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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SIGITAS RAULINAITIS, **Plaintiff,** **v.** **VENTURA COUNTY SHERIFFS DEPARTMENT,** **Defendant.**	**NO. CV 13-2605-MAN** **ORDER DENYING MOTION FOR SUMMARY JUDGMENT**

Presently before the Court is plaintiff's motion for summary judgment. For the reasons set forth below, the Court concludes that summary judgment is not warranted.

PROCEDURAL HISTORY

On April 15, 2013, plaintiff filed a civil rights complaint, pursuant to 42 U.S.C. § 1983 ("Complaint"). The sole defendant sued is the Ventura County Sheriff's Office (named in the Complaint as the Ventura County Sheriff's Department) (hereafter, the "VCSO" or "defendant"). The Complaint alleges a single claim based on the VCSO's March 18, 2013 denial of plaintiff's application for a permit to carry a concealed weapon. Plaintiff contends that the VCSO's denial of plaintiff's application has deprived plaintiff of his Second Amendment right to keep and bear

arms for the purpose of self defense. As relief, plaintiff seeks an order requiring the VCSO to issue a permit to carry a concealed weapon to plaintiff, as well as an award of costs and attorney's fees pursuant to 42 U.S.C. § 1988.

On May 6, 2013, defendant VCSO filed an Answer to the Complaint. On May 9, 2013, the parties consented to proceed before the undersigned pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73(b).

On May 28, 2013, the parties filed a Joint Case Management Statement And Factual Stipulation, in which they address, *inter alia*, some of their respective legal and factual contentions, several stipulated facts, and two disputed legal issues. On May 31, 2013, the Court issued a Case Management Order, which found that the following facts are deemed admitted by all parties:

a. Plaintiff applied for and was denied a permit for a concealed weapon by defendant, because he was not a resident of Ventura County.

b. Defendant defines residence as: The County in which a person spends most of his or her time and conducts most of his or her activities.

c. Defendant determined that plaintiff did not meet the standards for this definition, and plaintiff agrees that he does not meet the terms of this definition.

d. Plaintiff owns and maintains a home in Ventura County. Plaintiff also maintains homes in Los Angeles and San Bernardino County.

On June 3, 2013, plaintiff filed a motion for summary judgment, pursuant to Rule 56 of the

Federal Rules of Civil Procedure, an opening brief, and an unsigned declaration of plaintiff ("Motion"). The Motion was not accompanied by a separate statement of uncontroverted facts and conclusions of law as required by Local Rule 56-1. On June 5, 2013, plaintiff lodged his original signed declaration dated June 3, 2013 ("Plaintiff Decl.").

On June 14, 2013, defendant filed an opposition to the Motion, which included: a responsive brief; the May 2013 declaration of Daniel Gonzales, a VCSO deputy sheriff ("Gonzales Decl."); and Exhibits A-J (collectively, the "Opposition"). The Opposition was not accompanied by a statement of genuine disputes as required by Local Rule 56-2, presumably due to plaintiff's failure to comply with Local Rule 56-1. On June 17, 2013, the parties filed a stipulation to remove Exhibits C through J of the Opposition from the Court's public website and to allow them to be filed under seal. On June 17, 2013, the Court issued an Order granting the requested relief and Exhibits C through J were filed under seal on June 19, 2013.[1]

On June 19, 2013, plaintiff filed a reply, which contained a one-page Objection to the Gonzales Declaration ("Reply"). On June 28, 2013, defendant filed a reply. On the same day, plaintiff filed a sur-reply. Briefing on the Motion, thus, is complete.

THE APPLICABLE LEGAL STANDARDS

Summary judgment is appropriate when the evidence demonstrates that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a

[1] The Court granted the parties' request to file these exhibits under seal because some of them contained information that could be deemed private or sensitive, such as personal information about plaintiff and his wife, including telephone numbers, addresses, copy of drivers' license and other DMV information, photographs, vehicle records, etc. However, some of the information included within the documents filed under seal is not private or sensitive. To resolve the Motion, the Court has considered all of the sealed exhibits, but discusses herein only such information contained within the exhibits as would not be subject to sealing had it been submitted on its own.

matter of law. Fed. R. Civ. P. 56(a). In a trio of 1986 cases, the Supreme Court clarified the applicable standards for summary judgment. *See* Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 2552 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1355 (1986). The moving party bears the initial burden of informing the court of the basis for the motion and identifying portions of the pleadings, depositions, answers to interrogatories, admissions, affidavits, or other evidence that it believes demonstrate the absence of a triable issue of material fact. Celotex, 477 U.S. at 323, 106 S. Ct. at 2552. A moving party without the ultimate burden of persuasion at trial may carry its initial burden of production by one of two methods. Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc., 210 F.3d 1099, 1106 (9th Cir. 2000). "The moving party may produce evidence negating an essential element of the nonmoving party's case, or, after suitable discovery, the moving party may show that the nonmoving party does not have enough evidence of an essential element of its claim or defense to carry its ultimate burden of persuasion at trial." *Id.* The moving party, however, need not disprove the other party's case. Celotex, 417 U.S. at 323-24, 106 S. Ct. at 2553.

