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The National Shooting Sports Foundation, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE 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  
  
**OBJECTIONS TO EVIDENCE REFERRED  
TO IN RESPONDENTS' OPPOSITION TO  
ORDER TO SHOW CAUSE RE  
PRELIMINARY INJUNCTION**  
  
Date: January 13, 2014  
Time: 9:00 a.m.  
Dept: 20  
Judge: Hon. Kevin E. McKenney  
  
Action Filed: December 9, 2013  
Trial Date: None

Petitioners U.S. Firearms Company LLC ("U.S. Firearms"), Eric W. Fisher, and the  
National Shooting Sports Foundation, Inc. ("NSSF") submit the following evidentiary  
objections to Respondents the City of Sunnyvale's and the Sunnyvale City Council's  
Opposition to Order to Show Cause re: Preliminary Injunction.

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1 **OBJECTION NO. 1**

2 "A 2004 study of firearms sales in Los Angeles showed that in a two month period,  
3 2.6% of ammunitions purchasers were legally prohibited from purchasing ammunition,  
4 acquiring more than 10,000 rounds of ammunition. George E. Tita, *et al.*, *The Criminal*  
5 *Purchase of Firearm Ammunition*, 12 Inj. Prevention, 308, 308-311 (2006)." (Opp. 14:28-  
6 15:4).

7 **GROUND FOR OBJECTION NO. 1**

8 Relevance (Evid. Code §§ 210, 350): the study is irrelevant to Respondents'  
9 alleged interim harm because there has been no showing that that circumstances existing  
10 in 2004 Los Angeles are comparable to present-day Sunnyvale; Hearsay (Evid. Code §§  
11 1200, 1340-1341): published scientific studies and surveys constitute inadmissible  
12 hearsay, *see People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2004) 116  
13 Cal.App.4th 1253, 1269; *Deutsch v. Masonic Homes of California, Inc.* (2008) 164  
14 Cal.App.4th 748, 766-67, and hearsay evidence is disregarded when considering  
15 preliminary injunctions, *Riviello v. Journeymen Barbers, Hairdressers and Cosmetologists'*  
16 *Intern. Union of America, Local No. 148* (1948) 88 Cal.App.2d 499, 503; Unsupported  
17 Factual Assertions: unsupported factual assertions in a memorandum are not evidence  
18 and must be disregarded, *Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th  
19 573, 578; Lack of Foundation (Evid. Code §§ 702, 1400-1401): no foundation  
20 authenticating the study was laid by a witness with personal knowledge; Improper Expert  
21 Opinion (Evid. Code § 801): no foundation was laid for expert opinion.

22 **OBJECTION NO. 2**

23 "Thus, even after Los Angeles had an ammunition logging ordinance on the books  
24 for almost a decade, the ammunition logging requirement was effective in identifying  
25 illegal purchasers. See Los Angeles Municipal Code § 55.11" (Opp. 15:4-6).

26 **GROUND FOR OBJECTION NO. 2**

27 Relevance (Evid. Code §§ 210, 350): the study is irrelevant to Respondents'  
28 alleged interim harm because there has been no showing that that circumstances existing

1 in 2004 Los Angeles are comparable to present-day Sunnyvale; Hearsay (Evid. Code §§  
2 1200, 1340-1341): published scientific studies and surveys constitute inadmissible  
3 hearsay, see *R.J. Reynolds*, 116 Cal.App.4th at 1269; *Deutsch*, 164 Cal.App.4th at 766-  
4 67, and hearsay evidence is disregarded when considering preliminary injunctions,  
5 *Riviello*, 88 Cal.App.2d 499, 503; Unsupported Factual Assertions: unsupported factual  
6 assertions in a memorandum are not evidence and must be disregarded, *Smith, Smith &*  
7 *Kring*, 60 Cal.App.4th at 578; Lack of Foundation (Evid. Code §§ 702, 1400-1401): no  
8 foundation authenticating the study was laid by a witness with personal knowledge of the  
9 matter; Improper Expert Opinion (Evid. Code § 801): no foundation was laid for expert  
10 opinion.

### 11 OBJECTION NO. 3

12 "The threat posed by 10,000 rounds of ammunition in the hands of individuals  
13 barred from owning firearms is self-evident." (Opp. 15:6-8).

