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

11	ESPANOLA JACKSON, PAUL COLVIN,	)	CASE NO.: CV-09-2143-RS
	THOMAS BOYER, LARRY BARSETTI,)	
12	DAVID GOLDEN, NOEMI MARGARET	)	NOTICE OF MOTION AND MOTION TO
	ROBINSON, NATIONAL RIFLE	)	STRIKE PORTIONS OF DEFENDANTS'
13	ASSOCIATION OF AMERICA, INC. SAN	)	ANSWER; POINTS AND AUTHORITIES IN
	FRANCISCO VETERAN POLICE	)	SUPPORT
14	OFFICERS ASSOCIATION,)	
		)	Fed. R. Civ. P. 12(f)
15	Plaintiffs)	
		)	Hearing: December 15, 2011
16	vs.	)	Time: 1:30 p.m.
		)	Place: Courtroom 3 - 17 TH Floor
17	CITY AND COUNTY OF SAN	)	San Francisco Courthouse
	FRANCISCO, THE MAYOR OF	)	450 Golden Gate Ave.
18	SAN FRANCISCO, AND THE CHIEF	)	San Francisco, CA 94102
	OF THE SAN FRANCISCO POLICE)	
19	DEPARTMENT, in their official capacities,)	
	and DOES 1-10,)	
20)	
	Defendants.)	
21)	

1 **NOTICE AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:** Notice is hereby given
3 that on December 15, 2011, 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 courtroom 3
5 of the Honorable Judge Richard Seeborg. Plaintiffs will and hereby do move to strike portions of
6 Defendants’ Answer pursuant to Federal Rule of Civil Procedure 12(f) and Civil Local Rule 7-2.

7 Plaintiffs bring this motion to strike Defendant’s First and Second Affirmative Defenses
8 (ripeness and standing, respectively) as insufficient as a matter of law. Additionally, Plaintiffs
9 seek to strike paragraph 10, lines 10-11, wherein Defendants deny this Court has Article III
10 jurisdiction over Plaintiffs’ claims. This motion shall be based on this notice of motion and
11 motion, the supporting memorandum of points and authorities herein, the pleadings and papers on
12 file, and upon any such further matters the Court deems appropriate.

13 **STATEMENT OF THE ISSUES TO BE DECIDED**

- 14 1. Are challenges to ripeness and standing improperly pled as “affirmative defenses” such
15 that their excision from Defendants’ Answer is appropriate under Rule 12(f)?
- 16 2. Should challenges to ripeness and standing be stricken from Defendants’ Answer, when
17 the Court has already heard and decided those issues by way of a Rule 12(b)(1) motion to dismiss
18 and where re-litigation of the issues will require the expenditure of time and money on settled
19 issues of law and irrelevant issues of fact?

20 **INTRODUCTION**

21 Defendants’ Answer to Plaintiffs’ First Amended Complaint raises the same issues of
22 ripeness and standing they have repeatedly raised since the inception of this litigation – namely,
23 that Plaintiffs have not established sufficient injury-in-fact to maintain the present action. Most
24 recently, however, the Court denied Defendants’ Motion to Dismiss for Lack of Standing, holding
25 that Plaintiffs have established both ripeness and standing. In so holding, the Court indicated that
26 factual debate regarding the imminence of enforcement is ultimately irrelevant to the questions of
27 standing and ripeness in this context.

28 In light of this recent ruling in Plaintiffs’ favor, Plaintiffs now bring this motion to strike

1 from Defendants' Answer those portions that re-assert ripeness and standing challenges already
2 adjudicated. This includes Defendants' first and second affirmative defenses and paragraph 10,
3 lines 10-11.¹ As to these challenges, there remains no question of law or factual dispute that
4 would allow Defendants to succeed, and the re-litigation of these matters will merely confuse the
5 issues and require the great expenditure of time and money during discovery and trial.

6 Because Defendants' challenge to the Court's Article III jurisdiction and affirmative
7 defenses based on ripeness and standing are insufficient as a matter of law, and because Plaintiffs
8 will be prejudiced if such portions are not stricken, the Court should grant Plaintiffs' Motion to
9 Strike.

10 STATEMENT OF FACTS AND PROCEDURAL POSTURE

11 After the Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that
12 the Second Amendment indeed confers a fundamental, individual right to keep and bear arms,
13 Plaintiffs brought this action, challenging three sections of the San Francisco Police Code.
14 Specifically, Plaintiffs challenged San Francisco Police Code sections² 4512 (mandating
15 handguns be stored in a locked container or disabled by a trigger lock) and 1290 (banning the
16 discharge of firearms within the City and County of San Francisco), as an unconstitutional
17 infringement on the Second Amendment right to keep and bear arms, and section 613.10(g)
18 (banning the sale of certain ammunition), as both unconstitutionally vague and a violation of the
19 Second Amendment. (Pls.' Am. Compl. 2:6.)

