

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIRGINIA DUNCAN, et al,

Plaintiffs/Appellees,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant/Appellant.

No. 17-56081

D.C., Southern District of California,
San Diego, Case No. 3:17-cv-1017-BEN

**BRIEF OF *AMICI CURIAE* THE CITY AND
COUNTY OF SAN FRANCISCO, THE CITY OF
LOS ANGELES, AND THE CITY OF SUNNYVALE
IN SUPPORT OF REVERSAL**

On Appeal from the United States District Court
for the Southern District of California

The Honorable Roger T. Benitez

DENNIS J. HERRERA
San Francisco City Attorney
CHRISTINE VAN AKEN
Chief of Appellate Litigation
VICTORIA L. WEATHERFORD
Deputy City Attorney
Fox Plaza
1390 Market Street, 6th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-4287
Facsimile: (415) 437-4644
E-Mail: victoria.weatherford@sfgov.org

Attorneys for *Amicus Curiae*
CITY AND COUNTY OF SAN
FRANCISCO

MICHAEL N. FEUER
Los Angeles City Attorney
JAMES P. CLARK
Chief Deputy City Attorney
BENJAMIN CHAPMAN
Deputy City Attorney
Office of the Los Angeles City Attorney
200 North Main Street, City Hall East,
8th Floor
Los Angeles, CA 90012
Telephone: (213) 367-4560
E-Mail: benjamin.chapman@lacity.org

Attorneys for *Amicus Curiae*
CITY OF LOS ANGELES

Additional Counsel for *Amici Curiae*:

JOHN A. NAGEL
Sunnyvale City Attorney
REBECCA L. MOON
Sr. Assistant City Attorney
ROBERT L. BOCO
Sr. Assistant City Attorney
MELISSA C. TRONQUET
Assistant City Attorney
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, California 94086
Telephone: (408) 730-7464
E-Mail: jnagel@sunnyvale.ca.gov

Attorneys for *Amicus Curiae*
CITY OF SUNNYVALE

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTERESTS OF <i>AMICI CURIAE</i>	1
RULE 29(C) STATEMENT	5
ARGUMENT	5
I. The District Court’s “In Common Use” Analysis Is Inconsistent With <i>Heller</i> and Ninth Circuit Precedent	6
A. The District Court Misreads <i>Heller</i>	7
B. California’s LCM Ban Is Not a “Disarmament” and Is Subject To Intermediate Scrutiny Under <i>Heller</i>	11
II. The District Court Erroneously Applied Intermediate Scrutiny	13
A. California’s LCM Ban Is a “Reasonable Fit” to Further California’s Substantial Interest in Reducing Shooting Casualties	13
B. Proposition 63 Is Necessary To Eliminate The “Grandfathered” LCM Loophole	16
STATEMENT OF RELATED CASES	20
CERTIFICATE OF COMPLIANCE	20
APPENDIX	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Federal Cases

<i>City of Renton v. Playtime Theatres</i> 475 U.S. 41 (1986)	13
<i>District of Columbia v. Heller</i> 554 U.S. 570 (2008)	<i>passim</i>
<i>Ezell v. City of Chicago</i> 651 F.3d 684 (7th Cir. 2011)	12
<i>Friedman v. City of Highland Park</i> 136 S.Ct. 447 (2015)	6, 9
<i>Fyock v. City of Sunnyvale</i> (9th Cir. 2015) 779 F.3d 991	<i>passim</i>
<i>Heller v. District of Columbia</i> 670 F.3d 1244 (D.C. Cir. 2011)	12, 13
<i>Jackson v. City & County of San Francisco</i> , 746 F.3d 953 (9th Cir. 2014), <i>cert. denied</i> , 135 S. Ct. 2799 (June 8, 2015)	6, 11, 12, 13, 15
<i>San Francisco Veteran Police Officers Association v. City and County of San Francisco</i> 18 F.Supp.3d 997 (2014)	2, 9, 12
<i>United States v. Chovan</i> 735 F.3d 1127 (9th Cir. 2013)	12, 13
<i>United States v. Miller</i> 307 U.S. 174 (1939)	8

State Cases

<i>State v. Reid</i> 1 Ala. 612 (1840)	11
---	----

Constitutional Provisions

U.S. Const., amend. II	<i>passim</i>
U.S. Const., amend v. ("Takings Clause")	2

Federal Statutes

Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, 1998-2000.....10

State Statutes & Codes

Colo. Rev. Stat. Ann. § 18-12-301-30210

Conn. Gen. Stats. Ann. § 53-202w10

Haw. Rev. Stat. § 134-8(c).....10

Mass. Gen. Laws Ann. ch. 140 § 12110

Mass. Gen. Laws Ann. ch. 140 § 131M10

Md. Code Ann., Crim. Law § 4-305(b)10

N.J. Stat. Ann. § 2C:39-1(y)10

N.J. Stat. Ann. § 39-3(j)10

N.Y. Penal Law § 265.00(23)10

N.Y. Penal Law § 265.02(8)10

N.Y. Penal Law § 265.1010

N.Y. Penal Law § 265.1110

N.Y. Penal Law § 265.20(7-f)10

N.Y. Penal Law § 265.3610

N.Y. Penal Law § 265.3710

Rules

Fed. R. App. P. 29.....5

Municipal Statutes, Codes & Ordinances

Los Angeles, Cal. Muni. Code § 46.30

("Los Angeles Ord. No. 183806")3, 4

San Francisco Penal Code §§ 32310(c)-(d)

("Proposition 63") *passim*

San Francisco Police Code § 619 (2014) ("San Francisco Ord. No. 249-13")	1
Sunnyvale, Cal. Muni. Code § 9.44.050 (2013) ("City of Sunnyvale Ord. No. 3027-13")	2
Other References	
Fox News, "LAX Shooting Suspect Reportedly Told Police He Acted Alone," available at http://www.foxnews.com/us/2013/11/04/lax-shooting-suspect-reportedly-told-police-acted-alone.html (last updated November 4, 2013).....	3
SF Gate, "UPS Shooter in San Francisco Used Stolen Gun With 30-round Magazine," available at http://www.sfgate.com/crime/article/UPS-shooter-in-San-Francisco-used-stolen-gun-with-11243414.php (last updated June 23, 2017)	1, 9
Southern California Public Radio, "San Bernadino Shooting Update: Rifles Used in Attack Were Modified To Be Illegal," available at http://www.scpr.org/news/2015/12/04/56040/san-bernardino-shooting-update-rifles-used-in-atta/ (last updated December 4, 2015)	3
William Blackstone, 4 Commentaries on the Laws of England 148-49 (1769).....	8

INTERESTS OF *AMICI CURIAE*

The City and County of San Francisco is a charter city of California that has enacted pathbreaking legislation to prevent gun violence. In 2014, in response to recent mass shootings in Newtown, Connecticut and Tucson, Arizona, San Francisco prohibited the possession of magazines with capacity to hold more than 10 bullets.¹ Despite these local protections, approximately 50% of firearms seized by the San Francisco Police Department remain equipped with large-capacity magazines (“LCMs”).² San Francisco’s police officers and citizens continue to be victimized by shooters using LCMs. Only four months ago, on June 14, 2017, a United Parcel Service (UPS) worker—using an illegal automatic pistol equipped with an unlawful 30-round magazine brought across state lines into California—fired 20 rounds in his rampage at a UPS sorting facility in the Portrero Hill neighborhood, fatally shooting four people and injuring two others.³ Proposition 63 ends the statewide “grandfathered” LCM loophole that has made local LCM bans harder to enforce, and that results in illegally smuggled LCMs making their way into the hands of criminals and mentally unstable persons who murder and maim San Francisco residents and law enforcement officers.

San Francisco’s LCM ban was upheld by the Northern District of California in *San Francisco Veteran Police Officers Association v. City and County of San*

¹ Appx. A, S.F. Police Code § 619 (2014).

² See Appx. B, Declaration of SFPD Officer Joseph Emanuel In Support of Plaintiff’s Ex Parte Application for Order to Show Cause Re: Preliminary Injunction and Preliminary Injunction, ¶ 38 (filed Feb. 21, 2017), *People v. Badger Mountain Supply et al.*, S.F. Superior Case No. CGC-17-557010 (hereinafter “Decl. Emanuel”).

³ See, e.g., Appx. C, SF Gate, “UPS Shooter in San Francisco Used Stolen Gun With 30-round Magazine,” <http://www.sfgate.com/crime/article/UPS-shooter-in-San-Francisco-used-stolen-gun-with-11243414.php> (last updated June 23, 2017).

Francisco, 18 F. Supp. 3d 997 (2014), and is similar to the Sunnyvale LCM ban that this Court upheld in *Fyock v. City of Sunnyvale* (9th Cir. 2015) 779 F.3d 991.⁴

Notwithstanding these cases, plaintiffs/appellees Virginia Duncan et al. (collectively Duncan) have now challenged California’s LCM ban.⁵ If this Court upholds the district court’s determination that the California LCM ban amounts to a “disarmament” that violates both the Second Amendment and the Takings Clause, then San Francisco’s LCM ban will likely fall, along with many familiar gun control laws, such as California’s restrictions on assault weapons. State and local governments will be hard-pressed to regulate dangerous but popular weapons even in light of compelling evidence that their harms greatly outweigh their self-defense benefits.

The City of Los Angeles is a charter city with nearly four million residents. As a large metropolitan city, the City of Los Angeles has suffered the severe impacts of gun violence: serious injuries and loss of life of its residents, threats to the security of its public safety personnel, enormous health care costs, other related economic losses, and an overall decline in the public’s sense of security. For example, in Los Angeles in 2016, 1,180 people were shot (127 of them fatally), 5,908 firearms were seized, and the Los Angeles Police Department’s Gun Unit recovered 89 assault rifles and machine guns, as well as 224 large-capacity magazines.⁶ Moreover, mass shootings in Los Angeles and the greater Los Angeles area are far too common. Less than two years ago, a married couple

⁴ See Appx. D, City of Sunnyvale Ord. No. 3027-13, enacted as Sunnyvale, Cal. Muni. Code § 9.44.050 (2013).

⁵ The complete text of Proposition 63 is located at Appellant’s Excerpt of Record (“ER”) beginning at 2131. This Brief interchangeably refers to Proposition 63 and Penal Code section 32310, subsections (c) and (d), as amended.

⁶ Appx. K, Declaration of Los Angeles Police Department Detective Michael Mersereau (hereinafter, “Decl. Mersereau”) ¶¶ 7-10.

armed with various weapons, including a rifle that was modified to accept a detachable LCM, as well as four additional LCMs, targeted a San Bernardino County Department of Public Health event and Christmas party, killing 14 people and wounding 22 others.⁷ And in 2013, a gunman using a semi-automatic rifle loaded with a 30-round LCM opened fire at a Los Angeles International Airport terminal, killing a Transportation Security Administration agent and wounding several others. The shooter had five additional 30-round LCMs and hundreds of rounds of ammunition in his carrying bag.⁸

Over the years, the City of Los Angeles has enacted various firearm-related and ammunition-related ordinances to address the public safety threats posed by gun violence in the city. For example, on July 28, 2015, the City of Los Angeles enacted Municipal Code section 46.30, which, with certain exceptions, prohibited any person from possessing a LCM (defined as a magazine with the capacity to accept more than ten rounds) within Los Angeles. This ordinance is nearly identical to California's LCM ban.⁹ Since its enactment, the City of Los Angeles has prosecuted 22 cases for unlawful possession of a LCM.¹⁰

The City of Los Angeles has a critical interest in enhancing the public safety of its residents by eliminating LCMs from its borders. Indeed, the City of Los Angeles relied, to its detriment, on California's LCM ban becoming effective July

⁷ Appx. E, Southern California Public Radio, "San Bernadino Shooting Update: Rifles Used in Attack Were Modified To Be Illegal," <http://www.scpr.org/news/2015/12/04/56040/san-bernardino-shooting-update-rifles-used-in-atta/> (last updated December 4, 2015); Appx. K, Mersereau Decl. ¶ 16; *see* ER 802.

⁸ Appx. F, Fox News, "LAX Shooting Suspect Reportedly Told Police He Acted Alone," <http://www.foxnews.com/us/2013/11/04/lax-shooting-suspect-reportedly-told-police-acted-alone.html> (last updated November 4, 2013).

⁹ Appx. G, City of L.A. Ord. No. 183806, enacted as L.A. Muni. Code § 46.30; *see also* Appx. K, Mersereau Decl. ¶ 4.

¹⁰ Appx. K, Mersereau Decl. ¶ 5.

1, 2017; after Proposition 63 was approved by the voters of California, the City of Los Angeles added a sunset provision to section 46.30 to avoid a preemption lawsuit. As a result, as of July 1, 2017, the City of Los Angeles no longer prohibits the possession of LCMs and remains vulnerable to the threat of gun violence caused by LCMs so long as California's LCM ban remains unenforceable.¹¹

The City of Sunnyvale is a charter city with nearly one hundred and fifty thousand residents. As the second-largest city in Santa Clara County, the City of Sunnyvale has found that the violence and harm caused by and resulting from both the intentional and accidental misuse of guns constitutes a clear and present danger to its residents. The City of Sunnyvale has also found that sensible gun safety measures provide relief from that danger and help to protect its residents, aids and helps to protect our public safety officers in the performance of their duties, and are not burdensome for gun owners.

The City of Sunnyvale has a critical interest in protecting its residents and in defending Measure C, its local ordinance banning the possession of LCMs that was upheld by this Court only two years ago in the *Fyock* case. If Appellants were to succeed on the merits of their claims, then it is nearly certain that Sunnyvale's LCM ban would now fail as well.

Amici curiae therefore submit this brief to explain why the test that the district court applies for evaluating the constitutionality of firearms restrictions—that firearms that are in common use may never or almost never be prohibited, regardless of whether the prohibition meaningfully impairs armed self-defense—is a distortion of the holding of *District of Columbia v. Heller*, 554 U.S. 570 (2008), and is irreconcilable with this Circuit's precedents. *Amici curiae* also explain why

¹¹ Appx. K, Mersereau Decl. ¶ 6.

the district court improperly applied intermediate scrutiny, and improperly substituted its policy preferences for the reasoned, factually supported judgment of the California Legislature and its citizens. Finally, *amici curiae* explain why Proposition 63 is necessary to close the loophole for “grandfathered” LCMs that, in practice, is challenging to enforce and results in criminals continuing to acquire LCMs and use them in mass shootings and when committing crimes.

All parties have consented to the filing of this brief pursuant to Rule 29 of the Federal Rules of Appellate Procedure.

RULE 29(C) STATEMENT

No party’s counsel authored this brief in whole or in part. No party or its counsel contributed money to fund the preparation or submission of this brief. No person other than *amici curiae* contributed money to fund the preparation or submission of this brief.

ARGUMENT

Large-capacity magazines (“LCMs”) and incidents of mass shootings are unfortunately all too common in California. Even though the sale, import, manufacture, and purchase of LCMs has been unlawful in California for almost twenty years, they continue to be smuggled into the state, into jurisdictions with LCM bans, and into the hands of criminals and the mentally unstable. The district court below abused its discretion when it applied its own “simple *Heller* test,” rather than this Court’s precedents, when it explained that LCMs cannot be regulated simply because they may be in “common use” in California or elsewhere.

Assuming Proposition 63 implicates the Second Amendment,¹² it does not “disarm” gun owners. At most, it regulates “the *manner* in which persons may exercise their Second Amendment rights” and, under this Circuit’s precedents, is “not a substantial burden on the Second Amendment right itself.” *Jackson v. City & County of San Francisco*, 746 F.3d 953, 961, 964, 965 (9th Cir. 2014), *cert. denied* 135 S. Ct. 2799 (June 8, 2015). Accordingly, intermediate scrutiny applies. In addition, the district court abused its discretion when it held the Attorney General to a heightened factual showing not required under law, substituted its own policy preferences for the will of the California Legislature and voters, and disregarded the voluminous evidence in the record that LCMs are correlated with mass shootings and cause disproportionate death and destruction to innocent civilians and law enforcement. Correctly applying this Court’s precedents, Proposition 63 easily passes constitutional muster—just as *amici curiae*’s local gun-control ordinances have been upheld by this Court on a virtually identical record—because it is a “reasonable fit” to address the vital state objective of reducing the fatality of shootings. The decision below should be reversed and the preliminary injunction vacated.

I. The District Court’s “In Common Use” Analysis Is Inconsistent With *Heller* and Ninth Circuit Precedent

Relying on a dissent from the denial of *certiorari* in *Friedman v. City of Highland Park*, 136 S. Ct. 447 (2015), the district court claims Proposition 63 is “highly suspect” because its provisions “broadly prohibit common pistol and rifle magazines used for lawful purposes.” ER 1-66, Order Granting Preliminary

¹² *Amici curiae* assume for purposes of this Brief that Proposition 63 implicates the Second Amendment, such that a second-step analysis of the appropriate level of scrutiny (here, intermediate scrutiny) must be undertaken.

Injunction (referred to herein as “Order”), at 19.¹³ According to the district court, it is enough that LCMs “number in the millions” and are lawful in a majority of states and at the federal level to earn Second Amendment protection. Order at 19.

That extreme categorical view of the Second Amendment—where the “common use” test is the beginning and end of the Second Amendment inquiry—has been rejected by every court to consider bans on large-capacity magazines, assault weapons, and similar items. And rightly so. As this Circuit has recognized, the touchstone of the Second Amendment is self-defense. Gun laws that permit effective self-defense in the home, even if they limit an individual’s choice of guns or ammunition, are subject only to intermediate scrutiny, not the categorical invalidation or strict scrutiny that the district court advances. The district court abused its discretion when it analyzed California’s LCM ban under this standard, and this Court should reverse its decision on this basis alone.

A. The District Court Misreads *Heller*

Under the “simple *Heller*” common-use test advocated and applied by the district court, it is virtually impossible for the government to prohibit a particular firearm or ammunition that is popular with gun owners, no matter how terrible the consequences. If the district court is correct that such laws are categorically invalid, then there is no government justification at all that could pass muster. After all, as the district court puts it, the Second Amendment “necessarily takes certain policy choices off the table.” Order at 12 (quoting *Heller*, 554 U.S. at 636). And it apparently puts those policy choices exclusively in the hands of gun purchasers, since “public safety interests may not eviscerate the Second Amendment.” Order at 13.

¹³ Pincites to the Order refer to the internal pagination of the Order.

This absurd test is a distortion of *Heller*’s teaching. The district court’s “simple” *Heller* argument errs because it conflates *Heller*’s common-use test—which determines only whether possession of a firearm receives any protection *at all* under the Second Amendment—with what kind of scrutiny applies once possession of a particular firearm is held to be protected.

As this Court is well aware, *Heller* marked the Supreme Court’s first recognition of an individual right to keep and bear arms. This holding comes in Section II of the Supreme Court’s seminal 2008 opinion, 554 U.S. at 576-626. In Section III of that opinion, the Supreme Court turns to limitations on the Second Amendment right. “Like most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. One “important limitation” on the right is that it extends only to weapons “‘in common use at the time,’” not to “‘dangerous and unusual weapons.’” *Id.* at 627 (first quotation from *United States v. Miller*, 307 U.S. 174, 179 (1939); second quotation from William Blackstone, 4 Commentaries on the Laws of England 148-49 (1769)).¹⁴

Finally, Section IV of *Heller* turns to the application of its rule to the Washington, D.C. handgun ban that Dick Heller challenged. In Section IV, the Supreme Court holds that a handgun ban is unconstitutional “[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights”—*i.e.* any test other than rational basis. 554 U.S. at 628-29 & n.27. But that is not because handguns are in common use. Indeed, the words “common use” do not even appear in Section IV. Instead, that section emphasizes just how broad and unusual D.C.’s prohibition was: it banned “an entire class of ‘arms’” and was more severe than all but a “[f]ew laws in the history of our Nation.” 554 U.S. at

¹⁴ Blackstone’s text actually refers to “dangerous *or* unusual weapons.” *See* Appx. H (emphasis added).

