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7 Attorneys for Plaintiffs
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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 ESPANOLA JACKSON, PAUL) CASE NO.: CV-09-2143-RS
COLVIN, THOMAS BOYER,)
13 LARRY BARSETTI, DAVID) DECLARATION OF C.D. MICHEL IN
GOLDEN, NOEMI MARGARET) SUPPORT OF MOTION FOR RELIEF
14 ROBINSON, NATIONAL RIFLE) FROM STAY
ASSOCIATION OF AMERICA,)
15 INC. SAN FRANCISCO VETERAN)
POLICE OFFICERS)
16 ASSOCIATION,)
17)
Plaintiffs)
18 vs.)
19)
CITY AND COUNTY OF SAN)
20 FRANCISCO, MAYOR GAVIN)
NEWSOM, IN HIS OFFICIAL)
21 CAPACITY; POLICE CHIEF)
HEATHER FONG, in her official)
22 capacity, and Does 1-10,)
23 Defendants.)

24
25 I, C.D. Michel, declare as follows:

- 26 1. I am the attorney of record for Plaintiffs in the above-entitled action.
27 2. Plaintiffs filed their Complaint for Declaratory and Injunctive Relief against
28 Defendants challenging the validity of three firearms - related ordinances enacted by the City and

1 County of San Francisco on May 15, 2009. The ordinances at issue are: (1) San Francisco Police
2 Code (“SPFC”) § 4512 which prohibits the keeping of a handgun in a residence unless stored in a
3 locked container or disabled with a trigger lock; (2) SFPC § 613.10(g), prohibiting the sale of
4 ammunition which serves no sporting purpose; and (3) SFPC § 1290, which prohibits the
5 discharge of any firearms within the limits of the City and County of San Francisco.

6 3. On July 9, 2009, Defendants filed a Motion to Dismiss Plaintiff’s Complaint for lack
7 of subject matter jurisdiction, and a hearing was set for September 23, 2009. On August 24,
8 2009, Plaintiff’s filed a First Amended Complaint which made the Motion to Dismiss moot.

9 4. The Court held a Initial Case Management Conference on August 27, 2009. The
10 parties stipulated to staying the action pending a decision by the Ninth Circuit in *Nordyke v. King*.
11 Attached hereto as Exhibit “A” is a true and correct copy of the Minute Order of the Case
12 Management Conference.

13 5. Attached hereto as Exhibit “B” is true and correct copy of a July 29, 2009 Order of the
14 Ninth Circuit Court of Appeals in the matter of *Nordyke v. King* (No. 07-15763) ordering that the
15 matter is to be reheard en banc pursuant to Circuit Rule 35-3, and that the three-judge panel
16 opinion (*Nordyke v. King*, 563 F.3d 439 (9th Cir. 2009)) shall not be cited as precedent by or to
17 any court of the Ninth Circuit.

18 6. Attached hereto as Exhibit “C” is true and correct copy of a July 29, 2009 Order of the
19 Ninth Circuit Court of Appeals in the matter of *Nordyke v. King* (No. 07-15763) ordering that en
20 banc oral argument take place during the week of September 21, 2009.

21 7. Attached hereto as Exhibit “D” is true and correct copy of an August 21, 2009 Order
22 of the Ninth Circuit Court of Appeals in the matter of *Nordyke v. King* (No. 07-15763) ordering
23 that the en banc oral argument be held at 10:00 a.m. on September 24, 2009, at the James R.
24 Browning Courthouse in San Francisco, California.

25 8. Attached hereto as Exhibit “E” is a true and correct copy of the order that *Nordyke v.*
26 *King* (No. 07-15763) is to be stayed pending the United States Supreme Court ruling in
27 *McDonald v. City of Chicago* (No. 08-1521).

28 9. I am informed and believe that only issue that would warrant *en banc* review in

1 *Nordyke* is the decision that the Second Amendment to the United States Constitution is
2 incorporated by the Fourteenth Amendment and thus applicable to the states.

3 10. I am informed and believe that the United States Supreme Court will issue a decision
4 resolving the Second Amendment incorporation issue in *McDonald v. City of Chicago* (No. 08-
5 1521) by the end of this Term. Attached hereto as Exhibit "F" is the question presented before
6 the United States Supreme Court regarding the Second Amendment incorporation issue.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct.

