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13 Attorneys for Plaintiff DAVID W. SPEARS

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13 DAVID W. SPEARS,

14 Plaintiff,

15 v.

16 CITY OF TORRANCE, a governmental entity,  
17 JOHN J. NEU, individually and in his capacity as  
18 Chief of Police; FRANK SCOTTO, individually  
19 and in his capacity as Mayor; GENE BARNETT,  
20 individually and in his capacity as Council Member,  
21 TOM BREWER, individually and in his capacity as  
22 Council Member, GENE DREVINO, individually  
23 and in her capacity as Council Member, PAUL M.  
24 NOWATKA individually and in his capacity as  
25 Council Member, BILL SUTHERLAND,  
26 individually and in his capacity as Council Member,  
27 HOPE WITKOWSKY, individually and in her  
28 capacity as council member,

Defendants

CASE NO.

Judge

**COMPLAINT FOR DAMAGES**

Violation of Civil Rights [42 U.S.C. §1983]

**DEMAND FOR JURY TRIAL**

Plaintiff complains and alleges as follows:

**JURISDICTION**

1 1) This Court has jurisdiction of this action pursuant to the Civil Rights Act (42 U.S.C. § 1983, et  
2 seq).

3 2) The amount in controversy is in excess of \$50,000.

4 3) The events or omissions giving rise to Plaintiff's claims occurred in this judicial district and  
5 division.

6  
7 **PARTIES AND VENUE**

8 4) Plaintiff DAVID W. SPEARS is, and at all times herein mentioned was, a resident of the State of  
9 California, County of Los Angeles, and City of Torrance.

10 5) Defendant CITY OF TORRANCE is, and at all times herein mentioned was, a political  
11 subdivision of the state of California, and an incorporated governmental entity.

12 6) Plaintiff is informed and believes, and thereon alleges, that the Torrance Police Department is,  
13 and at all times herein mentioned was, a governmental department organized and under the control of  
14 the Defendant CITY OF TORRANCE.

15 7) Plaintiff is informed and believes, and thereon alleges, that Defendant JOHN J. NEU, is, and at  
16 all times herein mentioned was, the Chief of Police for Defendant CITY OF TORRANCE and a resident  
17 of the County of Los Angeles. This Defendant is sued both individually and in his official capacity.

18 8) Plaintiff is informed and believes, and thereon alleges, that Defendant FRANK SCOTTO, is, and  
19 at all times herein mentioned was the Mayor of Defendant CITY OF TORRANCE and a resident of the  
20 County of Los Angeles. This Defendant is sued both individually and in his official capacity.

21 9) Plaintiff is informed and believes, and thereon alleges, that Defendants GENE BARNETT, TOM  
22 BREWER, GENE DREVINO, PAUL M. NOWATKA, BILL SUTHERLAND, and HOPE  
23 WITKOWSKY, are, and at all times herein mentioned were, City Council members of Defendant CITY  
24 OF TORRANCE and residents of the County of Los Angeles. These Defendants are sued both  
25 individually and in their official capacity.

26 10) Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of them, was  
27 the agent, employee or representative of each of the remaining Defendants and, in doing the things  
28 herein alleged, was acting within the scope and authority of such relationship and, is responsible in some

1 manner for the occurrences herein alleged and, was a proximate cause of Plaintiff's damages as herein  
2 alleged.

3 11) Each of the acts of the agents of Defendant CITY OF TORRANCE, including the Torrance  
4 Police Department, was done by virtue of and under their authority and under the color and pretense of  
5 law. All the agents of Defendant CITY OF TORRANCE in doing the acts described were acting within  
6 the course and scope of their employment. Their acts are therefore imputed to Defendant CITY OF  
7 TORRANCE and the Torrance Police Department.

8  
9 **FACTUAL AND PROCEDURAL BACKGROUND**

10 12) Plaintiff is a resident of the city of Torrance, and is employed as a Revenue Investigator by and  
11 in the neighboring city of Lynwood. His job duties require him to collect and carry around cash and  
12 other payments for business licenses and similar permits from various businesses and individuals in the  
13 City of Lynwood.

