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

12 JONATHAN BIRDT,  
 13 Plaintiff,

14 v.

15 CHARLIE BECK, LEE BACA, THE  
 16 LOS ANGELES POLICE  
 DEPARTMENT and THE LOS  
 17 ANGELES COUNTY SHERIFF'S  
 DEPARTMENT, and DOES 1 through  
 18 50,  
 19 Defendants.

CASE NO. CV 10-08377 RGK (JEMx)

**DEFENDANTS LOS ANGELES  
 COUNTY SHERIFF'S  
 DEPARTMENT & LEE BACA'S  
 AMENDED SEPARATE  
 STATEMENT OF UNDISPUTED  
 FACTS & CONCLUSIONS OF  
 LAW; EVIDENCE IN SUPPORT  
 THEREOF & RESPONSE TO  
 PLAINTIFF'S SEPARATE  
 STATEMENT**

[Filed concurrently with Notice of  
 Motion and Motion for Summary  
 Judgment/Opposition to Plaintiff's  
 Motion for Summary Judgment;  
 Proposed Order]

MSJ Date; **May 16, 2011**  
 Time: **9:00 a.m.**  
 Dept. **850**

Action Filed: **November 4, 2010**  
 Trial Date: **October 4, 2011**

26 Defendants Los Angeles County Sheriff's Department and Sheriff Lee Baca  
 27 ("the LASD Defendants") submit their Amended Separate Statement of  
 28

1 Uncontroverted Facts & Conclusions of Law in support of their Motion for  
 2 Summary Judgment/Partial Summary Judgment pursuant to Local Rule 56-1. This  
 3 Amended Separate Statement replaces former Docket No. 55 and redacts Plaintiff's  
 4 private information which was inadvertently included in Exhibit 2 and Exhibit 4 to  
 5 the Declaration of Larry Waldie.

6 **LASD DEFENDANTS' UNDISPUTED FACTS AND EVIDENCE**

<b><u>LASD Defendants' Undisputed Facts</u></b>	<b><u>LASD Defendants' Supporting Evidence</u></b>
<p>10 1. Larry L. Waldie is the                      11 Undersheriff for Los Angeles County.                      12 As part of his responsibilities as                      13 Undersheriff he has been designated to                      14 act as the Sheriff's sole authorized                      15 representative for reviewing                      16 applications for (CCW) licenses for the                      17 county of Los Angeles. In that role, he                      18 and members of his staff, evaluate                      19 CCW applications. While members of                      20 his staff make recommendations                      21 regarding applications, he is the final                      22 decision-maker.</p>	<p>1. Exh. A, Waldie Decl. ¶¶ 1-2.</p>
<p>23 2. As part of his evaluation of                      24 CCW applications, he will review the                      25 entire application packet and any and                      26 all supporting documentation. He has                      27 been involved in these decisions since                      28</p>	<p>2. Exh. A, Waldie Decl. ¶ 2.</p>

	<b>LASD Defendants' Undisputed Facts</b>	<b>LASD Defendants' Supporting Evidence</b>
1 2 3 4	he became Undersheriff in 2005.	
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<p>3. In Los Angeles County, there are four distinct categories of CCW licenses: Employment, Standard, Judges, and Reserve Police Officers. The Employment CCW license is issued only to a person who spends a substantial period of time in his or her principal place of employment or business in Los Angeles County. The Standard CCW license is issued to residents of Los Angeles County or to residents of a particular city within Los Angeles County. The Judge CCW license is issued to California judges, full-time commissioners, and to federal judges and magistrates of the federal courts. The Reserve Police Officer CCW license may be issued to reserve police officers appointed pursuant to California Penal Code § 830.6.</p>	<p>3. Exh. A, Waldie Decl. ¶ 3.</p>
25 26 27 28	<p>4. If an applicant resides in an incorporated city not policed by the LASD, the applicant must apply to the</p>	<p>4. Exh. A, Waldie Decl. ¶ 4.</p>

