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12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14

15 EDWARD PERUTA,
16 Plaintiff,
17 v.

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

) **CASE NO: 09-CV-2371 IEG (BGS)**
) **REPLY TO OPPOSITION TO**
) **MOTION FOR LEAVE TO AMEND**
) **COMPLAINT**

) Date: June 1, 2010
) Time: 10:30 a.m.
) Courtroom: 1
) Honorable Irma E. Gonzalez

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1 **I. INTRODUCTION**

2 Defendants' arguments against adding the California Rifle & Pistol Association
3 Foundation ("CRPAF"), as well as the other proposed plaintiffs, are apparently based
4 on a misunderstanding of the nature of the common legal claims being made and the
5 common declaratory and injunctive remedies being sought by all plaintiffs through the
6 Proposed First Amended Complaint (the "Amended Complaint")

7 Generally, and with the proviso that the nuances of, and theories behind,
8 Plaintiffs' claims may evolve as this case progresses and as Defendants' defenses
9 emerge, all of the Plaintiffs challenge how the Defendants interpret and apply
10 California Penal Code section 12050, particularly as to its "good cause" and residency
11 requirements. Specifically, Plaintiffs challenge Defendants' adopted government
12 policy purporting to apply that misinterpretation to *all* applicants or would-be
13 applicants for a CCW in San Diego.

14 All of the Plaintiffs seek declaratory relief invalidating Defendants' policy and
15 the *general application* of its unlawful CCW issuance (or non-issuance) policy, which
16 unconstitutionally applies Penal Code section 12050 *et seq*, as a matter of policy, *to*
17 *everyone* who has applied or wants to apply for a license; not just the specifically
18 named plaintiffs. So neither the legal claims alleged, nor the relief sought, depend on
19 proving facts specific to each plaintiff or each application. No Plaintiff seeks to
20 compel the issuance of a CCW to them by this lawsuit alone. Rather, the issue in the
21 Amended Complaint is whether Defendants' stated CCW issuance policy regarding
22 "good cause" and residency is lawful *in general*.

23 Even the equal protection claim, although it will require some factual discovery to
24 determine whether similarly situated individuals are unconstitutionally being treated
25 differently, is primarily a question of law.

26 Plaintiffs see these issues as matters of broad public concern in need of
27 resolution. Toward that end, Plaintiffs wish to avoid litigating unnecessary procedural
28 issues that might distract from resolving the substantive legal issues presented. One

1 primary purpose for adding new plaintiffs is to try to avoid having standing issues
2 (particularly ones that might rise to the level of a jurisdictional challenge) emerge later
3 in this case after significant resources have been invested by the parties and this Court.

4 Largely ignoring the legal issues this case chiefly presents, Defendants'
5 Opposition instead proffers two central arguments against Plaintiffs' Motion for Leave
6 to Amend. First, Defendants contend that proposed plaintiff CRPAF does not have
7 standing because the claims asserted *and* the relief requested in the Amended
8 Complaint require "individualized proof specific to each [CCW] application."
9 Further, Defendants contend that allowing CRPAF as a plaintiff might well require the
10 participation of every individual CRPAF member in the lawsuit. (Opp. at pp. 2-3, lns.
11 24-26; 1-2).

12 Second, with respect to the other proposed plaintiffs, Defendants contend that
13 adding these additional parties would unnecessarily complicate or delay this case
14 because individualized discovery would be required for each of these plaintiffs. (Opp.
15 at p. 3, lns. 26-28).

16 Considering the commonality of the legal claims and remedies being sought,
17 Plaintiffs' Motion should be granted. It includes the same legal claims that arise from
18 the Defendants' same conduct (i.e., the same nucleus of operative facts), seeks the
19 same declaratory and injunctive remedies for all Plaintiffs, and is brought against the
20 same Defendants as the initial Complaint.