14 13) Plaintiff drives a marked city vehicle on the job which is not equipped with any means to safely  
15 secure the cash and payments collected by Plaintiff.

16 14) On numerous occasions, Plaintiff has been accosted, confronted and threatened by hostile  
17 individuals and would-be criminals demanding money that they have observed, or learned of, being  
18 collected by Plaintiff. Given the frequency and nature of Plaintiff's daily duties and routine, Plaintiff is  
19 familiar to many such individuals, who are aware of the nature of Plaintiff's duties, and of the cash  
20 Plaintiff carries. Many of these individuals know and regularly also see Plaintiff in the nearby city of  
21 Torrance where Plaintiff resides. Many such confrontations have occurred both while on duty during  
22 the day, and off duty after hours.

23 15) Plaintiff has no entitlement or access to police escort or protection while performing his duties or  
24 off duty, and no access to emergency radio contact in the event of an attack, attempted assault or robbery  
25 of Plaintiff, and is provided no current means of self defense or protection of the city revenues he  
26 carries.

27 16) Plaintiff ultimately determined that he had objectively good cause and need to obtain a  
28 Concealed Carry Weapon permit to enable him to protect himself from harm both on and off duty.

1 17) Plaintiff discussed with his employer, the City of Lynwood, any objection they might have to  
2 him obtaining a Concealed Carry Weapon permit and carrying a concealed weapon while on duty.  
3 Plaintiff received consent to do so, as evidenced by a letter dated October 25, 2007, from his department  
4 supervisor stating, "I am writing in support of Mr. David Spears' request to carry a concealed weapon  
5 when he is off duty as a business license specialist with the City of Lynwood, *or when carrying large*  
6 *sums of money as an agent of the City...*" [emphasis added], a true and correct copy of which is attached  
7 hereto as Exhibit "A" and incorporated herein by reference.

8 18) On or about May 9, 2007, Plaintiff attempted to apply to the city of Torrance, through the  
9 Torrance Police Department, for a Concealed Carry Weapon permit pursuant to Penal Code  
10 12050(a)(1)(B), a true and correct copy of which is attached hereto as Exhibit "B" and incorporated  
11 herein by reference.

12 19) Under California Penal Code Section 12050(a)(1)(B), a chief of police of a municipal police  
13 department may issue a "license to carry a pistol, revolver, or other firearm capable of being concealed  
14 upon the person ...". Prior to issuing a license, PC §12050 states that the chief must receive "proof that  
15 the person applying is of good moral character, that good cause exists for the issuance, and that the  
16 person applying is a resident of that city and has completed a course of training as described in  
17 subparagraph (E)." Subparagraph (E) states a new license applicant may be required to attend either a  
18 firearm training course that does not exceed 16 hours, or a Peace Officer Standards and Training [POST]  
19 firearms course taught at a local community college that does not exceed 24 hours. Making clear its  
20 intent to insure uniformity and fairness, PC §12050 states that if a department requires a college POST  
21 course, that requirement must apply uniformly to all license applicants *without exception* (emphasis  
22 added).

23 20) Plaintiff is qualified and meets all requirements for an applicant for Concealed Carry Weapon  
24 permit pursuant to Penal Code 12050(a)(1)(B). Plaintiff is a resident of the city of Torrance, is of good  
25 moral character, and is not a 'prohibited person' under federal or state law; he has no criminal record or  
26 convictions, nor restraining orders, nor psychiatric commitments, and has demonstrated good cause for  
27 issuance. All such qualifications are normally required for issuance of a Concealed Carry Weapon  
28 permit, and all would be confirmed and verifiable in a proper application review and background check.

1        21) In response to Plaintiff's application, a letter to Plaintiff dated September 26, 2006, from Lt. Rod  
2 Irvine, Adjutant to the Chief of Police of the Torrance Police Department, stated that, "I have attached a  
3 copy of our current written policy on issuing CCW permits to citizens; however, *we do not have records*  
4 *on the issuance of any such permits, since it has been the long-standing practice of our Chiefs of Police*  
5 *not to issue such permits to citizens.*" [emphasis added]. A true and correct copy of that letter and  
6 attachment are attached hereto as Exhibit "C" and incorporated herein by reference.

