

1 WRIGHT & L'ESTRANGE  
2 Robert C. Wright (SBN 51864)  
3 Andrew E. Schouten (SBN 263684)  
4 401 West A Street, Suite 2250  
5 San Diego, California 92101  
6 (619) 231-4844  
7 (619) 231-6710 (fax)

8 NATIONAL SHOOTING SPORTS FOUNDATION, INC.  
9 Lawrence G. Keane, General Counsel  
10 (*pro hac vice* pending)  
11 11 Mile Hill Road  
12 Newtown, Connecticut 06470  
13 (203) 426-1320  
14 (203) 426-7182 (fax)

15 Attorneys for Petitioners U.S. Firearms Company LLC, Eric W. Fisher, and  
16 The National Shooting Sports Foundation, Inc.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 IN AND FOR THE COUNTY OF SANTA CLARA

19 U.S. FIREARMS COMPANY LLC, a )  
20 limited liability company; ERIC W. )  
21 FISHER; and THE NATIONAL )  
22 SHOOTING SPORTS )  
23 FOUNDATION, INC., a non-profit )  
24 trade association, )  
25 )  
26 Petitioners, )  
27 )  
28 v. )  
29 CITY OF SUNNYVALE; THE )  
30 SUNNYVALE CITY COUNCIL; and )  
31 DOES 1 through 30, inclusive, )  
32 )  
33 Respondents. )

34 CASE NO. 1-13-CV-257353  
35 **DECLARATION OF ROBERT C. WRIGHT**  
36 **IN SUPPORT OF MOTION BY**  
37 **PETITIONERS TO SEAL DOCUMENTS**  
38 **SUBMITTED PURSUANT TO ORDER TO**  
39 **SHOW CAUSE RE: PRELIMINARY**  
40 **INJUNCTION**  
41 Date: February 11, 2014  
42 Time: 9:00 a.m.  
43 Dept: 3  
44 Judge: Hon. William J. Elfving

45 Robert C. Wright declares:

46 1. I am a lawyer admitted to practice in California and am a partner in Wright  
47 & L'Estrange, counsel for Petitioners U.S. Firearms Company, LLC, Eric W. Fisher, and  
48 The National Shooting Sports Foundation, Inc. ("Petitioners"), in this case.

49 2. On December 23, 2013, Respondents served Petitioners with a Notice of

1 Deposition of Eric W. Fisher and request for production of documents in this case, a true  
2 and correct copy of which is appended as Exhibit A.

3 3. Some of the documents sought information that was confidential,  
4 proprietary, and competitively sensitive. I therefore made a request to Tony  
5 Schoenberg, one of the attorneys representing the Respondents, that there be a  
6 Protective Order entered, which was then negotiated, signed by counsel and submitted  
7 to the Court for entry on December 27, 2013. A true and correct copy of the Protective  
8 Order is appended as Exhibit B to this declaration.

9 4. Pursuant the Protective Order, I produced to Mr. Schoenberg four  
10 documents consisting of bar charts showing gross revenues for U.S. Firearms for the  
11 years 2010-2013. The documents were marked "CONFIDENTIAL" pursuant to the  
12 Protective Order.

13 5. Mr. Fisher was deposed on December 27, 2013. During the deposition,  
14 Mr. Schoenberg asked Mr. Fisher about U.S. Firearms' sales information, including  
15 information contained in the documents previously produced marked "CONFIDENTIAL."  
16 Those questions and Mr. Fisher's responses were designated "CONFIDENTIAL" in his  
17 deposition. To the best of my knowledge, none of this information can be obtained in  
18 any public record.

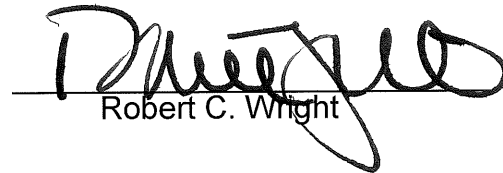
19 6. On December 30, 2013, Respondents filed an Opposition to the Order to  
20 Show Cause. Pursuant to the Protective Order and California Rule of Court 2.551(d),  
21 Respondents filed redacted copies of their Opposition Memorandum and Exhibits D and  
22 E, and lodged unredacted copies of those documents with the Court conditionally under  
23 seal pending resolution of this Motion. The unredacted documents contain or summarize  
24 "CONFIDENTIAL" information designated as such by me.

