

JONATHAN M. COUPAL, State Bar No. 107815
TIMOTHY A. BITTLE, State Bar No. 112300
LAURA E. DOUGHERTY, State Bar No. 255855
Howard Jarvis Taxpayers Foundation
1201 K Street, Suite 1030
Sacramento, CA 95814
(916) 444-9950

Attorneys for Plaintiffs
HOWARD JARVIS TAXPAYERS ASSN., et al.

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

NATIONAL ASSN. FOR GUN RIGHTS,
et al.,

Plaintiffs

v.

CITY OF SAN JOSE, *et al.*,

Defendants

No. 22-cv-00501-BLF

HOWARD JARVIS TAXPAYERS ASSN.,
et al.,

Plaintiffs

v.

CITY OF SAN JOSE,

Defendant

No. 22-cv-02365-BLF

**DECLARATION OF TIMOTHY BITTLE
IN SUPPORT OF PLAINTIFFS'
MOTION TO REMAND**

Date: April 6, 2023
Time: 9:00 a.m.
Judge: Hon. Beth Labson Freeman
Dept: San Jose Courtroom 3

I, Timothy A. Bittle, declare as follows:

I am an attorney, duly licensed by the State of California, admitted to practice
before this Court, and counsel of record for plaintiffs in this action. I have personal

1 knowledge of the facts to follow and if called upon as a witness, my testimony would be
2 the same.

3 1. Exhibit 1 attached hereto is a true and correct copy of the relevant
4 sections of the court reporter's transcript of this Court's August 18, 2022, hearing on the
5 motion of defendant City of San Jose to dismiss the complaint of plaintiff Howard Jarvis
6 Taxpayers Association, et al. (HJTA). I obtained the transcript from the Court's online
7 docket for Case No. 22-cv-02365-BLF, Document 28, which docket was subsequently
8 closed when this case was consolidated with *National Association of Gun Rights, et al.*
9 *v. City of San Jose*, Case No. 22-cv-00501-BLF. (See Court's Order Consolidating
10 Related Cases, Doc. 30, filed October 4, 2022.) The portions of the transcript quoted in
11 HJTA's accompanying Points and Authorities are highlighted.

12 2. Exhibit 2 attached hereto is a true and correct copy of the Order
13 Approving Publication of Summons, issued by Superior Court Judge Socrates
14 Manoukian in Santa Clara County Superior Court Case No. 22CV395596, filed March
15 25, 2022, which I obtained from the Clerk of said Superior Court.

16 3. Exhibit 3 attached hereto is a true and correct copy of the Proof of
17 Published Service of Summons, filed April 14, 2022, by plaintiffs in Santa Clara County
18 Superior Court Case No. 22CV395596, which I obtained from the Clerk of said Superior
19 Court.

20 I certify upon penalty of perjury that the foregoing is true and correct and that this
21 declaration was executed this 10th day of January, 2023, in the City of Vacaville, California.

22
23 
24 _____
25 TIMOTHY A. BITTLE
26
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Exhibit 1

1 THE COURT: THAT'S AN INTERESTING THEORY, AND RIGHT
2 NOW I'M GOING TO DISMISS THAT CLAIM, AND IF YOU WANT TO ALLEGE
3 FACTS THAT HELP ME OUT ON THAT, THAT'S FINE. I WILL GIVE YOU
4 LEAVE TO AMEND ON THAT. I WASN'T GOING TO, BUT I'M GOING TO
5 LOOK AT THE KESSLER CASE AGAIN. I THOUGHT IT KIND OF LOCKED IT
6 UP. I THINK THAT IS A PRETTY BROAD READING OF THE CALIFORNIA
7 CONSTITUTION, IT'S NOVEL, NO ONE ELSE HAS EVER READ IT THAT
8 WAY, NO ONE HAS EVER APPLIED IT, BUT I WILL GIVE YOU LEAVE TO
9 AMEND.

10 AND YOU KNOW I'M NOT CRITICAL OF YOUR PLEADING, YOU HAD
11 HOPED THIS CASE WOULD STAY IN STATE COURT AND IT DIDN'T WORK
12 OUT THAT WAY, SO YOU DIDN'T FILE A MOTION TO REMAND EITHER. I
13 WAS SUGGESTING SOME, THAT IF YOU WANTED TO GO BACK TO STATE
14 COURT, YOU PROBABLY THOUGHT ABOUT IT MORE THAN I HAVE, BUT
15 THERE ARE CERTAINLY WAYS THAT YOU COULD DO THAT.