Once the moving party has met its burden, the burden shifts to the nonmoving party to establish, beyond the pleadings, that there is a genuine issue for trial. Celotex, 477 U.S. at 324, 106 S Ct. at 2553. The nonmoving party must submit some evidence establishing the elements essential to that party's case, and for which that party will bear the burden of proof at trial. *Id.* at 322, 106 S Ct. at 2552. The nonmoving party is "required to present significant probative evidence tending to support [his] allegations." Bias v. Moynihan, 508 F.3d 1212, 1218 (9th Cir. 2007) (internal quotation marks omitted). When assessing whether the nonmoving party has raised a genuine issue, the court must believe the nonmoving party's competent evidence and draw all justifiable inferences in its favor. Anderson, 477 U.S. at 255, 106 S. Ct. at 2513. Even if the nonmoving party produces direct evidence of a material fact, inferences may be drawn from such evidence as to *other* material facts "only if they are reasonable in view of other undisputed background or contextual facts and only if such inferences are otherwise permissible under the

governing substantive law." T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 631-32 (9th Cir. 1987). "The mere existence of a scintilla of evidence" is insufficient to raise a genuine issue of material fact. Anderson, 477 U.S. at 252, 106 S. Ct. at 2512. When the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. Matsushita, 475 U.S. at 587, 106 S. Ct. at 1356; *see also* T.W. Elec. Serv., 809 F.2d at 631 ("the court's ultimate inquiry is to determine whether the 'specific facts' set forth by the nonmoving party, coupled with undisputed background or contextual facts, are such that a rational or reasonable jury might return a verdict in its favor based on that evidence").

SUMMARY OF EVIDENCE PRESENTED BY PARTIES

As noted above, the following facts are deemed admitted in this case: the VCSO denied plaintiff's application for a concealed weapons permit ("CWP") on the ground that plaintiff is not a resident of Ventura County; plaintiff does not meet the VCSO's definition of "resident," *i.e.,* a person who spends most of his or her time and conducts most of his or her activities within Ventura County; and plaintiff owns and maintains homes in Ventura, Los Angeles, and San Bernardino Counties.

The only additional evidence submitted by plaintiff is his declaration, in which he asserts the following facts. In June 2012, plaintiff purchased a home in the City of Oxnard, which is within Ventura County, and moved his personal effects into the home (the "Oxnard Home"). Other than family members and invited guests, no one else rents or uses the Oxnard Home. Plaintiff maintains and pays for the utilities for the Oxnard Home. (Plaintiff Decl. ¶ 2.) On an unspecified date after June 2012, plaintiff "updated [his] voter registration to Ventura County,"[2] and he intends to vote in the next election for the Ventura County Sheriff and any other election in Ventura County. (*Id.* ¶¶ 2-3.) Plaintiff considers the Oxnard Home to be "one of" his

[2] In its Answer, the VCSO admits that plaintiff registered to vote in Ventura County "on the day of his interview with detectives." As discussed *infra*, that date was February 20, 2013.

permanent homes and a place to which he always intends to return and frequently does return. Plaintiff owns homes in two other counties and frequently travels for business and pleasure. (*Id.* ¶¶ 4-5.) Because plaintiff's personal and professional life is of a "variable nature," there is no one County in California in which he spends the majority of his time. (*Id.* ¶ 6.)[3]

Defendant has submitted the Gonzales Declaration and Exhibits A through J, which establish the following facts. Gonzales is a deputy sheriff of the VCSO. He is responsible for evaluating CWP applications submitted in Ventura County. The VCSO receives 20 to 40 new CWP applications a month, plus renewal applications, which Gonzales must evaluate with limited assistance. (Gonzales Decl. ¶¶ 2, 7.) To process this volume of applications efficiently, Gonzales first examines whether an applicant satisfies the residency requirements for a CWP.[4] If the residency requirement is not satisfied, Gonzales saves time and work, because he need not conduct an assessment of the additional good cause and good moral character requirements for obtaining a CWP. (*Id.* ¶ 8.)

On January 15, 2013, Plaintiff submitted his application for a CWP to the VCSO (the "Application"), and Gonzales was responsible for investigating the Application. (Gonzales Decl. ¶ 4.) Gonzales interviewed plaintiff on February 20, 2013. During the interview, plaintiff indicated that: he had obtained a CWP from Arizona six months earlier; and in October 2010, he had applied for a CWP from Los Angeles County but his application was denied on the ground that good cause was lacking. (*Id.* ¶ 10, Ex. C at 1.) Plaintiff stated that he is employed as a

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[3] In his Reply (at 5, 6), plaintiff makes various factual assertions that lack any evidentiary support. Because these allegations are unsupported, they have not been considered, although the Court notes that, even if they had been properly supported by evidence, the Court's conclusions would not be different.

[4] As Gonzales notes, and as discussed in more detail *infra*, California Penal Code § 26150(a)(3) contains a residency requirement that must be met before a CWP can be issued. (Gonzales Decl. ¶ 5.) The VCSO has promulgated a policy, adopted on October 28, 2011, regarding the policy and practices of the VCSO with respect to CWPs, which also includes a residency requirement. (*Id.* ¶ 6, Ex. B (first page of that seven-page policy).)

contractor, broker, and attorney; his office is in Burbank; but most of his work involves contracting, which he performs "all over" in multiple California counties. (*Id.* at 4-5.) Plaintiff further stated that his wife was living in their Santa Clarita home (located in Los Angeles County), which they were then remodeling and getting ready to place on the rental market. (*Id.* at 3, 5.) Plaintiff indicated that his son lived in the Oxnard Home with plaintiff,[5] and plaintiff's wife "spent a better part of the summer" at the one-bedroom Oxnard Home with plaintiff, because it is cooler than their Santa Clarita home. During the winter, plaintiff and his wife also "go a lot" to their home in Big Bear (located in San Bernardino County). (*Id.* at 5.) When asked how much time he had spent at the Oxnard Home during the past month, plaintiff replied "probably just several days," because he had been spending more time in Santa Clarita while working there.[6] (*Id.*) When Gonzales disclosed that his investigation to date indicated plaintiff spent more time in Santa Clarita than in Ventura County, plaintiff responded, "[W]ell I would say over the past 4 months that's true but I would say over the you know, after I bought the [Oxnard Home] I was over [there] probably literally four months almost all the time." (*Id.* at 6.) Plaintiff stated that he was registered to vote in Ventura County, and he changed his registration to vote at the same time he changed his address with the DMV. (*Id.*)

