

1 C.D. Michel – S.B.N. 144258
2 Joshua R. Dale – SBN 209942
3 Sean A. Brady – SBN 262007
4 Anna M. Barvir – SBN 268728
5 MICHEL & ASSOCIATES, P.C.
6 180 E. Ocean Blvd., Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
Email: cmichel@michellawyers.com

7 Attorneys for Plaintiffs
8 *[Additional counsel on following page]*

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

12 MICHELLE FLANAGAN, SAMUEL
13 GOLDEN, DOMINIC NARDONE,
14 JACOB PERKIO, and THE
CALIFORNIA RIFLE & PISTOL
ASSOCIATION,

15 Plaintiffs,

16 v.

17 CALIFORNIA ATTORNEY
18 GENERAL XAVIER BECERRA, in
19 her official capacity as Attorney
General of the State of California,
20 SHERIFF JAMES McDONNELL, in
his official capacity as Sheriff of Los
21 Angeles County, California, and
DOES 1-10,

22 Defendants.
23
24
25
26
27
28

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

JOINT RULE 16(b)/26(f) REPORT

Hearing Date: February 13, 2017

Hearing Time: 8:30 a.m.

Courtroom: 10B

Judge: Hon. John A. Kronstadt

Action Filed: August 17, 2016

1 XAVIER BECERRA
Attorney General of California
2 STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
3 P. PATTY LI
Deputy Attorney General
4 JONATHAN M. EISENBERG
Deputy Attorney General
5 State Bar No. 184162
300 South Spring Street, Suite 1702
6 Los Angeles, CA 90013
Telephone: (213) 897-6505
7 Fax: (213) 897-5775
E-mail: Jonathan.Eisenberg@doj.ca.gov
8

9 Attorneys for Defendant California Attorney
General Xavier Becerra

10 MARY C. WICKHAM, County Counsel
JENNIFER A.D. LEHMAN, Assistant County Counsel
11 ALEXANDRA B. ZUIDERWEG, Deputy County Counsel
(SBN 270177) • *azuiderweg@counsel.lacounty.gov*
12 LANA CHOI, Deputy County Counsel
(SBN 301335) • *lchoi@counsel.lacounty.gov*
13 648 Kenneth Hahn Hall of Administration
500 West Temple Street
14 Los Angeles, California 90012-2713
Telephone: (213) 974-0811 • Fax: (213) 626-2105
15

16 Attorneys for Defendant Sheriff James McDonnell
17
18
19
20
21
22
23
24
25
26
27
28

1 **a. Statement of the Case**

2 Plaintiffs

3 Plaintiffs are residents of Los Angeles County who filed suit to
4 vindicate their Second Amendment right bear arms for self-defense beyond their
5 homes—a right that is now completely foreclosed by California’s prohibition on the
6 carriage of exposed firearms and Defendant McDonnell’s state-sanctioned policy
7 that denies law-abiding residents the license required under state law to carry a
8 concealed firearm.

9 Plaintiffs also seek relief under the Equal Protection Clause to prevent
10 Defendants’ ongoing unequal treatment concerning the exercise of Plaintiffs’
11 Second Amendment rights that authorizes some individuals to exercise their right to
12 bear arms beyond their doorsteps, while confining the exercise of plaintiffs’ right to
13 bear arms to their homes.

14 Defendant California Attorney General

15 Defendant Xavier Becerra, Attorney General of the State of California (the
16 “Attorney General”), sued in his official capacity only, understands this case to
17 comprise multiple plaintiffs asserting that the bulk of California’s statutes
18 regulating the public carry of firearms, facially and as applied by Los Angeles
19 County Sheriff James McDonnell within Los Angeles County, violate the Second
20 Amendment and the Fourteenth Amendment (Equal Protection Clause), such that
21 enforcement of the statutes should be enjoined. The plaintiffs seek to have declared
22 lawful, and unable to be barred by statute, at least one of three forms of the public
23 carry of firearms: (1) concealed carry, wherever and whenever desired; (2) open
24 carry, wherever and whenever desired; and (3) both concealed and open carry,
25 wherever and whenever desired.

26 Defendant Sheriff McDonnell

27 Defendant Sheriff James McDonnell is the Sheriff of Los Angeles County.
28 Plaintiffs allege that the four individual plaintiffs each applied for and were denied

1 a permit to carry a concealed firearm in public (“concealed carry permit” or
2 “CCW”) by Defendant McDonnell because they failed to show “good cause” as
3 defined by Los Angeles County Sheriff's Department's (“LASD”) policy. Defendant
4 McDonnell has no policies governing the issuance of a permit to openly carry a
5 firearm in public, as California state law prohibits the open carry of firearms in
6 public in Los Angeles County.

