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7

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 ESPANOLA JACKSON, PAUL COLVIN,) **CASE NO. C09-2143-RS**
THOMAS BOYER, LARRY BARSETTI,)
12 DAVID GOLDEN, NOEMI MARGARET) **PLAINTIFFS' NOTICE OF UNOPPOSED**
ROBINSON, NATIONAL RIFLE) **MOTION AND MOTION TO DISMISS**
13 ASSOCIATION OF AMERICA, INC., SAN) **PLAINTIFF PAUL COLVIN; NOTICE OF**
FRANCISCO VETERAN POLICE) **MOTION AND MOTION TO DISMISS**
14 OFFICERS ASSOCIATION,) **PLAINTIFF THOMAS BOYER; POINTS**
) **AND AUTHORITIES IN SUPPORT;**
15 Plaintiffs) **DECLARATION OF CLINTON B.**
) **MONFORT**

16 vs.

17 CITY AND COUNTY OF SAN)
FRANCISCO, THE MAYOR OF)
18 SAN FRANCISCO, AND THE CHIEF)
OF THE SAN FRANCISCO POLICE)
19 DEPARTMENT, in their official capacities,)
and DOES 1-10,)

20 Defendants.
21

) Fed. R. Civ. P. 41(a)
)
) Date: November 8, 2012
) Time: 1:30 p.m.
) Place: Courtroom 3 - 17th Floor
450 Golden Gate Ave.
San Francisco, CA 94102

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:** Notice is hereby given
3 that on November 8, 2012, at 1:30 p.m., or as soon thereafter as counsel may be heard by the
4 above-entitled Court, located at 450 Golden Gate Ave., San Francisco, California, in the
5 courtroom of the Honorable Judge Richard Seeborg, Plaintiffs will and hereby do move for
6 voluntary dismissal of certain individual plaintiffs' claims pursuant to Rule 41(a) of the Federal
7 Rules of Civil Procedure.

8 Plaintiffs will seek an order dismissing all claims of the individual plaintiffs Thomas Boyer
9 and Paul Colvin against all defendants. Mr. Colvin seeks dismissal of his claims against
10 defendants due to his age, serious medical condition, and unreliable memory. The City does not
11 oppose Mr. Colvin's dismissal. Dismissal of Mr. Boyer's claims is proper because he has
12 legitimate concerns regarding his continued participation in this lawsuit, and because the City
13 cannot establish any legally cognizable prejudice resulting from his removal.

14 This motion shall be based on this notice of motion and motion, the memorandum of points
15 and authorities in support, the declarations filed concurrently herewith, and upon any further
16 matters the Court deems appropriate.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 Plaintiffs Colvin and Boyer initially joined this lawsuit to secure the ability to exercise their
20 right to keep and bear arms within the City and County of San Francisco free from threat of
21 criminal prosecution in the same manner that all other Americans do. But, in light of Mr. Colvin's
22 age, memory loss, and current medical condition and in light of Mr. Boyer's legitimate fears of
23 harassment and retaliation by the City, they have each realized that the pressures and risks of
24 actively participating in this lawsuit have become too great. No matter how deeply and sincerely
25 they believe the challenged ordinances unconstitutionally infringe upon their Second Amendment
26 liberties, the risks are simply not worth the fight. And they each seek dismissal from this lawsuit.

27 The City has indicated it will not oppose Mr. Colvin's dismissal, but seems insistent on
28 forcing Mr. Boyer to continue his active participation in this lawsuit over his legitimate concerns.

1 Through past discovery efforts, the City delved into irrelevant and private details about Mr.
2 Boyer's gun ownership and possession, and now seeks to keep him in the case and compel him to
3 disclose such details when all he seeks now is to be released from the case and to be left alone.

4 Defendants will suffer no legally cognizable prejudice if the court dismisses Mr. Boyer at
5 this time. The City has expended no significant time or effort in specifically defending itself
6 against Mr. Boyer's claims. Plaintiffs have neither engaged in excessive delay nor demonstrated a
7 lack of diligence in prosecuting their claims. Mr. Boyer has explained his legitimate reasons for
8 seeking dismissal. And the City has not yet filed a motion for summary judgment, such that might
9 suggest Mr. Boyer seeks dismissal of his claims to prevent an unfavorable final ruling on the
10 merits. Indeed, four individual plaintiffs and two organizational plaintiffs remain willing and able
11 to continue pursuit of their identical claims and they each remain available for deposition.

12 Absent any legal harm to the City by Mr. Boyer's dismissal, the Court should reject the
13 City's attempt to coerce his continued participation and grant Plaintiffs' request to dismiss the
14 claims of both Mr. Boyer and Mr. Colvin against all defendants.

15
16 **II. THE COURT SHOULD GRANT PLAINTIFFS' UNOPPOSED MOTION TO
DISMISS PLAINTIFF PAUL COLVIN**

17 The City has indicated that it will not oppose Plaintiffs' motion to dismiss Mr. Colvin's
18 claims against all defendants, based on his age, medical condition, and unreliable memory.
19 Declaration of Clinton B. Monfort ("Monfort Decl.") ¶ 2. As such, Plaintiffs request this Court
20 issue an order granting Plaintiffs' Unopposed Motion to Dismiss Plaintiff Paul Colvin and
21 dismissing all claims brought by Mr. Colvin against all defendants.

22
23 **III. PLAINTIFFS' MOTION TO DISMISS PLAINTIFF THOMAS BOYER IS PROPER
BECAUSE MR. BOYER HAS LEGITIMATE CONCERNS REGARDING HIS
24 CONTINUED PARTICIPATION AND BECAUSE THE CITY WILL SUFFER NO
LEGAL PREJUDICE**

25 Rule 41(a)(2) of the Federal Rules of Civil Procedure allows a plaintiff, pursuant to court
26 order, to voluntarily dismiss an action by court order at any time. *Westlands Water Dist. v. United*
27 *States*, 100 F.3d 94, 96 (9th Cir. 1996) (citing *Stevedoring Servs. of Am. v. Armilla Int'l B.V.*, 889
28 F.2d 919, 921 (9th Cir. 1989)). Even when the defendant has filed an answer and refuses to

1 stipulate to a voluntary dismissal, the Court has discretion to grant a motion for voluntary
 2 dismissal “upon such terms and conditions as [it] deems proper.” *Burnette v. Godshall*, 828 F.
 3 Supp. 1439, 1443 (N.D. Cal. 1993) (quoting Fed. R. Civ. P. 41(a)(2)). The Court should freely
 4 grant a motion for voluntary dismissal unless the defendant can demonstrate that it will suffer
 5 some “plain legal prejudice” as a result. *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001).
 6 Because Mr. Boyer has legitimate concerns regarding his continued participation in this lawsuit,
 7 and because the City cannot establish any legally cognizable prejudice resulting from Mr. Boyer’s
 8 dismissal, the Court should grant Plaintiffs’ request.

9
 10 **A. Mr. Boyer Has Legitimate Concerns Regarding His Continued Participation in
 this Lawsuit and Seeks Dismissal of His Claims**

11 Mr. Boyer previously faced harassment from the City and its agents which followed his
 12 participation in other litigation against the City. Boyer Decl. ¶ 3. He legitimately fears further
 13 retaliation from the City and, for that reason, he wishes to be released from the case at this time.
 14 Boyer Decl. ¶ 3.

15 Additionally, Mr. Boyer is HIV positive, and he believes that his ongoing participation in
 16 this lawsuit and the stress it causes is deleterious to his health. Boyer Decl. ¶ 5. For this additional
 17 reason, Mr. Boyer wishes to be dismissed from this lawsuit. Boyer Decl. ¶ 5.

18 Further, in December 2011, during the preparation of responses to the City’s written
 19 discovery, Mr. Boyer first became concerned that the types of questions posed by the City would
 20 expose to the government personal information regarding, among other things, the types and
 21 number of firearms he owns. Boyer Decl. ¶ 2. He was particularly concerned about requests for an
 22 itemized list of all firearms and ammunition he had possessed at any point and for any duration
 23 since 2007,¹ Boyer Decl. ¶ 2, the answers to which would entail the creation of a de facto

24
 25 ¹ The City specifically asked Mr. Boyer to identify “each firearm that has been in [his] private
 26 residence while in your possession, custody or control at any time since August 2007, including
 27 but not limited to its make, model and serial number and the period of time during which [he]
 28 kept that firearm in [his] home.” Pl. Boyer’s Resp. to Defs.’ Interrogs. Set One 4 (attached as Ex.
 B to Monfort Decl.). The City also asked him to “[i]dentify every type of ammunition [he] has
 purchased for or used in each of the firearms [he] identified in response to Interrogatory No. 2,
 including but not limited to its manufacturer or brand name, caliber, jacket construction, place of

1 registration of his gun collection with the City. Mr. Boyer agreed to provide substantive and
2 relevant responses to the City's written discovery, but Plaintiffs' counsel raised numerous
3 objections consistent with Mr. Boyer's concerns. *See, e.g.*, Pl. Boyer's Resp. to Defs.' Interrogs.
4 Set One 4-8 (attached as Ex. B to Monfort Decl.). Mr. Boyer, then satisfied that his sensitive,
5 personal information would not be divulged to the City, elected to remain a party to this action for
6 the time. Boyer Decl. ¶ 2.

7 In recent weeks, however, Mr. Boyer again raised concerns that his continued participation
8 in this lawsuit would ultimately result in the City learning of his sensitive, personal information
9 and further intimidation and harassment, similar to that faced following his past participation in
10 litigation against the City. Boyer Decl. ¶ 4. Because the City is the party seeking to force Mr.
11 Boyer's deposition (and continued participation in this suit), the common avenues for protecting a
12 party's privacy, including the filing of deposition testimony under seal, are insufficient to alleviate
13 these concerns. Mr. Boyer further fears retaliation his continued participation in this lawsuit in
14 any other capacity, and he wishes to be removed from the lawsuit to prevent this.

15 For each of these reasons, Mr. Boyer seeks dismissal of his claims against all defendants.
16 The identical claims of Plaintiffs Jackson, Barsetti, Golden, Robinson, the National Rifle
17 Association, and the San Francisco Veteran Police Officers Association would remain.

18
19 **B. The City Cannot Establish Any Legally Cognizable Prejudice Resulting From Dismissal**

20 Dismissal of Mr. Boyer's claims is proper because the City cannot establish any legally
21 cognizable prejudice that dismissal of Mr. Boyer's claims would invite upon it. When ruling on a
22 Rule 41 motion to dismiss, the district court must first determine whether the defendant will
23 suffer legal prejudice. *Hyde & Drath v. Baker*, 24 F.3d 1162, 1169 (9th Cir. 1994). Legal
24 prejudice "is just that – prejudice to some legal interest, some legal claim, some legal argument."
25 *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996). To decide the question of
26 "legal prejudice" to a defendant, courts generally consider: (1) The defendant's effort and expense
27 _____
28 purchase and date of purchase." Pl. Boyer's Resp. to Defs.' Interrogs. Set One 6(attached as Ex. B
to Monfort Decl.).