628-29. *Heller*’s Section IV also emphasizes the practical utility of handguns for self-defense in the home, noting that they are “the quintessential self-defense weapon” because of their size and ease of storage, their ready accessibility in the event an emergency, the fact that they can be used by many people regardless of upper body strength, and so on. *Id.* at 629. It was those attributes that compelled the Court to determine that D.C.’s handgun ban was unconstitutional, not the mere fact that handguns are in common use.

Large-capacity magazines simply do not share these attributes. First, while LCMs may be “common,” there is no evidence to support the district court’s conclusion that LCMs are “commonly used for a *lawful* purpose.” Order at 19 (quoting *Friedman*, 136 S. Ct. at 449 (Thomas, J., dissenting from denial of certiorari)). Instead, the record is replete with evidence that LCMs are disproportionately used for *unlawful* purposes—to commit mass murders of civilians and aid the commission of crimes. *Accord S.F. Veteran Police Officers Ass’n*, 18 F. Supp. 3d at 1003 (“The record provided by counsel does not actually show that [large-capacity] magazines are common or prevalent *among law-abiding citizens* (as opposed to criminals and law enforcement).”) (emphasis added) (denying preliminary injunction challenging San Francisco’s LCM ban). This evidence is borne out by the experience of *amici curiae*—in San Francisco for example, criminals and the mentally unstable continue to seek out LCMs in order to have more firepower at their disposal, and approximately 50% of magazine-compatible firearms seized by the San Francisco Police Department are equipped with LCMs. Appx B, Decl. Emanuel ¶ 38; *see also* Appx. C, SF Gate, “UPS Shooter in San Francisco Used Stolen Gun With 30-round Magazine.”

Furthermore, even if LCMs are “in common use” for a lawful purpose and thus fall within the scope of the Second Amendment, a ban on LCMs does not

deny California residents access to an entire class of arms, only to a subset of the numerous ammunition magazines that can be used to equip any semiautomatic handgun or long gun. Proposition 63 has no effect on chamber-loaded firearms such as revolvers, bolt-action rifles, or shotguns. Appx. B, Decl. Emanuel ¶ 23. Nor is California's ban especially unusual. Several other states ban acquisition of LCMs by most people other than law-enforcement officers who do not own them already; while some states ban possession entirely.¹⁵ Federal law banned the purchase of new LCMs nationwide from 1994 to 2004, with no suggestion that this ban was unconstitutional. *See* Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, 1998-2000 (formerly codified at 18 U.S.C. § 922(w)).

Finally, unlike handguns, LCMs are not “the quintessential self-defense weapon,” and experienced law enforcement officers have spoken with one voice: LCMs are *not* necessary for adequate self-defense. *See* ER 172 (Decl. Allen), ER 210 (Decl. Ret. Police Chief Ken James); ER 310-459 (Koper Decl. ISO Sunnyvale Opp. *Fyock* Mot. Prelim. Inj); *see also* Appx. J ¶¶ 4-6 (Decl. Sunnyvale Chief Phan Ngo).¹⁶ In short, LCMs share none of the features of handguns that led the Supreme Court to invalidate the District of Columbia's handgun ban.

¹⁵ *See* Colo. Rev. Stat. Ann. § 18-12-301 to -302 (prohibits magazines with capacity to hold more than 15 rounds; grandfathers previously possessed magazines); Conn. Gen. Stats. Ann. § 53-202w (prohibits LCM possession except those owned prior to the ban and registered with state authorities); Haw. Rev. Stat. § 134-8(c) (prohibiting possession of LCMs capable of use with pistols); Md. Code Ann., Crim. Law § 4-305(b) (prohibiting possession of magazines with more than 10 rounds); Mass. Gen. Laws Ann. ch. 140, §§ 121, 131M (prohibiting sale or possession of LCMs); N.J. Stat. Ann. §§ 2C:39-1(y), 39-3(j) (prohibiting possession of magazines with capacity of more than 15 rounds except magazines grandfathered under 1990 law); 28 N.Y. Penal Law §§ 265.00(23), 265.02(8), 265.10, 265.11, 265.20(7-f), 265.36-265.37 (prohibiting LCM possession; eliminating previous exceptions for grandfathered magazines).

¹⁶ The district court pointed to a single media report of a home invasion in which the victim eventually ran out of bullets in her gun. Order at 44-47 (citing ER 46-47 and discounting declaration of Professor John J. Donahue (ER 189)). As the Attorney General notes in its Opening Brief at 45 n.16, nothing in the article

B. California’s LCM Ban Is Not a “Disarmament” and Is Subject To Intermediate Scrutiny Under *Heller*

Even assuming that LCMs are in common use and that their possession receives some degree of Second Amendment protection,¹⁷ cases in this Circuit establish that the degree of judicial scrutiny a gun-control law receives depends on the severity of the law’s burden on armed self-defense. If a challenged law “effect[s] a ‘*destruction* of the right’” to keep and bear arms, then it is invalid under any level of scrutiny. *Heller*, 554 U.S. at 629 (quoting *State v. Reid*, 1 Ala. 612, 616-17 (1840)) (emphasis added). This strict level of scrutiny has been applied only to the most onerous regulations that in effect amount to a “blanket prohibition” on possessing a firearm for self-defense. *See Jackson*, 746 F.3d at 964.

The district court conflates California’s sensible restriction on LCMs with completely “disarming law-abiding responsible citizen gun owners” that, according to the district court’s misguided reading of *Heller*, is “not a constitutionally-permissible policy choice” and “beyond the realm of debate.” Order at 41. This Court’s precedents hold otherwise. As this Court recently explained when upholding Sunnyvale’s LCM ban, the “prohibition of . . . large-capacity magazines *does not* effectively disarm individuals or substantially affect their ability to defend

suggests that a LCM would have helped the victim, and the victim subsequently purchased a five-round revolver (not a LCM) for her defense. ER 783-784.

¹⁷ As this Court noted in *Fyock*, however, firearms that are nevertheless in “common use” may still be “unusual” such that the Second Amendment does not apply *at all*. *Fyock*, 779 F.3d at 998 & n.4 (explaining that machine guns are “unusual” (and therefore fall outside the Second Amendment entirely), because they have been banned by federal law since 1986 and exist largely on the black market). This guidance—that a long history of federal proscription is persuasive evidence that a weapon falls outside the Second Amendment entirely—squarely contradicts the district court’s opinion that “To say the magazines are uncommon because they have been banned for so long is something of a tautology. It cannot be used as constitutional support for further banning.” Order at 19.

themselves.” *Fyock*, 779 F.3d at 999 (quoting *Heller v. District of Columbia*, 670 F.3d 1244, 1262 (D.C. Cir. 2011) (“*Heller II*”)) (quotation marks omitted, emphasis added); *accord Jackson*, 746 F.3d at 961 (“A ban on the sale of certain types of ammunition *does not* prevent the use of handguns or other weapons in self-defense.”) (emphasis added); *see also S.F. Veteran Police Officers Ass’n.*, 18 F. Supp. 3d at 1002 (holding that San Francisco’s LCM ban “would not be such a *total* ban [on carrying a firearm in public for self-defense] and “[g]iven that the San Francisco rule is not a total ban on self-defense at home or in public, there is no occasion whatsoever to apply the ‘categorical’ prohibition advanced by plaintiffs”).

If, as here, the challenged law does not destroy the right to keep and bear arms, then the “level of scrutiny should depend on (1) ‘how close the law comes to the core of the Second Amendment right,’ and (2) ‘the severity of the law’s burden on the right.’” *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013) (quoting *Ezell v. City of Chicago*, 651 F.3d 684, 703 (7th Cir. 2011)). There can be no doubt that “[I]f a challenged law does not implicate a core Second Amendment right, or does not place a substantial burden on the Second Amendment right,” the court applies intermediate scrutiny. *Jackson*, 746 F.3d at 961 (applying intermediate scrutiny to San Francisco’s sales ban on “hollow point” bullets).

Jackson teaches that the severity of a restriction on acquiring or possessing a particular gun or piece of ammunition is evaluated by reference to effective armed self-defense. *See id.* (“The regulation in this case limits only the manner in which a person may exercise Second Amendment rights by making it more difficult to purchase some types of ammunition.”). There is no intrinsic right to possess a 15-round magazine, or an 11-round magazine, regardless of how popular these

magazines are. Instead, the right is to keep and bear arms—not one particular firearm or another—for purposes of lawful self-defense. Restrictions that limit the choices of permissible arms may burden Second Amendment rights, but so long as the remaining choices are effective for self-defense, such a burden is not substantial according to *Jackson*. Because the district court refused to apply binding Circuit precedent when evaluating California’s LCM ban, it should be reversed on this basis alone.

II. The District Court Erroneously Applied Intermediate Scrutiny

Although the district court purported to apply the balancing test outlined in *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013), it did not faithfully apply that test. Instead, it abused its discretion when it held the Attorney General to a heightened evidentiary standard not required by law, and when it relied on clearly erroneous factual “findings.”

A. California’s LCM Ban Is a “Reasonable Fit” to Further California’s Substantial Interest in Reducing Shooting Casualties

As this Court has repeatedly affirmed, it is “self-evident” that governmental entities have a substantial interest “in reducing the fatality of shootings,” *Jackson*, 746 F.3d at 969; in “promoting public safety and reducing violent crime,” *Fyock*, 779 F.3d at 1000, and in reducing the harm and lethality of gun violence against law enforcement officers, *ibid.* (citing *Heller II*, 670 F.3d at 328). This principle established, all the Attorney General was required to show under *Chovan* was “a reasonable fit between the challenged regulation and the asserted objective.” 735 F.3d at 1139; *see Fyock*, 779 F.3d at 1000; *Jackson*, 746 F.3d at 969-970 (“[A] municipality may rely on any evidence ‘reasonably believed to be relevant’ to substantiate” its vital interests in reducing the incidence and lethality of shootings) (quoting *City of Renton v. Playtime Theatres*, 475 U.S. 41, 51-52 (1986)).

The district court below disregarded the Attorney General’s voluminous evidentiary record substantiating Proposition 63 on essentially three bases: (1) that the record before it could be distinguished from the record before the district court (and Ninth Circuit) in *Fyock* (Order at 23); (2) California’s LCM ban won’t meaningfully reduce the incidence of mass shootings because some mass shootings involve weapons other than firearms equipped with LCMs (Order at 30-36); and (3) California’s LCM ban won’t deter criminals because they already break other laws proscribing firearms (Order at 32, 37, 39-40 (“[N]otwithstanding the amendments to § 32310 (c) & (d), the shooter . . . would have continued to illegally possess his illegally acquired [LCMs] for use with his illegally possessed firearms.”)). Each of these rationales for granting the preliminary injunction is based on a misapplication of the law or clearly erroneous finding of fact, and justifies reversal.

There is no substantive difference between the record in this case and the record that was before both the trial and appellate courts in the *Fyock* litigation challenging Sunnyvale’s Measure C. In *Fyock*, this Court recounted the evidence relied on by the City of Sunnyvale to justify Measure C, which included, as here, reports that LCMs result in more gunshots fired, more wounds per victim, and increases the lethality of gunshot injuries; that LCMs are disproportionately used in mass shootings and in crimes against law enforcement officers; and that decreasing the number of LCMs in circulation may reduce their use in gun crimes. 779 F.3d at 1000. As outlined in detail by the Attorney General in his Opening Brief, the record contains many of the same reports, studies, and expert opinions as in *Fyock*, and that have been updated to include even more data of mass shootings since first presented to the courts in 2013. App. Br. 34-36; *see* Appx. J (Chief Ngo Decl. ¶ 8). But the district court admits it chose not to consider the vast majority of the

evidence submitted by the Attorney General in support of section 32310 as amended. Order at 29 n.10. This alone is clearly erroneous and an abuse of discretion.

The trial court further misapplied the “reasonable fit” standard when it in essence required the Attorney General’s evidence to prove that criminals will follow Proposition 63 and no longer use LCMs to commit crimes or commit mass murder. Order at 36-41. No court has ever held a governmental entity to such a standard, because it is not the law. While the district court expresses outrage that sensible gun control measures “disarm[] California’s law-abiding citizenry” Order at 41, its rationale for finding Proposition 63 fails to pass Constitutional muster is in direct conflict with this Court’s precedents upholding other sensible gun-control measures on the basis of public safety, reducing gun violence, and reducing the lethality of guns. *See, e.g., Jackson*, 746 F.3d 953 (trigger locks and hollow-point bullets). Those who kill law enforcement officers or commit mass murder are, by definition, lawless. California is entitled to pass public safety measures it reasonably believes will reduce the number of particularly lethal firearms or firearms accessories that can make their way into the hands of criminals. Nothing more is required, and the Attorney General amply met its burden. As this Court explained when evaluating a substantially similar evidentiary record in *Fyock*, “the evidence identified by the district court [in that case] is precisely the type of evidence that Sunnyvale was permitted to rely upon to substantiate its interest.” 779 F.3d at 1001. The same outcome is compelled here and the trial court should be reversed.

B. Proposition 63 Is Necessary To Eliminate The “Grandfathered” LCM Loophole

Specifically with respect to LCMs, California judges, legislators, and voters have all recognized the grave dangers posed by firearms configured to shoot large numbers of bullets without needing to stop and reload. In 2013, the voters of the City of Sunnyvale passed Measure C, which was the subject of the *Fyock* litigation. Appx. D. In 2014, the City and County of San Francisco outlawed their possession within City limits. Appx. A. In 2015, the City of Los Angeles passed its own LCM ban, which sunset on July 1, 2017 when Proposition 63 was supposed to go into effect. Appx. G; Appx. K, Decl. Merserau ¶ 6. Since its enactment, the City of Los Angeles has prosecuted 22 cases for unlawful possession of a LCM. Appx. K, Decl. Merserau ¶ 5. These local efforts to prevent tragic gun violence are especially vital given the void at the federal level since the lapse of the federal assault weapons ban in 2004. *Fyock*, 779 F.3d at 994.

Unfortunately, local efforts alone have been unable to eliminate incidents of mass violence and casualties resulting from firearms and specifically from LCMs. In Los Angeles in 2016, 1,180 people were shot (127 of them fatally), 5,908 firearms were seized, and the Los Angeles Police Department’s Gun Unit recovered 89 assault rifles and machine guns, as well as 224 large-capacity magazines. Appx. Appx. K, Decl. Merserau ¶¶ 7-10. In San Francisco, approximately fifty percent of firearms seized by the San Francisco Police Department remain equipped with LCMs, and San Francisco residents continue to fall victim to mass shooters armed with LCMs. Appx. B, Decl. Emanuel ¶ 38. California’s cities, counties, and municipalities are not islands, nor are they “gated, security-guarded enclaves” immune from gun violence as the district court surmises. *Compare* Order at 49 (“Perhaps [Sunnyvale] residents are wealthy enough to purchase multiple firearms or live in gated, security-guarded enclaves.”)

with Appx. I, Decl. Trudi Ryan ¶ 2 (“There are no gated or security-guarded residential neighborhoods in Sunnyvale.”). The citizens of Sunnyvale clearly did not feel adequately protected by Measure C, as 70.6 percent of its voters voted in favor of Proposition 63. Appx. J, Decl. Ngo ¶ 10.

As outlined in the Attorney General’s Opening Brief, the record below is replete with evidence demonstrating LCMs are linked to mass shootings. Furthermore, the record below confirms that these magazines, which can store more than 100 rounds of ammunition, multiply guns’ destructive power by allowing a shooter to fire many rounds without stopping to reload, significantly increasing a shooter’s ability to injure and kill large numbers of people quickly. See App. Op. Br. 4-6, 32-40; *see also* Appx. B, Decl. Emanuel ¶¶ 25, 35. Indeed, even the district court recognizes that LCMs increase the killing power of firearms and that LCMs in the hands of criminals pose a danger to law enforcement. Order at 47-48; *see also* Appx. B, Decl. Emanuel ¶¶ 41-43. Furthermore, as the Attorney General’s evidence demonstrated, residents’ remaining magazine choices for armed self-defense are more than sufficient. California permits magazines holding up to 10 bullets; most incidents of armed self-defense in the home involve only a couple of shots if any. ER 178-180, 212-13, 223-24, 299-303, 2223.

Proposition 63 ends the loophole that allows criminals and the mentally unstable to acquire LCMs in jurisdictions without LCM bans and use them to commit crimes and acts of mass murder throughout the state. Law enforcement officers in jurisdictions without a LCM ban have found section 32310’s “grandfathering” of pre-1999 LCMs to be challenging to enforce in practice, because LCMs do not have serial numbers (like guns), do not have to be registered, and have no markings to indicate when they were manufactured. *See* ER 209, 2121-23, 2167-68; *see also* Appx. J, Decl. Ngo ¶ 11.

California's Legislature and voters overwhelming supported the policy judgment that standard-capacity magazines holding 10 or fewer rounds would be sufficient for self-defense. Such policy judgments are inherently legislative, and applying the proper legal standards and evaluating all of the evidence, the Attorney General more than met its burden to support the will of the people. The district court abused its discretion when it substituted its own policy preferences for those of the people and its own view of the law for this Circuit's clear precedents. The decision below should be reversed.

Dated: October 19, 2017

Respectfully submitted,

DENNIS J. HERRERA
City Attorney of San Francisco
CHRISTINE VAN AKEN
Chief of Appellate Litigation
VICTORIA L. WEATHERFORD
Deputy City Attorney

By: /s/ Victoria L. Weatherford
VICTORIA L. WEATHERFORD
Deputy City Attorney

Attorneys for *Amicus Curiae* CITY AND
COUNTY OF SAN FRANCISCO

MICHAEL N. FEUER
City Attorney of Los Angeles
JAMES P. CLARK
Chief Deputy City Attorney
BENJAMIN CHAPMAN
Deputy City Attorney

Attorneys for *Amicus Curiae* CITY OF LOS
ANGELES

[ADDITIONAL SIGNATURES ON NEXT PAGE]

ADDITIONAL SIGNATURES:

JOHN A. NAGEL
Sunnyvale City Attorney
REBECCA L. MOON
Sr. Assistant City Attorney
ROBERT L. BOCO
Sr. Assistant City Attorney
MELISSA C. TRONQUET
Assistant City Attorney

Attorneys for *Amicus Curiae* CITY OF
SUNNYVALE

STATEMENT OF RELATED CASES

There are no related cases pending in this Court.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 14 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 5,527 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on October 19, 2017.