25 7. On January 6, 2014, I caused to be filed and served a Reply Brief in  
26 support of the Order to Show Cause re Preliminary Injunction. I included in that  
27 submission a redacted copy of the Supplemental Declaration of Eric W. Fisher. I caused  
28

1 to be lodged with the Court an unredacted copy of that document conditionally under  
2 seal pending resolution of this Motion. The unredacted Supplemental Fisher Declaration  
3 summarizes or contains, "CONFIDENTIAL" information designated as such pursuant to  
4 the Protective Order.

5 8. In connection with submission of the Supplemental Fisher Declaration, I  
6 limited redaction to the parts containing U.S. Firearms' Sales Information. Similarly, this  
7 Motion only seeks to maintain in confidence limited portions of Respondents' Opposition  
8 referring to the same information.

9 I declare under penalty of perjury under the laws of the State of California that the  
10 foregoing is true and correct and that this declaration was executed on January 8, 2014,  
11 at San Diego, California.

12   
13 Robert C. Wright  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

1 Roderick M. Thompson (State Bar No. 96192)  
rthompson@fbm.com  
2 Anthony P. Schoenberg (State Bar No. 203714)  
aschoenberg@fbm.com  
3 Evan M. Engstrom (State Bar No. 267300)  
eengstrom@fbm.com  
4 James H. Baker (State Bar No. 291836)  
jbaker@fbm.com  
5 Farella Braun + Martel LLP  
235 Montgomery Street, 17th Floor  
6 San Francisco, CA 94104  
Telephone: (415) 954-4400  
7 Facsimile: (415) 954-4480

8 Attorneys for Respondents  
CITY OF SUNNYVALE and THE SUNNYVALE  
9 CITY COUNCIL

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF SANTA CLARA

13 U.S. FIREARMS COMPANY LLC, a  
limited liability company; ERIC W.  
14 FISHER; and THE NATIONAL  
SHOOTING SPORTS FOUNDATION,  
15 INC., a non-profit trade association. ,

16 Petitioners,

17 vs.

18 CITY OF SUNNYVALE; THE  
SUNNYVALE CITY COUNCIL; and  
19 DOES 1 - 30, inclusive,

20 Respondents.

Case No. 113CV257353

**NOTICE OF DEPOSITION OF ERIC  
FISHER AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS**

21  
22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that, pursuant to California Code of Civil Procedure  
24 §§ 2025.010 and 2025.280(a), Respondents CITY OF SUNNYVALE & SUNNYVALE CITY  
25 COUNCIL will take the deposition upon oral examination of Petitioner ERIC FISHER in the  
26 above-entitled action on December 27th, 2013 by video or telephonic conference. Said  
27 deposition, if not completed on the aforementioned date, will continue from day to day thereafter  
28 until completed.

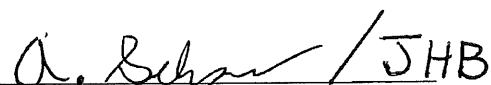
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiff and his counsel of record are hereby notified pursuant to California Code of Civil Procedure §§ 2025.220(a)(5) that Plaintiff's deposition may be recorded both stenographically using instantaneous transcription and by audiotape and/or videotape.

Pursuant to sections 2025.220(a)(4) of the California Code of Civil Procedure, Plaintiff is hereby requested to produce for inspection and copying all documents described in Section II of Attachment A hereof in accordance with the definitions and instructions contained in Section I of Attachment A by email on or before December 26, 2013, at noon.

Dated: December 23, 2013

FARELLA BRAUN + MARTEL LLP

By:   
Anthony Schoenberg

Attorney for Defendants  
CITY OF SUNNYVALE AND THE  
SUNNYVALE CITY COUNCIL

1 ATTACHMENT A

2 I. DEFINITIONS AND INSTRUCTIONS

3 The following definitions and instructions are to be considered applicable with respect to  
4 each request for production of documents contained herein:

5 1. Document. As used herein, "document" shall be understood to apply to any record  
6 or communication that would be a document within the meaning of Section 2031 of the California  
7 Code of Civil Procedure and shall include, without limitation, any kind of written, typewritten,  
8 computerized, printed or recorded material whatsoever, including, but without limitation, notes,  
9 memoranda, letters, reports, telegrams, e-mails, publications, contracts, recordings, transcriptions  
10 of recordings, and business records and shall include, without limitation, originals, duplicates, all  
11 file copies, all other copies (with or without notes or changes thereon) no matter how prepared,  
12 drafts, working papers, routing slips and similar materials.

