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16 **UNITED STATES DISTRICT COURT**  
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
18 **SAN JOSE DIVISION**

19 **National Association for Gun Rights, Inc., et al.,**

20 Plaintiffs,

21 v.

22 **City of San Jose, et al.,**

23 Defendants.

24 **Case No. 5:22-cv-00501-BLF**

25 **RESPONSE TO ORDER TO SHOW  
26 CAUSE WHY CASES SHOULD NOT  
27 BE CONSOLIDATED**

28 Judge: Hon. Beth Labson Freeman

29 **Howard Jarvis Taxpayers Association, et al.,**

30 Plaintiffs,

31 v.

32 **City of San Jose, et al.,**

33 Defendants.

34 **Case No. 5:22-cv-02365-BLF**

1 **I. INTRODUCTION**

2 The Court has ordered the parties to show cause why the Court should not consolidate two  
 3 related actions seeking to invalidate provisions of the same San Jose ordinance (“Ordinance”)  
 4 based on substantially similar legal theories. The two cases should be consolidated. In both cases,  
 5 the plaintiffs bring pre-enforcement facial challenges to the Ordinance under the First and Second  
 6 Amendments to the U.S. Constitution (applicable to the City through the Fourteenth Amendment),  
 7 as well as various provisions of the California Constitution and the San Jose City Charter. There is  
 8 significant overlap in the legal claims and theories at issue in both actions, the Ordinance is the  
 9 same, the Defendant City is the same, and both facial challenges would turn on the same or  
 10 substantially similar facts. Judicial economy and the avoidance of duplicative proceedings would  
 11 both be advanced by the two cases being consolidated, while generating no (or at most *de minimis*)  
 12 inconvenience, delay, or extra expense. The actions should be consolidated for all purposes.

13 **II. PROCEDURAL HISTORY**

14 **A. The Ordinance**

15 The Ordinance was enacted on February 8, 2022, and is scheduled to take effect on August  
 16 7, 2022. In general terms, the Ordinance’s purpose is to reduce the number of people killed and  
 17 otherwise harmed by firearms in San Jose, and to make it more likely that victims of accidental  
 18 shootings will receive compensation for their injuries. To that end, the Ordinance requires non-  
 19 exempt San Jose gunowners to obtain liability insurance covering accidental shootings and to pay  
 20 a yet-to-be-determined annual gun-harm reduction fee (“Fee”) to a yet-to-be-designated nonprofit  
 21 organization, which must use the Fee to provide gunowners and their families access to voluntary  
 22 programming and services related to gun safety, suicide, domestic violence, and other known  
 23 contributors to gun deaths and injuries.

24 **B. The *NAGR* Action**

25 On January 25, 2022, plaintiffs National Association for Gun Rights, Inc. (“NAGR”) and  
 26 Mark Sikes filed a complaint in this Court seeking to invalidate the Ordinance against defendants  
 27 City of San Jose, Jennifer Maguire (in her official capacity as City Manager of the City of San  
 28 Jose), and the City of San Jose City Council. *See Nat’l Ass’n for Gun Rights, Inc., et al. v. City of*

1 *San Jose, et al.*, No. 5:22-cv-00501-BLF (“*NAGR*”). On February 14, 2022, the *NAGR* plaintiffs  
 2 filed their operative First Amended Complaint (“*FAC*”). ECF 19. The *FAC* seeks to invalidate the  
 3 Ordinance in its entirety under six causes of action for alleged violations of (1) the Second and  
 4 Fourteenth Amendments to the U.S. Constitution, (2) the First and Fourteenth Amendments to the  
 5 U.S. Constitution, (3) Article XI, Section 7, of the California Constitution, (4) Article XIII C,  
 6 Section 1, of the California Constitution, as amended by Proposition 26, (5) the San Jose City  
 7 Charter, and (6) under the Declaratory Judgment Act. *Id.*

