

1 JOHN A. LAVRA, CSB No. 114533
2 JERI L. PAPPONE, CSB No. 210104
3 AMANDA L. BUTTS, CSB No. 253651
4 Longyear, O’Dea and Lavra, LLP
5 3620 American River Drive, Suite 230
6 Sacramento, Ca. 95864
7 Telephone: (916) 974-8500
8 Facsimile: (916) 974-8510
9 Attorneys for County of Sacramento
10 (also erroneously sued herein as Sacramento
11 County Sheriff’s Department); Lou Blanas,
12 John McGinness, Timothy Sheehan

9 **UNITED STATES DISTRICT COURT EASTERN DISTRICT**
10 **OF CALIFORNIA SACRAMENTO DIVISION**

12 JAMES ROTHERY, Esq.; ANDREA)
13 HOFFMAN,)

14 Plaintiffs,)

15 v.)

16 Former Sheriff LOU BLANAS; SHERIFF)
17 JOHN MCGINNESS; Detective TIM)
18 SHEEHAN; SACRAMENTO COUNTY)
19 SHERIFF’S DEPARTMENT, an independent)
20 branch of government of the COUNTY OF)
21 SACRAMENTO; COUNTY OF)
22 SACRAMENTO; STATE OF CALIFORNIA)
23 ATTORNEY GENERAL JERRY BROWN;)
24 LONGYEAR, O’DEA AND LAVRA, LLP;)
25 DOES 1 through 25, unknown)
26 conspirators,)

27 Defendants.)
28 _____)

CASE NO. 2:08-CV-02064-JAM-KJM

ORDER

22 On July 15, 2009, the hearing on Defendants, County of Sacramento, Lou Blanas, Sheriff
23 John McGinness, and Timothy Sheehan’s Motion to Dismiss pursuant to FRCP 12(b)(6), was
24 held before the Honorable John A. Mendez.

25 Daniel Karalash appeared for Plaintiffs James Rothery and Andrea Hoffman. Geoffrey
26 Graybill appeared on behalf of the State of California Attorney General Jerry Brown. John A.
27 Lavra of Longyear, O’Dea and Lavra appeared on behalf of the Defendants, County of
28 Sacramento, Lou Blanas, Sheriff John McGinness, and Timothy Sheehan, hereinafter “County

1 Defendants”.

2 After consideration of the Defendants’ moving papers, Plaintiffs’ opposition brief, and
3 Defendants’ reply brief, together with oral argument presented at the hearing, and good cause
4 appearing therefore, the court hereby rules as follows:

5 The County Defendants’ Motion to Dismiss the first claim for relief alleging violation of
6 the RICO statute (18 U.S.C. §§1961-1968) is granted. Plaintiffs’ complaint fails to state a claim
7 upon which relief can be granted. The court hereby adopts the findings made at the time of the
8 hearing as set forth in the transcript of the proceedings. Excerpts of the transcript are attached to
9 this order as Exhibit 1, and incorporated herein.

10 The County Defendants’ Motion to Dismiss the second claim for relief alleging a
11 violation of Equal Protection Clause pursuant to 42 U.S.C. § 1983 is granted. Plaintiffs’
12 complaint fails to state a claim upon which relief can be granted. The court hereby adopts the
13 findings made at the time of the hearing as set forth in the transcript of the proceedings. Excerpts
14 of the transcript are attached to this order as Exhibit 1, and incorporated herein.

15 The County Defendants’ Motion to Dismiss the third claim, brought under the First and
16 Fourteenth Amendments pursuant to 42 U.S.C. § 1983 is granted. Plaintiffs’ complaint fails to
17 state a claim upon which relief can be granted. The court hereby adopts the findings made at the
18 time of the hearing as set forth in the transcript of the proceedings. Excerpts of the transcript are
19 attached to this order as Exhibit 1, and incorporated herein.

