

Cody Jay Brownstein
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Plaintiff, pro se

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CODY JAY BROWNSTEIN,

Plaintiff,

vs.

ORANGE COUNTY SHERIFF'S
DEPARTMENT; and

ROB BONTA, in his official
capacity as Attorney General of
the State of California,
Defendants.

Case No. 8:24-CV-00970-SSS (AS)

FIRST AMENDED COMPLAINT
FOR INJUNCTIVE RELIEF,
DECLARATORY RELIEF, AND
COMPENSATORY DAMAGES

[42 U.S.C. Section 1983]

1. This action concerns the violation of Plaintiff Cody Jay Brownstein's rights guaranteed under the Second and Fourteenth Amendments to the Constitution of the United States, as well as the violation of his rights guaranteed under Article 1, Section 7 of the State of California Constitution. Specifically, this action concerns: (1)

1 the denial of Plaintiff's CCW license application by Defendant Orange
2 County Sheriff's Department (OCSD) without due process being
3 afforded to Plaintiff; and (2) violation of Plaintiff's due process rights
4 by denying Plaintiff's application for a CCW license based on Section
5 26202(a)(3) of the California Penal Code. (Section 26202(a)(3) of the
6 California Penal Code provides generally that a person subject to a
7 restraining order or protective order in the 5 years preceding their
8 application for a CCW license is disqualified from receiving a CCW
9 license, even if the restraining order expired and regardless of how it
10 was issued.)

11 2. Defendant Rob Bonta (AG Bonta) is sued only in his official
12 capacity as Attorney General of the State of California and, in that
13 capacity, as the chief law officer of the State responsible for enforcing
14 the laws of the State, including Section 26202(a)(3) of the California
15 Penal Code.

16 3. On January 1, 2024, Plaintiff applied to the OCSD for a CCW
17 license by submitting an entirely completed "BOF 4012" form to the
18 OCSD via the OCSD's online Permitium system. All of the information
19 Plaintiff provided in the form was true, including information about
20 his criminal history, restraining order history, and residence history.

21 4. On January 2, 2024, Plaintiff wrote a letter to the OCSD to
22 supplement the information he provided in his BOF 4012 form,
23 specifically, information regarding his criminal history and character
24 references.

25 5. On February 5, 2024, Plaintiff submitted his fingerprints to
26 the California Department of Justice, as required by Section 26185(a)
27 (1) of the California Penal Code, via Live Scan.

1 6. On February 13, 2024, Plaintiff wrote a letter to the OCSD
2 to further supplement the information provided in his BOF 4012 form,
3 specifically, regarding his employer's address, history of restraining
4 orders, and mental illness history; and to correct the phone number
5 provided for a character reference. Plaintiff explained that the
6 temporary restraining order (TRO) he disclosed in his BOF 4012 form
7 was issued after an ex parte application was made without him having
8 been given prior notice, the TRO expired on May 3, 2022, and after a
9 hearing on that same day, no further restraining order was issued.
10 Plaintiff also asked in his letter for an additional firearm to be added
11 to his application.

12 7. As the TRO was applied for without notice to Plaintiff and
13 without his opportunity to oppose issuance of the TRO, the
14 constitutionally guaranteed due process rights of Plaintiff are violated
15 by allowing the TRO to have any effects after it expired.

16 8. On April 7, 2024, Plaintiff wrote a letter to the OCSD solely
17 to request that another firearm be added to his application.

18 9. On April 8, 2024, Plaintiff received an email from the OCSD,
19 stating in pertinent part: "In processing your application we have
20 come across a past arrest/conviction/formal charge on your record
21 that was not disclosed; Past Temporary Restraining Orders and 5 year
22 past residency history. We cannot proceed forward with this
23 application as you are required to answer the listed questions
24 truthfully."

25 10. Under Section 26202(a) of the California Penal Code, none
26 of the reasons cited by the OCSD for rejection of Plaintiff's
27 application, except for "Past Temporary Restraining Orders," was a
28 valid basis for rejecting Plaintiff's application. Moreover, no law

1 authorized the OCSD to decide on its own that it couldn't proceed
2 forward with Plaintiff's application, as opposed to determining that
3 Plaintiff is disqualified under Section 26202 of the California Penal
4 Code from being issued a CCW license.

5 11. The OCSD, by deciding on its own to stop processing
6 Plaintiff's application without the legal authority to do so, violated
7 Plaintiff's rights under the Second and Fourteenth Amendments to the
8 United States Constitution and his rights under Article 1, Section 7 of
9 the California Constitution.

10 12. On the same day, April 8, 2024, Plaintiff wrote a letter to
11 the OCSD explaining the inaccuracies in the email the OCSD sent. In
12 the same letter, Plaintiff requested that the OCSD approve his
13 application for a CCW license or, if the OCSD couldn't do that after
14 considering Plaintiff's letter, allow him to appeal the rejection of his
15 application. Plaintiff further stated in his letter: "Should the Orange
16 County Sheriff's Department not have a process for appealing
17 rejections of CCW applications, I'm requesting that I be provided with
18 the 'Request for Hearing to Challenge Disqualified Person
19 Determination' form identified in Penal Code section 26206."

20 13. On the same day, April 8, 2024, the OCSD replied by email
21 with only, in pertinent part: "Dear applicant, you may reapply and
22 please ensure you read the questions and input your yes answers with
23 an explanation."

24 14. On the same day, April 8, 2024, Plaintiff located on the
25 Internet the "Request for Hearing to Challenge Disqualified Person
26 Determination" form, completed the form, and mailed it to the Orange
27 County Superior Court for filing.

1 15. On April 19, 2024, Plaintiff called the Orange County
2 Superior Court to find out if his form was filed. He was informed by
3 the representative he spoke with that it could take 4 to 6 weeks to
4 process the form and there was no guarantee the form would be
5 deemed filed as of the date it was received.

6 16. This form was never filed and a hearing was never set as
7 required under Section 26206(d)(1) of the California Penal Code,
8 presumably because the OCSD simply decided on its own to stop
9 processing Plaintiff's application for a CCW license, as opposed to
10 determining that Plaintiff is disqualified from being issued a CCW
11 license, as discussed above.

12 17. On May 6, 2024, Plaintiff initiated the present action.

13 18. On May 15, 2024, AG Bonta was served with the summons
14 and complaint filed in this action.

15 19. On May 16, 2024, the OCSD was served with the summons
16 and complaint filed in this action.

17 20. On May 28, 2024, nearly 2 months after the OCSD was
18 required to do so under Section 26202(d) of the California Penal
19 Code, the OCSD formally denied Plaintiff's application for a CCW
20 license. Notably, the OCSD didn't formally determine Plaintiff is
21 disqualified from being issued a CCW license until the OCSD was
22 served with the summons and complaint filed in this action. Further,
23 under Section 26206 of the California Penal Code, Plaintiff couldn't
24 have requested a hearing earlier to challenge the determination
25 because the determination hadn't yet been made.

26 21. By delaying the formal determination that Plaintiff is
27 disqualified from being issued a CCW license and subsequently
28 denying his application, the OCSD violated Plaintiff's rights under the

1 Second and Fourteenth Amendments to the United States
2 Constitution and his rights under Article 1, Section 7 of the California
3 Constitution.

4 22. On June 4, 2024, the Orange County Superior Court
5 accepted for filing Plaintiff's new request for a hearing to challenge
6 the determination that he's disqualified from being issued a CCW
7 license, and set a hearing for August 2, 2024.

8 23. On June 15, 2024, Plaintiff completed the training required
9 under Section 26165 of the California Penal Code.

10 24. On August 2, 2024, the Orange County Superior Court held
11 a hearing and upheld the determination that Plaintiff is disqualified
12 from being issued a CCW license.

13 25. Plaintiff still has not been issued the CCW license he applied
14 for. He has satisfied all of the requirements for issuance of a CCW
15 license and is denied issuance only because of the determination that
16 he's disqualified under Section 26202(a)(3) of the California Penal
17 Code.

18 Prayer for Relief

19 Based on the above factual statements, Plaintiff prays for:

20 1. Injunctive relief, namely, an order directing the OCSD to
21 immediately issue a CCW license to Plaintiff and an order enjoining
22 AG Bonta and persons under his supervision from enforcing Section
23 26202(a)(3) of the California Penal Code;

24 2. Declaratory relief, namely, a declaration that enforcement
25 of Section 26202(a)(3) of the California Penal Code is
26 unconstitutional;

27 3. Compensatory damages according to proof;

28 4. Reasonable attorney's fees should such fees be incurred;

5. Costs of prosecuting this action; and
6. Any other relief the Court deems proper.

Dated this 18th day of August,
2024

/s/ Cody Jay
Brownstein

Cody Jay Brownstein,
Plaintiff, pro se