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

10 CHRISTOPHER ANDERSON,) **CASE NO. 2:14-CV-5241-FMM**
11 MICHAEL DOZIER, DAVID)
12 MARCINKUS, ARI FRIEDMAN) MOTION FOR SUMMARY
13 AND ARI MILLER) JUDGMENT; DECLARATION RE
14) COMPLIANCE WITH LOCAL RULES
15 Plaintiffs,)
16 vs.) August 19, 2014 at 10:00 a.m.
17)
18 JOHN SCOTT & CHARLIE BECK)
19 Defendants.)
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28)

20 **I. INTRODUCTION**

21 The Second Amendment protects the fundamental right of law abiding citizens
22 to bear arms for self-defense, and in California, the only way Plaintiffs can exercise
23 that right is with a permit to carry a concealed weapon. Defendants maintain a policy
24 requiring proof of an imminent threat before the will find good cause to issue a
25 permit.

1 The actual policies read:

2 “The policy LAPD has adopted is that good cause exists if there is convincing
3 evidence of a clear and present danger to life or of great bodily injury to the
4 applicant, his (or her) spouse, or dependent child, which cannot be adequately
5 dealt with by existing law enforcement resources, and which danger cannot be
6 reasonably avoided by alternative measures, and which danger would be
7 significantly mitigated by the applicant's carrying of a concealed firearm.”

8 “According to Los Angeles County Sheriff's Department policy (5-09/380.1 0)
9 and the California Supreme Court (CBS, Inc. v. Block, (1986) 42 Cal.3d 646),
10 good cause shall exist only if there is convincing evidence of a clear and
11 present danger to life, or of great bodily harm to the applicant, his spouse, or
12 dependent child, which cannot be adequately dealt with by existing law
13 enforcement resources, and which danger cannot be reasonably avoided by
14 alternative measures, and which danger would be significantly mitigated by the
15 applicant's carrying of a concealed firearm.”

16 Accordingly, both departments maintain standards that cannot be met by law
17 abiding citizens, perhaps explaining why, combined, they have less than 300 permits
18 issued to civilians in Los Angeles. Plaintiffs are law abiding citizens who seek
19 permits to carry concealed weapons. Plaintiffs are legally prohibited from carrying a
20 concealed weapon absent a permit from Defendants. Defendants refuse to issue
21 permits to carry concealed weapons absent evidence of an imminent threat of harm
22 required by them to demonstrate good cause for the issuance of a permit. Plaintiffs
23 do not meet Defendants discretionary definition of good cause. Imminent threat of
24 harm is not a statutory requirement for the issuance of a concealed weapons permit, it
25 is a policy created by defendants.

22 **II. LEGAL STANDARD**

23 Summary judgment is proper where the pleadings and materials demonstrate
24 “there is no genuine issue as to any material fact and . . . the movant is entitled to
25 judgment as a matter of law.” Fed. R. Civ. P. 56(c)(2); Celotex Corp. v. Catrett, 477
26 U.S. 317, 322 (1986). A material issue of fact is a question a trier of fact must
27 answer to determine the rights of the parties under the applicable substantive law.
28 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

1 **III. THE SECOND AMENDMENT PROTECTS THE RIGHT OF A LAW**
2 **ABIDING CITIZEN TO CARRY A WEAPON FOR THE PURPOSE**
3 **OF SELF-DEFENSE**

4 The United States Supreme Court has clearly stated, with regard to the Second
5 Amendment, that:

6 “Putting all of these textual elements together, we find that they guarantee the
7 individual right to possess and carry weapons in case of confrontation.”
8 District of Columbia v. Heller, 128 S. Ct. 2783, at 2798 (2008).

9 Again reiterating just two years later:

10 “Self-defense is a basic right, recognized by many legal systems from ancient
11 times to the present day, and in Heller, we held that individual self-defense is
12 “the central component” of the Second Amendment right”. McDonald v. City
13 of Chicago (2010) 130 S. Ct. 3020, at 3037.

