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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HOWARD JARVIS TAXPAYERS
ASSOCIATION; Silicon Valley Taxpayers
Association; Silicon Valley Public
Accountability Foundation; James Barry; and
George Arrington,

Plaintiffs,

v.

CITY OF SAN JOSE, and all persons interested
in the matter of San Jose Ordinance No. 30716,
establishing an Annual Gun Harm Reduction Fee,

Defendants.

Case Number: 5:22-cv-02365-BLF

**JOINT CASE MANAGEMENT
STATEMENT**

Date: August 18, 2022
Time: 11:00 AM
Courtroom: 3 – 5th Floor (via Zoom)
Judge: Hon. Beth Labson Freeman

1 The parties submit this Joint Case Management Statement pursuant to Rule 26(f) of the Federal
 2 Rules of Civil Procedure, the Standing Order for All Judges of the Northern District of California, and
 3 Civil Local Rule 16-9.

4 **1. Jurisdiction & Service**

5 This action was removed from the California Superior Court for Santa Clara County by
 6 defendant City of San Jose (“Defendant” or “City”) under 28 U.S.C. §§ 1331, 1367, 1441, and 1446
 7 because plaintiffs’ complaint includes claims arising under the United States Constitution, in addition
 8 to state law claims concerning taxation. Plaintiffs did not file a motion to remand. No issues exist
 9 regarding personal jurisdiction or venue. No parties remain to be served.

10 *Additional Statement by Plaintiffs:*

11 Plaintiffs’ state court case was a “reverse-validation” action against “all persons” under
 12 California Code of Civil Procedure sections 860, *et seq.* One organization, the Golden State Second
 13 Amendment Council, responded to the summons published in the newspaper and filed a timely answer
 14 to plaintiffs’ complaint which, under state law, gives that organization the right to defend its interests as
 15 a party to the litigation. (Code of Civ. Proc. §§ 861-62.)

16 **2. Facts**

17 a. Plaintiff’s Position

18 The facts are not in dispute. On February 8, 2022, the San Jose City Council passed Ordinance
 19 No. 30716, requiring San Jose firearm owners to maintain gun liability insurance and to pay an annual
 20 “Gun Harm Reduction Fee,” in an amount to be set from time to time by the City Council, to a private
 21 nonprofit organization to be designated from time to time by the City Manager. This action challenges
 22 the annual fee, but not the insurance requirement.

23 Under the Ordinance, the nonprofit organization’s expenditure of fee revenue “may include”
 24 one or more listed programs, courses and services designed to reduce the risk of, and mitigate the harm
 25 from firearms. Except for these guidelines, the Ordinance provides that “the City shall not specifically
 26 direct how the monies from the Gun Harm Reduction Fee are expended.”

1 A gun owner's failure to pay the required fee to the designated private organization, or produce
 2 proof of payment when requested by a peace officer, is punishable by a fine and confiscation of the
 3 owner's firearms.

4 b. Defendant's Position

5 The San Jose Ordinance at issue requires San Jose gun owners to (1) obtain liability insurance
 6 covering loss or damage resulting from the accidental use of their firearm; (2) pay an annual Fee to a
 7 City-designated nonprofit organization to provide voluntary services to San Jose gunowners, their
 8 household and family members, and those in an intimate relationship with them; and (3) document
 9 their compliance by keeping near where their gun is stored or transported a City-issued form attesting
 10 that the gunowner has the required insurance and a receipt showing they have paid the Fee, and to
 11 produce these documents to a law enforcement officer upon lawful request. *See* Ordinance (ECF 9-14)
 12 §§ 10.32.200(B)(13), 10.32.210, 10.32.230. The text of the Ordinance and its legislative history are a
 13 matter of public record.

14 The principal factual issues in dispute are not yet entirely known, as regulations necessary to
 15 implement the Ordinance are still in rulemaking, and the City contends the action is unripe for review.
 16 However, the City anticipates that disputed factual issues may arise regarding the extent of the financial
 17 burden (or lack thereof) that the Ordinance imposes on covered persons who do not qualify for the
 18 Ordinance's "financial hardship" exemption, and issues that may arise surrounding the identity and
 19 activities of the yet-to-be-designated nonprofit organization.

