

1 HARMEET K. DHILLON (SBN: 207873)  
 2 harmeet@dhillonlaw.com  
 3 MICHAEL A. COLUMBO (SBN: 271283)  
 4 mcolumbo@dhillonlaw.com  
 5 MARK P. MEUSER (SBN: 231335)  
 6 mmeuser@dhillonlaw.com  
 7 DHILLON LAW GROUP INC.  
 177 Post Street, Suite 700  
 San Francisco, California 94108  
 Telephone: (415) 433-1700

8 DAVID A. WARRINGTON\*  
 9 dwarrington@dhillonlaw.com  
 10 CURTIS M. SCHUBE\*  
 11 cschube@dhillonlaw.com  
 12 DHILLON LAW GROUP INC.  
 2121 Eisenhower Avenue, Suite 402  
 Alexandria, VA 22314  
 Telephone: (571) 400-2121

13 \*Admission *Pro Hac Vice* forthcoming

14 **UNITED STATES DISTRICT COURT**

15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 **SAN JOSE DIVISION**

17  
 18 **NATIONAL ASSOCIATION FOR GUN**  
 19 **RIGHTS, INC.**, a nonprofit corporation, and  
 20 **MARK SIKES**, an individual,

21 Plaintiffs,

22 v.

23 **CITY OF SAN JOSE, a public entity,**  
 24 **JENNIFER MAGUIRE**, in her official capacity  
 as City Manager of the City of San Jose, and the  
 25 **CITY OF SAN JOSE CITY COUNCIL,**

26 Defendants.  
 27  
 28

Case Number: 5:22-cv-00501-BLF

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO SHORTEN  
TIME UNDER CIVIL LOCAL RULE 6-3**

Courtroom: 3-5<sup>th</sup> Floor

Judge: Honorable Beth Labson Freeman

Complaint Filed: January 25, 2022

MTD Filed: February 7, 2022



1 Plaintiffs National Association for Gun Rights (“NAGR”) and Mark Sikes submit this  
2 Opposition to Defendants’ Motion to Shorten Time Under Civil Local Rule 6-3. Defendants request  
3 an order under N.D. Cal. Civil L.R. 6-1(b) and 6-3: (1) to shorten the time for Plaintiffs to file their  
4 Opposition to Defendants’ Motion to Dismiss (ECF No. 17) and for Defendant’s Reply; and (2) to  
5 advance the Court’s hearing date on Defendants’ Motion to Dismiss. Def. MPOA 4. The sole issue  
6 before the Court as to this Motion is whether Defendants have made the requisite factual showing  
7 under Rule 6-3 to shorten the time for briefing and a hearing on their Motion to Dismiss.

8 Rule 6-3 requires Defendants to show, *with particularity*, why the normal rules that apply to  
9 every other litigant should not apply here. Defendants must show they will suffer *substantial* harm  
10 and prejudice if the schedule is not altered. But Defendants have proffered no justification for their  
11 Motion other than impatience with having to wait for their matter to be decided in the normal course.  
12 Because the Defendants have not proven substantial harm or prejudice, the Court should deny  
13 Defendant’s Motion to Shorten Time.

#### 14 ARGUMENT

##### 15 *Defendants Have Not Pleaded a Valid Basis to Alter the Briefing Schedule or Hearing Date*

16 The Local Rules are mindful that sometimes exigencies warrant a court granting an  
17 extraordinary request for an expedited briefing and hearing schedule. Under Rule 6-3, a Motion to  
18 Change Time must contain a declaration that:

- 19  
20 (1) Sets forth with particularity the reasons for the requested enlargement or shortening of  
21 time; (2) Describes the efforts the party has made to obtain a stipulation to the time change;  
22 (3) Identifies the substantial harm or prejudice that would occur if the Court did not change  
23 the time; and (4) If the motion is to shorten time for the Court to hear a motion: (i) Describes  
24 the moving party’s compliance with Civil L.R. 37-1(a), where applicable, and  
25 (ii) Describes the nature of the underlying dispute that would be addressed in the motion and  
26 briefly summarizes the position each party had taken.

27 Defendants have not pleaded, with particularity or otherwise, how they will suffer ‘substantial  
28 prejudice or harm’ if this Court does not shorten the briefing schedule by one week and the hearing  
schedule by an unspecified period of time.

