

O

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

**SIGITAS RAULINAITIS,**

**Plaintiff,**

**v.**

**VENTURA COUNTY SHERIFFS  
DEPARTMENT,**

**Defendant.**

**NO. CV 13-2605-MAN**

**ORDER GRANTING AND DENYING  
MOTIONS FOR SUMMARY JUDGMENT AND  
DISMISSING CASE**

Presently before the Court are the parties' respective motions for summary judgment.

**PROCEDURAL HISTORY**

On April 15, 2013, plaintiff Sigitis Raulinaitis 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" and hereafter referenced as 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. In the Complaint, 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,

1 plaintiff seeks an order requiring the VCSO to issue to him a permit to carry a concealed weapon,  
2 as well as an award of costs and attorney's fees pursuant to 42 U.S.C. § 1988. On May 6, 2013,  
3 defendant VCSO filed an Answer to the Complaint. On May 9, 2013, the parties consented to  
4 proceed before the undersigned pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73(b).

5  
6 On May 28, 2013, the parties filed a Joint Case Management Statement And Factual  
7 Stipulation, which set forth some of their respective legal and factual contentions, several  
8 stipulated facts, and two disputed legal issues. Based on the parties' express factual stipulations,  
9 the Court issued a Case Management Order on May 31, 2013, which found that the following facts  
10 are deemed admitted by all parties:

- 11
- 12 a. Plaintiff applied for and was denied a permit for a concealed weapon by  
13 Defendant, because he was not a resident of Ventura County.
  - 14
  - 15 b. Defendant defines residence as: The County in which a person spends most  
16 of his or her time and conducts most of his or her activities.
  - 17
  - 18 c. Defendant determined that Plaintiff did not meet the standards for this  
19 definition, and Plaintiff agrees that he does not meet the terms of this  
20 definition.
  - 21
  - 22 d. Plaintiff owns and maintains a home in Ventura County. Plaintiff also  
23 maintains homes in Los Angeles and San Bernardino County.
  - 24

25 (Docket No. 12; see Docket No. 11 at 2, in which the parties explicitly stipulate to these same  
26 factual matters.)

27  
28 On June 3, 2013, plaintiff filed a motion for summary judgment, pursuant to Rule 56 of the

1 Federal Rules of Civil Procedure, an opening brief, and an unsigned declaration of plaintiff ("First  
2 Motion"). On June 5, 2013, plaintiff lodged his original signed declaration dated June 3, 2013  
3 ("First Plaintiff Decl.).

4  
5 On June 14, 2013, defendant filed an opposition to the First Motion, which included: a  
6 responsive brief; the May 2013 declaration of Daniel Gonzales, a VCSO deputy sheriff ("First  
7 Gonzales Decl."); and Exhibits A-J (collectively, the "First Opposition"). On June 17, 2013, the  
8 parties filed a stipulation to remove Exhibits C through J of the First Opposition from the Court's  
9 public website and to allow them to be filed under seal. On June 17, 2013, the Court issued an  
10 Order granting the requested relief and Exhibits C through J were filed under seal on June 19,  
11 2013.<sup>1</sup>

12  
13 On June 19, 2013, plaintiff filed a reply, which contained a one-page Objection to the  
14 Gonzales Declaration ("Reply"). On June 28, 2013, defendant filed a reply. On the same day,  
15 plaintiff filed a sur-reply.

16  
17 On December 31, 2013, the Court issued an Order that denied the First Motion ("First SJ  
18 Order"). In brief, the Court found that plaintiff had not met his burden of showing he was entitled  
19 to judgment as a matter of law with respect to the issue presented by the First Motion, *i.e.*,  
20 whether the VCSO erred in its interpretation and application of the California Penal Code § 26150  
21 residency requirement (discussed in detail below) in connection with the denial of plaintiff's  
22 application for a permit to carry a concealed weapon. The First SJ Order did not reach or resolve  
23 the question of whether the denial of plaintiff's application violated his Second Amendment rights,

24  
25 \_\_\_\_\_  
26 <sup>1</sup> The Court granted the parties' request to file these exhibits under seal because some  
27 of them contained information that could be deemed private or sensitive, such as personal  
28 information about plaintiff and his wife, including telephone numbers, addresses, copy of driver's  
license and other DMV information, vehicle records, etc. However, not all of the information  
included within the documents filed under seal is private or sensitive, and thus, the non-private  
matters may be referenced herein.

1 because that issue was not presented by the First Motion and the parties' related briefing.

2  
3 Plaintiff did not seek reconsideration of the First SJ Order. Although the Court expressly  
4 afforded plaintiff the opportunity to file a belated motion for reconsideration, plaintiff advised the  
5 Court that he did not wish to do so. (See Docket No. 50.)

6  
7 Following the issuance of the First SJ Order, various proceedings ensued. Defendant filed  
8 a motion for judgment on the pleadings, which ultimately was withdrawn. Plaintiff filed an ex  
9 parte application for a temporary restraining order, which the Court denied on April 23, 2014. As  
10 discussed below, plaintiff filed a second application with the VCSO for a permit to carry a  
11 concealed weapon, and that second application was denied.

12  
13 On May 12, 2014, plaintiff filed a second motion for summary judgment ("Second Motion").  
14 The Second Motion was accompanied by a Statement of Uncontroverted Facts and Conclusions  
15 of Law and another declaration by plaintiff, which is dated May 12, 2014 ("Second Plaintiff  
16 Decl.").<sup>2</sup> On June 3, 2014, in opposition to the Second Motion, defendant filed a memorandum  
17 of points and authorities ("Second Opposition") accompanied by exhibits -- which include as  
18 Exhibit A a declaration by Deputy Sheriff Gonzales dated May 19, 2014 ("Second Gonzales Decl.")  
19 and as Exhibit B a declaration by Deputy Sheriff Gonzales dated May 19, 2014 ("Third Gonzales  
20 Decl.") -- as well as a Statement of Genuine Disputes in compliance with Local Rule 56-2.

21  
22 On June 3, 2014, defendant filed a motion for summary judgment, which included a  
23 memorandum of points and authorities with appended exhibits, including the Second and Third  
24 Gonzales Declarations (collectively, Defendant's Motion"), and a Statement of Uncontroverted  
25 Facts and Conclusions of Law. On June 3, 2014, plaintiff filed an Opposition to Defendants'

---

26  
27 <sup>2</sup> Defendant promptly filed an Objection to the Second Motion, asking that it be  
28 stricken (see Docket No. 54). While the Court is sympathetic to the concerns raised by defendant,  
it declines to strike the Second Motion and will resolve the Second Motion on its merits.

1 Motion.<sup>3</sup> Plaintiff did not file a Statement of Genuine Disputes as required by Local Rule 56-2.  
2 Accordingly, on July 23, 2014, the Court issued an Order that apprised the parties as follows:

3  
4 [B]ecause plaintiff did not file and serve, along with his opposition to defendant's  
5 motion for summary judgment, "a separate document containing a concise  
6 'Statement of Genuine Disputes' setting forth all material facts as to which it is  
7 contended there exists a genuine dispute necessary to be litigated," in accordance  
8 with Local Rule 56-2, the Court "may assume that the material facts as claimed and  
9 adequately supported by [defendant in his "Statement Of Uncontroverted Facts And  
10 Conclusions of Law . . ." filed on June 3, 2014; Docket No. 61] are admitted [by  
11 plaintiff] to exist without controversy," in accordance with Local Rule 56-3.  
12

13 On August 25, 2014, plaintiff filed a Notice of Decision, which asks the Court to take notice,  
14 in connection with the pending Second Motion and Defendant's Motion, of a decision issued that  
15 day by the United States District Court for the Eastern District of California in *Silvester v. Harris*,  
16 11-CV-2137-AWI SAB. On August 26, 2014, the Court issued an Order regarding the Notice of  
17 Decision, stating that "[i]f plaintiff believes that the *Silvester* decision is relevant to the Court's  
18 consideration of the pending summary judgment motions in this case, plaintiff shall file and serve  
19 a brief explaining the relevancy of the decision within ten (10) days of this Order" and affording  
20 defendant time to file a reply. In e-mail correspondence with the Court's Deputy Clerk, plaintiff's  
21 counsel indicated that he declined to file such a brief. Nonetheless, the Court has carefully  
22 reviewed and considered the August 25, 2014 decision in the *Silvester* case.  
23

24 On September 3, 2014, plaintiff filed another Notice of Decision, which asks this Court to  
25

---

26 <sup>3</sup> Plaintiff labeled this filing (Docket No. 65) both an Opposition to Defendant's Motion  
27 and a Reply Brief regarding the Second Motion. However, on June 2, 2014 (Docket No. 56), the  
28 parties stipulated that they waived filing reply briefs and would not file reply memoranda.  
Accordingly, the Court will treat plaintiff's June 3, 2014 filing as solely an Opposition to  
Defendant's Motion.

1 take judicial notice of a Report and Recommendation which issued that day in a case in this  
 2 district entitled *Jonathan Birdt v. San Bernardino Sheriff's Department*, EDCV 13-00673-VAP (JEM).  
 3 On September 4, 2014, a member of the Clerk's Office struck the Notice of Decision for procedural  
 4 deficiencies. Nonetheless, pursuant to Rule 201 of the Federal Rules of Evidence, the Court has  
 5 taken judicial notice of the September 3, 2014 Report and Recommendation in the *Birdt* case, as  
 6 that document is a judicial record filed in this district.

### 7 8 **THE APPLICABLE LEGAL STANDARDS**

9  
 10 Summary judgment is appropriate when the evidence demonstrates that there is no  
 11 genuine dispute as to any material fact and that the moving party is entitled to judgment as a  
 12 matter of law. Fed. R. Civ. P. 56(a). The moving party has the burden of establishing the  
 13 absence of a triable issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 242, 323 (1986).  
 14 The "test is whether a 'reasonable jury viewing the summary judgment record could find by a  
 15 preponderance of the evidence that the plaintiff is entitled to a favorable verdict.'" Pyramid  
 16 Technologies, Inc. v. Hartford Ca. Ins. Co., 752 F.3d 807, 818 (9th Cir. 2014) (citation omitted).

17 A moving party without the ultimate burden of persuasion at trial may carry its initial burden of  
 18 production by one of two methods. Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc., 210 F.3d  
 19 1099, 1106 (9th Cir. 2000). "The moving party may produce evidence negating an essential  
 20 element of the nonmoving party's case, or, after suitable discovery, the moving party may show  
 21 that the nonmoving party does not have enough evidence of an essential element of its claim or  
 22 defense to carry its ultimate burden of persuasion at trial." *Id.* The moving party, however, need  
 23 not disprove the other party's case. Celotex, 417 U.S. at 323-24.

24  
 25 Once the moving party has met its burden, the burden shifts to the nonmoving party to  
 26 establish, beyond the pleadings, that there is a genuine issue for trial. Celotex, 477 U.S. at 324.  
 27 The nonmoving party must submit some evidence establishing the elements essential to that  
 28 party's case for which that party will bear the burden of proof at trial. *Id.* at 322. The nonmoving

1 party is "required to present significant probative evidence tending to support [his] allegations."  
 2 Bias v. Moynihan, 508 F.3d 1212, 1218 (9th Cir. 2007) (internal quotation marks omitted). "The  
 3 mere existence of a scintilla of evidence" is insufficient to raise a genuine issue of material fact.  
 4 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). When the record, taken as a whole,  
 5 could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue  
 6 for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); *see also*  
 7 T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 631 (9th Cir. 1987) ("the  
 8 court's ultimate inquiry is to determine whether the 'specific facts' set forth by the nonmoving  
 9 party, coupled with undisputed background or contextual facts, are such that a rational or  
 10 reasonable jury might return a verdict in its favor based on that evidence").

