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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14 Deanna Sykes, et al.,) Case No. 2:09-cv-01235-MCE-KJM
15)
16 Plaintiffs,) NOTICE OF POSSIBLE
17) RELEVANT AUTHORITY
18 v.)
19)
20 John McGinness, et al.,)
21)
22 Defendants.)
23)

24 NOTICE OF POSSIBLE RELEVANT AUTHORITY

25 COME NOW Plaintiffs Deanna Sykes, Andrew Witham, Adam Richards, Calguns
26 Foundation, Inc. and Second Amendment Foundation, Inc., by and through counsel, and give
27 notice of two events within the past week that may be of interest to the Court in consideration of
28 the pending motion for summary judgment:

1. McDonald v. City of Chicago, Supreme Court No. 08-1521;
NRA v. City of Chicago, Supreme Court No. 08-1497

On August 19, 2009, the Clerk of the Supreme Court distributed for consideration at the Court's September 29, 2009 conference two petitions for certiorari raising the question of

1 whether the Second Amendment is incorporated as against the states by operation of the
2 Fourteenth Amendment. *McDonald v. City of Chicago*, No. 08-1521; *NRA v. City of Chicago*,
3 No. 08-1497. Plaintiffs' counsel Mr. Gura is counsel for the petitioners in *McDonald*.
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5 It is not possible to know whether the Court would take any particular action, or even any
6 action at all, on either of these petitions at its September 29 conference.

7 2. *Nordyke v. King*, Ninth Circuit No. 07-15763

8 On August 21, 2009, the Ninth Circuit set *Nordyke v. King*, No. 07-15763 for re-hearing
9 en banc in San Francisco, at 10:00 a.m. on September 24, 2009. One of the issues in the case is
10 whether the Second Amendment is incorporated as against the states by operation of the
11 Fourteenth Amendment. Plaintiffs' counsel Mr. Kilmer is counsel for the appellants in *Nordyke*.
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13 As *Nordyke* is set for a one-hour argument, counsel do not believe that there should be a
14 problem in keeping the September 24 argument date and time in this action.

15 Although the Court may wish to await any possible guidance from the Ninth Circuit
16 and/or Supreme Court with respect to the incorporation issue prior to deciding this case, counsel
17 believe that argument in the matter could be constructive at this time given the case's posture.
18 Additionally, Defendants Sacramento County and Sheriff McGinness have noticed a motion for
19 September 24 seeking discovery pursuant to Fed. R. Civ. Proc. 56(f). Plaintiffs will be opposing
20 this motion as it lacks merit. No issue in the Supreme Court and Ninth Circuit cases described
21 above appears relevant to the Rule 56(f) motion.
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24 Accordingly, Plaintiffs submit that notwithstanding the developments of the past week,
25 the arguments on both motions set in this case for September 24 should proceed as scheduled.
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1 Dated: August 24, 2009

Respectfully submitted,

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