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**United States District Court**

NORTHERN DISTRICT OF CALIFORNIA *filling*

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

**SUMMONS IN A CIVIL CASE**

CASE NUMBER:

**CV 09**

**2143**

v.

CITY AND COUNTY OF SAN FRANCISCO, MAYOR  
GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY;  
POLICE CHIEF HEATHER FONG, in her official  
capacity, and Does 1-10,

**PJH**

TO: (Name and address of Defendant)

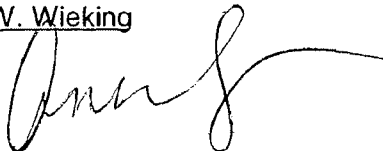
CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY;  
POLICE CHIEF HEATHER FONG, in her official capacity, and Does 1-10,

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

C. D. Michel  
TRUTANICH - MICHEL, LLP  
180 East Ocean Blvd., Suite 200  
Long Beach, CA 90802  
Telephone: (562) 216-4444

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Richard W. Wieking  
CLERK



**MAY 15 2009**

DATE \_\_\_\_\_

(BY) DEPUTY CLERK  
**ANNA SPRINKLES**

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 RECEIVED BY CLERK U.S. DISTRICT COURT  
 SAN FRANCISCO, CALIFORNIA

7 Attorneys for Plaintiffs  
8

9 **IN THE UNITED STATES DISTRICT COURT**  
 10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 11 **SAN FRANCISCO DIVISION**

**PJH**

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

CASE NO. **CV 09 2143**  
**COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF**

17 Plaintiffs

18 vs.

19  
 20 CITY AND COUNTY OF SAN  
 FRANCISCO, MAYOR GAVIN  
 NEWSOM, in his official capacity;  
 21 POLICE CHIEF HEATHER FONG,  
 in her official capacity, and Does 1-  
 22 10,

23 Defendants.  
24

25 Plaintiffs, by and through their undersigned attorneys, bring this Complaint  
 26 for Declaratory and Injunctive Relief against the above-named Defendants, their  
 27 employees, agents, and successors in office, and in support thereof allege the  
 28 following upon information and belief:

1 C. D. Michel - S.B.N. 144258  
Don B. Kates - S.B.N. 39193  
2 Glenn S. McRoberts - SBN 144852  
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7 Attorneys for Plaintiffs

8

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO DIVISION**

12 ESPANOLA JACKSON, PAUL ) CASE NO.  
COLVIN, THOMAS BOYER, )  
13 LARRY BARSETTI, DAVID ) **COMPLAINT FOR DECLARATORY**  
GOLDEN, NOEMI MARGARET ) **AND INJUNCTIVE RELIEF**  
14 ROBINSON, NATIONAL RIFLE )  
ASSOCIATION OF AMERICA, )  
15 INC. SAN FRANCISCO VETERAN )  
POLICE OFFICERS )  
16 ASSOCIATION, )

17 Plaintiffs

18 vs.

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

23 Defendants.

24  
25 Plaintiffs, by and through their undersigned attorneys, bring this Complaint  
26 for Declaratory and Injunctive Relief against the above-named Defendants, their  
27 employees, agents, and successors in office, and in support thereof allege the  
28 following upon information and belief:

1 INTRODUCTION

2 1. Plaintiffs bring this suit to challenge the validity of San Francisco Police  
3 Code §§ 4512, 1290, and 613.10(g) enacted by Defendant City and County of San  
4 Francisco and enforced by its Mayor, Gavin Newsom, and its Chief of Police,  
5 Heather Fong<sup>1</sup> (collectively, "CITY"). Each of these code sections violates  
6 Plaintiffs' right to keep and bear arms under the Second Amendment to the United  
7 States Constitution and, in particular, their right to defend themselves and others by  
8 exercising that right within their own homes.

9 2. San Francisco Police Code § 4512 (hereafter, "Section 4512") requires that  
10 handguns kept within the home be stored in a *locked* container or *disabled* with a  
11 trigger lock. Thus, Section 4512 requires Plaintiffs and other city residents to  
12 render and keep their handguns inoperable and, in effect, useless for self-defense  
13 purposes.

14 3. The United States Supreme Court recently struck down a similar "trigger  
15 lock" ordinance in *District of Columbia v. Heller*, 128 S. Ct. 2783, 2818, 171 L.  
16 Ed. 637, 680 (2008), holding "the District's requirement (as applied to respondent's  
17 handgun) that firearms in the home be rendered and kept inoperable at all times . . .  
18 makes it impossible for citizens to use them for the core lawful purpose of self-  
19 defense and is hence unconstitutional."

20 4. CITY's requirement that handguns in the home be stored in a locked  
21 container or disabled with a trigger lock likewise makes it impossible for city  
22 residents, including Plaintiffs, to use their handguns for the core lawful purpose of  
23 self-defense – particularly in urgent, life-threatening situations when the need to  
24 exercise the Constitutional right to self-defense is most acute. As the Supreme  
25 Court in *Heller* recognized, in such life-threatening situations, one has little time –  
26 if any – to fumble around in the dark and remove a trigger lock or open and

27  
28 <sup>1</sup> Police Chief Heather Fong is retiring; Plaintiffs will substitute in her  
successor when one is in place.

1 retrieve a handgun from a safe to ward off a violent attack. As in *Heller*, CITY’s  
2 requirements here violate Plaintiffs’ right to defend themselves against such attacks  
3 by exercising their Second Amendment right to keep and bear arms.

4 5. In addition, San Francisco Police Code § 1290’s blanket prohibition  
5 against the “discharge [of] any firearms” within the City and County of San  
6 Francisco – with no exception for self-defense discharges within the home –  
7 violates Plaintiffs’ right to keep and bear arms in defense of self and others as  
8 guaranteed by the Second Amendment. Section 1290 punishes and deters the  
9 exercise of that right.

