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September 22, 2010

VIA E-FILE

Ms. Molly C. Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
P.O. Box 19339
San Francisco, California 94119-3939

Re: *Nordyke, et al., v. King, et al.*, Case No. 07-15763

Dear Ms. Dwyer:

On September 13, 2010, Appellants in the above entitled case filed a Federal Rule of Appellate Procedure 28(j) letter brief regarding the Ninth Circuit Court of Appeals' recent decision in the matter of *Anderson v. Hermosa Beach*, No. 08-56914 (September 9, 2010). The Court of Appeals holding in *Anderson* is not relevant to the issues before this Court in this case for the following reasons:

Central to the holding in *Anderson* is the fact that the ordinance at issue effectively banned tattoo parlors throughout the City of Hermosa Beach. In contrast, the Ordinance before this Court is not a County-wide ban on gun possession. The Ordinance regulates gun possession only on certain County-owned property, as defined in the Ordinance, and does not regulate gun possession throughout the unincorporated County territory. Even assuming *arguendo* the Ordinance precludes Appellants from conducting a gun show on the Fairgrounds in the manner they wish to conduct a gun show, the Record reflects that gun shows continue to take place elsewhere in Alameda County. Excerpts of Record in Appeal No. 07-15763, Vol. II, pp. 420-431.

As the Record before this Court also reflects, the Scottish Games historical reenactments are conducted on the Fairgrounds consistent with the safety requirements of the exception to the Ordinance set forth at

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Section 9.12.120(f)(4). Excerpts of Record in Appeal No. 07-15763, Vol. II, p. 395, lines 16-25. That exception is available to Appellants. Accordingly, the statement in Appellants' Rule 28(j) letter that the County "permits the Scottish Games to display their guns, but denies that same right to Appellants" is incorrect.

Very truly yours,

/s/ Sayre Weaver

Sayre Weaver
Attorney for Defendants

CERTIFICATE OF COMPLIANCE

Appellees, pursuant to Federal Rules of Appellate Procedure, Rule 28(j) and Ninth Circuit Rule 28-6, submit this Certificate of Compliance. The 350-word limitation of Rule 28(j) has not been exceeded inasmuch as the body of the letter, excluding the address, salutation, header, and closing, contains 261 words.

Dated: September 22, 2010

/s/ Sayre Weaver
Sayre Weaver

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9th Circuit Case Number(s) 07-15763

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) September 22, 2010.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) /s/ Karen Forrand

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

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

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

Signature (use "s/" format)