<p>1 <b>LASD Defendants' Undisputed Facts</b></p> <p>2</p>	<p><b>LASD Defendants' Supporting Evidence</b></p>
<p>3 chief of police of their city of residence</p> <p>4 for a concealed weapons license and</p> <p>5 have such application acted upon.</p> <p>6 Within 60 days after a denial of such</p> <p>7 application, such city resident may file</p> <p>8 a separate application with the LASD,</p> <p>9 attaching a copy of the application</p> <p>10 denied by the chief of police. The</p> <p>11 LASD will exercise independent</p> <p>12 discretion in granting or denying</p> <p>13 licenses to such person but may review,</p> <p>14 consider, and give weight to the</p> <p>15 grounds upon which such denial was</p> <p>16 made.</p>	
<p>17 5. California Penal Code sections</p> <p>18 12050-12054 set forth the general</p> <p>19 criteria that CCW applicants must</p> <p>20 meet. Applicants must be of good</p> <p>21 moral character, be a resident of, or</p> <p>22 spend substantial time in the County</p> <p>23 they apply in, take a firearms course,</p> <p>24 and demonstrate good cause for the</p> <p>25 license.</p>	<p>5. Exh. A, Waldie Decl. ¶ 5.</p>
<p>26 6. The issuance of licenses enabling</p> <p>27 a private citizen to carry a CCW is of</p> <p>28</p>	<p>6. Exh. A, Waldie Decl. ¶ 6.</p>

<p>1 <b>LASD Defendants' Undisputed Facts</b></p> <p>2</p>	<p><b>LASD Defendants' Supporting Evidence</b></p>
<p>3 great concern to the LASD. The</p> <p>4 LASD's overriding policy is that no</p> <p>5 CCW license should be granted merely</p> <p>6 for the personal convenience of the</p> <p>7 applicant. No position or job</p> <p>8 application in itself shall constitute</p> <p>9 good cause for the issuance, or for the</p> <p>10 denial, of a CCW license.</p>	
<p>11 7. The LASD defines "good cause"</p> <p>12 under California Penal Code section</p> <p>13 12050 as requiring convincing evidence</p> <p>14 of a clear and present danger to life or</p> <p>15 of great bodily harm to the applicant,</p> <p>16 his spouse or dependent child, which</p> <p>17 cannot be adequately dealt with by</p> <p>18 existing law enforcement resources and</p> <p>19 which danger cannot be reasonably</p> <p>20 avoided by applicant's carrying of a</p> <p>21 concealed firearm.</p>	<p>7. Exh. A, Waldie Decl. ¶ 6.</p>
<p>22 8. Each application is individually</p> <p>23 reviewed for cause. The LASD's</p> <p>24 definition of good cause has been in</p> <p>25 existence since Undersheriff Waldie</p> <p>26 began reviewing CCW applications in</p> <p>27 2005. It is the Undersheriff's</p> <p>28</p>	<p>8. Exh. A, Waldie Decl. ¶ 6.</p>

<p>1 <b>LASD Defendants' Undisputed Facts</b></p> <p>2</p>	<p><b>LASD Defendants' Supporting Evidence</b></p>
<p>3 understanding that this definition of</p> <p>4 good cause, or one similar to it, is</p> <p>5 utilized by many other counties within</p> <p>6 California, including San Diego.</p>	
<p>7 9. In evaluating whether an</p> <p>8 applicant has presented "convincing</p> <p>9 evidence of a clear and present danger</p> <p>10 to life or of great bodily harm to the</p> <p>11 applicant, his spouse or dependent</p> <p>12 child, which cannot be adequately dealt</p> <p>13 with by existing law enforcement</p> <p>14 resources and which danger cannot be</p> <p>15 reasonably avoided by applicant's</p> <p>16 carrying of a concealed firearm," an</p> <p>17 applicant's stated reason of self-defense</p> <p>18 is not enough.</p>	<p>9. Exh. A, Waldie Decl. ¶ 7.</p>
<p>19 10. The applicant must demonstrate a</p> <p>20 credible threat of violence which would</p> <p>21 justify the need to possess a concealed</p> <p>22 weapon. If an applicant claims that he</p> <p>23 or she has been threatened, the LASD</p> <p>24 looks for documentation of that threat,</p> <p>25 such as police reports or other</p> <p>26 evidence.</p>	<p>10. Exh. A, Waldie Decl. ¶ 7.</p>
<p>27 11. One of the purposes for the</p> <p>28</p>	<p>11. Exh. A, Waldie Decl. ¶ 8.</p>

