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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

**DECLARATION OF DAVID
PEARSON IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

DECLARATION OF DAVID PEARSON

1
2 1. I, David Pearson, am a plaintiff in the above-entitled action. I make this
3 declaration of my own personal knowledge and, if called as a witness, I could and
4 would testify competently to the truth of the matters set forth herein.

5 2. I am a current resident of the City of Sunnyvale.

6 3. I am a law-abiding adult who is not prohibited from owning firearms
7 under the laws of the United States or the state of California. I have never been
8 found by any law enforcement agency, any court, or any other government agency
9 to be irresponsible, unsafe, or negligent with firearms in any manner.

10 4. Prior to December 6, 2013, I acquired a magazine capable of holding
11 more than ten rounds in accordance with state and federal law. This magazine has
12 not been permanently altered so as to be incapable of accommodating more than 10
13 rounds, its is not a .22 caliber tube ammunition feeding device, and it is not a
14 tubular magazine contained in a lever-action firearm. I currently own and possess
15 this magazine for in-home self-defense.

16 5. Prior to December 6, 2013, I lawfully acquired a magazine capable of
17 holding twenty rounds for my rifle, with the purpose of using such for target
18 practice and for in-home self-defense.

19 6. I selected this particular firearm in part because I believe that a rifle with
20 a magazine capable of holding more than ten rounds is useful for in-home self-
21 defense.

22 7. I am concerned that if multiple intruders attack me while at home, I may
23 require the use of more than ten rounds to effectively protect myself and others in
24 my home.

25 8. I fear that a home intruder will be carrying a firearm with a magazine
26 capable of holding more than ten rounds, or will be carrying multiple firearms, and
27 that I will require a firearm with a magazine capable of holding more than ten
28 rounds to effectively protect myself and others from such a threat in my home.

1 9. I believe that being forced to change my magazine after expending ten
2 rounds during any critical time that requires me to act in self-defense may impact
3 my ability to effectively defend myself and others in my home. Should I require
4 more than ten rounds to neutralize the threat of a home intruder or group of
5 intruders, I fear that I may be unable to re-load my rifle in time to effectively
6 defend myself and others in my home.

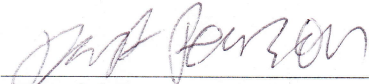
7 10. Due to the Defendants' enactment of Sunnyvale Municipal Code
8 (SMC) section 9.44.050, I am prohibited from continuing to possess, within the
9 City of Sunnyvale, any magazine capable of holding more than ten rounds that has
10 not been permanently altered so that it cannot accommodate more than 10 rounds,
11 is not a .22 caliber tube ammunition feeding device, and is not a tubular magazine
12 that is contained in a lever-action firearm.

13 11. In accordance with SMC section 9.44.050, I intend to cease possessing
14 any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale on
15 or before March 6, 2013.

16 12. But for SMC section 9.44.050, I would immediately and continuously
17 possess a magazine capable of holding more than ten rounds within the City of
18 Sunnyvale for lawful purposes, including in-home self-defense. If this court
19 declares SMC section 9.44.050 invalid or otherwise enjoins its enforcement, I will
20 continue to possess any magazine prohibited by SMC section 9.44.050 within the
21 City of Sunnyvale.

22 13. Because SMC section 9.44.050 requires that I cease possessing within
23 the City of Sunnyvale any magazine prohibited by SMC section 9.44.050, I will be
24 continuously and irreparably harmed by the ongoing deprivation of my individual,
25 fundamental right to possess and use commonly possessed firearm magazines for
26 lawful purposes, including in-home self-defense, without risking criminal
27 prosecution.
28

1 I declare under penalty of perjury that the foregoing is true and correct.
2 Executed within the United States on December 20, 2013.

3 
4

David Pearson, Declarant