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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY

7  
8 United States District Court  
9 Central District of California  
10

11 Charles Nichols,

12 Plaintiff,

13 vs.

14 EDMUND G. BROWN, Jr., in his  
15 official capacity as Governor of  
16 California, KAMALA D. HARRIS,  
17 Attorney General, in her official  
18 capacity as Attorney General of  
19 California, CITY OF REDONDO  
20 BEACH, CITY OF REDONDO  
21 BEACH POLICE DEPARTMENT,  
22 CITY OF REDONDO BEACH  
23 POLICE CHIEF JOSEPH LEONARDI  
24 and DOES 1 to 10,

25 Defendants.

Case No.:

CV-11-9916 SJO (SS)

**PLAINTIFF'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO MOTION TO  
DISMISS BY REDONDO BEACH  
DEFENDANTS**

Date: March 6, 2012

Time: 10:00 A.M.

Ctrm: 23-3<sup>rd</sup> Flr.

Trial Date: Not Yet Set

Action Filed: Nov. 30, 2011

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1 **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN**  
2 **OPPOSITION TO**  
3 **MOTION TO DISMISS BY REDONDO BEACH DEFENDANTS**  
4

5 COME NOW Plaintiff Charles Nichols, Pro Se, and submit his  
6 Memorandum of Points and Authorities in Opposition to Redondo Beach  
7 Defendants' Motion to Dismiss.  
8

9 **INTRODUCTION**  
10

11 Movant's motion is perplexing to Plaintiff. In the L.R. 7-3 Conference of  
12 Counsel held on 1/25/2012 Plaintiff tried to resolve this issue and offered  
13 Defendants terms for a settlement which, in light of the fact Plaintiff is not seeking  
14 monetary damages for violating his Constitutional Rights, seemed quite  
15 reasonable. The fact that opposing counsel rejected the terms only highlights the  
16 need for more than Declaratory Relief against defendants.  
17

18 Plaintiff asked in the Conference that all Defendants agree to: (1) Obey both  
19 the letter and spirit of this Court's Relief, should it be granted. (2) If the Court  
20 grants the relief sought by the Plaintiff in this lawsuit that Defendants not arrest  
21 and/or prosecute Plaintiff for openly carrying a loaded handgun in non-sensitive  
22 public places in violation of the statute at issue in this case. (3) That Defendants  
23 agree not to "trump up" charges such as Disturbing the Peace or Trespassing  
24 simply for Plaintiff exercising his Second Amendment Rights. (4) That Defendants  
25 agree that their city, despite its status as a "Charter City" must abide by the  
26 California Court's decision in Fiscal v. City and County of San Francisco, Cal:  
27 Court of Appeal, 1st Appellate Dist., 4th Div. 2008; 158 Cal.App.4th 895 (The  
28 City of San Francisco like Redondo Beach is also a home rule, charter city) that the

1 state of California has fully preempted the Regulation of firearms and therefore  
 2 Defendants must end their ban on openly carried, unloaded firearms in non-  
 3 sensitive public places. And most importantly (5) That Redondo Beach Police  
 4 Officers drop their contention that they are not bound by either state or Federal law  
 5 and agree to obey both state and Federal law. When the two are in conflict over a  
 6 Federal issue, the US Constitution triumphs. See Article III, Section 3 of the  
 7 California Constitution and Article VI, Clause 2 of the United States Constitution.  
 8 As opposing counsel is well aware, I have videos of Redondo Beach Police  
 9 Officers enforcing California Penal Code section 12031(e) (renumbered as PC  
 10 25850(b)) hereinafter referred to as PC12031(e). As well as video of opposing  
 11 counsel in a political campaign speech announcing that Defendants ban on openly  
 12 carried firearms applies to all public places.

13  
 14 In hindsight, Plaintiff should have asked Counsel for Redondo Beach  
 15 Defendants to review the denial of the Motion to Dismiss in Christopher Hacopian  
 16 and Scott Gibb v. Upland Police Dept., et al., Case No. CV 11-6155 PA (SPx)  
 17 Dated November 17, 2011 by United States District Judge Percy Anderson.  
 18 Hereinafter referred to as Hacopian.

