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 16 The National Shooting Sports Foundation, Inc.

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

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

v.

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

Respondents.

CASE NO. 113CV257353

**SUPPLEMENTAL DECLARATION OF  
 ERIC W. FISHER IN SUPPORT OF 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

**REDACTED**

Eric W. Fisher declares:

1. I am the managing member of U.S. Firearms Company LLC ("U.S. Firearms"), a California limited liability company maintaining its sole place of business at 590 S. Mary Street, Sunnyvale, California 94086.



1 7. On or about December 5, 2013, I spoke with Captain Jeffrey Plecque of the  
 2 Sunnyvale Department of Public Safety, who is in charge of enforcing the new law, about  
 3 the customer disclosure forms that would be required to be used in connection with  
 4 ammunition sales. During that conversation, he told me that the Sunnyvale police would  
 5 be conducting investigations of every person listed on the ammunition disclosure forms to  
 6 determine whether they were prohibited persons.

7 8. As previously stated in my declaration, collection of purchaser data over  
 8 time would enable a person, such as a police officer, to monitor a customer's firearm use  
 9 on a permanent basis. For example, if a police officer had a problem with someone  
 10 buying over 500 rounds of ammunition, the purchaser could be put in a different class,  
 11 and the data could be used to monitor a person's shooting habits and quantities of  
 12 ammunition they purchased.

13 **IRREPARABLE HARM TO U.S. FIREARMS**

14 9. In the Opposition (Opp. 13:8-9), the City states, "There is no indication that  
 15 § 9.44.060 will put U.S. Firearms out of business, as Mr. Fisher implies." At this point,  
 16 about a month after the Ordinance has become effective, it is too early to know whether  
 17 my *entire* business will be destroyed. I do know that Section 9.44.060 of the Ordinance  
 18 has resulted in U.S. Firearms losing ammunition sales, permanently losing ammunition  
 19 customers, and potentially losing firearms sales. This subject was described in paragraph  
 20 12 of my December 9, 2013 declaration.

21 10. In the Opposition (Opp. 13:11-12), the City states that I am "vastly  
 22 overstating the amount of ammunition sales U.S. Firearms is losing because of §  
 23 9.44.060." This is incorrect. My December 9, 2013 declaration vastly *understates* the  
 24 amount of ammunition sales U.S. Firearms has lost to date.

25 11. When a person comes into my store to buy ammunition, I ring up the sale,  
 26 tell them the dollar amount, and then provide them with the disclosure form that they have  
 27 to fill out for the City. At that point, many decline to go forward with the sale. I have kept  
 28 a record of these lost sales. Since December 6, 2013, about 20 ammunition customers

# REDACTED

1 have declined to purchase from U.S. Firearms after learning about the City's information  
2 form requirement. The amount of the total lost sales is about \$13,172.

3 12. Seven U.S. Firearms customers (Dr. Jesus L. Borrillo, Timothy M. Cordell,  
4 Andrew Nielsen, Bryan Nunn, Grant Sanderson, Steven M. Sarette, and Eugene Tan)  
5 gave declarations in this case stating that, because of the City's requirement for  
6 disclosure of personal information, they would no longer be purchasing ammunition from  
7 U.S. Firearms. Since December 6, 2013, some of these declarants have shopped at U.S.  
8 Firearms and purchased other products. *None* has purchased *ammunition*.

9 13. In the Opposition (Opp. 14:5-6), the City states that, "In 2013, ammunition  
10 sales accounted for less than █% of U.S. Firearms' total merchandise sold," and that  
11 even if ammunition sales business "completely evaporated due to \$ 9.44.060, these lost  
12 revenues would not" (Opp. 14:9-10) destroy U.S. Firearms' business. For the reasons  
13 stated below, these statements are misleading and inaccurate.

14 14. The sales price of ammunition is largely determined by supply and demand  
15 in the marketplace. Profit margins on ammunition sales are significantly higher than profit  
16 margins on the sale of firearms. Profit margins on ammunition sales vary between 30%  
17 and 50% of the sale price. Profit margins on firearms vary between █% and █% of the  
18 sale price. Thus, ammunition sales contribute disproportionately to the profit of U.S.  
19 Firearms. Using an average profit margin of 40% on the sale of ammunition, I estimate  
20 that since December 6, 2013, U.S. Firearms has lost profits on known lost ammunition  
21 sales of about \$█ (█% x \$█). This figure does not include lost profits from  
22 purchases by the seven former ammunition customers mentioned in paragraph 12 above.  
23 I expect these lost profits to continue unless enforcement of Section 9.44.060 of the  
24 Ordinance is enjoined by this Court.