## 11

## 12 **SUMMARY OF THE EVIDENCE PRESENTED BY THE PARTIES**

## 13

14 As noted above, the following facts have been stipulated to in this case. The VCSO denied  
 15 plaintiff's first application for a permit to carry a concealed weapon ("CCWP") on the ground that  
 16 plaintiff is not a resident of Ventura County. In reviewing plaintiff's application, the VCSO  
 17 concluded that plaintiff, who owns and maintains homes in Ventura, Los Angeles, and San  
 18 Bernardino Counties, does not meet the VCSO's definition of "resident," *i.e.*, a person who spends  
 19 most of his or her time and conducts most of his or her activities within Ventura County. The  
 20 Court relied on the parties' stipulation regarding these facts in connection with the First SJ Order,  
 21 and neither party has sought to be relieved from such factual stipulations. Accordingly, these  
 22 factual stipulations are binding for purposes of the instant summary judgment motions. The  
 23 Court, of course, also has considered the additional evidence submitted by the parties in support  
 24 of their respective pending Motions. Plaintiff has failed to dispute the factual assertions set forth  
 25 in defendant's Statement of Uncontroverted Facts, notwithstanding the Court's advice to plaintiff  
 26 of the consequences should he fail to do so. Accordingly, pursuant to Local Rule 56-3, the Court  
 27 may assume that the "uncontroverted" facts proffered by defendant are admitted by plaintiff and,  
 28 thus, are true to the extent they are adequately supported. Further, pursuant to Rule 56(c)(3),

the Court has considered the evidence submitted by the parties in connection with the First Motion, as such evidence is part of the record in this case. The relevant evidence, taken as a whole, is as follows:

*Plaintiff's Proffered Evidence:*

The only evidence proffered by plaintiff -- both to support his Second Motion and to oppose Defendant's Motion -- are his First and Second Declarations.<sup>4</sup>

In his First Declaration, plaintiff asserts the following facts. In June 2012, he 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. (First Plaintiff Decl. ¶ 2.) On an unspecified date after June 2012, plaintiff "updated [his] voter registration to Ventura County," and at the time of the declaration, he intended to vote in the next election for the Ventura County Sheriff and any other election in Ventura County.<sup>5</sup> (*Id.* ¶¶ 2-3.) Plaintiff considers the Oxnard Home to be "one of [his] 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

---

<sup>4</sup> In plaintiff's Reply to the First Motion (at 5, 6) and in plaintiff's present Opposition to Defendant's Motion (at 2-3, 7), his counsel has made numerous unsworn factual assertions that lack *any* evidentiary support. Indeed, plaintiff's counsel would not be competent to attest to these matters even had he attempted to do so, because they are matters within plaintiff's personal knowledge, not within his counsel's knowledge. In its First SJ Order, the Court advised plaintiff's counsel of the ineffective nature of his unsupported factual assertions, yet counsel has repeated and compounded this obvious defect in connection with the presently pending Motions. Because these unsworn allegations by counsel lack any evidentiary support, they are not competent to establish or controvert any fact and, thus, cannot be considered. See Fed. R. Civ. P. 56(c)(1)(A).

<sup>5</sup> 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. There is no evidence that plaintiff has ever voted in an election in Ventura County.



1 personal and professional life is of a "variable nature," "it is impossible" to designate any County  
2 in California as the one in which he spends the majority of his time. (*Id.* ¶ 6.)

3  
4 In his First Declaration, plaintiff further asserts that his declaration coupled with the  
5 "physical acts of moving and the legal registering to vote" -- on their own -- are sufficient to prove  
6 he is a resident of Ventura County for purposes of his CCWP application. Plaintiff contends that  
7 the VCSO is prohibited from conducting any additional investigation into the residency issue,  
8 because doing so would violate plaintiff's state constitutional right to privacy. (First Declaration  
9 ¶ 7.)<sup>6</sup>

10  
11 In his Second Declaration, plaintiff asserts, in material part, that: he is "a resident and  
12 domiciliary of Ventura [C]ounty where [he] maintain[s] [his] primary home [which is] registered  
13 with the DMV as my residence and with the Secretary of State to vote" (Second Plaintiff Decl. ¶  
14 1); if he is absent from his Oxnard Home, it remains his permanent home where he plans on  
15 returning (*id.*); Ventura is where he "remain[s] when not called elsewhere for labor or other  
16 special or temporary purpose, and to which [he] return[s] in seasons of repose" (¶ 2); and he  
17 intends to remain in Ventura and, when he is absent, he intends to return (¶ 4). Thus, while  
18 plaintiff initially stated, under oath, that his Oxnard Home was "one of" his several "permanent"  
19 homes and not his sole permanent home and that he does not spend the majority of his time at  
20 any of his three homes, he now contends otherwise. Plaintiff, however, does not assert that his  
21 factual circumstances have changed since June 3, 2013, the date on which he signed the First  
22 Declaration, nor does he explain the inconsistency between his sworn statements.

---

23  
24  
25 <sup>6</sup> Plaintiff repeated this assertion in his Opposition to Defendant's Motion (at 7), *i.e.*,  
26 he argues that the VCSO was limited to considering plaintiff's declaration and his voter and DMV  
27 registration and that it was improper for the VCSO to conduct any investigation. Inconsistently,  
28 however, in that same Opposition (at 2), plaintiff faults defendant for failing to conduct additional  
investigation -- including because the VCSO failed to re-interview plaintiff and obtain copies of  
documents such as his personal schedule -- when he re-applied for a CCWP in 2014.

1 *Defendant's Proffered Evidence:*

2  
3 *The First Application*

4  
5 Gonzales is a deputy sheriff of the VCSO. Since June 2012, he has been responsible for  
6 evaluating CCWP applications submitted in Ventura County. (Second Gonzales Decl. ¶¶ 1-2.) As  
7 of June 2013, Gonzales's practice is to examine first whether an applicant satisfies the residency  
8 requirements for a CCWP,<sup>7</sup> because if the residency requirement is not satisfied, there is no need  
9 to conduct an assessment of the additional requirements for obtaining a CCWP. (First Gonzales  
10 Decl. ¶ 8.)

11  
12 On January 15, 2013, Plaintiff submitted his first application for a CCWP to the VCSO (the  
13 "First Application"), and Gonzales was responsible for investigating the First Application. (Second  
14 Gonzales Decl. ¶ 4.) Gonzales interviewed plaintiff on February 20, 2013. During the interview,  
15 plaintiff indicated that: he had obtained a CCWP from Arizona six months earlier; and in October  
16 2010, he had applied for a CCWP from Los Angeles County, but his application was denied on the  
17 ground that good cause was lacking. (First Gonzales Decl. ¶ 10, Ex. C at 1.) Plaintiff stated that:  
18 he is employed as a contractor, broker, and attorney; his office is in Burbank; but most of his work  
19 involves contracting, which he performs "all over" in multiple California counties. (*Id.* at 4-5.)  
20 Plaintiff further stated that his wife lived at their Santa Clarita home (located in Los Angeles  
21 County), which they were remodeling and planning to place on the rental market. (*Id.* at 3, 5.)  
22 Plaintiff indicated that his son lived in the Oxnard Home with plaintiff,<sup>8</sup> and plaintiff's wife "spent  
23 a better part of the summer" at the one-bedroom Oxnard Home with plaintiff and his son, because

---

24  
25 <sup>7</sup> California's residency requirement for CCWPs is discussed *infra*. As California law  
26 requires, the VCSO's policy for issuing CCWPs requires that an applicant be a resident of Ventura  
County. (Second Gonzales Decl. ¶ 6.)

27 <sup>8</sup> The Oxnard Home is a one-bedroom condominium unit. Plaintiff stated that he slept  
28 in the bedroom and his son slept in the living room. (First Gonzales Decl., Ex. C at 6.) Plaintiff  
paid all the utility bills for the Oxnard Home. (*Id.*)

1 it is cooler than their Santa Clarita home. During the winter, plaintiff and his wife "go a lot" to  
2 their Big Bear home in San Bernardino County. (*Id.* at 5.) When asked how much time he had  
3 spent at the Oxnard Home during the past month, plaintiff replied "probably just several days,"  
4 because he had been spending more time in Santa Clarita while working there.<sup>9</sup> (*Id.*) Plaintiff  
5 stated that where he lives "varies"; he spends time at the Santa Clarita house; in the summer, he  
6 spends time at the Oxnard Home; and in the winter, he and his wife "go a lot to" their Big Bear  
7 home. (*Id.*)

8  
9 When Gonzales disclosed that his investigation to date indicated plaintiff spent more time  
10 in Santa Clarita than in Ventura County, plaintiff responded, "[W]ell I would say over the past 4  
11 months that's true but I would say over the you know, after I bought the place [in Oxnard] I was  
12 over probably literally four months almost all the time." (First Gonzales Decl., Ex. C at 6.) Plaintiff  
13 stated that he was registered to vote in Ventura County, and he changed his registration to vote  
14 at the same time he changed his address with the DMV. (*Id.*)

15  
16 Gonzales advised plaintiff that the Ventura County Sheriff took the residency requirement  
17 seriously, especially when faced with what appeared to be a dual residency situation. (First  
18 Gonzales Declaration, Ex. C at 6.) Gonzales stated that Ventura County had experienced a  
19 number of instances in which Los Angeles residents attempted to obtain CCWPs in Ventura County  
20 by claiming residence in Ventura County, because they perceived it as easier to obtain a CCWP  
21 in Ventura County than in Los Angeles County. (*Id.*) Gonzales also advised plaintiff that a further  
22 investigation would be conducted by the VCSO, because it appeared that plaintiff did not spend  
23 as much time in Ventura County as he did in Santa Clarita. (*Id.*) Plaintiff responded, "[L]ike I  
24 said[,] currently that would be true[;] it's my intention to get [the Santa Clarita home] rented out  
25 then I will be[,] I can't say that's not true at the current moment." (*Id.* at 7.) Plaintiff then said

---

26  
27 <sup>9</sup> During the interview, plaintiff at times referred to Canyon Country and at other times  
28 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.

1 that, had the interview taken place in July or August, he would have responded that, over the past  
 2 three months, he was at the Oxnard Home 80 percent of the time and at his Santa Clarita home  
 3 20 percent of the time. (*Id.*) Plaintiff stated that under the Ventura Sheriff's definition of  
 4 residence as explained by Gonzales -- *i.e.*, "where you sleep" and "where you spend most of your  
 5 time" -- plaintiff's residency varied "depending on the time of year." (*Id.*)

6  
 7 At the time Gonzales conducted his investigation concerning plaintiff's First Application,  
 8 plaintiff's driver's license listed a Burbank address in Los Angeles County, which is the same  
 9 address listed on his First Application as his business address. (First Gonzales Decl. ¶ 11, Ex. D;  
 10 Second Gonzales Decl. ¶¶ 9, 11.) California DMV records showed that two of plaintiff's cars were  
 11 registered to his Santa Clarita home address, and his other two cars were registered to his  
 12 Burbank work address. (First Gonzales Decl. ¶ 12, Exs. E-H; Second Gonzales Decl. ¶ 10.) The  
 13 First Application listed the address for the Oxnard Home as plaintiff's residence address, the  
 14 Burbank business address as plaintiff's mailing address, and the Santa Clarita home address as  
 15 his wife's address. (First Gonzales Decl. ¶ 14, Ex. I at 5; Second Gonzales Decl. ¶ 12.)

16  
 17 During his investigation related to the First Application, Gonzales learned that, about a year  
 18 and a half earlier, plaintiff had sued Los Angeles County for denying his CCWP application. When  
 19 plaintiff applied for a CCWP in Los Angeles County, he necessarily would have claimed that he was  
 20 a resident of Los Angeles County, or had his principal place of business or employment in Los  
 21 Angeles County, in order to qualify for a permit. (First Gonzales Decl. ¶ 7; Second Gonzales Decl.  
 22 ¶ 13.) Plaintiff, in fact, did so claim.<sup>10</sup>

23  
 24 <sup>10</sup> Pursuant to Rule 201 of the Federal Rules of Evidence, the Court takes judicial notice  
 25 of its records and files in that lawsuit -- *Raulinaitis v. Los Angeles County Sheriffs Department, et*  
 26 *al.*, CV 11-8026-MWF (JCG). In that case, both plaintiff and his wife filed a civil rights complaint  
 27 in this district after the Los Angeles Sheriffs Department denied their applications for CCWPs on  
 28 the ground that the good cause requirement was not met. Plaintiff and his wife claimed that the  
 Los Angeles Sheriff's policy regarding the "good cause" requirement violated the Second  
 Amendment. On August 13, 2012, the defense motion for summary judgment was granted.  
 Plaintiff and his wife appealed, and their appeal apparently remains pending (Ninth Circuit Case

1           Gonzales also learned that plaintiff had not registered to vote in Ventura County until  
 2 February 20, 2013, the same day he was interviewed by Gonzales. Prior to that date, and  
 3 including on the date he submitted the First Application, plaintiff was not registered to vote in  
 4 Ventura County. (First Gonzales Decl. ¶ 31; Second Gonzales Decl. ¶ 29.)

5  
 6           To assess whether the residency requirement was met, Gonzales conducted surveillance  
 7 of plaintiff's Santa Clarita home on January 28, 2013. At 6:15 a.m., Gonzales parked his car at  
 8 the end of the cul-de-sac on which the home is located. From his car, Gonzales observed plaintiff  
 9 leave the Santa Clarita home at 6:43 a.m., load a cooler into his Infiniti parked in the driveway  
 10 (which was parked next to the car registered to plaintiff's wife), and drive to his Burbank office  
 11 address. (Gonzales Decl. ¶¶ 16-23; Second Gonzales Dec. ¶¶ 14-21.)<sup>11</sup>

12  
 13 \_\_\_\_\_  
 No. 12-56508).

