Alan E. Wisotsky – State Bar No. 68051
James N. Procter II – State Bar No. 96589
Jeffrey Held – State Bar No. 106991
WISOTSKY, PROCTER & SHYER
300 Esplanade Drive, Suite 1500
Oxnard, California 93036
Phone: (805) 278-0920
Facsimile: (805) 278-0289
Email: jheld@wps-law.net

Attorneys for Defendant,
VENTURA COUNTY SHERIFF'S OFFICE
(erroneously sued as Ventura County Sheriffs Department)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SIGITAS RAULINAITIS,

Plaintiff,

v.

VENTURA COUNTY SHERIFFS DEPARTMENT,

Defendant.

CASE NO. CV13-02605-MAN

DEFENDANT VENTURA COUNTY SHERIFF'S OFFICE'S NOTICE OF HEARING OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed concurrently with request for judicial notice and proposed order]

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

TO PLAINTIFF, SIGITAS RAULINAITIS, AND TO HIS ATTORNEY OF RECORD, JONATHAN W. BIRDT:

PLEASE TAKE NOTICE that on March 11, 2014, at 10:00 a.m., or as soon thereafter as the matter may be called for hearing by the Honorable Margaret A. Nagle, defendant, VENTURA COUNTY SHERIFF'S OFFICE, will move Judge Nagle for an order granting it judgment on the pleadings or, in the alternative, for summary judgment, and entry of an order dismissing the action with prejudice.

This motion is based upon this notice of hearing, the within memorandum of points and authorities, and the concurrently filed request for judicial notice.

Defendant requests the Court to prejudicially dismiss the single cause of action pled against it, appearing on page 2, between lines 13 and 20 of the complaint, filed on April 15, 2013, claiming a Second Amendment violation of 42 U.S.C. §1983.

This motion is made following the conference of counsel pursuant to Central District Local Rule 7-3, which took place on January 23, 2014.

DATED: January 30, 2014

WISOTSKY, PROCTER & SHYER

By: _____
Jeffrey Held
Attorneys for Defendant,
VENTURA COUNTY SHERIFF'S OFFICE

WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

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OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

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I.

PROCEDURAL HISTORY

On April 15, 2013, the plaintiff filed a civil rights complaint under 42 U.S.C. §1983. The only defendant is the Ventura County Sheriff's Office (hereinafter referred to as "VCSO"). The complaint alleges a single claim based upon the VCSO's March 18, 2013, denial of plaintiff's application for a concealed weapons permit (hereinafter referred to as "CWP"). Plaintiff asserts that the denial of his CWP has deprived him of his Second Amendment right to keep and bear arms for the purpose of self-defense. Plaintiff seeks an order requiring the defendant to issue him a CWP, as well as an award of fees and costs pursuant to 42 U.S.C. §1988.

Defendant answered on May 6, 2013. The parties filed a joint case management statement and factual stipulation on May 28, 2013. On May 31, 2013, the Court issued a case management order finding that four facts were true. The plaintiff applied for but was denied a concealed weapons permit by the defendant because he is not a resident of Ventura County. VCSO defines "residence" as the county in which a person spends most of his or her time and conducts most of his or her activities. VCSO determined that plaintiff did not meet the standards for this definition. The plaintiff agrees that he does not meet the terms of this definition. Finally, plaintiff owns and maintains a home in Ventura County as well as homes in San Bernardino and Los Angeles counties.

Plaintiff moved for summary judgment on June 3, 2013. In support, he filed an opening brief and his unsigned declaration. The original signed declaration was filed on June 5, 2013.

Defendant filed opposition to the motion on June 14, 2013. Included were a responsive brief, the declaration of Deputy Daniel Gonzales, and ten exhibits. On June 17, 2013, a stipulation to remove Exhibits C through J from the Court's public website was filed, which allowed them to be filed under seal. The Court issued an

order granting the requested relief on June 17, 2013, and Exhibits C through J were filed under seal on June 19, 2013.

The plaintiff filed a reply memorandum on June 19, 2013, including an objection to the Gonzales declaration. The defendant filed a reply brief on June 28, 2013. The plaintiff filed a sur-reply brief on the same date.