16 ALL RIGHT. ANY LAST COMMENTS, MR. BITTLE?

17 MR. BITTLE: JUST A HOUSEKEEPING MATTER, YOUR HONOR.

18 YOU DID ACKNOWLEDGE THAT WE FILED THIS AS A REVERSE
19 VALIDATION ACTION IN STATE COURT, AND IT PUBLISHED THE SUMMONS
20 AND SOMEONE RESPONDED TO THE PUBLISHED SUMMONS, A GROUP CALLED
21 THE GOLDEN STATE SECOND AMENDMENT COALITION, THEY'RE
22 REPRESENTED BY AN ATTORNEY NAMED JASON BEZIS, THEY FILED AN
23 ANSWER TO OUR COMPLAINT IN STATE COURT. JUST FOR MY BENEFIT
24 AND THEIRS, IS THERE ANY OPPORTUNITY FOR THEM TO PARTICIPATE
25 HERE IN FEDERAL COURT, BECAUSE --

1 THE COURT: THAT'S AN INTERESTING ISSUE, MR. BITTLE.

2 I HAD BEEN THINKING THAT I MAY DECLINE SUPPLEMENTAL
3 JURISDICTION OVER THE VALIDATION ACTION ITSELF, BECAUSE IT IS
4 SUCH A UNIQUE PROCESS UNDER STATE LAW THAT THE STATE COURTS ARE
5 BETTER SUITED TO DEAL WITH IT.

6 I CAN'T TELL WHAT YOU -- YOU HAD ONE SPARSE LINE SAYING
7 THIS IS A VALIDATION ACTION UNDER CCP 860, AND THEN YOU GO INTO
8 THESE OTHER CLAIMS THAT ARE NOT PURELY VALIDATION.

9 THE FEDERAL COURT IS SIMPLY NOT EQUIPPED TO, AND NOR
10 SHOULD WE BE HANDLING AND TRYING TO UNDERSTAND THESE UNIQUELY
11 STATE PROCEDURES.

12 SO I MEAN, THAT'S THE OTHER PROBLEM HERE IS THAT I'M --
13 AND THEN I DON'T KNOW WHAT REMAINS IF I DECLINE THE VALIDATION
14 ACTION.

15 MR. BITTLE: YEAH. THAT'S AN INTERESTING QUESTION.

16 I MEAN, I FEEL LIKE THE BULK OF OUR COMPLAINT WAS PLED
17 UNDER STATE LAW, AND PERHAPS IF WE DISMISS THE FEDERAL FIRST
18 AMENDMENT CLAIM, ALL THE REST OF OUR CASE COULD GO BACK TO
19 STATE COURT, IF YOUR HONOR GAVE US THE OPPORTUNITY TO DO THAT.

20 THE COURT: I ACTUALLY THINK, MR. BITTLE, THAT THAT
21 MAKES SENSE. VALIDATION ACTIONS CAN BE OF VALUE TO THE PUBLIC
22 AGENCY AS WELL; IN FACT, THAT'S WHY THE LAW WAS CREATED, SO
23 THAT A PUBLIC AGENCY COULD VALIDATE ITS ACTION BEFORE IT
24 CHANGED ITS POSITION IN RELIANCE.

25 THE REVERSE VALIDATION IS WELL UNDERSTOOD UNDER STATE LAW,

1 AND THAT'S WHAT YOU HAVE TAKEN ADVANTAGE OF. THAT'S, IN MY
2 15 MINUTES OF RESEARCH IN READING THE CCP, AND ACTUALLY, I WAS
3 ON THE STATE BENCH FOR 13 YEARS AND I NEVER SAW ONE OF THESE,
4 BUT THAT WOULD BE A LONG TIME AGO NOW, SO I'M A LITTLE BIT
5 RUSTY.

6 I WANT YOU TO THINK ABOUT THAT, BECAUSE I AM NOT INCLINED
7 TO ACCEPT SUPPLEMENTAL JURISDICTION ON THE VALIDATION ACTION.
8 IF YOU WANT TO, AND I WILL GIVE YOU SOME TIME ON THIS TO SUBMIT
9 A STATEMENT THAT YOU WOULD DECLINE TO AMEND THE FEDERAL CLAIMS
10 IF, AND ONLY AMEND THE VALIDATION, THAT MAY HELP ME IN SIMPLY,
11 OR MAYBE IN THIS ORDER I SHOULD SIMPLY SAY THAT I'M NOT
12 ACCEPTING SUPPLEMENTAL JURISDICTION, THEN YOU CAN DECIDE WHAT
13 TO DO. MAYBE THAT'S THE BEST. THAT'S THE CLEANEST.

