

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.

8 177 Post Street, Suite 700

9 San Francisco, California 94108

10 Telephone: (415) 433-1700

11 DAVID A. WARRINGTON (admitted *pro hac vice*)

12 dwarrington@dhillonlaw.com

13 CURTIS M. SCHUBE (admitted *pro hac vice*)

14 cschube@dhillonlaw.com

15 DHILLON LAW GROUP INC.

16 2121 Eisenhower Avenue, Suite 402

17 Alexandria, VA 22314

18 Telephone: (571) 400-2121

19 *Attorneys for Plaintiffs*

20 JOSEPH W. COTCHETT (SBN 36324)

21 jcotchett@cpmlegal.com

22 TAMARAH P. PREVOST (SBN 313422)

23 tprevost@cpmlegal.com

24 ANDREW F. KIRTLEY (SBN 328023)

25 akirtley@cpmlegal.com

26 MELISSA MONTENEGRO (SBN 329099)

27 mmontenegro@cpmlegal.com

28 **COTCHETT, PITRE & McCARTHY, LLP**

San Francisco Airport Office Center

840 Malcolm Road, Suite 200

Burlingame, CA 94010

Telephone: (650) 697-6000

Attorneys for Defendants

[Case caption follows on next page]

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4 SAN JOSE DIVISION

5
6 **NATIONAL ASSOCIATION FOR GUN**
7 **RIGHTS, INC.**, a nonprofit corporation, and
8 **MARK SIKES**, an individual,

9 Plaintiffs,

10 v.

11 **CITY OF SAN JOSE, a public entity,**
12 **JENNIFER MAGUIRE**, in her official
13 capacity as City Manager of the City of San
14 Jose, and the **CITY OF SAN JOSE CITY**
15 **COUNCIL**,

16 Defendants.

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

JOINT CASE MANAGEMENT

STATEMENT

Judge: Honorable Beth Labson Freeman

1 The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT
2 STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the
3 Northern District of California and Civil Local Rule 16-9.

4
5 **1. Jurisdiction & Service**

6 *The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's*
7 *counterclaims, whether any issues exist regarding persona jurisdiction or venue, whether any*
8 *parties remain to be served, and, if any parties remain to be served, a proposed deadline for*
9 *service.*

10 This Court has federal question jurisdiction over this case pursuant to 28 U.S.C. § 1331
11 because it arises under the First, Second, and Fourteenth Amendments to the U.S. Constitution
12 and 42 U.S.C. § 1983. This Court has authority under 28 U.S.C. §§ 2201 and 2202 to grant
13 declaratory relief. The Court also has supplemental jurisdiction over the state law claims
14 pursuant to 28 U.S.C. §1367 because the federal and state claims are so related that they form
15 part of the same case or controversy.

16 Defendants do not present counterclaims.

17 No issues exist over personal jurisdiction or venue as Defendants are officials of the
18 City of San Jose, which is within the geographical boundaries of the Northern District of
19 California, San Jose Division.

20 All parties to this action have been served.

21 **2. Facts**

22 *A brief chronology of the facts and a statement of the principal factual issues in dispute.*

23 a. **Plaintiffs' Position**

24 The parties mostly agree on the facts. On February 8, 2022, the City of San Jose
25 formally adopted Chapter 10.32 of Title 10 of the San Jose Municipal Code. It will become
26 effective on August 8, 2022, at which time it will require San Jose gun owners to carry
27 insurance policies for liability arising from the use of their guns, to pay an annual "fee"
28 directly to a non-profit, and to pay another fee to the City to cover the costs of administering

1 the Ordinance. The annual fee paid to the non-profit will not fund the City's costs of
2 administering or enforcing the Ordinance. The non-profit will use the revenues from the
3 annual fee to fund programs about gun safety available to gun owners and members of their
4 household. The City will not otherwise manage the non-profit or dictate how it must spend the
5 annual fee but will review the non-profit's performance.