20 Shortly after filing, Defendants brought their first Motion to Dismiss for Lack of Subject
21 Matter Jurisdiction, arguing that Plaintiffs failed to allege that they faced "prosecution or an
22 imminent threat of prosecution under the challenged ordinances." (Defs.' Mot. Dismiss Lack
23 Subj. Matter Jdx. 5:16-18.) Plaintiffs then filed a First Amended Complaint mooting Defendants'
24 motion.

25
26 ¹ Plaintiffs seek to strike only the following from paragraph 10: "Plaintiffs lack standing, their
27 claims against Section 4512 and 613.10(g) are unripe, and."

28 ² Further statutory references are to the San Francisco Police Code unless otherwise indicated.

1 The case was then stayed pending the determination of whether the Second Amendment
2 should be applied against the states. (Min. Order, Aug. 27, 2009.) That stay was lifted when the
3 U.S. Supreme Court ruled in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), that it should.
4 (Order, Sept. 13, 2010.)

5 Defendants thereafter brought a second motion to dismiss Plaintiffs' claims, arguing in
6 nearly identical terms as the first that Plaintiffs lack standing to challenge the ordinances because
7 they did not allege and cannot establish an actual injury-in-fact or fact a "genuine threat" the
8 ordinance would be enforced against them. (Defs.' Mem. Supp. Mot. Dismiss 12:17-20.) For
9 largely the same reasons, Defendants also argued Plaintiffs' claims were not yet ripe for review.
10 *See id.* at 14:18-16:16. The Court denied Defendants' motion, holding "plaintiffs have adequately
11 alleged an intent and desire to engage in conduct that is prohibited by the ordinances but which
12 they contend is constitutionally protected." (Order, 2:4, Sept. 27, 2011.) That alone, the Court
13 ruled, was sufficient to prove "injury-in-fact," such that the requirements of standing and ripeness
14 are met. *Id.*

15 The Court also granted Plaintiffs leave to amend their challenge to section 1290, which
16 was mooted by the repeal of section 1290 and the amendment of similar code sections. (Order,
17 2:6, Sept. 27, 2011.) Plaintiffs opted not to amend their Complaint and so informed the Court and
18 Defendants on October 4, 2011. Thereafter, the Court ordered Defendants to respond to Plaintiffs'
19 First Amended Complaint by October 17, 2011. (Order, Oct. 6, 2011.) Defendants then filed their
20 answer, responding to each of Plaintiffs' allegations and raising six affirmative defenses,
21 including renewed challenges to ripeness and standing. (Defs.' Answer at 9-10.)

22 Plaintiffs now bring this motion to strike those portions of Defendants' Answer asserting
23 affirmative defenses based on lack of standing and ripeness and challenging the Court's Article III
24 jurisdiction for the same reasons.³

25
26 ³ Counsel for the parties have met and conferred, communicating in good faith to discuss issues
27 pertinent to the present motion, but were unable to reach an agreement as to whether those
28 portions should be stricken. (Decl. Clinton Monfort Supp. Mot. to Strike ["Monfort Decl.,"] ¶¶ 3-
4.) Additionally, Plaintiffs intend to file a subsequent motion challenging the sufficiency of the
defenses as a Rule 12(c) motion for judgment on the pleadings, but bring this motion to strike now

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28**ARGUMENT**

Pursuant to Rule 12(f), a “court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). While motions to strike may be viewed with disfavor because they are often used as a “dilatory tactic,” *Waste Management Holdings, Inc. v. Gilmore*, 252 F.3d 316, 347 (4th Cir. 2001), where “motions to strike remove unnecessary clutter from the case, they serve to expedite, not delay,” *Heller Financial, Inc. v. Midwhey Powder Co.*, 883 F.2d 1286, 1294 (7th Cir. 1989). Thus, an affirmative defense can and should be deleted if it serves to muddy the issues and is not a valid defense as a matter of law. *See Waste Mgmt. Holdings*, 252 F.3d at 347, *followed by*, *Security People, Inc. v. Classic Woodworking, LLC*, No. C04-3133, 2005 WL 645592, at *3 (N.D. Cal. March 4, 2005). Thus, a motion to strike is properly granted, even absent prejudice to the moving party, if doing so would streamline the litigation and clarify the issues for discovery and trial. *Ganley v. County of San Mateo*, No. C06-3923, 2007 WL 902551, at *2 (N.D. Cal. Mar. 22, 2007). Certainly, when prejudice is also shown, the grounds to strike are even stronger.

