

EXHIBIT A

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11

12 **IN THE UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 EDWARD PERUTA, MICHELLE
15 LAXSON, JAMES DODD, DR.
16 LESLIE BUNCHER, MARK
17 CLEARY, and CALIFORNIA RIFLE
AND PISTOL ASSOCIATION
FOUNDATION

18 Plaintiffs,

19 v.

20 COUNTY OF SAN DIEGO,
21 WILLIAM D. GORE,
INDIVIDUALLY AND IN HIS
22 CAPACITY AS SHERIFF,

23 Defendants.

CASE NO: 09-CV-2371 IEG (BLM)
FIRST AMENDED COMPLAINT
[PROPOSED]
42 U.S.C. sections 1983, 1988

24 NOW COME Plaintiffs, by and through the above Counsel, and allege
25 against Defendants as follows:

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1 INTRODUCTION

2 1. Twenty-five years ago, a committee of the California Assembly found
3 disarray in the issuance of concealed weapons permits (“CCW”) by local
4 government entities in California: “permit standards often are nonexistent or
5 unclear; the key standards for issuance are undefined and their interpretation is
6 highly discretionary; and many jurisdictions have no written policies.”¹

7 2. In June 2008, the United States Supreme Court held that the Second
8 Amendment to the United States Constitution protects a fundamental, individual
9 right to keep, and to bear, arms for self defense. *District of Columbia v. Heller*, 128
10 S.Ct. 2783 (2008).

11 3. When considering an application for a CCW, the standards Defendants
12 have set are so high they are illegal and unconstitutional. Defendants do not
13 consider this constitutionally guaranteed right to self-defense to be sufficient to
14 meet the “good cause” required by California law for the issuance of a permit.

15 4. Further, Defendants deny many CCW applications from those who
16 maintain an address and residence in San Diego on grounds that such applicants do
17 not meet the statutory residency requirement.

18 5. The fundamental individual right to bear arms for self-defense does not
19 end at the doorstep to one’s home. Plaintiffs seek equitable and declaratory relief to
20 that effect, to compel Defendants to articulate and adopt a constitutional policy
21 regarding the issuance of CCW licenses, and to review CCW applications,
22 determine residency, and issue CCW licenses in a manner consistent with
23 California law, and with the United States Constitution.

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27 ¹ Abstract to SMOKING GUN – THE CASE FOR CONCEALED WEAPON
28 PERMIT REFORM, <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=104228>.

PARTIES

[Plaintiffs]

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3 6. Plaintiff Edward PERUTA is a natural person, a citizen of the United
4 States and of the State of California, and a resident of San Diego County,
5 California.

6 7. PERUTA maintains a residence in San Diego County. Plaintiff maintains
7 a permanent mailing address in San Diego, California, and PERUTA and his wife
8 keep a room in San Diego in which they keep a wardrobe and other personal items.

9 8. PERUTA and his wife reside in San Diego in a motor home for extended
10 periods of time. PERUTA reserved space at Campland on the Bay, in San Diego,
11 California, from November 15, 2008 through April 15, 2009. PERUTA has also
12 previously reserved space at the same place for months at a time.

13 9. PERUTA is the founder and sole stockholder of *American News and*
14 *Information Services, Inc.*, a news and information company that operates
15 throughout the United States, and which gathers and provides raw, breaking news
16 video, photographs, and news tips to various mainstream media outlets.

17 10. As part of PERUTA's media duties and employment, he often enters
18 high crime areas. This puts him at risk of criminal assault and in need of a firearm
19 to defend himself. In pursuing his occupation, PERUTA and his wife travel
20 extensively throughout the United States in their motor home, carrying large sums
21 of cash, valuables and equipment, making them a target for violent crimes.

22 11. As part of PERUTA's travels, he and his wife often find it necessary to
23 stay in remote rural areas of the United States, including California, where law
24 enforcement personnel are frequently unavailable.

25 12. In November 2008, PERUTA requested a CCW application form from
26 the San Diego County Sheriff's License Division. At that time he was interviewed
27 by a licensing supervisor to determine whether he satisfied the Defendants'
28 licensing criteria. Basically, he had to first apply to get an official application form

1 before he could actually apply for a CCW.

2 13. In February 2009, PERUTA submitted an application for a CCW.
3 PERUTA provided the required eight (8) hour Firearms Safety and Proficiency
4 Certificate (California Penal Code § 12050(E)(I)).

5 14. PERUTA is eligible to possess firearms.

6 15. PERUTA was denied a CCW by Defendants upon a finding by the San
7 Diego County Sheriff's licensing division that Plaintiff did not have "good cause"
8 and was not a "resident" of San Diego County.

9 16. Defendants deemed that PERUTA did not have "good cause" because
10 PERUTA, beyond a desire to exercise his Second Amendment right to bear arms in
11 self-defense, could not document a more specific demonstrable threat of harm as a
12 primary reason for desiring a CCW license.

