

1 C. D. Michel – SBN 144258
2 Clinton B. Monfort – SBN 255609
3 Sean A. Brady – SBN 262007
4 Anna M. Barvir – SBN 268728
5 cmichel@michellawyers.com
6 MICHEL & ASSOCIATES, P.C.
7 180 E. Ocean Blvd., Suite 200
8 Long Beach, CA 90802
9 Telephone: (562) 216-4444
10 Facsimile: (562) 216-4445
11 www.michellawyers.com

12 Attorneys for Plaintiffs

13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 MICHELLE FLANAGAN,
18 SAMUEL GOLDEN, DOMINIC
19 NARDONE, JACOB PERKIO, and
20 THE CALIFORNIA RIFLE &
21 PISTOL ASSOCIATION,

22 Plaintiffs,

23 v.

24 CALIFORNIA ATTORNEY
25 GENERAL KAMALA HARRIS, in
26 her official capacity as Attorney
27 General of the State of California,
28 SHERIFF JAMES McDONNELL, in
his official capacity as Sheriff of Los
Angeles County, California, and
DOES 1-10,

Defendants.

CASE NO: 2:16-cv-6164

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

42 U.S.C. §§ 1983, 1988

1 NOW COME Plaintiffs Michelle Flanagan, Samuel Golden, Dominic
2 Nardone, Jacob Perkio, and the California Rifle & Pistol Association (collectively
3 “Plaintiffs”), and allege against Defendants California Attorney General Kamala
4 Harris and Los Angeles County Sheriff James McDonnell (collectively
5 “Defendants”), as follows:

6 INTRODUCTION

7 1. Plaintiffs are residents of Los Angeles County who bring this action to
8 vindicate their Second Amendment right to publicly bear arms for self-defense—a
9 right that is now completely foreclosed by California’s prohibition on the carriage
10 of exposed firearms and Defendant McDonnell’s state-sanctioned policy that denies
11 law-abiding residents the license required under state law to carry a concealed
12 firearm. Plaintiffs also seek relief under the Equal Protection Clause to prevent
13 Defendants’ ongoing unequal treatment concerning the exercise of Plaintiffs’
14 Second Amendment rights.

15 2. In 2008, the Supreme Court confirmed that the Second Amendment
16 guarantees the individual right of responsible, law-abiding citizens to keep and bear
17 arms for self-defense, *District of Columbia v. Heller*, 554 U.S. 570 (2008), which is
18 fully applicable to state and local governments. *McDonald v. City of Chicago*, 561
19 U.S. 742 (2010). In *Heller*, the Supreme Court interpreted the phrase “bear arms” to
20 mean “to wear, bear, or carry . . . upon the person or in the clothing or in a pocket
21 [i.e., openly or concealed] for the purpose of being armed and ready . . . in case of
22 conflict with another person.” *Heller*, 554 U.S. at 584 (quoting *Muscarello v.*
23 *United States*, 524 U.S. 125, 143 (1998)). And in *McDonald*, the Court confirmed
24 that “individual self-defense is ‘the central component’ of the Second Amendment
25 right.” *McDonald*, 561 U.S. at 744 (quoting *Heller*, 554 U.S. at 628). The Second
26 Amendment thus guarantees to all law-abiding adults the right to carry arms in
27 some manner for self-defense in case of confrontation, at least in non-sensitive,
28 public places. *Heller*, 554 U.S. at 592, 626-27.

1 3. California nonetheless bars ordinary, law-abiding citizens from
2 carrying a firearm for self-defense, regardless of whether the firearm is loaded or
3 unloaded and regardless of whether the firearm is carried in an exposed or
4 concealed manner, in all but extremely limited, remote areas—unless the individual
5 has a license to carry a firearm (“Carry License”) issued by the local sheriff or chief
6 of police under California Penal Code sections 26150 and 26155, respectively.

7 4. In populous counties like Los Angeles, state law only authorizes the
8 issuance of *concealed* Carry Licenses, thus completely barring residents of Los
9 Angeles County from openly carrying a firearm for self-defense.

10 5. California law affords sheriffs and police chiefs unfettered discretion
11 to determine whether to issue a Carry License to law-abiding citizens seeking to
12 exercise their fundamental rights to bear arms. Defendant McDonnell uses this
13 authority to deny Carry Licenses to nearly all law-abiding adults by denying their
14 applications or, in many cases, informing potential applicants that applying would
15 be futile because they would not satisfy his restrictive “good cause” policy under
16 section 26150.