LONG YUEN PAO, Clerk of Court, U.S. District Court, District of Columbia (202) 974-8510

20 The County Defendants’ Motion to Dismiss the fourth claim alleging violation of Second
21 Amendment on the grounds that the denial of CCW permits violates Plaintiffs’ right to bear arms
22 under the Second Amendment, is granted. Plaintiffs’ complaint fails to state a claim upon which
23 relief can be granted. The court hereby adopts the findings made at the time of the hearing as set
24 forth in the transcript of the proceedings. Excerpts of the transcript are attached to this order as
25 Exhibit 1, and incorporated herein.

26 The County Defendants’ Motion to Dismiss the fifth claim brought under the Privileges
27 and Immunities Clause pursuant to 42 U.S.C. § 1983 is granted. Plaintiffs’ complaint fails to
28 state a claim upon which relief can be granted. The court hereby adopts the findings made at the

1 time of the hearing as set forth in the transcript of the proceedings. Excerpts of the transcript are
2 attached to this order as Exhibit 1, and incorporated herein.

3 The County Defendants' Motion to Dismiss the sixth claim brought under Ninth and
4 Fourteenth Amendments pursuant to 42 U.S.C. § 1983, alleging that those amendments provide a
5 constitutional right to carry a concealed weapon, is granted. Plaintiffs' complaint fails to state a
6 claim upon which relief can be granted. The court hereby adopts the findings made at the time of
7 the hearing as set forth in the transcript of the proceedings. Excerpts of the transcript are attached
8 to this order as Exhibit 1, and incorporated herein.

9 The County Defendants' Motion to Dismiss the seventh claim, which is purportedly a
10 claim for injunctive relief and declaratory relief is granted. The declaratory and injunctive relief
11 claim is not a separate claim for relief upon which relief may be based and therefore, Plaintiffs'
12 complaint fails to state a claim upon which relief can be granted. The court hereby adopts the
13 findings made at the time of the hearing as set forth in the transcript of the proceedings. Excerpts
14 of the transcript are attached to this order as Exhibit 1, and incorporated herein.

15 The court further orders that this case, and each and every claim, be dismissed with
16 prejudice and without leave to amend, for the reasons as set forth in both the Attorney General's
17 and the County Defendants' briefs. There is no legal basis for the Plaintiffs' claims, and even if
18 given the opportunity to amend, Plaintiffs would be unable to plead a legally cognizable
19 complaint. The court finds this lawsuit to be almost frivolous, if not frivolous. There is no
20 support in the law for this lawsuit. And even if the Court gave the Plaintiffs an opportunity to
21 amend, they would be unable to. These are all solid, well-founded legal reasons set forth in the
22 defendants' briefs as to why this case should not go forward. This lawsuit is just a rehash of
23 David K. Mehl, et al. v. Lou Blanas, et al., U.S. District Court for the Eastern District of
24 California, Civ. No. S03-2682 MCE KJM, and the findings and orders of Judge England from
25 that case are incorporated herein in full.

26 ///

27 ///

28 ///

1 **APPROVED AS TO FORM :**

2 DATED: July 24, 2009

/s/ Gary W. Gorski

3 _____
4 DANIEL M. KARALASH or GARY GORSKI
5 COUNSEL FOR PLAINTIFFS

6 DATED: July 24, 2009

/s/ Geoffrey L. Graybill

7 _____
8 GEOFFREY LLOYD GRAYBILL
9 DEPUTY ATTORNEY GENERAL

10 DATED: July 24, 2009

/s/ John A. Lavra

11 _____
12 JOHN A. LAVRA
13 ATTORNEY FOR COUNTY DEFENDANTS

14 **IT IS SO ORDERED:**

15 Dated: July 27, 2009

/s/ John A. Mendez

16 _____
17 HONORABLE JOHN A. MENDEZ
18 UNITED STATES DISTRICT JUDGE

19 LONG YU LIAO, Clerk of Court, (415) 974-8510

20
21
22
23
24
25
26
27
28