6 The factual issues in dispute are:

- 7 • Whether the Ordinance's requirements will achieve the City's stated objectives of
8 reducing gun violence and reimbursing the City or the public at large for the costs of
9 gun violence.
- 10 • Whether the City's findings regarding gun violence that were used to justify the
11 Ordinance's requirements are accurate and support the Ordinance's requirements.

12 b. Defendants' Position

13
14 The facets of the Ordinance are clear from its face. It requires San Jose gunowners to
15 1) obtain liability insurance covering loss or damage resulting from the accidental use of their
16 firearm; 2) pay an annual Fee to make available voluntary services to gunowner residents, their
17 household or family members, or those in an intimate relationship with them; and 3)
18 document their compliance by keeping near where their gun is stored or transported a City-
19 issued form attesting that the gunowner has the required insurance and a receipt showing they
20 have paid the Fee, and to produce these documents to a police officer upon lawful request.
21 ECF 25-3, Exhibit H (§ 10.32.200(B)(13); 10.32.210(A), (C); § 10.32.230(A), (B)).

22 Because the language of the Ordinance and the procedural history associated with its
23 enactment are essentially undisputed, Defendants do not believe there are factual issues in
24 dispute in this case.

25 3. Legal Issues

26 *A brief statement, without extended legal argument, of the disputed points of law, including*
27 *reference to specific statutes and decisions.*

1 a. Plaintiffs' Position

- 2
- 3 • Whether this is a pre-enforcement action ripe for review consistent with *Babbitt v.*
 - 4 *United Farm Worker's Nat'l Union*, 442 U.S. 289, 298 (1979).
 - 5 • Whether the new Ordinance violates article XI, §7 of the California Constitution
 - 6 consistent with *Fiscal v. City and County of San Francisco*, 158 Cal.App. 895, 903 (Ct.
 - 7 App. 2008).
 - 8 • Whether the new Ordinance violates the Second Amendment to the United States
 - 9 Constitution. Specifically, at issue are 1) the appropriate level of scrutiny to apply
 - 10 under the guidance of the *Court in Dist. Columbia v. Heller*, 554 U.S. 570 (2008), 2)
 - 11 whether requiring insurance premiums and annual fees paid to a non-profit further the
 - 12 stated government interests of reducing gun violence and reimbursing the City for the
 - 13 costs of gun violence, 3) whether the insurance and non-profit fee requirements are a
 - 14 reasonable fit between the challenged regulation and the asserted objective (*See United*
 - 15 *States v. Chovan*, 735 F.3d 1127, 1139 (9th Cir. 2013)), and 4) whether the non-profit
 - 16 fee violates the *Murdock/Cox* fee-jurisprudence, which has been adopted by the 9th
 - 17 Circuit. *See Bauer v. Becerra*, 858 F.3d 1216 (9th Cir. 2017).
 - 18 • Whether the fee requirement violates the free speech and free association rights of San
 - 19 Jose gun owners who do not consent to the fee consistent with *Janus v. AFSCME,*
 - 20 *Council 31*, 138 S.Ct. 2448 (2018).
 - 21 • Whether the Ordinance creates taxes that were not voted upon by the citizens of San
 - 22 Jose pursuant to Article XIII C of the California Constitution.
 - 23 • Whether the Ordinance violates section 1211 of the City of San Jose's Charter.

24 b. Defendants' Position

25 Defendants agree with Plaintiffs' list of the legal issues in dispute, but disagree with

26 the authority and reasoning Plaintiffs rely on in listing those issues. The disputed legal issues

27 (and the parties' positions on them) are set forth in the in Plaintiffs' Motion for Preliminary

28 Injunction (ECF 25) and Defendants' Motion to Dismiss (ECF 36) and the corresponding

briefing filed therewith.

