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

CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED;
THE SECOND AMENDMENT
FOUNDATION; GUN OWNERS OF
AMERICA, INC.; GUN OWNERS
FOUNDATION; GUN OWNERS OF
CALIFORNIA, INC.; ERICK
VELASQUEZ, an individual; SHERWIN
DAVID PARTOWASHRAF, an
individual; CHARLES MESSEL, an
individual; BRIAN WEIMER, an
individual; JUNG YUN, an individual;
ALBERT MEDALLA, an individual;
CLARENCE RIGALI, an individual;
KEITH REEVES, an individual,
CYNTHIA GABALDON, an individual;
DAVID BROADY, an individual; and
STEPHEN HOOVER, an individual,

Plaintiffs,

v.

LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT; SHERIFF ROBERT
LUNA, in his official capacity; LA
VERNE POLICE DEPARTMENT; LA
VERNE CHIEF OF POLICE COLLEEN
FLORES, in her official capacity;
ROBERT BONTA, in his official
capacity as Attorney General of the State
of California; and DOES 1-10,

Defendants.

Case No. 2:23-cv-10169-SPG-ADS

**DEFENDANTS LOS ANGELES
COUNTY SHERIFF'S
DEPARTMENT AND SHERIFF
ROBERT LUNA'S NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFFS' FIRST
AMENDED AND
SUPPLEMENTAL COMPLAINT**

Judge: Hon. Sherilyn Peace
Garnett

Hearing Date: January 15, 2025

Hearing Time: 1:30 p.m.

Courtroom: 5C

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TO THE COURT, PLAINTIFFS, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on January 15, 2025 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 5C of the above-entitled Court located at 350 West 1st Street, Los Angeles, CA 90012, Defendants Los Angeles County Sheriff’s Department and Sheriff Robert Luna will, and hereby do, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, move this Court for an order dismissing this lawsuit in part.

This motion is based on Plaintiffs’ failure to state a claim upon which relief can be granted and this Court’s lack of subject matter jurisdiction with regard to Plaintiffs’ First Claim for Relief (Second Amendment), Fourth Claim for Relief (California Penal Code), and Eighth Claim for Relief (Fourteenth Amendment).

This motion is based on this Notice of Motion and Motion, all the pleadings and papers on file herein, and such other evidence and argument as may be presented at the hearing on this matter.

This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on October 16, 2024. The parties thoroughly discussed the substance and potential resolution of the filed motion by videoconference, but no resolution was reached.

Respectfully submitted,

Dated: October 28, 2024

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1 **INTRODUCTION**

2 Plaintiffs are gun advocates who seek relief against the Los Angeles County
3 Sheriff’s Department (LASD) and Sheriff Robert Luna far beyond that which the
4 law permits. To start, Plaintiffs’ complaint is with how Sheriff Luna—in his official
5 capacity, as a state actor—implements California’s concealed carry weapon (CCW)
6 licensing regime in Los Angeles County, not with the licensing regime on its face.
7 Several conclusions follow from that fact: any supposedly facial challenge as
8 opposed to an as-applied challenge should be dismissed; all claims against LASD
9 should be dismissed; all claims for damages against Sheriff Luna should be
10 dismissed; and Plaintiffs’ state-law claim should be dismissed. And Plaintiffs cannot
11 assert a claim for municipal liability for Sheriff Luna’s implementing a state law; to
12 the extent they try to do so, they fail to state a claim under *Monell*.

13 Cleaning up the defendants and scope of claims makes clear what relief
14 Plaintiffs can and cannot pursue. Bringing claims against Sheriff Luna and LASD
15 are six individuals—four suing over permitting delays (Medalla, Messel, Weimer,
16 and Yun), two suing over permitting denials (Velasquez and Partowashraf)—and
17 five organizations. Two of the four individuals suing over delays either have a
18 license (Wessel) or will receive one under the Court’s preliminary injunction order
19 (Weimer). Their claims are moot. The third and fourth (Medalla and Yun) and the
20 two bringing denial claims (Velasquez and Partowashraf) may seek relief for their
21 as-applied challenges only for themselves. The organizations, on the other hand,
22 may represent their members in as-applied challenges only if those members are
23 parties to the case. That means that three organizations (California Rifle & Pistol
24 Association (CRPA), Second Amendment Foundation (SAF), and Gun Owners of
25 America (GOA)) can stay in the case to support Medalla, Yun, Velasquez, and
26 Partowashraf’s claims for individual, as-applied relief only, while Gun Owners
27 Foundation (GOF) and Gun Owners of California (GOC) should be dismissed
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1 because they have no members bringing claims. In short, despite Plaintiffs’
2 sweeping policy goals, all that is at stake in the case against Sheriff Luna are the
3 individual as-applied claims of Medalla, Yun, Velasquez, and Partowashraf.

