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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 CHRISTOPHER ANDERSON,) **CASE NO. 2:14-cv-05241-DDP-PLA**
11 MICHAEL DOZIER, DAVID)
12 MARCINKUS, ARI FRIEDMAN) PLAINTIFFS POST PERUTA
13 AND ARI MILLER) SUPPLEMENTAL BRIEFING;
14 Plaintiffs,) WAIVER OF FURTHER BRIEFING
15 vs.) AND ORAL ARGUMENT; REQUEST
16 JOHN SCOTT & CHARLIE BECK) FOR RULING ON PENDING
17 Defendants.) MOTIONS TO LIFT STAY, TO
18) DISMISS AND FOR SUMMARY
19) JUDGMENT
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19 “The right of the people to keep and bear arms shall not be infringed”. The
20 Second Amendment to the United States Constitution. One need look no further than
21 the second item in the Bill of Rights to understand the Right belongs to the People
22 and and includes the Right to Bear Arms. Unfortunately, Courts have gotten lost in
23 the minutiae of specific claims, but such rabbit hole is not necessary here as Plaintiff
24 simply seeks a lawful means to exercise his Right to Bear Arms. If Defendant, acting
25 as the representative of the State under the statutory scheme has an alternative
26 proposal, Plaintiff is open to it, but to date, Defendants sole position is that Plaintiff
27 has no Right to Bear Arms. Plaintiff submits only that some avenue must be afforded
28 the People of this County to avoid a de facto ban on a Fundamental Civil Right.

1 This case is only complicated because of the bizarre statutory webs that create
2 a complete ban when they are combined with unfettered discretion in an elected
3 official, to wit the Defendant. Leaving a fractured state where most Sheriffs issue
4 permits to law abiding citizens, but a few still refuse to do so, as in the instant action.
5 Quite simply, Plaintiff has a Fundamental Constitutional Right to Keep and Bear
6 Arms that is being infringed by Defendant, who possesses sole discretionary power to
7 determine whether Plaintiff, a law abiding citizen, gets to exercise his Right to Bear
8 Arms for Self Defense as it concealed carry that is the only authorized means
9 currently existing under the legislative scheme that permits a citizen to bear arms in
10 the County and based solely upon his subjective opinion, Defendant has exercised
11 this discretion to deny Plaintiff the ability to Bear Arms outside the home.

12 This unfettered discretion is no more bizarre than book censorship by a library
13 board, discretionary search warrants with no public oversight by private citizens, or
14 giving the right to counsel only to friends of elected officials. How can the vast
15 majority of Sheriffs in this State do their duty, while a few insist on creating their own
16 terms and definitions, even after a citizen passes the State background check, is
17 entitled to possess a weapon and has not been dispossessed of any Constitutional
18 Right as a matter of law? That is exactly what Defendant has done here.

19 Plaintiff does not dispute that the Peruta court found there was no specific right
20 to concealed carry, but it specifically did not address whether the right existed outside
21 the home, or if open carry must then be a viable alternative stating that the question
22 was not presented. In Peruta the Court specified that it did "... not reach the question
23 whether the Second Amendment protects some ability to carry firearms in public,
24 such as open carry. That question was left open by the Supreme Court in *Heller*, and
25 we have no need answer it here." 10-56971, 2016 WL 3194315 (9th Cir. June 9,
26 2016), at 19. Peruta was based upon a pre-open carry ban and the question presented
27 was somehow limited to the sole issue of whether there was a Right to concealed
28 carry, something not contended in this action.

1 Ironically, Judge Otero found there was no right to open carry, again not
2 addressing that the Fundamental Right was a Right to Bear Arms, but instead relying
3 not he prior Peruta panel decision finding that there was a Fundamental Right to
4 concealed carry. Suggesting the State had approved only concealed carry, again based
5 upon the limited question presented by the parties Judge Otero found no right to Open
6 Carry in Los Angeles County:

7 Importantly, and fatal to Plaintiff’s open carry claims in this case, in
8 reaching this conclusion the Peruta Court also found that:

9 [T]he state has a right to prescribe a particular manner of carry,
10 provided that it does not “cut[] off the exercise of the right of
11 the citizen altogether to bear arms, or, under the color of
12 prescribing the mode, render[] the right itself useless.” [Nunn v.
13 State, 1 Ga. 243, 243 (1846)]. California’s favoring concealed
14 carry over open carry does not offend the Constitution, so long
15 as it allows one of the two.

