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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: CV 13-05807 RMW**

**PLAINTIFFS' ADMINISTRATIVE  
MOTION FOR AN EXPEDITED RULING  
ON PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION;  
DECLARATION OF CLINTON B.  
MONFORT IN SUPPORT**

**NOTICE OF MOTION AND MOTION**

Pursuant to Civil Local Rule 7-11, Plaintiffs submit this Administrative Motion for an Expedited Ruling on Plaintiffs' Motion for Preliminary Injunction.

Plaintiffs respectfully request that this Court expedite its ruling on whether to enjoin Defendants City of Sunnyvale, Mayor Anthony Spitaleri, Chief Frank Grgurina (collectively "the City"), and any of the City's agents, employees, officers, and representatives from enforcing Sunnyvale Municipal Code section 9.44.050 ("the Ordinance") pending resolution of the merits of this case or further order of this Court.

This motion shall be based on this Notice of Motion and Motion, the Declaration of Clinton B. Monfort, the record to date in this matter, and upon any further matters the Court deems appropriate.

**PROCEDURAL HISTORY**

In November of 2013, the City of Sunnyvale voters passed Measure C, which included the Ordinance. Although the election results were scheduled to be certified by the City in January of 2014, the City expedited the certification of the vote on November 26, 2013. (Monfort Decl. ¶ 3; Exh. "B.") This expedited certification caused the ordinance to take effect nearly two months earlier than originally scheduled on December 6, 2013.

The Ordinance prohibits any person, corporation, or other entity in the City of Sunnyvale from possessing ammunition magazines with the capacity to accept more than ten rounds. Sunnyvale, Cal., Muni. Code § 9.44.050 (a). Pursuant to the Ordinance, any person who possesses any magazines prohibited by the Ordinance prior to its effective date shall have ninety days to cease possessing those magazines within the City of Sunnyvale. Sunnyvale, Cal., Muni. Code § 9.44.050 (b).

On December 16, 2013, ten days after the Ordinance took effect and nineteen days after the early certification vote, Plaintiffs filed their lawsuit. On December 23, 2013, Plaintiffs filed their motion for preliminary injunction. On the same day, the Parties filed a stipulation to extend the briefing schedule so that the City would have twenty days to respond to the motion for preliminary injunction.

1 On December 30, 2013, the City filed an Administrative Motion to relate this case with  
 2 *San Francisco Veteran Police Officers Association v. City and County of San Francisco*, Case  
 3 No. 13-CV-05351. On January 7, 2014, this Court denied the City's motion.

4 On January 3, 2014, the City filed an Administrative Motion to Enlarge Time for Hearing  
 5 and Briefing Plaintiffs' Motion for Preliminary Injunction and for Expedited Discovery. On  
 6 January 7, 2014, Plaintiffs filed an Opposition to that motion. The Court granted with  
 7 modifications the City's motion to enlarge time and denied the City's request for expedited  
 8 discovery on January 9, 2014.

9 Pursuant to the Court's January 9 order, the hearing on Plaintiffs' motion for preliminary  
 10 injunction is currently scheduled for February 21, 2014. Just thirteen days later, on March 6, 2014,  
 11 all Sunnyvale residents will be forced to remove the prohibited magazines from their homes and  
 12 cease possession in Sunnyvale. Sunnyvale, Cal., Muni. Code § 9.44.050 (b). Anyone who fails to  
 13 comply with the City's mandate is subject to criminal penalties, including incarceration.

14 Plaintiffs now bring this Administrative Motion for an Expedited Ruling on Plaintiffs'  
 15 Motion for Preliminary Injunction. (Monfort Decl. ¶ 2; Exh. "A.")

### 16 **ARGUMENT**

17 Plaintiffs appreciate that the Court has acknowledged the Ordinance's pending effective  
 18 date and that the Court is sympathetic to the need to resolve the motion for preliminary injunction  
 19 prior to the March 6, 2014 deadline. Ct. Order 3:15-16, ECF No. 30. With an abundance of  
 20 caution, Plaintiffs bring this motion to further inform the Court of the circumstances justifying an  
 21 early decision and to respectfully request the Court expedite its ruling on Plaintiffs' motion for  
 22 preliminary injunction to the maximum extent possible.

23 Plaintiffs brought a motion for a preliminary injunction to vindicate their fundamental  
 24 constitutional right to possess magazines that are commonly possessed and used for lawful  
 25 purposes, and thus protected under the Second Amendment. Pls' Mot. Prelim. Inj. 1:24-3:4, 6:1-  
 26 13:12, 24:22-27. Because the Ordinance prohibits residents from possessing these magazines  
 27 within their homes, Plaintiffs will be irreparably harmed as of March 6, 2014. Pls' Mot. Prelim.  
 28 Inj. 2:25-3:4, 23:18-22.