4 BACKGROUND

5 A. Los Angeles County’s CCW Licensing Process

6 Subject to certain exceptions, it is a crime to carry firearms in California in
7 public without a license. *See* Cal. Penal Code §§ 25400, 25850(a), 26350(a), 26150,
8 26155. While CCW licenses are issued in California at the county and municipal
9 levels (Cal. Penal Code §§ 26150, 26155), applications “shall be uniform throughout
10 the state, upon forms to be prescribed by the Attorney General” (Cal. Penal Code
11 § 26175). Under this licensing regime, LASD “shall issue or renew a license” where
12 the applicant (1) is not a disqualified person; (2) is 21 years or older; (3) is a county
13 resident; (4) completes a course of training; and (5) is the recorded owner, with the
14 California Department of Justice, of the firearm for which the applicant seeks the
15 CCW license. Cal. Penal Code § 26150.

16 As of January 1, 2024, an applicant “shall be deemed to be a disqualified
17 person and cannot receive or renew a license” if, “[i]n the 10 years prior to the
18 licensing authority receiving the completed application for a new license or a license
19 renewal, [the applicant] has experienced the loss or theft of multiple firearms due to
20 the applicant’s lack of compliance with federal, state, or local law regarding storing,
21 transporting, or securing the firearm.” Cal. Penal Code § 26202(a)(9); Plaintiffs’
22 First Amended and Supplemental Complaint, Dkt. No. 55 (“Compl.”) ¶ 90.
23 Likewise, an applicant is a disqualified person if, within five years of his application,
24 he or she has been subject to a temporary restraining order issued pursuant to certain
25 statutes (including California Penal Code § 646.91(a)). *See* Cal. Penal Code
26 § 26202(a)(3); Compl. ¶ 92.

27 Licensing authorities must notify CCW applicants in writing whether their
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1 applications were approved or denied within 120 days of receiving a complete
2 application. Cal. Penal Code § 26205. Before January 1, 2024, that statutory time
3 limit was 90 days. *Id.*; Compl. ¶ 81 n.2.

4 **B. This Lawsuit**

5 Plaintiffs are individuals and organizations who have sued LASD and Sheriff
6 Luna concerning CCW applications. Sheriff Luna is sued solely in his official
7 capacity. Compl. ¶ 66.

8 Plaintiffs filed their original complaint on December 4, 2023. Dkt. No. 1.
9 After this Court’s order granting in part and denying in part Plaintiffs’ motion for
10 preliminary injunction (Dkt. No. 52), Plaintiffs filed their first amended and
11 supplemental complaint on September 13, 2024 (Dkt. No. 55).

12 Four of the individual plaintiffs bring claims concerning alleged delays in
13 LASD’s processing of their CCW applications—Charles Messel (Compl. ¶¶ 37-39),
14 Brian Weimer (Compl. ¶¶ 40-41), Jung Yun (Compl. ¶ 42), and Albert Medalla
15 (Compl. ¶ 43). LASD issued Messel his CCW permit in May 2024. Compl. ¶ 138.
16 Weimer will receive a decision on his application pursuant to a court-ordered
17 schedule. *See* Dkt. No. 57 (proposed order entering preliminary injunction). Yun
18 and Medalla are awaiting decisions on their applications (Compl. ¶¶ 42-43).

19 Two of the individual plaintiffs bring claims concerning CCW denials—Erick
20 Velasquez (Compl. ¶¶ 25-30) and Sherwin David Partowashraf (Compl. ¶¶ 31-36).
21 LASD denied Velasquez’s CCW application because, among other things, he failed
22 to comply with California’s firearm storage laws. Compl. ¶ 29. Velasquez contends
23 this denial was improper because he purports to have complied with the storage law.
24 Compl. ¶ 27. LASD denied Partowashraf’s CCW application because he had been
25 subject to a temporary restraining order within 5 years of his application. Compl.
26 ¶ 32. Partowashraf contends this denial was improper because the temporary
27 restraining order was ultimately dissolved. Compl. ¶¶ 32-33.

1 All six individual plaintiffs allege that they are members of CRPA, SAF, and
2 GOA. Compl. ¶ 24. The complaint does not allege that any individual plaintiffs are
3 members of either GOF or GOC.

4 Plaintiffs bring three related claims against LASD and Sheriff Luna. For both
5 the alleged delays and allegedly improper denials: violation of the Second
6 Amendment (Claim 1). For the alleged delays alone: violation of California Penal
7 Code § 26205 (Claim 4). And for the allegedly improper denials alone: violation
8 of the Due Process Clause (Claim 8). Plaintiffs seek injunctive relief, declaratory
9 relief, and nominal damages. Compl. at 53-55.