19  
 20 Unlike the Plaintiff in this case, the Plaintiffs in that case **are** seeking  
 21 monetary damages as a result of the entirely optional stop and inspection of their  
 22 firearms to see if they were loaded. Perhaps once Movant's frivolous Motion to  
 23 Dismiss is denied, Movant might view Plaintiff's terms in a more favorable light  
 24 rather than forcing Plaintiff to amend his Complaint to include unspecified  
 25 monetary damages. Relief which is apparently more cognizable to Movant as a  
 26 "...claim upon which relief can be granted." F.R.Civ.P. 12(b)(6).

1 To properly view Movant's Motion to Dismiss, some background  
2 information is in order.

### 3 BACKGROUND

4  
5 Counsel for Redondo Beach Defendants and Defendants are intimately  
6 aware of the circumstances which gave rise to this lawsuit as they and Plaintiff  
7 have been at loggerheads over the Redondo Beach Defendants enforcement of  
8 California Penal Code section 12031(e) (renumbered as PC 25850(b)) and threats  
9 of arrest and citation for lawfully openly carrying unloaded firearms since they  
10 first began enforcing their ban on openly carried firearms against Plaintiff  
11 beginning on August 7, 2010.

12  
13 Plaintiff became active in the Open Carry movement shortly before the  
14 McDonald v. Chicago, 561 U.S. \_\_\_, 130 S. Ct. 3020, 177 L. Ed. 2d 894, 2010  
15 U.S. LEXIS 5523 (2010) decision was issued. Plaintiff promoted an Open Carry  
16 "Beach Cleanup" in the adjacent City of Hermosa Beach California. Everything  
17 went smoothly. The then Chief of Police, Greg Savelli and his police officers were  
18 professional and courteous. PC12031(e) was not enforced against any of the  
19 participants in that Open Carry event. Nor was it enforced against Plaintiff in other  
20 Open Carry events he promoted and/or attended in the cities of; Torrance,  
21 Manhattan Beach, El Segundo, San Diego, unincorporated Los Angeles County  
22 and the Palos Verdes Peninsula. With one exception to Redondo Beach, Plaintiff  
23 merely had to contact the Police Departments in these cities and give them a heads-  
24 up as to the time and location of the event.

25  
26 Plaintiff then sought out a venue for the next Open Carry event and settled  
27 on the Redondo Beach Pier Shopping Center. Plaintiff contacted the city and was  
28 referred to National Rifle Association (NRA) attorney Carl "Chuck" Michel



1 (California Bar # 144258). On Tuesday July 20, 2010 beginning at 4:19PM Chuck  
2 Michel and Plaintiff engaged in a telephone conversation lasting for 24:16 in  
3 which an Open Carry event was negotiated between he and the Plaintiff which  
4 would take place on August 7, 2011 at the Redondo Beach Pier Shopping Center.  
5 Plaintiff was unaware that the leadership of the NRA was, and is, opposed to Open  
6 Carry.

7  
8 Unknown to the Plaintiff until it was too late, the spokesperson for the South  
9 Bay Open Carry Movement had entered into a needless squabble with the Redondo  
10 Beach Police over scheduling. A Police Captain wanted to attend the scheduled  
11 event but was on vacation and wanted to postpone the event until his return, which  
12 happened to coincide with the scheduled vacation for the event spokesperson.  
13 Given that the spokesperson was working and going to graduate school and the  
14 Redondo Beach Police Department has many police officers who could have stood  
15 in for the police Captain, there should not have been an issue over scheduling.

16  
17 Instead, two days before the scheduled event, opposing counsel declared the  
18 Pier Shopping Center to be a park and therefore off-limits to firearms. Of course  
19 the California courts have held that the state has fully occupied the area of firearms  
20 regulation and his park ban, even in real parks, is illegal. In any event, the  
21 Redondo Beach defendants have since expanded their ban to include the Galleria  
22 Mall and subsequently, according to the City Attorney for Redondo Beach  
23 (opposing counsel), Defendants "park" ban on firearms extends to all public places  
24 in the city.

25  
26 Therefore, Plaintiff risks arrest and prosecution should he openly carry an  
27 unloaded long gun for the purpose of self-defense, something which is legal under  
28 state law and, of course, Plaintiff alleges in his complaint, that he has the

1 Constitutional Right under both the Second Amendment and Article I, Section 1 of  
 2 the California Constitutions to openly carry a loaded firearm and that the statute at  
 3 issue is unconstitutional under both Constitutions (PC12031(e) being a violation of  
 4 both the Fourth Amendment and its corollary in the California Constitution, Article  
 5 I, Section 13). The ban on openly carrying a loaded firearm being unconstitutional  
 6 under the Second Amendment and its corollary in the California Constitution,  
 7 Article I, Section 1 (not forgetting the Fourteenth Amendment).

