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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

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ESPANOLA JACKSON, PAUL COLVIN,) CASE NO. CO9-2143 RS

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THOMAS BOYER, LARRY BARSETTI,)

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DAVID GOLDEN, NOEMI MARGARET)

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ROBINSON, NATIONAL RIFLE)

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ASSOCIATION OF AMERICA, INC., SAN)

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FRANCISCO VETERAN POLICE)

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OFFICERS ASSOCIATION,)

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**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL COMPLAINT**

Hearing Date: June 9, 2011
Time: 1:30 p.m.
Place: Courtroom 3, 17th Fl.

Hon. Richard Seeborg

Plaintiffs

vs.

CITY AND COUNTY OF SAN
FRANCISCO, MAYOR EDWIN LEE, in
his official capacity; ACTING POLICE
CHIEF JEFF GODOWN, in his official
capacity, and Does 1-10,

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Amended Complaint currently on file in this matter concerns Defendants' enactment and enforcement of three municipal code sections that improperly infringe Plaintiffs' right to use a firearm in defense of self, others, and property. Because Defendants amended one of those code sections subsequent to the filing of the Complaint, Plaintiffs now seek leave to file supplemental pleadings to address the amended code sections that have materialized since the filing of the Amended Complaint.²

II. STATEMENT OF FACTS

Plaintiffs' Complaint was originally filed in this action on May 15, 2009 and was amended by Plaintiffs on August 24, 2009. The Amended Complaint raises four causes of action, one of which challenges San Francisco Police Code section 1290,³ formerly a ban on the discharge of all firearms and fireworks within the City and County of San Francisco. Plaintiffs allege that section 1290 violates Plaintiffs' Second Amendment right to keep and bear arms and, in particular, their right to use any firearm to defend themselves and others within the City and County of San Francisco. (Am. Compl. 15:10-16:13.)

On March 31, 2011, Defendants filed a reply brief in support of their Motion Dismiss, wherein it was argued that Plaintiffs' section 1290 challenge was moot because the challenged section had been amended fifteen days earlier by Defendant City and County of San Francisco. (Defs.' Reply Supp. Mot. to Dismiss 1:16-19.) Among other things, the cited amendment removed all references to the discharge of firearms from section 1290 and amended section 4502 to prohibit the discharge of any firearm within City and County limits, subject to limited exceptions codified at section 4506—also recently amended. Section 4506 now permits discharges when made by:

- (1) Sheriffs, constables, marshals, police officers, or other duly appointed police officers in the performance of their official duties, or any person summoned by such officer to assist in making arrests or preserving the peace while said person so

² A copy of the Proposed Supplemental Complaint is attached to the Declaration of Clinton B. Monfort as Exhibit A.

³ Unless noted, all statutory references are to the San Francisco Police Code.

1 summoned is actually engaged in assisting such officer;

2 (2) Persons in lawful possession of a handgun who discharge said handgun in
3 necessary and lawful defense of self or others while in a personal residence; or

4 (3) Persons in lawful possession of a firearm or projectile weapon who are expressly
5 and specifically authorized by federal or state law to discharge said firearm or
6 projectile weapon under the circumstances present at the time of discharge.

7 S.F., Cal., Ordinance 50-11.⁴

8 In its Order of April 8, 2011, the Court requested Plaintiffs file a supplemental brief setting
9 forth their position as to the effect of the amendments. On April 15, 2011, Plaintiffs filed the
10 ordered brief, wherein they maintained that Defendants' amendments failed to redress Plaintiffs'
11 general claims that the discharge ban violates Plaintiffs' Second Amendment rights to keep and
12 bear arms. (Pls' Suppl. Br. Opp. Defs.' Mot. to Dismiss 1:8-11.) On those grounds, Plaintiffs
13 argued the Court should not dismiss their claim as moot. (*Id.* at 1:15.)

14 Upon further reflection, however, Plaintiffs believe the proper method by which to proceed
15 is to file a supplemental complaint that fully and specifically addresses Plaintiffs' Second
16 Amendment challenge to section 4502 because the direction of this challenge has been altered
17 somewhat in light of Defendants' amendments to sections 1290, 4502, an 4506. (Monfort Decl. ¶
18 3.) For example, Plaintiffs' claims now lie with respect to section 4502, not section 1290. And
19 Plaintiffs' original challenge focused moreso on the inability to discharge handguns in the home,
20 one of the more obvious problems with section 1290, which now appears to be cured by section.
21 As such, Plaintiffs now bring this noticed Motion for Leave to File Supplemental Complaint,
22 relief which was also sought, pursuant to the Court's interpretation of the effects of Defendants'
23 recent legislative amendments, in Plaintiffs' Supplemental Brief.