13 17. Defendants also found that PERUTA is not a San Diego county resident
14 because his residence is his mobile home.

15 18. PERUTA appealed this denial as far as possible administratively.

16 19. Re-submission of an application would be futile.

17 20. Plaintiff Michelle LAXSON is a 26-year-old natural person, a citizen of
18 the United States and of the State of California, and a resident of San Diego
19 County, California.

20 21. Plaintiff LAXSON owns her own hairdressing business.

21 22. LAXSON wishes to have a CCW for self-defense because her work
22 requires her to travel alone and to carry large amounts of cash, sometimes at night,
23 and often through neighborhoods known to have a heightened level of crime.

24 23. LAXSON applied for a CCW on or about January 25, 2010, but was told
25 that same day that a CCW license would not be issued for failure to establish "good
26 cause" as determined and required by Defendants.

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1 24. LAXSON is legally qualified to possess a firearm and, other than the
2 supposed inadequacy of her “good cause,” can satisfy the legal requirements for
3 issuance of a CCW.

4 25. LAXSON is involved in the community through various charities to
5 which she devotes time or money, including Mama’s Kitchen, the YMCA, Child
6 Help, Friends of Scott, Locks of Love, the Zoological Society, and various local
7 school events and fundraisers. She is an active member in her local church.

8 26. But for her lack of a CCW, LAXSON would carry a concealed, loaded
9 firearm in public for self-defense.

10 27. Plaintiff James DODD is a 67-year-old natural person, a citizen of the
11 United States and of the State of California, and a resident of San Diego County,
12 California.

13 28. Plaintiff DODD is a retired Navy Officer. He served in the Navy for 22
14 years, and served two combat tours of duty in the Vietnam War.

15 29. Apart from his military career, Plaintiff DODD has received extensive
16 firearms training from shooting schools such as Gunsite and Front Sight.

17 30. Plaintiff DODD also took a CCW class in San Diego on or about July
18 26, 2000, in anticipation of applying for a CCW from Defendant San Diego
19 County.

20 31. Plaintiff DODD desires a CCW to exercise his Second Amendment
21 right to bear arms in self-defense. At his age, he is less physically capable of
22 defending himself, and his wife, from violent crime without a firearm. Upon
23 requesting an application for a CCW in early August 2000, Plaintiff DODD was
24 told by the Sheriff’s Department that he would be wasting \$200 by applying
25 because Defendants would not issue Plaintiff DODD a CCW because he did not
26 have “good cause.” DODD was informed that filing a formal application and
27 paying the associated fees was a waste of time and money because he did not have
28 “good cause” to obtain a CCW.

1 32. But for the Defendants instructing him that he did not qualify for and
2 would not be issued a CCW license, Plaintiff DODD would have formally applied
3 for a CCW license.

4 33. Plaintiff Doctor Leslie BUNCHEER is a 71 year old natural person, a
5 citizen of the United States and of the State of California, and a resident of San
6 Diego County, California.

7 34. Plaintiff Dr. BUNCHEER is retired after working as a medical physician
8 for approximately thirty (30) years. Part of Dr. BUNCHEER's medical practice
9 involved him performing abortions.

10 35. Because of the socially controversial nature of Dr. BUNCHEER's
11 practice, he was the target of various threats to his well-being. Dr. BUNCHEER has
12 had anti-abortion protestors enter his office, and has received threatening electronic
13 mails and letters calling him a murderer and telling him to repent.

14 36. Dr. BUNCHEER obtained a CCW from one of Defendant GORE's
15 predecessors in the early 1970's and maintained it for decades. Dr. BUNCHEER
16 failed to timely renew his CCW. Sometime after it expired he went to the Sheriff's
17 station and inquired about reapplying for a new CCW. He was told by defendants'
18 employees that he would not be issued a permit if he applied because he was no
19 longer practicing medicine and thus lacked "good cause."

20 37. Upon being told he would be rejected, Dr. BUNCHEER nonetheless
21 returned days later with evidence of specific threats that continued to be made
22 against him and other doctors. Dr. BUNCHEER showed Defendants that his name
23 and address remained available on the internet as a doctor associated with
24 abortions. He then officially applied for a CCW license, but was nonetheless
25 denied on September 28, 2008.

26 38. Defendants sent the Doctor a Denial Letter stating that the
27 documentation he provided did not support a showing of good cause, and that "fear
28 alone" does not constitute "good cause."

1 39. Dr. BUNCHEER served in the military as a Military Police officer and
2 taught shooting courses at the Military Police Academy.

3 40. Dr. BUNCHEER presently volunteers as a reserve officer for the Humane
4 Society and a reserve officer for the Chula Vista Police Force, Mounted Division.
5 As a reserve officer he is permitted access to areas deemed fire-dangers and closed
6 to the public.