8  
 9 Video of the Redondo Beach Police Officers enforcing PC12031(e) adjacent  
 10 to the Redondo Beach Pier Shopping Center Open on the day of the aborted Open  
 11 Carry event (August 7, 2010) recorded by Plaintiff is attached as EXHIBIT 1-1.  
 12 Video of a Redondo Beach Police officer ejecting Open Carry advocates at the  
 13 Redondo Beach Galleria Mall and threatening them with arrest if they do not leave  
 14 the Mall is attached as EXHIBIT 1-2. Video of the City Attorney for Redondo  
 15 Beach (opposing counsel) enunciating that Defendants Open Carry ban extends to  
 16 all public places in the City of Redondo Beach is attached as EXHIBIT 1-3. Video  
 17 of the same Redondo Beach Police Officer stopping and enforcing PC12031(e) on  
 18 the former spokesperson for the South Bay Open Carry movement is attached as  
 19 EXHIBIT 1-4.

20  
 21 **F.R.Civ.P. 12(b)(1), F.R.Civ.P. 12(b)(6), Article III, Eleventh Amendment**

22  
 23 As Redondo Beach Defendants are well aware, it has been the “official  
 24 policy or custom” of the Defendants to enforce PC12031(e) since at least August 7,  
 25 2010. The only logical purpose of which is to determine whether or not a firearm  
 26 is loaded and, if it is, to make an arrest for violation of California Penal Code  
 27 section 12031(a)(1) (renumbered as PC 25850(a)) hereinafter referred to as  
 28 PC12031(a)(1).

1 On Page 3, lines 14-16 in Defendants MEMORANDUM OF POINTS AND  
2 AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS,  
3 hereinafter referred to as Movant's Memorandum; Movant seeks to divert this  
4 Courts attention from the fact that the plural word "Defendants" includes ALL of  
5 the defendants and that the singular "Defendant" is used properly in all paragraphs  
6 of the Complaint with the lone exception of Paragraph 85, which should have read  
7 "Plaintiff". In the context of Paragraph 85, it is clear that Plaintiff was the correct  
8 reading.

9  
10 On Page 6, lines 9-16 of Movant's Memorandum, Movant claims that  
11 enjoining Redondo Beach Defendants would not provide the relief Plaintiff seeks  
12 in the complaint.

13  
14 For the reasons given above, an injunction against Redondo Beach  
15 defendants is essential as Declaratory Relief alone has no teeth to prevent  
16 Defendants, all of whom believe that California law does not apply to them and  
17 more importantly, to the Defendants who physically enforce the laws and don't  
18 believe that either state or Federal law applies to them; Police Chief Leonardi and  
19 the Police Department. Declaratory and Injunctive Relief solely against the  
20 Redondo Beach Defendants and solely against PC12031(e) should stop the  
21 harassment of Plaintiff for exercising his Second Amendment right to Openly  
22 Carry a long gun, albeit unloaded and would prevent violations of his Fourth  
23 Amendment rights.

24  
25 Defendants may believe that the law does not apply to them. This Court has  
26 the authority and the power to adequately demonstrate that Federal law, at least,  
27 does apply to Defendants by granting the Relief requested in the Complaint.  
28

1 For some reason, Movant seems fixated on Paragraph 48 of Defendant's  
2 Complaint. Had defendant thoroughly read the Complaint and/or the District of  
3 Columbia v. Heller, 554 U.S. 570, 592 (2008), 128 S. Ct. 2783; 171 L. Ed. 2d 637,  
4 2008 U.S. LEXIS 5268 hereinafter referred to as Heller; Paragraph 48 of the  
5 Complaint is clear. In enacting the statute at issue, the California Legislature cared  
6 more for the right of a hunter to stop the heart of some fur bearing four legged  
7 mammal than it did for the right of people in this state to defend themselves from  
8 two legged predators.

9  
10 California Penal Code section 12031(i) (renumbered as section 26040) reads  
11 "Nothing in this section shall prevent any person from carrying a loaded firearm in  
12 an area within an incorporated city while engaged in hunting, provided that the  
13 hunting at that place and time is not prohibited by the city council."

