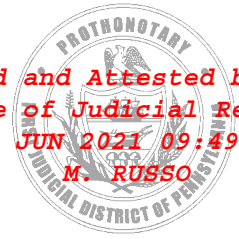


COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL

Filed and Attested by the
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M. RUSSO



**Gun Owners of America Inc., Gun Owners
Foundation, Jack Breslow, Daniel Enden,
Devon Pirestani, Sasson Aaron Soffer, and
Luke Sturgis,**

Plaintiff(s);

vs.

**City of Philadelphia, and
Commissioner Danielle M. Outlaw,**

Defendant(s).

June Term, 2021

No. _____

COMPLAINT — CLASS ACTION

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. if you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

PHILADELPHIA BAR ASSOCIATION
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
(215) 238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio, vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

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Gun Owners of America Inc., Gun Owners Foundation, Jack Breslow, Daniel Enden, Devon Pirestani, Sasson Aaron Soffer, and Luke Sturgis, *Plaintiff(s);*
vs.
City of **Philadelphia, and**
Commissioner Danielle M. **Outlaw,**
Defendant(s).

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

June Term, 2021
No. _____

COMPLAINT — CLASS ACTION

Pennsylvania Law is crystal clear: Philadelphia “shall, within 45 days, issue or refuse to issue” an applicant’s License to Carry Firearms (“LTCF”). 18 Pa. C.S. § 6109 (g). This issue was definitively settled by this Court in 2014, where the City of Philadelphia consented to a permanent injunction, where it was required to “process all LTCF applications ... within 45 calendar days from the date of application[.]” However, despite this Court’s 2014 order, and at least three other recent lawsuits on this subject, Commissioner Outlaw and the City of Philadelphia refuse to comply with this clear statutory mandate to timely issue LTCFs.

Plaintiffs Gun Owners of America, Gun Owners Foundation, and four Representative Plaintiffs bring this class-action against the City of Philadelphia and Commissioner Outlaw. Despite the clear 45-day mandate by the General Assembly, Defendants are requiring applicants to wait over 100 days to physically receive their LTCFs. Plaintiffs seek immediate relief from the City’s refusal to timely issue LTCFs and further to preliminarily and permanently enjoin Philadelphia to “issue or refuse” all licenses within the 45 days required by law.

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PARTIES

1. Plaintiff **Gun Owners of America, Inc.** (“GOA”) is a California non-stock corporation with its principal place of business at 8001 Forbes Pl., Springfield, Virginia. GOA is organized and operated as a non-profit membership organization exempt from federal income taxes under the 26 U.S.C. § 501 (c) (4). GOA was incorporated in 1976 to preserve, protect, and defend the Second Amendment rights of gun owners. GOA has thousands of members and supporters, including residents of the City of Philadelphia, who timely seek their Pennsylvania License to Carry Firearms, and brings this action on their behalf.
2. Plaintiff **Gun Owners Foundation** (“GOF”) is a Virginia non-stock corporation with its principal place of business in Virginia, at 8001 Forbes Place, Springfield, VA 22151. GOF is organized and operated as a nonprofit legal defense and educational foundation that is exempt from federal income taxes under 26 U.S.C. § 501 (c) (3). GOF is supported by gun owners across the country, including Philadelphia residents who are being irreparably harmed by the challenged ordinance. GOF routinely litigates across the country to defend its supporters’ right to keep and bear arms.
3. Plaintiff **Jack Breslow**, on behalf of himself and all others similarly situated, is an adult individual residing at 4405 Osage Avenue, Philadelphia, Pennsylvania 19104. Mr. Breslow is a law-abiding person who is eligible under Pennsylvania State Law to be issued his License to Carry Firearms. Mr. Breslow is a member of Gun Owners of America.
4. Plaintiff **Daniel Enden**, on behalf of himself and all others similarly situated, is an adult individual residing at 3108 Miller Street, Philadelphia, Pennsylvania 19134. Mr. Enden is a law-abiding person who is eligible under Pennsylvania State Law to be issued his License to Carry Firearms. Mr. Enden is a member of Gun Owners of America.
5. Plaintiff **Devon Pirestani**, on behalf of himself and all others similarly situated, is an adult individual residing at 1300 Chestnut Street, Apt. 901, Philadelphia, Pennsylvania 19107. Mr. Pirestani is a law-abiding person who is eligible under Pennsylvania State Law to be issued his License to Carry Firearms. Mr. Pirestani is a member of Gun Owners of America.