7 41. Dr. BUNCHEER wishes to have a CCW to defend himself and his wife
8 from violent crime in general, and specifically from individuals who have
9 threatened him in the past because he performed pregnancy terminations.

10 42. But for his lack of a CCW, Dr. BUNCHEER would carry a concealed,
11 loaded firearm in public for self-defense on occasions he deemed appropriate.

12 43. Plaintiff Mark CLEARY is a 58-year-old natural person, a citizen of the
13 United States and of the State of California, and a resident of San Diego County,
14 California.

15 44. Plaintiff CLEARY is a registered nurse at a hospital in San Diego
16 County. As part of his employment, Plaintiff CLEARY must tend to patients who
17 are deemed legally insane pursuant to the California Welfare and Institutions Code,
18 and who are often dangerous to themselves and others.

19 45. Plaintiff CLEARY has worked with mentally ill patients since 1994. He
20 worked between 1999 and 2008 throughout Southern California, including San
21 Diego County, conducting mental health evaluations of patients pursuant to
22 California Welfare and Institutions Code section 5150. During his career, Plaintiff
23 CLEARY was subjected to several death threats from patients. He has filed six
24 police reports to Defendants documenting some of these threats.

25 46. Plaintiff CLEARY continues to work with mentally ill patients in a lock-
26 down facility where he has worked since 2007.

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1 47. Plaintiff CLEARY wishes to have a CCW for self-defense against his
2 past and present patients, and the ones he will surely tend to in the future, who
3 suffer from mental illness and many of whom have a history of being dangerous to
4 others.

5 48. Plaintiff CLEARY was originally issued a CCW by Defendants in
6 November of 2005 after being denied previously. The CCW was issued to Plaintiff
7 CLEARY only after he became a member of the Honorary Deputy Sheriff's
8 Association in San Diego County and made a request for reconsideration of his
9 application to Defendant GORE personally.

10 49. Defendants granted his renewal application for a CCW in November of
11 2007 while he was working at the same hospital where he is currently employed.
12 At that time, Plaintiff CLEARY remained a member of the Honorary Deputy
13 Sheriff's Association.

14 50. On or about November 23, 2010, Plaintiff CLEARY submitted an
15 application for a renewal of his CCW.

16 51. Plaintiff CLEARY ceased being a member of the Honorary Deputy
17 Sheriff's Association in December of 2009 after he stopped paying his membership
18 dues.

19 52. In January 2010, Plaintiff CLEARY spoke with Jerry Quinlin of
20 Defendant GORE's office, who requested additional documentation from Plaintiff
21 CLEARY, including a letter from CLEARY's supervisor. When Plaintiff
22 CLEARY explained that he feared losing his job by making such a request of his
23 supervisor and that Defendants already had a letter from the same employer for his
24 previous application, Mr. Quinlin told Plaintiff CLEARY that he could withdraw
25 his CCW application.

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1 53. Plaintiff CLEARY refused to withdraw his CCW application and
2 reminded Defendants of the police reports he had filed involving threats from his
3 past patients and that he still worked at the same hospital from which he already
4 submitted a letter illustrating the type of patients he tends to. Plaintiff CLEARY
5 presented his current hospital identification as evidence of his employment there,
6 and offered to present paycheck stubs.

7 54. On March 17, 2010, Defendants denied Plaintiff CLEARY's renewal
8 application for failure to establish "good cause."

9 55. But for his lack of a CCW, Plaintiff CLEARY would carry a concealed,
10 loaded firearm in public for self-defense on appropriate occasions.

11 56. Plaintiff CALIFORNIA RIFLE AND PISTOL ASSOCIATION
12 FOUNDATION ("CRPA FOUNDATION") is a non-profit entity classified under
13 section 501(c)(3) of the Internal Revenue Code and incorporated under California
14 law, with headquarters in Fullerton, California.

15 57. Contributions to the CRPA FOUNDATION are used for the direct
16 benefit of Californians. Funds contributed to and granted by the Foundation benefit
17 a wide variety of constituencies throughout California, including gun collectors,
18 hunters, target shooters, law enforcement, and those who choose to own a firearm
19 to defend themselves and their families. The CRPA FOUNDATION seeks to: raise
20 awareness about unconstitutional laws, defend and expand the legal recognition of
21 the rights protected by the Second Amendment, promote firearms and hunting
22 safety, protect hunting rights, enhance marksmanship skills of those participating
23 in shooting sports, and educate the general public about firearms. The CRPA
24 FOUNDATION supports law enforcement and various charitable, educational,
25 scientific, and other firearms-related public interest activities that support and
26 defend the Second Amendment rights of all law-abiding Americans.