14           In his application submitted to the Los Angeles Sheriff's Department, plaintiff  
 15 represented that he was a resident of Santa Clarita, California. (See CV 11-8026 Docket No. 18  
 16 at 30, 37.) In his Complaint, he repeatedly alleged that he was a resident of Santa Clarita,  
 17 California. (See *id.* Docket No. 1 at 1-3.) The Court notes, however, that plaintiff did not own the  
 Oxnard Home at the time his Los Angeles County CCWP application was denied and he initiated  
 his related lawsuit.

18           <sup>11</sup> Gonzales instructed one of his fellow investigators (Ed Jones) to conduct a follow-up  
 19 surveillance. Jones reported to Gonzales that, on February 1, 2013, at 6:42 a.m., Jones observed  
 20 plaintiff leave the Santa Clarita home and get into his Infiniti. (First Gonzales Decl. ¶¶ 24-27;  
 21 Second Gonzales Decl. ¶¶ 22-25.) Gonzales also spoke to the property manager for the  
 22 condominium complex in which the Oxnard Home is located and was advised that plaintiff's wife  
 told the property manager that she and plaintiff were renting the condominium to their son. (First  
 Gonzales Decl. ¶ 30; Second Gonzales Decl. ¶ 28.)

23           In connection with the First Motion, plaintiff objected, on hearsay grounds, to the  
 24 portions of the First Gonzales Declaration setting forth what Gonzales was told by Jones and the  
 25 condominium complex property manager. When defendant repeated these factual assertions in  
 26 its Statement of Uncontroverted Facts filed in support of Defendant's Motion, plaintiff declined to  
 27 controvert them. In his declarations, Gonzales has stated this information formed a part of his  
 28 conclusion that plaintiff was not a Ventura County resident. (First Gonzales Decl. ¶ 32; Second  
 Gonzales Decl. ¶¶ 26, 30.) While the Court notes Gonzales's statements regarding information  
 he obtained from Jones and the unnamed property manager, and while these factual assertions  
 could be assumed to be true given plaintiff's failure to controvert them, the Court has not  
 considered such information in ruling on the pending Motions.

1           Gonzales concluded that, based on the foregoing matters, "it was not reasonable to  
2 conclude that [plaintiff] was a Ventura County resident." The First Application was denied on that  
3 ground alone, and thus, Gonzales did not investigate or determine the additional good cause and  
4 moral character requirements. (First Gonzales Decl. ¶¶ 9, 32; Second Gonzales Decl. ¶¶ 7, 30.)  
5

6           *The Second Application*  
7

8           During the course of this litigation, plaintiff submitted a new CCWP application to the VCSO,  
9 which Gonzales received on March 26, 2014 (the "Second Application"). As before, Gonzales was  
10 responsible for investigating the Second Application. (Third Gonzales Declaration ¶¶ 4-5.)  
11

12           On April 16, 2014, Gonzales went to the Oxnard Home to conduct surveillance from 5:30  
13 a.m. through 7:30 a.m. Gonzales drove through the outer parking lot of the condominium  
14 complex but did not see plaintiff's car or his wife's car. (Third Gonzales Decl. ¶¶ 7-9.)  
15

16           On April 17, 2014, Gonzales again went to the Oxnard Home to conduct surveillance from  
17 5:25 a.m. through 7:30 a.m. As before, Gonzales drove through the outer parking lot of the  
18 condominium complex but did not see any car registered to plaintiff. (Third Gonzales Decl. ¶¶ 10-  
19 13.)  
20

21           On April 18, 2014, at 5:27 a.m., Gonzales arrived at the Oxnard Home condominium  
22 complex to conduct further surveillance. Gonzales drove through the outer parking lot of the  
23 condominium complex but did not see any car registered to plaintiff. At 5:37 a.m., Gonzales  
24 accessed the secured parking structure beneath the complex, searched it (including plaintiff's  
25 assigned parking spot), and did not see any car registered to plaintiff. Gonzales's surveillance  
26 concluded at 7:00 a.m., by which time he still had not seen plaintiff or any of the cars registered  
27 to him or his wife. (Third Gonzales Decl. ¶¶ 14-16.)  
28

1 On April 21, 2014, at 5:40 a.m., Gonzales and Detective Jones commenced surveillance of  
2 plaintiff's Santa Clarita house. Gonzales saw two cars parked in that home's driveway -- the car  
3 registered to plaintiff's wife and the Infiniti registered to plaintiff. At 7:15 a.m., Gonzales saw the  
4 Infiniti leave; he and Jones followed it and confirmed that plaintiff was driving the car. (Third  
5 Gonzales Decl. ¶¶ 17-20.)

6  
7 On April 22, 2014, at 6:51 a.m., Gonzales and Detective Jones again conducted a  
8 surveillance of plaintiff's Santa Clarita house. The same two cars were parked in the driveway of  
9 that home. Gonzales saw plaintiff drive away in the Infiniti. (Third Gonzales Decl. ¶¶ 21-22.)

10  
11 On April 23, 2014, Gonzales and Detective Jones again went to plaintiff's Santa Clarita  
12 house and observed the same two cars were parked in the driveway of that home. At 6:51 a.m.,  
13 Gonzales saw plaintiff drive away in the Infiniti. Unlike on the prior two days, plaintiff drove very  
14 slowly and looked at Gonzales and Jones. Gonzales believes that plaintiff became aware of the  
15 surveillance at that time. When Gonzales and Jones went to the home the next morning to  
16 conduct surveillance, plaintiff was not there. (Third Gonzales Decl. ¶¶ 23-25.)

17  
18 On May 15, 2014, at 4:00 p.m., Gonzales and Detective Jones went to the Oxnard Home  
19 condominium complex. They knocked on doors hoping to interview neighbors, but no one  
20 answered. They checked the parking structure and did not see either plaintiff's car or his wife's  
21 car. (Third Gonzales Decl. ¶¶ 26-27.)

22  
23 On May 15, 2014, Gonzales and Detective Jones went to the neighborhood in which the  
24 Santa Clarita home is located area to speak with neighbors. Gonzales observed that plaintiff's  
25 Infiniti was backed into and parked in the driveway of the Santa Clarita home, and at 6:33 p.m.,  
26 Detective Jones placed his hand next to the front engine grille and observed heat emanating from  
27 the engine. (Third Gonzales Decl. ¶¶ 28-30, Ex. C.) While interviewing neighbors, Gonzales saw  
28



1 plaintiff drive out of his driveway in the Infiniti and look at Gonzales. (*Id.* ¶¶ 35-36.)<sup>12</sup>

2  
3 Gonzales also viewed an e-mail of plaintiff's Twitter page, which was obtained and sent to  
4 him by another unit in the VCSO. That Twitter page lists Santa Clarita as plaintiff's location.  
5 (Third Gonzales Decl. ¶ 40.)<sup>13</sup>

6  
7  
8 <sup>12</sup> During that May 15, 2014 Santa Clarita visit, Gonzales showed plaintiff's DMV  
9 photograph to a neighbor. The neighbor immediately recognized plaintiff and said they had been  
10 neighbors for 14 years and he saw plaintiff on a regular basis. He identified the Infiniti as  
11 plaintiff's car. (Third Gonzales Decl. ¶ 31.) The second neighbor Gonzales spoke with, and her  
12 son, both recognized plaintiff's photograph and pointed to the Santa Clarita home as the place  
13 where plaintiff lived. (*Id.* ¶ 32.)

14 Gonzales spoke with a third neighbor who, upon viewing the DMV photograph of  
15 plaintiff, identified him as "Sig" and said he last saw plaintiff two days ago coming home from  
16 work. When asked if he saw plaintiff on a regular basis, the neighbor said he saw plaintiff about  
17 every other day and would wave to him in greeting. (Third Gonzales Decl. ¶ 33.) The neighbor's  
18 mother then drove up, and she also identified plaintiff as the man in the DMV photograph and the  
19 Infiniti as his car, and said she often saw plaintiff and last socialized with him in March or April at  
20 a neighborhood function. (*Id.* ¶ 34.) Gonzales and Detective Jones then interviewed two sets of  
21 additional neighbors, neither of whom recognized plaintiff; the first indicated they do not socialize  
22 with their neighbors, and the second indicated that they had not met any of their neighbors. The  
23 next neighbor interviewed identified the man in the DMV photograph as "Sig" and stated that she  
24 sees him once or twice a week and sees his Infiniti parked in his driveway every day. (*Id.* ¶ 37.)  
25 The final neighbor interviewed also identified the photograph as "Sig" and the Santa Clarita home  
26 as belonging to plaintiff, and noted that he sees plaintiff on a regular basis. (*Id.* ¶ 38.) Gonzales  
27 states that he can identify the names of the neighbors with whom he spoke, but their names were  
28 omitted from his declaration for privacy reasons. (*Id.* ¶ 39.)

21 In his Opposition to Defendant's Motion (at 2), plaintiff vaguely asserts that he  
22 "objects" to Gonzales's description of his interviews and failure to identify the neighbors but  
23 plaintiff fails to identify the basis for his objection. Significantly, plaintiff failed to controvert the  
24 inclusion of this evidence in defendant's Statement of Uncontroverted Facts. Although the Court  
25 notes that these neighbor comments are included in the Third Gonzales Declaration and may be  
26 presumed to be true facts given plaintiff's failure to controvert them, the Court has not considered  
27 these statements in ruling on the pending Motions.

26 <sup>13</sup> Defendant did not produce a screen capture of that Twitter page, but it was readily  
27 viewable by the Court at <https://twitter.com/sighere> <viewed September 18, 2014>. On it,  
28 plaintiff listed Santa Clarita as his location. The Court notes, however, that when this Twitter page  
was re-viewed on September 30, 2014, plaintiff had changed his location to Channel Islands,  
California.



1 Based upon the entirety of his investigation, Gonzales concluded that plaintiff's primary  
 2 residence is his Santa Clarita home, contrary to the representation on the Second Application that  
 3 plaintiff resides in Oxnard. (Third Gonzales Decl. ¶ 41.) Gonzales ascribed "minimal significance"  
 4 to the fact that plaintiff is registered to vote in Ventura County, because no proof of residency  
 5 (other than simply writing down a residence address) is required to register to vote. (*Id.* ¶ 42.)

## 7 DISCUSSION

8  
 9 As filed, this case stems from defendant's denial of the First Application on the ground that  
 10 plaintiff was not a "resident" of Ventura County, as required by California law, specifically  
 11 California Penal Code § 26150 ("Section 26150"). As the case has evolved, plaintiff's claim  
 12 apparently also encompasses the denial of the Second Application on this same ground. (See  
 13 Defendant's Motion at 2, conceding that the denial of the Second Application should be treated  
 14 "as an implicitly plead claim"; Second Motion, *passim*.)<sup>14</sup>

15  
 16 The Complaint pleads a single claim, which alleges that defendant's refusal to issue a CCWP  
 17 to plaintiff violates his Second Amendment right to keep and bear arms for the purpose of self

---

18  
 19 <sup>14</sup> Plaintiff has not sought leave to amend the Complaint to expand his single claim to  
 20 encompass the denial of the Second Application. However, had such leave been sought, the Court  
 21 would have granted leave to file a supplemental pleading pursuant to Fed. R. Civ. P. 15(d),  
 22 especially given defendant's concession that it would be "fair" to consider the denial of the Second  
 23 Application as part of plaintiff's claim. Accordingly, the Court does not find the lack of a technical  
 24 amendment of the pleadings to be an impediment to resolving the issues raised by the parties'  
 25 respective motions with respect to the Second Application and its denial.

26 There is another procedural problem lurking in this case, although the parties have  
 27 not raised it. The sole defendant is an entity -- the Ventura County Sheriff's Office -- and, thus,  
 28 the County of Ventura is the actual defendant. There is some authority indicating that the VCSO  
 is an improper defendant, and instead, the proper defendant here would be the Sheriff of Ventura  
 County himself in his official capacity. See Scocca v. Smith, 912 F. Supp. 2d 875, 879-84 (N.D.  
 Cal. 2012). Of course, a substitution of defendants could easily cure this possible defect, if it  
 actually is a defect. Given its conclusion regarding the disposition of this action, however, the  
 Court finds that resolving the proper defendant issue and/or effecting such a substitution is  
 unnecessary.

1 defense, because plaintiff cannot exercise this right without a CCWP. This action, however, is not  
2 a direct or facial Second Amendment attack. Plaintiff does not claim that states may not condition  
3 the carrying of a concealed weapon on obtaining a permit from the appropriate state licensing  
4 agency. Plaintiff does not attack the validity of Section 26150 or its residency requirement.  
5 Plaintiff has never argued in this case that requiring county residency *in itself* unduly burdens  
6 Second Amendment rights or that California sheriffs are not entitled to enforce the residency  
7 requirement of Section 26150.