1 involved in preparing for trial; (2) excessive delay and lack of diligence on the part of plaintiff in
2 prosecuting the action; (3) insufficient explanation of need to take a dismissal; and (4) whether
3 summary judgment has been filed by the defendant. *United States v. Berg*, 190 F.R.D. 539, 543
4 (E.D. Cal. 1999).² None of these factors counsel in favor of denying Mr. Boyer's request to be
5 released from this lawsuit.

6 First, there remain in this litigation four individual plaintiffs, who are each willing and
7 physically able to continue pursuit of their identical claims against all defendants. Any effort or
8 expense the City has already expended in preparing this case for summary judgment or trial will
9 undoubtedly be essential to the City's continued defense against the remaining plaintiffs' claims.
10 Further, any efforts directed toward Mr. Boyer alone have been insufficient to justify denial of
11 Mr. Boyer's request for dismissal. Indeed, his claims are identical to those remaining, the City's
12 previously raised standing and ripeness defenses applied equally to each individual plaintiff, Mr.
13 Boyer's deposition has not yet taken place, and the only written discovery propounded on Mr.
14 Boyer was simply copied from the discovery propounded on every other individual plaintiff.³ All
15 of these points make it highly unlikely that the City has spent any significant time or effort
16 defending itself specifically against Mr. Boyer's claims.

17 Further, Plaintiffs have not engaged in "excessive delay" or shown a "lack of diligence" in
18 prosecuting their claims. While it is true this case was filed some three years ago, the long
19 procedural history is not the fault of Plaintiffs. In fact, all proceedings were stayed for more than a
20 year – on the parties' stipulation – pending the determination of whether the Second Amendment
21 applies against the states. Min. Order, Aug. 27, 2009 [Doc. No. 21]. And even then, the City itself
22 opposed Plaintiffs' motion to lift that stay when the U.S. Supreme Court ruled in *McDonald v.*

23 _____
24 ² Conversely, courts have concluded that the following harms do not constitute the required legal
25 prejudice: (1) any harm flowing from defendant facing prospect of second lawsuit or plaintiff
26 merely gaining a tactical advantage; (2) uncertainty because a dispute remains unresolved; (3)
27 expenses incurred in defending against a lawsuit; and (4) the threat of future litigation. *Petaluma*
City Sch. Dist. v. Victor D., No. 00-01979, 2001 WL 492466, at *2 (N.D. Cal. May 3, 2001).

28 ³ Compare Defs.' Interrogs. to Pl. Espanola Jackson Set One (attached as Ex. B to Monfort
Decl.), with Pl. Boyer's Resp. to Defs.' Interrogs. Set One (attached as Ex. B to Monfort Decl.).

1 *City of Chicago*, 561 U.S. 2025, 130 S. Ct. 3020 (2010), that it does. Defs.’ Partial Oppn. Mot.
2 Relief from Stay [Doc. No. 32.]. The City thereafter filed its second Rule 12(b)(1) motion to
3 dismiss, arguing that Plaintiffs lacked standing to challenge the ordinances and the case was not
4 yet ripe for review. Defs.’ Mem. Supp. Mot. Dismiss [Doc. No. 61] 12:17-20. That motion was
5 not heard until May 5, 2011, and it was not decided until September 27, 2011. Min. Entry, May 5,
6 2011 [Doc. No. 81]; Order Den. Mot. Dismiss for Lack of Standing [Doc. No. 89].) As a result,
7 the City was not even required to file its answer until October 17, 2011. Order Setting Deadline to
8 Resp. to Compl. [Doc. No. 91]. And since that time, Plaintiffs have continued to seek the prompt
9 conclusion on its merits, filing a motion for judgment on the pleadings and a motion for
10 preliminary injunction. Pls.’ Mot. Partial J. Pldgs. [Doc. No. 109]; Pls.’ Mot. Prelim. Inj. [Doc.
11 No. [Doc. No. 136]. As such, denial of Mr. Boyer’s request on grounds of delay or lack of
12 diligence is improper.

13 Third, Mr. Boyer has explained his need to dismiss his claims against all defendants in Part
14 II.A. above and in his supporting declaration. In light of Mr. Boyer’s legitimate concerns, forcing
15 his continued participation is not warranted as the City can show no other legally cognizable
16 prejudice.

17 The final factor also weighs in favor of granting dismissal as no motion for summary
18 judgment has yet been filed by the City, and so Mr. Boyer does not seek dismissal of his claims
19 simply to prevent an unfavorable final ruling on the merits.

20 As an aside, the City will suffer no legal harm from being unable to pursue the deposition of
21 Mr. Boyer as a party if the Court dismisses his claims. It is Plaintiffs’ position that the individual
22 circumstances of *any* person are irrelevant to the merits of this facial challenge. To the extent the
23 City disagrees, any testimony it could elicit regarding Mr. Boyer’s individual circumstances or his
24 personal desire or ability to engage in Second Amendment conduct would certainly be irrelevant
25 to the determination of whether the remaining plaintiffs’ claims have merit.

26 In sum, the City suffers no legally cognizable harm from Mr. Boyer’s dismissal at this
27 juncture, all four factors weigh in Plaintiffs’ favor, and Plaintiffs’ motion for voluntary dismissal
28 of Mr. Boyer’s claims against all defendants should be granted.

1 **III. CONCLUSION**

2 Based on the foregoing, Plaintiffs respectfully request that this Court grant Plaintiffs'
3 Unopposed Motion to Dismiss Plaintiff Paul Colvin. Plaintiffs further request that this Court
4 grant Plaintiffs' Motion to Dismiss Plaintiff Thomas Boyer.

5 Date: October 3, 2012

MICHEL & ASSOCIATES, P.C.

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7

s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs

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DECLARATION OF CLINTON B. MONFORT

I, Clinton B. Monfort, declare as follows:

1. I am over the age of eighteen and not a party to this action. I am an attorney licensed to practice law before all district courts in the State of California. I am an associate attorney at the law firm Michel & Associates, P.C., attorneys of record for plaintiffs in this action.

2. On or about September 19, 2012, I contacted Ms. Christine Van Aken, counsel of record for defendants, via e-mail regarding her client’s position regarding the dismissal of plaintiffs Colvin and Boyer’s claims. Ms. Van Aken responded via email on September 20, 2012, indicating that the City would oppose dismissal as to both plaintiffs. In a responsive email to Ms. Van Aken, I clarified that Mr. Colvin’s age, medical condition, and unreliable memory made it impossible for him to continue as a plaintiff, and that Mr. Boyer had faced harassment from agents of the City and County of San Francisco (“the City”) during his participation in previous litigation against the City and reasonably feared similar retaliation in connection with this lawsuit. In light of that further information, Ms. Van Aken stated that she would not object to Mr. Colvin’s dismissal, but would continue to object to Mr. Boyer’s dismissal.

3. On or about November 17, 2011, the City served Plaintiffs David Golden, Espanola Jackson, Thomas Boyer, Larry Barsetti, Noemi Margaret Robinson, and Paul Colvin with a first set of interrogatories. Each plaintiff was asked identical questions. As an example of the written discovery propounded on plaintiffs, attached hereto as “Exhibit A” is a true and correct copy of Plaintiff [sic] City and County of San Francisco’s Interrogatories to Espanola Jackson (Set One).

4. On or about December 16, 2012, Plaintiff Thomas Boyer responded to the City’s first set of written interrogatories. Plaintiff Boyer’s original response was served on defendants by my office via mail. Attached hereto as “Exhibit B” is a true and correct copy of Plaintiff Thomas Boyer’s Response to Defendants City and County of San Francisco Interrogatories Set One.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 3, 2012.



Clinton B. Monfort

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 ESPANOLA JACKSON, PAUL COLVIN,) CASE NO.: CV-09-2143-RS
5 THOMAS BOYER, LARRY BARSETTI,)
6 DAVID GOLDEN, NOEMI MARGARET)
7 ROBINSON, NATIONAL RIFLE) CERTIFICATE OF SERVICE
8 ASSOCIATION OF AMERICA, INC., SAN)
9 FRANCISCO VETERAN POLICE)
10 OFFICERS ASSOCIATION,)

11 Plaintiffs)

12 vs.)

13 CITY AND COUNTY OF SAN)
14 FRANCISCO, THE MAYOR OF)
15 SAN FRANCISCO, AND THE CHIEF)
16 OF THE SAN FRANCISCO POLICE)
17 DEPARTMENT, in their official capacities,)
18 and DOES 1-10,)

19 Defendants.)

20 IT IS HEREBY CERTIFIED THAT:

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

23 I am not a party to the above-entitled action. I have caused service of

24 **PLAINTIFFS' NOTICE OF UNOPPOSED MOTION AND MOTION TO DISMISS**
25 **PLAINTIFF PAUL COLVIN; NOTICE OF MOTION AND MOTION TO DISMISS**
26 **PLAINTIFF THOMAS BOYER; POINTS AND AUTHORITIES IN SUPPORT;**
27 **DECLARATION OF CLINTON B. MONFORT**

28 on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Wayne Snodgrass, Deputy City Attorney
Christine Van Aken, Deputy City Attorney
Office of the City Attorney
1 Drive Carlton B. Goodlett Place
City Hall, Room 234
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 3, 2012.

/s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs

EXHIBIT A

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7 Attorneys for Defendants
CITY AND COUNTY OF SAN FRANCISCO,
8 THE MAYOR OF SAN FRANCISCO and
9 THE CHIEF OF THE SAN FRANCISCO POLICE DEPARTMENT

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 ESPANOLA JACKSON, PAUL COLVIN,
13 THOMAS BOYER, LARRY BARSETTI,
14 DAVID GOLDEN, NOEMI MARGARET
ROBINSON, NATIONAL RIFLE
15 ASSOCIATION OF AMERICA, INC., and
SAN FRANCISCO VETERAN POLICE
16 OFFICERS ASSOCIATION,

17 Plaintiffs,

18 vs.