10 6. Plaintiffs also challenge on Second Amendment grounds CITY’s ban on  
11 the sale, lease or transfer of ammunition that “serves no sporting purpose,” or is  
12 designed to expand or fragment upon impact. (San Francisco Police Code  
13 § 613.10(g), hereafter “Section 613.10(g).”) Self-defense is not a “sport.” Section  
14 613.10(g)’s ban is, in effect, a ban on self-defense ammunition and thus prohibits  
15 city residents, including Plaintiffs, from purchasing ammunition used for self-  
16 defense – the same ammunition used by law enforcement for defense of self and  
17 others. Banning the sale of ammunition specifically designed for self-defense  
18 violates Plaintiffs’ right to keep and bear arms under the Second Amendment and  
19 defeats its “core lawful purpose of self-defense.”

20 7. Moreover, Section 613.10(g)’s ban on the sale/purchase of any and all  
21 ammunition that “serves no sporting purpose” is vague and overbroad, and fails to  
22 adequately inform Plaintiffs or anyone about which ammunition is in fact banned,  
23 in violation of Plaintiffs’ rights to Due Process under the Fifth Amendment.

24 8. Accordingly, Plaintiffs seek declaratory and injunctive relief to invalidate  
25 and halt CITY’s enforcement of Sections 4512, 1290, and 613.10(g).

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**JURISDICTION and VENUE**

9. Jurisdiction of this action is founded on 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the United States, and under 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 in that this action seeks to redress the deprivation, under color of the laws, statutes, ordinances, regulations, customs and usages of the State of California and political subdivisions thereof, of rights, privileges or immunities secured by the United States Constitution and by Acts of Congress. The Court has supplemental jurisdiction over Plaintiffs’ state law claims asserted herein under 28 U.S.C. § 1367 because such claims arise out of the same case or controversy as the federal claims.

10. Plaintiffs’ claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202.

11. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims occurred in this district.

**INTRADISTRICT ASSIGNMENT**

12. Pursuant to Civil Local Rule 3-2(c), this action arises in the County of San Francisco because a substantial part of the events or omissions giving rise to the claims occurred in that County. Pursuant to Civil Local Rule 3-2(d), this action should be assigned to either the San Francisco or Oakland Division.

**PARTIES**

13. Plaintiff Espanola Jackson is a seventy-four-year-old woman who resides in San Francisco. She is an African American civil rights activist who owns handguns and keeps them in her home for self-defense and other lawful purposes.

14. Plaintiff Paul Colvin is an eighty-four-year-old resident of San Francisco, who owns handguns and keeps them in his home for self-defense and other lawful purposes. Due to his age, Plaintiff Colvin finds opening a gun safe or unfastening a trigger lock to be difficult.

1           15. Plaintiff Thomas Boyer is a resident of San Francisco. He is a gay civil  
2 rights activist and an officer of the San Francisco Chapter of Pink Pistols, an  
3 organization that represents the interests of gay, lesbian, bisexual and  
4 transgendered firearms owners, with specific emphasis on self-defense issues, in  
5 over 32 states with 40 chapters. Mr. Boyer owns handguns and keeps them in the  
6 home for self-defense and other lawful purposes.

7           16. Plaintiff Larry Barsetti is a resident of San Francisco. He is a retired  
8 police officer and Secretary of the San Francisco Veteran Police Officer's  
9 Association. He, as well as many other veteran police officers, owns handguns and  
10 keeps them in the home for self-defense and other lawful purposes.

11           17. Plaintiff David Golden is a resident of San Francisco who owns handguns  
12 and keeps them in the home for self-defense and other lawful purposes. He has  
13 been harassed by city agencies regarding the manner of storage of firearms in his  
14 home.

15           18. Plaintiff Noemi Margaret Robinson is a female homeowner in San  
16 Francisco who owns handguns and keeps them in the home for self-defense and  
17 other lawful purposes.

18           19. Plaintiff National Rifle Association of America, Inc. (hereafter "NRA")  
19 is a non-profit association incorporated under the laws of New York, with its  
20 principal place of business in Fairfax, Virginia. The NRA has a membership of  
21 approximately 4 million persons. NRA members reside in the City and County of  
22 San Francisco, including Plaintiff David Golden. The purposes of the NRA  
23 include protection of the right of citizens to have firearms for the lawful defense of  
24 their families, persons, and property, and to promote public safety and law and  
25 order. The NRA brings this action on behalf of itself and its members, some of  
26 whom reside in, and others of whom travel through, the City and County of San  
27 Francisco.

28           20. Plaintiff San Francisco Veteran Police Officers Association is an

1 organization that represents the interests of veteran police officers in the City and  
2 County of San Francisco. Many of these veteran police officers own handguns and  
3 live within the City and County of San Francisco, including Plaintiff Larry Barsetti.

4 21. Each of the individual Plaintiffs identified above are citizens and  
5 taxpayers of the City and County of San Francisco who seek to keep their handguns  
6 within the home in a manner ready for immediate use to protect themselves and  
7 their families from attack by violent intruders, as is their right under the Second  
8 Amendment to the United States Constitution – a right the CITY now denies them  
9 by enforcing Sections 4512, 1290, and 613.10(g).

10 22. Each of the associational Plaintiffs identified above has individual  
11 members who, like the named individual Plaintiffs, are citizens and taxpayers of  
12 the City and County of San Francisco who have an acute interest in keeping their  
13 handguns within the home in a manner ready for immediate use to protect  
14 themselves and their families, but are prevented from doing so by CITY's  
15 enforcement of Sections 4512, 1290, and 613.10(g), and thus have standing to seek  
16 declaratory and injunctive relief to halt that enforcement; the interests of these  
17 members are germane to their respective associations' purposes; and neither the  
18 claims asserted nor the relief requested herein requires that these members  
19 participate in this lawsuit individually.

20 23. Defendant City and County of San Francisco is a municipal corporation  
21 acting as such by and under state law. Defendant City and County of San  
22 Francisco is a "person" acting under color of state law within the meaning of 42  
23 U.S.C. § 1983, and principally responsible for implementing and enforcing  
24 Sections 4512, 1290, and 613.10(g).

