunition could not be kept together while in a public place or on a public street.

EXHIBIT 26 - 5

INTRODUCTION FOR AB 1591
By Senator GRUNSKY

Gentlemen, I arise for the purpose of introducing what I believe to be one of the most important bills of this session. The measure before you is AB 1591, authored by Assemblyman Don Mulford.

Briefly, this bill prohibits unauthorized persons from carrying a loaded firearm in a public place, on a public street, or in an unincorporated territory where it is already illegal to discharge a firearm. Provisions of the bill extend to our schools, the Capitol, the homes and offices of the State's Constitutional officers, and to the homes and offices of members of the Senate and the Assembly.

This bill, gentlemen, is an excellent, well-thought-out piece of legislation. Much work on both sides of the Legislature has gone into it. As you will notice, the bill has been amended six times. Each amendment has been meticulously considered by both the Criminal Procedure Committee in the Assembly and the Senate Judiciary Committee.

I have told you, without going into minute detail, what the bill does. Now, just for a moment, allow me to tell you what this measure does not do. One thing it doesn't do, and perhaps the most important, it does not discriminate against the honest citizen. And in this same vein, it does not work a hardship on the legitimate hunter. In fact, this bill has the active support of the National Rifle Association.

EXHIBIT 26 – 7

213 1591



RONALD REAGAN
GOVERNOR

State of California

GOVERNOR'S OFFICE
SACRAMENTO 95814

May 3, 1967

MAY 3 1967

Mr. John A. Nejedly, District Attorney
Contra Costa County Courthouse
Martinez, California

Dear John:

Governor Reagan has asked me to answer your letter of April 20, 1967, concerning the need for legislation to provide for additional controls on the use of firearms.

We are very cognizant of the severe recent incidents throughout California, in which armed groups have openly displayed their weapons, thus constituting an imminent threat to the peace and safety of many citizens.

Effective legislation in this area is difficult to achieve, due both to drafting problems and to a great deal of resistance from certain special interest groups. We are presently working with legislators and law enforcement organizations to develop some new proposals. In this endeavor, we appreciate the information in your case, which is an excellent example in support of such legislation.

If there are any further incidents of this kind in your county, I would appreciate your advising me so that we can add them to the evidence in support of additional firearms controls.

Best personal wishes.

Sincerely,

Edwin Meese III
Extradition and
Clemency Secretary

✓ cc: Assemblyman Don Mulford

EXHIBIT 26 - 9

June 15, 1967

Mr. Lloyd E. Stahl
6400 Rembert Drive
Carmichael, Calif. 95608

Dear Mr. Stahl:

Thank you very much for sending me a copy of your letter of May 12 to the Editor of the Sacramento Bee.

I am sure you are aware that I am very grateful to the National Rifle Association for its help in making my gun control bill, AB 1591, a workable piece of legislation, yet protecting the Constitutional rights of citizens.

I am enclosing a copy of this bill in its amended form, as it was passed by the Assembly.

Thank you for writing to me.

Cordially,

DON MULFORD

em

Enclosure

EXHIBIT 26 – 13

1957L
MAY 2 1967

Reg. #18718

AMENDMENTS TO ASSEMBLY BILL NO. 1591

AMENDMENT NO. 1

On page 2, after line 16, of the printed bill,
insert:

(c) In order to determine whether or not a
firearm is loaded for the purpose of enforcing this section,
peace officers are authorized to examine any firearm carried
by anyone on his person while on a public street or in a
public place within any city, provided that the circumstances
are such that they would give a reasonable man probable
cause to believe that such firearm is loaded.

-1-

EXHIBIT 26 – 27

OFFICE OF
C. E. BROWN
CHIEF OF POLICE



December 22, 1967

Hon. Don Mulford, Assemblyman
2150 Franklin Street
Oakland, California 94612

Dear Sir:

I thought you might be interested in the fact that the revisions of the Penal Code concerning the carrying of loaded firearms, under your instigation, were very important to our citizenry last night.

Co-incidental with the funeral services in our city of a murdered San Francisco Police Officer, two alleged black panthers were observed carrying a .30 caliber M1 Carbine in our downtown business area. We also had other problems from the panthers directly connected with the funeral.

Because of the new teeth in the law, we were able to minimize the effect the panthers wished to convey by searching and identifying them and their weapon.

No arrest was made because the weapon was not loaded and ammunition was not immediately available to them. We were, however, able to immediately allay the fears of merchants and citizens present.

It also enabled us to legally contact, identify and surveille the men without fear of being accused of illegal search or harassment.

Thanks for the good work on behalf of law enforcement.

Very truly yours,

C. E. BROWN
Chief of Police

CEB:ML

EXHIBIT 26 - 68

April 21, 1967

The Honorable Ronald Reagan
Governor of California
State Capitol

My dear Governor:

Regarding the copy of letter from John A. Nejedly, District Attorney, Contra Costa County, I have introduced AB 1591, which will be polished with the addition of amendments. The Black Panther movement is creating a serious problem. The bill was introduced at the request of the Oakland Police Department.

At the proper time, I shall discuss it with you because we may need your personal help. I cannot help feeling that the people of this State are concerned about individuals armed with loaded weapons walking the streets of our communities in numbers.

Regarding the letter from Hardin Jones, I have requested that we all meet on next Thursday and bring Jones to Sacramento. His letter underwrites the reason for this meeting.

Sincerely,

DON MULFORD

Enclosures

cc Mr. Philip M. Battaglia
Mr. Lyn Nofziger

EXHIBIT 26 – 75

1 authorities have an unfettered discretion in the issuance of Open Carry licenses
2 (e.g., attorneys, bill collectors, insurance agents and brokers).

3
4 “...it is clear that the Framers and ratifiers of the Fourteenth Amendment
5 counted the right to keep and bear arms among those fundamental rights necessary
6 to our system of ordered liberty.” *McDonald* at 3042.

7
8 This disparate treatment is not limited to similarly situated individuals in
9 incorporated cities, unincorporated county territory, and counties with a population
10 of 200,000 or more people. California Penal Code section 626.9 allows “...the
11 school district superintendent, his or her designee, or equivalent school
12 authority...” to issue written permission slips to openly carry firearms within 1,000
13 feet of a K-12 public or private school. Similarly, retired peace officers are
14 generally exempt from the bans as are a host of special interest exemptions under
15 the Business and Professions Code.

16
17 “The phrase “public place” has not been used throughout the Penal Code
18 with a clear and uniform legislative meaning.” *People v. Strider*, 177 Cal. App. 4th
19 1393 - Cal: Court of Appeal, 2nd Appellate Dist., 3rd Div. 2009 at 1401. In the
20 context of carrying a loaded firearm in a public place, the court in *Strider*
21 concluded that a sufficiently high fence that encloses residential property and acts
22 as a barrier to public entry makes that residential property not a “public place.”

23
24 In short, each time PLAINTIFF so much as steps outside of his door onto his
25 private residential property with a firearm, loaded or unloaded, he is in violation of
26 the statutes to which he seeks a preliminary injunction against while his neighbors
27 with a sufficiently tall fence (4.5 to 5 feet tall) fully enclosing their property, or
28 with permission from their local school (PC 626.9) or who are retired peace

MOTION FOR PRELIMINARY INJUNCTION



OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

Opinion No. 68-175

1968 Cal. AG LEXIS 59; 51 Ops. Cal. Atty. Gen. 197

October 3, 1968

SYLLABUS:

[*1]

FIREARMS -- The term "firearm" includes rifles and shotguns; firearms may be carried in areas where no regulations exist; "every public road or highway" is a "prohibited area"; "public street" is not synonymous with "public road or highway"; and "safety zone" is a "prohibited area" only when it coincides with a "public place."

REQUESTBY:

DIRECTOR, DEPARTMENT OF FISH AND GAME

QUESTION:

The Honorable Walter T. Shannon, Director, Department of Fish and Game, has requested an opinion on the following questions:

1. Does the term "firearm" as used in Penal Code section 12031\$= > include rifles and shotguns?
2. Does Penal Code section 12031 prohibit the carrying of a rifle or shotgun with unexpended shells or cartridges in the magazine on a public road in an unincorporated area where there are no local ordinances or other laws or regulations prohibiting the discharge of firearms?
3. Does Penal Code section 374c make every "public road or highway" a "prohibited area," as defined in section 12031?
4. Is the term "public street" as used in section 12031 synonymous with "public road or highway" as used [*2] in Penal Code section 374c?
5. Would the "safety zone" described in Fish and Game Code section 3004 be considered a "prohibited area" as defined in section 12031(d)?

The conclusions are:

1. The term "firearm" as used in Penal Code section 12031 includes rifles and shotguns.

1968 Cal. AG LEXIS 59, *2; 51 Ops. Cal. Atty. Gen. 197, **

2. Penal Code section 12031 does not prohibit the carrying of a rifle or shotgun with unexpended shells or cartridges in the magazine on a public road in an unincorporated area where there are no local ordinances or other laws or regulations prohibiting the discharge of firearms.

3. Penal Code section 374c does make every "public road or highway" a "prohibited area" as defined in section 12031.

4. The term "public street" as used in section 12031 is not synonymous with "public road or highway" as used in Penal Code section 374c.

5. The "safety zone" described in Fish and Game Code section 3004 is a "prohibited area" as defined in section 12031, but carrying [*3] of loaded weapons is proscribed therein only when it coincides with a "public place."

OPINIONBY:

THOMAS C. LYNCH, Attorney General; Edward W. Bergtholdt, Deputy

OPINION:

[**198] ANALYSIS

Penal Code section 12031 was enacted by the 1967 Legislature as an urgency measure and provides in part as follows:

"(a) . . . every person who carries a loaded firearm on his person or in a vehicle while in any public place or on any public street in an incorporated city or *in any public place or on any public street in a prohibited area of unincorporated territory* is guilty of a misdemeanor.

. . .

"(d) As used in this section *prohibited area*' means any place where it is unlawful to discharge a weapon.

"(e) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and [*4] ball or shot in the barrel or cylinder." (Emphasis added.)

In order to respond properly to the questions raised, it is necessary to look at the circumstances surrounding the enactment of section 12031 and the attitude of the Legislature to these circumstances.

In April 1967 Assembly Bill 1591 was introduced and included the addition of 1 section 12031 to the Penal Code. At this time it prohibited the carrying of a loaded firearm on a public street or in a public place in an incorporated city. On May 2, 1967, members of the Black Panther organization entered the Assembly Chambers armed with "pistols, rifles and at least one sawed-off shotgun," all to the great alarm of the members of the Assembly. The Sacramento Bee, May 2, 1967, at 1. A.B. 1591 was then made an urgency measure. The provisions of the proposed section 12031 were expanded to extend the application of the section to certain parts of unincorporated areas. The revised bill also proposed the addition of sections 171c, 171d, and 171e to the Penal Code. These sections prohibited the carrying of loaded firearms at the State Capitol, at public schools, [*5] including state colleges and the University of California, and at the Governor's Mansion or residence of any elected state officials.

The urgency clause first appended to A.B. 1591 referred to organized bands of men "armed with loaded firearms" entering the Assembly Chambers. This was a clear reference to the appearance of members of the Black Panther organization referred to above. A.B. 1591 was subsequently enacted into law (Stats. 1967, ch. 960, p. 2459) as an urgency measure. The urgency clause of the bill as enacted reads as follows:

"The State of California has witnessed, in recent years, the increasing [^{**199}] incidence of organized groups and individuals publicly arming themselves for purposes inimical to the peace and safety of the people of California.

"Existing laws are not adequate to protect the people of this state from either the use of such weapons or from violent incidents arising from the mere presence of such armed individuals in public places. Therefore, in order to prevent the potentially tragic consequences of such activities, it is imperative that this statute take effect immediately."

Although this final version of the clause is broader than its earlier [^{*6}] versions, it remains clear that the Legislature did not direct the provisions of section 12031 against all uses of firearms but only at uses of firearms which are "inimical to the peace and safety of the people of California."

Question No. 1 represents an opinion whether the word "firearm" in section 12031 includes rifles and shotguns. *The word "firearm" includes rifles and shotguns.*

The fact that this section is a part of this state's Dangerous Weapons Control Law (Penal Code Part IV, Title 2, Chapter 1, commencing with section 12000), dealing with *concealed* weapons, might suggest its limitation to such weapons. Reading Penal Code section 12031 in its entirety suggests, however, that "firearm" includes rifles and shotguns. Subdivision (b), subparagraph (4) talks of "hunting," an activity which more often involves rifles or shotguns than pistols or revolvers, and subparagraph (8) uses the word "weapon" without any restriction such as "concealed." In subdivisions (d) and (j) the word "weapon" appears again without any restriction.

