

C. D. Michel - S.B.N. 144258
Clinton B. Monfort - S.B.N. 255609
Sean A. Brady - S.B.N. 262007
Anna M. Barvir - S.B.N. 268728
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
Email: cmichel@michellawyers.com

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SAN JOSE DIVISION

LEONARD FYOCK, SCOTT
HOCHSTETLER, WILLIAM DOUGLAS,
DAVID PEARSON, BRAD SEIFERS, and
ROD SWANSON,

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.

CASE NO: CV13-05807 RMW

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED] ORDER**

The parties to the above-entitled action submit this JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern District of California dated July 1, 2011 and Civil Local Rule 16-9.

1. Jurisdiction & Service

The basis for the court's subject matter jurisdiction over plaintiffs' claims and defendant's counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.

The Court has jurisdiction pursuant to 28 U.S.C. § 1331 because the action arises under the Second Amendment to the United States Constitution, thus raising a federal question. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 in that this action seeks to redress the alleged deprivation, under color of the laws, statutes, ordinances, regulations, customs and usages of the State of California and political subdivisions thereof, of rights, privileges or immunities secured by the United States Constitution and by Acts of Congress. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. § 2201 and 2202, respectively. No issues exist regarding personal jurisdiction or venue and all defendants have been served and entered an appearance.

2. Facts

A brief chronology of the facts and a statement of the principal factual issues in dispute.

Plaintiffs filed this action on December 16, 2013 to challenge the constitutionality of one provision in a voter-enacted local ordinance that bans the possession of ammunition magazines capable of holding more than ten rounds, referred to in the ordinance as "large-capacity magazines."

On March 5, 2014, the Court denied Plaintiffs' Motion for Preliminary Injunction. Plaintiffs appealed that decision, and on March 27, the Court issued an order staying the district court proceedings. On March 4, 2015, a three judge panel of the Ninth Circuit upheld the denial of Plaintiffs' Motion for Preliminary Injunction. The case has remained stayed.

1 Plaintiffs’ Position Regarding Senate Bill 1446, the Veto Referendum, and Prop 63

2 Senate Bill 1446

3 On July 1, 2016, Governor Brown signed Senate Bill 1446 into law, which prohibits the
4 possession of “large capacity magazines” capable of holding more than ten rounds. Senate Bill
5 1446 takes effect on July 1, 2017.

6 Veto Referendum to Repeal Senate Bill 1446

7 A veto referendum effort is currently underway that may impact whether and/or when Senate
8 Bill 1446 takes effect. The proponents of the referendum have 90 days from the
9 date of the bill’s enactment to submit signatures from registered voters totaling five
10 percent of the votes cast for all candidates for Governor during the last gubernatorial
11 election. (Cal. Const., art. II, § 9, subd. (b).) SB 1446 was enacted on July 1, 2016, and
12 so to qualify, the referendum proponent must submit 365,880 valid signatures by
13 September 29, 2016. Thus, the Court may know that the referendum has not qualified for
14 the ballot as early as that date, if it is immediately apparent that the proponent has not
15 submitted enough signatures. If the referendum proponent does submit a sufficient raw
16 count of signatures, then signature confirmation will be required. Depending on when
17 the signatures are submitted and the results of election officials’ random sampling of the
18 signatures, the referendum could qualify for the November 2018 general election ballot
19 on or before December 12, 2016, or as late as January 30, 2017. Elec. Code, §§ 9030,
20 9031, 9033. If the referendum qualifies for the ballot, the law at issue does not go into effect
21 unless and until approved by the vote of the electorate. Cal. Const., art. II, §10.

22 Prop 63

23 A statewide ballot measure, Proposition 63, is also set to be voted on this November. Among
24 other things, Prop 63 would, like Senate Bill 1446, ban the possession of “large capacity
25 magazines” capable of holding more than ten rounds. If approved by voters, these statutory
26 changes will take effect the day after the general election, November 9, 2016. Cal. Const., art.
27 II, § 10, subd. (a).-Prop 63 would ban the possession of magazines capable of holding more than
28 ten rounds beginning on July 1, 2017.