DENNIS J. HERRERA
City Attorney
CHRISTINE VAN AKEN
Chief of Appellate Litigation
VICTORIA L. WEATHERFORD
Deputy City Attorney

By: /s/ Victoria L. Weatherford
VICTORIA L. WEATHERFORD
Deputy City Attorney

Attorneys for *Amicus Curiae*
CITY AND COUNTY OF SAN
FRANCISCO

[ADDITIONAL SIGNATURES ON NEXT PAGE]

ADDITIONAL SIGNATURES:

MICHAEL N. FEUER
Los Angeles City Attorney
JAMES P. CLARK
Chief Deputy City Attorney
BENJAMIN CHAPMAN
Deputy City Attorney

Attorneys for *Amicus Curiae* CITY OF LOS ANGELES

JOHN A. NAGEL
Sunnyvale City Attorney
REBECCA L. MOON
Sr. Assistant City Attorney
ROBERT L. BOCO
Sr. Assistant City Attorney
MELISSA C. TRONQUET
Assistant City Attorney

Attorneys for *Amicus Curiae* CITY OF SUNNYVALE

APPENDIX

TABLE OF CONTENTS

APPENDIX A	San Francisco Ord. No. 249-13, enacted as San Francisco Police Code § 619	APP 001
APPENDIX B	Declaration of SFPD Officer Joseph Emanuel in Support of Plaintiff's Ex Parte Application for Order to Show Cause Re: Preliminary Injunction and Preliminary Injunction [exhibit excluded], <i>People v. Badger Mountain Supply, et al.</i> , S.F. Superior Case No. CGC-17-557010 (Feb. 21, 2017)	APP 014
APPENDIX C	SF Gate, "UPS Shooter in San Francisco Used Stolen Gun With 30-round Magazine," (last updated Jun. 23, 2017)....	APP 033
APPENDIX D	City of Sunnyvale Ord. No. 3027-13, enacted as Sunnyvale, Cal. Muni. Code § 9.44.050 (2013)	APP 037
APPENDIX E	Southern California Public Radio, "San Bernardino Shooting Update: Rifles Used in Attack Were Modified To Be Illegal," (last updated Dec. 4, 2015)	APP 041
APPENDIX F	Foxnews.com, "LAX Shooting Suspect Reportedly Told Police He Acted Alone," (last updated Nov. 4, 2013)	APP 044
APPENDIX G	City of Los Angeles Ord. No. 183806, enacted as L.A. Muni. Code § 46.30 (2015)	APP 046
APPENDIX H	William Blackstone, 4 Commentaries on the Laws of England 148-49 (1769)	APP 049
APPENDIX I	Declaration of Trudi Ryan in Support of Brief of Amici City and County of San Francisco, et al.	APP 058
APPENDIX J	Declaration of Phan Ngo in Support of Brief of Amici City and County of San Francisco, et al.	APP 063
APPENDIX K	Declaration of Michael Merserau in Support of Brief of Amici City and County of San Francisco, et al.	APP 069

APP 001

AMENDED IN COMMITTEE

10/10/13

FILE NO. 130585

ORDINANCE NO. **249-13**

[Police Code - Large Capacity Magazines; Sales of Firearms and Ammunition; Reporting Lost or Stolen Firearms; Shooting Ranges]

Ordinance amending the Police Code to ban the possession of large capacity magazines for firearm ammunition; require that dealers advise persons purchasing a firearm of local firearms laws; establish a rebuttable presumption that the owner who has not reported the theft or loss of a firearm as required by law remains in possession of the firearm; modify certain requirements for ammunition sales ~~require local dealers to report all ammunition sales to the Chief of Police;~~ and, prohibit the operator of a shooting range from allowing minors to enter the premises.

NOTE: Unchanged Code text and uncodified text are in plain Arial font.
 Additions to Codes are in single-underline italics Times New Roman font.
 Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
 Board amendment additions are in double-underlined Arial font.
 Board amendment deletions are in ~~strikethrough Arial font~~.
 Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables. Do NOT delete this NOTE: area.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Police Code is hereby amended by adding Section 619 618, to read as follows:

SEC. 619 618. PROHIBITION AGAINST POSSESSION OF LARGE CAPACITY MAGAZINES

(a) Findings.

(1) In 2007, 3,231 people died from firearm-related injuries in California, and 4,491 other people were treated for non-fatal gunshot wounds.

(2) The ability of an automatic or semiautomatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine." Inside the

APP 002

1 magazine, a spring forces the cartridges into position to be fed into the chamber by operation of the
2 firearm's action.

3 (3) Magazines with a capacity of more than 10 rounds of ammunition are generally
4 considered to be "large capacity" magazines, although the statutory definitions vary. In some cases,
5 large capacity magazines can hold up to 100 rounds of ammunition. Other types of firearms, in
6 contrast, are generally capable of holding far less ammunition; for example, revolvers typically hold
7 six rounds of ammunition in a rotating cylinder.

8 (4) Although detachable large capacity magazines are typically associated with
9 machine guns or semiautomatic assault weapons, such devices are available for any semiautomatic
10 firearm that accepts a detachable magazine, including semiautomatic handguns.

11 (5) The ability of large capacity magazines to hold numerous rounds of ammunition
12 significantly increases the lethality of the automatic and semiautomatic firearms using them.

13 (6) Large capacity magazines were used in a number of recent high-profile shootings,
14 including:

15 The shooting on the campus of Virginia Tech on April 16, 2007, where 32 people were
16 killed and many others wounded.

17 The shooting in a gym in Pittsburgh on August 4, 2009, where three people were killed
18 and nine others injured.

19 The shooting on November 5, 2009 at Fort Hood, Texas, where 13 people were killed
20 and 34 more were wounded.

21 The shooting on January 8, 2011, at Tucson, Arizona, where 6 people were killed and 13
22 people were injured, including a member of the United States House of Representatives, and

23 The shootings on December 14, 2012, at Newtown, Connecticut, where 27 people (not
24 including the shooter) were killed.

APP 003

1 (7) Large capacity magazines have also been used against San Francisco police
2 officers, including a recent incident at India Basin Shoreline Park, where undercover police officers
3 were targeted with semiautomatic pistols containing 30-round magazines. Prohibiting large capacity
4 magazines serves police safety by requiring perpetrators to pause to reload their firearms more
5 frequently, giving police officers greater opportunity to apprehend them.

6 (8) Large capacity magazine bans reduce the capacity, and thus the potential lethality,
7 of any firearm that can accept a large capacity magazine.

8 (9) Large capacity magazines are not necessary for individuals to vindicate their right
9 to self-defense. Only in an extraordinarily rare circumstance would a person using a firearm in self-
10 defense ever be required to use a large capacity magazine to defend himself or herself effectively. This
11 is particularly true in an urban center like San Francisco, where law enforcement can and does
12 respond quickly to threats and incidents. Conversely, the dangers of large capacity magazines are
13 heightened in dense urban areas like San Francisco.

14 (10) In 1994, in recognition of the dangers posed by these devices, Congress adopted a
15 law prohibiting the transfer and possession of large capacity magazines as part of the federal assault
16 weapon ban. That law was filled with loopholes, however.

17 (11) The federal law was enacted with a sunset clause, providing for its expiration after
18 ten years. Despite overwhelming public support for the law, Congress allowed the federal ban to
19 expire on September 13, 2004.

20 (12) Research commissioned by the U.S. Department of Justice to analyze the effect of
21 the 1994 federal ban on assault weapons and large capacity magazines found that attacks with
22 semiautomatics including assault weapons and other semiautomatics equipped with large capacity
23 magazines result in more shots fired, more persons hit, and more wounds inflicted per victim than do
24 attacks with other firearms.
25

APP 004

(13) Since January 1, 2000, California Penal Code §§ 32310 et seq., have, with limited exceptions, prohibited the manufacture, importation into the state, keeping for sale, offering or exposing for sale, giving, or lending of large capacity magazines. California law does not, however, prohibit the possession of these magazines, and this gap in the law threatens public safety.

(b) Definition. "Large capacity magazine" means any detachable ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

(1) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds;

(2) A .22 caliber tube ammunition feeding device; or

(3) A tubular magazine that is contained in a lever-action firearm.

(c) Prohibition on Possession of Large Capacity Magazines.

(1) No person, corporation, or other entity in the City may possess a large capacity magazine, whether assembled or disassembled.

(2) Any person who, prior to the effective date of this chapter, was legally in possession of a large capacity magazine shall have 90 days from such effective date to do any of the following without being subject to prosecution:

(A) Remove the large capacity magazine from the City;

(B) Surrender the large capacity magazine to the Police Department for destruction; or

(C) Sell or transfer the large capacity magazine lawfully in accordance with Penal Code § 12020.

(d) Exceptions. Subsection (c) shall not apply to the following:

APP 005

1 (1) Any government officer, agent, or employee, member of the armed forces of the
2 United States, or peace officer, to the extent that such person is otherwise authorized to possess a large
3 capacity magazine in connection with his or her official duties;

4 (2) A person licensed pursuant to Penal Code §§ 26700 to 26915, inclusive;

5 (3) A gunsmith for the purposes of maintenance, repair or modification of the large
6 capacity magazine;

7 (4) Any entity that operates an armored vehicle business pursuant to the laws of the
8 state, and an authorized employee of such entity, while in the course and scope of his or her
9 employment for purposes that pertain to the entity's armored vehicle business;

10 (5) Any person, corporation or other entity that manufactures the large capacity
11 magazine for a person mentioned in subsection (a) or for export pursuant to applicable federal
12 regulations;

13 (6) Any person using the large capacity magazine solely as a prop for a motion picture,
14 television, or video production, or entertainment event;

15 (7) Any holder of a special weapons permit issued pursuant to Penal Code § 33300,
16 32650, 32700, 31000, or 18900;

17 (8) Any person issued a permit pursuant to Penal Code § 32315 by the California
18 Department of Justice upon a showing of good cause for the possession, transportation, or sale of large
19 capacity magazines between a person licensed pursuant to Penal Code §§ 26700 to 26915 and an out-
20 of-state client, when those activities are in accordance with the terms and conditions of that permit;

21 (9) Any federal, state or local historical society, museum, or institutional collection
22 which is open to the public, provided that the large capacity magazine is properly housed, secured from
23 unauthorized handling, and unloaded;

24 (10) Any person who finds the large capacity magazine, if the person is not prohibited
25 from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the

APP 006

large capacity magazine no longer than is necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law;

(11) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities;

(12) Any person in the business of selling or transferring large capacity magazines in accordance with Penal Code § 12020, who is in possession of a large capacity magazine solely for the purpose of doing so; or

(13) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000 if no magazine that holds 10 or less rounds of ammunition is compatible with that firearm and the person possesses the large capacity magazine solely for use with that firearm.

(e) **Penalty.** Any person violating this chapter is guilty of a misdemeanor.

(f) **Severability.** If any subsection, sentence, clause, phrase, or word of this Section be for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this Section or any part thereof. The Board of Supervisors hereby declares that it would have adopted this Section notwithstanding the unconstitutionality, invalidity, or ineffectiveness of any one or more of its subsections, sentences, clauses, phrases, or words.

(g) **No duplication of state law.** In the event that the State of California enacts legislation prohibiting possession of large capacity magazines, this Section 618 shall have no force or effect to the extent that it duplicates any such state law.

Section 2. The San Francisco Police Code is hereby amended by amending Section 613.10, to read as follows:

SEC. 613.10. LICENSE—CONDITIONS.

* * * *

APP 007

(n) At or prior to the time of delivering a firearm, licensees shall provide the person buying, leasing, or receiving the loan of the firearm with a copy of a notice, to be prepared by the Chief of Police, advising the reader of local firearms laws, including safe gun storage requirements and the requirement to report a lost or stolen firearm. The notice may also include summary information on relevant State firearms laws, including the requirement that the sale, loan or other transfer of a firearm to a non-licensed person be completed through a licensed firearms dealer.

Section 3. The San Francisco Police Code is hereby amended by amending Section 616, to read as follows:

SEC. 616. REPORTING THE LOSS OR THEFT OF FIREARMS.

(a) Any person that owns or is otherwise in possession of a firearm shall report the theft or loss of such firearm to the San Francisco Police Department within 48 hours of becoming aware of the theft or loss whenever

(1) the owner resides in San Francisco, or

(2) the theft or loss of the firearm occurs in San Francisco.

(b) The failure of an owner or person in possession of a firearm to report the theft or loss of the firearms within 48 hours of when the owner or person in possession becomes aware or should have become aware of the theft or loss shall be punishable in accordance with Section 613.19.

(c) The failure of an owner or person in possession of a firearm to report the theft or loss of the firearms in a timely manner shall create a rebuttable presumption that the owner or person remains in possession of the firearm.

/ / /

/ / /

APP 008

1 Section 4. The San Francisco Police Code is hereby amended by amending
2 Section 615, to read as follows:

3 **SEC. 615. RECORDS OF AMMUNITION SALES.**

4 (a) **Definitions.**

5 (1) "Firearm ammunition," as used in this Section, shall include any ammunition
6 for use in any pistol or revolver, or semiautomatic rifle or assault weapon, but shall not include
7 ammunition for shotguns that contains shot that is No. 4 or smaller.

8 (2) "Semiautomatic rifle," as used in this Section, shall mean any repeating rifle
9 which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and
10 chamber the next round, and which requires a separate pull of the trigger to fire each
11 cartridge.

12 (3) "Assault weapon," as used in this Section, shall mean any of the weapons
13 designated in California Penal Code Section 12276 or 12276.1.

14 (4) "Vendor," as used in this Section, shall mean any person located in the City
15 and County of San Francisco who is engaged in the sale of firearm ammunition, including any
16 retail firearms dealer.

17 (5) "Remote Vendor," as used in this Section, shall mean any person engaged
18 in the sale of firearm ammunition, including any retail firearms dealer, who is located outside
19 the City and County of San Francisco but delivers or causes to be delivered firearm
20 ammunition to an address within the City and County of San Francisco.

21 (b) No Vendor shall sell or otherwise transfer ownership of any firearm ammunition
22 without at the time of purchase recording the following information on a form to be prescribed
23 by the Chief of Police:

24 (1) the name of the Vendor (including the name of the specific individual)
25 transferring ownership to the transferee;

APP 009

- (2) the place where the transfer occurred;
- (3) the date and time of the transfer;
- (4) the name, address and date of birth of the transferee;
- (5) the transferee's driver's license number, or other identification number, and the state in which it was issued;
- (6) the brand, type and amount of ammunition transferred; and
- (7) the transferee's signature and thumbprint.

Within 24 hours of the commencement of the transaction, regardless of when the firearm ammunition is delivered, the Vendor shall report the transaction to the Chief of Police by electronic mail at _____ or by such other means specified by the Chief of Police. The report shall contain the same information required above.

(c) ~~(1) The records required by this Section shall be maintained on the premises of the vendor for a period of not less than two years from the date of the recorded transfer. Said records shall be subject to inspection at any time during normal business hours.~~

~~(2) Any vendor or remote vendor~~ Any Vendor or Remote Vendor who sells or otherwise transfers ownership of five hundred (500) or more rounds of any firearm ammunition to a transferee in a single transaction, where the transaction occurs within the City and County of San Francisco or the firearm ammunition is ordered for delivery to an address within the City and County of San Francisco, shall be subject to the reporting requirement of this subsection (c) ~~(e)(2)~~. Within 24 hours of the commencement of the transaction, regardless of when the firearm ammunition is delivered, the Vendor or ~~Vendor or Remote Vendor~~ shall report the transaction to the Chief of Police by electronic mail at _____ or by such other means specified by the Chief of Police. The report shall contain the same information required under subsection (b). In determining the number of rounds sold or otherwise transferred for purposes of complying with this subsection (c) ~~(e)(2)~~,

the Vendor or Remote Vendor ~~vendor or remote vendor~~ shall include any combination of types, brands or calibers sold or transferred to the transferee.

(d) No Vendor shall knowingly make a false entry in, or fail to make a required entry in, ~~or fail to maintain in the required manner~~ records prepared in accordance with subsection (b) subsections (b) and (c)(1). ~~No vendor shall refuse to permit a Police Department employee to examine any record prepared in accordance with this Section during any inspection conducted pursuant to this Section.~~ No Vendor or Remote Vendor shall fail to submit the report required under subsection (c) subsections (b) or (c) in a timely manner subsection (c)(2), or knowingly include false information in such report. A Vendor must maintain the records required under subsection (b) on the premises for a period of not less than two years from the date of the recorded transfer. Said records shall be subject to inspection by the Police Department at any time during normal business hours.

(e) Penalties.

(1) **First Conviction.** Any person violating any provision of this Section shall be guilty of an infraction. Upon conviction of the infraction, the violator shall be punished by a fine of not less than \$50 nor more than \$100.

(2) **Subsequent Convictions.** In any accusatory pleading charging a violation of this Section, if the defendant has been previously convicted of a violation of this Section, each such previous violation and conviction shall be charged in the accusatory pleading. Any person violating any provision of this Section a second time within a 90-day period shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$300 and not more than \$400 for each provision violated, or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment. Any person violating any provision of this Section, a third time, and each subsequent time, within a 30-day period shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$400 and not

APP 011

1 more than \$500 for each provision violated, or by imprisonment in the County Jail for a period
2 of not more than six months, or by both such fine and imprisonment.

3 (f) **Severability.** If any subsection, sentence, clause, phrase, or word of this Section
4 be for any reason declared unconstitutional or invalid or ineffective by any court of competent
5 jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining
6 portions of this Section or any part thereof. The Board of Supervisors hereby declares that it
7 would have adopted this Section notwithstanding the unconstitutionality, invalidity, or
8 ineffectiveness of any one or more of its subsections, sentences, clauses, phrases, or words.

9
10 Section 5. The San Francisco Police Code is hereby amended by amending
11 Section 1040, to read as follows:

12 **SEC. 1040. FIREARMS REGULATED; MINORS PROHIBITED.**

13 (a) It shall be unlawful for any person, firm, corporation, club or association,
14 maintaining or conducting any shooting gallery or range to use or permit to be used or
15 discharged therein any firearms of greater than 22 caliber, unless the cartridges used in such
16 firearms be loaded with reduced charges.

17 (b) It shall be unlawful for any person, firm, corporation, club or association, maintaining or
18 conducting any shooting gallery or range to permit any person under the age of 18 to enter the
19 premises that are the subject of the permit unless accompanied by a parent or guardian.


20
21 Section 6. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor's veto of the ordinance.

APP 012

1 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

7
8
9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12
13 By:


THOMAS J. OWEN
Deputy City Attorney

14
15
16 n:\vegana\as2013\1300396\00878805.doc
17
18
19
20
21
22
23
24
25

APP 013



City and County of San Francisco

**Tails
Ordinance**

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 130585

Date Passed: October 29, 2013

Ordinance amending the Police Code to ban the possession of large capacity magazines for firearm ammunition; require that dealers advise persons purchasing a firearm of local firearms laws; establish a rebuttable presumption that the owner who has not reported the theft or loss of a firearm as required by law remains in possession of the firearm; modify certain requirements for ammunition sales; and prohibit the operator of a shooting range from allowing minors to enter the premises.

October 10, 2013 Neighborhood Services and Safety Committee - AMENDED, AN
AMENDMENT OF THE WHOLE BEARING NEW TITLE

October 10, 2013 Neighborhood Services and Safety Committee - RECOMMENDED AS
AMENDED

October 22, 2013 Board of Supervisors - PASSED ON FIRST READING

Ayes: 9 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Mar, Tang and Yee

Excused: 2 - Kim and Wiener

October 29, 2013 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener
and Yee

File No. 130585

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
10/29/2013 by the Board of Supervisors of
the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

11/8/13

Date Approved

APP 014

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 YVONNE R. MERÉ, State Bar #173594
Chief of Complex and Affirmative Litigation
3 VICTORIA L. WEATHERFORD, State Bar #267499
AILEEN M. MCGRATH, State Bar #280846
4 Deputy City Attorneys
1390 Market Street, 6th Fl.
5 San Francisco, California 94102-5408
Telephone: (415) 554-4236
6 Facsimile: (415) 554-3985
E-Mail: victoria.weatherford@sfgov.org
7 E-Mail: aileen.mcgrath@sfgov.org

8 Attorneys for Plaintiff
9 THE PEOPLE OF THE STATE OF CALIFORNIA
Ex rel. San Francisco City Attorney Dennis J. Herrera
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13
14 UNLIMITED JURISDICTION

15 THE PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. San Francisco City
16 Attorney Dennis J. Herrera,

17 Plaintiff,

18 vs.

19 BADGER MOUNTAIN SUPPLY, an
unincorporated business; 7.62 PRECISION, an
20 Alaska corporation; SHOOTERS PLUS, an
unincorporated business; L.A.K.
21 ENTERPRISES, d/b/a/ LAK SUPPLY, a
Wyoming limited liability company; MARK
22 THOMAS KUBES, d/b/a
BUYMILSURP.COM; and DOES 1 through
23 50, inclusive.

24 Defendants.
25

Case No. CGC-17-557010

EXPERT DECLARATION OF SAN FRANCISCO
POLICE DEPARTMENT OFFICER JOSEPH
EMANUEL IN SUPPORT OF PLAINTIFF'S EX
PARTE APPLICATION FOR ORDER TO SHOW
CAUSE RE: PRELIMINARY INJUNCTION AND
PRELIMINARY INJUNCTION; AND EXHIBIT A

Hearing Date: February 21, 2017
Hearing Judge: Hon. Harold E. Kahn
Time: 11:00 a.m.
Place: 302

Date Action Filed: February 9, 2017
Trial Date: TBD

26 ///

27 ///

APP 015

1 I, Joseph Emanuel, declare are follows:

2 1. I have personal knowledge of the following facts except those stated on information
3 and belief. As to those facts, I believe them to be true. The matters stated in this declaration are based
4 on my training, education, and experience. If called upon to testify, I can testify competently to the
5 contents of this Declaration.

