

1 Cody Jay Brownstein
2 1117 City Lights Dr
3 Alico Viejo CA 92656
4 Phone: 310-874-8743
5 Email: me@brownstein.co

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8 Defendant in pro per

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11 Superior Court of the State of California
12 County of Orange – Central Justice Center

13 People of the State of California,
14 Plaintiff,
15 vs.
16 Cody Jay Brownstein,
17 Defendant.

18 Case No. 30-2024-01403673-CU-JR-CJC

19 **Notice of Demurrer and
Defendant's Demurrer to Plaintiff's
Complaint;**

20 **Memorandum of Points and
Authorities in Support of
Demurrer;**

21 **Declaration of Cody Jay
Brownstein in Support of
Demurrer**

22 Hearing date and time:
23 ~~XXXXXX,XXXX~~ 8:30 a.m.
24 September 6, 2024
25 Department: C65

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Notice of Demurrer and Plaintiff's Demurrer to Defendant's Complaint

To the People of the State of California:

September 6, 2024

Please take notice that on ~~September 2024~~ at 8:30 a.m., in Department C65 at the Central Justice Center, located at 700 West Civic Center Drive, Santa Ana, California 92701, Defendant will, and by this notice does, demur to Plaintiff's complaint. Alternatively, Defendant will, and by this notice does, move the Court to exercise its inherent power to enter judgment for Defendant as a matter of law.

Defendant brings this demurrer on the ground that Plaintiff's complaint fails to state facts sufficient to constitute a cause of action against Defendant, specifically, because the relief Plaintiff seeks in this action violates Defendant's constitutional rights to due process under the United States Constitution and the California Constitution, as well as his Second Amendment rights under the United States Constitution.

Defendant's demurrer is based on this notice; the attached memorandum of points and authorities in support of this demurrer; Defendant's attached declaration; and the records and files in this action. Further, Defendant asks the Court to take judicial notice of the records and files in Orange County Superior Court case no. 22V000721, titled *Burger vs. Brownstein*. In particular, Defendant asks the Court to take judicial notice of the minute order dated May 3, 2022, a copy of which is attached to Defendant's declaration as exhibit "1".

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1 This demurrer follows Defendant's unsuccessful attempt to meet and confer
2 with Plaintiff to satisfy Code of Civil Procedure section 430.41. (*See* Brownstein
3 Decl. ¶ 4.)

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5 Dated: July 3, 2024

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C. Brownstein

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Cody Jay Brownstein,
9 Defendant in pro per

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Memorandum of Points and Authorities in Support of Defendant's Demurrer

I. Introduction

3 By this demurrer, Defendant asks the Court to answer the question: Can an
4 individual be denied their rights guaranteed by the Second Amendment based on a
5 legal proceeding that took place without the individual's knowledge? In
6 Defendant's case, can he be denied a license to carry a concealed firearm (a "CCW
7 license") based on an expired domestic violence temporary restraining order
8 (TRO) obtained against him without his knowledge? The answer to these questions
9 is clearly no and, accordingly, the Court should sustain Defendant's demurrer and
10 order that, as a matter of law, the TRO obtained against him can't be used to
11 disqualify him from being issued a CCW license.

II. Background

13 The facts relevant to this action are simple and undisputed:

14 On March 30, 2022, in Orange County Superior Court case no. 22V000721,
15 titled *Burger vs. Brownstein*, a domestic violence TRO was issued against
16 Defendant. The TRO was issued based on an ex parte application. Defendant was
17 given no notice the application was being made and Defendant had no opportunity
18 to oppose issuance of the TRO. On May 3, 2022, the TRO expired and, after a
19 hearing in which both parties participated, no further restraining order was issued.
20 (Brownstein Decl. ¶ 2; Ex. 1.)

21 On January 1, 2024, Defendant applied to the Orange County Sheriff's
22 Department (OCSD) for a CCW license. On May 28, 2024, the OCSD determined
23 Defendant is disqualified from being issued a CCW license based on the TRO that
24 was issued against him, discussed in the preceding paragraph. (Brownstein Decl. ¶
25 3; Ex. 2.) *See Pen. C §§ 26150(a), 26202(a)(3).* On June 4, 2024, Defendant filed
26 the Department of Justice Request for Hearing to Challenge Disqualified Person
27 Determination form to commence this action.