25 15. Secondly, ammunition is a high volume item purchased by people engaged  
26 in the shooting sports and attracts customers to purchase other products. It is essential  
27 that U.S. Firearms sell ammunition for its business to succeed.

28

1           16. Between the fall of 2010, when U.S. Firearms opened, and December 6,  
2 2013, when Measure C requiring registration of ammunition sales came into effect, U.S.  
3 Firearms ammunition sales grew from about \$42,200 (2011), to about \$54,400 (2012), to  
4 about \$123,800 (2013). I would expect that growth trend to continue but for the  
5 requirements of Section 9.44.060 of the Ordinance.

6           17. To the extent that I have lost regular purchasers of ammunition from my  
7 business, the goodwill value of the business has declined. U.S. Firearms is worth less  
8 today than it was on December 6, 2013, because at least seven customers have stated  
9 under oath that they will never again purchase ammunition if they have to comply with the  
10 disclosure requirements of Section 9.44.060. In addition, there are about 20 customers  
11 who have refused to complete ammunition sales when told of the City's requirement to  
12 disclose personal information. In my opinion, it is doubtful that they will purchase  
13 ammunition from U.S. Firearms as long as Section 9.44.060 is enforced.

14           **CLAIM OF HARM TO THE CITY IF SECTION 9.44.060 IS PRELIMINARILY ENJOINED**

15           18. In the Opposition (Opp. 14:26-28), the City claims that it will be harmed if  
16 Section 9.44.060's logging requirements are delayed because this would signal to  
17 "banned purchasers of ammunition that they have until the expiration of the preliminary  
18 stay to illegally purchase as much ammunition as they want from Sunnyvale vendors  
19 before the logging requirements prevent such purchases." I disagree with this statement  
20 for the following reasons:

21           19. Nothing requires a "prohibited person" to buy ammunition from a Sunnyvale  
22 seller, and it would make no sense for a "prohibited person" to do so. Such a person  
23 could purchase ammunition from at least four firearms sellers within five miles of U.S.  
24 Firearms in cities without the requirement to disclose personal information.

25           20. Section 9.44.060 does not apply to online, internet sales. Thus, anyone can  
26 purchase ammunition in Sunnyvale from internet sellers without complying with the  
27 disclosure requirements of Section 9.44.060.

28

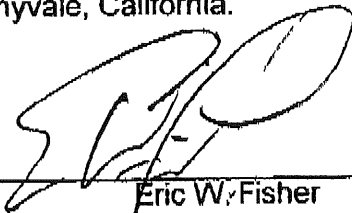
1           21. The ammunition purchasers from U.S. Firearms are law-abiding. I cannot  
2 recall any ammunition purchasers who have not previously purchased a firearm from U.S.  
3 Firearms and passed a background check to do so.

4           22. I am unaware of any purchaser of ammunition from U.S. Firearms who was  
5 later found to be a "prohibited person."

6           23. On December 27, 2013, I gave a deposition in this case. True and correct  
7 copies of excerpts from the deposition transcript are appended as Exhibit A to this  
8 declaration.

9           I declare under penalty of perjury, under the laws of the State of California, that the  
10 foregoing is true and correct.

11 Executed on January 4, 2014, at Sunnyvale, California.

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14 Eric W. Fisher  
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**EXHIBIT A**

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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,

vs.

No. 113CV257353

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

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PORTIONS ARE CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

DEPOSITION OF ERIC W. FISHER  
San Diego, California  
Friday, December 27, 2013  
Volume I

Reported by:

Kae F. Gernandt, RPR, CSR No. 5342

Job No. 1787800

PAGES 1 - 126

PAGES 30 - 50, 56 - 126 ARE CONFIDENTIAL AND

BOUND UNDER SEPARATE COVER



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

Respondents.

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Deposition of ERIC W. FISHER, Volume I, taken  
on behalf of respondents, at 402 West Broadway,  
Suite 700, San Diego, California, beginning at  
10:09 a.m. and ending at 1:54 p.m., on Friday,  
December 27, 2013, before Kae F. Gernandt, RPR,  
Certified Shorthand Reporter No. 5342.

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APPEARANCES:

For Petitioners:

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For Respondents:

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San Francisco, California 84104  
415.954.4400  
tschoenberg@fbm.com

1 I'm not trying to be difficult.

2 Q. That's okay.

3 When customers buy ammunition from you, you  
4 don't know one way or the other whether they're planning  
5 to use the ammunition with guns that they are legally  
6 permitted to have; isn't that true?

