

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. 19-55376

U.S. District Court, Southern District,
No. 3:17-cv-01017-BEN-JLB

**BRIEF OF AMICI CURIAE
CITY AND COUNTY OF SAN FRANCISCO, CITY
OF ALAMEDA, AND THE CITIES OF
CALABASAS, LOS ANGELES, OAKLAND, SAN
DIEGO, SANTA MONICA, SUNNYVALE, AND
WEST HOLLYWOOD IN SUPPORT OF THE
STATE OF CALIFORNIA'S PETITION FOR
REHEARING EN BANC**

Appeal from the United States District Court, Southern District of California
The Honorable Judge Roger T. Benitez

DENNIS J. HERRERA
San Francisco City Attorney
AILEEN M. MCGRATH
Co-Chief of Appellate Litigation
City Attorney's Office
City Hall Room 234
One Dr. Carlton B. Goodlett Pl.
San Francisco, California 94102
Telephone: (415) 554-4691
Facsimile: (415) 554-4699
E-Mail: aileen.mcgrath@sfcityatty.org

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

YIBIN SHEN
City Attorney
MICHAEL ROUSH
Chief Assistant City Attorney
MONTAGUE HUNG
Deputy City Attorney
Office of the City Attorney
City of Alameda
2263 Santa Clara Avenue, Room #280
Alameda, CA 94501

Attorneys for *Amicus Curiae* CITY OF
ALAMEDA

[Additional Counsel Listed on Next Page]

Additional Counsel for *Amici Curiae*:

SCOTT H. HOWARD

City Attorney

Colantuono Highsmith and Whatley, PC
790 East Colorado Blvd, Suite 850
Pasadena, California 91101

Attorneys for *Amicus Curiae*
CITY OF CALABASAS

GEORGE S. CARDONA

Interim City Attorney

Office of the City Attorney
1685 Main Street
Santa Monica, California 90401

Attorneys for *Amicus Curiae*
CITY OF SANTA MONICA

MICHAEL N. FEUER

Los Angeles City Attorney

KATHLEEN A. KENEALY

Chief Assistant City Attorney

SCOTT MARCUS

Senior Assistant City Attorney

BLITHE S. BOCK

Managing Assistant City Attorney

DANIELLE GOLDSTEIN

Deputy City Attorney

Office of the City Attorney

200 North Main Street,

City Hall East, 8th Floor

Los Angeles, California 90012

Attorneys for *Amicus Curiae*
CITY OF LOS ANGELES

JOHN A. NAGEL

Sunnyvale City Attorney

REBECCA L. MOON

Sr. Assistant City Attorney

Office of the City Attorney

456 West Olive Avenue

Sunnyvale, California 94086

Attorneys for *Amicus Curiae*
CITY OF SUNNYVALE

MICHAEL JENKINS

City Attorney

Best Best & Krieger LLP

1230 Rosecrans Avenue, Suite 110

Manhattan Beach, California 90266

Attorneys for *Amici Curiae*
CITY OF WEST HOLLYWOOD
and MAYOR LINDSEY P.
HORVATH

BARBARA J. PARKER

Oakland City Attorney

Office of the City Attorney

One Frank Ogawa Plaza, Sixth Floor

Oakland, California 94612

Attorneys for *Amicus Curiae*
CITY OF OAKLAND

MARA W. ELLIOTT

City Attorney

JONATHAN I. LAPIN

Chief Deputy City Attorney

Office of the City Attorney

1200 Third Ave., Suite 1620

San Diego, California 92101

Attorneys for *Amicus Curiae*
CITY OF SAN DIEGO

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INTEREST OF *AMICI CURIAE*¹

Amici are a diverse group of cities—including large metropolitan areas, smaller urban centers, and residential communities—from throughout the State of California. Although their communities differ in many ways, *amici* are united in their desire to protect their residents and law enforcement officers from gun violence. *Amici* have come together to voice shared concerns about the dangers of large-capacity magazines (LCMs) and the implications the panel’s decision in this case has for *amici*’s ability to protect their communities from these deadly weapons.

Amici have observed the dangers of LCMs firsthand and have sought to reduce the prevalence of these weapons in their communities. *Amici* the City and County of San Francisco and the City of Sunnyvale ban the possession of LCMs, in laws that this Court and others have previously upheld. *Fyock v. City of Sunnyvale*, 779 F.3d 991 (9th Cir. 2015); *San Francisco Veteran Police Officers Ass’n v. City & Cty. of San Francisco*, 18 F. Supp. 3d 997 (2014). The City of Oakland has also banned the possession of LCMs since 2016. Oakland Muni. Code § 9.38.010-080. Other *amici* have declined to regulate LCMs themselves and instead have relied on the State’s law to prohibit LCM possession in their jurisdictions. For instance, the City of Alameda recently passed a number of ordinances related to public safety and gun violence.² While Alameda considered banning LCMs at that time, it chose not to do so because of the State’s existing

¹ All parties have consented to the filing of this brief. No party’s counsel authored the brief in whole or in part, no party or party’s counsel contributed money intended to fund preparing or submitting the brief, and no person other than *amici* or their counsel contributed money intended to fund preparing or submitting the brief.

² Appx. A, City of Alameda Ord. No. 3269, enacted as Alameda Muni. Code § 4-32; Appx. B, City of Alameda Ord. No. 3270, enacted as Alameda Muni. Code § 4-36.

law. Similarly, the City of Los Angeles enacted Municipal Code section 46.30 in 2015 to prohibit the possession of LCMs in that city. But after the State’s ban went into effect, Los Angeles added a sunset provision to section 46.30, relying instead on the State’s law to protect against LCM-related violence. And all *amici*—regardless of whether they have considered banning LCMs—have observed the inherent dangers of LCMs to the public in general and law enforcement officers in particular.

Amici curiae therefore submit this brief to explain why the en banc Court should reconsider the test the divided panel applies for evaluating the constitutionality of firearms restrictions. The panel’s framework understates the dangers LCMs pose, makes it more difficult for *amici* to regulate weapons that might conceivably be used for self-defense, and creates new uncertainty about the factors that bear on the constitutionality of sensible gun regulations.

INTRODUCTION AND SUMMARY OF ARGUMENT

This panel is the first in the Nation to have struck down a State or local ban on the possession of LCMs. Opn. 67 (Lynn, J.). Every other court—including this Court—that has reviewed a prohibition on LCMs has applied intermediate scrutiny and upheld the law. *Fyock*, 779 F.3d at 1001; *see also Worman v. Healey*, 922 F.3d 26, 30-31 (1st Cir. 2019); *Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, 910 F.3d 106, 110 (3d Cir. 2018); *Kolbe v. Hogan*, 849 F.3d 114, 135, 138 (4th Cir. 2017) (en banc); *Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015); *N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 261-64 (2d Cir. 2015); *Heller v. District of Columbia* (“*Heller II*”), 670 F.3d 1244, 1260-64 (D.C. Cir. 2011).

The panel’s departure from this authority warrants en banc review for the reasons the State of California has set forth. Pet. 6-17. *Amici* do not restate those reasons here. Instead, *amici* address the various reasons the panel’s decision

threatens local government interests, ignores front-line law enforcement observations and experiences, and upends established understandings about when gun control measures are justified and necessary. The panel decision understates the interest in public safety that the Second Amendment has always protected, disregards the litany of evidence about how LCMs are actually used, and suggests that cities with *more* crime have *less* power to regulate dangerous weapons in their jurisdictions. Absent en banc review, the panel’s decision will make it more difficult for *amici* to protect their communities and their law enforcement officers from gun violence.

I. The Panel’s Determination That LCMs Are Common, And Therefore Protected By The Second Amendment, Threatens Public Safety And Localities’ Ability To Enact Gun Safety Laws.

In applying the first prong of this Circuit’s Second Amendment jurisprudence—which evaluates whether a regulation implicates the Second Amendment at all, *see Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014)—the panel held that LCMs receive Second Amendment protection largely because they are in common use in many parts of the Nation. Opn. 22. The panel found that this evidence of commonality “ends the inquiry” into whether these weapons are protected by the Second Amendment, and declared evidence about the dangers of LCMs to be “irrelevant.” Opn. 21-22. The panel’s approach is contrary to existing case law and will curtail *amici*’s efforts to regulate weapons that pose special dangers to their communities.

A. By using national evidence to assess commonality, the panel decision cabins cities’ ability to tailor local gun control measures.

In determining that the use of LCMs is protected by the Second Amendment, the panel relied almost exclusively on its conclusion that LCMs are in common use. Opn. 20-27. The panel based this finding on statistics showing that “[m]illions of Americans across the country own LCMs,” and that “half of all

magazines in America hold more than ten rounds.” Opn. 12. The panel also emphasized that LCMs “may be lawfully possessed in 41 states and under federal law.” *Id.*

This is contrary to existing authority that has preserved *local* authority over gun control measures. States and local jurisdictions have the primary responsibility for ensuring public safety. *See United States v. Morrison*, 529 U.S. 598, 618 (2000). The Second Amendment does not supersede this authority. Rather, the Supreme Court has held that the constitutional protection of the right to bear arms, while imposing “limits” on policy choices, by no means eliminates state and local authority “to devise solutions to social problems that suit local needs and values.” *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010) (plurality op.). And although firearm violence is a national problem, the Court has recognized that “conditions and problems differ from locality to locality,” so gun regulations that may be appropriate or effective in one area may be inappropriate or unwarranted in another. *Id.* at 793.

The panel’s approach threatens the ability of state and local governments to enact firearm regulations tailored to local needs, instead forcing them into lockstep regardless of their differences. Here, California’s longstanding legislative judgment that LCMs are dangerous is effectively trumped by the popularity of LCMs among residents of other States. Opn. 12. And that other States have decided not to prohibit the possession of LCMs in their communities—communities that may differ from California in any number of ways—limits California’s ability to regulate those firearms. This standard puts a stranglehold on local jurisdictions’ ability to adopt firearms restrictions to address local concerns.

B. The panel’s focus on commonality understates the significant dangers of LCMs, especially to law enforcement officers.

In focusing on LCMs’ commonality, the panel decision also effectively reads the dangers of LCMs out of the first-prong analysis. *See* Opn. 22 (holding that evidence of common use forecloses consideration of whether LCMs are dangerous). The panel’s disregard for the dangers of LCMs is gravely concerning to *amici*. *Amici*’s on-the-ground experience confirms that weapons outfitted with LCMs are especially deadly when used in confrontations with law enforcement officers, as well as to members of the public.³

As the case law has recognized, LCMs pose special dangers to law enforcement personnel because a shooter can fire more bullets without stopping to reload. The absence of pauses to reload makes it more difficult for law enforcement officers to intervene or retreat and exposes them to an uninterrupted wave of lethal fire. *See, e.g., Kolbe*, 849 F.3d at 127, 137 (holding that LCMs are not protected by the Second Amendment because they “depriv[e] . . . law enforcement officers of opportunities to escape or overwhelm the shooters while they reload their weapons”); *Heller II*, 670 F.3d at 1264 (citing testimony from District of Columbia Chief of Police that “the ‘2 or 3 second pause’ during which a criminal reloads his firearm ‘can be of critical benefit to law enforcement’”).

Amici’s experience is consistent with the case law: LCMs in the hands of criminals pose a greater danger to police officers than standard-capacity magazines. ER1602 (Emanuel Decl. ¶ 40); Appx. C (Emmitt Decl. ¶ 5). When a shooter must pause, even briefly, to reload, officers have the ability to take action, either by advancing or falling back to take cover. ER1602 (Emanuel Decl. ¶ 40); Appx. C (Emmitt Decl. ¶ 5). A shooter who does not have to reload does not give

³ This same evidence—which the State of California describes (Pet. 12-13)—also establishes why California’s ban on LCM possession satisfies intermediate scrutiny. California has shown a reasonable fit between an LCM possession ban and the substantial government interest in public safety.

police that opportunity, and has a greater ability to injure or kill by engaging in deadly fire. ER1602 (Emanuel Decl. ¶ 40); Appx. C (Emmitt Decl. ¶ 5). The San Francisco Police Department has observed that criminals use LCMs specifically to obtain these advantages over law enforcement officers. *See* ER1601 (Emanuel Decl. ¶ 38).

Amici have observed the tragic results of encounters between their law enforcement officers and criminals wielding LCMs. For instance, in 1994, SFPD Officer James Guelff was killed in downtown San Francisco by a shooter with an assault rifle and thousands of rounds of ammunition. ER1602 (Emanuel Decl. ¶ 41). Officer Guelff was a member of the SFPD Specialist Team with specialized weapons expertise. *Id.* But he was overmatched in firepower: After exhausting his service revolver's six bullets, Officer Guelff was fatally shot by the suspect—who did not have to reload—as he reloaded. *Id.* And in Los Angeles, in 1997, shooters engaged in a bank robbery used LCMs to launch a continuous wave of fire against responding LAPD officers. ER1602-03 (Emanuel Decl. ¶ 43). The responding officers—who, like Officer Guelff, had only standard-issue firearms—were forced to commandeer ammunition from a nearby firearms store to try to stop the shooting. *Id.* In the end, the shooters fired more than 1000 rounds of ammunition, and 12 officers were injured by the gunfire.

Sadly, these are not isolated incidents. *See, e.g.,* ER1602 (Emanuel Decl. ¶ 42) (describing attempted shooting of SFPD officers using LCMs in April 2013). For instance, in 2009, in one of the deadliest police shootings in recent memory, an individual shot and killed four Oakland Police Department officers, two while using a LCM. ER1002 (Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings* (2013)). And last year a gunman in Riverside, California, used an LCM

to fire almost 100 rounds in a shootout that killed two California Highway Patrol officers and injured two others.⁴

LCMs also continue to play an unfortunately prominent role in criminal activity, with often deadly consequences for *amici*'s communities and residents. Despite some *amici*'s efforts to ban LCMs, these weapons still circulate with alarming frequency and will only become more prevalent in the absence of a statewide ban. *See* ER1601 (Emanuel Decl. ¶ 38) (over 50 percent of the guns that SFPD recovers are fitted with LCMs).⁵ LCMs are frequently possessed by criminals, especially in connection with gang crimes and dangerous criminal activity. *Id.*; *see also* ER407 (Koper Rpt.); Appx. C (Emmitt Decl. ¶ 8). And they are used with harrowing regularity to harm innocent people at workplaces, schools, and other public spaces. For instance, on August 8, 2020, LCMs were recovered after three shooters fired gunshots in downtown Alameda, causing injuries to an innocent bystander and striking a passing car, narrowly missing the driver and her child.⁶ In 2017, a shooter using LCMs opened fire at his San Francisco workplace, killing three coworkers and injuring another. ER306 (Allen Rpt., Combined Mass Shootings Data, 1982-October 2017). In 2013, a shooter armed with LCMs opened fire on the Santa Monica College campus, killing five people and injuring four others. ER1619 (Mersereau Decl. ¶ 14). And that same year, a gunman using

⁴ <https://www.nbcnews.com/news/crime-courts/ex-con-who-killed-california-cop-used-homemade-ghost-gun-n1042811> (last visited Sept. 4, 2020).

⁵ A statewide prohibition on LCMs is critically important for public safety, both for jurisdictions that ban LCMs and those that do not. Appx. D (Ngo Decl. ¶ 12) (“[A] state-wide prohibition is necessary to ensure that [LCMs] do not permeate Sunnyvale borders from neighboring jurisdictions . . . and jeopardize the lives of Sunnyvale residents.”); *see also* Appx. C (Emmitt Decl. ¶ 9) (describing crimes committed using LCMs “brought in from outside the city”).

⁶ <https://www.nbcbayarea.com/news/local/east-bay/3-juvenile-suspects-arrested-in-connection-to-downtown-alameda-shooting/2341253> (last visited Sept. 4, 2020).

an LCM opened fire at Los Angeles International Airport, killing a TSA agent and injuring several bystanders. ER1619 (Mersereau Decl. ¶ 15).

As *amici* and other courts have concluded, limiting a shooter to a ten-round magazine could “mean the difference between life and death for many people.” *Kolbe*, 849 F.3d at 128 (internal quotation marks omitted). By making commonality nearly dispositive of the Second Amendment’s first-prong inquiry, the panel decision ignores how dangerous LCMs are to the public and law enforcement in particular, and makes it more difficult for cities to regulate these unusually dangerous weapons. Absent en banc review, the decision will increase the prevalence of LCMs in *amici*’s communities, leading to more unnecessary violence and deaths.

II. LCMs Are Not Commonly Used For Self-Defense.

Amici are also troubled by the panel’s conclusion that LCMs might be used in self-defense. Opn. 33. Based on its speculation that LCMs could hypothetically be so used, the panel applied strict scrutiny to California’s LCM ban. *Id.* But the panel’s unsubstantiated determination that LCMs are useful for self-defense is contrary to *amici*’s on-the-ground experience.

Amici and other law enforcement entities have taken a uniform stance on this topic: LCMs are neither necessary nor appropriate for self-defense. ER262 (James Decl. ¶ 8); Appx. C (Emmitt Decl. ¶ 7); Appx. D (Ngo Decl. ¶ 5); Appx. E (Lazar Decl. ¶ 4). In *amici*’s experience, individuals using firearms in self-defense do not normally need LCMs, because few shots are typically fired in self-defense situations and additional firepower is unnecessary. ER262 (James Decl. ¶ 8); Appx. E (Lazar Decl. ¶ 4); *see also Worman*, 922 F.3d at 37 (wielding LCMs for self-defense “is tantamount to using a sledgehammer to crack open the shell of a peanut”). Indeed, *amici*’s law enforcement officers are not aware of a single instance in which a person has fired more than ten rounds in self-defense. Appx. C

(Emmitt Decl. ¶ 7); Appx. D (Ngo Decl. ¶ 5); Appx. E (Lazar Decl. ¶ 4). And using LCMs in self-defense threatens to make the encounter *more* dangerous, not less. Appx. E (Lazar Decl. ¶ 5) (“Increasing the number of rounds that [untrained civilians] can fire in a self-defense emergency . . . could result in unnecessary injury to innocent people who are nearby.”).

Numerous courts—including this one—have relied on evidence like this in holding that LCM bans satisfy intermediate scrutiny. They have consistently agreed with *amici* that LCMs are not used for self-defense. *See, e.g., Worman*, 922 F.3d at 37 (“[N]ot one of the plaintiffs or their six experts . . . [could] identify even a single example of a self-defense episode in which ten or more shots were fired.”); *Kolbe*, 849 F.3d at 127 (“Neither the plaintiffs nor Maryland law enforcement officials could identify a single incident in which a Marylander has . . . needed to fire more than ten rounds to protect herself.”); *see also Fyock*, 779 F.3d at 1001 (upholding Sunnyvale LCM ban “because the record . . . contain[s] studies indicating that most defensive gun use incidents involved fewer than ten rounds of ammunition”). And they have recognized that LCMs make self-defense encounters more dangerous by leading to “indiscriminate firing” and “severe adverse consequences for innocent bystanders.” *Ass’n of N.J. Rifle & Pistol Clubs*, 910 F.3d at 112 (internal quotation marks omitted); *see also Kolbe*, 849 F.3d at 137 (LCMs are “particularly designed and most suitable for military and law enforcement applications”) (internal quotation marks omitted).

The record in this case is no different. Indeed, the panel does not even attempt to cite evidence that anyone, anywhere, has used an LCM or more than ten rounds of ammunition for self-defense. Rather, the panel describes various hypothetical scenarios in which it speculates “[m]any Californians *may* find solace in the security of a handgun equipped with an LCM: those who live in rural areas where the local sheriff may be miles away, law-abiding citizens trapped in high-

crime areas, communities that distrust or depend less on law enforcement, and many more” Opn. 9-10 (emphasis added); *see also* Opn. 35-39 (describing “examples” of circumstances that require “armed self-defense”).⁷ Based on its conclusion that “it does not take a wild imagination to conclude that citizens may need LCMs to defend hearth and home,” the panel finds California’s LCM ban subject to strict scrutiny. Opn. 50-52.

