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

10

11 CHRISTOPHER ANDERSON,  
MICHAEL DOZIER, DAVID  
12 MARCINKUS, ARI FRIEDMAN AND  
ARI MILLER,

13 Plaintiffs,

14 v.

15 JOHN SCOTT & CHARLIE BECK,

16 Defendants.  
17

CASE NO. CV 14-05241-DDP-PLAx

**DEFENDANT JOHN SCOTT'S  
SUPPLEMENTAL (POST-PERUTA)  
BRIEF**

18 In accordance with this Court's Order entered November 16, 2016, Defendant  
19 John Scott submits this Supplemental Brief in light of the Ninth Circuit's en banc  
20 decision in *Peruta v. County of San Diego*, No. 10-56971, 824 F.3d 919 (9<sup>th</sup> Cir.  
21 2016) ("*Peruta*"). *Peruta* clearly held that the Second Amendment of the United  
22 States Constitution does not convey an absolute right to carry concealed weapons in  
23 public places. Because there is no Constitutional right to carry concealed weapons  
24 in public, the *Peruta* court held that the requirement that an applicant show good  
25 cause to obtain a concealed weapons permit, irrespective of how good cause is  
26 defined, does not violate the Second Amendment.

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CV 14-05241-DDP-PLAx

**DEFENDANT JOHN SCOTT'S  
SUPPLEMENTAL (POST-PERUTA)  
BRIEF**

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## BACKGROUND

Plaintiffs in this case are five individuals who bring suit under 42 U.S.C. § 1983 against John Scott, the former acting Sheriff for the Los Angeles County Sheriff's Department ("LASD"), and Charlie Beck, the Chief of the Los Angeles Police Department ("LAPD"). Plaintiffs allege the violation of their Second Amendment rights resulting from Defendants' alleged denials of applications for licenses to carry concealed weapons. (Complaint, Docket No. 1). Plaintiffs allege that the applications were denied because of their failure to meet Defendant Scott's required showing of "proof of an imminent threat," or Defendant Beck's required showing of "imminent harm." (Complaint at ¶¶ 10-12).

On July 17, 2014, just ten days after filing their complaint, Plaintiffs filed a motion for summary judgment against Defendants before either Defendant had appeared in the litigation. (Docket No. 8). On August 1, 2014, Defendant Beck filed a motion to 1) dismiss the complaint; 2) stay Plaintiffs' action pending the Ninth Circuit *Peruta* litigation; and 3) strike Plaintiffs' premature motion for summary judgment. (Docket No. 13). On August 8, 2014, Defendant Scott joined Defendant Beck's motion. (Docket No. 15). On September 18, 2014, this Court issued a Minute Order vacating the hearing date for Defendants' motion and staying the case pending issuance of the mandate in *Peruta*. (Docket No. 26).

On June 16, 2015, *Peruta* was argued and submitted en banc to the Ninth Circuit. On June 9, 2016, the Ninth Circuit issued its en banc decision holding that "the Second Amendment does not protect, in any degree, the carrying of concealed firearms by members of the general public." On November 16, 2016, this Court issued a Minute Order granting Plaintiffs' Ex Parte Application to lift the stay in this case and ordering Defendants to file a supplemental brief addressing the effect of the Ninth Circuit's en banc decision in *Peruta*. (Docket No. 54).

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**ARGUMENT**

The California Legislature has given local law enforcement agencies the discretion to issue CCW permits to qualified individuals who can show "good cause." California Penal Code §§ 26150, et seq. Plaintiffs' complaint alleges that Defendants' denial of their concealed weapons (CCW) permit applications for failure to show such good cause violated their Second Amendment right to bear arms. (Complaint at ¶¶ 10-12). This claim – a constitutional challenge to the denial of their CCW applications based on their failure to show the requisite "good cause" for issuance of a CCW permit – has been foreclosed by the Ninth Circuit's en banc decision in *Peruta*. The *Peruta* decision established as a matter of law that the LASD's requirement that a CCW permit applicant show good cause does not violate the Second Amendment. As such, this Court should grant Defendants' motion to dismiss this case pursuant to Fed. R. Civ. P. 12(b)(6).

**I. The *Peruta* Court Unequivocally Held That a Local Law Enforcement Agency's Requirement that a Concealed Weapons Permit Applicant Demonstrate Good Cause Does Not Violate the Second Amendment.**

The facts of *Peruta* are nearly identical to this case. Plaintiff Edward Peruta, a resident of San Diego County, applied for a license to carry a concealed firearm. The application was denied because Plaintiff had not shown good cause as required under San Diego County policy. 824 F.3d at 924. San Diego County policy defined "good cause" as "a set of circumstances that distinguish the applicant from the mainstream and causes him or her to be placed in harm's way. Simply fearing for one's personal safety alone is not considered good cause." *Id.* Thus, like LASD and LAPD, San Diego County required a showing of a particularized reason why an applicant needs a concealed weapon for self-defense. And similarly, Plaintiffs' CCW applications were allegedly denied because they failed to make such a showing of good cause as defined by LASD or LAPD policy. (Complaint at ¶¶ 10-12).

1           After reviewing the history relevant to the Second Amendment and its  
2 incorporation by the Fourteenth Amendment, the *Peruta* en banc court held: "We  
3 therefore conclude that the Second Amendment right to keep and bear arms does not  
4 include, in any degree, the right of a member of the general public to carry  
5 concealed firearms in public. In so holding, we join several of our sister circuits that  
6 have upheld the authority of states to prohibit entirely or to limit substantially the  
7 carrying of concealed or concealable firearms." *Peruta*, 824 F.3d at 939 (citing  
8 cases). Further, "[b]ecause the Second Amendment does not protect in any degree  
9 the right to carry concealed firearms in public, any prohibition or restriction a state  
10 may choose to impose on concealed carry – including a requirement of "good  
11 cause," however defined – is necessarily allowed by the Amendment." *Id.*

12           This holding "fully answered" the questions presented to the *Peruta* court,  
13 which are identical to those presented by the complaint. As a matter of law, the  
14 Second Amendment does not convey an absolute right to carry concealed weapons  
15 in public places. As such, a county or city's requirement that a CCW permit  
16 applicant show good cause for the issuance of that permit does not violate the  
17 Second Amendment. As in *Peruta*, Plaintiffs' challenge is to the policies governing  
18 concealed carry and the denial of their CCW applications. Appellant cannot invoke  
19 the Second Amendment to protect a right to carry a concealed weapon, as that right  
20 "does not exist under the Amendment." 842 F.3d at 942. Accordingly, *Peruta* is  
21 binding authority in this case and the complaint should be dismissed as a matter of  
22 law.

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**CONCLUSION**

For the foregoing reasons, Defendants' motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) should be granted.

DATED: December 2, 2016

Respectfully submitted,

MARY C. WICKHAM  
County Counsel

By       /s/ Lana Choi        
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Senior Associate County Counsel

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