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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,
13 BRAD SEIFERS, and ROD
14 SWANSON,

15 Plaintiffs

16 vs.

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

22 Defendants.
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CASE NO: CV13-05807 RMW

**DECLARATION OF JAMES
CURCURUTO IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

DECLARATION OF JAMES CURCURUTO

1. I, James Curcuruto, am not a party in the above-titled action. I am over the age of 18, have personal knowledge of the facts and events referred to in this Declaration, and am competent to testify to the matters stated below.

2. I am the Director, Industry Research and Analysis, at the National Shooting Sports Foundation (“NSSF”). The NSSF is the trade association for the firearms industry. Its mission is to promote, protect and preserve hunting and the shooting sports. Formed in 1961, NSSF has a membership of 10,000 manufacturers, distributors, firearms retailers, shooting ranges, sportsmen’s organizations and publishers.

3. In my position as Director, Industry Research and Analysis, I am responsible for most of the research activities at NSSF, and I direct the activities of an internal research coordinator and outside companies retained to conduct research and gather market and consumer information useful to NSSF members.

4. Many NSSF members manufacture, distribute and/or sell firearms and shooting and hunting-related goods and services, and as is usual and customary for trade associations, the NSSF collects and disseminates industry-specific, non-sensitive data reflecting consumer preferences, market trends and other information for use in their business decisions. Among the shooting and hunting-related goods and services manufactured, distributed and sold by NSSF members are ammunition magazines.¹ Research conducted by the NSSF and under my direction demonstrates that detachable ammunition magazines are very popular

¹ A “magazine” is a receptacle for a firearm that holds a plurality of cartridges or shells under spring pressure preparatory for feeding into the chamber. <http://saami.org/glossary/display.cfm?letter=M>, Glossary of Terms, Sporting Arms and Ammunition Manufacturers’ Institute (SAAMI). While magazines take many forms – box, drum, rotary, tubular, etc. and may be fixed or removable – from the materials I considered and firearms industry professionals I consulted, the figures discussed in this declaration generally (if not exclusively) concern detachable, box magazines.

1 and are commonly owned by millions of persons in the United States for a variety
2 of lawful purposes, including, but not limited to, recreational and competitive target
3 shooting, home defense, collecting and hunting.

4 5. In addition to ammunition magazines accompanying firearms that
5 utilize them at the time of sale, such magazines are also widely available for sale as
6 a stand-alone item to individuals who need a replacement, different-capacity, and/or
7 additional magazine.

8 6. I am not aware of any singular public source providing reliable figures
9 identifying exactly how many ammunition magazines are manufactured or imported
10 for sale within the United States each year. There are, however, data available to me
11 from which estimations of the amount of magazines that have been sold to the
12 general population, as well as how many of those have a capacity for ammunition
13 exceeding ten rounds, can be calculated within a reasonable degree of certainty.

14 7. Using such data, I have, in the normal scope of my duties on behalf of
15 the NSSF, calculated estimations of the total number of magazines possessed by
16 consumers in the United States, as well as how many of those have a standard
17 capacity for ammunition exceeding ten rounds. These estimations are published in
18 the NSSF Magazine Report attached as Exhibit "A."

19 8. The NSSF Magazine Report estimates that 158 million pistol and rifle
20 magazines were in the possession of United States consumers between 1990 and
21 2012. The data supporting the Report further shows magazines capable of holding
22 more than 10 rounds of ammunition accounted for approximately 75 million or
23 approximately 47 percent of all magazines owned.

24 9. Sources used to compile the NSSF Magazine Report include the
25 Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Annual Firearms
26 Manufacturers and Exports Reports (AFMER), U.S. International Trade
27 Commission (ITC), as well as, opinions of firearms industry professionals. To
28 prepare the NSSF Magazine Report, only the number of pistols and rifles was used

1 while revolver and shotgun data was excluded as revolvers and the vast majority of
2 shotguns do not utilize magazines.

3 10. The ATF AFMER data provide historical figures for pistols by caliber
4 (i.e., the specific ammunition cartridge for which a firearm is chambered) and rifles
5 produced in the United States for consumer purchase. The ITC data provides
6 historical figures for pistol and rifles imported to and exported from the United
7 States for consumer purchase. The total number of firearms available for consumer
8 purchase 1990 through 2012 was calculated by adding the total U.S-production of
9 firearms with the total firearms imported and then subtracting total firearms
10 exported.

11 11. The ATF AFMER and ITC data provided estimates of approximately
12 50 million pistols and 33 million rifles available to United States consumers
13 between 1990 and 2012. Firearms industry professionals with knowledge of the
14 pistol and rifle magazine market then allocated magazines to the totals to complete
15 the data provided in the NSSF Magazine Report .

16 12. It can be assumed that many more such magazines were manufactured
17 in the United States or imported to the United States for sale in the commercial
18 marketplace both prior to 1990 as well as after 2012.