This new articulation of the Second Amendment “prong two” standard is startling. Opn. 31. It diverges from every other court, which has looked for actual evidence that LCMs are used in self-defense and found none to exist. *See* p. 9, *supra*. It contradicts authority from this Circuit establishing that speculation and hypotheticals do not show the existence of a core Second Amendment right. *See, e.g., Jackson*, 746 F.3d at 969 (“[Plaintiff’s] evidence suggests that the lethality of hollow-point bullets is an open question, which is insufficient to discredit San Francisco’s reasonable conclusions.”). And it threatens to dramatically restrict *amici*’s ability to regulate dangerous weapons that could be used in self-defense in theory, even if they have never been so used in practice.

III. The Panel’s Distinction Of *Fyock* Is Contrary To Case Law And Common Sense, And Undermines Municipalities’ Ability To Prevent Gun Violence.

The panel’s “flimsy” (Opn. 73 (Lynn, J.)) attempt to distinguish *Fyock* leaves municipal power to regulate LCMs and other dangerous weapons in limbo. The panel distinguishes *Fyock* as involving “unique facts,” including that Sunnyvale is a “small and affluent” city with “one of the largest combined public safety departments” and a lower “violent crime rate” compared to the State of California as a whole. Opn. 54-55. The panel’s novel and ambiguous approach

⁷ All of the scenarios the panel describes involve the basic need for self-defense. Opn. 50-52. The panel does not explain why people in these circumstances would need more than ten rounds to defend themselves effectively.

gives *amici* little guidance about how to craft gun safety regulations that will satisfy the Second Amendment. And it runs contrary to longstanding conventional wisdom about when gun regulations are necessary and appropriate.

A. The panel’s *Fyock* distinction is novel, ambiguous, and difficult for cities to implement.

The panel’s basis for distinguishing *Fyock* injects a host of new criteria—such as a municipality’s affluence, its crime rate, and the size of its law enforcement force—into the second-prong Second Amendment framework. *Opn.* 54. These relative and fluid criteria are novel in Second Amendment case law and will be impossible for *amici* to implement.

The panel’s determination that these factors bear on the constitutionality of LCM regulations—or any other gun safety regulation—is not supported by the case law. No court has ever endorsed similar Second Amendment criteria. Rather, in *Fyock*, this Court upheld Sunnyvale’s law based on evidence that LCMs result in more gunshots fired, more gunshots per victim, and more lethal injuries. 779 F.3d at 1000. Nowhere did the Court consider Sunnyvale’s demographics, economics, or any of the other factors the panel now identifies. Instead, the *Fyock* decision was consistent with this Circuit’s longstanding prong-two approach, which has focused primarily on whether an ordinance potentially “reduce[s] the number of gun-related injuries and deaths” without examining other factors about the locality itself. *Jackson*, 746 F.3d at 966.

Decisions from other circuits are to the same effect. Indeed, the Seventh Circuit explicitly rejected the factors—“crime statistics, population density, and demographics”—that the panel here embraces:

[O]ur analysis in *Friedman* [upholding a ban on LCMs] did not rest *at all* on the types or frequency of crime that a Highland Park resident may face. Such considerations never are mentioned, much less analyzed, in our decision. Our discussion of self-defense focused instead on the availability of other means for citizens to defend themselves. This is a question

answered by the particular locality's laws, not by its crime rates.

Wilson v. Cook Cty., 937 F.3d 1028, 1034-35 (7th Cir. 2019). The en banc court should consider whether these factors are relevant to the Second Amendment, even though other courts have repudiated them.

And even if these novel factors were appropriate, the panel's decision leaves many important questions unanswered. The relative affluence, crime rate, police force size, and so forth, in any municipality are fluid and hard to measure. This makes it difficult for *amici* to determine whether they are more like Sunnyvale (able to ban LCMs) or more like California (unable to do so). How small, how affluent, how low of a crime rate, must a city have to ban LCMs? What if a city—like San Francisco, which is affluent but also has high-crime areas—meets some criteria but not others? The panel provides no guidance on these questions and leaves *amici* uncertain how they can prevent the tragedies that result from LCMs.

B. The panel's newfound criteria turn the accepted rationale for gun safety measures on its head.

The panel's distinction of *Fyock* also upends traditional understandings of public safety and gun control. The panel suggests that Sunnyvale has greater Second Amendment authority because it is relatively safer than other communities in the State. *See* Opn. 54. Under the panel's approach, communities with *more* crime have *less* ability to regulate the weapons criminals commonly use. *Id.*

This suggestion runs directly contrary to the accepted principle that firearm regulations may be enacted in response to public safety concerns. Courts have always recognized as much: the prevalence of guns, and their use in criminal activity, justify gun safety regulations. For instance, in *Jackson*, this Court relied on the fact that “firearm injuries are the third-leading cause of death in San Francisco” to uphold the City's gun storage requirements. 746 F.3d at 966. Similarly, the Second Circuit upheld New York's and Connecticut's prohibitions

on LCMs based on evidence of the “appalling attack” on schoolchildren in Newtown, Connecticut. *N.Y. State Rifle & Pistol Ass’n*, 804 F.3d at 249. The panel’s decision inverts this framework by suggesting that evidence of crime and previous shootings actually *undercuts* gun safety laws.⁸

The panel decision also discounts the importance of civic order and encourages vigilantism. Despite ample evidence that LCMs are used overwhelmingly more for crime than self-defense, *see* pp. 7-9, *supra*, the panel conjures apocalyptic hypotheticals in which “law enforcement is overtaxed” and “unable to protect the people, leaving them solely responsible for their own safety in a seemingly Hobbesian world,” Opn. 51. By suggesting that people will need to act in self-defense in these circumstances, the panel unnecessarily disregards the role of law enforcement and encourages an arms race to prepare for this anarchic scenario.

Under the panel’s approach, gun violence will become more common in communities already suffering from criminal activity, and armed citizens will take matters into their own hands rather than calling upon trained law enforcement officers to protect them. The en banc Court should consider whether this is what the Second Amendment requires.

⁸ And to the extent that demographics matter for Second Amendment purposes, they support California’s LCM ban. California is a densely populated state with a number of urban centers. Other courts have recognized that gun regulations are especially important for public safety in such areas. *See Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Grewal*, No. C17CV10507PGSLHG, 2018 WL 4688345, *13 (D.N.J. Sept. 28, 2018), *aff’d* *Ass’n of N.J. Rifle & Pistol Clubs, Inc.*, 910 F.3d at 110 (“New Jersey, a densely populated urban state, has a particularly strong local interest in regulating firearms. New Jersey, like other states with densely populated areas (Massachusetts, New York, *California*, Connecticut, the District of Columbia), has concluded that this restriction on magazine capacity is necessary for public safety”) (emphasis added); *see also Heller II*, 670 F.3d at 1263 (upholding ban on assault weapons “in the densely populated urban area that is the District of Columbia”).

CONCLUSION

The Court should grant the petition for rehearing.

Dated: September 8, 2020

Respectfully submitted,

DENNIS J. HERRERA
City Attorney
AILEEN M. MCGRATH
Co-Chief of Appellate Litigation

By: s/Aileen M. McGrath
AILEEN M. MCGRATH

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

[ADDITIONAL SIGNATURES ON NEXT PAGE]

ADDITIONAL SIGNATURES:

YIBIN SHEN
City Attorney
MICHAEL ROUSH
Chief Assistant City Attorney
MONTAGUE HUNG
Deputy City Attorney
Office of the City Attorney
City of Alameda
2263 Santa Clara Avenue
Room #280
Alameda, California 94501

Attorneys for *Amicus Curiae*
CITY OF ALAMEDA

SCOTT H HOWARD
City Attorney
Colantuono Highsmith and Whatley, PC
790 East Colorado Blvd, Suite 850
Pasadena, California 91101

Attorneys for *Amicus Curiae*
CITY OF CALABASAS

MICHAEL N. FEUER
Los Angeles City Attorney
KATHLEEN A. KENEALY
Chief Assistant City Attorney
SCOTT MARCUS
Senior Assistant City Attorney
BLITHE S. BOCK
Managing Assistant City Attorney
DANIELLE GOLDSTEIN
Deputy City Attorney
Office of the City Attorney
200 North Main Street,
City Hall East, 8th Floor
Los Angeles, California 90012

Attorneys for *Amicus Curiae*
CITY OF LOS ANGELES

BARBARA J. PARKER
Oakland City Attorney
Office of the City Attorney
One Frank Ogawa Plaza, Sixth Floor
Oakland, California 94612

Attorneys for *Amicus Curiae*
CITY OF OAKLAND

MARA W. ELLIOTT
City Attorney
JONATHAN I. LAPIN
Chief Deputy City Attorney
Office of the City Attorney
1200 Third Ave., Suite 1620
San Diego, California 92101

Attorneys for *Amicus Curiae*
CITY OF SAN DIEGO

GEORGE S. CARDONA
Interim City Attorney
Office of the City Attorney
1685 Main Street
Santa Monica, California 90401

Attorneys for *Amicus Curiae*
CITY OF SANTA MONICA

JOHN A. NAGEL
Sunnyvale City Attorney
REBECCA L. MOON
Sr. Assistant City Attorney
Office of the City Attorney
456 West Olive Avenue
Sunnyvale, California 94086

Attorneys for *Amicus Curiae* CITY OF
SUNNYVALE

MICHAEL JENKINS
City Attorney
Best Best & Krieger LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, California 90266

Attorneys for *Amici Curiae*
CITY OF WEST HOLLYWOOD
and MAYOR LINDSEY HORVATH

STATEMENT OF RELATED CASES

Amici are not aware of any related cases pending in this Court.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s) 19-55376

I am the attorney or self-represented party.

This brief contains 4,181 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

- ☐ complies with the word limit of Cir. R. 32-1.
- ☐ is a cross-appeal brief and complies with the word limit of Cir. R. 28.1-1.
- ☒ is an amicus brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ☐ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ☐ complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
 - ☐ it is a joint brief submitted by separately represented parties;
 - ☐ a party or parties are filing a single brief in response to multiple briefs; or
 - ☐ a party or parties are filing a single brief in response to a longer joint brief.
- ☐ complies with the length limit designated by court order dated _____.
- ☐ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/Aileen McGrath Date September 8, 2020

(use "s/[typed name]" to sign electronically-filed documents)

APPENDIX

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**CITY OF ALAMEDA ORDINANCE NO. 3269
New Series**

AMENDING THE ALAMEDA MUNICIPAL CODE BY ADDING PROVISIONS TO SECTION 4-32 (FIREARMS AND WEAPONS) OF ARTICLE V (FIREARMS AND EXPLOSIVES) OF CHAPTER IV (OFFENSES AND PUBLIC SAFETY), REQUIRING SAFE STORAGE OF FIREARMS

WHEREAS, gun violence and gun injuries have a significant adverse effect on public health and safety; and

WHEREAS, stolen firearms contribute to higher rates of crime and gun violence; and

WHEREAS, unsecured firearms raise the risk of injuries from wrongful firearm discharges, including suicides and accidental discharge; and

WHEREAS, trigger locks and lockboxes for the home storage of firearms reduce the chance of stolen firearms and wrongful discharge of firearms; and

WHEREAS, improperly secured firearms contribute to a higher risk of stolen firearms and wrongful discharge of firearms; and

WHEREAS, trigger locks and lockboxes do not prevent firearms from being easily accessed in case of emergency;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES ORDAIN AS FOLLOWS:

Section 1. Section 4-32 (FIREARMS AND WEAPONS) of Article V (FIREARMS AND EXPLOSIVE) of Chapter IV (OFFENSES AND PUBLIC SAFETY) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

4-32 - FIREARMS AND WEAPONS.

4-32.1 – Definitions.

Firearm means any device, designed to be used as a weapon or modified to be used as a weapon, from which is expelled through a barrel a projectile by the force of an explosion or other form of combustion.

Residence means any structure intended or used for human habitation, including but not limited to houses, condominiums, rooms, in-law units, motels, hotels, single room occupancy units, time shares, and recreational and other vehicles where human habitation occurs.

Locked container means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device as defined by California Penal Code Section 16850, as amended from time to time or is listed on the California Department of Justice Bureau of Firearms roster of approved firearm safety devices.

Trigger lock means a trigger lock that is listed on the California Department of Justice's roster of approved firearms safety devices, and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm or to the physical characteristics of the firearm that match those listed on the roster for use with the device under California Penal Code Section 23635, as may be amended from time to time.

4-32.2 - Use of Firearm in City.

Unless otherwise lawful, no person shall fire, discharge, or cause to be fired or discharged, any firearm within the limits of the City.

4-32.3 – Safe Storage of Firearms in a Residence.

No person shall keep a firearm within any residence or upon any residential premises, unless the firearm is stored in a locked container or disabled with a trigger lock within a residence.

This provision shall not apply when the firearm is carried on the person of an individual in accordance with all applicable laws.

4-32.4 – Exception for Reporting Theft or Loss.

A person who owns or possesses a Firearm who reports to the Alameda Police Department that a Firearm was stolen or lost within 24 hours of the time they knew or reasonably should have known that the firearm had been stolen or lost shall not be subject to administrative citations for violation of Section 4-32.3.

4-32.5 - Projectile Weapons Prohibited.

No person shall discharge upon any public street or place in the City any gun, by means of which any missile is projected by a spring, bow, or compressed air, or use slingshots, slings, bows, or any other implement whereby stones, beans, shot, pebbles, or other substance are projected.

4-32.6 – Penalties for Violations.

Notwithstanding Section 1-5 and subject to subsection 4-32.4, violations of this section shall carry the following penalties:

- a. Any person violating any provision of this section may be subject to administrative citations. The fine for such violations shall be two hundred fifty (\$250.00) dollars for the first offense, a fine of five hundred (\$500.00) dollars for a second offense within a one (1) year period and a fine of one thousand (\$1,000.00) for a third offense within a one (1) year period.
- b. Any person violating any provision of this section, except for subsection 4-32.3, shall be guilty of an infraction which shall be punishable by a fine not exceeding two hundred fifty (\$250.00) dollars, or a misdemeanor, which shall be punishable by a fine not exceeding one thousand (\$1,000.00) dollars per violation, or by imprisonment in the County jail for a period not exceeding six (6) months, or by both such fine and imprisonment.

Section 2. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance, for any reason, is held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council of the City of Alameda hereby declares that it would have passed this ordinance, and each section, subsections, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases are declared to be invalid and unconstitutional.

Section 3: IMPLIED REPEAL

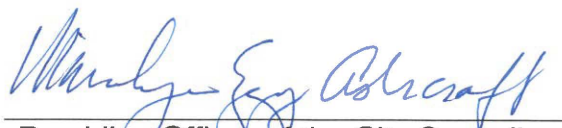
Any provision of the Alameda Municipal Code inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.

Section 4: CEQA DETERMINATION

The City Council finds and determines that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines, Section 15378 (not a project) and Section 15061(b)(3) (no significant environmental impact).

Section 5: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.



Presiding Officer of the City Council

Attest:



Lara Weisiger, City Clerk

I, the undersigned, hereby certify that the foregoing ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 17th day of March, 2020, by the following vote to wit:

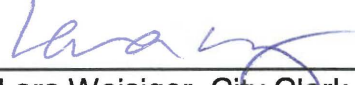
AYES: Councilmembers Daysog, Knox White, Oddie, Vella and Mayor Ezzy Ashcraft – 5.

NOES: None.

ABSENT: None.

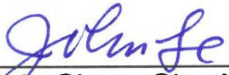
ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 18th day of March, 2020.



Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:



Yibin Shen, City Attorney
City of Alameda

**CITY OF ALAMEDA ORDINANCE NO. 3270
New Series**

AMENDING THE ALAMEDA MUNICIPAL CODE BY ADDING PROVISIONS TO SECTION 4-36 (LICENSE REQUIREMENTS FOR FIREARMS AND MUNITIONS DEALERS) OF ARTICLE V (FIREARMS AND EXPLOSIVES) OF CHAPTER IV (OFFENSES AND PUBLIC SAFETY), REQUIRING FIREARMS DEALERS TO PROVIDE VIDEO SURVEILLANCE

WHEREAS, gun violence and gun injuries have a significant adverse effect on public health and safety; and

WHEREAS, gun violence is frequently facilitated by gun traffickers and individuals who are not legally permitted to possess a firearm; and

WHEREAS, straw purchases of firearms raise the risk of crime and gun violence by putting firearms in unsafe hands; and

WHEREAS, missing firearms with no records of sales make it difficult for law enforcement to track and solve illegal activity; and

WHEREAS, video security surveillance of firearm sales provides law enforcement with critical tools to solve certain crimes, including but not limited to straw purchases; and

WHEREAS, video security surveillance on the premises of firearms and munitions dealers may deter and help solve theft and other crimes;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES ORDAIN AS FOLLOWS:

Section 1. Section 4-36 (LICENSE REQUIREMENTS FOR FIREARMS AND MUNITIONS DEALERS) of Article V (FIREARMS AND EXPLOSIVE) of Chapter IV (OFFENSES AND PUBLIC SAFETY) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

4-36.1 - Title for Citation.

This section shall be known as Firearms Dealer License Requirements.

4-36.2 - Purpose.

It is the purpose of this section to establish, as authorized by State of California Penal Code section 12071, a local licensing process for persons engaged in the business of selling, transferring or leasing firearms and munitions and in related activities.

4-36.3 - Definitions.

The following words and phrases, whenever used in this section, shall be construed as defined in this section:

- a. *Firearms* means as defined in Section 4.32.1.
- b. *Munitions* means any projectile or explosive substance for use with any firearm.
- c. *Firearms dealer* means a person engaged in the business of selling, transferring or leasing, or advertising for sale, transfer or lease, or offering or exposing for sale, transfer or lease, any firearm or munitions and who holds a federal firearms license under Title 18 U.S. Code, Chapter 44.
- d. *Engaged in the business* means the conduct of a business by the selling, transferring or leasing of any firearm or munitions; or the preparation for such conduct of business as evidenced by the securing of applicable federal or state licenses; or the holding of one's self out as engaged in the business of selling, transferring or leasing of any firearm or munitions, or the selling, transferring or leasing of firearms or munitions in quantity, in series or in individual transactions, or in any other manner indicative of trade including a pawnbroker.
- e. *Pawnbroker* means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm or munitions as security for the payment or repayment of money.
- f. *Person* means natural person, association, partnership, firm, cooperative or corporation.

4-36.4 - License Required.

It is unlawful for any person to engage in the business of operating or managing any business which sells, transfers, leases or offers or advertises for sale, transfer or lease, any firearm or munitions without first obtaining a firearms dealer license from the Chief of Police of the Alameda Police Department. The license required by this section shall be in addition to any other permits or licenses required by law.

4-36.5 - Application—Forms; Fees.

An applicant for a license under this section shall file with the Chief of Police a sworn application in writing, on a form to be furnished by the City. The applicant shall provide all information requested, including proof of compliance with all applicable Federal, State and local laws when required by the Chief of Police, or the application will not be deemed complete. The application shall be accompanied by a nonrefundable fee as set forth in the City of Alameda Master Fee Resolution. To the extent practicable, the fee amount shall reflect the cost of enforcing the requirements of this section.

4-36.6 - Application—Investigation.

The Chief of Police shall conduct an appropriate investigation to determine for the protection of the public safety whether the license may be issued. The Chief of Police may require additional information of an applicant deemed necessary to complete the investigation. The investigation shall be completed within thirty (30) days unless unusual circumstances exist justifying an extension of time. A written determination of the circumstances and an estimate of the additional time needed shall be provided to the applicant.

4-36.7 - Application Denial.