19 CITY AND COUNTY OF SAN
FRANCISCO, THE MAYOR OF SAN
20 FRANCISCO, and THE CHIEF OF THE SAN
FRANCISCO POLICE DEPARTMENT, in
21 their official capacities,

22 Defendants.

Case No. CV-09-2143-RS

**PLAINTIFF CITY AND COUNTY OF SAN
FRANCISCO'S INTERROGATORIES TO
ESPANOLA JACKSON (SET ONE)**

23
24 REQUESTING PARTY: CITY AND COUNTY OF SAN FRANCISCO

25 RESPONDING PARTY: ESPANOLA JACKSON

26 SET NUMBER: ONE
27

1 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant City and County of San
2 Francisco hereby requests that Plaintiff Espanola Jackson answer in writing and under oath the
3 following Interrogatories within thirty (30) days of the date of service.

4
5 **INSTRUCTIONS**

- 6 1. Answers and objections must conform to the requirements of Rule 33(b) of the Federal Rules
7 of Civil Procedure and N. D. Cal. Civil Local Rule 33-1.
- 8 2. Objections on the basis of privilege or work-product protection must be made expressly, and
9 the responsive information or materials withheld on the basis of such an objection must in a log in
10 accordance with Rule 26(b)(5) of the Federal Rules of Civil Procedure and governing case law. The
11 privilege log should be served simultaneously with the answers and objections.
- 12 3. Words used in the Interrogatories should be given their common meaning unless the word or
13 words appear in the following list of definitions, in which case the provided definition should be used.
- 14 4. To the extent required by Rule 26(e) of the Federal Rules of Civil Procedure, you must
15 promptly furnish, in the form of supplemental answers, any information requested in these
16 interrogatories that first becomes known to you after the date of your response.

17
18 **DEFINITIONS**

- 19 A. Unless otherwise stated, the terms “**and**” and “**or**” are to be read in both the
20 conjunctive and disjunctive and shall encompass all information that would be
21 responsive under a conjunctive reading and all information that would be responsive
22 under a disjunctive reading.
- 23 B. “**Any**” is understood to include and encompass “**all**.” “**All**” also includes “**each**,” and
24 vice versa.
- 25 C. “**Concerning**” means and includes constituting, referencing, explaining, stating,
26 describing, containing, relating to, referring to, reflecting, evidencing, memorializing,
27 repeating, incorporating, reporting, confirming, discussing, listing, summarizing,
28 showing, supporting, refuting, depicting, connected with, embodying, or mentioning.

1 D. "You" and "your" mean Espanola Jackson, plaintiff in the above-captioned lawsuit, her
2 employees, agents, representatives or anyone else acting on her behalf.

3
4 **INTERROGATORIES**

5 INTERROGATORY NO. 1:

6 Describe the circumstances in which you first became aware of San Francisco Police Code sections
7 4512 and 613.10(g), including, but not limited to, the date on which you first became aware of each
8 ordinance, the speaker or document from which you learned of each ordinance, and the content of that
9 communication.

10 INTERROGATORY NO. 2:

11 Identify each firearm that has been in your private residence while in your possession, custody or
12 control at any time since August 2007, including but not limited to its make, model and serial number
13 and the period of time during which you kept that firearm in your home.

14 INTERROGATORY NO. 3:

15 Identify every type of ammunition you have purchased for or used in each of the firearms you
16 identified in response to Interrogatory No. 2, including but not limited to its manufacturer or brand
17 name, caliber, jacket construction, place of purchase and date of purchase.

18 INTERROGATORY NO. 4:

19 Identify by manufacturer or brand name and model every trigger lock, lockbox, or other locking
20 device you have used at any time to secure a firearm while it was in your possession, custody or
21 control, whether in your home or elsewhere.

22 INTERROGATORY NO. 5:

23 Describe every communication, whether written or verbal, between you and any employee or official
24 of the City and County of San Francisco concerning the subject matter of your complaint in this
25 action, including but not limited to the date, medium, participants in and content of the
26 communication.

27 ///

28 ///

1 INTERROGATORY NO. 6:

2 If you have ever been arrested in any jurisdiction for any reason, identify the date, the arresting
3 agency, the alleged offense(s), the charge(s) brought, and the disposition of any charge(s).

4 INTERROGATORY NO. 7:

5 List every permit, license or registration issued to you concerning the possession or use of firearms or
6 ammunition, including its type, date of issue, the issuing agency, the expiration date (if any), any
7 conditions or restrictions it imposes, any period during which it was suspended or revoked, and the
8 reason given for the suspension or revocation.

9 INTERROGATORY NO. 8:

10 List every permit, license or registration concerning the use or possession of firearms for which you
11 have applied but which application was denied, including its type, the issuing agency, the date you
12 applied, and the reason given for the denial.

13 INTERROGATORY NO. 9:

14 Identify every person and organization other than your counsel with whom you have discussed or
15 otherwise communicated about the subject matter of this lawsuit or your participation in it at any time,
16 whether such discussion or communications were verbal or written, the subject matter of those
17 discussions or communications, and the date or dates on which such discussions or communications
18 took place.

19 INTERROGATORY NO. 10:

20 Describe any training you have had in gun safety, including its date, the person or agency that
21 provided the training, the length of the training, and its general content.

22 INTERROGATORY NO. 11:

23 Describe any training you have had in using a firearm in self defense, including its date, the person or
24 agency that provided the training, the length of the training, and its general content.

25 INTERROGATORY NO. 12:

26 Identify every residence in which you have lived during the last ten years, including its address, its
27 owner, and the period of time in which you lived at that location.

28 ///

1 INTERROGATORY NO. 13:

2 For each residence you identified in response to Interrogatory No. 12, provide the full name of any
3 person who lived with you in that residence at any time, that person's approximate age at the time, and
4 the most recent address, telephone number, email address or other contact information you have for
5 that person.

6

7 Dated: November 17, 2011

8

DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
SHERRI SOKELAND KAISER
Deputy City Attorneys

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By: 
SHERRI SOKELAND KAISER

12

13

Attorneys for Defendants CITY AND COUNTY OF
SAN FRANCISCO, THE MAYOR OF SAN
FRANCISCO and THE CHIEF OF THE SAN
FRANCISCO POLICE DEPARTMENT

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EXHIBIT B

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6 Attorneys for Plaintiffs

7

8 **IN THE UNITED STATES DISTRICT COURT**
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10 **SAN FRANCISCO DIVISION**

11 ESPANOLA JACKSON, PAUL COLVIN,) **CASE NO. C09-2143-RS**
THOMAS BOYER, LARRY BARSETTI,)
12 DAVID GOLDEN, NOEMI MARGARET) **PLAINTIFF THOMAS BOYER'S**
ROBINSON, NATIONAL RIFLE) **RESPONSE TO DEFENDANTS CITY**
13 ASSOCIATION OF AMERICA, INC. SAN) **AND COUNTY OF SAN FRANCISCO**
FRANCISCO VETERAN POLICE) **INTERROGATORIES SET ONE**
14 OFFICERS ASSOCIATION,)

15 Plaintiffs)

16 vs.)

17 CITY AND COUNTY OF SAN)
FRANCISCO, THE MAYOR OF)
18 SAN FRANCISCO, AND THE CHIEF)
OF THE SAN FRANCISCO POLICE)
19 DEPARTMENT, in their official capacities,)
and DOES 1-10,)

20 Defendants.)
21)
22)
23)

24 **PROPOUNDING PARTY: CITY AND COUNTY OF SAN FRANCISCO**

25 **RESPONDING PARTY: THOMAS BOYER**

26 **SET: ONE (1)**
27
28

1 Pursuant to Federal Rules of Civil Procedure (“FRCP”) Rule 33, Plaintiff Thomas Boyer
2 (“Plaintiff”) hereby responds to Defendants’ Special Interrogatories, Set One, propounded to
3 Plaintiff Thomas Boyer as follows:

4 GENERAL RESPONSE

5 1. Plaintiff reserves the right to amend, supplement, or otherwise revise each and every
6 one of the responses given herein as warranted by information learned through other proceedings
7 connected with this action, or otherwise.

8 2. Each response is made without waiver of any objections as to privilege,
9 confidentiality, competence, relevance, materiality, propriety, and admissibility, and of any and all
10 other objections on any grounds that would require exclusion from evidence of any statement
11 herein, any documents produced, or any interrogatory asked of, or any statements contained in or
12 made by, any witness while present and testifying in court, all of which actions and grounds are
13 expressly reserved and may be interposed at trial.

14 3. No incidental or implied admissions are intended by the responses herein. The fact that
15 Plaintiff has responded or objected to any Interrogatory shall not be construed as an admission
16 that Plaintiff accepts or admits the existence of any documents or facts set forth or assumed by
17 such Interrogatory or that such response or objection constitutes admissible evidence. The fact
18 that Plaintiff has answered part or all of any Interrogatory is not intended to be and shall not be
19 construed as a waiver by Plaintiff of any part of any objection to any Interrogatory.

20 GENERAL OBJECTION

21 Plaintiff generally objects to the Interrogatories, instructions, and definitions contained
22 therein, to the extent they purport to impose obligations on Plaintiff other than those imposed by
23 the FRCP and the Local Rules of the United States District Court for the Northern District of
24 California. Plaintiff also objects to the Interrogatories to the extent that they seek information or
25 materials that are protected by the attorney-client privilege (including, but not limited to, the joint
26 defense and common interest privileges) and/or attorney work product doctrine. Plaintiff will not
27 disclose any privileged or confidential information in its response to the Interrogatories.

28

1 INTERROGATORY NO. 1:

2 Describe the circumstances in which you first became aware of San Francisco Police Code
3 sections 4512 and 613.10(g), including, but not limited to, the date on which you first became
4 aware of each ordinance, the speaker or document from which you learned of each ordinance, and
5 the content of that communication.

6 RESPONSE TO INTERROGATORY NO. 1:

7 1. The discovery sought by Defendants in Interrogatory No. 1 is irrelevant and is not
8 reasonably calculated to lead to the discovery of any admissible evidence. When and under which
9 circumstances Plaintiff “became aware” of San Francisco Police Code sections 4512 and
10 613.10(g) is not at issue in this litigation and, because this is a facial challenge, each plaintiff’s
11 personal situation is ultimately irrelevant to the determination of the case. *Reno v. Flores*, 507
12 U.S. 292, 300-01 (1993); *see also Ezell v. City of Chicago*, 651 F.3d 684, 697 (7th Cir. 2011).

13 2. Plaintiff further objects to this Interrogatory on the ground that Defendants’
14 definition of the term “you” is overbroad insofar as it includes third parties who are not parties and
15 have no connection to this case, including Plaintiff’s “employees, agents, representative or anyone
16 else acting on his behalf.” Plaintiff cannot respond on behalf of any or all of these individuals.

