

1 EDMUND G. BROWN JR., State Bar No. 37100
Attorney General of California
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7 *Attorneys for Defendant California Attorney
General Edmund G. Brown Jr.*

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

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14 **THOMAS JACOBS,**

15 Plaintiff,

16 v.

17 **CITY OF SAN JOSE MAYOR CHUCK
18 REED, in both his individual and official
19 capacities; CITY OF SAN JOSE; COUNTY
20 OF SANTA CLARA; CITY OF SAN JOSE
21 POLICE CHIEF ROB DAVIS, in both his
22 individual and official capacities; COUNTY
23 OF SANTA CLARA SHERIFF LAURIE
24 SMITH, in both her individual and official
25 capacities; and STATE OF CALIFORNIA
26 ATTORNEY GENERAL EDMUND G.
27 BROWN, in his official capacity,**

28 Defendants.

2:10-cv-00913-LKK-EFB

**REQUEST FOR STAY OF
PROCEEDINGS PURSUANT TO
STIPULATION [L.Rs. 143 & 144] AND
[PROPOSED] ORDER**

Judge: The Hon. Lawrence K. Karlton
Courtroom: 4
Trial Date: TBD
Action Filed: April 16, 2010

25 Pursuant to the United States District Court, Eastern District of California, Local Rules,
26 Rule 143 and 144, Craig C. Weaver, co-counsel for plaintiff Thomas Jacobs, Geoffrey L.
27 Graybill, Deputy Attorney General, representing Defendant Edmund G. Brown Jr., sued in his
28 official capacity as Attorney General of the State of California (Defendant), Melissa Kiniyalocts,

1 Lead Deputy County Counsel, representing Defendants County of Santa Clara and Santa Clara
2 County Sheriff Laurie Smith sued in her individual and official capacities, and Margo Laskowska,
3 Deputy City Attorney, representing Defendants City of San Jose, Mayor Chuck Reed sued in his
4 individual and official capacities and San Jose Police Chief Rob Davis sued in his individual and
5 official capacities state:

6 They and each of them concurs with the representations and statements set forth in the
7 declaration by Mr. Graybill submitted herewith.

8 For the reasons stated in the Graybill Declaration, the parties respectfully request that this
9 Court vacate the order setting the status conference currently in effect for June 28, 2010 and stay
10 all proceedings in this matter including but not limited to responses to the complaint until after
11 the U.S. Supreme Court decides *McDonald v. City of Chicago* (Doc. No. 08-1521) and/or the
12 related case, *National Rifle Association of America v. City of Chicago* (No. 08-1497) in which
13 writs of certiorari have been granted with decisions expected on or before June 30, 2010, and the
14 U. S. Court of Appeals for the Ninth Circuit decides *Nordyke v. King*, No. 07-15763, for which
15 proceedings have been stayed pending the Supreme Court's decision in *McDonald* and/or
16 *National Rifle Association of America*.

17 The parties agree to enlarge the time to respond to the complaint until 20 days after the
18 stay is lifted by order of the Court. The parties further agree that by stipulating to stay the action
19 Defendants are not waiving their right to bring a motion pursuant to 28 U.S.C. § 1404(a) to
20 transfer the action for the convenience of the parties.

21 The parties respectfully request that the order vacating and staying proceedings remain in
22 effect pending further order of the Court. The parties are obligated to notify this Court of
23 decisions in *McDonald*, *Nordyke* and *Mehl* within five working days after each has been filed.

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IT IS SO STIPULATED.

Dated: June 8, 2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
DOUGLAS J. WOODS
Supervising Deputy Attorney General

/s/ **Geoffrey L. Graybill**

GEOFFREY L. GRAYBILL
Deputy Attorney General
*Attorneys for Defendant California Attorney
General Edmund G. Brown Jr.*

/s/ **Melissa Kinyalocets**

Dated: June 8, 2010

MELISSA KINIYALOCTS
Lead Deputy County Counsel
County of Santa Clara
*Attorney for Defendants Santa Clara County
and Sheriff Laurie Smith*

Dated: June 8, 2010

RICHARD DOYLE, City Attorney

/s/ **Margo Laskowska**

By:

MARGO LASKOWSKA
Deputy City Attorney
*Attorneys for Defendants City of San Jose,
San Jose Mayor Chuck Reed, and San Jose
Police Chief Rob Davis*

/s/ **Craig C. Weaver**

Dated: June 8, 2010

CRAIG C. WEAVER
Co-Counsel for Plaintiff Thomas Jacobs

IT IS SO ORDERED.