### 14 GROUND FOR OBJECTION NO. 3

15 Unsupported Factual Assertions: unsupported factual assertions in a memorandum  
16 are not evidence and must be disregarded, *Smith, Smith & Kring*, 60 Cal.App.4th at 578;  
17 Lack of Personal Knowledge (Evid. Code § 702(a)): absent testimony by a witness with  
18 personal knowledge of the matter, this proposition is speculative and conjectural, Evid.  
19 Code § 702, cmt. ("Personal knowledge' means a present recollection of an impression  
20 derived from the exercise of the witness' own senses").

### 21 OBJECTION NO. 4

22 "Requiring ammunitions vendors to log their sales allows law enforcement  
23 personnel to locate illegal gun owners – precisely the type of individuals most likely to use  
24 their firearms to commit crimes." (Opp. 15:8-10).

### 25 GROUND FOR OBJECTION NO. 4

26 Unsupported Factual Assertions: unsupported factual assertions in a memorandum  
27 are not evidence and must be disregarded, *Smith, Smith & Kring*, 60 Cal.App.4th at 578;  
28 Lack of Personal Knowledge (Evid. Code § 702(a)): absent testimony by a witness with

1 personal knowledge of the matter, this proposition is speculative and conjectural, Evid.  
2 Code § 702, cmt.; Improper Character Evidence (Evid. Code § 1101): evidence of  
3 nonparties' criminal conduct may not be offered to prove conduct on a specified occasion,  
4 *People v. Davis* (1995) 10 Cal.4th 463, 501; Improper Expert Opinion (Evid. Code § 801):  
5 Respondents did not tender an expert to testify about the Sunnyvale Department of Public  
6 Safety's investigative techniques.

#### 7 **OBJECTION NO. 5**

8 "Other California cities have recognized the need for ammunition logging  
9 ordinances; thirteen cities had ordinances similar to § 9.44.060 in effect in 2009, including  
10 Sacramento, Los Angeles, and San Francisco. (Pl.'s RJN at Ex. K, p. 15); *See, e.g.*,  
11 Sacramento City Code, section 5.66.020, Los Angeles Municipal Code § 55.11, San  
12 Francisco Police Code section 615" (Opp. 15:10-14).

#### 13 **GROUND FOR OBJECTION NO. 5**

14 Relevance (Evid. Code §§ 210, 350): whether other cities have adopted  
15 ammunition registration ordinances is irrelevant to Respondents' alleged interim harm  
16 because there has been no showing that that circumstances existing in those other cities  
17 are comparable to Sunnyvale or that the ordinances are effective in controlling or  
18 reducing crime; Improper Judicial Notice—Legislative Committee Reports (Evid. Code §  
19 452): beyond ascertaining legislative intent, it is improper for the Court to accept as true  
20 factual matters contained within the otherwise judicially-noticeable Legislative Committee  
21 reports, *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 (declining to  
22 accept as true statements contained in U.S. Surgeon General reports that were irrelevant  
23 to preemption issues before the court), *overruled on other grounds by In re Tobacco*  
24 *Cases II* (2007) 41 Cal.4th 1257; Improper Judicial Notice—City Ordinances (Evid. Code  
25 § 452): the Court should deny Respondents' request because they did not provide the Los  
26 Angeles, Sacramento, and San Francisco ammunition registration ordinances to the  
27 Court, *Hernandez v. Board of Educ. of Stockton Unified School Dist.* (2004) 126  
28 Cal.App.4th 1161, 1167, *see also* Cal. R. Ct, Rules 3.1113(i), (l), 3.1306(c).

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**OBJECTION NO. 6**

"Absent § 9.44.060, there is simply no way to know whether ammunition is being sold to prohibited purchasers. Delaying enforcement of § 9.44.060 impairs the city's ability to locate these prohibited purchasers and will essentially grant illegal purchasers a grace period to stock up on ammunition before the law makes it more difficult for them to obtain dangerous ammunition" (Opp. 15:15-22).

**GROUNDS FOR OBJECTION NO. 6**

Unsupported Factual Assertions: unsupported factual assertions in a memorandum are not evidence and must be disregarded, *Smith, Smith & Kring*, 60 Cal.App.4th at 578; Speculative / Conjectural (Evid. Code § 702(a)): Respondents admit that there is no witness with personal knowledge who may testify to the point, Evid. Code § 702, cmt.; Improper Expert Opinion (Evid. Code § 801): Respondents did not tender an expert to testify about the Sunnyvale Department of Public Safety's investigative techniques.

WRIGHT & L'ESTRANGE  
Attorneys for Petitioners

Dated: January 6, 2014

By   
Andrew E. Schouten