The Chief of Police shall deny the issuance of a license when any of the following conditions exist:

- a. The applicant is under the age of twenty-one years;
- b. The applicant is not licensed as required by all applicable Federal, State and local laws;
- c. The applicant has had a similar type license previously revoked or denied for good cause within the immediately preceding two (2) years;
- d. The applicant has made a false or misleading statement of a material fact or omission of a material fact in the application for a license;
- e. The applicant has been convicted of:
 1. Any offenses so as to disqualify the applicant, or an officer, employee or agent thereof, from owning or possessing a firearm under applicable Federal, State and local laws,
 2. Any offense relating to the manufacturing, sale, possession, use or registration of any firearm or dangerous or deadly weapon,
 3. Any offense involving the use of force or violence upon the person of another,
 4. Any offense involving theft, fraud, dishonesty or deceit,
 5. Any offense involving the manufacture, sale, possession or use of any controlled substance as defined by the California Health & Safety Code as said definition now reads or may hereafter be amended to read;
- f. The applicant is an unlawful user of any controlled substance as defined by the California Health & Safety Code as said definition now reads or may hereafter be amended to read, or is an excessive user of alcohol to the extent that such use would impair his or her fitness to be a dealer in firearms;
- g. The applicant has been adjudicated as a mental defective, or has been committed to a mental institution, or suffers from any psychological disturbance which would impair his or her fitness to be a dealer in concealable firearms;
- h. The operation of the business as proposed will not comply with all applicable Federal, State or local laws, including zoning ordinances;
- i. The applicant does not have, and/or cannot provide evidence of possessory interest in the property at which the proposed business will be conducted. When the property is leased or rented, the applicant shall provide written consent from the owner of record of the property to conduct such business at the property.

4-36.8 - Security.

In order to discourage the theft of firearms or munitions stored in the premises of a firearms or munitions dealer, any person licensed under this section must adhere to security measures as required by the Chief of Police. Security measures shall include but not be limited to:

- a. The provision of secure locks, windows and doors, adequate lighting, and alarms as specified by the Chief of Police;
- b. Storing of all firearms or munitions on the premises out of the reach of customers in a secure manner, so that access to firearms or munitions shall be controlled by the dealer or employees of the dealer, to the exclusion of all others; and
- c. The provision of a video surveillance security system that meets the following requirements:
 1. The system shall include cameras, monitors, digital video recorders, and cabling, if necessary.
 2. The number and location of the cameras shall at a minimum, as determined by the Chief of Police, be sufficient in number and location to monitor the critical areas of the business premises, including, but not limited to, all places where firearms, firearm components or ammunition are stored, handled, sold, transferred, or carried, including, but not limited to, all counters, safes, vaults, cabinets, cases, and entryways. The video surveillance system shall operate continuously, without interruption, whenever the licensee is open for business. Whenever the licensee is not open for business, the system shall be triggered by a motion detector and begin recording immediately upon detection of any motion within the monitored area.
 3. In addition, the sale or transfer of a firearm, firearm component or ammunition shall be recorded by the video surveillance system in such a way that the facial features of the purchaser or transferee are clearly visible.
 4. When recording, the video surveillance system shall record continuously and store color images of the monitored area at a frequency of not less than fifteen frames per second.¹ The system must produce retrievable and identifiable images and video recordings on media determined by the Chief of Police to be able to be enlarged through projection or other means, and can be made a permanent record for use in a criminal investigation. The system must be capable of delineating on playback the activity and physical features of persons or areas within the premises.
 5. The stored images shall be maintained on the business premises of the licensee for a period not less than one year from the date of recordation and shall be made available for inspection by federal, state or local law enforcement upon request.
 6. The video surveillance system must be maintained in proper working order at all times. If the system becomes inoperable, it must be repaired or replaced within seven calendar days. The licensee must inspect the system at least weekly to ensure that it is operational and images are being recorded and retained as required.

¹ Television in the U.S. has thirty (30) frames per second. However, fifteen (15) frames per second is generally described as viewable, and is used in similar regulations. *See, e.g.*, 02-392-013 Me. Code R. 6(6).

7. The licensee shall post a sign in a conspicuous place at each entrance to the premises that states in block letters not less than one inch in height: THESE PREMISES ARE UNDER VIDEO SURVEILLANCE. YOUR IMAGE MAY BE RECORDED.

4-36.9 - License Form.

All licenses issued pursuant to this section shall be in the form prescribed by the Attorney General of the State of California.

4-36.10 - License—Duration; Renewal.

All licenses issued pursuant to this section shall expire one year after the date of issuance or automatically upon the revocation or expiration of the licensee's federal firearms license, whichever is earlier. Such licenses may be renewed by the Chief of Police for additional periods of one year upon the approval of an application for renewal by the Chief of Police and payment of a nonrefundable renewal fee. Such renewal application must be completed and received by the Chief of Police no later than forty-five (45) days prior to the expiration of the current license. Renewal applications may be denied if the conditions set forth in Section 4-36.7 exist.

4-36.11 - License Assignment.

The assignment or attempt to assign any license issued pursuant to this section is unlawful and any such assignment or attempt to assign a license shall render the license null and void.

4-36.12 - License—Conditions.

Any license issued pursuant to this section shall be subject to all of the following conditions, the breach of any of which shall be sufficient cause for revocation of the license by the Chief of Police:

- a. The business shall be carried on in the building located at the street address shown on the license. The licensee shall notify the Chief of Police in writing within ten (10) days of any change in business location; such relocation shall require a new inspection to ensure compliance with this section. A nonrefundable reinspection fee will be required.
- b. The licensee shall comply with Sections 12073, 12074, 12076, 12077 and 12082 and subdivision (b) of Section 12072 of the California Penal Code, to the extent that the provisions remain in effect.
- c. The licensee shall maintain records of all employees who will be engaged in the sale, lease, transfer or delivery of firearms or munitions, identifying them by name, address, date of birth and social security number. The licensee shall notify the Chief of Police in writing within ten (10) days of any change in employees and submit the required identifying information for each newly hired employee.

d. The licensee shall comply with the requirements of this section.

4-36.13 - License—Grounds for Revocation.

In addition to subsection 4-36.12, any provisions constituting grounds for denial shall also constitute grounds for revocation.

4-36.14 - License—Hearing.

a. Any person whose application for a license under this section or a renewal license has been denied, or whose license has been revoked pursuant to the provisions of this section, shall have the right to a hearing before the Chief of Police or a designee prior to final denial or prior to revocation.

b. The Chief of Police shall give the applicant or licensee written notice of the intent to deny the application or to revoke the license. The notice shall set forth the ground or grounds for the Chief of Police's intent to deny the application or to revoke the license, and shall inform the applicant or licensee that he or she has ten (10) days from the date of receipt of the notice to file a written request for a hearing. The application may be denied or the license revoked if a written hearing request is not received within the ten (10) day period.

c. If the applicant or licensee files a timely hearing request, the Chief of Police shall set a time and place for the hearing. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross examine any witnesses against them. Any person dissatisfied with the decision of the Chief of Police may appeal to a hearing officer.

4-36.15 - Appeals.

Any person dissatisfied with a decision of the Chief of Police may file an appeal to the City Council within the time specified below. The appeal shall be made in writing and filed with the City Clerk not later than fifteen (15) days after the date written notice of the Chief of Police decision is made. Failure to file in a timely appeal shall result in a waiver to the right to appeal. The appeal shall state in detail the factual basis for the appeal.

An appeal fee shall be paid and shall consist of a processing fee plus the actual cost to the City for retaining a hearing officer if the appeal, or any portion thereof, is not granted. The processing fee shall accompany the request for an appeal. The appeal fee shall be set by Resolution of the City Council.

4-36.16 - Indemnification.

Applicants and licensees shall indemnify, defend and hold harmless the City, its officers, agents and employees, from claims arising from the negligence of the applicants or licensees.

4-36.17 - License—Authority to Inspect.

Any and all investigating officials including police and fire investigators of the City shall have the right to enter the building designated in the license from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, mechanical, fire, electrical, plumbing or health regulations, provisions of this section, and all Federal, State and local laws.

4-36.18 - Compliance.

Any person engaging in the business of selling, transferring or leasing, or advertising for sale, transfer or lease, or offering or exposing for sale, transfer or lease, any firearm or munitions on the effective date of the ordinance codified in this section shall have a period of sixty (60) days after such effective date to comply with the provisions of this section.

4-36.19 - Temporary Suspension of Firearms Dealer License.

- a. If the licensee violates any Federal, State, County or City law relating to firearms or involving firearms, the Chief of Police may immediately suspend the firearms dealer's license. This temporary suspension will not exceed three (3) days. If the violation results in a criminal charge filed in court by a Federal, State or County District Attorney, such license to sell firearms or munitions may be suspended until the case is adjudicated in a court of law.
- b. Notice of suspension shall be mailed to the person(s) who made application for the license and shall be delivered to the address listed on the license.

4-36.20 - Penalties.

Notwithstanding Section 1-5, violations of this section shall carry the following penalties:

- a. Any person violating any provision of this article may be subject to administrative citations. The fine for such violations shall be two hundred fifty (\$250.00) dollars for the first offense, a fine of five hundred (\$500.00) dollars for a second offense within a one (1) year period and a fine of one thousand (\$1,000.00) for a third offense within a one (1) year period.
- b. Any person violating any provision of this article shall be guilty of an infraction which shall be punishable by a fine not exceeding two hundred fifty (\$250.00) dollars, or a misdemeanor, which shall be punishable by a fine not exceeding one thousand (\$1,000.00) dollars per violation, or by imprisonment in the County jail for a period not exceeding six (6) months, or by both such fine and imprisonment.
- c. Any aggrieved person, including the City and the people of the State of California, may enforce and seek to enjoin against any violation of this article by means of a civil action. The burden of proof in such cases shall be preponderance of the evidence. As part of any civil action brought by the people of the State of California or the City to enforce this article, a court shall assess a civil penalty in an amount up to the greater

of two thousand five hundred (\$2,500.00) dollars per violation per day or ten thousand (\$10,000.00) dollars per violation, against any person who commits, continues to commit, operates, allows or maintains any violation of this article, and against any person who aids or incites another person to violate the provisions of this article.

d. Any business conducted or maintained contrary to this Article shall constitute a public nuisance.

4-36.21 - Severability.

This section shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this section is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this section and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this section shall be deemed severable.

Section 2: IMPLIED REPEAL

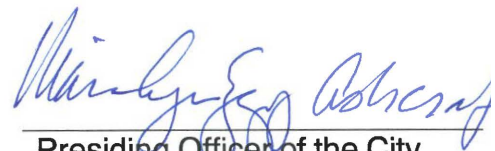
Any provision of the Alameda Municipal Code inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.

Section 3: CEQA DETERMINATION

The City Council finds and determines that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines, Section 15378 (not a project) and Section 15061(b)(3) (no significant environmental impact).

Section 4: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.


Presiding Officer of the City
Council

Attest:



Lara Weisiger, City Clerk

I, the undersigned, hereby certify that the foregoing ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 17th day of March, 2020, by the following vote to wit:

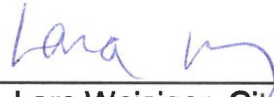
AYES: Councilmembers Daysog, Knox White, Oddie, Vella and Mayor Ezzy Ashcraft – 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 18th day of March, 2020.



Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:



Yubin Shen, City Attorney
City of Alameda

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. 19-55376

U.S. District Court, Southern District,
No. 3:17-cv-01017-BEN-JLB

**DECLARATION OF CITY OF ALAMEDA INTERIM
CHIEF OF POLICE JEFFREY EMMITT IN SUPPORT
OF BRIEF OF *AMICUS CURIAE* CITY AND COUNTY OF
SAN FRANCISCO, CITY OF ALAMEDA, AND THE
CITIES OF CALABASAS, LOS ANGELES, OAKLAND,
SAN DIEGO, SANTA MONICA, SUNNYVALE, AND WEST
HOLLYWOOD IN SUPPORT OF THE STATE OF
CALIFORNIA'S PETITION FOR REHEARING EN BANC**

Appeal from the United States District Court, Southern District of California
The Honorable Judge Roger T. Benitez

DENNIS J. HERRERA

San Francisco City Attorney

AILEEN M. MCGRATH

Co-Chief of Appellate Litigation

City Attorney's Office

City Hall Room 234

One Dr. Carlton B. Goodlett Pl.

San Francisco, California 94102

Telephone: (415) 554-4691

Facsimile: (415) 554-4699

E-Mail: aileen.mcgrath@sfcityatty.org

YIBIN SHEN

City Attorney

MICHAEL ROUSH

Chief Assistant City Attorney

MONTAGUE HUNG

Deputy City Attorney

Office of the City Attorney

City of Alameda

2263 Santa Clara Avenue Room #280

Alameda, CA 94501

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

Attorneys for *Amicus Curiae* CITY OF
ALAMEDA

Additional Counsel for *Amici Curiae*:

SCOTT H. HOWARD

City Attorney

Colantuono Highsmith and Whatley, PC
790 East Colorado Blvd, Suite 850
Pasadena, California 91101
Attorneys for *Amicus Curiae*
CITY OF CALABASAS

MICHAEL N. FEUER

Los Angeles City Attorney

KATHLEEN A. KENEALY

Chief Assistant City Attorney

SCOTT MARCUS

Senior Assistant City Attorney

BLITHE S. BOCK

Managing Assistant City Attorney

DANIELLE GOLDSTEIN

Deputy City Attorney

Office of the City Attorney

200 North Main Street,

City Hall East, 8th Floor

Los Angeles, California 90012

Attorneys for *Amicus Curiae*

CITY OF LOS ANGELES

BARBARA J. PARKER

Oakland City Attorney

Office of the City Attorney

One Frank Ogawa Plaza, Sixth Floor

Oakland, California 94612

Attorneys for *Amicus Curiae*

CITY OF OAKLAND

MARA W. ELLIOTT

City Attorney

JONATHAN I. LAPIN

Chief Deputy City Attorney

Office of the City Attorney

1200 Third Ave., Suite 1620

San Diego, California 92101

Attorneys for *Amicus Curiae*

CITY OF SAN DIEGO

GEORGE S. CARDONA

Interim City Attorney

Office of the City Attorney

1685 Main Street

Santa Monica, California 90401

Attorneys for *Amicus Curiae*

CITY OF SANTA MONICA

JOHN A. NAGEL

Sunnyvale City Attorney

REBECCA L. MOON

Sr. Assistant City Attorney

Office of the City Attorney

456 West Olive Avenue

Sunnyvale, California 94086

Attorneys for *Amicus Curiae*

CITY OF SUNNYVALE

MICHAEL JENKINS

City Attorney

Best Best & Krieger LLP

1230 Rosecrans Avenue, Suite 110

Manhattan Beach, CA 90266

Attorneys for *Amici Curiae*

CITY OF WEST HOLLYWOOD

and MAYOR LINDSEY P.

HORVATH

I, Jeffery Emmitt, do hereby declare that I have personal knowledge of the following facts, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. The matters stated in this declaration are based on my training, education, and experience. If called upon to testify, I can testify competently to the contents of this Declaration.

1. I am a sworn police officer within the City of Alameda Police Department ("APD"). I have been employed with the APD for approximately 21 years. I am currently serving as Interim Chief of the City of Alameda Police Department. I have been employed by the City of Alameda as a sworn peace officer for 19 years. From 2011 to 2018, I served as a Sergeant. In 2018, I was promoted to Lieutenant. In 2020, I was promoted to Captain.

2. During my time at APD, I worked in a wide range of assignments in administration, field operations, and investigations. As an Officer, a Sergeant and Lieutenant working assignments in the Investigations Unit, I have personally investigated numerous violent crimes involving the use of a firearm. As a Lieutenant and Captain, I have overseen many investigations involving the use of a firearm.

3. I make this Declaration in support of *Amici Curiae* City and County of San Francisco, City of Alameda, and the Cities of Calabasas, Los Angeles, Oakland, San Diego, Santa Monica, Sunnyvale, and West Hollywood's Brief in support of the State of California's Petition for Rehearing En Banc.

4. As a peace officer who has investigated or overseen the investigation of numerous violent crimes, it is my opinion that 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.

5. Large capacity magazines pose special dangers to law enforcement personnel in particular, primarily because a shooter can fire more bullets without stopping to reload. Large-capacity magazines in the hands of criminals pose a greater danger to law enforcement than standard-capacity magazines. When a shooter must pause, even briefly, to reload, police officers have the opportunity to take action, either by advancing or falling back to take cover. A shooter who does not have to reload does not give police that opportunity and has a greater ability to injure or kill police officers.

6. The time a shooter takes to reload his weapon can be critical in enabling victims to escape and law enforcement or others to intervene. When shooters have large-capacity magazines, more bullets can be fired before this crucial time period for escape or other intervention.

7. It is also my opinion, as a veteran law enforcement officer that there is simply no reason for everyday civilians to have access to these instruments of

destruction. Large capacity magazines do not enhance self-defense. Further, in my 19 years of law enforcement experience, I have never personally observed nor have I become aware of a single incident where a firearm with large capacity ammunition magazine has saved any individual's life. In my opinion, large-capacity magazines exist for one reason - to enact maximum destruction.

8. While the Alameda Police Department does not maintain a database of all firearm related statistics, the City of Alameda is not immune from the rising tide of gun related crime. Alameda's police officers face increased danger and the possibility of being outmanned and outgunned, as large capacity magazines, increasingly hit the streets in heavily populated Northern California. This year has seen an uptick in gun violence. In just the eight weeks preceding the filing of this declaration, there been four shootings in the City of Alameda, including two homicides.

9. The Alameda Police Department began tracking the number of gun-related crimes where large-capacity magazines were seized since March of 2018. Since March of 2018, APD has had 18 incidents involving large capacity magazines. In 2018 there were 7 such cases. In 2019, there were 3 cases. In 2020, as of the date of this declaration, there have been a total of 8 large capacity magazine cases with four months left in the year. Of these tracked incidents since March 2018, at least 28% of them involved large capacity magazines that were brought in from outside

the city.

Executed on September 8, 2020, at Alameda, California.

s/Jeffery Emmitt
JEFFERY EMMITT
INTERIM CHIEF OF POLICE
CITY OF ALAMEDA

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

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.

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DENNIS J. HERRERA, State Bar #139669
City Attorney
WAYNE SNODGRASS, State Bar #148137
CHRISTINE VAN AKEN, State Bar #241755
Deputy City Attorneys
1 Dr. Carlton B. Goodlett Place
City Hall, Room 234
San Francisco, California 94102-4682
Telephone: (415) 554-4633
Facsimile: (415) 554-4699
E-Mail: christine.van.aken@sfgov.org

Attorneys for Defendants
CITY AND COUNTY OF SAN FRANCISCO,
SAN FRANCISCO MAYOR EDWIN LEE, and
SAN FRANCISCO POLICE CHIEF GREG SUHR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO VETERAN POLICE
OFFICERS ASSOCIATION, LARRY
BARSETTI, RAINERIO GRANADOS,
ARTHUR RITCHIE, and RANDALL LOW,

Plaintiffs,

vs.

THE CITY AND COUNTY OF SAN
FRANCISCO, THE MAYOR OF SAN
FRANCISCO, EDWIN LEE in his official
capacity, THE CHIEF OF THE SAN
FRANCISCO POLICE DEPARTMENT,
GREG SUHR, in his official capacity, and
DOES 1-10,

Defendants.