The inclusion of rifles and shotguns within the definition of "firearm" is also suggested by the circumstances [^{*7}] surrounding its enactment and the wording of the urgency clause. There can, therefore, be little doubt that the word "firearm," as it appears in section 12031, is not limited in meaning to "concealed weapons," as defined in Penal Code section 12001. We must conclude that the word "firearm" as used in section 12031 embraces, among other weapons, rifles and shotguns. n1

n1 For a comprehensive discussion of all the laws of this state relating to firearms see Assem. Int. Comm. on Crim. Proc., *Regulation and Control of Firearms*, 22 Assembly Reports 1963-1965, No. 6 (1965).

Question No. 2 requests an opinion whether section 12031 prohibits the carrying of a loaded firearm on a public road in an unincorporated area. We conclude that section 12031 does not prohibit the carrying of loaded firearms on such public ways. For the reasons set forth in our answer to question No. 4, the term "public streets" in section 12031 (a) must be given a narrow construction. There is a distinction between [^{*8}] "public roads" and "public streets" which is discussed more fully below. The proscriptions of section 12031 are therefore not applicable to "public roads" because they are not "public streets" as that term is used in section 12031. n2

n2 The carrying of a rifle or shotgun in a vehicle with an unexpended round in the chamber is prohibited on "public highways" by Fish and Game Code section 2006, which provides in part:

"It is unlawful to possess a loaded rifle or shotgun in any vehicle . . . which is standing on or along or is being driven on or along any public highway or other way open to the public.

"A rifle or shotgun shall be deemed loaded . . . when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine."

[**200] Question No. 3 requests an opinion whether Penal Code section 374c n3 makes every "public road" a "prohibited area" as defined by section 12031. Because [*9] the discharge of firearms is prohibited on "public roads and highways," these public ways are by definition "prohibited areas" (section 12031 (d)). This does not, however, alter our conclusion that the proscriptions of section 12031 are not applicable to such public ways because, as set forth in our response to your question No. 4, the term "public road or highway" is not synonymous with the term "public street."

n3 Penal Code section 374c provides: "Every person who shoots any firearm from or upon a *public road or highway* is guilty of a misdemeanor." (Emphasis added.)

Question No. 4 requests an opinion whether the term "public street" in section 12031 is synonymous with the term "public road or highway" used in Penal Code section 374c. Our response is that the terms "public road or highway" are not synonymous with the term "public street."

The discussion above regarding the Legislature's purpose in enacting section 12031 suggests that the [*10] term "public street" is to be given a narrow meaning. The thrust of the section is not against the use of all firearms but only against use "inimical to the peace and safety of the people of California." Further, the application of the section's prohibition to unincorporated areas is modified by the injection of the concept, "prohibited area." It is clear, therefore, that the Legislature intended that there be a recognizable distinction in applying the prohibition of section 12031 as between incorporated areas and unincorporated areas. To make "public streets" synonymous with "public roads and highways" would leave little meaningful difference between incorporated and unincorporated areas.

Additionally, earlier versions of A.B. 1591 would have amended Fish and Game Code section 2006. Such amendment was designed to conform the definition of a loaded rifle or shotgun in Fish and Game Code section 2006 to the definition of a loaded firearm in Penal Code section 12031. Section 2006 applies on all "public highway [s] or other way[s] open to the public." The failure of the [*11] Legislature to enact such an amendment to section 2006 suggests that it did not intend that section 2006 be superseded by section 12031. Had it desired section 2006 to be superseded, it would have either amended its definition of a loaded weapon to conform to section 12031 or repealed it entirely.

For these reasons we must conclude that the Legislature intended the term "public streets" be given a narrow meaning. It is not synonymous, then, with "public roads and highways," but includes only the public ways of towns and villages and not the "open roads" in rural sections of unincorporated areas.

Attention should also be called to the effect of Penal Code section 415 which provides: "Every person who . . . fire[s] any gun or pistol in . . . [an] unincorporated [*201] town . . . is guilty of a misdemeanor" Section 12031 (d) defines a "prohibited area" as "any place where it is unlawful to discharge a weapon." An unincorporated town thereby becomes a "prohibited area." The proscription of section 12031 is applicable to the "public streets" of such towns and to all "public places" therein. We have therefore "public places" and "public streets" [*12] in the narrow sense where the discharge of firearms is prohibited and thus the concurrence of the necessary factors to bring the proscriptions into play.

Question No. 5 requests an opinion whether the term "safety zone" in Fish and Game Code section 3004 n4 is a "prohibited area." The answer is in the affirmative, subject to the qualifications given below.

1968 Cal. AG LEXIS 59, *12; 51 Ops. Cal. Atty. Gen. 197, **201

n4 Fish and Game Code section 3004 states:

"It is unlawful for any person, other than the owner, person in possession of the premises, or a person having the express permission of the owner or person in possession of the premises, to hunt or to discharge while hunting, any firearm . . . within 150 yards of any occupied dwelling house, residence, or other building or any barn or other outbuilding used in connection therewith. The 150-yard area is a safety zone."

The "safety zone" described in Fish and Game Code section 3004 which lies in uninco rporated [*13] areas is a "prohibited area" as that term is defined by section 12031 (d). Again, however, for the proscriptions of section 12031 to be applicable, there must be a concurrence of a "prohibited area" and a "public place." Further, "public places" which do not have a building located thereon (*e.g.*, a park) would not be "prohibited areas" and, thus, the proscription of section 12031 would not be applicable. The same would be true for those areas of "public places" more than 150 yards from any building.

It should also be noted that certain persons are excepted from the operation of Fish and Game Code section 3004. Because this exception is not in conflict with the intent of the Legislature these persons would be exempt in any case from the proscriptions of 12031.

Legal Topics:

For related research and practice materials, see the following legal topics:

Criminal Law & ProcedureCriminal OffensesWeaponsPossessionElementsCriminal Law & ProcedureCriminal OffensesWeaponsUseSimple UseElementsTransportation LawCommercial VehiclesMaintenance & Safety

EXHIBIT 3

2011 WL 7338242

Only the Westlaw citation is currently available.
United States District Court, N.D. California,
San Francisco Division.

Espanola JACKSON, et al., Plaintiffs,
v.

CITY AND COUNTY OF SAN
FRANCISCO, et al., Defendants.

No. C 09-2143 RS. | Sept. 27, 2011.

Synopsis

Background: Gun owners brought action against city and county, asserting that their Second Amendment individual right to keep and bear arms was violated by ordinances relating to storage and discharges of firearms, and sales of particular types of ammunition. City and county moved to dismiss on ground that gun owners lacked standing and that their claims were unripe.

[Holding:] The District Court, Richard Seeborg, J., held that gun owners adequately alleged injury-in-fact, as required for standing to challenge ordinances.

Motion denied.

West Headnotes (9)

[1] Federal Civil Procedure

⚡ In General; Injury or Interest

Federal Courts

⚡ Case or Controversy Requirement

The Article III case or controversy requirement limits federal courts' subject matter jurisdiction by requiring that plaintiffs have standing and that claims be ripe for adjudication. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[2] Federal Courts

⚡ Presumptions and Burden of Proof

The party asserting federal subject matter jurisdiction bears the burden of proving its existence.

[3] Federal Civil Procedure

⚡ In General; Injury or Interest

Standing jurisdictional requirement addresses whether the plaintiff is the proper party to bring the matter to the court for adjudication.

[4] Federal Courts

⚡ Case or Controversy Requirement

Doctrine of ripeness is a means by which federal courts may dispose of matters that are premature for review because the purported injuries are too speculative and may never occur.

[5] Federal Civil Procedure

⚡ In General; Injury or Interest

Federal Courts

⚡ Case or Controversy Requirement

Federal Courts

⚡ Objections to Jurisdiction,
Determination and Waiver

Because standing and ripeness pertain to federal courts' subject matter jurisdiction, they are properly raised in a motion to dismiss for lack of subject-matter jurisdiction. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

[6] Federal Civil Procedure

⚡ In General; Injury or Interest

Federal Civil Procedure

⚡ Causation; Redressability

Irreducible constitutional minimum of standing contains three elements, all of which the party invoking federal jurisdiction bears the burden of establishing: (1) plaintiff must prove that he or she suffered injury in fact, i.e., an

invasion of a legally protected interest which is concrete and particularized, and actual or imminent, not conjectural or hypothetical; (2) plaintiff must establish a causal connection by proving that the injury is fairly traceable to the challenged conduct of defendant; and (3) plaintiff must show that the injury will likely be redressed by a favorable decision. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[7] **Federal Courts**

☞ Case or Controversy Requirement

Jurisdictional question of ripeness turns on the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.

[8] **Federal Courts**

☞ Case or Controversy Requirement

The central concern of the ripeness jurisdictional inquiry is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.

[9] **Weapons**

☞ Constitutional, Statutory, and Regulatory Provisions

Gun owners adequately alleged injury-in-fact, as required for standing to bring action against city and county asserting that their Second Amendment individual right to keep and bear arms was violated by ordinances that required handguns to be kept in locked containers when not under direct control, banned sale of bullets designed to expand or fragment, and prohibited discharge of firearms, although gun owners had not been arrested or prosecuted under ordinances; gun owners wanted to immediately keep guns unlocked and acquire prohibited ammunition for potential use in self defense, and although they did not intend

to violate discharge prohibition unless in self-defense, it would be unreasonable to require incident to occur before judicial review was available. U.S.C.A. Const.Amend. 2.

Attorneys and Law Firms

Carl Dawson Michel, Don Bernard Kates, Glenn S. McRoberts, Hillary Jane Green, Michel & Associates, P.C., Long Beach, CA, for Plaintiffs.

Sherri Sokeland Kaiser, Office of the City Attorney, San Francisco, CA, for Defendants.

Opinion

**ORDER DENYING MOTION TO DISMISS
FOR LACK OF STANDING, GRANTING
LEAVE TO AMEND MOOT CLAIM**

RICHARD SEEBORG, District Judge.

I. INTRODUCTION

*1 In the wake of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), that the Second Amendment confers an individual right to keep and bear arms, plaintiffs brought this challenge to certain ordinances of the City and County of San Francisco relating to storage and discharges of firearms, and sales of particular types of ammunition. This litigation was then stayed pending further guidance as to whether the right announced in *Heller* constrains the states, a question answered in the affirmative in *McDonald v. City of Chicago*, — U.S. —, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010). Defendants¹ now move to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure, contending that plaintiffs lack standing to challenge the ordinances because they have not shown, and cannot show a genuine and particularized threat that the ordinances will be enforced against them. For essentially the same reasons, defendants further contend plaintiffs' claims are not ripe. Because plaintiffs have adequately alleged an intent and desire to engage in conduct

that is prohibited by the ordinances but which they contend is constitutionally protected, the motion will be denied. Plaintiffs will be given leave to amend, however, as to one claim involving an ordinance that has been repealed and replaced by somewhat different provisions, and which is therefore subject to dismissal on mootness grounds.

II. BACKGROUND

The First Amended Complaint challenges three provisions of the San Francisco Police Code ("SFPC"):

Section 4512, "The Safe Storage Law," generally allows San Francisco residents to carry unsecured handguns freely in their homes at any time, but requires them to apply trigger locks or to store handguns in locked containers when the guns are not under direct, personal control.

Section 613.10(g), entitled "Prohibiting Sale Of Particularly Dangerous Ammunition," prohibits gun shops from selling ammunition that has been enhanced to increase the damage it inflicts on the human body, such as fragmenting bullets, expanding bullets, bullets that project shot or disperse barbs into the body, or other bullets that serve no "sporting purpose." Plaintiffs contend that while bullets designed to expand or fragment upon impact fall within this ban, they are particularly suited for self-defense because they are designed, for safety reasons, to prevent ricochet and to eliminate over-penetration of unarmored assailants. Plaintiffs assert the police often use such bullets for the same reasons, and that they are unlike so-called "cop killer" or armor-penetrating bullets that might more reasonably be characterized as "particularly dangerous."

Section 1290, "the discharge ban" formerly prohibited firing or discharging "firearms or fireworks of any kind or description" within city limits. Plaintiffs challenged it on grounds that it did not explicitly contain appropriate exceptions for self-defense. Section 1290 has since been *repealed*, and replaced with amendments to provisions in sections 4502 and 4506. While this motion to dismiss was pending, plaintiffs moved for leave to amend to delete their challenge to section 1290 and to allege the grounds on which they contend the revised provisions of sections 4502 and 4506 still fail to pass constitutional muster. The motion

for leave to file a second amended complaint at that juncture was denied, with the understanding that unless the entire action were dismissed for lack of standing, plaintiffs would be given leave to amend this particular claim upon issuance of this order.

