

09-16852

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

<p>JAMES ROTHERY and ANDREA HOFFMAN, Plaintiffs - Appellants, v. COUNTY OF SACRAMENTO, et al., Defendants - Appellees.</p>

On Appeal from the United States District Court
for the Eastern District of California
No. 2:08-cv-02064-JAM-KJM
The Honorable John A. Mendez, Judge

**JOINT MOTION BY DEFENDANTS – APPELLEES
FOR FURTHER STAY OF APPELLATE
PROCEEDINGS**

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I. RELIEF SOUGHT

Appellees, County of Sacramento, Lou Blanas, John McGinniss, Tim Sheehan and Kamala D. Harris, move this Court for an extension of the current stay of proceedings in this matter. At present, appellees' answering briefs are due December 5, 2012. Appellees request that the current stay be extended until ninety (90) days following issuance of the Ninth Circuit's mandate in *Mehl v. County of Sacramento*, No. 08-15773.

II. POSITIONS OF ALL COUNSEL

All appellees, through the undersigned counsel, join in this Motion for Further Stay of Appellate Proceedings.

All appellants are represented by Gary W. Gorski. Mr. Gorski has indicated to counsel that he has no objection to this motion for further stay of proceedings. (See ¶ 7 of the attached Joint Declaration.)

III. NEED FOR EXTENSION OF THE CURRENT STAY

The present appeal has been stayed several times pending the resolution of other appeals, particularly *Mehl v. County of Sacramento*, No. 08-15773. This Court's present stay order was entered August 30, 2012, and stays proceedings until December 5, 2012. (Dkt. # 45.) As set forth in that order, "At or prior to the expiration of the stay of appellate proceedings, the

appellees shall file the answering brief or file a motion for appropriate relief.”

There is good reason to stay the present appeal pending resolution of the *Mehl* appeal. There is considerable overlap between *Mehl* and the present case. Both cases involve a constitutional challenge to California’s Concealed Carry Weapon (CCW) statutes, and to the application of those statutes by the Sacramento County Sheriff and the Sheriff’s Department. The Sacramento County Sheriff, the County of Sacramento, and the California Attorney General, are appellees in both cases. Appellants’ counsel and appellees’ counsel are the same in both cases. The lower court’s ruling in this case incorporated in full the order/ruling in the *Mehl* case at the District Court level. *Mehl* necessarily will resolve many of the issues presented in the present appeal. A further stay will allow the parties to better brief the Second Amendment issues presented here, and will allow the Ninth Circuit to avoid potentially conflicting or inconsistent decisions on the constitutionality of California’s CCW licensing regime.

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Accordingly, appellees request that the current stay be extended until ninety (90) days following issuance of the Ninth Circuit's mandate in *Mehl v. County of Sacramento*, No. 08-15773.

Dated: November 29, 2012 KAMALA D. HARRIS
Attorney General of California

/s/ GEORGE WATERS

GEORGE WATERS
Deputy Attorney General
*Attorneys for Appellee
Kamala D. Harris*

Dated: November 29, 2012 LONGYEAR, O'DEA & LAVRA

/s/ JERI L. PAPPONE

JERI L. PAPPONE
*Attorneys for Appellees
County of Sacramento, Lou Blanas,
John McGinnis, Timothy Sheehan*

**JOINT DECLARATION OF JERI L. PAPPONE AND
GEORGE WATERS IN SUPPORT OF APPELLEES'
MOTION FOR FURTHER STAY**

WE, Jeri L. Pappone and George Waters, declare as follows:

1. We are attorneys licensed to practice law before all courts in the State of California and are admitted to practice before this Court. Jeri Pappone is an associate of the law firm of Longyear, O'Dea & Lavra, LLP, counsel of record for Defendants/Appellees, County of Sacramento, Lou Blanas, John McGinnis, and Tim Sheehan. George Waters is a Deputy Attorney General for the State of California and counsel of record for Defendant/Appellee Kamala D. Harris, Attorney General of the State of California.