19 13. While the figure of 75 million standard capacity magazines holding
20 over 10 rounds in circulation is an estimation based on extrapolation from indirect
21 sources and cannot be confirmed as unequivocally accurate, it is safe to say that
22 whatever the actual number of such magazines in United States consumers' hands
23 is, it is in the tens-of-millions, even under the most conservative estimates.

24 I declare under penalty of perjury that the foregoing is true and correct.
25 Executed within the United States on December 19, 2013.


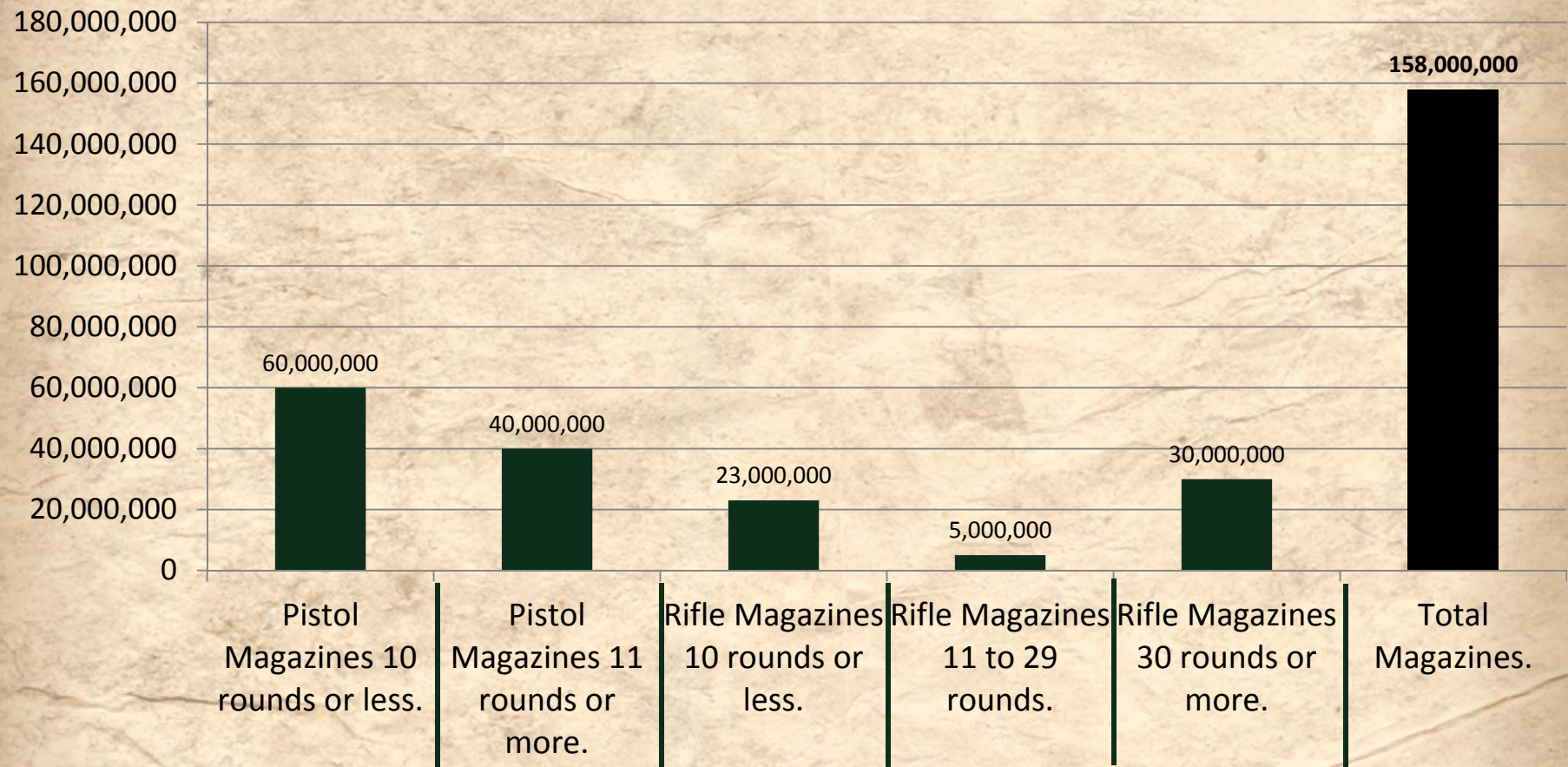
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27 
28 James Curcuruto

EXHIBIT A

Estimated 158 Million Pistol and Rifle Magazines in U.S. Consumer Possession 1990 – 2012.



Sources: ATF AFMER, US International Trade Commission figures combined with NSSF and Firearms Industry estimates.

PROMOTE

PROTECT

PRESERVE

