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11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 ADAM RICHARDS, BRETT STEWART,
14 SECOND AMENDMENT FOUNDATION,
15 INC., and THE CALGUNS FOUNDATION,
16 INC.,

17 Plaintiffs,

18 vs.

19 ED PRIETO and COUNTY OF YOLO

20 Defendants.

) Case No.:2:09-CV-01235-MCE-DAD (Temp)

)
) **DEFENDANTS YOLO COUNTY AND ED**
) **PRIETO’S RESPONSE TO PLAINTIFFS’**
) **STATEMENT OF UNDISPUTED FACTS**
) **IN SUPPORT OF PLAINTIFFS’ MOTION**
) **FOR SUMMARY JUDGMENT**

) **Date: March 10, 2011**

) **Time: 2:00 p.m.**

) **Courtroom: 7, 14th Floor**

) **Judge: Morrison C. England, Jr.**

)
) Trial Date: None

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22
23 Defendants respond to Plaintiffs’ Statement of Undisputed Facts as follows:

24
25 **UNDISPUTED FACT AND SUPPORTING**
26 **EVIDENCE**

27 1. California law generally prohibits the
28 open carrying of loaded, functioning firearms
in any public place or on any public street in an
incorporated city or in any public place or on

25 **DEFENDANTS’ RESPONSE AND**
26 **SUPPORTING EVIDENCE**

1. Defendants object to this “fact” on the
grounds that this “fact” contains only argument
and not fact in violation of E. Dist. Loc. Rule
260(a). Defendants discuss the cited statute in

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1 any public street in a prohibited area of
2 unincorporated territory, with licensed
3 exceptions for residents of sparsely populated
4 counties.

5 Evidence: Cal. Penal Code § 12031 *et seq.*

6
7 2. California law generally prohibits the
8 unlicensed concealed carrying of handgun.

9 Evidence: Cal. Penal Code § 12025 *et seq.*

10 3. The license available under Cal. Penal
11 Code § 12025 is the only legal option available
12 to ordinary citizens who wish to carry firearms
13 for self defense.

14 Evidence: Cal. Penal Code § 12025 (banning
15 unlicensed concealed carry), 12031 (banning
16 unlicensed open carrying); 12050 (restricting
open carry licenses to counties with fewer than
200,000 inhabitants).

17 4. Applicants for a license to carry a loaded
18 concealable firearms must pass a criminal
19 background check, and complete training in the
proper use of handguns.

20 Evidence: Cal. Penal Code §§ 12025(a)(1)(E),
21 12052 *et seq.*

22 5. Application for a CCW Permit is made to
23 the Sheriff of the county in which the applicant
24 resides or spends a substantial period of time at
25 a principal place of business and/or
employment.

26 Evidence: Cal. Penal Code §§ 12025(a)(1)(A),
12050(a)(1)(D)(I), 12050(a)(1)(D)(ii).

27 6. Application for a CCW Permit may also
28 be made to the Chief or other head of a
municipal police department, within a county

its opposition to this motion.

2. Defendants object to this “fact” on the
grounds that this “fact” contains only argument
and not fact in violation of E. Dist. Loc. Rule
260(a). Defendants discuss the cited statute in
its opposition to this motion.

3. Defendants object to this “fact” on the
grounds that this “fact” contains only argument
and not fact in violation of E. Dist. Loc. Rule
260(a). Defendants discuss the cited statutes in
its opposition to this motion.

4. Defendants object to this “fact” on the
grounds that this “fact” contains only argument
and not fact in violation of E. Dist. Loc. Rule
260(a). Defendants discuss the cited statutes in
its opposition to this motion.

5. Defendants object to this “fact” on the
grounds that this “fact” contains only argument
and not fact in violation of E. Dist. Loc. Rule
260(a). Defendants discuss the cited statutes in
its opposition to this motion.

6. Defendants object to this “fact” on the
grounds that this “fact” contains only argument
and not fact in violation of E. Dist. Loc. Rule

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in which the applicant resides or spends a substantial period of time at a principal place of business and/or employment.

260(a). Defendants discuss the cited statutes in its opposition to this motion.

Evidence: Cal. Penal Code §§ 12025(a)(1)(B), 12050(a)(1)(D)(I), 12050(a)(1)(D)(ii).

7. A Sheriff and/or the chief of a municipal police department has discretion to determine whether an applicant "is of good moral character, [and] that good cause exists for the issuance" of a CCW permit.

7. Defendants object to this "fact" on the grounds that this "fact" contains only argument and not fact in violation of E. Dist. Loc. Rule 260(a). Defendants discuss the cited statutes in its opposition to this motion.

Evidence: Cal. Penal Code §§ 12025(a)(1)(A), 12050(a)(1)(B).

8. A Sheriff and/or the chief of a municipal police department is required to publish and make available a written policy summarizing the provisions of Cal. Penal Code §§ 12025(a)(1)(A) and (B).

