

1 Alan Gura (Calif. Bar No. 178221)
2 Gura & Possessky, PLLC
3 101 N. Columbus St., Suite 405
4 Alexandria, VA 22314
5 703.835.9085/Fax 703.997.7665

6 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
7 Law Offices of Donald Kilmer, A.P.C.
8 1645 Willow Street, Suite 150
9 San Jose, CA 95125
10 408.264.8489/Fax 408.264.8487

11 Jason A. Davis (Calif. Bar No. 224250)
12 Davis & Associates
13 27281 Las Ramblas, Suite 200
14 Mission Viejo, CA 92691
15 949.310.0817/Fax 949.288.6894

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,)	PLAINTIFFS' SUPPLEMENTAL BRIEF
21)	RE: STAY OF ACTION
22	v.)	
23	Wilfredo Cid,)	Date: Oct. 2, 2009
24)	Time: 12:00 p.m.
25	Defendants.)	Judge: Frank C. Damrell, Jr.
26)	

27 On September 28, 2009, this Court ordered the parties to submit supplemental briefs
28 regarding why this action should not be stayed pending the Ninth Circuit's en banc decision in
29 *Nordyke v. King*, No. 07-15763. The Ninth Circuit's action was predicated on the existence of
30 various petitions for certiorari pending in the Supreme Court on the issue of Second
31 Amendment incorporation. *Maloney v. Rice*, No. 08-1592, *National Rifle Ass'n of America,*
32 *Inc., v. City of Chicago*, No. 08-1497 and *McDonald v. City of Chicago*, 08-1521.

33 On September 30, 2009, The Supreme Court of the United States granted certiorari in
34 *McDonald v. City of Chicago*, 08-1521.

1 In light of these facts, the Court's proposed remedy of a stay is well taken. Plaintiffs
2 hereby withdraw their Motion for Summary Judgment (set to be heard on October 30, 2009)
3 and ask that it be taken off calendar. They reserve the right to re-file the motion after the
4 incorporation issue is resolved. Defendants' Motion to continue the Summary Judgment
5 hearing (set to be heard on October 16, 2009) under Fed.R.Civ.P. 56(f) is thus mooted.
6

7 Plaintiffs hereby request that the Court enter the following orders:

- 8 1. This action, including all currently pending motions, are stayed.
- 9 2. Discovery by the parties may proceed, but any discovery motions that may arise and
10 the deadlines for filing those motions, are extended until the stay is lifted.
- 11 3. The Court, on its own motion, or either party may petition the Court to vacate the stay
12 after the Second Amendment incorporation issue is resolved by the Ninth Circuit
13 and/or the Supreme Court, which ever occurs first.
14

15 Dated: October 1, 2009

Respectfully submitted,

16
17 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
18 Law Offices of Donald Kilmer, A.P.C.
19 1645 Willow Street, Suite 150
20 San Jose, CA 95125
408.264.8489/Fax 408.264.8487
E-Mail: Don@DKLawOffice.com

Alan Gura (Calif. Bar No. 178221)
Gura & Possessky, PLLC
101 N. Columbus St., Suite 405
Alexandria, VA 22314
703.835.9085/Fax 703.997.7665

21 By: /s/Donald E.J. Kilmer, Jr./
22 Donald E.J. Kilmer, Jr.

By: /s/Alan Gura/
Alan Gura

23 Jason A. Davis (Calif. Bar No. 224250)
24 Davis & Associates
25 27281 Las Ramblas, Suite 200
Mission Viejo, CA 92691
949.310.0817/Fax 949.288.6894

26 By: /s/Jason Davis/
27 Jason Davis

28 Attorneys for Plaintiffs