6 2. I am a sworn police officer within the San Francisco Police Department ("SFPD"). I
7 have been employed with the SFPD for approximately 11 years. I am currently assigned to Mission
8 Station, where I have worked as Captain's Staff for 1.5 years.

9 3. I make this Declaration in support of Plaintiff's request for a preliminary injunction
10 against Defendants Badger Mountain Supply, 7.62 Precision, Shooters Plus, L.A.K. Enterprises, d/b/a/
11 LAK Supply ("LAK"), and Mark Thomas Kubes, d/b/a/ buymilsurp.com ("Buymilsurp.com"), barring
12 these Defendants from advertising for sale into California and San Francisco, and selling to California
13 and San Francisco residents, large-capacity magazines for firearms capable of holding more than 10
14 rounds of ammunition, and "repair" and "rebuild" kits for such magazines.

15 4. In this Declaration, except where I state something to be based on my own personal
16 observations, I am stating my opinion as a firearms expert, or am referring to information that I used to
17 form my opinions. In addition to my general training and experience on firearms, the information I
18 used to form my opinions regarding Defendants and the need for the preliminary injunction Plaintiff
19 seeks includes my personal observations, including of Defendants' websites and online firearm
20 enthusiast discussion boards, conversations I have had with firearms dealers, discussions with other
21 law enforcement officers including other experts, information from state and federal law enforcement
22 agencies, my review of the declarations submitted with San Francisco's request for a preliminary
23 injunction, and my review of police reports and other articles and reports on topics related to firearms
24 and firearms-related crimes.

25 5. In this Declaration, I discuss my experience, education, and expertise on firearms,
26 particularly within San Francisco. Additionally, I explain how large-capacity magazines are
27 dangerous to the public and to police officers, by allowing shooters to fire more rounds of ammunition
28 without having to stop to reload.

APP 016

EXPERIENCE, EDUCATION, AND EXPERTISE REGARDING FIREARMS

6. I attained an Associate's Degree from San Francisco City College in Administration of Justice. I have also taken courses in criminal justice from San Francisco State.

7. I am a court-qualified firearms expert, and have testified in San Francisco Superior Court as a firearms and high-capacity magazines expert in San Francisco at a preliminary hearing.

8. I am currently assigned as Captain's Staff at Mission Station, and have been in my current role for approximately 1.5 years. As Captain's Staff, I perform regular patrol duties, youth engagement, and am responsible for all police activities at Garfield Park in San Francisco. Before my current assignment as Captain's Staff, I was a patrol officer assigned to the Housing Unit at Mission Station for approximately one year.

9. Before that, I was assigned to the Narcotics Division for one year, where my primary focus was firearms investigations. My primary duties included tracking individuals who possessed firearms but subsequently became ineligible to possess the firearm based on mental health status or a new criminal case, and seizing the firearms. As part of that assignment, I worked closely with the California Bureau of Firearms and the federal Bureau of Alcohol, Tobacco and Firearms, and performed multiple firearms investigations with those agencies, including state investigations on armed prohibited felons and federal "trigger-lock" investigations for certain felonies. I reviewed over 100 firearms-related SFPD incident reports, including all corresponding photographs booked into evidence. Upon reviewing the reports, I would identify the weapon and any illegal modifications or additions made to it, such as removing the serial number, illegal silencer, or illegal large-capacity magazine. I have gained a vast amount of knowledge from reviewing firearms arrest reports, studying firearm and ammunition images taken during these arrests, and performing physical inspections on seized firearms and ammunition. In studying this information, I have been able to identify hundreds of firearms and their component parts. As part of my assignment in the Narcotics Division and continuing to today, I conduct physical inspections of firearms and firearms accessories where the booking officer in the Property Department was unable to identify or classify it.

10. As part of my duties related to firearms investigations, I also maintained the SFPD firearms database, which is a database of all firearms seized by the SFPD as well as the individuals

APP 017

1 arrested in possession of the firearm. I also received continual and substantial training from SFPD
2 Officer Ignatius Chinn, who is himself a court-qualified expert on firearms and who is widely
3 recognized within and outside the SFPD as the SFPD's preeminent firearms and ammunition expert.
4 Officer Chinn is presently on medical leave.

5 11. I also previously served in other patrol roles, and as a plainclothes officer at Mission
6 Station, focused on violent felonies and narcotics.

7 12. In addition, during my 11 years in the SFPD, while executing numerous search
8 warrants, as well as probation and arrest searches, I have located, seized, and inspected hundreds of
9 firearms and their component parts.

10 13. Before joining the SFPD, I was a United States Marine for eight years. As a Marine, I
11 was responsible for training and becoming familiar with various assault weapons, including their
12 functionality and component parts.

13 14. In addition to my SFPD-issued service weapon, I also own approximately 30 firearms
14 of various makes and models. I am intimately familiar with all types of firearms, including handguns,
15 assault rifles, and shot guns, their component parts and accessories, and how to assemble and
16 disassemble them.

17 15. I keep current on firearms and firearms accessory sales and trends in San Francisco by
18 talking directly to firearms dealers and consumers in the greater Bay Area. In fact, both during my
19 assignment in the Narcotics Division investigating firearms offenses and continuing to today, I have
20 had numerous conversations with firearms and ammunitions dealers and their customers. I have also
21 had several contacts with persons who unlawfully possess firearms and who possess unlawful firearms
22 and firearms components, including during investigation of firearms crimes, during police interviews
23 with arrested suspects, and during compliance investigations related to firearms probation conditions.

24 16. I also have been able to gain a great deal of knowledge about firearms and firearms
25 component sales and trends in the Bay Area by viewing online forums related to firearms, most
26 notably the CalGuns.net online forum. CalGuns is widely considered in the firearms community to be
27 the preeminent online forum for gun enthusiasts in California. On the Calguns.net forum, users
28 connect with each other to buy and sell firearms, ammunition, and component parts, share information

APP 018

1 related to online and physical retail sales locations, and ask and answer questions on all topics
2 regarding firearms, including issues related to various laws restricting the sale or possession of
3 firearms.

4 17. I also served on the SFPD Specialist Team (counter-sniper and containment team),
5 under the Special Operations Group, from 2011 to 2016. In that assignment, my primary duties were
6 responding to critical incidents, passive and violent demonstrations, and executing high-risk search
7 warrants. As part of that assignment, I received training on and carried specialty weapons such as an
8 AR-15 rifle, less lethal shot gun, and .40 extended-range impact weapon.

9 18. As part of my training as a firearms expert, I have attended hundreds of hours of
10 trainings on firearms. That training includes approximately 150 hours of California accredited
11 firearms training, including 100 hours of training with the SFPD as part of Special Operations Group
12 training on firearms, tactics, and critical incidents, and additional 50 hours of training consisting of
13 Basic and Advanced operators' courses for AR-15 assault rifles. I have also taken approximately 4
14 hours of training with the federal Bureau of Alcohol Tobacco, Firearms on subjects related to firearms
15 identification.

16 19. In addition to my required professional firearms licenses (including Carrying a
17 Concealed Weapon license), I also possess several civilian firearms certificates and have undergone
18 substantial additional firearms training. My additional training and certifications include a Basic
19 Certification from Glock Armor School for firearm maintenance and repair, which required 8 hours of
20 training and coursework. I also possess an Advanced Certificate from Roger Shooting School for
21 short-range carbine, which required 40 hours of training and coursework. I also possess an Advanced
22 Certificate in handguns from the Roger Shooting School, which required 40 hours of training and
23 coursework, which I have since repeated for a total of 80 hours of training.

24 20. I have also received extensive training from my supervisors in the SFPD, Officer
25 Chinn, and other experts from the California Department of Justice in the identification of Category
26 One through Three assault weapons. Assault weapons are broken down into different categories.
27 Category One is defined under section 30510 of the California Penal Code as assault weapons, which
28 are named, by make and model. Category two firearms are defined under Penal Code section 30510(f)

1 and comprised of variants of Category One, AR-15s and AK-47 variants. Category Three firearms are
2 assault weapons as defined under section 30515 of the California Penal Code. Category Three assault
3 weapons are defined by specific characteristics and are also comprised of other weapons in the
4 military.

5 21. I have also received extensive training from my supervisors in the SFPD, Officer
6 Chinn, and other experts from the California Department of Justice regarding extended and high-
7 capacity firearm magazines. I am intimately familiar with California laws restricting the sale of large-
8 capacity firearm magazines.

9 22. In addition to the above experience and training, I have also read, and regularly read,
10 manuals, publications, and reports related to firearms issued by the California Bureau of Firearms and
11 the federal Bureau of Alcohol, Tobacco and Firearms. I also regularly review news media accounts of
12 firearms-related crime and other private and public studies on issues related to firearms and firearms-
13 related crime.

14 **AN OVERVIEW OF LARGE-CAPACITY MAGAZINES AND THE HARM THEY** 15 **CAUSE**

16 23. A firearm magazine is an ammunition storage and feeding device for a firearm.
17 Magazines can be detachable or integral to the firearm. Magazines are a component of every firearm
18 with the exception of chamber-loaded firearms such as revolvers, bolt-action rifles, and shot guns.
19 Magazines are a component in all automatic and semiautomatic pistols, automatic and semi-automatic
20 rifles, and assault weapons. A magazine is comprised of four parts: the body, spring, follower, and
21 floor plate or end plate. The body is the exterior shell that houses the ammunition. The floor plate is
22 the base of the magazine. As a firearm is discharged, the follower pushes the ammunition up into the
23 body of the firearm to be reloaded. The spring forces the ammunition into position to be fed into the
24 firearm chamber by operation of the firearm's action. Magazines are shaped as either a box or a drum.

25 24. Assembling a completely disassembled magazine is fast and easy, even for persons who
26 are unfamiliar with firearms. A person familiar with firearms and their component parts can assemble
27 a magazine in as fast as ten seconds. As a firearms expert intimately familiar with hundreds of models
28

APP 020

1 of firearms and their component parts, I am capable of assembling a large-capacity magazine in under
2 ten seconds.

3 25. The ability of an automatic or semiautomatic firearm to fire multiple bullets without
4 reloading is directly related to the capacity of the firearm's magazine. The larger the capacity of the
5 magazine, the more shots a shooter can fire without having to stop firing to reload.

6 26. California Penal Code section 16740 defines a large-capacity magazine as "any
7 ammunition feeding device with the capacity to accept more than 10 rounds," excluding feeding
8 devices that have been permanently altered so that they cannot accommodate more than 10 rounds, .22
9 caliber tube ammunition feeding devices, and tubular magazines that are contained in a lever-action
10 firearm. Large-capacity "repair kits" that contain all parts necessary to create a new large-capacity
11 magazine are simply that—a disassembled large-capacity magazine—and can be readily assembled by
12 a purchaser the same as any other disassembled magazine.

13 27. California Penal Code section 32311(b) defines a "large-capacity conversion kit" as "a
14 device or combination of parts of a fully functioning large-capacity magazine, including, but not
15 limited to, the body, spring, follower, and floor plate or end plate, capable of converting an
16 ammunition feeding device into a large-capacity magazine." Some large-capacity "repair" or
17 "rebuild" kits that lack one or more parts can be completed with parts from an existing legal magazine,
18 allowing a purchaser to create a new large-capacity magazine.

19 28. Large-capacity conversion kits include magazine extenders, which are devices that
20 increase the ammunition capacity of a magazine. Magazines that have been modified with a magazine
21 extender such that they are capable of holding more than 10 rounds of ammunition constitute large-
22 capacity magazines under Penal Code section 16740.

23 29. To determine if a magazine is capable of holding over ten rounds of ammunition, you
24 can either put the ammunition into the magazine to check and see if it will hold more than ten rounds,
25 or check the buffer and the spring in the magazine to see whether it will go past the ten round marking.
26 Often, a quick visual check of a magazine is enough to determine that it is capable of holding more
27 than ten rounds, as certain magazines can hold 30, 50, or over 100 rounds of ammunition.
28

APP 021

30. California Penal Code section 32310, which has been in effect in various forms since January 1 2000, provides anyone who, with limited exceptions, “manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazine” may be punished “by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.” (Penal Code § 32310(a).)

31. California Penal Code section 32310(b) defines “manufacturing” as including “both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.”

32. California Penal Code section 32311, effective January 1, 2014, provides anyone who, with limited exceptions, “manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large capacity magazine conversion kit” may be punished “by a fine of not more than one thousand dollars (\$1,000) or imprisonment in a county jail not to exceed six months, or by both that fine and imprisonment.”

33. Furthermore, San Francisco Police Code section 619, which has been in effect since approximately April 1, 2014, prohibits the civilian possession of assembled or disassembled large-capacity magazines. Section 619(b) mirrors the definition of “large-capacity” magazine, including and the exceptions thereto, found in California Penal Code section 16740.

34. Large-capacity magazines have not been regulated at the federal level since the federal assault weapons ban lapsed in 2004. Between 1994 and 2004, it was illegal to sell new large-capacity magazines capable of holding more than 10 rounds of ammunition, although large-capacity magazines that were manufactured before the ban could be legally resold.

The Dangers to the Public Posed by Large-Capacity Magazines

35. The ability of large capacity magazines to hold numerous rounds of ammunition significantly increases the lethality of the automatic and semiautomatic firearms using them. The more bullets a shooter can fire without stopping to reload increases the shooter’s ability to injure and kill large numbers of people quickly. In addition, in a dense urban area like San Francisco, every

APP 022

1 firearm discharge has the potential to injure innocent people who are nearby. Increasing the number of
2 rounds a firearm can discharge through the use of large capacity magazines can and does result in
3 unnecessary injury to innocent people who are nearby.

4 36. As repeatedly documented in governmental and independent third-party reports
5 analyzing FBI and other law enforcement data regarding shootings, shootings involving large-capacity
6 magazines result in more injuries, more bullets fired, and more casualties. Examples of such reports
7 include the *Everytown for Gun Safety* "Analysis of Mass Shootings," revised August 31, 2016,
8 *Mayors Against Illegal Guns* "Analysis of Mass Shootings," dated September 2013, the *Citizens*
9 *Crime Commission of New York City* "Mass Shooting Incidents in America (1984-2002)," and *Mother*
10 *Jones* "A Guide to Mass Shootings in America, dated July 20, 2012."

11 37. As reported in the national media, automatic and semiautomatic firearms equipped with
12 large-capacity magazines have been used in several recent high-profile mass shootings, including the
13 following shootings:

- 14 a. The shooting on the campus of Virginia Tech on April 16, 2007, where 32
15 people were killed and many others wounded. One such media account is the
16 *Washington Post* article, "Gunman Kills 32 at Virginia Tech In Deadliest
17 Shooting in U.S. History," dated April 17, 2007.
- 18 b. The shooting on November 5, 2009 at Fort Hood, Texas, where 13 people were
19 killed and 34 more were wounded. One such media account is the *NBC News*
20 article, "Gunman Kills 12, Wounds 31 at Fort Hood," dated November 11,
21 2009.
- 22 c. The shooting on January 8, 2011, at Tucson, Arizona, where 6 people were
23 killed and 13 people were injured, including a member of the United States
24 House of Representatives. One such media account is the *New York Times*
25 article, "In Attack's Wake, Political Repercussions," dated January 8, 2011.
- 26 d. The shooting on December 14, 2012, at Sandy Hook Elementary School in
27 Newtown, Connecticut, where 27 people (not including the shooter), including
28 20 children, were killed. One such media account is *The Guardian* article,

APP 023

1 “Newtown Gunman Kiss 20 Children in Elementary School Shooting,” dated
2 December 15 2012.

- 3 e. The shooting on July 20, 2012, in an Aurora, Colorado, movie theater, which
4 killed 12 people and left approximately 70 people injured. One such media
5 account is the *Los Angeles Times* article, “Gunman Kills 12 at ‘Dark Knight
6 Rises’ screening in Colorado,” dated July 20, 2012.
- 7 f. The shooting on December 2, 2015, in San Bernardino, California, which killed
8 14 people and injured 22 others. One such media account is the *New York*
9 *Times* article, “San Bernadino Shooting Kills at Least 14; Two Suspects Are
10 Dead,” dated December 2, 2015.
- 11 g. The shooting on June 17, 2015, in a Charleston, South Carolina church, which
12 killed nine people. One such media account is the *USA Today* article, “9 Dead
13 in Shooting at Black Church in Charleston, S.C.,” dated June 15, 2015.
- 14 h. The shooting on June 12, 2016, in an Orlando, Florida night club, which killed
15 49 people and wounded 53 others. One such media account is the *New York*
16 *Times* article, “Orlando Gunman Attacks Gay Nightclub, Leaving 50 Dead,”
17 dated June 12, 2016.

18 38. Despite the fact that it has been illegal to sell large-capacity magazines in California for
19 17 years, criminals who are arrested with firearms often also possess large-capacity magazines. I have
20 been involved in arrests of hundreds of individuals in San Francisco who possessed firearms equipped
21 with large-capacity magazines. In my experience, I estimate that, of the magazine-fed firearms seized
22 in San Francisco, approximately 50% are equipped with a large-capacity magazine. It is my opinion
23 that criminals seek out firearms equipped with large-capacity magazines, in order to have more
24 firepower at their disposal when committing crimes.

25 39. It is my opinion that purchasers of “repair” or “rebuild” kits for large-capacity
26 magazines, that include all or substantially all of the parts needed to assemble an entire new large-
27 capacity magazine, seek to evade existing state laws rather than lawfully repair an existing “pre-ban”
28

1 magazine. Consumers who need to repair an existing pre-ban magazine can easily do so by
2 purchasing individual parts directly from the manufacturer or another vendor.

3 **The Specific Dangers to Police Officers Posed by Large-Capacity Magazines**

4 40. In my opinion, large-capacity magazines in the hands of criminals pose a greater danger
5 to police officers than standard-capacity magazines. When a shooter must pause, even briefly, to
6 reload, police officers have the opportunity to take action, either by advancing or falling back to take
7 cover. A shooter who does not have to reload does not give police that opportunity, and has a greater
8 ability to injure or kill police officers.

9 41. Unfortunately, this has been illustrated in a real-life tragedy here in San Francisco, the
10 story of which I am intimately familiar with as a former member of the SFPD Specialist Team. In
11 November 1994, San Francisco Police Department Officer James Guelff, who served on the Specialist
12 Team, was killed at Pine Street and Franklin Street by a shooter with an assault rifle who was carrying
13 what the media reported as about 1000 rounds of ammunition. Officer Guelff responded to a report of
14 shots fired and a car-jacking in progress and was met with the suspect's fire from an assault rifle.
15 Officer Guelff returned fire with his service revolver, which contained six shots. When Officer Guelff
16 ran out of ammunition, he took cover behind his vehicle to reload. As he reloaded, the suspect—who
17 did not need to reload his weapon—advanced on Officer Guelff and murdered him behind his vehicle.
18 As a member of the SFPD Specialist Team, Officer Guelff had more training than the average SFPD
19 officer, yet he was overwhelmed by the gunfire from this criminal.

20 42. There are additional examples of SFPD officers being targeted with large-capacity
21 magazines. Attached to this declaration as **Exhibit A** is a true and correct copy of a police report
22 concerning an attempted homicide of police officers which occurred in April 2013. In this incident,
23 suspects fired 10-15 shots at an unmarked patrol vehicle, at least four of which hit the vehicle. During
24 the investigation of the event, officers recovered a 30-round Glock magazine and a Glock 17
25 semiautomatic pistol from the suspects' path of travel and another extended capacity firearm magazine
26 in a backpack located in the backseat of the suspects' vehicle.

