

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

6 Attorneys for Plaintiffs

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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) **JOINT CASE MANAGEMENT**
ROBINSON, NATIONAL RIFLE) **CONFERENCE STATEMENT AND**
13 ASSOCIATION OF AMERICA, INC. SAN) **[PROPOSED] ORDER**
FRANCISCO VETERAN POLICE)
14 OFFICERS ASSOCIATION,)

15 Plaintiffs

16 vs.

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

21 Defendants.

) Hearing: November 17, 2011
) Time: 10:00 a.m.
) Place: Courtroom 3 - 17th Floor
) Judge: Honorable Richard Seeborg

1 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and Paragraph 7 of this
2 Court's Standing Order re: Initial Case Management, the parties to the above-entitled action
3 jointly submit this Case Management Statement and Proposed Order.

4 **a. Date case was filed**

5 May 15, 2009

6 **b. List or Description of all parties**

7 Plaintiffs

8 Espanola Jackson, an individual.

9 Paul Colvin, an individual.

10 Thomas Boyer, an individual.

11 Larry Barsetti, an individual.

12 David Golden, an individual.

13 Noemi Margaret Robinson, an individual.

14 National Rifle Association of America, Inc.

15 San Francisco Veteran Police Officers Association

16 Defendants

17 City and County of San Francisco

18 The Mayor of San Francisco and the Chief of the San Francisco Police Department, in their
19 official capacities.

20 **c. Summary of all claims**

21 Plaintiffs initially challenged the validity of San Francisco Police Code ("SFPC") sections
22 4512, 613.10(g), and 1290. Plaintiffs alleged that each of these sections violate the Second
23 Amendment to the United States Constitution, as well the right to self-defense under state law
24 pursuant to Article 1, Section 1, of the California Constitution and California Penal Code section
25 12026. Plaintiffs also alleged that SFPC section 613.10(g)'s ban on ammunition that "serves no
26 sporting purpose" violates their rights to Due Process as guaranteed by the Fifth Amendment to
27 the United States Constitution. Plaintiffs have since voluntarily dismissed each of their state law
28 claims, and Defendant City and County of San Francisco has since amended section 1290. As a

1 result of the amendment, the Court dismissed Plaintiffs' challenge to section 1290 as moot and
2 granted leave to amend the complaint to address the replacement legislation. Plaintiffs opted not
3 to do so in this litigation.

4 Remaining Claims

5 SFPC 4512 (First Claim for Relief)

6 Plaintiffs claim SFPC section 4512 violates the Second Amendment by precluding
7 Plaintiffs from storing a handgun in the home that is operable for immediate self defense. Section
8 4512 provides in pertinent part that, unless the handgun is being carried by an adult, "[n]o person
9 shall keep a handgun within a residence unless the handgun is stored in a locked container or
10 disabled with a trigger lock that has been approved by the California Department of Justice."

11 SFPC 613.10(g) (Second Claim for Relief)

12 Plaintiffs claim SFPC section 613.10(g) violates the Second Amendment by banning the
13 sale of any ammunition that "serves no sporting purpose" or is designed to expand or fragment
14 upon impact. Plaintiffs claim that the ammunition banned by this section is the type of
15 ammunition most suitable for self-defense, and that the Second Amendment precludes San
16 Francisco from prohibiting its sale to law abiding residents by licensed firearm dealers.

17 SFPC 613.10(g) (Fourth Claim for Relief)

18 Plaintiffs claim SFPC section 613.10(g) also violates Plaintiffs' right to Due Process under
19 the Fifth and Fourteenth Amendments to the United States Constitution insofar as its ban on all
20 ammunition that "serves no sporting purpose" is both vague and over-broad.

21 **d. Brief description of the event underlying the action**

22 This litigation was prompted by the recent holding in *District of Columbia v. Heller*, 554
23 U.S. 570 (2008), that the Second Amendment guarantees an individual right to keep and bear
24 arms. Plaintiffs assert that: the challenged sections of the SFPC run afoul of the Second
25 Amendment; that the Second Amendment protects their right to keep handguns loaded with the
26 prohibited ammunition, to purchase such ammunition from licensed dealers, and to store loaded
27 firearms unlocked and available for immediate self-defense in their homes; and that but for the
28 challenged ordinances they would presently do so.

1 **e. Description of relief sought and damages claimed**

2 Plaintiffs do not claim any damages. Plaintiffs seek injunctive and declaratory relief, as
3 described below, as well as reasonable attorneys fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C.
4 § 1988 and any other applicable laws.

5 1) Plaintiffs seek a declaration that San Francisco Police Code §§ 4512 and 613.10(g)
6 infringe upon the right to keep and bear arms protected by the Second Amendment and/or that
7 section 613.10(g) violates Due Process rights guaranteed by the Fifth Amendment, as
8 incorporated into the Fourteenth Amendment;

9 2) Plaintiffs seek injunctive relief forbidding the City and County of San Francisco and its
10 agents, employees, officers, and representatives, including its Mayor and Chief of Police, from
11 enforcing, or attempting to enforce San Francisco Police Code §§ 4512 and 613.10(g).