13 2. Possession, Custody or Control. Each request contained in Section II hereof  
14 extends to any documents in the possession, custody or control of the plaintiff. A document is  
15 deemed to be in plaintiff's possession, custody or control, if it is in plaintiff's physical custody, or  
16 if it is in the physical custody of any other person and plaintiff (a) owns such document in whole  
17 or in part; (b) has a right by contract, statute or otherwise to use, inspect, examine or copy such  
18 document on any terms; (c) has an understanding, express or implied, that plaintiff may use,  
19 inspect, examine or copy such document on any terms; or (d) has, as a practical matter, been able  
20 to use, inspect, examine or copy such document when plaintiff has sought to do so. Such  
21 documents shall include, without limitation, documents that are in the custody of plaintiff's  
22 attorney(s) or other agents.

23 3. U.S. Firearms LLC. As used herein, the term "U.S. Firearms LLC" or "U.S.  
24 Firearms" shall be deemed to include U.S. Firearms, LLC, and all of its affiliated companies,  
25 divisions and brands, and their employees and agents.

26 4. You. As used herein, the term "you" shall be deemed to include plaintiff Eric  
27 Fisher or plaintiff's attorney(s) or other agents.

28 5. Whenever used herein, the singular shall include the plural and vice versa.





1 **REQUEST NO. 3:**

2 Documents sufficient to show U.S. Firearms' total annual revenues and profits from 2008  
3 through 2013, attributable to each of the following categories of products and services:

- 4 Custom-tailored weapon systems
- 5 Body armor
- 6 Carrying
- 7 Defensive knives
- 8 Holsters
- 9 Cleaning supplies
- 10 Ammunition
- 11 Books
- 12 Tactical Lights
- 13 AR-15 building blocks and receivers
- 14 Gunsmithing
- 15 Training.
- 16 Firearms

17 **REQUEST NO. 4:**

18 Any and all documents that constitute, contain, reflect, or refer to any communications  
19 between you and/or U.S. Firearms and any employee or former employee of U.S. Firearms that  
20 relate in any way to Sunnyvale Municipal Code (SMC) Sections 9.44.040 and 9.44.060 or support  
21 the allegation in your petition that SMC Section 9.44.060 has caused U.S. Firearms to suffer  
22 financial injury.

23 **REQUEST NO. 5:**

24 Any and all documents that constitute, contain, reflect, or refer to any communications  
25 between you and/or U.S. Firearms and Declarant Timothy M. Cordell that relate in any way to  
26 Measure C or support the allegation in your petition that SMC Section 9.44.060 has caused U.S.  
27 Firearms to suffer financial injury.

28

1 **REQUEST NO. 6:**

2 Any and all documents that constitute, contain, reflect, or refer to any communications  
3 between you and/or U.S. Firearms and Declarant Jesus Borrillo that relate in any way to  
4 Measure C or support the allegation in your petition that SMC Section 9.44.060 has caused U.S.  
5 Firearms to suffer financial injury.

6 **REQUEST NO. 7:**

7 Any and all documents that constitute, contain, reflect, or refer to any communications  
8 between you and/or U.S. Firearms and Declarant Grant Sanderson that relate in any way to  
9 Measure C or support the allegation in your petition that SMC Section 9.44.060 has caused U.S.  
10 Firearms to suffer financial injury.

11 **REQUEST NO. 8:**

12 Any and all documents that constitute, contain, reflect, or refer to any communications  
13 between you and/or U.S. Firearms and Declarant Andrew Nielson that relate in any way to  
14 Measure C or support the allegation in your petition that SMC Section 9.44.060 has caused U.S.  
15 Firearms to suffer financial injury.

16 **REQUEST NO. 9:**

17 Any and all documents that constitute, contain, reflect, or refer to any communications  
18 between you and/or U.S. Firearms and Declarant Eugene Tan that relate in any way to Measure C  
19 or support the allegation in your petition that SMC Section 9.44.060 has caused U.S. Firearms to  
20 suffer financial injury.

21 **REQUEST NO. 10:**

22 Any and all documents that constitute, contain, reflect, or refer to any communications  
23 between you and/or U.S. Firearms and Declarant Bryan Nunn that relate in any way to Measure C  
24 or support the allegation in your petition that SMC Section 9.44.060 has caused U.S. Firearms to  
25 suffer financial injury.

