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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 CALIFORNIA RIFLE & PISTOL
12 ASSOCIATION, INCORPORATED;
13 THE SECOND AMENDMENT
14 FOUNDATION; GUN OWNERS OF
15 AMERICA, INC.; GUN OWNERS
16 FOUNDATION; GUN OWNERS OF
17 CALIFORNIA, INC.; ERICK
18 VELASQUEZ, an individual; CHARLES
19 MESSEL, an individual; BRIAN
20 WEIMER, an individual; CLARENCE
21 RIGALI, an individual; KEITH REEVES,
22 an individual; CYNTHIA GABALDON,
23 an individual; and STEPHEN HOOVER,
24 an individual,

25 Plaintiffs,

26 v.

27 LOS ANGELES COUNTY SHERIFF'S
28 DEPARTMENT; SHERIFF ROBERT
LUNA, in his official capacity; LA
VERNE POLICE DEPARTMENT; LA
VERNE CHIEF OF POLICE COLLEEN
FLORES, in her official capacity;
ROBERT BONTA, in his official
capacity as Attorney General of the State
of California; and DOES 1-10,

Defendants.

Case No. 2:23-cv-10169-SPG-ADS

**DEFENDANTS LOS ANGELES
COUNTY SHERIFF'S
DEPARTMENT AND SHERIFF
ROBERT LUNA'S RESPONSE TO
PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY
(ECF No. 45)**

Judge: Hon. Sherilyn Peace Garnett

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1 The Court should disregard Plaintiffs’ notice of supplemental authority filed
2 on May 10, 2024. *See* ECF No. 45.

3 Since the April 10 hearing on Plaintiffs’ motion for preliminary injunction,
4 Plaintiffs have repeatedly made unapproved additional filings. First they filed an
5 unapproved supplemental request for judicial notice, asking the Court to judicially
6 notice a sentence in a brief filed by a non-party in a different court. *See* ECF
7 No. 43. Now they have filed an unapproved de facto supplemental brief, making
8 arguments about how the Court should apply a recent Ninth Circuit decision and
9 what it should infer from a stipulation filed by non-parties in another court. *See*
10 ECF No. 45. They cite no authority permitting these filings, for which they did not
11 seek leave—because they are not permitted. *See Riot Games, Inc. v. Suga PTE,*
12 *Ltd.*, 638 F. Supp. 3d 1102, 1111 n.1 (C.D. Cal. 2022) (declining to consider notice
13 of supplemental authority filed without first receiving leave from the Court).

14 Where permitted by the court, a “notice of supplemental authority should
15 include only a copy of or citation to a recently published case, and should not
16 include additional arguments unless leave to do so is granted.” *Prodanova v. H.C.*
17 *Wainwright & Co., LLC*, 2018 WL 8017791, at *3 n.3 (C.D. Cal. Dec. 11, 2018);
18 *Nichols v. Harris*, 17 F. Supp. 3d 989, 996 n.3 (C.D. Cal. 2014) (“In sum, filing a
19 Notice of Supplemental Authority with a copy of or a citation to a recently
20 published case is proper; including a memorandum with the Notice explaining why
21 the case is relevant is not.”), *rev’d on other grounds sub nom., Nichols v. Newsom*,
22 2022 WL 4295404 (9th Cir. Sept. 12, 2022); *ABS Ent., Inc. v. CBS Corp.*, 2016
23 WL 4259846, at n.1 (C.D. Cal. May 30, 2016) (“To the extent the parties’ filings
24 include additional arguments, the parties did not obtain leave from the Court to do
25 so,” and so “the filings are stricken and will not be considered by the Court.”),
26 *rev’d on other grounds*, 908 F.3d 405 (9th Cir. 2018). The Court should disregard
27 Plaintiffs’ filing or, at minimum, Plaintiffs’ argument accompanying it.