27 43. Furthermore, one of the most infamous and well-known tragedies among law
28 enforcement officers is the North Hollywood Shootout, which was a 1997 shootout between the Los

APP 025

1 Angeles Police Department (“LAPD”) and two heavily armed bank robbers. The shootout
 2 miraculously resulted in no law enforcement or civilian casualties, but did result in 10 police officers
 3 and 6 civilians being injured from the gunfire. As was reported in the media, the suspects wore full
 4 body armor and possessed multiple automatic and semiautomatic firearms, including illegally
 5 converted firearms and over 3,000 rounds of ammunition. Four of the shooters’ assault rifles—one
 6 AR-15 converted to fully automatic and three AK-47 rifles converted to fully automatic—were
 7 equipped with multiple 100-round magazines. The LAPD officers who responded to the bank robbery
 8 call with only their standard-issue firearms were so outmatched in firepower they had to commandeer
 9 weapons and ammunition from a nearby gun store. The continuous rain of fire from the suspects’
 10 large-capacity magazines was a dramatic example of suppressive fire—shootings designed to degrade
 11 and paralyze law enforcement’s ability to stop the threat. Later reports determined that during the
 12 shootout, the shooters fired approximately 1,100 rounds of ammunition.

13 44. As has been reported in the national media, several shooters have in fact been subdued,
 14 and civilians have been able to escape immediate danger, when a shooter must stop to reload his
 15 firearm, for example in the following instances:

- 16 a. The Tucson, Arizona shooter was subdued by two civilians when he stopped to
 17 reload as reported in the *Los Angeles Times* article, “Crowd Member Took
 18 Gunman Down,” dated January 9, 2011, and in the *ABC News* article, “Woman
 19 Wrestled Fresh Ammo Clip From Tucson Shooter As He Tried to Reload,”
 20 updated August 23, 2016.
- 21 b. As many as six elementary school children were able to escape from the Sandy
 22 Hook Elementary School shooter when he stopped to reload or remove the
 23 ammunition magazine to his rifle, as reported in the *Hartford Courant* article,
 24 “Sandy Hook Shooter’s Pause May Have Aided Students’ Escape,” dated
 25 December 23, 2012.

26 **THE NEED FOR A PRELIMINARY INJUNCTION AGAINST THESE DEFENDANTS**
 27 **Defendants’ Websites Advertise for Sale Large-Capacity Magazines, Magazine Repair**
 28 **Kits, and Magazine Extenders to California Residents**

1 45. I have reviewed the Declaration of City Attorney Investigator Borys Procak, and the
2 exhibits attached thereto, which include screenshots taken of each Defendant's website, including
3 purchasing pages I am informed and believe were captured in January and February 2017 shortly
4 before Plaintiff filed this lawsuit. I have also reviewed the Complaint in this Action, and all
5 screenshots of Defendants' websites embedded therein and attached as exhibits thereto, which I am
6 informed and believe were taken by the City Attorney's Office in February 2017. I have also
7 reviewed each Defendant's website.

8 46. Each Defendant flouts California law, by advertising for sale large-capacity magazines,
9 magazine extenders, and "repair kits" that cannot legally be sold in California, and by falsely stating
10 that such products can be legally sold in California.

11 47. Defendant Badger Mountain Supply, which uses the websites www.loyalsguns.com and
12 www.badgermountainsupply.com, as shown in Exhibit E to Borys Procak's Declaration, offers dozens
13 of large-capacity magazines for sale to California consumers as "rebuild kits." On a page titled
14 "Magazines (Rebuild Kits)" explains that each "rebuild / repair kit is a new magazine that has been
15 opened, disassembled, and packaged for shipping." Defendant Badger Mountain Supply further
16 explains to California purchasers that, "To comply with recent California laws regarding magazine
17 rebuild kits, customers buying rebuild kits to be shipped to California will receive two shipments: the
18 contents of each shipment not containing sufficient parts to assemble a fully functional magazine.
19 Additional shipping charges may apply to CA customers due to additional packaging and shipping."

20 48. One example shown in Exhibit E to Borys Procak's declaration is of a 30-round
21 magazine "rebuild kit" for an AK-47 semiautomatic assault rifle. On the product page, Defendant
22 Badger Mountain Supply disclaims liability for its customers who "purchas[e] this item or its
23 components in an attempt to bypass Local, City, County or State laws," and again states rebuild kits
24 shipped to California will be shipped in two packages to "comply" with California law. However,
25 "rebuild kits" are unlawful to sell in California under section 32311, and there is no exception for such
26 kits that are shipped in multiple packages. Even if shipped in multiple packages, a "rebuild kit"
27 comprised of all parts of a large-capacity magazine is still capable of being assembled in seconds to
28 create an illegal large-capacity magazine in violation of Penal Code 32311. Furthermore,

APP 027

1 disassembled large-capacity magazines may not be lawfully possessed by civilians in San Francisco
2 under Police Code section 619.

3 49. Defendant 7.62 Precision, which uses the website www.7-62precision.com, offers for
4 sale on its website several large-capacity magazines which are unlawful under Penal Code section
5 32310 and, as shown in Exhibit C to Borys Procak's Declaration, offers for sale a "California
6 Magazine Rebuild Kit," for AR-15 assault rifle magazines, which "includes a complete set of parts
7 that may be used to replace worn or damaged parts on other magazines." Defendant 7.62 Precision
8 states these kits are for California consumers only. However, "rebuild kits" are unlawful to sell in
9 California under section 32311. Furthermore, disassembled large-capacity magazines may not be
10 lawfully possessed by civilians in San Francisco under Police Code section 619.

11 50. Defendant Shooters Plus, which uses the website www.shootersplus.com, provides a
12 link with information "on converting High Capacity Magazines to Rebuild Kits for ban States such as
13 California" and other states. As shows in Exhibit D to Borys Procak's Declaration, on a page titled
14 "Magazine Rebuild Kits," Shooters Plus states, "it is legal for us to ship these magazines in the form
15 of rebuild kits as long as the customer is using the rebuild kit to rebuild / repair magazines that he or
16 she legally owned before the Assault Weapon Ban. Our rebuild kits will be shipped unassembled and
17 there is currently a \$2.00 fee for each rebuild kit. To purchase our rebuild kits simply click on the
18 magazine/s you need, then click on the checkbox under each magazine that reads 'Convert to Rebuild
19 Kit.'" Despite their supposed legal disclaimers, Defendant Shooters Plus makes available to
20 California consumers every large-capacity magazine on their website in complete, disassembled form.
21 This is patently unnecessary to "repair" a broken component of an existing large-capacity magazine,
22 and violates California Penal Code section 32310 and San Francisco Police Code section 619.

23 51. As one example, as shown in Exhibit D to Borys Procak's Declaration, Defendant
24 Shooters Plus offers a complete, disassembled 30-round magazine for an AK-47 semiautomatic assault
25 rifle as a "Magazine Rebuild Kit" for a \$2.00 fee. Contrary to Defendant Shooters Plus's statements,
26 these "rebuild kits" are unlawful to sell in California under section 32311. Furthermore, disassembled
27 large-capacity magazines may not be lawfully possessed by civilians in San Francisco under Police
28 Code section 619.

52. Defendant L.A.K Enterprises, d/b/a/ LAK Supply ("LAK"), which uses the website www.laksupply.com, purports to "specialize" in large capacity magazines, and magazine repair kits for consumers in "anti-2A territory," which I understand to be shorthand for "anti Second Amendment" and a reference to states like California that have strict gun control laws. LAK's website also states that LAK noting that their business "originated in California" and "absolutely support[s] those of you fighting the good fight behind enemy lines." On a web page titled "Magazine repair kits," attached as Exhibit A to the Declaration of Borys Procak, LAK informs consumers that "All hi cap magazine orders from ban states will automatically be converted into compliant mag parts kits when you place your order. There is no extra charge, and there is nothing extra to add to your cart." Defendant LAK further states that "KIT ORDERS TO CA WILL BE SHIPPED MISSING ONE PART FOR COMPLIANCE."

53. Defendant LAK's statements misstate California law, which bans the sale of high-capacity magazine repair kits, including kits that lack one part of a magazine. California defines a "large-capacity conversion kit" as "a device *or combination of parts* of a fully functioning large-capacity magazine, including, but not limited to, the body, spring, follower, and floor plate or end plate, *capable* of converting an ammunition feeding device into a large-capacity magazine." (California Penal Code section 32311(b) (emphasis added).) It is illegal to sell in California a combination of parts that allow a consumer to modify an existing magazine into a large-capacity magazine, even if the kit does not include every single part of a magazine. A magazine repair kit that lacks a floor plate, for example, may still be capable of converting an existing magazine into an illegal large-capacity magazine, and would therefore violate California's ban. In fact, several well-known firearms manufacturers, such as Glock, have universal floor plates that can be used on almost any magazine of the same caliber of bullet.

54. Furthermore, Defendant LAK offers for sale on its website a host of large-capacity magazines, which are unlawful under Penal Code section 32310 and which, when converted by LAK into a "repair kit," are unlawful under section 32311. As one example, Defendant LAK offers for sale a 150-round drum magazine for an AR-15 semiautomatic assault rifle in violation of California Penal Code sections 32310 and 32311 (when disassembled into a "repair kit").

APP 029

1 55. Defendant Mark Thomas Kubes, d/b/a/ Buymilsurp.com (“Buymilsurp.com”), which
2 uses the website www.buymilsurp.com, offers for sale on its website a host of large-capacity
3 magazines which are unlawful under Penal Code section 32310. Buymilsurp.com also sells “spare
4 parts kits” for several large-capacity magazines. Two examples in Exhibit B to Borys Procak’s
5 Declaration are repair kits for a 30- and 75-round magazines for AK-47 semiautomatic assault rifle.
6 For the 30-round kit, Buymilsurp.com states: “This is a completely disassembled magazine for Spare
7 Parts. Can Ship to CA.” For the 75-round kit, Buymilsurp.com states: “These will be sold as Repair
8 Kits, They will arrive disassembled (all parts included) and sold for spare parts only. CA OK.”
9 Contrary to Defendant Buymilsurp.com’s statements, these “spare parts kits” are unlawful to sell in
10 California under section 32311. Furthermore, disassembled large-capacity magazines may not be
11 lawfully possessed by civilians in San Francisco under Police Code section 619.

12 56. Defendant Buymilsurp also offers for sale to California magazine extenders for large-
13 capacity magazines in violation of 32311. One example shown in Exhibit B to Borys Procak’s
14 Declaration is a 10-round extender capable of turning a 20-round magazine into a 30-round magazine.
15 While the extender itself contains only 10 rounds, it is still an unlawful “large-capacity conversion kit”
16 under Penal Code section 32311 as it extends the firing power of a magazine beyond 10 rounds.

17 57. It is my opinion that Defendants know or should know that many of their California
18 customers who purchase these “repair” or “rebuild” kits are doing to in order to assemble a new, fully
19 functioning, large-capacity magazine in violation of California law, and are not seeking to obtain spare
20 parts to repair existing magazines. It is my opinion that Defendants, by their statements on their
21 websites to consumers in “ban” states, by offering “repair kits” as a shipping option for fully
22 assembled large-capacity magazines (either automatically converting to disassembled upon receiving
23 an order or asking consumers to check a box), and by offering “repair kits” that contain all or
24 substantially all parts needed to assemble a new large-capacity magazine, are knowingly facilitating
25 California consumers’ illegal purchases of large-capacity magazines, by readily making available
26 complete, disassembled magazines that can be assembled by a purchaser in seconds.

27 **Preliminary Injunctive Relief Is Needed Before the July 1, 2017 Statewide Possession Ban**
28 **Goes Into Effect**

APP 030

1 58. In November 2016, California voters approved Proposition 63, which will generally
2 prohibit possession large-capacity magazines after July 1, 2017. (See Penal Code, § 32310, subds. (c),
3 (d).) Proposition 63 requires individuals who own large-capacity magazines to dispose of them prior
4 to July 1, 2017 by selling them to a licensed firearms dealer, transferring them to law enforcement, or
5 removing them from the state. Attached as **Exhibit E** is a true and correct copy of the full text of
6 Proposition 63, known as the Safety for All Act of 2016.

7 59. In my opinion, and based on my years of experience as a SFPD Officer and firearms
8 expert, California will likely see—if it has not already in the two and a half months since Prop 63 was
9 passed by the voters of California—a sharp rise in Californians attempting to purchase large-capacity
10 magazines, in whole or in part, in advance of the July 1, 2017 statewide ban. In my personal
11 experience as a SFPD Officer and firearms expert, I have repeatedly witnessed a surge in firearms and
12 ammunition sales in advance of a new law or restriction going into effect. In addition, in my meetings
13 with owners of gun stores in the Bay Area, they have likewise repeatedly informed me of surges in
14 sales immediately before a forthcoming gun restriction.

15 60. One very recent example of a gun restriction leading to a surge in sales is “Bullet
16 buttons.” California previously classified as assault rifles certain firearms with detachable magazines,
17 and prohibited their sale. “Bullet buttons” were then designed for certain AR-15 and other rifles to get
18 around this ban. Effective January 1, 2017, California outlawed the sale of semiautomatic firearms
19 with “bullet buttons.” As documented in the December 29, 2016 *San Francisco Chronicle* article
20 entitled “Gun sales spike as California’s tougher 2017 laws loom,” sales of semiautomatic firearms
21 more than doubled in 2016, and sales of firearms with “bullet buttons” surged in the months leading
22 up to the January 1, 2017 sales ban. In my personal experience with speaking with gun store owners
23 in the Bay Area, they also saw a surge in sales of firearms with “bullet buttons” and these weapons
24 enjoyed an increased sales price as a result of the high demand before the ban went into effect.

25 61. I am also aware of studies and articles that describe and analyze a longstanding trend of
26 increased firearms sales before an expected legal restriction. For example, the *New York Times* in
27 June 2016 in a piece entitled “What happens after calls for new gun restrictions? Sales go up”
28 examined nationwide and certain state gun sales since 2000, showing a marked increase in firearms

1 sales tied to a fear in future restrictions or a specific piece of legislation that tightened existing
2 restrictions. This phenomenon has been documented in other media reports, such as the July 24, 2012
3 *The Atlantic* article entitled “How come gun sales spike after mass shootings?”

4 62. In addition, at least one Defendant is the topic of recent discussions on the CalGuns.net
5 online forum regarding large-capacity magazines and large-capacity magazine repair kits. In my
6 opinion, this demonstrates that California residents are looking for ways to obtain large-capacity
7 magazines and are in fact coming across these Defendants (here, Defendant Badger Mountain Supply)
8 when seeking to buy these products.

9 63. For example, in a sub-forum for “California handguns,” on the thread located at
10 <https://www.calguns.net/calgunforum/showthread.php?t=1214226>, the user “Germ1” asks on June 30,
11 2016, where he can purchase blocked 15 round Glock 19 magazines, which is a 15-round magazine
12 that has been “blocked” to only hold 10 rounds of ammunition. User “Germ1” later explains,
13 however, he is looking for a “block” that he can remove so he can have a functioning 15-round
14 magazine. In the course of the thread, user “stag6.8” recommends the www.loyalsguns.com website,
15 which is the website for Defendant Badger Mountain Supply. Attached as **Exhibit B** is a true and
16 correct copy of the first page of the CalGuns discussion thread.

17 64. On another CalGuns.net discussion thread in a “general gun discussion” sub-forum,
18 located at <https://www.calguns.net/calgunforum/showthread.php?t=1181887>, the user “Zombie13” on
19 March 30, 2016 says, “ I was browsing the web for rifle magazines and came across Loyal’s Guns Inc.
20 <http://www.loyalsguns.com/> This company sells magazine parts out of Washington and California.
21 Without getting too much into details, is this legit?” The user “Librarian” responds, and “Zombie 13”
22 replies with a link to an earlier thread on the same seller. In that earlier thread, beginning on July 28,
23 2015, and located at <http://www.calguns.net/calgunforum/showthread.php?t=1098096>, user “beanz2”
24 quotes the following language from Defendant Badger Mountain Supply’s website and asks whether it
25 is legal: “To comply with recent California laws regarding magazine rebuild kits, customers buying
26 rebuild kits to be shipped to California will receive two shipments: the contents of each shipment not
27 containing sufficient parts to assemble a fully functional magazine. Additional shipping charges may
28

APP 032

1 apply to CA customers due to additional packaging and shipping.” True and correct copies of the
2 relevant portions of these CalGuns.net threads are attached hereto as **Exhibits C and D**.

3 65. In my opinion, a preliminary injunction is needed against Defendants to prevent them
4 from selling large-capacity magazines, “repair kits,” and/or conversion kits into California in the
5 months leading up to the statewide ban on civilian possession of large-capacity magazines, as current
6 demand for these products is likely much higher than usual.

7 66. It is my opinion that an injunction against Defendants, barring them from advertising
8 these products for sale to California and making false statements to California consumers, is necessary
9 to prevent Defendants from violating, and aiding and abetting the violation of, California and San
10 Francisco laws.

11 67. It is my further opinion that an injunction against Defendants, that requires they place
12 on their online marketplaces statements that such products are not legal to sell in California or to
13 California residents, is necessary to correct the Defendants’ prior misstatements. It if my further
14 opinion that an injunction against Defendants that requires they send all of their California customers
15 who purchased any of these products a corrective written notice, to inform their customers they may
16 have violated California law by purchasing (and, in the case of San Francisco consumers, possessing)
17 these products, and to inform these customers of the upcoming state-wide possession ban, is also
18 necessary to correct Defendants’ prior misstatements.

19
20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct and was executed in San Francisco, California.

22 Dated: 2/20/17

23 
24 JOSEPH EMANUEL # 2029

UPS shooter in San Francisco used stolen gun with 30-round magazine

By **Vivian Ho** Updated 10:38 pm, Friday, June 23, 2017



IMAGE 1 OF 29

A United Parcel Service worker who killed three of his fellow delivery drivers and then himself in San Francisco last week wielded a Mac-10-style "assault pistol" with a 30-round magazine that had been stolen

[... more](#)



MORNING REPORT DAILY NEWSLETTER

Everything you need to know to
start your day

You agree to our **Terms of Use**. Your
information will be used as described in
our **Privacy Policy**.

Enter your email address

SIGN UP

A United Parcel Service worker who killed three of his fellow delivery drivers and then himself in San Francisco last week wielded a MAC-10-style "assault pistol" with a 30-round magazine that had been stolen in Utah and is illegal to possess in California, police said Friday.

Jimmy Chanh Lam, 38, fired the semiautomatic handgun made by MasterPiece Arms 20 times during the June 14

APPENDIX C

shooting in which he also wounded two UPS workers who survived, said officials during a news conference detailing the city's progress in the investigation.

They said a motive in the rampage remained elusive. Lam said nothing as he calmly and methodically opened fire, turning a company meeting into a scene of horror and chaos, and detectives have not been able to gain insight into his computer files or contacts with his family.

"At this point, we have not established a motive," said **Greg McEachern**.



Man robbed on Grizzly Peak in second incident in three days



For 1st time, GG Bridge to close northbound lanes for SF marathon

He said Lam carried a second handgun that had been stolen in Napa, but didn't fire it before he shot himself to death at the company's **Potrero Hill distribution center** at 320 San Bruno Ave. Lam also had a black backpack with a box of bullets inside, which was recovered along with the guns.

McEachern said investigators do not yet know who stole the weapons or how Lam obtained them. He did not know when the weapons were stolen or when their

original owners had reported them being taken.

Gun theft is a common problem around the country and a leading reason why illegal guns get on the streets and end up being used in crimes. And while California outlaws an array of assault weapons as well as high-capacity ammunition magazines, the weaponry frequently travels across the border — sometimes even in the mail.

Lam, a city resident who had a history of drunken driving but no past arrests for violence, killed **Benson Louie**, 50, **Wayne Chan**, 56, and **Michael Lefiti**, 46. McEachern said it appeared Louie and Chan were specifically targeted — but for reasons that remain unknown.

Those who worked with Lam said there was no indication that the 17-year company veteran would commit mass violence. They described him as quiet and said he kept to himself, though one colleague said he had been troubled in the past over the consequences of a drunken-driving conviction and his relationship with his wife and son.

APPENDIX C

At Friday's news conference, Police Chief **Bill Scott**, who had been on a trip away from the city on the day of the shooting, said he was proud of his officers' response, saying that "they contained the threat and they saved lives."