25 24. Defendant Gavin Newsom is the current mayor and chief executive  
26 officer of Defendant City and County of San Francisco. Defendant Newsom is an  
27 agent, servant, and/or employee of Defendant City and County of San Francisco,  
28 acting under color of state law as that phrase is used in 42 U.S.C. § 1983,



1 responsible for enforcing Sections 4512, 1290 and 613.10(g). Defendant Newsom  
2 is sued in his official capacity.

3 25. Defendant Heather Fong (or her successor in office) is the Chief of  
4 Police of Defendant City and County of San Francisco. Defendant Fong is an  
5 agent, servant, and/or employee of Defendant City and County of San Francisco,  
6 acting under color of state law as that phrase is used in 42 U.S.C. § 1983,  
7 responsible for enforcing Sections 4512, 1290 and 613.10(g). Defendant Fong (or  
8 her successor in office) is sued in her official capacity.

9 **GENERAL ALLEGATIONS**

10 26. In August of 2007, Defendant Newsom signed into law and CITY began  
11 enforcing San Francisco Police Code § 4512, which provides in pertinent part: “No  
12 person shall keep a handgun within a residence unless the handgun is stored in a  
13 locked container or disabled with a trigger lock that has been approved by the  
14 California Department of Justice.” (A copy of San Francisco Police Code § 4512 is  
15 attached hereto as Exhibit “A” and incorporated herein.)

16 27. Under CITY’s policy, a person may not keep a working handgun in the  
17 home for emergency use – at least not one that is readily accessible and unsecured  
18 by locking devices, which is by definition what is required in an emergency. In  
19 short, the CITY’s policy renders a person’s handgun useless in a self-defense  
20 emergency, just as it renders one’s right to keep and bear arms in the home for self-  
21 defense meaningless. Moreover, CITY’s trigger lock requirement has no exception  
22 for self-defense use, subjecting anyone who uses a handgun in self-defense in the  
23 home to possible arrest and prosecution.

24 28. On June 26, 2008, the United States Supreme Court held in *District of*  
25 *Columbia v. Heller*, 128 S. Ct. 2783, 2821-22 (2008), that “the District’s ban on  
26 handgun possession in the home violates the Second Amendment, as does its  
27 prohibition against rendering any lawful firearm in the home operable for  
28 immediate self-defense.”

1           29. The *Heller* decision invalidated CITY's policy under San Francisco's  
2 Section 4512 that prohibits the rendering of lawful handguns in the home operable  
3 for immediate self-defense by requiring all handguns to be stored in a locked  
4 container or disabled with a trigger lock.

5           30. In addition to rendering Plaintiffs' handguns inoperable within the home  
6 for immediate self-defense, CITY prohibits the sale of ammunition intended for use  
7 in self-defense situations, pursuant to Section 613.10(g). Thus, in the unlikely  
8 event that Plaintiffs have sufficient time to render their handguns operable to ward  
9 off attacks within their homes, CITY requires them to do so only with ammunition  
10 suitable for "sporting purposes," rather than ammunition specifically designed for  
11 use in self-defense emergencies. This further limits the ability of Plaintiffs to  
12 adequately and safely defend themselves and their families within the sanctity of  
13 their own homes, as is their right under the Second Amendment.

14           31. CITY also prohibits the discharge of any firearm within city limits,  
15 pursuant to Section 1290, without any exception for self-defense, thereby  
16 subjecting Plaintiffs and others within the city to criminal charges for discharging a  
17 firearm within their homes in defense of themselves or others.

18           32. To date, CITY has failed to repeal and continues to enforce Sections  
19 4512, 1290 and 613.10(g) despite the Supreme Court's ruling in *Heller* that the  
20 Second Amendment guarantees the right of individuals to keep and bear arms and,  
21 specifically, to keep handguns in the home operable for immediate self-defense.

22           33. Plaintiffs Espanola Jackson, Paul Colvin, Thomas Boyer, Larry Barsetti,  
23 David Golden, and Noemi Margaret Robinson, are responsible law-abiding adults  
24 qualified to own firearms under the laws of the United States and the laws of the  
25 State of California. Plaintiffs seek to lawfully possess handguns in their homes in  
26 an operable state for immediate self-defense use, along with handgun ammunition  
27 intended for use in defense of self or others.

28           34. Plaintiffs seek to exercise their rights to defend themselves, their homes

1 and families by keeping firearms in the home, including handguns, available for  
2 immediate use by assembling them, removing trigger locks, removing them from  
3 locked storage containers, and loading them with the appropriate ammunition and,  
4 if necessary, discharging them in defense of self or others. CITY's policies under  
5 Sections 4512, 1290 and 613.10(g) prevent them from doing so and otherwise  
6 criminalize the exercise of Plaintiffs' Second Amendment rights.

7 35. Because CITY has not repealed and continues to enforce Sections 4512,  
8 1290 and 613.10(g), Plaintiffs continue to face the potential for criminal  
9 prosecution by exercising their Constitutional right to keep a handgun in the home  
10 that is operable for immediate self-defense, to use ammunition suitable for that  
11 purpose and, if necessary, to discharge the handgun in defense of themselves or  
12 others.

13 36. Because CITY has not repealed and continues to enforce Sections 4512,  
14 1290 and 613.10(g), Plaintiffs are subjected to irreparable harm in that they are  
15 unable to keep their handguns within the home in a manner ready for immediate  
16 use to protect themselves and their families from attack by violent intruders. But  
17 for these provisions, Plaintiffs would forthwith, at any time they deem it reasonable  
18 and necessary, keep their handguns in their residences without being stored in a  
19 locked container or disabled with a trigger lock; would forthwith purchase  
20 ammunition designed for self-defense use without regard to whether it serves any  
21 sporting purpose; and would discharge their firearms if threatened with imminent  
22 deadly force consistent with the laws of the State of California.