8  
9 Rather, plaintiff challenges the VCSO's *application* of the Section 26150 residency  
10 requirement in his particular case. Plaintiff's claim rests on an asserted misapplication of California  
11 law by defendant, which plaintiff believes, in turn, violates the Second Amendment by precluding  
12 him from being issued a CCWP and, thus, prevents him from legally carrying a concealed weapon  
13 in California. Plaintiff argues that under any definition of "resident" applicable under California law  
14 -- whether Section 26150's use of the term "resident" is construed to equate to the concept of  
15 "domiciliary" or something less -- he satisfies such a definition. (Second Motion at 5 - "Whether  
16 the definition is residency or domicile, Plaintiffs' [*sic*] declaration attached hereto establishes either  
17 standard" and "Plaintiffs' [*sic*] primary residence and domicile is Ventura.") As plaintiff puts it:  
18 "Plaintiff contends that Defendant's definition of residency as applied to a statutory license to carry  
19 a concealed weapon violates State law and therefore his rights under the Second Amendment,"  
20 because "resident is defined by California law as only requiring some physical abode in the County  
21 that is more than a temporary visit." (May 28, 2013 Joint Case Management Statement and  
22 Factual Stipulation at 1, 2.)

23  
24 Defendant, not surprisingly, disagrees and argues that the VCSO's interpretation of the  
25 term "resident," as used in Section 26150, is proper under California law and has been correctly  
26 applied to plaintiff under the facts and circumstances of record. (Defendant's Motion at 3-15.)  
27 Defendant asserts that it is entitled to summary judgment for this reason alone. In a brief  
28 discussion, defendant dismisses plaintiff's Second Amendment arguments by asserting that the

1 authorities on which plaintiff relies are inapposite, because they involve the interpretation of  
2 statutes that effected outright bans on firearm ownership, possession, and use, and the California  
3 residency requirement at issue here is simply a reasonable limitation on the time, place, and  
4 manner of carrying guns. (Second Opposition at 14-18.)

5  
6 Arguably, resolution of the state law question that drives this case -- *i.e.*, Is defendant's  
7 interpretation and application to plaintiff of Section 26150's use of the term "resident" consistent  
8 with California law or a misapplication of California law? -- should dispose of this action. If the  
9 VCSO's interpretation and application of that term with respect to plaintiff's First and Second  
10 Applications comports with California law, such a finding should be the end of the matter given  
11 that plaintiff plainly does not attack the validity of California's residency requirement for CCWPs  
12 or California law regarding the meaning of "resident." However, pretermittting plaintiff's cries of  
13 a Second Amendment violation in such a fashion, simply because he has not directly attacked the  
14 validity of California's residency requirement, would not appear to be appropriate under the  
15 present decisional landscape. At a minimum, the Ninth Circuit's pending Peruta decision  
16 (discussed below) would appear to preclude eliding the Second Amendment issue in this case,  
17 even if the Court were to find that no violation of California law has occurred.

18  
19 Accordingly, the Court will first address whether the VCSO's finding -- that, for purposes  
20 of Section 26150, plaintiff is not a resident of Ventura County -- comports with, or is contrary to,  
21 California law, before then proceeding to the Second Amendment issue.

22  
23 A. The Governing CCWP Statute

24  
25 California law generally prohibits the open or concealed carrying of firearms in public places  
26 within the state subject to certain exceptions for status (such as law enforcement officers) or  
27 transportation or other situations. *See generally* California Penal Code §§ 25300-25540.  
28 However, either the sheriff of a county or the chief of police of a city has the discretionary

1 authority to issue CCWPs if certain requirements are met.<sup>15</sup> California Penal Code §§ 26150,  
 2 26155. With some exceptions, a CCWP “conveys a right exercisable throughout the state.”  
 3 Scocca, 912 F. Supp. 2d at 883-84; *see also* Silvester v. Harris, \_\_\_\_ F. Supp. 2d \_\_\_\_, 2014 WL  
 4 4209563, at \*24 (E.D. Cal. Aug. 25, 2014).

5  
 6 Section 26150 governs CCWP applications made to county sheriffs. The statute provides  
 7 that a county sheriff “may” issue a CCWP to a person upon proof of four elements: (1) the  
 8 applicant is of good moral character; (2) good cause exists for the issuance of the permit; (3) the  
 9 applicant is a resident of the county or the applicant’s principal place of employment or business  
 10 is within the county and the applicant spends a substantial period of time in that place of  
 11 employment or business; and (4) the applicant has completed a course of training as specified in  
 12 another statute. As the parties agree, only the first clause of element (3) -- county residency --  
 13 is involved here.

14  
 15 Section 26150 does not contain a definition for “resident,” nor is such a definition set forth  
 16 in Part 6 (Control of Deadly Weapons), Title 4 (Firearms), Division 5 (Carrying Firearms), and  
 17

18 <sup>15</sup> California is what is commonly referred to as a “may issue” state with respect to  
 19 CCWPs. Whether or not to issue a CCWP pursuant to Section 26150 rests within the discretion  
 20 of the local issuing authority, here, the VCSO. By its terms, the statute makes such discretion  
 21 explicit: “when a person applies for a [CCWP], the sheriff of a county *may* issue a license to that  
 22 person upon proof of all of the following. . . .” Section 26150(a) (emphasis added). Ninth Circuit  
 23 and California courts that have considered this “may” language in Section 12050(a) -- the  
 24 predecessor to Section 26150(a) -- have drawn the same conclusion, *to wit*, the statute “explicitly  
 25 grants discretion to the issuing officer to issue or not issue a license to applicants meeting the  
 26 minimum statutory requirements.” Erdelyi v. O’Brien, 680 F.2d 61, 63 (9th Cir. 1982) (holding  
 27 that applicants for a CCWP in California do not have a property interest in obtaining such permits  
 28 that is protected by federal due process); *see also* Gifford v. City of Los Angeles, 88 Cal. App. 4th  
 801, 805 (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 (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.”).

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 the alternate "principal place of business or employment" ground, 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."

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

California statutes frequently use the terms "resident" and "domicile" interchangeably or synonymously. Milton H. Greene Archives, Inc. v. CMG Worldwide, Inc., 568 F. Supp. 2d 1152, 1179 (C.D. Cal. 2008) ("in many statutes, 'residence' is frequently construed to mean domicile and the terms are often used synonymously"; *quoting* Whittell v. Franchise Tax Bd., 231 Cal. App. 2d 278, 284 (1964), which in turn cited California Government Code §§ 243, 244, California Probate Code § 301, California Civil Code § 128, and California Code of Civil Procedure §§ 395, 417), *aff'd* by 692 F.3d 983 (9th Cir. 2012). As this District has observed, "[t]he California Supreme Court has recognized that many statutes use 'residence' and 'domicile' synonymously." *Id.* (citing and quoting from Smith v. Smith, 45 Cal. 2d 235, 239 (1955)).

In Smith, the California Supreme Court interpreted the term "resident" set forth in a California statute governing the power to enter judgment against a California "resident" served with process while in another state. A default judgment had been entered following personal service upon the defendant in New York, and he 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 courts. 45 Cal. 2d at 239.

1 The Smith Court then observed:

2  
3 Courts and legal writers usually distinguish "domicile" and "residence," so that  
4 "domicile" is the one location with which for legal purposes a person is considered  
5 to have the most settled and permanent connection, the place where he intends to  
6 remain and to which, whenever he is absent, he has the intention of returning, but  
7 which the law may also assign to him constructively; whereas "residence" connotes  
8 any factual place of abode of some permanency, more than a mere temporary  
9 sojourn. "Domicile" normally is the more comprehensive term, in that it includes  
10 both the *act* of residence and an *intention* to remain; a person may have only one  
11 domicile at a given time, but he may have more than one physical residence  
12 separate from his domicile, and at the same time.

13  
14 Smith, 45 Cal. 2d at 239 (*citing* two secondary sources). The California Supreme Court noted,  
15 however, that "statutes do not always make this distinction in the employment of those words"  
16 and "frequently use 'residence' and 'resident' in the legal meaning of 'domicile' and 'domiciliary,'  
17 and at other times in the meaning of factual residence or in still other shades of meaning." *Id.*  
18 The California Supreme Court then listed four California statutes in which "'residence' is used as  
19 synonymous with domicile." *Id.* at 239-40. Quoting from a state appellate court decision, the  
20 California Supreme Court concluded that "[r]esidence, as used in the law, is a most elusive and  
21 indefinite term," and its meaning in any particular statute must be determined by considering the  
22 purpose of the act. *Id.* at 240 (citation omitted). Examining the legislative history of the statute  
23 in question, the state high court determined that the term "resident," as used in the statute at  
24 issue before it, meant "domiciliary." *Id.* at 240-43.

25  
26 The Court has not located, and the parties have not identified, any California decision  
27 construing the meaning of the term "resident" as used in Section 26150 and its predecessor  
28 statutes. Accordingly, as Smith instructs, the Court must look to the legislative history of Section

1 26150 and its predecessors to see if the purpose of the CCWP residency requirement can be  
2 ascertained.

3  
4 California's first CCWP statute was enacted in 1917, and contained the present good moral  
5 character and good cause requirements but not any residency requirement. Stats. 1917, c. 145,  
6 p. 222, § 6. The statute was subsequently amended three times without including a residency  
7 requirement. See Stats. 1923, c. 339, p. 698, § 8; Stats. 1947, c. 1281, p. 2793, § 1; and Stats.  
8 1951, c. 1619, p. 3660, § 1.

9  
10 In 1953, the precursor to Section 26150, *i.e.*, California Penal Code § 12050 ("Section  
11 12050"), was enacted. Stats. 1953, c. 36, p. 656, § 1. As enacted, Section 12050 did not include  
12 a residency requirement. *Id.* However, in 1969, Senate Bill 1272 passed, which amended Section  
13 12050 to add to the the requirement that the applicant be "a resident of the county." Stats. 1969,  
14 c. 1188, p. 2318, § 1. The bill was sponsored by the Attorney General of the State of California,  
15 and it was "intended to stop 'shopping' for permits throughout the state." (See Enrolled Bill  
16 Memorandum to Governor for SB 1272 dated August 20, 1969, signed by the Legislative Secretary  
17 with a recommendation to "Approve."); see also California Bill Analysis, A.B. 2022 Sen., 8/19/1998  
18 ("The 1969 legislation also precluded chiefs and sheriffs from issuing licenses to out-of-county  
19 residents. The 1969 limitation on the issuance of out-of-county residents may have been  
20 designed to prevent forum shopping.").

21  
22 Before Senate Bill 1272 was signed by then Governor Ronald Reagan on August 30, 1969,  
23 the Attorney General and Assistant Attorney General of the State of California sent the Governor  
24 a memorandum on August 11, 1969, urging him to sign the bill into law and stating:

25  
26 The purpose of this bill is to curtail the present practice of "shopping" for concealed  
27 weapons permits throughout the state. It is now common practice for citizens to  
28 obtain these permits from law enforcement agencies in jurisdictions hundreds of



1 miles from their residence.

2  
3 Senate Bill 1272 would require that an applicant obtain his permit from the sheriff  
4 or a chief of police within the county of his residence. It would also help to insure  
5 that permits are not granted improvidently. Law enforcement agencies near the  
6 residence of the applicant are obviously in a much better position to evaluate the  
7 background, reputation, and need for a weapon, of an applicant.

8  
9 Permits to carry concealed weapons should, of course, be restricted to those who  
10 are stable and have demonstrated a genuine need to carry a concealed weapon.  
11 This bill will help to insure that the issuance of these permits is confined to this class  
12 of persons.

13  
14 Similarly, three days earlier on August 8, 1969, the District Attorney of Alameda County  
15 wrote to Governor Reagan on behalf of the California Peace Officers' Association and the District  
16 Attorneys' Association of California and urged the Governor to approve Senate Bill 1272, stating:

17  
18 This requirement of residency will assist law enforcement in effectively  
19 ascertaining just who within their county does possess such a permit, and these are  
20 the officials who are most likely to know whether the applicant does in fact possess  
21 that good moral character which must be demonstrated in order to obtain such a  
22 license.

23  
24 *See also* 62 Ops. Cal. Atty. Gen 509, 1979 WL 29270, at \*3 (Sep. 18, 1979) (opining that the  
25 residency requirement for CCWPs is "based upon the assumption that a local police agency would  
26 be best equipped to determine the good moral character of the applicant, the necessity for the  
27 license, and the restrictions, if any, that should be placed on it").