III. LEGAL STANDARDS

*2 [1] [2] [3] [4] [5] As noted above, defendants move to dismiss this action under Rule 12(b)(1) of the Federal Rules of Civil Procedure on the ground that plaintiffs lack standing and that their claims are unripe. The Article III case or controversy requirement limits federal courts' subject matter jurisdiction by requiring, among other things, that plaintiffs have standing and that claims be "ripe" for adjudication. *Allen v. Wright*, 468 U.S. 737, 750, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984). The party asserting federal subject matter jurisdiction bears the burden of proving its existence. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994). Standing addresses whether the plaintiff is the proper party to bring the matter to the court for adjudication. *See Allen*, 468 U.S. at 750–51, 104 S.Ct. 3315. The related doctrine of ripeness is a means by which federal courts may dispose of matters that are premature for review because the purported injuries are too speculative and may never occur. Because standing and ripeness pertain to federal courts' subject matter jurisdiction, they are properly raised in a Rule 12(b)(1) motion to dismiss. *See St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir.1989); *see also White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.2000).

[6] "[T]he irreducible constitutional minimum of standing contains three elements," all of which the party invoking federal jurisdiction bears the burden of establishing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). First, the plaintiff must prove that he or she suffered an "injury in fact," i.e., an "invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Id.* at 560, 112 S.Ct. 2130 (citations, internal quotation marks, and footnote omitted). Second, the plaintiff must establish a causal connection by proving that the injury is fairly traceable to the challenged conduct of the defendant. *Id.* at 560–

61, 112 S.Ct. 2130. Third, the plaintiff must show that the injury will likely be redressed by a favorable decision. *Id.* at 561, 112 S.Ct. 2130.

[7] [8] “[T]he question of ripeness turns on the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 201, 103 S.Ct. 1713, 75 L.Ed.2d 752 (1983) (quotations omitted). The central concern of the ripeness inquiry is “whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Richardson v. City and County of Honolulu*, 124 F.3d 1150, 1160 (9th Cir.1997) (quotations omitted).

IV. DISCUSSION

[9] Defendants insist that under “well established and well elucidated” law in this circuit, persons who have not yet been arrested or prosecuted under a challenged law have standing only if they can show imminent injury-in-fact by means of a “genuine and particularized threat” that the challenged law will be enforced against them. Relying primarily on *San Diego County Gun Rights Comm. v. Reno*, 98 F.3d 1121 (9th Cir.1996) (“*Gun Rights Committee*”), defendants argue that it simply is not enough for plaintiffs to allege that they “wish and intend” to engage in conduct prohibited by the law in dispute; rather, they must also allege facts showing when and how they will violate the law, and a specific threat that they will be prosecuted if they do. Defendants contend plaintiffs have not shown that any law enforcement official has specifically threatened any of them, much less all of them, with arrest and prosecution under any of the challenged ordinances. Defendants place particular emphasis on the observation in *Gun Rights Committee* that, “[w]e have repeatedly admonished ... that the mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to create a case or controversy within the meaning of Article III.” 98 F.3d at 1126 (quotations omitted).

*3 *Gun Rights Committee* involved a challenge to the federal “assault weapons” ban enacted by Congress in 1994, which prohibited the manufacture, transfer or possession of semiautomatic assault weapons and the transfer or possession of “large capacity ammunition

feeding device[s].” The plaintiffs alleged “that they ‘wish and intend’ to engage in unspecified conduct prohibited by the Act,” but had not “articulated concrete plans” to do so. 98 F.3d at 1124, 1127.

Because *Gun Rights Committee* long preceded *Heller*, the court quickly dispensed with the notion that the plaintiffs might have standing under the Second Amendment—the lack of any then-recognized individual constitutional right to keep and bear arms foreclosed plaintiffs from asserting standing. 98 F.3d at 1124–25. Plaintiffs’ challenge under the Ninth Amendment was rejected for the same basic reason. *Id.* at 1125. Accordingly, the court’s standing analysis proceeded only under the claim that Congress had exceeded its power under the Commerce Clause in enacting the assault weapons ban. Here, in contrast, plaintiffs are pursuing what the Supreme Court has now pronounced to be an individual right guaranteed by the Second Amendment, not simply challenging the scope of the Commerce Clause. While defendants may be correct that *Heller* cannot be seen as overruling *Gun Rights Committee*, *per se*, the applicability of the standing analysis in *Gun Rights Committee* to a case involving assertion of individual constitutional guarantees is uncertain.

The continued vitality of *Gun Rights Committee* is also questionable in light of *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 S.Ct. 764, 166 L.Ed.2d 604 (2007). The *Gun Rights Committee* court had pointed out that, “The acts necessary to make plaintiffs’ injury—prosecution under the challenged statute—materialize are almost entirely within plaintiffs’ own control.” 98 F.3d at 1127. As a result, the court concluded, “[p]laintiffs have failed to show the high degree of immediacy that is necessary for standing under these circumstances.” *Id.* In *MedImmune*, however, the Supreme Court rejected this argument.

Our analysis must begin with the recognition that, where threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat—for example, the constitutionality of a law threatened to be enforced. The plaintiffs

own action (or inaction) in failing to violate the law eliminates the imminent threat of prosecution, but nonetheless does not eliminate Article III jurisdiction.

549 U.S. at 128–129, 127 S.Ct. 764.²

Ultimately, though, even to the extent that at least some aspects of *Gun Rights Committee* remain good law, it simply is distinguishable. Plaintiffs have not merely alleged that they “wish and intend” to violate the ordinances in some vague and unspecified way, at some unknown point in the future. Plaintiffs allege they own guns now, and that based on their personal views of how it would enhance their personal safety, they want to keep their guns unlocked *now* for potential use in self defense, and that they wish to acquire prohibited ammunition *now* for the same purpose. While the time that they will actually *use* the guns in self defense is unknown and may never come, that does not undermine the immediacy and concreteness of the injury they have alleged. Even as to the discharge rules, which plaintiffs do not contend they intend to violate unless and until a self-defense situation arises, it would be unreasonable to require an incident to occur before judicial review of the validity of the rules is available.³

*4 Defendants also rely on *Rincon Band of Mission Indians v. County of San Diego*, 495 F.2d 1 (9th Cir.1974), which found no justiciable controversy where the governing body of an Indian tribe sought declaratory relief as to the applicability of a county anti-gambling ordinance to “traditional tribal games of chance,” and to the possible development of a tribally-run card room on reservation lands. Although the “case or controversy” issues discussed in *Rincon* underlie part of the standing doctrine, the decision was not framed in terms of standing, and it did not involve an assertion of individual constitutional rights. Nothing in the facts or discussion in *Rincon* otherwise compels a conclusion that plaintiffs lack standing here.

Defendants’ contention that the plaintiffs’ claims are not ripe are based on the same basic arguments as their position on standing, and do not provide a separate basis for dismissal. See *MedImmune*, 549 U.S. at 128 n. 8, 127 S.Ct. 764 (“standing and ripeness boil

down to the same question in this case.”) Similarly, their arguments that the case should be dismissed on *prudential* standing grounds rest on the same assumptions as to the concreteness and immediacy of plaintiffs’ alleged injury. Accordingly, the motion to dismiss must be denied.

IV. CONCLUSION

The motion to dismiss for lack of standing is denied. In light of plaintiffs’ concession that the claim directed at Section 1290 is now moot, however, it will be dismissed, with leave to amend to allege plaintiffs’ challenges to the amendments of sections 4502 and 4506. Any amended complaint shall be filed with 15 days of the date of this order. The parties shall appear for a Case Management Conference on November 3, 2011, at 10:00 a.m., with a joint Case Management Conference statement to be filed one week in advance.

IT IS SO ORDERED.

- 1 The operative first amended complaint names as defendants the City and County of San Francisco, its Mayor, and its Chief of Police. As defendants point out, the particular individuals holding those offices have changed since the complaint was filed, and may change again before this action is resolved. Defendants offer to stipulate that the individual defendants at any given time should be deemed to be the Mayor and Chief of Police then in office.
- 2 Indeed, the Court went on to hold that even where the threatened action was by a *private* party—a patent holder threatening an infringement action—the same principle applies.
- 3 Defendants’ motion also challenges plaintiffs’ standing to make a derivative claim on behalf of gun shop owners with respect to the ban on sales of certain types of ammunition. Plaintiffs, however, have made it clear that they are asserting that the ban unduly burdens their *own* alleged right to acquire and possess such ammunition. While it may be that plaintiffs will be unable, as a factual matter, to establish that a ban on sales within the City and County of San Francisco actually presents a significant burden on their ability to obtain such ammunition, that would only undermine the merits of the claim, not plaintiffs’ standing to bring it.

Jackson v. City and County of San Francisco, --- F.Supp.2d ---- (2011)

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1 government is concerned, we do not require a plaintiff to expose himself to
 2 liability before bringing suit to challenge the basis for the threat – for example, the
 3 constitutionality of a law threatened to be enforced. The plaintiff’s own action (or
 4 inaction) in failing to violate the law eliminates the imminent threat of prosecution,
 5 but nonetheless does not eliminate Article III jurisdiction.”

6 Inasmuch as the *Jackson* defendants’ contentions that the plaintiffs lacked standing and
 7 that their claims were unripe were based on the same arguments, neither contention provided
 8 the defendants with a separate basis for dismissal. *Jackson, supra*; Plaintiff’s Exhibit 3, p. 5,
 9 quoting *MedImmune, supra*, 549 U.S. at 128 n. 8: “standing and ripeness boil down to the same
 10 question in this case.”

11 The Court in *Jackson* denied the defendants’ motion to dismiss - plaintiff contends the
 12 Court here should do likewise.

13 14 **3. THE INJURY RESULTING FROM PLAINTIFF BEING REFUSED A PERMIT TO** 15 **CARRY A FIREARM IS FAIRLY TRACED TO THE ATTORNEY GENERAL.**

16 The defendant attempts to distance herself from the firearm permitting process of Penal
 17 Code § 26155. She argues that she should be dismissed from plaintiff’s challenge to Section
 18 26155 because, essentially, she has nothing to do with the process.

19 As acknowledged by the defendant, however, she is involved in the process in a very
 20 big way. She acknowledges that the Attorney General office is charged with “preparing a
 21 uniform application form to be used throughout the state.” (citing to Penal Code § 26175). She
 22 further states that “upon receipt of an applicant’s fingerprints from a licensing authority, the
 23 California Department of Justice, which is under the supervision of the Attorney General (Cal.
 24 Gov’t Code § 12510), provides to the licensing authority a report as to whether the applicant
 25 is prohibited by state or federal law from possessing a firearm. (Cal. Penal Code §§ 11105,
 26 26185.)” (Defendant’s Memorandum of Points and Authorities, p. 12, lines 1-7).

27 The obvious inference here, considering plaintiff actually did not receive a permit, is that
 28 the Attorney General’s office reported to the Redondo Beach chief of police that plaintiff “is
 prohibited by state or federal law from possessing a firearm.”

1 This goes to crux of this issue. The defendant speaks out of both sides of her mouth by
 2 saying she has nothing to do with permitting while she acknowledges she “only” directs the
 3 licensing body as to whether a person is prohibited from having same. The Attorney General,
 4 by law, issues an edict as to whether having a permit to carry a firearm is illegal under federal
 5 law.

6 In *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008), the Court acknowledged that
 7 the Second Amendment of the United States Constitution “guarantee[s] the individual right to
 8 possess and carry weapons in case of confrontation.” In *McDonald v. Chicago*, 561 U.S. 3025
 9 (2010), the Court found that the Second Amendment limits state and local governments to the
 10 same extent that it limits the federal government. In relation to *Heller*, the Attorney General has
 11 come out publicly with her opinion that it was wrongly decided. In relation to *McDonald*, the
 12 Attorney General in her former capacity filed an Amicus Curiae brief opposed to the opinion
 13 rendered in that case. It is not difficult to see the Attorney General viewing the issuance of gun
 14 permits as being against federal law when she does not agree the right to bear arms is a
 15 fundamental individual right.

16 17 **4. THE ELEVENTH AMENDMENT DOES NOT BAR PLAINTIFF’S CLAIMS AGAINST** 18 **THE ATTORNEY GENERAL.**

19 The defendant argues that plaintiff cannot meet two of three prongs necessary to defeat
 20 the Eleventh Amendment bar against prosecuting an official’s oversight of state law. Defendant
 21 avers that, “ ‘In evaluating the genuineness of a claimed threat of prosecution, [a court should]
 22 look to [1] whether the plaintiff ha[s] articulated a ‘concrete plan’ to violate the law in question,
 23 [2] whether the prosecuting authorities have communicated a specific warning or threat to
 24 initiate proceedings, and [3] the history of past prosecution or enforcement under the
 25 challenged statute.’ ” (Defendant’s Memorandum of Points and Authorities, p. 15, lines 7-12,
 26 quoting *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139).

