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 THE CITY OF SUNNYVALE, THE MAYOR OF
 10 SUNNYVALE, ANTHONY SPITALERI, in his
 official capacity, THE CHIEF OF THE
 11 SUNNYVALE DEPARTMENT OF PUBLIC
 SAFETY, FRANK GRGURINA, in his official
 12 capacity.

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

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

19 Plaintiffs,

20 v.

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

24 Defendants.

Case No. 13-cv-05807 RMW

**DEFENDANTS' ANSWER TO COMPLAINT
 FOR DECLARATORY AND INJUNCTIVE
 RELIEF**

Date Action Filed: December 16, 2013

Trial Date: None Set

25
 26 Defendants City of Sunnyvale, the former Mayor of Sunnyvale, Anthony Spitaleri, in his
 27 official capacity, and the Chief of the Sunnyvale Department of Public Safety, Frank Grgurina, in
 28 his official capacity (collectively, "Defendants" or the "City"), by and through their undersigned

counsel, hereby respond to the Complaint for Declaratory and Injunctive Relief (“Complaint”) filed on December 16, 2013, by Plaintiffs Leonard Fyock, Scott Hochstetler, William Douglas, David Pearson, Brad Seifers, and Rod Swanson (collectively, “Plaintiffs”).

ANSWER

INTRODUCTION

1. The City admits that Plaintiffs purport to bring this suit to challenge the constitutionality of Sunnyvale Municipal Code section 9.44.050, and that the ordinance is or will be enforced by city officials. Except as so expressly admitted, the City denies the remaining allegations in Paragraph 1.

2. The City denies the factual allegations in Paragraph 2, and the Ordinance speaks for itself. To the extent Paragraph 2 contains legal conclusions, the City is not required to respond to those statements of law.

3. The City denies the allegations in Paragraph 3.

4. Regarding Paragraph 4, the City admits that Plaintiffs purport to seek declaratory and injunctive relief to invalidate and enjoin the City’s enforcement of the Ordinance.

JURISDICTION AND VENUE

5. Paragraph 5 contains legal conclusions to which no response is required. To the extent a response is required, the City admits that this Court has original jurisdiction over this action.

6. The City denies the allegations in Paragraph 6 on the basis that they state only legal conclusions to which no answer is required.

INTRADISTRICT ASSIGNMENT

7. Paragraph 7 contains legal conclusions to which no response is required. To the extent a response is required, the City admits that assignment to the San Jose division of the United States District Court for the Northern District of California is proper.

PARTIES

8. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and therefore denies each and every allegation therein.

9. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore denies each and every allegation therein.

10. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and therefore denies each and every allegation therein.

11. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and therefore denies each and every allegation therein.

12. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and therefore denies each and every allegation therein.

13. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and therefore denies each and every allegation therein.

14. Paragraph 14 contains legal conclusions to which no response is required. The City is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 14 and therefore denies each and every allegation therein.

15. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and therefore denies each and every allegation therein.

16. Defendant City of Sunnyvale admits that it is a municipal corporation acting as such by and under state law and has responsibilities for implementing and enforcing the Ordinance. The City denies the remaining allegations in Paragraph 16 on the basis that they state only legal conclusions to which no answer is required.

17. Defendant Anthony Spitaleri admits that he was sued in his official capacity as the Mayor of Sunnyvale. Defendant Anthony Spitaleri denies the remaining allegations in Paragraph 17.

18. Defendant Frank Grgurina admits that he is the Chief of the Department of Public Safety of the City of Sunnyvale, that he is an employee of the City of Sunnyvale, that city officials have responsibilities for enforcing the Ordinance, and that he is being sued in his official capacity. Defendant Frank Grgurina denies the remaining allegations in Paragraph 18.

GENERAL ALLEGATIONS

19. The City admits that, on July 16, 2013, the Sunnyvale City Council adopted a

1 resolution calling for a Special Municipal Election to be held on November 5, 2013, for the
 2 purpose of voting on various proposed amendments to the Sunnyvale Municipal Code, including
 3 Measure C, and that the ballot measure asked voters to adopt among other items, Sunnyvale
 4 Municipal Code section 9.44.050. The City admits that Plaintiffs have purported to attach a copy
 5 of Sunnyvale Municipal Code section 9.44.050 as Exhibit "A." Except as so expressly admitted,
 6 the City denies the remaining allegations of Paragraph 19.

7 20. The City admits the allegations in Paragraph 20.