23 **DECLARATORY JUDGMENT ALLEGATIONS**

24 37. There is an actual and present controversy between the parties hereto in  
25 that Plaintiffs contend that CITY's policy of forbidding residents from possessing  
26 handguns in an operable condition, loaded with suitable ammunition, and available  
27 for immediate use in self-defense is unlawful, and presents an ongoing,  
28 unnecessary – and dangerous – burden on Plaintiffs' right to self-defense under the

1 Second Amendment, as does the threat of prosecution for discharging a firearm in  
2 self-defense. CITY denies these contentions. Plaintiffs desire a judicial  
3 declaration of their rights and CITY's duties, namely, that CITY's policies under  
4 Sections 4512, 1290 and 613.10(g) violate Plaintiffs' Second Amendment rights.  
5 Plaintiffs should not have to face criminal prosecution by CITY for exercising their  
6 Constitutional right to keep and bear arms to defend themselves and their families  
7 or, alternatively, give up those rights in order to comply with the CITY ordinances  
8 challenged herein.

9 **INJUNCTIVE RELIEF ALLEGATIONS**

10 38. If an injunction does not issue enjoining CITY from enforcing Sections  
11 4512, 1290 and 613.10(g), Plaintiffs will be irreparably harmed. Plaintiffs are  
12 presently and continuously injured by these laws insofar as they preclude them  
13 from effectively exercising their Second Amendment right to defend themselves  
14 and their families within the sanctity of their own homes. Sections 4512 and  
15 613.10(g) deny Plaintiffs the right to keep and bear handguns in the home that are  
16 immediately usable for self-defense and loaded with ammunition suitable for that  
17 purpose – or to keep and use such firearms and ammunition in that manner and for  
18 that purpose without fear of criminal prosecution under those sections and Section  
19 1290.

20 39. If not enjoined by this Court, CITY will continue to enforce Sections  
21 4512, 1290 and 613.10(g) in derogation of Plaintiffs' Second Amendment rights.

22 40. Plaintiffs have no plain, speedy, and adequate remedy at law. Damages  
23 are indeterminate or unascertainable and, in any event, would not fully redress any  
24 harm suffered by Plaintiffs as a result of being unable to access an operable  
25 handgun loaded with appropriate ammunition for the defense of themselves and  
26 their families.

27 41. Finally, the “irreparable harm” and unascertainable “damage” that could  
28 result from CITY's ongoing violation of Plaintiffs' Constitutional right to keep and

1 bear arms in defense of themselves and their families – within the sanctity of their  
2 own homes – includes severe physical injury and death.

3 42. Accordingly, injunctive relief is appropriate.  
4

5 **FIRST CLAIM FOR RELIEF: VALIDITY OF SFPC § 4512**

6 **Violation of the Second Amendment Right to Keep and Bear Arms**

7 (U.S. Const., Amend.'s II and XIV)

8 43. Paragraphs 1-42 are realleged and incorporated herein by reference.

9 44. The Fourteenth Amendment to the United States Constitution provides in  
10 part: “No State shall make or enforce any law which shall abridge the privileges or  
11 immunities of citizens of the United States; nor shall any State deprive any person  
12 of life, liberty, or property, without due process of law . . . .” The Second  
13 Amendment is applicable to the States and political subdivisions thereof through  
14 the Fourteenth Amendment.

15 45. The Second Amendment to the United States Constitution provides: “A  
16 well regulated militia, being necessary to the security of a free State, the right of  
17 the people to keep and bear arms, shall not be infringed.” The Supreme Court of  
18 the United States has interpreted the Second Amendment to at a minimum  
19 guarantee the right of responsible, law-abiding adults to keep firearms in their  
20 dwellings in a condition suitable for immediate self-defense.

21 46. The Fourteenth Amendment to the United States Constitution extends that  
22 guarantee through its Due Process Clause so as to apply against state and local  
23 government entities, including CITY.

24 47. CITY’s enactment and enforcement of Section 4512, which mandates all  
25 handguns kept in the home be stored in a locked container or disabled with a  
26 trigger lock, precludes Plaintiffs from keeping a handgun in the home that is  
27 operable for immediate self-defense.

28 48. CITY’s continued enforcement of Section 4512 under color of state law

1 impermissibly infringes upon the right of the people, including Plaintiffs herein, to  
2 keep and bear arms as guaranteed by the Second Amendment to the United States  
3 Constitution.

4 49. As a direct and proximate result of CITY's violation of Plaintiffs' Second  
5 Amendment rights, Plaintiffs have suffered irreparable harm, including the loss of  
6 their Constitutional rights, entitling them to declaratory and injunctive relief, under  
7 42 U.S.C. §§ 2201 and 2202.

8 50. Plaintiffs seek such equitable and other relief, precluding CITY from  
9 prohibiting the keeping of handguns in an operable condition for immediate self-  
10 defense and other lawful purposes. Other than this action for injunctive and  
11 declaratory relief, Plaintiffs have no clear, speedy and effective remedy for  
12 deprivation of their rights, privileges and immunities.

13

14 **SECOND CLAIM FOR RELIEF: VALIDITY OF SFPC § 613.10(g)**

15 **Violation of the Second Amendment Right to Keep and Bear Arms**

16 (U.S. Const., Amend.'s II and XIV)

17 51. Paragraphs 1- 50 are realleged and incorporated herein by reference.

18 52. CITY's enactment and enforcement of San Francisco Police Code  
19 § 613.10(g), which bans the sale of any ammunition that "serves no sporting  
20 purpose" or is designed to expand or fragment upon impact is contrary to and  
21 infringes upon the Second Amendment right to keep and bear arms for defense of  
22 self and others.