1 If the Court considers Plaintiffs’ arguments, LA County responds as follows.

2 *United States v. Duarte* does not apply in either of the two ways Plaintiffs
3 argue. 2024 WL 2068016 (9th Cir. May 9, 2024). *First*, it does not dictate, or
4 even analyze, how to determine the bounds of the course of conduct for the Second
5 Amendment textual analysis. *Duarte* just states in a single sentence that Duarte’s
6 proposed course of conduct was carrying a handgun publicly for self-defense, a
7 point “the Government never disputes.” *Id.* at *2, *9. And Duarte was prohibited
8 from carrying a handgun publicly for self-defense altogether, forever, without
9 exception, by 18 U.S.C. § 922(g)(1). Plaintiffs aren’t—they are just required to
10 have a license, under a shall-issue regime of the type that *Bruen* repeatedly
11 emphasized is constitutional under the Second Amendment. So neither the facts
12 nor the law of *Duarte* are relevant to the course-of-conduct question here.

13 *Second*, *Duarte* has no bearing on the as-applied constitutional challenges of
14 Mr. Velasquez or Mr. Partowashraf. Plaintiffs challenge the denial of licenses to
15 Mr. Velasquez and Mr. Partowashraf as allegedly applying impermissible
16 “subjective criteria.” *Duarte* has nothing to do with subjective criteria, or with
17 licensing regimes at all. *See, e.g., Duarte*, 2024 WL 2068016, at *15, *20
18 (distinguishing historical “[b]ans on selling arms to Indians” because they
19 “referred to licensing requirements and implied that those with proper credentials
20 could still trade arms with Indians”); *id.* at *21 (distinguishing historical “laws
21 disarming Blacks” because they permitted carry with a “ticket or license” or
22 “certificate”). Over Judge Smith’s dissent, the *Duarte* panel held only that
23 § 922(g)(1)’s lifetime, without-exception ban on possessing firearms due to
24 Duarte’s particular convictions for certain non-violent crimes was unconstitutional
25 as applied to Duarte. It does not hold that only violent convictions suffice to limit
26 the public carry of firearms, nor could it—not under *Bruen*’s express approval of
27 shall-issue licensing regimes nor under Ninth Circuit precedent. *See, e.g., United*
28

1 *States v. Perez-Garcia*, 96 F.4th 1166, 1192 (9th Cir. 2024) (upholding firearms
2 conditions on pretrial release as “consistent with our nation’s long history of
3 temporarily disarming criminal defendants facing serious charges and those
4 deemed dangerous or unwilling to follow the law”).

5 It is also worth noting that the United States has already filed a petition for
6 rehearing en banc and for an expedited order vacating the panel opinion in *Duarte*,
7 No. 22-50048, Dkt. No. 72-1. Since *Duarte* held that an earlier Ninth Circuit
8 precedent “no longer controls,” over Judge Smith’s dissent on this point, it is a
9 likely candidate for rehearing en banc. So even if the panel decision had some
10 bearing on the issues before this Court—it does not—it ought not inform the
11 Court’s ruling.

12 As for the City of Honolulu’s settling of a lawsuit in the District of Hawaii,
13 it is meaningless to this Court. That and how a different city settles a different
14 lawsuit has no bearing on the highly contested issues here. Plaintiffs also
15 misrepresent the settlement. They say Honolulu “acknowledges that it is now
16 obligated under the Second Amendment to process permit applications in a
17 reasonable timeframe.” ECF No. 45 at 3. That is false. The stipulation Plaintiffs
18 submit expressly states that “Nothing in this Order shall be construed as an
19 admission of liability or violation of any right by the County or any agent thereof.”
20 ECF No. 45-2 at 9. So there is nothing for the Court to take from this settlement.

21
22 Dated: May 17, 2024

Respectfully submitted,

23 /s/ Ryan Chabot

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LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants, certifies that this brief does not exceed 25 pages in length using Times New Roman 14-point font, which complies with this Court’s Standing Order of October 24, 2023.

Dated: May 17, 2024

/s/ Ryan Chabot
Ryan Chabot