7 **b. Subject Matter Jurisdiction**

8 Because this action arises under the Constitution and laws of the United
9 States, the Court has original jurisdiction under 28 U.S.C. § 1331. The Court also
10 has jurisdiction under 28 U.S.C. § 1343(a)(3) because this action seeks to redress
11 the alleged deprivation, under color of the laws, statutes, ordinances, regulations,
12 customs, and usages of the State of California and political subdivisions thereof, of
13 rights, privileges, or immunities secured by the United States Constitution and by
14 Acts of Congress.

15 Plaintiffs’ claims for declaratory and injunctive relief are authorized by 28
16 U.S.C. §§ 2201-2202.

17 **c. Legal Issues**

18 Plaintiffs

19 This case raises the question of whether Defendants’ restrictions that prohibit
20 Plaintiffs from carrying a firearm for self-defense outside the home in any manner
21 violate the Second Amendment.

22 Even if Defendants could justify the complete abrogation of Plaintiffs’ ability
23 to carry a firearm for self-defense outside the home under the Second Amendment,
24 this cases raises the distinct question of whether Defendants’ policies violate the
25 Equal Protection Clause. Specifically, Plaintiffs allege that Defendants’ policies
26 violate the Equal Protection clause because they authorize some individuals to
27 exercise the right to bear arms beyond the home, while limiting Plaintiffs’ exercise
28 of the right to bear arms to their homes—with no valid basis for the distinction.

Defendants filed separate motions to dismiss portions of Plaintiffs' Second Amendment claim with respect to Defendants' concealed carry restrictions in light of a divided en banc panel opinion in *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016). Plaintiffs opposed these motions because Plaintiffs are not bringing a concealed-carry challenge, but instead allege that Defendants' regulatory scheme *as a whole* violates the Second Amendment because it prevents Plaintiffs from carrying either openly or concealed. The en banc decision in *Peruta* expressly reserved that question.

Defendants also moved to dismiss Plaintiffs' Equal Protection claim under *Teixeira v. County of Alameda*, which upheld the dismissal of an Equal Protection claim that was simply redundant of a Second Amendment claim. 822 F.3d 1047, 1052 (9th Cir. 2016). Plaintiffs opposed because they are not merely restating their Second Amendment claim that Plaintiffs have a right to bear arms beyond the home. Rather, Plaintiffs are challenging Defendants' confinement of Plaintiffs' right to bear arms to their homes, while authorizing other individuals to exercise that right beyond their doorsteps, with no valid basis for that disparate treatment.

Defendant California Attorney General

The major legal issues in this case include the following:

- whether California's statutes regulating the public carry of firearms fall outside the scope of the U.S. Constitution's Second Amendment, as historically understood;
- whether California's public-carry statutes are or are sufficiently similar to longstanding regulations of firearms that are presumptively lawful under the Second Amendment;
- if California's public-carry statutes implicate the Second Amendment, which level of scrutiny this Court should apply to the statutes;
- whether California's public-carry statutes withstand application of the appropriate level of scrutiny under the Second Amendment;

- whether California's public-carry statutes, by allowing some classifications of people to carry firearms in public, while prohibiting other classifications from people to carry firearms in public, violate the Fourteenth Amendment;
- whether Plaintiffs have requested remedies that are available.

Defendant Sheriff McDonnell

Defendant Sheriff McDonnell moved to dismiss Plaintiffs' Second Amendment and Equal Protection Claims in their entirety. With respect to the Second Amendment claim, policies identical to those of Defendant McDonnell governing the issuance of concealed carry permits were held to be constitutional in the Ninth Circuit en banc decision in *Peruta*, 824 F.3d at 924. Further, while Plaintiffs have challenged California state laws prohibiting *open carry* in counties with populations over 200,000, Plaintiffs have not and cannot allege that Defendant McDonnell is in any way responsible for such state laws. Accordingly, the Second Amendment claims against Defendant McDonnell should be dismissed. Plaintiffs' allegation that the LASD's good cause policy for the issuance of concealed carry permits violates the Equal Protection clause fails to state a claim as a matter of law, as it merely restates their Second Amendment claim of the right to bear arms for self-defense. In any event, because there is no fundamental right to carry a concealed weapon, LASD's policy would survive constitutional scrutiny even if it was intentionally discriminatory as it bears a rational relation to the legitimate state interest in public safety.

d. Parties, and Non-Party Witnesses

Plaintiffs

Michelle Flanagan

Samuel Golden

Dominic Nardone

Jacob Perkio

1 The California Rifle & Pistol Association (“CRPA”)

2 Plaintiffs do not anticipate any non-party percipient witnesses.

3 Defendants

4 The California Attorney General (sued in official capacity). When this case
5 was filed, Kamala D. Harris was the Attorney General. Ms. Harris has left that
6 office and is now a U.S. Senator from California. Presently, Xavier Becerra is the
7 Attorney General. Pursuant to Federal Rule of Civil Procedure 25(d), Attorney
8 General Becerra should be automatically substituted into this case as a defendant, in
9 place of Ms. Harris.

10 Sheriff James McDonnell

11 Defendants do not anticipate any non-party percipient witnesses.

12 **e. Damages**

13 Plaintiffs are not seeking damages.

14 **f. Insurance**

15 The parties are not invoking insurance coverage.

16 **g. Motions**

17 The parties do not anticipate motions seeking to add other parties or claims,
18 file amended pleadings, or transfer venue.

19 Plaintiffs’ Opposition to Defendants’ Motions to Dismiss requested leave to
20 amend the Complaint to the extent that amendment might be appropriate in light of
21 the Court’s pending rulings on Defendants’ dismissal motions.

22 **h. Manual for Complex Litigation**

23 The parties do not believe the Manual for Complex litigation is
24 appropriate for this case.

25 **i. Status of Discovery**

26 The parties are in the process of preparing and propounding written
27 discovery and serving initial disclosures. On January 31, 2017, the Attorney
28 General served a request for production of documents on each named Plaintiff.

1 The parties have met and conferred on the scope and timing of anticipated
2 party and expert depositions. In light of Defendants' two pending motions to
3 dismiss that seek to substantially limit the scope of Plaintiffs' claims and to remove
4 Defendant Sheriff McDonnell from this litigation, the parties have agreed to
5 schedule depositions after this Court rules on Defendants' motions.

6 **j. Discovery Plan**

7 The parties are currently preparing and propounding written discovery
8 requests and have agreed to schedule party depositions after the Court rules on
9 Defendants' pending motions to dismiss. The parties anticipate the designation of
10 1-2 expert witnesses per party. The parties have agreed to schedule expert
11 depositions following the close of non-expert discovery as set forth the in the
12 attached schedule. The parties do not foresee the need for any changes in the
13 disclosures under Rule 26(a), and they do not believe discovery needs to be
14 conducted in phases or have limitations ordered beyond those imposed by federal
15 rules.

16 Plaintiffs

17 Plaintiffs are preparing requests for admission, requests for production of
18 documents, and form and special interrogatories to be served on Defendant
19 Attorney General and Defendant Sheriff McDonnell concerning the challenged
20 carry restrictions that Defendants are collectively charged with implementing and
21 enforcing.

22 Plaintiffs intend to depose the person(s) most knowledgeable at Defendant
23 Attorney General's office concerning the scope and enforcement of California's
24 comprehensive carry restrictions that Defendant is charged with enforcing.

25 Plaintiffs also intend to depose Defendant Sheriff McDonnell concerning his
26 policy regarding the issuance of carry licences. They also intend to depose the
27 person(s) most knowledgeable concerning Defendant McDonnell's carry policy and
28 the issuance of carry licences in Los Angeles County under that policy.

1 Plaintiffs will also notice depositions for any expert witness(es) that may be
2 designated by Defendants in defending against Plaintiffs' constitutional claims.

3 Defendant California Attorney General

4 The Attorney General has served a request for production of documents to
5 each plaintiff.

6 The Attorney General is contemplating serving a set of interrogatories to
7 each plaintiff.

8 The Attorney General intends to depose each of the natural-person plaintiffs
9 concerning their standing to pursue this case and their complaint allegations about
10 their personal experiences relating to the public carry of firearms.

11 The Attorney General also intends to depose the person(s) most
12 knowledgeable at CRPA concerning standing to pursue this case, the complaint
13 allegations about CRPA activities, and CRPA's past and present policy positions
14 about concealed carry and open carry.

15 The Attorney General also intends to depose any expert witness(es) that may
16 be designated by the plaintiffs.

17 Defendant Sheriff McDonnell

18 Defendant McDonnell is preparing requests for documents and
19 interrogatories to be served on Plaintiffs concerning their standing, the scope and
20 nature of their claims and the allegations in the complaint regarding their
21 experiences giving rise to the Complaint. Defendant McDonnell may also prepare
22 and serve requests for admission.

