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7 Attorneys for Defendants, LOU BLANAS, as SHERIFF OF COUNTY  
OF SACRAMENTO; COUNTY OF SACRAMENTO,  
SHERIFF’S DEPARTMENT; COUNTY OF SACRAMENTO

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 DAVID K. MEHL,

11 Plaintiff,

12 vs.

13 LOU BLANAS, individually and in his  
14 official capacity as SHERIFF OF  
COUNTY OF SACRAMENTO;  
15 COUNTY OF SACRAMENTO,  
SHERIFF’S DEPARTMENT;  
16 COUNTY OF SACRAMENTO;  
BILL LOCKYER, Attorney General,  
17 State of California;  
RANDI ROSSI, State Firearms Director  
18 and Custodian of Records

19 Defendants

CASE NO.: CIV S-03 -2682 MCE KJM

Date: February 6, 2006

Time: 9:00 a.m.

Ctrm: 3

Judge: England

**DEFENDANTS’ REPLY TO  
PLAINTIFFS’ OPPOSITION TO  
MOTION TO DISMISS**

20  
21 Defendants herein submit the following Reply to Plaintiff’s untimely opposition to  
22 Defendants’ Motion to Dismiss.

23 Plaintiffs’ opposition to the motion to dismiss was filed and served late according to the  
24 Eastern District Local Rules. According to Local Rule 78-230(c), an opposition to a motion is  
25 to be served seventeen (17) days preceding the scheduled hearing date when served by  
26 electronic service or mailing. The hearing date for this motion is February 6, 2006. Therefore,  
27 Plaintiffs’ opposition was to be served on or before January 20, 2006. Plaintiffs’ opposition was  
28 filed and served by facsimile and electronic filing on January 24, 2006, and is therefor untimely.

1 Local Rule 78-230(c) also states that, “No party will be entitled to be heard in opposition  
2 to a motion at oral argument if opposition to the motion has not been timely filed.” Therefore,  
3 Defendants request that not only should Plaintiffs’ counsel be denied oral argument, but that this  
4 court rule as if Plaintiffs had not responded to the motion to dismiss.

5 Additionally, Plaintiff has no justification for the inactivity for over a year in this case.  
6 Defendants received no requests for production of documents, nor follow-up from Plaintiffs  
7 which would ordinarily be expected if discovery responses were pending. There was no  
8 telephone call later on October 4, 2004, after the initial e-mail from Plaintiffs’ counsel, but a  
9 responsive e-mail, which was included in the Exhibit A to the Declaration of Defense counsel.  
10 Nor, as stated in the motion, was there any contact by Plaintiffs’ counsel for over a year. Again,  
11 defense counsel did try to contact Plaintiffs’ counsel during the dormant period, and got no  
12 response from Plaintiffs’ counsel. And, only now, since the current motion to dismiss has been  
13 filed, has Plaintiffs’ counsel responded, albeit late.

14 Finally, Plaintiffs’ counsel’s assertion that the pendency of other cases elsewhere in the  
15 United States regarding Second Amendment issues justifies the lack of activity or response in  
16 this case, is no excuse for failure to diligently proceed with a pending action. If Plaintiffs felt  
17 that a stay of the current litigation was appropriate in light of other cases being decided, such a  
18 motion should have been filed. But, instead, contacts made by Defense counsel in May and  
19 June of 2005, were ignored. Defense counsel should not be charged with moving this case  
20 along.

21 On December 22, 2005, following the filing of this motion, the court issued an order that  
22 a joint status conference report be filed. Defense counsel, again waited to hear from Plaintiffs’  
23 counsel. After no contact by Plaintiffs’ counsel regarding the preparation of the joint status  
24 report, on January 25, 2006, Defense counsel again initiated contact with Plaintiffs’ counsel by  
25 way of faxed correspondence. Plaintiffs’ counsel has finally made his first contact since

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October of 2004.

Therefore, based on the above, and the moving papers, Defendants request that this court grant their motion to dismiss as over time, memories have diminished, documents may or may not be available, and Defendants have surely been prejudiced by the unwarranted delay..

Respectfully submitted,

Dated: January 30, 2006.

LONGYEAR, O'DEA & LAVRA, LLP

By: /s/ Jeri L. Pappone  
JOHN A. LAVRA  
JERI L. PAPPONE  
Attorneys for Defendants