9 Dated this 17TH day of June, 2010 at Long Beach, California.

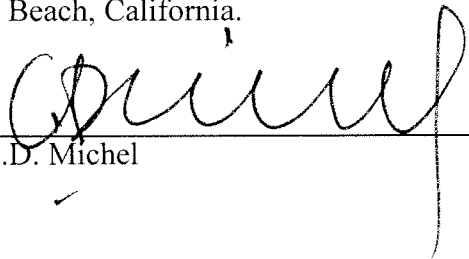
10 
11 _____
12 C.D. Michel
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EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CIVIL MINUTES

Date: August 27, 2009

JUDGE: Phyllis J. Hamilton

Case No: C-09-2143 PJH

Case Name: Espanola Jackson, et al. v. City and County of San Francisco, et al..

Attorney(s) for Plaintiff: C.D. Michel

Attorney(s) for Defendant: Sherri Sokeland Kaiser

Deputy Clerk: Nichole Heuerman

Court Reporter: Not Reported

PROCEEDINGS

Initial Case Management Conference-Held. The parties stipulate to staying action pending decision by the 9th Circuit in the Nordyke appeal. No motion to stay is necessary. The parties shall contact the court immediately upon the issuance of a decision. Defendants withdraw the pending motion to dismiss which was filed on 7/9/09. Upon the lifting of the stay by the court the defendants shall have 20 days to respond to the amended complaint. The hearing dates for the motion to stay and motion to dismiss are VACATED.

Order to be prepared by: PI Def Court

Notes:

cc: chambers

EXHIBIT B

FILED

FOR PUBLICATION

JUL 29 2009

UNITED STATES COURT OF APPEALS

**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

**RUSSELL ALLEN NORDYKE; ANN
SALLIE NORDYKE, dba TS Trade
Shows; JESS B. GUY; DUANE DARR;
WILLIAM J. JONES; DARYL N.
DAVID; TASIANA WESTYSCHYN;
JEAN LEE; TODD BALTES; DENNIS
BLAIR, R.L. ADAMS; ROGER
BAKER; MIKE FOURNIER; VIRGIL
MCVICKER,**

Plaintiffs - Appellants,

v.

**MARY V. KING; GAIL STEELE;
WILMA CHAN; KEITH CARSON;
SCOTT HAGGERTY; COUNTY OF
ALAMEDA; COUNTY OF ALAMEDA
BOARD OF SUPERVISORS,**

Defendants - Appellees.

No. 07-15763

D.C. No. CV-99-04389-MJJ

ORDER

CG COPY

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judge Rawlinson did not participate in the deliberations or vote in this case.

EXHIBIT C

FILED

JUL 29 2009

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

RUSSELL ALLEN NORDYKE; ANN SALLIE NORDYKE, dba TS Trade Shows; JESS B. GUY; DUANE DARR; WILLIAM J. JONES; DARYL N. DAVID; TASIANA WESTYSCHYN; JEAN LEE; TODD BALTES; DENNIS BLAIR, R.L. ADAMS; ROGER BAKER; MIKE FOURNIER; VIRGIL MCVICKER,

Plaintiffs - Appellants,

v.

MARY V. KING; GAIL STEELE; WILMA CHAN; KEITH CARSON; SCOTT HAGGERTY; COUNTY OF ALAMEDA; COUNTY OF ALAMEDA BOARD OF SUPERVISORS,

Defendants - Appellees.

No. 07-15763

D.C. No. CV-99-04389-MJJ

ORDER

 **COPY**

KOZINSKI, Chief Judge:

En banc oral argument will take place during the week of September 21, 2009, in San Francisco, California. The date and time will be determined by separate order. For further information or special requests regarding scheduling, please contact Deputy Clerk Paul Keller at paul_keller@ca9.uscourts.gov or (415) 355-8026.

Within seven days from the date of this order, the parties shall forward to the Clerk of Court thirty additional paper copies of the original briefs and excerpts of record.