1 The current schedule on Plaintiffs' motion for preliminary injunction leaves just thirteen  
2 days between the hearing date and the effective date of the Ordinance. (Monfort Decl. ¶ 4.)

3 Even if the Court rules to enjoin the Ordinance, time is of the essence. (Monfort Decl. ¶  
4 4.) If the Court issues a ruling enjoining the Ordinance after its effective date, Sunnyvale residents  
5 will have already been required to remove the banned magazines from their homes. (Monfort  
6 Decl. ¶ 4.) And if the Court issues a ruling anytime between the hearing date and the effective  
7 date of the Ordinance, it is likely that some residents will have already dispossessed themselves of  
8 the prohibited magazines, depending on when a ruling is issued. (Monfort Decl. ¶ 4.) In both  
9 situations, law-abiding residents will be permanently dispossessed of their constitutionally  
10 protected magazines with no way to replace them because state law prohibits the purchase and  
11 sale of these magazines. Cal. Penal Code §§ 32310, 32400-50. (Monfort Decl. ¶ 4.)

12 If the Court for any reason does not enjoin the Ordinance, time is likewise of the essence.  
13 Because the Ordinance was certified almost two months ahead of the original schedule, law-  
14 abiding Sunnyvale residents have even less time to comply with the Ordinance. (Monfort Decl. ¶  
15 5.) Residents will need time to determine how they will comply with the Ordinance, and to take  
16 such steps to ensure they are not at risk of criminal prosecution. (Monfort Decl. ¶ 5.) In addition,  
17 these residents, including Plaintiffs, will need time to purchase new compliant magazines to  
18 replace the magazines they were required to turn into police, surrender to a licensed gun dealer, or  
19 remove from the city. (Monfort Decl. ¶ 5.)

20 Finally, an expedited ruling would preserve already scarce time to file an emergency  
21 motion seeking a temporary stay of enforcement pending appeal pursuant to Circuit Rule 27-3  
22 and/or an emergency application for injunction pending appellate review under the All Writs Act,  
23 28 U.S.C. section 1651(a). (Monfort Decl. ¶ 5.)

24 An expedited ruling will thus ensure that Plaintiffs and law-abiding residents will not  
25 suffer any inadvertent harm.

26 ///

27 ///

28 ///

**CONCLUSION**

For these reasons, Plaintiffs respectfully request the Court grant Plaintiffs' Administrative Motion for an Expedited Ruling on Plaintiffs' Motion for Preliminary Injunction.

Date: January 13, 2014

**MICHEL & ASSOCIATES, P.C.**

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

**DECLARATION OF CLINTON B. MONFORT**

1. I am an attorney licensed to practice law before the Northern District of California. I am an associate attorney at the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs in this action and in *San Francisco Veteran Police Officers Association v. City and County of San Francisco*, Case No. 13-CV-05351. I submit this declaration in support of Plaintiffs' Motion for an Expedited Ruling on Plaintiffs' Motion for Preliminary Injunction.

2. A stipulation pursuant to Civil Local Rule 7-12 could not be obtained because Plaintiffs are requesting administrative relief to expedite a ruling by the Court. While parties can stipulate to matters concerning the rights or obligations of the parties, parties cannot stipulate to matters concerning the rights or obligations of the Court. Nonetheless, I met and conferred with defense counsel regarding this Motion. On or about December 27, 2014, I e-mailed counsel for Defendants to inform them that the Plaintiffs intended to ask the Court for an expedited ruling. And on January 9, 2014, I again e-mailed counsel for Defendants to let them know of the Plaintiffs' anticipated filing time for their motion. An email chain between counsel documenting these meet and confer communications is attached hereto as Exhibit "A." (*See* 1, 9).

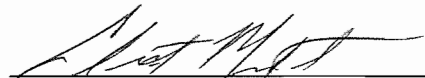
3. The election results for Measure C were scheduled to be certified by the City of Sunnyvale on January 7, 2014. A true and accurate copy of an e-mail exchange between the office of plaintiffs' counsel and Lisa Natusch with the City of Sunnyvale documenting this timeline is attached hereto as Exhibit "B."

4. The current schedule on Plaintiffs' motion for preliminary injunction leaves just thirteen days between the hearing date and the effective date of the Ordinance. Even if the Court rules to enjoin the Ordinance, time is of the essence. If the Court issues a ruling enjoining the Ordinance after its effective date, Sunnyvale residents will have already been required to remove the banned magazines from their homes. And if the Court issues a ruling anytime between the hearing date and the effective date of the Ordinance, it is likely that some residents will have already dispossessed themselves of the prohibited magazines, depending on when a ruling is issued. In both situations, law-abiding residents will be permanently dispossessed of their constitutionally protected magazines with no way to replace them because state law prohibits the

1 purchase and sale of these magazines. Cal. Penal Code §§ 32310, 32400-50.

2       5. If the Court for any reason does not enjoin the Ordinance, time is likewise of the  
3 essence. Because the Ordinance was certified almost two months ahead of schedule, law-abiding  
4 Sunnyvale residents have even less time to comply with the Ordinance. Residents will need time  
5 to determine how they will comply with the Ordinance and to take such steps to ensure they are  
6 not at risk to criminal prosecution. In addition, these residents, including Plaintiffs, will need time  
7 to purchase new magazines to replace the magazines they were required to remove from their  
8 homes. Finally, an expedited ruling would preserve already scarce time to file an emergency  
9 motion seeking a temporary stay of enforcement pending appeal pursuant to Circuit Rule 27-3,  
10 and/or an emergency application for injunction pending appellate review under the All Writs Act,  
11 28 U.S.C. section 1651(a).

12       I declare under penalty of perjury that the foregoing is true and correct. Executed within  
13 the United States on January 13, 2014.

14  
15   
16 Clinton B. Monfort

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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

CASE NO: CV13-05807 RMW

CERTIFICATE OF SERVICE

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.

IT IS HEREBY CERTIFIED THAT:

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

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

**PLAINTIFFS' ADMINISTRATIVE MOTION FOR AN EXPEDITED RULING ON  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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

Roderick M. Thompson  
rthompson@fbm.com  
Anthony P. Schoenberg  
aschoenberg@fbm.com  
Farella Braun + Martel LLP  
235 Montgomery Street, 17<sup>th</sup> Floor  
San Francisco, CA 94104

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 13, 2014.

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



## **Exhibit A**

## Clint B. Monfort

---

**From:** Clint B. Monfort  
**Sent:** Thursday, January 09, 2014 4:16 PM  
**To:** 'RThompson@fbm.com'; 'TSchoenberg@fbm.com'  
**Cc:** 'LJensen@fbm.com'; Claudia Ayala; 'EEngstrom@fbm.com'; 'JBaker@fbm.com'; 'RWoods@fbm.com'; Anna M. Barvir; Sean Brady; C.D. Michel  
**Subject:** RE: Fyock v. Sunnyvale

Gentlemen:

I just wanted to touch base with you regarding our anticipated request for expedited ruling that I mentioned last week.

To follow up, we plan to file an Administrative Motion for Expedited Ruling on Plaintiffs' Motion for Preliminary Injunction tomorrow. Although I don't expect this will require a filing on your end, I wanted to give you a courtesy notice nonetheless.

Thank you,

Clint

<b>Clint B. Monfort</b> Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:CMonfort@michellawyers.com">CMonfort@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a>
<b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense	180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802

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**From:** Clint B. Monfort  
**Sent:** Monday, January 06, 2014 6:07 PM  
**To:** 'RThompson@fbm.com'; 'TSchoenberg@fbm.com'  
**Cc:** LJensen@fbm.com; Claudia Ayala; EEngstrom@fbm.com; JBaker@fbm.com; RWoods@fbm.com; Anna M. Barvir; Sean Brady; C.D. Michel  
**Subject:** RE: Fyock v. Sunnyvale

Okay, thank you for the response.

I hope that in the future you will extend us the courtesy of responding to requests as to when you expect to file administrative motions.

Clint

<b>Clint B. Monfort</b>	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445
-------------------------	---

Attorney

Email: [CMonfort@michellawyers.com](mailto:CMonfort@michellawyers.com)  
Web: [www.michellawyers.com](http://www.michellawyers.com)

**MICHEL & ASSOCIATES, P.C.**  
Attorneys at Law

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Environmental - Land Use - Firearms - Employment Law  
Civil Litigation - Criminal Defense

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**From:** [RThompson@fbm.com](mailto:RThompson@fbm.com) [<mailto:RThompson@fbm.com>]

**Sent:** Monday, January 06, 2014 6:01 PM

**To:** Clint B. Monfort; [TSchoenberg@fbm.com](mailto:TSchoenberg@fbm.com)

**Cc:** [LJensen@fbm.com](mailto:LJensen@fbm.com); Claudia Ayala; [EEngstrom@fbm.com](mailto:EEngstrom@fbm.com); [JBaker@fbm.com](mailto:JBaker@fbm.com); [RWoods@fbm.com](mailto:RWoods@fbm.com); Anna M. Barvir; Sean Brady; C.D. Michel

**Subject:** RE: Fyock v. Sunnyvale

Clint, the City of Sunnyvale has no interest in staying enforcement.

