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7 Attorneys for Plaintiffs

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 LEONARD FYOCK, SCOTT)
12 HOCHSTETLER, WILLIAM DOUGLAS,)
DAVID PEARSON, BRAD SEIFERS, and)
13 ROD SWANSON)

14 Plaintiffs)

15 vs.)

16 THE CITY OF SUNNYVALE, THE)
17 MAYOR OF SUNNYVALE, ANTHONY)
SPITALERI, in his official capacity, THE)
18 CHIEF OF THE SUNNYVALE)
DEPARTMENT OF PUBLIC SAFETY,)
19 FRANK GRGURINA, in his official)
capacity, and DOES 1-10,)
20)

21 Defendants.)

CASE NO: CV 13-05807 RMW

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing: February 7, 2014
Time: 9:00 a.m.
Place: Courtroom 6 - 4th Floor
280 South 1st Street
San Jose, CA 95113

1 Plaintiffs' Motion for Preliminary Injunction came on for hearing before this Court on
2 February 7, 2014. After consideration of the briefs and arguments of counsel, the evidence filed
3 in support of and opposition to this motion, and being fully advised, the Court finds that Plaintiffs
4 have demonstrated both a likelihood of success on the merits and the possibility of irreparable
5 harm should injunction not issue. At minimum, this case raises serious questions of constitutional
6 importance, the balance of equities tips sharply in Plaintiffs' favor and preliminary injunction is
7 in the public interest. Accordingly, Plaintiffs are entitled to temporary injunctive relief to
8 preserve the status quo pending resolution of this case on the merits, and the Court GRANTS
9 Plaintiffs' motion as follows:

10 1. Upon finding that Plaintiffs have met their burden of showing (1) a likelihood of
11 success on the merits, and (2) the possibility of irreparable harm, or alternatively that this case
12 raises serious questions and the balance of equities tips sharply in Plaintiffs favor, a preliminary
13 injunction is granted pursuant to Federal Rule of Civil Procedure 65 and the inherent equitable
14 powers of the Court.

15 2. The Court hereby preliminarily ENJOINS Defendants City of Sunnyvale and its
16 agents, employees, officers, and representatives, including defendants the Mayor of Sunnyvale,
17 Anthony Spitaleri, and the Chief of the Sunnyvale Department of Public Safety, Frank Grgurina,
18 from enforcing Sunnyvale Police Code section 9.44.050 pending resolution of the merits of this
19 case or further order of this Court.

20 3. This preliminary injunction shall take effect immediately and shall remain in effect
21 pending resolution of the merits of this case or further order of this Court.

22 4. The Court further finds that the balance of potential hardships each party
23 will suffer as a result of preliminary injunction weighs overwhelmingly in
24 Plaintiffs' favor and that Plaintiffs have established a strong likelihood of success
25 on the merits. As such, the Court hereby exercises its discretion to waive the bond
26 requirement for this preliminary injunction.

27 Plaintiffs are directed to file proof of bond, in the amount of \$_____,
28 within three court days of this Order. The bond shall serve as security for all

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claims with respect to this preliminary injunction and any additional injunctive relief order by the Court in this action.

IT IS SO ORDERED.

Date: _____

Honorable Judge Ronald M. Whyte
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LEONARD FYOCK, SCOTT HOCHSTETLER, WILLIAM DOUGLAS, DAVID PEARSON, BRAD SEIFERS, and ROD SWANSON,)	CASE NO: CV13-05807 RMW
)	
)	CERTIFICATE OF SERVICE
)	
Plaintiffs)	
)	
vs.)	
)	
THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI, in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his 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

[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Roderick M. Thompson
rthompson@fbm.com
Anthony P. Schoenberg
aschoenberg@fbm.com
Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 23, 2013.

/s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs