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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA

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 14 **JAMES ROTHERY, Esq.; ANDREA**
 15 **HOFFMAN,**

16 Plaintiffs,

17 v.

18 **Former Sheriff LOU BLANAS; SHERIFF**
 19 **JOHN MCGINNIS; Detective TIM**
 20 **SHEEHAN; SACRAMENTO COUNTY**
 21 **SHERIFF'S DEPARTMENT, an**
 22 **independent branch of government of the**
 23 **COUNTY OF SACRAMENTO; COUNTY**
 24 **OF SACRAMENTO; STATE OF**
 25 **CALIFORNIA ATTORNEY GENERAL**
 26 **JERRY BROWN; DOES 1 through 225,**
 27 **unknown co-conspirators,**

28 Defendants.

Case No. 2:08-cv-02064-JAM-KJM

**ORDER DISMISSING FIRST AMENDED
 COMPLAINT WITH PREJUDICE AS TO
 DEFENDANT ATTORNEY GENERAL**

Date: July 15, 2009

Time: 9:00 a.m.

Ctrm: 6

Judge: The Honorable John A. Mendez

Action Filed: September 3, 2008

26 The motion by Defendant Attorney General of California Edmund G. Brown Jr. to dismiss
 27 the First Amended Complaint ("FAC") came on regularly for hearing before this Court on July
 28 15, 2009, with Deputy Attorney General Geoffrey L. Graybill appearing for defendant moving

1 party and Daniel M. Karalash appearing for plaintiffs in opposition. For the reasons stated on the
2 record at the hearing and summarized below, the Attorney General's motion to dismiss is
3 GRANTED, with prejudice. A copy of the transcript of the Court's ruling at the hearing is
4 attached hereto and incorporated by reference as though fully set forth herein. The Court has
5 adopted much of the reasoning set forth in the unpublished Memoranda and Orders by the
6 Honorable Morrison C. England, Jr. entered on September 3, 2004 and February 5, 2008 in *David*
7 *K. Mehl et al. v. Lou Blanas et al.*, U.S. District Court for the Eastern District of California, No.
8 CIV. S 03-2682 MCE KJM. Except for allegations against Sacramento County defendants in this
9 action regarding violations of the federal Racketeer Influenced and Corrupt Organizations Act
10 (RICO), the allegations in *Mehl* and in this case are virtually identical. Judge England's orders
11 are attached hereto for ease of reference.

12 Of the seven causes of action alleged in the FAC, two are directed against Sacramento
13 County defendants only and are addressed in a separate order.

14 The first cause of action alleged against the Attorney General is the Second Cause of
15 Action of the FAC, which claims pursuant to 42 U.S.C. section 1983 that on their face and as
16 applied by defendants California Penal Code sections 12027, 12031(b) and 12050-12054 deny
17 plaintiffs equal protection of the law by providing preferences to certain classes of applicants for
18 carry concealed weapons licenses ("CCW"). For the reasons the Court stated at the hearing
19 including adoption of portions of Judge England's orders, these allegations fail to state a claim for
20 which relief can be granted and cannot be amended to state a claim.

21 The second cause of action alleged against the Attorney General is the Fourth Cause of
22 Action of the FAC, which alleges pursuant to 42 U.S.C. section 1983 that the Second Amendment
23 incorporated through the Fourteenth Amendment prohibits operation of the CCW statutes to
24 preclude plaintiffs from carrying loaded concealed weapons outside their homes. Even if
25 incorporated through the Fourteenth Amendment, the Second Amendment as interpreted by the
26 United States Supreme Court and by the United States Court of Appeals for the Ninth Circuit
27 does not provide such a right. Therefore, this cause of action fails to state a claim for which relief
28 can be granted and cannot be amended to state a claim.

1 The third cause of action alleged against the Attorney General is the Fifth Cause of Action
2 of the FAC, which alleges pursuant to 42 U.S.C. section 1983 that the Privileges or Immunities
3 Clause of the Fourteenth Amendment prohibits operation of the CCW statutes to preclude
4 plaintiffs from carrying loaded concealed weapons outside their homes. As explained by this
5 Court at the hearing and in Judge England's orders, there is no authority to support this
6 contention. Therefore, this cause of action fails to state a claim for which relief can be granted
7 and cannot be amended to state a claim.

8 The fourth cause of action alleged against the Attorney General is the Sixth Cause of
9 Action of the FAC, which alleges pursuant to 42 U.S.C. section 1983 that the Ninth Amendment
10 prohibits operation of the CCW statutes to preclude plaintiffs from carrying loaded concealed
11 weapons outside their homes. As explained by this Court at the hearing and in Judge England's
12 orders this contention has been squarely rejected by the United States Court of Appeals for the
13 Ninth Circuit. Therefore, this cause of action fails to state a claim for which relief can be granted
14 and cannot be amended to state a claim.

15 The last cause of action alleged against the Attorney General is the Seventh Cause of
16 Action of the FAC, which seeks declaratory and injunctive relief against all defendants based on
17 the previous causes of action. As explained by this Court at the hearing and in Judge England's
18 orders, this is not a proper separate claim because it merely requests relief based on the previous
19 causes of action. Since the previous causes of action fail to state claims upon which relief can be
20 granted, this cause of action also fails to state a claim for which relief can be granted and cannot
21 be amended to state a claim.

22 Since none of the causes of action alleged against the Attorney General state a claim for
23 which relief can be granted and the action is being dismissed as to him without leave to amend
24 and with prejudice, this Court declines to consider his contentions that this action is barred by the
25 Eleventh Amendment and that plaintiffs do not have standing under Article III. *See Silveira v.*
26 *Lockyer*, 312 F.3d 1052, 1066-1068 (9th Cir. 2002).

1 For the reasons explained above, defendant Attorney General's motion to dismiss the First
2 Amended Complaint as to him is granted. Wherefore, the First Amended Complaint is hereby
3 DISMISSED, with prejudice

4 Correspondingly, and because it was procedurally improper as the pleadings here were
5 never closed, plaintiffs' counter motion for judgment on the pleadings as to defendant Attorney
6 General is DENIED.

7 IT IS SO ORDERED.

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9 DATED: July 28, 2009

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/s/ John A. Mendez
JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE

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DATED: July 27, 2009

APPROVED AS TO FORM:

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/s/ GARY W. GORSKI
GARY W. GORSKI
Law Office of Gary W. Gorski

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Law Offices of Daniel M. Karalash

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