

1 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 2 WAYNE SNODGRASS, State Bar #148137
 CHRISTINE VAN AKEN, State Bar #241755
 3 Deputy City Attorneys
 1 Dr. Carlton B. Goodlett Place
 4 City Hall, Room 234
 San Francisco, California 94102-4682
 5 Telephone: (415) 554-4633
 Facsimile: (415) 554-4747
 6 E-Mail: christine.van.aken@sfgov.org

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

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12

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

17 Plaintiffs,
 18

19 vs.

20 CITY AND COUNTY OF SAN
 FRANCISCO, THE MAYOR OF SAN
 FRANCISCO, and THE CHIEF OF THE SAN
 21 FRANCISCO POLICE DEPARTMENT, in
 their official capacities,
 22

23 Defendants.
 24
 25
 26
 27
 28

Case No. C09-2143 RS

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT**

1 The parties hereby submit this Joint Case Management Conference Statement.

2 **1. Jurisdiction and Service**

3 The Court has federal question jurisdiction over this case pursuant to 28 U.S.C. § 1331 because
4 plaintiffs contend that San Francisco Police Code § 4512 violates their Second Amendment rights and
5 that San Francisco Police Code § 613.10(g) violates their rights under the Second Amendment and the
6 Due Process Clause of the Fifth and Fourteenth Amendments. All parties have been served and have
7 appeared.

8 **2. Facts**

9 The individual plaintiffs contend that they wish to store handguns in their homes unlocked for
10 lawful self-defense purposes and to purchase ammunition prohibited by San Francisco Police Code
11 § 613.10(g) for lawful self-defense purposes in their homes. The entity plaintiffs contend that their
12 members' rights are violated by the challenged ordinances. Plaintiffs also contend that there are no
13 factual issues in dispute as set forth in Plaintiffs' pending Motion for Judgment on the Pleadings
14 because this case is a facial challenge to two government enactments and in light of this Court's Order
15 Denying the City's Motion to Dismiss.

16 The City and County of San Francisco ("City") asserts that it has no knowledge of the
17 individual plaintiffs' practices or wishes but wants to conduct discovery to determine whether the
18 ordinances at issue can lawfully be applied to the individual plaintiffs and whether the individual
19 plaintiffs in fact have standing to bring their claims. The City also contends that modern lockboxes
20 provide easy access to stored firearms, rendering them useable in the event of a self-defense
21 emergency, and that conventional ammunition whose sale is not prohibited by the City's ammunition
22 ordinance is sufficient for self-defense purposes.

23 **3. Legal Issues**

24 San Francisco Police Code § 4512 requires that guns stored in the home either be carried on the
25 person of an adult, under the control of a peace officer, or locked in a storage box or with a trigger
26 lock. Plaintiffs contend this ordinance violates their Second Amendment right to keep and bear arms
27 for lawful self-defense purposes because that all enactments burdening self-defense in the home are
28 either categorically invalid or subject to strict scrutiny. Plaintiffs also contend that that the government

1 cannot require residents to store their firearms inoperable at all times, including when Plaintiffs are
2 most vulnerable to a criminal attack, and that such restrictions are invalid under any level of
3 heightened scrutiny. The City contends that storage enactments are outside the scope of the Second
4 Amendment right recognized by *District of Columbia v. Heller*, 554 U.S. 570 (2008) or alternatively
5 that the City's storage ordinance passes intermediate scrutiny because it imposes a minimal burden on
6 Second Amendment and is readily justified by the City's interest in protecting public safety.

7 San Francisco Police Code § 613.10(g) prohibits licensed ammunition dealers from selling
8 what the City deems "enhanced lethality ammunition," including hollow point ammunition and
9 ammunition that serves no sporting purpose. Plaintiffs contend that this ordinance violates their
10 Second Amendment rights because it bans the sale of ammunition in common use for lawful self-
11 defense purposes, and because the City's sporting purposes ban directly conflicts with the right to keep
12 and bear arms for the core purpose of self-defense. The City contends that the Second Amendment
13 does not protect exceptionally dangerous ammunition and firearms, that conventional ammunition is
14 sufficient for self-defense purposes, and that its ordinance survives intermediate scrutiny because it is
15 reasonably tailored to the City's interest in minimizing firearms injuries and fatalities.

16 Plaintiffs also contend that Police Code § 613.10(g) violates the due process clause because its
17 definition "serves no sporting purpose" is vague and overbroad. The City contends that this is a
18 common and readily understood term of art in gun control legislation.

19 The City contends that Plaintiffs lack standing to challenge the ordinances because they have
20 not shown that the ordinances are reasonably likely to be applied to them or that they have violated the
21 ordinances and received individualized threats of enforcement. The Court has denied the City's
22 motion to dismiss the case on this basis. Dkt. 89.¹

23 **4. Motions**

24 Plaintiffs have filed a motion for partial judgment on the pleadings on their Second
25 Amendment claims. This motion is fully briefed and set to be heard on July 12, 2012.

27 ¹ Plaintiffs also challenged Police Code § 1290, which prohibits the discharge of firearms within city limits. Since
28 this lawsuit was filed, the City has amended the discharge ban to provide an exception for discharge during a self-defense
emergency in the home. Plaintiffs are no longer proceeding with this claim.

1 The parties anticipate filing motions for summary judgment. The Court has set a final pretrial
2 motions deadline of December 13, 2012.

3 The parties may also file discovery motions, as discussed *infra* in Section 8.

4 **5. Amendment of Pleadings**

5 Plaintiffs have filed a First Amended Complaint. The parties do not anticipate any further
6 amendments to the pleadings.