7        22) The two page attachment to that letter is an informal summary of the purported policy, and is  
8 entitled "TORRANCE POLICE DEPARTMENT, POLICY CONCERNING LICENSES TO CARRY  
9 CONCEALED WEAPONS". It contains a summary and list of the purported official policies and rules  
10 to be followed by Defendants if they were acting in good faith compliance with that policy summary and  
11 the law in processing and issuing Concealed Carry Weapon permits. Nowhere on that attached policy  
12 summary is there any indication of the other officially endorsed and documented, but contradictory,  
13 "*long-standing practice of our Chiefs of Police not to issue such permits to citizens*", in violation of the  
14 letter and spirit of the law and Defendants' own formal policy.

15        23) In further response to Plaintiff's application and his questions and objections to the September  
16 26, 2006 response letter, Michael Browne, Deputy Chief of Police of the Torrance Police Department,  
17 sent Plaintiff a letter dated Oct 5, 2007, stating again that, "*...it has been the long-standing practice of*  
18 *our Chiefs of Police not to issue such permits to citizens. There has been no change in this long*  
19 *standing practice.*" A true and correct copy of that letter is attached hereto as Exhibit "D" and  
20 incorporated herein by reference.

21        24) Despite a proper and thorough showing in his application of residence in the city of Torrance,  
22 and of his moral character and good cause for issuance, Plaintiff's application for Concealed Carry  
23 Weapon permit was summarily and officially rejected and denied by letter dated October 18, 2007, from  
24 Defendant JOHN J. NEU, Chief of Police, on behalf of the Torrance Police Department and Defendant  
25 CITY OF TORRANCE. A true and correct copy of that letter is attached hereto as Exhibit "E" and  
26 incorporated herein by reference.

27        25) In addition to the informal summary of policy attached to the letter responses of Defendants,  
28 there is actually a formal policy enacted by the City of Torrance and currently in place at the Torrance

1 Police Department regarding application for and issuance of a Concealed Carry Weapon permit. That  
2 formal policy is contained in a document entitled "TORRANCE POLICE DEPARTMENT, General  
3 Order 3.31, Concealed Weapon Permits, date issued: April 4, 2007", a true and correct copy of which is  
4 attached hereto as Exhibit "F" and incorporated herein by reference.

5        26) Defendants' formal policy describes most of the customary requirements to be found in  
6 legitimate policies in force at police agencies that issue Concealed Carry Weapon permits in good faith  
7 compliance with the law, but it does contain several highly unusual and Constitutionally objectionable  
8 terms and conditions, including:

9                "5. The applicant shall purchase an insurance policy in the amount of one million dollars ...  
10                naming the City as the insured ...".

11                "7. Before a permit is issued all qualified applicants will be required to pass psychological  
12                testing by the Department psychologist and may be required to submit and pass additional  
13                psychological testing."

14        27) There is no purpose or need for item 5, an insurance policy requirement, as state law is clear that  
15 police or sheriff's departments are immune from civil suit based upon issuance of Concealed Carry  
16 Weapon permits, so long as the departments have in place and follow an appropriate policy on such  
17 issuance.

18        28) There is also no purpose or need for item 7, a psychological exam of applicants, as its purposes  
19 are adequately met by the requirements of Penal Code 12050(a)(1)(B) for an FBI administered  
20 background check, and such evaluation would constitute a severe and unnecessary invasion of an  
21 applicant's privacy and open the application process to entirely non-objective standards of evaluation at  
22 the whim of the examiner.