Case No. CV 13-5351 WHA

**DECLARATION OF CAPTAIN DAVID S.
LAZAR IN SUPPORT OF SAN FRANCISCO'S
OPPOSITION TO PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Hearing Date: February 13, 2014
Time: 8:00 a.m.
Place: Courtroom 8, 19th Floor

Date Action Filed: Nov. 19, 2013
Trial Date: None Set

I, David S. Lazar, declare as follows:

1. I am a Captain of the San Francisco Police Department. I have been a law enforcement officer with SFPD for 22 years and was appointed to the rank of captain six years ago. I am currently the commanding officer of the SFPD's Training Division, which includes responsibility for the Police Academy, the SFPD range, SFPD's field training program, its inservice training, and firearms training

1 for all department members. I have been the commanding officer at the Ingleside Police Station and
2 have supervised the Personal Crimes Division, the Juvenile Domestic Violence Division, the
3 Investigations Division, and many other command assignments.

4 2. The matters stated in this declaration are based on my training, education, and
5 experience. I could and would testify competently to the matters stated in this declaration.

6 3. I make this declaration in support of the City and County of San Francisco's recently
7 enacted Police Code § 619, which prohibits the civilian possession of large-capacity ammunition
8 magazines, defined as detachable ammunition feeding devices with the capacity to accept more than
9 10 rounds.

10 4. I understand that the plaintiffs in this case contend that they may need to use large-
11 capacity magazines to defend themselves or their homes effectively. I believe that this contention is
12 wrong. In my 22 years as a police officer, I cannot recall hearing of any specific instance, in San
13 Francisco or elsewhere, where a citizen using a standard-capacity magazine of 10 rounds or less
14 needed to reload during a self-defense scenario.

15 5. In a dense urban area like San Francisco, police officers are trained to be very judicious
16 in discharging their firearms because of the prospect of collateral injury to persons other than the
17 target. Most civilians who are affected by Police Code § 619 do not have such training. Increasing the
18 number of rounds that they can immediately fire in a self-defense emergency through the use of large-
19 capacity magazines could result in unnecessary injury to innocent people who are nearby.

20 6. I understand that the plaintiffs in this action contend that a 1993 study shows that police
21 officers have a 37% rate of successfully hitting targets in incidents in which they fire at that target one
22 or more times. Plaintiffs contend that the low hit rate of police officers demonstrates why civilians
23 need large-capacity magazines to effectively defend themselves. I am not familiar with the study
24 plaintiffs cite. But in my opinion, if it is true that civilians miss their targets in most cases, then if they
25 can readily discharge more bullets through the use of a large-capacity magazine, that could result in
26 unnecessary collateral injuries to innocent people.

27 7. In any event, I doubt that the hit rate of police officers in performing their official
28 duties bears any relationship to the rate at which civilians can successfully hit targets when shooting in

1 self-defense. Police officers are sworn to protect public safety and public order. Their jobs require
2 them to place themselves in harm's way and, sometimes, to fire shots at dangerous offenders in
3 circumstances that would not occur in the daily lives of civilians, such as firing a gun at a moving
4 target or while chasing a fleeing felon. In my opinion, attempting to compare the hit rates of police
5 officers in such circumstances with likely hit rates for civilians is meaningless because the
6 circumstances are so dissimilar.

7 8. In my opinion, large-capacity magazines in the hands of criminals pose a greater danger
8 to police officers than standard-capacity magazines. When a shooter must pause, even briefly, to
9 reload, police officers have the opportunity to take action, either by advancing or falling back to take
10 cover. A shooter who does not have to reload does not give police that opportunity. Unfortunately,
11 this has been illustrated in a real-life tragedy. In November 1994, San Francisco Police Department
12 Officer James Guelff, whom I knew personally and had worked with, was killed at Pine Street and
13 Franklin Street by a shooter with an assault rifle who was carrying what the media reported as about
14 1000 rounds of ammunition. Officer Guelff responded to a report of shots fired and a car-jacking in
15 progress and was met with the suspect's fire from an assault rifle. Officer Guelff returned fire with his
16 service revolver, which contained six shots. Officer Guelff was outgunned by the shooter with high-
17 capacity magazines and was tragically murdered.

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

25 10. I am familiar with many of the makes and models of firearms available for sale to
26 civilians in California. Because of California's prohibition on the manufacture and sale of large-
27 capacity magazines, it is generally unlawful for sellers to sell or offer for sale a handgun or long gun
28 with a magazine that can accommodate more than 10 rounds of ammunition, except to law

1 enforcement. For firearms that come standard in other states with large-capacity magazines, sellers
2 have responded to California's magazine restriction by selling "California-legal" versions of their
3 firearms with magazines that do not violate California's restrictions on large-capacity magazine sales.

4 11. I am familiar with the San Francisco Police Department's expectations for off-duty
5 police officers. SFPD officers are afforded the opportunity to act as peace officers when confronted
6 with criminal situations and may act as law enforcement officers at any time. For example, off-duty
7 SFPD officers may assist active-duty officers if they are in the vicinity of an incident. They may also
8 interrupt crimes that they witness while off-duty. For that reason, SFPD officers are authorized to
9 carry firearms with them even when off duty, including firearms equipped with large-capacity
10 magazines.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct. Executed this 15 day of January, 2014, in San Francisco, California.

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14 
15 CAPTAIN DAVID S. LAZAR
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EXHIBIT A

TO

**DECLARATION OF CAPTAIN DAVID S. LAZAR
IN SUPPORT OF SAN FRANCISCO'S OPPOSITION
TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Retrieved by A10307 on 12/19/2013 at 0:00:00 AM

San Francisco Police Department

Report Type: Supplemental

INCIDENT REPORT

130309253

I N C I D E N T	Incident Number 130-308-253	Occurrence From Date / Time 04/16/2013 01:14	Occurrence To Date / Time 04/16/2013 01:14	Reported Date / Time 04/16/2013 01:14	CAD Number 131060140	130309253		
	Type of Incident INVESTIGATIVE DETENTION 04085							
	Location of Occurrence: 679 GATES ST		At Intersection with/Premise Type STREET, (NOT SIDEWALK)		District INGLESIDE			
	Confidential Report? <input type="checkbox"/>	Arrest Made? <input type="checkbox"/>	Suspect Known? <input type="checkbox"/>	Suspect Unknown? <input type="checkbox"/>	Non-Suspect Incident? <input type="checkbox"/>		Domestic Violence? <input type="checkbox"/>	(Type of Weapon Used)
Location Sent / On View: 679 GATES ST		At Intersection with		Reporting District INGLESIDE				
How Cleared?	Reported to Bureau DOC	Name Garrity, James B	Star 2158	Date/Time 04/16/2013 02:30	Elder Victim? <input type="checkbox"/>	Gang Related? <input type="checkbox"/>	Juvenile Subject? <input type="checkbox"/>	Prejudice Based? <input type="checkbox"/>

O F F I C E R I A T I O N	I declare under penalty of perjury, this report of 6 pages is true and correct, based on my personal knowledge, or is based on information and belief following an investigation of the events and parties involved. PROP 116 CERTIFIED 5 Year/Post					
	Reporting Officer APODACA, NICHOLAS B		Star 408	Station Ingleside Station	Watch 2100-0700	Date 04/16/13 08:34
	Reviewing Officer GARRICK, AVA J		Star 1190	Station Ingleside Station	Watch 0530-1530	Date 04/16/13 06:37
	OIC WEARING, IRENE L		Star 1865	Station Ingleside Station	Watch 0530-1530	Date 04/16/13 06:41
	Related Case	Related Case	Re-assigned to Copies to 5X200 3*300	Assigned to 5X200 Add'l Copies CO, C/I	Assigned by NA 408	

R E P O R T E E	Code R 1	Name (Last, First Middle) #408, #2200, SFPD		Alias		Email	
	Day Phone	Type	Home Address		City	State	Zip Code
	Night Phone (415) 404-4000	Type Work	Work Address 1 SERGEANT JOHN V YOUNG LANE		City SAN FRANCISCO	State CA	Zip Code 94112-
	DOB	Age	DOB	Age between and	Race	Sex	Height Weight Hair Color Eye Color ID Type Jurisd. ID No.
	Confidential Person? <input type="checkbox"/>	Violent Crime Notification? <input type="checkbox"/>	293 PC Star		Follow-up Form YES <input type="checkbox"/>	Statement YES <input type="checkbox"/>	Relationship to Subject STRANGER/NONE
	School (if Juvenile)		Injury/Treatment NONE		Other Information/If Interpreter Needed Specify Language		

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San Francisco Police Department

Report Type: Supplemental

INCIDENT REPORT

130309253

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Codo D 1	Name (Last, First Middle) HERBERT, DARRELL JOSHUA		Alias		Email Unk	
Day Phone (000) 000-0000		Type Unknown	Home Address 679 GATES STREET		City SAN FRANCISCO	State CA
Night Phone		Type	Work Address		City	State
DOB Unknown <input type="checkbox"/>		Date of Birth 04/04/01	Age 22	or age between and	Race A	Sex M
Height 5'8"		Weight 200	Hair Color BLK		Eye Color BRO	
3FNO	J/D# (if Juv)	ID Type/Jurisdiction/Number DL CA		ID Type/Jurisdiction/Number		ID Type/Jurisdiction/Number
Booking Charge(s)				Booking Location		
Warrant #	Court#	Action#	Dept#		Enroute to	
Warrant Violation(s)					Bail (\$)	
Citation#	Violation(s)			Appear Date/Time	Location of Appearance	
<input type="checkbox"/> CA Form Booked Copy Attached	Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check Star	
Book/Cite Approval	Star	Mass Arrest Code	M X-Rays <input type="checkbox"/>		School (if Juvenile)	Statement <input type="checkbox"/>
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos						

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Codo D 2	Name (Last, First Middle) CONSTANTINO, RAYMOND JEREMY		Alias		Email Unk	
Day Phone (000) 000-0000		Type Unknown	Home Address 370 LELAND AVENUE		City SAN FRANCISCO	State CA
Night Phone		Type	Work Address		City	State
DOB Unknown <input type="checkbox"/>		Date of Birth 10/25/91	Age 21	or age between and	Race A	Sex M
Height 5'5"		Weight 100	Hair Color BLK		Eye Color BRO	
3FNO	J/D# (if Juv)	ID Type/Jurisdiction/Number DL CA		ID Type/Jurisdiction/Number		ID Type/Jurisdiction/Number
Booking Charge(s)				Booking Location		
Warrant #	Court#	Action#	Dept#		Enroute to	
Warrant Violation(s)					Bail (\$)	
Citation#	Violation(s)			Appear Date/Time	Location of Appearance	
<input type="checkbox"/> CA Form Booked Copy Attached	Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check Star	
Book/Cite Approval	Star	Mass Arrest Code	M X-Rays <input type="checkbox"/>		School (if Juvenile)	Statement <input type="checkbox"/>
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos						

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San Francisco Police Department

Report Type: Supplemental

INCIDENT REPORT

130309253

PROPERTY 1	Code/No	Item Description			Brand		Model	
	EVD 1	CD DISC						
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				SIL		1		
Seized by (Star)		From Where						
408		CO. H						
Additional Description/Identifying Numbers								
Booked at Co. H by #2286								
PROPERTY 2	Code/No	Item Description			Brand		Model	
	EVD 2	DNA COLLECTION DATA SHEET			SFPD		235B	
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				WHI	13282163	2		
Seized by (Star)		From Where						
2286		CO. H						
Additional Description/Identifying Numbers								
Booked at Co. H by #2286								
PROPERTY 3	Code/No	Item Description			Brand		Model	
	EVD 3	GSR COLLECTION DATA SHEET			SFPD		235C	
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				WHI	13202163	2		
Seized by (Star)		From Where						
2286		CO. H						
Additional Description/Identifying Numbers								
Booked at Co. H by #2286								
PROPERTY 4	Code/No	Item Description			Brand		Model	
	EVD 4	CRIME LABORATORY EXAMINATION REQUEST FORM			SFPD		84	
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				WHI	13282163	1		
Seized by (Star)		From Where						
2286		CO. H						
Additional Description/Identifying Numbers								
Booked at Co. H by #2286								
PROPERTY 5	Code/No	Item Description			Brand		Model	
	EVD 5	CERTIFICATE OF RELEASE FORM			SFPD		184	
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				WHI		2		
Seized by (Star)		From Where						
408		CO. H						
Additional Description/Identifying Numbers								
Booked at Co. H by #2286								
PROPERTY 6	Code/No	Item Description			Brand		Model	
	EVD 6	PAPER HAND BAGS						
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				BRO		2		
Seized by (Star)		From Where						
2286		CO. H						
Additional Description/Identifying Numbers								
Booked at Co. H by #2286								

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San Francisco Police Department

Report Type: Supplemental

INCIDENT REPORT

130309253

PROPERTY	Code/No EVD 7	Item Description GSR COLLECTION KIT				Brand		Model	
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity 2	Value		
	Seized by (Star) 2286		From Where CO. H						
	Additional Description/Identifying Numbers Booked at Co. H by #2286								
PROPERTY	Code/No EVD 8	Item Description AMMUNITION				Brand HSM		Model	
	Serial No.	Gun Make	Caliber 38 Special	Color CPR	Narcotics Lab No.	Quantity 100	Value		
	Seized by (Star) 408		From Where INSIDE OF (U I) HONDA CIVIC TRUNK						
	Additional Description/Identifying Numbers (2) HSM brand, 158 grain, semi-wadcutler boxes, 50 rounds each box. Booked at Co. H by #2286								
VEHICLE INFORMATION	VEHICLE CODES: B - BOOSTER, D - DAMAGED, F - USED FFI ONLY, R - RECOVERED, S - STOLEN, SR - STOLEN/RECOVERED, T - TOWED, U - USED OTHER, V - VANDALIZED, X - STRIPPED								
	Code U 1	Plate No. 6WY138	State CA	Reg Yr 2013	Plate Type PC	VIN No. JH1MEJ8674WS009483			
	Veh Year 1998	Make Honda	Model CIVIC						
	Style Sedan, 4 Door	Color Black	Plates/VIN Match? <input checked="" type="checkbox"/>	Plates Missing? FRONT <input type="checkbox"/> REAR <input type="checkbox"/>					
	Condition (Check all that apply) APPARENTLY DRIVABLE? <input type="checkbox"/> BURNED? <input type="checkbox"/> DAMAGE? <input type="checkbox"/> STRIPPED? <input type="checkbox"/>				Damage NONE		Point of Entry		
	Crime Scene Tech. Notified? <input type="checkbox"/>	307 Form Given to Owner? <input type="checkbox"/>	Tow Approved By (Name) Star		Towed to (Name/Address)		Tow Check (Name) Star		
	Hold For		Other Information						
	Registered Owner Business Name/Last Name (R/O) First Name Residence Phone HERBERT DARRELL								
	Residence Address 679 Gates St			City SAN FRANCISCO	State CA	Zip 94110	Business Phone		

Retrieved by A10307 on 12/19/2013 at 8:06:08 AM

San Francisco Police Department
INCIDENT REPORT

Report Type: Supplemental

130309253

NARRATIVE

On 04/16/13 at approximately 0115 hours, Officer Jones #2286 and I were on patrol, in full police uniform, riding in a fully marked police vehicle in the city and county of San Francisco. I was sitting in the front passenger seat and Officer Jones was driving our patrol vehicle.

Dispatch advised Bayview units observed a vehicle fleeing the scene of an incident involving another vehicle firing gunshots at an unmarked Bayview patrol vehicle. 3C13E Officer Alvarenga #1630 advised the fleeing vehicle was a Honda with a license plate of 6WVY138, last seen with five occupants. A computer check of the above mentioned vehicle listed the registered owner as Darrell Herbert with a registered address of 579 Gates Street. We responded to the 500 block of Gates Street in an attempt to locate the vehicle and any possible suspects.

While traveling southbound Gates Street, we observed the above mentioned black (U1) Honda Civic (CA6WVY138), slowly reversing into a parking spot in front of 579 Gates Street. After Officer Jones stopped our patrol vehicle, we both exited and advanced towards the vehicle. I observed (D1) Darrell Herbert (04/04/91) sitting in the front driver seat of the vehicle, as well as (D2) Raymond Constantino (10/25/91) sitting in the front passenger seat. I observed the vehicle was still running and after telling Herbert to turn the vehicle off, he did. Both Herbert and Constantino were told to exit the vehicle and they did. Both were placed in handcuffs and detained pending further investigation. Herbert was identified via his California driver's license (E1) and Constantino was identified via his California ID Card (E1).

Officer Alvarenga arrived on scene shortly thereafter and identified both Herbert as the driver and the vehicle as being the same as the one that fled earlier.

Per 3C108 Sergeant Schaffer #1181, both Herbert's and Constantino's hands were paper bagged for GSR testing.

We transported Herbert back to Ingleside Station. 3H90 Officers Seavey #2292 and Padilla #2272 transported Constantino back to Ingleside Station. Per Sergeant Schaffer, 3H11E Officer Peregrina #2286 drove the Honda back to Ingleside Station.

As a GSR collection trained Officer, Officer Jones conducted a GSR collection of Herbert and Constantino and completed two (E3) SFPD 235c forms, which were later booked into evidence at Ingleside Station.

An incidental search of the Honda by myself resulted in locating two boxes of 38 Special (E8) ammunition (HSM, 158 grain, semi-wadcutter, 50 count each) inside the trunk, located in a plastic bag. I took digital photos of the vehicle and ammunition which were later saved onto a (E1) CD Disc. With a fresh pair of latex gloves, I seized the ammunition from inside the trunk.

5X105 Inspector Garrity #2156 responded to Ingleside Station and took over the investigation.

Officer Jones voluntarily obtained a DNA sample from Herbert and Constantino and completed two (E2) SFPD 235b forms and one (E4) SFPD 64 form. Lab number 13282163 was requested regarding the two DNA samples obtained.

Per Inspector Garrity, both Herbert and Constantino were released from Ingleside Station per 849(b) PC and each issued a (E5) Certificate of Release form.

Officer Jones booked the CD Disc, (E6) paper hand bags, (E7) GSR collection kit, ammunition, Certificate of Release forms, SFPD 64 form, SFPD 235b forms and SFPD 235c forms into evidence at Ingleside Station.