23 53. The ammunition specifically banned by Section 613.10(g) (hollow-point  
24 and similar ammunition) is the very type of ammunition most suitable for self-  
25 defense, especially in close quarters, e.g., within one's home, because it has greater  
26 stopping power and is less likely to pass through the intended target or ricochet off  
27 hard surfaces and injure innocent bystanders. That is a primary reason such  
28 ammunition is used – and preferred – by law enforcement. CITY recognizes this

1 fact, as is evident in the exception provided in Section 613.10(g) for the purchase  
2 of “conventional hollow-point ammunition with a solid lead core when the  
3 purchase is made for official law enforcement purposes.”

4 54. Prohibiting law-abiding residents from using the type of ammunition best  
5 suited for self-defense conflicts with Plaintiffs’ right to self-defense, which is at the  
6 core of the Second Amendment right to keep and bear arms, rendering the  
7 ammunition ban unconstitutional.<sup>2</sup>

8  
9 **THIRD CLAIM FOR RELIEF: VALIDITY OF SFPC § 1290**

10 **Violation of the Second Amendment Right to Keep and Bear Arms**

11 (U.S. Const., Amend.’s II and XIV)

12 55. Paragraphs 1- 54 are realleged and incorporated herein by reference.

13 56. CITY’s enactment and enforcement of San Francisco Police Code § 1290,  
14 which criminalizes the discharge of any firearms within the City and County of San

15  
16 <sup>2</sup> San Francisco Police Code section 613.10(g) reads in full, as follows:

17 (g) The licensee shall not sell, lease or otherwise transfer to any person any  
18 ammunition that:

19 (1) Serves no sporting purpose;

20 (2) Is designed to expand upon impact and utilize the jacket, shot or materials  
21 embedded within the jacket or shot to project or disperse barbs or other objects  
22 that are intended to increase the damage to a human body or other target  
23 (including, but not limited to, Winchester Black Talon, Speer Gold Dot, Federal  
24 Hydra-Shok, Hornady XTP, Eldorado Starfire, Hollow Point Ammunition and  
25 Remington Golden Sabre ammunition; or

26 (3) Is designed to fragment upon impact (including, but not limited to, Black  
27 Rhino bullets and Glaser Safety Slugs).

28 This subsection does not apply to conventional hollow-point ammunition with a  
solid lead core when the purchase is made for official law enforcement purposes  
and the purchaser is authorized to make such a purchase by the director of a  
public law enforcement agency such as the Chief of the San Francisco Police  
Department or the Sheriff of the City and County of San Francisco.

1 Francisco, without a self-defense exception, further threatens to punish Plaintiffs  
2 for discharging any firearm, including a handgun lawfully used within the home for  
3 self-defense, all in violation of Plaintiffs' right to keep and bear arms under the  
4 Second Amendment.<sup>3</sup>

5

6 **FOURTH CLAIM FOR RELIEF: VALIDITY OF SFPC § 613.10(g)**

7 **Violation of the Fifth Amendment Right to Due Process**

8 (U.S. Const., Amend. V and XIV)

9 57. Paragraphs 1-56 are realleged and incorporated herein by reference.

10 58. Section 613.10(g) bans the sale (and necessarily the purchase) of  
11 ammunition that “[s]erves no sporting purpose” or is designed to expand or  
12 fragment upon impact. This provision, on its face and as applied, is vague insofar  
13 as it fails to give the person of ordinary intelligence a reasonable opportunity to  
14 know what is prohibited, so that he or she may act accordingly.

15 59. Section 613.10(g) also fails to provide explicit standards for those who  
16 must apply it, and thus impermissibly delegates basic policy matters to policemen,  
17 judges, and juries for resolution on an ad hoc and subjective basis, with the  
18 attendant dangers of arbitrary and discriminatory application of CITY’s sales ban.

19 60. Moreover, the provisions, in particular the undefined phrase, “serves no  
20 sporting purpose,” inevitably leads citizens – both sellers and buyers of  
21 ammunition – to steer far wider of the “unlawful zone” of conduct than if the  
22 boundaries of the forbidden areas were clearly marked, thus further undermining

23

---

24 <sup>3</sup> Section 1290 reads, in full, as follows:

25 No person or persons, firm, company, corporation or association  
26 shall fire or discharge any firearms or fireworks of any kind or  
27 description within the limits of the City and County of San  
28 Francisco. Provided, however, that public displays of fireworks  
may be given with the joint written consent of the Fire Marshal and  
the Chief of Police.



1 Plaintiffs' ability to exercise their right to keep and bear arms under the Second  
2 Amendment.

3 61. Section 613.10(g) also is overbroad, both on its face and as applied,  
4 inasmuch as not all ammunition unsuitable for "sporting purposes" or designed to  
5 expand or fragment upon impact is unsuitable for self-defense purposes, and thus  
6 the provisions of Section 613.10(g) prohibit and/or deter protected conduct,  
7 specifically activity (the purchase of ammunition) necessarily associated with the  
8 right to keep and bear arms for self-defense under the Second Amendment.

9 62. The vague and overbroad provisions of Section 613.10(g) violate  
10 Plaintiffs' right to Due Process under the Fifth Amendment.

11

12 **FIFTH CLAIM FOR RELIEF:**

13

**VALIDITY OF SFPC §§ 4512, 1290 and 613.10(g)**

14

**Violation of the Right to Self-Defense Under State Law**

15

(Cal. Const., art. 1 § 1, Cal. Penal Code § 12026)

16

63. Paragraphs 1-62 are realleged and incorporated herein by reference.

17

18 64. Each of the municipal ordinances, Sections 4512, 1290 and 613.10(g),  
19 challenged above under federal law also violates pertinent California laws. Those  
20 California laws include: Article 1, section 1 of the California Constitution;  
21 California Penal Code § 12026(b); and innumerable statutes, and the public policy  
22 they express, authorizing the use of firearms in self-defense. California public  
23 policy likewise implies the right to discharge handguns or other firearms for  
24 defense of self, family, home and business. In particular, California law guarantees  
25 the right of law-abiding responsible adults to acquire and possess lawful handguns  
26 in their own homes and offices for defense of self, family, home and business, as  
27 recognized in *Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th  
895, 907-908.