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1 58. In this suit, the CRPA FOUNDATION represents the interests of its
 2 many citizen and taxpayer members and members of its related association the
 3 California Rifle and Pistol Association who reside in San Diego and who wish to
 4 obtain CCWs, but who have been denied CCWs for supposed lack of residence, or
 5 supposed lack of “good cause,” or who have been told by the Sheriff’s Office not
 6 to bother applying for a CCW because of the aforesaid reasons. These members
 7 are too numerous to conveniently bring this action individually. The CRPA
 8 FOUNDATION and the individuals whose interests are represented by the CRPA
 9 FOUNDATION are and will be affected by Defendants’ failure to issue CCW
 10 licenses according to law.

11 **[Defendants]**

12 59. Defendant William GORE is the Sheriff of San Diego County. As such,
 13 he is responsible for formulating, executing and administering the laws, customs
 14 and practices that Plaintiffs challenge, and is in fact presently enforcing the
 15 challenged laws, customs, and practices against Plaintiffs (and, in the case of the
 16 CRPA Foundation, those they represent). Defendant GORE is sued in his
 17 individual capacity and in his official capacity as Sheriff.

18 60. Defendant San Diego County is a municipal entity organized under the
 19 Constitution and laws of the State of California.

20 **JURISDICTION AND VENUE**

21 61. This Court has subject matter jurisdiction over this action pursuant to 28
 22 U.S.C. sections 1331, 1343, 1367, 2201, 2202, and 42 U.S.C. section 1983.

23 62. Venue lies in this court pursuant to 28 U.S.C. section 1391.

24 **REGULATORY SCHEME**

25 **[California Law - Permits to Carry Concealed Firearms]**

26 63. With very few and very limited exceptions, California has banned the
 27 unlicensed public carrying of concealed handguns (California Penal Code §
 28 12025), and the unlicensed public carrying of loaded firearms (California Penal

1 Code § 12031). Because California does not permit the open carriage of loaded
2 firearms, concealed carriage with a CCW permit is the only means by which an
3 individual can bear arms in public places in order to exercise his or her Second
4 Amendment right to armed self-defense.

5 64. California law allows for the issuance of a license to carry a firearm in
6 public for self-defense. In counties with small populations, an individual may
7 obtain a license to openly carry a loaded handgun. (California Penal Code §
8 12050(a)).

9 65. Depending on the jurisdiction, in order to obtain a CCW one must
10 submit an application to either the police chief or the county sheriff (“Issuing
11 Authority”) for the city or county in which the applicant either resides or spends a
12 substantial amount of time while conducting business at the applicant’s principal
13 place of employment or business located in that county. (California Penal Code §
14 12050, *et seq*).

15 66. CCW applicants must pass a criminal background check (California
16 Penal Code § 12052), and successfully complete a handgun training course.
17 (California Penal Code §12050(a)(1)(E)).

18 67. Even if an applicant successfully completes a background check and the
19 handgun training course, a CCW is issued only if the applicant is additionally
20 found to be of good moral character and, in the discretion of the Issuing Authority,
21 has “good cause” for carrying a concealed firearm. (California Penal Code § 12050
22 (a)(1)(A), (B)).

23 68. Because Issuing Authorities have discretion to determine whether an
24 applicant is of good moral character, and whether an applicant has "good cause"
25 for a CCW, there is little consistency among jurisdictions in establishing the
26 criteria for issuing CCWs. That lack of consistency leads to disparate treatment of
27 similarly situated applicants by a particular Issuing Authority, or by the various
28 Issuing Authorities from jurisdiction to jurisdiction.

1 69. In some counties, such as San Diego, applicants are rarely issued
 2 CCWs, but in other counties, CCWs are issued to most law-abiding, responsible
 3 adult applicants. Applicants who do receive CCWs in jurisdictions (typically
 4 urban) that do not issue CCWs liberally are often wealthy and/or politically
 5 important, friends of the Issuing Authority, or individuals who contribute to the
 6 Issuing Authority's campaign fund or to the campaign funds of other politicians.
 7 Many people lacking those "qualifications" are denied CCWs.

8 70. This pattern is so pervasive that many people lacking these unofficial
 9 "qualifications" or connections generally do not waste their time or money by
 10 applying for a CCW.

11 **[Second and Fourteenth Amendments]**

12 71. The Second Amendment to the United States Constitution, by way of its
 13 incorporation into the Fourteenth Amendment, prohibits states and localities from
 14 depriving law-abiding individuals of their right both to keep and to bear arms.

15 72. The inherent right of self-defense is central to the Second Amendment.

16 73. The Second Amendment guarantees the right of law-abiding responsible
 17 adults to "possess and carry weapons in case of confrontation." This right includes
 18 the ability of law-abiding citizens to obtain a license to carry loaded handguns for
 19 self-defense in public.

20 74. States may not completely ban the carrying of handguns for self-defense,
 21 nor impose regulations on the right to carry handguns that are inconsistent with the
 22 Second Amendment.

