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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
10

11 Deanna Sykes, Andrew Witham,  
Adam Richards, Second Amendment  
12 Foundation, Inc., and The Calguns  
Foundation, Inc.,

13 Plaintiffs,

14 v.

15 John McGinness, County of Sacramento,  
16 Ed Prieto, and County of Yolo,

17 Defendants.  
18

) Case No. 2:09-CV-01235-MCE-KJM  
)  
) **PLAINTIFFS’ OBJECTION TO**  
) **DEFENDANTS’ REQUEST FOR**  
) **A SCHEDULING ORDER**

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20 The Defendants’ latest filing (Doc. 38) is confusing, misleading and made in bad faith.

21 1. This Court’s order of Sept. 1, 2009 (Doc. #37) did not “stay” these proceedings. The  
22 order was crafted to permit discovery to move forward at the request of the Defendants.  
23 It said: “Prior to issuance of the Ninth Circuit’s opinion in *Nordyke*, no party shall file  
24 any Motion for Summary Judgment without leave of this Court.”

25 2. The Defendants correctly note that the *Nordyke* en banc decision is awaiting a ruling by  
26 the U.S. Supreme Court in the *McDonald v. City of Chicago*, Case No.: 08-1521.

27 3. The next assertion by the Defendants is that they need to take the depositions of four (4)  
28 Plaintiffs prior to opposing any motion for summary judgment. In the nearly six months

1 since this Court's September 1, 2009 order, specifically made for the benefit of  
2 Defendants' discovery rights, no discovery has been propounded by the Defendants.<sup>1</sup>

3 a. Initially, Plaintiffs and Plaintiffs' counsel made arrangements to accommodate a  
4 deposition schedule for the Defendants that included the 24<sup>th</sup> and 25<sup>th</sup> of  
5 September, 2009. With this Court's September 1, 2009 order, Defendants asked  
6 to reschedule the depositions. Plaintiffs accommodated this request.

7 b. Then the Defendants served notices for depositions on the 26<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> of  
8 October, 2009. Plaintiffs made accommodations to attend. These depositions  
9 were canceled by the Defendants.

10 c. The depositions were then rescheduled and amended notices served for January  
11 28<sup>th</sup> and 29<sup>th</sup>, 2010. Plaintiffs, again, made appropriate arrangements, bought  
12 plane tickets and reserved hotel rooms. On January 25, 2010, Defendants  
13 canceled the depositions. Un-reimbursable costs for airfare and hotel reservations  
14 were incurred for Plaintiff HOFFMAN (\$165.79) and Plaintiff GOTTLIEB  
15 (\$371.98).

16 4. Next, Defendants claim they can only take depositions after the *McDonald* and *Nordyke*  
17 cases clarify the law. This is a specious argument. The questions presented to the United  
18 States Supreme Court in the *McDonald* case is: "***Whether the Second Amendment right***  
19 ***to keep and bear arms is incorporated as against the States by the Fourteenth***  
20 ***Amendment's Privileges or Immunities or Due Process Clauses.***" That issue was  
21 resolved in favor of incorporation via the Due Process clause in *Nordyke*, 563 F.3d 439  
22 (9<sup>th</sup> Cir. 2009). *Nordyke* was put on hold by the sua sponte granting of en banc  
23 reconsideration. Just days after the oral argument in *Nordyke*, the Supreme Court granted  
24 certiorari in *McDonald v. City of Chicago*, (2009) 130 S.Ct 48, 174 L. Ed. 2d 632.

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27 Plaintiffs will be filing their own motion for attorney fees and costs regarding the scheduling,  
28 rescheduling and canceling of depositions in this matter. Two plaintiffs incurred hotel and flight  
cancellation fees when the Defendants canceled depositions on short notice. Plaintiffs' letters  
requesting reimbursement, have gone unanswered.