17 3. Plaintiff, having conducted a reasonable investigation and search, has been unable to
18 locate or otherwise obtain the information Defendants request in Interrogatory No. 1 because such
19 was not committed to a writing and Plaintiff no longer recalls the exact date, source, or content of
20 any communication or writing that first made Plaintiff aware of the passage or existence of San
21 Francisco Police Code sections 4512 and 613.10(g).

22 Without waiving the foregoing general or specific objections, Plaintiff responds as follows:
23 Though he does not recall the circumstances under which he first became aware of either San
24 Francisco Police Code section 4512 and 613.10(g), Plaintiff knows that he learned of the laws
25 before their passage because he expressed his opposition to the ammunition ordinance to the San
26 Francisco Board of Supervisors at the time the law was being contemplated. Plaintiff believes he
27 likely first learned of one or both of the ordinances through reports in the general news media at
28 the time the laws were being contemplated by the San Francisco Board of Supervisors.

1 INTERROGATORY NO. 2:

2 Identify each firearm that has been in your private residence while in your possession,
3 custody or control at any time since August 2007, including but not limited to its make, model
4 and serial number and the period of time during which you kept that firearm in your home.

5 RESPONSE TO INTERROGATORY NO. 2:

6 1. The discovery sought by Defendants in Interrogatory No. 2 is irrelevant and is not
7 reasonably calculated to lead to the discovery of any admissible evidence; it is also overbroad as it
8 seeks information pertaining to any long gun that has been in Plaintiff's private residence at any
9 time since August 2007. Whether Plaintiff has ever owned, possessed, or had in his control a long
10 gun within his private residence is immaterial to the litigation because long guns are not regulated
11 by or subject to either of the ordinances challenged in this lawsuit. The discovery is also irrelevant
12 and overbroad to the extent Defendants seek information pertaining to any firearm not currently
13 owned by, possessed by, or under the control of Plaintiff within his private residence.

14 2. The discovery sought by Defendants in Interrogatory No.2 is not only irrelevant and
15 unlikely to lead to the discovery of admissible evidence; Defendants' definition of "you" is
16 overbroad insofar as it includes third parties who are not parties and have no connection to this
17 case, including Plaintiff's "employees, agents, representative or anyone else acting on his behalf."
18 Plaintiff cannot respond on behalf of any or all of these individuals.

19 3. Defendants' discovery request is oppressive and unduly burdensome, and its likely
20 benefit is far outweighed by the burden of producing the requested information. Interrogatory No.
21 2 seeks a list of *each and every* firearm to have been within Plaintiff's residence and under his
22 ownership, possession, or control at *any* time since August 2007. A responsive list would thus
23 include the entirety of Plaintiff's current firearm collection, any firearm that Plaintiff has
24 transferred to another person since August 2007, and any firearm ever carried into Plaintiff's
25 residence and held by Plaintiff, no matter how long that firearm was in the home. Responding to
26 this Interrogatory would thus require a time-consuming search for and description of incidental,
27 irrelevant, and trivial details (e.g., the serial number of firearms no longer in Plaintiff's
28 possession) not necessary to the determination of any material issue of fact. When weighed

1 against the heavy burden of preparing such a list, Defendants' need for this information is
2 insignificant – for all that is necessary is that Plaintiff establish that he presently keeps at least one
3 handgun in his private residence for self-defense. Taking into account the needs of the case, the
4 issues at stake in the litigation, and the importance of the requested discovery in resolving
5 material issues, the burden of producing the information sought by Defendants in Interrogatory
6 No. 2 outweighs any benefit.

7 4. The information sought by Defendants in Interrogatory No. 2, when weighed against
8 its probative value as to the material issues of the current litigation, constitutes an unreasonable
9 invasion of privacy and a significant intrusion upon the rights of Plaintiff because it seeks
10 sensitive information regarding all types of firearms Plaintiff has at any time owned, possessed, or
11 had control of within his private residence since August 2007.

12 Because it is recognized that people have at least some privacy interest in the firearms that
13 they own or possess, at least some of the firearms that would be subject to disclosure under
14 Interrogatory No. 2 are not registered with the state of California and the records pertaining to
15 those firearms for which registration *is* required are protected from public disclosure. While the
16 ownership or possession of a firearm is by no means discreditable, a great deal of social, political,
17 and moral controversy often surrounds gun ownership in our culture. More importantly, gun
18 owners reasonably fear public disclosure of the number and types of firearms one owns to his
19 neighbors and to officials in a city that is known as fanatically anti-gun. In short, at least some
20 members of the public, including Plaintiff, are reasonably more interested in the protection of
21 their privacy regarding the number and types of firearms they keep in their homes than they are in
22 divulging how often they buy toothpaste and which brand they prefer.

23 The sensitive and private nature of the information Defendants seek in Interrogatory No. 2
24 thus merits heightened protection from disclosure, requiring Defendants to establish a significant
25 need for it before disclosure should be required. *See Johnson v. Bryco Arms*, 224 F.R.D. 536, 543
26 (E.D.N.Y. 2004). Because the number of firearms Plaintiff owns and the make, model, and serial
27 number of each of his firearms is irrelevant and unnecessary to the determination of any factual
28 issue (i.e., whether Plaintiff owns a handgun), Defendant cannot demonstrate a sufficient need for

1 the disclosure of Plaintiff's private, sensitive information.

2 5. California Penal Code section 28210 prohibits any government from compiling a
3 registry "of firearms that are not pistols, revolvers, or other firearms capable of being concealed
4 upon the person." To the extent Defendants seek information regarding Plaintiff's past or present
5 ownership or possession of long guns and other firearms that are not "pistols, revolvers, or other
6 firearms capable of being concealed upon the person," that information is not discoverable by the
7 government Defendants as a matter of law.

8 Without waiving the foregoing general or specific objections, Plaintiff responds as follows:
9 Plaintiff owns or possesses at least one lawfully acquired and possessed handgun that he keeps
10 within his home for self-defense and other lawful purposes.

11
12 INTERROGATORY NO. 3:

13 Identify every type of ammunition you have purchased for or used in each of the firearms
14 you identified in response to Interrogatory No. 3, including but not limited to its manufacturer or
15 brand name, caliber, jacket construction, place of purchase and date of purchase.

16 RESPONSE TO INTERROGATORY NO. 3:

17 1. The discovery sought by Defendants in Interrogatory No. 3 is irrelevant and is not
18 reasonably calculated to lead to the discovery of any admissible evidence because the types of
19 ammunition that Plaintiff has had, currently has, or has used in the past is irrelevant to whether
20 Plaintiff has a right to access constitutionally protected ammunition in the future. Interrogatory
21 No. 3 is also overbroad insofar as it seeks information pertaining to ammunition that is not
22 prohibited by San Francisco Police Code section 613.10 and any ammunition acquired before that
23 code section took effect.

24 2. The discovery sought by Defendants in Interrogatory No. 3 is not only irrelevant and
25 unlikely to lead to the discovery of admissible evidence; Defendants' definition of "you" is
26 overbroad insofar as it includes third parties who are not parties and have no connection to this
27 case, including Plaintiff's "employees, agents, representative or anyone else acting on his behalf."
28 Plaintiff cannot respond on behalf of any or all of these individuals.

1 3. Defendants' discovery request is oppressive and unduly burdensome, and its likely
2 benefit is far outweighed by the burden of producing the requested information. Interrogatory No.
3 3 seeks a list of *each and every* type of ammunition Plaintiff has purchased for *or* used in *each*
4 *and every* firearm to have been within Plaintiff's residence and under his ownership, possession,
5 or control at *any* time since August 2007. Responding to this Interrogatory requires a time-
6 consuming search for and description of incidental, irrelevant, and trivial details not necessary to
7 the determination of any material issue of fact (e.g., the purchase date and location of fully
8 jacketed ammunition acquired before the passage of San Francisco Police Code section 613.10).
9 When weighed against the heavy burden of preparing such a list, Defendants' need for this
10 information is insignificant – for all that is necessary is that Plaintiff establish that he intends to
11 purchase arguably constitutionally protected ammunition, the sale of which is prohibited by San
12 Francisco Police Code section 613.10. Taking into account the needs of the case, the issues at
13 stake in the litigation, and the importance of the requested discovery in resolving material issues,
14 the burden of producing the information sought by Defendants in Interrogatory No. 3 outweighs
15 its likely benefit.

16 4. The information sought by Defendants in Interrogatory No. 3, when weighed against
17 its probative value as to the material issues of the current litigation, constitutes an unreasonable
18 invasion of privacy and a significant intrusion upon the rights of Plaintiff because it seeks
19 sensitive information regarding each and every type of ammunition Plaintiff has ever purchased
20 for or used in each and every firearm to have been within Plaintiff's residence and under his
21 ownership, possession, or control at *any* time since August 2007.

22 The use, ownership, or possession of ammunition, like the ownership and possession of
23 firearms, often sparks a great deal of social, political, and moral controversy in our culture. More
24 importantly, gun owners reasonably fear public disclosure of the number and types of firearms
25 and ammunition one owns to his neighbors and to officials in a city that is known as fanatically
26 anti-gun. In short, at least some members of the public, including Plaintiff, are reasonably more
27 interested in the protection of their privacy regarding the number and types of firearms they keep
28 in their homes than they are in divulging how often they buy toothpaste and which brand they

1 prefer.

2 The sensitive and private nature of the information Defendants seek in Interrogatory No. 3
3 thus merits heightened protection from disclosure, requiring Defendants to establish a significant
4 need for it before disclosure should be required. *See Johnson v. Bryco Arms*, 224 F.R.D. 536, 543
5 (E.D.N.Y. 2004). Because the specifics of every type of ammunition Plaintiff has ever purchased
6 or used in any firearm to have been within Plaintiff's residence and under his ownership,
7 possession, or control at *any* time since August 2007 is irrelevant and unnecessary to the
8 determination of any factual issue (i.e., whether Plaintiff intends to purchase allegedly
9 constitutionally protected ammunition), Defendant cannot demonstrate a sufficient need for the
10 disclosure of Plaintiff's private, sensitive information.

11 5. Plaintiff, having conducted a reasonable investigation and search, has been unable to
12 locate or otherwise obtain some of the information Defendants request in Interrogatory No. 3. The
13 discovery Defendants seek in Interrogatory No. 3 relies in part on information found in receipts,
14 documents, or product packaging no longer in the possession of Plaintiff, those items having been
15 lost, destroyed, transferred, or otherwise disposed of. Additionally, as it pertains to ammunition
16 that was gifted or loaned to Plaintiff or has since been transferred from Plaintiff to another person,
17 Defendants seek information regarding ammunition that is currently under the control of
18 individuals other than Plaintiff.