20 3. Legal Issues

21 Plaintiffs' complaint alleges that the Ordinance's requirement that gun owners pay an annual
 22 Gun Harm Reduction Fee to a city-designated private nonprofit organization: (1) violates plaintiffs'
 23 rights of free speech and association; (2) imposes an unconstitutional local condition on plaintiffs'
 24 exercise of their Second Amendment rights; (3) imposes a tax without the voter approval required by
 25 the California Constitution, Article XIII C; and (4) impermissibly delegates to a private entity some of
 26 the government's power to tax in violation of the California Constitution, Article XIII, section 31.
 27 Preliminary disputed legal issues are set forth in the City's Motion to Dismiss the Complaint (ECF 9),
 28 plaintiffs' opposition thereto (ECF 16), and the City's reply (ECF 17).

1 **4. Motions**

2 Currently pending before the Court is the City's Motion to Dismiss Plaintiffs' Complaint,
3 which has been fully briefed. The hearing on the motion has been converted to a Zoom webinar hearing
4 and is scheduled for August 18, 2022, at 11:00 a.m. (ECF 21).

5 There are no other pending motions, but there is the pending issue of consolidation. The Court
6 issued an Order to Show Cause (ECF 6) why this case should not be consolidated with an earlier-filed
7 related case challenging the same Ordinance at issue here, captioned *Nat'l Assn. for Gun Rights, Inc. v.*
8 *City of San Jose*, No. 5:22-cv-00501-BLF. The parties submitted responses to the Court's Order.
9 Plaintiffs oppose consolidation; the City does not.

10 **5. Amendment of Pleadings**

11 Plaintiffs do not plan to amend their complaint unless this Court, in ruling on the City's motion
12 to dismiss, grants any part of the motion with leave to amend. Given this case's procedural posture, the
13 parties are not proposing a deadline for amending the pleadings at this time, but suggest the matter be
14 addressed after the Court decides the pending motion to dismiss.

15 **6. Evidence Preservation**

16 The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored
17 Information and have conferred about the steps taken to preserve evidence, and the parties have met
18 and conferred in accordance with Rule 26(f).

19 **7. Disclosures**

20 The parties will fully comply with the initial disclosure requirements of Rule 26.

21 **8. Discovery**

22 Given the early procedural posture of the case, no discovery has yet been propounded, and no
23 discovery plan has been proposed.

24 **a. Plaintiffs' Position**

25 Plaintiffs will want to discover all information related to the selection or formation of the
26 nonprofit organization designated to collect the Gun Harm Reduction Fee, including the identity and
27 biographies of its board members and officers, and how they were selected, the organization's past and
28 present activities, publications, presentations, Internet and social media postings, and all

correspondence between the City, its officials or employees, and the organization, its board members or officers. For the sake of expediency, plaintiffs request Judge Freeman, as part of her case management order, to direct the City to voluntarily provide this information as part of its Rule 26(a) disclosure.

b. Defendant's Position

There should be no discovery in this case until the Court decides the pending motion to dismiss, set for hearing on August 18, 2022, and the pending issue of whether this case will be consolidated (and, if so, for what purposes) with the two related cases, in which there are also pending motions to dismiss. In the event the Court grants the motion(s) to dismiss in whole or in part with leave to amend, there should continue to be no discovery until the pleadings are resolved, so the City does not have to expend time and resources responding to discovery relevant only to claims or issues that may be dismissed with prejudice at the motion to dismiss stage.

The City opposes Plaintiffs' request that the Court order discovery set forth by Plaintiffs above regarding the nonprofit organization referenced in the Ordinance for the reasons stated above, and for the additional reason that the nonprofit organization has not yet been designated and so there would be no discovery to provide at this time.

9. Class Actions

Not applicable.

10. Related Cases

There are three cases before the Court challenging all or some of the same San Jose Ordinance at issue here, which were filed in the following order: (1) *Nat'l Assn. for Gun Rights, Inc. v. City of San Jose*, No. 5:22-cv-00501-BLF ("NAGR Action"), (2) this action, and (3) *Glass v. City of San Jose*, No. 5:22-cv-02533-BLF ("Glass Action"). The Court has related this case to the NAGR Action (ECF 5), and also related the Glass Action to the NAGR Action. The Court has indicated it is considering whether the three actions should be consolidated. Plaintiffs oppose consolidation; the City does not.

11. Relief

Plaintiffs' complaint prays for (1) an Order invalidating sections 10.32.215 and 10.32.230(B) of the Ordinance, (2) costs of suit including reasonable attorney fees, and (3) such other or further relief as the Court deems just and proper. The City opposes Plaintiffs' requested relief and reserves the right to

1 seek all relief to which it may be entitled in connection with this action, including its costs and
2 reasonable attorney fees.