28

65. California Constitution Article 1, § 1 guarantees certain inalienable rights,

1 among them the right to defend one's life, liberty, and property. Section 1  
2 provides, in full, as follows:

3 § 1. Inalienable rights

4 All people are by nature free and independent and have inalienable rights.  
5 Among these are enjoying and defending life and liberty, acquiring,  
6 possessing, and protecting property, and pursuing and obtaining safety,  
7 happiness, and privacy.

8 66. California Penal Code § 12026 (b) guarantees the right of law-abiding  
9 responsible adults to acquire and possess lawful handguns in the sanctity of their  
10 own homes and offices for lawful purposes, including the exercise of their  
11 Constitutional right to self-defense under Article 1, Section 1, quoted above. Penal  
12 Code section 12026, subdivision (b) reads in full:

13 No permit or license to purchase, own, possess, keep, or carry,  
14 either openly or concealed, shall be required of any citizen of  
15 the United States or legal resident over the age of 18 years who  
16 resides or is temporarily within this state, and who is not within  
17 the excepted classes prescribed by Section 12021 or 12021.1 of  
18 this code [relating to certain persons convicted of crimes and to  
19 narcotics addicts] or Section 8100 or 8103 of the Welfare and  
20 Institutions Code [relating to persons with mental disorders], to  
21 purchase, own, possess, keep, or carry, either openly or  
22 concealed, a pistol, revolver, or other firearm capable of being  
23 concealed upon the person within the citizen's or legal resident's  
24 place of residence, place of business, or on private property  
25 owned or lawfully possessed by the citizen or legal resident.

26 67. Implicit in Penal Code § 12026(b) guaranteeing the right of law-abiding  
27 responsible adults to acquire and possess handguns in their homes and offices is  
28 that those whom California law authorizes to possess handguns are entitled to

1 discharge them when in defense of self, family, home and business, and otherwise  
2 exercise their rights under Article 1, Section 1 of the California Constitution.

3 68. As noted above in the claims for relief under federal law, the provisions  
4 of Section 4512 render handguns inoperable and thus useless in self-defense  
5 emergencies; Section 1290 prohibits the discharge of any firearm – with no  
6 exception for self-defense use within the home or on private property (where Penal  
7 Code § 12026 entitles one to possess a handgun); and Section 613.10(g) bans the  
8 sale (and consequently the purchase and use) of ammunition designed specifically  
9 for self-defense.

10 69. Therefore, San Francisco Police Code Sections 4512, 1290 and 613.10(g),  
11 separately and/or in combination, infringe upon the right to self-defense recognized  
12 and guaranteed by the Article 1, Section 1 of the California Constitution, in  
13 conjunction with laws such as Penal Code § 12026(b) which make it clear that,  
14 under California law, the right to self-defense contemplates and includes the lawful  
15 use of handguns.

16 70. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief to  
17 stop CITY's enforcement of these three sections.

18  
19 **PRAYER**

20 WHEREFORE Plaintiffs pray for relief as follows:

21 1) For a declaration that San Francisco Police Code § 4512 infringes upon the  
22 right to keep and bear arms protected by the Second Amendment, as incorporated  
23 into the Fourteenth Amendment, by impermissibly forbidding residents from  
24 keeping handguns in the home available for immediate use in defense of self and  
25 others;

26 2) For a preliminary and permanent prohibitory injunction forbidding CITY  
27 and its agents, employees, officers, and representatives, including Defendants  
28 Mayor Newsom and Police Chief Fong, from enforcing, or attempting to enforce

1 San Francisco Police Code § 4512;

2 3) For a declaration that San Francisco Police Code § 613.10(g) infringes  
3 upon the right to keep and bear arms protected by the Second Amendment, as  
4 incorporated into the Fourteenth Amendment, by impermissibly forbidding dealers  
5 from selling (and residents from purchasing) ammunition designed for use in  
6 defense of self and others within the City and County of San Francisco;

7 4) For a declaration that San Francisco Police Code § 613.10(g) is, on its face  
8 and as applied, vague and overbroad in violation of Plaintiffs' right to Due Process  
9 under the Fifth Amendment, as incorporated into the Fourteenth Amendment.

10 5) For a preliminary and permanent prohibitory injunction forbidding CITY  
11 and its agents, employees, officers, and representatives, including Defendants  
12 Mayor Newsom and Police Chief Fong, from enforcing, or attempting to enforce  
13 San Francisco Police Code §613.10(g);

14 6) For a declaration that San Francisco Police Code § 1290 infringes upon the  
15 right to keep and bear arms protected by the Second Amendment, as incorporated  
16 into the Fourteenth Amendment, by impermissibly forbidding the discharge of any  
17 firearm within the City and County of San Francisco, without an exception for  
18 otherwise lawfully discharging a firearm within the home or on private property for  
19 the defense of self and others;

20 7) For a preliminary and permanent prohibitory injunction forbidding CITY  
21 and its agents, employees, officers, and representatives, including Defendants  
22 Mayor Newsom and Police Chief Fong, from enforcing, or attempting to enforce  
23 San Francisco Police Code § 1290;

24 8) In the alternative, under Plaintiffs' Fifth Claim for Relief pursuant to  
25 California law, for: (1) a declaration that San Francisco Police Code §§ 4512, 1290,  
26 and/or 613.10(g) infringe upon the right to use a handgun in defense of self and  
27 others guaranteed by Article 1, section 1 of the California Constitution, in  
28 conjunction with California Penal Code § 12026 and related state laws; and (2) a

1 preliminary and permanent prohibitory injunction forbidding CITY and its agents,  
2 employees, officers, and representatives, including Defendants Mayor Newsom and  
3 Police Chief Fong, from enforcing, or attempting to enforce San Francisco Police  
4 Code §§ 4512, 1290 and/or 613.10(g);

5 9) For remedies available pursuant to 42 U.S.C. § 1983 and for an award of  
6 reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988,  
7 California Code of Civil Procedure § 1021.5 (private attorney general statute)  
8 and/or other applicable state and federal law;

9 10) For such other and further relief as may be just and proper.