Applying these principles, those portions of Defendants’ Answer challenging ripeness and standing should be stricken because they cannot succeed as a matter of law and because their continued pursuit casts prejudice upon Plaintiffs. Defendants’ Answer raises “affirmative defenses” which aren’t really affirmative defenses at all, and on that basis alone, they should be stricken. In any event, the Court has already heard and dismissed Defendants’ standing and ripeness challenges, dispensing with legal issues as settled and factual disputes as irrelevant. What’s more, Plaintiffs will be prejudiced by the high cost of re-litigating these settled matters and by the diversion of the Court’s and the parties’ attention from the constitutional challenges at the core of this litigation to jurisdictional issues already resolved.

to prevent its untimely filing. (Monfort Decl. ¶ 5.) During the aforementioned meet and confer efforts, the parties agreed that the present filing would not bar Plaintiffs from bringing a motion for judgment on the pleadings at a later date and that Defendants would not raise an objection on those grounds. (Monfort Decl. ¶ 5.) For the convenience of the Court and all parties, counsel have agreed to defer to the Court on calendaring issues should it wish to consolidate Plaintiffs’ motions to strike and for judgment on the pleadings. (Monfort Decl. ¶ 6.)

1 **I. DEFENDANTS’ FIRST AND SECOND “AFFIRMATIVE DEFENSES” ARE NOT**
 2 **ACTUALLY AFFIRMATIVE DEFENSES AND ARE THUS INSUFFICIENT AS A**
 3 **MATTER OF LAW**

4 As an initial matter, Defendants’ first “affirmative defense” challenging ripeness and its
 5 second challenging standing should be stricken because, as a matter of law, they are not
 6 affirmative defenses. “Affirmative defenses plead matters extraneous to the plaintiff’s prima facie
 7 case, which deny plaintiff’s right to recover, even if the allegations of the complaint are true.” *J&J*
 8 *Sports Productions, Inc. v. Vizcarra*, No. 11-1151, 2011 WL 4501318, at *2 (N.D. Cal. Sept. 27,
 9 2011). To the contrary, “allegations that the Plaintiff cannot prove the elements of his claims are
 10 not affirmative defenses.” *Id.* While the defendant bears the burden of proof as to each element of
 11 proper affirmative defenses, it is the plaintiff who must establish standing and ripeness. As such
 12 neither are affirmative defenses, *id.*, nor are they subject to the “plead or waive” requirements of
 13 Rule 8(c), *Quintana v. Baca*, 233 F.R.D. 562, 566 (C.D. Cal. 2005). Where, as here, ripeness and
 14 standing challenges are improperly brought as affirmative defenses, the Court can and should
 15 strike them from the pleading.

16 **II. LACK OF RIPENESS AND STANDING ARE INSUFFICIENT DEFENSES AND**
 17 **SHOULD BE STRICKEN WHERE THE COURT HAS ALREADY FOUND BOTH**
 18 **EXIST WITHOUT REFERRING TO ANY FACT REGARDING ENFORCEMENT**

19 Because the Court has already dispensed with the issues of ripeness and standing after full
 20 briefing and a hearing on the challenges’ merits, Defendants’ first and second affirmative defenses
 21 should be stricken as legally insufficient. To succeed, the moving party must show “there are no
 22 questions of fact, that any questions of law are clear and not in dispute, and that under no set of
 23 circumstances could the defense succeed.” *Ganley*, No. C06-3923, 2007 WL 902551, at *1. The
 24 applicable law has already been settled in Plaintiffs’ favor, and disputed facts played no part in the
 25 resolution of the legal questions presented. There is thus no circumstance under which
 26 Defendants’ challenges to jurisdiction, ripeness, and standing could succeed.

27 Further litigating the ripeness and standing challenges to uncover facts regarding
 28 “particularized” threats of enforcement or Plaintiffs’ intention to violate the challenged ordinances
 would be wholly unnecessary as these facts have no bearing on the resolution of those issues in
 this context. In its Order Denying Motion to Dismiss for Lack of Standing, the Court determined

1 the law counsels in favor of the existence of both ripeness and standing without relying on any
2 issue of fact regarding the enforcement of the ordinances challenged in this lawsuit. (Order 4:10-
3 7:2, Sept. 27, 2011.) Applying relevant case authority and distinguishing the cases relied on by
4 Defendants, the Court ruled that Plaintiffs indeed suffer an injury-in-fact because the challenged
5 ordinances require they forgo conduct arguably protected by the Second Amendment. *Id.* No
6 discussion as to whether Defendants had specifically enforced or threatened to enforce the
7 ordinances against any of the plaintiffs was necessary because such is irrelevant to the injury
8 inherently suffered. *See id.* at 5 (citing *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007)).