24 **III. THE COURT SHOULD GRANT PLAINTIFFS LEAVE TO FILE A
25 SUPPLEMENTAL COMPLAINT, ALLEGING FACTS NOT IN EXISTENCE
26 WHEN THE AMENDED COMPLAINT WAS FILED**

27 Federal Rule of Civil Procedure 15(d) permits the filing of a supplemental pleading that
28 introduces a cause of action not alleged in the original or amended complaints based on facts not

⁴ A true and accurate copy of San Francisco Ordinance 50-11 is attached as Exhibit 1 to the Proposed Supplemental Complaint.

1 in existence when the those pleadings were filed. *Cabrera v. City of Huntington Park*, 159 F.3d
 2 374, 382 (9th Cir. 1998). While supplemental pleadings can only be filled with leave of court and
 3 upon such terms as are just, they are favored because they enable to court to award *complete relief*
 4 *in the same action*, avoiding the costs and delays of separate suits. As such, absent a clear showing
 5 of prejudice to the opposing party, supplemental pleadings are liberally allowed. *Keith v. Volpe*,
 6 858 F.2d 467, 473 (9th cir. 1988). Because such a showing of prejudice cannot be made, this
 7 Court should grant Plaintiffs' motion.

8 Here, Plaintiffs seek to file a supplemental complaint because Defendants' recent
 9 amendment to section 4502 and their new exceptions for limited self-defense discharges have
 10 created the need to challenge to a different municipal code section. And the facts supporting this
 11 challenge did not exist when the Amended Complaint was filed.⁵ For instance, Plaintiffs'
 12 Proposed Supplemental Complaint includes several allegations of fact regarding the amendment
 13 of section 4502 and 4506 and the ongoing enforcement of those sections since March 2011.
 14 (Monfort Decl. ¶ 4; Ex. A, 1:18-16:8, 3:5-7, 5:14-6:1.)

15 Further, no prejudice will be invited upon Defendants by the filing of supplemental
 16 pleadings. Defendants have yet to file an Answer to Plaintiffs' Amended Complaint, no
 17 scheduling order has been established in this case, and, as such, the parties are not likely enter trial
 18 phase in the next few weeks. Defendants will thus have more than ample time to prepare a defense
 19 to Plaintiffs' newly raised cause of action.

20 Plaintiffs have met and conferred with Defendants on the issue of filing supplemental
 21 pleadings. Defendants indicated they would likely object, and did not respond to Plaintiffs'
 22 stipulation request after being provided a draft of Plaintiffs' Supplemental Complaint (Monfort
 23 Decl. ¶ 4.)

24 _____
 25 ⁵ Procedurally, Plaintiffs' discharge ban challenge must now focus on sections
 26 4502 and 4506, as section 1290 no longer bans the discharge of firearms. Substantively,
 27 the focus of Plaintiffs' challenge has also changed in the face of new language in sections
 28 4502 and 4506 that was not employed by section 1290.

If the Court grants this Motion, Plaintiffs would seek to dismiss their fifth claim—
 the challenge to section 1290 – as indicated in communications with Defendants' counsel.
 (Monfort Decl. ¶ 4.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ESPANOLA JACKSON, PAUL COLVIN,)	CASE NO.: CV-09-2143-RS
THOMAS BOYER, LARRY BARSETTI,)	
DAVID GOLDEN, NOEMI MARGARET)	
ROBINSON, NATIONAL RIFLE)	CERTIFICATE OF SERVICE
ASSOCIATION OF AMERICA, INC. SAN)	
FRANCISCO VETERAN POLICE)	
OFFICERS ASSOCIATION,)	
)	
)	
Plaintiffs)	
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vs.)	
)	
CITY AND COUNTY OF SAN)	
FRANCISCO, MAYOR EDWIN LEE, in)	
his official capacity; ACTING POLICE)	
CHIEF JEFF GODOWN, in his official)	
capacity, and Does 1-10,)	
)	
Defendants.)	

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of:

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE
SUPPLEMENTAL COMPLAINT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Wayne Snodgrass, Deputy City Attorney
Sherri Sokeland Kaiser, Deputy City Attorney
sherri.kaiser@sfgov.org
City and County of San Francisco
Office of the City Attorney
City Hall 1 Drive Carlton B.
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 3, 2011.

/S/
C. D. Michel
Attorney for Plaintiffs'