23 75. Almost all states effectively recognize the Second Amendment right to
 24 carry a handgun for self-defense by either not regulating the carrying of handguns
 25 by law-abiding citizens (*i.e.*, they do not require a license to carry a firearm in
 26 public), or by regulating only to the extent that individuals who pass a background
 27 check and complete a gun-safety program are, as a matter of course, issued a
 28 license to carry a handgun in public.

1 76. In some of those states, a person needs a license to legally carry a
2 handgun only if the person carries the handgun concealed.

3 **GENERAL ALLEGATIONS**

4 **[Defendants' Issuance Policy]**

5 77. Defendant Sheriff William GORE has formulated and adopted, and is
6 continuing to abuse his discretion and apply San Diego County's unconstitutional
7 policies and standards for establishing "good cause" and "residency" when denying
8 CCWs. Defendants' policy, to the extent it has been articulated and published
9 publicly, is attached as Exhibit A.

10 78. The Second Amendment right to bear arms, and the fundamental right to
11 self-defense and self-preservation, are not deemed by Defendants to constitute
12 "good cause" for the issuance of a CCW.

13 79. Defendants do not actually require "residency" in San Diego County *per*
14 *se* (the statutory standard). Rather, they improperly require a lack of any residency
15 elsewhere.

16 80. Plaintiffs are informed and believe and thereupon allege that Defendants
17 sometimes issue CCWs to applicants whose "good cause" *is* credible threats of
18 harm to self or family, or a need to transport large sums of money or valuable
19 property, or engaging in a business or occupation that exposes the applicant to
20 attack. Defendants, however, issue a CCW in such circumstances only when the
21 applicant is a personal friend of the Sheriff or of someone with influence over the
22 Sheriff, has contributed money to the Sheriff's campaign or to the campaign of
23 others who have influence over the Sheriff, is wealthy or otherwise politically
24 influential, or is a public official.

25 81. Plaintiffs are also informed and believe and thereupon allege that
26 Defendants sometimes issue CCWs to applicants who do *not* have "good cause"
27 under Defendants' standard, but who are a personal friend of the sheriff or of
28 someone with influence over the sheriff, is a contributor of money to the sheriff's

1 campaign or to the campaigns of others who have influence over the sheriff; are
2 wealthy or otherwise politically influential, or is a public official.

3 82. Defendants have created a screening process whereby would-be CCW
4 applicants are required to, in essence, apply to apply for a CCW permit. Unless
5 applicants are determined to have "good cause," as defined by Defendants, during
6 the initial screening of applicants process, they are told that formally applying for a
7 CCW would be pointless and a waste of money, that they will not be issued a
8 CCW, and that they should not apply because their CCW application will be
9 denied.

10 **[All Plaintiffs]**

11 83. By reason of the Second Amendment, the Fourteenth Amendment's Due
12 Process Clause, the Equal Protection Clause and California Penal Code section
13 12050, each of the Defendants has "good cause" and meets the "good cause"
14 requirement for a CCW license.

15 84. Plaintiffs also meet the residency requirements for issuance of a CCW.

16 85. In the alternative, with respect to Plaintiff PERUTA, he is
17 constitutionally entitled to a CCW permit even if he does not meet the statutory
18 requirement of "residency" in San Diego.

19 86. Plaintiffs meet all of the statutory criteria in California Penal Code
20 section 12050 for issuance of a CCW insofar as such criteria are constitutionally
21 valid.

22 87. Defendants' arbitrary, capricious, and subjective interpretation and
23 application of California Penal Code section 12050's "good cause" requirement is
24 an abuse of discretion and has resulted in the illegal and unconstitutional denial of
25 CCW permits to Plaintiffs.

26 88. There is no valid reason not to consider Plaintiffs' "good cause" and
27 residency adequate to obtain a CCW under California Penal Code § 12050.

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1 89. But for the lack of a CCW, Plaintiffs would carry concealed weapons for
2 self-defense.

3 **[Right to Bear Arms]**

4 90. Defendants' manner of interpreting and applying California Penal Code
5 section 12050's requirements is an abuse of discretion and infringes upon
6 Plaintiffs' right to keep and bear arms under the Second and Fourteenth
7 Amendments, which includes the right to possess and carry weapons in public for
8 self-defense in case of confrontation.

9 91. Denial of a CCW is a denial of the right to carry a firearm for
10 self-defense, a purpose guaranteed by the Second Amendment.

11 **[Equal Protection]**

12 92. The Fourteenth Amendment to the United States Constitution provides
13 that no state shall "deny to any person within its jurisdiction the equal protection of
14 the laws."

15 93. Defendants' "good cause" and residency policies are an abuse of
16 discretion, subjective, inherently prone to abuse, and results in the unequal
17 treatment of similarly situated individuals applying for a CCW.