8. Defendants object to this "fact" on the grounds that this "fact" contains only argument and not fact in violation of E. Dist. Loc. Rule 260(a). Defendants discuss the cited statutes in its opposition to this motion.

Evidence: Cal. Penal Code § 12050.2.

9. Defendant Ed Prieto is the Sheriff of Yolo County.

9. Undisputed.

Evidence: Answer to First Am. Complaint ¶ 5; Answer to Scnd. Am. Complaint ¶ 3.

10. Defendant Prieto's "Concealed Weapons License Policy" provides that applicants "Be of good moral character," "Show good cause for the issuance of the license," and "Provide at least three letters of character reference" from non-relatives.

10. Undisputed.

Evidence: Exh. A.

11. Defendant Prieto's application for a license to carry a handgun requires disclosure of "substantial personal information [that] may be subject public access under the Public Records Act."

11. Undisputed that the cited policy recites that the application "will include substantial personal information." Further undisputed that the policy recites that "[m]uch of the information may be subject public access under

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3 Evidence: Exh. A.
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the Public Records Act.” However, Defendants dispute that Prieto submitted any sort of application for a license to carry a handgun.

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6 12. Defendant Prieto’s policy regarding the issuance of gun carry permits includes among
7 “examples of invalid reasons to request a permit” “self-protection and protection of
8 family (without credible threats of violence).”

12. Undisputed.

9 Evidence: Exh. A.

10
11 13. Defendant Prieto does not schedule gun carry permit applicants for fingerprinting and
12 background checks unless “the Sheriff or his designee feels there is sufficient reason to grant
13 the license.”

13. Undisputed that this fact accurately states the Sheriff’s policy.

14 Evidence: Exh. A.

15
16 14. Even where he issues gun carry permits, Prieto reserves the right to impose “any and all
17 reasonable restrictions and conditions” that he “has deemed warranted,” violations of which
18 can lead to summary revocation of the Sheriff.

14. Undisputed that this fact accurately states the Sheriff’s policy.

19 Evidence: Exh. A.

20
21 15. Defendant Prieto maintains that “the issuance, amendment or revocation” of a gun
22 carry license “remains exclusively within the discretion of the Sheriff.”

15. Disputed. The policy does not contain the cited language. Rather, the policy sets forth the criteria for the issuance, amendment and revocation of concealed weapons licenses.

23 Evidence: Exh. A.

24
25 16. Gun carry licenses in Yolo County may be renewed “[i]f the Sheriff or his designee
26 feels there is sufficient reason to renew the license.”

16. Undisputed that this is one of the criteria for license renewal contained in the cited policy.

27 Evidence: Exh. A.
28

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17. Plaintiffs Adam Richards and Brett Stewart are law abiding residents of Yolo County, fully qualified to possess firearms under state and federal law.

Evidence: Richards Decl., ¶¶ 1, 2; Stewart Decl., ¶¶ 1, 2

18. In March, 2009, Richards contacted Defendant Prieto's office to inquire about the process for obtaining a permit to carry a handgun. Defendant Prieto's office advised Richards that the desire to have a gun available for self-defense would not constitute "good cause" for the issuance of the permit, and that he should not apply because doing so would be a futile act.

Evidence: Richards Decl., ¶ 4.

19. Richards was further advised that as a matter of policy, his application would also not be considered unless he first applied to the Chief of Police in the City of Davis, where he resides.

Evidence: Richards Decl., ¶ 4.

20. Richards subsequently applied to Davis Police Chief Lanny Black for a permit to carry a handgun. On April 1, 2009, Black denied Plaintiff Richards' application for a gun carry permit, stating in writing that for budgetary reasons his department no longer process handgun carry permit applications, and suggesting that Richards seek a permit from Defendant Prieto.

Evidence: Richards Decl., ¶ 5.

21. Plaintiff Richards seeks to exercise his Second Amendment right to carry a handgun for personal protection.

17. For purposes of this motion, Defendants do not dispute that Richards and Stewart are "law abiding residents of Yolo County." However, Defendants object to Plaintiffs' claim that they are "fully qualified to possess firearms under state and federal law" on the grounds that this statement is a legal conclusion not supported by any fact.

18. Object as irrelevant. Richard's desire to carry a handgun is not at issue in this case. Rather, what is at issue is the constitutionality of Yolo's concealed weapons license policy. Likewise what Richards was told by the Sheriff's office about the handgun policies is irrelevant. The concealed weapons license policy speaks for itself.

19. Object as irrelevant. What Richards was told by the Sheriff's office about the handgun policies is irrelevant. The concealed weapons license policy speaks for itself.

20. Undisputed for purposes of this motion only.

21. Undisputed for purposes of this motion only.

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Evidence: Richards Decl., ¶ 3.

22. Plaintiff Richards seeks a handgun carry permit so that he might protect himself and his family. However, Richards has received no threats of violence and is unaware of any specific threat to him or his family.

Evidence: Richards Decl., ¶ 3.

