

1 C. D. Michel – SBN 144258
Email: cmichel@michellawyers.com
2 Joshua R. Dale - SBN 209942
Sean A. Brady – SBN 262007
3 Anna M. Barvir – SBN 268728
MICHEL & ASSOCIATES, P.C.
4 180 E. Ocean Blvd., Suite 200
Long Beach, CA 90802
5 Telephone: (562) 216-4444
Facsimile: (562) 216-4445

6 Attorneys for Plaintiffs

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11
12 MICHELLE FLANAGAN, et al.,

13 Plaintiffs,

14
15 v.

16 CALIFORNIA ATTORNEY
GENERAL KAMALA HARRIS, in
17 her official capacity as Attorney
General of the State of California, et
18 al.,

19 Defendants.
20

Case No.: 2:16-cv-06164 JAK AS

21
22 **STATEMENT OF**
23 **UNCONTROVERTED FACTS AND**
24 **CONCLUSIONS OF LAW IN**
25 **SUPPORT OF PLAINTIFFS’**
26 **MOTION FOR SUMMARY**
27 **JUDGMENT**

Judge: John A. Kronstadt
Hearing Date: November 6, 2017
Hearing Time: 8:30 AM
Courtroom: 10B

Action Filed: August 17, 2016
Trial Date: February 6, 2018

INTRODUCTION

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56-1, Plaintiffs Michelle Flanagan, Jacob Perkio, Thomas Golden, Dominic Nardone, and the California Rifle & Pistol Association (collectively “Plaintiffs”), respectfully submit the following Statement of Uncontroverted Facts and Conclusions of Law in support of Plaintiffs’ Motion for Summary Judgment.

STATEMENT OF UNCONTROVERTED FACTS

Plaintiffs contend there is no genuine issue about the following material, uncontroverted facts:

| UNCONTROVERTED FACT | SUPPORTING EVIDENCE |
|---|---|
| 1. All individual Plaintiffs are residents of the County of Los Angeles, California. | Flanagan Decl., ¶ 2; Golden Decl., ¶ 2; Nardone Decl., ¶ 2; Perkio Decl., ¶ 2; CRPA Decl., ¶ 2. |
| 2. All individual Plaintiffs are over the age of 21. | Flanagan Decl., ¶ 2; Golden Decl., ¶ 2; Nardone Decl., ¶ 2; Perkio Decl., ¶ 2; CRPA Decl., ¶ 2. |
| 3. All Plaintiffs satisfy all applicable requirements to possess a firearm under state and federal law. | Flanagan Decl., ¶ 3; Golden Decl., ¶ 3; Nardone Decl., ¶ 3; Perkio Decl., ¶ 3; CRPA Decl., ¶ 3. |
| 4. All Plaintiffs currently own a handgun. | Flanagan Decl., ¶ 3; Golden Decl., ¶ 3; Nardone Decl., ¶ 3; Perkio Decl., ¶ 3; CRPA Decl., ¶ 3. |
| 5. No Plaintiff is prohibited from owning firearms under the laws of the United States or the state of California. | Flanagan Decl., ¶ 4; Golden Decl., ¶ 4; Nardone Decl., ¶ 4; Perkio Decl., ¶ 4. |
| 6. No Plaintiff has ever been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner. | Flanagan Decl., ¶ 4; Golden Decl., ¶ 4; Nardone Decl., ¶ 4; Perkio Decl., ¶ 4. |

| UNCONTROVERTED FACT | SUPPORTING EVIDENCE |
|---|--|
| <p>7. But for California's comprehensive restrictions on the public carriage of firearms and Plaintiffs' inability to obtain a Carry License, the individual Plaintiffs and members of Plaintiff CRPA would lawfully carry a firearm in non-sensitive public places for self-defense, but they refrain from doing so for fear of liabilities for violating one or more of California's laws that criminalize of their doing so.</p> | <p>Flanagan Decl., ¶ 12; Golden Decl., ¶ 12; Nardone Decl., ¶ 12; Perkio Decl., ¶ 10; CRPA Decl., ¶ 8.</p> |
| <p>8. None of the individual Plaintiffs currently qualifies for the exceptions to California's carry restrictions that would allow them to carry a firearm outside their home for self-defense in some manner.</p> | <p>Flanagan Decl., ¶ 9; Golden Decl., ¶ 9; Nardone Decl., ¶ 9; Perkio Decl., ¶ 7.</p> |
| <p>9. Sheriff James McDonnell is responsible for administering the program for the licensing of persons to carry concealed weapons in Los Angeles County.</p> | <p>Cal. Pen. Code § 26150.</p> |
| <p>10. As of July 1, 2016, the County of Los Angeles has a population of approximately 10,137,915, a number that exceeds 200,000.</p> | <p>U.S. Census Bureau, <i>QuickFacts: Los Angeles County, California</i> (July 1, 2016), http://www.census.gov/quickfacts/fact/table/losangelescountycalifornia/PST045216</p> |