19 Without waiving the foregoing general or specific objections, Plaintiff responds as follows:
20 Plaintiff intends to purchase ammunition for his lawfully owned and possessed firearms,
21 including ammunition prohibited from sale and purchase in the City and County of San Francisco
22 under San Francisco Police Code section 613.10.

23
24 INTERROGATORY NO. 4:

25 Identify by manufacturer or brand name and model every trigger lock, lockbox, or other
26 locking device you have used at any time to secure a firearm while it was in your possession,
27 custody or control, whether in your home or elsewhere.

28 ///

1 RESPONSE TO INTERROGATORY NO. 4:

2 1. The discovery sought by Defendants in Interrogatory No. 4 is irrelevant and is not
3 reasonably calculated to lead to the discovery of any admissible evidence; it is also overbroad as it
4 seeks information pertaining to the locking or securing of firearms not regulated by San Francisco
5 Police Code section 4512 (i.e., long guns), the locking or securing of firearms when outside of
6 one's residence, the use of locks loaned or borrowed from third persons, especially when outside
7 of one's residence, and the use of trigger locks, lockboxes, or other locking devices acquired and
8 used only before the passage of San Francisco Police Code section 4512. In any event, the
9 particular brand name and model of any trigger lock, lockbox, or other locking device used to
10 secure Plaintiff's firearm is irrelevant under this facial constitutional challenge to San Francisco
11 Police Code section 4512. *Reno v. Flores*, 507 U.S. 292, 300-01 (1993); *see also Ezell v. City of*
12 *Chicago*, 651 F.3d 684, 697 (7th Cir. 2011).

13 2. The discovery sought by Defendants in Interrogatory No. 4 is not only irrelevant and
14 unlikely to lead to the discovery of admissible evidence; Defendants' definition of "you" is
15 overbroad insofar as it includes third parties who are not parties and have no connection to this
16 case, including Plaintiff's "employees, agents, representative or anyone else acting on his behalf."
17 Plaintiff cannot respond on behalf of any or all of these individuals.

18 Without waiving the foregoing general or specific objections, Plaintiff responds as follows:
19 Plaintiff owns or possesses at least one trigger lock, firearm safe, lockbox, or other locking device
20 that he presently uses to secure any handgun in his residence as required by San Francisco Police
21 Code section 4512.

22
23 INTERROGATORY NO. 5:

24 Describe every communication, whether written or verbal, between you and any employee
25 or official of the City and County of San Francisco concerning the subject matter of your
26 complaint in this action, including but not limited to the date, medium, participants in and content
27 of the communication.

28 ///

1 RESPONSE TO INTERROGATORY NO. 5:

2 1. To the extent Interrogatory No. 5 seeks information regarding communications with
3 law enforcement or city officials over the enforcement of the challenged ordinance, the request is
4 irrelevant and is not reasonably calculated to lead to the discovery of any admissible evidence
5 because facts surrounding enforcement and threats of enforcement of the challenged ordinances
6 are irrelevant to the determination of standing and ripeness in this case.

7 2. The discovery sought by Defendants in Interrogatory No. 5 is not only irrelevant and
8 unlikely to lead to the discovery of admissible evidence, it is also overbroad insofar as it seeks all
9 communications related to the “subject matter” of Plaintiff’s Complaint in this action, which can
10 be read to include even tangential communications concerning the broad subject of firearms and
11 ammunition. The 2000 amendments to the Federal Rules of Civil Procedure require relevance as
12 to “any claim or defense,” not simply the “subject matter” of the litigation. Further, Defendants’
13 definition of “you” is overbroad insofar as it includes third parties who are not parties and have no
14 connection to this case, including Plaintiff’s “employees, agents, representative or anyone else
15 acting on his behalf.” Plaintiff cannot respond on behalf of any or all of these individuals.

16 4. Finally, Interrogatory No. 5 is vague and ambiguous as to the term “subject matter”;
17 Plaintiff is uncertain whether Defendants are referring to a broad category of “subject matter,”
18 such as firearms and ammunition or the Second Amendment, to a more specific category like
19 firearm storage requirements, or even more specifically to San Francisco Police Code sections
20 4512 and 613.10. Therefore, Interrogatory No. 5 fails to describe the requested information with
21 reasonable particularity. Plaintiff is, therefore, unable to determine what information is sought. In
22 good faith, Plaintiff will answer this question as though “subject matter” refers only to San
23 Francisco Police Code section 4512 and/or section 613.10.

24 Without waiving the foregoing general or specific objections, Plaintiff responds as follows:
25 Though he does not recall the date of the communication, Plaintiff spoke in opposition to San
26 Francisco Police Code section 613.10 at the Board of Supervisors Committee hearing in which
27 the ordinance was considered for passage.

28 To his knowledge and recollection, Plaintiff has had no other communications with

1 Defendant the City and County of San Francisco, its employees or officials, concerning the
2 subject matter of his complaint in this action.

3
4 INTERROGATORY NO. 6:

5 If you have ever been arrested in any jurisdiction for any reason, identify the date, the
6 arresting agency, the alleged offense(s), the charge(s) brought, and the disposition of any
7 charge(s).

8 RESPONSE TO INTERROGATORY NO. 6:

9 1. The discovery sought by Defendants in Interrogatory No. 5 is irrelevant and is not
10 reasonably calculated to lead to the discovery of any admissible evidence; it is also overbroad as it
11 seeks information pertaining to *all* arrests, including those for irrelevant non-violent
12 misdemeanors, non-violent felonies, juvenile offenses, and offenses that do not impeach one's
13 veracity, to those for which no charges were ever brought, and to wrongful arrests made solely to
14 harass.

15 2. It also appears from the Complaint, Answer, and all other pleadings that the discovery
16 sought by Defendants in Interrogatory No. 6 is totally unrelated to any "claim or defense of any
17 party" because it seeks information pertaining to *all* arrests, including those for irrelevant non-
18 violent misdemeanors, juvenile offenses, and offenses that do not impeach one's veracity, to those
19 for which no charges were ever brought, and to wrongful arrests made solely to harass. No claim
20 or defense is thus impacted by the information sought in Interrogatory No. 6, and the request,
21 therefore, exceeds the scope of permissible discovery.

22 3. The discovery sought by Defendants in Interrogatory No. 6 is not only irrelevant and
23 unlikely to lead to the discovery of admissible evidence; Defendants' definition of "you" is
24 overbroad insofar as it includes third parties who are not parties and have no connection to this
25 case, including Plaintiff's "employees, agents, representative or anyone else acting on his behalf."
26 Plaintiff cannot respond on behalf of any or all of these individuals.

27 4. Plaintiff, having conducted a reasonable investigation and search, has been unable to
28 locate or otherwise obtain some of the information Defendants request in Interrogatory No. 6. The

1 discovery Defendants seek in Interrogatory No. 6 relies in part on information found in documents
2 or records that are no longer in the possession of Plaintiff, those items having been lost,
3 destroyed, or otherwise disposed of.

4 Without waiving the foregoing general or specific objections, Plaintiff responds as follows:
5 Plaintiff is not prohibited from owning or possessing firearms and ammunition under state or
6 federal law. To the extent Defendants are asking whether Plaintiff is somehow disqualified from
7 exercising his right to keep and bear arms, the answer is “no.” Plaintiff is not prohibited from
8 owning or possessing firearms and ammunition under state or federal law. *See* Cal. Penal Code §§
9 12021, 12021.1, 12316(b); Cal. Welf. & Inst. Code §§ 8100, 8103; 18 U.S.C. 922(g), (n). To the
10 extent Defendants are asking whether Plaintiff has ever been convicted of a crime that might
11 relate to his veracity, e.g., a felony, the answer also is “no.”

12
13 INTERROGATORY NO. 7:

14 List every permit, license or registration issued to you concerning the possession or use of
15 firearms or ammunition, including its type, date of issue, the issuing agency, the expiration date
16 (if any), any conditions or restrictions it imposes, any period during which it was suspended or
17 revoked, and the reason given for the suspension or revocation.

18 RESPONSE TO INTERROGATORY NO. 7:

19 1. The discovery sought by Defendants in Interrogatory No. 7 is irrelevant and is not
20 reasonably calculated to lead to the discovery of any admissible evidence because the types of
21 firearms and ammunition licenses, permits, or registrations that Plaintiff has had in the past or
22 currently has is irrelevant to whether Plaintiff has a right to engage in constitutionally protected
23 conduct now or in the future. And again, because this is a facial challenge, each plaintiff’s
24 personal situation is ultimately irrelevant to the determination of the case. *Reno v. Flores*, 507
25 U.S. 292, 300-01 (1993); *see also Ezell v. City of Chicago*, 651 F.3d 684, 697 (7th Cir. 2011).
26 Interrogatory No. 7 is also overbroad as it seeks information pertaining to all sorts of licenses,
27 permits, and registrations having to do with firearms and ammunition, including those that deal
28 with specialized firearms and ammunition and those that have nothing to do with the types of

1 firearms and ammunition regulated by San Francisco Police Code sections 4512 and 613.10.

2 2. It also appears from the Complaint, Answer, and all other pleadings that the discovery
3 sought by Defendants in Interrogatory No. 7 is totally unrelated to any “claim or defense of any
4 party” because no claim or defense is impacted by whether and to what extent Plaintiff has
5 licenses, permits, or registrations concerning the possession or use of firearms. Regardless of
6 whether Plaintiff has zero, one, or multiple such permits, Plaintiff holds a right to engage in
7 conduct protected by the Second Amendment. And the determination of whether San Francisco
8 Police Code sections 4512 and 613.10 infringe on that right is not affected by the information
9 sought in Interrogatory No. 7. The discovery, therefore, exceeds the scope of permissible
10 discovery.

11 3. The discovery sought by Defendants in Interrogatory No. 7 is not only irrelevant and
12 unlikely to lead to the discovery of admissible evidence; Defendants’ definition of “you” is
13 overbroad insofar as it includes third parties who are not parties and have no connection to this
14 case, including Plaintiff’s “employees, agents, representative or anyone else acting on his behalf.”
15 Plaintiff cannot respond on behalf of any or all of these individuals.

16 4. Plaintiff, having conducted a reasonable investigation and search, has been unable to
17 locate or otherwise obtain at least some of the information Defendants request in Interrogatory
18 No. 7. The discovery Defendants seek in Interrogatory No. 7 relies in part on information found in
19 documents that are no longer in the Plaintiff’s possession, those items having been lost, destroyed,
20 transferred, or otherwise disposed of. Moreover, Plaintiff has conducted a diligent search in an
21 unsuccessful attempt to locate the materials described in this objection.

