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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Ivan Peña, et al.,)	Case No. 2:09-CV-01185-FCD-KJM
)	
Plaintiffs,)	NOTICE OF POSSIBLE RELEVANT
)	AUTHORITY
v.)	
)	
Wilfredo Cid,)	
)	
Defendant.)	
_____)	

NOTICE OF POSSIBLE RELEVANT AUTHORITY

COME NOW the Plaintiffs, Ivan Peña, Roy Vargas, Doña Croston, Brett Thomas, the Second Amendment Foundation, Inc., and the Calguns Foundation, Inc., by and through undersigned counsel, and give notice of two recent events that may be relevant to consideration of the pending motion to dismiss and forthcoming cross-motion for summary judgment:

1. *McDonald v. City of Chicago*, Supreme Court No. 08-1521;
NRA v. City of Chicago, Supreme Court No. 08-1497

On August 19, 2009, the Clerk of the Supreme Court distributed for consideration at the Court's September 29, 2009 conference two petitions for certiorari raising the question of whether the Second Amendment is incorporated as against the states by operation of the Fourteenth Amendment. *McDonald v. City of Chicago*, No. 08-1521; *NRA v. City of Chicago*, No. 08-1497. Plaintiffs' counsel Mr. Gura is counsel for the petitioners in *McDonald*.

The State of California has filed an amicus brief in these matters, urging the Supreme Court to grant certiorari and hold that the Second Amendment is incorporated.

It is not possible to know whether the Court would take any particular action, or even any action at all, on either of these petitions at its September 29 conference.

2. *Nordyke v. King*, Ninth Circuit No. 07-15763

On August 21, 2009, the Ninth Circuit set *Nordyke v. King*, No. 07-15763 for re-hearing en banc in San Francisco, at 10:00 a.m. on September 24, 2009. One of the issues in the case is whether the Second Amendment is incorporated as against the states by operation of the Fourteenth Amendment. Plaintiffs' counsel Mr. Kilmer is counsel for the appellants in *Nordyke*.

Although the Court may wish to await any possible guidance from the Ninth Circuit and/or Supreme Court with respect to the incorporation issue prior to deciding this case, counsel believe that argument in the matter could be constructive at this time given the case's posture. The parties are apparently in agreement that the Second Amendment should be held incorporated as against the states, and no issue in the pending Supreme Court and Ninth Circuit matters is relevant to the arguments raised in Defendant's motion to dismiss.

1 Accordingly, Plaintiffs submit that notwithstanding the developments of the past week,
2 the argument set in this case for October 2 should proceed as scheduled.

3 Dated: August 24, 2009

Respectfully submitted,

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