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April 11, 2017

Hon. David N. Hurd, U.S. District Judge
Alexander Pirnie Federal Bldg. and U.S. Courthouse
10 Broad Street
Utica, NY 13501

Via ECF

RE: 1:16-cv-01447-DNH-CFH, *Avitabile, et al. v. Cuomo, et al.*

Dear Judge Hurd:

Today the New Jersey Attorney General's office filed the attached Consent Order in a separate case, styled *New Jersey Second Amendment Society and Mark Cheeseman v. Christopher Porrino, et al*; Civil Action No. 16-4906 (MAS-DEA); pending in the United States District Court for the District of New Jersey, Vicinage of Trenton. The facts of that case and the instant case are relatively similar. New Jersey, like New York, maintains a complete ban on the possession or carry of electronic arms, including Tasers and stun guns. New Jersey conceded that its ban violates the Second Amendment to the United States Constitution.

In relevant portion, the Consent Order provides that:

Pursuant to the holdings in *Heller*, *McDonald* and *Caetano*, N.J. Stat. Ann. § 2C:39-3(h), to the extent this statute outright prohibits, under criminal penalty, individuals from possessing electronic arms, is declared unconstitutional in that it violates the Second Amendment to the United States Constitution and shall not be enforced.

Consent Order, p.4. While the Consent Order has not been entered by the New Jersey District Court yet, the cover letter (also attached) provides that “[a]ll of the parties to this matter have consented to the contents of the proposed Order and consent to the Court entering the Order.”

We appreciate the Court's attention to this matter and stand ready to provide any additional information requested by the Court.

Yours very truly,


STEPHEN D. STAMBOULIEH

cc: All counsel of record (ECF)



State of New Jersey

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April 11, 2017

Honorable Michael A. Shipp, U.S.D.J.
United States District Court
For the District of New Jersey
Clarkson S. Fisher Building
& U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: Second Amendment Society v. Porrino, et al.
Civ. No. 16-4906 (MAS-DEA)

Dear Judge Shipp:

Filed along with this cover letter, please find a Proposed Consent Order between the parties in the above captioned matter. All of the parties to this matter have consented to the contents of the proposed Order and consent to the Court entering the Order. Thank you.

Sincerely yours,

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: S/ Matthew J. Lynch
Matthew J. Lynch
Deputy Attorney General

Cc: Via ECF
Ryan Watson, Esq.
Stephen Stamboulieh, Esq.
Alan Alexander Beck, Esq.



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON

NEW JERSEY SECOND : HON. MICHAEL A. SHIPP, U.S.D.J.
AMENDMENT SOCIETY and :
MARK CHEESEMAN, : Civil Action No. 16-4906 (MAS-DEA)

Plaintiffs, :

v. :

: CONSENT ORDER
CHRISTOPHER S. PORRINO :
in his Official Capacity :
as Acting Attorney :
General of New Jersey, :
and COLONEL RICK FUENTES :
in his Official Capacity :
as Superintendent of the :
New Jersey State Police, :

Defendants. :

THIS COURT having received a verified complaint filed by Plaintiffs New Jersey Second Amendment Society and Mark Cheeseman (Docket Entry 1), an Answer filed by Defendants (Docket Entry 18), a pending Motion for Judgment on the Pleadings filed by Plaintiffs (Docket Entry 19), and a response to Plaintiffs' Motion for Judgment on the Pleadings adjourned by Defendants, the Attorney General of New Jersey and the Superintendent of the New Jersey State Police in their respective official capacities; and

This Court finding that plaintiffs' asserted claims in this matter are whether, in light of the United States Supreme Court's recent decision in *Caetano v. Massachusetts*, ___ U.S. ___, 136 S. Ct. 1027, 194 L. Ed. 2d 99 (2016) (per curiam), they have a right to possess a stun gun protected by the Second Amendment to the United States Constitution, notwithstanding the State of New Jersey's prohibition of "stun guns" (defined as "any weapon or other device which emits an electrical charge or current intended to temporarily or permanently disable a person"), by declaring that "[a]ny person who knowingly has in his possession any stun is guilty of a crime of the fourth degree," N.J. Stat. Ann. § 2C:39-1(t); N.J. Stat. Ann. § 2C:39-3(h); and

This Court finding that a separate New Jersey statute, N.J. Stat. Ann. § 2C:39-9(d), among other things prohibits the sale or shipment of "weapons," which are statutorily defined as including all "stun guns," by declaring that any such person who does so "is guilty of a crime of the fourth degree," N.J. Stat. Ann. § 2C:39-1(r)(4); and

This Court finding that New Jersey statutes define a "crime of the fourth degree" as one imposing certain penalties including imposition of a term of imprisonment of up to 18

months and a fine of up to \$10,000.00, N.J. Stat. Ann. § 2C:43-3(b) (2); N.J. Stat. Ann. § 43:3-6(g); and

This Court finding that plaintiffs' prayer for relief in their verified complaint includes, among other things, a request for an order enjoining Defendants and their officers, agents, servants, and employees from N.J. Stat. Ann. § 2C:39-3(h) to the extent it bans the acquisition, possession, carrying or use of "Tasers[®] and other electronic arms" (Docket Entry 1, Prayer for Relief, § 1); and a request for an order declaring that N.J. Stat. Ann. § 2C:39-3(h) is unconstitutional and violates the Second Amendment to the United States Constitution (Docket Entry 1, Prayer for Relief, § 2); and an order declaring N.J. Stat. Ann. § 2C:39-3(h) unenforceable (Docket Entry 1, Prayer for Relief, § 3); and costs of suit, including attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

Defendants having advised the Court that, they, in their official capacities, and in light of the aforementioned recent United States Supreme Court decision, recognize that an outright ban on the possession of electronic arms within the state, regardless of the contextual circumstances surrounding any such possession, would likely not pass constitutional muster and enter into this consent decree and do hereby concede that the

aforementioned statute banning electronic arms in New Jersey is unconstitutional.

IT IS on this day of , 2017,
HEREBY ORDERED THAT:

1. The Second Amendment guarantees individuals a fundamental right to keep and bear arms for self-defense *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010); *Caetano v. Massachusetts*, 577 U.S. __ (2016). Further, "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller*, 554 U.S. at 582; *Caetano*, slip op. at 1 (per curiam).

2. Pursuant to the holdings in *Heller*, *McDonald* and *Caetano*, N.J. Stat. Ann. § 2C:39-3(h), to the extent this statute outright prohibits, under criminal penalty, individuals from possessing electronic arms, is declared unconstitutional in that it violates the Second Amendment to the United States Constitution and shall not be enforced.

2. N.J. Stat. Ann. § 2C:39-9(d) shall not be enforced to the extent this statute prohibits, under criminal penalty, the sale or shipment of Tasers® or other electronic arms; and

3. For good cause shown, any and all further proceedings in this matter, are hereby stayed for a period of 180 days until

