

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

OCEAN STATE TACTICAL, LLC, :
d/b/a BIG BEAR HUNTING AND :
FISHING SUPPLY; JONATHAN :
HIRONS; JAMES ROBERT :
GRUNDY; JEFFREY GOYETTE; :
and MARY BRIMER :
Plaintiffs, :

v. :

C.A. NO. 1:22-cv-00246-JJM-PAS

PETER F. NERONHA (official :
capacity), DARNELL S. WEAVER :
(official capacity) :
Defendants. :

**STATE DEFENDANTS’ MOTION TO EXCLUDE PLAINTIFFS’ NOVEMBER 3, 2022
SUBMISSION OF AN AFFIDAVIT OF WILLIAM WORTHY**

Now come the Defendants, Peter F. Neronha and Darnell S. Weaver, in their official capacities only (hereinafter “State Defendants”), and move to exclude Plaintiffs’ November 3, 2022 submission of an affidavit of Will Worthy, ECF No. 23 (the “affidavit”) under the applicable scheduling orders in this case and Federal Rules of Evidence Rule 403. The affidavit is out of time, cumulative, vague, and in an important respect inaccurate. In the alternative, if this Court permits the admission of the affidavit into the record, the State Defendants move to admit Exhibit L into evidence.

On November 3, 2022, Plaintiffs filed the affidavit with this Court and emailed it to Defendants’ counsel, just hours before the scheduled hearing on Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction. Pursuant to this Court’s Text Order of August 18, 2022, Plaintiffs were to complete briefing in this matter by October 24, 2022; this

deadline was subsequently extended to October 27, 2022. Plaintiffs met this deadline and submitted their briefing, including an affidavit of William Worthy dated October 27, 2022 (Ex. D in Plaintiffs' Reply to the State's Opposition to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, ECF 19-1, 87-88). Plaintiffs did not seek any further extension of time prior to submitting the affidavit or offer any accompanying rationale for the delay (and there could be none, as Mr. Worthy was available to sign on Plaintiff's original deadline as demonstrated by ECF 19-1, 87-88). Moreover, the affidavit was signed November 2, 2022, begging the question why Plaintiffs waited until just before the hearing in this matter to file the affidavit and email it to State Defendants' counsel. In sum, the Plaintiffs were out of time in submitting the affidavit, and it should not be considered by the Court.

This Court may also exclude the affidavit because "its probative value is substantially outweighed by a danger of . . . unfair prejudice [and] needlessly presenting cumulative evidence." Fed. R. Evid. 403. First, the timing of the filing of the affidavit presented unfair prejudice because its admission would give Plaintiffs the opportunity to reference evidence to which the Defendants had no opportunity to respond or this Court to consider in its preparation for hearing argument on the preliminary injunction motion. Moreover, the affidavit is cumulative, vague, and contains inaccurate information. A great deal of the information in the affidavit is contained in Plaintiffs' prior affidavits, both the earlier affidavit of Mr. Worthy and other affidavits by Ocean State Tactical principals, making the affidavit cumulative. Particularly, the gravamen of the affidavit appears to be that Ocean State Tactical will suffer some, unspecified and unquantified (though quantifiable) amount of economic harm if the injunction is not granted. However, this is the same evidentiary ground already trod by Ocean State Tactical's two prior affidavits.

Other information in the affidavit is so vague as to be legally meaningless; for example, the affiant's assertion that "[s]elling (and shipping) the Standard Capacity Magazines in Ocean State's possession currently would be a tremendous amount of effort and cost" in no way demonstrates that Ocean State Tactical would be unable to sell its existing inventory of large capacity feeding devices in the national marketplace, even at a profit. *See* Affidavit ¶ 4. Moreover, the claims in the affidavit are unclear and do not specifically establish any new fact—for example, Mr. Worthy's new assertion that "[t]here exists a class of customers . . . whose firearms do not accept Magazines under 10 rounds" explains this is so because manufacturers either (1) "never made a magazine for those models that can accept" ten rounds or fewer or (2) no longer makes the firearm. Affidavit ¶ 5. But Mr. Worthy does not explain whether or if any *other* manufacturer makes such a magazine or whether the magazines could be modified. *See* Defendants' Exhibits D, E.

Finally, the affidavit contains at least one piece of patently inaccurate information. It claims that "[s]everal models of firearms, including the Canik TP9SFX, do not have the option for a ten (10) round or less magazine. Its capacity is eighteen (18) rounds." This claim regarding the Canik TP9SFX is readily disproven by an internet search, as that firearm is indeed capable of accepting a ten-round magazine and is sold with ten-round or twenty-round magazine options, as described by its manufacturer. *See* State Defendant's Exhibit L (Manufacturer's Advertisement for the Canik TP9SFX, accessed November 3, 2022). If the Court admits ECF No. 23, State Defendant's Exhibit L should also be admitted. The affidavit, together with Exhibit L, provides another example in support of the State Defendants' contention that there are very few, if any, firearms available on the market which cannot fire with a magazine that accepts fewer than eleven rounds. A large capacity magazine is a firearm accessory that can readily be replaced with a

magazine of smaller capacity (or not, as most magazine-enabled semiautomatic firearms are capable of firing without an attached magazine at all, with a round placed directly in the chamber).

For all these reasons, the State Defendants object to the affidavit.

Respectfully submitted,

PETER F. NERONHA
ATTORNEY GENERAL

/s/ Sarah W. Rice

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Attorneys for Defendants Peter F. Neronha and
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I filed the within via the ECF filing system and that a copy is available for viewing and downloading. I have also caused a copy to be sent via the ECF System to counsel of record on this 4th day of November, 2022.

/s/ Keith Hoffmann _____

EXHIBIT L

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- Warren Tactical sights with red and green fiber optic front sight
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- Accessory under-barrel rail
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Extended Slide Lock Release

SPECIFICATIONS

WEIGHT 1.83 lbs	CAPACITY 20+1 rounds	FRONT SIGHT Fiber Optic
CARTRIDGE 9mm Luger	MAGAZINE TYPE Canik Full Size Magazine	REAR SIGHT Blackout
MAGAZINE INCLUDED 2 x 20-Round Magazine	FINISH COLOR Tungsten Grey	ACTION TYPE Semi-Automatic
FRAME MATERIAL Synthetic	OVERALL LENGTH 8.27"	BARREL LENGTH 5.2"
HEIGHT 6.2"	WIDTH 1.38"	MANUFACTURED Made in Turkey

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CAPACITY

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TP9SFX

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