Gonzales advised that he would be conducting a further investigation, because it appeared that plaintiff did not spend as much time in Ventura County as he did in Santa Clarita. (Gonzales Decl., Ex. C at 6.) Plaintiff responded, "[L]ike I said[,] currently that would be true[;] it's my intention to get [the Santa Clarita home] rented out then I will be[,] I can't say that's not true at the current moment." (*Id.* at 7.) Plaintiff then said that, had the interview taken place in July or August, he would have responded that, over the past three months, he was at the Oxnard Home

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[5] Plaintiff stated that he slept in the bedroom and his son slept in the living room. (Gonzales Decl., Ex. C at 6.) Plaintiff paid all the utility bills for the Oxnard Home. (*Id.*)

[6] During the interview, plaintiff at times referred to Canyon Country and at other times to Santa Clarita. Canyon Country is an area within Santa Clarita, and it appears that plaintiff's references to "Canyon Country" were to his Santa Clarita home.

80 percent of the time and at his Santa Clarita home 20 percent of the time. (*Id.*) Plaintiff stated that under the Ventura Sheriff's definition of residence as explained by Gonzales -- *i.e.,* "where you sleep" and "where you spend most of your time" -- plaintiff's residency varied "depending on the time of year." (*Id.*)

At the time Gonzales conducted his investigation concerning plaintiff's Application, plaintiff's driver's license listed his place of work as a Burbank address. (Gonzales Decl. ¶ 11, Ex. D.) California DMV records showed that two of plaintiff's cars were registered to his Santa Clarita home address, and his other two cars were registered to the Burbank work address. (*Id.* ¶ 12, Exs. E-H.) The Application listed the address for the Oxnard Home as plaintiff's residence address, the Burbank business address as plaintiff's mailing address, and the Santa Clarita home address as his wife's address. (*Id.* ¶ 14, Ex. I at 5.)

During his investigation, Gonzales learned that, about a year and a half earlier, plaintiff had sued Los Angeles County for denying him a CWP. When plaintiff applied for a CWP in Los Angeles County, he necessarily would have claimed that he was a resident of Los Angeles County, or had his principal place of business or employment in Los Angeles County, to qualify for a CWP. (Gonzales Decl. ¶7.)[7]

Gonzales confirmed that plaintiff had not registered to vote in Ventura County until February 20, 2013, the same day he was interviewed by Gonzales. Prior to that date, plaintiff was

[7] Plaintiff listed that lawsuit in the Application. (Gonzales Decl., Ex. C at 2.) Pursuant to Rule 201 of the Federal Rules of Evidence, the Court takes judicial notice of its records and files in that lawsuit -- Raulinaitis v. Los Angeles County Sheriffs Department, et al., CV 11-8026-MWF (JCG). In that case, both plaintiff and his wife filed a civil rights complaint in this district after the Los Angeles Sheriffs Department denied their applications for a CWP on the ground that the good cause requirement was not met. Plaintiff and his wife claim that the Los Angeles Sheriff's policy regarding the "good cause" requirement violates the Second Amendment. On August 13, 2012, the defense motion for summary judgment was granted. Plaintiff and his wife appealed, and their appeal is pending (Ninth Circuit Case No. 12-56508).

not registered to vote in Ventura County. (Gonzales Decl. ¶ 31.)

To address the residency issue, Gonzales conducted surveillance of plaintiff's Santa Clarita home on January 28, 2013. From his car, Gonzales observed plaintiff leave the Santa Clarita home at 6:43 a.m., load a cooler into his Infiniti parked in the driveway, and drive to his Burbank office address. (Gonzales Decl. ¶¶ 16-23.) Gonzales asked one of his fellow investigators (Reserve Deputy Jones) to conduct a similar surveillance. Jones reported to Gonzales that, on February 1, 2013, at 6:42 a.m., Jones observed plaintiff leave the Santa Clarita home and get into his Infiniti. (*Id.* ¶¶ 24-27.) Gonzales also spoke to the property manager for the condominium complex in which the Oxnard Home is located and was advised that the property manager was told by plaintiff's wife that she and plaintiff were renting the condominium to their son. (*Id.* ¶ 30.)[8]

Gonzales concluded that, based on the results of his investigation, "it was not reasonable to conclude that [plaintiff] was a Ventura County resident." The Application was denied on that ground alone, and thus, Gonzales was not required to investigate the additional good cause and moral character requirements. (Gonzales Decl. ¶¶ 9, 32.)

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[8] Plaintiff has objected, on hearsay grounds, to the portions of the Gonzales Declaration setting forth what Gonzales was told by Jones and the condominium complex property manager. In his Declaration, Gonzales makes clear that this information formed a part of his conclusion that plaintiff was not a Ventura County resident. (Gonzales Decl. ¶ 32.) The Court has considered this information not for its truth -- *i.e.,* not to establish that plaintiff and his wife, in fact, rent the Oxnard Home to their son and/or that plaintiff left the Santa Clarita home on the morning of February 1, 2013 -- but rather, to the extent it formed a part of and/or the basis for defendant's decision challenged here. Accordingly, plaintiff's objections to Paragraphs 24-28 and 30 of the Gonzales Declaration are overruled. Plaintiff's objection to Paragraph 29 of the Gonzales Declaration also is overruled. Even if, as plaintiff claims, this paragraph misstates other evidence, this is an argument that goes to the weight of the evidence proffered in the declaration, not its admissibility.