1 If the veto referendum for Senate Bill 1446 fails or if Prop 63 is passed by the voters, the
 2 City's law will be preempted by state law. If either of these events occur, Plaintiffs will
 3 accordingly no longer have an interest in litigating their Second Amendment challenge to the
 4 City's ordinance, because state will prohibit the possession of magazines over then rounds, in
 5 which case Plaintiffs anticipate that they will dismiss the suit. In the event that the veto
 6 referendum is successful and Prop 63 fails, Plaintiffs will continue litigating their Second
 7 Amendment claim on the merits.

8 Contrary to the City's assertions, if Sunnyvale's ordinance is the only law that precludes
 9 plaintiffs from possessing their lawfully acquired magazines in Sunnyvale, Plaintiffs intend to
 10 continue litigating this case.

11 In light of the passage of Senate Bill 1446, the pending veto referendum, and pending Prop 63,
 12 Plaintiffs respectfully suggest that, in the interest of judicial economy, the parties and the Court
 13 reconvene in 90 days, or at a point in time that the Court prefers, to discuss whether this case
 14 continues to present a controversy that requires litigation.

15 Defendants' Position

16 Plaintiffs claim that they will "no longer have an interest" in litigating their Second
 17 Amendment challenge to Sunnyvale's ordinance if Senate Bill 1446 is not retroactively vetoed
 18 by the electorate or if Proposition 63 passes. It has become apparent, however, that Plaintiffs no
 19 longer have any interest in litigating their Second Amendment challenge under any
 20 circumstance. Plaintiffs filed this case nearly three years ago. It has now been two-and-a-half
 21 years since this Court denied Plaintiffs' motion for preliminary injunction, and it has been a
 22 year-and-a-half since the Ninth Circuit affirmed this Court's ruling, finding that Plaintiffs are
 23 not likely to succeed on the merits of their Second Amendment challenge to Sunnyvale's
 24 ordinance. Since then, Plaintiffs have done nothing to move this case forward. The presumptive
 25 reason is obvious -- this Court and the Ninth Circuit have already found that Plaintiff's Second
 26 Amendment challenge lacks merit.

27 Plaintiffs would now have this Court delay this case for an additional three months based
 28 on the remote possibility that a veto referendum against Senate Bill 1446 will be successful *and*

1 Proposition 63 will fail. And this speculative scenario assumes that both Senate Bill 1446 and
 2 Proposition 63 would necessarily preempt the Sunnyvale ordinance as a matter of law, an
 3 assertion for which Plaintiffs provide no support other than their own conclusory statement that
 4 it is so. And even assuming for the sake of argument that Plaintiffs' assertion is correct, neither
 5 Senate Bill 1446 nor Proposition 63 would have any preemptive effect until July 1, 2017.

6 The time has come for Plaintiffs to dismiss this case. It seems that they have no actual
 7 interest in litigating their Second Amendment challenge, which this Court and the Ninth Circuit
 8 have found to be lacking in merit. In fact, since the Ninth Circuit issued its ruling in March of
 9 last year, the legal landscape has only become more bleak for Plaintiffs, as additional courts
 10 (including the Seventh Circuit) have upheld large capacity magazine bans against Second
 11 Amendment challenges. *See, e.g., Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir.
 12 2015). As far as Defendants are aware, every court to consider a Second Amendment challenge
 13 to a large capacity magazine ban has found that the ban passes constitutional muster. And in a
 14 case of this nature, it is highly improbable that Plaintiffs would learn any facts through
 15 discovery that would lead to a different result. Accordingly, there is no realistic prospect that
 16 Plaintiffs can succeed in their challenge, and it will be a significant waste of judicial resources if
 17 this case goes forward.

18 3. Legal Issues

19 *A brief statement, without extended legal argument, of the disputed points of law, including*
 20 *reference to specific statutes and decisions.*

21 Plaintiffs contend that the City's ordinance violates the Second Amendment right to keep and
 22 bear arms.

23 Defendants dispute Plaintiffs' claim and contend that the ordinance does not violate the Second
 24 Amendment.

25 4. Motions

26 *All prior and pending motions, their current status, and any anticipated motions.*

27 On January 7, 2014, the Court denied Defendants' Motion to Relate Case.

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On January 9, 2014, the Court granted with modifications Defendants' Motion to Enlarge Time for Hearing and Briefing on Preliminary Injunction and denied Defendants' Motion for Expedited Discovery.