1       The addition of a residency requirement to the CCWP licensing statute, thus, was motivated  
2 by a desire to ensure that CCWPs were issued only to persons who actually lived within the  
3 counties in which the permits were sought. The bill's proponents believed that an adequate  
4 assessment of the good moral character and good cause requirements, as well as the need for  
5 imposing any restrictions, was possible only if an applicant resided within the county of  
6 application. California legislators intended that the imposition of the residency requirement would  
7 deter CCWP shopping, *i.e.*, prevent applicants from applying for permits in counties which were  
8 perceived to be more lenient in issuing CCWPs, rather than applying in the counties in which they  
9 actually resided. Given these legislative purposes behind the imposition of the residency  
10 requirement effectuated by the passage of Senate Bill 1272, the statute's newly-added use of the  
11 term "resident" appears to have been intended to embody a concept akin to that of domiciliary,  
12 namely, to require that an applicant's permanent home be in the county of application.

13  
14       That conclusion is buttressed by several other factors. Section 12050 was subsequently  
15 amended in 1997, when Senate Bill 146 passed and was signed into law. Stats. 1997, c. 408, §  
16 1 (S.B. 146). Under preexisting law, a police chief could issue a CCWP to both residents of his city  
17 and residents of the county at large. The amendment effected by Senate Bill 146 took away from  
18 city police chiefs the ability to issue CCWPs to persons who did not reside in their cities but who  
19 resided in the county in which the city was located. The bill's sponsor noted his intent to keep  
20 "local control for issuing a [CCWP] where it belongs." (See California Bill Analysis, S.B. 146  
21 Assem., 7/08/1997, available on WESTLAW.) "The impetus for the bill was to prevent a northern  
22 California police chief from issuing permits to non-city residents who resided in the county." (See  
23 California Bill Analysis, A.B. 2022 Sen., 6/30/1998, available on WESTLAW.) Thus, California's  
24 Legislature amended the CCWP statute for the purpose, once again, of ensuring that the local  
25 officials who assessed CCWP applications would be appropriately postured to do so, *because the*  
26 *applicants actually resided within their jurisdictions.*

27  
28       Section 12050 was amended numerous times thereafter in respects not germane here. In

2008, Section 12050 was amended to include the alternate “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 CCWPs 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 CCWPs be issued only to persons who actually were physically present within a county to a significant degree.

Significantly, California Penal Code § 26210(d) provides that, when a licensee’s “place of residence” was the basis for the issuance of a CCWP, while that permit will not be automatically revoked simply because the licensee’s place of residence has changed to a different county, the CCWP will expire within 90 days of the licensee’s move from the county of issuance. This statute simply continues former Section 12050(f)(4)(B) without substantive change. Section 26210(d), thus, confirms the California Legislature’s intent that a person who applies for and is issued a CCWP be tied to the county of application and issuance through the maintenance of his place of residence in that county.

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 separate 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. No Violation Of California Law Has Been Established.

As noted earlier, no case specifically interprets the meaning of “resident” as used in Section

1 26150, and the statute lacks its own definition. The VCSO interprets "resident" to mean a person  
2 who spends most of his time and conducts most of his activities in Ventura County -- an  
3 interpretation plaintiff has stipulated he does not meet. Plaintiff insists that the VCSO's  
4 interpretation is invalid under California law and that the VCSO was required to find that plaintiff  
5 is a "resident," because plaintiff has stated, under oath, that he is a resident and has changed his  
6 voter registration and DMV registration to Ventura County. Plaintiff contends that defendant was  
7 required to find the residency requirement satisfied based upon plaintiff's own assertion that he  
8 *does* meet the residency requirement and that defendant was precluded from looking at other  
9 facts and circumstances and drawing a different conclusion. Thus, as a threshold matter, the  
10 Court must determine, under the governing summary judgment standards, whether the VCSO's  
11 interpretation and application of Section 26150's "resident" requirement, as applied to plaintiff,  
12 is contrary to, or comports with, California law.

13  
14 As the California Supreme Court made clear in Smith, a California statute's use of the term  
15 "resident," without definition, is ambiguous, because statutes frequently employ the terms  
16 "resident" or "residence" with the intended meaning of "domiciliary" or "domicile." 45 Cal. 2d at  
17 239. The California Supreme Court concluded that, given the "elusive and indefinite" nature of  
18 the term "resident" when left undefined, its meaning in any given statute requires a consideration  
19 of the purpose of the statute. *Id.* at 240. Thus, it was not unreasonable for the VCSO to conclude  
20 that the term "resident," as used without definition in Section 26150, was subject to interpretation  
21 and to formulate an interpretation of the term that it believed complies with California law.

22  
23 California law contains a number of longstanding statutory and decisional principles that  
24 aid in this Court's interpretation of the term "resident" in Section 26150, including whether it  
25 means a status akin to "domiciliary" under California law or something lesser. As a threshold  
26 matter, it is clear under California law that, while a California citizen may have multiple  
27 "residences," he can have only one "domicile." Walters v. Weed, 45 Cal. 3d 1, 7-8 (1988); see  
28 *also* California Elections Code § 349. Relatedly, every resident of California has that one domicile,

1 and it is "not lost until a new one is acquired." *Id.* (collecting cases). California Government Code  
 2 §§ 243 and 244 set forth California's "basic rules" regarding residence and domicile. These  
 3 statutes are part of the portion of the California Government Code related to the "Sovereignty of  
 4 the State" (Chapter 1) and its "Rights Over Persons" (Article 5). Section 243 states that, in law,  
 5 every person has a "residence." Section 244 defines "residence" to mean, in effect, domicile, *to*  
 6 *wit*, it is the "place where one remains when not called elsewhere for" work or other "special or  
 7 temporary purpose," and there "can only be one residence," which "cannot be lost until another  
 8 is gained."

9  
 10 California law recognizes that intent plays a role in determining whether a location  
 11 constitutes a person's primary residence, or domicile, but that "[i]ntent alone is insufficient." *In*  
 12 *re Marriage of Thornton*, 135 Cal. App. 3d 500, 509 (1982). "[A] residence can be gained or lost  
 13 only by the union of act and intent, but as the act alone is insufficient, so the intent alone is  
 14 insufficient." *Aldabe v. Aldabe*, 209 Cal. App. 2d 453, 466 (1962) (citation omitted). "To  
 15 establish a domicile the union of act and intent is necessary." *Id.* The intent needed to be shown  
 16 must be "an intention as to the fact, not as to the legal consequences of the fact," for "[a] man's  
 17 home is where he makes it, not where he would like to have it." *Id.* (citation omitted). A  
 18 declaration of intent by someone as to which place is his residence or domicile is ineffective "until  
 19 the intention is carried into effect by the completed act." *Sheehan v. Scott*, 145 Cal. 684, 690  
 20 (1905), *overruled on other grounds by Zeilenga v. Nelson*, 4 Cal. 3d 716 (1971). Thus, a desire  
 21 to make one location a permanent home in the future is not enough to establish that site as one's  
 22 domicile or permanent residence. *Id.* ("A change in the domicile of a person cannot be effected  
 23 by an intention in the mind to make this change, unless it is accompanied by an actual change in  
 24 the place of abode.") (citation omitted); *see also Aldabe*, 135 Cal. App. 3d at 509.

25  
 26 California law also provides guidance on the situation, as here, when a person has more  
 27 than one California residence. "The mere intention to acquire a new domicile, without the fact  
 28 of removal, avails nothing, neither does the fact of removal, without the intention." California

1 Elections Code § 2024. "In order to effect a change of residence, there must be a concurrence  
2 in the act of abandonment of one residence with the intent to establish a new residence  
3 elsewhere," and the individual's intent can be established by testimony from the relevant parties  
4 "considered in connection with the surrounding circumstances, plus corroboration when essential."  
5 Ericksen v. Ericksen, 57 Cal. App. 2d 532, 535-36 (1943).<sup>16</sup>

6  
7 [A] person can have but one bona fide residence. Residence depends upon  
8 intention as well as fact; and in its ordinary acceptation it is the place where one  
9 remains when not called elsewhere on business, pleasure or for other temporary  
10 purpose. The mere inhabitancy of a summer home or country house at certain  
11 seasons of the year or at certain times would not make the party inhabiting said  
12 house a resident of the county in which such house is situated.

13  
14 Younger v. Spreckels, 12 Cal. App. 175, 177 (1909). As one California District Court construing  
15 California law on the question of the meanings of "residence" and "domicile" found:

16  
17 A mere change of place of abode, however long continued, is insufficient, unless the  
18 proper animus or intention is present. This [is], because, as stated by Mr. Justice  
19 Stone in *State of Texas v. State of Florida*: "Residence in fact, coupled with the  
20 purpose to make the place of residence one's home, are the essential elements of  
21 domicile."

22  
23 For this reason, "the place where a man lives is properly taken to be his  
24 domicile until facts adduced establish the contrary." And, while to establish such  
25 intent, the acts and declarations of a person may be considered, a mere "floating  
26

---

27 <sup>16</sup> Ericksen, thus, renders meritless plaintiff's complaint that the VCSO was required  
28 to accept plaintiff's representations at face value and was precluded from conducting any  
investigation into the residency issue.

1 intention to return at some future period['] to a former place of abode is not  
2 enough to overcome residence in fact, — especially if it has continued for a long  
3 period of time  
4

5 Penn. Mut. Life Ins. Co. v. Fields, 81 F. Supp. 54, 57-58 (S.D. Cal. 1984) (footnotes and citations  
6 omitted).

7  
8 As the Supreme Court made clear in the decision noted above:  
9

10 Residence in fact, coupled with the purpose to make the place of residence  
11 one's home, are the essential elements of domicile. . . . While one's statements  
12 may supply evidence of the intention requisite to establish domicile at a given place  
13 of residence, they cannot supply the fact of residence there; . . . and they are of  
14 slight weight when they conflict with the fact. . . . This is the more so where, as  
15 here, decedent's declarations are shown to have been inspired by the desire to  
16 establish a nominal residence for tax purposes, different from his actual residence  
17 in fact. . . . In such circumstances the actual fact as to the place of residence and  
18 decedent's real attitude and intention with respect to it as disclosed by his entire  
19 course of conduct are the controlling factors in ascertaining his domicile.  
20

21 State of Texas v. State of Florida, 306 U.S. 398, 424-45 (1939) (citations omitted). In that case,  
22 several states in which the decedent had lived at varying times made competing tax claims against  
23 the decedent's estate. The Supreme Court concluded that Massachusetts -- where the decedent  
24 maintained and renovated a family home and where his wife lived -- was the decedent's domicile,  
25 rather than Texas, which the decedent repeatedly had declared to be his place of legal residence,  
26 or Florida, where, for health reasons and for the several years before his death, the decedent had  
27 spent about four and a half months each winter in a home he renovated. *Id.* at 416-27. The  
28 Supreme Court disregarded the decedent's repeated oral and written statements (including in

1 numerous legal documents) of his intent that Texas remain his place of domicile, because, *inter*  
 2 *alia*, he never paid taxes there, his significant personal property was in Massachusetts, and his  
 3 family life (including his wife) was in Massachusetts. "He could not elect to make his home in one  
 4 place in point of interest and attachment and for the general purposes of life, and in another,  
 5 where he in fact had no residence, for the purpose of taxation." *Id.* at 426. The Supreme Court  
 6 also found that there was no proof that the decedent's domicile in Massachusetts was abandoned  
 7 for his Florida home. The State of Florida's "burden is not sustained by showing a period of winter  
 8 residence there in obedience to the demands of health, in the absence there of the activities  
 9 associated with decedent's chief interests and of the objects of those interests and of intimate  
 10 family association, with which he had surrounded himself at" his Massachusetts home. *Id.* at 427.

11  
 12 With these principles in mind, the Court also notes, as Smith establishes, the long history  
 13 of California courts interpreting the term "resident" in California statutes to mean, in effect,  
 14 "domiciliary." See Burt v. Scarborough, 56 Cal. 2d 817, 820-21 (1961) (noting the historical  
 15 practice of California courts construing the term "reside" to mean "domicile"); see also Penn. Mut.  
 16 Life Ins. Co., 81 F. Supp. at 57 ("as a rule, whenever 'residence' is mentioned [in California  
 17 statutes], it is evident that a residence which has risen to the dignity of 'domicile' is meant"). As  
 18 noted in Smith, 45 Cal. 2d at 239, California Government Code §§ 243 and 244 set forth  
 19 California's "basic rules" regarding domicile, and Section 244 defines "residence" as meaning the  
 20 equivalent of domicile. Given these broad statutory provisions, as the Southern District of  
 21 California found in Penn Mut. Life Ins. Co., *supra*, the California statutory scheme generally  
 22 contemplates that a "resident" is a "domiciliary," absent an indication otherwise. See Fenton v.  
 23 Bd. of Dirs. of the Groveland Cmty. Servs. Dist., 156 Cal. App. 3d 1107, 1113-15 (1984) (affirming  
 24 trial court's interpretation of the term "residing" used in California Government Code § 61200 to  
 25 mean "domiciled," relying on both Smith and the "basic rules" set forth in Government Code §  
 26 244).

