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December 4, 2012

Molly C. Dwyer
Clerk of Court
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

RE: *Mehl v. Blanas*, No. 08-15773
Set for argument December 10, 2012

Dear Ms. Dwyer:

Appellee Kamala D. Harris, Attorney General of the State of California, respectfully submits this citation of supplemental authority pursuant to Federal Rule of Civil Procedure 28(j).

On November 27, 2012, the Second Circuit issued its opinion in *Kachalsky v. County of Westchester*, 2012 WL 5907502 (2d Cir. 2012). *Kachalsky* upheld New York State laws prohibiting the carrying of handguns in public except by license holders who can make a showing of "proper cause." *Id.* at *3. The New York licensing procedure is administered by local licensing officers who enjoy "considerable discretion," and whose decisions will be upheld unless "arbitrary and capricious." *Id.* at *4. The New York system resembles that of California, which restricts the right to carry handguns and grants carry permits only where a local official determines that an applicant is of good moral character and that good cause exists. Cal. Penal Code §§ 26150, 26155.

The court in *Kachalsky* did the following:

- Concluded that in the United States there is a "longstanding tradition" of regulation of public firearm possession because of the danger to public

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safety, and that handguns have been subject to regulation “stricter than any other enumerated right.” *Id.* at *10, *15.

- Concluded that there is no clear answer to the question whether the Second Amendment protects the right to carry arms in public, but assumed that it did. *Id.* at *5.
- Based on that assumption, determined that the New York licensing regime imposes a substantial limit on the right to possess arms in public, and applied heightened scrutiny. *Id.* at *8, *11.
- Held that the challenged New York laws withstood heightened scrutiny. *Id.* at *11. In particular, *Kachalsky* deferred to the legislative judgment that there is a connection between promoting public safety and regulating handgun possession in public. *Id.* at *12-*13.
- Rejected application of First Amendment prior restraint doctrine to New York’s handgun licensing scheme. *Id.* at *7-*8.

These points are relevant to the standard of review to be applied in the present appeal, an issue raised in Appellee Attorney General’s Supplemental Brief. Dkt. # 40 at 14-40.

Sincerely,

/S/ George Waters

GEORGE WATERS
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

GW:

cc: All counsel via ECF
(The body of this letter contains 349 words.)

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CERTIFICATE OF SERVICE

Case Name: *David K. Mehl, et al. v. Lou Blanas, et al.*

Case No. 08-15773

I hereby certify that on December 4, 2012, I electronically filed the following document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

Rule 28(j) Letter Re Supplemental Authority

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 4, 2012, at Sacramento, CA.

Deborah Trudeau
Declarant

/s/ Deborah Trudeau
Signature