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JUL 10 2012

**SUPERIOR COURT
CIVIL DIVISION**

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN MATEO**
10

11 CALGUNS FOUNDATION, INC.,

12 Plaintiffs,

13 vs.

14 COUNTY OF SAN MATEO,

15 Defendant.
16

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.

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

- 26 1. Defendant's demurrer to the First Cause of Action for Declaratory Relief is
27 SUSTAINED WITHOUT LEAVE TO AMEND. Plaintiffs' complaint does not
28 identify the specific state law which is alleged to preempt the subject ordinance.

1 Even if the court were to construe plaintiff's opposition as an offer to amend to
2 allege that the ordinance is preempted by Government Code §53071, the complaint
3 would still fail to state a cause of action. The language of the statute indicates the
4 legislature intends to occupy the field of regulation of the registration or licensing
5 of commercially manufactured firearms. Nothing on the face of the subject
6 ordinance purports to regulate registration or licensing of any firearm. It merely
7 prohibits the possession of firearms on specified county property. Plaintiffs'
8 reliance on *Fiscal* is misplaced as it is factually distinct. In that case, the finding
9 of preemption was based on the fact that the ordinance imposed a total ban on the
10 possession of handguns within the City and County of San Francisco. As a result,
11 it had the practical effect of revoking or invalidating existing licenses. In this case
12 the ordinance does not have the effect of invalidating any licenses. It merely
13 regulates the possession or use of firearms on county property.

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

18 3. This Action is DISMISSED.

19 4. JUDGMENT is hereby entered for Defendant.

20 **IT IS SO ORDERED.**

21
22 Dated: _____

23 HON. V. RAYMOND SWOPE III
24 JUDGE OF THE SUPERIOR COURT
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26
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