DISCUSSION

In the Motion, plaintiff contends that he meets the definition of "resident" set forth in the CWP statute at issue (discussed below), but that the VCSO has improperly supplanted its own definition of the term "resident" for that intended by the California Legislature. Plaintiff asserts that the VCSO errs in construing the CWP statute to require that, in order to satisfy the statutory residency requirement, an applicant have a status akin to that of a domiciliary under California law. Plaintiff further asserts that, by applying the CWP statute in an allegedly more stringent manner than permitted under California law, the VCSO has violated plaintiff's Second Amendment right to bear arms for self-defense purposes. Finally, plaintiff argues that, if the Court agrees the VCSO utilized an erroneous interpretation of the term "resident" in denying the Application, the VCSO should be precluded from any further consideration of the Application, must grant the Application, and issue him a CWP.

A. The Governing Statute

California Penal Code § 26150 governs CWP applications made to county sheriffs ("Section 26150"). Section 26150 provides that a county sheriff "may" issue a CWP to a person upon proof of four elements: (1) the applicant is of good moral character; (2) good cause exists for the issuance of the CWP; (3) the applicant is a resident of the county or the applicant's principal place of employment or business is within the county and the applicant spends a substantial period of time in that place of employment or business; and (4) the applicant has completed a course of training as specified in another statute. The first clause of element (3) is the provision at issue here.

By its terms, Section 26150 requires that an applicant must either be a "resident" of the county in which he submits his application ("prong 1") or be employed or conduct business within that county and spend a substantial portion of his time there performing such work ("prong 2").

Section 26150 does not contain a definition for "resident" (prong 1), nor is such a definition set forth in Part 6 (Control of Deadly Weapons), Title 4 (Firearms), Division 5 (Carrying Firearms), and Chapter 4 (License to Carry A Pistol, etc.) of the California Penal Code, of which Section 26150 is a part. Part 6 does contain a definition for prong 2, which is set forth in California Penal Code § 17020 and defines "principal place of employment or business" in a manner similar to the language of Section 26150, namely, by requiring that the applicant be "physically present in the jurisdiction during a substantial part of the applicant's working hours for purposes of that employment or business."

Plaintiff does not contend that he satisfies prong 2. Rather, he contends that he satisfies prong 1 -- *i.e.,* that he was a "resident" of Ventura County when he submitted the Application -- based upon his interpretation of the term "resident." Defendant contends that plaintiff is not a "resident" of Ventura County under its interpretation of the term, and plaintiff concedes that he does not fall within the scope of defendant's definition of "resident" for purposes of Section 26150. Thus, the threshold, and fundamental, issue presented by the Motion is whether the VCSO correctly interprets the term "resident" for purposes of CWP applications.[9]

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[9] To prevail on his Section 1983 claim, plaintiff must show that defendant VCSO, a municipal entity, caused plaintiff's injury pursuant to a municipal policy or custom. *See* Monell v. New York City Dep't of Social Servs., 436 U.S. 658, 690-91, 694, 98 S. Ct. 2018 (1978). The Monell "policy or custom" requirement applies both to claims for damages and those that seek only prospective relief. Los Angeles Cnty., Cal. v. Humphries, ___ U.S. ___, 131 S. Ct. 447, 451-54 (2010).

The Complaint does not include any allegations related to the Monell "policy or custom" requirement, and neither party has addressed the Monell issue in their briefing. However, the parties have stipulated as to defendant VCSO's definition of the term "resident," and there is no dispute that the Application was denied because plaintiff does not meet that definition. In addition, defendant has produced a copy of the first page of the VCSO's written "Policy" regarding the issuance of CWPs. Thus, the evidence before the Court appears to be sufficient to establish that there is no genuine dispute as to any material fact with respect to the Monell "policy or custom" requirement in this case and that the denial of the Application was pursuant to a VCSO policy.

B. The History Of The Term "Resident" As Used In Section 26150

In Smith v. Smith, 45 Cal. 2d 235, 288 P.2d 497 (1955), the California Supreme Court interpreted the term "resident" as used in a California statute related to a court's power to enter judgment against a California "resident" who is served with process while in another state. The defendant, against whom a default judgment had been entered following personal service upon him in New York, argued that the statute's use of the term "resident" did not mean domicile but, rather, meant "residence in fact." The California Supreme Court noted the word "resident" was not specifically defined within the statute at issue, or by case law interpreting that statute, and concluded that, in such a circumstance, its meaning must be determined by the court. 45 Cal. 2d at 239.

The Smith Court then observed:

> Courts and legal writers usually distinguish "domicile" and "residence," so that "domicile" is the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning, but which the law may also assign to him constructively; whereas "residence" connotes any factual place of abode of some permanency, more than a mere temporary sojourn. "Domicile" normally is the more comprehensive term, in that it includes both the *act* of residence and an *intention* to remain; a person may have only one domicile at a given time, but he may have more than one physical residence separate from his domicile, and at the same time.

Smith, 45 Cal. 2d at 239 (*citing* two secondary sources). The California Supreme Court noted, however, that "statutes do not always make this distinction in the employment of those words" and "frequently use 'residence' and 'resident' in the legal meaning of 'domicile' and 'domiciliary,'

and at other times in the meaning of factual residence or in still other shades of meaning." *Id.* The California Supreme Court then listed four California statutes in which "'residence' is used as synonymous with domicile." *Id.* at 239-40. Quoting from a state appellate court decision, the California Supreme Court concluded that "[r]esidence, as used in the law, is a most elusive and indefinite term," and its meaning in any particular statute must be determined by considering the purpose of the act. *Id.* at 240 (citation omitted). Examining the legislative history of the statute in question, the state high court determined that the term "resident," as used in the statute at issue before it, meant "domiciliary." *Id.* at 240-43.

