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9 Attorneys for COUNTY OF SACRAMENTO
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.

23 **SUPPLEMENTAL**
24 **MEMORANDUM OF POINTS &**
25 **AUTHORITIES IN SUPPORT OF**
26 **DEFENDANT JOHN MCGINNESS**
27 **AND COUNTY OF SACRAMENTO'S**
28 **MOTION TO CONTINUE OR**
SUSPEND HEARING ON
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
FRCP 56(f)

23 In addition to the bases cited in Defendants' initial moving papers for a continuance or
24 suspension of the hearing on Plaintiff's motion for summary judgment, Defendants also request
25 an opportunity to take the depositions of the individual Plaintiffs and the principals of the group
26 plaintiffs in order to create evidence with which to respond to several of the "Undisputed Facts"
27 presented by Plaintiffs in the motion for summary judgment.
28

1 For instance, individual Plaintiffs state as undisputed fact that they are law abiding
2 citizens; that they are authorized and qualified to purchase and possess firearms; that they fear
3 victimization; that they fear arrest, prosecution, fine and imprisonment if they were to carry a
4 concealed weapon without a permit; and that they have concluded from the face of the web-site
5 posted policy of the Sacramento County Sheriff's Department, that they do not qualify for a
6 carry concealed weapon permit under that publicized policy. Defendants seek to depose the
7 individual plaintiffs on these issues to determine the basis of their alleged "undisputed facts",
8 what process each plaintiff has engaged in to the end of obtaining a carry concealed permit in
9 Sacramento County.
10

11
12 The depositions of principals of the group defendants will be utilized to determine the
13 alleged injury that those groups allege to have taken place by virtue of the Carry Concealed
14 Weapons permit policy and practices of the County of Sacramento.
15

16 In addition, it is noteworthy that an en banc hearing on the case of *Nordyke v. King* in the
17 Ninth Circuit is scheduled for September 24, 2009, the same date as the hearing on Plaintiffs'
18 motion for summary judgment herein. The issue before the Ninth Circuit in *Nordyke* is whether
19 the Second Amendment is incorporated against the states by and through the Fourteenth
20 Amendment. It may be pertinent to this court's rulings on Plaintiffs' Second Amendment issues
21 in this case, to have the Ninth Circuit's opinion on that issue prior to making substantive rulings
22 in this case.
23

24 Therefore, Sacramento Defendants request that the hearing on Plaintiffs' motion for
25 summary judgment be continued or suspended and opportunity be made for Defendants to
26 depose Plaintiffs.
27

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Dated: August 24, 2009

LONGYEAR, O'DEA AND LAVRA, LLP

/s/ Jeri L. Pappone

By: _____
Jeri L. Pappone
Attorneys for County of Sacramento and
John McGinness