17 6. Defendant McDonnell’s policy requires that an applicant provide
18 “convincing evidence of a clear and present danger” against the applicant or a
19 family member. Accordingly, the vast majority of the population cannot satisfy this
20 discretionary standard, and therefore cannot obtain a license to publicly carry a
21 firearm.

22 7. The Ninth Circuit Court of Appeals recently upheld a similarly
23 restrictive “good cause” policy enforced by the San Diego County Sheriff after the
24 plaintiffs in that case alleged that the denial of Carry Licenses—the only remaining
25 means of carrying a firearm for self-defense under state law—violated the Second
26 Amendment. *Peruta v. County of San Diego*, No. 10-56971, 2016 WL 3194315
27 (9th Cir. June 9, 2016) (en banc). Despite the Supreme Court’s teachings in *Heller*
28 and *McDonald*, the majority opinion in *Peruta* did not address whether the Second

1 Amendment protects the right to publicly carry a firearm for self-defense. Nor did it
2 address whether denying Carry Licenses, which in turn extinguishes the only lawful
3 means of carrying a firearm for self-defense, violates that right. Instead, it held only
4 that the carrying of *concealed* firearms was not historically protected by the Second
5 Amendment, while leaving for another day the question of whether the Second
6 Amendment protects the carrying of firearms *openly*. *Id.* at *19. That day has
7 come.

8 8. In light of that ruling, Plaintiffs ask this Court to hold those provisions
9 of California law that prohibit them from openly carrying firearms unconstitutional.
10 Plaintiffs nevertheless also challenge Defendants' restrictions that bar them from
11 obtaining concealed Carry Licenses.

12 9. In sum, the Supreme Court has made clear that Plaintiffs' rights to bear
13 arms cannot be completely foreclosed. Because California law prohibits them from
14 openly carrying firearms and Defendant McDonnell denies them the only lawful
15 means of carrying a concealed firearm, Plaintiffs are completely barred from
16 exercising their right to bear arms—in *any* manner. They are thus entitled to relief
17 from the complete abrogation of their fundamental rights.

18 10. Accordingly, Plaintiffs seek declaratory relief confirming that (1) the
19 Second Amendment protects the right to carry a firearm for self-defense in public
20 and (2) Defendants' total denial of the exercise of that right violates the Second
21 Amendment.

22 11. Plaintiffs also seek a declaration that California laws prohibiting the
23 open carriage of firearms violate the Second Amendment, or, alternatively, that
24 Defendants' laws and policies that preclude law-abiding citizens from carrying a
25 concealed firearm for self-defense are unconstitutional.

26 12. Finally, Plaintiffs seek preliminary and permanent injunctive relief
27 enjoining Defendant Harris from enforcing California's open carry restrictions or,
28 alternatively, enjoining enforcement of Defendants' laws and policies that deny

1 concealed Carry Licenses to law-abiding citizens who wish to exercise their
2 fundamental right to bear arms for self-defense.

3 **PARTIES**

4 **Plaintiffs**

5 13. All individual Plaintiffs are natural persons and citizens of the United
6 States.

7 14. All individual Plaintiffs are eligible to possess firearms under state and
8 federal law and currently own a handgun.

9 15. Plaintiff Michelle Flanagan is a resident of Los Angeles County where
10 she is employed as a realtor. Ms. Flanagan has two licenses to carry a firearm
11 issued by the states of Arizona and Utah. These licenses authorize her to carry a
12 firearm in thirty-five states, but not in California. Before moving to Los Angeles
13 County, Ms. Flanagan maintained a Carry License for four years pursuant to
14 California Penal Code section 26150 that was issued by the Kern County Sheriff.

15 16. After moving to Los Angeles County, Ms. Flanagan applied with
16 Defendant McDonnell for a Carry License on or about July 30, 2015. She asserted
17 self-defense as her “good cause” for the license because her job duties require her
18 to enter vacant industrial buildings alone, where she encounters vagrant men who
19 are often much larger than her. Defendant McDonnell nevertheless denied Ms.
20 Flanagan’s application for lack of “good cause,” explaining:

21 Typically, the verbiage ‘convincing evidence of a clear
22 and present danger ...’ refers to a current situation which
23 involves a specific person(s) who has threatened an
24 individual and who has displayed a pattern of behavior
25 which would suggest that the threat(s) could be carried
26 out. Situations which would suggest only a potential
27 danger to one’s safety, (e.g. carrying large amounts of
28 money to the bank, profession/job, working late hours in
a high crime rate area, etc.) are not consistent with the
criteria for issuance of a concealed weapon license.