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San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

130309253

I N C I D E N T	Incident Number 130-309-253	Occurrence From Date / Time 04/16/2013 00:17	Occurrence To Date / Time 04/16/2013 00:32	Reported Date / Time 04/16/2013 00:17	CAD Number 131060036	1 3 0 3 0 9 2 5 3	
	Type of Incident ASSAULT, ATT. HOMICIDE, W/ GUN 04021 ASSAULT, AGGRAVATED, ON POLICE OFFICER, W/ SEMI AUTO 04094 EVADING A POLICE OFFICER RECKLESSLY 27176						
	Location of Occurrence: 200 HUNTERS POINT BL				At Intersection with/Promise Type EVANS AVENUE / PARK		
	Confidential Report? <input type="checkbox"/>		Arrest Made? <input checked="" type="checkbox"/>		Suspect Known? <input type="checkbox"/> Suspect Unknown? <input type="checkbox"/> Non-Suspect Incident? <input type="checkbox"/> Domestic Violence? <input type="checkbox"/> (Type of Weapon Used)		
	Reporting Unit 3C13E		Reporting District DAYVIEW				
O F F I C E R A T I O N	I declare under penalty of perjury, this report of 27 pages is true and correct, based on my personal knowledge, or is based on information and belief following an investigation of the events and parties involved. PROP 116 CERTIFIED Post Training						
	Reporting Officer ASCHWANDEN, DAVID J		Star 4257	Station Bayview Station		Watch 2100-0700	
	Reviewing Officer DANGERFIELD, TROY J		Star 250	Station Bayview Station		Watch 0530-1630	
R E P O R T E R	OIC DANGERFIELD, TROY J		Star 250	Station Bayview Station		Watch 0530-1630	
	Related Case ..	Related Case ..	Re-assigned to Copies to 3*300			Assigned to 3*300	
	Add Copies: BAYVIEW SIT, HOMICIDE, CIU, GTF, HIT AND RUN, OR, DA					Assigned by DA 4257	

R E P O R T E R	Code R 1	Name (Last, First Middle) SFPD #4257, SFPD #1630		Alias		Email	
	Day Phone (415) 671-2300	Type Work	Home Address		City	State	Zip Code
	Night Phone	Type	Work Address 201 WILLIAMS AVENUE		City SAN FRANCISCO	State CA	Zip Code 04124
	DOB / Age Unk. <input type="checkbox"/>	DOB	Age between and	Race	Sex	Height	Weight
	Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>	Star	Follow-up Form YES <input type="checkbox"/>	Statement YES <input type="checkbox"/>	Relationship to Subject STRANGER/NONE
	School (If Juvenile)	Injury/Treatment		Other Information/If Interpreter Needed Specify Language			

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San Francisco Police Department

INCIDENT REPORT

130309253

Report Type: Initial

BOOKED	Code B 1	Name (Last, First Middle) IOANE, LEAFATULAGI				Alias				Email			
	Day Phone (415) 685 6699		Type Cell	Home Address 128 NORTH RIDGE ROAD				City SF		State CA		Zip Code 94124	
	Night Phone		Type	Work Address				City		State		Zip Code	
	DOB Unknown <input type="checkbox"/>	Date of Birth 05/07/84	Age 18	or age between and		Race A	Sex F	Height 6'6	Weight 230	Hair Color BRO	Eye Color BRO		
	SFNO	J/D# (If Juv)		ID Type/Jurisdiction/Number DL CA			ID Type/Jurisdiction/Number			ID Type/Jurisdiction/Number			
	Booking Charge(s) 2800.2 CVC / 12500(a) CVC						Booking Location COUNTY JAIL #1 - 7TH STREET SHERIFF'S FACILITY						
	Warrant #		Court#	Action#		Dept#		Enroute to					
	Warrant Violation(s)								Bail (\$)				
	Citation#		Violation(s)				Appear Date/Time		Location of Appearance				
	<input type="checkbox"/> CA Form Booked Copy Attached		Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check		Star				
Book/Cite Approval SGT BROPHY		Star 2112	Mass Arrest Code		M X-Rays <input type="checkbox"/>		School (If Juvenile)				Statement <input type="checkbox"/>		
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description: Scars, Marks, Tattoos GRAY HOODIE, BLUE JEANS AND BEIGE SHOES													

DETAINED	Code D 1	Name (Last, First Middle) WINTERSTEIN, EVELYN PULETELE				Alias				Email			
	Day Phone (000) 000-0000		Type Unknown	Home Address 140 MIDDLEPOINT ROAD				City SF		State CA		Zip Code 94124	
	Night Phone (000) 000-0000		Type Unknown	Work Address				City		State		Zip Code	
	DOB Unknown <input type="checkbox"/>	Date of Birth 02/13/91	Age 22	or age between and		Race A	Sex F	Height 6'11	Weight 215	Hair Color BLK	Eye Color BRO		
	SFNO	J/D# (If Juv)		ID Type/Jurisdiction/Number DL CA			ID Type/Jurisdiction/Number			ID Type/Jurisdiction/Number			
	Booking Charge(s)						Booking Location						
	Warrant #		Court#	Action#		Dept#		Enroute to					
	Warrant Violation(s)								Bail (\$)				
	Citation#		Violation(s)				Appear Date/Time		Location of Appearance				
	<input type="checkbox"/> CA Form Booked Copy Attached		Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check		Star				
Book/Cite Approval		Star	Mass Arrest Code		M X-Rays <input type="checkbox"/>		School (If Juvenile)				Statement <input type="checkbox"/>		
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description: Scars, Marks, Tattoos LSW: RED PFACOT, PINK HOODIE, BLUE JEANS, RAINBOW TOMS.													

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San Francisco Police Department
INCIDENT REPORT

Report Type: Initial

130309253

DETAINED

Code D 2	Name (Last, First Middle) JANESA, LEE MO V L EUI				Alias				Email				
Day Phone (000) 000-0000		Type Unknown		Home Address 0000 GOLDEN GATE & HYDE UNKNOWN				City SF		State UNKNOWN		Zip Code -	
Night Phone		Type		Work Address				City		State		Zip Code	
DOB Unknown	Date of Birth 06/10/04	Age 18	or age between and		Race A	Sex F	Height	Weight	Hair Color BRO	Eye Color BRO			
SFNO	JID# (if Juv)		ID Type/Jurisdiction/Number				ID Type/Jurisdiction/Number		ID Type/Jurisdiction/Number				
Booking Charge(s)								Booking Location					
Warrant #		Court #		Action #		Dept #		Enroute to					
Warrant Violation(s)								Bail (\$)					
Citation #		Violation(s)				Appear Date/Time		Location of Appearance					
<input type="checkbox"/> CA Form Booked Copy Attached		Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check		Star					
Book/Cite Approval		Star		Mass Arrest Code		M X-Rays <input type="checkbox"/>		School (if Juvenile)				Statement <input type="checkbox"/>	
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos													

DETAINED

Code D 3	Name (Last, First Middle) VAOGA, FLORENCE MARIA				Alias				Email				
Day Phone (000) 000-0000		Type Unknown		Home Address 43 NORTH IRIDGE ROAD				City SF		State CA		Zip Code 94124-	
Night Phone (000) 000-0000		Type Unknown		Work Address				City		State		Zip Code	
DOB Unknown	Date of Birth 03/19/95	Age 18	or age between and		Race A	Sex F	Height 6'4	Weight 185	Hair Color BRO	Eye Color BRO			
SFNO	JID# (if Juv)		ID Type/Jurisdiction/Number DL CA				ID Type/Jurisdiction/Number		ID Type/Jurisdiction/Number				
Booking Charge(s)								Booking Location					
Warrant #		Court #		Action #		Dept #		Enroute to					
Warrant Violation(s)								Bail (\$)					
Citation #		Violation(s)				Appear Date/Time		Location of Appearance					
<input type="checkbox"/> CA Form Booked Copy Attached		Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check		Star					
Book/Cite Approval		Star		Mass Arrest Code		M X-Rays <input type="checkbox"/>		School (if Juvenile)				Statement <input type="checkbox"/>	
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos													

Retrieved by A10307 on 12/19/2013 at 8:06:58 AM

San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

130309253

D E T A I N E D	Code D 4	Name (Last, First Middle) SEGI-DAVIS, FRANCIELS				Alias				Email			
	Day Phone (000) 000-0000		Type Unknown	Home Address 19 CARR STREET				City SF		State CA		Zip Code 94124-	
	Night Phone (000) 000-0000		Type Unknown	Work Address				City		State		Zip Code	
	DOB Unknown <input type="checkbox"/>	Date of Birth 01/01/92	Age 21	or age between and		Race B	Sex M	Height 6'0	Weight 170	Hair Color BLK	Eye Color BRO		
	SFNO 654902	J/D# (If Juv)		ID Type/Jurisdiction/Number FBI USA			ID Type/Jurisdiction/Number CII USA			ID Type/Jurisdiction/Number			
	Booking Charge(s)						Booking Location						
	Warrant #		Court#	Action#		Dept#		Enroute to					
	Warrant Violation(s)						Bail (\$)						
	Citation#		Violation(s)				Appear Date/Time		Location of Appearance				
	<input type="checkbox"/> CA Form Booked Copy Attached		Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check		Star				
Book/Cite Approval		Star	Mass Arrest Code		<input type="checkbox"/> M X-Rays		School (If Juvenile)			Statement <input type="checkbox"/>			
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos													

D E T A I N E D	Code D 5	Name (Last, First Middle) SEGI, SIVANE				Alias				Email			
	Day Phone (000) 000-0000		Type Unknown	Home Address 19 CARR STREET				City SF		State CA		Zip Code 94124-	
	Night Phone (000) 000-0000		Type Unknown	Work Address				City		State		Zip Code	
	DOB Unknown <input type="checkbox"/>	Date of Birth 02/23/91	Age 22	or age between and		Race B	Sex M	Height 6'5	Weight 135	Hair Color BLK	Eye Color BRO		
	SFNO 637093	J/D# (If Juv)		ID Type/Jurisdiction/Number DL CA			ID Type/Jurisdiction/Number			ID Type/Jurisdiction/Number			
	Booking Charge(s)						Booking Location						
	Warrant #		Court#	Action#		Dupl#		Enroute to					
	Warrant Violation(s)						Bail (\$)						
	Citation#		Violation(s)				Appear Date/Time		Location of Appearance				
	<input type="checkbox"/> CA Form Booked Copy Attached		Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check		Star				
Book/Cite Approval		Star	Mass Arrest Code		<input type="checkbox"/> M X-Rays		School (If Juvenile)			Statement <input type="checkbox"/>			
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos													

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San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

130309253

D E T A I N E D	Code D 6	Name (Last, First Middle) TAYLOR, DEON				Alias				Email			
	Day Phone (000) 000-0000		Type Unknown	Home Address 220 MIDDLE POINT ROAD				City SF		State CA		Zip Code 04124-	
	Night Phone (000) 000-0000		Type Unknown	Work Address				City		State		Zip Code	
	DOB Unknown	Date of Birth 00/25/00	Age 24	or age between and		Race R	Sex M	Height 6'2	Weight 155	Hair Color BLK	Eye Color BRO		
	SFNO 61987G	J/D# (If Juv)		ID Type/Jurisdiction/Number CII USA			ID Type/Jurisdiction/Number DL CA			ID Type/Jurisdiction/Number FBI USA			
	Booking Charge(s)						Booking Location						
	Warrant #		Court#	Action#		Dept#		Enroute to					
	Warrant Violation(s)						Bail (S)						
	Citation#		Violation(s)				Appear Date/Time		Location of Appearance				
	<input type="checkbox"/> CA Form Booked Copy Attached		Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check		Star				
Book/Cite Approval		Star	Mass Arrest Code		M X-Rays <input type="checkbox"/>		School (If Juvenile)			Statement <input type="checkbox"/>			
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description: Scars, Marks, Tattoos LSW: DARK BLUE JEANS, FREY HOODIE, GREY SHIRT, BLACK NIKES.													

D E T A I N E D	Code D 7	Name (Last, First Middle) FAATAUI, CENTURY				Alias				Email			
	Day Phone (000) 000-0000		Type Unknown	Home Address 144 WEST POINT ROAD				City SF		State CA		Zip Code 94124-	
	Night Phone (000) 000-0000		Type Unknown	Work Address				City		State		Zip Code	
	DOB Unknown	Date of Birth 01/06/91	Age 22	or age between and		Race A	Sex M	Height 6'10	Weight 210	Hair Color BLK	Eye Color BRO		
	SFNO 65054G	J/D# (If Juv)		ID Type/Jurisdiction/Number DL CA			ID Type/Jurisdiction/Number FBI USA			ID Type/Jurisdiction/Number CII USA			
	Booking Charge(s)						Booking Location						
	Warrant #		Court#	Action#		Dept#		Enroute to					
	Warrant Violation(s)						Bail (S)						
	Citation#		Violation(s)				Appear Date/Time		Location of Appearance				
	<input type="checkbox"/> CA Form Booked Copy Attached		Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check		Star				
Book/Cite Approval		Star	Mass Arrest Code		M X-Rays <input type="checkbox"/>		School (If Juvenile)			Statement <input type="checkbox"/>			
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description: Scars, Marks, Tattoos													

Retrieved by A10307 on 12/18/2013 at 8:07:00 AM

San Francisco Police Department

INCIDENT REPORT

130309253

Report Type: Initial

PROPERTY 1	Code/No	Item Description				Brand		Model	
	EVD 1	GUN							
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value		
			9MM	BLK		1			
Seized by (Star)		From Where							
638		INDIA BASIN PARK							
Additional Description/Identifying Numbers									
Refer to CSI Supplemental									
PROPERTY 2	Code/No	Item Description				Brand		Model	
	EVD 2	GUN						GLOCK 17	
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value		
			GLOCK	9MM	BLK		1		
Seized by (Star)		From Where							
638		EVANS AVENUE							
Additional Description/Identifying Numbers									
Refer to CSI Supplemental									
PROPERTY 3	Code/No	Item Description				Brand		Model	
	EVD 3	EXTENDED MAGAZINE							
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value		
				BLK		1			
Seized by (Star)		From Where							
638		EVANS AVENUE							
Additional Description/Identifying Numbers									
Refer to CSI Supplemental									
PROPERTY 4	Code/No	Item Description				Brand		Model	
	EVD 4	EXTENDED MAGAZINE							
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value		
				SIL		1			
Seized by (Star)		From Where							
4267		FROM INSIDE SUSPECT VEHICLE.							
Additional Description/Identifying Numbers									
Booked at Bayview Station.									
PROPERTY 5	Code/No	Item Description				Brand		Model	
	EVD 5	FIRED CASINGS							
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value		
			9MM	MUL/COL		2			
Seized by (Star)		From Where							
4257		INDIA BASIN PARK							
Additional Description/Identifying Numbers									
Booked at Bayview Station.									
PROPERTY 6	Code/No	Item Description				Brand		Model	
	EVD 6	BACKPACK							
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value		
				BLK		1			
Seized by (Star)		From Where							
4257		INSIDE SUSPECT VEHICLE (WHITE SUBURBAN)							
Additional Description/Identifying Numbers									
Booked at Bayview Station. Contains blue document folder with Certificate of Completion for IPO-HSA New Employee Orientation (NEO) Issued to Century Fastaut on 04/15/2013.									

Retrieved by A10307 on 12/19/2013 at 8:07:01 AM

San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

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PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 7	GSR TEST KITS						
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
						0		
Seized by (Star)		From Where						
1114		ALL SUSPECTS IN SUSPECT VEHICLE (WHITE SUBURBAN)						
Additional Description/Identifying Numbers								
Booked at Bayview Station. (Refer to Ofc. Telusan's Statement)								
PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 8	LEAFY VEGETABLE SUBSTANCE						
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				GRN	13282163	1		
Seized by (Star)		From Where						
704		NB 101						
Additional Description/Identifying Numbers								
Refer to Ofc. Cader's statement								
PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 9	GRINDER						
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				GRN		1		
Seized by (Star)		From Where						
704		N/B 101						
Additional Description/Identifying Numbers								
Refer to Ofc. Cader's Statement								
PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 10	CD						
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				SIL		1		
Seized by (Star)		From Where						
704		N/B 101						
Additional Description/Identifying Numbers								
Contains photographs taken on scene. Refer to Ofc. Cader's statement.								
PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 11	CD						
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				SIL		1		
Seized by (Star)		From Where						
2438		INDIA BASIN PARK						
Additional Description/Identifying Numbers								
Contains photographs taken on scene.								
PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 12	849 FORMS			SFPD			
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				MUL/COL		7	\$0.00 Total	
Seized by (Star)		From Where						
4270		SOUTHERN STATION						
Additional Description/Identifying Numbers								
OFC CUNNINGHAM #1264 ALSO COLLECTED SOME OF THESE FORMS FROM SOUTHERN STATION								

Retrieved by A10307 on 12/19/2013 at 8:07:02 AM

San Francisco Police Department

INCIDENT REPORT

130309253

Report Type: Initial

VEHICLE INFORMATION	VEHICLE CODES: B - BOOSTED, D - DAMAGED, F - USED FELONY, R - RECOVERED, S - STOLEN, SR - STOLEN/RECOVERED, T - TOWED, U - USED OTHER, V - VANDALIZED, X - STRIPPED					
	Code F 1	Plate No. 4T7A184	State CA	Reg Yr 2013	Plate Type PC	VIN No.
	Veh Year 1999	Make Chevrolet	Model SUBURBAN			
	Style Truck Style	Color White	Plates/VIN Match? <input checked="" type="checkbox"/>	Plates Missing? FRONT <input type="checkbox"/> REAR <input type="checkbox"/>		
	Condition (Check all that apply) APPARENTLY DRIVABLE? <input checked="" type="checkbox"/> BURNED? <input type="checkbox"/> DAMAGE? <input type="checkbox"/> STRIPPED? <input type="checkbox"/>			Damage	Point of Entry	
	Crime Scene Tech. Notified? <input type="checkbox"/>	387 Form Given to Owner? <input type="checkbox"/>	Tow Approved By (Name) Sgt. Brophy	Star 2112	Towed to (Name/Address) CSI LOT, 450 7TH STREET	Tow Check (Name) Star
	Hold For Criminal Investigations Unit		Other Information			
	Registered Owner Business Name/Last Name (R/O) TAQUIMA		First Name LUISA		Residence Phone (415) 685-0099	
	Residence Address 9 Harbor Rd		City SAN FRANCISCO	State CA	Zip 94124-	Business Phone

VEHICLE INFORMATION	VEHICLE CODES: B - BOOSTED, D - DAMAGED, F - USED FELONY, R - RECOVERED, S - STOLEN, SR - STOLEN/RECOVERED, T - TOWED, U - USED OTHER, V - VANDALIZED, X - STRIPPED					
	Code U 1	Plate No. 6WVY138	State CA	Reg Yr 1998	Plate Type PC	VIN No. JHMEJ0674WS009403
	Veh Year 1998	Make Honda	Model CIVIC			
	Style Sedan, 4 Door	Color Black	Plates/VIN Match? <input checked="" type="checkbox"/>	Plates Missing? FRONT <input type="checkbox"/> REAR <input type="checkbox"/>		
	Condition (Check all that apply) APPARENTLY DRIVABLE? <input checked="" type="checkbox"/> BURNED? <input type="checkbox"/> DAMAGE? <input type="checkbox"/> STRIPPED? <input type="checkbox"/>			Damage	Point of Entry	
	Crime Scene Tech. Notified? <input type="checkbox"/>	387 Form Given to Owner? <input type="checkbox"/>	Tow Approved By (Name)	Star	Towed to (Name/Address)	Tow Check (Name) Star
	Hold For		Other Information			
	Registered Owner Business Name/Last Name (R/O) HERBERT		First Name DARRELL		Residence Phone	
	Residence Address 579 Gates St		City SAN FRANCISCO	State CA	Zip 94110-	Business Phone

Retrieved by A10307 on 12/10/2013 at 6:07:03 AM

**San Francisco Police Department
INCIDENT REPORT**

Report Type: Initial

130309253

NARRATIVE

On 04/16/2013 at approximately 0017 Hrs, Ofc. Alvarenga #1630 and I responded as back up to a Bayview plain clothes unit that had been fired upon in the area of India Basin Park (200 Hunters Point Expressway). Refer to Ofc. Faye's #1379 and Ofc. Eastlund's #1318 statements.

I was driving a marked police unit driving code-3 (emergency lights and siren activated) from the area of Ingalls Street at La Salle Avenue. I was travelling Northbound on Ingalls to the intersection of Ingalls at Innes Avenue. I turned right onto Innes Street traveling Eastbound Innes to the intersection of Innes Avenue at Hawes Street. I turned left onto Hawes Street traveling Northbound on Hawes to the intersection of Hawes Street and Evans Avenue. I turned left onto Evans Avenue traveling Westbound on Evans to the entrance on India Basin Park.

Upon arrival at India Basin park, I viewed approximately five vehicles approaching the exit of India Basin Park from inside of the park and attempting to turn Westbound onto Evans. I had my red lights and siren activated because I was driving code-3; however, none of the vehicles pulled to the right nor did they stop their vehicles. Of the five vehicles viewed, Ofc. Alvarenga and I were able to identify a (U/F1) White Chevy Suburban with California plates 4TZA184, (U/F1) Black Honda with California plates 6WVY138, and a Burgundy SUV with unknown plates.

Due to the seriousness of the call, the location of the vehicles, and the manner in which the vehicles were behaving, Ofc. Alvarenga and I determined that the vehicles were possibly involved with the shooting. The vehicles continued to drive away from my vehicle fleeing Westbound on Evans Avenue. The (U/F1) White Chevy was traveling at the highest rate of speed and appeared to be attempting to flee with the greatest effort. I therefore decided to pursue the White Chevy instead of the other vehicles.