On March 5, 2014, the Court denied Plaintiffs' Motion for Preliminary Injunction. Plaintiffs appealed that ruling, and on March 27, the Court issued an order staying the district court proceedings. On March 4, 2015, a three judge panel of the Ninth Circuit upheld the denial of Plaintiffs' Motion for Preliminary Injunction.

No motions are currently pending.

5. Amendment of Pleadings

The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.

Plaintiffs

If the veto referendum for Senate Bill 1235 fails or if Prop 63 is passed by the voters, Plaintiffs accordingly will no longer have an interest in litigating their Second Amendment challenge to the City's ordinance because state law will prohibit the possession of magazines over ten rounds, and Plaintiffs anticipate that they will dismiss the suit. In light of the passage of Senate Bill 1446, the pending veto referendum, and pending Prop 63, Plaintiffs respectfully suggest that, in the interest of judicial economy, the parties and the Court reconvene in 90 days, or at a point in time that the Court prefers, to discuss whether this case continues to present a controversy that requires litigation.

Defendants

For the reasons explained above, Plaintiffs should dismiss this case.

6. Evidence Preservation

A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"), and confirming that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.

The parties have reviewed the guidelines, but have not yet met and conferred regarding preservation of evidence.

Plaintiffs

In light of the passage of Senate Bill 1446, the pending veto referendum, and the upcoming vote on Prop 63, Plaintiffs respectfully suggest that, in the interest of judicial economy, the parties and the Court reconvene in 90 days, or at a point in time that the Court prefers, to discuss whether this case will continue to be litigated and thus, whether disclosures and discovery are necessary.

Defendants

For the reasons explained above, Plaintiffs should dismiss this case.

7. Disclosures

Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26 and a description of the disclosures made.

The parties have not yet made initial disclosures since the case has remained stayed following the denial of Plaintiffs' Motion for Preliminary Injunction.

8. Discovery

Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, a brief report on whether the parties have considered entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified discovery disputes.

The parties have not taken any discovery to date and have not considered entering into a stipulated e-discovery order. The parties have not yet proposed a discovery plan since the case has remained stayed following the denial of Plaintiffs' Motion for Preliminary Injunction.

Plaintiffs

In light of the passage of Senate Bill 1446, the pending veto referendum, and pending Prop 63, Plaintiffs respectfully suggest that, in the interest of judicial economy, the parties and the Court reconvene in 90 days, or at a point in time that the Court prefers, to discuss whether this case will continue to be litigated and thus, whether disclosures and discovery are necessary.

1 Defendants

2 For the reasons explained above, Plaintiffs should dismiss this case.

3 9. Class Actions

4 *If a class action, a proposal for how and when the class will be certified.*

5 N/A

6 10. Related Cases

7 *Any related cases or proceedings pending before another judge of this court, or before another*
 8 *court or administrative body.*

9 None.

10 11. Relief

11 *All relief sought through complaint or counterclaim, including the amount of any damages*
 12 *sought and a description of the bases on which damages are calculated. In addition, any party*
 13 *from whom damages are sought must describe the bases on which it contends damages should*
 14 *be calculated if liability is established.*

15 Plaintiffs seek declaratory and injunctive relief to invalidate the ordinance and enjoin its
 16 enforcement.

17 12. Settlement and ADR

18 *Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including*
 19 *compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to*
 20 *position the parties to negotiate a resolution.*

21 N/A

22 13. Consent to Magistrate Judge For All Purposes

23 *Whether all parties will consent to have a magistrate judge conduct all further proceedings*
 24 *including trial and entry of judgment. ____ YES X NO*

25 14. Other References

26 *Whether the case is suitable for reference to binding arbitration, a special master, or the*
 27 *Judicial Panel on Multidistrict Litigation.*

28 *The case is not suitable for reference to binding arbitration, a special master, or the Judicial*

Panel on Multidistrict litigation.

15. Narrowing of Issues

Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.