1 17. Plaintiff Samuel (“Thomas”) Golden is a resident of Los Angeles
2 County who is a Certified Carry License Instructor for California, Utah, and
3 Florida. He is also one of the trainers qualified to teach the Carry License training
4 course to individuals applying for a Carry License with the Los Angeles County
5 Sheriff. He has trained at least 10,000 shooters at almost every level. Mr. Golden
6 applied with Defendant McDonnell for a Carry License in Los Angeles County,
7 asserting as his “good cause” a desire to carry a firearm for self-defense. Defendant
8 McDonnell denied Mr. Golden’s application for lack of “good cause” because,
9 according to the Defendant, Mr. Golden did not face a significant enough threat to
10 warrant a Carry License.

11 18. Plaintiff Dominic Nardone is a 69-year-old resident of Los Angeles
12 County. He is a Vietnam veteran who served in the U.S. Navy as a diver and a
13 shooting instructor in small arms. Mr. Nardone applied with Defendant McDonnell
14 for a Carry License in Los Angeles County on March 28, 2014, asserting as his
15 “good cause” a desire to defend himself and his family. On May 14, 2015,
16 Defendant McDonnell denied the application for lack of “good cause” because,
17 according to the Defendant, Mr. Nardone did not face a significant enough threat to
18 warrant a Carry License. Mr. Nardone has repeatedly requested reconsideration of
19 his denial, but to no avail.

20 19. Plaintiff Jacob Perkio is a resident of Los Angeles County who
21 applied with Defendant McDonnell for a Carry License. Mr. Perkio asserted as his
22 “good cause” a desire to carry a firearm for self-defense while hiking and camping
23 with his wife in remote areas. Defendant McDonnell denied the application for
24 lack of “good cause” with an explanation for the denial that was identical to the
25 justification provided to Plaintiff Flanagan.

26 20. Plaintiff California Rifle & Pistol Association (“CRPA”) is a non-
27 profit membership and donor-supported organization qualified as tax-exempt under
28 26 U.S.C. § 501(c)(4) with its headquarters in Fullerton, California. Founded in

1 1875, the CRPA seeks to defend the civil rights of all law-abiding individuals,
2 including the fundamental right to “bear” or “carry” firearms for the core lawful
3 purpose of self-defense.

4 21. The CRPA regularly participates as a party or amicus in litigation
5 challenging unlawful restrictions on the right to keep and bear arms. It also
6 provides guidance to California gun owners regarding their legal rights and
7 responsibilities. In addition, CRPA is dedicated to promoting the shooting sports
8 and providing education, training, and organized competition for adult and junior
9 shooters. CRPA members include law enforcement officers, prosecutors,
10 professionals, firearm experts, and the general public.

11 22. Many CRPA members who reside in Los Angeles County wish to
12 obtain a Carry License, but refrain from applying and wasting their time and
13 financial resources given that such application would be futile in light of
14 Defendant McDonnell’s official “good cause” policy. Other CRPA members,
15 including Plaintiffs Flanagan, Golden, Nardone, and Perkio have nevertheless
16 applied and been denied.

17 23. The individual Plaintiffs and members of Plaintiff CRPA wish
18 immediately to exercise their constitutional right to carry a firearm in public for
19 self-defense, but they are precluded from doing so because they are unable to
20 obtain a Carry License, which would allow them to carry a firearm in a concealed
21 manner, and because California law prohibits them from carrying a firearm openly.
22 But for Defendants’ enforcement of statutes and policies that prohibit the
23 individual Plaintiffs and members of Plaintiff CRPA from lawfully carrying a
24 firearm in public, they would immediately begin carrying a firearm in public for
25 self-defense.

26 **Defendants**

27 24. Defendant Kamala Harris is the Attorney General of California. She is
28 the chief law enforcement officer of California. Defendant Harris is charged by

1 Article V, Section 13 of the California Constitution with the duty to enforce the
2 laws of the State of California; to inform the general public, to supervise and
3 instruct local prosecutors and law enforcement agencies regarding the meaning of
4 the laws of the State, including restrictions on the carrying of firearms in public;
5 and to ensure the fair, uniform, and consistent enforcement of those laws
6 throughout the State. She is sued in her official capacity.