8 21. The City admits the allegations in Paragraph 21.

9 22. The City admits the allegations in Paragraph 22.

10 23. Paragraph 23 contains legal conclusions to which no response is required, and
 11 the Ordinance speaks for itself.

12 24. Paragraph 24 contains legal conclusions to which no response is required, and
 13 the Ordinance speaks for itself.

14 25. Paragraph 25 contains legal conclusions to which no response is required, and
 15 the Ordinance speaks for itself.

16 26. Paragraph 26 contains legal conclusions to which no response is required, and
 17 the Ordinance speaks for itself.

18 27. Paragraph 27 contains legal conclusions to which no response is required, and
 19 the Ordinance speaks for itself.

20 28. Paragraph 28 contains legal conclusions to which no response is required, and
 21 the Ordinance speaks for itself.

22 29. Paragraph 29 contains legal conclusions to which no response is required, and
 23 the Ordinance speaks for itself.

24 30. The City denies the allegations in Paragraph 30.

25 31. The City admits the allegations in Paragraph 31.

26 32. The City admits the allegations in Paragraph 32.

27 33. The City admits that the United States Supreme Court issued the decision
 28 *District of Columbia v. Heller*, 554 U.S. 570 (2008) on June 26, 2008. The City denies the

1 remaining allegations in Paragraph 33 on the basis that they state only legal conclusions to which
2 no answer is required.

3 34. The City denies the allegations in Paragraph 34 on the basis that they state only
4 legal conclusions to which no answer is required.

5 35. The City denies the allegations in Paragraph 35 on the basis that they state only
6 legal conclusions to which no answer is required.

7 36. The City denies the allegations in Paragraph 36 on the basis that they state only
8 legal conclusions to which no answer is required

9 37. The City denies the allegations in Paragraph 37.

10 38. The City is without knowledge or information sufficient to form a belief as to
11 the truth of the allegations in Paragraph 38 and therefore denies those allegations.

12 39. The City is without knowledge or information sufficient to form a belief as to
13 the truth of the allegations in Paragraph 39 and therefore denies those allegations.

14 40. The City denies that magazines with capacities of more than ten rounds are
15 standard for many common handguns and long guns. The City is without knowledge or
16 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 40
17 and therefore denies those allegations.

18 41. The City denies that “standard-capacity” magazines are capable of holding
19 more than ten rounds. The City is without knowledge or information sufficient to form a belief as
20 to the truth of the remaining allegations in Paragraph 41 and therefore denies those allegations.

21 42. The City denies that “standard-capacity” magazines are capable of holding
22 more than ten rounds. The City is without knowledge or information sufficient to form a belief as
23 to the truth of the remaining allegations in Paragraph 42 and therefore denies those allegations.

24 43. The City denies the allegations in Paragraph 43 on the basis that they state only
25 legal conclusions to which no answer is required.

26 44. The City denies that “standard-capacity” magazines are capable of holding
27 more than ten rounds. The City is without knowledge or information sufficient to form a belief as
28 to the truth of the remaining allegations in Paragraph 44 and therefore denies those allegations.

1 45. The City denies the allegations in Paragraph 45.

2 46. The City denies the allegations in Paragraph 46.

3 47. The City is without knowledge or information sufficient to form a belief as to
4 the truth of the allegations in Paragraph 47 and therefore denies those allegations.

5 48. The City is without knowledge or information sufficient to form a belief as to
6 the truth of the allegations in Paragraph 48 and therefore denies those allegations.

7 49. The City denies the allegations in Paragraph 49.

8 50. The City denies the allegations in Paragraph 50.

9 51. The City denies the allegations in Paragraph 51.

10 52. The City denies the allegations in Paragraph 52.

11 53. The City denies the allegations in Paragraph 53.

12 54. The City denies that “standard-capacity” magazines are capable of holding
13 more than ten rounds. The City is without knowledge or information sufficient to form a belief as
14 to the truth of the remaining allegations in Paragraph 54 and therefore denies those allegations.

15 **DECLARATORY JUDGMENT ALLEGATIONS**

16 55. Paragraph 55 contains legal conclusions to which no response is required. The
17 City is without knowledge or information sufficient to form a belief as to the truth of the factual
18 allegations in Paragraph 55 and therefore denies those allegations.

19 56. Paragraph 56 contains legal conclusions to which no response is required. The
20 City is without knowledge or information sufficient to form a belief as to the truth of the factual
21 allegations in Paragraph 56 and therefore denies those allegations.