III. Argument

A. The Court Has Inherent Power to Consider Defendant's Demurrer and Power to Enter Judgment as a Matter of Law.

It's well-settled that trial courts have inherent power to develop their own procedures to efficiently resolve issues. *Cottle v. Super. Ct.*, 3 Cal. App. 4th 1367, 1376-78 (1992).

Since this action presents only legal issues, discussed below, it makes sense for the Court to exercise its inherent power to consider Defendant's demurrer or to treat the demurrer as a motion for judgment as a matter of law.

B. Defendant's Demurrer Should Be Sustained and Judgment Entered in His Favor Since No Cause of Action is Alleged.

It's proper for a court to sustain a defendant's demurrer to a complaint if the complaint fails to state facts sufficient to allege a cause of action. Moreover, if the complaint can't be amended to allege a cause of action, it's proper to deny leave to amend and enter a judgment in the defendant's favor. *Schifando v. City of Los Angeles*, 31 Cal. 4th 1074, 1081, 6 Cal. Rptr. 3d 457, 460 (2003).

It's true that there's no complaint filed in this action. However, it's clear that the "cause of action" is for a determination that Defendant is disqualified from being issued a CCW license, and the sole, undisputed, material fact is that a restraining order was issued against Defendant. (See Brownstein Decl. ¶ 3; Ex. 2.)

As discussed below, as a matter of law, it's impossible for Plaintiff to establish in this action that Defendant is disqualified from being issued a CCW license. That's because Plaintiff is asking the Court to violate Defendant's constitutional rights to due process. The Court, however, is obligated to ensure Defendant's constitutional rights are upheld. “[I]t is well established that it is a judicial function to interpret the law, including the Constitution, and, when appropriately presented in a case or controversy, to declare when an act of the Legislature or the executive is beyond the constitutional authority vested in those

1 branches. (*INS v. Chadha* (1983) 462 U.S. 919, 941-942 [103 S.Ct. 2764, 2779-
2 2780, 77 L.Ed.2d 317, 338-339]; *California Radioactive Materials Management*
3 *Forum v. Department of Health Services, supra*, 15 Cal. App.4th at p. 869.)”
4 *Schabarum v. California Legislature*, 60 Cal. App. 4th 1205, 1213 (1998). The
5 Court ensures Defendant’s constitutional rights are upheld by sustaining his
6 demurrer and entering judgment in his favor.

7 **C. Defendant’s Constitutional Rights to Due Process Are Violated By
8 Allowing the TRO Issued Against Him to Disqualify Him From
9 Being Issued a CCW License.**

10 As previously stated, Defendant was disqualified from being issued a CCW
11 license because of a TRO issued following an ex parte application made without
12 notice having been given to Defendant. (To be clear, Defendant isn’t arguing he’s
13 denied due process in this action. Defendant is arguing that allowing the TRO to be
14 the basis for disqualifying him from being issued a CCW license violates his due
15 process rights.)

16 “[W]hen a person is deprived of a statutorily conferred benefit, due process
17 analysis must start not with a judicial attempt to decide whether the statute has
18 created an ‘entitlement’ that can be defined as ‘liberty’ or ‘property,’ but with an
19 assessment of what procedural protections are constitutionally required in light of
20 the governmental and private interests at stake.” *People v. Ramirez (Ramirez)*, 25
21 *Cal. 3d 260, 264 (1979)*.

22 Under Penal Code section 26150(a), “When a person applies for a new
23 license or license renewal to carry a pistol, revolver, or other firearm capable of
24 being concealed upon the person, the sheriff of a county *shall* issue or renew a
25 license to that person....” *Pen. C § 26150(a)* (emphasis added).

26 In cases like *Ramirez*, the primary concern with respect to due process is
27 whether or not the procedural safeguards were sufficient. *See Ramirez*, 25 Cal. 3d
28 at 268. But in this action, the concern isn’t the sufficiency of procedural

1 safeguards. The concern is whether or not *the complete absence of procedural*
2 *safeguards* ensures due process. Obviously not.

3 **IV. Conclusion**

4 It's impossible to construe Penal Code section 26202(a)(3) to include TROs
5 without violating constitutionally guaranteed rights to due process. But in this
6 action, that's what Plaintiff is asking the Court to do. The Court should refuse to
7 construe Penal Code section 26202(a)(3) as Plaintiff asks the Court to do, and
8 should instead sustain Defendant's demurrer and enter judgment in his favor as a
9 matter of law.

