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January 8, 2019

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

Re: Supplemental Authorities in Rodriguez, et al. v. City of San Jose, et al., Case No. 17-17144

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), the City submits *Pena v. Lindley*, 898 F.3d 969 (9th Cir. 2018) and *Wilson v. Lynch*, 835 F.3d 1083 (9th Cir. 2016) as supplemental authorities in this matter.

In *Pena*, this Court held that California's Unsafe Handgun Act did not violate the Second Amendment. The plaintiffs in the case were unable to buy several popular guns as a result of the Act. *Pena*, 898 F.3d at 978. They argued the law accordingly burdened their Second Amendment rights and that strict scrutiny was appropriate. *See id.* Assuming without deciding that the law's restrictions constituted a burden on the plaintiffs' right to bear arms, the Court held that only intermediate scrutiny would apply. *Id.* This was because "being unable to purchase a subset of [guns]" different from the "exact gun [the plaintiffs] want[ed did] not significantly burden the" core Second Amendment "right to self-defense in the home." *Id.* (text rearranged for clarity).

Similarly, this Court held in *Wilson* that intermediate scrutiny applied to a federal policy prohibiting gun sales to medical marijuana cardholders. *Wilson*, 835

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F.3d at 1093. In reaching its holding, this Court observed that the policy barred “only the sale of firearms to [the cardholder]—not her possession of firearms.” *Id.* Because the federal policy did not prohibit cardholders from possessing firearms but instead only prevented the sale of new firearms to them, this Court held that the policy did “not place a severe burden” on cardholders’ core Second Amendment rights. *Id.*

Both *Pena* and *Wilson* relate to a central question before the Court in this case: whether the City’s withholding of particular firearms from Plaintiff Rodriguez pursuant to a California court order burdens her Second Amendment rights, and if so, whether the burden is “severe.” Neither *Pena* nor *Wilson* is cited in the parties’ briefing, but unforeseen circumstances have necessitated a recent substitution of counsel in this matter, and counsel intends to rely on those authorities at argument.

Respectfully submitted,

RICHARD DOYLE, City Attorney

By: /s/ Matthew Pritchard
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MWP/cem