10 Date: May 14, 2009

TRUTANICH • MICHEL, LLP

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13 C. D. Michel  
14 Attorney for Plaintiffs

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# **EXHIBIT A**

**SEC. 4512. HANDGUNS LOCATED IN A RESIDENCE TO BE KEPT IN A LOCKED CONTAINER OR DISABLED WITH A TRIGGER LOCK.**

(a) Prohibition. No person shall keep a handgun within a residence owned or controlled by that person unless the handgun is stored in a locked container or disabled with a trigger lock that has been approved by the California Department of Justice.

(b) Definitions.

(1) "Residence." As used in this Section, "residence" is any structure intended or used for human habitation including but not limited to houses, condominiums, rooms, in law units, motels, hotels, SRO's, time-shares, recreational and other vehicles where human habitation occurs.

(2) "Locked container." As used in this Section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock or similar locking device.

(3) "Handgun." As used in this Section, "handgun" means any pistol, revolver, or other firearm that is capable of being concealed upon the person, designed to be used as a weapon, capable of expelling a projectile by the force of any explosion or other form of combustion, and has a barrel less than 16 inches in length.

(4) "Trigger lock." As used in this Section, a "trigger lock" means a trigger lock that is listed in the California Department of Justice's list of approved firearms safety devices and that is identified as appropriate for that handgun by reference to either the manufacturer and model of the handgun or to the physical characteristics of the handgun that match those listed on the roster for use with the device under Penal Code Section 12088(d).

(c) Exceptions. This Section shall not apply in the following circumstances:

(1) The handgun is carried on the person of an individual over the age of 18.

(2) The handgun is under the control of a person who is a peace officer under Penal Code Section 830.

(d) Lost or Stolen Handguns. In order to encourage reports to law enforcement agencies of lost or stolen handguns pursuant to San Francisco Police Code Section 616, a person who files a report with a law enforcement agency notifying the agency that a handgun has been lost or stolen shall not be subject to prosecution for violation of Section 4512(a) above.

(e) Penalty. Every violation of this Section shall constitute a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00 or by imprisonment in the county jail not to exceed six months, or by both.

(f) Severability. If any provision, clause or word of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision, clause, word or application of this Section which can be given effect without the invalid provision, clause or word, and to this end the provisions of this Section are declared to be severable.

(Added by Ord. 193-07, File No. 070683, App. 8/1/2007)

# FILE BY FAX

## CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**  
 ESPANOLA JACKSON, PAUL COLVIN, THOMAS BOYER, LARRY BARSETTI, DAVID GOLDEN, NOEMI MARGARET ROBINSON, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. SAN FRANCISCO VETERAN POLICE OFFICERS ASSOCIATION

**DEFENDANTS**  
 CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY, POLICE CHIEF HEATHER FONG, in her official capacity, and Does 1-10

(b) County of Residence of First Listed Plaintiff  
 (EXCEPT IN U.S. PLAINTIFF CASES)

San Francisco

(c) Attorney's (Firm Name, Address, and Telephone Number)  
 C. D. Michel S.B.N. 144852  
 TRUTANICH - MICHEL, LLP  
 180 East Ocean Blvd., Suite 200  
 Long Beach, CA 90802  
 (562) 216-4444

County of Residence of First Listed Defendant San Francisco  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff  
 2 U.S. Government Defendant  
 3 Federal Question (U.S. Government Not a Party)  
 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                            |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

### IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 88.1	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<b>IMMIGRATION</b>		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities Employment	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 465 Other Immigration Actions		<input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights			
	<b>PRISONER PETITIONS</b>			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<input type="checkbox"/> 530 General Habeas Corpus			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			

### V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from another district (specify)  
 6 Multidistrict Litigation  
 7 Appeal to District Judge from Magistrate Judgment

### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Title 42 U.S.C. 1983

Brief description of cause:

### VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
 DEMAND \$  
 CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

### VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

### IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

- SAN FRANCISCO/OAKLAND  
 SAN JOSE

DATE  
May 14, 2009

SIGNATURE OF ATTORNEY OF RECORD





CV 09

2143

**U.S. District Court Northern California****ECF Registration Information Handout**

The case you are participating in has been designated for this court's Electronic Case Filing (ECF) Program, pursuant to Civil Local Rule 5-4 and General Order 45. This means that you must (check off the boxes  when done):

PJH

- 1) Serve** this ECF Registration Information Handout on **all** parties in the case along with the complaint, or for removals, the removal notice. **DO NOT** serve the efiler application form, just this handout.

Each attorney representing a party must also:

- 2) Register** to become an efiler by filling out the efiler application form. Follow **ALL** the instructions on the form carefully. If you are already registered in this district, do not register again, your registration is valid for life on all ECF cases in this district.
- 3) Email** (do not efile) the complaint and, for removals, the removal notice and all attachments, in PDF format within ten business days, following the instructions below. You do not need to wait for your registration to be completed to email the court.
- 4) Access** dockets and documents using **PACER** (Public Access to Court Electronic Records). If your firm already has a PACER account, please use that - it is not necessary to have an individual account. PACER registration is free. If you need to establish or check on an account, visit: <http://pacer.psc.uscourts.gov> or call **(800) 676-6856**.