6. Plaintiff **Sasson Aaron Soffer**, on behalf of himself and all others similarly situated, is an adult individual residing at 100 North 22nd Street, Apt. 114, Philadelphia, Pennsylvania 19103. Mr. Soffer is a law-abiding person who is eligible under Pennsylvania State Law to be issued his License to Carry Firearms. Mr. Soffer is a member of Gun Owners of America.
7. Plaintiff **Luke Sturgis**, on behalf of himself and all others similarly situated, is an adult individual residing at 1 Parker Avenue Apt. 1307, Philadelphia, Pennsylvania 19128. Mr. Sturgis is a law-abiding person who is eligible under Pennsylvania State Law to be issued his License to Carry Firearms. Mr. Sturgis is a member of Gun Owners of America.
8. Defendant **City of Philadelphia**, is a Municipal Corporation of the First Class of the Commonwealth of Pennsylvania under the First Class City Home Rule Act of April 21st, 1949, P.L. 665, § 1 *et seq.*
9. Defendant **Danielle M. Outlaw**, named in her official capacity as the Commissioner of the Philadelphia Police Department (“PPD”), is Chief of Police for the City of Philadelphia, responsible for the issuance of License to Carry Firearms for residents of this city. 18 Pa. C.S. § 6109. Commissioner Outlaw’s principal office is Police Headquarters, located at 750 Race Street, Philadelphia, Pennsylvania.

OTHER ENTITIES

10. The **PPD Gun Permit Unit**, located at 660 E. Erie Avenue, Philadelphia, Pennsylvania, is the PPD office designated by Commissioner Outlaw to receive applications for- and issue- License to Carry Firearms within the City of Philadelphia.

JURISDICTION & VENUE

11. This Court has unlimited original jurisdiction, and venue is proper as the Defendants are a municipality- and public employee acting in their official capacity- within this judicial district. 42 Pa. C.S. § 931, Pa. R.C.P. 1006 (a) and 2103 (b).

12. Both the City of Philadelphia and Police Commissioner are further subject to the personal jurisdiction of this Court, as they are located in – or reside within– the Commonwealth of Pennsylvania.

ALLEGATIONS

13. This is the second lawsuit initiated by Plaintiff Gun Owners of America regarding Defendants Philadelphia and Commissioner Outlaw’s refusal to comply with the 45 day mandate of Pennsylvania law. The first lawsuit in Mandamus and Declaratory Judgment was initiated in October 2020 in response to the City of Philadelphia’s refusal to timely **accept** applications, but instead created an “appointment” process to allow applicants to drop off their one-page LTCF applicant. *Gun Owners of America, et al. v. Philadelphia, et al.*, Phila. Com. Pl. (Oct ‘20 # 130).
14. After a Motion for Peremptory Judgment, Defendants Philadelphia and Outlaw decided to accept applications via email, providing Plaintiff GOA and those Plaintiffs the relief sought in the lawsuit.
15. However, Defendants have now simply shifted their illegal process: Instead of making individuals wait months to drop-off their application, they are trying to make approved applicants wait months to pick-up their physical LTCF.
16. However, Defendants shall issue an LTCF within 45 days, and the “procedures in 18 Pa. C.S. § 6109 do not vest authority in the Police Commissioner to arbitrarily extend the 45 day period prescribed in the statute to actually issue the license.” See Judge Roberts’ 05/12/21 Order, *Auerbach v. Outlaw*, Phila. Com. Pl. (Apr. ‘21 # 1216) [*Exhibit E*].

Legal Background

17. Pennsylvania has a state-wide License to Carry Firearms (“LTCF”) allowing for individuals to “carry[] a firearm concealed on or about one’s person or in a vehicle throughout this Commonwealth.” 18 Pa. C.S. § 6109 (a).

18. Pennsylvania Law requires that Commissioner Outlaw issue or refuse to issue an applicant's LTCF within 45 days of application. 18 Pa. C.S. § 6109 (g).
19. In 2014, the City of Philadelphia entered a consent agreement in the matter of *Doe, et al. v. Philadelphia, et al.*, Phila. Com. Pl., (Dec '12 # 3785) where Judge Allen entered as part of a permanent injunction: "The City of Philadelphia and its Police Department shall process all LTCF applications, and issue an approval or denial of such application, within 45 calendar days from the date of application, as required by 18 Pa. C.S. § 6109 and as calculated pursuant to Pa. R.C.P. 106." [*Exhibit F* at ¶ 26 (n)].
20. On May 12th 2021, this Court further entered a Mandamus order in the matter of *Auerbach v. Outlaw*, Phila. Com. Pl., (Apr. '21 # 1216), mandating that Commissioner Outlaw issue a Plaintiff his LTCF in accordance with the statutory requirements of 18 Pa. C.S. § 6109. [*Exhibit E*].