Since you had stated several times that the meet and confer was concluded, and Plaintiffs would not agree to move the unilaterally-selected February 7 hearing date, we had no choice but to file the motion as provided by the Local Rules.

Rod

**From:** Clint B. Monfort [<mailto:CMonfort@michellawyers.com>]

**Sent:** Monday, January 06, 2014 4:03 PM

**To:** Thompson, Rod (27) x4445; Schoenberg, Tony (22) x4963

**Cc:** Jensen, Lauren (22) x3505; Claudia Ayala; Engstrom, Evan (27) x4945; Baker, James (21) x4965; Woods, Rochelle L. (21) x4937; Anna M. Barvir; Sean Brady; C.D. Michel

**Subject:** RE: Fyock v. Sunnyvale

Gentlemen,

We have received your motion to enlarge time to respond to plaintiffs' pending MPI and for expedited discovery, filed after the close of business on Friday, January 3. In the future, I would appreciate a response to my (multiple) inquiries about the timing of such filings, particularly those with short, four-day turnarounds. This marks the second time in two weeks that you have filed such a motion without any notification of when the filing would be coming in. I hope that you will consider providing such minimal professional courtesies in the future, and we will certainly do the same.

I also write to follow up on our preliminary discussion concerning the potential filing of an amended complaint to add an organizational plaintiff. Our office was considering adding an organizational plaintiff to alleviate any concerns the City might have about staying enforcement of the ordinance to accommodate the City's requests for a further extended briefing schedule and expedited discovery (as a stipulated stay would be in response to litigation representing hundreds to thousands of individuals). Given that the City has no interest in temporarily postponing enforcement, and because our individual plaintiffs all have standing to challenge the standard magazine ban, we do not intend to amend the complaint to add an organizational plaintiff. Although we see no reason to amend, to the extent the existence of an organizational plaintiff might address any standing concerns the City may have, in the interest of judicial economy we will consider adding an organizational plaintiff if the City will stipulate that the amendment will not require plaintiffs' MPI to be refiled. If the City has any interest in this approach, please let me know.

You should receive our opposition to your motion sometime tomorrow.

Thank you,

Clint

<b>Clint B. Monfort</b> Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:CMonfort@michellawyers.com">CMonfort@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a>
<b>MICHEL &amp; ASSOCIATES, P.C.</b> <i>Attorneys at Law</i> Environmental - Land Use - Firearm - Employment Law Civil Litigation - Criminal Defense	180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802

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**From:** Clint B. Monfort

**Sent:** Tuesday, December 31, 2013 12:56 PM

**To:** 'RThompson@fbm.com'; [TSchoenberg@fbm.com](mailto:TSchoenberg@fbm.com)

**Cc:** [LJensen@fbm.com](mailto:LJensen@fbm.com); Claudia Ayala; [EEngstrom@fbm.com](mailto:EEngstrom@fbm.com); [JBaker@fbm.com](mailto:JBaker@fbm.com); [RWoods@fbm.com](mailto:RWoods@fbm.com); Anna M. Barvir; Sean Brady; C.D. Michel

**Subject:** RE: Fyock v. Sunnyvale

Rod,

Thank you for your response.

Preliminarily, I think we need to reiterate that the meet and confer process for your motion was satisfied as of last Friday. I don't want you to misconstrue our continuing attempt to find a way to accommodate your desire for a further extended briefing schedule as a reason to delay the preparation and filing of your motion papers (nor your opposition to our motion for that matter). Please let us know as soon as possible when you intend to file your motion and when you will ask the court to hear it.

We simply thought that extending the enforcement date might be a way to avoid the need for your motion, and to avoid the urgency for a hearing on our motion for preliminary injunction. It worked in San Francisco. But in light of the short timeline we are faced with, and the differences between the cases, we should not count on it working here.

In response to your specific question about the City's or the Court's authority to postpone enforcement of a ballot measure, as you of course know, courts generally have the authority to enjoin the enforcement of laws, whether on a preliminary or a permanent basis. Parties can stipulate to allow a court to enter an order to this effect. I'm not aware of any authority suggesting that is not the case if a law is passed as a ballot measure as opposed to via legislative enactment. You can research this further if you like, but I suspect there is no authority either way distinguishing the parties' ability or a court's authority concerning a ballot measure. Our clients are willing to stipulate, and certainly won't object, to postponing enforcement to accommodate your request to further extend the briefing schedule.

In considering what to recommend to your client, it may be helpful to recall that the voters voted in Measure C, but they did not vote on when the ordinance would go into effect. The City Council, apparently at the

behest of the Mayor, who was the one pushing Measure C all along, voted to move up the certification date of the vote so that the ordinance took effect in March rather than in May. It seems the Mayor was prompted to take this action by the media reporting that Mr. Michel had said we would file suit against the law when the vote was certified. That was when the City opted to moved up the certification date.