14 MR. BITTLE: WHAT WOULD BE THE PROCEDURAL METHOD THAT
15 I WOULD USE?

16 THE COURT: I WOULD REMAND THE VALIDATION ACTION TO
17 THE STATE COURT, BECAUSE THIS WAS REMOVED, AND I WOULD RETAIN
18 THE CLAIMS THAT ARE FEDERAL, IF ANY REMAIN. YOU MAY NOT WISH
19 TO LITIGATE ON TWO FRONTS, THAT'S YOUR CHOICE.

20 MR. BITTLE: I DON'T.

21 THE COURT: SO THAT'S A CONVERSATION WITH YOUR
22 CLIENTS, OF COURSE, I DON'T NEED TO PUT YOU ON THE SPOT NOW.

23 BUT I THINK WHAT I'M GOING TO DO, MR. BITTLE, IS I'M GOING
24 TO ISSUE THIS ORDER. I WILL DEAL WITH WHETHER I ACCEPT
25 SUPPLEMENTAL JURISDICTION OR NOT ON THE VALIDATION. IT'S NOT

Exhibit 2

MAR 23 2022

1 JONATHAN M. COUPAL, State Bar No. 107815
 TIMOTHY A. BITTLE, State Bar No. 112300
 2 LAURA E. DOUGHERTY, State Bar No. 255855
 Howard Jarvis Taxpayers Foundation
 3 921 Eleventh Street, Suite 1201
 Sacramento, CA 95814
 4 Tel: (916) 444-9950
 Fax: (916) 444-9823
 5 Email: tim@hjta.org
 Attorneys for Plaintiffs

Filed
 March 25, 2022
 Clerk of the Court
 Superior Court of CA
 County of Santa Clara
 22CV395596
 By: rsandoval

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 7
 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
FOR THE COUNTY OF SANTA CLARA
 9

10 HOWARD JARVIS TAXPAYERS ASSN.,)
 SILICON VALLEY TAXPAYERS ASSN.,)
 11 SILICON VALLEY PUBLIC ACCOUNTA-)
 BILITY FOUNDATION, JIM BARRY, and)
 12 GEORGE ARRINGTON,)

No. 22CV395596

13 Plaintiffs)

~~PROPOSED~~ ORDER APPROVING
PUBLICATION OF SUMMONS

14 v.)

15 CITY OF SAN JOSE, and ALL PERSONS)
 INTERESTED in the matter of San Jose)
 16 Ordinance No. 30716, establishing an)
 Annual Gun Harm Reduction Fee,)
 17

Department: 20
 Case Filed: March 7, 2022
 Trial Date: Not Set

18 Defendants)

Calendar preference per CCP § 867

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ORDER

On the application of plaintiffs, which was considered 24 March, 2022, in Department 20 with notice to counsel for defendant City of San Jose, the Court having considered the authorities cited and good cause appearing therefor:

IT IS HEREBY ORDERED that plaintiffs' application for approval to publish summons as to All Persons Interested in the matter of San Jose Ordinance No. 30716 is GRANTED AS FOLLOWS:

1. Plaintiffs shall use the form of Summons attached hereto as Exhibit 1.
2. Plaintiffs shall cause the Summons to be published once a week for three consecutive weeks, with at least five days intervening between publication dates, in the Legal Notices section of the San Jose Mercury News.
3. Plaintiffs shall obtain Proof of Publication from said newspaper and file it with this Court immediately thereafter, or show good cause for their failure to do so.

DATED: 24 March, 2022.

Signed: 3/24/2022 12:38 PM



HON. Socrates Peter Manoukian
JUDGE OF THE SUPERIOR COURT

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EXHIBIT 1

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND NOT LATER THAN [A date to be determined that is 10 or more days after the completion of publication of the summons in the newspaper]. READ THE INFORMATION BELOW.

AVISO! USTED HA SIDO DEMANDADO. EL TRIBUNAL PUEDE DECIDIR CONTRA USTED SIN AUDIENCIA A MENOS QUE USTED RESPONDA NO MÁS TARDE QUE EL DÍA [The date from above that is 10 or more days after the completion of publication of the summons in the newspaper]. LEA LA INFORMACIÓN QUE SIGUE.

TO ALL PERSONS INTERESTED IN THE MATTER OF CITY OF SAN JOSE ORDINANCE NO. 30716, ESTABLISHING AN ANNUAL GUN HARM REDUCTION FEE.

A civil complaint has been filed in California Superior Court for the County of Santa Clara by Howard Jarvis Taxpayers Association and other plaintiffs against defendant City of San Jose for the purpose of determining the validity of the City's Annual Gun Harm Reduction Fee.