10 ARGUMENT

11 **I. Plaintiffs’ Claims Should Be Limited To As-Applied Challenges Against** 12 **Sheriff Luna In His Official Capacity, As A State Actor**

13 Plaintiffs are not, or cannot be, challenging the constitutionality of
14 California’s CCW licensing regime on its face, in either its statutory criteria or
15 statutory timing. Rather, they are challenging how Sheriff Robert Luna implements
16 that regime—namely, how long it has taken Medalla and Yun (and Wessel and
17 Weimer) to have their applications decided, and that Velasquez and Partowashraf’s
18 applications were denied. LASD is an improper defendant for those claims, and
19 Sheriff Luna is entitled to Eleventh Amendment immunity for them, so any damages
20 claims should be dismissed. Similarly, state actors cannot be sued to enforce state
21 law in federal court, so Plaintiffs’ state law claim should be dismissed. This is the
22 proper route for Plaintiffs’ claims: as applied challenges brought against Sheriff
23 Luna alone, in his official capacity as a state actor under the state CCW regime.

24 At times, Plaintiffs’ Complaint seems to suggest a different route—that they
25 are bringing claims against LASD and Sheriff Luna for *municipal* liability, under
26 *Monell*. That route is not available to them. If it were, Plaintiffs fail to state a claim
27 under that theory. Municipalities are only liable for their official policies and
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1 customs, and Plaintiffs’ own allegations prove that no actionable municipal policy
2 or custom exists here.

3 **A. Plaintiffs’ Claims Can Only Proceed As As-Applied Challenges**

4 To assert a facial challenge to the constitutionality of a statute, a plaintiff must
5 show “that the law or policy at issue is unconstitutional in all its applications.”
6 *Bucklew v. Precythe*, 587 U.S. 119, 138 (2019). “A facial challenge to a legislative
7 Act is, of course, the most difficult challenge to mount successfully, since the
8 challenger must establish that no set of circumstances exists under which the Act
9 would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see also Ams.*
10 *For Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021) (same). Plaintiffs fail to
11 state a claim for a facial challenge under any of their theories.

12 *First*, on their timing claims, Medalla, Yun, Messel, and Weimer (and the
13 organizations supporting them) do not challenge California’s CCW permitting
14 scheme on its face. Under California law, licensing authorities must notify CCW
15 applicants in writing whether their applications were approved or denied within 120
16 days of receiving a complete application. Cal. Penal Code § 26205. Before January
17 1, 2024, that statutory time limit was 90 days. Compl. ¶ 81 n.2. Plaintiffs do not
18 attempt to levy a facial challenge against these statutorily permitted response periods
19 in California’s licensing regime, instead limiting their constitutional claims to the
20 application of the licensing regime to their permit requests. In a footnote, Plaintiffs
21 state that they “do not concede that either [the 90 or 120-day] time periods is a
22 permissible impediment to the exercise of an enumerated right.” Compl. ¶ 137 n.25.
23 But whether they concede it is irrelevant. They do not affirmatively claim that the
24 codified time periods violate the Constitution, let alone allege facts supporting such
25 a claim. So their timing claim is, and can proceed, only as-applied.

26 *Second*, Partowashraf (and the organizations supporting him) cannot
27 challenge the California Penal Code’s prohibition on issuing a CCW license to
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1 someone subject to a domestic violence restraining order on its face. *See* Cal. Penal
2 Code § 26202(a)(3). Partowashraf alleges no facts to support a facial challenge to
3 Section 26202(a)(3)—he only conclusorily states that the section is
4 “unconstitutional ... facially.” Compl. ¶ 149. That is not enough. *See, e.g., Cal.*
5 *Rifle & Pistol Ass’n v. City of Glendale*, 644 F. Supp. 3d 610, 618-620 (C.D. Cal.
6 2022) (finding CRPA unlikely to succeed on alleged facial challenge where CRPA
7 failed to show that statute was unconstitutional in all applications). In any event,
8 after *United States v. Rahimi* upheld a law permitting “the Government to disarm
9 individuals who present a credible threat to the physical safety of others,” 144 S. Ct.
10 1889, 1902 (2024), Partowashraf cannot possibly “establish that no set of
11 circumstances exists under which” Section 26202(a)(3) would be constitutional,
12 *Salerno*, 481 U.S. at 745. Like the statute in *Rahimi*, the statute under which
13 Partowashraf was subject to a domestic violence restraining order applies only to a
14 “person who has made a credible threat” to another. Cal. Penal Code § 646.91(a).
15 Whatever Partowashraf’s arguments about the restraining order entered against him,
16 including how long it was in place and how long ago it was dissolved, he cannot
17 plausibly claim that this statute is unconstitutional in all circumstances after
18 *Rahimi*—as the Court recognized in its preliminary injunction decision. Dkt. No. 52
19 at 27 n.23.

