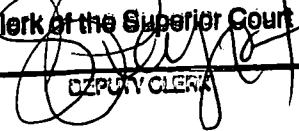


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5 Attorneys for Defendant
COUNTY OF SAN MATEO

FILED
SAN MATEO COUNTY

JUL 10 2012

Clerk of the Superior Court
By 
DEPUTY CLERK

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN MATEO**

11 CALGUNS FOUNDATION, INC., et al.,

12 Plaintiffs,

13 vs.

14 COUNTY OF SAN MATEO,

15 Defendant.

Case No. 509185

~~PROPOSED~~ ORDER SUSTAINING
DEMURRER

Hearing:

Date: July 2, 2012
Time: 9:00 a.m.
Dept: Law and Motion

17 The Demurrer and Motion to Strike of Defendant County of San Mateo came on regularly for
18 hearing on July 2, 2012, at 9:00 a.m., in the Law and Motion Department of the Superior Court of the
19 County of San Mateo, the Honorable V. Raymond Swope III presiding. The parties did not appear to
20 contest the tentative issued on June 29, 2012. As indicated by the declaration of David Silberman, filed
21 with this Order, the County circulated a draft of this Order and the Judgment issued herewith, pursuant to
22 California Rule of Court 3.1312 on July 2, 2012 and changes were requested, changes which have been
23 incorporated into this Order with one exception as detailed in the Declaration of David Silberman filed
24 with this Order and the email from Plaintiff's counsel attached thereto.

25 The Court, having reviewed the Demurrer, the Opposition to the Demurrer, and all papers filed in
26 connection thereto, the Court, HEREBY ORDERS as follows:

- 27 1. The Court GRANTS Defendant County of San Mateo's request for the Court to
28 take judicial notice of: (a) Section 3.68.080 of the San Mateo County Ordinance

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Code; ~~(b) Santa Clara County Ordinance Section Sec. B14-31.1. Firearms and Weapons;~~ ~~(c) Los Angeles County Ordinance Code 17.04.620 Firearms and other weapons;~~ ~~(d) Daly City Ordinance Code 12.36.050 Prohibited Acts;~~ and ~~San Mateo County Ordinance 415 (1934), each of which is attached to the County's Request for Judicial Notice and filed on December 15, 2011;~~

2. Defendant's demurrer to the First Cause of Action for Declaratory Relief is SUSTAINED WITHOUT LEAVE TO AMEND. Plaintiffs' complaint does not identify the specific state law which is alleged to preempt the subject ordinance. Even if the court were to construe plaintiff's opposition as an offer to amend to allege that the ordinance is preempted by Government Code §53071, the complaint would still fail to state a cause of action. The language of the statute indicates the legislature intends to occupy the field of regulation of the registration or licensing of commercially manufactured firearms. Nothing on the face of the subject ordinance purports to regulate registration or licensing of any firearm. It merely prohibits the possession of firearms on specified county property. Plaintiffs' reliance on *Fiscal* is misplaced as it is factually distinct. In that case, the finding of preemption was based on the fact that the ordinance imposed a total ban on the possession of handguns within the City and County of San Francisco. As a result, it had the practical effect of revoking or invalidating existing licenses. In this case the ordinance does not have the effect of invalidating any licenses. It merely regulates the possession or use of firearms on county property.

3. Defendant's demurrer to the Second Cause of Action for Injunctive Relief is also SUSTAINED WITHOUT LEAVE TO AMEND. Injunctive relief is a remedy, not a cause of action in itself. A cause of action must exist before injunctive relief may be granted. *Shell Oil Co v. Richter* (1942) 52 Cal.App.2d 164, 168.

4. This Action is DISMISSED.

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5. JUDGMENT is hereby entered for Defendant.

IT IS SO ORDERED.

Dated: JUL 05 2012



HON. V. RAYMOND SWOPE III
JUDGE OF THE SUPERIOR COURT