Plaintiffs allege that the new fee violates their constitutional rights of free speech and association, places an unconstitutional condition on the right to bear arms, is a special tax which needed 2/3 voter approval, unlawfully delegates governmental taxing power to a private organization, and for these reasons is invalid.

To be heard regarding this matter, you must file with the court a written response

1 to the complaint by [the date from above that is 10 or more days after the completion of
2 publication of the summons in all newspapers]. If you do not file a timely written response
3 with the court, plaintiffs may apply for entry of default and the relief sought by their
4 complaint. You may obtain a copy of the complaint by contacting plaintiffs' counsel using
5 the address or telephone number shown below. If you respond to defend the legality or
6 validity of the matter, you will not be subject to punitive action such as wage garnishment
7 or seizure of real or personal property.

8
9 **YOU MAY SEEK THE ADVICE OF AN ATTORNEY IN ANY MATTER**
10 **CONNECTED WITH THE COMPLAINT OR THIS SUMMONS. SUCH ATTORNEY**
11 **SHOULD BE CONSULTED PROMPTLY SO THAT YOUR PLEADING MAY BE FILED**
12 **OR ENTERED WITHIN THE TIME REQUIRED BY THIS SUMMONS.**

13
14 **PUEDE SOLICITAR EL CONSEJO DE UN ABOGADO EN CUALQUIER ASUNTO**
15 **RELACIONADO CON LA DENUNCIA O CON ESTA CITACIÓN. DICHO ABOGADO**
16 **DEBERÁ CONSULTARSE INMEDIATAMENTE PARA QUE SU ALEGATO PUEDA SER**
17 **PRESENTADO O ENTRADO EN EL MOMENTO REQUERIDO POR ESTA CITACIÓN**
18 **JUDICIAL.**

19
20 The name and address of the Court is (El nombre y dirección del Tribunal es):

21
22 Superior Court, County of Santa Clara

23 191 North First Street

24 San Jose, CA 95113

25 CASE NUMBER (Numero del Caso): 22CV395596
26
27

1 The name, address, and telephone number of plaintiffs' attorney is (El nombre, dirección
2 y número de teléfono de los abogados del demandante es):

3

4 Timothy A. Bittle

5 Howard Jarvis Taxpayers Foundation

6 921 11th Street, Ste. 1201

7 Sacramento, CA 95814

8 Tel: 916-444-9950

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Exhibit 3

1 JONATHAN M. COUPAL, State Bar No. 107815
TIMOTHY A. BITTLE, State Bar No. 112300
2 LAURA E. DOUGHERTY, State Bar No. 255855
Howard Jarvis Taxpayers Foundation
3 921 Eleventh Street, Suite 1201
Sacramento, CA 95814
4 (916) 444-9950
Email: tim@hjta.org

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 4/14/2022 2:59 PM
Reviewed By: R. Fleming
Case #22CV395596
Envelope: 8753617**

5 Attorneys for Plaintiffs
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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**

10 HOWARD JARVIS TAXPAYERS ASSN.,)
SILICON VALLEY TAXPAYERS ASSN.,)
11 SILICON VALLEY PUBLIC ACCOUNTA-)
BILITY FOUNDATION, JIM BARRY, and)
12 GEORGE ARRINGTON,)

No. 22CV395596

13 Plaintiffs)

**PROOF OF PUBLISHED SERVICE OF
SUMMONS ON "ALL PERSONS
INTERESTED"**

14 v.)

15 CITY OF SAN JOSE, and ALL PERSONS)
INTERESTED in the matter of San Jose)
16 Ordinance No. 30716, establishing an)
Annual Gun Harm Reduction Fee,)

Department: 20
Case Filed: March 7, 2022
Trial Date: Not Set

17 Defendants)
18

Calendar preference per CCP § 867

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1 I, Timothy A. Bittle, declare as follows:

2 I am an attorney, duly licensed by the State of California, admitted to practice
3 before this Court, and counsel of record for plaintiffs in this action. I have personal
4 knowledge of the facts to follow and if called upon as a witness my testimony would be
5 the same.

6 1. On March 24, 2022, Judge Socrates Peter Manoukian signed plaintiffs'
7 proposed Order Approving Publication of Summons. The Order directed that notice be
8 given to All Persons Interested using the form of Summons attached to the Order. The
9 Order required publication once a week for three consecutive weeks, with at least five
10 days intervening between publication dates, in the Legal Notices section of the San
11 Jose Mercury News.

12 2. Plaintiffs caused the Summons to be published as ordered on the
13 following dates: April 1, April 7, and April 13, 2022. The newspaper's Proof of
14 Publication is attached hereto as EXHIBIT A.