The Court has not located, and the parties have not identified, any California decision determining the meaning of the term "resident" as used in Section 26150 and its predecessor statutes. Accordingly, as in Smith, the Court has looked to the legislative history of Section 26150 and its predecessors to see if the purpose of the residency requirement can be ascertained.

California's first CWP statute was enacted in 1917. Although it contained the present good moral character and good cause requirements, it did not contain any residency requirement. Stats. 1917, c. 145, p. 222, § 6. The statute was subsequently amended three times without the inclusion of a residency requirement. *See* Stats. 1923, c. 339, p. 698, § 8; Stats. 1947, c. 1281, p. 2793, § 1; and Stats. 1951, c. 1619, p. 3660, § 1.

In 1953, the precursor to Section 26150, *i.e.*, California Penal Code § 12050 ("Section 12050"), was enacted. Stats. 1953, c. 36, p. 656, § 1. As enacted, Section 12050 did not include a residency requirement. *Id.* However, in 1969, Senate Bill 1272 passed, which amended Section 12050 to add to the good moral character and good cause requirements for the issuance of a CWP the prong 1 requirement that the applicant be "a resident of the county." Stats. 1969, c. 1188, p. 2318, § 1. The bill was sponsored by the Attorney General of the State of California, and it was "intended to stop 'shopping' for permits throughout the state." (*See* Enrolled Bill Memorandum to Governor for SB 1272 dated August 20, 1969, signed by the Legislative Secretary with a

recommendation to "Approve.").

Before Senate Bill 1272 was signed by then Governor Ronald Reagan on August 30, 1969, the Attorney General and Assistant Attorney General of the State of California sent the Governor a memorandum on August 11, 1969, urging him to sign the bill into law and stating:

> The purpose of this bill is to curtail the present practice of "shopping" for concealed weapons permits throughout the state. It is now common practice for citizens to obtain these permits from law enforcement agencies in jurisdictions hundreds of miles from their residence.
>
> Senate Bill 1272 would require that an applicant obtain his permit from the sheriff or a chief of police within the county of his residence. It would also help to insure that permits are not granted improvidently. Law enforcement agencies near the residence of the applicant are obviously in a much better position to evaluate the background, reputation, and need for a weapon, of an applicant.
>
> Permits to carry concealed weapons should, of course, be restricted to those who are stable and have demonstrated a genuine need to carry a concealed weapon. This bill will help to insure that the issuance of these permits is confined to this class of persons.

Similarly, three days earlier on August 8, 1969, the District Attorney of Alameda County wrote to Governor Reagan on behalf of the California Peace Officers' Association and the District Attorneys' Association of California and urged the Governor to approve Senate Bill 1272, stating:

> This requirement of residency will assist law enforcement in effectively ascertaining just who within their county does possess such a permit, and these are

> the officials who are most likely to know whether the applicant does in fact possess that good moral character which must be demonstrated in order to obtain such a license.[10]

Thus, the addition of a residency requirement for the CWP statute was motivated by a desire to ensure that such permits were issued only to persons who actually lived within the counties in which the permits were sought. The bill's proponents believed that an adequate assessment of the good moral character and good cause requirements was possible only if an applicant resided within the county of application. Given the legislative purpose behind the imposition of the residency requirement effectuated by the passage of Senate Bill 1272, it appears that the statute's newly-added use of the term "resident" was intended to embody a concept akin to that of domiciliary.

That conclusion is buttressed by a subsequent amendment to Section 12050. In 1997, Senate Bill 146 passed and was signed into law. Stats. 1997, c. 408, § 1 (S.B. 146). Under preexisting law, a police chief could issue a CWP to both residents of his city and residents of the county at large. The amendment effected by Senate Bill 146 took away from city police chiefs the ability to issue CWPs to persons who did not reside in their cities but who resided in the county in which the city was located. The bill's sponsor noted his intent to keep "local control for issuing a [CWP] where it belongs." (*See* California Bill Analysis, S.B. 146 Assem., 7/08/1997, available on WESTLAW.) "The impetus for the bill was to prevent a northern California police chief from issuing permits to non-city residents who resided in the county." (*See* California Bill Analysis, A.B, 2022 Sen., 6/30/1998, available on WESTLAW.) Thus, California's Legislature amended the CWP statute for the purpose, once again, of ensuring that the local officials who assessed CWP

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[10] Neither party addressed the legislative history of Section 26150 in their briefing. The Court has conducted its own research on this issue, and copies of the legislative history documents for Senate Bill 1272 discussed herein were obtained by the Court from the California State Archives.

applications would be appropriately postured to do so, *because the applicants actually resided within their jurisdictions*.

Section 12050 was amended numerous times thereafter in respects not germane here. In 2008, Section 12050 was amended to include the alternate prong 2 "principal place of business or employment" language, as well as to, *inter alia*, impose a training requirement and require licensing authorities to publish and make available a written policy and give written notice regarding the action taken on an application or renewal application within specified time frames. Stats. 1998, c. 910, § 1 (A.B. 2022); 1998 Cal. Legis. Serv. Ch. 910 (A.B. 2022) (West). This amendment expanded the category of person able to apply for CWPs to include an alternative category, *i.e.*, those who were not domiciled within a county but who spent a substantial portion of their time working within the county. The California Legislature again evidenced a desire that CWPs be issued only to persons who actually were physically present within a county to a significant degree.

Section 12050 was amended four more times after that, again in ways not germane here. In 2010, Section 12050 was repealed and continued without substantive change, with its text split into separates statutes and renumbered, in a new Part 6 of the California Penal Code. The portions of Section 12050 relevant here were renumbered as Section 26150.

