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

11 MICHELLE FLANAGAN, et al.,

12 Plaintiffs,

13 v.

14 CALIFORNIA ATTORNEY  
GENERAL XAVIER BECERRA, in  
15 his official capacity as Attorney  
General of the State of California, et  
16 al.,

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

**PLAINTIFFS' ADDITIONAL  
UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW**

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

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56-1, Plaintiffs Michelle Flanagan, Samuel Golden, Dominic Nardone, Jacob Perkio, and The California Rifle & Pistol Association (collectively “Plaintiffs”) respectfully submit the following additional uncontroverted facts and conclusions of law.

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

### **PLAINTIFFS’ ADDITIONAL UNCONTROVERTED FACTS**

<b>Plaintiffs’ Uncontroverted Fact</b>	<b>Supporting Evidence</b>
38. Plaintiff Jacob Perkio testified in his deposition that “I’m hoping that any law abiding gun owner can carry a firearm in public.”	Brady Decl., Ex. 4, Perkio Dep. 16:8-9
39. Jacob Perkio testified in his deposition that “I don’t have a preference if it’s open or concealed. I just believe that it’s a right to carry a firearm in public.”	Brady Decl., Ex. 4, Perkio Dep. 16:13-15
40. Jacob Perkio testified in his deposition that he would “Definitely” carry a firearm openly if it was his only way to carry a firearm in public.	Brady Decl., Ex. 4, Perkio Dep. 16:16-19
41. Jacob Perkio testified in his deposition that he would “Definitely” carry a firearm concealed if it was his only way to carry a firearm in public.	Brady Decl., Ex. 4, Perkio Dep. 16:20-24

Plaintiffs' Uncontroverted Fact	Supporting Evidence
<p>42. Jacob Perkio testified in his deposition "if both concealed carry and open carry" were available "it would probably depend on the weather, the day" "what I'm wearing, what I'll be doing, where I'll be going" when deciding between open and concealed carry.</p>	<p>Brady Decl., Ex. 4, Perkio Dep. 17:4-11</p>
<p>43. Dominic Nardone testified in his deposition about open carry in public "It would be my second option, not my preference, but I would take that".</p>	<p>Brady Decl., Ex. 2, Nardone Dep. 19:21-24</p>
<p>44. Michelle Flanagan testified in her deposition that if openly carrying a firearm was her only option to carry a firearm in public that she would take advantage of that option.</p>	<p>Brady Decl., Ex. 1, Flanagan Dep. 25:2-5</p>
<p>45. Michelle Flanagan testified in her deposition that she has applied for a and was denied a concealed carry license from the Los Angeles County Sheriff's Office.</p>	<p>Brady Decl., Ex. 1, Flanagan Dep. 14:22-15:8</p>
<p>46. Michelle Flanagan testified in her deposition that she is eligible to possess a firearm in the State of California and has never been convicted of a felony or</p>	<p>Brady Decl., Ex. 1, Flanagan Dep. 10:11-20</p>

Plaintiffs' Uncontroverted Fact	Supporting Evidence
misdemeanor.	
47. Samuel Golden testified in his deposition that if openly carrying a firearm was his only option to carry a firearm in public that he would take that option.	Brady Decl., Ex. 3, Golden Dep. 20:17-20
48. Samuel Golden testified in his deposition that the Los Angeles County Sheriff's Department has repeatedly denied his application for a permit to carry a concealed weapon.	Brady Decl., Ex. 3, Golden Dep. 19:12-20:8
49. Plaintiffs' expert witness Professor Gary Kleck, a professor of criminology at Florida State University, submitted in this matter an expert report analyzing and responding to the report of Defendant's expert, Professor John J. Donohue III.	Brady Decl., Ex. 6, Expert Report of Professor Gary Kleck
50. Plaintiffs' expert witness Guy Rossi, a retired law enforcement officer and a law enforcement trainer, submitted in this matter an expert report analyzing and responding to the report of Defendant's expert witness Chief Kim	Brady Decl., Ex. 7, Expert Report of Guy Rossi