14 This Principal likewise has already been followed in the Central District
15 wherein Magistrate John E. McDermott found no legal basis for even bringing a
16 motion to dismiss on an almost identical Complaint:

17 In District of Columbia v. Heller, 554 U.S. 570 (2008), the Supreme Court held
18 that the District of Columbia’s “absolute prohibition of handguns held and used
19 for self defense in the home” clearly violated the Second Amendment.1 Id. at
20 628-636. In so holding, the Supreme Court explained that the Second
21 Amendment protects an individual right to “keep and carry arms,” and further
22 noted that “the inherent right of self-defense has been central to the Second
23 Amendment right.” Id. at 627-629. Thus, the Supreme Court identified in
24 Heller an unequivocal Second Amendment “individual right to possess and
25 carry weapons in case of confrontation.” 554 U.S. at 592. In McDonald v. City
26 of Chicago, 130 S.Ct. 3020, 3026 (2010), the Court held that “the Second
27 Amendment right is fully applicable to the States.”

28 Ruling Denying Motion to Dismiss, Case 5:13-cv-00673-VAP-JEM.

29 Plaintiffs are law abiding citizen unable to exercise their Fundamental Right to
30 Self-Defense because Defendants refuses to issue him a permit necessary to exercise
31 such right based solely upon an unlawful exercise of discretion.

1 When a fundamental right is recognized, substantive due process forbids
2 infringement of that right “at all, no matter what process is provided, unless the
3 infringement is narrowly tailored to serve a compelling state interest.” Reno v.
4 Flores, 507 U.S. 292 (1993) at 301-02 (citations omitted).

5 The 9th Circuit Court has adopted an intermediate scrutiny approach to Second
6 Amendment challenges, not a rational basis approach¹ as previously used by this
7 Court:

8 After considering the approaches taken by other circuits that considered the
9 constitutionality of § 922(g)(9), we hold as follows. We adopt the two-step
10 Second Amendment inquiry undertaken by the Third Circuit in Marzzarella,
11 614 F.3d at 89, and the Fourth Circuit in Chester, 628 F.3d at 680, among other
12 circuits. Applying that inquiry, we hold that § 922(g)(9) burdens conduct
13 falling within the scope of the Second Amendment's guarantee and that
14 intermediate scrutiny applies to Chovan's Second Amendment challenge.
15 Finally, like the First, Fourth, and Seventh Circuits, we apply intermediate
16 scrutiny....

17 U.S. v. Chovan (9th Cir. 2013) 735 F.3d 1127, 1136

18 As such, regardless of the level of scrutiny applied, defendants discretionary
19 decision to condition the exercise of a Fundamental Civil Liberty upon proof that one
20 really, really, really needs to exercise that right fails to pass muster.

21 **IV. DEFENDANTS CREATION OF A DISCRETIONARY DEFINITION**
22 **OF GOOD CAUSE THAT SERVES NO LEGITIMATE PURPOSE**
23 **AND DENIES LAW ABIDING CITIZENS THE ABILITY TO**
24 **EXERCISE A FUNDAMENTAL RIGHT VIOLATES THE SECOND**
25 **AMENDMENT RIGHTS OF PLAINTIFFS**

26 It is repugnant to Constitutional Jurisprudence to suggest that an elected
27 official could supplant his own wisdom for that clearly stated by the legislature and
28 then exercise that discretion to deny Plaintiffs the ability to exercise a Fundamental
Right in any lawful manner outside of his home.

¹ The *Heller* Court did, however, indicate that rational basis review is not appropriate.
U.S. v. Chovan (9th Cir. 2013) 735 F.3d 1127, 1137

1 Under Cantwell v. Connecticut (1940) 310 U.S. 296, and its progeny, States
2 and localities may not condition a license necessary to engage in constitutionally
3 protected conduct on the grant of a license officials have discretion to withhold.
4 Further, a host of prior restraint cases establish that “the peaceful enjoyment of
5 freedoms which the Constitution guarantees” may not be made “contingent upon the
6 uncontrolled will of an official.” Staub v. Baxley (1958) 355 U.S. 313, 322.

7 **V. CONCLUSION**

8 It is respectfully submitted that Defendants policies requiring proof of
9 imminent harm before they will issue a license to exercise a Fundamental Civil Right
10 violates Plaintiffs Second Amendment Rights.

11
12 **Declaration of Counsel:**

- 13 1. Prior to filing this motion I sought to meet and confer with Defense counsel
14 to see if the Defendants had any change in their position or wished to
15 discuss resolution of this matter. Chief Beck declined and Sheriff Scott did
16 not reply other than to acknowledge receipt.

17
18 July 17, 2014

/s/

19 _____
20 Jonathan W. Birdt
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