8 There are two pending motions before the Court in the *NAGR* action, both of which are  
 9 fully briefed: (1) Plaintiffs’ motion for preliminary injunction (*see* ECF 25, 28, 32), set to be heard  
 10 on July 21, 2022; and (2) Defendants’ motion to dismiss the *FAC* under Federal Rule of Civil  
 11 Procedure (“*Rule*”) 12(b)(1) and 12(b)(6) (*see* ECF 36, 46, 50), set to be heard on August 4, 2022.  
 12 The parties have agreed not to engage in any discovery “prior to a dispositive ruling on  
 13 Defendants’ Motion to Dismiss ... if not mooted in some manner by a ruling on Plaintiffs’ Motion  
 14 for Preliminary Injunction ....” ECF 44 at 7 (joint Rule 26(f) statement). The Court held an initial  
 15 case management conference on April 28, 2022, but other major case events have yet occurred,  
 16 and this case is still in its relative infancy. ECF 49.

### 17 C. The *HJTA* Action

18 On March 7, 2022, Plaintiffs Howard Jarvis Taxpayers Association, Silicon Valley  
 19 Taxpayers Association, Inc., Silicon Valley Public Accountability Foundation, James Barry, and  
 20 George Arrington filed a complaint against the City in Santa Clara County Superior Court seeking  
 21 to invalidate the Ordinance’s Fee-related provisions, and the City timely removed the action to  
 22 this Court on April 15, 2022. *Howard Jarvis Taxpayers Ass’n, et al. v. City of San Jose*, No. 5:22-  
 23 cv-02365-BLF (“*HJTA*”).

24 The *HJTA* complaint seeks to invalidate only the Fee-related provisions of the Ordinance  
 25 (*see* Ordinance §§ 10.32.215, 10.32.230(B)) under four causes of action for (1) First and  
 26 Fourteenth Amendments to the U.S. Constitution, and Article I, Sections 2-3, of the California  
 27 Constitution (for alleged violation of constitutional rights of speech and association), (2) Second  
 28 and Fourteenth Amendments to the U.S. Constitution, and Article I, Section 1, of the California

1 Constitution (for allegedly imposing “unconstitutional conditions”), (3) Article XIII C, Sections 1-  
 2 2, of the California Constitution, as amended by Proposition 26 (for allegedly imposing a special  
 3 tax lacking voter approval), and (4) Article XI, Section 11, and Article XIII, Section 31, of the  
 4 California Constitution (for allegedly unconstitutional delegation of the power to tax).

5 The only pending motion before the Court in the *HJTA* action is the City’s motion to  
 6 dismiss the complaint under Rules 12(b)(1) and 12(b)(6), which was filed on April 22, 2022  
 7 (ECF 9), and set to be heard on August 18, 2022.

8 **D. The Court Has Ordered These Cases Related**

9 On April 19, 2022, Defendants filed an administrative motion to consider whether the  
 10 *NAGR* and *HJTA* actions should be related, pursuant to Civil Local Rules 3-12 and 7-11. *NAGR*  
 11 Action, ECF 40. The following day, the Court granted the motion and issued an Order to show  
 12 cause why the two cases should not be consolidated (“Order to Show Cause”). ECF 41, 43.

13 **III. ARGUMENT**

14 The Court should consolidate the *NAGR* and *HJTA* actions for all purposes. Consolidation  
 15 pursuant to Rule 42(a) is proper where actions “involve a common question of law or fact.” Fed.  
 16 R. Civ. P. 42(a). “The purpose of consolidation is not only to enhance efficiency of the trial court  
 17 by avoiding unnecessary duplication of evidence and procedures, but also to avoid inconsistent  
 18 adjudications.” *Chacanaca v. Quaker Oats Co.*, No. C 10-0502 RS, 2011 WL 13141425, at \*2  
 19 (N.D. Cal. June 14, 2011) (cleaned up). A “district court has broad discretion ... to consolidate  
 20 cases pending in the same district.” *Investors Research Co. v. U.S. Dist. Court for Cent. Dist. of*  
 21 *Cal.*, 877 F.2d 777, 777 (9th Cir. 1989) (citation omitted). In exercising its broad discretion to  
 22 consolidate actions under Rule 42(a), a court “weighs the saving of time and effort consolidation  
 23 would produce against inconvenience, delay, or expense that it would cause.” *Huene v. United*  
 24 *States*, 743 F.2d 703, 704 (9th Cir. 1984).