I pursued the White Chevy Westbound on Evans at approximately 50-60 miles per hour. I watched the White Chevy run through multiple red lights and stop signs without obeying any traffic laws. From my recollection I recall that the Chevy failed to stop for a posted stop sign on Evans Avenue at Jennings, failed to stop for a solid red light at Evans and 3rd Street, failed to stop for a solid red light at Evans and Napoleon Street, failed to stop for a solid red light at Evans and Army, and failed to stop for a solid red light at 9th Street and Bryant Street. Officer Alvarenga provided updated information to dispatch as I drove our vehicle in pursuit of the White Chevy. The route of pursuit is as follows: Westbound Evans Avenue to the intersection of Evans Avenue and Army Street, left turn on Army Street heading Westbound on Army, Westbound on Army Street to the intersection of Army Street and the Northbound 101 on ramp, right turn heading N/B on 101 to the N/B 101 and E/B 80 split, left turn at the split traveling N/B 101 to the 9th Street off-ramp, right turn on the 9th Street off-ramp to Eastbound Bryant Street, straight on Bryant Street until stopping in front of 1046 Bryant Street.

During the pursuit, upon approaching the N/B 101 and E/B 80 split, I viewed sparks ignite beneath the White Chevy. I then viewed a large plume of black and white smoke emit from the White Chevy. The speed of the White Chevy decreased and I believe that the vehicle suffered a significant mechanical failure. I determined that the vehicle then coasted to the final stop at 1046 Bryant due to the mechanical failure. The vehicle made no effort to stop prior to the mechanical failure.

While the vehicle was coming to the stop, a number of police vehicles arrived on scene to assist in conducting a felony vehicle stop. The occupants of the vehicle were given verbal instructions until each passenger was taken into custody (Refer to Ofc. Talusan's #1114 Statement). The following individuals were inside of the vehicle: (B/1) LEAFAITULAGI IOANE, (D/1) EVELYN WINTERSTEIN, (D/2) LEE MO JAMESA, (D/3) FLORENCE VAOGA, (D/4) FRANCIELS SEGI-DAVIS, (D/5) SIVANE SEGI, (D/6) DEON TAYLOR, (D/7) CENTURY FAATAUI. All of the individuals were transported to Southern Station for further investigation. Sgt. Brophy #2112 was notified and took over the investigation. I did not speak with any suspects detained during the incident.

Ofc. Alvarenga and I searched the White Chevy as per the instructions of Sgt. Brophy. During my search of the Chevy, I found a (E/6) Black backpack that contained an (E/4) Extended magazine. I seized the backpack and magazine. The (U/F1) White Chevy was towed to 450th 7th Street with a hold for CSI. The White Chevy was

APPENDIX E
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Retrieved by A10307 on 12/10/2013 at 10:07:03 AM

San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

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escorted to the CSI lot by Ofc. Kikuchi #2374 and Ofc. Camilosa #4244 (Refer to Ofc. Camilosa's Statements).

While on scene at 1045 Bryant, Ofc. Alvarenga and I confirmed the plate for the Black Honda with California plates 6WVY138. I was later notified that Ingleside officers had detained a matching vehicle (Refer to Ofc. Apodaca's #408 supplemental report).

Multiple Bayview Units responded to the initial crime scene at India Basin Park in order to secure the crime scene. The crime scene was searched and Ofc. Hargreaves #2321 discovered a (E/2) CZ pistol as well as multiple 9mm shell casings (See Ofc. Hargreaves statement). CSI was notified and Sgt. Chacon #638 responded to the India Basin Park (Refer to CSI's Supplemental).

Ofc. Gummo #607 and Ofc. Dizon #710 searched the pursuit route in an effort to identify any additional evidence that may have been discarded by fleeing suspects. During the course of the search, Ofc. Gummo and Ofc. Dizon located a second pistol (E/1) Glock 17 and (E/3) Extended magazine on Evans Avenue (Refer to Ofc. Gummo's and Ofc. Dizon's statements).

Ofc. Tozzini #4084 responded to E/B 80 at the 9th Street split to assist with a search for evidence and discovered a container with (E/8) green leafy vegetable substance. Ofc. Cader #704 seized the container (Refer to Ofc. Tozzini's and Ofc. Cader's statements). The suspected marijuana was relinquished to Ofc. Alvarenga who maintained custody until Ofc. Chantal #4055 took control of the suspected marijuana and delivered it to the narcotics drop box at 850 Bryant Street.

I returned to the scene at India Basin Park and assisted in conducting a search of the area for additional witnesses, suspects, and evidence. During my search I located (E/5) two fired casings. I attempted to contact CSI to notify them that there were two additional casings located on scene. I was unable to contact CSI. Ofc. Lyons #2438 took photographs of the casings and I seized the casings.

The crime scene at India Basin Park was maintained until it was properly searched during daylight hours. Sgt. McCray #4076 supervised a search of the area with six additional Bayview Officers. No additional evidence was found.

After returning to Bayview Station I looked through the contents of the (E/6) Black Backpack, which contained the (E/4) extended magazine, and discovered a Certificate of Completion for IPO-HSA New Employee Orientation (NEO) issued to Century Faataui on 04/15/2013. All of the contents of the backpack were booked with the backpack except the extended magazine. A computer query of Century Faataui revealed that he was placed on probation until 10/04/2015 for a prior weapons violation (report #120423590).

The following evidence was booked at Bayview Station: (E/6) Backpack, (E/4) Extended Magazine, (E/9) Grinder, (E/5) Fired casings, (E/7) GSR test kits, (E/10) CD, (E/11) CD, (E/12) 849h forms, and (E/13) Crime Scene Log. The (E/8) suspected marijuana was dropped in the narcotics drop box at 850 Bryant Street by Ofc. Chantal #4055.

All other evidence was seized by Sgt. Chacon.

Retrieved by A10307 on 12/10/2013 at 6:07:04 AM

San Francisco Police Department

INCIDENT REPORT

130309253

Report Type: Initial

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	6	3		
Name (Last,First,Middle) Hergreaves, Louis B 2321				DOB/Age		Residence Phone(Day/Night)		Business Phone (Day/Night) 415/671-2300		
Residence				Zip Code		Business Address / City if not San Francisco 201 Williams Street, SF			Zip Code 94124-2558	
Date of Statement 04/16/13		Time Started 03:00		Time Completed 03:10		Location Where Statement Taken At Scene <input type="checkbox"/> Other: POTR				

On April 16 2013 at about 0017 hours, I responded to the area of India Basin Park at 200 Hunters Point Blvd regarding shots fired. Officer Eastlund #1318 broadcast that their vehicle had been shot at and requested units to stage in the area of Middle Point Rd and Evans Ave for attempting to contact the suspects inside the park. Prior to my arrival, Officer Alvarenga broadcast that they spotted a vehicle leaving the scene and initiated a pursuit.

I located Officers Eastlund and Faye #1379 on Jennings St north of Evans Ave. I manually searched Officers Eastlund and Faye for any traumatic injuries and found none. Officer Faye said that the shots were most likely coming from the turnaround and the bottom of the hill near the waterfront. Officers Soto #2370, Navarro #1435, and I responded to the area to search for a crime scene.

As I was walking from the waterfront towards the Hunters Point Blvd vehicle entrance to the park, I felt an object in the roadway with my right foot. I looked down, illuminated the area with my flashlight, and found a (E) CZ 75-P01 semi-automatic pistol on the ground. I informed Lt Ng #338 of my discovery and ensured the firearm was not tampered with until CSI arrived to collect it.

APP 047

Relieved by A10307 on 12/10/2013 at 8:07:05 AM

San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

130309253

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3		
Name (Last,First,Middle) Gummo, Joseph F 607				DOB/Age		Residence Phone(Day/Night)		Business Phone (Day/Night) 415/671-2300		
Residence				Zip Code		Business Address / City if not San Francisco 201 Williams Street, SF			Zip Code 94124-2558	
Date of Statement 04/16/13		Time Started 02:30		Time Completed 03:00		Location Where Statement Taken At Scene <input type="checkbox"/> Other: POTR				

On Tuesday 04/16/13 at approximately 0050 hours my partner Officer Dizon #710 and I responded to India Basin Shoreline Park located on Hunters Point Blvd and met with 3C203 Lt. Ng#338 to assist in an ongoing investigation regarding shots fired at Officers.

We were directed to begin at the top of India Basin Shoreline Park on Hunters Point Blvd and canvass the pursuit route of the suspect vehicle which was pursued westbound Hunters Point Blvd to Evans, Evans to Cesar Chavez and then onto the Highway 101.

At 0112 hours while canvassing the route taken by the suspect vehicle and pursuing Officers, Officer Dizon and I observed what appeared to be a gun magazine lying in the street along the north curb line of Evans Street directly in front of Nor Cal Painting Inc. a business located at 1698 Evans Street. Officer Dizon stopped our patrol vehicle and I exited the passenger's seat and observed an extended 30 round "Glock" gun magazine. I immediately notified dispatch of our findings and maintained visual observation of the gun magazine. Officer Dizon informed me he was going to walk on foot westbound on Evans to look for additional evidence. Approximately 30 seconds later Officer Dizon verbally told me he found a gun in the number 2 westbound lane of Evans Street. I walked over and visually observed a "Glock 17" 9mm firearm which was broken apart with the slide and barrel detached from the frame and the handle broken into pieces. I again notified dispatch of our findings.

Simultaneously 5L101 Sgt. Chacon #638 arrived on scene at our location. She photographed and seized the firearm and magazine at approximately 0130 hours and Officer Dizon and I cleared our location.

Relieved by A10307 on 12/19/2013 at 8:07:00 AM

San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

130309253

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	6	3
Name (Last,First,Middle) Cuevas, Nicholas J 2295		DOB/Age	Residence Phone (Day/Night)		Business Phone (Day/Night) 415/671-2300			
Residence		Zip Code	Business Address / City If not San Francisco 201 Williams Street, SF				Zip Code 94124-2558	
Date of Statoment 04/16/13	Time Started 03:18	Time Completed 03:18	Location Where Statement Taken At Scene <input type="checkbox"/> Other:					

On 04/16/2013, I was working with Officer Larsen#2341. At approximately 01:38 hours, we responded to the termination point of the pursuit (Bryant Street and 9th Street), and we transported Sivale Segi, who was a passenger in the vehicle, to Southern Station. Segi was handcuffed, and her hands were preserved in paper bags. We detained her at Southern Station until she was interviewed by investigators.

Retrieved by A10397 on 12/19/2013 at 5:07:07 AM

San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

130309253

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3			
Name (Last,First,Middle) Dizon, John O 710				DOB/Age		Residence Phone(Day/Night)			Business Phone (Day/Night) 415/671-2300		
Residence				Zip Code		Business Address / City If not San Francisco 201 Williams Street, SF				Zip Code 94124-2558	
Date of Statement 04/16/13		Time Started 02:30		Time Completed 00:30		Location Where Statement Taken At Scene <input type="checkbox"/> Other: POTR					

On 04/16/13 at approximately 0050 hours, Officer Gummo # 607 and I responded to India Basin Shoreline Park located on Hunters Point Blvd to assist in an ongoing investigation regarding shots fired at plain clothes officers.

Upon our arrival we met with 3C203, Lt Ng # 338 who instructed us to canvass the pursuit route, in our SFPD vehicle, for any guns/contraband that might have been thrown out of the suspect vehicle during the pursuit. Lt Ng instructed us to search the city street route which was westbound Hunters Point Blvd to west bound Evans Ave to west bound Cesar Chavez to the 101 northbound freeway on ramp. Other units would search the freeway to the termination point

We began our search along the westbound lane/curb line of Hunters Point Blvd to west bound Evans Ave. We continued searching west bound Evans across 3rd St past Phelps St. At approximately 0112 hours we noticed what appeared to be a gun magazine lying in the west bound number 2 lane approximately a foot from the north curb line of Evans Ave in front of Nor Cal Painting Inc located at 1698 Evans Ave. Officer Gummo and I exited our vehicle at which point we confirmed it was a magazine to a hand gun. Upon further inspection Officer Gummo identified the magazine as a 30 round "Glock" magazine. Officer Gummo then advised dispatch of our findings.

While Officer Gummo watched over the gun magazine I continued my search on foot west bound Evans Ave. As I neared Quint St I observed a black object in the east bound number 2 lane of Evans Ave. I walked over to the object and observed it to be a "Glock 17" 9mm handgun which was broken apart with the slide and barrel detached from the frame and the handle broken into pieces. It appeared that the hand gun had been run over several times by vehicles prior to its discovery. I advised Officer Gummo who notified dispatch of our findings.

CSI, 51101 Sgt Chacon #638 arrived on scene and seized the hand gun and the magazine.

At approximately 0130 hours Officer Gummo and I cleared the scene.

Retrieved by A10307 on 12/19/2013 at 8:07:08 AM

San Francisco Police Department
INCIDENT REPORT

130309253

Report Type: Initial

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3		
Name (Last, First, Middle) Barrientos, Edward A 2276				DOB/Age		Residence Phone (Day/Night)		Business Phone (Day/Night) 415/671-2300		
Residence				Zip Code		Business Address / City if not San Francisco 201 Williams Street, SF			Zip Code 94124-2550	
Date of Statement 04/16/13		Time Started 02:36		Time Completed 03:19		Location Where Statement Taken At Scene <input type="checkbox"/> Other: SOUT				

On 4/15/13, at about 0017 hrs, Ofc. Guzman #2066 and I were working as SFPD patrol unit 3C11D and wearing full police uniforms. Ofc. Guzman was driving fully marked patrol vehicle #055 and I was the right front passenger. We responded to the area of India Basin Park located at 200 Hunters Point Blvd. to assist officers who advised of gunshots fired at their vehicle.

Officers pursued a white sport utility vehicle northbound HWY-101 to the 9th St. off-ramp where the vehicle had become disabled. Ofc. Guzman and I arrived as the vehicle was coming to a stop. We assisted officers in a high risk vehicle stop in detaining the occupants of the vehicle. Officers bagged the vehicle occupants' hands in order to preserve any possible evidence of gunshot residue (GSR).

Ofc. Guzman and I transported Leafaltulagi laone to Southern Station at the direction of Sgt. Schaffer #1181. Ofc. Talusan conducted GSR tests on laone.

Retrieved by A10307 on 12/10/2013 at 0:07:09 AM

San Francisco Police Department
INCIDENT REPORT

Report Type: Initial

130309253

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3		
Name (Last,First,Middle) Talusán, Edric D 1114				DOB/Ago		Residence Phone(Day/Night)		Business Phone (Day/Night) 415/671-2300		
Residence				Zip Code		Business Address / City if not San Francisco 201 Williams Street, SF			Zip Code 94124-2558	
Date of Statement 04/16/13		Time Started 03:00		Time Completed 03:00		Location Where Statement Taken At Scene <input type="checkbox"/> Other: POTR				

On 04/16/2013, at about 0017 hrs, Officer Cadór #704 and I were on uniformed patrol in a marked police car. We responded to a call of gunshots fired at a plainclothes SFPD unit at India Basin Park, located in the area of 200 Hunters Point Blvd.

While enroute to their location, the plainclothes unit (3C35) advised that several vehicles were seen leaving the area at a high rate of speed. 3C13E, Officer Alvarenga #1630 and Officer Ashwanden #4257, stated that they were in pursuit of a white Suburban traveling westbound on Evans approaching 3rd St. We made our way to their location while 3C13E transmitted their current location. They advised that the Suburban had blown its engine and was exiting 9th St. We caught up to their location at Bryant and 9th St and observed a white Suburban, with smoke spewing from its undercarriage, traveling at about 5 mph eastbound on Bryant St from 9th St. We positioned ourselves behind the vehicle and I used our vehicle's public announcement system to order the driver to stop the vehicle.

The vehicle stopped on the right shoulder and we conducted a felony stop on the vehicle with multiple SFPD units. I used our vehicle's public announcement system to order the occupants hands up in the air. I ordered the occupants to exit the vehicle individually where they were taken into custody by SFPD Officers.

All the occupants were handcuffed and separated. All the occupants had their hands paper bagged to preserve any GSR evidence that may be present.

All the occupants were transported to Southern Police Station, where I conducted GSR testing on each individual.

Officer Cadór assisted in the GSR testing process. All GSR testing was conducted at Southern Police Station.

GSR testing consisted of the following:

- GSR data sheet was completed
- GSR vials and evidence bags were labeled
- I donned fresh latex gloves for each individual test
- I seized and labeled each paper bag with either L or R.
- I collected GSR samples using the GSR vials provided in the GSR kit
- I placed each GSR data sheet, paper bags and GSR vials into the provided GSR evidence bag which was sealed with the provided evidence seal
- I asked each individual if they had handled or fired a handgun in the last 48 hrs, to which they all answered with a negative response

I relinquished all GSR kits to Officer Alvarenga.

Received by A10307 on 12/19/2013 at 8:07:10 AM

San Francisco Police Department

INCIDENT REPORT

Report Type: Initial

130309253

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3		
Name (Last,First,Middle) Cadon, Brant M 704				DOB/Age		Residence Phone (Day/Night)		Business Phone (Day/Night) 415/671-2300		
Residence				Zip Code		Business Address / City If not San Francisco 201 Williams Street, SF			Zip Code 94124-2558	
Date of Statement 04/16/13		Time Started 03:00		Time Completed 03:30		Location Where Statement Taken At Scene <input type="checkbox"/> Other: POTR				

On 04/16/13 at approximately 0017 hours, Ofc. Talusan #1114 and I responded as back up to Bayview units that were in pursuit of a vehicle that fired shots at plain clothes officers.

After conducting a Felony Stop on the vehicle and detaining all occupants I was instructed by Sgt. Schaffer #1181 to conduct a search of NB 101 with the California Highway Patrol. The pursuing officers saw the occupants of the vehicle toss something out of the vehicle during the pursuit on NB 101 before the 9th St. off-ramp. I coordinated with CHP Ofc. Tabarez #18829 to have NB 101 from the 80 split to the 9th St. off-ramp shut down so we could conduct a search on foot for any possible evidence. During our search I located a small blue plastic container, containing a green leafy substance. Based on my training and experience I believed the green leafy substance to be marijuana. The container looked to be unharmed and untouched, as if it had only been there for a short time. I also located a green plastic grinder approximately 150ft away from the container with the marijuana. Based on my training and experience I know that the grinder is used to grind the marijuana into a finer material prior to ingesting it. I found the green plastic grinder in pieces. I took pictures of the evidence and seized it from the freeway. I notified CHP Ofc. Tabarez that our search was finished and the freeway could reopen.

At Southern Station I assisted Ofc. Talusan conduct Gun Shot Residue Kits.

Once back at Bayview Station I weighed the suspected marijuana in its container, its gross weight was 13.9 grams. I placed the suspected marijuana into a narcotics evidence envelope and sealed it. I pulled Lab#13282163. I gave Ofc. Alvarenga #1630 the evidence that I found on the freeway and it took control of it.

Received by A10307 on 12/19/2013 at 8:07:11 AM

San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

130309253

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3							
Name (Last,First,Middle) Camiloza, Jeffrey A /244								DOB/Age		Residence Phone(Day/Night)		Business Phone (Day/Night) 415/553-1373			
Residence								Zip Code		Business Address / City if not San Francisco 850 Bryant Street, SF				Zip Code 94133-4803	
Date of Statement 04/16/13				Time Started 03:30		Time Completed 03:45		Location Where Statement Taken At Scene <input type="checkbox"/> Other: SOUT							

On 04/16/2013 at approximately 0024 hours, I was working with Officer Kikuchi #2374 when we responded to the termination point of the pursuit at Bryant St and 9th St.

After the suspects were taken into custody by other responding units, we were directed by Sgt Espinoza # 525 to stand by the suspect vehicle (Chevrolet Suburban, CA 4TZA184).

