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THE CITY OF SUNNYVALE and
8 SUNNYVALE CITY COUNCIL

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SANTA CLARA

11
12 U.S. FIREARMS COMPANY LLC, *et al.*,

13 Petitioners,

14 vs.

15 THE CITY OF SUNNYVALE, *et al.*,

16 Respondents.

Case No. 113cv257353

RESPONDENTS' OBJECTIONS TO
INADMISSIBLE EVIDENCE IN
DECLARATIONS OF ERIC W. FISHER IN
SUPPORT OF PETITIONERS'
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE RE: PRELIMINARY
INJUNCTION

Judge: Hon. Kevin E. McKenney
Dept: 20
Action Filed: December 10, 2013

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20 Respondents hereby object as inadmissible to the following statements in the Declarations
21 of Eric W. Fisher ("Fisher Decl.") filed by Petitioners in support of their *ex parte* Application for
22 Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction. Respondents
23 move the Court for an order striking the following statements from the declaration and from the
24 record and for a ruling that such statements are not admissible evidence and are not to be
25 considered in adjudicating Petitioners' request before this Court or in any subsequent appeal.
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1 **DECLARATION OF FISHER IN SUPPORT OF PETITIONERS' APPLICATION FOR**
2 **TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE:**
3 **PRELIMINARY INJUNCTION**

4 **1. Statement:** "Without exception, these customers have objected to the collection
5 of their personal information for tracking and monitoring their ammunition purchases. Many
6 have told me that if Measure C passes, they will purchase ammunition from stores in adjacent
7 cities which do not have a requirement for collecting personal information in connection with the
8 purchase of ammunition." Fisher Decl. ¶9.

9 **Objection: Hearsay.** Cal. Evid. Code § 1200(a), (b). The declarant's statement
10 refers to out of court statements by unidentified customers to prove the truth of the matter
11 asserted, *i.e.*, their supposed intent to purchase ammunition at other stores in the future.

12 **2. Statement:** "Based on my conversations with customers, I presently believe that
13 the ammunition sales recordkeeping and reporting requirements mandated by section 9.44.060 in
14 Measure C will deter law-abiding, regular customers of U.S. Firearms from buying ammunition
15 here." Fisher Decl. ¶11.

16 **Objection: Hearsay; Lack of Foundation; Lack of Personal Knowledge.** Cal.
17 Evid. Code §§ 403, 702, 1200. Insofar as this conveys "conversations with customers," it is
18 inadmissible hearsay in that it is an out of court statement by unidentified customers to prove the
19 truth of the matter asserted, *i.e.*, their intent to purchase ammunition at other stores in the future.
20 In addition, Mr. Fisher lacks personal knowledge of the future buying habits of his customers. He
21 also lacks personal knowledge, and has not provided a foundation for, his assertion that the
22 unnamed customers are "law-abiding."

23 **3. Statement:** "I am familiar with the buying habits of many U.S. Firearms
24 ammunition customers, who shop regularly at the store. If a person were to collect information
25 concerning each customer's ammunition purchases, such as the type and quantity of ammunition
26 bought and the date of sale, they could create a database with individual profiles on each
27 customer. The profiles would necessarily reveal the type of firearms owned by each customer
28 and the frequency of use. Collection of such data over time would enable that person to monitor
customers' firearm use on a permanent basis. Federal and state laws do not require the

1 dissemination to law enforcement of such information on firearms sales.” Fisher Decl. ¶13.

2 **Objection: Lack of Foundation, Lack of Personal Knowledge, Improper Lay**

3 **Witness Opinion, Irrelevant:** Cal. Evid. Code §§ 350, 403, 702, 800. The declarant’s statement
4 lacks foundation in that it is based on a hypothetical and speculative scenario and is made without
5 personal knowledge of any facts, as opposed to speculation, concerning said scenario. Moreover,
6 this is an improper opinion of a lay witness in that it is not rationally based on the declarant’s
7 perception and is not helpful to a clear understanding of his testimony. Furthermore, Mr. Fisher’s
8 speculation has no relevance to any issue in this lawsuit.

9 **SUPPLEMENTAL DECLARATION OF FISHER IN SUPPORT OF ORDER TO SHOW
10 CAUSE RE: PRELIMINARY INJUNCTION**

11 4. **Statement:** “On or about December 5, 2013, I spoke with Captain Jeffrey Plecque
12 of the Sunnyvale Department of Public Safety, who is in charge of enforcing the new law, about
13 the customer disclosure forms that would be required to be used in connection with ammunition
14 sales. During that conversation, he told me that the Sunnyvale police would be conducting
15 investigations of every person listed on the ammunition disclosure forms to determine whether
16 they were prohibited persons.” Fisher Suppl. Decl. ¶7.