| UNCONTROVERTED FACT | SUPPORTING EVIDENCE |
|--|--|
| <p>11. Sheriff James McDonnell’s “good cause” standard requires Carry License applicants to provide “convincing evidence of a clear and present danger to life, or of great bodily harm to the applicant, his spouse, or dependent child, which cannot be adequately dealt with by existing law enforcement resources, and which danger cannot be reasonably avoided by alternative measures, and which danger would be significantly mitigated by the applicant’s carrying of a concealed firearm.”</p> | <p><i>Concealed Weapon Licensing Policy</i>, Los Angeles County Sheriff’s Department, available at http://shq.lasdnews.net/content/uoa/SHQ/ConcealedWeaponLicensePolicy.pdf (last visited June 23, 2016).</p> |
| <p>12. Plaintiff Michelle Flanagan is employed as a realtor in Los Angeles County.</p> | <p>Flanagan Decl., ¶ 3.</p> |
| <p>13. Plaintiff Michelle Flanagan has two licenses to carry a firearm issued by the states of Arizona and Utah.</p> | <p>Flanagan Decl., ¶ 5.</p> |
| <p>14. Pursuant to her two licenses to carry a firearm issued by the states of Arizona and Utah, Plaintiff Michelle Flanagan is authorized to carry a firearm in thirty-five states, but not in California.</p> | <p>Flanagan Decl., ¶ 5.</p> |
| <p>15. Before moving to Los Angeles County, for four years, Plaintiff Michelle Flanagan maintained a license to carry a firearm pursuant to California Penal Code section 26150, that was issued by Kern County Sheriff.</p> | <p>Flanagan Decl., ¶ 6.</p> |

| UNCONTROVERTED FACT | SUPPORTING EVIDENCE |
|---|---|
| <p>16. After she moved to Los Angeles County Plaintiff Michelle Flanagan applied with Sheriff McDonnell for a Carry License on or about July 30, 2015.</p> | <p>Flanagan Decl., ¶ 7; Brady Decl., ¶ 2 and Exhibit 4 thereto.</p> |
| <p>17. Plaintiff Michelle Flanagan asserted self-defense as her “good cause” for the issuance of a Carry License from Sheriff McDonnell, citing that her job duties require her to enter vacant industrial buildings alone, where she encounters vagrant men who are much larger than her.</p> | <p>Flanagan Decl., ¶ 7.</p> |
| <p>18. Sheriff James McDonnell denied Plaintiff Michelle Flanagan’s application for a Los Angeles County Carry License for lack of “good cause” because:</p> <p>Typically, the verbiage ‘convincing evidence of a clear and present danger’ refers to a current situation which involves a specific person(s) who has threatened an individual and who has displayed a pattern of behavior which would suggest that the threat(s) could be carried out. Situations which would suggest only a potential danger to one’s safety, (e.g. carrying large amounts of money to the bank, profession/job, working late hours in a high crime rate area, etc.) are not consistent With the criteria for issuance of a concealed weapon license.</p> | <p>Flanagan Decl., ¶ 8 and Exhibit 1 thereto.</p> |
| <p>19. Plaintiff Thomas Golden is certified Carry License Instructor for California, Utah, and Florida.</p> | <p>Golden Decl., ¶ 4.</p> |

| UNCONTROVERTED FACT | SUPPORTING EVIDENCE |
|--|---|
| 20. Plaintiff Thomas Golden is qualified to teach the Carry License training course to individuals applying for a Carry License with the Los Angeles County Sheriff. | Golden Decl., ¶ 5. |
| 21. Plaintiff Thomas Golden has trained at least 10,000 shooters at almost every level. | Golden Decl., ¶ 6. |
| 22. Plaintiff Thomas Golden applied for a Carry License in Los Angeles County, asserting as his “good cause” a desire to carry a firearm for self-defense, because he had been threatened by multiple individuals saying they would easily be able to steal his guns from him outside of his work. | Golden Decl., ¶ 7; Brady Decl., ¶ 3 and Exhibit 5 thereto. |
| 23. Sheriff James McDonnell denied Plaintiff Thomas Golden’s Carry License application for lack of “good cause.” | Golden Decl., ¶ 8. |
| 24. Plaintiff Dominic Nardone is a Vietnam veteran, who served in the U.S. Navy as a diver and shooting instructor in small arms. | Nardone Decl., ¶ 5. |
| 25. Plaintiff Dominic Nardone applied for a Carry License in Los Angeles County on March 28, 2014, asserting a desire to defend himself and his family as his “good cause.” | Nardone Decl., ¶ 6; Brady Decl., ¶ 4 and Exhibit 6 thereto. |