While at the scene, I took digital photographs of the exterior and interior of the suspect vehicle. I also took photographs of the backpack containing an extended capacity firearm magazine located in the backseat of the vehicle.

Officer Kikuchi requested for a tow and we followed the suspect vehicle to Auto Return, where Officer Kikuchi secured the vehicle inside the CSI Lot.

I transferred the photographs onto a CD media and handed it to Officer Brophy # 2112.

Retrieved by A10307 on 12/19/2013 at 8:07:12 AM

San Francisco Police Department
INCIDENT REPORT

130309253

Report Type: Initial

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3			
Name (Last,First,Middle) Navarro, Shaun A 1435				DOB/Age		Residence Phone (Day/Night)			Business Phone (Day/Night) 415/671-2300		
Residence				Zip Code		Business Address / City if not San Francisco 201 Williams Street, SF				Zip Code 94124-2558	
Date of Statement 04/16/13		Time Started 03:45		Time Completed 04:00		Location Where Statement Taken At Scene <input type="checkbox"/> Other: POTR					

On 4/16/2013 at approximately 0017 hours, Officer Seto #2370 and I responded to a report of shots fired at officers at 200 Hunters Point, India Basin Park.

We responded to India Basin Park to secure the crime scene. Officer Seto started a crime scene log and I taped off the crime scene. Officer Seto and I located numerous (E) 9mm shell casings on the sidewalk and road and marked them with chalk for CSI.

Later, Officer Seto handed the crime scene log responsibilities to Officer Lyons #2438. We then followed the (D) unmarked Monte Carlo (CA 3VPW481) that was towed to the secured CSI parking lot at Auto Return. A hold for CIU was placed on the vehicle per Inspector Horan #2014.

Retrieved by A10397 on 12/19/2013 at 8:07:12 AM

San Francisco Police Department

INCIDENT REPORT

130309253

Report Type: Initial

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3		
Name (Last,First,Middle) Eastlund, Eric G 1318				DOB/Age		Residence Phone(Day/Night)		Business Phone (Day/Night) 415/671-2300		
Residence				Zip Code		Business Address / City if not San Francisco 201 Williams Street, SF			Zip Code 84124-2558	
Date of Statement 04/16/13		Time Started 03:18		Time Completed 03:18		Location Where Statement Taken At Scene <input type="checkbox"/> Other: POTR				

On 04/16/2013 at approximately 0017 hours, Officer Faye #1379 and I were working in a plainclothes capacity, driving an unmarked unit in the area of Evans Avenue and Hunters Point Expressway.

I was the driver of the vehicle and Officer Faye #1379 was seated as the front passenger. Officer Faye #1379 and I entered India Basin Shoreline Park with our headlights on. My driver's side window was approximately 1/4 of the way open. The area of India Basin Shoreline Park is near Westpoint/Middlepoint roads. Over the previous week, I responded to shots fired in that area where numerous shell casings were recovered. Based upon my experience, I know that the park is a popular meeting place for individuals who live in the Westpoint/Middlepoint area. India Basin Shoreline Park has signs clearly posted that state that the park closes at 1900 hours. As I drove down through the park, I observed a black Honda Civic (mid 90's model), a white Chevrolet Suburban (mid 90's model) and approximately two other unidentified vehicles in the roundabout. I observed approximately 20 subjects congregating outside of the vehicles. Officer Faye #1379 and I decided that due to the amount of subjects, that we would exit the park and request a marked unit to assist us in clearing the park. I placed my vehicle in reverse and backed into a nearby parking space in an attempt to conduct a three point turn. I heard approximately 10-12 shots coming from the parked vehicles stationed in the round about and striking our vehicle repeatedly. I feared for my life. I had no doubt that the individuals firing the shots at my vehicle intended to kill my partner and I. I then sped out of the park and broadcast shots fired to responding units. I advised that my vehicle had been hit by gunfire. I stopped my vehicle at Evans Avenue and Jennings Street and exited. I observed 3C13E Officer Aschwanden #4257 and Alvarenga #1630 pursuing the black Honda Civic and white Chevrolet Suburban W/B on Evans Avenue.

I inspected the damage to my vehicle and found that the vehicle had been struck four times, right side of the trunk, left rear tire and driver's side door (twice).

Officer Faye #1379 and I were uninjured during the incident.

I was informed by Officer Alvarenga #1630 that a white Chevrolet Suburban (LP 4TZA184) was detained at 9th/Bryant Streets. I responded and positively identified the vehicle as being the same one that I saw parked at the round about of India Basin Shoreline Park.

I was later informed by 3H14E Officer Apodaca #408 and Jones #2286 that a black Honda Civic (LP 6WVY138) was detained on Gates Street. I responded and positively identified the vehicle as being the same one that I saw parked at the round about of India Basin Shoreline Park.

Retrieved by A510307 on 12/10/2013 at 8:07:13 AM

San Francisco Police Department
 INCIDENT REPORT

Report Type: Initial

130309253

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	6	3		
Name (Last,First,Middle) Faye, Patrick T 1379				DOB/Age		Residence Phone(Day/Night)		Business Phone (Day/Night) 671-2300		
Residence				Zip Code		Business Address / City If not San Francisco 201 Williams Street, SF			Zip Code 94124-2558	
Date of Statement 04/16/13		Time Started 03:22		Time Completed 03:22		Location Where Statement Taken At Scene <input checked="" type="checkbox"/> Other: POTR				

On 04-16-2013 at approximately 0017 hours I was working in plain clothes in an unmarked police vehicle with Officer Eastlund #1318. Officer Eastlund was driving and I was in the front passenger seat. We drove into India Basin Shoreline Park, which is located close to Intersection of Westpoint Road and Middlepoint Road. Over the last week there have been multiple reports of shots fired near Westpoint Road and Middlepoint Road. India Basin Shoreline Park is an area that people frequently congregate in late at night, despite the fact that the Park closes at 1900 hours.

As we pulled into India Basin Shoreline Park our headlights illuminated a group of approximately 20-30 people standing around at least three vehicles on the north side of small traffic circle. Because of the trees, the lack of illumination beyond our headlights, and the small traffic circle we were unable to see everyone and everything that was in the Park. The relaxed body language and casual demeanor of the people in the Park made it appear as though they all friendly with each other.

Because of the number of people in the Park, combined with the fact that we were in an unmarked vehicle, Officer Eastlund and I decided to exit the Park and radio for a marked Police vehicle to initiate contact with the people. Officer Eastlund backed our car into a parking spot, turned the wheel to the left and starting driving up the road out of the Park. I heard 10-15 gunshots in rapid succession and what sounded like several bullets impacting our vehicle.

I was scared for my life and had no doubt that the people in the Park were shooting at us to kill us. Officer Eastlund accelerated rapidly out of the Park and turned west onto Evans Ave and Hunters Point Expressway. As we exited the park we broadcast what had just happened over the plc radio. We turned north onto Jennings St, stopped, and exited our vehicle.

I heard 3C13E, Officer Alvarenga #1630 and Officer Aschwanden #4257, broadcast that they were in pursuit of a vehicle. I saw a white Chevrolet Suburban (CA 4TZA184) drive westbound on Evans Ave at a high rate of speed with 3C13E and several other marked police vehicles, with emergency lights and sirens activated, closely behind them. I immediately recognized the Suburban as one of the vehicles I had seen inside of India Basin Shoreline Park. I also saw a black Honda Civic (CA 6WVY138) driving westbound at a high rate of speed closely behind the Suburban and ahead of the police vehicles.

Officer Eastlund and I returned to India Basin Shoreline Park and helped units establish the crime scene. I heard over the radio that 3C13E had stopped the Suburban downtown. Officer Eastlund and I responded downtown where I confirmed that the vehicle 3C13E had stopped was the same Suburban I had seen inside of India Basin Shoreline Park.

While we were downtown, we heard 3H14E broadcast that they had stopped the above listed Honda Civic on Gates St. Officer Eastlund, Officer Alvarenga and I responded to Gates St where I identified the Honda Civic as the same one I had seen travelling westbound on Evans Ave at a rate of speed.

Retrieved by A10307 on 12/19/2013 at 8:07:14 AM

San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

130309253

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3	
Name (Last,First,Middle) Tozzini, Glen P 4084				DOB/Age		Residence Phone(Day/Night)		Business Phone (Day/Night) 415/550-5400	
Residence				Zip Code		Business Address / City If not San Francisco 630 Valencia Street, SF			Zip Code 94110-1120
Date of Statement 04/16/13		Time Started 03:55		Time Completed 04:04		Location Where Statement Taken At Scene <input type="checkbox"/> Other: MISS			

On 04/16/2013 at 0039hrs, I was working in full uniform and operating a marked SFPD vehicle in the City & County of San Francisco.

After assisting with traffic control at 9th Street & Bryant during a felony traffic stop, (CAD#131060036) I responded to perform a traffic break on E/B 80 at the 9th Street split to assist with a search for evidence.

Several CHP units also responded and we walked the freeway towards 9th Street. At 0056hrs, I located a blue, transparent plastic container on the right side (#2 lane) of the freeway. Inside of it I could see what appeared to me as marijuana "buds" from my training and experience. I also located about 20 yards from this a green, transparent plastic item that appeared to be a marijuana "bud" masher that had a metal ring next to it. Both described items were on the right shoulder of the roadway. They were found approximately above Brannon Street.

I radioed that I located these items and unit 3C73 arrived on scene and collected the items.

Retrieved by A10307 on 12/19/2013 at 6:07:15 AM

San Francisco Police Department

INCIDENT REPORT

130309253

Report Type: Initial

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3
Name (Last,First,Middle) Lentz, Alexander N 2338		DOB/Age	Residence Phone(Day/Night)		Business Phone (Day/Night) 415/871-2300			
Residence		Zip Code	Business Address / City If not San Francisco 201 Williams Street, SF				Zip Code 94124-2550	
Date of Statement 04/16/13	Time Started 04:13	Time Completed 04:20	Location Where Statement Taken At Scene <input type="checkbox"/> Other: POTR					

On 04/16/2013 at approximately 0018 hours Officer Bernstein #2304 and I responded and assisted with the vehicle pursuit. Officer Bernstein and I arrived at the termination point of the pursuit at Bryant Street and 9th Street.

Once the vehicle was cleared and all occupants were removed, Officer Bernstein (while wearing a fresh pair of latex gloves) placed brown paper bags from a GSR Collection kit onto Segi-Davis' hands. The paper bags were secured with a zip tie. Officer Bernstein and I transported Francis Segi-Davis to Southern Station to be interviewed by Inspectors.

Retrieved by A10307 on 12/19/2013 at 8:07:16 AM

San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

130309253

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3
Name (Last, First, Middle) Cunningham, Blake W 4284		DOB/Age	Residence Phone (Day/Night)		Business Phone (Day/Night) 671-2300			
Residence		Zip Code	Business Address / City If not San Francisco 201 Williams Street, SF			Zip Code 94124-2558		
Date of Statement 04/16/13	Time Started 04:20	Time Completed 04:25	Location Where Statement Taken At Scene <input type="checkbox"/> Other: POTR					

On April 16, 2013 at approximately 0015hrs I responded CODE 3 with Officer Fry #656 to the area of 9th St. and Bryant to aid in conducting a felony car stop.

Upon arrival, I detained Evelyn Winterstein (verbally identified), who was seated in the "back middle" of the white SUV. Officer Fry and I placed her in handcuffs. I verified her ID through a computer records check. The computer check showed Winterstein had no wants or warrants. Her CA ID is [REDACTED].

Officer Fry and I transported Winterstein to Company B (Southern Station) for interview by Sgt. Brophy #2112.

I issued Deon Taylor (SF#619875), Century Faataui (SF#658546), and Janesa Luei (CA ID [REDACTED] 849(b) PC (SFPD Form 184) as per Sgt. Brophy at 0250hrs.

Retrieved by A10307 on 12/10/2013 at 8:07:17 AM

San Francisco Police Department

INCIDENT REPORT

130309253

Report Type: Initial

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3					
Name (Last, First, Middle) Fong, Kevin C 4270									DOB/Age		Residence Phone (Day/Night)	Business Phone (Day/Night) 671-2300	
Residence									Zip Code		Business Address / City if not San Francisco 201 Williams Street, SF		Zip Code 94124-2558
Date of Statement 04/16/13			Time Started 03:45			Time Completed 04:15			Location Where Statement Taken At Scene <input type="checkbox"/> Other: SCUT				

On 4/16/13 at approximately hours I was on patrol in full uniform and in a marked patrol with FTO Rosenberg #1511 as the 3C13D. We responded to the termination point of a vehicle pursuit on Bryant St. between 8th and 9th.

At the scene of the incident, the driver and front passenger had been extracted from the vehicle and detained by other officers. The third person extracted from the vehicle, later identified as Silvale Segi, exited the rear right passenger door and was commanded to stop backwards with her hands in the air. Segi was then told to stop a short distance from me. I holstered my firearm and approached Segi. With the assistance of Ofc. Rosenberg, I placed Segi into handcuffs and escorted her away from the scene.

I conducted an arrest search of Segi and positively identified her through her California driver's license (REDACTED). While wearing a fresh pair of latex gloves, I opened a new package containing two paper bags and zip ties. I applied a paper bag to each of Segi's hands and secured them using the supplied zip ties.

I later transported Taylor to Southern Station for further investigation.

I later issued certificates of release at Southern Station to the following: Francil Segi at 0251 hours, Evelyn Winterstein at 0310 hours, Silvale Segi at 0319 hours, and Florence Vaoga at 0329 hours per Sgt. Brophy #2112.

Received by A10307 on 12/19/2013 at 8:07:13 AM
 San Francisco Police Department
INCIDENT REPORT

Report Type: Initial

130309253

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3			
Name (Last,First,Middle) Ozol, Jonathan T 2358				DOB/Age		Residence Phone (Day/Night)			Business Phone (Day/Night) 415/671-2300		
Residence				Zip Code		Business Address / City if not San Francisco 201 Williams Street, SF				Zip Code 04124-2558	
Date of Statement 04/16/13		Time Started 05:20		Time Completed 05:20		Location Where Statement Taken At Scene <input type="checkbox"/> Other: POTR					

On 4/16/2013 at approximately 0018 hours, Officer Salcedo #770 and I were in full uniform and in a marked patrol vehicle. I responded Code-3 to the report of shots fired at a plainclothes police unit at India Basin Park. While I was responding, I heard that Units were in pursuit of a white Chevrolet that had left the scene of India Basin Park and that was headed westbound on Evans. I responded to area and entered the pursuit of the white Chevrolet at Napoleon/Evans. Officer Salcedo and I were unable to broadcast our status in the pursuit due to other radio traffic preventing us from doing so. Based upon the fact that the white Suburban was possibly involved in shooting at the police and the fact that the vehicle could have had multiple suspects on board, I continued in the pursuit as vehicle #3 to the termination point on the 1000 block of Bryant Street.

At the termination point after the occupants of the vehicle had been detained, Officer Salcedo and I transported one of the occupants of the Chevrolet, Century Faataui, to Co. B for further investigation. While on scene and prior to transporting Faataui, I bagged his hands in order to preserve them for gunshot residue retrieval.

At Co. B, I transported B1-Leafaltulagi Ioane to be booked at CJ1.

Relieved by 410307 on 12/19/2013 at 8:07:19 AM

San Francisco Police Department
INCIDENT REPORT

Report Type: Initial

130309253

Incident Report Statement

INCIDENT NO.

1	3	0	3	0	9	2	5	3		
Name (Last,First,Middle) Lyons, Meighan A 2438				DOB/Age		Residence Phone(Day/Night)		Business Phone (Day/Night) 415/671-2300		
Residence				Zip Code		Business Address / City if not San Francisco 201 Williams Street, SF			Zip Code 94124-2558	
Date of Statement 04/16/13		Time Started 06:05		Time Completed 06:15		Location Where Statement Taken At Scene <input type="checkbox"/> Other: POTR				

On 4/16/2013 at approximately 0223 hours, while on uniformed patrol as the 3C15E with Officer Zellzer #2297, we responded to India Basin Park in the Bayview 3 Car Sector where I assumed responsibility for the Crime Scene Log from Officer Seto #2370.

I also took four photographs of two shell casings which I was told were located after CSI had concluded their evidence collection. The casings were near the back of the park, along the west curb, slightly south of the turnaround. Officer Ashwandan #4257 stood by as I took the photographs and I observed him collect the casings wearing a pair of fresh latex gloves.

I stored the photographs on a Photo CD at Bayview Station and provided it to Officer Alvarenga #1630.

Certificate of Completion

This certifies that

Century Faataui

has successfully completed

IPO - HSA New Employee Orientation (NEO)

and is awarded this certificate by

Human Services Agency – Staff Development

April 15, 2013

Date

P Marcia Brown

P Marcia Brown, Instructor

Retrieved by A10367 on 12/19/2013 at 8:07:21 AM
SFPD Records (415) 553-1288

CENTURY

CENTURY

CERTIFICATE OF RELEASE

As required by the provisions of Penal Code Section 851.6 (as amended by Stats 1975, ch. 1117) I hereby certify that the taking into custody of Subject's name on 4/16/13 at 0251 hours

by the Releasing Agency was a detention only, not an arrest.

Subject's name was released on 4/16/13 at 0251 hours

by the Releasing Agency pursuant to the provision of:

Paragraph (1) of subdivision (b) Penal Code Section 849; paragraph (3) of subdivision (b) of Penal Code Section 849; Penal Code Section 849.5; and Penal Code Section 851.6; pertinent portion of which appear on the reverse of this certificate.

Officer's Full Name Officer [Signature] Title 9-2 Unit 30150

Officer's Signature [Signature] Star 4270

Releasing Officer ☒ Superior ☐

Original to citizen. Copy to Record Room. Attach additional copy to citation.

SFPD 184 Rev. (06/05)

CERTIFICATE OF RELEASE

As required by the provisions of Penal Code Section 851.6 (as amended by Stats 1975, ch 1117) I hereby certify that the taking into custody of SFPD Records (215) 552-1288 on 4/16/13 at 0829 hours

by the SFPD was a detention only, not an arrest.
Releasing Agency

SFPD was released on 4/16/13 at 0829 hours

by the SFPD pursuant to the provision of:
Releasing Agency

Paragraph (1) of subdivision (b) Penal Code Section 849; paragraph (3) of subdivision (b) of Penal Code Section 849; Penal Code Section 849.5; and Penal Code Section 851.6; pertinent portion of which appear on the reverse of this certificate.

Officer's Full Name Fong Title Sgt Unit 0030

Officer's Signature [Signature] Star 4270

Releasing Officer ☒ Superior ☐

Original to citizen. Copy to Record Room. Attach additional copy to citation.

SFPD 184 Rev. (06/05)

CERTIFICATE OF RELEASE

As required by the provisions of Penal Code Section 851.6 (as amended by Stats 1975, ch 1117) I hereby certify that the taking into custody of Sivale Segi on 4/16/13 at 0829 hours

by the SFPD was a detention only, not an arrest.
Releasing Agency

Sivale Segi was released on 4/16/13 at 0829 hours

by the SFPD pursuant to the provision of:
Releasing Agency

Paragraph (1) of subdivision (b) Penal Code Section 849; paragraph (3) of subdivision (b) of Penal Code Section 849; Penal Code Section 849.5; and Penal Code Section 851.6; pertinent portion of which appear on the reverse of this certificate.

Officer's Full Name Fong Title Sgt Unit 0030

Officer's Signature [Signature] Star 4270

Releasing Officer ☒ Superior ☐

Original to citizen. Copy to Record Room. Attach additional copy to citation.

