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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 STEPHEN
HELSLEY IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

DECLARATION OF STEPHEN HELSLEY

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2 1. I am a retired peace officer from the California Department of Justice
3 (DOJ). The bulk of that career was in drug enforcement. The last three positions I
4 held were Chief of the Bureau of Narcotic Enforcement, Chief of the Bureau of
5 Forensic Services and finally Assistant Director of the Division of Law
6 Enforcement. As Assistant Director, I was responsible for the department's
7 criminal, civil and controlled substance investigations as well as law enforcement
8 training, intelligence gathering and our forensic laboratory system. In my executive
9 level positions, I had occasion to review special agent-involved shootings and a
10 wide range of homicides involving firearms. I have qualified as an expert in both
11 criminal and civil matters. I was the department's principal firearms instructor for
12 many years and am an FBI certified range master. I also participated in the firearm
13 training that was part of the FBI National Academy Program in Quantico, Virginia.
14 Additionally, I am a member of the American Academy of Forensic Sciences and a
15 technical advisor to the Association of Firearm and Tool Mark Examiners. I have
16 co-authored five books on firearms and have authored or co-authored more than
17 fifty firearm-related articles for US and Russian journals. For the past twenty years,
18 I was first a state liaison and, then later, a consultant to the National Rifle
19 Association. Throughout my adult life I have been an active participant in handgun,
20 rifle and shotgun competitions. I have also been a firearm collector and ammunition
21 reloader since the early 1960s. Finally, I am a collector of firearm related books –
22 of which I have approximately three thousand. Included in my book collection are
23 forty nine different issues of *Gun Digest*, the earliest of which is from 1944. It is a
24 standard resource that is widely used by gun dealers and buyers alike. *Gun Digest*
25 has traditionally provided a comprehensive overview of the firearms and related
26 items available to retail buyers.

27 2. The combination of my consulting work, writing and free time activities
28 puts me in constant contact with gun stores, shooting ranges, gun shows and gun

1 owners. I am also in frequent contact with retirees from DOJ and other law
2 enforcement agencies. It is clear to me from my collective experiences that
3 handguns with a potential magazine capacity of more than 10-rounds are a common
4 choice for self-protection.

5 3. The standard magazine for a given firearm is one that was originally
6 designed for use with that firearm, regardless of whether its capacity is six, ten,
7 fifteen, or twenty rounds. Various popular handgun models originally came from
8 the manufacturer standard, free from artificial influences like laws restricting
9 capacity, with magazines exceeding ten rounds. Examples include, but are in no
10 way limited to, the Browning High Power (13 rounds) c.1954, MAB PA-15 (15
11 rounds) c.1966, Beretta Models 81/84 (12/13 rounds) c.1977, S&W Model 59 (14
12 rounds) c.1971, L.E.S P-18 (18 rounds) c.1980 aka Steyr GB, Beretta Model 92 (15
13 rounds) c.1980s, and Glock 17 (17 rounds) c.1986. I know there to be many more
14 examples not listed here.

15 4. Firearms with a capacity exceeding 10-rounds date to the ‘dawn of
16 firearms.’ In the late-15th Century, Leonardo Da Vinci designed a 33-shot weapon.
17 In the late 17th Century, Michele Lorenzoni designed a practical repeating flintlock
18 rifle. A modified 18th Century version of Lorenzoni’s design, with a 12-shot
19 capacity, is displayed at the NRA’s National Firearms Museum. Perhaps the most
20 famous rifle in American history is the one used by Lewis and Clark on their ‘Corps
21 of Discovery” expedition between 1803 and 1806 -- the magazine for which held
22 twenty-two .46 caliber balls.

23 5. Rifles with fixed magazines holding 15-rounds were widely used in the
24 American Civil War. During that same period, revolvers with a capacity of 20-
25 rounds were available but enjoyed limited popularity because they were so
26 ungainly.

27 6. In 1879, Remington introduced the first ‘modern’ detachable rifle
28 magazine. In the 1890s, semiautomatic pistols with detachable magazines followed.

1 During WWI, detachable magazines with capacities of 25 to 32-rounds were
2 introduced. As those magazines protruded well below the bottom of the pistol's
3 frame, they weren't practical for use with a belt holster – and by extension
4 concealed carry for self-defense.

