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September 28, 2010

VIA E-FILE

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

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

Dear Ms. Dwyer:

This letter responds to the unauthorized letter brief filed by appellants on September 24, 2010. Instead of calling the Court's attention to new authority as required under Rule 28(j), Appellants argued an issue that has already been litigated between the parties.

That issue is whether subsection (f)(4) of the Alameda County Ordinance under review is available to Appellants. That subsection allows events on County-owned property when conducted in compliance with the safety requirements set forth in that subsection. Appellees simply stated in their Rule 28(j) response letter filed on September 22, 2010 that subsection (f)(4) is available to appellants, as it would be to any other person. That statement is consistent with this Court's earlier opinion and the earlier briefs filed by Appellees:

1. In *Nordyke v. King*, 563 F.3d 439, 462 (2009) (vacated), this Court noted that "only if the Scottish Games ensure that authorized participants possess the firearms or that the firearms are secure can they get the benefit of the exception. If the Nordykes could meet one of those criteria [in subsection (f)(4)], they could benefit from the exception as well."
2. In their Answering Brief (at pp. 12-13) filed some nine years ago on March 15, 2001 in the California Supreme Court (on certified question from this Court), Appellees explained that the Alameda County Fair Association asked Appellants how they would conduct their event on the County fairgrounds in compliance with the Ordinance, and received no answer. This Court recognized as much in its opinion. *See Nordyke*, 563 F.3d at 443-44.

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3. In Appellees' Answering Brief filed in this Court on January 9, 2008, at pages 38 through 41, Appellees again explained that Appellants could conduct their event at the fairgrounds if they complied with subsection (f)(4).

In short, the availability of subsection (f)(4) to events that are conducted in compliance with its safety requirements has been thoroughly addressed in this litigation, as has the fact that compliance with the exception would require changes in how the Nordykes conduct their gun show. Appellants' September 24, 2010 letter re-arguing the issue is, therefore, improper.

Very truly yours,

/s/ Sayre Weaver

Sayre Weaver
Attorney for Defendants

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9th Circuit Case Number(s) 07-15763

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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 28, 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

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Signature (use "s/" format)