| UNCONTROVERTED FACT | SUPPORTING EVIDENCE |
|---|--|
| 26. Sheriff James McDonnell denied Plaintiff Dominic Nardone's Carry License application for lack of "good cause." | Nardone Decl., ¶ 7 and Exhibit 2 thereto. |
| 27. Plaintiff Dominic Nardone's repeated requests for reconsideration of his Carry License have been denied. | Nardone Decl., ¶ 8. |
| 28. Plaintiff Jacob Perkio applied for a Carry License in Los Angeles County asserting a desire to carry a firearm for self-defense when he is hiking and camping with his wife in remote areas as his "good cause." | Perkio Decl., ¶ 4; Brady Decl., ¶ 5 and Exhibit 4 thereto. |
| <p>29. James McDonnell denied Plaintiff Jacob Perkio's Carry License application for lack of "good cause" because:</p> <p>Typically, the verbiage 'convincing evidence of a clear and present danger' refers to a current situation which involves a specific person(s) who has threatened an individual and who has displayed a pattern of behavior which would suggest that the threat(s) could be carried out. Situations which would suggest only a potential danger to one's safety, (e.g. carrying large amounts of money to the bank, profession/job, working late hours in a high crime rate area, etc.) are not consistent With the criteria for issuance of a concealed weapon license.</p> | Perkio Decl., ¶ 6 and Exhibit 3 thereto. |
| 30. Rick Travis is the Executive Director of Plaintiff California Rifle & Pistol Association ("CRPA"). | CRPA Decl., ¶ 1. |

| UNCONTROVERTED FACT | SUPPORTING EVIDENCE |
|---|-------------------------|
| <p>31. Plaintiff CRPA is a non-profit membership and donor supported organization classified under § 501(c)(4) and incorporated under the laws of California with its headquarters in Fullerton, California.</p> | <p>CRPA Decl., ¶ 2.</p> |
| <p>32. Founded in 1875, the CRPA seeks to defend the Second Amendment and advance laws that protect the rights of individual citizens.</p> | <p>CRPA Decl., ¶ 3.</p> |
| <p>33. CRPA works to preserve the constitutional and statutory rights of gun ownership, including the right to self-defense, the right to hunt, and the right to keep and bear arms. CRPA is also dedicated to promoting the shooting sports, providing education, training, and organized competition for adult and junior shooters.</p> | <p>CRPA Decl., ¶ 3.</p> |
| <p>34. CRPA's members include law enforcement officers, prosecutors, professionals, firearm experts, and members of the public of all law-abiding individuals, including the fundamental right to "bear" or "carry" firearms for the core lawful purpose of self defense.</p> | <p>CRPA Decl., ¶ 4.</p> |
| <p>35. Law-abiding CRPA members who reside in Los Angeles County applied for Carry Licensed to carry a firearm for self-defense and were denied.</p> | <p>CRPA Decl., ¶ 5.</p> |

| UNCONTROVERTED FACT | SUPPORTING EVIDENCE |
|---|-------------------------|
| <p>36. Law-abiding CRPA members who reside in Los Angeles County wish to obtain a Carry License, but refrain from applying and wasting their time and financial resources given that such application would be futile in light of Los Angeles County Sheriff James McDonnell’s official “good cause” policy.</p> | <p>CRPA Decl., ¶ 6</p> |
| <p>37. Members of Plaintiff CRPA desire and intend to exercise their constitutional right to carry a firearm in public for self-defense, but they are precluded from doing so because they are unable to obtain a license to carry a firearm and California law generally prohibits them from carrying a firearm in any manner openly or concealed, without such a license.</p> | <p>CRPA Decl., ¶ 7.</p> |

CONCLUSIONS OF LAW

1. The Second Amendment to the United States Constitution provides that: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” The Supreme Court has held that this text protects two separate rights: the right to “keep” arms, and the right to “bear” arms. *District of Columbia v. Heller*, 554 U.S. 570, 591 (2008) (“keep and bear arms” is not a “term of art” with a “unitary meaning”). Under *Heller*’s binding construction, to “bear arms” means to “carry” a weapon for the purpose of “confrontation”—to “wear, bear, or carry” a firearm “upon the person or in the clothing or in a pocket, for the purpose ... of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Id.* at 584 (quoting

1 Muscarello v. United States, 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting)).
2 The Court did not limit the scope of this right to private property, but instead
3 indicated that it extends to at least those public areas that are not “sensitive places.”
4 *Heller*, 554 U.S. at 626-27 & n.26. In sum, the Second Amendment protects a right
5 of “the People” to bear arms in some manner for self-defense purposes beyond their
6 homes.