27 Defendant concedes the third prong; that is, she acknowledges that the Attorney
 28 General’s office has enforced Penal Code §§ 25850 and 26155. However, defendant contends
 that plaintiff cannot prove the first two prongs, a “concrete plan” to violate the law, and a threat

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

1 Washington Governor Gregoire was not able to so easily escape in the above
2 cited case, nor should Defendant Brown.

3
4 The Complaint alleges that the statute at issue has been enforced, is currently
5 being enforced and will continue to be enforced thereby subjecting Plaintiff to an
6 actual and genuine threat of imminent prosecution should he exercise his right,
7 under the United States Constitution, to openly carry a handgun in non-sensitive
8 public places for the purpose of self-defense.

9
10 **A. Deprivation of Constitutional Right**

11 "A person 'subjects' another to the deprivation of a constitutional right,
12 within the meaning of [§] 1983, if [that person] does an affirmative act, participates
13 in another's affirmative acts, or omits to perform an act which [that person] is
14 legally required to do that causes the deprivation of which complaint is made."
15 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.1978). Indeed, the "requisite causal
16 connection can be established not only by some kind of direct personal
17 participation in the deprivation, but also by setting in motion a series of acts by
18 others which the actor knows or reasonably should know would cause others to
19 inflict the constitutional injury." Hydrick v. Hunter, 449 F. 3d 978 - Court of
20 Appeals, 9th Circuit 2006 at 991, 2006 U.S. App. LEXIS 13497; 64 Fed. R. Serv.
21 3d (Callaghan) 928

22
23 Defendant Brown took an oath of office in which he swore to defend both
24 the United States Constitution and the Constitution of the State of California.
25 Instead, he signed into law a bill into law which violates both constitutions.
26 Defendant Brown by signing Assembly Bill 144 into law, and enforcement of the
27 statute at issue, set into motion a series of acts by others which he knew, or
28 reasonably should have known, would cause others to inflict the constitutional

injuries on Plaintiff. By continuing to enforce the statute at issue in this case as well, Defendant Brown compounds his culpability. The causal connection is clear as are his acts or omissions.

IV. STATE CLAIMS

In his Complaint, Plaintiff refers to provisions in the California Constitution that parallel the applicable provisions in the United States Constitutions where it is legitimate to do so, e.g., where there is a state-created liberty or property interest at stake. Indeed, the Complaint alleges at ¶ 79 that the statute at issue violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment. This Seventh Claim for Relief in the Complaint fully incorporated all of the previously stated Equal Protection and Due Process allegations under the United States Constitution. See ¶ 83 of the Complaint.

None of Plaintiff's claims are retrospective in nature. Every state law claim (and Federal, for that matter) in the complaint seeks purely declaratory, and/or prospective injunctive relief. The Complaint makes no demands on the State Treasury, nor is money sought from any of the Defendants; directly or indirectly. Nor does the Complaint seek compulsory relief from any of the Defendants. The relief sought in the Complaint does not ask of any defendant to do anything. There is no Eleventh Amendment bar.

Nor is the Complaint even close to being a purely (or even predominantly) state law complaint. The lone claim for relief for violation of the California Constitution arises out of the fully incorporated Federal claims which included the Second, Fourth and Fourteenth Amendments to the United States Constitution. See ¶ 83 of the Complaint. Nor would a denial of the Seventh Claim for Relief under the California Constitution affect the Request for Relief which Plaintiff

1 nearly 100 years that in certain cases federal-question jurisdiction will lie over
 2 state-law claims that implicate significant federal issues. E. g., *Hopkins v. Walker*,
 3 244 U. S. 486, 490-491 (1917). The doctrine captures the commonsense notion that
 4 a federal court ought to be able to hear claims recognized under state law that
 5 nonetheless turn on substantial questions of federal law, and thus justify resort to
 6 the experience, solicitude, and hope of uniformity that a federal forum offers on
 7 federal issues, see ALI, *Study of the Division of Jurisdiction Between State and*
 8 *Federal Courts* 164-166 (1968).” *Grable & Sons Metal Products, Inc. v. Darue*
 9 *Engineering & Mfg.*, 545 US 308 - Supreme Court 2005 at 312; 2005 U.S. LEXIS
 10 4659; 125 S. Ct. 2363; 162 L. Ed. 2d 257

11 12 **B. Due Process Liberty and Property Interest**

13 “It is apparent from our decisions that there exists a variety of interests
 14 which are difficult of definition but are nevertheless comprehended within the
 15 meaning of either "liberty" or "property" as meant in the Due Process Clause.
 16 These interests attain this constitutional status by virtue of the fact that they have
 17 been initially recognized and protected by state law,[5] and we have repeatedly
 18 ruled that the procedural guarantees of the Fourteenth Amendment apply whenever
 19 the State seeks to remove or significantly alter that protected status. In *Bell v.*
 20 *Burson*, 402 U. S. 535 (1971), for example, the State by issuing drivers' licenses
 21 recognized in its citizens a right to operate a vehicle on the highways of the State.
 22 The Court held that the State could not withdraw this right without giving
 23 petitioner due process. In *Morrissey v. Brewer*, 408 U. S. 471 (1972), the State
 24 afforded parolees the right to remain at liberty as long as the conditions of their
 25 parole were not violated. Before the State could alter the status of a parolee
 26 because of alleged violations of these conditions, we held that the Fourteenth
 27 Amendment's guarantee of due process of law required certain procedural

1 People v. Strider, 177 Cal. App. 4th 1393 - Cal: Court of Appeal, 2nd
 2 Appellate Dist., 3rd Div. 2009 hereinafter referred to as Strider, "...the "key
 3 consideration is whether a member of the public can access the place `without
 4 challenge.' [Citation.]" (People v. Krohn, supra, 149 Cal.App.4th at p. 1298.) Here,
 5 there was a considerable challenge: a high metal fence." Strider at 1405.

6
 7 Unlike the "high metal fence" in Strider, Plaintiff's front gate can easily be
 8 stepped over by a person of average height. Given that Redondo Beach, Torrance
 9 and LASD Police patrol cars routinely pass in front of Plaintiff's home, he is at risk
 10 of arrest and prosecution under the statute at issue for simply carrying a firearm on
 11 his own private residential property. Simply leaning out of his front door with a
 12 loaded firearm in response to a suspicious noise or intruder puts Plaintiff at risk of
 13 arrest, prosecution and imprisonment.

14
 15 The United States Supreme Court precludes prior or current prosecution for
 16 a case to have Article III standing. "Plaintiffs seek preenforcement review of a
 17 criminal statute. Before addressing the merits, we must be sure that this is a
 18 justiciable case or controversy under Article III. We conclude that it is: Plaintiffs
 19 face "a credible threat of prosecution" and "should not be required to await and
 20 undergo a criminal prosecution as the sole means of seeking relief." Babbitt v.
 21 Farm Workers, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979) (internal
 22 quotation marks omitted). See also MedImmune, Inc. v. Genentech, Inc., 549 U.S.
 23 118, 128-129, 127 S.Ct. 764, 166 L.Ed.2d 604 (2007) Holder v. Humanitarian Law
 24 Project, 130 S. Ct. 2705 - Supreme Court 2010 at 2717

25
 26 PC12031(e) does not require that police officers stop, detain, run serial
 27 numbers on the firearm or to do anything for that matter. Enforcement of that
 28 subsection of the statute at issue is entirely optional. For Movant to allege

1 The 7th Circuit Court of Appeals has held that the scope of the Second
 2 Amendment is broader than one's front door. See ¶ 43 of Complaint. "[T]he core
 3 right identified in Heller [is] the right of a law-abiding, responsible citizen to
 4 possess *and carry* a weapon for self-defense." United States v. Chester, 628 F.3d
 5 673, 683 (4th Cir. 2010) (emphasis removed and added). In upholding the right to
 6 carry a handgun under the Second Amendment, Heller broke no new ground. See
 7 e.g., Nunn v. State, 1 Ga. 243, 251 (1846); In re Brickey, 8 Idaho 597, 70 P. 609
 8 (1902) (Second Amendment right to carry handgun); Kellogg v. City of Gary, 562
 9 N.E.2d 685 (Ind. 1990); State ex rel. City of Princeton v. Buckner, 180 W. Va.
 10 457, 377 S.E.2d 139 (1988); City of Las Vegas v. Moberg, 82 N.M. 626, 485 P.2d
 11 737 (N.M. Ct. App. 1971); State v. Rosenthal, 75 Vt. 295, 55 A. 610 (1903)
 12 (striking down ban on concealed carry); Andrews v. State, 50 Tenn. 165 (1871);
 13 see also State v. Delgado, 298 Or. 395, 692 P.2d 610 (Or. 1984) (right to carry a
 14 switchblade knife). State v. Reid, 1 Ala. 612, 616-17 (1840), State v. Chandler, 5
 15 La. Ann. 489, 490 (1850). Nor is it the case that this right to carry arms is limited
 16 to homes with tall fences completely enclosing the property, or some similarly
 17 narrow category of private, real property. Heller compels the conclusion that it
 18 extends to a wide variety of public places.

19
 20 A claim that the right to carry arms does not extend to public places would
 21 fly in the face of Heller's statement concerning the permissibility of laws
 22 forbidding the carrying of firearms in sensitive places such as schools and
 23 government buildings . . . " 554. U.S. at 626. It beggars belief to suggest that when
 24 the Heller Court identified two types of "sensitive" public places in which the
 25 carrying of arms could presumptively be forbidden, what it really meant to say was
 26 that the right to carry arms has no application outside of one's home. The only
 27 sensible reading of this dictum from Heller is that the carrying of arms generally
 28 cannot be prohibited in non-sensitive public places. This reading was adopted by

1 searches absent probable cause are a violation of the Fourth Amendment. Nor is it
 2 necessary at this stage of the case for Plaintiff to prove his Fourteenth Amendment
 3 allegations.

4 5 CONCLUSION

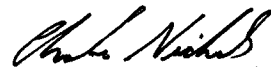
6
 7 Plaintiff had a Quaker upbringing. He finds no shame in crossing the street
 8 to avoid confrontation. Unfortunately, criminals are not so inclined. It is
 9 regrettable that humans need to engage in armed self-defense anywhere, let alone
 10 in public places, but many do. This court should not turn a blind eye to that reality.

11
 12 The Right to self-defense does not disappear the moment an individual
 13 leaves his home and certainly exists on one's private, residential property.

14
 15 For the reasons given above, Defendant Harris' Motion to Dismiss should
 16 not be granted.

17
 18
 19
 20 Dated: February 6, 2012

Respectfully Submitted,



By: Charles Nichols
 Plaintiff in Pro Per
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 Redondo Beach, CA
 90278
 Voice: (424) 634-7381
 E-Mail:
 CharlesNichols@Pykrete
 .info

21
 22
 23
 24
 25
 26
 27 ///

28 ///

**UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF
CALIFORNIA (Western Division – Los Angeles)
CIVIL DOCKET FOR CASE #: 2:11-cv-09916-SJO-SS**

Charles Nichols v. Edmund G Brown Jr et al
Assigned to: Judge S. James Otero
Referred to: Magistrate Judge Suzanne H. Segal
Related Case: 2:14-cv-07411-SJO-SS
Case in other court: 9th CCA, 13-56203
9th CCA, 14-55873
Cause: 42:1983 Civil Rights Act

Date Filed: 11/30/2011
Date Terminated: 05/01/2014
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Charles Nichols

represented by **Charles Nichols**
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ATTORNEY TO BE NOTICED

V.