5 7. In 1935, Fabrique Nationale introduced the Model P-35 pistol with its
6 fully internal 13-round magazine. It would become one of the most widely used
7 military pistols of all time. During WWII, magazine capacity for shoulder-fired
8 arms was substantially increased while most pistols (excluding the P-35) remained
9 at 10-rounds or less. In the mid-1950s the P-35 was rebranded the High Power and
10 imported to the US.

11 8. This transition of a firearm from military to civilian use for sport or self-
12 defense is very common. The standards of WWI – the 1903 Springfield rifle and the
13 Colt M1911 pistol are but two of many examples. Civilian sales of both began
14 immediately after the war ended. The Springfield would become the standard for
15 both rifle hunting and target competition. Likewise, the M1911 Colt pistol was a
16 target shooting standard for a half-century or more and popular for self-defense.

17 9. Between the two world wars, double-action semiautomatic pistols like
18 the Walther PPK and P-38 were introduced. The double-action feature allowed the
19 first shot to be fired in a manner similar to a revolver. Law enforcement agencies in
20 the United States had traditionally used revolvers. However, in the early 1970s, a
21 confluence of events changed that: training funds became widely available and so
22 did the first double action semiautomatic pistol (the S&W M59) with a 14-round
23 magazine. Soon major agencies were transitioning to the M59 and the legion of
24 other makes that followed – CZ, Colt, HK, Sig-Sauer, Glock, Beretta, Ruger, Smith
25 & Wesson, etc. Pistols with magazine capacities as large as 19-rounds quickly
26 replaced the six-shot revolver.

1 10. Law enforcement demand for the new generation of semiautomatic
2 pistols helped create an increased demand in the civilian market. Comparing 1986
3 and 2010 handgun sales, one can see evidence of that change. According to the
4 Bureau of Alcohol Tobacco Firearms and Explosives, in 1986, 663,000 pistols were
5 sold in the United States versus 761,000 revolvers. In 2010, revolver sales had
6 dropped to 559,000 while pistol sales had grown to 2,258,000. *See* United States
7 Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives,
8 Firearms Commerce in the United States, Annual Statistical Update (2012).¹ The
9 result of almost four decades of sales to law enforcement and civilian clients is
10 millions of semiautomatic pistols with a magazine capacity of more than ten rounds
11 and likely multiple millions of magazines for them. My associates who have such
12 pistols also have a significant number of spare magazines for them. In my case, I
13 have one 19-round and eight 17-round magazines for my Glock.

14 11. The retired peace officer, concealed weapon permit holder and the
15 home-owner wants a pistol that can hold significantly more cartridges than a
16 revolver for the same reason a law enforcement officer or soldier wants one – to
17 increase his or her chances of staying alive. Gunfights frequently involve a lot of
18 ‘missing.’ This can be the result of improper aim or impact with barriers such as
19 vehicles or walls. One would be hard pressed to find someone who had been in a
20 gunfight that complained about having too much ammunition.

21 12. Some believe that anyone defending themselves can just “shoot to
22 wound.” Those who grew up in the 1950s likely watched Roy Rogers shoot the gun
23 out of an evildoers hand - or if things got really serious – let loose a grazing wound
24 to the arm to settle matters. Such ideas are a fantasy. Equally as silly is the well-

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27 ¹ Report available at
28 <http://www.atf.gov/files/publications/firearms/050412-firearms-commerce-in-the-us-annual-statistical-update-2012.pdf>

1 known 'fact' that a bullet from a .45ACP cartridge will knock someone to the
2 ground no matter where it strikes them.