16 Nichols v. Harris, Case No. CV 11-9916 SJO, from Referees
17 Report dated 3/18/16 and adopted as final Judgment, at 21.

18 Thus, we are left with a conundrum, which one of the two is permitted and how
19 does Plaintiff herein get this Court to recognize his Right to Bear Arms is being
20 infringed? Peruta initially found a right to carry concealed, and then *en banc* the 9th
21 Circuit found no specific right to concealed carry, but meanwhile, this District has
22 found no right to open carry because Concealed Carry is an option, all the while
23 having lost sight of the forest for the trees as the Supreme Court has repeatedly stated,
24 as the Second Amendment reads, the People have a Right to Bear Arms for Self
25 Defense.

26 Furthering the unanimous vote, Justices Alito and Thomas concurred in
27 Caetano v. Massachusetts, 136 S. Ct. 1027, decided March 21, 2016, making it clear
28 that 'it is settled that the Second Amendment protects an individual right to keep and
bear arms applies against both the Federal Government and the States. District of
Columbia v. Heller, 554 U. S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637

1 (2008); McDonald v. Chicago, 561 U. S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894
2 (2010). That right vindicates the “basic right” of “individual self-defense.” Id., at 767,
3 130 S. Ct. 3020, 177 L. Ed. 2d 894; see Heller, supra, at 599, 628, 128 S. Ct. 2783,
4 171 L. Ed. 2d 637. Caetano’s encounter with her violent ex-boyfriend illustrates the
5 connection between those fundamental rights: By arming herself, Caetano was able
6 to protect against a physical threat that restraining orders had proved useless to
7 prevent. And, commendably, she did so by using a weapon that posed little, if any,
8 danger of permanently harming either herself or the father of her children.’
9 Caetano v. Massachusetts, 136 S. Ct. 1027 decided March 21, 2016 at 1028-1029.

10 Moreover, this isn't new, because as set forth in the Motion for Summary
11 Judgment, the Supreme Court has indeed long recognized both the right to possess
12 arms and the right to self defense:

13 “Putting all of these textual elements together, we find that they guarantee the
14 individual right to possess and carry weapons in case of confrontation.”
15 District of Columbia v. Heller, 128 S. Ct. 2783, at 2798 (2008).

16 Again reiterating just two years later:

17 “Self-defense is a basic right, recognized by many legal systems from ancient
18 times to the present day, and in Heller, we held that individual self-defense is
19 “the central component” of the Second Amendment right”. McDonald v. City
20 of Chicago (2010) 130 S. Ct. 3020, at 3037.

21 Thus, the very basic question presented here is whether this Court recognizes
22 that Plaintiff has a fundamental Right to Bear Arms outside the home, and if so, in
23 what manner should plaintiff be allowed to exercise that right as it is the State that
24 has chosen the Sheriff as it means for both enforcing the ban on open carry and given
25 the ministerial power to issue the license needed to exercise that Right.

26 Put quite simply, Plaintiff asks this Court to remedy the violation of their Right
27 to Bear Arms by a Sheriff who has created his own interpretation of the law thus
28 creating a complete ban on the Right to Bear Arms by imposing discretionary
conditions well in excess of any valid legal basis insisting that he has plenary and

1 unfettered discretion to decide who gets their right and who doesn't. Moreover,
2 plaintiff does not dispute the necessity for a criminal background check matching that
3 necessary to purchase a gun, nor the training requirements. The only infringing
4 conduct here is the breach of a ministerial duty by an elected official to issue a license
5 necessary (no matter how much that conduct offends the nature of the right) to
6 exercise the fundamental right in question when that same ministerial agent is in
7 charge of enforcing laws banning the possession of a weapon for self defense in the
8 absence of such license.

9 Plaintiff would respectfully submit that the debate between open and concealed
10 carry is one best left for the politicians, and that the focus in this case remain simply
11 the redress sought by Plaintiff, to wit, the ability to exercise his Right to Bear Arms
12 outside the home for the purpose of Self Defense in a lawful manner.

13
14 June 20, 2016

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16 /s/ Jonathan W. Birdt