The Court filed a comprehensive order denying the motion for summary judgment, with a detailed opinion. The order was filed as website docket entry 28 on December 31, 2013. The order found that the defendant had acted within its reasonable discretion under the law in denying plaintiff the CWP.

Based upon this state of the pleadings, especially the analysis and findings in the Court's order denying the plaintiff's summary judgment motion, the defendant now moves the Court for judgment on the pleadings in its favor or, in the alternative, for entry of summary judgment. The order denying plaintiff's summary judgment motion now partially comprises the pleadings and admits of only one outcome – entry of judgment in favor of the defendant.

II.

ENABLING AUTHORITY

After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings. Fed. R. Civ. P. 12(c). A Rule 12(c) motion may be joined with any other applicable motion. Fed. R. Civ. P. 12(g).

Analysis under Rule 12(c) requires the court to determine whether the facts entitle the plaintiff to a legal remedy. There must be sufficient factual matter to state a claim for relief which is plausible on its face. *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012). Conclusions and formulaic recitations are not sufficient and are discounted because they are not entitled to the presumption of truth when determining whether a claim is plausible. *Id.* A claim only has plausibility when the court can draw a reasonable inference that the defendant is liable for the misconduct alleged. *Id*. at 1109. Determining whether a complaint states a plausible claim for

WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

relief is a context-specific task which requires the court to draw upon its judicial experience, knowledge, and common sense. *Id.*

III.

STATEMENT OF FACTS

This statement of facts is drawn from the Court's order denying the plaintiff's motion for summary judgment, filed as website docket entry 28. After having reviewed all of the factual submissions and arguments of the parties on summary judgment, the Court synthesized the relevant factual data.

The order denying plaintiff's motion for summary judgment (hereinafter referred to as "the order") noted that a number of facts have been deemed admitted in this case. The CWP was denied on the ground that plaintiff was not a Ventura County resident. He did not meet the VCSO's definition of a resident because he did not spend most of his time or conduct most of his activities within Ventura County. He does own a home in Ventura County as well as two other counties. Order, p. 5:12-17.

Plaintiff considers his Oxnard home to be "one of" his permanent homes and a place to which he always intends to return and frequently does return. Order, p. 5:26, p. 6:1. Plaintiff owns homes in two other counties and frequently travels for business and pleasure. Order, p. 6:2. There is no single county in California in which plaintiff spends the majority of his time. Order, p. 6:3-4.

On January 15, 2013, plaintiff submitted his CWP application to the VCSO. Order, p. 6:16. Deputy Gonzales was responsible for investigating the application. Order, p. 6:17.

Deputy Gonzales interviewed the plaintiff on February 20, 2013. Order, p. 6:18. During the interview, the plaintiff stated that his office was in Burbank, and most of his work was performed in multiple California counties. Order, p. 6:18, 21, p. 7:1-2. Plaintiff further stated during the interview that his wife lived in their Santa Clarita home, which is located in Los Angeles County. Order, p. 7:3.

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ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

Plaintiff told Deputy Gonzales that he and his wife went "a lot" to their home in Big Bear, located in San Bernardino County. Order, p. 7:-8. 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 spent more time in Santa Clarita in Los Angeles County, where he worked. Order, p. 7:8-10.

Deputy Gonzales mentioned that his investigation so far indicated that plaintiff spent more time in Santa Clarita than in Ventura County. The plaintiff responded, "I would say over the past four months that's true …." Order, p. 7:11-13. Plaintiff said that he was registered to vote in Ventura County and that he had changed his address with the Department of Motor Vehicles. Order, p. 7:14-16.

Deputy Gonzales said that he would have to investigate further because it appeared that plaintiff did not spend as much time in Ventura County as he did in Los Angeles County. Order, p. 7:18-19. Plaintiff answered, "Like I said, currently that would be true." Order, p. 7:20. He also said, "I can't say that's not true at the current moment." Order, p. 7:21-22.

During the time Deputy Gonzales conducted his investigation into plaintiff's CWP application, plaintiff's driver's license listed his place of employment as a Burbank address. Order, p. 8:6-7. California Department of Motor Vehicles records reflected that two of plaintiff's cars were registered to his Santa Clarita home address, and his other two cars were registered to his Burbank work address. Order, p. 8:8-9.

