

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 Leonard Fyock,  
 Scott Hochstetler, William Douglas,  
 David Pearson, Brad Seifers, and Rod Swanson

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

LEONARD FYOCK, SCOTT	)	CASE NO: CV-13-05807 RMW
HOCHSTETLER, WILLIAM DOUGLAS,	)	
DAVID PEARSON, BRAD SEIFERS, and	)	JOINT CASE MANAGEMENT
ROD SWANSON,	)	CONFERENCE STATEMENT

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.

1 Plaintiffs Leonard Fyock, Scott Hochstetler, William Douglas, David Pearson, Brad  
 2 Seifers, and Rod Swanson (collectively “Plaintiffs”), and Defendants the City of Sunnyvale, the  
 3 Mayor of Sunnyvale, Anthony Spitaleri, in his official capacity, and the Chief of the Department  
 4 of Public Safety, Frank Grgurina, in his official capacity (collectively “Sunnyvale”), jointly  
 5 submit this Case Management Conference Statement.

## 6 **I. JURISDICTION AND SERVICE**

7 The complaint alleges violations of Plaintiffs’ rights under the Second Amendment to the  
 8 United States Constitution and seeks declaratory and injunctive relief. This Court has jurisdiction  
 9 pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and 42 U.S.C. § 1983.

10 All named defendants have been served and have appeared.

## 11 **II. FACTS**

12 Municipal Code section 9.44.050 (“the Ordinance”) prohibits, with limited exceptions, the  
 13 possession of “large-capacity magazines,” defined in the Ordinance as “any detachable  
 14 ammunition feeding device with the capacity to accept more than ten (10) rounds.” The  
 15 Ordinance took effect on December 6, 2013, and requires all individuals in Sunnyvale subject to  
 16 the possession ban to remove their prohibited magazines from city limits, surrender them to the  
 17 Sunnyvale Department of Public Safety, or lawfully sell or transfer them on or before March 6,  
 18 2014. Sunnyvale, Cal., Muni. Code § 9.44.050 (b).

19 The individual plaintiffs allege that they lawfully possess magazines capable of accepting  
 20 more than ten rounds that are standard equipment for millions of handguns and rifles, they are in  
 21 common use in the United States for lawful purposes including self-defense and sport, and that  
 22 prohibiting possession of common magazines capable of accepting more than ten rounds will not  
 23 promote public safety and will diminish residents’ safety by restricting their ability to use  
 24 common arms to defend themselves and their homes. Further information about Plaintiffs’ factual  
 25 contentions can be found in Plaintiffs’ Motion for Preliminary Injunction and supporting  
 26 documents, ECF Nos. 10-21, 32, and in Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’  
 27 Motion for Preliminary Injunction and supporting documents, ECF Nos. 45-46.

28 Sunnyvale alleges that large-capacity ammunition magazines are not “arms” subject to the

1 Second Amendment, are not in common use in California where they have been unavailable for  
2 purchase or transfer for twenty years, are not suitable for responsible self-defense purposes in the  
3 United States or California, that they are disproportionately dangerous and used overwhelmingly  
4 in crimes including mass shootings and police shootings, and that prohibiting them will advance  
5 public safety. Further information about Sunnyvale's factual contentions can be found in  
6 Sunnyvale's opposition to Plaintiffs' motion for preliminary injunction and supporting  
7 documents, ECF Nos. 35-43.

### 8 **III. LEGAL ISSUES**

9 The legal issue in this case is whether the Ordinance violates the Second Amendment of  
10 the United States Constitution.

11 Plaintiffs contend that the Ordinance violates the Second Amendment because magazines  
12 capable of accepting more than ten rounds are in common use by tens of millions of law-abiding  
13 citizens for lawful purposes including self-defense in the home and thus protected by the Second  
14 Amendment, and an outright ban on their possession by law-abiding citizens is unconstitutional  
15 regardless of the level of scrutiny applied. Alternatively, Plaintiffs contend that because the  
16 Ordinance bans protected arms for any purpose including the core Second Amendment activity of  
17 self-defense in the home, it must survive strict scrutiny under *United States v. Chovan*, 735 F.3d  
18 1127 (9th Cir. 2013) to be held lawful, and it fails that scrutiny. Alternatively, Plaintiffs contend  
19 that even under intermediate scrutiny, the Ordinance is unconstitutional because removing  
20 protected arms from law-abiding citizens burdens more conduct than is necessary and does not  
21 bear a substantial relationship to advancing Sunnyvale's public safety aims. Further information  
22 about Plaintiffs' legal contentions can be found in Plaintiffs' Motion for Preliminary Injunction,  
23 ECF No. 10.