Date: June ____, 2010

HONORABLE LAWRENCE K. KARLTON
United States District Court Judge

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 Attorney General of California
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 22 ATTORNEY GENERAL EDMUND G.
 BROWN, in his official capacity,**

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2:10-cv-00913-LKK-EFB

**DECLARATION OF GEOFFREY L.
 GRAYBILL IN SUPPORT OF
 STIPULATION FOR REQUEST TO
 STAY PROCEEDINGS**

Judge: The Hon. Lawrence K. Karlton
 Courtroom: 4
 Trial Date: TBD
 Action Filed: April 16, 2010

25
 26 I, GEOFFREY L. GRAYBILL, declare as follows:

27 1. I am a Deputy Attorney General of California and member of the California State Bar
 28 admitted to practice before the U.S. District Court for the Eastern District of California. I have

1 been assigned to represent defendant Edmund G. Brown Jr. sued in his official capacity as
2 Attorney General of California in this action.

3 2. In the aforesaid capacity, I am also representing state defendants in cases pending in
4 the U. S. Court of Appeals for the Ninth Circuit in which the core issues are the same as those
5 raised in this action: whether state regulation of concealed firearms violates plaintiffs' asserted
6 right to keep and bear arms under the Second Amendment which plaintiffs contend applies to the
7 states through incorporation by the Fourteenth Amendment.

8 3. The two cases pending in the Ninth Circuit are *Mehl v. Blanas*, No. 08-15773 (9th
9 Cir.) and *Rothery v. County of Sacramento*, No. 09-16852 (9th Cir.). Proceedings in *Rothery*
10 have been stayed until August 16, 2010. Although oral argument has been completed in *Mehl*,
11 the panel withdrew the submission pending a decision by the en banc panel in *Nordyke v. King*,
12 No. 07-15763 (9th Cir.). Both the incorporation issue and the scope of the Second Amendment
13 issue are pending decision in *Mehl* and *Nordyke*.

14 4. The en banc panel in *Nordyke* also withdrew its submission after oral argument
15 pending a decision by the U.S. Supreme Court in *McDonald v. City of Chicago* (Docket # 08-
16 1521). The Supreme Court granted certiorari in *McDonald* to decide whether its landmark
17 decision in *District of Columbia v. Heller*, --- U.S. ---, 128 S.Ct. 2783 (2008) holding there is an
18 individual right to keep and bear arms under the Second Amendment applies to the states.

19 5. Decisions in *McDonald* and *Nordyke* will likely establish the legal framework for
20 further proceedings in this case. Until these cases are decided, the parties are faced with great
21 uncertainty regarding applicable law. Thus, proceeding further in this case before the related
22 appeals are decided risks potentially unnecessary or duplicative expenditure of time and resources
23 for the parties and for this Court. In my opinion, a stay of further proceedings until the U.S.
24 Supreme Court and Ninth Circuit decide the legal parameters that will be controlling in this case
25 will promote the best interests of the Court and the parties.

26 6. Counsel for plaintiff, Thomas Jacobs, is also counsel for appellants in *Rothery* and
27 *Mehl*. He is also counsel of record for plaintiff in another Second Amendment case pending in
28

1 the U.S. District Court for the Northern District of California: *Pizzo v. Newsom* [No. cv-09-4493-
2 CW.]

3 7. The parties will notify this Court immediately when decisions are filed in *McDonald*,
4 *Nordyke* and *Mehl*.

5 I declare under penalty of perjury that the foregoing statements are true and correct of my
6 personal knowledge except where stated on information and belief and, as to those statements, I
7 believe them to be true and correct.

8 Executed at Sacramento, California on June 8, 2010.

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10 /s/ ***Geoffrey L. Graybill***

11 _____
GEOFFREY L. GRAYBILL

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CERTIFICATE OF SERVICE

Case Name: **Thomas Jacobs v. City of San Jose Mayor Chuck Reed, et al.**

No. **2:10-cv-00913-LKK-EFB**

I hereby certify that on June 8, 2010, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- 1) **Request for Stay of Proceedings Pursuant to Stipulation and [Proposed] Order**
- 2) **Declaration of Geoffrey L. Graybill in Support of Stipulation for Request to Stay Proceedings**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not yet registered CM/ECF users. On June 8, 2010, I mailed the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following:

Melissa R. Kiniyalocts
Lead Deputy County Counsel
Office of the County Counsel
County of Santa Clara
County Government Center, East Wing
70 West Hedding Street, 9th Floor
San Jose, CA 95110-1705
Attorney for Defendants

Margo Laskowska
Deputy City Attorney
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905
Attorneys for Defendants

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 8, 2010, at Sacramento, California.

Tammy J. Treichel

Declarant

/s/ **Tammy J. Treichel**

Signature