9 Defendants' jurisdictional challenge and their first and second affirmative defenses raise no
10 new question of law or disputed fact relevant to the Court's consideration of ripeness or standing.
11 And the Court has already answered both questions in Plaintiffs' favor. As such, those portions of
12 Defendants' Answer should be stricken.

13 **III. PLAINTIFFS WILL BE PREJUDICED BY HIGH COSTS OF RE-LITIGATING**
14 **SETTLED ISSUES, AND DEFENDANTS ARE NOT HARMED BECAUSE**
15 **RIPENESS AND STANDING ARE NOT WAIVED BY FAILURE TO PLEAD**

16 A showing of prejudice is not required to strike an "insufficient" portion of the pleading as
17 opposed to "redundant, immaterial, impertinent, or scandalous matter" under Rule 12(f). *Bottoni*
18 *v. Sallie Mae, Inc.*, No. C10-03602, 2011 WL 3678878, *2 (N.D. Cal. Aug. 22, 2011) (citing
19 *Barnes*, 718 F. Supp. 2d at 1173). Regardless, the obligation to conduct expensive and potentially
20 unnecessary and irrelevant discovery is a recognized prejudice. *Id.* Because the continued pursuit
21 of Defendants' challenges to ripeness and standing expose Plaintiffs to exactly this sort of injury,
22 Defendants' first and second affirmative defenses should be stricken.

23 Forcing Plaintiffs to re-litigate an issue already decided by this Court will drag Plaintiffs
24 into a morass of irrelevant and costly discovery and factual debate regarding the existence of
25 enforcement of the challenged ordinances and whether Plaintiffs intend to violate the same.
26 Defendants, through their counsel of record, have already indicated an intention to conduct
27 extensive discovery on issues they believe relevant to ripeness and standing. (Monfort Decl. ¶ 2.)
28 Though Plaintiffs are of the opinion that this case deals primarily, if not entirely, with questions of
law, Defendants have requested the parties agree to expand discovery to allow for some twelve

1 depositions so that Defendants may interrogate each of the Plaintiffs or their representatives and
2 law enforcement officials, as they deem necessary. (Monfort Decl. ¶ 2.) The time and cost to
3 prepare such extensive discovery can and should be avoided because the Court has already
4 indicated such factual debate is unnecessary to the questions of standing and ripeness in this case.

5 To the extent Defendants seek to include these defenses to preserve their right to appeal the
6 Court's previous decision, it bears repeating that neither ripeness nor standing are proper
7 affirmative defenses subject to the "plead or waive" requirement of Rule 8(c). *See J&J Sports*
8 *Productions, Inc.*, No. 11-1151, 2011 WL 4501318, at *2; *Quintana*, 233 F.R.D. at 566. Such
9 challenges can be raised at any time, even for the first time upon appeal. *See Stormans, Inc. v.*
10 *Selecty*, 586 F.3d 1109, 1119 (9th Cir. 2009). Striking them from Defendants' Answer thus
11 streamlines the litigation, without preventing Defendants from raising the issue later should a
12 genuine issue of fact or law arise. And, in the case Defendants were to successfully appeal the
13 Court's decision on the analysis that should be applied to ripeness and standing in this context, the
14 appropriate time to litigate whether facts exist supporting ripeness and standing would be on
15 remand.

16 **IV. CONCLUSION**

17 Based on the foregoing, Plaintiffs respectfully request the Court grant Plaintiffs' motion and
18 strike from Defendants' Answer the first and second affirmative defenses and paragraph 10, lines
19 10-11.

20 Date: November 7, 2011

MICHEL & ASSOCIATES, P.C.

21
22 /s/ C. D. Michel
23 C. D. Michel
24 Attorney for Plaintiffs
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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)
SAN FRANCISCO, AND THE CHIEF)
OF THE SAN FRANCISCO POLICE)
DEPARTMENT, in their official capacities,)
and DOES 1-10,)
Defendants.)

15 IT IS HEREBY CERTIFIED THAT:

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

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

19 **NOTICE OF MOTION AND MOTION TO STRIKE PORTIONS OF DEFENDANTS’
ANSWER; POINTS AND AUTHORITIES IN SUPPORT**

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

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

25 I declare under penalty of perjury that the foregoing is true and correct. Executed on
November 7, 2011.

26 /s/ C. D. Michel
27 _____
28 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
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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 Jackson et. al.

