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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA
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 14 **THOMAS JACOBS,**
 Plaintiff,
 15
 16 **v.**
 17
 18 **CITY OF SAN JOSE MAYOR CHUCK
 REED, in both his individual and official
 capacities; CITY OF SAN JOSE; COUNTY
 19 OF SANTA CLARA; CITY OF SAN JOSE
 POLICE CHIEF ROB DAVIS, in both his
 20 individual and official capacities; COUNTY
 OF SANTA CLARA SHERIFF LAURIE
 21 SMITH, in both her individual and official
 capacities; and STATE OF CALIFORNIA
 22 ATTORNEY GENERAL EDMUND G.
 BROWN, in his official capacity,**
 23
 24 Defendants.

2:10-cv-00913-LKK-EFB

**DECLARATION OF GEOFFREY L.
 GRAYBILL IN SUPPORT OF
 STIPULATION FOR REQUEST TO
 STAY PROCEEDINGS**

Judge: The Hon. Lawrence K. Karlton
 Courtroom: 4
 Trial Date: TBD
 Action Filed: April 16, 2010

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 26 I, GEOFFREY L. GRAYBILL, declare as follows:

27 1. I am a Deputy Attorney General of California and member of the California State Bar
 28 admitted to practice before the U.S. District Court for the Eastern District of California. I have

1 been assigned to represent defendant Edmund G. Brown Jr. sued in his official capacity as
2 Attorney General of California in this action.

3 2. In the aforesaid capacity, I am also representing state defendants in cases pending in
4 the U. S. Court of Appeals for the Ninth Circuit in which the core issues are the same as those
5 raised in this action: whether state regulation of concealed firearms violates plaintiffs' asserted
6 right to keep and bear arms under the Second Amendment which plaintiffs contend applies to the
7 states through incorporation by the Fourteenth Amendment.

8 3. The two cases pending in the Ninth Circuit are *Mehl v. Blanas*, No. 08-15773 (9th
9 Cir.) and *Rothery v. County of Sacramento*, No. 09-16852 (9th Cir.). Proceedings in *Rothery*
10 have been stayed until August 16, 2010. Although oral argument has been completed in *Mehl*,
11 the panel withdrew the submission pending a decision by the en banc panel in *Nordyke v. King*,
12 No. 07-15763 (9th Cir.). Both the incorporation issue and the scope of the Second Amendment
13 issue are pending decision in *Mehl* and *Nordyke*.

14 4. The en banc panel in *Nordyke* also withdrew its submission after oral argument
15 pending a decision by the U.S. Supreme Court in *McDonald v. City of Chicago* (Docket # 08-
16 1521). The Supreme Court granted certiorari in *McDonald* to decide whether its landmark
17 decision in *District of Columbia v. Heller*, --- U.S. ---, 128 S.Ct. 2783 (2008) holding there is an
18 individual right to keep and bear arms under the Second Amendment applies to the states.

19 5. Decisions in *McDonald* and *Nordyke* will likely establish the legal framework for
20 further proceedings in this case. Until these cases are decided, the parties are faced with great
21 uncertainty regarding applicable law. Thus, proceeding further in this case before the related
22 appeals are decided risks potentially unnecessary or duplicative expenditure of time and resources
23 for the parties and for this Court. In my opinion, a stay of further proceedings until the U.S.
24 Supreme Court and Ninth Circuit decide the legal parameters that will be controlling in this case
25 will promote the best interests of the Court and the parties.

26 6. Counsel for plaintiff, Thomas Jacobs, is also counsel for appellants in *Rothery* and
27 *Mehl*. He is also counsel of record for plaintiff in another Second Amendment case pending in
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1 the U.S. District Court for the Northern District of California: *Pizzo v. Newsom* [No. cv-09-4493-
2 CW.]

3 7. The parties will notify this Court immediately when decisions are filed in *McDonald*,
4 *Nordyke* and *Mehl*.

5 I declare under penalty of perjury that the foregoing statements are true and correct of my
6 personal knowledge except where stated on information and belief and, as to those statements, I
7 believe them to be true and correct.

8 Executed at Sacramento, California on June 8, 2010.

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10 /s/ **Geoffrey L. Graybill**

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GEOFFREY L. GRAYBILL

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