7 25. Defendant James McDonnell is the elected Sheriff of Los Angeles
8 County, California. As such, he is responsible for formulating, executing, and
9 administering the laws, customs, and practices that prohibit Plaintiffs from
10 lawfully carrying a firearm for self-defense. He is, in fact, presently enforcing the
11 challenged laws, customs, and practices against Plaintiffs (and, in the case of the
12 CRPA, those whose interests it represents). Defendant McDonnell is sued in his
13 official capacity.

14 26. Based on information and belief, Plaintiffs allege that Does 1 through
15 10 are responsible for establishing, enforcing, or administering California's laws or
16 Defendant McDonnell's policy for issuing Carry Licenses or are otherwise
17 responsible for denying Plaintiffs' right to bear arms. Plaintiffs will seek leave to
18 amend this Complaint when the true names and identities of Does 1 through 10 are
19 ascertained.

20 JURISDICTION AND VENUE

21 27. Jurisdiction of this action is founded on 28 U.S.C. § 1331. This action
22 arises under the Constitution and laws of the United States, and under 28 U.S.C. §
23 1343(a)(3) because this action seeks to redress the deprivation, under color of the
24 laws, statutes, ordinances, regulations, customs, and usages of the State of
25 California and political subdivisions thereof, of rights, privileges, or immunities
26 secured by the United States Constitution and by Acts of Congress.

27 28. Plaintiffs' claims for declaratory and injunctive relief are authorized by
28 28 U.S.C. §§ 2201-2202.

1 36. The Second Amendment thus guarantees the right to publicly carry
2 arms for self-defense purposes in case of confrontation, at least in non-sensitive
3 public places, to all law-abiding, competent adults. *Heller*, 554 U.S. at 592, 626-27.

4 **[California’s Firearm Carry Scheme]**

5 37. With very limited exceptions, California bars residents from carrying
6 firearms on their person or within a vehicle in all public places other than remote
7 locations where the discharge of firearms is not prohibited. It does so regardless of
8 whether the firearm is loaded or unloaded and regardless of whether it is carried
9 concealed or openly, unless it is carried pursuant to a Carry License.

10 **Loaded Firearm Restriction**

11 38. California law generally prohibits carrying “a loaded firearm on the
12 person or in a vehicle while in any public place¹ or on any public street in an
13 incorporated city or in any public place or on any public street in a prohibited area
14 of unincorporated territory.” Cal. Penal Code § 25850. A “prohibited area” is “any
15 place where it is unlawful to discharge a weapon.” *Id.* § 17030.

16 39. Thus, California prohibits the carriage of loaded firearms in public for
17 self-defense, except in unincorporated territory where discharging a firearm is
18 lawful.

19 40. Although California law authorizes the carriage of loaded firearms in
20 certain limited circumstances and by specific classes of individuals like peace
21 officers, these exceptions do not allow ordinary, law-abiding citizens to carry
22 operable, loaded firearms for self-defense in public during the course of their daily
23 lives without a valid Carry License. *See id.* §§ 26000-26055.

24
25
26 ¹ California’s carry laws do not define the term “public place.” Whether a location is
27 deemed a public place depends on the specific facts of each case and appropriately
28 turns on whether the public can lawfully enter the area with little difficulty. *See,*
e.g., People v. Cruz, 44 Cal. 4th 636, 674 (2008).

Concealed Firearm Restriction

1
2 41. California law also prohibits the carrying of concealed firearms (even
3 if the firearm is unloaded) in any place outside one's residence, place of business,
4 or other private property. *Id.* §§ 25400, 25605.

5 42. California's exceptions to its concealed carry restrictions authorize the
6 carriage of concealed firearms in certain limited circumstances and by specific
7 classes of individuals like peace officers. Many of the exceptions to California's
8 concealed carry restrictions authorize individuals to lawfully transport their
9 unloaded firearms in a locked container to and from specified locations like
10 shooting ranges, firearm retail stores, gunsmiths, and shooting events. *Id.* §§ 25505-
11 25645.

12 43. The exceptions to California's concealed carry restrictions do not
13 authorize ordinary, law-abiding citizens to carry concealed firearms in public for
14 self-defense during the course of their daily lives without a valid Carry License.

Unloaded Open Carry Restrictions

15
16 44. California law generally prohibits the carriage of unloaded, exposed
17 handguns in any public place, except in unincorporated areas where the discharge
18 of firearms is allowed. *Id.* § 26350.