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11 Dated: July 3, 2024

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C. Brownstein

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Cody Jay Brownstein,
Defendant in pro per

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Declaration of Cody Jay Brownstein in Support of Demurrer

I, Cody Jay Brownstein, declare:

1. I am the defendant in this action. I have personal knowledge of each fact stated in this declaration. If called as a witness, I'd competently testify to each fact stated in this declaration.

6 2. Attached to this declaration as exhibit “1” is a true and correct copy of
7 the May 3, 2022 minute order entered in Orange County Superior Court case no.
8 22V000721, titled *Burger v. Brownstein*. I was the respondent in that action. In
9 that action, as stated in the minute order, a domestic violence temporary restraining
10 order (TRO) was issued against me. I wasn’t given any notice that a TRO against
11 me was being applied for and I didn’t have any opportunity to oppose the
12 application. As stated in the minute order, at the hearing in the action, the TRO
13 issued against me expired and no new orders were entered.

14 3. Attached to this declaration as exhibit "2" is a true and correct copy of
15 the letter I received from the Orange County Sheriff's Department informing me
16 that I'm disqualified from being issued a CCW license. The letter says I'm
17 disqualified because I had been subject to a restraining order.

18 4. On June 19, 2024, I wrote a letter to the Orange County District
19 Attorney's Office (DA's Office), attorneys for Plaintiff, saying that I planned on
20 filing a demurrer in this action. In my letter, I specified the grounds on which my
21 demurrer would be based and summarized my legal position. As of the date I'm
22 signing this declaration, I haven't heard from the DA's Office.

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1 I declare under penalty of perjury under the laws of the State of California
2 that the foregoing is true and correct.

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4 Dated: July 3, 2024

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6 *C. Brownstein*

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Cody Jay Brownstein

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ORANGE
MINUTE ORDER
5/3/2022

Judge / Commissioner: ADRIANNE E. MARSHACK

Dept.: L61 at 8:45 AM

Clerk: S. PEREZ

Bailiff: C. PIMENTEL

Reporter: K. CAGNEY 10850

Case Type: DOMESTIC VIOLENCE WITH CHILD

Case Number: 22V000721

Case Name: ALEXANDRA BURGER VS CODY BROWNSTEIN

Appearances:

CODY BROWNSTEIN, RESPONDING PARTY - PROTECTIVE ORDER, MOVING PARTY - PROTECTIVE ORDER
ALEXANDRA BURGER, MOVING PARTY - PROTECTIVE ORDER, RESPONDING PARTY - PROTECTIVE
ORDER

Attorney for RESP / DEF

Patrick O'Kenndy counsel for Cody Jay Brownstein

DV REQUEST - RESTRAINING ORDER

By RESPONDING PARTY - PROTECTIVE ORDER

Filed on 4/1/2022

CODY JAY BROWNSTEIN

DV REQUEST - RESTRAINING ORDER

By MOVING PARTY - PROTECTIVE ORDER

Filed on 3/30/2022

ALEXANDRA LAUREN BURGER

In open court at 10:20 a.m., appearances as indicated above.

Dueling request from both parties request for domestic violence restraining order, is before the court.

The request for a temporary restraining order was granted for moving party, Alexandra Lauren Burger on 3/30/2022.

The request for temporary restraining order was denied for moving party, Cody Jay Brownstein on 4/1/2022.

Both parties announce ready to proceed.

Both parties are sworn and testify.

The Court has read and reviewed the moving papers, the declaration of the moving party, and pursuant to FC§6306, the CLETS (California Law Enforcement Telecommunications Tracking System) report regarding the criminal history of the both parties.

Court notes moving party, is currently in probation for a matter not related to this matter.

Upon the court's inquiry, moving party Mr. Brownstien states he has relinquished his weapons.

Court notes there is no criminal history for moving party, Alexandra Lauren Burger.

At 11:08 a.m., court declares recess.

Back on the record at 11:15 a.m., appearances as indicated above.

Moving party's Cody Jay Brownstein Exhibit A: one page of a black and white handwritten note from Mr. Brownstien is marked for identification and admitted into evidence.

Finding of No Domestic Violence

The Court finds, there is insufficient evidence to substantiate by a preponderance of the evidence that domestic violence has occurred. Both moving party's request for restraining orders are denied.

Temporary restraining order for moving party, Alexandra Lauren Burger expire this date.

Return of Exhibits

The Court orders the return of exhibit A to the submitting party; exhibits returned to proffering party this date. The Court Clerk is relieved from the responsibility of keeping and maintaining the records.



ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

Date: Tue, 28 May 2024

CODY BROWNSTEIN
1117 CITY LIGHTS DR.,
ALISO VIEJO CALIFORNIA 92656

Dear CODY BROWNSTEIN

Your license to carry a concealed firearm pursuant to Penal Code sections 26150, 26155, or 26170 is denied based on a determination that you are a disqualified person for such a license, as set forth in Penal Code section 26202:

The applicant has been subject to any restraining order, protective order, or other type of order issued pursuant to the following statutory provisions, unless that order expired or was vacated or was canceled more than five years prior to the licensing authority receiving the completed application:

- (a) section 646.91 or part 3 (commencing with section 6240) of division 10 of the family code.
- (b) part 4 (commencing with section 6300) of division 10 of the family code.
- (c) sections 136.2 and 18100.
- (d) section 527.6, 527.8, or 527.85 of the code of civil procedure.
- (e) section 213.5, 304, 362.4, 726.5, or 15657.03 of the welfare and institutions code.

You may request a hearing from the superior court of the county of your residence to review the license denial. Pursuant to Penal Code section 26206, subdivision (c), if you choose to request a hearing to review the denial of the license you must do so within 30 days after receipt of the notice of denial from the licensing authority. Attached hereto is a copy of the Request for Hearing form (BOF 1031) created by the Department of Justice that is required to be used to request a hearing.

Sincerely,

Orange County Sheriff's Department
CCW Licensing Unit



DEPARTMENT OF JUSTICE REQUEST FOR HEARING TO CHALLENGE DISQUALIFIED PERSON DETERMINATION

If a new license or license renewal to carry a concealed firearm pursuant to Penal Code sections 26150, 26155, or 26170 is denied or revoked based on a determination that the applicant is a disqualified person for such a license, as set forth in Penal Code section 26202, the applicant may request a hearing from the superior court of their county of residence to review the denial or revocation of a license. Pursuant to Penal Code section 26206, subdivision (c), an applicant must request a hearing within 30 days after receipt of the notice of denial or revocation from the licensing authority, or when applicable, within 30 days after receipt of the notice of an unsuccessful appeal of the denial or revocation with the licensing authority. The superior court shall set a hearing date within 60 days of receipt of this request, unless a continuance is granted as described in Penal Code section 26206, subdivision (d)(2), and notify the applicant, licensing authority, district attorney, and Department of Justice about the hearing date.

FOR COURT USE ONLY

CASE NUMBER:

TO: _____ COUNTY SUPERIOR COURT.
County of Residence

I hereby request a hearing to review the denial or revocation of a new license or license renewal.
 I hereby request a confidential private hearing to review the denial or revocation of a new license or license renewal.

Pursuant to Penal Code section 26206, subdivision(d)(1), you can request a confidential private hearing that is not open to the public. Such a hearing would only be attended by persons relevant to your case, unless the court finds that the public interest would be better served by conducting the hearing in public.

First Name

Middle Name

Driver's License or Identification Number

City

State _____ Zip Code _____

Address

City

State _____

Zip Code _____

Date of Receipt of Notice of Denial/Revocation

Initial

Renewal

CCW License Type

License Number (if applicable)

Issue Date

Expiration Date

By signing below, I hereby authorize the Department of Justice to release my criminal history records to the court named above solely for use in the hearing, as required by Penal Code section 26206, subdivision (b).

Date

Requestor: Please forward completed form to the superior court of your county of residence.

Superior Court: Pursuant to Penal Code section 26206, subdivision (d)(1), send a copy of this completed form to the Department of Justice, Bureau of Firearms by emailing BOFCCW@doj.ca.gov.

PROOF OF SERVICE

I, Akram Musleh, am over the age of 18 years and am not a party to this cause. My business address is 12405 Venice Boulevard #403, Los Angeles, California 90066.

On July 3, 2024, I served the parties listed below with the documents listed below by enclosing and sealing a copy of the documents in a separate envelope for each party, postage fully prepaid, then depositing the envelopes in a mailbox regularly maintained by the United States Postal Service at Aliso Viejo, California.

Documents:

Notice of Demurrer and Defendant's Demurrer to Plaintiff's Complaint; Memorandum of Points and Authorities in Support of Demurrer; Declaration of Cody Jay Brownstein in Support of Demurrer

Parties:

Orange County District Attorney's Office
Central Justice Center
700 W Civic Center Dr
Santa Ana CA 92701

Attorneys for Plaintiff,
People of the State of California

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: July 3, 2024

/s/ _____