7 MR. WRIGHT: Just a moment. I think that's  
8 argumentative and calls for speculation by him.

9 But go ahead.

10 THE WITNESS: They come in and buy a box of  
11 ammunition. I sell them a box of ammunition.

12 BY MR. SCHOENBERG:

13 Q. And you don't know whether or not they're  
14 going to use it with a gun that they're allowed to have  
15 or not allowed to have, right?

16 A. How would I know that?

17 Q. Well, you don't ask, right?

18 A. I've never thought to ask that question.

19 Q. But you don't ask it, though --

20 A. No, no, no.

21 Q. -- just to be clear?

22 A. No.

23 Q. And you don't know, correct?

24 A. Correct.

25 But then, you know, you have the same

1 requirements -- you don't have the same requirements for  
2 someone who wants to buy ammunition online and ship it  
3 right into Sunnyvale. Are they asking them the  
4 question? That's not covered on Measure C.

5 So, you have means of getting ammunition in  
6 the City of Sunnyvale without having to go through my  
7 shop, go directly online, have it shipped directly to  
8 your house without this document being generated.

9 Q. I want to direct your attention to  
10 paragraph 11 of this declaration.

11 In paragraph 11 you state, "Based on my  
12 conversations with customers, I presently believe that  
13 the ammunition sales recordkeeping and reporting  
14 requirements mandated by Section 9.44.060 in Measure C  
15 will defer law-abiding, regular customers of  
16 U.S. Firearms from buying ammunition here."

17 Do you see that?

18 A. Yes, sir.

19 Q. When you use the word "law-abiding," what  
20 customers were you referring to?

21 A. Law-abiding customers.

22 Q. Can you be a little more specific?

23 A. That doesn't lend -- that I have  
24 nonlaw-abiding customers.

25 Q. What's that?

1           A.    That doesn't mean that I have a mixture of  
2 law-abiding and nonlaw-abiding customers.

3           Q.    I mean, what steps do you take to  
4 determine -- how do you determine whether a customer is  
5 law-abiding?

6           A.    Well, most customers I've had, usually a  
7 store is a collection of people that do business with  
8 you for a long period of time.  And we've sold firearms  
9 to them.  And so, when they pass their background checks  
10 with the State of California, you know, I -- I consider  
11 them law-abiding at that point.  There's no regulation  
12 saying that someone can't come in -- well, not till  
13 now -- and buy a box of ammunition and leave without the  
14 suspicion of being a criminal.

15          Q.    Okay.  But again, you don't -- with respect  
16 to any of your customers, you don't know whether or not  
17 they possess illegal firearms, correct?

18          A.    Correct:  How would I know?

19          Q.    And some of your customers have never bought  
20 firearms from you, correct?

21          A.    I don't know.  I've never -- I've never  
22 researched that data.

23          Q.    You don't know whether you've had any  
24 customers who haven't bought firearms from you but have  
25 only bought other things?

1           A.    I -- I wouldn't know without looking through  
2 my -- my data to look at the types of purchases that all  
3 my customers make.

4           Q.    What percentage of your customers are  
5 law-abiding?

6           MR. WRIGHT: That calls for -- that calls for  
7 speculation by him.

8                    But you can answer if you have a sense of  
9 it. It also asks for his opinion.

10           THE WITNESS: Well, I would -- I would say all my  
11 customers are law-abiding.

12 BY MR. SCHOENBERG:

13           Q.    How do you know that?

14           A.    Because most of my customers, I've sold guns  
15 to.

16           Q.    Any other reason?

17           A.    No. I mean --

18           Q.    And can you estimate what percentage of your  
19 customers you sold guns to?

20           A.    That's -- that's a really -- that's a really  
21 hard question to answer. I mean, I don't know.

22           Q.    Okay.

23           A.    Majority -- majority.

24           Q.    You just said --

25           A.    75, 90 percent.

1 Q. What did you have in mind when you said you  
2 sold most of them guns?

3 MR. WRIGHT: Well, I think he's just answered  
4 previously, although there was some interruption on that  
5 response.

6 BY MR. SCHOENBERG:

7 Q. Okay. Let me just ask again, 'cause I  
8 didn't hear it.

9 You said you've sold guns to most of your  
10 customers. What did you have in mind when you said that  
11 in terms of, you know, percentage?

12 A. I can't think of customers that I haven't  
13 sold firearms to.

14 Q. I'd like to direct your attention to  
15 paragraph 13 of the declaration.

16 A. Okay.

17 Q. In the second sentence of that paragraph,  
18 you say, "If a person were to collect information  
19 concerning each customer's ammunition purchases, such as  
20 the type and quantity of ammunition bought and the date  
21 of sale, they could create a database with individual  
22 profiles on each customer."

23 First of all, let me ask: When you say  
24 "they," who are you referring to there?

25 A. Whoever is in possession of their