26 **REQUEST NO. 11:**

27 Any and all documents that constitute, contain, reflect, or refer to any communications  
28 between you and/or U.S. Firearms and Declarant Steven M. Sarette that relate in any way to

1 Measure C or support the allegation in your petition that SMC Section 9.44.060 has caused U.S.  
2 Firearms to suffer financial injury.

3 **REQUEST NO. 12:**

4 Any and all documents that constitute, contain, reflect, or refer to any communications  
5 between you and/or U.S. Firearms and any customers of U.S. Firearms that relate in any way to  
6 Measure C or support the allegation in your petition that SMC Section 9.44.060 has caused U.S.  
7 Firearms to suffer financial injury.

8 **REQUEST NO. 13:**

9 Any and all documents that constitute, contain, reflect, or refer to any communications  
10 between you and/or U.S. Firearms and the National Shooting Sports Foundation that relate in any  
11 way to Measure C or support the allegation in your petition that SMC Section 9.44.060 has  
12 caused U.S. Firearms to suffer financial injury.

13 **REQUEST NO. 14:**

14 Any and all documents that verify, support or contain any information regarding the  
15 amount of money, sales or customers that U.S. Firearms alleges it has lost as a result of SMC  
16 Section 9.44.060.

17 **REQUEST NO. 15:**

18 Any and all documents that constitute, contain, reflect, or refer to any communications  
19 between you and/or U.S. Firearms and Defendants that relate in any way to Measure C, including  
20 compliance with Section 9.44.060 or support the allegation in your petition that SMC Section  
21 9.44.060 has caused U.S. Firearms to suffer financial injury.

22 Dated: December 23, 2013

FARELLA BRAUN + MARTEL LLP

23  
24 By: *A. Schen* / JHB  
Anthony Schoenberg

25  
26 Attorneys for Defendants  
CITY OF SUNNYVALE and THE  
27 SUNNYVALE CITY COUNCIL

# **EXHIBIT B**

ENDORSED

2013 DEC 27 A 0:20

Cliff H. ...  
T Ngo

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

U.S. FIREARMS COMPANY LLC, a limited liability company; ERIC W. FISHER; and THE NATIONAL SHOOTING SPORTS FOUNDATION, INC., a non-profit trade association,

Petitioners,

v.

CITY OF SUNNYVALE; THE SUNNYVALE CITY COUNCIL; and DOES 1 through 30, inclusive,

Respondents.

CASE NO. 113cv257353

**[PROPOSED] STIPULATED PROTECTIVE ORDER**

Dept.: 20  
Judge: Hon. Kevin McKenney

**IT IS HEREBY ORDERED THAT:**

1. This Order covers documents produced by Petitioners U.S. Firearms LLC, Eric W. Fisher, and The National Shooting Sports Foundation, Inc., to Respondents City of Sunnyvale and the Sunnyvale City Council in this connection with the deposition of Eric W. Fisher on December 27, 2013.

....  
....  
....

1           2.     "Document" or "documents" as used in this Stipulated Protective Order  
2 ("Protective Order") shall have the same meaning as "writing" or "writings" in California  
3 Evidence Code section 250.

4           3.     "Confidential Information" as used in this Protective Order means any  
5 information contained in a document which may constitute trade secrets, or otherwise  
6 proprietary, commercial information, or may be protected by applicable privileges  
7 and/or the right of privacy.

8           4.     Petitioners may designate any document as "CONFIDENTIAL" which  
9 they in good faith believe contains Confidential Information.

10          5.     "Qualified Person" as used in this Protective Order means:

11           (a)    Attorneys of record in this action and their retained or employed  
12                    legal assistants and staff;

13           (b)    In-house counsel for of the Respondents assisting counsel in the  
14                    case;

15           (c)    Experts for the Respondents assisting counsel in the case;

16           (d)    The Court and Court personnel; and

17           (e)    Stenographic reporters engaged for depositions or other  
18                    proceedings necessary for the conduct of the case.

19          6.     Documents marked "CONFIDENTIAL," and information contained in such  
20 documents, may not be disclosed or made available by the Respondents or a Qualified  
21 Person to anyone other than a Qualified Person. Accordingly, documents marked  
22 "CONFIDENTIAL," and information contained in such documents, may not be provided  
23 to third parties, other than as provided for herein.

24          7.     Documents marked "CONFIDENTIAL," and information contained in such  
25 documents, may be disclosed to a person referred to in categories (b) and (c) of  
26 paragraph 5 only after the person has been provided with a copy of this Protective  
27 Order and has signed a statement in the form attached hereto as Exhibit "A." These  
28 statements shall be maintained by counsel for the Respondents.