"The men and women of the **San Francisco Police Department** did a tremendous job responding to this tragedy," he said. "We train for these incidents, but each incident presents its own challenges."

McEachern detailed how the shooting unfolded during a routine company meeting. Lam was in uniform, as were the victims. He said that the massacre was not captured on video, but that investigators have been able to view footage of other aspects of the incident and the response.

At about 8:50 a.m., he said, Lam suddenly pulled out the black semiautomatic pistol with the extended magazine and, "without warning or saying anything," shot Louie. A driver who witnessed the shooting told **The Chronicle** in an earlier interview that Lam shot Louie in the head at close range.

Lam shot Chan next, and then he shot the two UPS employees who survived. As others fled or took cover, McEachern said, Lam calmly walked outside the building, where he approached Lefiti at 17th Street and San Bruno Avenue. Without a word, he shot him several times.

The first call to police came at 8:56 a.m., officials said, and the officers who responded — who all wore body cameras — were told there was an active shooting being committed by Lam.

McEachern said that as officers began searching for Lam, they directed a number of hiding UPS employees to safety. After about two minutes, he said, they came upon Lam, who was near the fallen Louie and Chan and had the pistol pointed at his head. The officers ordered him to put down the gun, but he pulled the trigger.

Investigators were able to locate a journal belonging to Lam, but so far have not discovered any insights into why he resorted to such violence.

"Our job as investigators is to do everything we can to uncover a motive," McEachern said. "I can't say whether or not we will be able to reach that point."

Some of the most notorious crimes in recent Bay Area history have involved stolen guns.

In 2015, on San Francisco's Pier 14, 32-year-old **Kathryn Steinle** was fatally shot by **Juan Francisco Lopez-Sanchez**, who said he had been playing with a gun he found. The gun had been stolen from a **Bureau of Land Management** officer's personal vehicle that was parked in the city.

APPENDIX C

Later that same year, artist **Antonio Ramos** was killed in Oakland while painting a mural by an assailant armed with a gun that had been stolen from a **U.S. Immigration and Customs Enforcement** agent's car in San Francisco.

A few days later, a trio of troubled young drifters killed two people, one in Golden Gate Park and another in Marin County, using a gun they had stolen from an unlocked vehicle.

From 2005 to 2010, some 1.4 million guns were reported stolen in the U.S., according to a **Department of Justice** report.

Vivian Ho is a San Francisco Chronicle staff writer. Email: vho@sfchronicle.com Twitter: @VivianHo

© 2017 Hearst Communications, Inc.

H E A R S T

ORDINANCE NO. 3027-13

**AN ORDINANCE OF THE CITY OF SUNNYVALE
AMENDING CHAPTER 9.44 (FIREARMS) OF THE
SUNNYVALE MUNICIPAL CODE TO ADD GUN SAFETY
MEASURES**

WHEREAS, by Resolution No. 606-13, adopted July 16, 2013, the City Council of the City of Sunnyvale submitted a measure to the electors of the City of Sunnyvale proposing an amendment to Chapter 9.44 of the Sunnyvale Municipal Code adding gun safety measures as set forth in Section 1 of this ordinance; and

WHEREAS, the proposed amendment was adopted by a majority of the voters at the election held on November 5, 2013, and the City Council has by Resolution No. 621-13 declared that the ballot measure was approved.

NOW THEREFORE, THE PEOPLE OF THE CITY OF SUNNYVALE DO ORDAIN AS FOLLOWS:

WHEREAS, the People of the City of Sunnyvale find that the violence and harm caused by and resulting from both the intentional and accidental misuse of guns constitutes a clear and present danger to the populace, and find that sensible gun safety measures provide some relief from that danger and are of benefit to the entire community; and

WHEREAS, the People of the City of Sunnyvale find that laws that provide for safe storage of guns in homes, that require a gun owner to report a stolen or lost gun, that prohibit the possession of ammunition magazines capable of holding more than ten rounds unless circumstances warrant such possession, and that require record-keeping relating to the sale of ammunition constitute sensible gun safety regulations because they are not unduly burdensome for gun owners, they aid law enforcement officers in their duties, and they offer some protection to all members of the community.

SECTION 1. SECTIONS 9.44.030, 9.44.040, 9.44.050 and 9.44.060 ADDED. Sections 9.44.030, 9.44.040, 9.44.050 and 9.44.060 is added to Chapter 9.44 (Firearms) of Title 9 (Public Peace, Safety or Welfare) of Sunnyvale Municipal Code to read as follows:

9.44.030. Duty to report theft or loss of firearms.

Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Sunnyvale Department of Public Safety within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the City of Sunnyvale; or (2) the theft or loss of the firearm occurs in the City of Sunnyvale.

9.44.040. Safe storage of firearms.

Except when carried on his or her person, or in his or her immediate control and possession, no person shall keep a firearm (as defined in Penal Code Section 16520 or as amended) in any residence owned or controlled by that

person unless the firearm is stored in a locked container, or the firearm is disabled with a trigger lock that is listed on the California Department of Justice's list of approved firearms safety devices.

9.44.050. Possession of large-capacity ammunition magazines prohibited.

(a) No person may possess a large-capacity magazine in the City of Sunnyvale whether assembled or disassembled. For purposes of this section, "large-capacity magazine" means any detachable ammunition feeding device with the capacity to accept more than ten (10) rounds, but shall not be construed to include any of the following:

- (1) A feeding device that has been permanently altered so that it cannot accommodate more than ten (10) rounds; or
- (2) A .22 caliber tubular ammunition feeding device; or
- (3) A tubular magazine that is contained in a lever-action firearm.

(b) Any person who, prior to the effective date of this section, was legally in possession of a large-capacity magazine shall have ninety (90) days from such effective date to do either of the following without being subject to prosecution:

- (1) Remove the large-capacity magazine from the City of Sunnyvale; or
- (2) Surrender the large-capacity magazine to the Sunnyvale Department of Public Safety for destruction; or
- (3) Lawfully sell or transfer the large-capacity magazine in accordance with Penal Code Section 12020.

(c) This section shall not apply to the following:

- (1) Any federal, state, county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties;
- (2) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large-capacity magazine and does so while acting within the course and scope of his or her duties;
- (3) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her duties;
- (4) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;
- (5) Any person who has been issued a license or permit by the California Department of Justice pursuant to Penal Code Sections 18900, 26500-26915, 31000, 32315, 32650, 32700-32720, or 33300, when the possession of a large-capacity magazine is in accordance with that license or permit;
- (6) A licensed gunsmith for purposes of maintenance, repair or modification of the large-capacity magazine;
- (7) Any person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to

federal or state law, and the person possesses the large-capacity magazine no longer than is reasonably necessary to deliver or transport the same to a law enforcement agency;

(8) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds fewer than 10 rounds of ammunition is compatible with the firearm and the person possesses the large-capacity magazine solely for use with that firearm.

(9) Any retired peace officer holding a valid, current Carry Concealed Weapons (CCW) permit issued pursuant to California Penal Code.

9.44.060. Ammunition Sales.

(a) It is unlawful for any person to engage in the business of selling, leasing, or otherwise transferring firearm ammunition within the City of Sunnyvale except in compliance with this code.

(b) Definitions:

(1) "Ammunition" means any cartridge or encasement containing a bullet or projectile, propellant, or explosive charge, and a primer which is used in the operation of a firearm.

(2) "Ammunition vendor" means any person engaged in the business of selling, leasing, or otherwise transferring firearm ammunition.

(3) "Person" means a natural person, association, partnership, firm, corporation, or other entity.

(c) Every ammunition vendor shall maintain an ammunition sales log which records all ammunition sales made by the vendor. The transferee shall provide, and the ammunition vendor shall record on the ammunition sales log, at the time of sale, all of the following information for each sale of firearms ammunition:

(1) The name, address, and date of birth of the transferee;

(2) The date of the sale;

(3) The transferee's driver's license number, state identification card number, passport number, or other valid government-issued photographic identification;

(4) The brand, type, and quantity of firearms ammunition transferred;

(5) The identity of the person transferring the firearms ammunition on behalf of the ammunition vendor;

(6) The transferee's signature and right thumbprint.

(d) The ammunition sales log shall be recorded on a form approved by the Chief of Public Safety. All ammunition sales logs shall be kept at the location of the firearms ammunition sale for a period of not less than two years from the date of the sale. Ammunition sales logs shall be open to reasonable inspection by peace officers at all times the ammunition vendor is regularly open for business.

(e) No person shall knowingly provide false, inaccurate, or incomplete information to an ammunition vendor for the purpose of purchasing firearms ammunition. No ammunition vendor shall knowingly make a false, inaccurate, or incomplete entry in any ammunition sales log, nor shall any ammunition vendor refuse any reasonable inspection of an ammunition sales log subject to inspection.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of Sunnyvale hereby declare that they would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 3. EFFECTIVE DATE. Pursuant to California Election Code Section 9217, this ordinance is adopted as of November 26, 2013, when the City Council of the City of Sunnyvale certified the election results. This ordinance shall go into effect December 6, 2013.

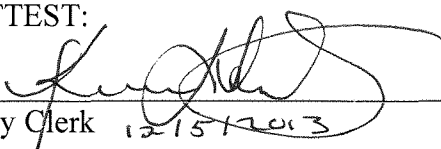
SECTION 4. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

This ordinance was introduced by Resolution No. 606-13 by the City Council of the City of Sunnyvale at the regular meeting of the City Council, held on the 16th day of July, 2013, for submission to the voters at an election to be held on November 5, 2013 by the following vote:

AYES: SPITALERI, GRIFFITH, MOYLAN, MEYERING, MARTIN-MILLIUS, DAVIS
NOES: WHITTUM
ABSENT: None
ABSTAIN: None

This ordinance was submitted to the voters and approved by a vote of 12,404 (yes) to 6,235 (no) as declared by Resolution No. 621-13 of the City Council, dated November 26, 2013.

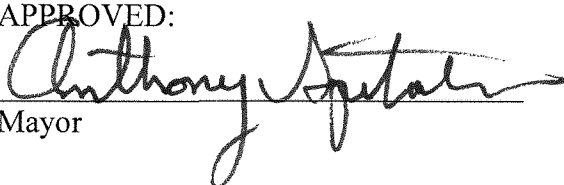
ATTEST:



City Clerk 12/5/2013

(SEAL)

APPROVED:



Mayor

APPROVED AS TO FORM:



Joan A. Borger, City Attorney



Crime & Justice

San Bernardino Shooting update: Rifles used in attack were modified to be illegal

Chris Keller

December 04 2015

A photo of the four guns used in the San Bernardino shooting.
SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT



SHARE



Modifications made to rifles used Wednesday in the [mass shooting in San Bernardino](#) made them technically illegal to possess in California under the state's assault weapons ban.

Fourteen people died and 19 people were injured in the shooting at the Inland Regional Center. Two police officers were later injured during a shootout that killed suspects Syed Farook and Tashfeen Malik.

Meredith Davis, a special agent with the bureau of Alcohol Tobacco and Firearms, said the rifles were purchased legally. But the .223 caliber Smith & Wesson M&P 15 authorities recovered had been modified to make it fully automatic, illegal under federal law.

A field test of the rifle showed the modification did not work, she said.

The other rifle – a .223 caliber DPMS A-15 – was modified to accept a high-capacity magazine, and to bypass the so-called bullet button, which makes removing a magazine easier, Davis said.

California bans guns with magazines that detach for quick reloading. Since 2000 the state has banned the sale or manufacture of magazines that can hold more than 10 rounds.

At least four magazines designed to hold 30 rounds were recovered from the Inland Regional Center.

Technicians are coming to California to examine both rifles to make an official determination, Davis said.

Davis said the agency isn't publicizing where the rifles were sold, and declined to name the person who purchased the rifles citing the ongoing investigation.

Earlier Friday, the Dave Bowdich, the FBI's assistant director in charge of the Los Angeles Field Office, said the agency has spoken to the person who purchased the rifles. "That person is not under arrest at this point," Bowdich said.

The rifles and two semi-automatic handguns were found Wednesday following the shootout. The handguns recovered had not been modified, Davis said. Authorities said Farook purchased those firearms legally.

Authorities also recovered thousands of rounds of ammunition, explosive devices and a .22 caliber rifle.

Legislators enacted [California's assault weapons ban in 1989](#). Following a court challenge in 2000, the law was upheld. Gun owners could keep their assault weapons provided they registered with the state before Jan. 23, 2001.

There are some 145,000 assault weapons that remain in the state under this grandfather provision, [according to state Department of Justice data](#).

THE BEST SOCIAL NEWS IN YOUR

INBOX, DAILY.

Catch up each afternoon with KPCC's Short List newsletter.

[Sign Up](#)

RELATED LINKS



7 gun-control bills advancing through the California Senate

ARTICLE



Gun sales spiked in California after San Bernardino shooting

ARTICLE



What we know about the victims of the San Bernardino attack

MAP



San Bernardino shooting: What we know about shooters Syed Farook, Tashfeen Malik

ARTICLE



Justices reject challenge to assault weapons ban

ARTICLE



Islamic State group praises San Bernardino shootings, Obama speaks out

VIDEO



How many mass shootings this year? There's no consensus

ARTICLE



San Bernardino shooting update: FBI investigating 'act of terrorism'

ARTICLE



San Bernardino case raises immigration security questions

ARTICLE



Legal assault rifles in CA can be made illegal

ARTICLE

SHARE





LAX shooting suspect reportedly told police he acted alone

Published November 04, 2013

Fox News

Despite being shot several times by police at Los Angeles International Airport Friday morning, 23-year-old Paul Anthony Ciancia was coherent enough to inform police that he had acted alone when he fatally shot a Transportation Security Administration officer and wounded three others, sparking chaos at one of the world's busiest airports.

Ciancia also told police that he had been dropped off at the airport without a ticket by friend in a black Hyundai, whom officials believe had no knowledge of Ciancia's plans.

The alleged gunman was shot four times by airport police, including once in the mouth, and remains heavily sedated and under 24-hour armed guard at the hospital, a law enforcement official told The Associated Press on Sunday. The official was not authorized to speak publicly on the case and requested anonymity.

The deadly rampage left investigators to piece together what motivated Ciancia's hatred toward the agency formed to make air travel safer after the Sept. 11 terrorist attack, but could ultimately lead to changes in the way airports are patrolled.

The FBI said he had a handwritten letter, stating that he made the conscious decision to try to kill multiple TSA officers and "instill fear in your traitorous minds."

More On This...

Note found on LAX shooter shows anger toward TSA

Ciancia is facing charges of murder of a federal officer and committing violence at an international airport. The charges could qualify him for the death penalty. It was not immediately clear when he would make a first court appearance given his medical condition.

In court documents and interviews, authorities spelled out a chilling chain of events, saying Ciancia walked into the airport's Terminal 3, pulled the assault rifle from his duffel bag and fired repeatedly at 39-year-old TSA officer Gerardo I. Hernandez. He went up an escalator, turned back to see Hernandez move and returned to shoot him again, according to surveillance video reviewed by investigators.

He then fired on two other uniformed TSA employees and an airline passenger, who all were wounded, as he moved methodically through the security checkpoint to the passenger gate area before airport police shot him as panicked travelers hid in stores and restaurants.

It wasn't clear why Ciancia targeted TSA officers, but what he left behind indicated he was willing to kill any of them that crossed his path, authorities revealed.

The letter in his duffel bag refers to how Ciancia believed his constitutional rights were being violated by TSA searches and that he's a "pissed-off patriot" upset at former Department of Homeland Security Secretary Janet Napolitano.

"Black, white, yellow, brown, I don't discriminate," the note read, according to a paraphrase by a law enforcement official briefed on the investigation. The official spoke on the condition of anonymity because he was not authorized to speak publicly.

The screed also mentioned "fiat currency" and "NWO," possible references to the New World Order, a conspiracy theory that foresees a totalitarian one-world government.

The letter also talked about "how easy it is to get a gun into the airport," the law enforcement official said.

When searched, the suspect had five 30-round magazines, and his bag contained hundreds more rounds in boxes.

U.S. Rep. Michael McCaul, R-Texas, chairman of the House Homeland Security Committee, said on CNN's "State of the Union" on Sunday that Ciancia's actions show how difficult it is to protect travelers at a massive airport such as LAX.

The terminals are open and easily accessible to thousands of people who arrive at large sliding glass doors via a broad ring road that fronts the facility and is designed to move people along quickly.

"It's like a shopping mall outside the perimeter, it's almost like an open shopping mall," McCaul said.

TSA Administrator John Pistole said the agency will need to work with each airport's police agency "to see how we'll go about in providing the best possible security."

The FBI has served a search warrant on a Sun Valley residence where Ciancia lived, Ari Dekofsky, a spokeswoman for the FBI's Los Angeles field office, said Sunday. Agents are still interviewing people, she said.

Authorities believe the rifle used in the shooting was purchased in Los Angeles. Ciancia also had two additional handguns that he purchased in Los Angeles, but which weren't at the crime scene, a law enforcement official said. The official, who has been briefed on the investigation, was not authorized to speak publicly and requested anonymity.

The purchases themselves appeared legal, although authorities were still tracing them, and it's unclear if the shooter used his own identification or someone else's, the official said.

"He didn't buy them on the street. He didn't buy them on the Internet," the official said. "He bought them from a licensed gun dealer -- the rifle and the two handguns."

Hernandez, a three-year veteran of the TSA, moved to the U.S. from El Salvador at age 15, married his sweetheart, Ana, on Valentine's Day in 1998 and had two children.

The TSA said the other two officers wounded in the attack -- James Speer, 54, and Tony Grigsby, 36 -- were released from the hospital.

Brian Ludmer, a Calabasas High School teacher, remained in fair condition at Ronald Regan UCLA Medical Center and will need surgery for a gunshot wound to the leg. Two other people suffered injuries trying to evade the gunman, but weren't shot.

The FBI was still looking into Ciancia's past, but investigators said they had not found evidence of previous crimes or any run-ins with the TSA. They said he had never applied for a job with the agency.

The Associated Press contributed to this report.

 Print  Close

URL

<http://www.foxnews.com/us/2013/11/04/lax-shooting-suspect-reportedly-told-police-acted-alone.html>

[Home](#) | [Video](#) | [Politics](#) | [U.S.](#) | [Opinion](#) | [Entertainment](#) | [Tech](#) | [Science](#) | [Health](#) | [Travel](#) | [Lifestyle](#) | [World](#) | [Sports](#) | [Weather](#)

[Privacy](#) | [Terms](#)

This material may not be published, broadcast, rewritten, or redistributed. © FOX News Network, LLC. All rights reserved. All market

APPENDIX F

COMMENTARIES
ON THE
L A W S
OF
E N G L A N D.

BOOK THE FOURTH.

BY
WILLIAM BLACKSTONE, Esq.
SOLICITOR GENERAL TO HER MAJESTY.

O X F O R D,
PRINTED AT THE CLARENDON PRESS.
M. DCC. LXIX.



merly allowable to every person disseised, or turned out of possession, unless his entry was taken away or barred by his own neglect, or other circumstances; which were explained more at large in a former volume¹. But this being found very prejudicial to the public peace, it was thought necessary by several statutes to restrain all persons from the use of such violent methods, even of doing themselves justice; and much more if they have no justice in their claim^m. So that the entry now allowed by law is a peaceable one; that forbidden is such as is carried on and maintained with force, with violence, and unusual weapons. By the statute 5 Ric. II. st. 1. c. 8. all forcible entries are punished with imprisonment and ransom at the king's will. And by the several statutes of 15 Ric. II. c. 2. 8 Hen. VI. c. 9. 31 Eliz. c. 11. and 21 Jac. I. c. 15. upon any forcible entry, or forcible detainer after peaceable entry, into any lands, or benefices of the church, one or more justices of the peace, taking sufficient power of the county, may go to the place, and there record the force upon his own view, as in case of riots; and upon such conviction may commit the offender to gaol, till he makes fine and ransom to the king. And moreover the justice or justices have power to summon a jury, to try the forcible entry or detainer complained of: and, if the same be found by that jury, then besides the fine on the offender, the justices shall make restitution by the sheriff of the possession, without inquiring into the merits of the title; for the force is the only thing to be tried, punished, and remedied by them: and the same may be done by indictment at the general sessions. But this provision does not extend to such as endeavour to maintain possession by force, where they themselves, or their ancestors, have been in the peaceable enjoyment of the lands and tenements, for three years immediately preceding.

