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7 Attorneys for Defendants  
THE CITY OF SUNNYVALE, THE MAYOR OF  
8 SUNNYVALE, ANTHONY SPITALERI in his  
official capacity, THE CHIEF OF THE  
9 SUNNYVALE DEPARTMENT OF PUBLIC  
SAFETY, FRANK GRGURINA, in his official  
10 capacity

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION  
14

15 LEONARD FYOCK,  
SCOTT HOCHSTETLER,  
16 WILLIAM DOUGLAS,  
DAVID PEARSON, BRAD SEIFERS, and  
17 ROD SWANSON,

18 Plaintiffs,

19 v.

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

24 Defendants.  
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Case No. 13-cv-05807 RMW

**DECLARATION OF JAMES E.  
YURGEALITIS IN SUPPORT OF  
SUNNYVALE'S OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Date: February 21, 2014  
Time: 9:00 a.m.  
Location: San Jose Courthouse  
Courtroom 6 – 4<sup>th</sup> Floor  
280 South 1<sup>st</sup> Street  
San Jose, CA 95113

1 I, James E. Yurgealitis, declare as follows:

2 1. I am currently Self Employed as a Legal and Forensic Consultant providing  
3 Criminal Case Reviews, Forensic Case Reviews and Technical Firearms Consulting, Testing and  
4 Training Services to Corporations, Legal Counsel and the Public Sector. During my previous 26  
5 year career as a Federal Law Enforcement Officer I have been recognized, and testified as, an  
6 expert witness in numerous local, state and federal courts. I have toured numerous firearms and  
7 ammunition manufacturer's facilities both in the United States and overseas. I maintain a personal  
8 library of firearms and ammunition related books and periodicals and maintain contact with other  
9 recognized experts in the field. My final assignment in government service was as Senior Special  
10 Agent / Program Manager for Forensic Services for the Bureau of Alcohol, Tobacco, Firearms  
11 and Explosives (ATF), U.S. Department of Justice, a position I held for nine (9) years. During  
12 that time I was responsible for all Bureau firearms and forensic firearms related training and  
13 research at the ATF National Laboratory Center in Ammendale, Maryland.

14 2. My credentials, training, background and experience are stated in my curriculum  
15 vitae, a true and correct copy of which is attached as Exhibit A. My credentials, training,  
16 background and experience as an expert witness are detailed on my Statement of Qualifications, a  
17 true and correct copy of which is attached as Exhibit B.

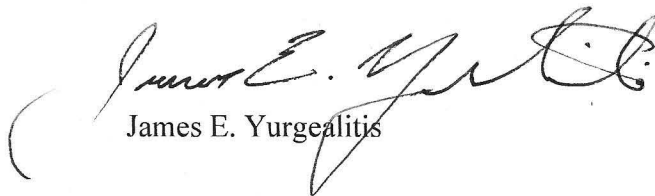
18 3. I have been provided with, and have reviewed, a copy of the documents submitted  
19 by the Plaintiff(s) relative to Case No. 13-cv-05807 RMW in United States District Court for the  
20 Northern District of California, San Jose Division. I have also been provided with, and have  
21 reviewed, a copy of The City of Sunnyvale, California, Municipal Ordinance 9.44.050, (the  
22 "Ordinance") wherein the possession and use of "ammunition feeding devices" or "magazines"  
23 with a capacity of more than ten (10) Ammunition Cartridges or "rounds" is prohibited.

24 4. The specific capacity limitation in the Ordinance addresses "Detachable  
25 Magazines". Detachable Magazines are ammunition feeding devices not permanently integrated  
26 or fixed to the firearm receiver or frame. Common types of firearms which utilize detachable  
27 magazines include Semi Automatic Pistols, Semi Automatic Rifles, Bolt Action Rifles, Semi  
28 Automatic Shotguns, Bolt Action Shotguns and Machineguns.

1 5. Detachable Magazines are, can be, and have been manufactured with varying  
2 capacities. The operation (or cycle of fire) of any firearm designed and manufactured to accept a  
3 detachable magazine will function regardless of the capacity of the magazine itself. For example  
4 modern firearms such as the Beretta Model 92 Semi Automatic Pistol and the AR- 15 Type Semi  
5 Automatic Rifles will function as designed whether the operator utilizes a magazine limited to  
6 ten (10) rounds or one of greater capacity. Generally speaking, any firearm capable of accepting  
7 a detachable "Large Capacity Magazine" as defined under the Ordinance will readily accept  
8 a magazine with a maximum capacity of ten (10) rounds. This includes the vast majority of  
9 Handguns and Shoulder Fired firearms so designed and manufactured.

