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18 **IN THE UNITED STATES DISTRICT COURT**
19 **DISTRICT OF NEVADA**

20 AL BAKER,

21 Plaintiff,

22 vs.

23 LEO DROZDOFF, Acting Director of the
Nevada Department of Conservation and
24 Natural Resources; DAVID K. MORROW,
Administrator of the Nevada State Parks;
25 ALLEN NEWBERRY, Nevada State Parks
Chief of Operations and Maintenance; ERIC
26 JOHNSON, Nevada State Parks Fallon
Regional Manager; and ANDREW BASS,
27 Park Supervisor I, Wild Horse State
Recreation Area,

28 Defendants.

Case No. 3:10-cv-00426-ECR-RAM

**SECOND
STIPULATED MOTION FOR
PRELIMINARY INJUNCTION
AND TO STAY PROCEEDINGS**

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1 Plaintiff Al Baker and Defendants Leo Drozdoff, Acting Director of the Nevada
2 Department of Conservation and Natural Resources, David K. Morrow, Administrator of the
3 Nevada State Parks, Steve Weaver, Deputy Director of the Nevada State Parks, Eric
4 Johnson, Nevada State Parks Fallon Region, Regional Manager, and Andrew Bass, Park
5 Supervisor I, Wild Horse State Recreation Area, by and through their undersigned attorneys,
6 respectfully move the Court for a Preliminary Injunction pursuant to Federal Rule of Civil
7 Procedure 65(a) to prohibit Defendants from enforcing Nevada Administrative Code §
8 407.105(1)(b)(c) and to stay all deadlines in this case, pending the outcome of an
9 administrative rulemaking to amend the regulations.

10 **GROUND FOR APPLICATION**

11 1. On August 26, 2010, Plaintiff filed an Amended Complaint seeking declaratory
12 and injunctive relief for Defendants' alleged deprivation of Plaintiff's right to keep and bear
13 arms guaranteed by the United States Constitution.

14 2. Plaintiff's Amended Complaint alleges, *inter alia*, that Defendant's maintenance
15 and enforcement of Nevada Administrative Code § 407.105(1)(b)(c) prohibits the possession
16 and discharge of functional firearms for self-defense in Nevada State Parks in violation of
17 Plaintiff's right to keep and bear arms guaranteed by the Second and Fourteenth
18 Amendments.

19 3. Defendants filed an Answer to Plaintiff's Amended Complaint on September 10,
20 2010, denying these allegations.

21 4. Defendants have initiated the rulemaking process to revise the regulation to
22 include the holding of a public workshop and submitting of draft language to the Legislative
23 Counsel Bureau (LCB).

24 5. Defendants are currently awaiting approval from LCB before they can schedule
25 a public hearing pursuant to Nevada Revised Statutes § 284 and Nevada Administrative
26 Code § 284 prior to revising the regulation.

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1 6. This rulemaking may result in changes to Nevada Administrative Code
2 § 407.105 that could cure Defendants' alleged deprivation of the right to keep and bear arms
3 guaranteed by the United States Constitution.

4 7. In order to conserve judicial resources, the parties desire and hereby stipulate to
5 the entry of a preliminary injunction prohibiting enforcement of Nevada Administrative Code
6 § 407.105(1)(b)(c) by Defendants, their officers, agents, servants, employees, and all persons
7 in active concert or participation with them for the anticipated duration of the rulemaking
8 process.

9 8. The parties agree and stipulate that neither party should be required to post
10 security as a condition of this preliminary injunction.

11 9. Furthermore, the parties desire and hereby stipulate to stay all deadlines in this
12 case for the anticipated duration of the rulemaking process.

13 Wherefore, the parties jointly move the Court for entry of a Preliminary Injunction and
14 an Order staying these proceedings in the form submitted.

15 Respectfully submitted this 21st day of March 2011.

16 CATHERINE CORTEZ MASTO
17 Attorney General

Robert M. Salyer
Wilson Barrows & Salyer, Ltd.

18 By: /s/ Matthew A. Deal
19 Matthew A. Deal
20 Deputy Attorney General
 Attorneys for Attorneys for Defendants
 David Morrow, Eric Johnson and
21 *Andrew Bass*

By: /s/ James M. Manley
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Mountain States Legal Foundation
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 21st day of March 2011, I caused to be served a copy of the foregoing *Second Motion for Preliminary Injunction and to Stay Proceedings*, by CM/ECF to the following:

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/s/ Sandra L. Geyer
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