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

11 NATIONAL ASSN. FOR GUN RIGHTS,
et al.,

12 Plaintiffs

13 v.

14 CITY OF SAN JOSE, *et al.*,

15 Defendants

No. 22-cv-00501-BLF

16 _____
17 HOWARD JARVIS TAXPAYERS ASSN.,
et al.,

18 Plaintiffs

19 v.

20 CITY OF SAN JOSE,

21 Defendant

No. 22-cv-02365-BLF

**PLAINTIFFS' ADMINISTRATIVE
MOTION, SUPPORTING
DECLARATION, AND [PROPOSED]
ORDER TO EXTEND TIME FOR
FILING AMENDED COMPLAINT**

Judge: Hon. Beth Labson Freeman
Dept: San Jose Courtroom 3

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

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

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

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

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

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

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

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

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

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

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

18 DATED: January 27, 2023.

Respectfully submitted,

19 JONATHAN M. COUPAL
20 TIMOTHY A. BITTLE
21 LAURA E. DOUGHERTY



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23 Attorneys for Plaintiffs
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[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