

RAYMOND M. DIGUISEPPE
CA State Bar No. 228457
THE DIGUISEPPE LAW FIRM, P.C.
4320 Southport-Supply Road
Suite 300
Southport, NC 28461
P: 910-713-8804
E: law.rmd@gmail.com

JOHN W. DILLON
CA State Bar No. 296788
DILLON LAW GROUP, APC
2647 Gateway Rd.
Suite 105 #255
Carlsbad, CA 92009
P: 760.642.7150
E: jdillon@dillonlawgp.com

WILLIAM SACK*
PA STATE BAR NO. 325863
FIREARMS POLICY COALITION
5550 Painted Mirage Road
Suite 320
Las Vegas, NV 89149-4584
P: (916) 596-3492
E: wsack@fpclaw.org
* *App. Pro Hac Vice Forthcoming*
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES FAHR; DESIREE
BERGMAN; COLIN RUDOLPH;
SAN DIEGO COUNTY GUN
OWNERS PAC; and FIREARMS
POLICY COALITION, INC.,

Plaintiffs,

v.

CITY OF SAN DIEGO,
CALIFORNIA; and DAVID
NISLEIT, in his official capacity as
Chief of Police of San Diego City,
California,

Defendants.

Case No.:
21CV1676BASBGS_____

**PLAINTIFFS' EX PARTE
APPLICATION FOR ORDER
SHORTENING TIME TO HEAR
PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING
ORDER; ALTERNATIVE MOTION
FOR PRELIMINARY INJUNCTION**

Judge: Hon. Cynthia Bashant

Date: TBD

Time: TBD

Courtroom: 4B

TO THE COURT AND ALL PARTIES AND THEIR RESPECTIVE
ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on September 24, 2021, or as soon thereafter as this matter may be heard, counsel for Plaintiffs James Fahr, Desiree Bergman, Colin Rudolph, San Diego County Gun Owners PAC, and Firearms Policy Coalition, Inc. (collectively, "Plaintiffs"), will apply to this Court for an order to shorten time on Plaintiffs' Application For Temporary Restraining Order; and Alternative Motion for Preliminary Injunction. Specifically, Plaintiffs will ask the Court to hold a hearing on their temporary restraining order/alternative preliminary injunction motion within approximately 14 days of this notice, with a briefing schedule that would allow Defendants to file an opposition brief 7 days from today and Plaintiffs to file a reply brief 5 days thereafter, subject to the Court's schedule and availability.

The subject of the motion is the City of San Diego's enacted Ordinance No. O-2022-7, which prohibits, *inter alia*, the possession, purchase, sale, receipt, and transportation of non-serialized, unfinished frames and receivers as well as non-serialized firearms. Plaintiffs claim the City of San Diego Ordinance No. O-2022-7 violates the right to keep and bear arms protected by the Second Amendment and constitutes an unlawful government taking under the Takings and the Due Process clauses of the U.S. Constitution.

At approximately 7:24 p.m., on September 23, 2021, Plaintiffs filed their complaint naming Defendants City of San Diego and David Nisleit in his official capacity as Chief of Police of San Diego City. Dillon Decl. ¶ 2. At approximately 11:00 a.m., on September 24, 2021, Plaintiffs filed their Application For Temporary Restraining Order; and Alternative Motion for Preliminary Injunction along with accompanying declarations. Dillon Decl. ¶ 3. Plaintiffs initiated service of all filed pleadings at approximately 2:30 p.m., on September 24, 2021, through Nationwide Legal. Plaintiffs' counsel received confirmation that service was completed on

1 Defendant City of San Diego at 4:20 p.m. Dillon Decl. ¶ 4. While service was
 2 attempted on Defendant David Nisleit, service could not be completed as the San
 3 Diego Police Headquarters' offices were closed. Dillon Decl. ¶ 5. At this time,
 4 Plaintiffs are unaware of Defendants' assigned counsel, and thus, have not been able
 5 to meet and confer with Defendants' counsel. Dillon Decl. ¶ 6.

6 Plaintiffs intend to complete service of all filed pleadings on all Defendants
 7 by Monday, September 27, 2021, and can provide the Court proof of service to
 8 supplement this application. Further, Plaintiffs will continue to attempt to meet and
 9 confer with Defendants' counsel to agree upon a mutually acceptable briefing
 10 schedule and subject to the Court's approval. Dillon Decl. ¶ 7.

11 Plaintiffs bring this application on good cause grounds because Plaintiffs
 12 require an order on their application for temporary restraining order/alternative
 13 motion for preliminary injunction before October 23, 2021 — the date when the San
 14 Diego City Ordinance in question becomes effective and enforceable against
 15 Plaintiffs requiring Plaintiffs (and potentially thousands of law-abiding San Diego
 16 residents) to dispossess themselves of their personal property or face criminal
 17 prosecution. Dillon Decl. ¶ 9-12. If Plaintiffs cannot have their motion heard and
 18 granted before October 23, 2021, they will suffer irreparable harm. Dillon Decl. ¶ 9-
 19 12.