19 45. Although California authorizes the open carrying of unloaded
20 handguns in certain limited circumstances and/or by specific classes of individuals,
21 these exceptions do not authorize ordinary, law-abiding citizens to carry a firearm
22 in public for self-defense during the course of their daily lives without a valid Carry
23 License. *Id.* §§ 26361 – 26391.

24 46. California law also generally prohibits the carrying of unloaded long
25 guns (i.e., rifles and shotguns) while outside of a vehicle in an incorporated city or
26 city and county, unless the firearm is in a locked container or completely enclosed
27 in a case that is expressly made for the purpose of containing a firearm. *Id.* §§
28 16505, 26400, 26400(c).

1 47. With slight variations, the same narrow exceptions to California’s
2 restrictions on openly carrying unloaded handguns in public apply to California’s
3 restrictions on the carrying of unloaded long guns. *Id.* § 26405.

4 **Penalties**

5 48. Carrying a firearm in public without a Carry License or without
6 meeting one of the other limited exceptions to California’s carry restrictions is
7 punishable as either a misdemeanor or a felony. *Id.* §§ 25400, 25850, 26350,
8 26400.

9 **Carry Licenses**

10 49. California authorizes city police chiefs and county sheriffs (“Issuing
11 Authorities”) to issue Carry Licenses to their residents, allowing those residents
12 who qualify to carry a loaded handgun in public, subject to restrictions.

13 50. To qualify for a Carry License, a resident must submit a written
14 application to the respective Issuing Authority showing that the resident meets
15 certain statutorily required criteria. *Id.* §§ 26150-26155.

16 51. Before a Carry License can be issued, the Issuing Authority must agree
17 that the applicant is of “good moral character” and has “good cause” for carrying a
18 loaded firearm in public. *Id.* §§ 26150(a). The applicant must also pass a criminal
19 background check, *id.* § 26185, and successfully complete a handgun training
20 course covering handgun safety and California firearm laws, *id.* § 26165.

21 52. Under California law, Issuing Authorities currently exercise
22 “unfettered discretion” in deciding whether an applicant has “good cause” to be
23 issued a Carry License.² Some Issuing Authorities, like Defendant McDonnell,
24 deny Carry Licenses to virtually all law-abiding residents. Other Issuing Authorities
25 issue Carry Licenses to law-abiding, competent adult applicants who seek a Carry

26 _____
27 ² *Erdelyi v. O’Brien*, 680 F.2d 61, 63 (9th Cir. 1982); *Nichols v. Cty. of Santa Clara*,
28 223 Cal. App. 3d 1236, 1241 (1990); *CBS, Inc. v. Block*, 42 Cal. 3d 646, 665-66
(1986).

1 License for self-defense, and who satisfy the additional requirements for the
2 license.

3 53. Issuing Authorities in counties with populations over 200,000, like Los
4 Angeles County, can only issue licenses to carry a concealed firearm. California
5 law prohibits them from issuing licenses to carry a loaded handgun in an exposed,
6 open manner (e.g., in a visible hip holster). *Id.* §§ 26150(b)(2), 26155(b)(2). In
7 counties where a license to carry openly is available, it is only valid within the
8 county where it was issued. *Id.* § 26155(b)(2).

9 54. A license to carry *concealed* is valid statewide unless the Issuing
10 Authority expressly restricts the license to the county where it was issued. *Id.* §
11 26200.

12 55. Because California law generally prohibits the carrying of firearms in
13 most public places, whether loaded or unloaded, and whether in a concealed or
14 exposed manner, a Carry License is effectively the only means by which
15 individuals may lawfully carry a firearm for self-defense in public during the course
16 of their daily lives.

17 **[Defendant McDonnell’s Carry License Issuance Policy]**

18 56. According to his official written policy and the denials of Plaintiffs’
19 applications for Carry Licenses, Defendant McDonnell refuses to issue Carry
20 Licenses where an applicant asserts a general desire for self-defense as his or her
21 “good cause,” even if the applicant is a law-abiding, competent Los Angeles
22 County resident who satisfies all other statutory requirements for the license.

23 57. To even *potentially* satisfy Defendant McDonnell’s “good cause”
24 standard, applicants must provide “convincing evidence of a clear and present
25 danger to life, or of great bodily harm to the applicant, his spouse, or dependent
26 child, which cannot be adequately dealt with by existing law enforcement
27 resources, and which danger cannot be reasonably avoided by alternative measures,
28

1 and which danger would be significantly mitigated by the applicant’s carrying of a
2 concealed firearm.”³

3 **[Abrogation of Plaintiffs’ Right to Bear Arms]**

4 58. Plaintiffs do not meet any of the narrow exceptions to California’s
5 carry restrictions that would allow them to generally carry a firearm in public for
6 self-defense during the course of their daily lives.