21 **II. ARGUMENT**

22 **A. CRPAF Has Associational Standing**

23 CRPAF is an association of individuals primarily dedicated to promoting the
24 exercise and preservation of Second Amendment rights, including self-defense.
25 CRPAF seeks the same declaratory and injunctive remedy on behalf of all its
26 members, and all of those members will benefit from enjoining Defendants' restrictive
27 and arbitrary CCW issuance policy, which they allege unconstitutionally infringes on
28 the fundamental right to keep and bear arms. CRPAF's goal is protection of Second

1 Amendment rights. That goal is common to CRPAF's entire membership.

2 Whether an association satisfies the third prong of the standing test set out in
3 *Hunt v. Wash. State Apple Adver. Comm'n* (1977) 432 U.S. 333 at 343, and cited by
4 Defendants, depends on the claims it asserts *and* the relief it requests. *Warth v. Seldin*,
5 422 U.S. 490, 511, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1975). Defendants make two
6 arguments to support their position that CRPAF does not satisfy the third *Hunt* prong.
7 First, Defendants argue that the relief sought by CRPAF "require[s] 'individualized
8 proof' specific to each permit application." (Opp. at p. 3, Ins. 1-3). Second, that even
9 if the *relief* sought by Plaintiffs does not bar associational standing, that the nature of
10 Plaintiffs' legal *claims* are so "individualized" that they would "require an 'ad hoc
11 factual inquiry' for each member represented by the association." (Opp. at p. 3, Ins.
12 13-16).

13 Defendants' arguments misunderstand the claims and relief sought by CRPAF,
14 and indeed of the rest of the Plaintiffs too. To reiterate, all Plaintiffs (including
15 CRPAF) claim that Defendants' refusal to accept self-defense as sufficient "good
16 cause" for a CCW license infringes on the right to bear arms and cannot be
17 constitutionally justified by the government, and thereby violates the Second
18 Amendment. Because Defendants refuse to accept self-defense, absent an additional
19 showing of a specific articulated threat to the applicant, as sufficient "good cause" to
20 issue a CCW license, all of the Plaintiffs allege that the heightened "good cause"
21 standard and accompanying policy adopted by Defendants is set unconstitutionally too
22 high. Plaintiffs also allege that the durational residency requirement, adopted as a
23 standard to establish the residency required by the state statute, violates the Second
24 Amendment, Equal Protection, the Right to Travel, and Privileges and Immunities.
25 Finally, to the extent that Defendants vary from their heightened "good cause" or
26 residency policies and issue CCW licenses to favored persons with no more "good
27 cause" or residency than similarly situated persons who are denied a permit, all
28 Plaintiffs allege an Equal Protection violation. All Plaintiffs seek a judicial

1 declaration confirming their claims, and injunctive relief to this effect.

2 Defendants' CCW license issuance policy has affected, and unless enjoined will
3 continue to, affect *all applicants and potential applicants for a CCW license*, not just
4 the named plaintiffs. This includes members of CRPAF, some of whom have applied,
5 and some of whom would apply for a CCW but for Defendants' restrictive policies on
6 good cause and/or residency, which discourages those who want a CCW from
7 bothering to apply and chills their exercise of a constitutional right.

8 **1. CRPAF Seeks Common *Relief* for All of its Members**

9 CRPAF, on behalf of its members, contends that the heightened standards
10 Defendants' impose as their policy on what must be established to meet the "good
11 cause" and residency requirements for issuing CCWs constitute an unconstitutional
12 interpretation of section 12050's requirements. Although specific Plaintiffs are named
13 in the Amended Complaint along with CRPAF, neither their claims nor the relief they
14 seek are individually unique or different from the relief sought by CRPAF. Since the
15 Defendants' current policy has been in effect for years, the named Plaintiffs merely
16 represent the multitude of other people who were unconstitutionally denied a CCW by
17 Defendants' restrictive issuance policy, or who were deterred thereby from even
18 applying for a CCW in the first place. Plaintiffs and CRPAF seek relief from
19 Defendants' unconstitutional policy for the public at large, not any particular
20 individual. (Pls.' First Am. Compl., ¶¶ 148-150.)

21 CRPAF's situation is akin to the plaintiff in *International Union, United Auto,*
22 *etc. v. Brock* (U.S. 1986) 477 U.S. 274. In *Brock*, a labor union challenged, on behalf
23 of its members, the Secretary of Labor's interpretation of the eligibility provisions of
24 the Trade Act of 1974, which provisions provided benefits to certain laid off workers.
25 The Court of Appeals wrongly denied the union standing, and held that because those
26 UAW members "who had suffered an alleged injury had done so in varying amounts
27 requiring individualized proof," the relief sought could not be obtained unless "each
28 individual claimant was a party plaintiff. *Brock*, 477 at 280 (internal citation omitted).