9. THE offence of *riding or going armed*, with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land; and is particularly prohibited

¹ See Vol. III. pag. 174, &c.

^m 1 Hawk. P. C. 141.

by

Ch. II.

WRONGS.

149

by the statute of Northampton, 2 Edw. III. c. 3. upon pain of forfeiture of the arms, and imprisonment during the king's pleasure: in like manner as, by the laws of Solon, every Athenian was finable who walked about the city in armour^a.

10. SPREADING *false news*, to make discord between the king and nobility, or concerning any great man of the realm, is punished by common law^b with fine and imprisonment; which is confirmed by statutes Westm. I. 3 Edw. I. c. 34. 2 Ric. II. st. I. c. 5. and 12 Ric. II. c. 11.

11. FALSE and *pretended prophecies*, with intent to disturb the peace, are equally unlawful, and more penal; as they raise enthusiastic jealousies in the people, and terrify them with imaginary fears. They are therefore punished by our law, upon the same principle that spreading of public news of any kind, without communicating it first to the magistrate, was prohibited by the antient Gauls^c. Such false and pretended prophecies were punished capitally by statute 1 Edw. VI. c. 12. which was repealed in the reign of queen Mary. And now by the statute 5 Eliz. c. 15. the penalty for the first offence is a fine of 100 l., and one year's imprisonment; for the second, forfeiture of all goods and chattels, and imprisonment during life.

12. BESIDES actual breaches of the peace, any thing that tends to provoke or excite others to break it, is an offence of the same denomination. Therefore *challenges to fight*, either by word or letter, or to be the bearer of such challenge, are punishable by fine and imprisonment, according to the circumstances of the offence^d. If this challenge arises on account of any mo-

^a Pott. Antiqu. b. 1. c. 26.

^b 2 Inst. 226. 3 Inst. 198.

^c "Habent legibus sanctum, si quis quid de republica a finitimis rumore aut fama acceperit, uti ad magistratum deferat, neve cum alio communicet: quod saepe homines temerarios

"atque imperitos falsis rumoribus terreri, et

"ad facinus impelli, et de summis rebus confi-

"lium capere, cognitum est." Caes. de bell. Gall. lib. 6. cap. 19.

^d 1 Hawk. P. C. 135. 138.

ney

ORDINANCE NO. 183806

An ordinance adding a new Article 6.7 to Chapter IV of the Los Angeles Municipal Code to prohibit the possession of large-capacity magazines.

WHEREAS, the ability of an automatic or semi-automatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine";

WHEREAS, any ammunition feeding device with the capacity to accept more than 10 rounds of ammunition as defined in Section 16740 of the California Penal Code is considered to be a "large-capacity" magazine, and some large-capacity magazines can hold up to 100 rounds of ammunition;

WHEREAS, although detachable large-capacity magazines are typically associated with machine guns or semi-automatic assault weapons, such devices are available for any semi-automatic firearm that accepts a detachable magazine, including semi-automatic handguns;

WHEREAS, the ability of large-capacity magazines to hold numerous rounds of ammunition significantly increases the lethal capacity of the automatic and semi-automatic firearms with these magazines;

WHEREAS, a recent study concluded that 42 percent of mass shooting incidents within the last three decades involved an assault weapon and more than half of the perpetrators possessed assault weapons, large-capacity magazines or both;

WHEREAS, on average, shooters who use assault weapons and/or large-capacity magazines in mass shootings shoot 151 percent more people and kill 63 percent more people than shooters who do not use assault weapons and large-capacity magazines;

WHEREAS, the prohibition on large-capacity magazines serves as further protection for law enforcement officers because shooters will be forced to reload – and put themselves in a position to be subdued – before they can cause mass casualties;

WHEREAS, large-capacity magazines were used in a number of high-profile shootings, including:

- The shooting at a San Francisco law firm on July 1, 1993, where a shooter armed with semiautomatic assault weapons and large capacity magazines, some capable of holding up to 50 rounds of ammunition, killed 8 people and injured 6 others;

- The shooting on December 7, 1993, that occurred in a Long Island Rail Road train, where a shooter armed with a semi-automatic handgun and large capacity magazines killed 6 people and wounded 19 others;
- The shooting on February 28, 1997, at a North Hollywood Bank of America where two heavily armed bank robbers emptied more than a thousand rounds of ammunition using fully automatic machine guns and an AR-15 assault rifle with high-capacity drum magazines and armor-piercing bullets, where several courageous LAPD officers were outgunned and injured as a result of the incident;
- The shooting at the Connecticut State Lottery Headquarters in Newington, Connecticut on March 6, 1998, where a gunman armed with 9mm pistol and large-capacity magazine holding 19-rounds of ammunition, killed 4 people;
- The shooting on April 20, 1999, at Columbine High School in Columbine, Colorado where two students using shot guns and semi-automatic handguns loaded with 52, 32 and 28-round large-capacity magazines killed 12 students and injured 21 additional students;
- The shooting at the North Valley Jewish Community Center in Granada Hills on August 10, 1999, where a shooter armed with an Uzi-type submachine gun and semi-automatic pistol and large-capacity magazines fired 70 shots into the lobby of the Community Center, wounding 5 people (3 children, 1 teenage counselor and an officer worker);
- The shooting on the campus of Virginia Polytechnic Institute and State University in Virginia on April 16, 2007, where a college student using two semi-automatic handguns loaded with 15-round large-capacity magazines and hollow-point ammunition killed 32 people and wounded 17 others;
- The shooting on April 3, 2009, at the American Civic Association immigration center in Binghamton, New York where a shooter armed with semi-automatic pistols, two 30-round large capacity magazines, and two 15-round large capacity magazines, killed 13 people and wounded 4 others;
- The shooting at a family-owned beer and wine wholesaler in Manchester, Connecticut on August 3, 2010, where a gunman using a Sturm Ruger SR9 pistol and two large capacity magazines holding 17-rounds of ammunition, killed 8 co-workers and seriously wounded 2 others;
- The shooting on January 8, 2011, at a constituent meeting held in a supermarket parking lot in Tucson, Arizona where U.S. Representative Gabrielle Gifford and 13 others were shot by a man using a semi-automatic pistol loaded with a 33-round large capacity magazine. Six of the people shot died, including a Federal Court Judge;

- The shooting in a movie theater in Aurora, Colorado on July 20, 2012, where a gunman using a 12-gauge Remington 870 Express Tactical shotgun, a Smith & Wesson M&P15 semi-automatic rifle with a 100-round drum magazine and a semi-automatic handgun killed 12 and injured 58 others;
- The recent shooting on December 14, 2012, at Sandy Hook Elementary School in Newtown, Connecticut where a gunman using a Bushmaster XM15-E2S rifle with 30-round large-capacity magazines and semi-automatic handguns fatally shot 20 children and 6 adult staff members;
- The recent shooting on July 15, 2013, near and on the campus of Santa Monica College where a shooter armed with 1,300-rounds of ammunition, including a semi-automatic AR-15 assault rifle with large-capacity magazines, capable of holding 30-rounds of ammunition, killed 5 people and seriously wounded 4 others;
- The recent shooting on August 5, 2013, at a town meeting in Ross Township, Pennsylvania where a gunman fired 28-rounds from a Ruger Mini-14 rifle, killing 3 people and injuring 2 others. The shooter used a 30-round large-capacity magazine in his rifle and had 90-rounds of ammunition in his car;
- The recent shooting on August 20, 2013, at Ronald E. McNair Discovery Learning Academy in Decatur, Georgia where a gunman using an AK 47-style assault rifle, large-capacity magazines and nearly 500 rounds of ammunition exchanged fire with local law enforcement before ultimately surrendering to local law enforcement;
- The recent shooting on September 20, 2013 at a park on the south side of Chicago where a shooter armed with an assault weapon equipped with a large-capacity magazine injured 13 people; and
- The recent shooting on November 1, 2013, at Los Angeles International Airport where a gunman using a Smith & Wesson M&P15 semi-automatic rifle loaded with a 30-round large-capacity magazine opened fire into a crowded airport terminal, killing 1 TSA agent and wounding several others. The shooter had five additional 30-round large-capacity magazines and hundreds of ammunition in his carrying bag;

WHEREAS, large-capacity magazine bans reduce the capacity, and thus the potential lethality, of any firearm that can accept a large capacity magazine; and

WHEREAS, large-capacity magazines are not necessary for individuals to vindicate their right to self-defense. Only in an extraordinarily rare circumstance would a person using a firearm in self-defense ever be required to use a large-capacity magazine to defend himself or herself effectively. This is particularly true in an urban center like Los Angeles where law enforcement can and does respond quickly to threats

and incidents. Conversely, the dangers of large-capacity magazines are heightened in dense urban areas like Los Angeles;

WHEREAS, in 1994, in recognition of the dangers posed by large-capacity magazines, Congress adopted a law prohibiting the transfer and possession of large-capacity magazines as part of the federal assault weapon ban;

WHEREAS, the federal law banning large-capacity magazines was enacted with a sunset clause and expired on September 13, 2004;

WHEREAS, a researcher hired by the U.S. Department of Justice to analyze the effect of the 1994 federal ban on assault weapons and large-capacity magazines found that “attacks with semi-automatics including assault weapons and other semi-automatics equipped with large-capacity magazines result in more shots fired, more persons hit, and more wounds inflicted per victim than do attacks with other firearms”;

WHEREAS, since the federal ban’s sunset in 2004, the Los Angeles Police Department’s Gun Unit has seen a significant increase in the number of large-capacity magazines recovered, from 38 in 2003 to anywhere from 151 to 940 each year between 2004 and 2010;

WHEREAS, the number of assault rifles recovered by the Los Angeles Police Department’s Gun Unit ranged from 93 in 2010, 56 in 2011, 54 in 2012, and 63 in 2013;

WHEREAS, since January 1, 2000, California Penal Code Section 32310 has, with limited exceptions, prohibited the manufacture, importation into the state, keeping for sale, offering or exposing for sale, giving or lending of large capacity magazines; however, California law does not prohibit the possession of these magazines, and this gap in the law threatens public safety;

WHEREAS, any large-capacity magazine that is subject to California Penal Code Section 32390 is a nuisance wherever found within the State and can be disposed of in accordance with the provisions of Sections 18010 and 18005 of the California Penal Code; and

WHEREAS, it is necessary to preserve the peace and protect the general health, safety and welfare of the residents of the City.

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 6.7 is added to Chapter IV of the Los Angeles Municipal Code to read as follows:

ARTICLE 6.7

LARGE-CAPACITY MAGAZINES – POSSESSION PROHIBITED

SEC. 46.30. LARGE-CAPACITY MAGAZINES – POSSESSION PROHIBITED.

(a) Definitions.

(1) “**LARGE –CAPACITY MAGAZINE**” means any detachable ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

- (i) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.
- (ii) A .22 caliber tube ammunition feeding device.
- (iii) A tubular magazine that is contained in a lever-action firearm.

(b) Prohibition on Possession of Large-Capacity Magazines

(1) It is unlawful for any person to possess any large-capacity magazine, except as otherwise authorized by law, whether assembled or disassembled.

(2) Any person who, prior to the effective date of this article, was legally in possession of a large-capacity magazine shall have 60 days from such effective date to do any of the following without being subject to prosecution:

- (i) Remove the large-capacity magazine from the City of Los Angeles;
- (ii) Surrender the large-capacity magazine to the Los Angeles Police Department for destruction;
- (iii) Sell or transfer the large-capacity magazine lawfully in accordance with Section 32410 of the California Penal Code.

(c) **Exemptions.**

The provisions of Subsection (b) shall not apply to the following:

(1) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large-capacity magazine, and does so while acting within the scope of his or her duties;

(2) A person licensed pursuant to Sections 26700 to 26915 of the California Penal Code;

(3) A gunsmith for the purpose of maintenance, repair or modification of the large-capacity magazine;

(4) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;

(5) Any person, corporation or other entity that manufactures the large-capacity magazine for a person mentioned in Subdivision (1), or for export pursuant to applicable federal regulations;

(6) Any person using the large-capacity magazine solely as a prop for a motion picture, television or video production;

(7) Any holder of a special weapons permit issued pursuant to California Penal Code Sections 18900, 31000, 32650, 32700-32720, or 33300;

(8) Any person issued a permit pursuant to California Penal Code Section 32315 by the Department of Justice upon a showing of good cause for the possession, transportation or sale of large-capacity magazines between a person licensed pursuant to Sections 26700 to 26915 of the California Penal Code, and an out-of-state client, when those activities are in accordance with the terms and conditions of the permit;

(9) Any federal, state or local historical society, museum or institutional collection which is open to the public, provided that the large-capacity magazine is properly housed, secured from unauthorized handling and unloaded;

(10) Any person who finds the large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large-capacity magazine no longer than is necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to the law;

(11) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities;

(12) Any person in the business of selling or transferring large-capacity magazines in accordance with California Penal Code Section 32310 who is in possession of a large-capacity magazine solely for the purpose of doing so; or

(13) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000 if no magazine that holds 10 or less rounds of ammunition is compatible with that firearm and the person possesses the large-capacity magazine solely for use with that firearm;

(d) **Penalty.** Violation of this section shall constitute a misdemeanor.

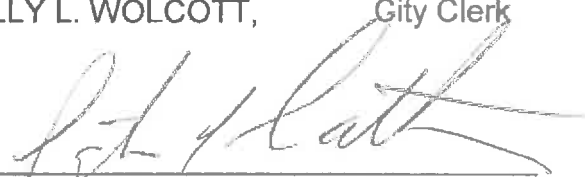
(e) **Severability.** If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of JUL 28 2015.

HOLLY L. WOLCOTT, City Clerk

By



Deputy

Approved August 7, 2015



Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By



BRIAN SOTTILE
Deputy City Attorney

Date JUN 26 2014

File No. CF 13-0068

DECLARATION OF POSTING ORDINANCE

I, VERONICA COLEMAN-WARNER, state as follows: I am, and was at all times hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and a Deputy City Clerk of the City of Los Angeles, California.

Ordinance No.183806 – Adding a new Article 6.7 to Chapter IV of the Los Angeles Municipal Code to prohibit the possession of large-capacity magazines - a copy of which is hereto attached, was finally adopted by the Los Angeles City Council on **July 28, 2015**, and under the direction of said City Council and the City Clerk, pursuant to Section 251 of the Charter of the City of Los Angeles and Ordinance No. 172959, on **August 10, 2015** I posted a true copy of said ordinance at each of the three public places located in the City of Los Angeles, California, as follows: 1) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; 2) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; 3) one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Copies of said ordinance were posted conspicuously beginning on **August 10, 2015** and will be continuously posted for ten or more days.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this **7th** day of **August, 2015** at Los Angeles, California.


Veronica Coleman-Warner, Deputy City Clerk

Ordinance Effective Date: September 19, 2015

Council File No. 13-0068

APP 058

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIRGINIA DUNCAN, et al,

Plaintiffs/Appellants,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant/Appellee.

No. 17-56081

D.C., Southern District of California,
San Diego, Case No. 3:17-cv-01017-
BEN-JLB

DECLARATION OF TRUDI RYAN IN SUPPORT OF
AMICI CURIAE THE CITY AND COUNTY OF SAN
FRANCISCO, THE CITY OF LOS ANGELES, AND
THE CITY OF SUNNYVALE

On Appeal from the United States District Court
for the Southern District of California

The Honorable Roger T. Benitez

DENNIS J. HERRERA
San Francisco City Attorney
PETER J. KEITH
Team Leader
VICTORIA L. WEATHERFORD
Deputy City Attorney
Fox Plaza
1390 Market Street, 6th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-4287
Facsimile: (415) 437-4644
E-Mail: victoria.weatherford@sfgov.org

Attorneys for *Amicus Curiae*
CITY AND COUNTY OF SAN
FRANCISCO

MICHAEL N. FEUER
Los Angeles City Attorney
JAMES P. CLARK
Chief Deputy City Attorney
BENJAMIN CHAPMAN
Deputy City Attorney
Office of the Los Angeles City Attorney
200 North Main Street, City Hall East,
8th Floor
Los Angeles, CA 90012
Telephone: (213) 367-4560
E-Mail: mike.feuer@lacity.org

Attorneys for *Amicus Curiae*
CITY OF LOS ANGELES

1 Additional Counsel:

2 JOHN A. NAGEL, Sunnyvale City Attorney (164796)
3 REBECCA L. MOON, Sr. Assistant City Attorney (167981)
4 Office of the Sunnyvale City Attorney
5 456 West Olive Avenue
6 Sunnyvale, California 94086
7 (408) 730-7464
8 E-Mail: jnagel@sunnyvale.ca.gov

9 Attorneys for *Amicus Curiae*
10 CITY OF SUNNYVALE

11 I, TRUDI RYAN declare and state:

12 1. I am employed as the Community Development Director for the City
13 of Sunnyvale. I have been employed in that capacity for approximately 2 years. I
14 was previously the Planning Officer for the City for over 26 years. As Community
15 Development Director I organize and administer the operations of the Community
16 Development Department; oversee all land use policy planning and development
17 review in the City and administer and enforce the Sunnyvale Municipal Code and
18 other government regulations related to the physical development of the City. I
19 also administer the One-Stop Permit Center which coordinates customer services
20 for zoning information and approvals, development applications and building
21 permits; and oversee the City's housing programs which include administering
22 federal grant funds.

23 2. I have reviewed Judge Benitez's June 29, 2017 Order Granting
24 Preliminary Injunction in the *Duncan at al. v. Becerra et al.* matter in the United
25 States District Court for the Southern District of California, case No. 3:17-cv-
1017-BEN-JLB. Many of the "factual" statements contained therein about
Sunnyvale are not accurate and contrary to my professional training and many

1 years' experience as the Planning Officer and Community Development Director
2 in Sunnyvale. As one example, Judge Benitez suggests in his Order Granting
3 Preliminary Injunction that Sunnyvale residents are "wealthy enough to live in
4 gated, security-guarded enclaves." (See, p. 49.) While Sunnyvale residents, in
5 general, enjoy slightly higher average incomes than other parts of the state, the
6 community has a range of household incomes which also include households living
7 below the poverty line, up through households above moderate incomes. There are
8 no gated or security-guarded residential neighborhoods in Sunnyvale.

9 3. The 2017 population of Sunnyvale, as reported by the State of
10 California, is 149,831. As reported in the January 31, 2015 to January 31, 2023
11 Housing Element of the Sunnyvale General Plan, 72% of Sunnyvale households
12 enjoyed moderate and above incomes (>80% of area median incomes); 8% of
13 households were low income and 20% of household incomes were classified as
14 very low (30 – 50% of area median income). In 2010, 7.5% of the population was
15 living below poverty level.

16 4. Sunnyvale has a wide range of land uses and includes a wide choice
17 of housing styles. The City is 22.69 square miles, of which 15.47 is developable
18 (this area excludes baylands and creeks). Roughly 54 percent of the developable
19 land (inclusive of public streets) is composed of residential uses of which
20 approximately three-quarters (6.25 square miles) is single-family detached homes.
21 Between 1950 and 1970, Sunnyvale envisioned its residential sector as principally
22 single-family detached homes. These homes were built on former orchards and
23 flower farms (typically 30-50 acres at a time) and consisted of interconnected
24 public streets with convenient vehicle access through-out the city. Neighborhoods,
25 roughly one-half to one square mile in size, were defined by public elementary
schools and city parks.

1 5. None of the single-family subdivisions were, nor are, gated or
2 exclusive in any manner as they are all served by public streets. In the 1960s, the
3 City started to allow more development of apartments, accessed by private
4 driveways; however, no gates, guardhouses or other physical barriers were
5 established in this type of housing. In the 1980s, more townhouse developments
6 were built, primarily on former industrial and commercial property. More recently,
7 higher density housing (as compared to the single-family neighborhoods) with
8 podium or underground parking has been built. Today there are about 20 apartment
9 and condominium developments that have security gates controlling access to
10 private parking (podium and subterranean parking garages); just as a private garage
11 on a single-family residence has a private garage for the resident. Only three
12 residential apartment or townhouse developments have controlled access gates to
private surface parking.

