

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 EDWIN LEE and ACTING POLICE CHIEF
JEFF GODOWN
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 ASOCIATION,

18 Plaintiffs,

19 vs.

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

23 Defendants.
24
25
26
27
28

Case No. C09-2143 RS

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO DISMISS
AMENDED COMPLAINT FOR LACK OF
JURISDICTION**

Hearing Date: April 7, 2011
Time: 1:30 p.m.
Place: Courtroom 3, 17th Floor

1 On August 24, 2009, the National Rifle Association (NRA), along with six San Francisco
2 residents and the San Francisco Veteran Police Officers Association (SFVPOA) (collectively,
3 plaintiffs), filed the amended complaint in this matter against the City and County of San Francisco, its
4 Mayor, and its Chief of Police (collectively, defendants or the City). Plaintiffs' suit is a pre-
5 enforcement challenge to three local gun-related ordinances, each of which they allege to be in
6 violation of the Second Amendment, and one of which they also believe to be unconstitutionally
7 vague. Defendants have moved to dismiss the amended complaint in its entirety for lack of subject-
8 matter jurisdiction.

9 Plaintiffs' amended complaint fails to allege that the challenged statutes have been enforced
10 against any of the plaintiffs, or even that any of them faces a particularized threat of enforcement.
11 Accordingly, none of the plaintiffs has alleged an injury-in-fact, whether actual or imminent, sufficient
12 to establish standing to seek relief in federal court. Moreover, one of the challenged ordinances is a
13 permit condition that only affects licensed San Francisco gun dealers. None of the plaintiffs are
14 alleged to be licensed gun dealers, nor do they allege that San Francisco gun dealers face significant
15 obstacles to asserting their own rights if they so choose. In the absence of such showings, plaintiffs do
16 not have third-party standing to pursue those claims.

17 It is also evident that plaintiffs' claims are not ripe for judicial consideration. The Court is not
18 convinced that plaintiffs will ever suffer an injury-in-fact adequate to invoke this Court's jurisdiction.
19 Nor does the Court believe that it should, as a matter of prudential ripeness, accept plaintiffs'
20 invitation to engage in sensitive and unprecedented constitutional decision making that risks voiding a
21 legislative enactment without the benefits of a developed factual context and the further guidance of
22 sister courts that may develop if this controversy is allowed to mature.

23 For all of these reasons, the Court holds that the plaintiffs have failed to allege a sufficient
24 factual basis to establish federal jurisdiction, and the amended complaint must be and hereby is
25 DISMISSED.

26 IT IS SO ORDERED:

27 Date: _____

28 _____
The Honorable Richard Seeborg
Judge of the United States District Court