20 *Third*, Velasquez fails to state a claim that California Penal Code Section
21 26202(a)(9)—disqualifying from CCW licenses someone who lost or had firearms
22 stolen due to noncompliance with laws about storing, transporting, or securing
23 them—is unconstitutional in all circumstances. Velasquez alleges no facts to
24 support that claim at all. His sole allegation is that he *did* comply with storage laws,
25 so was improperly denied, but that does not state a facial challenge.

26 Altogether, Plaintiffs claims do not and cannot proceed facially, but only as
27 applied.

1 and the Department must determine if applicants are prohibited under state or federal
2 law from possessing firearms. In other words, the CCW statutes do not make a
3 “sufficiently complete” delegation of power to sheriffs, and those sheriffs—when
4 administering the CCW programs—are therefore state agents. *Scocca*, 912 F. Supp.
5 2d at 884. Several conclusions follow from this.

6 *First*, for purposes of this litigation, Sheriff Luna is a state actor, and
7 Plaintiffs’ suit against him in his official capacity may only yield declaratory and
8 injunctive relief—not damages. While suits may proceed against state actors in their
9 official capacities for declaratory and injunctive relief, “state sovereign immunity
10 protects state officer defendants sued in federal court in their official capacities from
11 liability in damages, including nominal damages.” *Platt v. Moore*, 15 F.4th 895, 910
12 (9th Cir. 2021). Because Sheriff Luna is a state actor when administering the CCW
13 program, he is also entitled to state sovereign immunity. *Scocca*, 912 F. Supp. 2d at
14 884; *Nordstrom v. Dean*, 2016 WL 10933077, at *10 (C.D. Cal. Jan. 8, 2016). The
15 Court should therefore dismiss with prejudice Plaintiffs’ claims for nominal
16 damages.

17 *Second*, for purposes of this litigation, LASD is a state agency entitled to
18 absolute immunity. LASD is thus an improper defendant and should be dismissed
19 with prejudice. *Scocca*, 912 F. Supp. 2d at 884 (“Santa Clara County is not an
20 appropriate defendant in this action because Sheriff Smith, when making her
21 decisions on granting or denying CCW licenses, acts as a representative of the state
22 of California, and not of the County.”); *see also Birdt v. San Bernardino Sheriff’s*
23 *Dep’t*, 2016 WL 8735630, at *2 (C.D. Cal. Aug. 8, 2016) (“The Sheriff’s
24 Department acts on a statewide, not countywide, basis in administering concealed
25 weapon permits under California’s statutory scheme. ... As such, the Eleventh
26 Amendment bars suits against the Sheriff’s Department for all types of relief.”);
27 *Nordstrom*, 2016 WL 10933077, at *10 (same).

1 *Third*, Plaintiffs’ state-law claim should be dismissed with prejudice. In
2 Claim Four, Plaintiffs purport to sue under the California Penal Code—alleging that
3 LASD’s permit process “violates California Penal Code section 26205 by taking
4 over a year to process permit applications.” Compl. ¶ 170. The Eleventh
5 Amendment bars any claim in federal court that a state official purportedly violated
6 state law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984);
7 *Spoklie v. Montana*, 411 F.3d 1051, 1060 (9th Cir. 2005) (“Since [the plaintiff] seeks
8 to vindicate an asserted right under state rather than federal law, *Pennhurst* dictates
9 that this claim must be dismissed.”). Indeed, the *Ex parte Young* exception has no
10 application to suits brought under state, rather than federal, law. *Steshenko v.*
11 *Gaynard*, 44 F. Supp. 3d 941, 950 (N.D. Cal. 2014) (“[T]he *Ex parte Young*
12 exception applies only where the state officials are allegedly violating federal law;
13 it does not reach suits seeking relief against state officials for violations of state
14 law.”); *see also Pennhurst*, 465 U.S. at 106 (“when a plaintiff alleges that a state
15 official has violated state law,” “the entire basis for the doctrine ... disappears”).
16 This Court therefore lacks jurisdiction over Plaintiffs’ allegation that Sheriff Luna
17 has violated the California Penal Code, and should dismiss Claim Four with
18 prejudice.

19 Claim Four fails for a separate reason, which Sheriff Luna and LASD raise
20 here in the interest of completeness: because California Penal Code § 26205 has no
21 private right of action. Whether a private right of action exists under California law
22 is a question of legislative intent. *Moradi-Shalal v. Fireman’s Fund Insurance Cos.*,
23 758 P.2d 58 (Cal. 1988); *see also Rezek v. City of Tustin*, 2012 WL 5829928, at *7
24 (C.D. Cal. Nov. 15, 2012) (“A statute creates a private right of action only if the
25 enacting body so intended.”). “Such legislative intent, if any, is revealed through
26 the language of the statute and its legislative history.” *Lu v. Hawaiian Gardens*
27 *Casino, Inc.*, 236 P.3d 346, 348 (Cal. 2010). Private rights of action to enforce
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1 criminal statutes are especially rare. *Rezek*, 2012 WL 5829928, at *7. It is the
2 plaintiff’s burden to adequately plead entitlement to a private right of action. *See*
3 *Scocca v. Smith*, 2012 WL 2375203, at *10 (N.D. Cal. June 22, 2012). Here,
4 plaintiffs have failed to meet that burden. In the Complaint, plaintiffs say nothing
5 about whether a private right of action exists under California Penal Code § 26205.
6 For good reason: Nothing in the plain text of § 26205 suggests that the legislature
7 intended to create a mechanism for private individuals to enforce the statute. Nor
8 does the section’s legislative history. The Court should therefore dismiss Claim 4
9 with prejudice.¹