14  
15 Paragraph 47 of the Complaint perfectly explains Paragraph 48.  
16 Discharging a firearm in a "public place" while illegally hunting incurs a small  
17 fine. There are many scenarios where one may legally discharge a firearm in the  
18 City of Redondo Beach and not be in violation of this statute or the City's  
19 discharge ordinance. There is no doubt that there are some noise and/or Fish &  
20 Game ordinance(s) that would be violated. Regardless, openly carrying a loaded  
21 firearm for the purpose of self-defense is at a minimum a misdemeanor and  
22 potentially a felony. The contrast was clear to the majority of the justices in Heller  
23 and Plaintiff thought he had explained it to the satisfaction of opposing counsel in  
24 the L.R. 7-3 Conference.

25  
26 It is a mystery to Plaintiff why Movant cites a 9<sup>th</sup> Circuit opinion from 1984  
27 on page 8, lines 9-16 when Plaintiff made it aware to opposing counsel in the L.R.  
28

1 7-3 Conference that the standards for dismissing a lawsuit have changed  
2 significantly since then.

3  
4 On Page 8, footnote 5 Movant seems not to understand the difference  
5 between Facial, As-Applied and Substantive Due Process Claims.

6  
7 As to the Fifth Claim for Relief Movant references in footnote 5 - The  
8 substantive component of the Due Process Clause bars such arbitrary action  
9 "regardless of the fairness of the procedures used to implement them." (Foucha, at  
10 p. 80; see also In re Marilyn H. (1993) 5 Cal.4th 295, 306 ["Substantive due  
11 process prohibits governmental interference with a person's fundamental right to  
12 life, liberty or property by unreasonable or arbitrary legislation"]; Rental Housing  
13 Owners Assn. of Southern Alameda County, Inc. v. City of Hayward (2011) 200  
14 Cal.App.4th 81, 93 ["Substantive due process protects against 'arbitrary legislative  
15 action, even though the person whom it is sought to deprive of his right to life,  
16 liberty or property is afforded the fairest of procedural safeguards'"].) People v.  
17 Hartshorn, Cal: Court of Appeal, 4th Appellate Dist., 1st Div. 2012

18  
19 As to the Sixth Claim for Relief Movant references in footnote 5, see Duke  
20 Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 84 (1978).  
21 Even in the unfathomably unlikely event that this Court concludes that self-defense  
22 is not a fundamental right, in 1967 approximately 30 Black men and women  
23 marched into the California State Capitol openly carrying loaded firearms. From  
24 that impromptu publicity stunt, the statute at issue in this case was spawned.

25  
26 Plaintiff has obtained the entire California State archival file of this statute  
27 at issue, over 700 pages. The contents of that file alone are enough to prove that  
28 the state acted arbitrarily or irrationally in response to that event.

1 It would seem that L.R. 7-3 Conferences are an exercise in futility as  
 2 Plaintiff sees that Movant cites Kasler v. Lockyer, 2 P. 3d 581 - Cal: Supreme  
 3 Court 2000, hereinafter referred to as Lockyer, on Page 10, line 12 (which was  
 4 discussed in Conference) and yet somehow fails to cite the case Lockyer relied  
 5 upon in coming to its decision that there is no Article I, Section 1 right to own an  
 6 Assault Weapon, which was the statute at issue in that case.

7  
 8 As discussed in the L.R. 7-3 Conference. Lockyer, relied upon In Re  
 9 Ramirez 193 Cal. 633; 226 P. 914; 1924 Cal. LEXIS 351; 34 A.L.R. 51 hereinafter  
 10 referred to as Ramirez for Movant's out of context snippet. Movant also fails to  
 11 cite that the Facial Challenge was denied at 355 because the plaintiffs in that case  
 12 failed to show that "...the temporary suspension provision of the AWCA (Assault  
 13 Weapons Control Act) would present due process notice issues in the "*vast*  
 14 *majority of its applications*" (American Academy, supra, 16 Cal.4th at p. 343, 66  
 15 Cal.Rptr.2d 210, 940 P.2d 797), or that it would present such problems "*in the*  
 16 *generality of cases*" (California Teachers, supra, 20 Cal.4th at p. 347, 84  
 17 Cal.Rptr.2d 425, 975 P.2d 622)." Italics added.

18  
 19 Unlike the "temporary suspension provision" of the Assault Weapons  
 20 Control Act, PC12031 remains **permanently** in force and applies to far more than  
 21 a generality of cases and will continue to do so until and unless the relief asked for  
 22 in the Complaint is granted.

23  
 24 Perhaps the intent of the Court in Lockyer was to say that there was no  
 25 Article I, Section 1 right to even own any firearm, let alone to openly carry one in  
 26 public but, presumably, when a court cites a precedent with the intention of  
 27 overturning the precedent, it clearly says so; which the court in Lockyer did not.



1 Both Lockyer and Ramirez incorrectly interpreted the Second Amendment  
2 as applying to just militias and restricting only the Federal government. Under that  
3 interpretation, it is true. California does not have a Militia Clause. It does have an  
4 enumerated right to self-defense which is the central component of the Second  
5 Amendment.

6  
7 It seems to Plaintiff, in researching 9<sup>th</sup> Circuit Appellate Court cases that  
8 Motions to Dismiss are affirmed only after there is no chance of correcting the  
9 defects in the Complaint by amendment. Perhaps Plaintiff's pro se case is the  
10 exception.

11  
12 Hebbe v. Pliler (9th Cir. 2010) 611 F.3d 1202, 1205] hereinafter referred to  
13 as Hebbe. A pro se "...complaint "must be held to less stringent standards than  
14 formal pleadings drafted by lawyers," as the Supreme Court has reaffirmed since  
15 Twombly. See Erickson v. Pardus, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d  
16 1081 (2007) (per curiam). Iqbal incorporated the Twombly pleading standard and  
17 Twombly did not alter courts' treatment of pro se filings; accordingly, we continue  
18 to construe pro se filings liberally when evaluating them under Iqbal.[7] While the  
19 standard is higher, our "obligation" remains, "where the petitioner is pro se,  
20 particularly in civil rights cases, to construe the pleadings liberally and to afford  
21 the petitioner the benefit of any doubt." Bretz v. Kelman, 773 F.2d 1026, 1027 n. 1  
22 (9th Cir. 1985) (en banc)." Hebbe at 342. Plaintiff is represented Pro Se and this is  
23 a civil rights case.

24  
25 Even if Hebbe did not apply, in Twombly a conspiracy was alleged with no  
26 supporting facts. Plaintiff is not "An anti-trust conspiracy plaintiff with evidence  
27 showing nothing..." Under the strict Iqbal threshold, "...plaintiff must be given  
28

1 the opportunity to try to meet those [pleading] requirements.” AE v. County of  
2 Tulare, Court of Appeals, 9th Circuit 2012, 798.

3  
4 Movant argues that Plaintiff does not have Article III standing for the  
5 ongoing deprivation of his Second Amendment Rights (PC12031(a)(1)) and  
6 violations of his Fourth Amendment Rights (PC12031(e)).

7  
8 The statute at issue in this case has been actively enforced by Defendants  
9 against Plaintiff since August 7<sup>th</sup>, 2010 and is continuing to be enforced to this day,  
10 which opposing counsel acknowledged in the L.R. 7-3 Conference. A Complaint  
11 does not need to be accompanied by 1,000 pages of evidence and videos  
12 particularly when the facts of the case leading up to the filing of the complaint are  
13 well known to Defendants. Plaintiff can do so should this Court conclude that is  
14 necessary but given that this suit is solely seeking equitable relief, at this point at  
15 least; a jury trial can be avoided and the case can proceed on the Facial Claims for  
16 relief which, as Plaintiff understands it, are pure questions of law which can be  
17 (quickly) decided by this Court.

18  
19 Nor does Plaintiff have to wait until he is arrested for violating the statute at  
20 issue in this case.

21  
22 Dearth v. Holder, 641 F. 3d 499 - Court of Appeals, Dist. of Columbia  
23 Circuit 2011 hereinafter referred to as Dearth. “Dearth is an American citizen who  
24 resides in Canada and no longer maintains a residence in the United States.”  
25 Dearth at 501. Unlike in Dearth, PLAINTIFF NICHOLS is a resident of this state  
26 and country and “...would openly carry a loaded and fully functional handgun in  
27 public for self-defense, but he refrains from doing so because he fears arrest,  
28 prosecution, fine and imprisonment...” (Compl. ¶ 4).



1            “In a case of this sort, where the plaintiffs seek declaratory and injunctive  
2 relief, past injuries alone are insufficient to establish standing. Rather, Dearth must  
3 show he is suffering an ongoing injury or faces an immediate threat of injury.”  
4 Dearth at 502.

5  
6            The “ongoing injury” is the deprivation of Plaintiff’s Constitutional right to  
7 openly carry a loaded firearm, particularly a handgun, for the purpose of self-  
8 defense, in non-sensitive public places. Movant does not deny that Plaintiff would  
9 be arrested and prosecuted for violating the statute at issue nor must Plaintiff be  
10 arrested and convicted for violating the statute at issue to have standing.

11  
12            During the L.R. 7-3 Conference, opposing council agreed that Plaintiff was  
13 not seeking monetary damages for “past injuries.” The Complaint clearly alleges  
14 an ongoing violation of Plaintiff’s Constitutional Rights.

15  
16            “...plaintiffs had standing because, rather than alleging merely an intent to  
17 violate the District's gun laws, he had "invoked his rights under the Second  
18 Amendment to challenge the statutory classifications used to bar his ownership of  
19 a handgun." Dearth at 502.

20  
21            Plaintiff has invoked his right to openly carry a loaded firearm under the  
22 Second Amendment, his rights to be free from unconstitutional searches and  
23 seizures under the Fourth Amendment, his rights to Due Process and Equal  
24 Protection under the Fourteenth Amendment and others.

25  
26            Plaintiff challenges the bar to openly carrying a loaded firearm in non-sensitive  
27 public places which includes the curtilage of his home as the California courts have  
28 concluded that such places are “public places.”

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 insufficient Article III standing for a statute REDONDO BEACH DEFENDANTS  
2 are currently enforcing and, admit will continue to enforce; speaks for itself.

### 4 **SECOND AMENDMENT**

5  
6 The central component of the Second Amendment right is self-defense.  
7 "JUSTICE BREYER's assertion that individual self-defense is merely a  
8 "subsidiary interest" of the right to keep and bear arms, see post, at 36, is  
9 profoundly mistaken. He bases that assertion solely upon the prologue—but that  
10 can only show that self-defense had little to do with the right's codification; it was  
11 the central component of the right itself." Heller at 26. (Emphasis added).

12  
13 "Constitutional rights are enshrined with the scope they were understood to  
14 have when the people adopted them, whether or not future legislatures or (yes)  
15 even future judges think that scope too broad." Heller at 2821. When Article I,  
16 Section 1 of the California Constitution was adopted by the people, there were no  
17 restrictions on the type of weapon or the manner of carry. Local restrictions on  
18 concealed carry were decades away and there would not be any statewide  
19 regulation of firearms until the 20th Century. Even machine-guns did not require a  
20 permit from this state to possess until the mid 1970's.

21  
22 A handgun openly carried does not impede others from detecting its  
23 presence. As to public safety "Municipal respondents cite no case in which we  
24 have refrained from holding that a provision of the Bill of Rights is binding on the  
25 States on the ground that the right at issue has disputed public safety implications."  
26 McDonald v. Chicago, 561 U.S. \_\_\_, 130 S. Ct. 3020, 177 L. Ed. 2d 894, 2010  
27 U.S. LEXIS 5523 (2010) at 3045.

1 If Heller entails only the right to possess a loaded firearm in one's home,  
2 then every handgun in a drawer or nightstand is concealed and subject to  
3 prosecution on this statute. California has upheld convictions for violation of this  
4 statute for having a loaded handgun in a drawer. See *Garber v. Superior Court*,  
5 184 Cal. App. 4th 724 - Cal: Court of Appeal, 2nd Appellate Dist., 3rd Div. 2010

6  
7 A claim that the right to carry arms does not extend to public places would  
8 fly in the face of Heller's statement concerning the permissibility of laws  
9 forbidding the carrying of firearms in sensitive places such as schools and  
10 government buildings . . . " 554. U.S. at 626. It beggars belief to suggest that when  
11 the Heller Court identified two types of "sensitive" public places in which the  
12 carrying of arms could presumptively be forbidden, what it really meant to say was  
13 that the right to carry arms has no application outside of one's home. The only  
14 sensible reading of this dictum from Heller is that the carrying of arms generally  
15 cannot be prohibited in non-sensitive public places. This reading was adopted by  
16 the Puerto Rico Court of Appeals in *In re Nido Lanausse*, No. G PA2010-0002,  
17 2011 WL 1563927 (P.R. Cir. Jan. 31, 2011) (concluding that after Heller the  
18 Second Amendment right to carry arms cabins the discretion of authorities to deny  
19 CHLs).