Gonzales also learned that about a year and a half earlier, plaintiff had sued Los Angeles County for denying him a CWP. Applying for a CWP in another county, plaintiff necessarily would have claimed that he was a resident of that county or had his principal place of business or employment there. Order, p. 8:14-18. Gonzales further confirmed that plaintiff had not registered to vote in Ventura County until the same day he was interviewed by Deputy Gonzales for the CWP, February 20, 2013. Before that date, plaintiff was not registered to vote in Ventura County. Order, p. 8:20-21, p. 9:1.

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ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

To address the residency issue, Gonzales conducted surveillance of plaintiff's Santa Clarita home on January 28, 2013. Gonzales observed plaintiff leave the Santa Clarita home at 6:43 a.m., load a cooler into his Infiniti parked in the driveway, and then drive to his Burbank office address. Order, p. 9:3-6. A few days later, a VCSO reserve deputy conducted similar surveillance and reported to Gonzales that on February 1, 2013, at 6:42 a.m., he observed plaintiff leaving the Santa Clarita home. Order, p. 9:6-9.

Deputy Gonzales also interviewed the property manager for the condominium complex in which the Oxnard home is located. He was told that the property manager was told by plaintiff's wife that she and plaintiff were renting the condominium to their son. Order, p. 9:9-12.

Deputy Gonzales concluded that it was not reasonable to conclude that plaintiff was a Ventura County resident. The application was denied on that ground. Order, p. 9:14-16.

IV.

THE ISSUANCE OF A CONCEALED WEAPONS PERMIT IS AN IMMUNE DISCRETIONARY ACT

The Ninth Circuit stated:

> We affirm because Erdelyi did not have a property or liberty interest in obtaining an initial license to carry a concealed weapon. ¶ … Section 12050 [recodified without substantive change in 2010 as Penal Code §26150] 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).

In *Erdelyi*, the plaintiff was an employee of a licensed private investigator, though not herself a licensed private investigator. She had not been issued a concealed weapons license in the past. She applied to the police chief for a license to

carry a concealed weapon. The plaintiff brought the suit in federal district court under 42 U.S.C. §1983. The suit alleged that the police chief violated her constitutional rights to due process and equal protection. The district court granted summary judgment for the defendant.

The Ninth Circuit first addressed property interests. Property interests protected by the Due Process Clause of the Fourteenth Amendment do not arise whenever a person has only an abstract need, desire, or unilateral expectation of a benefit. 680 F.2d at 63. Rather, protectable property interests arise from legitimate claims of entitlement defined by existing rules or understandings which stem from an independent source, such as state law. *Id.*

Concealed weapons are closely regulated by the State of California. Whether the statute creates a property interest in concealed weapons licenses depends largely upon the extent to which the statute contains mandatory language which restricts the discretion of the issuing authority to deny a license to applicants who claim to meet the minimum eligibility requirements. Former §12050 explicitly granted discretion to the issuing officer to issue or not to issue a license to applicants meeting the minimum eligibility requirements. *Id.*

Section 26150(a) expressly provides that the sheriff of a county "may issue a license." The word "may" in a statute dealing with an agency's power normally confers a discretionary power, not a mandatory obligation, unless the legislative intent evidences a contrary purpose. *Dalton v. United States*, 816 F.2d 971, 973 (4th Cir. 1987). State law is to the same effect: The word "shall" is ordinarily used in laws, regulations, or directives to express what is mandatory, whereas "may" is usually permissive, and the Legislature is presumed to be well aware of this distinction. *Hogya v. Superior Court*, 75 Cal.App.3d 122, 133 (1977).

If state law gives the issuing authority broad discretion to grant or deny license applications in a closely regulated field, initial applicants do not have a property right in such licenses which is constitutionally protected by the Fourteenth Amendment.

WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

Erdelyi, 680 F.2d at 63. The Ninth Circuit concluded, "Erdelyi therefore did not have a property interest in a concealed weapons license." *Id*.

The *Erdelyi* court then turned to the argument that there was a liberty interest in a concealed weapons permit. "Although liberty is a broad and majestic term, … it is not all-inclusive." It includes "the right to be free from actions which impose a stigma or other disability that forecloses one's freedom to take advantage of other employment opportunities." *Id*.