20 This application is based on the declaration of John W. Dillon filed
 21 simultaneously herewith, all pleadings currently on file, and any oral argument that
 22 this Court may authorize.

23 September 24, 2021

24 THE DIGUISEPPE LAW FIRM, P.C.

DILLON LAW GROUP, APC

25 /s/ Raymond M. DiGuiseppe

/s/ John W. Dillon

26 Raymond M. DiGuiseppe

John W. Dillon

27 4320 Southport-Supply Road, Ste 300

2647 Gateway Rd.

28 Southport, NC 28461

Ste 105 #255

Carlsbad, CA 92009

1 FIREARMS POLICY COALITION

2
3 /s/ William Sack*

4 5550 Painted Mirage Road

5 Suite 320

6 Las Vegas, NV 89149-4584

7 * *App. Pro Hac Vice Forthcoming*

8 *Attorneys for Plaintiffs*

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES FAHR; DESIREE
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POLICY COALITION, INC.,

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v.

CITY OF SAN DIEGO,
CALIFORNIA; and DAVID
NISLEIT, in his official capacity as
Chief of Police of San Diego City,
California,

Defendants.

Case No.:
21CV1676BASBGS

**DECLARATION OF JOHN W.
DILLON IN SUPPORT OF
PLAINTIFFS' EX PARTE
APPLICATION FOR ORDER
SHORTENING TIME TO HEAR
PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING
ORDER; ALTERNATIVE MOTION
FOR PRELIMINARY INJUNCTION;
DECLARATION OF JOHN W.
DILLON**

Judge: Hon. Cynthia Bashant

Date: TBD

Time: TBD

Courtroom: 4B

DECLARATION OF JOHN W. DILLON

I, John W. Dillon, declare as follows:

1. I am the principal attorney of Dillon Law Group APC and co-counsel for Plaintiffs in the above-captioned action. I have personal knowledge of the facts stated herein, and if called as a witness, I can and would competently testify thereto.

2. At approximately 7:24 p.m., September 23, 2021, Plaintiffs filed their complaint naming Defendants City of San Diego and David Nisleit in his official capacity as Chief of Police of San Diego City.

3. At approximately 11:00 a.m., on September 24, 2021, Plaintiffs filed their Application For Temporary Restraining Order; and Alternative Motion for Preliminary Injunction along with accompanying declarations.

4. I initiated service of all filed pleadings at approximately 2:30 p.m., on September 24, 2021, through Nationwide Legal in San Diego. I received confirmation that service was completed on Defendant City of San Diego at 4:20 p.m., today.

5. While service was attempted on Defendant David Nisleit, service could not be completed as the San Diego Police offices were closed. I received this status update from the process server at 3:48 p.m., September 24, 2021.

6. At this time, Plaintiffs' counsel is unaware of Defendants' assigned counsel, and thus, we have not been able to meet and confer with Defendants' counsel.

7. Plaintiffs intend to complete service of all filings, including this application and related documents on all Defendants by Monday, September 27, 2021, and can provide the Court proof of service to supplement this application.

1 8. Further, my co-counsel and I will continue to attempt to meet and
2 confer with opposing counsel, once identified, to determine if a reasonable briefing
3 schedule can be agreed upon — subject to the Court’s approval.

4 9. This case presents a 42 U.S.C. § 1983 action for deprivation of rights
5 guaranteed by the Second, Fifth, and Fourteenth Amendments of the United States
6 Constitution. Specifically, Plaintiffs challenge the constitutionality of the City of San
7 Diego Ordinance No. O-2022-7, which prohibits, *inter alia*, the possession,
8 purchase, sale, receipt, and transportation of non-serialized, unfinished frames and
9 receivers as well as non-serialized firearms. Plaintiffs claim the City of San Diego
10 Ordinance No. O-2022-7 violates the right to keep and bear arms protected by the
11 Second Amendment and constitutes an unlawful government taking under the
12 Takings and the Due Process clauses.

13 10. Plaintiffs’ *ex parte* application is made in good faith and for good cause.
14 The City Ordinance was passed by the San Diego City Council on September 14,
15 2021 and signed into law by Mayor Gloria on September 23, 2021. The Ordinance
16 is effective and enforceable by Defendants against all persons in the City of San
17 Diego, including named Plaintiffs herein, by no later than October 23, 2021, leaving
18 those who already lawfully acquired and possess proscribed items before the
19 Ordinance was enacted only 30 days to dispossess themselves of their personal
20 property, and it forever after prohibits all persons in San Diego from acquiring the
21 necessary products for and self-manufacturing firearms in compliance with State
22 law. Plaintiffs require a temporary restraining order, or alternatively, a preliminary
23 injunction, to prevent enforcement of the City Ordinance against Plaintiffs and all
24 other similarly situated individuals in the City of San Diego from being forced to
25 dispossess themselves of any item that could be construed by Defendants as an
26 “unfinished frame” or “unfinished receiver” to comply with the Ordinance, in
27 violation of their fundamental constitutional rights, or face enforcement and
28 prosecution by the Defendants.

