

JONATHAN W. BIRDT, SBN 183908
Law Office of Jonathan W. Birdt
10315 Woodley Ave, Suite 208
Granada Hills, CA 91344
Telephone: (818) 400-4485
Facsimile: (818) 428-1384
jon@jonbirdt.com

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SIGITAS RAULINAITIS,
Plaintiff,
vs.

VENTURA COUNTY SHERIFFS
DEPARTMENT,
Defendants.

CASE NO. CV 13-2605MAN

**PLAINTIFF'S OPPOSITION TO
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Date: March 11, 2014
Time: 10:00 a.m.
Ct rm: 580 Roybal

1 **I. INTRODUCTION**

2 Defendant moves for Judgment on the Pleadings based upon a ruling by this
3 Court that failed to recognize the recent 9th Circuit Court decision wherein the Court
4 adopted an intermediate scrutiny approach to Second Amendment challenges, not a
5 rational basis approach¹ as previously used by this Court:

6 After considering the approaches taken by other circuits that considered the
7 constitutionality of § 922(g)(9), we hold as follows. We adopt the two-step
8 Second Amendment inquiry undertaken by the Third Circuit in *Marzzarella*,
9 614 F.3d at 89, and the Fourth Circuit in *Chester*, 628 F.3d at 680, among other
10 circuits. Applying that inquiry, we hold that § 922(g)(9) burdens conduct
11 falling within the scope of the Second Amendment's guarantee and that
12 intermediate scrutiny applies to Chovan's Second Amendment challenge.
13 Finally, like the First, Fourth, and Seventh Circuits, we apply intermediate
14 scrutiny....

15 U.S. v. Chovan (9th Cir. 2013) 735 F.3d 1127, 1136

16 This now gives the Court a unique chance to update, revisit and provide a new
17 clear and definitive ruling on these matters recognizing that this is a Civil Rights
18 Action wherein Plaintiff has properly pled a violation of his Fundamental Right to
19 Bear Arms as secured by the Second Amendment. Having previously applied a
20 rational basis review this court now has the opportunity to fix its' error wherein it
21 applied a rational basis test to an exercise of discretion that in itself violates the law
22 because it is clear that it is unacceptable for an elected official to exercise broad
23 discretion as to whether a citizen of the United States may exercise his Fundamental
24 Constitutional Rights.

25
26
27
28 ¹ The *Heller* Court did, however, indicate that rational basis review is not appropriate.
U.S. v. Chovan (9th Cir. 2013) 735 F.3d 1127, 1137

1 **I. PLAINTIFF HAS A FUNDAMENTAL RIGHT TO BEAR ARMS**
 2 **FOR SELF-DEFENSE AND THE ONLY WAY TO EXERCISE THAT**
 3 **RIGHT IN CALIFORNIA IS WITH A CCW PERMIT**

4 Recognition of Plaintiff's fundamental rights, a topic not addressed in the prior
 5 ruling, is the gravamen of Plaintiff's Complaint and the issue before this Court which
 6 must be accepted as true for purposes of this motion. It is also a well-established
 7 point of law:

8 "Self-defense is a basic right, recognized by many legal systems from ancient
 9 times to the present day, and in *Heller*, we held that individual self-defense is
 10 "the central component" of the Second Amendment right". McDonald v. City
 11 of Chicago (2010) 130 S. Ct. 3020, at 3037.

12 This Principal likewise has already been followed in the Central District
 13 wherein Magistrate John E. Mcdermott found no legal basis for even bringing a
 14 motion to dismiss an almost identical Complaint:

15 In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held
 16 that the District of Columbia's "absolute prohibition of handguns held and used
 17 for self defense in the home" clearly violated the Second Amendment.¹ *Id.* at
 18 628-636. In so holding, the Supreme Court explained that the Second
 19 Amendment protects an individual right to "keep and carry arms," and further
 20 noted that "the inherent right of self-defense has been central to the Second
 21 Amendment right." *Id.* at 627-629. Thus, the Supreme Court identified in
 22 *Heller* an unequivocal Second Amendment "individual right to possess and
 23 carry weapons in case of confrontation." 554 U.S. at 592. In *McDonald v. City*
 24 of Chicago, 130 S.Ct. 3020, 3026 (2010), the Court held that "the Second
 25 Amendment right is fully applicable to the States."

26 Ruling Denying Motion to Dismiss, Case 5:13-cv-00673-VAP-JEM.

II. MOTION FOR JUDGMENT ON THE PLEADINGS STANDARD AND THE PLEADINGS

In considering a motion for Judgment on the pleadings, pursuant to Federal Rule of Civil Procedure 12(c), is proper only when there is no unresolved issue of fact, and no question remains that the moving party is entitled to a judgment as a matter of law. *Torbet v. United Airlines, Inc.*, 298 F.3d 1087, 1089 (9th Cir.2002); *Honey v. Distelrath*, 195 F.3d 531, 532–33 (9th Cir.1999). It must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Sun Savings and Loan Ass'n v. Dierdorff*, 825 F.2d 187, 191 (9th Cir.1987).

The standard applied on a Rule 12(c) motion is essentially the same as that applied on a motion to dismiss pursuant to Federal Rule of Civil Procedure Rule 12(b)(6). See *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir.1989). Thus, the allegations of the non-moving party are accepted as true, and all inferences reasonably drawn from those facts must be construed in favor of the responding party. *Id.* However, conclusory allegations and unwarranted inferences are insufficient to defeat a motion for judgment on the pleadings. *In re Syntex Corp. Sec. Litig.*, 95 F.3d 922, 926 (9th Cir.1996).

Thus, taken as true, the legal issue presented in this case is in essence a complete ban on the exercise of a Fundamental Right:

The California Legislature has mandated that the only method by which a resident of the State can bear arms for the purpose of self-defense outside the home is with a permit to carry a concealed weapon.

Complaint at Paragraph 1.

Clearly, given the authorities cited herein, the only way to decide this matter on the pleadings would be with a finding of liability against defendants, not a finding that there is no violation as a matter of law.

1 **III. STANDARD OF REVIEW**

2 In reviewing the prior motion, this Court stated “The question before the Court
3 is whether that application of Section 26150 was an unreasonable exercise of the
4 VCSO’s discretionary authority under the statute.” But that is not the correct analysis
5 to be applied to an infringement of a Fundamental Liberty. Instead, if a law burdens a
6 right within the scope of the Second Amendment, either intermediate or strict
7 scrutiny will be applied. See Chovan, 2013 U.S. App. LEXIS 23199 at *25-*29;
8 N.R.A., 700 F.3d at 195; Chester, 628 F.3d at 682.

9 **IV. THE FINDING OF A DISCRETIONARY ACT BY THIS COURT** 10 **THAT PREVENTS PLAINTIFF FROM EXERCISING HIS RIGHT** 11 **MANDATES A FINDING OF A VIOLATION OF HIS CIVIL** 12 **LIBERTIES, NOT THE OPPOSITE AS URGED BY MOVING** 13 **PARTIES**

14 This Court previously approved an elected officials exercise of discretion to
15 determine whether a citizen could exercise a Fundamental Rights, but that is not the
16 proper basis for a decision given the evolving jurisprudence and recognition of the
17 Fundamental Liberty confirmed by the Second Amendment and here, where
18 defendants exercise of discretion deprived a law abiding citizen of a Fundamental
19 Liberty, such act cannot be ratified by an Article III Court.

20 Under Cantwell v. Connecticut (1940) 310 U.S. 296, and progeny, States and
21 localities may not condition a license necessary to engage in constitutionally
22 protected conduct on the grant of a license officials have discretion to withhold.
23 Further, a host of prior restraint cases establish that “the peaceful enjoyment of
24 freedoms which the Constitution guarantees” may not be made “contingent upon the
25 uncontrolled will of an official.” Staub v. Baxley (1958) 355 U.S. 313, 322.
26 In the First Amendment arena, where the concept has been developed extensively,
27 courts have consistently condemned licensing systems which vest in an
28 administrative official discretion to grant or withhold a permit upon broad criteria
unrelated to proper regulation of public places. Kunz v. New York (1951) 340 U.S.

1 290, 294 (1951); *Shuttlesworth v. City of Birmingham* (1969) 394 U.S. 147, at 153
 2 (1969).

3 “Unbridled discretion naturally exists when a licensing scheme does not
 4 impose adequate standards to guide the licensor’s discretion.” Chesapeake B & M,
 5 Inc. v. Harford County 58 F.3d 1005, 1009 (4th Cir. 1995 (en banc); cf. Green v. City
 6 of Raleigh (4th Cir. 2008) 523 F.3d 293, 306 (“‘virtually unbridled and absolute
 7 power’ to deny permission to demonstrate publically, or otherwise arbitrarily impose
 8 de facto burdens on public speech” is unconstitutional) (citation omitted). A
 9 “reasonable” regulation is one that does not eliminate the exercise of a right, but
 10 instead is narrowly tailored, is based on a significant government interest, and leaves
 11 ample alternatives. As with the right to keep and bear arms, the right to freedom of
 12 speech has sometimes been analyzed in terms of “reasonable” regulation. For
 13 example, many public events for the exercise of First Amendment rights may be
 14 subject to “reasonable” time, place, and manner regulations. The “government may
 15 impose reasonable restrictions,” which means that the restrictions must be “narrowly
 16 tailored to serve a significant governmental interest, and that they leave open ample
 17 alternative channels for communication of the information.” Ward v. Rock Against
 18 Racism (1989) 491 18 U.S. 781, 791.

19 **V. CONCLUSION**

20 Plaintiff does not contend deprivation of a property right in a license, Plaintiff
 21 contends, and the law supports his view that, Defendants exercise of discretion in
 22 denying him the Fundamental Right to Bear Arms Violates his Constitutional Rights
 23 and allegation that must be accepted as true for purposes of this motion and analyzed
 24 at the very least under an intermediate scrutiny standard either de novo by this Court,
 25 by subsequent motion or on Appeal.

26
 27 February 8, 2014

/s/

28
 Jonathan W. Birdt
 Counsel for Plaintiff