10 6. Following the enactment of California Penal Code Section 32310 regulating the  
11 Manufacture, Import or Sale of Large Capacity Magazines, numerous Firearm Manufacturers  
12 have produced firearms compliant with the legislation. For example Smith and Wesson currently  
13 markets specific models of AR-15 type rifles and Semi Automatic pistols compliant with  
14 California Law(s). Beretta, Glock, Colt, Sturm Ruger, Sigarms and numerous other manufacturers  
15 have produced and marketed specific models of firearms in California after minor changes to  
16 their design or component parts. In general firearm magazines with a maximum capacity of ten  
17 (10) rounds have been mass produced since the mid 1990's and are readily available to the public.

18 I declare under penalty of perjury under the laws of the State of California that the  
19 foregoing is true and correct. Executed this 28th day of January, 2014, in Sparks, Maryland.  
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21   
22 James E. Yurgealitis  
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# EXHIBIT A

To

DECLARATION OF JAMES E.  
YURGEALITIS IN SUPPORT OF  
SUNNYVALE'S OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION

## **James E. Yurgealitis**

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New Freedom, Pennsylvania 17349  
24 Hour Mobile: (443) 452-7248  
Email: jyurgealitis@gmail.com

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### SUMMARY:

Curently self employed as a Legal and Forensic Consultant providing Criminal Case Reviews, Forensic Analysis Reviews and Technical Firearms Consulting, Testing and Training Services to Corporations, Legal Counsel and the Public Sector

### EDUCATION:

B.A., Political Science and Psychology, St. John Fisher College, Rochester, New York – May 1985

### PROFESSIONAL EXPERIENCE:

December 2003 to December 2012: Senior Special Agent / Program Manager for Forensic Services ATF National Laboratory Center (NLC), Beltsville, Maryland. U. S Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Directed the administration and management of ATF's Forensic Training Programs to include the National Firearms Examiner Academy (NFEA) a 12 month training program for State and Local Forensic Firearm Examiner Trainees. Also managed two additional forensic training programs. Administered a \$1M + budget in accordance with strict ATF and National Institute of Justice (NIJ) guidelines and reporting requirements. Responsible for oversight of all Forensic Firearms related research at the NLC. Supervised a full and part time cadre of fifty two (52) instructors and administrative personnel. Maintained liaison with commercial firearms and ammunition manufacturers and subject matter experts and ensure that lesson plans and curriculum reflected the latest technical developments in firearms manufacture, forensics and their application to federal and state law. Applied for, received and managed in excess of \$2M in external grants to facilitate uninterrupted delivery of training during internal budget shortfalls. Detailed to the Department of Homeland Security Command Center in 2005 with overall responsibility to coordinate and direct Federal, State and Local Law Enforcement assets during and following Hurricanes "Irene" and "Katrina" and again in 2010 for "Andrew" and "Danielle".

June 1997 - December 2003: Special Agent / Violent Crime Coordinator, ATF Baltimore Field Division, Baltimore, Maryland

Responsible for management of ATF's "Project Disarm", a joint law enforcement initiative between ATF, The United States Attorney's office for the District of Maryland (USAO), the Baltimore City Police Department, the Baltimore City States Attorney's Office and the Maryland State Police. Duties included reviewing over 400 state and local firearms related arrests annually for subsequent referral to the USAO and Federal Prosecution. Managed a caseload of 75 – 100 criminal cases annually. Responsible for selection, referral, follow - up investigation and subsequent indictment and prosecution of armed career criminals. Testified in front of Federal Grand Juries in excess of 75 times annually. Was recognized, and testified, as an expert witness in the Identification, Operability and origin of Firearms and Ammunition in three Federal Judicial Districts. Toured over 25 firearms and ammunition manufacturing facilities in Europe and the United States.