22 5. The discovery sought by Defendants in Interrogatory No. 7 is further irrelevant and is
23 not reasonably calculated to lead to the discovery of any admissible evidence because the types of
24 firearms and ammunition licenses, permits, or registrations that Plaintiff has or has had in the past
25 and whether any of those licenses, permits, or registrations have been revoked has no bearing on
26 whether Plaintiff can own or possess firearms under state or federal law.

27 Without waiving the foregoing general or specific objections, Plaintiff responds as follows:
28 Plaintiff owns or possesses at least one lawfully acquired and possessed handgun that he keeps

1 within his home for self-defense and other lawful purposes.

2
3 INTERROGATORY NO. 8:

4 List every permit, license or registration concerning the use or possession of firearms for
5 which you have applied but which application was denied, including its type, the issuing agency,
6 the date you applied, and the reason given for the denial.

7 RESPONSE TO INTERROGATORY NO. 8:

8 1. The discovery sought by Defendants in Interrogatory No. 8 is irrelevant and is not
9 reasonably calculated to lead to the discovery of any admissible evidence because the types of
10 firearms and ammunition licenses, permits, or registrations that Plaintiff currently has or has been
11 denied is irrelevant to whether Plaintiff has a right to engage in constitutionally protected conduct
12 now or in the future. And again, because this is a facial challenge, each plaintiff's personal
13 situation is ultimately irrelevant to the determination of the case. *Reno v. Flores*, 507 U.S. 292,
14 300-01 (1993); *see also Ezell v. City of Chicago*, 651 F.3d 684, 697 (7th Cir. 2011). Interrogatory
15 No. 8 is also overbroad as it seeks information pertaining to all sorts of licenses, permits, and
16 registrations having to do with firearms and ammunition for which Plaintiff has applied, including
17 those that deal with specialized firearms and ammunition and those that have nothing to do with
18 the types of firearms and ammunition regulated by San Francisco Police Code sections 4512 and
19 613.10.

20 2. It also appears from the Complaint, Answer, and all other pleadings that the discovery
21 sought by Defendants in Interrogatory No. 8 is totally unrelated to any "claim or defense of any
22 party" because no claim or defense is impacted by whether Plaintiff has been denied any license,
23 permit, or registration concerning the possession or use of firearms. Regardless of whether
24 Plaintiff has zero, one, or multiple such permits, Plaintiff holds a right to engage in conduct
25 protected by the Second Amendment. And the determination of whether San Francisco Police
26 Code sections 4512 and 613.10 infringe on that right is not affected by the information sought in
27 Interrogatory No. 8. The discovery, therefore, exceeds the scope of permissible discovery.

28 3. The discovery sought by Defendants in Interrogatory No. 8 is not only irrelevant and

1 unlikely to lead to the discovery of admissible evidence; Defendants' definition of "you" is
2 overbroad insofar as it includes third parties who are not parties and have no connection to this
3 case, including Plaintiff's "employees, agents, representative or anyone else acting on his behalf."
4 Plaintiff cannot respond on behalf of any or all of these individuals.

5 4. Plaintiff, having conducted a reasonable investigation and search, has been unable to
6 locate or otherwise obtain some of the information Defendants request in Interrogatory No. 8. The
7 discovery Defendants seek in Interrogatory No. 8 relies on information found in documents that
8 are no longer in the possession of Plaintiff, those items having been lost, destroyed, transferred, or
9 otherwise disposed of. Moreover, Plaintiff has conducted a diligent search in an unsuccessful
10 attempt to locate the materials described in this objection.

11 5. The discovery sought by Defendants in Interrogatory No. 8 is further irrelevant and is
12 not reasonably calculated to lead to the discovery of any admissible evidence because the types of
13 firearms and ammunition licenses, permits, or registrations that Plaintiff has had denied has no
14 bearing on whether Plaintiff can own or possess firearms under state or federal law.

15 Without waiving the foregoing general or specific objections, Plaintiff responds as follows:
16 Many years ago, the date now unknown, Plaintiff wrote a letter to the San Francisco Sheriff
17 inquiring as to the procedure for applying and receiving a Concealed Carry Weapon (CCW)
18 permit within the City and County of San Francisco. The San Francisco Sheriff's office responded
19 that it would be the responsibility of the San Francisco Chief of Police to consider Plaintiff's
20 application. Plaintiff never followed up with the Chief of Police. Plaintiff no longer has
21 documentation of these communications.

22
23 INTERROGATORY NO. 9:

24 Identify every person and organization other than your counsel with whom you have
25 discussed or otherwise communicated about the subject matter of this lawsuit or your
26 participation in it at any time, whether such discussion or communications were verbal or written,
27 the subject matter of those discussions or communications, and the date or dates on which such
28 discussions or communications took place.

1 RESPONSE TO INTERROGATORY NO. 9:

2 1. To the extent Interrogatory No. 9 seeks information regarding communications with
3 law enforcement or city officials over the enforcement of the challenged ordinances, the request is
4 irrelevant and is not reasonably calculated to lead to the discovery of any admissible evidence
5 because facts surrounding enforcement and threats of enforcement of the challenged ordinances
6 are irrelevant to the determination of standing and ripeness in this case. Additionally, it seeks
7 irrelevant oral and written communications with third parties who have no relationship to this
8 case and regarding only the existence of San Francisco Police Code sections 4512 and 613.10, the
9 status of this lawsuit, and Plaintiff's participation in it.

10 2. The discovery sought by Defendants in Interrogatory No. 9 is not only irrelevant and
11 unlikely to lead to the discovery of admissible evidence, it is also overbroad insofar as it seeks all
12 communications related to the "subject matter" of Plaintiff's Complaint in this action, which can
13 be read to include even tangential communications concerning the broad subject of firearms and
14 ammunition. The 2000 amendments to the Federal Rules of Civil Procedure require relevance as
15 to "any claim or defense," not simply the "subject matter" of the litigation. Further, Defendants'
16 definition of "you" is overbroad insofar as it includes third parties who are not parties and have no
17 connection to this case, including Plaintiff's "employees, agents, representative or anyone else
18 acting on his behalf." Plaintiff cannot respond on behalf of any or all of these individuals.

19 3. Defendants' discovery request will cause Plaintiff annoyance, oppression, and undue
20 burden because it seeks a list of each and every person Plaintiff has ever discussed with or
21 communicated (orally or in writing) about the subject matter of or Plaintiff's participation in this
22 lawsuit – this purports to include even brief comments made in passing to friends and
23 acquaintances and comments made on open, internet message boards. Plaintiff estimates a
24 responsive list would include hundreds of individuals. Responding to this Interrogatory would
25 thus require a time-consuming search for and description of incidental, irrelevant, and trivial
26 details not necessary to the determination of any material issue of fact (e.g., the identities of third
27 parties who have merely been apprised of the existence of the challenged ordinances, the status of
28 this lawsuit, or Plaintiff's participation in it and the date(s) of communications with those

1 persons). When weighed against the heavy burden of preparing such a list, Defendants' need for
2 this information is insignificant. Taking into account the needs of the case, the issues at stake in
3 the litigation, and the importance of the requested discovery in resolving material issues, the
4 burden of producing the required information sought by Defendants in Interrogatory No. 9
5 outweighs its likely benefit.

6 4. By so broadly requesting information regarding any communication to any
7 organization pertaining to the subject matter of this lawsuit and Plaintiff's participation in it, the
8 request infringes upon Plaintiff's right to freely associate, speak and petition the government for
9 redress of grievances under Article I, Sections 2, 3, and 13 of the California Constitution and
10 Amendments I, IV, and XIV of the United States Constitution.

11 5. Plaintiff, having conducted a reasonable investigation and search, has been unable to
12 obtain the information Defendants request in Interrogatory No. 9. He cannot recall the
13 circumstances surrounding every communication he has made regarding the subject matter of this
14 lawsuit or his participation in it, and Plaintiff does not know, and in fact never knew, the identities
15 of all persons who have read Plaintiff's internet message board postings regarding the existence
16 and status of the present litigation.

17 6. Finally, Interrogatory No. 9 is vague and ambiguous as to the term "subject matter";
18 Plaintiff is uncertain whether Defendants are referring to a broad category of "subject matter,"
19 such as firearms and ammunition or the Second Amendment, to a more specific category like
20 firearm storage requirements, or even more specifically to San Francisco Police Code sections
21 4512 and 613.10. Therefore, Interrogatory No. 9 fails to describe the requested information with
22 reasonable particularity. Plaintiff is, therefore, unable to determine what information is sought.

23
24 INTERROGATORY NO. 10:

25 Describe any training you have had in gun safety, including its date, the person or agency
26 that provided the training, the length of the training, and its general content.

27 RESPONSE TO INTERROGATORY NO. 10:

28 1. The discovery sought by Defendants in Interrogatory No. 10 is irrelevant and is not

1 reasonably calculated to lead to the discovery of any admissible evidence because whether and to
2 what extent Plaintiff has been formally or informally “trained” in “gun safety” is irrelevant to
3 whether Plaintiff has a right to engage in constitutionally protected conduct now or in the future.
4 And again, because this is a facial challenge, each plaintiff’s personal situation is ultimately
5 irrelevant to the determination of the case. *Reno v. Flores*, 507 U.S. 292, 300-01 (1993); *see also*
6 *Ezell v. City of Chicago*, 651 F.3d 684, 697 (7th Cir. 2011).

7 2. It also appears from the Complaint, Answer, and all other pleadings that the discovery
8 sought by Defendants in Interrogatory No. 10 is totally unrelated to any “claim or defense of any
9 party” because no claim or defense is impacted by whether and to what extent Plaintiff has been
10 formally or informally “trained” in “gun safety.” Plaintiff has not challenged any regulations
11 regarding firearms training, nor is such training or lack thereof a defense to Plaintiff’s claims.
12 Regardless of whether Plaintiff has had zero or hundreds of hours of “training” in “gun safety,”
13 Plaintiff has a right to engage in conduct protected by the Second Amendment. And the
14 determination of whether San Francisco Police Code sections 4512 and 613.10 infringe on that
15 right is not affected by the information sought in Interrogatory No. 10. The discovery, therefore,
16 exceeds the scope of permissible discovery.

17 3. The discovery sought by Defendants in Interrogatory No. 10 is not only irrelevant and
18 unlikely to lead to the discovery of admissible evidence; Defendants’ definition of “you” is
19 overbroad insofar as it includes third parties who are not parties and have no connection to this
20 case, including Plaintiff’s “employees, agents, representative or anyone else acting on his behalf.”
21 Plaintiff cannot respond on behalf of any or all of these individuals.