24 Sunnyvale contends that the voter-passed Ordinance does not violate the Second  
25 Amendment because large-capacity magazines are not "arms" and therefore not protected by the  
26 Second Amendment. Sunnyvale further contends that there is no Second Amendment right to  
27 possess large-capacity magazines because they are dangerous and unusual firearm accessories,  
28 are not suitable for responsible self-defense in the home, and are not in common use in California

1 or the United States. Even if large-capacity magazines implicate the Second Amendment,  
 2 Sunnyvale claims the Ordinance should be evaluated under intermediate scrutiny pursuant to  
 3 *Chovan*, 735 F.3d 1127, because banning large-capacity magazines does not burden the right to  
 4 bear lawful arms for self-defense in the home. Sunnyvale contends that the Ordinance survives  
 5 intermediate scrutiny. Further information about Sunnyvale's legal contentions can be found in  
 6 Sunnyvale's Opposition to Plaintiffs' Motion for Preliminary Injunction, ECF No. 35.

#### 7 **IV. MOTIONS**

8 Plaintiffs filed a motion for preliminary injunction on December 23, 2013, Sunnyvale  
 9 opposed it on January 29, 2014, and the Plaintiffs filed a reply on February 10, 2014. This Court  
 10 issued an order denying Plaintiffs' motion for preliminary injunction on March 5, 2014.

11 On March 5, 2014, Plaintiffs filed an Emergency Motion Under Circuit Rule 27-3 for an  
 12 Injunction Pending Appeal with the United States Court of Appeals for the Ninth Circuit, which  
 13 the Ninth Circuit denied on March 6, 2014. ECF No. 60. On March 10, 2014, Plaintiffs appealed  
 14 this decision, filing an Emergency Application for Injunction Pending Appeal to the Supreme  
 15 Court of the United States. On March 12, Justice Anthony Kennedy denied Plaintiff's  
 16 Application.

17 On March 5, 2014, Plaintiffs filed a notice of appeal to the United States Court of Appeals  
 18 for the Ninth Circuit from this Court's order denying Plaintiffs' Motion for Preliminary  
 19 Injunction. Plaintiffs' Notice of Appeal & Representation Statement, *Fyock v. City of Sunnyvale*,  
 20 No. 14-15408 (9th Cir. Mar. 5, 2014), ECF No. 57. On March 5, 2014, the Ninth Circuit issued  
 21 an order expediting the appellate briefing schedule. The parties believe it is prudent to stay  
 22 further proceedings in this Court until the Ninth Circuit has decided the appeal, and they will file  
 23 a stipulation to that effect.

#### 24 **V. AMENDMENT OF PLEADINGS**

25 The parties do not presently see a need to amend their respective pleadings.

#### 26 **VI. EVIDENCE PRESERVATION**

27 Plaintiffs believe that all evidence that might be relevant to this dispute is in the Plaintiffs'  
 28 possession or in the possession of Plaintiffs' counsel in Long Beach, California, and has been

1 preserved as a matter of course. Sunnyvale believes that evidence relevant to this dispute in its  
 2 possession has been preserved. Counsel for both parties have reviewed this Court's ESI  
 3 Guidelines but do not believe this case will involve significant discovery of ESI.

#### 4 **VII. DISCLOSURES**

5 As noted in Section IV, the parties have agreed to stay further proceedings in this matter  
 6 pending resolution of Plaintiffs' appeal from this Court's order denying their preliminary  
 7 injunction motion. The parties have accordingly agreed to postpone Rule 26 discovery and  
 8 disclosures until after that appeal is resolved.

#### 9 **VIII. DISCOVERY**

10 No discovery has been taken to date. Again, the parties have agreed to stay further  
 11 proceedings in this matter, including discovery, pending resolution of Plaintiffs' appeal from this  
 12 Court's order denying their preliminary injunction motion. Both parties anticipate that discovery  
 13 in this case, if it must proceed at all, will be limited. Sunnyvale anticipates limited paper  
 14 discovery and depositions of Plaintiffs' expert declarants, the individual plaintiffs, third parties,  
 15 and a representative of the organizational plaintiff. Plaintiffs anticipate limited paper discovery,  
 16 limited third party subpoenas, and depositions of Sunnyvale's expert and lay witness declarants,  
 17 the individual plaintiffs, and a representative of the organizational plaintiff.

18 To date, the parties have not considered entering into a stipulated e-discovery order. They  
 19 will consider the matter once the stipulated stay in this case is lifted.

#### 20 **IX. CLASS ACTIONS**

21 This case is not proceeding as a class action.

#### 22 **X. RELATED CASES**

23 This Court determined on January 7, 2014, that the issue of whether this case should be  
 24 related to *San Francisco Veteran Police Officers Association v. City and County of San*  
 25 *Francisco*, No.13-05351 (N.D. Cal.) (challenging the City and County of San Francisco's ban on  
 26 possession of detachable magazines capable of accepting more than ten rounds), was moot. Order  
 27 Den. Mot. to Relate 2, ECF No. 27. In any event, the parties of the San Francisco lawsuit have  
 28 stipulated to dismiss the action voluntarily without prejudice. Order Re Stipulation of Dismissal,

1 *SFVPOA v. City and Cnty. of San Francisco*, No. 13-05351 (N.D. Cal. Mar. 14, 2014), ECF No.  
 2 63. At this time, the parties are aware of no other cases that are arguably related.

