

1 C. D. Michel - S.B.N. 144258  
 2 Don B. Kates - S.B.N. 39193  
 3 Jason A. Davis - S.B.N. 222250  
 4 Clinton B. Monfort - S.B.N. 255609  
 5 TRUTANICH • MICHEL, LLP  
 6 180 E. Ocean Boulevard, Suite 200  
 7 Long Beach, CA 90802  
 8 Telephone: 562-216-4444  
 9 Facsimile: 562-216-4445  
 10 Email: cmichel@tmllp.com

11 Attorneys for Plaintiffs

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

<p>15 GUY MONTAG DOE, NATIONAL          16 RIFLE ASSOCIATION OF          17 AMERICA, INC., CITIZENS          18 COMMITTEE FOR THE RIGHT TO          19 KEEP AND BEAR ARMS,          20          21 Plaintiffs</p> <p>22 vs.</p> <p>23 SAN FRANCISCO HOUSING          24 AUTHORITY, MIRIAM SAEZ, IN          25 HER OFFICIAL CAPACITY,          26 HENRY ALVAREZ III, IN HIS          27 OFFICIAL CAPACITY, CITY AND          28 COUNTY OF SAN FRANCISCO,          GAVIN NEWSOM, IN HIS          OFFICIAL CAPACITY, JOHN          STEWART COMPANY, AND          DOES 1-10,          Defendants.</p>	<p>) CASE NO. CV-08-03112 TEH          )          ) <b>NOTICE OF OR MOTION FOR</b>          ) <b>VOLUNTARY DISMISSAL</b>          ) <b>WITHOUT PREJUDICE OF</b>          ) <b>DEFENDANTS CITY AND COUNTY</b>          ) <b>OF SAN FRANCISCO AND GAVIN</b>          ) <b>NEWSOM</b></p> <p>) Dept.: Courtroom 12- 19<sup>th</sup> Floor</p>
--	--

24 NOTICE IS HEREBY GIVEN that pursuant to Federal Rules of Civil  
 25 Procedure Rule 41(a), Plaintiffs GUY MONTAG DOE, et. al. voluntarily dismiss  
 26 Defendants CITY AND COUNTY OF SAN FRANCISCO and GAVIN NEWSOM  
 27 from the above-captioned action without prejudice. Since the defendants have not  
 28 been served with the Complaint, it would appear this action can be taken simply by

1 way of notice. To the extent court approval is required plaintiffs respectfully  
2 request this be considered a motion for such approval.

### 3 **BACKGROUND**

4 Plaintiffs named the City and County of San Francisco and Mayor Gavin  
5 Newsom as defendants in this action based on statements made by and information  
6 obtained from those defendants and from others. The information caused plaintiffs  
7 to believe that those defendants were at least in part responsible for the current ban  
8 on the possession of all firearms in San Francisco public housing facilities because  
9 of a recently enacted ordinance banning the possession of firearms on property  
10 owned or controlled by San Francisco. (San Francisco Police Code § 617.)

11 For example, on May 15, 2007 Mayor Newsom held a press conference  
12 introducing the ordinance banning the possession of firearms on property owned or  
13 controlled by San Francisco. When asked if the ordinance would apply in public  
14 housing, Newsom said: “Yes, yes it does. It is our intent to include it.” When  
15 asked as a follow up question whether the ordinance would ban the possession of  
16 firearms by a law-abiding resident of public housing who chooses to own a firearm  
17 to protect her family in her own home, Newsom confirmed: “It is our intent to  
18 move in that direction.” (Newsom Press Conference, May 15, 2007, available  
19 online at: [http://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=18&clip\\_id=3577](http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=18&clip_id=3577).)  
20

21 Prior to filing this lawsuit, plaintiffs submitted several public records act  
22 requests to various San Francisco officials seeking information about all of the  
23 ordinances and policies that regulate the possession of firearms in public housing.  
24 (See Exhibit 1.) San Francisco responded with information indicating that San  
25 Francisco Police Code section 617 was adopted in part to formally support San  
26 Francisco’s and Newsom’s policy and goal of banning firearms possession in  
27 public housing, and that it could apply in public housing. (See Response to Public  
28 Records Act Request attached as Exhibit 2.)

1 Plaintiffs learned that administrators of public housing in San Francisco also  
2 believed the San Francisco ordinance applied. (For example, see Exhibit 3.)  
3 Perhaps Mayor Newsom's statements (either public, or later private statements) led  
4 them to believe this. That might explain why Defendant John Stewart Company  
5 subsequently amended its "House Rules" to ban the possession of firearms in the  
6 Valencia Gardens public housing complex.

7 Regardless, after this lawsuit was filed the San Francisco City Attorney's  
8 office formally confirmed that Police Code section 617 actually does *not* apply in  
9 public housing residences and does *not* ban the possession of firearms by public  
10 housing residents.

11 This is now confirmed in that attached stipulation between plaintiffs and  
12 Defendants City and County of San Francisco, Gavin Newsom, and the San  
13 Francisco Housing Authority. (See Exhibit 4.)

14 In light of this, only the current lease provisions, which are also challenged in  
15 this lawsuit, act to ban possession of firearms in the public housing units. San  
16 Francisco and Newsom do not directly control or pass housing authority lease  
17 provisions. Accordingly, plaintiffs now move to dismiss Defendants CITY AND  
18 COUNTY OF SAN FRANCISCO and GAVIN NEWSOM from the above-  
19 captioned action without prejudice.

20 Date: October 24, 2008

TRUTANICH • MICHEL, LLP



21  
22  
23 /S/  
24 C. D. Michel  
25 Attorney for Plaintiffs