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16 IN THE UNITED STATES DISTRICT COURT

17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18	Ivan Peña, et al.,	)	Case No. 2:09-CV-01185-FCD-KJM
19		)	
20	Plaintiffs,	)	NOTICE OF POSSIBLE RELEVANT
21		)	AUTHORITY
22	v.	)	
23		)	
24	Wilfredo Cid,	)	
25		)	
26	Defendant.	)	
27	_____	)	

28 NOTICE OF POSSIBLE RELEVANT AUTHORITY

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

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

3 On August 19, 2009, the Clerk of the Supreme Court distributed for consideration at the  
4 Court's September 29, 2009 conference two petitions for certiorari raising the question of  
5 whether the Second Amendment is incorporated as against the states by operation of the  
6 Fourteenth Amendment. *McDonald v. City of Chicago*, No. 08-1521; *NRA v. City of Chicago*,  
7 No. 08-1497. Plaintiffs' counsel Mr. Gura is counsel for the petitioners in *McDonald*.  
8

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

11 It is not possible to know whether the Court would take any particular action, or even any  
12 action at all, on either of these petitions at its September 29 conference.  
13

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

15 On August 21, 2009, the Ninth Circuit set *Nordyke v. King*, No. 07-15763 for re-hearing  
16 en banc in San Francisco, at 10:00 a.m. on September 24, 2009. One of the issues in the case is  
17 whether the Second Amendment is incorporated as against the states by operation of the  
18 Fourteenth Amendment. Plaintiffs' counsel Mr. Kilmer is counsel for the appellants in *Nordyke*.  
19

20 Although the Court may wish to await any possible guidance from the Ninth Circuit  
21 and/or Supreme Court with respect to the incorporation issue prior to deciding this case, counsel  
22 believe that argument in the matter could be constructive at this time given the case's posture.  
23 The parties are apparently in agreement that the Second Amendment should be held incorporated  
24 as against the states, and no issue in the pending Supreme Court and Ninth Circuit matters is  
25 relevant to the arguments raised in Defendant's motion to dismiss.  
26

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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