7 59. As described above, individual Plaintiffs Flanagan, Golden, Nardone,
8 and Perkió applied with Defendant McDonnell for Carry Licenses, asserting self-
9 defense as their “good cause” for their respective licenses.

10 60. Defendant McDonnell denied each of these Plaintiffs’ applications for
11 lack of “good cause.”

12 61. Defendant McDonnell did not find that any of these Plaintiffs failed to
13 satisfy any other statutory criteria in California Penal Code section 26150.

14 62. Members of Plaintiff CRPA have also been denied Carry Licenses by
15 Defendant McDonnell because he concluded that they lacked “good cause.” Their
16 lack of “good cause” (as defined by Defendant McDonnell) was the sole basis for
17 these denials.

18 63. Other members of Plaintiff CRPA have refrained from applying for
19 Carry Licenses because they know that applying will be futile based on Defendant
20 McDonnell’s official written “good cause” policy, which they cannot satisfy, and in
21 light of the Defendant’s commonly known practice of enforcing his “good cause”
22 policy in a manner that denies all applicants other than those with evidence of the
23 most specific and serious threats against them.

24
25
26 ³ *Concealed Weapon Licensing Policy*, Los Angeles County Sheriff’s Department,
27 available at
28 <http://shq.lasdnews.net/content/uoa/SHQ/ConcealedWeaponLicensePolicy.pdf> (last
visited August 2, 2016).

1 64. Although the individual Plaintiffs and members of Plaintiff CRPA do
2 not face specific threats that differentiate them from the typical, law-abiding citizen,
3 many events have confirmed that their desire to carry a firearm for self-defense is
4 well-founded. For example, Plaintiff Golden was confronted outside of a shooting
5 range where he works and trains by youth who were discussing how easy it would
6 be to take his firearms from him. And as a realtor, Plaintiff Flanagan must often
7 enter vacant buildings alone to show properties and perform inspections, where she
8 frequently meets individuals for the first time. Additionally, violent crime in Los
9 Angeles County has increased steadily over the past few years, thus increasing the
10 likelihood that individuals may have to defend themselves against a criminal
11 attacker.⁴ Regardless, Plaintiffs are law-abiding citizens that cannot be denied the
12 exercise of their fundamental right to bear arms for the core lawful purpose of self-
13 defense at the whim of Defendants.

14 65. Defendants have foreclosed the ability of the individual Plaintiffs and
15 members of Plaintiff CRPA to carry a firearm in public for self-defense.

16 66. But for California's comprehensive restrictions on the public carriage
17 of firearms and Plaintiffs' inability to obtain a Carry License, the individual
18 Plaintiffs and members of Plaintiff CRPA would lawfully carry a firearm in non-
19 sensitive, public places for self-defense. They refrain from doing so for fear of
20 liabilities for violating one or more of California's laws that criminalize the
21 exercise of this constitutional right.

22
23
24 _____
25 ⁴ *Patrol Station Part 1 Crime Summary - Preliminary Data*, Los Angeles County
26 Sheriff's Department,
27 http://shq.lasdnews.net/content/uoa/SHB/upload/119_page_PDF_crime_stats.pdf
28 (June 5, 2016) (showing increases in criminal homicide (+22.73%), robbery
(11.85%), and aggravated assault (+4.27%) from 2015 to 2016, and a 73.44%
increase in forcible rape from 2011 to 2016).

DECLARATORY RELIEF ALLEGATIONS

1
2 67. There is an actual and present controversy between the parties.
3 Plaintiffs contend that California’s comprehensive carry regime, in conjunction
4 with Defendant McDonnell’s restrictive policy for implementing California Penal
5 Code section 26150(a)(2)’s “good cause” criterion for the issuance of Carry
6 Licenses, are unconstitutional both facially and as applied to Plaintiffs because
7 California law and Defendant McDonnell’s policy preclude Plaintiffs and other
8 law-abiding individuals from exercising their fundamental right to carry a firearm
9 in public for self-defense in any manner. Defendants deny and dispute this.
10 Plaintiffs desire a judicial declaration of their rights and of the duties of Defendants
11 Harris and McDonnell in this matter.