23        29) Defendants' formal policy is logically and clearly intended to put a 'false face' on Defendants'  
24 public persona, making it appear that Defendants comply with the requirements and rules of the  
25 Department of Justice, and with Penal Code 12050(a)(1)(B) when they actually do not. However,  
26 Defendants' actual policy of uniformly denying all applicants, violates the law as expressed in the on-  
27 point holding in Salute v. Pitchess, 61 Cal. App. 3d 557 (1976), which holds that, "While a court cannot  
28 compel a public officer to exercise his discretion in any particular manner, it may direct him to exercise

1 that discretion. We regard the case at bench [a consistent policy of denial of all applicants but judges  
2 and selected public officials] as involving a refusal of the sheriff to exercise the discretion given him by  
3 the statute. Section 12050 imposes only three limits on the grant of an application to carry a concealed  
4 weapon: the applicant must be of good moral character, show good cause and be a resident of the county.  
5 To determine, in advance, as a uniform rule, that only selected public officials can show good cause is to  
6 refuse to consider the existence of good cause on the part of citizens generally and is an abuse of, and  
7 not an exercise of, discretion. . . . It is admitted that no inquiry into the existence of good cause has ever  
8 been made in connection with the application of these petitioners, or of any other applicant outside the  
9 limited group of public officials. It is the duty of the sheriff to make such an investigation and  
10 determination, on an individual basis, on every application under section 12050.”

11 30) Defendants’ actual policy of uniformly denying all applicants, is a violation of equal protection  
12 and due process, as expressed in Guillory v. County of Orange, 731 F.2d 1379 (9th Cir 1984). That case  
13 holds that, “a government as an entity may be responsible under section 1983 "when execution of [the]  
14 government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may  
15 fairly be said to represent official policy, inflicts the injury”. Guillory goes on to explain that, “...the  
16 county [Defendant] took the position that it was not bound by the fourteenth amendment equal  
17 protection clause . . . . This wholly unsubstantiated position in itself seems to be evidence of the county's  
18 official policy of indifference to fourteenth amendment protections.”

19 31) Defendants failed to even process Plaintiff's application in good faith: they failed to follow the  
20 very specific procedures detailed in their own official policies; failed and declined to obtain his  
21 fingerprints or run his background check; failed to have him evaluated for fitness under Defendant s'  
22 standards; failed to allow him to demonstrate proficiency with his firearm; and failed entirely to follow  
23 the letter or spirit of the law embodied in Defendants’ policy. Instead, Defendants willfully disregarded  
24 and ignored their own written policies and procedures, willfully disregarded and ignored the law, and  
25 willfully violated Plaintiff s' constitutional rights in order to deprive him of a means of self defense.

26 32) Plaintiff has determined through responses to his subsequent requests for Public Records, that  
27 neither Defendants nor the Department of Justice have any record of issuance by the Torrance Police  
28 Department of a Concealed Carry Weapon permit to any applicant, nor do they even have any record of

1 applications submitted or accepted for processing by the Torrance Police Department for a Concealed  
2 Carry Weapon permit from *any* applicant. This is confirmed by Defendants' admission in the  
3 September 26, 2006, letter attached that, "...we do not have records on the issuance of any such  
4 permits...". True and correct copies of the Department of Justice response is attached hereto as Exhibit  
5 "G" and incorporated herein by reference.

6 33) Plaintiff is aware of other citizens applying for Concealed Carry Weapon permits from  
7 Defendants, and also being summarily rejected by Defendants in willful disregard of the law and of  
8 official policies and procedures in place. Evidence of that is demonstrated by the identically worded  
9 rejection letter dated October 5, 2007, given Steve Nagaoka, another party seeking a Concealed Carry  
10 Weapon permit. A true and correct copy of that letter is attached hereto as Exhibit "H" and incorporated  
11 herein by reference.

12 34) Plaintiff has learned that the individual Defendants, city council members and mayor, are  
13 personally aware of, and have consistently for years supported, the Torrance police department and  
14 police chiefs' freely admitted actual policy of non-issuance of Concealed Carry Weapon permits, and  
15 that such policy of non-issuance is the approved policy of the City of Torrance and the Torrance City  
16 Council, all in contravention and disregard of the law and Defendants' own published policy  
17 "TORRANCE POLICE DEPARTMENT, General Order 3.31, Concealed Weapon Permits", and the  
18 policy summary "TORRANCE POLICE DEPARTMENT, POLICY CONCERNING LICENSES TO  
19 CARRY CONCEALED WEAPONS". See declaration of Preston Guillory attached as Exhibit "I".