C. The VCSO's Application Of Section 26150 Was Reasonable.

It is clear that whether or not to issue a CWP pursuant to 26150 rests within the discretion of the local issuing authority, here, the VCSO. By its terms, the statute makes such discretion explicit: "when a person applies for a [CWP], the sheriff of a county *may* issue a license to that person upon proof of all of the following. . . . Section 26150(a) (emphasis added). Ninth Circuit and California courts that have considered this "may" language in Section 12050(a) -- the predecessor to Section 26150(a) -- have drawn the same conclusion, *to wit*, the statute "explicitly

grants discretion to the issuing officer to issue or not issue a license to applicants meeting the minimum statutory requirements." Erdelyi v. O'Brien, 680 F.2d 61, 63 (9th Cir. 1982) (holding that applicants for a CWP in California do not have a property interest in obtaining such permits that is protected by federal due process); *see also* Gifford v. City of Los Angeles, 88 Cal. App. 4th 801, 805, 106 Cal. Rptr. 2d 164 (2001) (observing that "Section 12050 gives 'extremely broad discretion' to the sheriff concerning the issuance of concealed weapons licenses") (citation omitted); Nichols v. Cnty. of Santa Clara, 223 Cal. App. 3d 1236, 1241, 273 Cal. Rptr. 84 (1990) ("In light of this statute's delegation of such broad discretion to the sheriff, it is well established that an *applicant* for a license to carry a concealed firearm has no legitimate claim of entitlement to it under state law, and therefore has no 'property' interest to be protected by the due process clause of the United States Constitution.").

As noted earlier, no case specifically interprets the meaning of "resident" as used in Section 26150, and the statute lacks its own definition. The VCSO, interpreting "resident" to mean a status akin to "domiciliary" under California law, concluded that plaintiff does not satisfy the Section 26150 residency requirement. The question before the Court is whether that application of Section 26150 was an unreasonable exercise of the VCSO's discretionary authority under the statute.

Plaintiff contends that, because Section 26150 was enacted many years after the California Supreme Court's decision in Smith, the California Legislature's use of the term "resident" in Section 26150 must be construed in accordance with the Smith decision. Plaintiff argues that, because Smith existed at the time Section 26150 was enacted, the California Legislature would have used the term "domiciliary" in Section 26150, rather than "resident," had it intended the statute to impose a residency requirement akin to the concept of domicile. Plaintiff asserts that the VCSO has acted wrongfully, and abused its discretion, in adopting an interpretation of "resident" for purposes of Section 26150 that is "akin to Domicile." (Motion at 1; *see also id.* at 4 -- "Defendant has changed the statutory definition of resident and instead uses Domicile"; Reply

at 2 -- "the Sheriffs' [*sic*] ruling goes far beyond the legislative intent and the Supreme Court ruling [in Smith] and seeks to amend the law to serve his own purpose [by] requiring what is essentially, proof of domicile.")

As the California Supreme Court made clear in Smith, a California statute's use of the term "resident," without definition, is ambiguous, because statutes frequently employ the terms "resident" or "residence" with the intended meaning of "domiciliary" or "domicile." 45 Cal. 2d at 239. Contrary to plaintiff's argument, the Smith decision did not establish a hard and fast rule that, henceforth, any undefined use of the term "resident" in a California statute must be deemed to unambiguously embody the concept of "residence," of which a person may have many, and not of "domicile," of which there may be only one. Indeed, the California Supreme Court concluded just the opposite, *to wit*, given the "elusive and indefinite" nature of the term "resident" when left undefined, its meaning in any given statute requires a consideration of the purpose of the statute. *Id.* at 240. Thus, it was not unreasonable for the VCSO to conclude that the term "resident," as used in Section 26150, was subject to interpretation.

As Smith establishes, there is a long history of California courts interpreting the term "resident" in California statutes to mean "domiciliary." For example, as noted in Smith, 45 Cal. 2d at 239, California Government Code §§ 243 and 244 set forth California's "basic rules" regarding domicile. These statutes are part of the portion of the California Government Code related to the "Sovereignty of the State" (Chapter 1) and its "Rights Over Persons" (Article 5). Section 243 states that, in law, every person has a "residence." Section 244 defines "residence" to mean, in effect, domicile, *to wit*, it is the "place where one remains when not called elsewhere for" work or other "special or temporary purpose," and there "can only be one residence," which "cannot be lost until another is gained." Given this broad provision, it seems that the California statutory scheme generally contemplates that a "resident" is a "domiciliary," absent an indication otherwise. *See* Fenton v. Bd. of Dirs. of the Groveland Cmty. Servs. Dist., 156 Cal. App. 3d 1107, 1113-15, 203 Cal. Rptr. 388 (1984) (affirming trial court's interpretation of the term "residing"

used in California Government Code § 61200 to mean "domiciled," relying on both Smith and the "basic rules" set forth in Government Code § 244).

Six years after Smith was decided, in Burt v. Scarborough, 56 Cal. 2d 817, 17 Cal. Rptr. 146 (1961), the California Supreme Court considered the use of the term "reside" in a venue provision -- California Code of Civil Procedure § 395. The state high court noted that there was a history of California courts construing the term to mean "domicile." *Id.* at 820-21. Significantly, as plaintiff does here, the appellant argued that, based on the issuance of the Smith decision, the state high court should adopt a construction based on Smith's description of the dual or multi-residence concept sometimes used in connection with "residence." *Id.* at 821. The California Supreme Court declined to do so, observing that: "The Smith case only reiterates the long-recognized rule that 'residence' is not necessarily a synonym for 'domicile' and that its meaning in a particular statute is subject to varying constructions." *Id.* The California Supreme Court noted that this point "was well recognized when the codes were adopted in 1872." (*Id.* (citation omitted).)