20  
21 "Masciandaro also argues that he possessed a constitutional right to possess  
22 a loaded handgun for self-defense outside the home. I would agree that there is a  
23 plausible reading of Heller that the Second Amendment provides such a right, at  
24 least in some form." *US v. Masciandaro*, 638 F. 3d 458 - Court of Appeals, 4th  
25 Circuit 2011 at 467 and "Consistent with the historical understanding of the right  
26 to keep and bear arms outside the home, the Heller Court's description of its actual  
27 holding also implies that a broader right exists....If the Second Amendment right  
28

1 were confined to self-defense in the home, the Court would not have needed to  
 2 express a reservation for "sensitive places" outside of the home." at 468. See also  
 3 ¶ 41 of Complaint.

4  
 5 The 9<sup>th</sup> Circuit Court of Appeals has already answered the question as to  
 6 whether or not the Heller decision entails only the right to possess a loaded firearm  
 7 in one's home. It is not so limited. See paragraphs 33 and 41 of Complaint.

8  
 9 "Likewise, in *State v. Chandler*, 5 La. Ann. 489, 490 (1850), the Louisiana  
 10 Supreme Court held that citizens had a right to carry arms openly: "This is the right  
 11 guaranteed by the Constitution of the United States, and which is calculated to  
 12 incite men to a manly and noble defence of themselves, if necessary, and of their  
 13 country, without any tendency to secret advantages and unmanly assassinations.""  
 14 *District of Columbia v. Heller*, 554 U.S. 570, 40 (2008) and Paragraph 28 of the  
 15 Complaint (*Nunn v. State*, 1 Ga. 243, 251 (1846))

#### 16 17 **FOURTH AMENDMENT**

18  
 19 Any search, even a consensual one, is constrained by the bounds of reasonableness.  
 20 *Florida v. Jimeno*, 500 U.S. 248, 251 (1991). Plaintiff does not, and will not,  
 21 voluntarily consent to PC12031(e) searches. Nor does he have to physically resist  
 22 such a search. Simply stating that he does not consent is sufficient for a search not  
 23 to be voluntary.

24  
 25 Even a person carrying drugs illegally inside of an Airport, which is most  
 26 likely a "sensitive" place under *Heller*, has the right to refuse to be searched absent  
 27 a warrant, probable cause or even reasonable suspicion. *US v. Russell*, Court of  
 28 Appeals, 9th Circuit 2012, hereinafter referred to as *Russell*.

1 Arguably, Terry v. Ohio, 392 US 1 - Supreme Court 1968 precludes the stop  
2 and search of a person for even reasonable suspicion to determine if he is armed  
3 when that person is openly carrying a firearm as the sole purpose of the "Terry  
4 Stop" was to determine whether or not a person behaving suspiciously was armed.

5  
6 Unlike the drug courier in Russell, who could have refused to be searched  
7 and then freely exited the airport. This subsection does not allow for one to refuse  
8 to be searched. Refusing to be searched constitutes "probable cause" for arrest  
9 under the statute.

10  
11 PC12031(e) In order to determine whether or not a firearm is loaded for the  
12 purpose of enforcing this section, peace officers are authorized to examine any  
13 firearm carried by anyone on his or her person or in a vehicle while in any public  
14 place or on any public street in an incorporated city or prohibited area of an  
15 unincorporated territory. **Refusal to allow a peace officer to inspect a firearm**  
16 **pursuant to this section constitutes probable cause for arrest for violation of**  
17 **this section.** Emphasis added.

18  
19 Under this subsection of the statute at issue, a drug courier has greater rights  
20 under the Fourth Amendment than does a law-abiding person.

21  
22 If this is not abhorrent enough to the US Constitution, PC12031(5)(A),  
23 renumbered to 25850(2)(g)(1) and (2)(g)(2) reads:

24  
25 (5) (A) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a  
26 peace officer may make an arrest without a warrant:



1 (ii) Whenever the officer has *reasonable cause* to believe that the person to be  
 2 arrested has violated this section, whether or not this section has, in fact, been  
 3 violated. (Italics added).

4  
 5 Under the Fourth Amendment, a warrantless arrest requires probable cause.  
 6 See Michigan v. Summers, 452 U.S. 692, 700 (1981). Probable cause to arrest  
 7 exists when officers have knowledge or reasonably trustworthy information  
 8 sufficient to lead a person of reasonable caution to believe that an offense has been  
 9 or is being committed by the person being arrested. Beck v. Ohio, 379 U.S. 89, 91  
 10 (1964). Alternatively, this court has defined probable cause as follows: when  
 11 "under the totality of circumstances known to the arresting officers, a prudent  
 12 person would have concluded that there was a fair probability that [the defendant]  
 13 had committed a crime." United States v. Smith, 790 F.2d 789, 792 (9th Cir.  
 14 1986). While conclusive evidence of guilt is of course not necessary under this  
 15 standard to establish probable cause, "[m]ere suspicion, common rumor, or even  
 16 strong reason to suspect are not enough." McKenzie v. Lamb, 738 F.2d 1005,  
 17 1008 (9th Cir. 1984) (citing Henry v. United States, 361 U.S. 98, 101 (1959)).  
 18 Emphasis added.