Also, to the extent it might influence your analysis or the City's decision, please be advised that we are planning to amend our complaint to include an associational plaintiff this week. When you discuss the possibility of postponing enforcement with the City, you can let them know that it's no longer just the six current plaintiffs. A large number of Sunnyvale residents, along with gun owners in possession of prohibited magazines who travel through Sunnyvale with them, will now be represented in the suit through the association. I will send you a separate meet and confer correspondence on this in the next day or two.

Regarding the City's request that our office agree to some expedited discovery prior to a rule 26(f) conference, courts typically only grant such requests if there is an urgent need for the information sought, and we don't believe there is in this case. If enforcement is postponed, however, we are nonetheless willing to move forward with some limited discovery before the City's opposition brief is due. Of course, our office would likewise need additional time to take the deposition of the City's expert(s) after the City's opposition is filed. We can try to work out these details if the City agrees to postpone enforcement to allow the parties time to conduct this discovery under a further extended briefing schedule.

Again, the meet and confer requirement for a modification motion has been satisfied since last Friday. These subsequent e-mail exchanges are simply a continuing effort to accommodate the City's requests without sacrificing our clients' rights. So, if the City is not able to postpone enforcement to accommodate postponement of the MPI and you will be proceeding with your administrative motion, please let me know what your anticipated schedule is for that motion as soon as possible.

Thank you,

Clint

<p><b>Clint B. Monfort</b> Attorney</p>  <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> <b>Attorneys at Law</b></p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:CMonfort@michellawyers.com">CMonfort@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a></p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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**From:** [RThompson@fbm.com](mailto:RThompson@fbm.com) [<mailto:RThompson@fbm.com>]

**Sent:** Monday, December 30, 2013 8:33 PM

**To:** Clint B. Monfort; [TSchoenberg@fbm.com](mailto:TSchoenberg@fbm.com)

**Cc:** [LJensen@fbm.com](mailto:LJensen@fbm.com); Claudia Ayala; [EEngstrom@fbm.com](mailto:EEngstrom@fbm.com); [JBaker@fbm.com](mailto:JBaker@fbm.com); [RWoods@fbm.com](mailto:RWoods@fbm.com); Anna M. Barvir; Sean Brady; C.D. Michel

**Subject:** RE: Fyock v. Sunnyvale

Clint, due to the holidays, we do not have a response to your proposal.

We don't expect there to be any interest in defying the will of the voters, as you and your colleagues have suggested in court filings.

Do you have any authority supporting the request for a preliminary injunction enjoining the enforcement of an ordinance passed by the voters as to everyone affected based on a suit by a handful of individuals in a non-class action? Please let us know. Thanks.

Roderick M Thompson

Partner

[rthompson@fbm.com](mailto:rthompson@fbm.com)

direct 415.954.4445

cell 415.509.1874



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Russ Building

235 Montgomery Street

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T 415.954.4400

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**From:** Clint B. Monfort [<mailto:CMonfort@michellawyers.com>]

**Sent:** Monday, December 30, 2013 5:10 PM

**To:** Thompson, Rod (27) x4445; Schoenberg, Tony (22) x4963

**Cc:** Jensen, Lauren (22) x3505; Claudia Ayala; Engstrom, Evan (27) x4945; Baker, James (21) x4965; Woods, Rochelle L. (21) x4937; Anna M. Barvir; Sean Brady; C.D. Michel

**Subject:** RE: Fyock v. Sunnyvale

Gentlemen,

I wanted to touch base to confirm you received our e-mail on Saturday. I'm still working on a response for you regarding the discovery you would like to take prior to before filing your MPI opposition.

Have you had a chance to discuss a potential stay of enforcement with the City?

I'll follow up Thursday (after the holidays) with a further response.

Clint

<b>Clint B. Monfort</b> Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:CMonfort@michellawyers.com">CMonfort@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a>
<b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense	180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802

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**From:** Clint B. Monfort

**Sent:** Saturday, December 28, 2013 1:02 PM

**To:** 'RThompson@fbm.com'; TSchoenberg@fbm.com

**Cc:** LJensen@fbm.com; Claudia Ayala; EEngstrom@fbm.com; JBaker@fbm.com; RWoods@fbm.com; Anna M. Barvir; Sean Brady; C.D. Michel

**Subject:** RE: Fyock v. Sunnyvale

Rod and Tony,

Thank you for your response. I hope you all have been able to enjoy some time celebrating the holidays with your families this week as well.

