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*(ADMITTED *pro hac vice*)
Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

RONALD G. LIVINGSTON; MICHAEL J.
BOTELLO; KITIYA M. SHIROMA; JACOB
STEWART; and HAWAII RIFLE
ASSOCIATION,

Plaintiffs,

v.

SUSAN BALLARD, Police Chief of the
City & County of Honolulu; CITY &
COUNTY OF HONOLULU; and CLARE E.
CONNORS, Attorney General of Hawaii,

Defendants.

) Case No. 19-00157JMS-RT
)
) **DECLARATION OF HARVEY**
) **GERWIG IN SUPPORT OF**
) **PLAINTIFFS' MOTION FOR**
) **PRELIMINARY INJUNCTION;**
) **EXHIBIT A**

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H Gerwig ISO MPI DOCX

DECLARATION OF HARVEY GERWIG

I, Harvey Gerwig, an adult resident of the State of Hawaii, declare the following based on my personal knowledge:

1. I am a citizen of the United States and a resident of Hawaii.
2. I am the President of the Hawaii Rifle Association and am thoroughly familiar with the organization.
3. The Hawaii Rifle Association is a non-profit organization registered and incorporated within the State of Hawaii
4. The Hawaii Rifle Association is a membership organization with the stated mission “[t]o protect [members’] Second Amendment Right to Keep and Bear Arms, and protect Hawaii’s hunting and shooting traditions.”
5. The Hawaii Rifle Association fulfills its mission in numerous ways, including by promoting gun safety courses and hunter education; sponsoring shooting competitions; advocating for Second Amendment rights through administrative, legislative, and judicial channels; and publishing a newsletter to keep members informed about relevant legal developments.
6. Membership at the Hawaii Rifle Association is open to all citizens of the United States who are of good repute, have never been convicted of a felony, subscribe to the purposes and objectives of the Association and the National Rifle

Association of America, and meet the specific requirements for the type of membership for which application is made.

7. The Hawaii Rifle Association includes numerous adult citizen members who lawfully own handguns.

8. The Hawaii Rifle Association includes numerous adult citizen members who presently seek to carry handguns beyond their homes or places of business, either concealed or openly, for the lawful purpose of self-defense.

9. The Hawaii Rifle Association includes numerous members who satisfy all background requirements necessary to obtain a carry license.

10. Ordinary citizen members of the Hawaii Rifle Association, however, are unable to obtain either concealed-carry or open-carry licenses under H.R.S. § 134-9(a).

11. As a result, ordinary, law-abiding members of the Hawaii Rifle Association cannot lawfully carry handguns for self-defense.

12. If licensed to carry handguns concealed or openly, numerous members of the Hawaii Rifle Association would immediately carry handguns for self-defense outside their homes or places of business.

13. Like many members of the Hawaii Rifle Association, I presently desire to carry—and, if authorized, immediately would carry—a handgun outside the home for self-defense.

14. To carry a handgun outside the home for self-defense—whether concealed or openly—Hawaii law generally requires ordinary, law-abiding citizens to obtain a license issued by a county chief of police. H.R.S. §134-9(c).

15. As an ordinary, law-abiding citizen, I am not exempted from Hawaii's firearms restrictions.

16. Therefore, in order to lawfully carry a handgun in public for self-defense, I must obtain a license.

17. I satisfy all applicable requirements to possess a handgun and obtain a carry license: I am a United States citizen, above 21 years old, have completed appropriate safety training, have not been disqualified from possession under H.R.S. §134-7, have not been adjudged insane, am not mentally deranged, and am otherwise suitable to possess a firearm.

18. I inquired with the Honolulu Police Department as to what application form, if any, I should use in applying for both an open and/or concealed carry license. I was informed that no form existed for open carry license applications. The application form for concealed carry licenses presented to me was entitled "Application for a License to Carry a Concealed Firearm."

19. Because no application form existed for open carry licenses, I submitted a cover letter accompanying my application for a concealed carry license. In this cover letter, I requested the Honolulu Police Department treat my

application as both an application for a concealed carry and open carry license, while also referencing former Attorney General Suzuki's opinion letter clarifying the requirements for such licenses.

20. I received a November 30, 2019 letter from Chief of Police Susan Ballard denying my application; a true and correct copy is attached as Exhibit A.

21. Chief Ballard's letter stated that my application was denied because I did "not sufficiently meet the immediacy, urgency, or need necessary for protection of life and property" as required under Hawaii law.

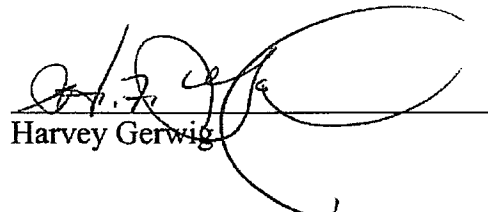
22. If licensed to carry a handgun concealed or openly, I would immediately do so to protect myself outside my home.

23. The denial of my request to carry a handgun outside my home in any manner prevents me from defending myself and makes me fear for my safety.

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

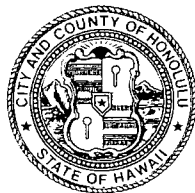
Executed on:

4-9-2019


Harvey Gerwig

CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE DN-TH
Certified Mail 7017 0530 0001 1609 2475

November 30, 2018

Mr. Harvey Gerwig
1039 Kupau Street
Kailua, Hawaii 96734

Dear Mr. Gerwig:

This letter is to officially inform you that your application for a license to carry an open/concealed firearm has been denied.

Your application describes that you sometimes carry large sums of cash from rental properties and other business endeavors, that you sometimes transport large numbers of weapons to and from the Koko Head range and other locations for shooting events, and that you are concerned for your personal safety due to your high public profile as a supporter for pro-gun and pro-Second Amendment rights. Your application does not indicate any threats to your person or property that substantially exceed those of other business agents engaged in similar duties or that there are any creditable threats to your person or property. Your application does not sufficiently meet the immediacy, urgency, or need necessary for protection of life and property (as required by Chapter 134-9 of the Hawaii Revised Statutes) for the issuance of a license to carry an open/concealed firearm.

Chapter 134-9 of the Hawaii Revised Statutes deals with firearms and the issuance of licenses to carry a pistol or revolver and ammunition therefor concealed or unconcealed on the person, and grants the Chief of Police of the appropriate county the authority to grant such licenses.

If you or any of those around you are placed in danger of bodily injury by word or deed, the police department should be contacted immediately so that proper action may be initiated.

Should you have any further questions, you may contact Sergeant Matthew Liana of the Firearms Unit, Records and Identification Division, at 723-3190.

Sincerely,

A handwritten signature in black ink that reads "Susan Ballard". The signature is written in a cursive, flowing style.

SUSAN BALLARD
Chief of Police

EXHIBIT A