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 CITY AND COUNTY OF SAN FRANCISCO,
 8 MAYOR GAVIN NEWSOM and POLICE CHIEF
 HEATHER FONG
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10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13

14 ESPANOLA JACKSON, PAUL COLVIN,
 THOMAS BOYER, LARRY BARSETTI,
 15 DAVID GOLDEN, NOEMI MARGARET
 ROBINSON, NATIONAL RIFLE
 16 ASSOCIATION OF AMERICA, INC. SAN
 FRANCISCO VETERAN POLICE
 17 OFFICERS ASOCIATION,

Case No. C09-2143 RS

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT**

18 Plaintiffs,

19 vs.

20 CITY AND COUNTY OF SAN
 FRANCISCO, MAYOR GAVIN NEWSOM,
 21 in his official capacity; POLICE CHIEF
 HEATHER FONG, in her official capacity,
 22 and Does 1-10,

23 Defendants.
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1 Pursuant to this Court's order dated March 18, 2010, the parties hereby submit this Joint Case
2 Management Conference Statement.

3 **1. Date case was filed**

4 May 15, 2009.

5 **2. List or description of all parties**

6 There are both individual and organizational plaintiffs. The individual plaintiffs are Espanola
7 Jackson, Paul Colvin, Thomas Boyer, Larry Barsetti, David Golden, and Noemi Margaret Robinson.
8 The organizational plaintiffs are the National Rifle Association and the San Francisco Veteran Police
9 Officers Association.

10 Defendants are the City and County of San Francisco, and its Mayor and Police Chief in their
11 official capacities only.

12 **3. Summary of all claims**

- 13 A. Whether, assuming the forthcoming U.S. Supreme Court decision in *McDonald v.*
14 *Chicago* holds that the Second Amendment is incorporated against the States, and
15 in light of its recent decision in *District of Columbia v. Heller* (2008) 128 S. Ct.
16 2783, 2818, 171 L. Ed. 637, 680, several San Francisco ordinances unduly burden
17 Plaintiffs' Right to Keep and Bear Arms under the Second Amendment to the
18 United States Constitution.
- 19 B. Whether SFPC § 613.10(g) also violates Plaintiffs' right to Due Process under the
20 Fifth Amendment to the United States Constitution insofar as its ban on all
21 ammunition that "serves no sporting purpose" is both vague and over-broad.
- 22 C. Whether the three challenged ordinances also violate related California laws:
23 including (1) Article 1, section 1 of the California Constitution (right to self
24 defense); (2) California Penal Code § 12026(b) (right to possess handgun in home
25 or business); (3) and innumerable statutes, and the public policy they express,
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1 authorizing the use of firearms in self-defense, especially in light of *Fiscal v. City*
2 *and County of San Francisco* (2008) 158 Cal.App.4th 895.

3 D. Whether the Court has jurisdiction over the case, or should decline to exercise that
4 jurisdiction for prudential reasons, where defendants contend that none of the
5 challenged ordinances have been enforced against plaintiffs and the plaintiffs face
6 no immediate threat of enforcement.

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8 **4. Brief description of the event underlying the action**

9 Plaintiffs challenge the validity of three San Francisco ordinances: (1) San Francisco Police
10 Code (“SFPC”) § 4512, enacted in August of 2007, which provides in pertinent part: “No person shall
11 keep a handgun within a residence unless the handgun is stored in a locked container or disabled with
12 a trigger lock that has been approved by the California Department of Justice;” (2) SFPC § 613.10(g)
13 (amended most recently in August 2007), which prohibits the sale of all ammunition that “serves no
14 sporting purpose” or is designed to expand or fragment upon impact; and (3) SFPC § 1290, which
15 prohibits without exception (e.g., for self-defense) the discharge of any firearms within the limits of
16 the City and County of San Francisco.