1 The U.S. Supreme Court reversed, explaining that “the Court of Appeals misconstrued
2 the nature of petitioners' claims. Neither these claims nor the relief sought required the
3 District Court to consider the individual circumstances of any aggrieved UAW
4 member. The suit raises a pure question of law: whether the Secretary properly
5 interpreted the Trade Act's TRA eligibility provisions.” *Id.* at 287. “Thus, though the
6 unique facts of each UAW member's claim will have to be considered by the proper
7 state authorities before any member will be able to receive the benefits allegedly due
8 him, the UAW can litigate this case without the participation of those individual
9 claimants and still ensure that “the remedy, if granted, will inure to the benefit of those
10 members of the association actually injured.” *Id.* at 288 (citing *Warth*, 422 U.S. at
11 515).

12 Just as the Court of Appeals in *Brock*, Defendants here misconstrue the nature
13 of Plaintiffs claims and the remedies sought. “[A]ssociational standing is often
14 granted where the challenge raises a pure question of law that is not specific to
15 individual members.” *See Playboy Enters., Inc. v. Pub. Serv. Comm'n of P.R.*, 906 F.2d
16 25, 35 (1st Cir. 1990) (citing *Brock*, 477 U.S. at 286). It is unnecessary, and would be
17 a waste of the Court’s resources, to consider the individual circumstances of each and
18 every aggrieved CRPAF member, because the Complaint chiefly raises questions of
19 law: whether the Sheriff and Defendants properly interpreted the Penal Code’s “good
20 cause” and residency provisions.

21 And, to paraphrase the Supreme Court in *Brock*, “though unique facts of each
22 [member-applicant (i.e., competency with a firearm, criminal history, etc.)] will have
23 to be considered by [Defendants] before any member will be able to receive [a CCW],
24 the [CRPAF] can litigate this case without the participation of those individual
25 [member-applicants] and still ensure that ‘the remedy, if granted, will inure to the
26 benefit of those members of the association actually injured.’” *Id.* at 288 (citing *Warth*,
27 422 U.S. at 515).

28

1 Defendants cite *Ass'n of Christian Schs. Int'l v. Stearns*, 2010 U.S. App. LEXIS
2 745 (9th Cir. Cal. Jan. 12, 2010) to support their argument. In *Stearns*, an organization
3 representing Christian students sued the University of California, seeking declaratory
4 relief that the school's policy of refusing to approve religious-based courses that did
5 not "treat the study of religion or ethics from the standpoint of scholarly inquiry" was
6 unconstitutional, and also seeking an injunction on that policy. *Id.* at *6. The District
7 Court denied the group standing. On appeal, the Ninth Circuit upheld the decision of
8 the district court to deny the group standing because "The Plaintiffs' *as-applied claims*
9 and the relief they seek, although equitable in nature, both require 'individualized
10 proof' *specific to each rejected course and the school that offered it.*" *Id.* at *7
11 (emphasis added). The *Stearns* court reasoned that "individual course decisions 'are
12 not common to the entire membership.' Relief would not be 'shared by all in equal
13 degree.' Instead, each course decision affects only one [organizational] school, and
14 relief would benefit only that school." See *Ass'n of Christian Schs. Int'l v. Stearns*
15 (2008) 678 F.Supp.2d 980, 985.

16 Unlike the plaintiffs in *Stearns*, Plaintiffs do not seek to vindicate the
17 constitutional worthiness of any particular individual to have a CCW, nor even to
18 compel the issuance of a CCW to any individual plaintiff. No individualized decisions
19 need be made. Rather, Plaintiffs seek relief for *all* current, future, and contemplated
20 CCW applicants, including all members of the CRPAF, who have applied for a CCW
21 or might want to, and who have been or would be denied a CCW as a result of the
22 policy held out by defendants as the one Defendants apply to *all* applicants to establish
23 "good cause" and residency.