1 4. Motions

2 *All prior and pending motions, their current status, and any anticipated motions.*

- 3 • The Plaintiffs have a pending Motion for Preliminary Injunction that has been briefed.
4 Its hearing is scheduled for July 21, 2022, at 9:00 a.m.
- 5 • The Defendants have a pending Motion to Dismiss, to which the Plaintiffs' Response
6 and the Defendants' Reply are forthcoming. The hearing is scheduled for August 4,
7 2022, at 9:00 a.m.
- 8 • Defendants filed an administrative motion under Local Rule 3-12 to relate this case
9 with another matter recently removed from state court, *Howard Jarvis Taxpayers*
10 *Association, et al v. City of San Jose* before Judge Cousins (Case No. 5:22-cv-02365-
11 NC). The Court granted that motion. ECF 41. On April 20, 2022, the Court issued an
12 Order to Show Cause, seeking briefing on why the two matters should not be
13 consolidated. ECF 43. That briefing will be submitted by May 4, 2022. *Id.*

14 5. Amendment of Pleadings

15 *The extent to which parties, claims, or defenses are expected to be added or dismissed and a*
16 *proposed deadline for amending the pleadings.*

17 The parties do not anticipate any additional amended pleadings.

18 6. Evidence Preservation

19 *A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery*
20 *of Electronically Stored Information (“ESI Guidelines”), and confirming that the parties have*
21 *met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate*
steps taken to preserve evidence relevant to the issues reasonably evident in this action. See ESI
Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.

22 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
23 Stored Information and have conferred about the steps taken to preserve evidence.

24 7. Disclosures

25 *Whether there has been full and timely compliance with the initial disclosure requirements of*
26 *Fed. R. Civ. P. 26 and a description of the disclosures made. For ADA and employment cases,*
see General Order Nos. 56 and 71.

27 The parties agree that the parties have complied, or will comply, with the initial
28 disclosure requirement of Rule 26.

1 8. Discovery

2 *Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or*
3 *modifications of the discovery rules, a brief report on whether the parties have considered*
4 *entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ.*
5 *P. 26(f), and any identified discovery disputes.*

6 The parties agree that there will be no discovery in this case prior to a dispositive
7 ruling on Defendants’ Motion to Dismiss, set for hearing on August 4, 2022 if not mooted in
8 some manner by a ruling on Plaintiffs’ Motion for Preliminary Injunction set for hearing on
9 July 21, 2022.

10 9. Class Actions

11 *If a class action, a proposal for how and when the class will be certified.*

12 N/A.

13 10. Related Cases

14 *Any related cases or proceedings pending before another judge of this court, or before another*
15 *court or administrative body.*

16 On April 20, 2022, the Court ordered that this case is “related,” pursuant to Local Rule
17 3-12, to the case entitled *Howard Jarvis Taxpayers Association, et al v. City of San Jose* (Case
18 No. 5:22-cv-02365-NC) matter. ECF 41. Subsequent briefing on whether the cases should be
19 consolidated will be submitted May 4, 2022. ECF 43.

20 11. Relief

21 *All relief sought through complaint or counterclaim, including the amount of any damages*
22 *sought and a description of the bases on which damages are calculated. In addition, any party*
23 *from whom damages are sought must describe the bases on which it contends damages should be*
24 *calculated if liability is established.*

25 Plaintiffs seek nominal damages, attorney fees, injunctive relief and declaratory relief.
26 Nominal damages do not require calculation as they are “in name only and by nature [are]
27 minimal in amount.” *Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 872 (9th Cir. 2017).

28 Defendants dispute there is any basis for Plaintiffs to collect damages or attorneys’ fees
in this case.

12. Settlement and ADR

Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including
which ADR process option the parties have selected and a proposed deadline, or if the parties do

1 *not agree, each party's preferred option and timing, in compliance with ADR L.R. 3-5. In*
2 *addition, the parties should include a description of key discovery or motions necessary to*
3 *position the parties to negotiate a resolution.*

4 Because this matter seeks to invalidate a local law based upon the constitutionality of
5 that law, the parties agree that neither ADR nor settlement attempts will assist the parties in a
6 resolution.

7 Defendants nonetheless remain open to resolution discussions.

8 13. Consent to Magistrate Judge For All Purposes

9 *Whether all parties will consent to have a magistrate judge conduct all further proceedings*
10 *including trial and entry of judgment. ___ YES ___x___ NO*

11 14. Other References

12 *Whether the case is suitable for reference to binding arbitration, a special master, or the*
13 *Judicial Panel on Multidistrict Litigation.*

14 Because this matter seeks to invalidate a local law based upon the constitutionality of
15 that law, the parties agree that the most efficient manner to resolve this dispute is to have a
16 district judge determine the constitutionality of the local law at issue.

