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8	UNITED STATES DISTRICT COURT
9	EASTERN DISTRICT OF CALIFORNIA
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11	DEANNA SYKES, et al., NO. 2:09-cv-01235-MCE-KJM
12	Plaintiffs,
13	v. <u>Order</u>
14	JOHN McGINNESS, et al.,
15	Defendants.
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18	Plaintiffs initiated this action on May 5, 2009, alleging
19	that Defendants' refusal to issue the individual Plaintiffs
20	concealed weapons permits violated, inter alia, Plaintiffs'
21	Second Amendment rights. On August 6, 2009, Plaintiffs filed a
22	Motion for Summary Judgment ("MSJ"), which is scheduled for
23	hearing on September 24, 2009. Presently before the Court is
24	Defendants' subsequent Motion to Continue or Suspend Plaintiffs'
25	pending MSJ. On August 27, 2009, the Court entertained oral
26	argument, and, for the following reasons, Defendants' Motion is
27	granted.
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1	STANDARD
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3	Federal Rule of Civil Procedure 56(a) permits a party to
4	file a Motion for Summary Judgment "any time after: (1) 20 days
5	have passed from commencement of the action; or (2) the opposing
6	party serves a motion for summary judgment." Nevertheless,
7	pursuant to Rule 56(f):
8	If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts
9	essential to justify its opposition, the court may: (1) deny the motion;
10	(2) order a continuance to enable affidavits to be
11	obtained, depositions to be taken, or other discovery to be undertaken; or (3) issue any other just order

"'Federal Rule of Civil Procedure 56(f) provides a device for litigants to avoid summary judgment when they have not had sufficient time to develop affirmative evidence." Burlington Northern Santa Fe R. Co. v. Assiniboine and Sioux Tribes of Fort Peck, 323 F.3d 767, 773 (9th Cir. 2003), quoting United States v. Kitsap Physicians Serv., 314 F.3d 995, 1000 (9th Cir. 2002). "The cases construing Rule 56(f) suggest that the denial of a Rule 56(f) application is generally disfavored where the party opposing summary judgment makes (a) a timely application which (b) specifically identifies (c) relevant information, (d) where there is some basis for believing that the information sought actually exists. Summary denial is especially inappropriate where the material sought is also the subject of outstanding discovery requests." VISA Intern. Service Ass'n v. Bankcard Holders of America, 784 F.2d 1472, 1475 (9th Cir. 1986).

1 "Where...a summary judgment motion is filed so early in the 2 litigation, before a party has had any realistic opportunity to 3 pursue discovery relating to its theory of the case, district 4 courts should grant any Rule 56(f) motion fairly freely." 5 Burlington Northern, 323 F.3d at 773.

ANALYSIS

9 Defendants' instant Motion to Continue or Suspend is granted for two reasons: 1) Plaintiffs' Motion is premature in light of 10 the fact that this action remains in its infancy, with no 11 discovery yet undertaken; and 2) conducting hearing on 12 Plaintiffs' MSJ will result in a waste of judicial resources in 13 light of the Ninth Circuit's pending en banc hearing scheduled in 14 Nordyke v. King, 563 F.3d 439 (9th Cir. 2009), a case that, 15 regardless of outcome, will affect the instant action. 16

17 First, Defendants have sufficiently convinced this Court 18 that they have not had an opportunity to conduct any discovery, 19 and more specifically, to investigate whether Plaintiffs have 20 standing to bring this action in the first place. This 21 litigation has been pending for just a few months, and Defendants have not had time to even depose Plaintiffs or Plaintiffs' 22 23 representatives. Such discovery is both critical to a 24 determination of whether this case is even properly before the 25 Court as well as relevant to Plaintiffs' pending MSJ. 111 26 27 111

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Additionally, it became clear to the Court from both the 1 2 papers and oral argument that there is simply no justification to hasten to judgment in this case. Indeed, according to 3 Plaintiffs, their impetus for seeking an expedited ruling now is 4 that numerous Second Amendment cases are riding the District of 5 Columbia v. Heller wave into the courts and that flood of cases 6 is resulting in "bad law." --- U.S. ---, 128 S. Ct. 2783 7 (2008). Plaintiffs seek to curtail that bad law with a case that 8 9 they believe will result in "good law." This Court is unable to reconcile the pursuit of good law with the forbearance of 10 discovery. As such, because Plaintiffs' backgrounds and ability 11 12 to qualify for concealed weapons permits are relevant to Plaintiffs' pending MSJ and because no persuasive reason has been 13 proffered to expedite the instant action, Defendants' Rule 56(f) 14 15 Motion is granted.

Moreover, this Court finds the impending en banc hearing in Nordyke to provide an independent basis for continuing Plaintiffs' Motion. An opinion in that case will directly impact the legal issues before this Court. Accordingly, in the interest of judicial economy, this Court finds it appropriate to await the Ninth Circuit's guidance before proceeding with dispositive motions here.

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CONCLUSION

Defendants' Motion to Continue or Suspend (Docket No. 28) is
GRANTED, and Plaintiffs' Motion for Summary Judgment (Docket
No. 18) is DENIED without prejudice. All future hearing dates
are hereby vacated. Prior to issuance of the Ninth Circuit's
opinion in <u>Nordyke</u>, no party shall file any Motion for Summary
Judgment without leave of this Court.

IT IS SO ORDERED.

Dated: August 31, 2009

MORRISON C. ENGLAND, CR.) UNITED STATES DISTRICT JUDGE