22 4. Plaintiff, having conducted a reasonable investigation and search, has been unable to
23 locate or otherwise obtain some of the information Defendants request in Interrogatory No. 10.
24 The discovery Defendants seek in Interrogatory No. 10 relies in part on information found in
25 documents that are no longer in the possession of Plaintiff, those items having been lost,
26 destroyed, transferred, or otherwise disposed of. Moreover, Plaintiff has conducted a diligent
27 search in an unsuccessful attempt to locate the materials described in this objection.

28 Without waiving the foregoing general or specific objections, Plaintiff responds as follows:

1 Plaintiff has had training in gun safety, that includes the following:

2 1) Many years ago, Plaintiff held a permit to carry a weapon as an armed guard, for which
3 Plaintiff had to re-qualify twice annually. Plaintiff does not recall the dates or other particulars of
4 this recurring training.

5 2) On a date unknown, Plaintiff completed an education/training program for his
6 Handgun Safety Certificate. The program, administered by the California Department of Justice,
7 generally includes safety rules regarding the use and storage of handguns.

8 3) Plaintiff is presently a National Rifle Association (NRA) Certified Handgun Instructor.
9 He has participated in training through the NRA to obtain and maintain his certification. To
10 qualify as an NRA Instructor: Candidates must possess and demonstrate a solid background in
11 firearm safety and shooting skills acquired through previous firearm training and/or previous
12 shooting experience. Instructor candidates must be intimately familiar with each action type in the
13 discipline they wish to be certified. Candidates must demonstrate solid and safe firearms handling
14 skills. And candidates must satisfactorily complete an NRA Instructor Training Course in the
15 discipline they wish to teach (e.g., NRA Basic Pistol Course), and receive the endorsement of the
16 NRA Training Counselor conducting that training.

17 4) Plaintiff is presently an NRA Refuse to Be a Victim Instructor. He has participated in
18 training through the NRA to obtain and maintain his certification, and he conducts a number of
19 courses annually. The course is a personal safety program that teaches strategies you can use to
20 avoid situations where self-defense is required. This course focuses on proactive courses of
21 action, rather than reactive.

22 5) Plaintiff was formerly an NRA Women on Target Instructor.

23
24 INTERROGATORY NO. 11:

25 Describe any training you have had in using a firearm in self-defense, including its date, the
26 person or agency that provided the training, the length of the training, and its general content.

27 RESPONSE TO INTERROGATORY NO. 11:

28 1. The discovery sought by Defendants in Interrogatory No. 11 is irrelevant and is not

1 reasonably calculated to lead to the discovery of any admissible evidence because whether and to
2 what extent Plaintiff has been formally or informally “trained” in self-defense is irrelevant to
3 whether Plaintiff has a right to engage in constitutionally protected conduct now or in the future.
4 And again, because this is a facial challenge, each plaintiff’s personal situation is ultimately
5 irrelevant to the determination of the case. *Reno v. Flores*, 507 U.S. 292, 300-01 (1993); *see also*
6 *Ezell v. City of Chicago*, 651 F.3d 684, 697 (7th Cir. 2011).

7 2. It also appears from the Complaint, Answer, and all other pleadings that the discovery
8 sought by Defendants in Interrogatory No. 11 is totally unrelated to any “claim or defense of any
9 party” because no claim or defense is impacted by whether and to what extent Plaintiff has been
10 formally or informally “trained” in self-defense . Regardless of whether Plaintiff has had zero or
11 hundreds of hours of “training” in self-defense, Plaintiff has a right to engage in conduct protected
12 by the Second Amendment. And the determination of whether San Francisco Police Code sections
13 4512 and 613.10 infringe on that right is not affected by the information sought in Interrogatory
14 No. 11. The discovery, therefore, exceeds the scope of permissible discovery.

15 3. The discovery sought by Defendants in Interrogatory No. 11 is not only irrelevant and
16 unlikely to lead to the discovery of admissible evidence; Defendants’ definition of “you” is
17 overbroad insofar as it includes third parties who are not parties and have no connection to this
18 case, including Plaintiff’s “employees, agents, representative or anyone else acting on his behalf.”
19 Plaintiff cannot respond on behalf of any or all of these individuals.

20 4. Plaintiff, having conducted a reasonable investigation and search, has been unable to
21 locate or otherwise obtain at least some of the information Defendants request in Interrogatory
22 No. 11. The discovery Defendants seek in Interrogatory No. 11 relies in part on information found
23 in documents that are no longer in the possession of Plaintiff, those items having been lost,
24 destroyed, transferred, or otherwise disposed of. Moreover, Plaintiff has conducted a diligent
25 search in an unsuccessful attempt to locate the materials described in this objection.

26 5. Interrogatory No. 11 is also vague in that it does not clarify whether it refers to formal
27 or informal “training” or both. And if informal “training” is included, what type of instruction and
28 practice constitutes “training.” Therefore, Interrogatory No. 11 fails to describe the requested

1 information with reasonable particularity. Plaintiff is, therefore, unable to determine what
2 information is sought.

3 Without waiving the foregoing general or specific objections, Plaintiff responds as follows:
4 Plaintiff has had training in gun safety, that includes the following:

5 1) Many years ago, Plaintiff held a permit to carry a weapon as an armed guard, for which
6 Plaintiff had to re-qualify twice annually. Plaintiff does not recall the dates or other particulars of
7 this recurring training.

8 2) On a date unknown, Plaintiff completed an education/training program for his
9 Handgun Safety Certificate. The program, administered by the California Department of Justice,
10 generally includes safety rules regarding the use and storage of handguns.

11 3) Plaintiff is presently a National Rifle Association (NRA) Certified Handgun Instructor.
12 He has participated in training through the NRA to obtain and maintain his certification. To
13 qualify as an NRA Instructor: Candidates must possess and demonstrate a solid background in
14 firearm safety and shooting skills acquired through previous firearm training and/or previous
15 shooting experience. Instructor candidates must be intimately familiar with each action type in the
16 discipline they wish to be certified. Candidates must demonstrate solid and safe firearms handling
17 skills. And candidates must satisfactorily complete an NRA Instructor Training Course in the
18 discipline they wish to teach (e.g., NRA Basic Pistol Course), and receive the endorsement of the
19 NRA Training Counselor conducting that training.

20 4) Plaintiff is presently an NRA Refuse to Be a Victim Instructor. He has participated in
21 training through the NRA to obtain and maintain his certification, and he conducts a number of
22 courses annually. The course is a personal safety program that teaches strategies you can use to
23 avoid situations where self-defense is required. This course focuses on proactive courses of
24 action, rather than reactive.

25 5) Plaintiff was formerly an NRA Women on Target Instructor.

26
27 INTERROGATORY NO. 12:

28 Identify every residence in which you have lived during the last ten years, including its

1 address, its owner, and the period of time in which you lived at that location.

2 RESPONSE TO INTERROGATORY NO. 12:

3 1. The discovery sought by Defendants in Interrogatory No. 12 is irrelevant and is not
4 reasonably calculated to lead to the discovery of any admissible evidence, as the owner of any
5 residence in which Plaintiff has lived in at any time within the last ten years has no bearing on any
6 claim or defense.

7 2. Interrogatory No. 12 is also overbroad insofar as it seeks information pertaining to any
8 residence outside the City and County of San Francisco in which Plaintiff has resided at any time
9 within the last ten years.

10 3. The discovery sought by Defendants in Interrogatory No. 12 is not only irrelevant and
11 unlikely to lead to the discovery of admissible evidence; Defendants' definition of "you" is
12 overbroad insofar as it includes third parties who are not parties and have no connection to this
13 case, including Plaintiff's "employees, agents, representative or anyone else acting on his behalf."
14 Plaintiff cannot respond on behalf of any or all of these individuals.

15 Without waiving the foregoing general or specific objections, Plaintiff responds as follows:
16 Plaintiff currently resides, and for the last ten years has resided, within the City and County of San
17 Francisco. Plaintiff fears retaliation from the City if his full address is disclosed.

18
19 INTERROGATORY NO. 13:

20 For each residence you identified in response to Interrogatory No. 12, provide the full name
21 of any person who lived with you in that residence at any time, that person's approximate age at
22 the time, and the most recent address, telephone number, email address or other contact
23 information you have for that person.

24 RESPONSE TO INTERROGATORY NO. 13:

25 1. The discovery sought by Defendants in Interrogatory No. 13 is irrelevant and is not
26 reasonably calculated to lead to the discovery of any admissible evidence, as the identities, ages,
27 and current contact information of every person who has ever lived with Plaintiff in the residence
28 described in response to Interrogatory No. 13, including in periods *before* San Francisco Police

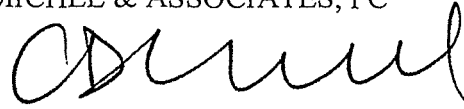
1 Code section 4512 took effect, has no bearing on any claim or defense. This is especially true in
2 light of the fact that this is a facial challenge to section 4512, where each plaintiff's personal
3 situation is ultimately irrelevant to the determination of the case. *Reno v. Flores*, 507 U.S. 292,
4 300-01 (1993); *see also Ezell v. City of Chicago*, 651 F.3d 684, 697 (7th Cir. 2011).

5 2. Interrogatory No. 13 is also overbroad insofar as it seeks information pertaining to any
6 residence outside the City and County of San Francisco in which Plaintiff has resided at any time
7 within the last ten years. Further, Defendants' definition of "you" is overbroad insofar as it
8 includes third parties who are not parties and have no connection to this case, including Plaintiff's
9 "employees, agents, representative or anyone else acting on his behalf." Plaintiff cannot respond
10 on behalf of any or all of these individuals.

11 3. The information sought by Defendants in Interrogatory No. 13, when weighed against
12 its probative value as to the material issues of the current litigation, constitutes an unreasonable
13 invasion of privacy and an intrusion upon the privacy rights of third parties who have no
14 relationship to or contact with this litigation.

15 Date: December 16, 2011

MICHEL & ASSOCIATES, PC



18 C. D. Michel
19 Attorney for Plaintiffs

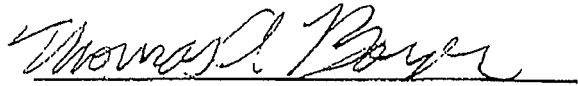
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VERIFICATION

I, THOMAS BOYER, am a Plaintiff in the above-entitled action. I have read the foregoing PLAINTIFF THOMAS BOYER'S RESPONSE TO DEFENDANTS CITY AND COUNTY OF SAN FRANCISCO INTERROGATORIES SET ONE and know the contents thereof. The same is true of my own knowledge, except as to any matters stated therein on information and belief, and as to such matters I believe them to be true.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this verification was executed on December 15, 2011, in San Francisco, California.


