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10 JOHN MCGINNESS

11 UNITED STATES DISTRICT COURT EASTERN DISTRICT  
12 OF CALIFORNIA SACRAMENTO DIVISION

13 DEANNA SYKES, ANDREW WITHAM, )  
14 ADAM RICHARDS, SECOND )  
15 AMENDMENT FOUNDATION, INC., AND )  
16 THE CALGUNS FOUNDATION, INC. )

17 Plaintiffs )

18 v. )

19 JOHN MCGINNESS, COUNTY OF )  
20 SACRAMENTO, ED PRIETO, AND )  
21 COUNTY OF YOLO )

22 Defendants. )

**CASE NO. 2:09-cv-01235-MCE-KJM**

**Date: September 24, 2009**

**Time: 2:00 p.m.**

**Ctrm: 7**

**Judge: Morrison C. England, Jr.**

**MEMORANDUM OF POINTS &  
AUTHORITIES IN SUPPORT OF  
DEFENDANT JOHN MCGINNESS  
AND COUNTY OF SACRAMENTO’S  
MOTION TO CONTINUE OR  
SUSPEND HEARING ON  
PLAINTIFFS’ MOTION FOR  
SUMMARY JUDGMENT  
FRCP 56(f)**

23 Defendants John McGinness and County of Sacramento (hereinafter “Sacramento  
24 Defendants”) hereby move for an order continuing or suspending the currently scheduled hearing  
25 date on Plaintiffs’ Motion for Summary Judgment, pursuant to Federal Rule of Civil Procedure  
26 56(f). Defendants cannot properly respond to Plaintiffs’ motion for summary judgment by  
27 affidavits regarding facts essential to justify Defendants’ opposition, and require time to conduct  
28 discovery in order to do so.

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1 Rule 56(f) provides that if discovery is needed in order to oppose a motion for summary  
2 judgment, the opposing party may move for an order continuing the hearing on the motion in  
3 order to obtain needed discovery.

4  
5 Defendants answered Plaintiffs' complaint on June 2, 2009; a joint status report by  
6 Sacramento Defendants and Plaintiffs was filed on July 8, 2009; Plaintiffs provided Rule 26  
7 initial disclosures on July 10, 2009; Yolo County Defendants answered on July 17, 2009;  
8 Sacramento County Defendants provided Rule 26 initial disclosures on August 4, 2009; Yolo  
9 County defendants have not yet provided their Rule 26 initial disclosures.

10  
11 Plaintiffs filed their motion for summary judgment on August 6, 2009, for hearing on  
12 September 24, 2009. The Court issued a PreTrial Scheduling Order on August 18, 2009, to  
13 which Sacramento County Defendants objected on August 20, 2009.

14 Defendants have not had the opportunity to conduct any discovery in this case. Plaintiffs  
15 contend that their motion for summary judgment is based upon law only and not factual issues  
16 can or should be disputed or are disputable. However, Sacramento Defendants, after reviewing  
17 Plaintiffs' motion and the statement of undisputed facts and evidence submitted therewith,  
18 determine that discovery is necessary to determine the standing of the individual plaintiffs as  
19 well as the organizational plaintiffs to bring this lawsuit against Sacramento County.  
20

21 Defense counsel has meet and conferred with Plaintiffs' counsel, Alan Gura, regarding  
22 the potential of postponing this motion in order that Sacramento Defendants could take the  
23 depositions of the individual plaintiffs and the principals of the group plaintiffs to determine  
24 standing issues. Plaintiffs' counsel was reluctant to agree to a continuance of the hearing date  
25 and contends that depositions are not necessary in this case.  
26  
27

28 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF DEFENDANT JOHN MCGINNESS  
AND COUNTY OF SACRAMENTO'S MOTION TO CONTINUE OR SUSPEND HEARING ON  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

1 Plaintiffs and Defendants disagree on whether or not these Plaintiffs have standing. As  
2 no discovery has occurred in this case, and because Plaintiffs' motion was filed on the heels of  
3 initial appearances, Defendants believe the motion for summary judgment is premature. Celotex  
4 Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 2554 (1986). This is not a matter of a party  
5 requesting further or additional discovery, or the re-opening of discovery after it has closed, but  
6 an opportunity to conduct initial discovery to determine the standing of the plaintiffs to bring the  
7 lawsuit.

8  
9 Plaintiffs' position is that the policy with respect to the issuance of Carry Concealed  
10 Weapons of Sacramento Defendants violates their Second Amendment Rights, and that under the  
11 Second Amendment, Plaintiffs' have a right or should have a right to carry a concealed weapon.  
12 Further, Plaintiffs allege that two national gun groups have standing to bring this lawsuit against  
13 Sacramento Defendant in that Defendants' policy regarding issuance of Carry Concealed  
14 Weapons violates the groups' rights under the Second Amendment. In order to proceed with the  
15 lawsuit, all Plaintiffs need to show that they have standing to do so. Defendants do not concede  
16 that this standing exists and request the opportunity to conduct discovery in order to make that  
17 determination or develop facts to support or dispel any standing issues.  
18  
19

20 Therefore, Sacramento Defendants request that the hearing on Plaintiffs' motion for  
21 summary judgment be continued or suspended and opportunity be made for Defendants to  
22 depose Plaintiffs.  
23

24 Dated: August 21, 2009

LONGYEAR, O'DEA AND LAVRA, LLP

*/s/ Jeri L. Pappone*

By: \_\_\_\_\_

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