24 **2. Plaintiffs' Claims Do Not All Require an**
25 **"Ad Hoc Factual Inquiry"**

26 Preliminarily, we note that even if Plaintiffs' claims were found to require some
27 amount of "individualized proof" or the participation of *some* CRPAF members in the
28 suit, that would not necessarily foreclose CRPAF's standing. (See *National Ass'n of*

1 *College Bookstores v. Cambridge Univ. Press* (S.D.N.Y. 1997) 990 F. Supp. 245, 250
2 (The fact that a limited amount of individuated proof may be necessary does not in
3 itself preclude associational standing); citing *New York State Nat'l Org. of Women v.*
4 *Terry* (2d Cir. 1989) 886 F.2d 1339, 1349 (associational standing present though
5 evidence from some individual members required); see also *UAW v. Brock*, 477 U.S.
6 at 282 (*Hunt* test was formalized version of doctrine announced in *Warth v. Seldin*,
7 422 U.S. 490, 511, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1975), which held that
8 associational standing was not present in cases requiring "the individual participation
9 of *each* injured party . . .") (emphasis added)). As mentioned, Plaintiffs' legal
10 challenges do not require participation of any CRPAF members, let alone all of them.
11 (See *Hospital Council of Western Pennsylvania v. Pittsburgh*, 949 F.2d 83,89-90 (3d
12 Cir. Pa. 1991) (So long as the nature of the claim and of the relief sought does not
13 make the individual participation of each injured party indispensable to proper
14 resolution of the cause, the association may be an appropriate representative of its
15 members entitled to invoke the court's jurisdiction); (and see *Welch v. Eli Lilly & Co.*,
16 2008 U.S. Dist. LEXIS 61648, *14-20 (S.D. Ind. Aug. 7, 2008) (holding the NAACP
17 had standing to challenge an alleged pattern or practice of race discrimination *against*
18 *individuals.*)

19 Defendants nonetheless incorrectly rely on *Stearns* and *Rent Stabilization Ass'n*
20 *v. Dinkins* (2d Cir. N.Y. 1993) 5 F.3d 591, 595-597, to assert that regardless of the
21 nature of the *relief* plaintiffs seek, CRPAF does not have associational standing
22 because the *claims* asserted "require an 'ad hoc factual inquiry' for each member
23 thereof. (Opp. at p. 3, lns. 13-16). But both *Stearns* and *Dinkins* dealt solely with
24 standing relating to *as applied* claims that required fact-intensive analysis of each
25 individual claimant. (See 2010 U.S. App. LEXIS 745 at *7; see also *Dinkins*, 5 F.3d
26 at 595-596). *Dinkins* involved an organization purporting to represent various
27 landowners who claimed to be the victims of takings. *Dinkins*, 5 F.3d at 596. In
28 denying the organization standing, the court in *Dinkins* reasoned that "whether a

1 taking has occurred depends not only on a legal interpretation of takings
2 jurisprudence, but also on a variety of financial and other information unique to each
3 landlord,” and that the court “would have to engage in an ad hoc factual inquiry for
4 each landlord who alleges that he has suffered a taking.” *Id.*

5 Such is not the case here. Plaintiffs assert seven claims for relief in their
6 Complaint, only one of which, the Second Claim for Relief (Equal Protection), would
7 require any ‘factual inquiry’ – as to individuals granted or not granted a CCW and
8 their comparative circumstances, and not even necessarily the individual Plaintiffs’
9 circumstances. All Plaintiffs’ other claims are direct *legal* challenges to Defendants’
10 CCW issuance policies, requiring no individual fact-specific inquiry.

11 Unlike Plaintiffs’ claims here, the issue in *Stearns* depended on the need for
12 evaluating the specific merits of a class course, just as the issue in *Dinkins* depended
13 on evaluating the unique property aspects of land. Defendants’ reliance on *Stearns*
14 and *Dinkins* is misplaced. Because the challenges here are to the policy itself, the
15 claims present primarily questions of law. They do not depend on, nor need, an inquiry
16 into the facts of each CRPAF member to establish Defendants’ constitutional
17 violations.

18 **3. CRPAF Also Has Standing Because CRPAF Itself Is Injured** 19 **by Defendants’ Policy**

20 When an organization is forced to devote its time and energy to dealing with
21 certain conduct, it is injured by that conduct. *See, e.g. Havens Realty Corp. v.*
22 *Coleman*, 455 U.S. 363 (1982). CRPAF is an organization dedicated to promoting the
23 exercise and preservation of Second Amendment rights. This includes raising
24 awareness about unconstitutional laws, defending and expanding the legal recognition
25 of rights protected by the Second Amendment, promoting firearms and hunting safety,
26 protecting hunting rights, enhancing marksmanship skills of those participating in
27 shooting sports, and educating the general public about firearms and the laws relating
28 to firearms. Because its members rely on CRPAF to not only inform them of the scope

1 of their Second Amendment rights, but to guard against infringements thereto,
2 unlawful policies such as, and including Defendants', divert CRPAF's limited
3 resources, including time and treasure.

