

1 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 2 WAYNE SNODGRASS, State Bar #148137
 SHERRI SOKELAND KAISER, State Bar #197986
 3 Deputy City Attorneys
 1 Dr. Carlton B. Goodlett Place
 4 City Hall, Room 234
 San Francisco, California 94102-4682
 5 Telephone: (415) 554-4691
 Facsimile: (415) 554-4747
 6 E-Mail: sherri.kaiser@sfgov.org

7 Attorneys for Defendants
 CITY AND COUNTY OF SAN FRANCISCO,
 8 MAYOR GAVIN NEWSOM and POLICE CHIEF
 GEORGE GASCON
 9

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 ASSOCIATION,

18 Plaintiffs,

19 vs.

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

23 Defendants.
 24

Case No. C09-2143 PJH

**SAN FRANCISCO DEFENDANTS'
 MEMORANDUM IN SUPPORT OF
 MOTION TO RELATE CASES:**

Pizzo v. Newsom, Case No. C09-4493CW, and
Jackson v. City and County of San Francisco,
 Case No. C09-2143 PJH

25
 26 **INTRODUCTION**

27 On September 23, 2009, Plaintiff Therese Marie Pizzo filed suit against the same San
 28 Francisco defendants to challenge the same San Francisco gun ordinances on the same legal theories

1 as those already at issue in this earlier-filed case. Compare *Pizzo v. Newsom*, N.D. Cal. C09-4493CW,
2 with *Jackson v. City and County of San Francisco*, N.D. Cal. C09-2143 PJH. On November 2, 2009,
3 the plaintiffs in *Jackson* filed a motion to relate *Pizzo*. The Plaintiff in *Pizzo* has likewise recognized,
4 in Section VIII of her Civil Cover Sheet, that *Pizzo* and *Jackson* are related cases. The *Jackson*
5 Defendants and the San Francisco Defendants in *Pizzo* now write in support of the motion to relate.

6 **I. MOST OF THE DEFENDANTS, SUBJECT MATTER AND LEGAL CLAIMS IN THE**
7 **TWO ACTIONS ARE IDENTICAL.**

8 The complaints in both *Jackson* and *Pizzo* attack San Francisco Police Code §§ 4512 (requiring
9 safe storage of firearms in residences), 613.10(g) (banning unusually dangerous ammunition), and
10 1290 (a discharge ban). Both complaints name the City and County of San Francisco, as well as San
11 Francisco's Mayor and Police Chief as defendants. Both complaints allege that the San Francisco laws
12 violate the Second Amendment and that § 613.10(g) also violates the right to due process. And the
13 main claims of both cases hinge on the disposition of other Second Amendment cases scheduled to be
14 heard and decided by the United States Supreme Court this term. To this great extent, the two
15 complaints are not just related – they are identical.

16 Unlike *Jackson*, the complaint in *Pizzo* also attacks several state and federal laws related to
17 concealed weapons as violating the Second Amendment and/or equal protection clause. *Pizzo* names
18 the San Francisco County Sheriff and California Attorney General's Office as additional defendants on
19 account of these concealed weapons claims. But these new claims and defendants are sufficiently like
20 the claims and defendants common to both cases that they cannot justify denying the motion to relate.
21 Like the claims against the San Francisco laws, the claims against state and federal concealed weapons
22 laws depend largely on the pending Supreme Court cases. And on a practical level, the concealed
23 weapons claims mean only an extra section in the briefing and opinion. Moreover, one of the two
24 additional defendants, the San Francisco County Sheriff, is represented by the same counsel as all of
25 the other San Francisco defendants in both cases.

26 Because these cases are so closely related, and because the differences between them are far
27 smaller than their commonalities, the Court should deem them related.

1 **II. THE PENDING CHALLENGES TO THE CONSTITUTIONALITY OF THREE SAN**
 2 **FRANCISCO GUN CONTROL LAWS SHOULD BE DECIDED UNIFORMLY.**

3 These cases present important constitutional questions of first impression on matters of grave
 4 public concern and safety. In such circumstances, the importance of uniform decision is particularly
 5 acute. San Francisco believes that its safe storage, unreasonably dangerous ammunition and firearm
 6 discharge laws help protect its citizenry from serious peril, and even one child's life lost by an
 7 unnecessary or inconsistent injunction of its safe storage law is far too high a price to pay on account
 8 of legal uncertainties. Warring opinions would also leave San Francisco in an impossible bind,
 9 because it could not follow the law of one opinion without breaking the law of the other. Where, as
 10 here, a single, indivisible set of legal obligations is at issue in two, nearly identical cases, the Court
 11 should relate the cases to assure the City that it will receive a single, consistent mandate from the
 12 Court that it will be able to obey.

13 **CONCLUSION**

14 For the foregoing reasons, the San Francisco Defendants in both cases support the *Jackson*
 15 Plaintiffs' motion to relate *Pizzo* and *Jackson*. The City also agrees that the Court should stay the
 16 *Pizzo* case for the same reasons and on the same terms as it has already stayed *Jackson*.

17 Dated: November 5, 2009

18 DENNIS J. HERRERA
 19 City Attorney
 20 WAYNE SNODGRASS
 21 SHERRI SOKELAND KAISER
 22 Deputy City Attorneys

23 By: _____/s/_____
 24 SHERRI SOKELAND KAISER

25 Attorneys for Defendants City and County of San
 26 Francisco, Mayor Gavin Newsom and Police Chief
 27 George Gascon
 28

PROOF OF SERVICE

(on parties in the Therese Marie Pizzo v. CCSF, et al.; USDC No. C09-4493 CW)

I, DIANA QUAN, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4682.

On November 5, 2009, I served the following document(s):

SAN FRANCISCO DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO RELATE CASES

on the following persons at the locations specified:

GARY W. GORSKI
THE LAW OFFICES OF GARY W. GORSKI
1207 Front Street, Suite 15
Sacramento, CA 95814
Telephone: (916) 965-6800
Facsimile: (916) 965-6801
Email: usrugby@pacbell.net

DANIEL M. KARALASH
THE LAW OFFICE OF DANIEL M. KARALASH
1207 Front Street, Suite 15
Sacramento, CA 95814
Telephone: (916) 787-1234
Facsimile: (916) 787-0267
Email: dmkaralash@surewest.net

GEOFFREY LLOYD GRAYBILL
CALIFORNIA ATTORNEY GENERAL'S OFFICE
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5465
Facsimile: (916) 324-8835
Email: geoffrey.graybill@doj.ca.gov

Email courtesy copies only served on:
DUSTIN MACFARLANE
LAW OFFICE OF DUSTIN MACFARLANE
Email: dustinmacfarlane@gmail.com
BRIAN KENNEDY
LAW OFFICE OF BRIAN KENNEDY
Email: brian_kennedy6@yahoo.com

in the manner indicated below:

BY UNITED STATES MAIL: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

BY ELECTRONIC MAIL: I caused a copy of such document to be transmitted via electronic mail in Portable Document Format ("PDF") Adobe Acrobat from the electronic address: *diana.quan@sfgov.org*

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed November 5, 2009, at San Francisco, California.

/s/ _____
DIANA QUAN