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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' OPPOSITION TO
DEFENDANTS' MOTION TO STRIKE
PLAINTIFFS' IMPROPER OBJECTIONS
TO EVIDENCE**

Date: February 21, 2014

Time: 9:00 a.m.

Location: Courtroom 6 – 4th Floor
280 South 1st Street
San Jose, CA 95113

1 On February 18, 2014, the City filed a document entitled, “ Defendants’ Objections to
2 Reply Evidence and Motion to Strike Plaintiffs’ Improper Objections to Evidence,” that served
3 three purposes: (1) to move to strike Plaintiffs’ Objections to Defendants’ Evidence; (2) to
4 respond, pursuant to Local Rule 7-3(d)(1), to Plaintiffs’ evidence submitted on reply; and (3) to
5 move to strike a portion of Plaintiffs’ recently filed Statement of Recent Decision. Dkt. No. 48.
6 While it is unclear under what authority the City has brought its requests to strike Plaintiffs’
7 objections and portions of the recently filed statement of recent decision, Plaintiffs hereby submit
8 this opposition to the City’s motion to strike.

9 The City first moves to strike Plaintiffs’ Objections to Defendants’ Evidence, filed
10 simultaneously with Plaintiffs’ Reply to Defendants’ Opposition to Motion for Preliminary
11 Injunction. Plaintiffs recognize that the City correctly notes that Local Rule 7-3(c) requires that
12 evidentiary objections be included in the body of their reply, but object to its characterization of
13 Plaintiffs’ honest oversight regarding the form of their objections as a sort of gambit to
14 improperly append attorney argument beyond page limitations. Indeed, rather than including
15 argument regarding the merits of Plaintiffs’ Motion for Preliminary Injunction, Plaintiffs’s
16 Objections to Defendants’ Evidence is strictly limited to a listing of the City’s objectionable
17 material and the grounds for each objection.

18 On Reply, Plaintiffs were in the unique position of reviewing and objecting to 1333 pages
19 of evidence, including four expert declarations and the incorporation of a brief from a similar
20 case, submitted in response to a motion for preliminary injunction. In their fifteen-page reply
21 memorandum, Plaintiffs reference their objections, but had they properly understood Local Rule
22 7–3(c) to prevent the practice of submitting the grounds for one’s objections in a separate
23 document, they would have sought leave to exceed page limitations or to file their objections
24 separately. Plaintiffs must beg the pardon of this Court and respectfully request that it consider
25 Plaintiffs’ objections.

26 The City next moves to strike lines 9-13 of Plaintiffs’ recently filed Statement of Recent
27 Decision notifying the Court of the Ninth Circuit’s opinion in *Peruta v. County of San Diego*,
28 claiming they contain improper argument. They do not. The paragraph with which the City takes

1 issue was intended to assist this Court by directing its attention to two potentially relevant
2 excerpts of the 127-page *Peruta* decision and dissent with only three days remaining until
3 hearing. Plaintiffs' Statement summarizes these discussions without arguing that or how they
4 might impact the analysis of this case. But to the extent the Court believes Plaintiffs' attempt to
5 provide a neutral description of the relevant portion of the *Peruta* opinion entered the realm of
6 argument, Plaintiffs do not oppose striking lines 9-13 of Plaintiffs' Statement of Recent Decision.

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8 Date: February 19, 2014

MICHEL & ASSOCIATES, P.C.

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10 /s/ C. D. Michel
11 C. D. Michel
12 Attorney for Plaintiffs
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LEONARD FYOCK, SCOTT) CASE NO: CV13-05807 RMW
HOCHSTETLER, WILLIAM DOUGLAS,)
DAVID PEARSON, BRAD SEIFERS, and)
ROD SWANSON,) 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' OPPOSITION TO DEFENDANTS' MOTION TO STRIKE
PLAINTIFFS' IMPROPER OBJECTIONS TO EVIDENCE**

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
Anthony P. Schoenberg
Rochelle L. Woods
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aschoenberg@fbm.com

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 19, 2014.

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