17 **5. Description of relief sought and damages claimed with an explanation as to**
18 **how damages are computed**

18 Plaintiffs request the following relief:

19 1) For a declaration that San Francisco Police Code §§ 4512, 613.10(g), and 1290 infringe
20 upon the right to keep and bear arms protected by the Second Amendment or the right to Due Process
21 under the Fifth Amendment, as incorporated into the Fourteenth Amendment;

22
23 2) For a preliminary and permanent prohibitory injunction forbidding City and County of San
24 Francisco and its agents, employees, officers, and representatives, including Defendants Mayor
25 Newsom and Police Chief Fong, from enforcing, or attempting to enforce San Francisco Police Code
26 §§ 4512, 613.10(g), and 1290;

1 3) In the alternative, pursuant to California law, for: (1) a declaration that San Francisco Police
2 Code §§ 4512, 1290, and/or 613.10(g) infringe upon the right to use a handgun in defense of self and
3 others guaranteed by Article 1, section 1 of the California Constitution, in conjunction with California
4 Penal Code § 12026 and related state laws; and (2) a preliminary and permanent prohibitory injunction
5 forbidding the City and County of San Francisco and its agents, employees, officers, and
6 representatives, including Defendants Mayor Newsom and Police Chief Fong, from enforcing, or
7 attempting to enforce San Francisco Police Code §§ 4512, 1290 and/or 613.10(g); for attorneys fees
8 pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988, California Code of Civil Procedure § 1021.5
9 (private attorney general statute) and/or other applicable state and federal law.
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11 **6. Status of discovery (including any limits or cutoff dates)**

12 This case has not yet entered the discovery phase, nor has the Court yet issued a Case
13 Management Order.

14 **7. Procedural history of the case including previous motions decided and/or**
15 **submitted, ADR proceedings or settlement conferences scheduled or**
16 **concluded, appellate proceedings pending or concluded, and any previous**
17 **referral to a magistrate judge**

18 Defendants responded to the complaint with a motion to dismiss, alleging that plaintiffs lacked
19 standing because they had alleged no injury nor an imminent threat of enforcement of the challenged
20 statutes against them. On August 24, 2009, prior to the hearing, plaintiffs filed a First Amended
21 Complaint that mooted the motion.

22 On August 27, 2009, the Court held an Initial Case Management Conference. The parties
23 informed the Court that they had stipulated to stay the case pending resolution of the question whether
24 the Second Amendment is incorporated against the States, which was soon to be decided by the Ninth
25 Circuit in *Nordyke v. King*. The Court agreed to stay this case, and in the meantime the U.S. Supreme
26 Court has taken up the incorporation issue in *McDonald v. Chicago*, which has now been heard but not
27 yet decided. A decision is anticipated by the end of June 2010. The stay is set be lifted once the Ninth
28 Circuit issues its *Nordyke* opinion, which has been stayed pending the *McDonald* opinion. Plaintiffs
now believe the stay should end with the issuance of the *McDonald* opinion. Defendants believe the

1 stay should continue until the *Nordyke* decision is issued. This issue is unresolved between the parties.
2 In any event, once the Court lifts the stay, defendants will have 20 days to respond to the First
3 Amended Complaint.

4 In November 2009, both parties asked the Court to relate a later-filed case, *Pizzo v. Newsom*,
5 N.D. Cal. No. C09-4493CW, to this case. Except for the addition of a claim against the State's
6 concealed carry regulations and the addition of a few more San Francisco officials as defendants, that
7 case is identical to this case. It attacks all the same San Francisco ordinances on all the same legal
8 bases, and it even copies some of the exact language of plaintiffs' complaint. Judge Hamilton denied
9 the request on November 20, 2009.

10 **3. Other deadlines in place (before reassignment), including those for**
11 **dispositive motions, pretrial conferences and trials**

12 None.

13 **4. Any requested modification of these dates and the reason for the request**

14 None.

15 **5. Whether the parties will consent to a magistrate judge for trial**

16 Defendants do not consent.

17 **6. Whether Judge Seeborg has previously conducted a settlement conference**
18 **in this case**

19 No.

20 **7. Whether there exists an immediate need for a case management conference**
21 **to be scheduled in this action.**

22 No. This case should remain stayed at least until the Second Amendment incorporation
23 question has been decided in the *McDonald* case, and possibly until the Ninth Circuit issues its en
24 banc opinion in *Nordyke v. King*. The *McDonald* opinion is expected to issue by the end of June 2010;
25 the timeline for the *Nordyke* opinion is less certain. The defendants suggest a case management

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1 conference be scheduled once the stay is lifted. The plaintiffs suggest a scheduling conference be held
2 in July 2010, after the *McDonald* decision is issued.

3 Dated: April 2, 2010

4 DENNIS J. HERRERA
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9 By: _____/s/_____
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12 Francisco, Mayor Gavin Newsom and Police Chief
13 Heather Fong

14 MICHEL & ASSOCIATES, P.C.

15 By: _____/s/_____
16 C.D. MICHEL
17 Attorney for Plaintiffs