7
8 2. California law generally prohibits Plaintiffs, and all ordinary Los Angeles
9 County residents, from *openly* carrying a firearm (e.g., in a visible hip holster),
10 whether loaded or not, in any public place, with the exception of isolated and
11 oftentimes difficult to identify portions of unincorporated areas. Cal. Penal Code §§
12 25850, 26350, 26400. Los Angeles County Code of Ordinances § 13.66.040.

13
14 3. California law generally prohibits Plaintiffs, and most ordinary Los Angeles
15 County residents, from carrying a *concealed* firearm in any place outside one’s
16 residence, or other private property one owns or controls. Cal. Penal Code §§
17 25400, 25605.

18
19 4. California law exempts certain persons, places, and activities from each of
20 these general restrictions on carrying firearms. *See* Cal. Penal Code §§ 25450-
21 25655, 26045, 26361-26391, 26405, 27560, 27565, 27800, 27850, 27870, 27875,
22 27915, 27920, 27925, and 31725.

23
24 5. None of these exemptions allows an ordinary, law-abiding adult Californian
25 to carry a firearm in public for self-defense.

26
27 6. California law does allow a Sheriff or Chief of Police to issue a license to
28 carry a loaded handgun in public (“Carry License”) to qualifying residents of their
jurisdiction or to non-residents who spend a substantial period of time in their

principal place of employment or business within that jurisdiction. Cal. Penal Code §§ 26150, 26155. Issuing Authorities in counties with populations over 200,000 residents can only issue licenses allowing the holder to carry a *concealed* firearm. California law prohibits them from issuing licenses to carry a loaded handgun in an exposed, open manner (e.g., in a visible hip holster). *Id.* §§ 26150(b)(2), 26155(b)(2).

7. Before a Carry License can be issued, the Issuing Authority must, among other requirements, Cal. Penal Code §§ 26185 (a)(1),(3),(4); 26165 (a)(1),(3),(4); agree that the applicant has “good cause” for carrying a loaded firearm in public. Cal. Penal Code §§ 26150(a)(2), 26155(a)(2).

8. Issuing Authorities exercise “unfettered discretion” in deciding whether a Carry License applicant has “good cause” to be issued a license. *Erdelyi v. O’Brien*, 680 F.2d 61, 63 (9th Cir. 1982); *Nichols v. Cty. of Santa Clara*, 223 Cal. App. 3d 1236, 1241 (1990); *CBS, Inc. v. Block*, 42 Cal. 3d 646, 665-66 (1986).

9. Within California a concealed Carry License is the only means by which an individual can lawfully be armed for self-defense in public places without meeting one of the narrow exceptions to the general carry restrictions.

10. Los Angeles County Sheriff James McDonnell’s official written policy that does not recognize a desire for general self-defense as “good cause” for issuance of a Carry License, combined with California’s general carry restrictions, essentially bars competent, law-abiding Los Angeles County residents like plaintiffs from any means to carry firearms for self-defense beyond their homes.

Respectfully Submitted,
Date: September 11, 2017

MICHEL & ASSOCIATES, P.C.

/s/Sean A. Brady
Sean A. Brady
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

Case Name: *Flanagan, et al. v. California Attorney General Xavier Becerra, et al.*
Case No.: 2:16-cv-06164-JAK-AS

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**STATEMENT OF UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

| | |
|--|--------------------------------|
| Xavier Becerra, Attorney General of California | <i>Attorneys for Attorney</i> |
| P. Patty Li, Deputy Attorney General | <i>General of the State of</i> |
| E-mail: Patty.Li@doj.ca.gov | <i>California</i> |
| Jonathan M. Eisenberg, Deputy Attorney General | |
| E-mail: Jonathan.Eisenberg@doj.ca.gov | |
| 300 South Spring Street, Suite 1702 | |
| Los Angeles, CA 90013 | |

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 11, 2017

/s/Laura Palmerin
Laura Palmerin