7 **6. Evidence Preservation**

8 Plaintiffs believe that all evidence that might be relevant to this dispute is in the Plaintiffs'
9 possession or in the possession of Plaintiffs' counsel in Long Beach, California, and has been
10 preserved as a matter of course. The City believes that all evidence relevant to this dispute in the
11 City's possession is the legislative file of the San Francisco Board of Supervisors for the relevant
12 enactments and is preserved as a matter of course.

13 **7. Disclosures**

14 The parties believe they have made full and timely initial disclosures.

15 **8. Discovery**

16 In its Case Management Order of November 18, 2011 (Dkt. 101), the Court limited fact
17 discovery as follows: (a) ten (10) non-expert depositions per party; (b) twenty-five (25) interrogatories
18 per party, including all discrete subparts; (c) a reasonable number of requests for production of
19 documents or for inspection per party; and (d) a reasonable number of requests for admission per
20 party.

21 The City has propounded written discovery to the individual plaintiffs and wishes to depose the
22 individual plaintiffs to learn about their firearm ownership and storage practices, where they purchase
23 their ammunition, their experience with different kinds of ammunition, how they secure their guns to
24 prevent theft, what individuals regularly or occasionally visit their homes, and their experience with
25 different methods of firearms storage. The City believes these depositions will inform whether
26 plaintiffs have standing to maintain this case and whether the City's firearms and ammunition
27 ordinances can lawfully be applied to plaintiffs. To date, plaintiffs have not agreed that these
28 depositions may be conducted, and the parties of agreed to table depositions until the Court has ruled

1 on Plaintiffs Motion For Judgment on the Pleadings to conserve client resources and in the interest of
 2 judicial economy. The City also intends to serve paper discovery on the organizational defendants.
 3 Plaintiffs do not believe that any material factual issues are in dispute, but reserve the right to
 4 propound written discovery depending upon the Court's ruling on Plaintiffs' Motion for Partial
 5 Judgment on the Pleadings.

6 Plaintiffs to date have provided limited responses to the City's discovery. Plaintiffs contend
 7 that discovery is largely unnecessary in this case because it poses only legal questions and there are no
 8 material factual issues relevant to resolution of those legal issues. In the event the Court denies
 9 plaintiffs' motion for partial judgment on the pleadings because of factual issues, however, plaintiffs
 10 may wish to take discovery.

11 In light of the parties' disagreement over whether depositions of the plaintiffs should occur, and
 12 their belief that this Court's ruling on plaintiffs' motion for partial judgment on the pleadings would
 13 inform the parties whether the Court believes any facts are relevant to the resolution of this case, the
 14 parties presented a stipulation and proposed order to the Court extending the discovery dates in this
 15 case beyond the motion for partial judgment on the pleadings. Dkt. 120, 121. The Court did not
 16 endorse the parties' proposed order.

17 The parties therefore wish to discuss the discovery schedule and current limits on the scope of
 18 discovery with the Court at this case management conference.

19 The current discovery schedule in this case is as follows (per Dkt. 101):

20 Aug. 25, 2012	Fact discovery closes (the parties have stipulated to extend this deadline to October 1)
21 Sept. 1, 2012	Plaintiffs' expert disclosures
22 Sept. 15, 2012	Defendant's expert disclosures
23 Oct. 1, 2012	Expert discovery closes

23 **9. Class Actions**

24 Not applicable.

25 **10. Related Cases**

26 The Ninth Circuit has not yet determined what standard of review applies to Second
 27 Amendment claims. *See Nordyke v. King*, No. 07-15763, 2012 WL 1959239 (9th Cir. June 1, 2012)
 28 (*en banc*). There are cases pending before the Ninth Circuit that may address this issue, including

1 *Peruta v. San Diego*, Ninth Circuit Case No. 10-56971, *Richards v. Prieto*, Ninth Circuit Case No.
2 11-16255, and *Mehl v. Blanas*, Ninth Circuit Case No. 08-15773, which are fully briefed. (These
3 cases were stayed pending *Nordyke*. The stays in *Peruta* and *Richards* were recently lifted.) *Peruta*
4 and *Mehl* involves challenges to San Diego's and Sacramento's administration of concealed weapons
5 licenses, respectively, and *Prieto* involves a challenged to California statutes regulating licenses to
6 carry firearms. These cases will not directly control the issues in this case. The City notes that these
7 cases may provide a standard of review for Second Amendment claims that will be applicable here.
8 Plaintiffs note that these cases may not address the standard of review applicable to restrictions on the
9 core right to keep and bear arms in the home for self-defense because those cases involve the right to
10 carry firearms in public.

11 **11. Relief**

12 Plaintiffs seek a declaration that the challenged statutes are unconstitutional and an injunction
13 prohibiting the City from implementing them. Plaintiffs also seek attorneys' fees pursuant to 42
14 U.S.C. § 1988. Plaintiffs do not seek damages.

15 **12. Settlement and ADR**

16 Because this case presents questions of law and facial challenges to legislative enactments, the
17 parties do not believe that settlement is possible.

18 **13. Consent to Magistrate Judge**

19 The parties do not consent to a magistrate judge for all purposes.

20 **14. Other References**

21 This case is not suitable for reference to binding arbitration, a special master, or the Judicial
22 Panel on Multidistrict Litigation.

23 **15. Narrowing of Issues**

24 Plaintiffs believe that the Court can resolve their Second Amendment claims on the pleadings,
25 as indicated by their motion for partial judgment on the pleadings. The parties do not otherwise
26 believe the case can be narrowed by motion or stipulation.