Plaintiff makes the same mistake as the appellant in Burt, namely, overstating the import of the Smith decision. Smith simply reiterated that "resident" is an "elusive and indefinite term," the meaning of which must be determined for each statute in which it is used based on legislative history or other indicia of meaning. *See* Kirk v. Bd. of Regents of Univ. of Calif., 273 Cal. App. 2d 430, 434-35, 78 Cal. Rptr. 2d 260 (1969) ("despite the fact that the terms residence and domicile are often used synonymously, residence is not a synonym for domicile, and its meaning in particular statutes is subject to differing construction, depending on the context and purpose of the statute in which it is used"); *see also, e.g.,* Milton H. Greene Archives, Inc. V. CMG Worldwide, Inc., 568 F. Supp. 2d 1152, 1179-81 (C.D. Cal. 2008) (*quoting* Smith and Kirk and looking to the purpose of and implementing regulations for California's Inheritance Law to determine that, under the law, "residence and domicile are synonymous"), *aff'd by* 692 F.3d 983 (9th Cir. 2012).

> In interpreting a statute where the language is clear, courts must follow its plain meaning. . . . However, if the statutory language permits more than one reasonable interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute. . . . In the end, we must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences. . . .

In re Marriage of Amezquita & Archuleta, 101 Cal. App. 4th 1415, 1419, 124 Cal. Rptr. 2d 887 (2002) (citation and internal punctuation omitted) (interpreting "residence" as used in California Family Code § 4962 to mean "domicile").

Following this admonition, the Court has analyzed the legislative history pertinent to Section 26150's use of the term "resident." That history evidences an intent that county sheriffs grant CWPs only to those persons who are physically present within their respective counties to an extent consistent with the concept of "domicile."[11] Based on the legislative history located, the Court concludes that it was reasonable for the VCSO to construe Section 26150 to impose a residency requirement "akin to domicile," as plaintiff puts it.[12] Accordingly, as that interpretation

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[11] That legislative intent also is demonstrated by the subsequent addition of the alternative prong 2 basis, which allows the issuance of a CWP to someone who has his principal place of business or employment in a county *only if* the applicant also spends a substantial period of time in that county engaged in such work or business. Thus, even if someone has his sole place of business or employment in a county, he cannot obtain a CWP unless he also is physically present within the county to a significant degree, because otherwise, the county sheriff lacks an adequate basis for assessing the additional good character and good cause requirements.

[12] As plaintiff concedes (Motion at 2 n.2), the VCSO's definition of "resident" is similar to the definition used in Government Code § 244, which defines the term to mean "domicile." Plaintiff's reliance (Motion at 4) on a California decision discussing former California Elections Code § 200 (now renumbered at Section 349) is puzzling. That statute, like California Government Code § 244, expressly defines "residence," for purposes of California voting matters, as "domicile."

appears to comport with California law, the fact of that interpretation alone cannot serve as the basis for finding the federal constitutional violation required for a cognizable Section 1983 claim.

The question then becomes whether the VCSO's application of Section 26150's residency requirement -- as it is interpreted by the VCSO -- is itself constitutionally violative in this case. As noted earlier, plaintiff has stipulated that he does *not* meet the VCSO's definition of "resident," and that stipulated fact has been made a part of a Court Order. However, in his Motion papers, plaintiff inconsistently argues that he meets the test for "domicile." Plaintiff argues that the VCSO was obligated to find that plaintiff was a domiciliary of Ventura County at the time of the Application, because he: owns a home there which "he returns to monthly"; has declared that his Ventura home is "*one of* [his] permanent homes" (emphasis added); intends to return to the Oxnard Home and "frequently" does; and has changed his DMV registration and voter registration to Ventura County. (Motion at 1-2; Plaintiff Decl. ¶2; Reply at 1, 4, 7.) Plaintiff asserts that, because he has purchased a home in Ventura County, registered to vote there, and declares himself to be a resident of that County, it is constitutionally violative for the "Government" to inquire any further. (Plaintiff Decl. ¶ 7.)

Plaintiff's argument -- that because he recently opted to change his voter registration to Ventura County, the site of one of his three "permanent" homes, he must be deemed a "resident" of Ventura County for purposes of Section 26150 -- runs counter to the legislative purpose behind the addition of the residency requirement to California's CWP statute. As discussed earlier, the evolution of the residency requirement through several statutory amendments makes plain the intent of the California Legislature to ensure that a CWP is issued by a county sheriff only to

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The fact that this statute includes its own definition of the term "residence," and thus there is no need to interpret the term, is of no moment here. As Smith shows, there are many California statutes that do not contain any such internal definition, yet the undefined use of the term "residence" means "domicile." In those instances in which a California statute lacks a definition for "resident," Smith instructs that it is incumbent upon courts to construe the meaning of the term utilizing legislative history and other tools of interpretation.

someone who actually lives within the county or who spends most of his working time within that county. Critically, plaintiff concedes that there is no county within California within which he spends the majority of his time and that the Oxnard Home is just one of multiple residences in three counties that he considers to be a "permanent" home.[13] Plaintiff, moreover, ignores the undisputed evidence that he did not change his voter registration until *after* the Application was submitted. Plaintiff also ignores his own admissions during his interview by Gonzales, in which plaintiff stated: he and his wife have divided their time between their Santa Clarita, Big Bear, and Oxnard homes; during the month in which the Application was submitted, plaintiff had spent "just several days" at the Oxnard Home; over the prior four months, plaintiff had spent more time at the Santa Clarita home than in Ventura County; it was "currently" "true" that plaintiff did not spend as much time in Ventura County as in Santa Clarita; and under the VCSO's definition of "resident," his place of residence varied "depending on the time of year." Plaintiff's statements to Gonzales also indicated that plaintiff had spent most of his Summer in 2012 at the Oxnard Home but, thereafter, had spent the bulk of his time at the Santa Clarita home.