June 1990 – June 1997:

Special Agent, ATF Baltimore Field Division, Baltimore, Maryland

Served in various capacities as a street-level Special Agent. Acted as Group Supervisor and Assistant Special Agent in Charge on numerous occasions. Served on the Washington – Baltimore High Intensity Drug Trafficking Area (HIDTA) task force from 1995 – 1999. Investigated armed narcotics trafficking organizations, seized assets, authored and executed Federal and state search and arrest warrants, conducted surveillance, interviews / interrogations, testified in Federal and state courts as a fact witness, purchased firearms, explosives and narcotics while in an undercover capacity, investigated fatal bombings and arsons, firearms trafficking, alcohol and tobacco trafficking, homicide, fraud and gun store burglaries. Also while detailed for 8 months as the Public Information Officer authored press releases, provided interviews to local and national print and television media outlets and made presentations to local and national public and special interest groups and associations.

April 1989 – June 1990 and July 1986 – March 1987: Special Agent, United States Department of State, Diplomatic Security Service (DSS), Washington Field Office, Rosslyn, VA

Conducted investigations of violations of Federal Law under the department's purview to include Passport and Visa Fraud, Illegal trafficking of restricted firearms and war materials to prohibited countries, human trafficking, seized assets, authored and executed State, local and Federal Arrest and Search Warrants, testified in Federal Court as a fact witness, detailed on an as needed basis to the Dignitary Protection Division as Agent in Charge of multiple protective details for visiting and resident foreign dignitaries, temporarily assigned to support Physical and Personal Protective Security in various U.S. Embassies overseas on an as needed basis, detailed to the Secretary of State Protective Division on an as needed basis to supervise "jump team" agents assigned to augment the permanent protective detail overseas and domestically.

March 1987-February 1989: Special Agent, DSS, Secretary of State Protective Division, Washington, DC

Served in various capacities as Acting Agent in Charge, Acting Shift Leader, Lead Advance Agent and Shift Agent. Responsibilities included close personal protection of the Secretary of State both domestically and overseas, extensive foreign travel to facilitate and prepare security arrangements for overseas visits to include Presidential Summit meetings, liaison with foreign host government officials to plan and solicit assistance with security arrangements, supervision of "jump team" agents temporarily assigned to augment the detail, liaison with U.S Government Intelligence Agencies, other Federal, State and Local Law Enforcement Agencies to identify and protect against potential threats to the Secretary of State.

CLEARANCES:

Top Secret since March 1986 valid through February 2015. Numerous prior SCI Clearances.

TEACHING EXPERIENCE:

Instructed at the Federal Law Enforcement Training Center (FLETC), both recruit and in service training for ATF and other Federal Law Enforcement Agencies

Instructed at the International Law Enforcement Academy (ILEA) in Budapest, Hungary

Instructed for numerous State, local and / or regional law enforcement agencies both in the United States, Canada and Central America.

**EXHIBIT B**  
**To**  
**DECLARATION OF JAMES E.**  
**YURGEALITIS IN SUPPORT OF**  
**SUNNYVALE’S OPPOSITION TO**  
**PLAINTIFFS’ MOTION FOR**  
**PRELIMINARY INJUNCTION**



**Qualifications of James E. Yurgealitis**  
**Independent Legal and Forensic Consultant**

I, James E. Yurgealitis, being duly sworn, depose and state:

- 1.) That I was previously employed as a Senior Special Agent / Program Manager with the Bureau of Alcohol, Tobacco Firearms & Explosives, (ATF) United States Department of Justice, and had been so employed since 1990. Prior to 1990 I was employed as a Special Agent with the Bureau of Diplomatic Security, (DSS) United States Department of State and had been so employed since 1986.
- 2.) I have a Bachelor of Arts Degree in Political Science and Psychology from St. John Fisher College, Rochester, New York.
- 3.) I am a graduate of the Federal Law Enforcement Training Center, Glynco, Georgia, the Criminal Investigator Training Program, Bureau of Diplomatic Security New Agent Training, and the Bureau of ATF New Agent Training Program.
- 4.) I have completed the Firearms Interstate Nexus Training Program conducted by the Firearms Technology Branch, ATF Headquarters, Washington, D.C.
- 5.) I have completed both Advanced Interstate and European Nexus Training conducted by ATF in conjunction with several domestic and European firearm manufacturers.
- 6.) I have testified in excess of 200 times before Federal Grand Juries regarding the classification, operability, and commerce of firearms and / or ammunition.
- 7.) I have previously qualified as an expert witness regarding the origin, operability / classification and interstate movement of firearms and ammunition in U.S. District Court for the District of Maryland, U.S. District Court for the District of Delaware and the Circuit Court For Baltimore City, Maryland.
- 8.) I have conducted regular training for local, state and federal law enforcement agencies both domestically and overseas regarding firearms classification, operability and firearms statutes.
- 9.) I maintain a personal library of books, printed material and documents that relate to the field of firearms, ammunition, and firearms classification, attend local and national trade shows and professional association meetings, and regularly review periodicals relating to firearms and ammunition.
- 10.) I attend trade shows, maintain contact with, and regularly consult with other persons, to include published authors and recognized experts in the origin, identification and classification of firearms and ammunition.
- 11.) I have, during my tenure with ATF, personally examined in excess of five thousand