SFPD 184 Rev. (06/05)

CERTIFICATE OF RELEASE

As required by the provisions of Penal Code Section 851.6 (as amended by Stats 1975, ch 1117) I hereby certify that the taking into custody of Evelyn Dominguez on 4/16/13 at 0829 hours

by the SFPD was a detention only, not an arrest.
Releasing Agency

Evelyn Dominguez was released on 4/16/13 at 0829 hours

by the SFPD pursuant to the provision of:
Releasing Agency

Paragraph (1) of subdivision (b) Penal Code Section 849; paragraph (3) of subdivision (b) of Penal Code Section 849; Penal Code Section 849.5; and Penal Code Section 851.6; pertinent portion of which appear on the reverse of this certificate.

Officer's Full Name Fong Title Sgt Unit 0030

Officer's Signature [Signature] Star 4270

Releasing Officer ☒ Superior ☐

Original to citizen. Copy to Record Room. Attach additional copy to citation.

SFPD 184 Rev. (06/05)

CERTIFICATE OF RELEASE

As required by the provisions of Penal Code Section 851.6 (as amended by Stats 1975, ch 1117) I hereby certify that the taking into custody of DEON TAYLOR on 11/15/13 at 07:04 hours

by the SFPD was a detention only, not an arrest.
Releasing Agency

DEON TAYLOR was released on 11/15/13 at 02:52 hours
Subject's name

by the SFPD pursuant to the provision of:
Releasing Agency

Paragraph (1) of subdivision (b) Penal Code Section 849; paragraph (3) of subdivision (b) of Penal Code Section 849; Penal Code Section 849.5; and Penal Code Section 851.6; pertinent portion of which appear on the reverse of this certificate.

Officer's Full Name CUNNINGHAM Title Patrol Officer Unit 3C14E

Officer's Signature [Signature] Star 4264

Releasing Officer ☒ Superior ☐

Original to citizen. Copy to Record Room. Attach additional copy to citation.

SFPD 181 Rev. (06/05)

CERTIFICATE OF RELEASE

As required by the provisions of Penal Code Section 851.6 (as amended by Stats 1975, ch 1117) I hereby certify that the taking into custody of GENIVY FANTAU on 11/15/13 at 00:14 hours

by the SFPD was a detention only, not an arrest.
Releasing Agency

GENIVY FANTAU was released on 11/15/13 at 02:52 hours
Subject's name

by the SFPD pursuant to the provision of:
Releasing Agency

Paragraph (1) of subdivision (b) Penal Code Section 849; paragraph (3) of subdivision (h) of Penal Code Section 849; Penal Code Section 849.5; and Penal Code Section 851.6; pertinent portion of which appear on the reverse of this certificate.

Officer's Full Name CUNNINGHAM Title Patrol Officer Unit 3C14E

Officer's Signature [Signature] Star 4264

Releasing Officer ☒ Superior ☐

Original to citizen. Copy to Record Room. Attach additional copy to citation.

SFPD 181 Rev. (06/05)

CERTIFICATE OF RELEASE

As required by the provisions of Penal Code Section 851.6 (as amended by Stats 1975, ch 1117) I hereby certify that the taking into custody of JANESA LEUT on 11/15/13 at 00:24 hours

by the SFPD was a detention only, not an arrest.
Releasing Agency

JANESA LEUT was released on 11/15/13 at 03:00 hours
Subject's name

by the SFPD pursuant to the provision of:
Releasing Agency

Paragraph (1) of subdivision (b) Penal Code Section 849; paragraph (3) of subdivision (b) of Penal Code Section 849; Penal Code Section 849.5; and Penal Code Section 851.6; pertinent portion of which appear on the reverse of this certificate.

Officer's Full Name CUNNINGHAM Title Patrol Officer Unit 3C14E

Officer's Signature [Signature] Star 4264

Releasing Officer ☒ Superior ☐

Original to citizen. Copy to Record Room. Attach additional copy to citation.

SFPD 181 Rev. (06/05)

Retrieved by A10307 on 12/19/2013 at 9:07:25 AM

SAN FRANCISCO POLICE DEPARTMENT PD Records (415) 553-1200

CRIME SCENE LOG

INCIDENT NUMBER:

130 309 253

1 of 2

TYPE OF INCIDENT:

ASSAULT, ATT. HOMICIDE w/ GUN

LOCATION:

200 HUNTER'S PT BLVD (INDIA BASIN PARK)

DATE/TIME OF INCIDENT:

4/16/13 @

OFFICER MAINTAINING LOG:

OFC. SETO

STAR:

2370

DATE/TIME LOG STARTED:

4/16/13 @ 00:30 HRS

RELIEF OFFICER:

OFFER. LYONS

STAR:

24/38

DATE/TIME:

4/16/13 0223

[illegible]

APPENDIX E

SEPH Records (415) 553-1286

CRIME SCENE LOG

130 300 253

216

INDIA BASIN PARK

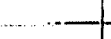
CUNNINGHAM

4264

04/16/13 0015

04/16/13 0550

DATE/TIME:



APPENDIX E

Retrieved by A10307 on 12/19/2013 at 8:07:27 AM

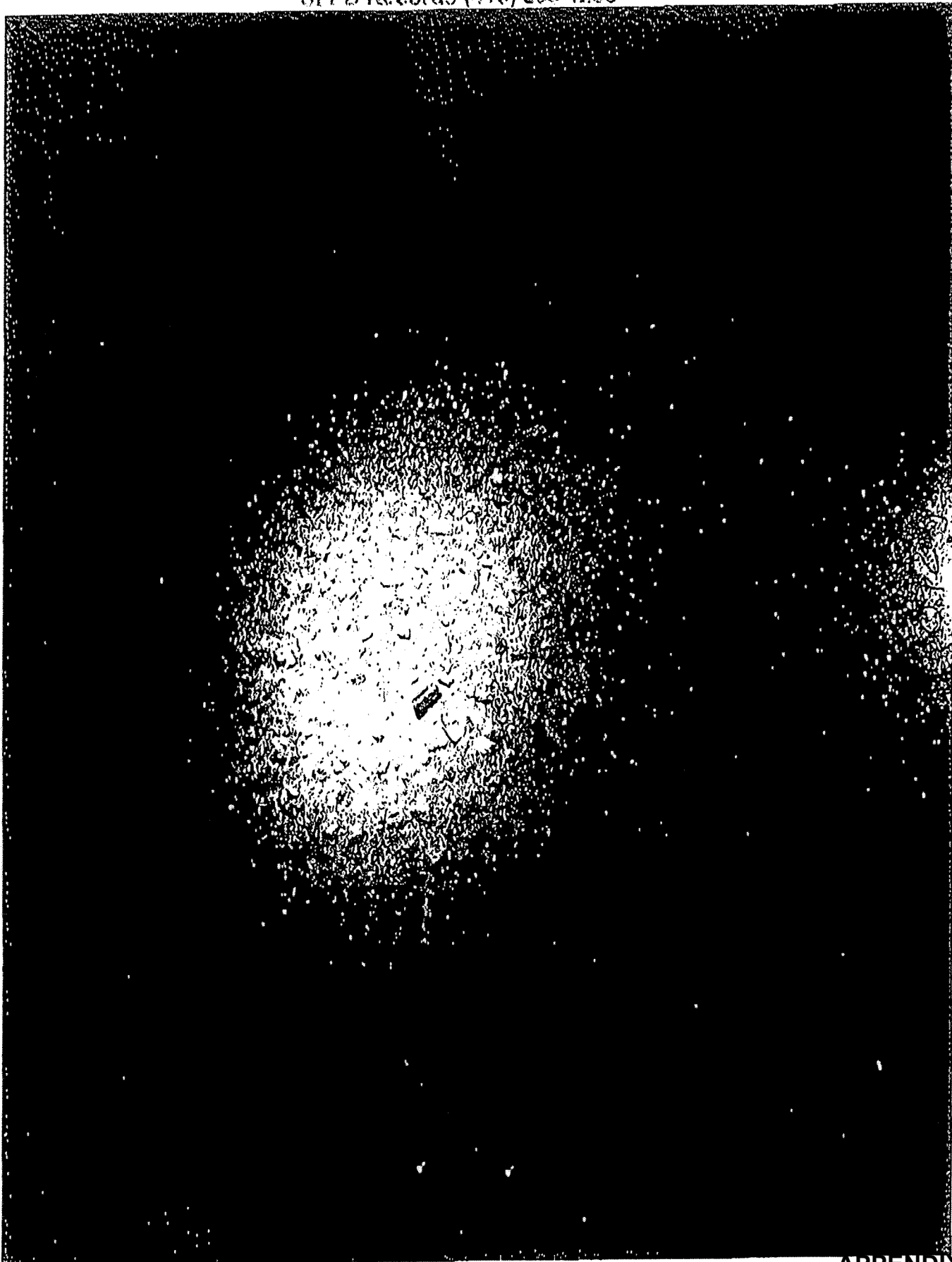


Retrieved by A10307 on 12/19/2013 at 8:07:26 AM





Retrieved by A10307 on 12/10/2013 at 8:07:30 AM
SFPD Records (415) 553-1286



APP 074

San Francisco Police Department
INCIDENT REPORT

130309253

Report Type: Supplemental

I N C I D E N T	Incident Number 130-309-263	Occurrence From Date / Time 04/16/2013 00:17	Occurrence To Date / Time 04/16/2013 00:32	Reported Date / Time 04/16/2013 00:17	CAD Number 131060036	130309253	
	Type of Incident ASSAULT, ATT. HOMICIDE, W/ GUN 04021 ASSAULT, AGGRAVATED, ON POLICE OFFICER, W/ SEMI AUTO 04094 EVADING A POLICE OFFICER RECKLESSLY 27175						
	Location of Occurrence: 200 HUNTERS POINT BL				At Intersection with Promisc Type EVANS AVENUE MARK 21 P 5:32		
	Confidential Report? <input type="checkbox"/>		Arrest Made? <input checked="" type="checkbox"/>	Suspect Known? <input checked="" type="checkbox"/>	Suspect Unknown? <input type="checkbox"/>		Non-Suspect Incident? <input type="checkbox"/>
	Domestic Violence? <input type="checkbox"/>		(Type of Weapon Used)		Reporting Unit 3C13E		
Location Sent / On View: 200 HUNTERS POINTS BL						Reporting District BAYVIEW	
How Cleared? 6		Reported to Bureau UUC	Name Brophy, Timothy	Star 2112	Date/Time 04/16/2013 00:50	Elder Victim? <input type="checkbox"/>	
					Gang Related? <input checked="" type="checkbox"/>	Juvenile Subject? <input type="checkbox"/>	
						Prejudice Based? <input type="checkbox"/>	

O F F I C E R I N F O R M A T I O N	I declare under penalty of perjury, this report of 1 pages is true and correct, based on my personal knowledge, or is based on information and belief following an investigation of the events and parties involved.					
	PROP 116 CERTIFIED Post Training					
	Reporting Officer ASCHWANDEN, DAVID J	Star 4267	Station Bayview Station	Watch 2100-0700	Date 04/24/13 06:29	
	Reviewing Officer ELLIOTT, DAVID O	Star 2185	Station Bayview Station	Watch 2000-0600	Date 04/24/13 07:21	
	OIC ELLIOTT, DAVID O	Star 2185	Station Bayview Station	Watch 2000-0600	Date 04/24/13 07:21	
Related Case --		Related Case --	Re-assigned to Copies to 3'300	Assigned to 3'300 Add 1 Copies	Assigned by DA 4257	

R / V I C T I M	Code RV 1	Name (Last, First Middle) SFPD, #1379	Alias	Email		
	Day Phone (415) 871-2300	Type Work	Home Address	City	State	Zip Code
	Night Phone	Type	Work Address 201 WILLIAMS AVENUE	City SAN FRANCISCO	State CA	Zip Code 94124
	DOB / Age	DOB Unk. <input type="checkbox"/>	or age between and	Race	Sex	Height
	Weight	Hair Color	Eye Color	ID Type	Jurisd.	ID No.
	Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>	Star	Follow-up Form YES <input type="checkbox"/>	Statement YES <input checked="" type="checkbox"/>
	School (If Juvenile)	Injury/Treatment NONE/CIRT	Other Information/If Interpreter Needed Specify Language			

R / V I C T I M	Code RV 2	Name (Last, First Middle) SFPD, #1310	Alias	Email		
	Day Phone (415) 871-2300	Type Work	Home Address	City	State	Zip Code
	Night Phone	Type	Work Address 201 WILLIAMS AVENUE	City SAN FRANCISCO	State CA	Zip Code 94124
	DOB / Age	DOB Unk. <input type="checkbox"/>	or age between and	Race	Sex	Height
	Weight	Hair Color	Eye Color	ID Type	Jurisd.	ID No.
	Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>	Star	Follow-up Form YES <input type="checkbox"/>	Statement YES <input checked="" type="checkbox"/>
	School (If Juvenile)	Injury/Treatment NONE/CIRT	Other Information/If Interpreter Needed Specify Language			

Received by A10307 on 12/19/2013 at 8:08:41 AM

San Francisco Police Department

Report Type: Supplemental

INCIDENT REPORT

130309253

VEHICLE INFORMATION	VEHICLE CODES: D - DAMAGED; F - USED FELONY; R - RECOVERED; S - STOLEN; S/R - STOLEN/RECOVERED; T - TOWED; U - USED OTHER; V - VANDALIZED; X - STRIPPED					
	Code D 1	Plate No. 3VPW481	State CA	Reg Yr 2013	Plate Type PC	VIN No.
	Veh Year 1980	Make Chevrolet	Model MONTE CARLO			
	Style Sedan, 2 Door		Color Black	Plates/VIN Match? <input checked="" type="checkbox"/>	Plates Missing? FRONT <input type="checkbox"/> REAR <input type="checkbox"/>	
	Condition (Check all that apply) APPARENTLY DRIVABLE? <input checked="" type="checkbox"/> BURNED? <input type="checkbox"/> DAMAGE? <input checked="" type="checkbox"/> STRIPPED? <input type="checkbox"/>			Damage STRUCK BY BULLETS	Point of Entry	
	Crime Scene Tech. Notified? <input type="checkbox"/>	387 Form Given to Owner? <input type="checkbox"/>	Tow Approved By (Name) Sgt. Schaffer	Star 1181	Towed to (Name/Address) AUTO RETURN	Tow Check (Name) Star
	Held For Criminal Investigations Unit		Other Information			
	Registered Owner Business Name/Last Name (R/O) CITY AND COUNTY OF SAN FRANCISCO		First Name N/A		Residence Phone	
	Residence Address 1800 Jerrold Av		City SAN FRANCISCO	State CA	Zip 94124-	Business Phone

San Francisco Police Department
INCIDENT REPORT

Report Type: Supplemental

130309253

NARRATIVE

Upon review of the initial report, I identified that the two officers who were fired upon were not properly listed as victims nor was their vehicle. This supplemental accurately corrects the errors identified with the initial report cover pages.

2/16/2019 12/16/2019 12/16/2019 12/16/2019
ATF FIREARM WORKSHEET

Stolen Y N

Case # 130-309-253

Loc/Bag# D 415-1 16 NCIC CODE 0900 CO.

Assigned Detail Assigned Inspector Contacted

Examined by Ofc. J. Gala 950 Date 08-13-2013 DNA Swab by Date

Ser # A021303	Mfg CZ
Type PISTOL SEMI AUTO	Cal 9mm
Country of origin Czech Republic	Model CZ 75 P-01
Barrel 3.75	Finish BLACK
Importer	Other marks
Serial # obliterated	Additional Accessories 1 Magazine
How removed	

Recovery Location

Recovery date 4-16-13		Type of location			
Street # 200	Direction	Street name HUNTERS POINT	Suffix BLVD	RT. #	Apt. #
City San Francisco	County SF	State CA	Zip Code 9	Country USA	
Lic. #	State	Make	Model	Year	

CLETS / NCIC Info

FCN
ORIGINAL

Comments

Found FCN	Safekeeping FCN
Crime FCN #	Evidence FCN #
Validated by: Ofc. J. Gala 950	

216 ON K.O.
Retrieved by A10307 on 12/10/2013 at 8:09:27 AM
SFPP Property (415) 553-1200
ATF FIREARM WORKSHEET

Stolen Y N Case # 130-309-253

Loc/Bag# D415-2 NCIC CODE 0900 CO. C
17

Assigned Detail _____ Assigned Inspector _____ Contacted _____

Examined by ofc. J. Gala Date 08-13-13 DNA Swab by _____ Date _____

Ser # <u>OBLITERATED</u>	Mfg <u>Glock</u>
Type <u>PISTOL semi Auto</u>	Cal <u>9</u>
Country of origin <u>AUSTRIA</u>	Model <u>17</u>
Barrel <u>4.41</u>	Finish <u>BLACK</u>
Importer _____	Other marks _____
Serial # obliterated <u>Yes</u>	Additional Accessories _____
How removed <u>Grinded</u>	Lower receiver <u>BROKEN INTO</u> <u>several pieces</u>

Recovery Location

Recovery date <u>4-16-13</u>			Type of location _____		
Street # _____	Direction _____	Street name <u>HUNTERS POINT</u>	Suffix <u>BL</u>	RT. # _____	Apt. # _____
City <u>SAN FRANCISCO</u>	County <u>SF</u>	State <u>CA</u>	Zip Code _____	Country <u>USA</u>	
Lic. # _____	State _____	Make _____	Model _____	Year _____	

CLETS / NCIC Info

Comments _____

Found FCN _____	Safekeeping FCN _____
Crime FCN # <u>[REDACTED]</u>	Evidence FCN # <u>[REDACTED]</u>
Validated by: <u>ofc. J. Gala #950</u>	

Retrieved by A10307 on 12/19/2013 at 6:09:29 AM

San Francisco Police Department

Report Type: Initial

INCIDENT REPORT

130309253

PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 1	GUN					C 2	
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
			9MM	BLK		1		
	Seized by (Star)		From Where					
	638		INDIA BASIN PARK					
	Additional Description/Identifying Numbers							
	Refer to CSI Supplemental							

PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 2	GUN					GLOCK 17	
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
			GLOCK	9MM	BLK		1	
	Seized by (Star)		From Where					
	638		EVANS AVENUE					
	Additional Description/Identifying Numbers							
	Refer to CSI Supplemental							

PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 3	EXTENDED MAGAZINE						
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				BLK		1		
	Seized by (Star)		From Where					
	638		EVANS AVENUE					
	Additional Description/Identifying Numbers							
	Refer to CSI Supplemental							

PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 4	EXTENDED MAGAZINE						
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				SIL		1		
	Seized by (Star)		From Where					
	4257		FROM INSIDE SUSPECT VEHICLE.					
	Additional Description/Identifying Numbers							
	Booked at Bayview Station.							

PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 5	FIRED CASINGS						
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				MUL/COL		2		
	Seized by (Star)		From Where					
	4257		INDIA BASIN PARK					
	Additional Description/Identifying Numbers							
	Booked at Bayview Station.							

PROPERTY	Code/No	Item Description			Brand		Model	
	EVD 6	BACKPACK						
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.	Quantity	Value	
				BLK		1		
	Seized by (Star)		From Where					
	4257		INSIDE SUSPECT VEHICLE (WHITE SUBURBAN)					
	Additional Description/Identifying Numbers							
	Booked at Bayview Station. Contains blue document folder with Certificate of Completion for IPO-HSA New Employee Orientation (NEO) issued to Century Fasten on 04/15/2013.							

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/ECF system on September 8, 2020.

**BRIEF OF *AMICI CURIAE*
CITY AND COUNTY OF SAN FRANCISCO, CITY
OF ALAMEDA, AND THE CITIES OF
CALABASAS, LOS ANGELES, OAKLAND, SAN
DIEGO, SANTA MONICA, SUNNYVALE, AND
WEST HOLLYWOOD IN SUPPORT OF THE
STATE OF CALIFORNIA'S PETITION FOR
REHEARING EN BANC**

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 September 8, 2020, at San Francisco, California.

s/Pamela Cheeseborough

Pamela Cheeseborough