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 3 Sacramento, CA 95814 (916) 444-9950 4 5 Attorneys for Plaintiffs 6 7 8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA 9 SAN JOSE DIVISION 10 NATIONAL ASSN. FOR GUN RIGHTS, No. 22-cv-00501-BLF 11 et al., 12 **Plaintiffs** 13 14 CITY OF SAN JOSE, et al., 15 **Defendants** 16 No. 22-cv-02365-BLF HOWARD JARVIS TAXPAYERS ASSN.. 17 et al., PLAINTIFFS' ADMINISTRATIVE 18 **Plaintiffs MOTION, SUPPORTING DECLARATION, AND [PROPOSED]** 19 ORDER TO EXTEND TIME FOR ٧. FILING AMENDED COMPLAINT 20 CITY OF SAN JOSE, 21 Defendant Judge: Hon. Beth Labson Freeman Dept: San Jose Courtroom 3 22 23 24 25 26 27

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Pursuant to Civil Local Rules 6-3 and 7-11, Plaintiffs Howard Jarvis Taxpayers Association, et al. ("Plaintiffs") file this Administrative Motion to Change Deadline for Filing Amended Complaint.

Per the Court's September 30, 2022, Order Granting in Part and Denying in Part Defendants' Motion to Dismiss ("Order"), Plaintiffs' Amended Consolidated Complaint is due on February 2, 2023. (Order at 24:18-20.)

Plaintiffs respectfully request that the Court extend this deadline, at least for the Howard Jarvis Taxpayer Plaintiffs in consolidated Case No. 22-cv-02365-BLF, until 30 days after defendant City of San Jose files a Status Report showing that the City has designated a nonprofit organization to receive the Gun Harm Reduction Fee that is the subject of Plaintiffs' case, and set the amount of the Fee.

Plaintiffs have not previously asked the Court for an extension of time.

Plaintiffs believe this extension of time is necessary because, as the City indicated in its recently filed Status Report, it has not yet designated a nonprofit organization to collect the Fee, nor set the final amount of the Fee.

In its September 30, 2022, Order, the Court found that "HJTA Plaintiffs' First Amendment claim against the Fee Provision is not ripe." The Court reasoned that the claim is unripe because "[t]he Nonprofit and, more critically, its activities have not yet been determined." (Order at 18:12-15). In its January 6, 2023, Status Report on Implementation of the Gun Harm Reduction Ordinance ("Status Report"), the City stated that "the CMO has now completed all relevant tasks ... except for the task listed as 'Finalize contract with the designated nonprofit'." (Status Report at 3:6-8.) This was expected to be completed in December 2022. (*Id.* at 3:8.)

The Court set Plaintiffs' deadline of February 2, 2023, "so that Plaintiffs' claims may become ripe upon the City's enactment of further implementing regulations as contemplated by the Ordinance's express terms." (Order at 24: 20-21.) At the hearing on the City's Motion to Dismiss, after the Court announced its intention to dismiss the

complaint as unripe but with leave to amend once the controversy became ripe, the Court turned to setting a date for Plaintiffs to file their amended complaint. The Court remarked, "Mr. Bittle, on the ripeness issue, things are changing, and it's never my goal to make you amend, and amend, and amend. The city ordinance is a little bit of a moving target" (Transcript of Aug. 18, 2022 Hearing at 25:11.) Since the City did not meet its expected deadline, Plaintiffs cannot amend their complaint by the current February 2 deadline. Any amended complaint that Plaintiffs might file would still be, per the reasoning in the Court's September Order, unripe and based on speculation about the Fee amount and the nonprofit organization that the City will eventually designate.

Plaintiffs do not believe changing this deadline will affect any other deadlines as a trial date has not been set in this action. Plaintiffs' hearing on Motion for Remand, set for April 6, 2023, before this Court, will not be affected.

Counsel for the City was asked by email and by voicemail on the morning of January 26, 2023, to stipulate to the proposed extension. Counsel has acknowledged receipt of the request, but has not given an answer. (See Bittle Dec.)

For these reasons, Plaintiffs respectfully ask this Court for an order extending Plaintiffs' time to file an amended complaint.

DATED: January 27, 2023. Respectfully submitted,

JONATHAN M. COUPAL TIMOTHY A. BITTLE LAURA E. DOUGHERTY

TIMOTHY A. BITTLE Attorneys for Plaintiffs

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DECLARATION OF TIMOTHY A. BITTLE IN SUPPORT OF PLAINTIFFS' MOTION TO EXTEND TIME FOR FILING AMENDED COMPLAINT

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

- 1. On January 26, 2023, at approximately 11:15 a.m., I telephoned the law office for Tamarah Prevost, counsel for Defendant City of San Jose. I was told by the receptionist that Ms. Prevost was on another line. So I left a voicemail for Ms. Prevost asking if the City of San Jose would stipulate to an extension of time for the Howard Jarvis Taxpayers Association Plaintiffs to file their amended complaint in light of the fact that the City has not yet set the final amount of its Gun Harm Reduction Fee, nor designated a nonprofit organization to receive the Fee. I left my phone number so that she could return the call.
- 2. The same day, January 26, 2023, at approximately 11:20 a.m., I emailed Ms. Prevost to ask the same question. My email read, in part, "Would you please stipulate to an extension of time for the Howard Jarvis Taxpayers Assn. plaintiffs to file an amended complaint? As you know, the Court set February 2, 2023, as our deadline based on the City's representation to the Court that it would have a nonprofit designated, and the fee amount set, by the end of December. Since that did not happen, the City itself would argue that any amended complaint filed now is premature and based on speculation about the City's intentions. I would like an extension until 30 days after the City files a Status Report indicating that a nonprofit has been designated and a firm fee amount set. Or, if you have a better proposal, I would be happy to consider it."

- 3. About five minutes later, at approximately 11:25 a.m., I received an email from Ms. Prevost stating, "We will respond tomorrow." I immediately replied, "OK, but please call me early. I plan to file our motion tomorrow."
- 4. At approximately 11:35 a.m. the next day, Ms. Prevost sent me this email: "Mr. Bittle so I can properly evaluate your request, are you making it on behalf of just HJTA, or also the NAGR plaintiffs?" I answered, "HJTA only." That was the last I heard from Ms. Prevost. Because it was Friday, and my legal secretary leaves at 3:00 p.m. on Fridays, we finalized these moving papers and she filed them before leaving.
- 5. I have been practicing law for 40 years. It is my experience that attorneys routinely stipulate to a first request for extension of time as a matter of professional courtesy. In my opinion, given that Plaintiffs need an extension of time only because the City has not yet set a firm amount for its Fee or designated a nonprofit organization to receive the Fee, the City should have readily granted the requested extension without considering whether a strategic advantage could be gained by denying the request.

I certify upon penalty of perjury that the foregoing is true and correct and that this declaration was executed this 27th day of January, 2023, in the City of Vacaville, California.

TIMOTHY A. BITTLE

[PROPOSED] ORDER Regarding Howard Jarvis Taxpayers Association v. City of San Jose and All Persons Interested, consolidated Case No. No. 22-cv-02365-BLF: Good cause appearing, Plaintiffs' motion for an extension of time to file their amended complaint is GRANTED. The deadline to file Plaintiffs' amended complaint is rescheduled to 30 days after defendant City of San Jose files a Status Report showing that the City has designated a nonprofit organization to receive the Gun Harm Reduction Fee, and has set the amount of the Fee, or is rescheduled to: ______, 2023. IT IS SO ORDERED. Date:_____ Honorable Beth Labson Freeman Judge, United States District Court. Northern District of California