27  
 28 In interpreting a statute where the language is clear, courts must follow its plain

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

8  
 9 In re Marriage of Amezquita & Archuleta, 101 Cal. App. 4th 1415, 1419 (2002) (citation and  
 10 internal punctuation omitted) (interpreting “residence” as used in California Family Code § 4962  
 11 to mean “domicile”).

12  
 13 Following this admonition, and as it did in connection with the First Motion and the First SJ  
 14 Order, the Court has considered the legislative history pertinent to Section 26150’s use of the term  
 15 “resident” in conjunction with the above-noted statutory and decisional law. The legislative history  
 16 of the imposition of a residency requirement for CCWP applicants evidences an intent that county  
 17 sheriffs grant CCWPs based on the residency prong only to those persons who actually reside  
 18 within their counties. Plaintiff’s contention that the Section 26150 residency requirements means  
 19 nothing more, under California law, than “only requiring some physical abode in the County that  
 20 is more than a temporary visit” (May 28, 2013 Joint Case Management Statement and Factual  
 21 Stipulation at 2) is wholly unpersuasive given the California decisions discussed above and the  
 22 legislative purpose behind the imposition of the residency requirement for CCWP applications.  
 23 Equally unpersuasive is plaintiff’s contention that the VCSO was required to defer to plaintiff’s  
 24 statements and was precluded from conducting an investigation into the facts. As noted above,  
 25 that assertion is contrary to California law, which requires: proof of *both* intent and action,  
 26 because intent alone is insufficient; and proof not only of the applicant’s stated intent but *also*  
 27 obtaining corroboration of such asserted intent when necessary *and* a consideration of the of the  
 28 surrounding facts and circumstances. *See, e.g., Aldabe*, 209 Cal. App. 2d at 466; *Ericksen*, 57 Cal.



1 App. 2d at 535-56. Indeed, as the Supreme Court has made clear, a declaration of intent with  
2 respect to domicile and/or permanent residence -- no matter how vehemently or repeatedly made  
3 -- will not control when the facts and circumstances show otherwise. State of Texas, 306 U.S. at  
4 424-27.

5  
6 The VCSO interprets residence for Section 26150 purposes to mean the county in which  
7 a person spends most of his or her time and conducts most of his or her activities. That  
8 interpretation is consistent with the foregoing California case law and the legislative history behind  
9 Section 26150's residency requirement. Accordingly, the Court finds that the definition of resident  
10 which the VCSO applied to plaintiff does not violate California law.

11  
12 The next question then is whether, under summary judgment standards, there is an  
13 absence of a triable issue of material fact on the question of whether defendant erred in finding  
14 that plaintiff does not meet the residency requirement as it has been defined by the VCSO. The  
15 Court finds that there is no triable issue of material fact on this critical question, for several  
16 reasons, any one of which would be dispositive.

17  
18 First, and critically, plaintiff has stipulated that he does *not* meet the VCSO's definition of  
19 resident. That stipulation became a part of this Court's Order of May 31, 2013, and is the law of  
20 this case. Moreover, that same stipulation was relied upon and made a finding in the Court's First  
21 SJ Order. Plaintiff has never challenged either of the Court's Orders or sought to retract his  
22 stipulation. Thus, it binds him.

23  
24 Second, even absent plaintiff's stipulation, the VCSO's conclusion that its investigation  
25 confirmed that plaintiff does not meet the VCSO's definition of resident is amply supported by  
26 uncontroverted evidence. The only evidence that plaintiff is a resident of Ventura County is that  
27 he: owns a one-bedroom condominium there (along with homes in two other Southern California  
28 counties); changed his voter registration to Ventura County after he submitted the First

Application listing the Oxnard Home as his residence, *i.e.*, on the day he was interviewed by Gonzales, almost seven months after he purchased the Oxnard Home; apparently registered the Oxnard Home with the DMV as his residence on the same date he changed his voter registration.<sup>17</sup> Further, plaintiff's statements regarding his permanent home(s) have been significantly inconsistent, *to wit*, he earlier stated that he splits his times between his three homes, considers the Oxnard home to be "one of [his] permanent homes," and cannot designate any one County as the place in which he spends the majority of his time (First Plaintiff Decl. ¶¶ 4-6), but more recently has stated that the Oxnard Home is his "primary," "permanent home" and "domicile" (Second Plaintiff ¶¶ 1-2, 4). While the Court makes no credibility finding with respect to Plaintiff's First and Second Declarations, it notes that they are bereft of detail and, for the most part, actual facts.<sup>18</sup>

---

<sup>17</sup> Plaintiff alleges this in his Second Declaration and his counsel has asserted this at hearings and in plaintiff's Opposition to Defendant's Motion. Other than plaintiff's Second Declaration, however, no proof of such DMV registration has been adduced. As noted earlier, his driver's license lists his Burbank work address.

<sup>18</sup> While the Court does not rely on the following in ruling on the pending Motions, it is interesting to note that, although plaintiff stated on May 12, 2014, under penalty of perjury, that the Oxnard Home is his primary and "permanent" home to which he plans on returning when absent and where he intends to remain, an Internet search reveals that a property at the same address as the Oxnard Home, *i.e.*, 3101 Peninsula Road, Unit 205, Oxnard, California 93035 (see First Gonzales Decl. Ex. I, plaintiff's CCWP application listing this address), has been placed on the market for sale. For example, Coldwell Banker, a real estate company, contains a sales listing for property at the same address as the Oxnard Home, which is viewable at: <http://www.californiamoves.com/property/details/3901870/MLS-214029183/3101-Peninsula-Road-205-Oxnard-CA-93035.aspx> <viewed September 23 and 30, 2014>. That listing states that it was originally received on July 31, 2014, and (when originally viewed by the Court on September 23, 2014) an open house was scheduled for September 28, 2014. Numerous other well-known real estate websites -- such as, *inter alia*, zillow.com, redfin.com, and trulia.com <viewed on September 23 and 30, 2014> among numerous other sites -- show the Oxnard Home as listed for sale and (when originally viewed by the Court) with a scheduled open house.

That plaintiff placed the Oxnard Home on the market so closely after he submitted his May 2014 declaration tends to belie his assertions regarding the *permanent* nature of the Oxnard Home as his domicile and his alleged intent at all times to return to, and remain at, the Oxnard Home. And while the Court has not considered the unsupported factual assertions made by plaintiff's counsel as evidence in this case, the listing of the Oxnard Home for sale in July 2014 is consistent with counsel's representation that plaintiff's son, having graduated from college, no

1 In contrast, there is uncontroverted evidence that, when the VCSO visited the Oxnard  
2 Home on four occasions in April and May 2014, there was no sign of any car belonging to plaintiff  
3 or his wife. In repeated visits by the VCSO to plaintiff's Santa Clarita home in January and  
4 February 2013, April 2014, and May 2014, plaintiff was observed leaving the Santa Clarita home  
5 in the morning hours and/or returning to that home, and both his and his wife's cars were  
6 observed at that home. Until approximately one week ago, plaintiff listed Santa Clarita as his  
7 location on his Twitter page. His wife lives at the Santa Clarita home.<sup>19</sup> The cars belonging to  
8 plaintiff and his wife are registered to the Santa Clarita home address and his Burbank work  
9 address, not the Oxnard Home address. The business at which both plaintiff and his wife work  
10 is located in Los Angeles County, not Ventura County. Plaintiff listed his Burbank work address  
11 as his mailing address on the First Application, not the Oxnard Home address. Finally, although  
12 plaintiff purchased the Oxnard Home in June 2012, he did not change his voter/DMV registration  
13 until February 2013, a month after he had submitted the First Application and on the day he was  
14 interviewed by Gonzales. There is no evidence that plaintiff has voted in Ventura County.

15  
16 In short, there is no evidence of any connection between plaintiff and Ventura County other  
17 than the facts that he purchased a one-bedroom condominium in Oxnard in June 2012, which he  
18 shared on occasion with his son who lived there on a full-time basis, and belatedly registered to  
19 vote there after he sought a CCWP. Even crediting plaintiff's declarations with respect to the  
20 "intent" aspect of "residence" and "domicile" under California law, the evidence of the requisite  
21 "union" of "intent" and "act" is missing. Rather, the evidence of the required "act" shows only a

22  
23  
24 longer lives in the Oxnard Home, as well as with the property manager's advice to Gonzales that  
she understood plaintiff and his wife to be renting the Oxnard Home to his son.

25 <sup>19</sup> Plaintiff does not suggest that he and he and his wife are estranged; indeed, in his  
26 interview with Gonzales, plaintiff's statements as a whole indicate that he and his wife spend  
27 substantial time together. Thus, it is odd that plaintiff's alleged permanent home is in Oxnard (a  
28 one-bedroom condominium shared (at least in the past) with his adult son), and his wife's home  
is in Santa Clarita -- almost 50 driving miles from Oxnard, (which, given Southern California traffic,  
is a significant distance).

1 connection with Los Angeles County and plaintiff's home in Santa Clarita. As plaintiff has  
 2 stipulated, he neither spends nor conducts the majority of his activities in Ventura County. There  
 3 was significant and substantial evidence available to the VCSO showing that the everyday  
 4 incidents of plaintiff's life are in Los Angeles County, the place listed on his California driver's  
 5 license, which is where he maintains a home with his wife and his wife resides, he was residing  
 6 (rather than Oxnard) on every occasion that the VCSO had conducted surveillance, his business  
 7 is located, and his cars are registered.<sup>20</sup> The evidence of record does not support the finding, as  
 8 required under California law, that plaintiff has abandoned his Santa Clarita home as his domicile  
 9 and replaced it with the Oxnard Home as his domicile. The evidence amply supports the  
 10 conclusion that plaintiff remains a "resident" of Los Angeles County within the meaning of Section  
 11 26150 and is not a "resident" of Ventura County within the meaning of that statute.<sup>21</sup>

12  
 13 Plaintiff has not met his burden of establishing that there is no question of material fact on  
 14

---

15 <sup>20</sup> Whether there are, as plaintiff's counsel suggests in his briefing, additional facts that  
 16 might explain some of these circumstances is of no moment. This is the second round of  
 17 summary judgment motions in this case. Plaintiff failed to prevail on his prior motion, and the  
 18 Court, in its First SJ Order, explicitly advised plaintiff that unsupported assertions by his counsel  
 19 do not constitute evidence for Rule 56 purposes. In this current round of briefing in connection  
 20 with the pending Motions, plaintiff failed, as required by Local Rule 56-2, to respond to, or  
 21 otherwise controvert, defendant's Local Rule 56-1 Statement of Uncontroverted Facts, and when  
 22 the Court effectively gave plaintiff an opportunity to remedy this noncompliance (and warned him  
 of the consequences of not doing so) through its Order of July 23, 2014, plaintiff expressly  
 advised the Court Clerk that he did not intend to comply with Local Rule 56-2. Plaintiff, therefore,  
 cannot complain that the facts on which the Court must base its ruling are anything *other* than  
 as established by the evidence actually before the Court and of record.

23 <sup>21</sup> Plaintiff's characterization of the VCSO's finding that he is not a resident of Ventura  
 24 County as an "abuse of discretion" is a red herring. The issue in this case has always been  
 25 whether the VCSO's interpretation of the term "resident," as used in Section 26150, and its finding  
 26 that plaintiff does not meet that definition comport with California law and whether the  
 27 consequent denial of a CCWP to plaintiff on that basis violates the Second Amendment. To the  
 28 extent that plaintiff, by a brief, ten-line discussion at the end of his Second Motion now purports  
 to mount a new broad facial challenge to the discretionary "may" language of Section 26150 (see  
 Note 15, *supra*), this new claim constitutes an entirely different and direct attack on the validity  
 of Section 26150 that plaintiff has not previously raised in this case. The Court declines to  
 consider any such belated, and wildly expanded, claim.