Qualifications Of James E. Yurgealitis contd.

firearms to determine their origin and classification and operability, and to facilitate the tracing of those firearms.

I have toured production facilities for numerous firearms and ammunition manufacturers. The tours were conducted by corporate historians, corporate officers, or production engineering personnel.

Domestic Firearm Manufacturers:

Bushmaster Firearms, Ilion, NY, USA  
Colt, New Haven CT, USA (4x)  
H&R 1871 Inc., Chicopee, MA, USA (2x)  
Marlin, North Haven CT, USA (4x)  
O.F. Mossberg & Sons, North Haven, CT, USA (4x)  
Remington Firearms, Ilion, NY, USA  
Savage Arms Inc., Westfield, MA, USA (4x)  
Sig-Sauer / SIGARMS Inc., Exeter, NH, USA (3x)  
Smith and Wesson, Springfield, MA, USA (4x)  
Sturm Ruger, Newport, NH, USA (4x)  
Yankee Hill Machining, Florence, MA, USA

Foreign Firearm Manufacturers:

Carl Walther GmbH, Ulm, Germany  
Ceska Zbrojovka (CZ), Uhersky Brod, Czech Republic  
Fegarmy (FEG), Budapest, Hungary  
F.N Herstal S.A., Herstal, Belgium  
Glock GmbH, Deutsch-Wagram, Austria  
Heckler & Koch GmbH, Oberndorf am Neckar, Germany  
J.P. Sauer & Sohn GmbH, Eckernförde, Germany

Domestic Ammunition Manufacturers:

Fiocchi Ammunition, Ozark, MO, USA  
PMC, Boulder City, NV, USA  
Remington, Lonoke, AR, USA (4x)  
Sierra, Sedalia, MO, USA  
Starline Brass, Sedalia, MO, USA

European Proof Houses

Beschussamt Ulm, (Ulm Proofhouse) Ulm, Germany  
Beschusstelle Eckernförde, (Eckernförde Proofhouse) Eckernförde, Germany  
Czech Republic Proofhouse, Uhersky Brod, Czech Republic  
Liege Proofhouse, Liege, Belgium

Qualifications Of James E. Yurgealitis contd.

I have been allowed regular access to the following reference collections:

Bureau of Alcohol, Tobacco Firearms and Explosives Reference Collection, Martinsburg, West Virginia, USA consisting of 5,000+ firearms

Liege Proofhouse, Liege, Belgium consisting of 1,000+ ammunition cartridges

Springfield Armory National Historic Site Firearms Collection, Springfield, MA, USA consisting of 10,000+ Firearms

Smithsonian Institution (Museum of American History) Firearms Reference Collection Washington, DC, USA, consisting of 4000+ firearms

Werotechnische Studiensammlung des BWB, (Federal Defense Procurement Bureau Museum) Koblenz, Germany consisting of 10,000+ Firearms

I have toured the following museums:

Heeresgeschichtliches Museum, (Museum of Military History), Vienna, Austria

Hungarian Military Museum, Budapest, Hungary

Springfield Armory National Historic Site, Springfield, MA, USA

United States Air Force Museum, Dayton, OH, USA

United States Army Ordnance Museum, Aberdeen Proving Ground, Aberdeen, MD, USA

United States Military Academy Museum, West Point, NY, USA

United States Naval Academy Museum, Annapolis, MD, USA

Werotechnische Studiensammlung des BWB, (Federal Defense Procurement Bureau Museum) Koblenz, Germany

Membership in Professional Organizations:

Member, International Ammunition Association (IAA)

Technical Advisor (pending approval), Association of Firearm and Toolmark Examiners (AFTE)

Member, Federal Law Enforcement Officers Association (FLEOA)