1           8. Documents marked "CONFIDENTIAL," and information contained in such  
2 documents, may be used by the Respondents only for the purposes of this case.

3           9. Any document designated as "CONFIDENTIAL," and any pleading or  
4 memorandum purporting to reproduce or disclose information contained in a  
5 "CONFIDENTIAL" document, shall be filed with the Court consistent with the  
6 procedures set forth under California Rules of Court, rule 2.551 in order to seal  
7 material that has been designated as CONFIDENTIAL.

8           10. During a deposition (or within ten days after receiving a copy of the  
9 transcript), a party or a deponent may designate portions of the transcript, and  
10 exhibits, as "CONFIDENTIAL." Thereafter, the original or copies of such pages and  
11 exhibits shall be stamped "CONFIDENTIAL" and the title pages of the transcript shall  
12 state, "CONTAINS CONFIDENTIAL INFORMATION."

13           11. Nothing herein shall prevent disclosure beyond the terms of this Order if  
14 the Court, after notice to all affected parties, orders such disclosure.

15           12. If the Respondents disagree with a designation by Petitioners, the parties  
16 shall first try to resolve such dispute in good faith on an informal basis, and the  
17 Respondents then may apply to the Court for modification of or removal of such  
18 designation.

19           13. Nothing in this Protective Order will restrict the otherwise proper  
20 disclosure by Petitioners of their own Confidential Information.

21           14. After the case has been decided and all appeals have been resolved (or  
22 the time to notice such appeals has expired), all documents in the Respondents'  
23 possession, custody, or control that were marked "Confidential," or that contain  
24 information obtained from "Confidential" documents, shall within 30 days be returned

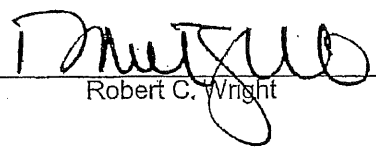
25       ....  
26       ....  
27       ....  
28       ....

.1 to Petitioners or, alternatively, destroyed by Respondents. In the latter case,  
2 Respondents shall certify in writing that such destruction has occurred.

3 **IT IS SO STIPULATED.**

4 WRIGHT & L'ESTRANGE  
5 Attorneys for Petitioners U.S. Firearms  
6 Company LLC, Eric W. Fisher, and  
7 The National Shooting Sports Foundation, Inc.

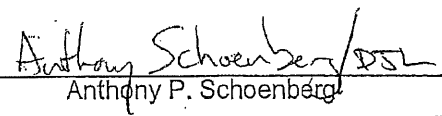
8 Dated: December 26, 2013

9 By   
10 Robert C. Wright

**BY FAX**

11 FARELLA BRAUN + MARTEL LLP  
12 Attorneys for Respondents City of Sunnyvale  
13 and Sunnyvale City Council

14 Dated: December 26, 2013

15 By   
16 Anthony P. Schoenberg

**BY FAX**

17 **ORDER**

18 The Court and the parties having stipulated to the foregoing Protective Order,

19 **IT IS SO ORDERED.**

20 **DEC 27 2013**

21 **James L. Stoelker**

22 Dated: \_\_\_\_\_

23 \_\_\_\_\_  
24 JUDGE OF THE SUPERIOR COURT



EXHIBIT A

**NON-DISCLOSURE AGREEMENT**

I, \_\_\_\_\_, hereby certify that documents designated as "Confidential" are being provided to me pursuant to the Stipulated Protective Order ("Protective Order") between Petitioners U.S. Firearms Company LLC, Eric W. Fisher, and The National Shooting Sports Foundation, Inc.; and Respondents City of Sunnyvale and The Sunnyvale City Council entered by the Court in connection with the action entitled U.S. Firearms Company LLC; Eric W. Fisher; and The National Shooting Sports Foundation, Inc. v. City Of Sunnyvale; The Sunnyvale City Council Santa Clara Superior Court Case No. 113cv257353. I agree to be bound by and abide by this Protective Order.

I further certify that I have been provided a copy of and have read the Protective Order and hereby agree to subject myself to the jurisdiction of the Santa Clara Superior Court for purposes of enforcement of the terms and restrictions of the Protective Order. I understand the violation of the Protective Order is punishable as contempt of court.

Date: \_\_\_\_\_ By: \_\_\_\_\_