<p>1 <b>LASD Defendants' Undisputed Facts</b></p> <p>2</p>	<p><b>LASD Defendants' Supporting Evidence</b></p>
<p>3 LASD's policy is to protect against gun</p> <p>4 violence to the community at large, as</p> <p>5 well as to protect officers conducting</p> <p>6 law enforcement operations on the</p> <p>7 streets.</p>	
<p>8 12. Gun violence is a problem</p> <p>9 throughout the State of California and</p> <p>10 Los Angeles County is no exception.</p> <p>11 The vast majority of homicides in Los</p> <p>12 Angeles County are committed with the</p> <p>13 use of guns. Handguns are of</p> <p>14 particular concern because they are</p> <p>15 much more likely to be used than</p> <p>16 shotguns and rifles. Because handguns</p> <p>17 are small, easy to conceal, and deadly</p> <p>18 at short range, they are of paramount</p> <p>19 concern and danger. Further, most of</p> <p>20 the violent acts committed in this</p> <p>21 County involving the use of guns are</p> <p>22 by gang members.</p>	<p>12. Exh. A, Waldie Decl. ¶ 8; see also</p> <p>Exh, B, Zimring Decl., ¶¶ 3-6.</p>
<p>23 13. The presence of more guns on</p> <p>24 the streets of Los Angeles County</p> <p>25 creates many problems for law</p> <p>26 enforcement officers. Officers are</p> <p>27 often charged with monitoring public</p> <p>28</p>	<p>13. Exh. A, Waldie Decl. ¶ 9; Exh., B,</p> <p>Zimring Decl., ¶¶ 3-6.</p>

<p>1 <b>LASD Defendants' Undisputed Facts</b></p> <p>2</p>	<p><b>LASD Defendants' Supporting Evidence</b></p>
<p>3 gatherings as well as with breaking up</p> <p>4 public nuisances. Officers must act</p> <p>5 quickly whenever a disturbance occurs.</p> <p>6 Often times, this involves isolating one</p> <p>7 or two problem individuals. However,</p> <p>8 if multiple persons within a crowd are</p> <p>9 carrying concealed weapons, this</p> <p>10 creates an increased likelihood that</p> <p>11 guns will be brandished or used. Thus,</p> <p>12 the increased presence of guns creates</p> <p>13 not only increased safety problems for</p> <p>14 officers but also for members of the</p> <p>15 community at large.</p>	
<p>16 14. It is the LASD's position that</p> <p>17 increasing the numbers of concealed</p> <p>18 weapons in the community increases</p> <p>19 the threat of gun violence to the</p> <p>20 community at large, to those who use</p> <p>21 the streets and go to public</p> <p>22 accommodations, and to law</p> <p>23 enforcement officers patrolling the</p> <p>24 streets. Further, the increased presence</p> <p>25 of concealed handguns make law</p> <p>26 enforcement operations more difficult</p> <p>27 thus taking away valuable resources</p> <p>28</p>	<p>14. Exh. A, Waldie Decl. ¶ 10; Exh. B, Zimring Decl., ¶¶ 3-6.</p>