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1 **Briefing Schedule**

2 Defendants filed a Motion to Dismiss on February 8, 2022. Under Rule Fed. R. Civ. P. 6(a)  
3 and (d) and Local Rule 7-3(a) and (c), Plaintiffs’ Opposition to the Motion to Dismiss is currently  
4 due on February 22, 2022, and Defendants’ Reply is currently due on March 1, 2022. Defendants’  
5 instant Motion to Shorten Time asks the Court to advance the due date for Plaintiffs’ Opposition to  
6 February 17, 2022 (*i.e.*, by 5 days, to this Thursday) and the due date for their Reply brief to  
7 February 24, 2022. Def. MPA 4. This would shave a grand total of just *one week* off the briefing  
8 schedule. If anything, Plaintiffs are now prejudiced by the threat of a dramatically shortened time to  
9 complete their Opposition to the Motion to Dismiss.

10 **Hearing Date**

11 The Court’s hearing on the Defendants’ Motion to Dismiss is scheduled for June 2, 2022.  
12 Defendants’ motion asks the Court to advance the date of the hearing to “the Court’s earliest  
13 convenience.” Def. Mot. Short. Time 1. Considering the pandemic’s effects on Court operations, the  
14 earliest “convenient” date for the Court, of course, was the date the Court originally set the hearing.  
15 Defendants are effectively asking the Court to allow it to jump the line and hurry the Court’s  
16 decision without providing sufficient justification for such a request.

17 **Defendants’ Reasons for Their Motion Fall Far Short of Substantial Harm and Prejudice**

18 One justification Defendants assert is “ameliorating the prejudice from continuing federal  
19 judicial oversight over the ongoing, lawful, legislative activities of local officials, which could be  
20 chilled by the pendency of Plaintiffs’ illegitimate and prematurely filed litigation.” Def. MPOA 3.  
21 This justification is nonsensical for three reasons.

22 First, a complaint which Defendants characterize as frivolous and unripe is not “continuing  
23 judicial oversight over the ongoing, lawful legislative activities of local officials.” If every Motion to  
24 Dismiss presented a case of substantial harm or prejudice warranting a shorter briefing schedule,  
25 then the Court’s rules would already provide less time to respond. This would be bad policy for both  
26 the Courts and litigants, especially for litigants like Plaintiffs appealing to the federal courts for  
27 protection from the violation of their civil rights.

28 //

1 Second, a conclusory statement that their “ongoing...legislative activities...could be chilled”  
2 is not specific, not substantial, and is speculative or conditional. It also makes no sense considering  
3 the Motion’s concession that the challenged ordinance was already enacted (“San Jose’s firearm  
4 Ordinance has passed”, MPA 2). Defendants’ past legislative activities are challenged here, not their  
5 current actions. Any “continuing judicial oversight” they claim is stifling their legislative activities  
6 would be the same judicial oversight to which their actions are always subject. Federal courts are  
7 the refuge of those seeking protection of their civil rights. Federal courts acting to protect  
8 constitutional rights only “chills” ongoing legislative work if that work violates the Constitution.

9 Finally, Defendants request expedited review based on their confidence this Court will grant  
10 their Motion to Dismiss. This argument also does not supply evidence of substantial harm or  
11 prejudice if Plaintiffs were to have the full 14 days the rules allow them to respond to the Motion to  
12 Dismiss rather than the 9 days Defendants propose. The cases Defendants cite are irrelevant to the  
13 issue of harm or prejudice arising from a normal briefing and hearing schedule, and Defendants’  
14 characterizations of the case’s holdings are, to be charitable, incomplete. *Morongo Band of Mission*  
15 *Indians v. California St. Bd. of Equalization*, 858 F.2d 1376 (9th Cir. 1988), is about a party who  
16 failed to allege either a federal cause of action or one based on diversity of citizenship and thus the  
17 federal court had no subject matter jurisdiction. It has nothing to do with Motions to Change Time.

18 *Faerfers v. Caviar Creator, Inc.*, 2006 WL 768713 (E.D. Cal. 2006) is a short, irrelevant, and  
19 unreported decision. It involved three parties who filed claims against each other. One party,  
20 Sinclair, moved to *voluntarily dismiss* its own cross-claim against another party, Faerfers, and then  
21 sought to shorten briefing time so its motion would be resolved before an upcoming settlement  
22 conference. The court granted the request because “shortening time on its Motion to Dismiss will  
23 serve judicial economy and promote settlement.” *Id.* at \*1. Those circumstances are not remotely  
24 analogous to this matter.

25 //

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28 //

**CONCLUSION**

Defendants have not pleaded with particularity how allowing Plaintiffs the normal time to respond to the Motion to Dismiss instead of the 9 that Defendants request, and not shortening the briefing schedule by any particular requested period of time, will cause *substantial* harm and prejudice. Defendant’s Motion seems to be a transparent effort to harass Plaintiffs, distracting and burdening them while they are in the process of responding to the Motion to Dismiss under the already brisk 14-day deadline in the Court’s rules. This case involves credible allegations of federal civil rights violations committed by a local government boasting of enacting an “unprecedented” (their word) law to regulate a federal constitutional right. Given that Defendants did not establish substantial harm or prejudice, the Court should deny Defendants’ motion.

