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February 4, 2009

VIA FEDERAL EXPRESS

Ms. Molly C. Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, California 94103-1518

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

Dear Ms. Dwyer:

Pursuant to F.R.App.P. 28(j), this letter is intended to advise you of pertinent and significant authority that came to Appellees' attention after oral argument in the above -referenced matter.

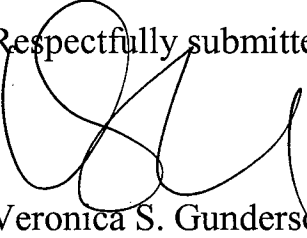
On January 28, 2009, the United States Court of Appeals for the Second Circuit issued the decision in *Maloney v. Cuomo*, --- F.3d ----, 2009 WL 189887 (C.A.2 (N.Y.)). Plaintiff was arrested August 24, 2000 in his home and charged with possessing a "nunchaku" in violation of New York Penal Law § 265.10(1). *Id.* at *1. After the criminal case concluded, Plaintiff filed a complaint seeking a declaration that N.Y. Penal Law §§ 265.00 through 260.02 are unconstitutional insofar as they punish possession of nunchakus in one's home. *Id.* at *1. The district court dismissed the suit, and on appeal, Plaintiff argued that the statutory ban on possession of nunchakus violated his Second Amendment right to keep and bear arms. *Id.* at *1.

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The Court held that “the Second Amendment applies only to limitations the federal government seeks to impose.” *Id.*, at *2. In so doing, the Second Circuit noted that the Supreme Court’s decision in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008) did not invalidate this longstanding principle, which was articulated in *Presser v. Illinois*, 116 U.S. 252, 265 (1886). *Id.* at *2. The Second Circuit held that it was bound to follow the rule from *Presser v. Illinois* because the Supreme Court must be left the prerogative of overruling its own decisions. *Id.*, at *2.

Accordingly, Appellees ask the Clerk to inform the Panel of the above-referenced citation.

Respectfully submitted,

Veronica S. Gunderson

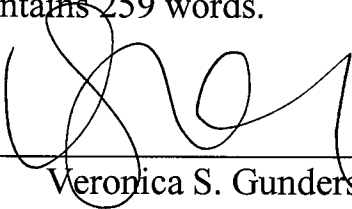
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CERTIFICATE OF COMPLIANCE

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 259 words.

Dated: February 4, 2009



Veronica S. Gunderson

PROOF OF SERVICE

I, Karen Forrand, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand Avenue, 40th Floor, Los Angeles, CA 90071-3101.

On February 4, 2009, I served the within document: **LETTER DATED FEBRUARY 4, 2009 TO 9TH CIRCUIT COURT OF APPEAL**

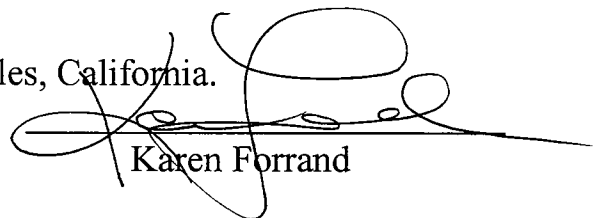
■ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in this affidavit.

Donald Kilmer Law Offices of Donald Kilmer 1645 Willow Street, Suite 150 San Jose, California 95125 Tele: (408) 264-8489/Fax: (408) 264-8487	Attorneys for Appellants
Richard E. Winnie County Counsel 333 Hegenberger, Suite 400 Oakland, California 94621	Attorneys for Appellees

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on February 4, 2009 at Los Angeles, California.


Karen Forrand