17 **Objection: Hearsay.** Cal. Evid. Code §1200. This conveys an out of court
18 statement that Petitioners seek to use for the truth of the matter asserted, *i.e.*, to establish how the
19 Sunnyvale police are going to use the ammunition disclosure forms required by Measure C.

20 5. **Statement:** “As previously stated in my declaration, collection of purchaser data
21 over time would enable a person, such as a police officer, to monitor a customer’s firearm use on
22 a permanent basis. For example, if a police officer had a problem with someone buying over
23 500 rounds of ammunition, the purchaser could be put in a different class, and the data could be
24 used to monitor a person’s shooting habits and quantities of ammunition they purchased.” Fisher
25 Suppl. Decl. ¶8.

26 **Objection: Lack of Foundation, Lack of Personal Knowledge, Improper Lay**

27 **Witness Opinion, Irrelevant:** Cal. Evid. Code §§ 350, 403, 702, 800. The declarant’s statement
28 lacks foundation in that it is based on a hypothetical and speculative scenario and is made without

1 personal knowledge of any facts, as opposed to speculation, concerning said scenario. Moreover,
2 this is an improper opinion of a lay witness in that it is not rationally based on the declarant's
3 perception and is not helpful to a clear understanding of his testimony. Furthermore, Mr. Fisher's
4 speculation has no relevance to any issue in this lawsuit.

5 **6. Statement:** "To the extent that I have lost regular purchasers of ammunition from
6 my business, the goodwill value of the business has declined. U.S. Firearms is worth less today
7 than it was on December 5, 2013, because at least seven customers have stated under oath that
8 they will never again purchase ammunition if they have to comply with the disclosure
9 requirements of Section 9.44.060." Fisher Suppl. Decl. ¶17.

10 **Objection: Lack of Foundation, Lack of Personal Knowledge, Improper Lay**
11 **Witness Opinion:** Cal. Evid. Code §§ 403, 702, 800. Mr. Fisher provides no basis or supporting
12 analysis to support his bald conclusions that the goodwill of his business has declined and that the
13 business is worth less today than it was on December 5, 2013 because seven customers declared
14 that they will no longer purchase ammunition at the store. Mr. Fishers's conclusions appear to be
15 speculation by a layperson who does not indicate that he has training in business valuation or
16 economics. Insofar as he is offering his opinion, this is an improper opinion of a lay witness in
17 that it is not rationally based on the declarant's perception and is not helpful to a clear
18 understanding of his testimony.

19 **7. Statement:** "In addition there are about 20 customers who have refused to
20 complete ammunition sales when told of the City's requirement to disclose personal information.
21 In my opinion, it is doubtful that they will purchase ammunition from U.S. Firearms as long as
22 Section 9.44.060 is enforced." Fisher Suppl. Decl. ¶17.

23 **Objection: Lack of Foundation, Lack of Personal Knowledge, Improper Lay**
24 **Witness Opinion:** Cal. Evid. Code §§ 403, 702, 800. Mr. Fisher does not lay a foundation, nor
25 does he have personal knowledge, that would allow him to opine on the future conduct or
26 intentions of the 20 unnamed customers referred to in the statement. Insofar as he is offering his
27 opinion, this is an improper opinion of a lay witness in that it is not rationally based on the
28 declarant's perception and is not helpful to a clear understanding of his testimony.

1 **8. Statement:** “The ammunition purchasers from U.S. Firearms are law-abiding.”
2 Fisher Suppl. Decl. ¶21.

3 **Objection: Lack of Foundation, Lack of Personal Knowledge:** Cal. Evid.
4 Code §§ 403, 702. Mr. Fisher has not laid an adequate foundation to support his conclusion that
5 the ammunition purchasers at his store are “law-abiding,” nor does he appear to have personal
6 knowledge sufficient to support such a statement. He also fails to explain what he means by
7 “law-abiding” in this context.

8 **9. Statement:** “I am unaware of any purchaser of ammunition from U.S. Firearms
9 who was later found to be a "prohibited person."” Fisher Suppl. Decl. ¶22.

10 **Objection: Lack of Foundation, Lack of Personal Knowledge, Irrelevant:** Cal.
11 Evid. Code §§ 350, 403, 702. Mr. Fisher’s awareness — or lack thereof — of whether any
12 purchaser of ammunition from his store was later found to be a “prohibited person” is irrelevant.
13 Moreover, he has not laid a foundation to establish that he has reason to know whether any such
14 purchasers are “prohibited persons” or that he otherwise has personal knowledge of such
15 information.

16 Dated: January 8, 2014

FARELLA BRAUN + MARTEL LLP

17
18 By: 
19 Anthony R. Schoenberg

Attorneys for Respondents
THE CITY OF SUNNYVALE and
SUNNYVALE CITY COUNCIL

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