Factual Background

21. The PPD Gun Permit Unit now uses a private company, Permittium, to process LTCF applications (instead of their initial email process). Permittium is the sole means that an applicant can apply for and receive an LTCF application in Philadelphia.
22. The Permittium system sends an application acknowledgment email and approval email notifying the applicant of their status, and instructing the applicant to schedule an appointment to pick up the LTCF from the PPD Gun Permit Unit.
23. The only means to book an appointment to pick up an approved LTCF is via the Permittium system.
 - (a) Plaintiff Breslow received his acknowledgment on May 7th 2021. He was approved on May 12th 2021. The first available appointment to pick up his LTCF was September 14th 2021 (or 130 days after his application).
 - (b) Plaintiff Enden received his acknowledgment on April 15th 2021. He was approved on May 11th

2021. The first available appointment to pick up his LTCF was September 16th 2021 (or 154 days after his application).

(c) Plaintiff Pirestani received his acknowledgment on March 31st 2021. He was approved on April 28th 2021. The first available appointment to pick up his LTCF was August 23rd 2021 (or 145 days after his application).

(d) Plaintiff Soffer received his acknowledgment on May 25th 2021. [*Exhibit A*]. He was approved on May 28th 2021. [*Exhibit B*]. The first available appointment to pick up his LTCF was September 16th 2021 (or 114 days after his application). [*Exhibit D*].

(e) Plaintiff Sturgis received his acknowledgement on April 14th 2021. He was approved on April 26th 2021. The first available appointment to pick up his LTCF was August 17th 2021 (or 125 days after his application).

24. The Permitium approval email sent to all Plaintiffs emphasizes that approval is not issuance, emphasizing the following in red text:

NOTICE: This approval letter DOES NOT give you the Authority or Permission to carry a firearm. You must be in possession of the physical License To Carry in order to do so. If you are found to be carrying a firearm without having been issued the actual License To Carry you will be subject to arrest.

PPD Permitium Approval Email (emphasis in original) [*Exhibit B*]

25. This is reinforced in Plaintiff Soffer's correspondence with the PPD Gun Permit Unit:

An approval letter does not give you permission to carry. You are not licensed until come [sic] into the Gun Permit Unit, take your picture, and the **License is handed to you.**

Email from PPD Gun Permit Unit (emphasis added) [*Exhibit C*]

26. Despite the clear mandate of Pennsylvania law requiring Commissioner Outlaw to issue a permit within 45 days, the PPD Gun Permit Unit refuses to comply, instead:

All applications are processed in the order in which they are received. Scheduling is based upon the first available appointment.

Email from PPD Gun Permit Unit [*Exhibit C*]

CLASS

27. Plaintiffs bring this suit as a class action pursuant to Pa. R.C.P. 1702, 1708, and 1709 on behalf of themselves and the following class: “Any person who has applied for a License to Carry Firearms in Philadelphia but has not yet received their license or a denial thereof.”
28. The members of the class are so numerous that joinder of all members is impractical. Plaintiffs do not know the number of class members that exist however it is estimated to be more than one-thousand. However, the precise number of class members and their identities can be ascertained from the records of Defendants. It would be impracticable to individually join these plaintiffs without the use of a class action lawsuit.
29. The representative plaintiffs’ claims raise questions of law and fact common to all class members. Among the questions of law and fact common to the class are the following:
 - (a) Is Mandamus an appropriate remedy to force Commissioner Outlaw to comply with her statutory duties under 18 Pa. C.S. § 6109?
 - (b) Is the language and procedure outlined in 18 Pa. C.S. § 6109 clear and unambiguous?
 - (c) Does the City of Philadelphia have the authority to unilaterally extend the time period set by the Pennsylvania Legislature for the issuance or refusal of LTCFs?
 - (d) Is the Defendants refusal to comply with their statutory duties despite both a 2014 consent order and 2021 mandamus order entitle Plaintiffs to attorneys’ fees for the Defendants improper conduct?
30. The claims of the representative plaintiff are typical of, if not identical to, the claims of each member of the class because all class members are facing a substantively identical failure by the Defendants to timely issue their LTCFs within 45 days, as required by Pennsylvania law. 18 Pa. C.S. § 6109.
31. The representative plaintiff will fairly and adequately protect the interests of all class members. They have retained competent counsel who has experience in complex litigation, and knowledge