20 35) Defendants have willfully and intentionally denied Plaintiff his constitutional rights to equal  
21 treatment and protection under the law by implementing and adhering to an actual policy contradictory  
22 to their formally approved policy, and their refusal to grant Concealed Carry Weapon permits to any  
23 applicant, including Plaintiff, regardless of eligibility, qualification, necessity or good cause shown.

24  
25 **FIRST CAUSE OF ACTION**

26 Civil Rights Violation, Civil Rights Act (42 U.S.C. § 1983)

27 36) Plaintiff hereby realleges and incorporates by reference as if fully set forth herein, the allegations  
28 of paragraphs 1 through 35 above.

1 37) Plaintiff is, and at all times herein mentioned was, a citizen protected by the Civil Rights Act (42  
2 U.S.C. § 1983), et seq., entitled to due process and equal protection under the laws of the State of  
3 California.

4 38) Defendants' willful disregard of, and refusal to follow, their own formally implemented policy,  
5 and their unconditional refusal to grant a Concealed Carry Weapon permit to Plaintiff, or any applicant,  
6 regardless of qualification and entitlement, is an arbitrary and capricious exercise of Defendants'  
7 authority, and violates California state law, violates 42 U.S.C. § 1983, and violates the 14<sup>th</sup> Amendment  
8 of the U.S. Constitution, in that Plaintiff was denied basic Constitutionally mandated equal protection  
9 and due process.

10 39) Defendants have no legal or rational basis for their arbitrary and capricious treatment of Plaintiff.  
11 In enforcing an unconditional informal policy, without exception for any qualified applicant, Defendants  
12 are not exercising their statutory 'discretion' under California Penal Code Section 12050(a)(1)(B), and  
13 cannot claim immunity based upon discretionary acts by a government or its agent.

14 40) Plaintiff has exhausted all available administrative remedies, if any were required, in that there is  
15 no appeal process available under Defendants' stated or as implemented policies.

16 41) As a proximate result of Defendants' policies and conduct, Plaintiff has suffered general and  
17 special damages in an amount according to proof. He has been denied his Constitutional right to keep  
18 and bear arms in his self defense, through the arbitrary and capricious denial of a Concealed Carry  
19 Weapon permit pursuant to the authority of Penal Code 12050(a)(1)(B). He has been denied the equal  
20 protection of the laws. He has been forced to take legal action and incur attorney fees and costs to  
21 protect his rights.

22 42) As a result of Defendants' policies and conduct, Plaintiff is entitled to reasonable attorneys' fees  
23 and costs of suit.

24 WHEREFORE, Plaintiff requests relief as hereinafter provided.

25  
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays judgment as follows:

28 1. For a Declaratory Judgment that Defendants' enforced policy and practice of refusing to issue

1 Concealed Carry Weapon permits violates the Fourteenth Amendment to the United States  
2 Constitution;

- 3 2. For an order requiring Defendants to prepare and implement Constitutionally acceptable policies and  
4 guidelines, with specific objective criteria and standards governing Defendants' exercise of their  
5 statutory discretion, for the issuance, re-issuance or denial of Concealed Carry Weapon permits,  
6 including but not limited to procedures for reasonable response, amendment, supplementation and  
7 appeal of any alleged grounds for denial or revocation;
- 8 3. For a finding and order that Plaintiff has demonstrated statutorily sufficient good cause for the  
9 issuance of a Concealed Carry Weapon permit, and that Defendants shall accept and process his  
10 application under the Constitutionally acceptable standards adopted, and that if Plaintiff otherwise is  
11 not barred by law, Defendants shall issue Plaintiff a Concealed Carry Weapon permit;
- 12 4. For general and special damages in an amount subject to proof;
- 13 5. For attorneys' fees pursuant to 42 U.S.C. § 1983, et seq;
- 14 6. For costs of suit;
- 15 7. For such other and further relief as the Court may deem proper.
- 16 8. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's orders;

17  
18 Dated: June 3, 2008

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20 Terry A. Nelson,  
21 Attorneys for Plaintiff  
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