EXHIBIT D

FILED

AUG 21 2009

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**RUSSELL ALLEN NORDYKE; ANN
SALLIE NORDYKE, dba TS Trade
Shows; JESS B. GUY; DUANE DARR;
WILLIAM J. JONES; DARYL N.
DAVID; TASIANA WESTYSCHYN;
JEAN LEE; TODD BALTES; DENNIS
BLAIR, R.L. ADAMS; ROGER
BAKER; MIKE FOURNIER; VIRGIL
MCVICKER,**

Plaintiffs - Appellants,

v.

**MARY V. KING; GAIL STEELE;
WILMA CHAN; KEITH CARSON;
SCOTT HAGGERTY; COUNTY OF
ALAMEDA; COUNTY OF ALAMEDA
BOARD OF SUPERVISORS,**

Defendants - Appellees.

No. 07-15763

D.C. No. CV-99-04389-MJJ

ORDER

CC COPY

KOZINSKI, Chief Judge:

Oral argument in this en banc case will be held at 10:00 a.m. on Thursday, September 24, 2009, in Courtroom One at the James R. Browning Courthouse, located at 95 Seventh Street in San Francisco, California 94103.

<http://www.ca9.uscourts.gov/information/locations.php>

EXHIBIT E

FILED

NOT FOR PUBLICATION

SEP 24 2009

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

RUSSELL ALLEN NORDYKE; ANN SALLIE NORDYKE, dba TS Trade Shows; JESS B. GUY; DUANE DARR; WILLIAM J. JONES; DARYL N. DAVID; TASIANA WESTYSCHYN; JEAN LEE; TODD BALTES; DENNIS BLAIR, R.L. ADAMS; ROGER BAKER; MIKE FOURNIER; VIRGIL MCVICKER,

Plaintiffs - Appellants,

v.

MARY V. KING; GAIL STEELE; WILMA CHAN; KEITH CARSON; SCOTT HAGGERTY; COUNTY OF ALAMEDA; COUNTY OF ALAMEDA BOARD OF SUPERVISORS,

Defendants - Appellees.

No. 07-15763

D.C. No. CV-99-04389-MJJ

ORDER

KOZINSKI, Chief Judge:

Submission is vacated pending the Supreme Court's disposition of Maloney v. Rice, No. 08-1592, McDonald v. City of Chicago, No. 08-1521, and National Rifle Ass'n of Am., Inc. v. City of Chicago, No. 08-1497.

EXHIBIT F

08-1521 MCDONALD V. CHICAGO

DECISION BELOW:567 F.3 856

LOWER COURT CASE NUMBER: 08-4241, 08-4243, 08-4244

QUESTIONS PRESENTED:

Whether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment's Privileges or Immunities or Due Process Clauses.

CERT. GRANTED 9/30/2009

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 ESPANOLA JACKSON, PAUL) CASE NO.: CV-09-2143-RS
5 COLVIN, THOMAS BOYER,)
6 LARRY BARSETTI, DAVID) CERTIFICATE OF SERVICE
7 GOLDEN, NOEMI MARGARET)
8 ROBINSON, NATIONAL RIFLE)
ASSOCIATION OF AMERICA,)
9 INC. SAN FRANCISCO VETERAN)
POLICE OFFICERS)
ASSOCIATION,)

9 Plaintiffs

10 vs.

11 CITY AND COUNTY OF SAN)
12 FRANCISCO, MAYOR GAVIN)
13 NEWSOM, IN HIS OFFICIAL)
14 CAPACITY; POLICE CHIEF)
HEATHER FONG, in her official)
capacity, and Does 1-10,)

15 Defendants.

16 IT IS HEREBY CERTIFIED THAT:

17 I, the undersigned, am a citizen of the United States and am at least eighteen
18 years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach,
California, 90802.

19 I am not a party to the above-entitled action. I have caused service of:

20 **DECLARATION OF C.D. MICHEL IN SUPPORT OF MOTION FOR
RELIEF FROM STAY**

21 on the following party by electronically filing the foregoing with the Clerk of the
District Court using its ECF System, which electronically notifies them.

22 Wayne Snodgrass, Deputy City Attorney
23 Sherri Kaiser, Deputy City Attorney
sherri.kaiser@sfgov.org
24 City and County of San Francisco
Office of the City Attorney
25 City Hall 1 Drive Carlton B.
San Francisco, CA 94102

26 I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 17, 2010.

27 _____/S/
C. D. Michel
28 Attorney for Plaintiffs'