18 94. Many of those whose CCW applications are granted because they have
19 the "qualifications" or connections described above are otherwise similarly situated
20 to Plaintiffs, in that they too generally have no significant need or "good cause"
21 that is greater than any of Plaintiffs' self-defense needs.

22 95. Defendants' residency requirement subjects Plaintiff PERUTA and other
23 San Diego residents to unequal treatment.

24 96. Plaintiff PERUTA is a resident of San Diego County by virtue of the fact
25 that he maintains a permanent mailing address in San Diego, keeps personal
26 belongings there, and resides in San Diego County for extended periods of time.

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1 97. Plaintiff PERUTA should be deemed to have good cause and his
2 application processed even if he does not meet Defendants' residency requirement
3 because treating a person in his circumstance differently from full-time residents
4 denies him equal protection of the laws.

5 98. Plaintiff PERUTA was denied a CCW, at least in part, because the San
6 Diego Licensing Division made a finding that Plaintiff's residency in a motor home
7 did not meet Defendants' residency requirement.

8 99. Plaintiff PERUTA was treated differently than similarly situated
9 residents of San Diego County, at least in part, because he does not reside in San
10 Diego County all of the time.

11 **[Right to Travel]**

12 100. The Fourteenth Amendment and other provisions of the Constitution
13 guarantee individuals the right to interstate travel and to change their residence
14 from state to state.

15 101. A state may not impose a penalty upon those who exercise a right
16 guaranteed by the Constitution.

17 102. Defendants reject CCW applicants, including Plaintiff PERUTA, who
18 do not reside in San Diego County full time.

19 103. Defendants base such rejections on their inconsistent, unconstitutional,
20 and illegal interpretation and mis-application of California Penal Code section
21 12050's residency requirement.

22 104. Defendants' policy of requiring full-time residency in San Diego
23 County as a prerequisite to issuing a CCW is an abuse of discretion, is
24 unauthorized by California law, and violates the right to travel guaranteed by the
25 United States Constitution. The policy deters people, including Plaintiff PERUTA,
26 from traveling and spending time outside of San Diego County.

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[Penal Code Section 12050]

105. California Penal Code section 12050 requires Defendants to issue CCWs to all responsible, law-abiding adult residents of San Diego County who have “good cause” to carry a firearm for self-defense.

106. Defendants’ policies are an abuse of discretion and unlawfully exceed California Penal Code section 12050’s “good cause” requirement by inconsistently, arbitrarily, capriciously, and subjectively refusing to acknowledge that Plaintiffs have “good cause.”

107. Defendants’ policies unlawfully exceed California Penal Code section 12050’s “residency” requirement by refusing to acknowledge that lawful residency, even if not full time, satisfies the statutory residency requirement.

[Privileges and Immunities - Article IV]

108. Article IV, section 2 of the United States Constitution provides: “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” This clause bars discrimination against citizens of other States where no substantial reason for the discrimination exists beyond the mere fact that they are citizens of other states.

109. Defendants deny applicants CCW applications and licenses based on lack of residency if the applicant resides in San Diego only part of the year.

110. Defendants denied Plaintiff PERUTA a CCW based in part on the fact that he spends time in and travels to jurisdictions other than San Diego County.

**FIRST CLAIM FOR RELIEF
SECOND AND FOURTEENTH AMENDMENTS - RIGHT TO BEAR ARMS
42 U.S.C. § 1983
AGAINST ALL DEFENDANTS**

111. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth in the foregoing paragraphs as if set forth herein in full.

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1 112. By refusing to issue CCWs to individuals, including Plaintiffs, based
2 on their subjective and unconstitutional standard of "good cause" that requires a
3 showing beyond the need for self-defense, Defendants are abusing their discretion
4 and propagating customs, policies, and practices that infringe on Plaintiffs' right to
5 possess and carry firearms as guaranteed by the Second and Fourteenth
6 Amendments.

7 113. Defendants cannot satisfy their burden of justifying these customs,
8 policies, and practices that infringe on Plaintiffs' rights.

9 114. Plaintiffs are entitled to permanent injunctive relief against such
10 customs, policies, and practices.

11 **SECOND CLAIM FOR RELIEF**
12 **FOURTEENTH AMENDMENT - EQUAL PROTECTION**
13 **42 U.S.C. § 1983**
14 **AGAINST ALL DEFENDANTS**

15 115. Plaintiffs hereby re-allege and incorporate by reference the allegations
16 set forth in the foregoing paragraphs as if set forth herein in full.

17 116. Plaintiff PERUTA was treated differently than other similarly situated
18 residents of San Diego County because he resides in San Diego only part of the
19 year.

20 117. Plaintiffs were treated differently than other similarly situated CCW
21 applicants because Plaintiffs are not politically-connected, wealthy, or contributors
22 to the Sheriff's campaign, as are those individuals issued a CCW.