I understand that your office, after a brief review of our moving papers, would like a further extension beyond the previously stipulated 20 day timeframe to respond to Plaintiffs' Motion for Preliminary Injunction. Given that the only claim in this case is already being litigated in other states, I believe that if you take a closer look at our Motion and the opposition briefs that have been filed in those cases, you will find that a substantial amount of your work has already been done for you. (See, e.g., *NYSRPA v. Cuomo*). Mayors for Illegal Guns and the Law Center to Prevent Gun Violence have been heavily involved in the passage and defense of magazine bans in those jurisdictions. The City of Sunnyvale has already been in communication with these organizations during the City's adoption of Section 9.44.050 as well. Given these resources being available to you, and that the issues in this case are in most respects similar to the issues being litigated in those cases, I believe that upon closer review of our Motion you will find that the extended 20 day briefing schedule is more than sufficient.

Given the short time frame we have to work with before the ordinance takes effect on March 6, our office prepared and filed our Motion for Preliminary Injunction as quickly as humanly possible. To clarify and reiterate, our timeframe was severely limited and we were forced to file our Motion as quickly as possible because the City opted to forego the typical process of approving a ballot measure in January, and instead verified the measure in November, thus significantly advancing the effective enforcement to March 6.

While we would normally be more than happy to accommodate your office's further extension request, the current pending enforcement date of March 6 unfortunately takes that option off the table for us. The current hearing date on Plaintiffs' Motion is February 7. The hearing date cannot be pushed back even closer to the enforcement date, as the Court will undoubtedly need time to consider and rule on the motion. In the event the court does not enjoin enforcement for any reason, we cannot stipulate away our clients' already scarce time to seek appropriate review of any district court ruling.

In the spirit of compromise, however, I would like to propose a further extended briefing schedule if your client is willing stay enforcement of the ordinance.

If the City will stay enforcement of the ordinance for 60 days, I propose the following schedule to allow the parties further time to prepare their respective briefs, and to give the court additional time to consider and rule on Plaintiffs' Motion:

Opposition Due Date: Friday January 27, 2014. (This provides the City with an additional 15 days, for a total of 34 days to prepare an opposition).

Reply Due Date: Monday February 10, 2014 (This provides Plaintiffs an additional 2 days, for a total for 14 days to prepare a Reply brief.)

Motion Hearing Date: Friday February 21, 2014

Please let me know if the City is willing to stay enforcement for 60 days so that we can adjust the briefing schedule accordingly to accommodate you.

If you intend to go through with the motion regardless, please let me know how and when you intend to move forward with that motion.

I will address your communications about anticipated discovery in this case on Monday, as some of them raise significant legal issues that I will need time to appropriately address.

I hope you enjoy your weekend and I look forward to hearing from you.

Clint

<b>Clint B. Monfort</b> Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:CMonfort@michellawyers.com">CMonfort@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a>
<b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense	180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802

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**From:** [RThompson@fbm.com](mailto:RThompson@fbm.com) [mailto:[RThompson@fbm.com](mailto:RThompson@fbm.com)]

**Sent:** Friday, December 27, 2013 3:18 PM

**To:** Clint B. Monfort; [TSchoenberg@fbm.com](mailto:TSchoenberg@fbm.com); Sean Brady; C.D. Michel

**Cc:** [LJensen@fbm.com](mailto:LJensen@fbm.com); Claudia Ayala; [EEngstrom@fbm.com](mailto:EEngstrom@fbm.com); [JBaker@fbm.com](mailto:JBaker@fbm.com); [RWoods@fbm.com](mailto:RWoods@fbm.com); Anna M. Barvir

**Subject:** RE: Fyock v. Sunnyvale

Chuck, Clint and Sean:

We hope you've all had some time to enjoy the holidays. I'm interrupting mine, to try one last time to avoid a needless motion.

Late in the afternoon one week ago today, the Friday before Christmas, you first contacted Tony by email. You did not ask how much time we might need to respond or what hearing date would be convenient for us and our clients. Instead you simply notified us that the motion would be heard on January 31 and that our opposition motion would be due under the Local Rules two weeks after Monday December 23, the date you intended to file the motion. Only because that hearing date proved to be unavailable with the Court, you scheduled the hearing for February 7, again without consulting with us. After Tony reached Chuck by phone late that day, you proposed only a four day extension for our opposition brief. Given the impending holidays we accepted subjected to review of your moving papers. As I told you immediately after reviewing the motion, it is clear a further extension is required to allow the minimum discovery we need to respond.