Defendant

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*in his official capacity as Governor of
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LEAD ATTORNEY

Defendant

Kamala D Harris
*Attorney General in her official capacity
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Defendant

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**City of Redondo Beach Police
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 TERMINATED: 07/02/2012
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Defendant

Joseph Leonardi
City of Redondo Beach Police Chief

represented by **Lisa M Bond**
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 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Michael W Webb
 (See above for address)
 TERMINATED: 07/02/2012
 ATTORNEY TO BE NOTICED

Defendant

Does
1 to 10
 TERMINATED: 08/05/2013

Defendant

Officer Todd Heywood

represented by **Lisa M Bond**
 (See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/22/2016	<u>174</u>	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>168</u> filed by Charles Nichols. CCA # 14-55873. Appellant's unopposed motion (docket entry 23) to further stay appellate proceedings pending disposition of the petitions for full court rehearing in Peruta v. County of San Diego, case no. 10-56971, and Richards v. Prieto, case no. 11-16255, is granted. This case is stayed until November 17, 2016. [See document for further information] (car) (Entered: 07/26/2016)
04/13/2015	<u>173</u>	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>168</u> filed by Charles Nichols. CCA # 14-55873. Appellant's unopposed motion to stay appellate proceedings pending disposition of two en banc

		cases, Peruta v. County of San Diego, case no. 10–56791, and Richards v. Prieto, case no. 11–16255, is granted. [See document for details] (mat) (Entered: 04/14/2015)
01/21/2015	<u>172</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>168</u> filed by Charles Nichols, CCA # 14–55873. Appellant's motion to file sur–reply in opposition to appellees motion to stay proceedings is granted. Appellees opposed motion to stay proceedings pending the courts ruling whether to grant the petition for en banc review in Richards v. Prieto, No. 11– 16255 is granted. Within 90 days after the date of this order or within 14 daysafter the court rules on the petition for en banc review in Richards, whicheveroccurs first, appellees shall file an appropriate motion addressing the status of thisappeal and requesting a further stay or other relief. Appellant's unopposed motion for an extension to file a shortened opening brief is granted. Order received in this district on 1/21/15. [See document for details] (mat) (Entered: 01/22/2015)
07/03/2014	<u>171</u>	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> , CCA # 13–56203. On May 1, 2014, the district court entered a final order dismissing the underlying action. Consequently, this preliminary injunction appeal is dismissed as moot. Appellant's appeal from the district court's final judgment is proceeding in this court as appeal number 14–55873. Mandate received in this district on 7/3/2014. (car) (Entered: 07/08/2014)
06/10/2014	<u>170</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> filed by Charles Nichols CCA # 13–56203. On May 1, 2014, the district court entered a final order dismissing the underlying action. Consequently, this preliminary injunction appeal is dismissed as moot. See SEC v. Mount Vernon Meml Park, 664 F.2d 1358, 1361 (9th Cir. 1982) (district courts entry of final judgment renders pending appeal from preliminary injunction moot). Appellant's appeal from the district court's final judgment is proceeding in this court as appeal number 14–55873. All pending motions are denied as moot. Order received in this district on 6/10/2014. (dmap) (Entered: 06/16/2014)
05/29/2014	<u>169</u>	NOTIFICATION by Circuit Court of Appellate Docket Number 14–55873, 9th CCA regarding Notice of Appeal to 9th Circuit Court of Appeals <u>168</u> as to Petitioner Charles Nichols. (ja) (Entered: 05/30/2014)
05/27/2014	<u>168</u>	NOTICE OF APPEAL to the 9th CCA filed by Petitioner Charles Nichols. Appeal of Judgment <u>167</u> Filed On: 5/1/14; Entered On: 5/1/14; Filing fee \$505 PAID, receipt number LA096419. (Attachments: # <u>1</u> Appeal Fee receipt) (mat) (Entered: 05/28/2014)
05/01/2014	<u>167</u>	JUDGMENT by Judge S. James Otero, Related to: R&R – ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE, <u>166</u> . IT IS HEREBY ADJUDGED that the above–captioned action is dismissed with prejudice. (MD JS–6, Case Terminated). (mr) (Entered: 05/01/2014)
05/01/2014	<u>166</u>	ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE by Judge S. James Otero. IT IS ORDERED that Plaintiff's Motion for Partial Summary Judgment is DENIED. IT IS FURTHER ORDERED that Defendant's Motion for Judgment on the Pleadings is GRANTED and that Judgment be entered in favor of Defendant Kamala D. Harris. (mr) (Entered: 05/01/2014)
04/14/2014	<u>164</u>	REPLY TO OBJECTION to Report and Recommendation (Issued) <u>162</u> filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 04/14/2014)
04/11/2014	<u>165</u>	NOTICE OF DISCREPANCY AND ORDER: by Magistrate Judge Suzanne H. Segal, ORDERING Request for Ruling on Submitted Matter (2) submitted by Plaintiff Charles Nichols received on 4/09/14 is not to be filed but instead rejected. Denial based on: Both parties have not signed the document. (mr) (Entered: 04/16/2014)
03/31/2014	<u>163</u>	OBJECTION to Report and Recommendation (Issued) <u>162</u> filed by plaintiff Charles Nichols.(mr) (Entered: 04/02/2014)
03/18/2014	<u>162</u>	REPORT AND RECOMMENDATION issued by Magistrate Judge Suzanne H. Segal. Re Complaint, <u>1</u> , MOTION for Partial Summary Judgment, <u>131</u> , MOTION for

		Judgment on the Pleadings, <u>129</u> . (mr) (Entered: 03/18/2014)
03/18/2014	<u>161</u>	NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Suzanne H. Segal. Objections to R&R due by 4/1/2014. (mr) (Entered: 03/18/2014)
02/05/2014	<u>160</u>	DECLARATION of Plaintiff Charles Nichols Regarding Notice of Supplemental Authority <u>159</u> filed by Plaintiff Charles Nichols. (es) (Entered: 02/06/2014)
02/05/2014	<u>159</u>	NOTICE OF SUPPLEMENTAL AUTHORITY <u>131</u> filed by Plaintiff Charles Nichols. (es) (Entered: 02/06/2014)
02/03/2014	<u>158</u>	Plaintiff's RESPONSE to Defendant Harris' Objection to Plaintiff's Notice of Supplemental Authority <u>157</u> filed by Plaintiff Charles Nichols (es) (Entered: 02/05/2014)
01/28/2014	<u>157</u>	Objection re: MOTION for Partial Summary Judgment <u>131</u> , MOTION for Judgment on the Pleadings as to Pleadings of <i>Charles Nichols</i> , <u>129</u> <i>Four Supplemental Filings</i> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Affidavit of Service)(Eisenberg, Jonathan) (Entered: 01/28/2014)
01/13/2014	<u>156</u>	DECLARATION re Notice of Supplemental Authority <u>155</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/16/2014)
01/13/2014	<u>155</u>	NOTICE of Supplemental Authority filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/16/2014)
01/10/2014	<u>154</u>	DECLARATION re Notice (Other) <u>153</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/13/2014)
01/10/2014	<u>153</u>	NOTICE of Supplemental Authority filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/13/2014)
01/06/2014	<u>152</u>	DECLARATION re Notice of Supplemental Authority <u>150</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/09/2014)
01/06/2014	<u>151</u>	RESPONSE to Objections – non–motion <u>149</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/09/2014)
01/06/2014	<u>150</u>	NOTICE of Supplemental Authority filed by Plaintiff Charles Nichols. (lmh) (Entered: 01/09/2014)
12/27/2013	<u>149</u>	OBJECTIONS to <i>Supplemental Filing</i> filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 12/27/2013)
12/13/2013	<u>148</u>	DECLARATION of Plaintiff Charles Nichols Regarding Notice of Supplemental Authority, <u>147</u> filed by Plaintiff Charles Nichols. (lmh) Modified on 12/16/2013 (mr). (Entered: 12/16/2013)
12/13/2013	<u>147</u>	NOTICE of Supplemental Authority filed by Plaintiff Charles Nichols. (lmh) (Entered: 12/16/2013)
12/09/2013	<u>146</u>	Plaintiff's Objections to Declaration of Jonathan M. Eisenberg filed in Opposition to Plaintiff's Motion for Partial Summary Judgment, <u>131</u> . (lmh) Modified on 12/13/2013 (mr). (Entered: 12/12/2013)
12/09/2013	<u>145</u>	Plaintiff's Objections to Defendant's Notice of Errata filed in Opposition to Plaintiff's Motion for Partial Summary Judgment, <u>131</u> . (lmh) Modified on 12/13/2013 (mr). (Entered: 12/12/2013)
12/09/2013	<u>144</u>	Reply to Defendant's State of Genuine Disputes re Plaintiff's Motion for Partial Summary Judgment <u>131</u> filed by Plaintiff Charles Nichols. (lmh) Modified on 12/13/2013 (mr). (Entered: 12/12/2013)
12/09/2013	<u>143</u>	Reply in Support of Plaintiff's Motion for Partial Summary Judgment <u>131</u> filed by Plaintiff Charles Nichols. (lmh) Modified on 12/13/2013 (mr). (Entered: 12/12/2013)
12/03/2013	<u>142</u>	REPLY in Support of MOTION for Judgment on the Pleadings as to Pleadings of <i>Charles Nichols</i> , <u>129</u> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Affidavit of Service)(Eisenberg, Jonathan) (Entered: 12/03/2013)

12/03/2013	<u>141</u>	NOTICE OF ERRATA filed by Defendant Kamala D Harris. correcting Objection/Opposition (Motion related) <u>140</u> (Attachments: # <u>1</u> Memorandum of P's and A's in Opp'n to MSJ, # <u>2</u> Affidavit of Service)(Eisenberg, Jonathan) (Entered: 12/03/2013)
12/02/2013	<u>140</u>	Opposition re: MOTION for Partial Summary Judgment <u>131</u> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Appendix of Genuine Disputes, # <u>2</u> Affidavit of Jonathan M. Eisenberg, # <u>3</u> Affidavit of Service)(Eisenberg, Jonathan) (Entered: 12/02/2013)
11/26/2013	<u>139</u>	Plaintiff's Opposition to Defendant's Motion for Judgment on the Pleadings <u>129</u> filed by Plaintiff Charles Nichols. (mr) (Entered: 12/02/2013)
11/26/2013	<u>138</u>	Plaintiff Nichols' Objection to Evidence re: MOTION for Judgment on the Pleadings as to Pleadings of <i>Charles Nichols</i> , <u>129</u> filed by Plaintiff Charles Nichols. (mr) (Entered: 12/02/2013)
11/18/2013	<u>137</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal, On November 8, 2013, Plaintiff filed a Motion for Partial Summary Judgment, which was entered on the Courts docket on November 15, 2013. (Dkt. No. 131). The Court sets the following briefing schedule: Defendants Opposition shall be filed within fourteen (14) days of the date of this Order. Plaintiffs Reply, if necessary, shall be filed within seven (7) days of service of the Opposition. Thereafter, the Motion will be taken under submission without a hearing unless otherwise ordered by the Court. Accordingly, the hearing date currently set for December 17, 2013 is VACATED. re: MOTION for Partial Summary Judgment <u>131</u> . (lmh) (Entered: 11/18/2013)
11/13/2013	<u>130</u>	MINUTE ORDER (IN CHAMBERS) ORDER: (1) SETTING BRIEFING SCHEDULE ON DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS AND (2) VACATING HEARING DATE (Dkt. No. <u>129</u>) by Magistrate Judge Suzanne H. Segal: The Court sets the following briefing schedule: Plaintiff's Opposition shall be filed within fourteen (14) days of the date of this Order. Defendant's Reply, if necessary, shall be filed within seven (7) days of service of the Opposition. Thereafter, the Motion will be taken under submission without a hearing unless otherwise ordered by the Court. Accordingly, the hearing date currently set for December 17, 2013 is VACATED. If Plaintiff does not intend to oppose the Motion, he may request a voluntary dismissal of this action pursuant to Federal Rule of Civil Procedure 41(a). A Notice of Dismissal form is attached for Plaintiff's convenience. (Attachments: # <u>1</u> Notice of Dismissal Form) (mr) (Entered: 11/13/2013)
11/12/2013	<u>129</u>	NOTICE OF MOTION AND MOTION for Judgment on the Pleadings as to Pleadings of <i>Charles Nichols</i> , filed by Defendant Kamala D Harris. Motion set for hearing on 12/17/2013 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Attachments: # <u>1</u> Memorandum of P's and A's, # <u>2</u> Appendix (RFJN), # <u>3</u> Declaration of Service)(Eisenberg, Jonathan) (Entered: 11/12/2013)
11/08/2013	<u>136</u>	NOTICE OF LODGING of Proposed Statement of Uncontroverted Facts and Conclusions of Law; Evidence in Support filed by Plaintiff Charles Nichols re MOTION for Partial Summary Judgment <u>131</u> (lmh) (Entered: 11/15/2013)
11/08/2013	<u>135</u>	NOTICE OF LODGING of Proposed Order filed by Plaintiff Charles Nichols re MOTION for Partial Summary Judgment <u>131</u> (lmh) (Entered: 11/15/2013)
11/08/2013	<u>134</u>	EXHIBIT A through H to MOTION for Partial Summary Judgment <u>131</u> filed by Plaintiff Charles Nichols. (Attachments: # <u>1</u> Exhibits Part 2)(lmh) (Entered: 11/15/2013)
11/08/2013	<u>133</u>	DECLARATION of Charles Nichols in Support MOTION for Partial Summary Judgment <u>131</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 11/15/2013)
11/08/2013	<u>132</u>	MEMORANDUM in Support of MOTION for Partial Summary Judgment <u>131</u> filed by Plaintiff Charles Nichols. (lmh) (Entered: 11/15/2013)
11/08/2013	<u>131</u>	NOTICE OF MOTION AND MOTION for Partial Summary Judgment filed by Plaintiff Charles Nichols. Motion set for hearing on 12/17/2013 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Lodged Proposed Order) (lmh) (Entered: 11/15/2013)