23. Plaintiff Richards has read Defendant Prieto's written policy declaring that "self-protection and protection of family (without credible threats of violence)" is among "examples of invalid reasons to request a permit," which is consistent with his experience in unsuccessfully seeking a permit application.

Evidence: Richards Decl., ¶¶ 6, 7.

24. Plaintiff Richards thus understands that he lacks "good cause" to obtain a permit as that term is defined and implemented by Defendants Prieto and Yolo County.

Evidence: Evidence: Richards Decl., ¶ 8.

25. Plaintiff Richards fears arrest, prosecution, fines and imprisonment were he to carry a handgun without a permit. But for the lack of a permit to do so, Richards would carry a handgun in public for self-defense.

Evidence: Richards Decl., ¶ 10.

26. On March 17, 2010, Stewart applied to Davis Police Chief Lanny Black for a permit to carry a handgun. On March 18, 2010, Black denied Plaintiff Stewart's application for a permit to carry a handgun, stating that for budgetary reasons his department no longer processes handgun carry permit applications,

22. Undisputed for purposes of this motion only.

23. Object as irrelevant. Plaintiff's understanding of the policies is not relevant to this motion.

24. Object as irrelevant. Plaintiff's understanding is not relevant to this motion.

25. Object as irrelevant. Plaintiff's "fears" of arrest, prosecution, fines, and imprisonment are not relevant to this motion.

26. Undisputed.

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DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE

1 and suggested that Stewart seek a permit from
2 Prieto.

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4 Evidence: Stewart Decl., ¶ 5.

5 27. On March 23, 2010, Stewart applied to
6 Defendant Prieto for a permit to carry a
7 handgun. On April 27, 2010, Stewart was
8 informed that his application was denied,
9 because "the reasons listed in your application
10 do not meet the criteria in our policy."

11 Evidence: Stewart Decl., ¶ 6; Exh. D.

12 28. Plaintiff Stewart seeks to exercise his
13 Second Amendment right to carry a handgun
14 for personal protection. He seeks a handgun
15 carry permit so that he might protect himself
16 and his family. However, Stewart has received
17 no threats of violence and is unaware of any
18 specific threat to him or his family.

19 Evidence: Stewart Decl., ¶ 3.

20 29. Plaintiff Stewart fears arrest, prosecution,
21 fines and imprisonment were he to carry a
22 handgun without a permit. But for the lack of
23 a permit to do so, Stewart would carry a
24 handgun in public for self-defense.

25 Evidence: Stewart Decl., ¶ 7.

26 30. Second Amendment Foundation, Inc.
27 ("SAF") is a non-profit membership
28 organization incorporated under the laws of
Washington with its principal place of business
in Bellevue, Washington.

Evidence: Versnel Decl., ¶ 2.

31. SAF has over 650,000 members and
supporters nationwide, including many in
California.

27. Undisputed.

28. Undisputed for purposes of this motion only.

29. Object as irrelevant. Plaintiff's "fears" of arrest, prosecution, fines, and imprisonment are not relevant to this motion.

30. Undisputed for purposes of this motion only.

31. Undisputed for purposes of this motion only.

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Evidence: Versnel Decl., ¶ 2.

32. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control.

32. Undisputed for purposes of this motion only.

Evidence: Versnel Decl., ¶ 2.

33. The Calguns Foundation, Inc., is a non-profit organization incorporated under the laws of California with its principal place of business in Redwood City, California.

33. Undisputed for purposes of this motion only.

Evidence: Hoffman Decl., ¶ 2.

34. The purposes of Calguns include supporting the California firearms community by providing education for all stakeholders about firearm laws, rights and privileges, and securing the civil rights of California gun owners, who are among its members and supporters.

34. Undisputed for purposes of this motion only.

Evidence: Hoffman Decl., ¶ 2.

35. SAF and Calguns expend their resources encouraging exercise of the right to bear arms, and advising and educating their members, supporters, and the general public about the varying policies with respect to the public carrying of handguns in California, including in Yolo County. Defendants' policies regularly cause the expenditure of resources by SAF and Calguns as people turn to these organizations for advice and information. The issues raised by, and consequences of, Defendants' policies, are of great interest to SAF and Calguns' constituencies.

35. Undisputed for purposes of this motion only.

Evidence: Versnel Decl., ¶ 3; Hoffman Decl., ¶ 3.

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UNDISPUTED FACT AND SUPPORTING EVIDENCE

36. Defendants' policies bar the members and supporters of SAF and Calguns from obtaining permits to carry handguns.

Evidence: Versnel Decl., ¶¶ 4, 5; Hoffman Decl., ¶¶ 4, 5.

Dated: February 10, 2011

DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE

36. Undisputed for purposes of this motion only.

ANGELO, KILDAY & KILDUFF, LLP

/s/ Serena M. Sanders

By: _____
SERENA M. SANDERS
Attorneys for Defendants YOLO
COUNTY and SHERIFF ED PRIETO