First, while you may have worked hard to prepare the motion for preliminary injunction to meet the self imposed deadline of December 23, filing on that day was your choice. As noted in the complaint and in your moving papers, the Sunnyvale ordinance does not become effective until March 6, almost a month after the selected hearing date. Therefore, there is no need for a hearing until shortly before March 6. As a compromise, we suggest the following extended briefing schedule for both sides (provided we obtain the minimum discovery requested below):

Opposition Due Date: Friday January 31, 2014

Reply Due Date: Monday February 10, 2014 (Could be as late as Friday February 14—your call)

Motion Hearing Date: Friday February 28, 2014



Second, we will need the deposition of Mr. Kleck. The fact that he may have been deposed in other cases (please provided copies of any such depositions), does not lessen the City of Sunnyvale's discovery rights. As I requested in my email Tuesday, sent immediately after reviewing your moving papers, please obtain Mr. Kleck's availability for deposition in San Francisco in January. We will also need the documents he considered or relied upon.

Third, we will need all documentation each plaintiff has in his possession custody or control that relates to each large capacity magazine he possesses, as well as documents showing all firearms of any kind he owns or has access to for use in any residence in Sunnyvale.

Please let us know if these terms are acceptable by 5 p.m. Monday December 30. If they are not, we will prepare a suitable administrative motion, which may request a longer extension and broader discovery. Let me or Tony know if you have any questions or wish to discuss.

Rod

P.S. I need not respond here to either your mischaracterizations of our client's motives or the legal merits of your motion. We will respond to those issues in our briefing.

Roderick M Thompson

Partner

[rthompson@fbm.com](mailto:rthompson@fbm.com)

direct 415.954.4445

cell 415.509.1874

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Russ Building

235 Montgomery Street

San Francisco / CA 94104

T 415.954.4400

F 415.954.4480

[www.fbm.com](http://www.fbm.com)

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**From:** Clint B. Monfort [<mailto:CMonfort@michellawyers.com>]

**Sent:** Friday, December 27, 2013 2:13 PM

**To:** Schoenberg, Tony (22) x4963; Sean Brady; Thompson, Rod (27) x4445; C.D. Michel

**Cc:** Jensen, Lauren (22) x3505; Claudia Ayala; Engstrom, Evan (27) x4945; Baker, James (21) x4965; Woods, Rochelle L. (21) x4937; Anna M. Barvir

**Subject:** RE: Fyock v. Sunnyvale

Hi Tony,

I've been a little out of the loop this week but I've been watching the correspondence back and forth and I wanted to clarify a couple of points.

Since irreparable harm is presumed if plaintiffs are likely to succeed on the merits (i.e. our clients have a fundamental right to possess standard magazines in their homes), I'm not sure I see the urgency to depose our plaintiffs about how they intend to comply with the ordinance. Whether some of our plaintiffs will store their magazines outside of the City or surrender them does not alleviate the irreparable harm of not being able to possess them in their homes for self-defense. I just wanted to clarify that issue as you determine whether to ask for a postponement of our MPI to take the depositions of each of our plaintiffs on this point.

Can you please confirm if you are still planning to ask for an additional extension beyond the extended stipulated briefing schedule? If so, when do you expect you will file it? Do you intend to go in ex parte and will you be asking for a hearing?

As Sean mentioned, we will of course make a good faith effort to comply with discovery requests and make our plaintiffs and witnesses available for deposition. I just want to make sure that you haven't viewed any issue that was discussed this week as a reason to hold off on preparing your opposition to our MPI. As a side note, the City of San Francisco agreed to stipulate to stay enforcement of its ordinance for 30 days so that the City could have additional time to respond to our MPI in that case. San Francisco has 20 days to respond under that extended briefing schedule. In order to make sure Sunnyvale had the same timeframe to respond (without staying enforcement of the ordinance) my colleagues and I worked day and night through the weekends to get our motion filed.

I also want to let you know that we are planning to file a motion asking the court for an expedited ruling given the looming enforcement date that is just 27 days from the scheduled hearing date.

Thank you and I look forward to hearing from you.

-Clint

<b>Clint B. Monfort</b> Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:CMonfort@michellawyers.com">CMonfort@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a>
<b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense	180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802

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**From:** [TSchoenberg@fbm.com](mailto:TSchoenberg@fbm.com) [<mailto:TSchoenberg@fbm.com>]  
**Sent:** Thursday, December 26, 2013 3:53 PM  
**To:** Sean Brady; [RThompson@fbm.com](mailto:RThompson@fbm.com); Clint B. Monfort; C.D. Michel  
**Cc:** [LJensen@fbm.com](mailto:LJensen@fbm.com); Claudia Ayala; [EEngstrom@fbm.com](mailto:EEngstrom@fbm.com); [JBaker@fbm.com](mailto:JBaker@fbm.com); [RWoods@fbm.com](mailto:RWoods@fbm.com)  
**Subject:** RE: Fyock v. Sunnyvale

Sean – Thank you for the call just now. As we agreed and discussed, the parties are at an impasse on the question of extending the time deadlines related to plaintiffs' preliminary injunction motion, and the meet and confer is complete. Accordingly, we no longer need to schedule a call on Monday.