<p>1 <u>LASD Defendants' Undisputed Facts</u></p> <p>2</p>	<p><u>LASD Defendants' Supporting Evidence</u></p>
<p>3 which would be better used conducting</p> <p>4 law enforcement operations.</p>	
<p>5 15. Los Angeles County's "good</p> <p>6 cause" requirement is intended to</p> <p>7 drastically restrict the number of</p> <p>8 persons who are secretly armed in the</p> <p>9 County.</p>	<p>15. Exh. A, Waldie Decl. ¶ 10; see</p> <p>also Exh. B, Zimring Decl., ¶¶ 3-</p> <p>6.</p>
<p>10 16. At present, there are</p> <p>11 approximately 400 concealed weapons</p> <p>12 permits that were issued by the LASD.</p> <p>13 The Undersheriff is informed and</p> <p>14 believe that the County's Chief</p> <p>15 Executive Office has estimated that the</p> <p>16 population of Los Angeles County as of</p> <p>17 January 2010 was 10,441,080 people.</p>	<p>16. Exh. A, Waldie Decl. ¶ 11.</p>
<p>18 17. The LASD reviewed Mr. Birdt's</p> <p>19 first application and determined that he</p> <p>20 failed to show good cause as required</p> <p>21 by LASD policy, and as defined above.</p> <p>22 LASD has not yet responded to Mr.</p> <p>23 Birdt's second application as of the date</p> <p>24 of the Undersheriff's Declaration.</p>	<p>17. Exh. A, Waldie Decl. ¶ 15 and</p> <p>exhibits 1-4 thereto; Exh. C, Birdt</p> <p>Depo., p. 111:1-10.</p>
<p>25 18. In his initial application to the</p> <p>26 LASD, Plaintiff states as justification:</p> <p>27 <u>Details of Reason for Applicant</u></p> <p>28</p>	<p>18. Exh. A, Waldie Decl., exh. 2</p> <p>thereto, p. 13.</p>

1 <b>LASD Defendants' Undisputed Facts</b>	<b>LASD Defendants' Supporting Evidence</b>
2 3 Desiring a CCW License: Volunteer 4 LA Superior Court Judge. Frequent 5 Las Vegas Travel with large sums of 6 cash. Unprotected/Unsecured office 7 with threat against employer. 8 Representation of victims of violence, 9 abuse + murder.	
10 19. Birdt never spoke with anyone 11 from the LAPD to report threats 12 against him and to his knowledge, no 13 report was ever generated.	19. Exh. C, Birdt Depo., p. 31:15-p. 33:19; p. 42:4-p. 45:10; p. 50:10- 17.
14 20. Birdt was never threatened in his 15 capacity as a volunteer judge.	20. Exh. C, Birdt Depo. p. 33:23-24; p. 37:2-7.
16 21. Birdt was never specifically 17 threatened as a result of his position on 18 the juvenile dependency court panel.	21. Exh. C, Birdt Depo., p. 38:5-7; p. 39:8-p. 40:8.
19 22. Birdt himself has never been 20 expressly threatened with harm at all.	22. Exh. C, Birdt Depo., pp. 68:5-p. 71:1
21 23. In 2009, there were 126,352 22 adults arrested by the LASD, and 23 46,329 felony arrests.	23. Exh. D, LASD Arrest Statistics 2009, <a href="http://www.lasd.org">www.lasd.org</a>
24 24. In that same year, 23,001 LASD 25 arrests involved those with prior felony 26 convictions.	24. Exh. E, Enbom Decl. ¶3.

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1 The LASD Defendants also submit this Response to Plaintiff Jonathan  
 2 Birdt's Separate Statement of Uncontroverted Facts & Conclusions of Law in  
 3 support of his Motion for Summary Judgment/Partial Summary Judgment  
 4 pursuant to Local Rule 56-1.

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 6 **PLAINTIFF'S UNDISPUTED FACTS IN SUPPORT OF MOTION FOR  
 SUMMARY JUDGMENT**

<u>Plaintiff's Undisputed Material Facts and Supporting Evidence:</u>	<u>Opposing Party's Response</u>
7 8 9 10 1. Plaintiff is also a long time 11 resident, property owner and operates 12 his business in Los Angeles from his 13 home. 14 <u>Evidence:</u> Declaration of Jonathan W. 15 Birdt at Paragraph 2.	1. Undisputed for purposes of this Motion.
16 2. Plaintiff has completed several 17 NRA and State required training 18 courses and has competed (and scored 19 higher than several LAPD Officers) in 20 tactical Pistol competitions with the 21 USPSA. 22 <u>Evidence:</u> Declaration of Jonathan W. 23 Birdt at Paragraph 3.	2. Undisputed for purposes of this Motion.
24 3. Plaintiff has also passed 25 numerous California Department of 26 Justice Background and screening tests 27 for various appointments and numerous 28 weapons purchases.	3. Undisputed for purposes of this Motion.