23 Defendant McDonnell intends take the deposition of each of the individual
24 plaintiffs concerning their standing to challenge Defendants' carry restrictions and
25 the allegations in the complaint regarding their personal experiences relating to
26 public carry of firearms.

27 Defendant McDonnell also intends to notice the deposition of the person
28 most knowledgeable at CRPA concerning its standing, the allegations in the

1 complaint concerning CRPA activities, and CRPA's policy positions about
2 concealed carry and open carry.

3 Defendant McDonnell will also notice depositions for any expert witnesses
4 that may be designated by Plaintiff to support their claims or rebut Defendant's
5 expert witnesses.

6 **Protective Orders**

7 Plaintiffs

8 Although Plaintiffs have concerns about the relevance of deposition
9 testimony concerning CRPA's policy positions concerning open and concealed
10 carry, Plaintiffs do not currently plan to seek a protective order. The need for a
11 protective order may be avoided if the parties can clarify the relevancy of this
12 subject matter to Plaintiffs' claims or if Defendants abandon this line of
13 questioning.

14 Defendant California Attorney General

15 The Attorney General presently does not see a need for a protective order in
16 this case, but reserves the right to seek a protective order later, if appropriate.

17 Defendant Sheriff McDonnell

18 Defendant McDonnell may seek a protective order for documents produced
19 in discovery, specifically those documents which contain private information of
20 third parties. Defendant McDonnell anticipates that Plaintiffs may request the
21 production of individual concealed carry permit applications, which not only
22 contain private identifying information of individuals who have applied for and
23 currently carry concealed weapons, but information concerning specific threats
24 such individuals have cited in support of their "good cause" for issuance of a
25 concealed carry permit. The need for a protective order may be avoided if Plaintiffs
26 agree that any information that would tend to identify any individual (either the
27 applicant or individuals named or identified in the application) named in a
28 concealed carry permit be redacted.

1 **k. Discovery Cut-Off**

2 Non-Expert Cut-Off: June 1, 2017

3 Last Day to Hear Discovery Motions: November 13, 2017

4 **l. Expert Discovery**

5 Expert Disclosure (Initial): June 1, 2017

6 Expert Disclosure (Rebuttal): June 30, 2017

7 Expert Discovery Cut-Off: August 21, 2017

8 **m. Dispositive Motions**

9 Plaintiffs' constitutional claims raise largely legal issues that the parties
10 believe should be resolved on motions for summary judgment and/or motions for
11 judgment on the pleadings.

12 **n. Settlement**

13 The parties have met and conferred on the possibility of settlement but do not
14 believe this case has any potential of settling. Plaintiffs believe that Defendants'
15 policies violate their constitutional rights, and Defendants believe that the policies
16 are constitutional. Plaintiffs do not have any intention of dismissing this litigation
17 unless Defendants permit them to generally carry a firearm outside the home for
18 self-defense. Defendants intend to continue enforcing the current public-carry
19 regulations as required by California law.

20 Pursuant to this Court's order, the parties have met and conferred on the
21 possibility of settlement prior to reaching this conclusion and have completed the
22 Settlement Procedure Selection in the Schedule of Pretrial and Trial Dates for Civil
23 Cases attached hereto as "Exhibit A."

24 **o. Trial Estimate**

25 The parties believe this case will be resolved on dispositive motions and will
26 not require trial. In the event this case proceeds to trial, the parties estimate a bench
27 trial of up to 7 days. In the event of trial, the parties would each anticipate calling 3-
28 5 party witnesses and 1-2 expert witnesses.

p. Trial Counsel

Plaintiffs

Joshua R. Dale; Sean A. Brady

Defendant California Attorney General

Jonathan M. Eisenberg; P. Patty Li

Defendant Sheriff McDonnell

Lana Choi

q. Independent Expert or Master

The parties do not request appointment of an Expert or Master.

r. Timetable

See Schedule of Pretrial and Trial Dates attached as “Exhibit A.”

s. Other Issues

The parties do not anticipate any other issues at this time.

t. Patent Cases

N/A

u. Whether the Parties Wish to Have a Magistrate Judge Preside

The parties do not wish to have a magistrate judge preside.

Dated: February 2, 2017

MICHEL & ASSOCIATES, P.C.