## 19 20 FEDERAL RULES OF CIVIL PROCEDURE

### 21 RULE 1 - SCOPE AND PURPOSE

22  
 23 "These rules govern the procedure in all civil actions and proceedings in the  
 24 United States district courts, except as stated in Rule 81. They should be construed  
 25 and administered to secure the just, speedy, and inexpensive determination of  
 26 every action and proceeding." - F.R.Civ.P. 1  
 27  
 28

1 Movants unjustly seek to delay Plaintiff from an inexpensive determination  
2 of this proceeding. ALL DEFENDANTS have had two months to come up with an  
3 Answer to the Complaint they could have six more and they would still not be able  
4 to make the case why Relief should not be granted to Plaintiff.

5  
6 The US Supreme Court spoke clearly in Heller and in McDonald. With the  
7 exception of a couple of District Court judges outside of the 9<sup>th</sup> Circuit, no Federal  
8 Appellate Court has limited the scope of the Second Amendment to just the right to  
9 possess a loaded firearm in one's home.

### 10 11 CONCLUSION

12  
13 Although not a precedent, and perhaps not even persuasive, United States  
14 District Judge Percy Anderson had this to say in his denial of a Motion to Dismiss  
15 the Hacopian lawsuit stemming from enforcement of PC12031(e).

16  
17 "In District of Columbia v. Heller, the Supreme Court held that the Second  
18 Amendment protects an individual's right to keep and bear arms, a right  
19 unconnected to service in the militia. District of Columbia v. Heller, 554 U.S. 570,  
20 593, 128 S. Ct. 2783, 2799, 171 L. Ed. 2d 637 (2008). Two years later, the  
21 Supreme Court held that "the Second Amendment right is fully applicable to the  
22 States." McDonald v. City of Chicago, \_\_ U.S. \_\_, 130 S. Ct. 3020, 3025, 177 L.  
23 Ed. 2d 894 (2010). The alleged incident occurred on July 13, 2011, after the  
24 McDonald case held that the Second Amendment right is fully applicable to the  
25 States.

26  
27 As noted above, Plaintiffs properly allege a Fourth Amendment claim by alleging  
28 facts to support that Defendants conducted an unreasonable search and seizure. In



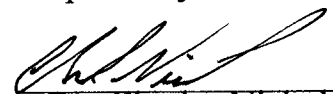
1 their FAC, Plaintiffs allege that they “were illegally searched and detained for  
 2 simply exercising [their Second Amendment] Right.” (FAC ¶ 26.) Plaintiffs allege  
 3 that after Defendants checked to make sure that Plaintiffs’ firearms were unloaded,  
 4 Defendants went beyond the scope of a permissible search by running background  
 5 checks on them and serial number checks on their firearms, as well as handcuffing  
 6 Plaintiffs, ordering them to get on their knees, and forcibly removing Plaintiffs’  
 7 wallets without their consent. Therefore, **Plaintiffs have properly alleged a**  
 8 **Second Amendment violation.**” Emphasis added.

9  
 10 At this early stage of the case, this Court does not have to examine in great  
 11 detail every point raised thus far. Supplemental pleadings in support of the  
 12 Complaint, if necessary can come at a later date. This Court has the authority and  
 13 the power to ensure “...the just, speedy, and inexpensive determination...” of these  
 14 proceedings.

15  
 16  
 17  
 18 For the reasons given above, REDONDO BEACH DEFENDANT’S Motion  
 19 to Dismiss should not be granted.

20  
 21 Dated: February 6, 2012

Respectfully Submitted,



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 Plaintiff in Pro Per  
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22  
 23  
 24  
 25  
 26  
 27  
 28 ///

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Plaintiff's **PLAINTIFF'S**  
**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**  
**MOTION TO DISMISS BY REDONDO BEACH DEFENDANTS** was served via  
United States Mail, postage prepaid, on this 7, day of February, 2012; on the  
following:

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Charles Nichols  
Plaintiff, In Pro Per