The *Erdelyi* plaintiff could not argue that she had an absolute liberty to carry a concealed weapon. *Id*. She claimed that the police chief's denial of her concealed weapons permit foreclosed her freedom to work as a criminal defense investigator because it was dangerous for her to undertake that work without carrying a concealed weapon. Rejecting this contention, the Ninth Circuit held that the denial was not based upon charges of dishonesty, crime, or immorality to which any stigma attached. It is undisputed that many people engage in the occupations of private investigator or criminal defense investigator without a concealed weapons license.

Although the plaintiff might not have been able to pursue her profession in precisely the way she would have liked, she had not been entirely, or even substantially, excluded. Further, no stigma attaches to the denial of an application to carry a concealed weapon. Therefore, the plaintiff was held not to have had a liberty interest in obtaining a concealed weapons license. *Erdelyi*, 680 F.2d at 63-64.

In *Association of Orange County Deputy Sheriffs v. Gates*, 716 F.2d 733 (9th Cir. 1983), former deputy sheriffs retired under medical disability brought a civil rights action alleging that they had been unconstitutionally deprived of permits allowing them to carry concealed, loaded weapons. The Central District granted summary judgment against the deputies. The Ninth Circuit unanimously affirmed. The holding was that the statute providing for issuance of certificates allowing retired peace officers to carry concealed, loaded weapons did not create an entitlement sufficient to warrant constitutional protection.

WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

A property interest in a benefit protected by the Due Process Clause results from a legitimate claim of entitlement created and defined by an independent source, such as state or federal law. A reasonable expectation of entitlement is determined mostly by the language of the statute and the extent to which the entitlement is couched in mandatory terms. *Gates*, 716 F.2d at 734.

The only restrictions imposed by the relevant statutes in that case were that the agency from which the officer retires issue a certificate indicating whether or not the retired officer may carry a concealed weapon and that the privilege of carrying a loaded concealed weapon might be denied or revoked for good cause. But the Ninth Circuit held that the requirement of good cause prior to the denial of a concealed weapons permit does not create a constitutionally protected liberty interest "because it is not a significant substantive restriction on the basis for the agency's action." *Gates* at 734.

The *Gates* court also rejected the argument that the denial of the permit caused a loss of liberty without due process of law in that the plaintiffs' reputations must have been damaged, foreclosing alternative sources of employment. *Id*. Unpublicized accusations do not infringe constitutional liberty interests. By definition, they cannot harm good name, reputation, honor, or integrity. When reasons are not given, inferences drawn from the denial of the concealed weapons request are insufficient to implicate liberty interests. The *Gates* court also wrote, "The right of a retired deputy sheriff to carry concealed weapons is not so fundamental as to warrant constitutional protection apart from its status under state law." *Id*. at 735, n.4.

The California Court of Appeal has analyzed the Ninth Circuit's holdings and found them to be well reasoned. The issue was taken up, for example, in *Gifford v. City of Los Angeles*, 88 Cal.App.4th 801 (2001). The plaintiff was an applicant for a concealed firearm license which the Los Angeles Police Department refused to issue. The applicant sought mandate from the superior court and obtained it. But the

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appellate court unanimously reversed, reinstating the decision of the agency to deny the concealed weapons permit.

The *Gifford* court explained:

> [Penal Code] Section 12050 gives extremely broad discretion to the sheriff concerning the issuance of concealed weapons licenses … and explicitly grants discretion to the issuing officer to issue or not issue a license to applicants meeting the minimum statutory requirements.

Gifford, 88 Cal.App.4th at 805 [citing *Erdelyi*].

Another panel of the California Court of Appeal explained:

> In light of this statute's [Penal Code §12050] 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.

Nichols v. County of Santa Clara, 223 Cal.App.3d 1236, 1241 (1990), citing *Erdelyi* and *Gates* with approval.

Former Penal Code §12050(a) was textually indistinguishable from current Penal Code §26150. Former §12050 provided:

> The sheriff of a county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying satisfies any one of the conditions specified in subparagraph (D) and has completed a course of training as described in subparagraph (E), may issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person.

Former Penal Code §12050, as quoted in *Gifford, supra*, 88 Cal.App.4th at 803.

WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

The Ninth Circuit's derivation of the conclusion that §12050 "explicitly grants discretion to the issuing officer to issue or not issue a license to applicants meeting the minimum statutory requirements" (680 F.2d at 63) was predicated upon the same permissive term "may" carried over into the recodified statute, Penal Code §26150.