of firearms and state preemption laws, who will prosecute this action vigorously. Neither representative plaintiff nor their counsel have any interests antagonistic to or in conflict with the class; their interests are antagonistic to the interests of the defendants; and they will vigorously pursue the claims of the class. Representative plaintiffs have adequate financial resources to vigorously pursue this action, including an agreement with Plaintiffs GOA and GOF to assume the reasonable and necessary costs and expenses of litigation.

32. A class action provides a fair and efficient method for adjudication of the controversy:
- (a) The questions of law or fact common to the class members predominate over any questions affecting only individual members. The common questions set forth above (§ 29) will affect all class members alike and predominate over any individual issues that could be present, as the resolutions of those are the essential elements of the cause of action that may be proven through simultaneous class-wide evidence.
 - (b) There are an unknown number of class members, but believed to be more than one-thousand, and their claims are substantially identical. The case presents no unusual management difficulties. The claims are ideally suited to class treatment, as the claims involve matters of statutory interpretation and the size of the class is too large for individual litigation, but not so large as to present an obstacle to the manageability as a class action.
 - (c) The prosecution of separate actions by individual members of the class would, as a practical matter, impair or impede the ability of others who are not parties to the individual actions to protect their interests, and defendants could be confronted with inconsistent standards of conduct. Further, it would require thousands of individual plaintiffs to seek to enforce their rights before this Court.
 - (d) There have been several lawsuits initiated against Defendants regarding this issue over the last year, including litigation by both Gun Owners of America and other gun rights organizations seeking to force Defendants to timely issue LTCFs. Thus far, Defendants have continued to refuse to comply with plain language of 18 Pa. C.S. § 6109. However, recently this Court ruled

on an individual applicant, and entered an order in mandamus requiring Commissioner Outlaw to timely issue his LTCF. [*Exhibit E*]. Upon information and belief, there is no other litigation pending that would resolve this dispute.

- (e) This Court is an appropriate forum to concentrate all litigation respecting class member claims, as this is a matter of statutory interpretation of Pennsylvania laws, and this is the sole state court with proper jurisdiction and venue over the Defendant City of Philadelphia and Commissioner Outlaw in her official capacity.
- (f) Individuals are suffering ongoing and irreparable harm for the Defendants failure to comply with the statutory mandate; this lawsuit does not seek individual damages but rather only injunctive relief that would require Defendants to timely issue LTCFs.

LEGAL COUNTS

Count # 1

Writ of Mandamus

Pa. R.C.P. 1091 *et seq.*

- 33. Plaintiffs incorporates by reference ¶¶ 17–32f above as if fully set forth herein.
- 34. Plaintiffs, on behalf of themselves and all others similarly situated, bring an action in Mandamus against Commissioner Outlaw.
- 35. Commissioner Outlaw has a ministerial duty to issue or deny an LTCF application within the 45 days permitted by the statute. *See* 18 Pa. C.S. § 6109 (g) (“Upon the receipt of an application for a license to carry a firearm, the sheriff [or chief of police] shall, within 45 days, issue or refuse to issue a license on the basis of the investigation under subsection (d) and the accuracy of the information contained in the application.”)
- 36. Commissioner Outlaw, as chief of police for Philadelphia, a city of the first class, is required under the law to accept applications for Pennsylvania License to Carry Firearms. § 6109 (b).

