EXHIBIT “A”

Bancroft PLLC

October 20, 2011

Molly C. Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119

Re: No. 10-56971, *Peruta v. County of San Diego*
Notice of Supplemental Authority Under Rule 28(j)
California Assembly Bill No. 144

Dear Ms. Dwyer:

Last week, Governor Jerry Brown signed into law Assembly Bill No. 144, which amends the California Penal Code to prohibit open carrying of unloaded handguns in public places. That new law underscores the unconstitutionality of the county's interpretation and application of the "good cause" provision of section 12050 of the California Penal Code to prohibit Appellants and similarly situated individuals from obtaining a permit to carry a loaded firearm for self-defense.

In rejecting Appellants' Second Amendment challenge to the county's policy, the district court placed great emphasis upon its determination that California law does not "restrict[] the open carry of unloaded firearms and ammunition ready for instant loading," which the court deemed sufficient to mitigate the Second Amendment burden that the county's de facto ban on loaded carry creates. E.R., Vol. I, at 8–9. With the passage of A.B. 144, however, even that limited option is no longer available. Accordingly, the issues before this Court are significantly narrowed, as the Court need no longer determine whether the district court's analysis of the burden on Second Amendment rights was legally or factually correct. *See* Appellants' Opening Br. 2, Issues No. 2–3.

Although the passage of A.B. 144 eliminates one aspect of the district court's flawed legal analysis, there is no need to remand for consideration of the new law's impact. In addition to holding erroneously that open unloaded carry is a reasonable alternative means by which to exercise Second Amendment rights, the district court also erroneously concluded, applying a form of intermediate scrutiny, that the county's policy "would pass constitutional muster even if it burdens protected conduct." *Id.* at 9–10. Accordingly, there is every reason to believe that a remand would produce the same misguided result and produce nothing but delay. Moreover, whatever impact A.B. 144 has on this case is a pure question of law that this Court can and should consider in the first instance. If further analysis of that

1919 M Street, N.W. • Suite 470 • Washington D.C. 20036
Telephone 202.234.0090 • www.bancroftpllc.com • Facsimile 202.234.2806

Bancroft PLLC

question is necessary, a request for supplemental briefing in this Court, rather than a remand, would be the better course.

Sincerely,

/s/Paul D. Clement
Counsel for Appellants

cc: (via ECF): James Chapin

1919 M Street, N.W. • Suite 470 • Washington D.C. 20036
Telephone 202.234.0090 • www.bancroftpllc.com • Facsimile 202.234.2806