Based upon these authorities, the Sheriff has the discretion *not* to issue a license to carry a concealed firearm even to applicants who meet *all* of the minimum statutory requirements. Even if plaintiff in this matter were a Ventura County resident, he would have no constitutionally protected right vindicatable in a §1983 action. This rule of law moots the residency discussion.

V.

EVEN IF THE SHERIFF HAD A CONSTITUTIONALLY ENFORCEABLE OBLIGATION TO EVALUATE THE STATUTORY CRITERIA, THAT EXTREMELY BROAD DISCRETION HAS BEEN HELD BY THIS COURT TO HAVE BEEN REASONABLY EXERCISED IN THIS INSTANCE

The statutory addition of a residency requirement for the concealed weapons permit statute was motivated by a desire to ensure that such permits were issued only to persons who actually lived within the counties within which the permits were sought. Order, p. 15:5-7. Considering 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 a domiciliary. Order, p. 15:9-12.

The California Supreme Court held that California statutes frequently use the words "residence" or "resident" to mean "domicile" or "domiciliary." *Smith v. Smith*, 45 Cal.2d 235, 239 (1955); Order, p. 12:26-28. Examining the legislative history of the statute in question, the California Supreme Court ruled that the term "resident" as used in the statute at issue before it meant "domiciliary." *Smith* at 240-243. There is

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ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

no California decision determining the meaning of the term "resident" as used in §26150 of the Penal Code or any of its predecessor versions. Order, p. 13:10-12. It is therefore necessary to examine the legislative history of §26150 and its predecessor iterations to see if the purpose of the residency requirement can be ascertained. Order, p. 13:10-13.

The conclusion that the concealed weapons permit statute's use of the term "resident" is intended to embody a concept akin to that of a domiciliary is fortified by a subsequent amendment to §12050. In 1997, Senate Bill 146 passed and was signed into law. Under preexisting law, a police chief could issue a concealed weapons permit to both residents of his city and residents of the county at large, but the amendment effected by Senate Bill 146 took away from police chiefs the ability to issue concealed weapons permits to persons who did not reside in their cities but, rather, resided in the county in which the city was located. The bill's sponsor noted his intent to keep "local control for issuing a concealed weapons permit where it belongs." Order, p. 15:14-20. The impetus for the bill was to prevent a Northern California police chief from issuing concealed weapons permits to non-city residents who resided in the county. Order, p. 15:21-22.

California's Legislature therefore amended the concealed weapons permit statute for the purpose, once again, of ensuring that local officials who assessed concealed weapons permit applications would be appropriately postured to do so "*because the applicants actually resided within their jurisdictions*." Order, p. 15:23-24, p. 16:1-2 (italics in original text of Court's order).

When the statute was amended in 2008, an alternate prong was added to increase the number of persons able to apply for concealed weapons permits – those who were not domiciled within a county but who spent a substantial portion of their time working within the county. The Legislature again evidenced a desire that concealed weapons permits be issued only to persons who were actually physically present within a county to a significant degree. Order, p. 16:5-14.

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300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

At page 16, line 21, of the order, the Court stated: "The VCSO's Application of Section 26150 Was Reasonable."

It is clear that whether or not to issue a concealed weapons permit pursuant to Penal Code §26150 rests within the discretion of the local issuing authority, here, the Ventura County Sheriff's Office. Order, p. 16:23-24. By its terms, the statute makes such discretion explicit: "when a person applies for a concealed weapons permit, the sheriff of a county *may* issue a license to that person upon proof of all of the following ...." Order, p. 16:23-26 (italics in original text of Court's order). Both the Ninth Circuit and California courts have drawn the same conclusion, namely, that the statute "explicitly grants discretion to the issuing officer to issue or not issue a license to applicants meeting the minimum statutory requirements." Order, p. 16:26-28, p. 17:1-2.

The VCSO has interpreted "resident" to mean a status akin to "domiciliary" under California law and concluded that plaintiff does not satisfy the §26150 residency requirement, so that the question before the Court now is whether that application of §26150 was an unreasonable exercise of the VCSO's discretionary authority under the concealed weapons permit issuance statute. Rejecting plaintiff's argument that the state Supreme Court decision in *Smith* established a hard and fast rule that 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, this Court explained:

> 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

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> the VCSO to conclude that the term "resident," as used in Section 26150, was subject to interpretation.