25 Here, the pleadings and motion to dismiss briefing in the related *NAGR* and *HJTA* actions  
 26 make clear that the cases present largely overlapping theories, and a multitude of common  
 27 questions of law and fact. *See generally NAGR*, ECF 40 (administrative motion to consider  
 28 whether cases should be related). Both actions are facial challenges to all or substantial portions of

1 the Ordinance based on the same and/or substantially similar legal theories, including virtually  
2 identical alleged violations of the First and Second Amendments to the U.S. Constitution (applied  
3 to the City via the Fourteenth Amendment), and Article XIII C of the California Constitution, as  
4 amended by Proposition 26. While the *NAGR* and *HJTA* plaintiffs each assert a small number of  
5 additional state law theories for striking down the Ordinance (e.g., alleged violations of the San  
6 Jose City Charter) other state law theories simply allege violations of state constitutional analogues  
7 for the First and Second Amendment claims, which are present in both complaints. *Compare*  
8 *NAGR* Complaint, ECF 19 (¶¶ 82-115); with *HJTA* Complaint, ECF 1 Ex. A (¶¶ 9-23), cited from  
9 each respective docket. The claims in the two complaints are factually and legally similar. In any  
10 event, there can be no reasonable dispute that the two actions share many common questions of  
11 law and fact, thus making consolidation appropriate and desirable under Rule 42(a).

12 The Ordinance is the same, the Defendant City is the same, there is the same basis for  
13 jurisdiction in both cases, Plaintiffs are seeking the same or similar relief, and all of the discovery  
14 (from the Defendants' side at least) will be essentially identical in both cases. There is no sense  
15 from a judicial economy standpoint for the Court to have two trials on cases that overlap to this  
16 degree. There is no sense in forcing the Court to consider and hear two summary judgment  
17 motions, should dispositive motion practice ensue. Aside from being inefficient, denying  
18 consolidation would be extremely prejudicial to Defendants, given that any future written  
19 discovery required from Defendants will be nearly identical, as will Defendants' witnesses.  
20 Permitting duplicative proceedings will improperly increase the costs and resources attendant to  
21 defending this Ordinance.

22 Moreover, while not precisely before the Court, on April 26, 2022, a third pre-enforcement  
23 challenge to the Ordinance was filed under the First, Second, and Fourteenth Amendments to the  
24 U.S. Constitution, asserting substantially similar legal theories as in the *NAGR* and *HJTA* actions.  
25 *See Glass, et al. v. City of San Jose, et al.*, No. 5:22-cv-02533-BLF ("*Glass*"). While the *Glass*  
26 action is not at issue in the present case, it is part of the landscape of litigation challenging the  
27 Ordinance and helps to show that judicial economy would be served by consolidating the *NAGR*  
28 and *HJTA* actions. It is possible that after August 7, 2022, when the Ordinance takes effect,

1 additional lawsuits will be filed. On May 3, 2022, the *Glass* action was ordered related to the  
2 *NAGR* action, reassigned to this Court, and the parties to that action will be responding to the  
3 Court's Order to Show Cause Why Cases Should Not Be Consolidated, by May 17, 2022. *See*  
4 *NAGR*, ECF 51, 52.

5 In sum, consolidation will significantly conserve judicial resources and prevent prejudice to  
6 Defendants, while generating no (or at most *de minimis*) inconvenience, delay, or expense.  
7 Consolidation will also conserve judicial and party resources and expedite resolution of this matter  
8 by avoiding duplicative motions practice at the pleading stage and potentially duplicative motions  
9 and other practice concerning discovery, discovery disputes, summary judgment, and trial.

10 **IV. CONCLUSION**

11 For all the foregoing reasons, the *NAGR* and *HJTA* actions should be consolidated for all  
12 purposes.

13 Dated: May 4, 2022

**COTCHETT, PITRE & McCARTHY, LLP**

14  
15 By: /s/ Tamarah P. Prevost

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