10 **C. Plaintiffs’ Claims Do Not Fall Under *Monell*—But If They Did,**
11 **Plaintiffs Fail To State A Claim**

12 Plaintiffs’ complaint appears to try to assert claims against Sheriff Luna and
13 LASD for *municipal* liability under Section 1983, under *Monell*. *Monell* extends
14 liability under § 1983 to municipal actors when they implement official policies and
15 customs. But in CCW licensing, Sheriff Luna is a state actor, not a municipal actor.
16 *See supra* at 8. So Plaintiffs’ claims are not properly formulated under *Monell*;
17 rather, they proceed under § 1983 without reliance on *Monell*.

18 If Plaintiffs had to proceed under *Monell*, they would fail to state a claim.
19 Under *Monell*, municipalities may be held liable for infringement of constitutional
20 rights in certain circumstances. *Monell v. Dep’t of Soc. Servs. of City of New York*,
21 436 U.S. 658, 690-695, (1978). In particular, “municipalities may be liable under
22 § 1983 for constitutional injuries pursuant to (1) an official policy; (2) a pervasive
23 practice or custom; (3) a failure to train, supervise, or discipline; or (4) a decision or
24 act by a final policymaker.” *Horton by Horton v. City of Santa Maria*, 915 F.3d 592,
25 602-603 (9th Cir. 2019). For a practice to be considered an actionable municipal

26 ¹ To the extent that Plaintiffs contend they are attempting to sue under the
27 Second Amendment in Claim 4, the claim is duplicative of Claim 1.

1 policy, it must reflect a “‘deliberate’ or ‘conscious’ choice by a municipality.” *City*
2 *of Canton v. Harris*, 489 U.S. 378, 388-389 (1989). If the policy was not formally
3 adopted by the government, Plaintiffs must show that it is a “longstanding practice
4 or custom” that is “so persistent and widespread that it constitutes a permanent and
5 well settled [municipal] policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996)
6 (citations and internal quotation marks omitted). In other words, the practice “must
7 be founded upon practices of sufficient duration, frequency and consistency that the
8 conduct has become a traditional method of carrying out policy.” *Id.*

9 For the delay claim, Plaintiffs allege just the opposite of this: that it was
10 Sheriff Luna and LASD’s official, well-settled municipal policy *not* to delay. For
11 example, Plaintiffs cite to a letter in which Sheriff Luna advised CRPA that LASD
12 was “‘taking steps to reduce processing times and improve our overall processes.’”
13 Compl. ¶ 103. As Sheriff Luna explained there, LASD implemented new
14 application software to decrease wait times and sought to increase staffing. *Id.* In
15 other words, LASD’s intent was not to delay, and it took steps to reduce delays. *Id.*
16 This is the exact opposite of a “‘deliberate’ or ‘conscious’ choice by a municipality”
17 to violate citizens’ rights or a “deliberate indifference to the rights of persons.” *City*
18 *of Canton*, 489 U.S. at 388-389. Accordingly, any *Monell* claim must fail.

19 Moreover, the pleaded delay in processing CCW applications falls short of a
20 “longstanding practice or custom” that constitutes “‘permanent and well settled city
21 policy.’” *Trevino*, 99 F.3d at 918. Where a municipal program requires government
22 officials to make decisions on a case-by-case basis, courts are reluctant to identify a
23 constitutionally actionable practice or custom. *Id.* *Trevino* is instructive. There, the
24 plaintiff alleged that city council members violated her civil rights by engaging in a
25 policy of routinely voting to pay punitive damages of police officers who were found
26 to have used excessive force. *Id.* at 917. Notwithstanding a pattern of votes from
27 the city council to indemnify officers accused of excessive force, the court granted
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1 summary judgment on the claim because each payment involved unique
2 circumstances, and the “varied and inconsistent ad hoc practice” was not ““persistent
3 and widespread”” enough to constitute a government policy. *Id.* at 919-920. So too
4 here. In their Complaint, Plaintiffs assert varying wait periods for their CCW
5 applications, ranging from just under a year, to over a year and a half. Compl. ¶¶ 25-
6 43. They concede that each CCW application contains unique facts and
7 circumstances that LASD must handle on a case-by-case basis. Compl. ¶ 80. The
8 varied and ad hoc process that is inherent to the review of CCW applications
9 prevents the timing of processing those applications from taking on a constitutional
10 dimension. *See Trevino*, 99 F.3d at 920 (“If there is a pattern, it is more reflective
11 of normal municipal claims adjusting with all its inconsistencies and imperfections
12 than of subtle conspiracy to indemnify officers outside the public eye.”).