7

8

IN THE UNITED STATES DISTRICT COURT

9

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

11

ESPANOLA JACKSON, PAUL COLVIN,) CASE NO. C09-2143 RS

12

THOMAS BOYER, LARRY BARSETTI,)

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DAVID GOLDEN, NOEMI MARGARET)

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ROBINSON, NATIONAL RIFLE)

15

ASSOCIATION OF AMERICA, INC. SAN)

16

FRANCISCO VETERAN POLICE)

17

OFFICERS ASSOCIATION,)

18

Plaintiffs)

19

Hearing: December 15, 2011

20

vs.)

Time: 1:30 p.m.

21

Place: Courtroom 3 - 17TH Floor

22

CITY AND COUNTY OF SAN)

23

FRANCISCO, THE MAYOR OF)

24

SAN FRANCISCO, AND THE CHIEF)

25

OF THE SAN FRANCISCO POLICE)

26

DEPARTMENT, in their official capacities,)

27

and DOES 1-10,)

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Defendants.)

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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 the 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 Thursday, October 20, 2011, I spoke with Sherri Sokeland Kaiser, Defendants' attorney of record, via telephone to discuss case management issues in light of the Court's September 27, 2011 Order Denying Defendants' Motion to Dismiss, and my clients' intention to not file a second amended complaint. During that telephone conference, we discussed matters necessary for the preparation of the court-ordered joint case management statement, including any anticipated discovery issues. Ms. Kaiser informed me of her clients' intention to conduct significant discovery and asked that we expand the number of permitted depositions to twelve. Ms. Kaiser cited the need to depose at least every plaintiff and possibly to subpoena law enforcement officials on matters relevant to the issues of ripeness and standing. Although I believe this case presents questions of law and that issues of ripeness and standing do not require discovery, out of professional courtesy our office agreed to extend applicable deposition limits at Defendants' request.

3. On or about Tuesday, November 2, 2011, I contacted Ms. Kaiser via email to discuss her availability to meet and confer regarding Plaintiffs' intention to file the present motion to strike and a future motion for judgment on the pleadings. Ms. Kaiser responded via email that she would be available to discuss these issues on Friday, November 4, 2011.

4. On or about November 4, 2011, I contacted Ms. Kaiser via telephone to meet and confer regarding Plaintiffs' intention to file the present motion to strike and a future motion for judgment on the pleadings. During that conversation, I communicated to Defendants' counsel my clients' position that portions of Defendants' Answer should be stricken under Federal Rule of Civil Procedure 12(f), including two affirmative defenses that are insufficient as a matter of law and Defendants' challenge to the Court's Article III jurisdiction, which has already been resolved by the Court in its Order Denying Motion to Dismiss. The parties communicated in good faith,

1 but were ultimately unable to come to an agreement as to whether those portions of Defendants'
2 Answer should be removed, and the present motion is therefore necessary to resolve the dispute.

3 5. Also during the November 4, 2011 telephone conference with Ms. Kaiser, I explained
4 my intention to file motions to strike and for judgment on the pleadings separately to prevent the
5 untimely filing of Plaintiffs' Motion to Strike. I also inquired as to whether Defendants might
6 oppose the later filing of a motion for judgment on the pleadings as barred by the Federal Rule of
7 Civil Procedure Rule 12(g) requirement, generally, that most Rule 12 motions be brought
8 together. Ms. Kaiser informed me that she did not believe this course of action raises any
9 procedural issues and agreed that the filing of a subsequent motion for judgment on the pleadings
10 is the appropriate course at this juncture such that Defendants would not object to the filing on
11 procedural timing grounds.

12 6. Finally, during the November 4, 2011 telephone conference, the parties agreed to
13 coordinate hearings on Plaintiffs' Motion to Strike and Plaintiffs' upcoming Motion for Judgment
14 on the pleadings to accommodate counsels' respective family health considerations and to defer to
15 the Court on calendaring issues should the Court wish to consolidate these motions.

16 I declare under penalty of perjury that the foregoing is true and correct. Executed on
17 November 7, 2011.

18
19 
20 Clinton B. Monfort

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-PJH
5 THOMAS BOYER, LARRY BARSETTI,)
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13 CITY AND COUNTY OF SAN)
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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 CLINTON B. MONFORT IN SUPPORT OF PLAINTIFFS'**
25 **MOTION TO STRIKE PORTIONS OF DEFENDANTS' ANSWER**

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
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

I declare under penalty of perjury that the foregoing is true and correct. Executed on
November 7, 2011.

/S/

C. D. Michel
Attorney for Plaintiffs