13 6. The remainder of Sunnyvale includes about 23% of the land area
14 developed with office and industrial uses, retail/service uses are 6.4% of the land,
15 City parks and open space make up 7.4% of the land and all other uses are 5.7%.
16 About 6.2% of the land is vacant. Amongst non-residential uses, only the
17 Lockheed-Martin campus (about 400 acres; less than one square mile) has
18 controlled access on private streets. Lockheed-Martin is a defense and aerospace
19 company engaged in research, design, development, and manufacture of their
20 products.

21 7. The suggestion that Sunnyvale residents are “wealthy enough to live
22 in gated, security-guarded enclaves” and do not need the protection from the
23 dangers that large capacity magazines pose is inaccurate.
24
25

APP 062

1 I declare under penalty of perjury under the laws of the State of California
2 that the foregoing is true and correct. Executed by me this 17th day of
3 October, 2017, in Sunnyvale, California.

4
5 
6 TRUDI RYAN
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APP 063

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIRGINIA DUNCAN, et al,

No. 17-56081

Plaintiffs/Appellants,

D.C., Southern District of California,
San Diego, Case No. 3:17-cv-01017-
BEN-JLB

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant/Appellee.

DECLARATION OF CHIEF PHAN NGO IN SUPPORT
OF AMICI CURIAE THE CITY AND COUNTY OF
SAN FRANCISCO, THE CITY OF LOS ANGELES,
AND THE CITY OF SUNNYVALE

On Appeal from the United States District Court
for the Southern District of California

The Honorable Roger T. Benitez

DENNIS J. HERRERA
San Francisco City Attorney
PETER J. KEITH
Team Leader
VICTORIA L. WEATHERFORD
Deputy City Attorney
Fox Plaza
1390 Market Street, 6th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-4287
Facsimile: (415) 437-4644
E-Mail: victoria.weatherford@sfgov.org

Attorneys for *Amicus Curiae*
CITY AND COUNTY OF SAN
FRANCISCO

MICHAEL N. FEUER
Los Angeles City Attorney
JAMES P. CLARK
Chief Deputy City Attorney
BENJAMIN CHAPMAN
Deputy City Attorney
Office of the Los Angeles City Attorney
200 North Main Street, City Hall East, 8th
Floor
Los Angeles, CA 90012
Telephone: (213) 367-4560
E-Mail: mike.feuer@lacity.org

Attorneys for *Amicus Curiae*
CITY OF LOS ANGELES

Additional Counsel:

JOHN A. NAGEL, Sunnyvale City Attorney (164796)
REBECCA L. MOON, Sr. Assistant City Attorney (167981)
Office of the Sunnyvale City Attorney
456 West Olive Avenue
Sunnyvale, California 94086
(408) 730-7464
E-Mail: jnagel@sunnyvale.ca.gov

Attorneys for *Amicus Curiae*
CITY OF SUNNYVALE

I, Phan Ngo, declare and state:

1. I am the Director of the Sunnyvale Department of Public Safety (DPS). I have been the DPS Director for nine months. Previously, I had worked at the San Jose Police Department (SJPD) for over 27 years and retired as a Deputy Chief. With a population of over a million residents, San Jose is the 10th largest city in the United States.

2. DPS is a fully integrated public safety department that provides Police, Fire, and EMS services. Sunnyvale has a population of approximately 150,000 residents and is the second largest city in Santa Clara County, California.

3. During my time at SJPD, I worked in a wide range of assignments in administration, field operations, and investigations. As an officer and sergeant working assignments in the Assaults, Robbery, and Gang Unit, I have personally investigated numerous violent crimes involving the use of a firearm. Also, as a Deputy Chief of Investigations and Deputy Chief of Patrol, I oversaw hundreds of investigations involving the use of a firearm. In many of these violent incidents, the firearms used had high capacity (more than 10 rounds) ammunition magazines.

1 4. I have reviewed Judge Benitez's June 29, 2017 Order Granting
2 Preliminary Injunction in the *Duncan at al. v. Becerra et al.* matter in the United
3 States District Court for the Southern District of California, case No. 3:17-cv-
4 1017-BEN-JLB. Many of the "factual" statements contained therein are contrary to
5 my professional training and many years' experience as a law enforcement officer
6 in Sunnyvale. As one example, the district court states in its Order Granting
7 Preliminary Injunction that in Alpine County, California that "[t]he risk of stray
8 bullets wounding bystanders is low. It is likely that many rely on themselves and
9 their lawfully owned firearms for self-defense. Certainly in suburban and rural
10 settings, there will be occasions when more than 10-rounds are needed for self-
11 defense." (See, p. 49-50.)

12 5. It has been debated that because rural environments are different from
13 suburban or urban environments, the ability to possess high capacity ammunition
14 magazines might enhance one's ability to protect oneself - where help is far away.
15 I do not agree. To my knowledge there are no significant statistical data to support
16 the supposition that the ability to possess high capacity ammunition magazines had
17 saved any lives in a rural environment. Furthermore, in my 28 years of law
18 enforcement experience, I have not seen an incident where a firearm with high
19 capacity ammunition magazines has saved anyone's life. Indeed, the opposite is
20 true – where firearms with these high capacity ammunition magazines have
21 seriously injured or killed many victims. Banning high capacity ammunition
22 magazines will make California safer.

23 6. Outside of law enforcement, the only purpose for possessing a high
24 capacity ammunition magazine is to inflict as much damage as possible in a short
25 period of time. They are not necessary for any civilian to possess.

1 7. High capacity ammunition magazines not only pose a danger to the
2 public, but also to law enforcement personnel. As outlined in the Appellant's
3 Record on Appeal, there are numerous incidents in this country that can be pointed
4 to where officers were seriously injured or killed by firearms with high capacity
5 ammunition magazines. My personal experiences as a law enforcement officer in
6 San Jose similarly lead me to believe that high capacity magazines pose a unique
7 danger to law enforcement. As just one recent example, as a Deputy Chief at the
8 SJPd I oversaw a 2016 officer-involved shooting investigation where the suspect
9 fired 9 rounds at the officers, with an AR pistol type, semi-automatic weapon. Also
10 recovered at the scene was a Mag Pro 30 clip (large capacity magazine) that still
11 had 21 .223 caliber rounds in the clip. Fortunately, none of the officers involved in
12 that incident were injured.

13 8. The voters of Sunnyvale adopted Measure C in 2013 with 66.55
14 percent voting yes. Measure C presented a gun safety ordinance to the voters and
15 required: 1) report the known loss or theft of a firearm to the police within 48
16 hours; 2) storing firearms in residences in a locked container or disabling them
17 with a trigger lock when not in the owner's immediate possession; 3) prohibited
18 the possession of ammunition magazines capable of holding more than 10 rounds,
19 with certain exceptions; and 4) logging and tracking of ammunition sales in the
20 City. Measure C was the subject of the *Fyock* litigation, where this Court upheld
21 the denial of a preliminary injunction that sought to enjoin the implementation of
22 Measure C on Second Amendment grounds on virtually the same record as was
23 presented to the trial court in this case. (*Fyock v. Sunnyvale*, 779 F.3d 991, 1001
24 (9th Cir. 2015))
25

1 9. The Argument in Favor of Measure C stated that “[m]any of us in
2 Sunnyvale are concerned about the risk to our families from stolen, improperly
3 secured or large-capacity weapons in private hands.”

4 10. In 2016, 70.6% of Sunnyvale voters supported Proposition 63 (See,
5 Exhibit 1, which is a true and correct copy of page 93 of Santa Clara County
6 Registrar of Voter’s Final Statement of Vote for the November 8, 2016 Presidential
7 General Election obtained from Santa Clara County Registrar of Voters website.)
8 While Judge Benitez rightly points out that Sunnyvale is a safe community, it is
9 clear that the overwhelming majority of Sunnyvale voters did not feel that
10 protections of Measure C were sufficient to protect them from the threat of large
11 capacity magazines.

12 11. Furthermore, without a statewide possession ban Measure C is
13 difficult to enforce as it is not possible to determine when a magazine was
14 manufactured or purchased. From my law enforcement experience, most of which
15 predates Measure C, “grandfathering” in existing large capacity magazines at a
16 minimum weakens, if not outright eliminates, the very protections that Sunnyvale
17 residents sought when they adopted Measure C. In fact, it is precisely for this
18 reason that Measure C banned possession of large capacity magazines. Proposition
19 63 will close that loophole and will allow Sunnyvale residents to achieve the
20 protections they sought with the adopted of Measure C in 2013.

21 12. The voters of Sunnyvale spoke clearly when they voted in favor of
22 Proposition 63: a state-wide prohibition is necessary to ensure that large capacity
23 magazines do not permeate Sunnyvale borders from neighboring jurisdictions (or
24 across state lines) and jeopardize the lives of Sunnyvale residents.

25 13. It is also my professional opinion, developed from years of experience
with the SJPd and DPS in law enforcement, that Proposition 63 is necessary to

APP 068

1 ensure the safety of first responders, law enforcement, to reduce the trafficking of
2 weapons and large-capacity firearms magazines, and to reduce the incidents of
3 mass shootings and mass casualties in California that occur when these lethal
4 weapons enter the hands of criminals and the mentally disturbed—in Sunnyvale
5 and throughout the State of California. Sunnyvale is not an island—nor is it the
6 “gated, security-guarded enclave[]” Judge Benitez portrays it to be (p. 49).
7 Sunnyvale, like other California jurisdictions with similar bans as Measure C,
8 remain vulnerable to gun violence.

9 14. Proposition 63’s possession ban will make Sunnyvale residents less
10 vulnerable to being injured or killed in large numbers and will increase not only
11 increase the safety of our residents, but also our public safety officers.

12 I declare under penalty of perjury under the laws of the State of California
13 that he foregoing is true and correct. Executed by me this 17th day of
14 October, 2017, in Sunnyvale, California.

15
16
17
18 
19 PHAN NGO
20
21
22
23
24
25

APP 069

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIRGINIA DUNCAN, et al,

Plaintiffs/Appellees,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant/Appellant.

No. 17-56081

D.C., Southern District of California,
San Diego, Case No. 3:17-cv-1017-BEN

**DECLARATION OF DETECTIVE MICHAEL MERSEREAU OF THE
LOS ANGELES POLICE DEPARTMENT IN SUPPORT OF AMICI
CURIAE THE CITY AND COUNTY OF SAN FRANCISCO, THE CITY
OF LOS ANGELES, AND THE CITY OF SUNNYVALE**

On Appeal from the United States District Court
for the Southern District of California

The Honorable Roger T. Benitez

DENNIS J. HERRERA
San Francisco City Attorney
PETER J. KEITH
Team Leader
VICTORIA L. WEATHERFORD
Deputy City Attorney
Fox Plaza
1390 Market Street, 6th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-4287
Facsimile: (415) 437-4644
E-Mail: victoria.weatherford@sfgov.org

Attorneys for *Amicus Curiae*
CITY AND COUNTY OF SAN
FRANCISCO

MICHAEL N. FEUER
Los Angeles City Attorney
JAMES P. CLARK
Chief Deputy City Attorney
BENJAMIN CHAPMAN
Deputy City Attorney
Office of the Los Angeles City Attorney
200 North Main Street, City Hall East,
8th Floor
Los Angeles, CA 90012
Telephone: (213) 367-4560
E-Mail: benjamin.chapman@lacity.org

Attorneys for *Amicus Curiae*
CITY OF LOS ANGELES

APP 070

Additional Counsel for *Amici Curiae*:

JOHN A. NAGEL
Sunnyvale City Attorney
REBECCA L. MOON
Sr. Assistant City Attorney
ROBERT L. BOCO
Sr. Assistant City Attorney
MELISSA C. TRONQUET
Assistant City Attorney
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, California 94086
Telephone: (408) 730-7464
E-Mail: jnagel@sunnyvale.ca.gov

Attorneys for *Amicus Curiae*
CITY OF SUNNYVALE

DECLARATION OF MICHAEL MERSEREAU

I, Michael Mersereau, declare and state as follows:

1. I am a Detective employed by the Los Angeles Police Department (the "LAPD") as a sworn officer for approximately 21 years. I have personal knowledge of the facts set forth below except those stated on information and belief. As to those facts, I believe them to be true and if called as a witness, could and would testify competently thereto.

2. I am currently assigned to the LAPD Gun Unit and have been for approximately 14 years. The LAPD Gun Unit is involved exclusively in the enforcement of the California Dangerous Weapons Control Act and the Municipal Code of the City of Los Angeles as it pertains to firearms. Prior to this assignment, I worked uniform patrol, unformed gangs, and divisional gang detectives. In these assignments, I have encountered a wide variety of firearms and firearms accessories, including high capacity magazines, and I have made numerous arrests for firearms violations.

3. Pursuant to my current assignment, I received training from the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) on illegal firearms trafficking, firearms identification and tracing, undercover operations, hidden compartment identification and recognition, assault weapons, and Federal Firearms laws. I have also received informal training on the above-mentioned subjects from more experienced investigators. I routinely review California Department of Justice (DOJ) and BATFE publications related to firearm identification and transactions. I have attended numerous gun shows and firearms trade expositions. I routinely review Firearms Industry trade publications. I have spoken to hundreds of persons engaged in the business of firearms sales. I have also been involved in numerous investigations of illegally transferred firearms, possession of prohibited weapons including machine guns, assault weapons, and short barrel shotguns and rifles, as

APP 072

well as possession of firearms by prohibited persons. As a result of these investigations, I have seized or participated in the seizure of hundreds of prohibited firearms and thousands of high capacity magazines.

4. On July 28, 2015, the City of Los Angeles enacted Los Angeles Municipal Code section 46.30, which, with certain exceptions, prohibited any person from possessing a large capacity magazine, defined as a magazine with the capacity to accept more than ten rounds, within Los Angeles (the “Ordinance”). On September 19, 2015, the Ordinance went into effect. The Ordinance is very similar to the State-wide ban on the possession of large-capacity magazines passed by the voters in November 2016 (Proposition 63).

5. It is my understanding based on information provided to me by the Office of the Los Angeles City Attorney that the City of Los Angeles has prosecuted twenty-two cases for unlawful possession of a large-capacity magazine.

6. Subsequently, due to the passage of Proposition 63, the City of Los Angeles added a sunset provision to the Ordinance so that it would no longer be in effect once the state law went into effect on July 1, 2017. This was to avoid a preemption lawsuit. As a result, the City of Los Angeles currently does not prohibit the possession of large-capacity magazines.

7. Gun violence is a particular problem in Los Angeles. The LAPD lacks a central database of all firearms related statistics. The statistics set forth below are accumulated by a number of different entities within the department including the Gun Unit and Robbery Homicide division. Here are some statistics for the past five years regarding gun-related crimes in Los Angeles:

APP 073

Year	Total Number of Gunshot Victims
2013	1012
2014	994
2015	1119
2016	1180
2017 (as of 9/6/17)	718

Year	Total Number of "Shots Fired" Calls
2013	2198
2014	2134
2015	2419
2016	2628
2017	N/A

Year	Total Number of Firearms Related Arrests
2013	1225
2014	1153
2015	1265
2016	1509
2017	N/A

APP 074

Year	Total Number of Homicide Victims Who Were Shot
2013	182
2014	185
2015	208
2016	127
2017	N/A

8. Not surprisingly given the above statistics, the number of weapons seized both city-wide, and by the gun unit in particular, are high as well. Here are some statistics for the past five years regarding gun-related seizures:

Year	Total Number of Firearms Booked Citywide
2013	5130
2014	5529
2015	6151
2016	5908
2017 (as of 9/6/17)	4513

9. Statistics regarding assault weapons and machine guns are provided because these guns typically use large-capacity magazines. The LAPD does not keep statistics on the number of assault weapons and machine guns recovered citywide due to the expertise needed to determine whether a weapon is actually an assault weapon or a machine gun. The below statistics represent Assault Weapons

APP 075

/ Machine Guns recovered by the Gun Unit only. Citywide numbers are likely higher.

Year	Number of Assault Rifles/Machine Guns recovered by the Gun Unit
2013	123
2014	113
2015	145
2016	89
2017 (as of 9/6/17)	83

10. With respect to large-capacity magazines specifically, the statistics provided below represent only the seizure of large capacity magazines by the Gun Unit. As with assault rifles, the LAPD does not keep statistics on the number of large-capacity magazines recovered citywide.

Year	Number of Large-Capacity Magazines Recovered by the Gun Unit
2013	601
2014	392
2015	8826 ¹
2016	224
2017 (as of 9/6/17)	456

¹ This was due to an abnormal seizure regarding a deceased individual at a condominium in the Pacific Palisades.

APP 076

11. It is my opinion, based on my training and experience, that large-capacity magazines in the hands of criminals pose a greater danger to both police officers and the public than standard-capacity magazines. Large capacity magazines increase the number of rounds that the shooter can discharge in a given amount of time. Large capacity magazines allow the shooter to fire more rounds at their target(s) before the need to stop firing in order to replace the magazine. The use of large capacity magazines in conjunction with any semi-automatic or fully automatic firearm increases the potential lethality of the firearm. There is a direct correlation between the number of rounds immediately available to the shooter and the ability to inflict more casualties among those persons targeted. This has been illustrated in various mass-shootings in and around the City of Los Angeles over the past twenty years.

12. For example, in one of the most brazen crimes ever committed, on February 28, 1997, two heavily armed men robbed a Bank of America in North Hollywood. According to reports that I have read, the bank robbers emptied more than one thousand rounds of ammunition using fully automatic machine guns with high-capacity drum magazines (holding 75 to 100 rounds), an AR-15 assault rifle converted to fire automatically with two high-capacity magazines (holding 100 rounds each), a semi-automatic HK-91 rifle with several 30-round high-capacity magazines, and armor-piercing bullets. The LAPD officers responding to the scene were outgunned and injured as a result of this incident. Indeed, twelve police officers and eight civilians were injured.

13. On August 10, 1999, a white supremacist fired shots into the lobby of the North Valley Jewish Community Center in Granada Hills. According to reports I have read, the shooter was armed with a fully-automatic Uzi machine gun, a semi-automatic pistol, and large capacity magazines. Three children, a teenage counselor, and an office worker were injured.

APP 077

14. On June 7, 2013, a shooter opened fire in and around the campus of Santa Monica College. According to reports that I have read, the shooter was armed with a semi-automatic rifle (similar in type to an AR-15), 1,300 rounds of ammunition, and forty 30-round magazines. Five people were killed and four people were injured.

15. On November 1, 2013, a gunman opened fire at the Los Angeles International Airport. According to reports that I have read, the shooter used a Smith & Wesson M&P15 semi-automatic rifle loaded with a 30-round large-capacity magazine. The shooter also had five additional 30-round large-capacity magazines and hundreds of rounds of ammunition in his carrying bag. One TSA agent was killed and several other people were injured.

16. On December 2, 2015, a married couple targeted a San Bernardino County Department of Public Health event and Christmas party, killing fourteen people and wounding twenty-two others. According to reports that I have read, the shooters were armed with semi-automatic pistols, a Smith & Wesson M&P15 rifle that was modified to make it fully automatic, a DPMS A-15 rifle with its bullet button removed allowing for the quick exchange of large-capacity magazines, and at least four large-capacity magazines.

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

Executed on October 18, 2017 at Los Angeles, California.

Michael Mervoreau

CERTIFICATE OF SERVICE

I, Pamela Cheeseborough, hereby certify that I electronically filed the following document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECFsystem on October 19, 2017.

**BRIEF OF *AMICI CURIAE* THE CITY AND
COUNTY OF SAN FRANCISCO, THE CITY OF
LOS ANGELES, AND THE CITY OF SUNNYVALE
IN SUPPORT OF REVERSAL**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed October 19, 2017, at San Francisco, California.

/s/Pamela Cheeseborough

Pamela Cheeseborough