2. In the present *Rothery* appeal, appellants' opening brief was filed on May 6, 2010. (Dkt. # 11.) Thereafter, appellate proceedings, including the filing of appellees' answering briefs, have been stayed by a series of court orders dated May 24, 2010 (Dkt. # 15), August 16, 2010 (Dkt. # 18), October 18, 2010 (Dkt. # 20), January 18, 2011 (Dkt. # 22), March 24, 2011 (Dkt. # 25), June 8, 2011 (Dkt. # 27), August 30, 2011 (Dkt. # 35), November 15, 2011 (Dkt. # 37), February 10, 2012 (Dkt. # 39), May 14, 2012 (Dkt. # 43), and August 30, 2012 (Dkt. # 45). At present, appellees' answering briefs are due on December 5, 2012.

3. We are also counsel of Record for Defendants/Appellees in the pending 9th Circuit case of *Mehl v. Lou Blanas, et al.*, Case No. 08-15773.

4. The *Mehl* appeal is very closely related to the present *Rothery* appeal. Appellants' counsel and appellees' counsel are the same in both cases. Both cases involve a constitutional challenge to California's Concealed Carry Weapon (CCW) statutes, and to the application of those statutes by the Sacramento County Sheriff and the Sheriff's Department. The lower court's ruling in this case incorporated in full the order/ruling in the *Mehl* case at the District Court level. The Sacramento County Sheriff, the County of Sacramento, and the California Attorney General, are appellees in both cases. *Mehl* has been argued before this Court, and thereafter the Court *sua sponte* withdrew the appeal from submission pending issuance of the mandate in *Nordyke v. King*, No. 07-15763. (*Mehl* Dkt. ## 27, 28.)

5. The mandate in *Nordyke* was issued on July 19, 2012. (*Nordyke* Dkt. #280.) Shortly thereafter, the *Mehl* panel resubmitted the case and requested supplemental briefs regarding the effect of *Nordyke* and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). (*Mehl* Dkt. ## 34, 35.) Supplemental briefs were filed on August 10, 2012. (*Mehl* Dkt. ## 38,

40, 41.) Reargument is scheduled for December 10, 2012. (*Mehl* Dkt. # 50.)

6. Appellees have exercised diligence in this matter, but will have only one opportunity to address the Second Amendment and related issues raised by appellants. Because the present appeal is strikingly similar to the *Mehl* appeal (both cases involve a constitutional challenge to California's Concealed Carry Weapon (CCW) statutes, and to the application of those statutes by the Sacramento County Sheriff), it is appropriate to await the Court's opinion in *Mehl* prior to any further briefing in *Rothery*. The requested continuation of the stay to a date until ninety (90) days following issuance of the Ninth Circuit's mandate in *Mehl* is therefore reasonable and will enable appellees' counsel to fulfill their obligations to their clients and to this Court.

7. All Plaintiffs/Appellants in this action are represented by Gary W. Gorski. On November 28, 2012, Jeri Pappone received the response to inquiry from Mr. Gorski that he had no objection to this request for continued stay.

Declarants declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

EXECUTED this 29th day of November, 2012, at Sacramento,
California.

LONGYEAR, O'DEA & LAVRA, LLP

KAMALA D. HARRIS
Attorney General of California

/s/ JERI L. PAPPONE

/s/ GEORGE WATERS

JERI L. PAPPONE
*Attorneys for Appellees
County of Sacramento, Lou Blanas,
John McGinnis, Timothy Sheehan*

GEORGE WATERS
*Attorneys for Appellee
Kamala D. Harris*

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CERTIFICATE OF SERVICE

Case Name: *James Rothery, et al. v. County of Sacramento*

Case No. **09-16852**

I hereby certify that on November 29, 2012, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

**JOINT MOTION BY DEFENDANTS – APPELLEES
FOR FURTHER STAY OF APPELLATE
PROCEEDINGS**

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 29, 2012, at Sacramento, CA.

L. Carnahan
Declarant

/s/ L. Carnahan
Signature