10/15/2013	<u>128</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> filed by Charles Nichols, CCA # 13-56203. The court stays proceedings in this appeal pending this court's decisions in Richards v. Prieto, 11-16255, Peruta v. County of San Diego, 10-56971, and Baker v. Kealoha, 12-16258 (arg. & sub. SF 12/6/12 DFO SRT CMC). Order received in this district on 10/15/13. (car) (Entered: 10/17/2013)
08/08/2013	<u>126</u>	MINUTE ORDER (IN CHAMBERS) ORDER DENYING CITY OF REDONDO BEACH'S MOTION TO DISMISS THE SECOND AND THIRD CLAIMS IN THE SECOND AMENDED COMPLAINT AS MOOT (Dkt. No. <u>89</u>) by Magistrate Judge Suzanne H. Segal: On August 5, 2013, Plaintiff in the above-referenced pro se civil rights action filed a Notice of Voluntary Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1) dismissing his claims against Defendant City of Redondo Beach and Does 1 to 10 without prejudice. (Dkt. No. <u>125</u>). Accordingly, City of Redondo Beach's pending Motion to Dismiss the Second and Third Claims in the Second Amended Complaint is DENIED as MOOT. (Dkt. No. <u>89</u>). (mr) (Entered: 08/08/2013)
08/07/2013	<u>127</u>	STATUS REPORT filed by Plaintiff Charles Nichols. (afe) (Entered: 08/08/2013)
08/05/2013	<u>125</u>	NOTICE OF VOLUNTARY DISMISSAL without prejudice against defendant City of Redondo Beach and Does 1 to 10 pursuant to FRCP 41a(1) filed by plaintiff Charles Nichols. (afe) (Entered: 08/07/2013)
08/02/2013	<u>124</u>	ORDER from 9th CCA filed, CCA # 13-56203. Appellant's emergency motion to stay district court proceedings pending appeal is denied. Appellant's motion to expedite this preliminary injunction appeal is denied as unnecessary. Order received in this district on 8/2/13. (car) (Entered: 08/05/2013)
07/29/2013	<u>123</u>	STATUS REPORT filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 07/29/2013)
07/22/2013	<u>122</u>	STATUS REPORT filed by Defendant City of Redondo Beach. (Pierce, Thomas) (Entered: 07/22/2013)
07/18/2013	<u>121</u>	MINUTES (IN CHAMBERS) by Judge S. James Otero: ORDER DENYING PLAINTIFF'S EX PARTE APPLICATION FOR STAY PENDING APPEAL <u>116</u> . (lc) (Entered: 07/18/2013)
07/17/2013	<u>120</u>	Opposition re: EX PARTE APPLICATION to Stay Case pending Pending Appeal <u>116</u> filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 07/17/2013)
07/16/2013	<u>119</u>	<i>Opposition of Defendant City of Redondo Beach</i> re: EX PARTE APPLICATION to Stay Case pending Pending Appeal <u>116</u> (Pierce, Thomas) (Entered: 07/16/2013)
07/12/2013	<u>118</u>	MEMORANDUM, Reasons and Points and Authorities in Support Plaintiff's Ex Parte Application to Stay Case Pending Appeal <u>116</u> filed by Plaintiff Charles Nichols. (dmap) (Entered: 07/15/2013)
07/12/2013	<u>117</u>	PLAINTIFF'S NOTICE OF LODGING (Proposed) Order Staying Further District Court Proceedings filed by plaintiff Charles Nichols re EX PARTE APPLICATION to Stay Case pending Pending Appeal <u>116</u> . (dmap) (Entered: 07/15/2013)
07/12/2013	<u>116</u>	PLAINTIFF'S EX PARTE APPLICATION to Stay Pending Appeal filed by plaintiff Charles Nichols.(dmap) (Entered: 07/15/2013)
07/12/2013	<u>115</u>	Plaintiff's Notice Of Potential Partial Mootness Against Defendant City of Redondo Beach filed by plaintiff Charles Nichols. (dmap) (Entered: 07/15/2013)
07/10/2013	<u>114</u>	NOTICE OF CLERICAL ERROR: Due to clerical error the Order denying the Certificate of Appealability <u>113</u> for CV 12-2558 GAF, Rranklin Ross Knisley was mistakenly docketed into this case. The order will be docketed in the correct case CV 12-2558 GAF. (dmap) (Entered: 07/10/2013)
07/09/2013	<u>111</u>	NOTIFICATION by Circuit Court of Appellate Docket Number 13-56203 9th CCA regarding Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> as to Plaintiff Charles Nichols. (dmap) (Entered: 07/09/2013)
07/09/2013	<u>110</u>	FILING FEE LETTER issued as to Plaintiff Charles Nichols re Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> . (dmap) (Entered: 07/09/2013)

07/08/2013	<u>112</u>	APPEAL FEE PAID: re Notice of Appeal to 9th Circuit Court of Appeals <u>109</u> as to Plaintiff Charles Nichols; Receipt Number: LA074294 in the amount of \$455. (dmap) (Entered: 07/10/2013)
07/08/2013	<u>109</u>	PRELIMINARY INJUNCTION NOTICE OF APPEAL to the 9th CCA filed by plaintiff Charles Nichols. Appeal of Order on Motion for Preliminary Injunction <u>108</u> . Filed On: 7/3/2013; Entered On: 7/3/2013; Filing fee \$455.00 billed. (dmap) (Entered: 07/09/2013)
07/06/2013	<u>113</u>	Order by Judge S. James Otero denying certificate of appealability. (dmap) (Entered: 07/10/2013)
07/03/2013	<u>108</u>	MINUTES (IN CHAMBERS): ORDER by Judge S. James Otero:ORDER DENYING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION <u>58</u> . The Court refers this matter to Magistrate Judge Segal for further proceedings. (lc) (Entered: 07/03/2013)
06/12/2013	<u>107</u>	SCHEDULING ORDER by Magistrate Judge Suzanne H. Segal. This Order governs discovery and pretrial motions. All discovery shall be completed on or before October 31, 2013. All discovery motions shall be filed and served on or before October 31, 2013. All other motions, including but not limited to motions for summary judgment, shall be filed and served on or before November 13, 2013. The deadline for amending pleadings and/or adding parties is June 28, 2013. Each party shall file and serve a Status Report on or before August 12, 2013. (See document for further details). (mr) (Entered: 06/12/2013)
06/03/2013	<u>106</u>	PLAINTIFF'S REQUEST for Judicial Notice and REPLY to defendant Kamala D. Harris's Evidentiary Objections <u>96</u> to declaration of Charles Nichols filed by plaintiff Charles Nichols. (afe) (Entered: 06/04/2013)
06/03/2013	<u>105</u>	PLAINTIFF'S REPLY to defendant Kamala D. Harri's Opposition to Plaintiff Charles Nichols's Motion for Preliminary Injunction <u>96</u> filed by Plaintiff Charles Nichols. (afe) (Entered: 06/04/2013)
05/28/2013	<u>104</u>	Opposition re: MOTION for Preliminary Injunction. Motion <u>85</u> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Appendix Request for Judicial Notice, # <u>2</u> Affidavit Jonathan Eisenberg Declaration, # <u>3</u> Exhibit Exh. A, # <u>4</u> Exhibit Exh. B, # <u>5</u> Appendix Evidentiary Objections, # <u>6</u> Declaration Certificate of Service)(Eisenberg, Jonathan) (Entered: 05/28/2013)
05/16/2013	<u>103</u>	Plaintiff's Reply to Defendant City of Redondo Beach's Evidentiary Objections to Plaintiff's Declaration Submitted in Opposition to Motion to Dismiss <u>99</u> . (mr) (Entered: 05/17/2013)
05/16/2013	<u>102</u>	MINUTES (IN CHAMBERS) by Judge S. James Otero: ORDER STRIKING DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION <u>96</u> ; STRIKING PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FORPRELIMINARY INJUNCTION <u>100</u> .Defendant shall re-file her Opposition in accordance with this Court's Initial Standing Order on or before May 28, 2013. Plaintiff shall re-file his Reply in accordance with this Court'sInitial Standing Order on or before June 3, 2013. The Court finds this matter suitable for disposition without oral argument <u>85</u> , and thus no appearances are necessary. See Fed. R. Civ. P.78(b). (lc) (Entered: 05/16/2013)
05/07/2013	<u>101</u>	PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE AND REPLY TO DEFENDANT KAMALA D. HARRIS'S EVIDENTIARY OBJECTIONS TO DECLARATION OF CHARLES NICHOLS filed by plaintiff Charles Nichols. (lc) (Entered: 05/08/2013)
05/07/2013	<u>100</u>	PLAINTIFF'S REPLY TO DEFENDANT KAMALA D. HARRIS'S OPPOSITION TO PLAINTIFF CHARLES NICHOLS'S MOTION FOR PRELIMINARY INJUNCTION <u>85</u> filed by Plaintiff Charles Nichols. (lc) (Entered: 05/08/2013)
05/07/2013	<u>99</u>	Evidentiary Objections in support of re: MOTION to Dismiss Case <u>89</u> <i>the Second and Third Claims in the Second Amended Complaint</i> filed by Defendant City of Redondo Beach. (Pierce, Thomas) (Entered: 05/07/2013)

05/07/2013	<u>98</u>	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Case <u>89</u> <i>the Second and Third Claims in the Second Amended Complaint; Declaration of T. Peter Pierce in Support</i> filed by Defendant City of Redondo Beach. (Pierce, Thomas) (Entered: 05/07/2013)
05/07/2013	<u>97</u>	REPLY in support of a motion MOTION to Dismiss Case <u>89</u> <i>the Second and Third Claims in the Second Amended Complaint, or in the Alternative, in Support of Motion for More Definite Statement</i> filed by Defendant City of Redondo Beach. (Pierce, Thomas) (Entered: 05/07/2013)
05/02/2013	<u>96</u>	Opposition to Preliminary Injunction Motion Opposition to Mtn. for Preliminary Injunction re: MOTION for Preliminary Injunction. Motion <u>85</u> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Request for Judicial Notice, # <u>2</u> Declaration of Jonathan M. Eisenberg, # <u>3</u> Exhibit A to JME Decl., # <u>4</u> Exhibit B to JME Decl., # <u>5</u> Evidentiary Objections, # <u>6</u> Proof of Service)(Eisenberg, Jonathan) (Entered: 05/02/2013)
04/30/2013	<u>95</u>	Plaintiff's Opposition to Motion By Defendant City of Redondo Beach to Dismiss the Second and Third Claims in the Second Amended Complaint or, In the Alternative, Motion for More Definite Statement <u>89</u> , Etc.; Memorandum of Points and Authorities; Declaration of Charles Nichols filed by Plaintiff Charles Nichols. (mr) (Entered: 05/01/2013)
04/19/2013	<u>94</u>	MINUTE ORDER (IN CHAMBERS) SCHEDULING ORDER RE DEFENDANT CITY OF REDONDO BEACH'S MOTION TO DISMISS (Dkt. No. <u>89</u>) by Magistrate Judge Suzanne H. Segal: On April 15, 2013, Defendant City of Redondo Beach filed a Motion to Dismiss the Second and Third Claims in the Second Amended Complaint. (Dkt. No. <u>89</u>). Plaintiff shall have until May 3, 2013 to file and serve an Opposition to the Motion. Defendant shall have seven (7) days from service of the Opposition to file and serve a Reply, if necessary. Thereafter, the Motion will be deemed submitted without oral argument. Accordingly, IT IS ORDERED that the hearing set for May 21, 2013 be taken off calendar. (See document for further details). (mr) (Entered: 04/19/2013)
04/19/2013	<u>93</u>	MINUTE ORDER (IN CHAMBERS) ORDER VACATING HEARING DATE ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (Dkt. No. <u>85</u>) by Magistrate Judge Suzanne H. Segal: On April 10, 2013, Plaintiff in the above-referenced pro se civil rights action filed a Motion for Preliminary Injunction. (Dkt. No. <u>85</u>). Plaintiff set May 20, 2013 as the hearing date on the Motion. Pursuant to Local Rule 7-15, the hearing date of May 20, 2013 is VACATED and no appearance is necessary, unless otherwise advised by the Court. (mr) (Entered: 04/19/2013)
04/18/2013	<u>92</u>	MINUTE ORDER (IN CHAMBERS) SCHEDULING ORDER RE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (Dkt. No. <u>85</u>) by Magistrate Judge Suzanne H. Segal: On April 10, 2013, Plaintiff in the above-referenced pro se civil rights action filed a Motion for Preliminary Injunction. Defendants' Opposition, if any, is due fourteen (14) days from the date of this order, i.e., by May 2, 2013. Plaintiff's Reply is due seven (7) days from the date of service of the Opposition. (mr) (Entered: 04/18/2013)
04/16/2013	<u>91</u>	ANSWER to Amended Complaint <u>83</u> filed by Defendant Kamala D Harris.(Eisenberg, Jonathan) (Entered: 04/16/2013)
04/15/2013	<u>90</u>	MEMORANDUM in Support of Defendant City of Redondo Beach's Motion to Dismiss the Second and third Claims in the Second Amended Complaint or, in the Alternative, in Support of Motion for More Definite Statement filed by Defendant City of Redondo Beach. (Pierce, Thomas) (Entered: 04/15/2013)
04/15/2013	<u>89</u>	NOTICE of Motion and Motion by Defendant City of Redondo Beach to Dismiss the Second and Third Claims in the Second Amended Complaint or, in the Alternative, Motion for More Definite Statement filed by Defendant City of Redondo Beach. (Pierce, Thomas) Modified on 4/16/2013 (mr). (Entered: 04/15/2013)
04/10/2013	<u>88</u>	REQUEST FOR JUDICIAL NOTICE re MOTION for Preliminary Injunction. Motion <u>85</u> filed by plaintiff Charles Nichols. (lc) (Entered: 04/12/2013)