Date: February 15, 2022

Respectfully submitted,

DHILLON LAW GROUP INC.

By: /s/ Harmeet K. Dhillon

Harmeet K. Dhillon  
Michael A. Columbo  
Mark P. Meuser  
DHILLON LAW GROUP INC.  
177 Post Street, Suite 700  
San Francisco, California 94108  
(415) 433-1700

David A. Warrington\*  
Curtis M. Schube\*  
DHILLON LAW GROUP INC.  
2121 Eisenhower Avenue, Suite 402  
Alexandria, VA 22314  
(571) 400-2121

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*Attorneys for Plaintiffs*

1 HARMEET K. DHILLON (SBN: 207873)  
 2 harmeet@dhillonlaw.com  
 3 MICHAEL A. COLUMBO (SBN: 271283)  
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1 I, Michael Columbo, declare and state as follows:

2 1. I am an attorney duly admitted to practice in the state of California and before the  
3 U.S. District Court for the Northern District of California. I am an attorney with Dhillon Law Group  
4 Inc., counsel for Plaintiffs National Association for Gun rights, Inc. and Mark Sikes.

5 2. I make this Declaration consistent with L.R. 6-3(b) and in support of Plaintiffs'  
6 Opposition to Defendants' Motion to Shorten Time Under Civil Local Rule 6-3.

7 3. I have personal knowledge to each of the facts stated herein and if called as a witness,  
8 I could and would testify competently to such facts herein.

9 4. Plaintiffs' Complaint in the pending litigation was filed on January 25, 2022.

10 5. On February 4, 2022, before the Complaint had been served on Defendants and  
11 before Defendants filed their Motion to Dismiss the Complaint, I informed counsel for Defendants  
12 that Plaintiffs would be filing an Amended Complaint.

13 6. Despite this knowledge, on February 7, 2022, Defendants filed a Motion to Dismiss  
14 the original Complaint. The sole basis for Defendants' Motion to Dismiss is that there was one more  
15 step the City Council had to take to enact the ordinance Plaintiffs are challenging, and, therefore,  
16 Plaintiffs' claims were not yet ripe.

17 7. Counsel for Plaintiffs and Defendants met and conferred on February 10, 2022,  
18 before Defendants' Motion to Shorten time was filed. Defendants did not articulate *any* harm or  
19 prejudice, much less substantial harm or prejudice, that they would suffer if Plaintiffs were to have  
20 the normal time to respond to the Motion to Dismiss. As to their request to shorten the time for the  
21 court to hold a hearing on the matter, my understanding was that they would simply prefer a quicker  
22 decision from this Court.

23 8. After reviewing Defendants' Motion to Shorten Time and counsel's supporting  
24 Declaration, I still do not comprehend *any* claimed substantial harm or prejudice Defendants would  
25 suffer if the Motion were not granted as to the briefing schedule. As to altering the Court's current  
26 hearing schedule, Defendants have now at least attempted to articulate reasons to do so, but they fall  
27 short of the requirements under the Local Rules of this Court, as addressed in the accompanying  
28 Plaintiffs' Opposition.

1 9. In any event, Defendants acknowledge in their Motion to Shorten Time and  
2 Counsel’s accompanying Declaration that on February 8, 2022, the Defendants in fact passed the  
3 ordinance being challenged in this lawsuit.

4 10. Plaintiffs had waited to amend the Complaint until the San Jose City Clerk published  
5 a clean copy of the challenged ordinance, which occurred on Friday, February 11, 2022.

6 11. Accordingly, on Monday, February 14, 2022, Plaintiffs filed their First Amended  
7 Complaint [ECF no. 19.]

8 12. It is my and my clients’ position that it is not an efficient or prudent use of the Court’s  
9 and parties’ time to be briefing over a requested abbreviated briefing and hearing schedule for a  
10 Motion to Dismiss that only challenges the ripeness of the original Complaint when that Complaint  
11 has been amended and the point of contention about ripeness has been resolved, thus mooted the  
12 claim in the Motion to Dismiss.

13 13. It is my and my clients’ position that my clients would be significantly prejudiced to  
14 have a reduction in time to respond to the Motion to Dismiss, particularly on short notice.

15  
16 I declare under penalty of perjury under the laws of the United States of America that the  
17 foregoing is true and correct. Executed at San Rafael, California, on this 15th day of February, 2022.

18  
19  
20 By: /s/Michael A. Columbo  
21 Michael A. Columbo