

1 C. D. Michel - S.B.N. 144258
Don B. Kates - S.B.N. 39193
2 Glenn S. McRoberts - SBN 144852
Hillary J. Green - S.B.N. 243221
3 MICHEL & ASSOCIATES, PC
180 E. Ocean Boulevard, Suite 200
4 Long Beach, CA 90802
Telephone: 562-216-4444
5 Facsimile: 562-216-4445
Email: cmichel@michellawyers.com
6

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
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-RS**
) **NOTICE OF PREVIOUS RULING**

17 Plaintiffs

18 vs.
19

20 CITY AND COUNTY OF S.F.
FRANCISCO, MAYOR GAVIN
NEWSOM, IN HIS OFFICIAL
21 CAPACITY; POLICE CHIEF
HEATHER FONG, in her official
22 capacity, and Does 1-10,

23 Defendants.
24
25
26
27
28

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 22, 2010, this Court took under submission
3 Plaintiff's Motion for Relief from Stay pending a decision by the United States Court of Appeals
4 for the Ninth Circuit in *Nordyke v. King*, No. CV-99-04389-MJJ (N.D. Cal. filed Sept. 17, 1999).

5 At the hearing on this Motion, Defendants' counsel expressed concerns about lifting the
6 stay on this case while a somewhat similar case, *Pizzo v. County of San Francisco, et al.*, C09-
7 4493 CW, remained stayed, and requested that these cases be consolidated. It should be noted that
8 this Court has already held these cases *not* to be related within the meaning of Local Rule 3-12.
9 For the Court's reference, attached hereto as Exhibit "A" is a true and accurate copy of the Order
10 Denying Related Case Request, docketed as number twenty-six on the Court's record.

11

12 Date: July 22, 2010

MICHEL & ASSOCIATES, PC

13

14

/s/

C. D. Michel
Attorney for Plaintiffs

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ESPANOLA JACKSON, et al.,

Plaintiff(s),

No. C 09-2143 PJH

v.

**ORDER DENYING RELATED
CASE REQUEST**

CITY AND COUNTY OF SAN
FRANCISCO, et al.,

Defendant(s).

_____ /

Defendants seek an order relating this case with *Pizzo v. City and County of San Francisco, et al.*, C09-4493 CW. This case was filed on May 15, 2009, by six individuals and two organizations (the National Rifle Association, and the San Francisco Veteran Police Officers Association), against CCSF, Mayor Newsom, and Chief of Police Heather Fong. Newsom and Fong were sued in their official capacities only. Plaintiffs seek declaratory and injunctive relief.

Plaintiffs challenge a San Francisco law (Police Code § 4512) which mandates that any handgun kept in a residence in S.F. be stored in a locked container or disabled with an approved trigger lock. Plaintiffs also challenge a law (Police Code § 613.10(g)) which prohibits the sale of ammunition intended for use in what plaintiffs call "self-defense situations," and another law (Police Code § 1290) that prohibits the discharge of any firearm within the city limits, without any exception for self-defense.

Plaintiffs assert five causes of action – that § 4512 violates the Second Amendment to the U.S. Constitution; that § 613.10(g) violates the Second Amendment; that § 1290 violates the Second Amendment; that § 613.10(g) is overly vague and therefore violates

United States District Court
For the Northern District of California

1 the Due Process Clause of the Fifth Amendment; that all three challenged statutes violate
2 the right to self defense under the California Constitution and the California Penal Code.

3 The *Pizzo* case was filed on September 23, 2009, by one individual, against CCSF,
4 Mayor Newsom, former Chief of Police Heather Fong, present Chief of Police George
5 Gascon, S.F. Sheriff Mike Hennessey, and California Attorney General Edmund G. Brown.
6 Newsom, Fong, and Hennessey are sued in both individual and official capacities, and
7 Gascon and Brown are sued in their official capacities only. Plaintiffs seek damages, and
8 declaratory and injunctive relief.

9 Plaintiff challenges Police Code § 4512, Police Code § 1290, California Penal Code
10 § 12050, et seq. (providing police and sheriffs with absolute discretion regarding the
11 issuance of concealed weapons permits); California Penal Code § 12031(b) (prohibiting
12 carrying of loaded firearm on one's person or in one's vehicle while in public place or on
13 public street, with exception for police officers and retired police officers); and Police Code
14 613.10(g).

15 Plaintiff asserts ten causes of action – that § 4512 violates the Second Amendment
16 to the U.S. Constitution; that § 1290 violates the Second Amendment; that Penal Code
17 § 12050, et seq., violates the Second Amendment; that Penal Code § 12050, et seq.,
18 violates the Equal Protection Clause of the Fourteenth Amendment; that Penal Code §
19 12031(b) violates the Equal Protection Clause; that enforcement of the federal Law
20 Enforcement Officers Safety Act (LEOSA), 18 U.S.C. §§ 926B, 926C, violates the Equal
21 Protection Clause; that § 613.10(g) violates the Second Amendment; that § 613.10(g)
22 violates the Fifth Amendment Due Process Clause; that Police Code §§ 4512, 1290,
23 613.10(g), and Penal Code § 12050, et seq., are invalid because they violate the
24 Constitution and laws of the State of California; and that Police Code §§ 4512, 1290,
25 613.10(g), and Penal Code § 12050, et seq. violate the Due Process Clause of the
26 Fourteenth Amendment.

27 Defendants contend that the two cases should be related simply because each
28

1 challenges the validity and constitutionality of the same sections of the S.F. Police Code.
2 It is clear from the above recitation of the claims, that while there are some similarities in
3 the provisions of the Police Code that are challenged, and that both cases assert violations
4 of the Second Amendment, there are far more differences between the two complaints.
5 They involve different plaintiffs, and although both name three of the same defendants,
6 *Pizzo* names a number of defendants that are not named in *Jackson*, and several
7 defendants are sued in their individual capacity, unlike *Jackson*. Different provisions of the
8 various laws are challenged and the underlying basis for the challenges are different.

9 Civil Local Rule 3-12 defines a related case as one in which the actions concern
10 substantially the same parties, property, transaction or event. The court finds that these
11 two cases do not concern substantially the same parties, and there is no property,
12 transaction or event at issue in the complaints. The court has not and does not interpret
13 the rule as providing for a related case determination just because the same laws might be
14 challenged by different lawsuits. Thus, all cases brought by different plaintiffs, challenging
15 the new San Francisco gun ordinance, might be similar, but they are not, in the court's
16 view, related within the meaning of Rule 3-12.

17 **IT IS SO ORDERED.**

18 Dated: November 20, 2009



19 _____
20 PHYLLIS J. HAMILTON
21 United States District Judge
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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,

**CASE NO.: CV-09-2143-RS
CERTIFICATE OF SERVICE**

Plaintiffs

vs.

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,

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:

NOTICE OF PREVIOUS RULING

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 Kaiser, Deputy City Attorney
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 July 22, 2010

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