/s/Joshua Robert Dale

Joshua Robert Dale
Attorneys for Plaintiffs

Dated: February 2, 2017

XAVIER BECERRA
Attorney General of California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
P. PATTY LI
Deputy Attorney General

/s/Jonathan M. Eisenberg

JONATHAN M. EISENBERG
Deputy Attorney General
Attorneys for Attorney General
of the State of California

1 Dated: February 2, 2017

MARY C. WICKHAM
County Counsel

2
3 /s/Mary C. Wickham
Lana Choi
4 Deputy County Counsel
Attorneys for Defendant Sheriff James
5 McDonnell
6

7 Pursuant to Local Rule 5-4.3.4(a)(2), the below filer attests that concurrence
8 in the filing of this document has been obtained from the above signatories.

9
10 Dated: February 2, 2017

By: /s/Joshua Robert Dale
Joshua Robert Dale

EXHIBIT A - SCHEDULE OF PRETRIAL AND TRIAL DATES FOR CIVIL CASES

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

Hearings:		Plaintiff(s) Request	Defendant(s) Request	Court Order
<div><div><div><div><div></div></div><div>Jury Trial</div></div><div><div><div>X</div></div><div>Court Trial</div></div></div><div>(Tuesday at 9:00 a.m.)</div><div>Duration Estimate:</div><div><div><div>5</div></div><div>Days</div></div><div><div></div><div>Weeks</div></div></div>		01/30/2018	01/30/2018	
Final Pretrial Conference ("FPTC") & Status Conference re Disputed Exhibits: (Monday at 3:00 p.m.: Two weeks before the trial)		01/15/2018	01/15/2018	
Deadlines for Bench Trials Only:	Weeks Before FPTC	Plaintiff(s) Request	Defendant(s) Request	Court Order
Anticipated Ruling to be Issued by Court	Same date	01/15/2018	01/15/2018	
Last Date to File Objections to Direct Testimony Declarations	2	12/29/2017	12/29/2017	
Last Date to File Direct Testimony Declarations	3	12/22/2017	12/22/2017	
Proposed Motion Practice for Motions for Summary Judgment & Motions for Class Certification:	Weeks Before FPTC	Plaintiff(s) Request	Defendant(s) Request	Court Order
Hearing on Motion		12/04/2017	12/04/2017	
Reply to Motion		11/17/2017	11/17/2017	
Response to Motion		10/27/2017	10/27/2017	
Last day to File Motion		09/28/2017	09/28/2017	

Deadlines:	Weeks Before FPTC	Plaintiff(s) Request	Defendant(s) Request	Court Order
Anticipated Ruling on All Motions	4	12/18/2017	12/18/2017	
Last Date to Hear Motions (including discovery motions)	8	11/13/2017	11/13/2017	
Last Date to File Motions (including discovery motions)	20	08/21/2017	08/21/2017	
Expert Discovery Cut-Off	20	08/21/2017	08/21/2017	
Expert Disclosure (Rebuttal)	22	06/30/2017	06/30/2017	
Expert Disclosure (Initial)	24	06/01/2017	06/01/2017	
Non-Expert Discovery Cut-Off	26	06/01/2017	06/01/2017	
Last Date to Add Parties/Amend Pleadings		05/01/2017	05/01/2017	
Settlement Procedure Selection: (ADR-12 Form will be completed by Court after scheduling conference)		Plaintiff(s) Request	Defendant(s) Request	Court Order
1. Magistrate Judge 2. Attorney Settlement Officer Panel 3. Outside ADR/Non-Judicial (Private)		1.	1.	
Last day to conduct settlement conference/mediation		03/15/2017	03/15/2017	
Notice of Settlement / Joint Report re Settlement (10 days before PMSC)		03/20/2017	03/20/2017	
Post Mediation Status Conference: (Monday at 1:30 pm: 14 days after the last day to conduct settlement)		03/30/2017	03/30/2017	

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 E. Ocean Blvd., Suite 200, Long Beach, California 90802.

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

JOINT RULE 16(b)/26(f) REPORT

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
Stepan A. Haytayan
Supervising Deputy Attorney General
P. Patty Li
Deputy Attorney General
Jonathan M. Eisenberg
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
E-mail: Jonathan.Eisenberg@doj.ca.gov

*Attorneys for Attorney
General of the State of
California*

Mary C. Wickham, County Counsel
Jennifer A.D. Lehman, Assistant County Counsel
Alexandra B. Zuiderweg, Deputy County Counsel
azuiderweg@counsel.lacounty.gov
Lana Choi, Deputy County Counsel
lchoi@counsel.lacounty.gov

*Attorneys for Defendant
Sheriff James McDonnell*

1 648 Kenneth Hahn Hall of Administration
2 500 West Temple Street
3 Los Angeles, California 90012-2713

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

5
6 Executed February 2, 2017.

/s/Joshua Robert Dale
Joshua Robert Dale