Regards,  
Tony

**Anthony P. Schoenberg**  
Attorney at Law

**Farella Braun + Martel LLP**  
RUSS BUILDING  
235 MONTGOMERY STREET  
SAN FRANCISCO / CA 94104

## **Exhibit B**

**Clint B. Monfort**

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**From:** Lisa Natusch <lnatusch@sunnyvale.ca.gov>  
**Sent:** Wednesday, November 13, 2013 11:23 AM  
**To:** Rudy G. Klapper  
**Cc:** Franco Simmons, Kathleen  
**Subject:** Re: Sunnyvale Ballot Measures

Mr. Klapper,

I apologize for my delayed response. The Certification of Election Results for the measures on the November 5 ballot will go to Council on November 26, 2013. The measures will take effect 10 days after the vote is declared by Council.

If I can be of additional assistance, please let me know.

Thank you,

Lisa Natusch  
Deputy City Clerk  
City of Sunnyvale  
408-730-7595  
408-730-7619 Fax  
[lnatusch@sunnyvale.ca.gov](mailto:lnatusch@sunnyvale.ca.gov)

On Thu, Nov 7, 2013 at 8:58 AM, Rudy G. Klapper <[RKlapper@michellawyers.com](mailto:RKlapper@michellawyers.com)> wrote:

Hi Ms. Natusch,

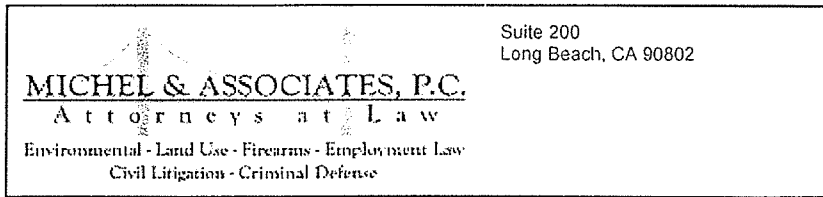
Following up on the e-mail below, I was just writing to confirm the effective date of the Sunnyvale ordinances. I was under the impression that Measures B and C would go into effect around January 17, 2014 (ten days after the certification of the election results tentatively scheduled for January 7). However, I've seen media reports that said these measures (specifically C) would go into effect as of January 1. Can you let me know the tentative effective date? Thanks!

<http://www.nbcbayarea.com/news/local/Sunnyvale-Passes-Strict-Gun-Control-Measure-C-NRA-Vows-to-Challenge-230776461.html>

**Rudy G. Klapper**  
Law Clerk

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Web: [www.michellawyers.com](http://www.michellawyers.com)

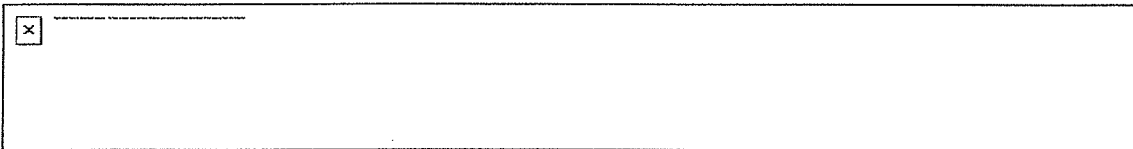
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**From:** City Clerk [mailto:[cityclerk@ci.sunnyvale.ca.us](mailto:cityclerk@ci.sunnyvale.ca.us)]  
**Sent:** Thursday, October 10, 2013 12:11 PM  
**To:** Rudy G. Klapper  
**Subject:** Re: Sunnyvale Ballot Measures



Mr. Klapper,

If the measures on the November 5, 2013 ballot pass, the measures take effect as follows:

Measure A (Charter amendment): Once accepted and filed by the Secretary of State pursuant to Government Code Section 34460.

Measures B and C: 10 days after the vote is declared by the legislative body pursuant to California Elections Code 9217. The certification of the election results is tentatively scheduled for January 7, 2014.

If I can be of additional assistance, please let me know.

Sincerely,

Lisa Natusch  
Deputy City Clerk  
City of Sunnyvale  
408-730-7595  
[lnatusch@sunnyvale.ca.gov](mailto:lnatusch@sunnyvale.ca.gov)

----- Your Original Message -----

**Request #:** 28848

**From:** Rudy Klapper

**Date:** 10-08-13 11:02 am

**Subject:** Sunnyvale Ballot Measures

**Message:** Assuming any of the Sunnyvale ballot measures currently up for a vote in the November 5, 2013 elections successfully pass, at what date do the measures and the ordinances within them officially become law?