Order, p. 18:8-15.

As the state Supreme Court decision in *Smith* proves, there is a long history of California courts interpreting the term "resident" in state statutes to mean "domiciliary." Order, p. 18:17-18. Section 244 of the Government Code provides that there can be only one residence, which cannot be lost until another is gained. Order, p. 18:22-25. "Given this broad provision, it seems that the California statutory scheme generally contemplates that a 'resident' is a 'domiciliary,' absent an indication otherwise." Order, p. 18:25-27.

Another state Supreme Court decision, *Burt v. Scarborough*, 56 Cal.2d 817, 820-821 (1961), stated that there was a history of California courts construing the term "reside" to mean "domicile." The appellant in the *Burt* case argued that the high court should adopt a construction based upon the *Smith* court's description of the dual or multi-residence concept sometimes used in connection with defining a residence. But the 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." Order, p. 19:4-14.

This Court stated:

> 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.

Order, p. 19:17-20.

This Court explained:

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ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

> 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." **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.** Accordingly, as that interpretation 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.

Order, p. 20:14-19, p. 21:1-2 (bolded emphasis supplied).

The Court then turned to the application of the facts to that reasonable interpretation of the statute by the defendant. This Court found a contradiction in plaintiff's arguments noteworthy. Plaintiff has stipulated that he does not meet the VCSO's definition of "resident," and that stipulated fact was made a part of the court order. Yet, inconsistently, plaintiff argued in his motion papers that he *did* meet the test for domicile. Order, p. 21:6-8. Plaintiff argued that because he bought a home in Ventura County and, post interview, registered to vote in Ventura County, it was constitutionally violative of the government to inquire further. Order, p. 21:13-16. This Court stated:

> 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

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OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

> 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 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. 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."

Order, p. 21:18-23, p. 22:1-12 (emphasis in original order).

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ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

The order went on to conclude the case in favor of the defendant, writing:

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

Order, p. 22:20-25, p. 23:1 (bolded emphasis supplied).

This Court then determined that "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**." Order, p. 23:10-13 (bolded emphasis supplied). It was for these reasons that the order concluded at page 24, lines 3-5, that:

> 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.

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WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920

VI.

ARGUMENT

Based upon the intensive factual submissions of the parties and the intense legal analysis embodied in the Court's order of December 31, 2013, only two conclusions are possible. The Sheriff's Office had immune discretion to issue or not issue any applicant a concealed weapons permit which renders it not susceptible to suit under the federal civil rights statute. See, for example, Order, p. 22:22-24 – Sheriff has discretion to deny a concealed weapons permit even when an applicant actually meets the residency and all other requirements. Second, even if the Sheriff had a duty to issue a concealed weapons permit to an applicant who met all four requirements of the concealed weapons permit statute (residency, firearms training course, good moral character, and good cause), that discretion was not abused here. The pleadings now contain this Court's determination to that effect: "[T]he conclusion drawn by Gonzales and the VCSO, based on the evidence of record, plainly was within the realm of reason." Order, p. 22:20-22. The concealed weapons permit statute "gives extremely broad discretion to the Sheriff concerning the issuance of concealed weapons licenses." *Gifford*, 88 Cal.App.4th at 805. Given this state of the law and the well-considered discussion and analysis of the Court's order digesting the factual submissions for plaintiff's summary judgment motion, the action should be dismissed, as there was no constitutional violation cognizable under the federal civil rights statute.

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VII.

CONCLUSION

It is therefore respectfully requested that this Court grant this motion for judgment on the pleadings or, in the alternative, for summary judgment, in favor of the defendant, dismissing the action with prejudice.

DATED: January 30, 2014

WISOTSKY, PROCTER & SHYER

By: _____
Jeffrey Held
Attorneys for Defendant,
VENTURA COUNTY SHERIFF'S OFFICE

WISOTSKY, PROCTER & SHYER
ATTORNEYS AT LAW
300 ESPLANADE DRIVE, SUITE 1500
OXNARD, CALIFORNIA 93036
TELEPHONE (805) 278-0920