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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,)	PLAINTIFFS' SUPPLEMENTAL
)	REPLY BRIEF
v.)	RE: STAY OF ACTION
Wilfredo Cid,)	Date: Oct. 2, 2009
)	Time: 12:00 p.m.
Defendants.)	Judge: Frank C. Damrell, Jr.
)	

Plaintiffs respectfully oppose the suggestion by Defendant that no summary judgment motion be considered until after a motion to dismiss is first resolved. This suggestion quite simply contradicts the established practice of resolving cases, as well as the express language of the forthcoming revision to Rule 56, effective December 1, 2009.

District courts traditionally resolve cases on dispositive cross-motions because doing so conserves judicial resources. An appellate court, on a record containing cross-motions, can resolve more questions by granting in whole or in part motions that were not granted by lower courts, without need of additional proceedings. Indeed, this was exactly the procedure

1 followed in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008). The District Court granted
 2 the city's motion to dismiss and denied the plaintiffs' motion for summary judgment, but the
 3 D.C. Circuit specifically granted the summary judgment motion, and the Supreme Court
 4 affirmed. *McDonald v. City of Chicago*, No., 08-1521 may well follow the identical path.
 5

6 Rule 56 currently allows plaintiffs to file summary judgment motions within 20 days
 7 of the initiation of the action. Under the current rules the motion would therefore be timely
 8 upon the lifting of any stay. However, Rule 56 as it would be operative in a post-*McDonald*,
 9 post-*Nordyke* environment (after Dec. 1, 2009) will authorize a summary judgment motion by
 10 either party "at any time until 30 days after the close of all discovery."
 11

12 Respectfully, the Court should decide this matter on a full record, consistent with
 13 Plaintiffs' prerogatives under Rule 56 and in accordance with the normal procedure governing
 14 the disposition of cases on cross-motions.
 15

16 Dated: October 2, 2009

Respectfully submitted,

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