13 Velasquez and Partowashraf’s denial claims would similarly fail to state a
14 claim for liability under *Monell*—whether based on alleged Second Amendment
15 violations or Due Process violations. Neither of them alleges any facts beyond the
16 individual denials of their CCW applications. They allege nothing plausibly
17 suggesting that Sheriff Luna or LASD had an official policy or custom of denying
18 applicants under the circumstances they allege—for Velasquez, denying applicants
19 for having guns stolen *without* violating storage laws, or for Partowashraf, denying
20 applicants with restraining orders who were not actually credibly dangerous
21 (because their restraining orders, as Partowashraf alleges, were issued based on false
22 information and were quickly resolved). To the extent they claim due process owed
23 them an appeal of these denials, they allege nothing about Sheriff Luna and LASD’s
24 policy, custom, or practice with respect to CCW appeals—in general or with respect
25 to Velasquez and Partowashraf in particular. While the Complaint does allege that
26 “[LASD] Sergeant Berner told [Velasquez] there was no appeal process” (Compl.
27 ¶ 29), the Complaint fails to allege that Sergeant Berner was a “final policymaking
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1 ... official[]” under California state law, such that his statement is sufficient to create
2 municipal policy. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988); *see*
3 *also Pazmino v. City of Vacaville*, 2022 WL 12071470, at *3-4 (E.D. Cal. Oct. 20,
4 2022) (granting motion to dismiss where plaintiff failed to plead that the officer who
5 had purportedly violated constitution was a final policymaker). These are highly
6 individualized issues that do not plausibly allege facts rising to the level of a
7 sufficiently widespread municipal policy or custom under *Monell*.

8 In sum, Plaintiffs’ claims do not fall under *Monell*, but if they did, Plaintiffs
9 would fail to state a claim for municipal liability.

10 **II. Plaintiffs Can Seek Relief Only For Medalla, Yun, Velasquez, And**
11 **Partowashraf Individually**

12 Plaintiffs brought this case with the stated sweeping goal of obtaining a CCW
13 permit—or absolution for carrying without a permit—for every CCW applicant
14 whose application was pending in Los Angeles County or who was denied for
15 broadly defined “subjective criteria.” They can seek no such thing. The only relief
16 available to them is for individual Plaintiffs Medalla, Yun, Velasquez, and
17 Partowashraf. Their claims should be limited accordingly at this stage.

18 **A. Messel And Weimer’s Claims Are Moot**

19 Messel and Weimer’s claims for injunctive relief and declaratory relief are
20 moot because Plaintiff Messel already has full relief, and Plaintiff Weimer will
21 receive full relief by virtue of the Court’s Preliminary Injunction Order (Dkt. No.
22 52). “Mootness is a jurisdictional issue,” and a claim is moot “[w]hen ‘there is no
23 longer a possibility that [a party] can obtain relief for [its] claim.’” *MetroPCS Cal.,*
24 *LLC v. Picker*, 970 F.3d 1106, 1115-1116 (9th Cir. 2020). The Ninth Circuit has
25 dismissed plaintiffs’ claims for injunctive relief and declaratory relief as moot in the
26 Second Amendment context where plaintiffs have already received full relief. *See*
27 *Altman v. County of Santa Clara*, 2023 WL 33345, at *1 (9th Cir. Jan. 4, 2023)

1 (affirming district court’s dismissal of plaintiffs’ Second Amendment claims as moot
2 for injunctive relief and declaratory relief because previous county restrictions on
3 firearms purchase had been lifted “during the pendency of the litigation”); *see also*
4 *Wallingford v. Bonta*, 82 F.4th 797, 799, 801 (9th Cir. 2023) (affirming that
5 plaintiffs’ claim for declaratory relief was moot because relevant restraining orders
6 that prevented plaintiffs from possessing firearms had “expired”); *Koppel v. Bonta*,
7 2023 WL 8457243, at *3 (C.D. Cal. Nov. 16, 2023) (finding that California’s SB2
8 superseded “good cause” CCW licensing statute at issue here, and concluding that
9 plaintiff’s motion for preliminary injunction was moot).