3 13. The notion that a bullet can 'knock-down' a person is a largely
4 Hollywood-inspired myth. Most of us learned in school about Sir Isaac Newton's
5 *Third Law of Motion* that states - "For every action, there is an opposite and equal
6 reaction." Put another way -If the recoil of the firearm doesn't knock you down,
7 neither will the bullet. Bullets can penetrate skin, cut arteries, break bones or
8 interrupt nerve function to accomplish what is generally described as 'stopping
9 power.' A bullet that severs the spine or strikes a certain area of the brain will
10 almost certainly stop an attacker instantly. Bullet design and/or increased velocity
11 may improve performance but placement is still the most critical factor. A hit, or
12 even multiple hits, to less vital areas of the body may allow an attacker to continue
13 the assault. This phenomenon is extensively documented in the citations for
14 American hero's who were awarded the Congressional Medal of Honor. Many of
15 these men continued to fight after suffering multiple gunshot wounds, being struck
16 by shrapnel or having an arm or leg severed. *See, e.g., The Congressional Medal of*
17 *Honor, The Names, The Deeds* 28-29, 52-53, 284-85 (Sharp & Dunnigan, 1984). A
18 fighter who has overcome fear and is motivated to continue an attack can be
19 difficult to stop. In the infamous 1986 FBI shoot-out with two Florida bank robbers,
20 one of the suspects, Michael Platt, sustained 12 gunshot wounds before dying.
21 Jamie Frater, Top 10 Most Audacious Shootouts in US History, Listserve (October
22 14, 2009)
23 <http://listverse.com/2009/10/14/top-10-most-audacious-shootouts-in-us-history/>.

24 14. "Knockdown" and "Stopping Power" are things I know from personal
25 experience. During my early years as a narcotic agent with the California
26 Department of Justice, I was conducting an undercover investigation of a
27 significant heroin dealer. After purchasing an ounce and a half of heroin from him
28 and the arrest was initiated, he shot me with a .45 first breaking my left arm and

1 severing an artery (Note: I wasn't 'knocked down.') and then bouncing another
2 round off my spine that exited my right leg. From a prone position I returned fire at
3 the suspect who was mostly concealed by the trunk of his car. My shots that struck
4 the vehicle failed to penetrate sufficiently to reach him. In the exchange that
5 followed I had another round pass through my right leg, while another entered my
6 left side and lodged in the disc between L3 and L4 - where it remains today. Having
7 emptied the 8 rounds in my pistol, I tried to reload. However, with a broken arm
8 and temporary paralysis from the waist down, I was unable to reach my spare
9 magazine in my left rear pants pocket. Fortunately, at that time the suspect quickly
10 surrendered to my converging surveillance team. Very little pain was initially
11 associated with my wounds and I could have 'fought on' if more ammunition had
12 been available. A total of 18-rounds were fired.

13 15. Four years later, I was making an undercover cocaine purchase with a
14 new member of my team. I had involved myself to evaluate his performance. The
15 three suspects, two of whom were armed (initially unbeknownst to us) had decided
16 that robbery was a better option than delivering the cocaine. The junior agent was
17 taken hostage and was being held in the state undercover car with a sawed-off rifle
18 to the back of his head and a revolver held against his right side. I was across the
19 street in another undercover car with the money the suspects wanted. I informed the
20 surveillance team that I was going to approach the other vehicle to see what I could
21 do. When I got to the car it was difficult to determine what was happening, as it was
22 a dark, rainy night. I told the agent to exit the vehicle and as he opened the car door
23 and dived out, two shots were fired at him – both missed. I returned fire at the area
24 of the muzzle flash inside the car. Of the eight rounds I fired, the automobile glass
25 defeated most. However, one .45 bullet hit the suspect holding the rifle, causing
26 him serious internal injuries. The suspect with the revolver came out of the
27 passenger door and was struck through the shin with a .45 bullet from a member of
28 the surveillance team who had quietly closed-in on the vehicle. After a short pause

1 the suspects were ordered out of the vehicle. Both of those with gunshot wounds
2 came out fighting. A flashlight to the chin produced the 'stopping power' for the
3 suspect with the internal wound. The suspect with the leg wound was unaware of
4 his injury until he saw the massive blood loss – whereupon he exclaimed "I'm
5 bleeding" and passed out. Twenty-eight rounds were fired into the vehicle with only
6 two hits. For my actions in this incident I was awarded the department's Medal of
7 Valor. The 'take away' from these incidents is that serious bullet wounds aren't
8 necessarily incapacitating and that gunfights can require lots of ammunition.

9 16. By the time I retired from DOJ, I had switched to a Glock 17 with a 19-
10 round magazine as my duty and then personal defense weapon. I purchased it from
11 the department with a compliment of magazines and have carried it, so equipped,
12 ever since. I am authorized to carry a loaded and concealed firearm pursuant to
13 Penal Code Sections 25455 and 25460. Should my travels take me into Sunnyvale, I
14 would be prohibited from using my magazines for such travel because I transited
15 that city.

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

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20 
21 Stephen Helsley
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