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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 **Christopher Glass, et al.,**

30 Plaintiffs,

31 v.

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

33 Defendants.

34 **Case No. 5:22-cv-02533-BLF**

1 **I. INTRODUCTION**

2 The Court has ordered the parties to show cause why the Court should not consolidate the
 3 two above-captioned related actions, which are pre-enforcement challenges that seek to invalidate
 4 the same City of San Jose (“City”) ordinance (“Ordinance”) based on the same or substantially
 5 similar legal theories under the First and Second Amendments to the U.S. Constitution (applicable
 6 to the City through the Fourteenth Amendment). Defendants believe that consolidation is
 7 appropriate. Both cases also name some of the same defendants (the City and City Manager) and
 8 would turn on the same or substantially similar facts if they survive beyond the pleading stage.
 9 Consolidation would promote judicial economy and the avoidance of duplicative proceedings,
 10 while generating no (or at most *de minimis*) inconvenience, delay, or extra expense. The actions
 11 should be consolidated for all purposes.

12 **II. PROCEDURAL HISTORY**

13 **A. The Ordinance**

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

23 **B. The *NAGR* Action**

24 On January 25, 2022, plaintiffs National Association for Gun Rights, Inc. (“NAGR”) and
 25 Mark Sikes filed a complaint in this Court seeking to invalidate the Ordinance against defendants
 26 City of San Jose, Jennifer Maguire (in her official capacity as City Manager of the City of San
 27 Jose), and the City of San Jose City Council. *See Nat’l Ass’n for Gun Rights, Inc., et al. v. City of*
 28 *San Jose, et al.*, No. 5:22-cv-00501-BLF (“*NAGR*”). On February 14, 2022, the *NAGR* plaintiffs

1 filed their operative First Amended Complaint (“FAC”). ECF 19. The FAC seeks to invalidate the
 2 Ordinance in its entirety under six causes of action for alleged violations of (1) the Second and
 3 Fourteenth Amendments to the U.S. Constitution (42 U.S.C. § 1983), (2) the First and Fourteenth
 4 Amendments to the U.S. Constitution (42 U.S.C. § 1983), (3) Article XI, Section 7, of the
 5 California Constitution, (4) Article XIII C, Section 1, of the California Constitution, as amended
 6 by Proposition 26, (5) the San Jose City Charter, and (6) under the Declaratory Judgment Act. *Id.*

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

16 **C. The *Glass* Action**

17 On April 26, 2022, Plaintiffs Christopher Glass and Firearms Policy Coalition, Inc. filed a
 18 complaint in this Court against defendants City of San Jose, Anthony Mata (in his official
 19 capacity as the City’s Chief of Police), and Jennifer Maguire (in her official capacity as City
 20 Manager). *See Glass, et al. v. City of San Jose, et al.*, No. 5:22-cv-02533-BLF (“*Glass*”). The
 21 *Glass* complaint seeks to invalidate the Ordinance in its entirety under two causes of action for
 22 alleged violations of (1) the Second and Fourteenth Amendments to the U.S. Constitution (42
 23 U.S.C. § 1983) and (2) the First and Fourteenth Amendments (42 U.S.C. § 1983). ECF 1. There
 24 are no currently pending motions in the *Glass* action, but the City intends to timely file a motion
 25 to dismiss under Rules 12(b)(1) and 12(b)(6), just as it has done in the *NAGR* action.

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

2 On April 26, 2022, the Honorable Magistrate Judge Nathanael Cousins *sua sponte* referred
3 the *Glass* action to this Court for consideration whether the *Glass* action is related to the *NAGR*
4 action. *NAGR*, ECF 47. On May 3, 2022, this Court ordered the *Glass* action related to the *NAGR*
5 action, reassigned the *Glass* action to itself, and issued an order to show cause why the two cases
6 should not be consolidated (“Order to Show Cause”). *See NAGR*, ECF 51, 52; *Glass*, ECF 19.

7 **III. ARGUMENT**

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

19 Here, the pleadings in the *NAGR* and *Glass* actions make clear that the cases present
20 significantly overlapping legal theories, and a multitude of common questions of law and fact.
21 Both actions are facial challenges to the Ordinance in its entirety based on identical or virtually
22 identical legal theories under the First and Second Amendments to the U.S. Constitution (applied
23 to the City via the Fourteenth Amendment). *Compare NAGR*, FAC (ECF 19) ¶¶ 82-115, *with*
24 *Glass*, Compl. (ECF 1) ¶¶ 41-61. There can be no reasonable dispute that the two actions share
25 many common questions of law and fact, thus making consolidation appropriate and desirable
26 under Rule 42(a).

27 The Ordinance is the same, the defendants are substantially the same, there is the same
28 basis for jurisdiction in both cases, Plaintiffs are seeking the same or substantially similar relief,

1 and all of the discovery (that could be provided by Defendants, at least) will be essentially
2 identical. There is no good reason from a judicial economy standpoint for the Court to have two
3 trials on cases that overlap to such a significant degree. Nor is there any sense in forcing the Court
4 to consider and hear two summary judgment motions, should these actions survive the pleading
5 stage. On the other hand, denying consolidation would be prejudicial to Defendants because it
6 would force them to incur significant duplication of effort and extra expense to defend the
7 Ordinance by having to respond to overlapping discovery requests, to produce and re-produce the
8 same witnesses for depositions and trial, and the like. Denying consolidation would be contrary to
9 Rule 1’s mandate that the Rules “be construed, administered, and employed by the court and the
10 parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”
11 Fed. R. Civ. P. 1.

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

17 **IV. CONCLUSION**

18 For all the foregoing reasons, the *NAGR* and *Glass* actions should be consolidated for all
19 purposes.

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