12 **f. Status of discovery**

13 Neither party has engaged in any discovery to date. As the case is a declaratory relief action
14 regarding the constitutional validity of certain ordinances, Plaintiffs contend that it presents issues
15 of law and that discovery is largely unnecessary; but this is subject to change depending on input
16 from the Court. Defendants presently intend to pursue discovery regarding the factual basis for
17 Plaintiffs' standing and the burden imposed by the challenged ordinances on Plaintiffs' ability to
18 keep and use handguns in their homes in self-defense. Plaintiffs' contend any factual issues in
19 dispute regarding standing are irrelevant in light of the Court's Order Denying Motion to Dismiss,
20 and have filed a Motion to Strike on this basis. Plaintiffs' also contend that discovery regarding
21 the Plaintiffs' particular circumstances are irrelevant as to the merits of Plaintiffs' facial challenges
22 to SFPC section 4512 and 613.10(g).

23 In light of the relatively large number of Plaintiffs to this action, Defendants request that the
24 Court set the number of allowable depositions at twelve (12) per side. Plaintiffs do not object to
25 this request, if such discovery is deemed necessary at all. The parties do not currently anticipate
26 the need for further limitations to or modifications of the federal discovery rules.

27 Respectfully, Plaintiffs suggest that an in chambers case management conference to discuss
28 the issues and necessary discovery would avoid wasting resources unnecessarily.

1 **g. Procedural history of the case**

2 Plaintiffs filed their Complaint on May 15, 2009. On August 14, 2009, Plaintiffs filed an
3 Amended Complaint for Declaratory and Injunctive Relief. On August 27, 2009, with the
4 agreement of the Defendants, Plaintiffs moved the Court to stay the proceedings pending the
5 resolution of the then-undecided issue of whether the Second Amendment applies to state and
6 local governments. The Court stayed all proceedings until further notice. In November 2009,
7 Plaintiffs filed a Notice of Related cases, and Defendants filed a Motion to Relate the case with
8 Pizzo v. Newsom, No. 09-4493 (N.D. Cal. Sept. 23, 2009). The Court declined to relate the two
9 cases.

10 On June 17, 2010, Plaintiffs filed a Motion for Relief from Stay, which was granted on
11 September 13, 2010. Defendants subsequently filed a Motion to Consolidate the case with the
12 Pizzo case. On November 8, Plaintiffs filed a Stipulation dismissing Plaintiffs' Fifth Claim For
13 Relief (i.e. Plaintiffs' state law claims). On December 9, 2010, the Court denied Defendants'
14 Motion to Consolidate and set a deadline for Defendants to respond to Plaintiffs' Amended
15 Complaint. On February 10, 2011, Defendants filed a Motion to Dismiss for Lack of Jurisdiction.
16 On September 27, 2011, the denied the motion to dismiss, and Defendants filed their Answer on
17 October 17, 2011. On November 7, 2011, Plaintiffs filed a Motion to Strike Portions of
18 Defendants' Answer.

19 **h. Other deadlines in place**

20 There are currently no other deadlines in place.

21 **i. Proposed deadlines and discovery cutoff dates**

22 The Plaintiffs propose the following schedule:

23 Discovery cutoff: June 15, 2012 (As this is an action arising under 18 U.S.C. 1983, the
24 parties do not wish to engage in unnecessary discovery, but agree and request that this schedule be
25 subject to modification depending on the potential need for discovery as the issues are further
26 clarified in this litigation.)

27 Expert disclosures: July 1, 2012

28 Rebuttal expert disclosures: July 15, 2012

1 Expert discovery cutoff: August 1, 2012
2 Deadline to hear Dispositive Motions: August 15, 2012
3 Deadline for Pretrial Conference: September 15, 2012
4 Trial Deadline: November 1, 2012
5 The Defendants propose this alternative:
6 Discovery cutoff: August 15, 2012
7 Expert disclosures: September 1, 2012
8 Rebuttal expert disclosures: September 15, 2012
9 Expert discovery cutoff: October 1, 2012
10 Dispositive motion hearing deadline: December 13, 2012
11 Trial: February 12, 2013

12 **j. Whether the parties consent to a magistrate judge for trial**

13 The parties do not consent to a magistrate judge for trial.

14 Date: November 10, 2011

MICHEL & ASSOCIATES, P.C.

17 s/ C. D. Michel
18 C. D. MICHEL
Attorney for Plaintiffs

19 Date: November 10, 2011

San Francisco City Attorneys Office

21 ** s/Sherri Sokeland Kaiser
22 SHERRI SOKELAND KAISER
Attorney for Defendants

23 **pursuant to GO 45, the electronic signatory
24 has obtained approval from this signatory
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CASE MANAGEMENT STATEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders:

Dated: _____

UNITED STATES DISTRICT JUDGE