04/10/2013	<u>87</u>	DECLARATION of Charles Nichols in support MOTION for Preliminary Injunction. Motion <u>85</u> filed by Plaintiff Charles Nichols. (lc) (Entered: 04/12/2013)
04/10/2013	<u>86</u>	MEMORANDUM in Support of MOTION for Preliminary Injunction. Motion <u>85</u> filed by Plaintiff Charles Nichols. (lc) (Entered: 04/12/2013)
04/10/2013	<u>85</u>	NOTICE OF MOTION AND MOTION for Preliminary Injunction. Motion filed by plaintiff: Charles Nichols. Motion set for hearing on 5/20/2013 at 10:00 AM before Judge S. James Otero. (lc) (Entered: 04/12/2013)
04/02/2013	<u>84</u>	MINUTE ORDER (IN CHAMBERS) SCHEDULING ORDER RE RESPONSE DEADLINE TO PLAINTIFF'S SECOND AMENDED COMPLAINT (Dkt. No. <u>83</u>) by Magistrate Judge Suzanne H. Segal: On April 1, 2013, Plaintiff in the above-referenced pro se civil rights action filed a Second Amended Complaint. Pursuant to Federal Rule of Civil Procedure 15(a)(3), Defendants shall file a response to the Second Amended Complaint within fourteen (14) days of the date of this Order. (mr) (Entered: 04/02/2013)
03/29/2013	<u>83</u>	SECOND AMENDED COMPLAINT amending First Amended Complaint <u>47</u> , filed by plaintiff Charles Nichols. (afe) (Entered: 04/01/2013)
03/03/2013	<u>82</u>	ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE by Judge S. James Otero. The Motion to Dismiss the First Amended Complaint <u>54</u> filed by the Redondo Beach Defendants is GRANTED. The Motion to Dismiss the First Amended Complaint <u>58</u> filed by Attorney General Kamala D. Harris is DENIED. The First Amended Complaint <u>47</u> is DISMISSED with leave to amend. If Plaintiff desires to proceed with his claims against Attorney General Harris and City of Redondo Beach, Plaintiff shall file a Second Amended Complaint within thirty (30) days of the date of this Order. (See Order for details) (afe) (Entered: 03/05/2013)
02/28/2013	<u>81</u>	NOTICE OF SUPPLEMENTAL AUTHORITY filed by plaintiff Charles Nichols. (afe) (Entered: 03/04/2013)
02/25/2013	<u>80</u>	NOTICE OF SUPPLEMENTAL AUTHORITY filed by plaintiff Charles Nichols. (afe) (Entered: 02/27/2013)
01/11/2013	<u>79</u>	NOTICE of Related Case [Local Rule 83-1.3(b)] filed by plaintiff Charles Nichols. (afe) (Entered: 01/11/2013)
01/11/2013	<u>78</u>	SUPPLEMENTAL AUTHORITY Moore, et al. and Shepard, et al.v. Madigan, Nos 12-1269, 12-1788 Seventh Circuit Court of Appeals filed by Plaintiff Charles Nichols. (afe) (Entered: 01/11/2013)
01/11/2013	<u>77</u>	SUPPLEMENTAL AUTHORITY filed by Plaintiff Charles Nichols. (afe) (Entered: 01/11/2013)
12/21/2012	<u>76</u>	ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY by Magistrate Judge Suzanne H. Segal. granting <u>75</u> Motion to Substitute Attorney. Attorney Michael F Sisson terminated. (afe) (Entered: 12/26/2012)
12/20/2012	<u>75</u>	Request for Approval of Substitution of Attorney filed by plaintiff Charles Nichols. (jy) (Entered: 12/21/2012)
12/20/2012	<u>74</u>	NOTICE OF DOCUMENT DISCREPANCIES AND ORDER by Magistrate Judge Suzanne H. Segal ORDERING Request for Approval of Substitution of Attorney submitted by Plaintiff Charles Nichols received on 12/20/12 to be filed and processed; filed date to be the date the document was stamped Received but not Filed with the Clerk. (jy) (Entered: 12/21/2012)
12/17/2012	<u>73</u>	PLAINTIFF'S RESPONSE to defendant Kamala D. Harris's Objections <u>72</u> to November 20, 2012 Report and Recommendation of United States Magistrate Judge filed by plaintiff Charles Nichols. (afe) (Entered: 12/17/2012)
12/04/2012	<u>72</u>	OBJECTION to Report and Recommendation (Issued) <u>71</u> filed by Defendant Kamala D Harris.(Eisenberg, Jonathan) (Entered: 12/04/2012)
11/20/2012	<u>71</u>	REPORT AND RECOMMENDATION issued by Magistrate Judge Suzanne H. Segal. Re MOTION to Dismiss First Amended Complaint <u>54</u> and Second MOTION to

		Dismiss for Lack of Jurisdiction <u>58</u> (jy) (Entered: 11/20/2012)
11/20/2012	<u>70</u>	NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Suzanne H. Segal. Objections to R&R due by 12/4/2012 (jy) (Entered: 11/20/2012)
07/23/2012	<u>69</u>	REPLY in Support of Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> <u>58</u> filed by Defendant Kamala D Harris. (Attachments: # <u>1</u> Declaration of Service)(Eisenberg, Jonathan) (Entered: 07/23/2012)
07/20/2012	<u>68</u>	REDONDO BEACH DEFENDANTS' EVIDENTIARY OBJECTIONS AND MOTION TO STRIKE PORTIONS OF NICHOLS DECLARATION FILED IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS FIRST AMENDED COMPLAINT – IN SUPPORT OF re: MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. (Bond, Lisa) (Entered: 07/20/2012)
07/20/2012	<u>67</u>	REPLY REDONDO BEACH DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. (Bond, Lisa) (Entered: 07/20/2012)
07/16/2012	<u>66</u>	MEMORANDUM in Opposition to MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> , Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> <u>58</u> Request for Judicial Notice filed by Plaintiff Charles Nichols. (Sisson, Michael) (Entered: 07/16/2012)
07/16/2012	<u>65</u>	MEMORANDUM in Opposition to Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> <u>58</u> by Defendant Kamala Harris filed by Plaintiff Charles Nichols. (Sisson, Michael) (Entered: 07/16/2012)
07/16/2012	<u>64</u>	MEMORANDUM in Opposition to MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> by Defendant Redondo Beach et al filed by Plaintiff Charles Nichols. (Sisson, Michael) (Entered: 07/16/2012)
07/13/2012	<u>63</u>	ORDER by Magistrate Judge Suzanne H. Segal: granting <u>62</u> Request to Substitute Attorney. (jy) (Entered: 07/13/2012)
07/12/2012	<u>62</u>	REQUEST to Substitute attorney Michael F. Sisson in place of attorney Charles Nichols filed by Attorney Charles Nichols. Request set for hearing on 7/13/2012 at 01:30 PM before Judge S. James Otero. (Sisson, Michael) (Entered: 07/12/2012)
07/05/2012	<u>61</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal: On June 29, 2012, in the above–entitled civil rights action, Motions to Dismiss were filed by Defendants City of Redondo Beach, Joseph Leonardi, Todd Heywood and California Attorney General Kamala D. Harris. Plaintiff shall have until July 16, 2012 to serve and file Oppositions to the Motions. Defendants shall have seven (7) days from service of the Oppositions to serve and file Replies, if necessary. Thereafter, the Motions will be deemed submitted without oral argument. Accordingly, IT IS ORDERED that the hearings set for July 31, 2012 be taken off calendar. See minute order for details. (jy) (Entered: 07/05/2012)
07/02/2012	<u>60</u>	PLAINTIFF'S OBJECTION to substitution of attorney <u>53</u> filed by Plaintiff Charles Nichols. (afe) (Entered: 07/05/2012)
07/02/2012	<u>59</u>	ORDER by Magistrate Judge Suzanne H. Segal: granting <u>53</u> Request to Substitute Attorney. Attorney Michael W Webb terminated (jy) (Entered: 07/02/2012)
06/29/2012	<u>58</u>	NOTICE OF MOTION AND Second MOTION to Dismiss for Lack of Jurisdiction <i>per FRCP 12(b)(1)</i> filed by Defendant Kamala D Harris. Motion set for hearing on 7/31/2012 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Attachments: # <u>1</u> Memorandum of P's and A's Supporting Dismissal, # <u>2</u> Supplement Request for Judicial Notice)(Eisenberg, Jonathan) (Entered: 06/29/2012)

06/29/2012	<u>57</u>	SUPPLEMENT to MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> ([Proposed] Order) filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. (Bond, Lisa) (Entered: 06/29/2012)
06/29/2012	<u>56</u>	DECLARATION of Lisa Bond in support of MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Bond, Lisa) (Entered: 06/29/2012)
06/29/2012	<u>55</u>	MEMORANDUM in Support of MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> <u>54</u> filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. (Bond, Lisa) (Entered: 06/29/2012)
06/29/2012	<u>54</u>	NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint , <i>or, in the Alternative, Motion for More Definite Statement</i> filed by Defendants City of Redondo Beach, Todd Heywood, Joseph Leonardi. Motion set for hearing on 7/31/2012 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Bond, Lisa) (Entered: 06/29/2012)
06/28/2012	<u>53</u>	REQUEST to Substitute attorney Lisa Bond in place of attorney Michael W. Webb filed by Defendants City of Redondo Beach, Joseph Leonardi. (Attachments: # <u>1</u> Proposed Order Order on Request for Approval of Substitution of Attorney)(Bond, Lisa) (Entered: 06/28/2012)
06/27/2012	<u>52</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal: ORDER CLARIFYING DEADLINE FOR RESPONSE TO FIRST AMENDED COMPLAINT; the Court extends the deadline by one day and ORDERS Harris, Leonardi and City of Redondo Beach to file a response to the First Amended Complaint by Friday, June 29, 2012. See order for further details. (jy) (Entered: 06/27/2012)
06/19/2012	<u>51</u>	PROOF OF SERVICE filed by plaintiff Charles Nichols, re Summons Issued, Amended Complaint <u>47</u> served on 06/07/12. (afe) (Entered: 06/20/2012)
06/19/2012	<u>50</u>	PROOF OF SERVICE filed by plaintiff Charles Nichols, re Summons Issued, Amended Complaint <u>47</u> served on 06/07/12. (afe) (Entered: 06/20/2012)
06/19/2012	<u>49</u>	PROOF OF SERVICE filed by plaintiff Charles Nichols, re Summons Issued, Amended Complaint <u>47</u> served on 06/07/12. (afe) (Entered: 06/20/2012)
06/19/2012	<u>48</u>	PROOF OF SERVICE filed by plaintiff Charles Nichols, re Summons Issued, Amended Complaint <u>47</u> served on 06/07/12. (afe) (Entered: 06/20/2012)
05/30/2012		60 DAY AMENDED Summons Issued re Amended Complaint <u>47</u> as to defendant City of Redondo Beach, City of Redondo Beach Police Department, Kamala D Harris (Attorney General in her official capacity as Attorney General of California), Officer Todd Heywood. (afe) (Entered: 06/18/2012)
05/30/2012	<u>47</u>	FIRST AMENDED COMPLAINT amending Complaint <u>1</u> filed by plaintiff Charles Nichols. (jy) (Additional attachment(s): # <u>2</u> Amended Summons) (Entered: 05/30/2012)
05/07/2012	<u>46</u>	ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE by Judge S. James Otero; Plaintiffs claims against Attorney General Kamala D. Harris are DISMISSED WITH LEAVE TO AMEND for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). See order for further details. (jy) (Entered: 05/08/2012)
05/07/2012	<u>45</u>	MINUTES (IN CHAMBERS)by Judge S. James Otero: The Court deems the Plaintiff's MOTION for Review of Magistrate Judges report and recommendation <u>41</u> as an objection. Accordingly, the Court takes the hearing off its calendar. (lc) (Entered: 05/07/2012)
05/02/2012	<u>44</u>	NOTICE OF ERRATA filed by Plaintiff Charles Nichols. correcting MOTION for Review of Magistrate Judges report and recommendation re Report and Recommendation (Issued) <u>40</u> <u>41</u> (jy) (Entered: 05/03/2012)

