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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 EDWARD PERUTA,

12 Plaintiff,

13 v.

14 COUNTY OF SAN DIEGO, WILLIAM D.
15 GORE, INDIVIDUALLY AND IN HIS
16 CAPACITY AS SHERIFF,

17 Defendants.

) USSD No. 09-CV-2371 IEG (BGS)

) **COUNTY OF SAN DIEGO AND**
) **WILLIAM D. GORE'S OPPOSITION**
) **TO PLAINTIFF'S MOTION TO**
) **AMEND**

) Date: June 1, 2010

) Time: 10:30 a.m.

) Courtroom: 1

) Honorable Irma E. Gonzalez

[Defendants Demand Jury Trial]

18
19 **I**

20 **INTRODUCTION**

21 The Complaint in this action was filed on October 23, 2009. On February 24,
22 2010, the Court entered an Order setting dates following the Early Neutral Evaluation.
23 At that time, there was a single Plaintiff and a single distinct set of allegations relating
24 to the application of Edward Peruta for a concealed weapons permit. The Court entered
25 orders relating to discovery, experts and other dates based upon the assumption that the
26 case was limited to a single Plaintiff.

27 On April 22, 2010, the last day for filing an amended complaint, this motion for
28 leave to amend was filed. The amended complaint proposes to add five new plaintiffs

1 and makes allegations about the new plaintiffs that raise issues of fact not raised by the
2 original complaint and which compound and confuse the legal issues previously sought
3 to be addressed by this litigation.

4 Furthermore, one of the new plaintiffs is an association which has no standing to
5 litigate an “as applied” constitutional challenge which is the essence of the proposed
6 amended complaint.

7 For these reasons and as more fully set forth below, Defendants oppose the
8 motion for leave to amend.

9 **II**

10 **THE CALIFORNIA RIFLE AND PISTOL**
11 **ASSOCIATION FOUNDATION LACKS STANDING**

12 All allegations and claims for relief in the proposed amended complaint relate to
13 Defendants’ administration of California Penal Code section 12050 and interpretation
14 of residency and good cause requirements in the context of granting and denying permit
15 applications submitted by individuals. The California Rifle and Pistol Association
16 Foundation [“CRPAF”] cannot apply for a permit and cannot pursue an “as applied”
17 challenge to this statute.

18 Associational standing permits an organization to litigate as a representative of its
19 members if: “(a) [the organization’s] members would otherwise have standing to sue in
20 their own right; (b) the interests [the organization] seeks to protect are germane to the
21 organization’s purpose; and (c) neither the claim asserted nor the relief requested
22 requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State*
23 *Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977).

24 CRPAF cannot satisfy the third prong of the Supreme Court’s associational
25 standing test, which mandates that “neither the claim asserted nor the relief requested
26 requires the participation of individual members in the lawsuit.” The plaintiffs’ as-

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1 applied claims and the relief they seek, although equitable in nature, both require
2 “individualized proof” specific to each permit application. *See, Ass’n of Christian Schs.*
3 *Int’l v. Stearns*, 2010 U.S. App. LEXIS 745 (9th Cir. Cal. Jan. 12, 2010).

4 Whether an organization satisfies the third *Hunt* prong depends on the claims it
5 asserts and the relief it requests. The more specific claims and relief are to individual
6 organization members, the less likely it is that the organization has standing. Courts are
7 likely to grant associational standing where “the [l]aw does not require the participation
8 of individual [association] members, [because] there is complete identity between the
9 interests of the consortium and those of its member[s] . . . and the necessary proof could
10 be presented ‘in a group context.’” *N.Y. State Club Ass’n, Inc. v. City of New York*, 487
11 U.S. 1, 10 n.4 (1988) (*quoting Hunt*, 432 U.S. at 344). .

12 Second, “the relief sought is only half the story.” *Rent Stabilization Ass’n of City*
13 *of N.Y. v. Dinkins*, 5 F.3d 591, 596 (2d Cir. 1993). Even if Plaintiffs’ individualized
14 declaratory relief request did not prohibit associational standing, the individualized
15 nature of Plaintiffs’ as-applied claims would bar standing. When the claims require an
16 “ad hoc factual inquiry” for each member represented by the association, the
17 organization does not have associational standing.

18 Since each permit application is granted or denied based upon specific,
19 individualized information, and requires a factual inquiry for each applicant, the
20 CPRAF cannot have associational standing in this litigation.

21 III

22 THE FOUR NEW INDIVIDUAL PLAINTIFFS RAISE 23 WHOLLY NEW FACTUAL AND LEGAL ISSUES

24 The proposed amended complaint contains 36 new paragraphs of factual
25 allegations regarding the four new individual plaintiffs. Defendants are aware that at
26 least some of the allegations are not true. With this amended pleading, the course of
27 this litigation would expand five-fold from a strictly factual standpoint and significantly
28 from a legal standpoint because of the broad constitutional claims that are made.

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IV

CONCLUSION

The motion should be denied for lack of associational standing and because the four new individual plaintiffs have unique and different factual circumstances from the original plaintiff which will significantly alter the breadth and scope of this litigation. If any amendment is permitted by the court, the scheduling order should be modified.

DATED:

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By: s/ James M. Chapin

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