Plaintiffs' Uncontroverted Fact	Supporting Evidence
Raney (ret.).	
51. Plaintiffs' expert Senator John Cooke, a Colorado state senator and retired police chief, submitted in this matter an expert report analyzing and responding to the report of Defendant's expert witness Chief Kim Raney (ret.).	Brady Decl., Ex. 8, Expert Report of Senator John Cooke

### 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 already held that this text protects two separate rights: the right to "keep" arms, and the right to "bear" arms. See *Heller* id. at 591 ("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 *Muscarello v. United States*, 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting)). The Court did not limit the scope of this right to private property, but instead made every indication that it extends to at least those public areas that are not "sensitive places." [cite?] In sum, the Second Amendment protects a right of "the People" to bear arms in some manner for self-defense purposes beyond their homes.

2. California law generally prohibits Plaintiffs, and all ordinary Los

1 Angeles County residents, from openly carrying a firearm (e.g., in a visible hip  
2 holster), whether loaded or not, in any public place, with the exception of isolated  
3 and oftentimes difficult to identify portions of unincorporated areas. Cal. Penal  
4 Code §§ 25850, 26150(b)(2), 26155(b)(2), 26350, 26400. [insert LA Muni Code  
5 sections?]

6 3. California law generally prohibits Plaintiffs, and most ordinary Los  
7 Angeles County residents, from carrying a concealed firearm in any place outside  
8 one's residence, place of business, or other private property owned or controlled.  
9 Cal. Penal Code §§ 25400, 25605.

10 4. California law exempts certain persons, places, and activities from  
11 each of these general restrictions on carrying firearms. See Cal. Penal Code §§  
12 25450-25655, 26361-26391, 27560, 27565, 27800, 27850, 27870, 27875, 27915,  
13 27920, 27925, 31725, and 26405.

14 5. None of these exemptions allow an ordinary, law-abiding adult  
15 Californian to carry a firearm in public for self-defense.

16 6. California law does allow for a Sheriff or Chief of Police to issue a  
17 license to carry a loaded handgun in public to qualifying residents of their  
18 jurisdiction or to non-residents who spend a substantial period of time in their  
19 principal place of employment or business within that jurisdiction. Cal. Penal Code  
20 §§ 26150-26155.

21 7. Before a CCW can be issued, the Issuing Authority must agree that the  
22 applicant has "good cause" for carrying a loaded firearm in public. Cal. Penal Code  
23 § 26150(a).

24 8. An applicant for a CCW must also pass a criminal background check,  
25 and successfully complete a handgun training course covering handgun safety and  
26 California firearm laws. Cal. Penal Code §§ 26185, 26165.

27 9. Issuing Authorities exercise "unfettered discretion" in deciding  
28 whether a CCW applicant has "good cause" to be issued a license. *Erdelyi v.*

1 O'Brien, 680 F.2d 61, 63 (9th Cir. 1982); Nichols v. Cty. of Santa Clara, 223 Cal.  
2 App. 3d 1236, 1241 (1990); CBS, Inc. v. Block, 42 Cal. 3d 646, 665-66 (1986).

3 10. Within California, including Los Angeles County, a concealed carry  
4 license ("CCW") is the only means by which an individual can lawfully be armed  
5 for self-defense in public places without meeting one of the narrow exceptions to  
6 the general carry restrictions.

7 11. Los Angeles County Sheriff James McDonnell's official written policy  
8 that does not recognize a desire for general self-defense as "good cause" for  
9 issuance of a Carry License, combined with California's general carry restrictions,  
10 essentially bars competent, law-abiding Los Angeles County residents like  
11 plaintiffs from any means to publicly carry firearms, for self-defense.

12  
13 Dated: October 2, 2017

**MICHEL & ASSOCIATES, P.C.**

14  
15 /s/ Sean A. Brady  
16 Sean A. Brady  
17 Attorneys for Plaintiffs  
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**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:

**PLAINTIFFS' ADDITIONAL UNCONTROVERTED  
FACTS AND CONCLUSIONS OF LAW**

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>
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300 South Spring Street, Suite 1702	
Los Angeles, CA 90013	

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

Executed October 2, 2017

/s/ Laura Palmerin

Laura Palmerin