05/01/2012	<u>43</u>	REPLY TO OBJECTION to Report and Recommendation (Issued) <u>40</u> filed by Defendant Edmund G Brown, Jr. and Defendant Kamala D. Harris (Eisenberg, Jonathan) (Entered: 05/01/2012)
04/17/2012	<u>42</u>	MEMORANDUM in Support of MOTION for Review of Magistrate Judges report and recommendation re Report and Recommendation <u>41</u> filed by Plaintiff Charles Nichols. (lc) (Main Document 42 replaced on 8/8/2014) (tad). (Entered: 04/17/2012)
04/17/2012	<u>41</u>	NOTICE OF MOTION AND MOTION for Review of Magistrate Judges report and recommendation <u>40</u> filed by plaintiff Charles Nichols. Motion set for hearing on 5/24/2012 at 10:00 AM before Judge S. James Otero. (lc) (Entered: 04/17/2012)
04/05/2012	<u>40</u>	REPORT AND RECOMMENDATION issued by Magistrate Judge Suzanne H. Segal. Re Complaint <u>1</u> (jy) (Entered: 04/05/2012)
04/05/2012	<u>39</u>	NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Suzanne H. Segal. Objections to R&R due by 4/19/2012 (jy) (Entered: 04/05/2012)
03/19/2012	<u>38</u>	REPLY in Support of MOTION to Dismiss for Lack of Jurisdiction <u>34</u> filed by Defendant Edmund G Brown, Jr. (Eisenberg, Jonathan) (Entered: 03/19/2012)
03/12/2012	<u>37</u>	DECLARATION of Charles Nichols re Memorandum of Points and Authorities in Opposition <u>36</u> filed by Plaintiff Charles Nichols. (afe) (Entered: 03/13/2012)
03/12/2012	<u>36</u>	PLAINTIFF'S MEMORANDUM of Points and Authorities in Opposition to Motion to Dismiss <u>34</u> by defendant Edmund G. Brown, Jr., in his official capacity as governor of California, filed by Plaintiff Charles Nichols. (afe) (Entered: 03/13/2012)
03/09/2012	<u>35</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal re: MOTION to Dismiss for Lack of Jurisdiction <u>34</u> . On March 8, 2012, in the above-entitled civil rights action, a Motion to Dismiss was filed by Defendant Gov. Edmund G. Brown, Jr. Plaintiff shall have until March 23, 2012 to serve and file an Opposition to the Motion. Defendants shall have seven (7) days from service of the Opposition to serve and file a Reply, if necessary. Thereafter, the Motion will be deemed submitted without oral argument. Accordingly, IT IS ORDERED that the hearing set for April 10, 2012 be taken off calendar. See minute order for further details. (jy) (Entered: 03/09/2012)
03/08/2012	<u>34</u>	NOTICE OF MOTION AND MOTION to Dismiss for Lack of Jurisdiction filed by Defendant Edmund G Brown, Jr. Motion set for hearing on 4/10/2012 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Attachments: # <u>1</u> Memorandum Points and Authorities in Support of Motion to Dismiss)(Eisenberg, Jonathan) (Entered: 03/08/2012)
02/24/2012	<u>33</u>	PROOF OF SERVICE filed by Plaintiff Charles Nichols, Complaint – (Referred) <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 02/16/12. (afe) (Entered: 02/27/2012)
02/21/2012	<u>32</u>	Reply to Order Directing Plaintiff to File Response Regarding Application for Entry of Default filed by Plaintiff Charles Nichols. (jy) (Entered: 02/21/2012)
02/17/2012	<u>31</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal: DENYING THE REDONDO BEACH DEFENDANTS REQUEST FOR A HEARING (Dkt. Nos. <u>25</u> – <u>26</u>); See minute order for details. (jy) (Entered: 02/17/2012)
02/16/2012	<u>30</u>	NOTICE of Error in Submission of Application for Default Judgment Against Defendant Brown filed by Plaintiff Charles Nichols. (jy) (Entered: 02/16/2012)
02/15/2012	<u>29</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal: the Court directs Plaintiff to file a response within seven (7) days (February 22, 2012) of the date of this Order stating whether he wishes to withdraw his Application. See minute order for further details. (jy) (Entered: 02/15/2012)
02/14/2012	<u>28</u>	REPLY Support MOTION to Dismiss for Lack of Jurisdiction <u>13</u> filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 02/14/2012)
02/14/2012	<u>27</u>	REPLY Reply MOTION to Dismiss Case <u>12</u> Reply filed by Defendants City of Redondo Beach, City of Redondo Beach Police Department, Joseph Leonardi. (Webb,

		Michael) (Entered: 02/14/2012)
02/14/2012	<u>26</u>	Objection Support re: MOTION to Dismiss Case <u>12</u> <i>Objections To Plaintiff's Notice of Lodging</i> filed by Defendants City of Redondo Beach, City of Redondo Beach Police Department, Joseph Leonardi. (Webb, Michael) (Entered: 02/14/2012)
02/14/2012	<u>25</u>	Objection Support re: MOTION to Dismiss Case <u>12</u> <i>Redondo Beach Defendants' Objections To Plaintiff's Two Requests For Judicial Notice; Request for Hearing</i> filed by Defendants City of Redondo Beach, City of Redondo Beach Police Department, Joseph Leonardi. (Webb, Michael) (Entered: 02/14/2012)
02/13/2012	<u>23</u>	Application for Entry of Default Opposition re: APPLICATION for Clerk to Enter Default against defendant Edmund G Brown, Jr <u>22</u> filed by Defendant Edmund G Brown, Jr. (Eisenberg, Jonathan) (Entered: 02/13/2012)
02/10/2012	<u>24</u>	REQUEST FOR JUDICIAL NOTICE of recently decided 9TH CIRCUIT opinion in support of plaintiff's opposition to motions to dismiss by Redondo Beach defendants and Motion to dismiss by defendant Kamala D. Harris, Attorney General in her official capacity as Attorney General of California, re MOTION to Dismiss for Lack of Jurisdiction <u>13</u> , filed by Plaintiff Charles Nichols. (afe) (Entered: 02/14/2012)
02/08/2012	<u>22</u>	APPLICATION for Entry of Default against defendant Edmund G Brown, Jr filed by plaintiff Charles Nichols. (jy) (Entered: 02/10/2012)
02/08/2012	<u>21</u>	DECLARATION of Charles Nichols, filed by Plaintiff Charles Nichols. (afe) (Entered: 02/10/2012)
02/08/2012	<u>20</u>	PLAINTIFF'S NOTICE OF LODGING OF COMPUTER DISC CONTAINING VIDEOS REFERENCED AS EXHIBIT 1-1 TO 1-4 IN PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS BY REDONDO BEACH DEFENDANTS, filed by plaintiff Charles Nichols. re Memorandum of Points and Authorities in Opposition (non-motion) <u>19</u> (afe) (Entered: 02/10/2012)
02/08/2012	<u>19</u>	PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TODISMISS BY REDONDO BEACH DEFENDANTS, filed by Plaintiff Charles Nichols. Re: MOTION to Dismiss Case <u>12</u> (afe) (Entered: 02/10/2012)
02/08/2012	<u>18</u>	PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT KAMALA HARRIS' MOTION TO DISMISS, filed by Plaintiff Charles Nichols. Re: MOTION to Dismiss for Lack of Jurisdiction <u>13</u> (afe) (Entered: 02/10/2012)
02/08/2012	<u>17</u>	REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO MOTION TO DISMISS BY REDONDO BEACH DEFENDANTS AND MOTION TO DISMISS BY DEFENDANT KAMALA D. HARRIS ATTORNEY GENERAL IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF CALIFORNIA. re MOTION to Dismiss for Lack of Jurisdiction <u>13</u> , filed by plaintiff Charles Nichols.(afe) (Entered: 02/10/2012)
02/02/2012	<u>16</u>	CONSENT TO PROCEED before a U. S. Magistrate Judge in accordance with Title 28 Section 636(c) and F.R.CIV.P 73(b), consent is hereby DECLINED by Plaintiff Charles Nichols. (jy) (Entered: 02/02/2012)
02/01/2012	<u>15</u>	NOTICE of Errata filed by Defendant Kamala D Harris. (Eisenberg, Jonathan) (Entered: 02/01/2012)
01/31/2012	<u>14</u>	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal: re: MOTION to Dismiss Case <u>12</u> and MOTION to Dismiss for Lack of Jurisdiction <u>13</u> . On January 30, 2012, in the above-entitled civil rights action, Motions to Dismiss were filed by Defendants City of Redondo Beach and City of Redondo Beach Police Department and by Defendant Kamala D. Harris. Plaintiff shall have until February 14, 2012 to serve and file an Opposition to the Motions. Defendants shall have seven (7) days from service of the Opposition to serve and file a Reply, if necessary. Thereafter, the Motions will be deemed submitted without oral argument. Accordingly, IT IS ORDERED that the hearings set for March 6, 2012 be taken off calendar. (jy) (Entered: 01/31/2012)

01/30/2012	<u>13</u>	NOTICE OF MOTION AND MOTION to Dismiss for Lack of Jurisdiction filed by Defendant Kamala D Harris. Motion set for hearing on 3/6/2012 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Attachments: # <u>1</u> Memorandum Supporting P's and A's)(Eisenberg, Jonathan) (Entered: 01/30/2012)
01/30/2012	<u>12</u>	NOTICE OF MOTION AND MOTION to Dismiss Case filed by Defendants City of Redondo Beach, City of Redondo Beach Police Department, Joseph Leonardi. Motion set for hearing on 3/6/2012 at 10:00 AM before Magistrate Judge Suzanne H. Segal. (Attachments: # <u>1</u> Memorandum of Points and Authorities, # <u>2</u> Proposed Order)(Webb, Michael) (Entered: 01/30/2012)
01/19/2012	<u>11</u>	MINUTES (IN CHAMBERS): ORDER by Magistrate Judge Suzanne H. Segal: denying <u>10</u> Ex Parte Application to Seal; Plaintiffs Application is DENIED. Plaintiff fails to explain his purpose in filing the Report or provide any compelling reason that would justify filing the Report under seal. There is no pending motion and Defendants have not yet answered the Complaint. Furthermore, the Application fails to comply with the Local Rules governing ex parte applications. See minute order for further details. (jy) (Entered: 01/19/2012)
01/17/2012	<u>10</u>	EX PARTE APPLICATION to Submit Document Under Seal and Request for Waiver of Notice filed by plaintiff Charles Nichols.(jy) (Entered: 01/19/2012)
01/12/2012	<u>9</u>	PROOF OF SERVICE filed by PLAINTIFF Charles Nichols, re Complaint <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 01/09/12. (afe) (Entered: 01/17/2012)
01/12/2012	<u>8</u>	PROOF OF SERVICE filed by PLAINTIFF Charles Nichols, Complaint <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 01/09/12. (afe) (Entered: 01/17/2012)
01/12/2012	<u>7</u>	PROOF OF SERVICE filed by PLAINTIFF Charles Nichols, re Complaint - <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 01/09/12. (afe) (Entered: 01/17/2012)
01/12/2012	<u>6</u>	PROOF OF SERVICE filed by PLAINTIFF Charles Nichols, re Complaint <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 01/09/12. (afe) (Entered: 01/17/2012)
01/12/2012	<u>5</u>	PROOF OF SERVICE filed by plaintiff Charles Nichols, re Complaint <u>1</u> , Notice of Reference to a U S Magistrate Judge (CV-25) <u>3</u> served on 01/09/12. (afe) (Entered: 01/17/2012)
12/07/2011	<u>4</u>	STANDING ORDER GOVERNING PRE-TRIAL PROCEEDINGS BEFORE THE MAGISTRATE JUDGE by Magistrate Judge Suzanne H. Segal, See order for details. (jy) (Entered: 12/07/2011)
11/30/2011	<u>3</u>	NOTICE OF REFERENCE to United States Magistrate Judge Suzanne H. Segal. (et) (Entered: 12/01/2011)
11/30/2011	<u>2</u>	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Charles Nichols. (et) (Entered: 12/01/2011)
11/30/2011	<u>1</u>	COMPLAINT filed against Defendants Edmund G Brown, Jr, City of Redondo Beach, City of Redondo Beach Police Department, Does 1 to 10, Kamala D Harris, Joseph Leonardi. Case assigned to Judge S. James Otero and referred to Magistrate Judge Suzanne H. Segal.(Filing fee\$350 Paid.), filed by Plaintiff Charles Nichols. [Summons not issued on 11/30/2011] (et) (Additional attachment(s) added on 1/10/2012: # <u>1</u> Summons) (afe). (Entered: 12/01/2011)