15 I certify upon penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct and that this declaration was executed April 14, 2022, in
17 the City of Sacramento, California.


18 
19 _____
20 TIMOTHY A. BITTLE
21 Counsel for Plaintiffs
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Exhibit A

San Jose Mercury News

75 E. Santa Clara St , Suite 1100
San Jose, CA 95113
408-920-5332

3757186

HOWARD JARVIS TAXPAYERS ASSOCIATION
ACCTS PAYABLE
921 11TH ST., #1201
SACRAMENTO, CA 95814-2822

**PROOF OF PUBLICATION
IN THE CITY OF SAN JOSE
IN THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

FILE NO. 22CV395596

In the matter of

San Jose Mercury News

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to or interested in the above entitled proceedings; and was at and during all said times and still is the principal clerk of the printer and publisher of the San Jose Mercury News, a newspaper of general circulation printed and published daily in the City of San Jose, County of Santa Clara, State of California as determined by the court's decree dated June 27, 1952, Case Numbers 84096 and 84097, and that said San Jose Mercury News is and was at all times herein mentioned a newspaper of general circulation as that term is defined by Sections 6000; that at all times said newspaper has been established, printed and published in the said County and State at regular intervals for more than one year preceding the first publication of the notice herein mentioned. Said decree has not been revoked, vacated or set aside.

I declare that the notice, of which the annexed is a true printed copy, has been published in each regular or entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

04/01/2022, 04/07/2022, 04/13/2022

Dated at San Jose, California
April 13, 2022

I declare under penalty of perjury that the foregoing is true and correct.



Principal clerk of the printer and publisher of the San Jose Mercury News

Legal No.

0006657022

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND NOT LATER THAN MAY 3, 2022. READ THE INFORMATION BELOW.

AVISO! USTED HA SIDO DEMANDADO. EL TRIBUNAL PUEDE DECIDIR CONTRA USTED SIN AUDIENCIA A MENOS QUE USTED RESPONDA NO MÁS TARDE QUE EL DÍA 3 DE MAYO, 2022. LEA LA INFORMACIÓN QUE SIGUE.

TO ALL PERSONS INTERESTED IN THE MATTER OF CITY OF SAN JOSE ORDINANCE NO. 30716, ESTABLISHING AN ANNUAL GUN HARM REDUCTION FEE.

A civil complaint has been filed in California Superior Court for the County of Santa Clara by Howard Jarvis Taxpayers Association and other plaintiffs against defendant City of San Jose for the purpose of determining the validity of the City's Annual Gun Harm Reduction Fee.

Plaintiffs allege that the new fee violates their constitutional rights of free speech and association, places an unconstitutional condition on the right to bear arms, is a special tax which needed 2/3 voter approval, unlawfully delegates governmental taxing power to a private organization, and for these reasons is invalid.

To be heard regarding this matter, you must file with the court a written response to the complaint by May 3, 2022. If you do not file a timely written response with the court, plaintiffs may apply for entry of default and the relief sought by their complaint. You may obtain a copy of the complaint by contacting plaintiffs' counsel using the address or telephone number shown below. If you respond to defend the legality or validity of the matter, you will not be subject to punitive action such as wage garnishment or seizure of real or personal property.

YOU MAY SEEK THE ADVICE OF AN ATTORNEY IN ANY MATTER CONNECTED WITH THE COMPLAINT OR THIS SUMMONS. SUCH ATTORNEY SHOULD BE CONSULTED PROMPTLY SO THAT YOUR PLEADING MAY BE FILED OR ENTERED WITHIN THE TIME REQUIRED BY THIS SUMMONS.

PUEDE SOLICITAR EL CONSEJO DE UN ABOGADO EN CUALQUIER ASUNTO RELACIONADO CON LA DENUNCIA O CON ESTA CITACIÓN. DICHO ABOGADO DEBERÁ CONSULTARSE INMEDIATAMENTE PARA QUE SU ALEGATO PUEDA SER PRESENTADO O ENTRADO EN EL MOMENTO REQUERIDO POR ESTA CITACIÓN JUDICIAL.

The name and address of the Court is (El nombre y dirección del Tribunal es):

Superior Court, County of Santa Clara
191 North First Street
San Jose, CA 95113
CASE NUMBER (Numero del Caso): 22CV395596

The name, address, and telephone number of plaintiffs' attorney is (El nombre, dirección y número de teléfono de los abogados del demandante es):

Timothy A. Bittle
Howard Jarvis Taxpayers Foundation
921 11th Street, Ste. 1201
Sacramento, CA 95814
Tel: 916-444-9950

SJMN#6657022; April 1,7,13,2022