22 57. The City denies the allegations in Paragraph 57.

23 58. The City admits that Plaintiffs are making certain contentions and assert that
24 they desire a judicial declaration of their rights and the City’s duties. The City denies the
25 remaining allegations in Paragraph 58.

26 **INJUNCTIVE RELIEF ALLEGATIONS**

27 59. The City denies the allegations in Paragraph 59.

28 60. The City denies the allegations in Paragraph 60.

61. The City denies the allegations in Paragraph 61.

62. The City denies the allegations in Paragraph 62.

CLAIM FOR RELIEF: VALIDITY OF SMC § 9.44.050

63. Paragraphs 1-62 are realleged and incorporated herein by reference.

64. The City denies the allegations in Paragraph 64.

65. The City denies the allegations in Paragraph 65.

66. The City denies the allegations in Paragraph 66.

PRAYER FOR RELIEF

The allegations in the six (6) numbered paragraphs which appear directly following the word “WHEREFORE” are Plaintiffs’ prayer for relief to which no answer is required; however, to the extent a response is required, the City denies that any relief should be awarded and requests that this Court dismiss the Complaint with Plaintiffs taking nothing by way of damages, fees, or costs against the City.

The City further answers that all allegations in the Complaint which are not specifically admitted or otherwise answered are hereby denied.

AFFIRMATIVE DEFENSES

Additionally, the City answers the Complaint by way of affirmative defenses alleged below. By alleging these defenses below, the City is not agreeing or conceding that it has the burden of proof or persuasion on any of these issues.

First Affirmative Defense
(No Standing)

As a first, separate and distinct affirmative defense, the City alleges that Plaintiffs lack standing to bring the claims that are set forth in the Complaint.

Second Affirmative Defense
(Failure to State a Claim)

As a second, separate and distinct affirmative defense, the City alleges that the Complaint fails to state facts sufficient to state a cause of action for which relief can be granted.

Third Affirmative Defense
(Failure to Exhaust Administrative Remedies)

As a third, separate and distinct affirmative defense, the City alleges that Plaintiffs are barred from bringing or maintaining this action because they have failed to exhaust their administrative remedies.

Fourth Affirmative Defense
(Attorneys' Fees)

As a fourth, separate and distinct affirmative defense, the City alleges that Plaintiffs have failed to state facts sufficient to set forth a claim for recovery of their attorneys' fees.

Fifth Affirmative Defense
(Irreparable Harm)

As a fifth, separate and distinct affirmative defense, the City alleges that Plaintiffs have not experienced irreparable harm, making injunctive relief improper.

Sixth Affirmative Defense
(Ripeness)

As a sixth, separate and distinct affirmative defense, the City alleges that some or all of Plaintiffs' causes of action are premature and not ripe for adjudication.

Seventh Affirmative Defense
(Fault of Third Parties)

As a seventh, separate and distinct affirmative defense, the City alleges that the harms alleged in the Complaint are the fault of third parties and/or acts not within the control of the City, including but not limited to statutes enacted and enforced by the State of California and/or third party retailers.

Eighth Affirmative Defense
(Unclean Hands)

As an eighth, separate and distinct affirmative defense, the City alleges Plaintiffs' claims and requests for equitable relief are barred by the doctrine of unclean hands.

Ninth Affirmative Defense
(Improper Party)

As a ninth, separate and distinct affirmative defense, the City alleges that Defendant Anthony Spitaleri should be dismissed from this suit because he was sued in his official capacity as the Mayor of Sunnyvale, and, as of about January 7, 2014, he is no longer the Mayor.

Tenth Affirmative Defense
(Additional Defenses)

The Complaint is barred by other affirmative defenses that the City may allege as those defenses become known through discovery.

PRAYER FOR RELIEF

WHEREFORE, Defendants deny that Plaintiffs are entitled to the relief prayed for, or to any relief whatsoever, and pray as follows:

- A. That the Complaint be denied;
- B. That Plaintiffs shall take nothing by way of their Complaint;
- C. That Defendants have acted in accordance with the law in all respects;
- D. That the Court deny any award of attorneys' fees to Plaintiffs;
- E. That the Court grant to Defendants reasonable attorneys' fees and an award of costs of suit incurred herein; and
- F. For such other relief as this Court may deem just and proper.

Dated: January 16, 2014

FARELLA BRAUN + MARTEL LLP

By: /s/ Anthony P. Schoenberg
 Anthony P. Schoenberg
 Attorneys for Defendants
 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.