Based on plaintiff's statements alone, a reasonable fact-finder could conclude that, at the time of the Application: plaintiff divided his time between his several homes; and while he and his wife apparently had an intent to move out of their Santa Clarita home and thereafter to utilize the Oxnard Home as their primary residence, plaintiff had not yet effectuated such a change of primary residences. Perhaps another fact-finder might conclude otherwise, but the conclusion drawn by Gonzales and the VCSO, based on the evidence of record, plainly was within the realm of reason. Given the substantial discretion accorded California sheriffs under Section 26150 -- indeed, encompassing the discretion to deny a CWP even when an applicant actually meets the residency and all other requirements (Erdelyi, 680 F.2d at 63) -- there is no basis for concluding that the VCSO abused its discretion and acted wrongfully in finding that, under Section 26150,

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[13] "Due to the variable nature of my personal and professional life, it is impossible to pick a County within California where I spend the majority of my time." (Plaintiff Decl. ¶ 6; *see also id.* ¶¶ 4-5.)

plaintiff did not satisfy the statutory residency requirement and, thus, could not be granted a CWP.

The Court acknowledges plaintiff's argument that the VCSO's interpretation of "resident" leaves him, in essence, as a man without a domicile, and thus, he is entitled to be the sole arbiter of the county in which he is a "resident" for Section 26150 purposes. (Reply at 4-5.) Plaintiff's argument, however, is contrary to fact and law. Under California law, it is a "well established principle that every person has in law a domicile." Walters v. Weed, 45 Cal. 3d 1, 7, 246 Cal. Rptr. 1149 (1988); *see also* California Government Code § 243. "To ensure that everyone has a domicile at any given time, the statutes adopt the rule that a domicile is not lost until a new one is acquired." *Walters*, 45 Cal. 3d at 7. The conclusion drawn by the VCSO that plaintiff was not domiciled within Ventura County did not leave plaintiff without a domicile; rather, the VCSO reasonably concluded that, as of the time of the Application, the Santa Clarita home was plaintiff's domicile.

For the foregoing reasons, the Court finds that plaintiff has not met his burden of showing that he is entitled to judgment as a matter of law with respect to the first issue presented by the Motion, *i.e.,* whether the VCSO erred in its interpretation and application of the Section 26150 residency requirement in connection with the denial of the Application. Because plaintiff has failed to do so, he is not entitled to summary judgment.[14]

D. Even If The VCSO Unreasonably Applied Section 26150's Residency Requirement, The Remedy Would Not Be An Automatic Award Of A Concealed Weapons License.

Plaintiff asserts that, if the Court agrees with him that the VCSO erred in its construction

[14] Due to its conclusion with respect to the residency requirement issue, the Court does not, and need not, reach the question of whether the denial of the Application violated plaintiff's Second Amendment rights -- a question that was not teed up by the Motion or the parties' briefing.

and application of the term "resident" in Section 26150, the VCSO is estopped from any further evaluation of the Application, must be ordered to grant the Application, and must issue plaintiff a CWP. As set forth above, the Court has ruled against plaintiff on the "resident" issue. But even if the Court had issued plaintiff a favorable ruling on that issue and/or has drawn an erroneous conclusion, the relief requested by plaintiff nonetheless is not available to him.

Section 26150 contains multiple requirements, in addition to residency, that must be satisfied before a CWP can issue, including training, good moral character, and good cause. There is no dispute that the VCSO has not assessed these requirements yet, because it found that the requirement of residency within Ventura County had not been met. The Court finds the VCSO's proffered reason for pretermitting the Section 26150 analysis in plaintiff's case at the residency step to be reasonable; certainly, plaintiff has not shown that it was not. It would be improper for this Court to dictate to a state municipal entity that it must disregard state law requirements and issue a CWP, even though all of the statutory requisites for it have not yet been found satisfied.

Moreover, plaintiff can show no harm if the requested relief fails to issue. It may be that, since the denial of the Application, circumstances have changed, and plaintiff, in fact, is now domiciled in Ventura County and can satisfy the residency requirement. If so, he may renew his Application and have the additional requisites (good cause, etc.) assessed. In Gifford, the California Court of Appeal considered an applicant's claim that he was entitled to have his CWP renewed *ad infinitum* based upon the terms of a stipulated judgment. The police department had denied a third renewal on the ground that the stipulated judgment did not relieve the applicant of the burden of showing "good cause" for the CWP as required by statute. The California Court of Appeal agreed and reversed a trial court decision ordering that the CWP be issued, stating:

> Our conclusion here is bolstered by the fact that Gifford suffers no legally cognizable harm through our decision. If he has good cause for a license, he may demonstrate it, and the Police Department must issue one to him pursuant to the

Lake judgment. If he does not have good cause he is not entitled to the license, and may not complain if he does not receive one.

88 Cal. App. 4th at 807. As in Gifford, if plaintiff meets the various statutory requisites for the issuance of a CWP, he may renew his Application and have it considered.

CONCLUSION

For the foregoing reasons, the Court concludes that plaintiff has not shown that he is entitled to summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure. Accordingly, the Motion must be, and is, DENIED.

IT IS SO ORDERED.

DATED: December 31, 2013

Margaret A. Nagle

MARGARET A. NAGLE
UNITED STATES MAGISTRATE JUDGE