17 15. Narrowing of Issues

18 *Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation*
19 *of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate*
20 *issues, claims, or defenses.*

21 The parties have met and conferred and do not believe any measures can be taken to
22 narrow disputed issues at this time.

23 16. Expedited Trial Procedure

24 *Whether this is the type of case that can be handled under the Expedited Trial Procedure of*
25 *General Order 64, Attachment A. If all parties agree, they shall instead of this Statement, file an*
26 *executed Agreement for Expedited Trial and a Joint Expedited Case Management Statement, in*
27 *accordance with General Order No. 64, Attachments B and D.*

28 Plaintiffs' Motion for Preliminary Injunction will be heard on July 21, 2022. On March
29 25, 2022, Plaintiffs Filed an Unopposed Motion to Shorten Time, which was denied on the same
30 day.

31 17. Scheduling

32 *Proposed dates for completion of initial ADR session, designation of experts, discovery cutoff,*
33 *hearing of dispositive motions, pretrial conference and trial.*

1 The parties agree that ADR, expert designations, discovery, and pretrial conferences
2 are unnecessary for the preliminary injunction motion, and/or motion to dismiss to be heard
3 and decided. Should this matter proceed after the resolution of these Motions, the parties
4 propose the following schedules:

5 Plaintiffs' Proposed Schedule:

- 6 • Expert Witnesses will be disclosed by June 15, 2023.
- 7 • All discovery will be completed by August 1, 2023.
- 8 • All dispositive motions will be filed by October 1, 2023.
- 9 • The final pre-trial conference will be scheduled December 15, 2023.
- 10 • The matter will be set for trial on February 1, 2024.

11 Defendants Proposed Schedule:

- 12 • Fact Discovery Cut-Off: December 15, 2023
- 13 • Expert Discovery Cut-Off: February 15, 2024
- 14 • Hearing on Dispositive Motions: on or about May 31, 2024, subject to the Court's
15 availability.
- 16 • Final Pretrial Conference: to be set by the Court.
- 17 • Trial Date: to be set by the Court.

18
19 **18. Trial**

20 *Whether the case will be tried to a jury or to the court and the expected length of the trial.*

21 This matter will not require a jury trial. The parties estimate that trial will take five (5)
22 days.

23 **19. Disclosure of Non-party Interested Entities or Persons**

24 *Whether each party has filed the "Certification of Interested Entities or Persons" required by*
25 *Civil Local Rule 3-15. In addition, each party must restate in the case management statement the*
26 *contents of its certification by identifying any persons, firms, partnerships, corporations*
27 *(including parent corporations) or other entities known by the party to have either: (i) a*
28 *financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any*
other kind of interest that could be substantially affected by the outcome of the proceeding.

1 Plaintiffs filed their Certification of Interested Parties on January 26, 2022 (Doc 2).

2 Defendants, as a governmental entity, are exempt from this disclosure per Local Rule 3-15(a).

3 20. Professional Conduct

4 *Whether all attorneys of record for the parties have reviewed the Guidelines for Professional*
5 *Conduct for the Northern District of California.*

6 The parties have received and reviewed the Guidelines for Professional Conduct.

7 21. Other

8 *Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.*

9 None.

10 **DHILLON LAW GROUP INC.**

11 Dated: April 21, 2022

12 /s/David A. Warrington

13 David A. Warrington

14 Counsel for Plaintiffs

15 **COTCHETT, PITRE & McCARTHY, LLP**

16 Dated: April 21, 2022

17 /s/Joseph W. Cotchett

18 Joseph W. Cotchett

19 Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2022, I caused to serve a true and accurate copy of the following on all counsel of record via ECF:

JOINT CASE MANAGEMENT STATEMENT AND [PROPOSED] ORDER

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: April 21, 2022

/s/David A. Warrington

David A. Warrington

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28