23 118. By maintaining and enforcing a set of customs, practices, and policies
24 that inconsistently and arbitrarily deny Plaintiffs a CCW based on a subjective
25 determination of "good cause" and/or length of one's residency in San Diego, while
26 at the same time issuing CCWs to other similarly situated individuals, Defendants
27 are abusing their discretion and propagating customs, policies, and practices that
28 violate Plaintiffs' rights to equal protection under the Fourteenth Amendment.

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1 119. Defendants cannot satisfy their burden of justifying these customs,
2 policies, and practices that deprive Plaintiffs equal protection under the law.

3 120. Plaintiffs are entitled to permanent equitable relief against such
4 customs, policies, and practices.

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6 **THIRD CLAIM FOR RELIEF**
7 **FOURTEENTH AMENDMENT - RIGHT TO TRAVEL**
8 **42 U.S.C. § 1983**
9 **AGAINST ALL DEFENDANTS**

10 121. Plaintiffs hereby re-allege and incorporate by reference the allegations
11 set forth in the foregoing paragraphs as if set forth herein in full.

12 122. The residency requirement, as interpreted and applied by Defendants,
13 deters individuals such as Plaintiff PERUTA from exercising their right to travel
14 because the residency requirement penalizes applicants for traveling and spending
15 time outside of San Diego.

16 123. San Diego's policy burdens the right to travel.

17 124. Defendants can neither identify a compelling state interest for
18 demanding that individuals reside more than part time in San Diego County, nor
19 demonstrate that the County's residency requirement is necessary to further that
20 interest.

21 125. Because Defendants cannot satisfy their burden of justifying the
22 residency requirement they impose for CCW issuance, Defendants are abusing their
23 discretion and propagating customs, policies, and practices that violate Plaintiffs'
24 right to travel under the Fourteenth Amendment to the United States Constitution.

25 126. Plaintiffs are entitled to permanent injunctive relief against such
26 customs, policies and practices.

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1 **FOURTH CLAIM FOR RELIEF**
2 **VIOLATION OF CALIFORNIA PENAL CODE SECTION 12050**
3 **42 U.S.C. § 1983**
4 **AGAINST ALL DEFENDANTS**

5 127. Plaintiffs hereby re-allege and incorporate by reference the allegations
6 set forth in the foregoing paragraphs as if set forth herein in full.

7 128. Plaintiffs meet each of the statutory qualifications for licensure under
8 California Penal Code section 12050, but Defendants refuse to examine Plaintiffs'
9 qualifications on their merits because Defendants' "good cause" standard requires a
10 showing of comparatively greater hazard than those faced by other residents of the
11 county.

12 129. For example, instead of examining Plaintiff PERUTA's individual
13 qualifications on their merits, Defendants denied Plaintiff a CCW license by reason
14 of Defendants' unlawful policies which exclude residents if they also reside
15 elsewhere and for all Plaintiffs require a showing of some specific threat rather
16 than just good cause to fear being attacked in general.

17 130. Defendants' CCW issuing policies exceed the scope of their discretion
18 and abuse the discretion granted in California Penal Code section 12050, and
19 subject Plaintiffs to irreparable harm.

20 131. Plaintiffs are entitled to declaratory and equitable relief.

21 **FIFTH CLAIM FOR RELIEF**
22 **ARTICLE IV, §2 - PRIVILEGES AND IMMUNITIES**
23 **42 U.S.C. § 1983**
24 **AGAINST ALL DEFENDANTS**

25 132. Plaintiffs hereby re-allege and incorporate by reference the allegations
26 set forth in the foregoing paragraphs as if set forth herein in full.

27 133. Plaintiff PERUTA was denied a CCW based in whole or in part on his
28 failure to satisfy Defendants' residency requirement.

134. Such conduct by Defendants deprives Plaintiff PERUTA of the
privileges and immunities of citizenship in violation of Article IV, Section 2 of the
United State Constitution.

1 135. Defendants' policies regarding the issuance of CCW licenses are
2 unlawful and subject individuals, including Plaintiff PERUTA, to irreparable harm.

3 136. Plaintiff PERUTA is entitled to declaratory and equitable relief.

4
5 **SIXTH CLAIM FOR RELIEF**
6 **SECOND AMENDMENT,**
7 **FOURTEENTH AMENDMENT,**
8 **AND CALIFORNIA PENAL CODE SECTION 12050**
9 **42 U.S.C. § 1983**
10 **AGAINST ALL DEFENDANTS**

11 137. Plaintiffs hereby re-allege and incorporate by reference the allegations
12 set forth in the foregoing paragraphs as if set forth herein in full.

13 138. Plaintiffs desire a Decree from this Court directing Defendants to
14 consider self-defense to be "good cause" for an otherwise qualified applicant to be
15 issued a CCW.