N/A

16. Expedited Trial Procedure

Whether this is the type of case that can be handled under the Expedited Trial Procedure of General Order 64, Attachment A. If all parties agree, they shall instead of this Statement, file an executed Agreement for Expedited Trial and a Joint Expedited Case Management Statement, in accordance with General Order No. 64, Attachments B and D.

This case is not appropriate for expedited trial procedures.

17. Scheduling

Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.

Plaintiffs

If the veto referendum for Senate Bill 1235 fails or if Prop 63 is passed by the voters, Plaintiffs accordingly will no longer have an interest in litigating their Second Amendment challenge to the City's ordinance because state law will prohibit the possession of magazines over ten rounds, and Plaintiffs anticipate that they will dismiss the suit. In light of the passage of Senate Bill 1446, the pending veto referendum, and pending Prop 63, Plaintiffs respectfully suggest that, in the interest of judicial economy, the parties and the Court reconvene in 90 days, or at a point in time that the Court prefers, to discuss whether this case continues to present a controversy that requires litigation.

Defendants

For the reasons explained above, Plaintiffs should dismiss this case.

18. Trial

Whether the case will be tried to a jury or to the court and the expected length of the trial.

1 Plaintiffs

2 If this case continues to present a live controversy, Plaintiffs anticipate that this case will be
3 resolved on cross-motions for summary judgment. In the event the case goes to trial, Plaintiffs
4 claim would be tried before the Court and trial should not exceed 14 days.

5 Defendants

6 For the reasons explained above, Plaintiffs should dismiss this case.

7 19. Disclosure of Non-party Interested Entities or Persons

8 *Whether each party has filed the "Certification of Interested Entities or Persons" required by*
9 *Civil Local Rule 3-15. In addition, each party must restate in the case management statement*
10 *the contents of its certification by identifying any persons, firms, partnerships, corporations*
11 *(including parent corporations) or other entities known by the party to have either: (i) a*
12 *financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any*
13 *other kind of interest that could be substantially affected by the outcome of the proceeding.*

14 Yes.

15 Plaintiffs

16 Plaintiffs do not believe there are any non-party interested entities or persons to report, and none
17 were reported in Plaintiffs Certification of Interested Parties. To the extent that the State of
18 California, Kamala D. Harris, in her official capacity as Attorney General for the State of
19 California, or any other State agents or officials could be substantially affected by the outcome
20 of this proceeding, Plaintiffs made the following disclosure: Pursuant to Civil L.R. 3-16, listed
21 persons, associations of persons, firms, partnerships, corporations (including parent
22 corporations) or other entities could potentially have a financial or non-financial interest in the
23 subject matter or in a party that could be substantially affected by the outcome of this
24 proceeding: (1) the State of California; (2) Kamala 20 D. Harris, in her official capacity as
25 Attorney General for the State of California

1 Defendants

2 Civil Local Rule 3-15(a) exempts government entities and agencies from the certification
3 requirement.

4 20. Professional Conduct

5 *Whether all attorneys of record for the parties have reviewed the Guidelines for Professional*
6 *Conduct for the Northern District of California.*

7 All parties have review the Guidelines for Professional Conduct for the Northern District of
8 California.

9 21. Other

10 *Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.*

11 N/A

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1 Date: September 16, 2016

MICHEL & ASSOCIATES, P.C.

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3
4 /s/ Sean A. Brady

SEAN A. BRADY

5 Attorney for Plaintiffs Leonard Fyock, Scott
6 Hochstetler, William Douglas, David Pearson, Brad
7 Seifers, and Rod Swanson

8 Date: September 16, 2016

FARELLA BRAUN + MARTEL LLP

9
10 /s/ Anthony P. Schoenberg

11 ANTHONY P. SCHOENBERG

12 Attorney for Defendants the City of Sunnyvale, the
13 Mayor of Sunnyvale, Anthony Spitaleri, in his official
14 capacity, and the Chief of the Department of Public
15 Safety, Frank Grgurina, in his official capacity
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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. In addition, the Court makes the further orders stated below:

IT IS SO ORDERED.

Date: _____

Honorable Judge Ronald M. Whyte
United States District Court Judge

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9/16/16