1 the issue of whether he is a "resident" of Ventura County within the meaning of Section 26150,  
2 and thus, defendant erred in concluding otherwise. He simply has failed to produce the required  
3 "significant probative evidence tending to support" his claim of residency. Bias, 508 F.3d at 1218.  
4 Defendant has met its burden of establishing that there is no triable issue of material fact on this  
5 question, as no reasonable jury viewing the record before the Court would find, by a  
6 preponderance of the evidence, that plaintiff is a "resident" of Ventura County within the meaning  
7 of Section 26150. Pyramid Technologies, 752 F.3d at 818. Because the record, taken as a whole,  
8 could not lead a rational factfinder to find for plaintiff on this issue, there is no genuine issue for  
9 trial, and defendant is entitled to summary judgment on the issue of whether the VCSO's finding  
10 that plaintiff was not a Ventura County "resident," and its consequent denial of his First and  
11 Second Applications, was appropriate under California law. Matsushita, 475 U.S. at 587.

#### 12 13 D. The Second Amendment Issue

14  
15 The question now is whether defendant's application of California's residency requirement,  
16 even though proper under California law, nonetheless violates the Second Amendment.

##### 17 18 1. The Evolving Second Amendment Jurisprudence

19  
20 The Second Amendment states: "A well regulated Militia, being necessary to the security  
21 of a free state, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const.  
22 amend. II. In Robertson v. Baldwin, 165 U.S. 275, 281-82 (1887), the Supreme Court observed  
23 that many of the freedoms guaranteed by the Bill of Rights are subject to "certain well-recognized  
24 exceptions" and, in listing such exceptions, observed that "the right of the people to keep and  
25 bear arms is not infringed by laws prohibiting the carrying of concealed weapons." The Supreme  
26 Court has never retracted that pronouncement nor questioned it. Nonetheless, in recent years,  
27 there has been an explosion of cases brought challenging state and local municipality laws and  
28 regulations restricting the carrying of concealed weapons. These lawsuits, without question, are

1 the result of two Supreme Court decisions -- District of Columbia v. Heller, 554 U.S. 570 (2008),  
2 and McDonald v. City of Chicago, 561 U.S. 742 (2010).

3  
4 In Heller, the Supreme Court considered a District of Columbia law that banned the  
5 possession of handguns in the home and required that any lawful firearm be kept in an inoperable  
6 condition. The Supreme Court found that the right embodied in the Second Amendment is an  
7 individual right to "keep and carry arms," and that "the inherent right of self-defense has been  
8 central to the Second Amendment right." 554 U.S. at 627-28. The Supreme Court opined that  
9 the core protection of this Second Amendment right is "the right of law-abiding, responsible  
10 citizens to use arms in defense of hearth and home" and found that the District of Columbia's  
11 absolute prohibition on the possession of handguns in the home, as well as its requirement that  
12 firearms be rendered inoperable, violated the Second Amendment. *Id.* at 635. The Supreme  
13 Court concluded that, because the District of Columbia law effected a total ban and rendered it  
14 impossible for citizens to use firearms "for the core lawful purpose of self-defense" of the home,  
15 the law would fail under any standard of scrutiny applicable, but the high court declined to specify  
16 what standard of scrutiny should be used in connection with Second Amendment challenges other  
17 than to indicate that rational basis review is not appropriate. *Id.* at 628-29 & n.27, 630. In  
18 McDonald, the Supreme Court held that the Second Amendment right found in Heller extends to  
19 state citizens. McDonald, 130 S. Ct. 3020, 3026.

20  
21 Heller did not resolve the constitutionality of statutes and regulations that "are less  
22 restrictive than the near-total ban at issue in that case." Jackson v. City and County of San  
23 Francisco, 746 F.3d 935, 359 (9th Cir. 2014). The Supreme Court has yet to address the  
24 relationship between the Second Amendment right found in Heller and statutes and regulations  
25 that govern carrying firearms outside the home, whether on an open or a concealed basis.  
26 However, in Heller, the Supreme Court made clear that regulating handgun use is permissible,  
27 "the right secured by the Second Amendment is not unlimited," and "the right was not a right to  
28 keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."

1 Heller, 554 U.S. at 626. The Supreme Court explained that:

2  
3 For example, the majority of the 19th-century courts to consider the question held  
4 that prohibitions on carrying concealed weapons were lawful under the Second  
5 Amendment or state analogues. . . . Although we do not undertake an exhaustive  
6 historical analysis today of the full scope of the Second Amendment, nothing in our  
7 opinion should be taken to cast doubt on longstanding prohibitions on the  
8 possession of firearms by felons and the mentally ill, or laws forbidding the carrying  
9 of firearms in sensitive places such as schools or government buildings, or laws  
10 imposing conditions and qualifications on the commercial sales of arms.

11  
12 *Id.* at 626-27 (internal citations omitted). Such prohibitions, although not an “exhaustive” list, are  
13 “presumptively lawful regulatory measures.” *Id.* & n. 26.

14  
15 Although Heller did not decide the procedural framework and scrutiny level applicable to  
16 Second Amendment challenges, the “majority of” Circuit Courts “have discerned from *Heller’s*  
17 approach a two-step Second Amendment inquiry.” Jackson, 746 F.3d at 960. “The two-step  
18 inquiry we have adopted ‘(1) asks whether the challenged law burdens conduct protected by the  
19 Second Amendment and (2) if so, directs courts to apply an appropriate level of scrutiny.’” *Id.*  
20 (*quoting United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013), *pet. for cert. filed* (June  
21 26, 2014) (U.S. No. 14-5032)).

22  
23 The first step of this inquiry requires courts to decide whether the challenged law burdens  
24 conduct protected by the Second Amendment based upon a historical understanding of the scope  
25 of the Second Amendment right, or whether the challenged law falls within a well-defined and  
26 narrowly-limited category of prohibitions that have been historically unprotected. Jackson, 746  
27 F.3d at 960.



1 To determine whether a challenged law falls outside the historical scope of the  
2 Second Amendment, we ask whether the regulation is one of the “presumptively  
3 lawful regulatory measures” identified in *Heller*, 554 U.S. at 627 n.26, 128 S. Ct.  
4 2738, or whether the record includes persuasive historical evidence establishing that  
5 the regulation at issue imposes prohibitions that fall outside the historical scope of  
6 the Second Amendment.

7  
8 *Id.*

9  
10 If a court determines that the law or regulation burdens conduct that falls within the  
11 historical scope of the Second Amendment, the second step of the inquiry requires a court to  
12 determine the appropriate level of scrutiny to be applied. *Jackson*, 746 F.3d at 960; *Chovan*, 735  
13 F.3d at 1136. Rational basis review is not appropriate; rather, a court must apply either  
14 intermediate or strict scrutiny. *Heller*, 554 U.S. at 628 n.27; *Jackson*, 746 at 961; *Chovan*, 735  
15 F.3d at 1137-38. To determine the appropriate level of scrutiny, a court must consider “(1) ‘how  
16 close the law comes to the core of the Second Amendment right’ and (2) ‘the severity of the law’s  
17 burden on the right.’” *Chovan*, 735 at 1138 (citation omitted). With respect to prong (1), courts  
18 must bear in mind *Heller*’s holding that the Second Amendment core purpose is the individual’  
19 citizen’s right to use arms in defense of hearth and home. *Jackson*, 746 F.3d at 961; *Chovan*, 735  
20 F.3d at 1138. With respect to prong (2), as in First Amendment analysis, laws that regulate only  
21 the *manner* in which a person may exercise his Second Amendment rights are less burdensome  
22 than those, such as in *Heller*, that bar firearm possession completely. *Jackson*, 746 F.3d at 961.  
23 “[F]irearm regulations which leave open alternative channels for self-defense are less likely to  
24 place a severe burden on the Second Amendment right than those which do not.” *Id.* If a  
25 challenged law does not place a substantial burden on the Second Amendment right, intermediate  
26 scrutiny applies. *Id.* Intermediate scrutiny requires “(1) the government’s stated objective to be  
27 significant, substantial, or important; and (2) a reasonable fit between the challenged regulation  
28 and the asserted objective.” *Chovan*, 735 F.3d at 1139.



2. Step One: Does California's County Residence Requirement For The Issuance Of CCWPs Burden Conduct Protected By The Second Amendment?

Prior to February 13, 2014, resolving the first step of the Chovan two-step test would have been a difficult task, as the decisional law on this issue was conflicting. *Compare, e.g., Drake v. Filko*, 724 F.3d 426, 429 (3d Cir. 2013) ("we conclude that the requirement that applicants demonstrate a 'justifiable need' to publicly carry a handgun for self-defense qualifies as a 'presumptively lawful,' 'longstanding' regulation and therefore does not burden conduct within the scope of the Second Amendment's guarantee"), *cert. denied* 134 S. Ct. 2134 (2014), and Peterson v. Martinez, 707 F.3d 1197, 1209-12 (10th Cir. 2012) (holding that the concealed carrying of firearms falls outside the scope of the Second Amendment guarantee), *with Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012) ("The Supreme Court has decided that the amendment confers a right to bear arms for self-defense, which is as important outside the home as inside."). Rather than resolving the first step inquiry, some Circuits simply have assumed, *arguendo*, that the first step is satisfied, proceeded to the second step, and apply the intermediate scrutiny standard of review. *See, e.g., Woollard v. Gallagher*, 712 F.3d 865, 875-76 (4th Cir. 2013), *cert. denied* 134 S. Ct. 422 (2013); Kachalsky v. County of Westchester, 701 F.3d 81, 93 (2d Cir. 2012), *cert. denied* 133 S. Ct. 1806 (2013).

On February 13, 2014, a sharply divided panel of the Ninth Circuit issued its decision in Peruta v. County of San Diego, 742 F.3d 1144, 1166, 1172 (9th Cir. 2014), finding that the Second Amendment "right to bear arms includes the right to carry an operable firearm outside the home for the lawful purpose of self-defense" and "require[s] that the states permit *some form* of carry for self-defense outside the home." The majority in Peruta found that, because the State of California generally bars the open carrying of weapons outside the home but permits concealed carrying of weapons if a permit is granted (which requires a finding of "good cause"), the County of San Diego's policy at issue -- which provided that concern for one's safety alone does not

1 constitute the requisite "good cause" -- "destroys" the Second Amendment right to bear arms, and  
2 thus, is unconstitutional. *Id.* at 1168-70. The Peruta majority concluded that the "good cause"  
3 requirement of California's CCWP system, as that "good cause" requirement was being interpreted  
4 and applied by the County of San Diego, required "per se invalidation," because it was the type  
5 of "rare law that 'destroys' the" Second Amendment right. *Id.* at 1170. While the Peruta majority  
6 opinion noted the Chovan two-step test, it specifically elected not to apply the second part of that  
7 test based on its conclusion that the law at issue required "per se invalidation" and, thus,  
8 heightened scrutiny review was inappropriate. 742 F.3d at 1168, 1175-78.

9  
10 The Peruta decision is not final. Motions to intervene as well as petitions for rehearing and  
11 review *en banc* are pending, and thus, the mandate has not issued and is stayed. Given the  
12 existing intra-Circuit conflict with respect to the subject-matter of the Peruta decision, it seems  
13 possible, if not likely, that the Supreme Court will grant *certiorari* in one of the CCWP cases,  
14 although it has declined to do so to date. At this time, however, the majority opinion in Peruta  
15 constitutes Ninth Circuit law that this Court must follow. See Miller v. Gammie, 335 F.3d 889,  
16 899-900 (9th Cir. 2003) (*en banc*) (noting that lower courts are bound by the holdings of higher  
17 courts); Hart v. Massanari, 266 F.3d 1155, 1170-71 (9th Cir. 2001) (opining that "the first panel  
18 to consider an issue sets the law not only for all the inferior courts in the circuit, but also future  
19 panels of the court of appeals"; "[b]inding authority must be followed unless and until overruled  
20 by a body competent to do so"; and "[o]nce a panel resolves an issue in a precedential opinion,  
21 the matter is deemed resolved, unless overruled by the court itself sitting *en banc*, or by the  
22 Supreme Court); see also Nichols v. Harris, \_\_\_ F. Supp. 2d \_\_\_, 2014 WL 1716135, at \*1 (C.D.  
23 Cal. May 1, 2014) (finding that Peruta is binding on district courts notwithstanding its presently  
24 unsettled procedural posture).

25  
26 In addressing the Second Amendment issue, the Court will follow the "cautionary" approach  
27 the First Circuit has suggested is appropriate and will "not engage in answering the question of  
28 how *Heller* applies to possession of firearms outside the home," given that "the whole matter is

1 a 'vast *terra incognita* that courts should enter only upon necessity and only then by small  
 2 degree.'" Hightower v. City of Boston, 693 F.3d 61, 75 (1st Cir. 2012) (citation omitted). In view  
 3 of the panel majority opinion in Peruta and its broad interpretation of the Second Amendment  
 4 right found in Heller, the Court will assume, as other courts have done, that the first step of the  
 5 Chovan test is satisfied with respect to Section 26150's residency requirement and will proceed  
 6 to the second step.

7  
 8 3. Step Two: Does California's Residency Requirement For The Issuance  
 9 of CCWPs Survive The Appropriate Standard Of Scrutiny?  
 10

11 Heller left open the question of the particular level of scrutiny that should be used in a  
 12 given Second Amendment case other than to rule out rational basis review, 554 U.S. at 628 n.27,  
 13 and as the second part of the Chovan test makes clear, a court hearing such a challenge must  
 14 determine which scrutiny standard should be applied, 735 F.3d at 1136. To make that  
 15 determination, a court must consider (1) how close the law comes to the core of the Second  
 16 Amendment right and (2) the severity of the law's burden on that right. Chovan, 735 F.3d at  
 17 1138. With respect to (1), a court looks to the core of the Second Amendment right enunciated  
 18 in Heller, *i.e.*, the right of law abiding citizens to use arms in defense of hearth and home.  
 19 Jackson, 746 F.3d at 961; Chovan, 725 F.3d at 1138. With respect to (2), "laws which regulate  
 20 only the '*manner* in which persons may exercise their Second Amendment rights' are less  
 21 burdensome than those which bar firearm possession completely." Jackson, 746 F.3d at 961  
 22 (*quoting Chovan*, 735 F.3d at 1138). "[F]irearm regulations which leave open alternative channels  
 23 for self-defense are less likely to place a severe burden on the Second Amendment right than  
 24 those which do not." Jackson, 746 F.3d at 961.

25  
 26 If a challenged law or regulation does not implicate a core Second Amendment right, or  
 27 does not place a substantial burden on the Second Amendment, intermediate scrutiny is  
 28 appropriate at the second step of the Chovan test. Jackson, 746 F.3d at 961. Plaintiff appears

1 to concede that intermediate scrutiny is the appropriate standard of review here (Second Motion  
2 at 4), and the Court agrees. This is not an instance, as in Heller or as found by the Ninth Circuit  
3 in Peruta, in which the application of the challenged state law effects a *de facto* destruction of the  
4 Second Amendment right to bear arms for self defense, and thus, intermediate scrutiny would be  
5 precluded. California provides for the issuance of CCWPs but simply has decided that an applicant  
6 for a CCWP must seek his permit from the county in which he actually resides. As noted above,  
7 under California law, every California citizen has a domicile, and thus, every California citizen who  
8 desires a CCWP has a county in which he may submit his application. At most, the Section 26150  
9 residency requirement regulates the *manner* in which those desiring to carry concealed weapons  
10 for self defense may exercise their right to do so, *i.e.*, by making their applications in the  
11 appropriate county of residence rather than shopping for a county among counties perceived to  
12 be more lenient with respect to granting CCWPs.

13  
14 In addition, for the most part, those federal courts that have considered challenges to laws  
15 and regulations found to affect (rather than destroy) the manner in which Second Amendment  
16 rights are exercised have, at the second step, applied intermediate scrutiny. *See, e.g., Jackson*,  
17 746 F.3d at 965 (San Francisco ordinances that regulated handgun storage and ammunition sales  
18 were assessed, and found constitutional, under intermediate scrutiny review); Drake, 724 F.3d  
19 at 436-40 (applying intermediate scrutiny to a New Jersey law that required applicants for CCWPs  
20 to show “justifiable need” to publically carry a handgun for self defense, and finding that  
21 requirement to withstand intermediate scrutiny); Woollard, 712 F.3d at 876-82 (applying  
22 intermediate scrutiny to the good-and-substantial-reasons requirement of Maryland’s CCWP law  
23 and holding that the requirement is constitutional); Peterson, 707 F.3d at 1216 (although the  
24 majority did not reach the second step, the concurring opinion found that intermediate scrutiny  
25 should be applied, and was satisfied, with respect to a Colorado statute that limited issuance of  
26 CCWPs to state residents); Kachalsky, 701 F.3d at 93-101 (reviewing, and finding constitutional,  
27 under intermediate scrutiny the “proper cause” requirement of New York’s CCWP scheme).

1 Applying intermediate scrutiny here to the residency requirement at issue, the Court must  
2 consider whether (1) the government's stated objective is significant, substantial, or important,  
3 and (2) there is a reasonable fit between the challenged law and the asserted objective. Chovan,  
4 735 F.3d at 1139.

5  
6 The first factor is satisfied readily here. As described earlier, Section 26150's residency  
7 requirement was imposed to curtail the practice of persons "shopping" for CCWPs in counties  
8 where they did not reside. The sponsors and supporters of the implementing bill believed that  
9 limiting the grant of CCWPs to counties in which applicants actually resided would "insure that  
10 permits are not granted improvidently," because local law enforcement officials would be  
11 "obviously in a much better position to evaluate the background, reputation, and need for a  
12 weapon, of an applicant," and this would help to "insure" that the issuance of CCWPs would be  
13 limited to persons who met the statutory requirements, including good moral character. In a state  
14 as large as California and with such differing population dynamics and geography, it is readily  
15 apparent that individual needs for carrying concealed weapons may differ tremendously between  
16 citizens of one county versus another county, just as the discretion to be exercised by county  
17 sheriffs in issuing CCWPs may need to be exercised in different manners between different  
18 counties. In short, it makes sense that California would wish to vest decisionmaking authority at  
19 the local, county level and to make such local decisionmaking meaningful by requiring county  
20 residence as a condition for obtaining a CCWP.

21  
22 In addition, the State of California's interest in public safety is self-evident. *See, e.g.,*  
23 United States v. Salerno, 481 U.S. 739, 748-50 (1987) (discussing the government's "legitimate  
24 and compelling interest" in public safety and preventing crime and stating: "We have repeatedly  
25 held that the Government's regulatory interest in community safety can, in appropriate  
26 circumstances, outweigh an individual's liberty interest."). In the State of California's motion to  
27 intervene filed in the Peruta appeal, California expressly noted its significant interest "in preserving  
28 and protecting public safety through the reasonable regulation of public carrying" of firearms.

1 (See Case No. 10, 56971, Docket No. 122-1 at 14.)  
2

3 With respect to the second factor -- which addresses whether there is a reasonable fit  
4 between the residence requirement and the State of California's interest -- the Court also finds  
5 that factor satisfied. Ensuring that CCWP holders are qualified under California law furthers the  
6 state's objective of fostering public safety, and the residency requirement is a reasonable means  
7 of ensuring that decisionmakers have a basis for making such qualification decisions. Requiring  
8 the assessment of CCWP applications at the local county level maximizes the likelihood that  
9 meaningful decisions can be made regarding an applicant's qualifications and affords a basis for  
10 monitoring that such qualifications are maintained during the life of the CCWP. A local licensing  
11 authority is more likely to be aware of incidents or facts that would render someone unqualified  
12 for a CCWP and which constitutes information that may not be available to a licensing authority  
13 in another county or at the state level, because it does not show up in any reporting database --  
14 for example, police officer knowledge of domestic disturbance calls at an applicant's residence that  
15 have not resulted in any actual prosecution or awareness of an applicant's gang associations or  
16 other informal contact with law enforcement involving applicant behavior that has not resulted in  
17 a criminal charge or prosecution. See Bach v. Pataki, 408 F.3d 75, 92-94 (2d Cir. 2005)  
18 (upholding a Privileges and Immunities Clause attack on New York's prohibition on nonresidents  
19 carrying concealed weapons while in New York and finding the reasonable fit requirement  
20 satisfied, because New York had an interest in monitoring those possessing CCWPs, which  
21 included "an interest in the entirety of a licensee's behavior," and New York could "best monitor  
22 the behavior of those licensees" who spent significant time in New York), *overruled on another*  
23 *ground by McDonald*. In Bach, New York argued that its residency requirement was substantially  
24 related to its interest in monitoring those possessing CCWPs, reasoning:

25  
26 The ongoing flow of information to a licensing officer as a result of the licensee's tie  
27 to a particular residence or community is an important element of the State's  
28 regulatory scheme. It substantially increases the likelihood that a licensing officer

1 will be alerted to facts that cast doubt on a licensee's fitness to possess a firearm.

2  
3 *Id.* at 92. That rationale applies equally with respect to the Section 26150 residency requirement.

4  
5 The second factor of intermediate scrutiny review does not require a perfect fit but, rather,  
6 one that is reasonable. As the Supreme Court has explained: "The relevant inquiry . . . is not  
7 whether the statute is drawn as precisely as it might have been, but whether the line chosen by  
8 the California Legislature is within constitutional limitations." Michael M. v. Superior Court of  
9 Sonoma County, 450 U.S. 464, 473 (1981) (plurality opinion). "Intermediate scrutiny does not  
10 require that [the challenged statute] be the *least* restrictive means of" meeting the governmental  
11 objective. Jackson, 746 F.3d at 966. A challenged statute is appropriately narrowly tailored "so  
12 long as the . . . regulation promotes a substantial government interest that would be achieved less  
13 effectively absent the regulation," and "[s]o long as the means chosen are not substantially  
14 broader than necessary to achieve the government's interest, . . . the regulation will not be invalid  
15 simply because a court concludes that the government's interest could be adequately served by  
16 some less-speech-restrictive alternative." Ward v. Rock Against Racism, 491 U.S. 781, 799-800  
17 (1989) (applying second factor in First Amendment context); see Jackson, 746 F.3d at 961  
18 (explaining that, in analyzing the second factor, courts are "guided by First Amendment  
19 principles").<sup>22</sup>

20  
21 Here, the fit between the residence requirement and the government's objective is a

---

22  
23 <sup>22</sup> "[M]ost legislation will assert broad safety concerns and broad gun control measures  
24 to match, covering both 'good' and 'bad' gun possessors and 'good' and 'bad' guns. Such  
25 legislation cannot be narrowly tailored to reach only the bad people who kill with their innocent  
26 guns." Donald Dowd, *The Relevance of the Second Amendment to Gun Control Legislation*, 58  
27 MONT. L. REV. 79, 111 (1997) (explaining why requiring strict scrutiny review and a narrow  
28 tailoring analysis is not feasible in most Second Amendment cases). "[D]ue to the intensity of  
public opinion on guns, legislation is inevitably the result of hard-fought compromise in the  
political branches. To expect such legislation to reflect a tight fit between ends and means is  
unrealistic." Adam Winkler, *Scrutinizing the Second Amendment*, 105 MICH. L. REV. 683, 731  
(2007).



1 reasonable one. The residence requirement does not preclude any California resident from  
2 obtaining a CCWP, because under California law, every Californian has a domicile, regardless of  
3 how many homes he owns and in how many counties those homes are located. The law simply  
4 requires that he submit his CCWP application to the county in which that domicile is located.  
5 While plaintiff may dispute the VCSO's conclusion that Ventura County is not plaintiff's place of  
6 domicile, plaintiff's disagreement with defendant's finding -- a finding this Court believes is  
7 appropriate under the evidence of record -- does not mean that the reasonable fit requirement  
8 is not satisfied.<sup>23</sup> While the residence requirement may burden those persons who wish to submit  
9 CCWP applications in other counties perceived to more readily grant such permits, forum shopping  
10 would not appear to be a part of the core right of Second Amendment protection envisioned by  
11 the Supreme Court in Heller.

12  
13 For these reasons, the Court concludes that the Section 26150 residency requirement --  
14 both facially and as applied here -- is substantially related to an important government objective  
15 and is reasonably tailored to that objective. Thus, that residency requirement withstands  
16 intermediate scrutiny. No Second Amendment violation has been shown, and no triable issue of  
17 material fact exists in this respect. As a result, plaintiff is not entitled to relief under 42 U.S.C. §  
18 1983, as he has not shown a violation of his rights under the United States Constitution.  
19 Accordingly, defendant is entitled to summary judgment.

## 20 21 CONCLUSION

22  
23 For the foregoing reasons, the Court concludes that: plaintiff has not shown he is entitled  
24 to summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, and  
25

---

26  
27 <sup>23</sup> Significantly, plaintiff's application for a CCWP submitted in Los Angeles County --  
28 where his Santa Clarita home is located -- was not denied on the ground that he was not a  
resident. Rather, it was denied based upon an interpretation of the "good cause" requirement  
that predated the Peruta decision.



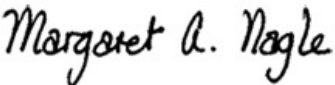
1 accordingly, the Second Motion is DENIED; and defendant has established it is entitled to  
2 summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, and  
3 accordingly, Defendant's Motion is GRANTED.

4  
5 IT IS ORDERED that this case is dismissed with prejudice.

6  
7 Let Judgment be entered against plaintiff and in favor of defendant.

8  
9 IT IS SO ORDERED.

10  
11 DATED: September 30, 2014.

12   
13 \_\_\_\_\_  
14 MARGARET A. NAGLE  
15 UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28