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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.

ORDER

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 "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.

### 7 ANALYSIS

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

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  
22 have not had time to even depose Plaintiffs or Plaintiffs'  
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.

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

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

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1 **CONCLUSION**

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3 Defendants' Motion to Continue or Suspend (Docket No. 28) is

4 GRANTED, and Plaintiffs' Motion for Summary Judgment (Docket

5 No. 18) is DENIED without prejudice. All future hearing dates

6 are hereby vacated. Prior to issuance of the Ninth Circuit's

7 opinion in Nordyke, no party shall file any Motion for Summary

8 Judgment without leave of this Court.

9 IT IS SO ORDERED.

10 Dated: August 31, 2009

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13 MORRISON C. ENGLAND, JR.  
14 UNITED STATES DISTRICT JUDGE

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