16
17 **SEVENTH CLAIM FOR RELIEF**
18 **FOURTEENTH AMENDMENT - DUE PROCESS**
19 **42 U.S.C. § 1983**
20 **AGAINST ALL DEFENDANTS**

21 139. Plaintiffs hereby re-allege and incorporate by reference the allegations
22 set forth in the foregoing paragraphs as if set forth herein in full.

23 140. Plaintiffs have a right to access and review Defendants' CCW policies,
24 to obtain applications to apply for a CCW, to submit applications, and to have
25 those applications reviewed in a fair, impartial, and constitutional manner and
26 obtain a CCW when they meet the constitutional and legal prerequisites or
27 standards.

28 141. Plaintiffs desire a Decree from this Court directing Defendants to adopt
a constitutional application process for issuing CCW licenses.

DECLARATORY RELIEF ON ALL COUNTS

142. Plaintiffs hereby re-allege and incorporate by reference the allegations
set forth in the foregoing paragraphs as if set forth herein in full.

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1 143. There is an actual and present controversy between the parties in that
2 Plaintiffs contend that Defendants' are illegally and unconstitutionally interpreting,
3 administering, and applying the California CCW licensing statutes arbitrarily,
4 capriciously, and holding applicants to unconstitutional and illegal standards.
5 Defendants deny and dispute this contention. Plaintiffs desire a judicial declaration
6 of their rights and Defendants' duties in this matter.

7 144. There is an actual and present controversy between the parties hereto
8 in that Plaintiffs contend that Defendants' policies as to "good cause" are an abuse
9 of discretion and are unauthorized by law, and contrary to the Second Amendment.
10 Defendants deny and dispute this contention. Plaintiffs desire a judicial declaration
11 of their rights and Defendants' duties, and that Defendants' policies are contrary to
12 law.

13 145. There is an actual and present controversy between the parties hereto in
14 that Plaintiffs contend Defendants' practice is to deny CCW licensure unless an
15 applicant is a personal friend of the sheriff or of someone with influence over the
16 sheriff, a contributor of money to the Sheriff or his campaigns or to others who
17 have influence over the Sheriff; is wealthy or otherwise politically influential, or is
18 a public official. Defendants deny and dispute this contention. Plaintiffs desire a
19 judicial declaration of their rights and Defendants' duties, and that Defendants'
20 policies are contrary to law.

21 146. There is an actual and present controversy between the parties hereto in
22 that Plaintiffs contend that Defendants' policies as to residency requirements are
23 unauthorized by law and contrary to the Second Amendment, the Equal Protection
24 Clause, the right to travel guaranteed by the Fourteenth Amendment, and the
25 Privileges and Immunities Clause of Article IV, Section 2 of the U.S. Constitution.
26 Defendants deny and dispute this contention. Plaintiffs desire a judicial declaration
27 of their rights and Defendants' duties, to wit that Defendants' policies are contrary
28 to law.

1 147. There is an actual and present controversy between the parties hereto in
2 that Plaintiffs contend that Defendants' "good cause" and residency policies are
3 unauthorized by and violate California Penal Code section 12050. Defendants deny
4 and dispute this contention. Plaintiffs desire a judicial declaration of their rights
5 and Defendants' duties.

6 **PRAYER**

7 WHEREFORE, Plaintiffs request that judgment be entered in their favor and
8 against Defendants as follows:

9 148. An order permanently enjoining Defendants, their officers, agents,
10 servants, employees, and all persons in active concert or participation with them
11 who receive actual notice of the injunction, from enforcing the "good cause" or
12 other requirement of California Penal Code section 12050 as currently applied
13 against applicants who seek a CCW for self-defense and who are otherwise
14 qualified to obtain a CCW;

15 149. Declaratory relief that Defendants' interpretation of the "good cause"
16 provisions of California Penal Code § 12050 is unconstitutional either on its face
17 and/or as applied to applicants who are otherwise legally qualified to possess
18 firearms and who assert self-defense as their "good cause" for seeking a license to
19 carry a concealed weapon;

20 150. An order permanently enjoining Defendants, their officers, agents,
21 servants, employees, and all persons in active concert or participation with them
22 who receive actual notice of the injunction, from requiring any duration of local
23 residence prior to acknowledging satisfaction of the statutory residency
24 requirement and accepting an application under California Penal Code § 12050;

25 151. Costs of Suit, including attorney fees and costs pursuant to 42 U.S.C. §
26 1988 and California law;

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152. Any further relief as the Court deems just and proper.

Respectfully Submitted,

Date: April 22, 2010

MICHEL & ASSOCIATES, P.C.

/s/ C.D. Michel
C.D. Michel
E-mail: cmichel@michellawyers.com
Counsel for Plaintiffs

Date: April 22, 2010

PAUL NEUHARTH, JR., APC

/s/ Paul Neuharth
Paul Neuharth, Attorney at Law
Counsel for Plaintiff