1 2 3 4 5 6 7 8	C. D. Michel - S.B.N. 144258 Don B. Kates - S.B.N. 39193 Glenn S. McRoberts - SBN 144852 Hillary J. Green - S.B.N. 243221 MICHEL & ASSOCIATES, LLP 180 E. Ocean Boulevard, Suite 200 Long Beach, CA 90802 Telephone: 562-216-4444 Facsimile: 562-216-4445 Email: cmichel@michelandassociates. Attorneys for Plaintiffs IN THE UNITED ST	COM CATES DISTRICT COURT	
10	FOR THE NORTHERN DISTRICT OF CALIFORNIA		
11	SAN FRANCISCO DIVISION		
12	ESPANOLA JACKSON, PAUL COLVIN, THOMAS BOYER,) CASE NO. C09-2143 PJH	
13 14	LARRY BARSETTI, DAVID GOLDEN, NOEMI MARGARET	DECLARATION OF C. D. MICHEL IN	
15	ROBINSON, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. SAN FRANCISCO VETERAN	SUPPORT OF MOTION TO STAY	
16	POLICE OFFICERS ASSOCIATION,	Hearing Date: October 21, 2009 Time: 9:00 a.m.	
17		Place: Courtroom 5, 17th Fl.	
18	Plaintiffs) Hon. Phyllis J. Hamilton)	
19	VS.		
20	CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, in his official capacity; POLICE CHIEF HEATHER FONG, in her official capacity, and Does 1-		
21	POLICE CHIEF HEATHER FONG, in her official capacity, and Does 1-		
22	10,		
23 24	Defendants.	}	
25	I, C. D. Michel, declare as follows:		
26	1. I am the attorney of record for Plaintiffs in the above-entitled action.		
27	 Attached hereto as Exhibit "A" is true and correct copy of a July 29, 2009 		
28	Order of the Ninth Circuit Court of Appeals in the matter of <i>Nordyke v. King</i> (No.		
	Declaration of C. D. Michel - USDC No. C09-2143-PJH		

07-15763) ordering that the matter is to be reheard en banc pursuant to Circuit Rule 35-3, and that the three-judge panel opinion (*Nordyke v. King*, 563 F.3d 439 (9th Cir. 2009) shall not be cited as precedent by or to any court of the Ninth Circuit.

- 3. Attached hereto as Exhibit "B" is true and correct copy of a July 29, 2009 Order of the Ninth Circuit Court of Appeals in the matter of *Nordyke v. King* (No. 07-15763) ordering that en banc oral argument take place during the week of September 21, 2009.
- 4. Attached hereto as Exhibit "C" is true and correct copy of an August 21, 2009 Order of the Ninth Circuit Court of Appeals in the matter of *Nordyke v. King* (No. 07-15763) ordering that the en banc oral argument be held at 10:00 a.m. on September 24, 2009, at the James R. Browning Courthouse in San Francisco, California.
- 5. I am informed and believe that only issue that would warrant *en banc* review in *Nordyke* is the decision that the Second Amendment to the United States Constitution is incorporated by the Fourteenth Amendment and thus applicable to the states. Because that issue is central to Plaintiffs' case, and the Appellate Court's ruling will be controlling authority, Plaintiffs see no benefit in proceeding with the instant action pending a decision by the *en banc* panel in *Nordyke* and, on that basis, request that a stay be granted immediately and for all purposes.
- 6. Defendants, as indicated in the Joint Case Management Conference Statement, filed August 20, 2009, do not oppose staying this action.

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

Executed within the United States on August 27, 2009.

/S/ C. D. MICHEL

EXHIBIT A

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



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 B

FILED

NOT 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



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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 C

FILED

NOT FOR PUBLICATION

AUG 21 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



Page 2

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

1	IN THE UNITED STATES DISTRICT COURT		
2	FOR THE NORTHERN DISTRICT OF CALIFORNIA		
3	SAN FRANCISCO DIVISION		
4	ESPANOLA JACKSON, PAUL COLVIN, THOMAS BOYER,	CASE NO.: CV-09-2143-PJH	
5	LARRY BARSETTI, DAVID GOLDEN, NOEMI MARGARET	DECLARATION OF C. D. MICHEL IN	
6	ROBINSON, NATIONAL RIFLE ASSOCIATION OF AMERICA,	SUPPORT OF MOTION TO STAY	
7	INC. SAN FRANCISCO VETERAN POLICE OFFICERS		
8	ASSOCIATION,		
9	Plaintiffs		
10	vs.		
11	CITY AND COUNTY OF SAN		
12	FRANCISCO, MAYOR GAVIN NEWSOM, IN HIS OFFICIAL		
13	CAPACITY; POLICE CHIEF HEATHER FONG, in her official		
14	capacity, and Does 1-10,		
15	Defendants.		
16)		
17	IT IS HEREBY CERTIFIED THAT:		
18	I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.		
19			
20	I am not a party to the above-entitled action. I have caused service of: DECLARATION OF C. D. MICHEL IN SUPPORT OF MOTION TO STAY on the following party by all the following party b		
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	Sherri Kaiser, Deputy City Attorney		
23	Sherri Kaiser, Deputy City Attorney City and County of San Francisco Office of the City Attorney City Hall 1 Drive Carlton B. Goodlett Place		
24	City Hall 1 Drive Carlton B. Goodlett Place San Francisco, CA 94102 - 4682		
25	I declare under penalty of perjury that the foregoing is true and correct.		
26	Executed on August 2/, 2009.	-	
27	Ī	/S/ C. D. Michel Attorney for Plaintiffs	
28	•	The state of the s	
		3	
	Declaration of C. D. Michel - USDC No. C09-2143-PJH		