

Superior Court of California
County of San Mateo
Minute Order

Case No.: 509185 Date: 07/02/12 Dept.: LM
Case Name: THE CALGUNS FOUNDATION VS COUNTY OF SAN MATEO
Case Category: CIVIL COMPLAINT
Hearing: HEARING: DEMURRER TO COMPLAINT of EARLY BY COUNTY OF SAN MATEO

Honorable V. Raymond Swope, Judge Presiding. Clerk: Sandra Harris,
Court Reporter: Geraldine Vandeveld

No appearance is made by any parties herein or their counsel of record.

Tentative ruling adopted and becomes the order:

As noted in the court's prior tentative ruling, defendant's demurrer addresses the merits of the underlying controversy alleged in plaintiff's complaint rather than any pleading deficiency. None of the cases in defendant's supplemental memorandum indicates the court must reach the merits of the underlying controversy where the controversy is otherwise adequately alleged. Nevertheless, it appears that where the issue is purely one of law, it is not error for the court to do so. *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 24. Because the parties desire the court to reach the merits of the underlying preemption issue it will do so.

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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 Section 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.

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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.

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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.

* * .

Prevailing party is directed to prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and to provide notice thereof to the opposing party/counsel as required by law and the California Rules of Court. The order is to be submitted directly to Judge V. Raymond Swope, Department 23.

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Entered by S.Harris on 07/02/12.