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11 Attorneys for Plaintiffs

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 ESPANOLA JACKSON, PAUL
16 COLVIN, THOMAS BOYER,
17 LARRY BARSETTI, DAVID
18 GOLDEN, NOEMI MARGARET
19 ROBINSON, NATIONAL RIFLE
20 ASSOCIATION OF AMERICA,
21 INC. SAN FRANCISCO VETERAN
22 POLICE OFFICERS
23 ASSOCIATION,

24 Plaintiffs

25 vs.

26 CITY AND COUNTY OF SAN
27 FRANCISCO, MAYOR GAVIN
28 NEWSOM, in his official capacity;
POLICE CHIEF HEATHER FONG,
in her official capacity, and Does 1-
10,

Defendants.

) CASE NO. C09-2143 PJH

) **DECLARATION OF C. D. MICHEL IN**
) **SUPPORT OF MOTION TO STAY**

) Hearing Date: October 21, 2009

) Time: 9:00 a.m.

) Place: Courtroom 5, 17th Fl.

) Hon. Phyllis J. Hamilton

29 I, C. D. Michel, declare as follows:

30 1. I am the attorney of record for Plaintiffs in the above-entitled action.

31 2. Attached hereto as Exhibit "A" is true and correct copy of a July 29, 2009

32 Order of the Ninth Circuit Court of Appeals in the matter of *Nordyke v. King* (No.

1 07-15763) ordering that the matter is to be reheard en banc pursuant to Circuit Rule
2 35-3, and that the three-judge panel opinion (*Nordyke v. King*, 563 F.3d 439 (9th
3 Cir. 2009) shall not be cited as precedent by or to any court of the Ninth Circuit.

4 3. Attached hereto as Exhibit "B" is true and correct copy of a July 29, 2009
5 Order of the Ninth Circuit Court of Appeals in the matter of *Nordyke v. King* (No.
6 07-15763) ordering that en banc oral argument take place during the week of
7 September 21, 2009.

8 4. Attached hereto as Exhibit "C" is true and correct copy of an August 21,
9 2009 Order of the Ninth Circuit Court of Appeals in the matter of *Nordyke v. King*
10 (No. 07-15763) ordering that the en banc oral argument be held at 10:00 a.m. on
11 September 24, 2009, at the James R. Browning Courthouse in San Francisco,
12 California.

13 5. I am informed and believe that only issue that would warrant *en banc*
14 review in *Nordyke* is the decision that the Second Amendment to the United States
15 Constitution is incorporated by the Fourteenth Amendment and thus applicable to
16 the states. Because that issue is central to Plaintiffs' case, and the Appellate
17 Court's ruling will be controlling authority, Plaintiffs see no benefit in proceeding
18 with the instant action pending a decision by the *en banc* panel in *Nordyke* and, on
19 that basis, request that a stay be granted immediately and for all purposes.

20 6. Defendants, as indicated in the Joint Case Management Conference
21 Statement, filed August 20, 2009, do not oppose staying this action.

22 I declare under penalty of perjury under the laws of the United States of
23 America that the foregoing is true and correct.

24 Executed within the United States on August 27, 2009.

25
26 /S/
27 C. D. MICHEL
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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INC. SAN FRANCISCO VETERAN
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NEWSOM, IN HIS OFFICIAL
CAPACITY; POLICE CHIEF
HEATHER FONG, in her official
capacity, and Does 1-10,

Defendants.

CASE NO.: CV-09-2143-PJH

DECLARATION OF C. D. MICHEL IN
SUPPORT OF MOTION TO STAY

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of: **DECLARATION OF C. D. MICHEL IN SUPPORT OF MOTION TO STAY** on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Sherri Kaiser, Deputy City Attorney
City and County of San Francisco
Office of the City Attorney
City Hall 1 Drive Carlton B. Goodlett Place
San Francisco, CA 94102 - 4682

I declare under penalty of perjury that the foregoing is true and correct.
Executed on August 27, 2009.

/S/

C. D. Michel
Attorney for Plaintiffs