4 **B. The Four Proposed Individual Plaintiffs Should be Allowed Added**

5 **1. Leave to Amend Is Given Liberally**

6 "The court should freely give leave when justice so requires." Fed. R. Civ. P.
7 15(a). The policy favoring leave to amend is "a necessary companion to notice
8 pleading and discovery" (*Lone Star Invest. Club v. Schlotzsky's, Inc.* (5th Cir. 2001)
9 238 F.3d 363, 367), and should be applied with "extreme liberality." *Eminence*
10 *Capital, LLC v. Aspeon, Inc.* (9th Cir. 2003) 316 F.3d 1048, 1051; see also *Moore v.*
11 *Baker* (11th Cir. 1993) 989 F.2d 1129, 1131, holding that "justifying reason must be
12 apparent for denial of a motion to amend."

13 **2. Additional Plaintiffs Will Not Unduly Prejudice Defendants**
14 **Nor Unduely Burden This Court**

15 As previously explained, adding the proposed plaintiffs will neither confuse any
16 legal issues, nor significantly or unnecessarily expand this litigation. (See *Jones v.*
17 *Bates*, 127 F.3d 839, 847 n.8 (9th Cir. Cal. 1997)). Plaintiffs' Prayer for relief in the
18 Complaint is virtually identical to that of the Prayer in the original Complaint.
19 (*Compare* Compl. at pg. 3, ¶¶ 1-3, and Pls.' First Am. Compl., ¶¶ 148-150). Thus,
20 although the Motion seeks to add new claims and plaintiffs, they are all still based on
21 the same policy and seek the same relief as the original complaint in this matter; they
22 do not significantly expand the litigation. The proposed plaintiffs' claims are nearly
23 the same as, and based upon the same set of factual circumstances as the original sole
24 Plaintiff. And allowing the additional parties now avoids the costliness of separate
25 suits later.

26 Moreover, the Opposition fails to explain how or which of the proposed
27 plaintiffs or allegations will cause confusion. To justify denial of leave to amend, the
28 prejudice must be substantial. *Morongo Band of Mission Indians v. Rose* (9th Cir.

1 1990) 893 F.2d 1074, 1079. Defendants' inability to articulate a specific example of
2 how the issues will expand and become confusing, indicates how *insubstantial* any
3 potential prejudice to Defendants really is.

4 As explained above, Plaintiffs' claims for relief are chiefly questions of law.
5 Defendants mention the "36 new paragraphs of factual allegations regarding the four
6 new individual plaintiffs" (Opp. at pg. 3, lns. 24-25), but this merely expresses
7 defendants' concerns about new *paragraphs*, not new facts. The amended complaint
8 does not significantly affect the scope of this litigation. Defendants have failed to
9 demonstrate any undue prejudice by the addition of the proposed plaintiffs to this
10 lawsuit.

11 3. There Was No Undue Delay by Plaintiffs

12 The Motion was filed by the date this Court allowed for the filing of amended
13 pleadings. Defendants do not provide a reason they would be prejudiced by the timing
14 of the Motion. Thus, there is no undue delay. Further, a showing of delay alone usually
15 will not justify denial of leave to amend anyway. *DCD Programs, Ltd.*, 833 F.2d 185,
16 186. Any of Defendants' concerns that Plaintiffs' Complaint would complicate this
17 Court's previous discovery orders is easily remedied, as this Court has discretion to
18 modify the scheduling Order accordingly.

19 III. CONCLUSION

20 For the foregoing reasons, Plaintiffs' Motion for Leave to Amend Complaint
21 should be granted.

22 Date: May 24, 2010

MICHEL & ASSOCIATES, P.C.

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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EDWARD PERUTA,)
Plaintiff,)
v.)
COUNTY OF SAN DIEGO,)
WILLIAM D. GORE,)
INDIVIDUALLY AND IN HIS)
CAPACITY AS SHERIFF,)
Defendants.)

CASE NO. 09-CV-2371 IEG (BGS)
CERTIFICATE OF SERVICE

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:

**REPLY TO OPPOSITION TO MOTION FOR LEAVE TO
AMEND COMPLAINT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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I declare under penalty of perjury that the foregoing is true and correct.
Executed on May 24, 2010.

/s/ C.D. Michel
C. D. Michel
Attorney for Plaintiffs

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