37. These applications are accepted via the Permitium system, which sends an acknowledgment which initiates the City's 45 day (maximum) investigation period.
38. Once the investigation is complete, the Permitium system notifies applicants via email they are approved. This approval email shows Commissioner Outlaw, via the PPD Gun Permit Unit, has determined the individual applicants are "individual[s] concerning whom no good cause exists to deny their license." 18 Pa. C.S. § 6109 (e).
39. Thereafter, applicants are instructed to schedule an appointment to pick-up their LTCF from the PPD Gun Permit Unit. However, appointments are not available within 45 days of the LTCF application, but instead are routinely treble the statutorily allowed term.
40. Commissioner Outlaw is then required to "issue or refuse a license" within forty-five (45) days of receipt of an LTCF application. 18 Pa. C.S. § 6109 (g).
41. However, Commissioner Outlaw is refusing to "issue or refuse a license" within the statutory time-frame, interfering with Plaintiffs' statutory rights under Pennsylvania laws. *See* 18 Pa. C.S. § 6109 (g).
42. Commissioner Outlaw will not comply with her clear statutory duty, and Plaintiffs have no other adequate remedy at law to address this infringement of their statutory rights.
43. Commissioner Outlaw should be commanded to perform her ministerial duty to accept LTCF applications from Philadelphia residents immediately and without delay.
44. Commissioner Outlaw has previously and identically defended this issue in *Auerbach v. Outlaw*, Phila. Com. Pl., (Apr. '21 # 1216), where she had a full and fair opportunity to litigate the issue, the determination in the prior proceeding was essential, and Judge Roberts entered a final judgment in mandamus. Therefore, Defendants may not re-litigate this issue as a matter of collateral estoppel.¹ *Balent v. City of Wilkes-Barre*, 669 A.2d 309, 313 (Pa. 1995).

¹ The order on May 12th 2021 granted Mr. Auerbach complete relief, and upon information and belief the PPD Gun Permit Unit complied with that order on Friday, May 14th 2021. However, the Office of Judicial Records has not marked this case with a final judgment, and Mr. Auerbach has a pending motion to do so before this Court.

45. Commissioner Outlaw and the City of Philadelphia will not comply with the clear statutory requirement of 18 Pa. C.S. § 6109, despite agreeing to permanent injunction requiring such compliance by this Court on October 29th 2014, and further order of this Court in mandamus on May 12th 2021. Therefore, Defendants are subject to attorneys' fees pursuant to 42 Pa. C.S. § 2503.

WHEREFORE, Plaintiffs ask this Court to mandate that Commissioner Outlaw and the City of Philadelphia issue LTCFs within 45 days of the application in accordance with 18 Pa. C.S. § 6109 (g), award attorney's fees and costs and enter any other relief that this Court deems just and proper.

Count # 2
Declaratory Judgment

42 Pa. C.S. §§ 7351 *et seq.*

46. Plaintiffs incorporates by reference ¶¶ 17–45 above as if fully set forth herein.
47. As described above, Commissioner Outlaw's refusal to issue LTCFs within the 45 days required by law violates 18 Pa. C.S. § 6109.
48. An actual dispute exists between the parties regarding Commissioner Outlaw's legal obligations, despite this Court's repeated instruction to the Defendants to the contrary.
49. The existence of a remedy in mandamus does not preclude an action in declaratory judgment. 42 Pa. C.S. § 7537, § 7531 (b).
50. Commissioner Outlaw and the City of Philadelphia refuse to comply with the clear statutory requirement of 18 Pa. C.S. § 6109, despite agreeing to permanent injunction requiring such compliance by this Court on October 29th 2014, and further order of this Court on May 12th 2021. Therefore, De-

endants are subject to attorneys' fees pursuant to 42 Pa. C.S. § 2503 for their "arbitrary, vexatious or [] bad faith" conduct.

WHEREFORE, Plaintiffs ask this Court to declare that Commissioner Outlaw and the City of Philadelphia must "issue or refuse to issue" LTCFs within 45 days of the application in accordance with 18 Pa. C.S. § 6109 (g), award attorney's fees and costs and enter any other relief that this Court deems just and proper.

JURY DEMAND

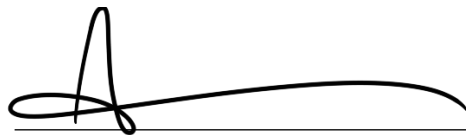
For any issues so triable, Plaintiffs hereby demand a jury trial.

RELIEF REQUESTED

WHEREFORE, Plaintiffs asks that judgment be entered in their favor, and both **COMMANDING** and **DECLARING** Commissioner Outlaw and the City of Philadelphia shall issue or refuse, within 45 days, all applicants LTCFs—including the physical license—pursuant to Pennsylvania law, 18 Pa. C.S. § 6109.

Further, Plaintiffs ask that this Court award them damages including attorneys' fees, and costs, as well as any other relief this Court may find is just and proper.

Respectfully Submitted,



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