3 **12. Settlement and ADR**

4 Because this matter challenges the constitutionality of a local law, the parties agree that neither
5 ADR nor settlement attempts will assist the parties in a resolution.

6 **13. Consent to Magistrate Judge for All Purposes**

7 No, the parties do not consent to have a magistrate judge conduct all further proceedings
8 including trial and entry of judgment.

9 **14. Other References**

10 Given the constitutional nature of this case, the parties agree it is not suitable for reference to
11 binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation. The parties
12 further agree that the most efficient way to resolve this case is to have the Court determine the
13 constitutionality of the provisions of the Ordinance that plaintiffs are challenging.

14 **15. Narrowing of Issues**

15 a. Plaintiffs' Position

16 At the August 4th hearing of the City's motion to dismiss the National Association for Gun
17 Rights case, Judge Freeman seemed prepared to allow the City, by delaying its determination of the
18 amount of the fee and the identity of the nonprofit organization, to control the outcome of its own
19 motion to dismiss for prematurity. Based on news reports, plaintiffs here suggest that the parties
20 should stipulate that the nonprofit organization will be formed by the City, that its board of directors
21 will serve at the invitation of the City, and that the fee will be set as necessary to fund the
22 organization's budget for each year.

23 b. Defendant's Position

24 The City does not see the potential for any narrowing of issues at this time. The City opposes
25 Plaintiffs' above proposal, which is vague, inaccurate, and argumentative.

26 **16. Expedited Trial Procedure**

27 The parties agree that this case is not appropriate to be handled under the Expedited Trial
28 Procedure of General Order 64.

Plaintiffs' Additional Statement:

Due to the novel facts of this case and the important constitutional questions it raises for all Americans, this case is not suitable for the expedited trial procedure described in General Order 64 because paragraph 15 of that Order requires the parties to largely waive their right to appeal.

17. Scheduling

a. Plaintiffs' Position

At the August 4th hearing of the City's motion to dismiss the National Association for Gun Rights case, Judge Freeman said she is inclined to consolidate the three cases for trial. Plaintiffs here have already filed an opposition to consolidation because their case will not require an evidentiary trial as the two other cases apparently will. If the City will agree to stipulated facts regarding the nonprofit organization and the fee amount, this case could be ready for trial quickly, much more quickly than the schedule proposed below by defendant City.

b. Defendant's Position

The City proposes the following schedule:

- Fact Discovery Cut-Off: December 15, 2023
- Expert Discovery Cut-Off: February 15, 2024
- Hearing on Dispositive Motions: May 31, 2024
- Final Pretrial Conference: TBD
- Trial Date: TBD

18. Trial

Plaintiffs' Position:

This case, involving only questions of law, will not be tried to a jury. The trial will be in the nature of an oral argument and should not exceed two hours.

Defendant's Position:

Plaintiffs have not filed a jury demand, and the City does not currently expect the case will be tried before a jury. The City estimates that trial will take five (5) days.

19. Disclosure of Non-party Interested Entities or Persons

Plaintiffs filed their Certification of Interested Entities or Persons on May 4, 2022.

1 The City, as a governmental entity, is exempt from filing this disclosure under Civil Local Rule
2 3-15(a).

3 **20. Professional Conduct**

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

6 **21. Other**

7 a. Plaintiffs' Position:

8 If, by the date of the Case Management Conference, the City still has not set the amount of the
9 Gun Harm Reduction Fee or designated the nonprofit organization that will collect the fee, plaintiffs
10 believe it would be reasonable for the Court to set a deadline for the City, and require the City to report
11 to the Court regarding the designation and makeup of the organization, and the amount and reason for
12 the fee prior to the Court ruling on the City's motion to dismiss for prematurity.

13 b. Defendant's Position:

14 None, except that the City opposes Plaintiffs' above request. In any event, the City volunteers
15 that it is currently drafting and intends to separately file as soon as possible a written update to the
16 Court regarding the City's progress implementing the Ordinance.

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18 *[Signatures on the Following Page]*
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1 Dated: August 11, 2022

**HOWARD JARVIS TAXPAYERS
FOUNDATION**

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3 By: /s/ Timothy A. Bittle
4 Timothy A. Bittle
5 Jonathan M Coupal
6 Laura E. Dougherty

7 *Attorneys for Plaintiffs Howard Jarvis*
8 *Taxpayers Association, et al.*

9
10 Dated: August 11, 2022

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11
12 By: /s/ Tamarah P. Prevost
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