10 This caselaw applies squarely to Messel and Weimer. Messel already
11 obtained full relief by receiving his CCW license from LASD in May 2024. Compl.
12 ¶ 138. He is now able to carry firearms publicly for self-defense with a valid permit
13 as required by state law. Weimer will obtain full relief by virtue of the Court’s
14 Preliminary Injunction Order. The Order, once entered, guarantees the disposition
15 of Plaintiff Weimer’s application on a specific timeline.² Because Plaintiff Weimer
16 will obtain full relief through the preliminary injunction order, there is no live
17 controversy and his request for other injunctive relief and declaratory relief is moot.
18 *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (“No matter how vehemently
19 the parties continue to dispute the lawfulness of the conduct that precipitated the
20 lawsuit, the case is moot if the dispute ‘is no longer embedded in any actual

21 _____
22 ² Within 30 days of the Court’s entry of the Preliminary Injunction Order,
23 LASD must contact Weimer to schedule his interview and instruct him to conduct
24 his livescan. Within 30 days of the later of LASD’s completion of his interview and
25 receipt of his livescan, LASD must review Weimer’s file and, if Weimer is approved
26 for firearms training, instruct him to schedule his training. Within 30 days of
27 LASD’s receipt of proof from Weimer that he completed his mandatory firearms
28 training, LASD must reach a final decision on Weimer’s application. If Weimer’s
application is approved, LASD must issue his license within 30 days of approval.
See Dkt. No. 57 at 5-6.

1 controversy about the plaintiffs’ particular legal rights.”); *see also Warren v.*
2 *Cardwell*, 621 F.2d 319, 322 (9th Cir. 1980) (finding case moot where petitioner
3 already received relief sought in petition).

4 Messel and Weimer also purport to seek nominal damages, presumably in an
5 effort to avoid the mootness of their claims. Compl. ¶ 138 (Messel); *id.* at 55 (Prayer
6 for Relief). While the availability of nominal damages might avoid mootness (*see*
7 *Yniguez v. Arizona*, 975 F.2d 646, 647 (9th Cir. 1992)), nominal damages are not
8 available here because Sheriff Luna (and LASD if not dismissed altogether) are state
9 actors in these circumstances immune to damages claims, including nominal
10 damages. *See supra* at 7-10. Therefore, Messel and Weimer’s request for nominal
11 damages is precluded and their claims should be dismissed entirely as moot.

12 **B. Medalla, Yun, Velasquez, And Partowashraf Can Only Seek**
13 **Relief For Themselves**

14 The as-applied challenges of Medalla, Yun, Velasquez, and Partowashraf (and
15 Messel and Weimer, if not moot) should be dismissed to the extent they seek to
16 obtain relief for anyone but themselves. The scope of relief for as-applied challenges
17 is limited to the party asserting the claim and “does not implicate the enforcement
18 of the law against third parties.” *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th
19 Cir. 1998); *United States v. Perez-Garcia*, 96 F.4th 1166, 1181 n.13 (9th Cir. 2024)
20 (declining to “take up the question whether the [challenged] firearm condition may
21 theoretically be applied to others because “[a]n as-applied challenge does not
22 implicate the enforcement of the law against third parties”” (quoting *Foti*, 146 F.3d
23 at 635)). The individual plaintiffs’ claims should be limited to relief for themselves
24 alone.

1 **C. CRPA, SAF, And GOA Can Only Pursue Individual As-Applied**
2 **Relief For Medalla, Yun, Velasquez, And Partowashraf**

3 The organizational plaintiffs are equally limited in the relief that they can
4 seek. Organizational standing comes in two forms: direct and associational. *East*
5 *Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 662 (9th Cir. 2021). CRPA, SAF,
6 and GOA lack direct standing, and their associational standing is limited to the as-
7 applied claims of Medalla, Yun, Velasquez, and Partowashraf.

8 For direct standing, an organization must establish that it has experienced an
9 injury itself, which it does by showing that “it suffered ‘both a diversion of its
10 resources and a frustration of its mission.’” *La Asociacion de Trabajadores de Lake*
11 *Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010). At the outset, it
12 is unclear from the pleadings if CRPA, SAF, and GOA are seeking to proceed on a
13 direct standing basis at all. The Complaint identifies them only as “associational
14 Plaintiffs” (e.g., Compl. ¶¶ 21, 22, 24, 118) and explains that they “bring this action
15 to vindicate *their members’ and supporters’* Second Amendment rights” (Compl.
16 ¶ 21 (emphasis added)). In any event, CRPA, SAF, and GOA have failed to plead
17 direct standing for two distinct reasons. *First*, they have failed to plead an adequate
18 “diversion of [their] resources.” *Asociacion de Trabajadores*, 624 F.3d at 1088. In
19 the Complaint, the only expenditure that CRPA, SAF, and GOA identify is use of
20 “their resources and economies of scale to ensure the broadest possible protection
21 for their members and supporters by bringing suits on behalf of individual
22 plaintiffs.” Compl. ¶ 21. But litigation costs alone are an insufficient “diversion of
23 resources” for standing purposes. *Asociacion de Trabajadores*, 624 F.3d at 1088
24 (“[an organization] cannot manufacture the injury by incurring litigation costs”).
25 CRPA, SAF, and GOA cite nothing beyond these costs to support direct standing.
26 *Second*, in constitutional challenges, direct standing is only appropriate where an
27 organization brings a broad, facial challenge. *See Rodriguez v. City of San Jose*, 930

1 F.3d 1123, 1134 (9th Cir. 2019) (“an organizational plaintiff must show that ... the
2 organization seeks broad relief against the defendant’s actions.”). As explained
3 above (*see supra* at 5-7), Plaintiffs have only pled as-applied constitutional
4 challenges. To the extent CRPA, SAF, and GOA are attempting to bring as-applied
5 claims on behalf of their members, they must establish associational standing.