INJUNCTIVE RELIEF ALLEGATIONS

12
13 68. Injunctive relief is necessary to prevent Defendant Harris from
14 enforcing California’s carry restrictions and to prevent Defendant McDonnell from
15 enforcing his restrictive “good cause” policy. Together, those legal mandates
16 prohibit Plaintiffs from carrying a firearm in public for self-defense in any manner.
17 If an injunction does not issue, Plaintiffs will continue to be irreparably injured by
18 Defendants’ carry restrictions insofar as they preclude Plaintiffs from exercising
19 rights guaranteed by the Second Amendment. Defendants’ enforcement of these
20 statutes and policies denies Plaintiffs the right to publicly carry a firearm for self-
21 defense without subjecting themselves to risk of criminal prosecution.

22 69. If not enjoined by this Court, Defendants will continue to enforce these
23 statutes and policies in derogation of Plaintiffs’ Second Amendment rights.
24 Plaintiffs have no plain, speedy, and adequate remedy at law. Damages are
25 indeterminate or unascertainable, and would not fully redress any harm suffered by
26 Plaintiffs as a result of being unable to engage in activity protected by the Second
27 Amendment.
28

1 70. The injunctive relief sought would eliminate that irreparable harm and
2 allow Plaintiffs to exercise their core, fundamental right to carry a firearm for self-
3 defense. Accordingly, injunctive relief is appropriate.

4 **FIRST CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
5 **U.S. CONST. AMEND. II, XIV**
6 **RIGHT TO BEAR ARMS**
7 **42 U.S.C. § 1983**
8 **AGAINST ALL DEFENDANTS**

9 71. Plaintiffs hereby re-allege and incorporate by reference the allegations
10 in the foregoing paragraphs as if set forth fully herein.

11 72. California statutes prohibiting law-abiding citizens, including
12 Plaintiffs, from publicly carrying an exposed firearm for self-defense violate the
13 Second Amendment.

14 73. California statutes and Defendant McDonnell’s “good cause” policy
15 that prohibit law-abiding citizens, including Plaintiffs, from publicly carrying a
16 concealed firearm for self-defense violate the Second Amendment.

17 74. Subject to very limited exceptions, California law prohibits the
18 carriage of handguns, or any other firearms, in public for self-defense in any
19 manner, without a Carry License.

20 75. Plaintiffs do not qualify for any of the exceptions to California’s carry
21 restrictions, and are thus prohibited from carrying a firearm for self-defense in any
22 manner without a Carry License.

23 76. Plaintiffs are unable to satisfy Defendant McDonnell’s official written
24 “good cause” policy under California Penal Code section 26150(a)(2) for the
25 issuance of Carry Licenses, which does not recognize the core constitutional right
26 of self-defense as a sufficient basis to carry a firearm in public.

27 77. California statutes prohibiting the carriage of firearms for self-defense
28 without a Carry License, together with Defendant McDonnell’s policy that denies
Carry Licenses to law-abiding citizens seeking to exercise their right to bear arms

1 for self-defense, wholly foreclose Plaintiffs’ ability to carry a firearm in public for
2 self-defense, whether openly or concealed.

3 78. As such, Defendants are propagating customs, policies, and practices
4 that deprive Los Angeles County residents, including Plaintiffs, of their
5 constitutional right to carry a firearm for self-defense “in case of confrontation” in
6 non-sensitive public places as guaranteed by the Second and Fourteenth
7 Amendments.

8 79. Neither Defendant Harris nor Defendant McDonnell can satisfy their
9 burden to justify these customs, policies, and practices that preclude Plaintiffs from
10 exercising their fundamental rights.

11 80. Plaintiffs are entitled to declaratory and injunctive relief against such
12 unconstitutional customs, policies, and practices.

13 **SECOND CLAIM FOR RELIEF**
14 **FOURTEENTH AMENDMENT - EQUAL PROTECTION**
15 **42 U.S.C. § 1983**
16 **AGAINST ALL DEFENDANTS**

17 81. Plaintiffs hereby re-allege and incorporate by reference the allegations
18 in the foregoing paragraphs as if set forth fully herein.

19 82. The Fourteenth Amendment to the United States Constitution provides
20 that no state shall “deny to any person within its jurisdiction the equal protection of
21 the laws.” U.S. Const. amend. XIV, § 1.

22 83. The government bears the burden of justifying restrictions on the
23 exercise of fundamental rights by a particular class or classes of individuals.

24 84. All law-abiding, competent adults are similarly situated in that they are
25 equally entitled to exercise the constitutional right to bear arms—without having to
26 first demonstrate special circumstances or needs to do so—whether pursuant to a
27 Carry License or otherwise.