### 3 **XI. RELIEF**

4 Plaintiffs seek a declaration that the challenged Ordinance is unconstitutional and an  
 5 injunction prohibiting Sunnyvale from enforcing it. Plaintiffs also seek attorneys' fees pursuant to  
 6 42 U.S.C. § 1988. Plaintiffs do not seek damages.

7 Sunnyvale seeks an order denying all Plaintiffs' requests for relief. Sunnyvale also seeks  
 8 attorneys' fees.

### 9 **XII. SETTLEMENT AND ADR**

10 Because this case presents questions of law and facial challenges to legislative  
 11 enactments, the parties do not believe that settlement is possible. They will file an ADR  
 12 certification indicating that view shortly.

### 13 **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

14 The parties do not consent to a magistrate judge for all purposes.

### 15 **XIV. OTHER REFERENCES**

16 The parties believe that this case is not suitable for reference to binding arbitration, a  
 17 special master, or the Judicial Panel on Multidistrict Litigation.

### 18 **XV. NARROWING OF ISSUES**

19 The parties believe that the outcome of this case will mostly depend on questions of law,  
 20 most notably what standard of judicial review applies to the Ordinance. This Court's disposition  
 21 of the preliminary injunction motion has already resulted in an appeal to the Ninth Circuit, which  
 22 will likely answer the question of the appropriate legal test to apply in this case. Resolution of  
 23 that issue will narrow the disputed issues in this case.

### 24 **XVI. EXPEDITED TRIAL PROCEDURE**

25 The parties do not believe this case can be handled under the Expedited Trial Procedure of  
 26 General Order No. 64 Attachment A.

### 27 **XVII. SCHEDULING**

28 The parties propose staying further proceedings in this case, including discovery, expert

discovery, dispositive motions, and/or trial, pending resolution of Plaintiffs' ongoing appeal from this Court's order denying their Motion for Preliminary Injunction. After the appeal is resolved and the stay is lifted, the parties will propose dates for designation of experts, discovery cutoff, hearing of dispositive motions, and pretrial conference and trial

### **XVIII. TRIAL**

In the event trial is necessary, the case will be tried to the Court. The parties anticipate no more than four days for trial.

### **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

Neither party has any interested entities or persons to disclose. On December 16, 2013, Plaintiffs filed a "Certification of Interested Entities or Persons" as required by the local rules.

### **XX. OTHER MATTERS**

The parties expect that this case may well settle either because Sunnyvale repeals the challenged Ordinance or Plaintiffs dismiss their complaint depending on the Ninth Circuit's ruling. In the event that further merits proceedings in this Court are necessary, the parties anticipate that this case can be resolved by summary judgment.

Date: March 21, 2014

MICHEL & ASSOCIATES, P.C.

/s/ Anna M. Barvir

ANNA M. BARVIR

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

Date: March 21, 2014

FARELLA BRAUN + MARTEL LLP

\*/s/ Roderick M. Thompson

RODERICK M. THOMPSON

Attorney for Defendants the City of Sunnyvale, the Mayor of Sunnyvale, Anthony Spitaleri, in his official capacity, and the Chief of the Department of Public Safety, Frank Grgurina, in his official capacity

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\* Pursuant to Local Rule 5-1(i)(3), this signatory, on whose behalf the filing is submitted, concurs in this filing's content and has authorized this filing.

1 **IN THE UNITED STATES DISTRICT COURT**

2 **NORTHERN DISTRICT OF CALIFORNIA**

3 **SAN JOSE DIVISION**

4 LEONARD FYOCK, SCOTT ) **CASE NO: CV13-05807 RMW**  
 5 HOCHSTETLER, WILLIAM DOUGLAS, )  
 6 DAVID PEARSON, BRAD SEIFERS, and ) **CERTIFICATE OF SERVICE**  
 7 ROD SWANSON, )

8 Plaintiffs, )

9 vs. )

10 THE CITY OF SUNNYVALE, THE )  
 11 MAYOR OF SUNNYVALE, ANTHONY )  
 12 SPITALERI, in his official capacity, THE )  
 13 CHIEF OF THE SUNNYVALE )  
 14 DEPARTMENT OF PUBLIC SAFETY, )  
 15 FRANK GRGURINA, in his official )  
 16 capacity, and DOES 1-10, )

17 Defendants. )

18 **IT IS HEREBY CERTIFIED THAT:**

19 I, the undersigned, am a citizen of the United States and am at least eighteen years of age.  
 20 My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

21 I am not a party to the above-entitled action. I have caused service of:

22 **JOINT CASE MANAGEMENT CONFERENCE STATEMENT**

23 on the following party by electronically filing the foregoing with the Clerk of the District Court  
 24 using its ECF System, which electronically notifies them.

25 Roderick M. Thompson  
 26 Anthony P. Schoenberg  
 27 Rochelle L. Woods  
 28 Farella Braun + Martel LLP  
 235 Montgomery Street, 17<sup>th</sup> Floor  
 San Francisco, CA 94104  
[aschoenberg@fbm.com](mailto:aschoenberg@fbm.com)

I declare under penalty of perjury that the foregoing is true and correct. Executed on  
 March 21, 2014.

/s/ C. D. Michel  
 C. D. Michel  
 Attorney for Plaintiffs