1 <b>Plaintiff's Undisputed Material Facts</b> 2 <b>and Supporting Evidence:</b>	<b>Opposing Party's Response</b>
3 <b>Evidence:</b> Declaration of Jonathan W. 4 Birdt at Paragraph 4.	
5 4. Plaintiff also volunteers as a 6 judicial officer for the Los Angeles 7 Superior Court and an Advocate for the 8 Juvenile Court. 9 <b>Evidence:</b> Declaration of Jonathan W. 10 Birdt at Paragraph 5	4. Undisputed for purposes of this Motion.
11 5. The LAPD and LASD both 12 denied Plaintiff's application for a 13 concealed weapon and both stated the 14 reason for the denial was "failure to 15 establish good cause". 16 <b>Evidence:</b> Declaration of Jonathan W. 17 Birdt at Paragraph 6.	5. Undisputed for purposes of this Motion.

18 **CONCLUSIONS OF LAW**

19  
20 1. California Penal Code § 12050(a)(1)(A) authorizes a county sheriff to  
21 issue a license to carry a concealed pistol, revolver, or other firearm capable of  
22 being concealed upon the person (hereinafter "CCW permit") upon the existence  
23 of good cause, and provided that the applicant meets other criteria provided for in  
24 the Penal Code.

25 2. Penal Code § 12050 gives extremely broad discretion to the sheriff  
26 concerning the issuance of concealed weapons licenses, and explicitly grants  
27 discretion to the issuing officer to issue or not issue a license to applicants meeting  
28 the minimum statutory requirements. *Gifford v. City of Los Angeles*, 88

1 Cal.App.4<sup>th</sup> 801, 805 (2001).

2 3. In *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783,  
3 2788, 2822 (2008) and *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3026,  
4 3044 (2010), the United States Supreme Court held that the Second Amendment  
5 protects an individual's right to possess firearms in the home for self-defense.

6 4. The right to keep and bear arms is not a right to keep and carry any  
7 weapon whatsoever in any manner whatsoever and for whatever purpose. *Heller*,  
8 128 S.Ct. at 2816.

9 5. Penal Code sections 12025(a) and 12031(a) have been upheld in  
10 California against a Second Amendment challenge after *Heller*. *People v. Flores*,  
11 169 Cal. App. 4th 568, 575-576 (2008); *People v. Yarbrough*, 169 Cal. App. 4th  
12 303, 312-314 (2008).

13 6. Unlike possession of a gun for protection within a residence, carrying  
14 a concealed firearm presents a recognized "threat to public order," and is  
15 "prohibited as a means of preventing physical harm to persons other than the  
16 offender.' *Yarbrough*, 169 Cal.App.4th at 314, citing *People v. Hale*, 43  
17 Cal.App.3d 353, 356 (1974).

18 7. A person who carries a concealed firearm on his person or in a  
19 vehicle, which permits the individual immediate access to the firearm but impedes  
20 others from detecting its presence, poses an 'imminent threat to public safety. *Id.*  
21 at 313-314.

22 8. Intermediate scrutiny requires that the challenged statute or regulation  
23 "be substantially related to an important governmental objective." *Clark v. Jeter*,  
24 486 U.S. 456, 461 (1988).

25 9. Maintaining public safety and preventing crime are clearly important  
26 (if not paramount) government interests and the regulation of concealed firearms is  
27 a critical factor in accomplishing that interest. See, e.g., *United States v. Salerno*,  
28 481 U.S. 739, 750 (1987); *Schall v. Martin*, 467 U.S. 253, 264 (1984); *Kelley v.*

1 *Johnson*, 425 U.S. 238, 247 (1976).

2 10. The denial of a concealed weapons permit is not a deprivation of the  
3 right to travel. See *Pencak v. Concealed Weapons Licensing Bd.*, 872  
4 F.Supp.410, 414 (E.D. Mich. 1994).

5 11. When a government's action does not involve a suspect classification  
6 or implicate a fundamental right, even intentional discrimination will survive  
7 constitutional scrutiny for an equal protection violation as long as it bears a  
8 rational relation to a legitimate state interest. *New Orleans v. Dukes*, 427 U.S.  
9 297, 303-04 (1976); *Lockary v. Kayfetz*, 917 F.2d 1150, 1155 (9th Cir. 1990).

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DATED: April 19, 2011

Respectfully submitted,

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