28 85. Because California’s comprehensive carry restrictions, together with
Defendant McDonnell’s official written policy that does not recognize self-defense

1 as “good cause” for the issuance of Carry Licenses, bar law-abiding Los Angeles
2 County residents from publicly carrying a firearm for self-defense in any manner,
3 while allowing other law-abiding citizens to carry a firearm for self-defense,
4 Defendants have created a classification of persons, including Plaintiffs, who are
5 treated unequally through the denial of their Second Amendment rights to publicly
6 bear arms for self-defense.

7 86. Defendants cannot satisfy their burden under heightened scrutiny to
8 justify this classification that unequally deprives Plaintiffs of their right to bear
9 arms. Therefore, Defendants are propagating customs, policies, and practices that
10 deprive Los Angeles County residents, including Plaintiffs, of their right to equal
11 protection under the law as guaranteed by the Fourteenth Amendment.

12 87. Plaintiffs are entitled to declaratory and preliminary and permanent
13 injunctive relief against such unconstitutional customs, policies, and practices as set
14 forth in the Prayer.

15 **PRAYER**

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

18 1. A declaration that the Second Amendment guarantees the right of
19 responsible, law-abiding citizens to carry a firearm in public for self-defense.

20 2. A declaration that denying all manners of publicly carrying a firearm
21 for self-defense to law-abiding citizens violates the Second Amendment.

22 3. A declaration that California Penal Code sections 25850, 26350,
23 26400, and 26150(b)(2) are unconstitutional facially and as applied to Plaintiffs
24 insomuch as they preclude law-abiding citizens from openly carrying a firearm in
25 public for self-defense.

26 4. A declaration that state laws prohibiting the open carriage of firearms
27 by law-abiding citizens for self-defense are unconstitutional facially and as applied
28 to Plaintiffs.

1 5. An order preliminarily and permanently enjoining the Attorney
2 General of California and all officers, agents, servants, employees, and persons
3 under the authority of the Attorney General of California, from enforcing California
4 Penal Code sections 25850, 26350, 26400, and 26150(b)(2).

5 6. An order preliminarily and permanently enjoining the Attorney
6 General and all officers, agents, servants, employees, and persons under the
7 authority of the Attorney General of California from enforcing any other laws that
8 deny Plaintiffs and other law-abiding citizens the ability to openly carry a firearm in
9 public for self-defense.

10 **As an alternative to the relief in paragraphs 3-6 of this Prayer, Plaintiffs seek:**

11 7. A declaration that California Penal Code section 26150(a)(2)'s "good
12 cause" criterion is unconstitutional facially and as applied to Plaintiffs and law-
13 abiding citizens who seek a Carry License to exercise their constitutional right to
14 carry a firearm for self-defense.

15 8. A declaration that Defendant McDonnell's "good cause" policy under
16 section 26150(a)(2), which rejects a general desire for self-defense as sufficient
17 good cause for the issuance of a Carry License, is unconstitutional facially and as
18 applied to Plaintiffs under the Second Amendment.

19 9. A declaration that section 26150(a)(2)'s "good cause" criterion and
20 Defendant McDonnell's implementation thereof are unconstitutional facially and as
21 applied to Plaintiffs under the Equal Protection Clause—because they create a class
22 of individuals who are improperly denied their right to bear arms, simply because
23 they do not have "good cause" for a Carry License as determined by Defendant
24 McDonnell, while the rights of similarly situated residents are not so infringed.

25
26 10. An order preliminarily and permanently enjoining:

27 a. The Attorney General of California and Defendant McDonnell,
28 and their officers, agents, servants, employees, and all persons in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

active concert or participation with them, from enforcing California Penal Code section 26150(a)(2)'s "good cause" criterion; and

b. Defendant McDonnell and his officers, agents, servants, employees, and all persons in active concert or participation with him, from enforcing his current policy implementing California Penal Code section 26150(a)(2)'s "good cause" criterion, to the extent it does not recognize a general desire for self-defense as satisfying that criterion.

11. Costs of suit, including attorney's fees and costs pursuant to 42 U.S.C. § 1988.

12. Any further or alternative relief as the Court deems just and proper.

Respectfully Submitted,

Dated: August 17, 2016

MICHEL & ASSOCIATES, P.C.

/S/ C.D. Michel
C.D. Michel
Counsel for Plaintiffs
e-mail: cmichel@michellawyers.com