BY SIGNING AND SUBMITTING TO THE COURT A REQUEST FOR AN ECF USER ID AND PASSWORD, YOU CONSENT TO ENTRY OF YOUR E-MAIL ADDRESS INTO THE COURT'S ELECTRONIC SERVICE REGISTRY FOR ELECTRONIC SERVICE ON YOU OF ALL E-FILED PAPERS, PURSUANT TO RULES 77 and 5(b)(2)(D) (eff. 12.1.01) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

**All subsequent papers submitted by attorneys in this case shall be filed electronically. Unrepresented litigants must file and serve in paper form, unless prior leave to file electronically is obtained from the assigned judge.**

ECF registration forms, interactive tutorials and complete instructions for e-filing may be found on the ECF website: <http://ecf.cand.uscourts.gov>

**WELCOME TO THE U.S. DISTRICT COURT, SAN FRANCISCO**  
**OFFICE HOURS: 9:00 A.M. TO 4:00 P.M.**

**415.522.2000**

[www.cand.uscourts.gov](http://www.cand.uscourts.gov)

**In Addition to the Local Rules, the Following Guidelines Have Been Provided to Ensure That the Filing Process Is Accomplished with Ease and Accuracy. For Additional Information or Assistance, Please Call the above Number During Office Hours.**

1. Documents are to be filed in the Clerk's Office at the location of the chambers of the judge to whom the action has been assigned. We do not accept filings for cases assigned to judges or magistrate judges in the Oakland or San Jose division, per Civil L.R. 3-2(b).
2. This office will retain the original plus one copy of most documents submitted. We will conform as many copies as you bring for your use. Related cases require an extra copy for each related action designated.
3. The copy retained goes directly to the assigned Judge. Courtesy copies, or instructions for couriers to deliver a copy directly to chambers are inappropriate, unless you have been instructed to do so by court order.
4. In order to facilitate the file stamping process, each original document should be submitted on top of its copies. In other words, group like documents together--as opposed to a set of originals and separate sets of copies.
5. The case number must indicate whether it is a civil or criminal matter by the inclusion of **C** or **CR** at the beginning of the number. Miscellaneous and foreign judgment matters should also be indicated with initials **MISC** or **FJ** at the end of the case number.
6. The case number must include the initials of the judge and/or magistrate judge followed by the letters designating the case Arbitration (**ARB**), Early Neutral Evaluation (**ENE**) or Mediation (**MED**)--if assigned to one of those programs.
7. The document caption should include the appropriate judge or magistrate judge involved in a particular matter or before whom an appearance is being made. This is especially important when submitting Settlement Conference Statements.
8. Documents are to be stapled or acco-fastened at the top. Backings, bindings and covers are not required. Two holes punched at the top of the original document will facilitate processing.
9. Appropriately sized, stamped, self-addressed return envelopes are to be included with proposed orders or when filing documents by mail.

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**NOTICE OF AVAILABILITY OF MAGISTRATE JUDGE  
TO EXERCISE JURISDICTION**

In accordance with the provisions of Title 28, U.S.C. § 636(c), you are hereby notified that a United States magistrate judge of this district is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge.

An appeal from a judgment entered by a magistrate judge may be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

Copies of the Form for the "Consent to Exercise of Jurisdiction by a United States Magistrate Judge" are available from the clerk of court.

The plaintiff or removing party shall serve a copy of this notice upon all other parties to this action pursuant to Federal Rules of Civil Procedure 4 and 5.

FOR THE COURT,  
RICHARD W. WIEKING, CLERK

*May Ann Buckley*  
By: Deputy Clerk

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ESPANOLA JACKSON,

Plaintiff (s),

v.

CITY AND COUNTY OF SAN  
FRANCISCO,

Defendant(s).

No. C 09-02143 PJH

**ORDER SETTING INITIAL CASE  
MANAGEMENT CONFERENCE  
AND ADR DEADLINES**

ORIGINAL  
FILED  
2009 MAY 15 P 3:22  
RECEIVED  
SUPERIOR COURT DISTRICT OF CALIFORNIA

IT IS HEREBY ORDERED that this action is assigned to the Honorable Phyllis J. Hamilton. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the material entitled "Dispute Resolution Procedures in the Northern District of California" on the Court ADR Internet site at [www.adr.cand.uscourts.gov](http://www.adr.cand.uscourts.gov). A limited number of printed copies are available from the Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

IT IS FURTHER ORDERED that plaintiff or removing defendant serve upon all parties the brochure entitled "Consenting To A Magistrate Judge's Jurisdiction In The Northern District Of California," additional copies of which can be downloaded from the following Internet site: <http://www.cand.uscourts.gov>.

**CASE SCHEDULE - ADR MULTI-OPTION PROGRAM**

Date	Event	Governing Rule
5/15/2009	Complaint filed	
8/6/2009	*Last day to:	<u>FRCivP 26(f) &amp; ADR L.R.3-5</u>
	• meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan	
	• file ADR Certification signed by Parties and Counsel (form available at <a href="http://www.cand.uscourts.gov">http://www.cand.uscourts.gov</a> )	<u>Civil L.R. 16-8 (b) &amp; ADR L.R. 3-5(b)</u>
	• file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference (form available at <a href="http://www.cand.uscourts.gov">http://www.cand.uscourts.gov</a> )	<u>Civil L.R. 16-8 (c) &amp; ADR L.R. 3-5(b) &amp; (c)</u>

Court Name: U.S. District Court, NDCA  
Division: 3  
Receipt Number: 34611032225  
Cashier ID: sprinka  
Transaction Date: 05/15/2009  
Payer Name: WILLIAMS COLE INC

-----  
CIVIL FILING FEE

For: espanola jackson  
Case/Party: D-CAN-3-09-CV-002143-001  
Amount: \$350.00

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CHECK

Check/Money Order Num: 18430  
Amt Tendered: \$350.00

-----  
Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

pjh

Checks and drafts are accepted  
subject to collections and full  
credit will only be given when the  
check or draft has been accepted by  
the financial institution on which  
it was drawn.

Reference#: OT601434-00

TRUTANICH & MICHEL  
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ATTN: CLAUDIA AYALA  
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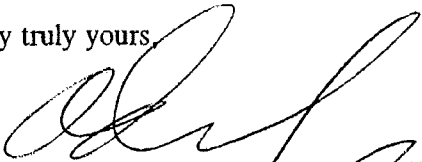
Court: UNITED STATES DISTRICT COURT  
Case #: \*\*\*NEW CASE\*\*\*

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