6 To establish associational standing, an organization must show that “(a) its
7 members would otherwise have standing to sue in their own right; (b) the interests
8 it seeks to protect are germane to the organization’s purpose; and (c) neither the
9 claim asserted nor the relief requested requires the participation of individual
10 members in the lawsuit.” *Hunt v. Washington State Apple Advert. Comm’n*, 432
11 U.S. 333, 343 (1977). It is the final requirement that is fatal to CRPA, SAF, and
12 GOA’s ability to secure relief for any of their members who are not parties to this
13 litigation. “When the claims require an ‘ad hoc factual inquiry’ for each member
14 represented by the association, the organization does not have associational standing
15 [for non-party members].” *Ass’n of Christian Schls. Int’l v. Stearns*, 678 F. Supp.
16 2d 980, 986 (C.D. Cal. 2008); *Ass’n of Christian Schls. Int’l v. Stearns*, 362 F.
17 App’x 640, 644 (9th Cir. 2010) (“[T]he district court correctly concluded that ACSI
18 lacks associational standing to assert as-applied claims on behalf of its member
19 schools that are not parties to this lawsuit.”); *New Hampshire Motor Transport Ass’n*
20 *v. Rowe*, 448 F.3d 66, 72 (1st Cir. 2006) (injunctive relief will not satisfy the third
21 requirement where it requires a “sufficiently fact-intensive inquiry” into
22 individualized situations), *aff’d*, 552 U.S. 364 (2008).

23 The as-applied challenges in this case require precisely the kind of fact-
24 intensive inquiry that limits associational standing to the named plaintiffs. *See, e.g.,*
25 *Garcia v. City of Los Angeles*, 611 F. Supp. 3d 941, 952 (C.D. Cal. 2020) (“[I]f [the
26 organization] is bringing as-applied challenges or seeks damages, participation of
27 the individual members would be required.”); *Guadalupe Police Officer’s Ass’n v.*

1 *City of Guadalupe*, 2011 WL 13217671, at *5 (C.D. Cal. Mar. 29, 2011) (“[T]o the
2 extent [the organization] brings an as-applied challenge, as opposed to a facial
3 challenge, its claims require individual members’ participation. Such as-applied
4 challenges ‘require individualized proof specific to’ each member” (citation
5 omitted)). The challenged CCW application process treats each applicant separately
6 by requiring a background check, investigating compliance with gun safety laws,
7 and compliance with California’s regulations. Each application is then granted or
8 denied on an individual basis, and a unique explanation is provided for each CCW
9 application determination. Thus, the as-applied challenges in this case are unique to
10 each applicant, and CRPA, SAF, and GOA lack standing to pursue relief for anyone
11 but Medalla, Yun, Velasquez, and Partowashraf.

12 **D. GOF And GOC Cannot Assert Claims Against Sheriff Luna Or**
13 **LASD At All**

14 The remaining two organizations, Gun Owners Foundation and Gun Owners
15 of California, do not allege that they have a member who is a party to this lawsuit
16 suing Sheriff Luna and LASD. None of Medalla, Yun, Velasquez, or Partowashraf
17 (or Weimer or Messel) claims to be a member of those organizations. Consequently,
18 they have no place in the case and should be dismissed altogether. *See Rodriguez*,
19 930 F.3d at 1135 (finding organizations lacked standing to bring action alleging that
20 city’s seizure and retention of firearms from home of person detained for mental
21 evaluation violated a resident’s Second Amendment right, where the resident was
22 “not a member” of either organization); *see also Foti*, 146 F.3d at 635 (“An as-
23 applied challenge contends that the law is unconstitutional as applied to the litigant’s
24 particular ... activity, even though the law may be capable of valid application to
25 others.”).

CONCLUSION

For these reasons, Sheriff Luna and LASD respectfully request that the Court grant this motion to dismiss.

Respectfully submitted,

Dated: October 28, 2024

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LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants, certifies that this brief does not exceed 25 pages in length using Times New Roman 14-point font, which complies with this Court’s Standing Order of October 24, 2023.

Dated: October 28, 2024

/s/ Mark Selwyn
Mark Selwyn

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