Thomas Boyer

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am a citizen of the United States, over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On December 16, 2011, I served the foregoing document(s) described as

PLAINTIFF THOMAS BOYER'S RESPONSE TO DEFENDANTS CITY AND COUNTY OF SAN FRANCISCO INTERROGATORIES SET ONE

on the interested parties in this action by placing
 the original
 a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

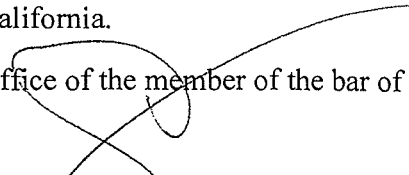
Wayne Snodgrass, Deputy City Attorney
Sherri Kaiser, Deputy City Attorney
City and County of San Francisco
Office of the City Attorney
City Hall 1 Drive Carlton B.
San Francisco, CA 94102

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on December 16, 2011, at Long Beach, California.

 (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on December 16, 2011, at Long Beach, California.

 (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance.
Executed on December 16, 2011, at Long Beach, California.

X (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.



CLAUDIA AYALA

1 C. D. Michel - S.B.N. 144258
Glenn S. McRoberts - S.B.N. 144852
2 Clinton B. Monfort - S.B.N. 255609
Anna M. Barvir - S.B.N. 268728
3 MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
4 Long Beach, CA 90802
Telephone: 562-216-4444
5 Facsimile: 562-216-4445
Email: cmichel@michellawyers.com

6 Attorneys for Plaintiffs
7

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 ESPANOLA JACKSON, PAUL COLVIN,) **CASE NO. C09-2143-RS**
THOMAS BOYER, LARRY BARSETTI,)
12 DAVID GOLDEN, NOEMI MARGARET) **DECLARATION OF THOMAS BOYER IN**
ROBINSON, NATIONAL RIFLE) **SUPPORT OF MOTION TO DISMISS**
13 ASSOCIATION OF AMERICA, INC., SAN) **PLAINTIFF THOMAS BOYER**
FRANCISCO VETERAN POLICE)
14 OFFICERS ASSOCIATION,) Date:
Plaintiffs) Time: 1:30 p.m.
15) Place: Courtroom 3 - 17th Floor
450 Golden Gate Ave.
16 vs.) San Francisco, CA 94102
CITY AND COUNTY OF SAN)
17 FRANCISCO, THE MAYOR OF)
18 SAN FRANCISCO, AND THE CHIEF)
OF THE SAN FRANCISCO POLICE)
19 DEPARTMENT, in their official capacities,)
and DOES 1-10,)
20 Defendants.)
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DECLARATION OF THOMAS BOYER

I, Thomas Boyer, declare as follows:

1. I, Thomas Boyer, am a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. On or around December 16, 2011, during the preparation of my responses to defendants’ written interrogatories, I became concerned that the types of questions posed by defendants would expose to the government information that I consider personal and sensitive, including, among other things, the types and number of firearms I own. At the time, I was particularly concerned about requests for an itemized list of all firearms and ammunition that I have possessed at any point and for any duration since 2007. I worked with my attorneys to provide responses to defendants’ written interrogatories, and I reviewed my attorneys’ objections to the same. Based on my attorneys’ objections to the City’s written discovery, I was then satisfied for the time that my sensitive, personal information would remain secure, and I elected to remain a party to this lawsuit.

3. Following my participation in litigation against the City and County of San Francisco (“the City”), I have faced harassment from the City and its agents. I reasonably believe that harassment to have been motivated by my participation in other litigation against the City. I fear further retaliation from the City and/or its agents in connection with my participation in this lawsuit, and I no longer wish to involve myself in this case.

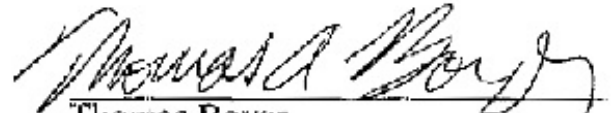
4. On or about September 12, 2012, to avoid further retaliation by the City and/or its agents as a result of the release of my sensitive, personal information to the government and as a result of my ongoing participation in this lawsuit, I requested that my attorneys seek dismissal of my claims against all defendants.

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1 5. Further, I am HIV positive, and I believe that my ongoing participation in this lawsuit
2 and the stress it causes me is deleterious to my health. For this additional reason, I wish to be
3 dismissed from this lawsuit.

4 I declare under penalty of perjury that the foregoing is true and correct. Executed on
5 October 3, 2012.

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Thomas Boyer

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 ESPANOLA JACKSON, PAUL COLVIN,) CASE NO.: CV-09-2143-RS
5 THOMAS BOYER, LARRY BARSETTI,)
6 DAVID GOLDEN, NOEMI MARGARET)
7 ROBINSON, NATIONAL RIFLE) CERTIFICATE OF SERVICE
8 ASSOCIATION OF AMERICA, INC., SAN)
9 FRANCISCO VETERAN POLICE)
10 OFFICERS ASSOCIATION,)

11 Plaintiffs)

12 vs.)

13 CITY AND COUNTY OF SAN)
14 FRANCISCO, THE MAYOR OF)
15 SAN FRANCISCO, AND THE CHIEF)
16 OF THE SAN FRANCISCO POLICE)
17 DEPARTMENT, in their official capacities,)
18 and DOES 1-10,)

19 Defendants.)

20 IT IS HEREBY CERTIFIED THAT:

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

23 I am not a party to the above-entitled action. I have caused service of

24 **DECLARATION OF THOMAS BOYER IN SUPPORT OF**
25 **MOTION TO DISMISS PLAINTIFF THOMAS BOYER**

26 on the following party by electronically filing the foregoing with the Clerk of the District Court
27 using its ECF System, which electronically notifies them.

28 Wayne Snodgrass, Deputy City Attorney
Christine Van Aken, Deputy City Attorney
Office of the City Attorney
1 Drive Carlton B. Goodlett Place
City Hall, Room 234
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct. Executed on
October 3, 2012.

/s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs

1 C. D. Michel - S.B.N. 144258
Glenn S. McRoberts - S.B.N. 144852
2 Clinton Monfort - S.B.N. 255609
Anna M. Barvir - S.B.N. 268728
3 MICHEL & ASSOCIATES, PC
180 E. Ocean Boulevard, Suite 200
4 Long Beach, CA 90802
Telephone: 562-216-4444
5 Facsimile: 562-216-4445
Email: cmichel@michellawyers.com

6 Attorneys for Plaintiffs
7

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 ESPANOLA JACKSON, PAUL COLVIN,) **CASE NO.: CV-09-2143-RS**
THOMAS BOYER, LARRY BARSETTI,)
12 DAVID GOLDEN, NOEMI MARGARET) **[PROPOSED] ORDER GRANTING**
ROBINSON, NATIONAL RIFLE) **PLAINTIFFS' UNOPPOSED MOTION TO**
13 ASSOCIATION OF AMERICA, INC., SAN) **DISMISS PLAINTIFF PAUL COLVIN;**
FRANCISCO VETERAN POLICE) **GRANTING PLAINTIFFS' MOTION TO**
14 OFFICERS ASSOCIATION,) **DISMISS PLAINTIFF THOMAS BOYER**

15 Plaintiffs)
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16 vs.)
)
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17 CITY AND COUNTY OF SAN)
FRANCISCO, THE MAYOR OF SAN)
18 FRANCISCO, AND THE CHIEF OF THE)
SAN FRANCISCO POLICE)
19 DEPARTMENT, in their official capacities,)
and DOES 1-10,)

20 Defendants.)
)
)
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1 Plaintiffs’ Unopposed Motion to Dismiss Plaintiff Paul Colvin and Motion to Dismiss
 2 Plaintiff Thomas Boyer came on for hearing before this Court on November 8, 2012. C.D. Michel
 3 and Clinton Monfort appeared for Plaintiffs, and Christine Van Aken appeared for Defendants.
 4 After consideration of the briefs and arguments of counsel and all other matters presented, the
 5 Court finds good cause exists for the dismissal of the claims of Plaintiffs Colvin and Boyer and
 6 that defendants can establish no legally cognizable prejudice sufficient to justify the denial of
 7 Plaintiffs’ request. As such, dismissal of Plaintiffs Colvin and Boyer’s claims against all
 8 defendants is proper.

9 The Court hereby GRANTS Plaintiffs’ Unopposed Motion to Dismiss Plaintiff Paul
 10 Colvin. The Court also GRANTS Plaintiffs’ Motion to Dismiss Plaintiff Thomas Boyer. All
 11 claims of Plaintiff Paul Colvin and Plaintiff Thomas Boyer are hereby dismissed against all
 12 defendants.

13 The Court further orders as follows:
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17 IT IS SO ORDERED.

18 Date: _____

19 _____
 20 Honorable Judge Richard Seeborg
 21 United States District Court Judge
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1 **IN THE UNITED STATES DISTRICT COURT**
 2 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 3 **SAN FRANCISCO DIVISION**

4 ESPANOLA JACKSON, PAUL COLVIN,) **CASE NO.: CV-09-2143-RS**
 5 THOMAS BOYER, LARRY BARSETTI,)
 6 DAVID GOLDEN, NOEMI MARGARET)
 7 ROBINSON, NATIONAL RIFLE) **CERTIFICATE OF SERVICE**
 8 ASSOCIATION OF AMERICA, INC. SAN)
 9 FRANCISCO VETERAN POLICE)
 10 OFFICERS ASSOCIATION,)

11 Plaintiffs

12 vs.

13 CITY AND COUNTY OF SAN)
 14 FRANCISCO, THE MAYOR OF SAN)
 15 FRANCISCO, AND THE CHIEF OF THE)
 16 SAN FRANCISCO POLICE)
 17 DEPARTMENT, in their official capacities,)
 18 and DOES 1-10,)

19 Defendants.

20 IT IS HEREBY CERTIFIED THAT:

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

23 I am not a party to the above-entitled action. I have caused service of

24 **[PROPOSED] ORDER GRANTING PLAINTIFFS’ UNOPPOSED MOTION TO DISMISS**
 25 **PLAINTIFF PAUL COLVIN; GRANTING PLAINTIFFS’ MOTION TO DISMISS**
 26 **PLAINTIFF THOMAS BOYER**

27 on the following party by electronically filing the foregoing with the Clerk of the District Court
 28 using its ECF System, which electronically notifies them.

Wayne Snodgrass, Deputy City Attorney
 Christine Van Aken, Deputy City Attorney
 Office of the City Attorney
 1 Drive Carlton B. Goodlett Place
 City Hall, Room 234
 San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct. Executed on
 October 3, 2012.

 /s/ C. D. Michel
 C. D. Michel
 Attorneys for Plaintiffs