

Donald E.J. Kilmer, Jr. (SBN: 179986)
LAW OFFICES OF DONALD KILMER, A.P.C.
1645 Willow Street, Suite 150
San Jose, California 95125-5120
Voice: (408) 264-8489
Fax: (408) 264-8487
Email: Don@DKLawOffice.com

Attorney for Plaintiffs

FILED
SAN MATEO COUNTY

JUN - 4 2012

Clerk of the Superior Court

By

DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO
400 County Center, Redwood City, CA 94063

THE CALGUNS FOUNDATION,
INC., and GENE HOFFMAN,

Plaintiffs,

vs.

COUNTY OF SAN MATEO, and
DOES 1 TO 20,

Defendants.

Case No.: CIV 509185

PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM

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

Plaintiffs THE CALGUNS FOUNDATION, INC., (CGF, Inc.) and GENE HOFFMAN, hereby submit this supplemental memorandum as ordered by this Court on April 24, 2012. In its tentative ruling the Court raised the procedural issue of whether the Court must, or has the discretion, to deny a demurrer on the legal point that preemption questions cannot be determined on demurrer. The Court cited *Ludgate Ins. Co. v. Lockheed Martin Corp.*, 82 Cal.App.4th 592, 606 (2000) in that tentative ruling.

The legal scholarship of Defendants' Counsel is impressive, but not compelling on the legal point. A Court always has the discretion to overrule a demurrer in a case where Court does not believe the trial court record is sufficiently developed for the summary adjudication that a successful demurrer represents.

1 As this is a public interest lawsuit, challenging an unconstitutional policy of
2 a local government, the case is headed to the Court of Appeals regardless of how
3 this Court resolves the underlying substantive (preemption) issue.

4 While it might have been a more efficient use of judicial resources if the
5 Defendants had accepted Plaintiffs proposition to take the demurrer off calendar
6 and instead submit cross-motions for summary judgment; Plaintiffs are prepared to
7 litigate this matter, on the facts plead in the complaint, in the same District Court
8 of Appeals that already decided *Fiscal v. City and County of San Francisco*, (2008)
9 158 Cal. App. 4th 895.

10 Finally – addressing Defendants’ footnote #1 – that same Court did not
11 require a pending criminal prosecution to determine whether the County of San
12 Francisco exceeded its power under California’s preemption doctrine with
13 Proposition H.

14
15 CONCLUSION

16 Plaintiffs are not advancing a radical or novel theory. California state law
17 licensing the carrying of weapons for self-defense preempts a local government’s
18 power to nullify that license.

19 This Court should overrule the Defendants’ Demurrer, and order them to
20 answer the complaint. Furthermore, the Court should order the parties to expedite
21 preparation of a joint statement of undisputed facts (e.g., whether HOFFMAN has a
22 current and valid state license) and schedule a hearing date for cross-motions for
23 summary judgment.

24 RESPECTFULLY SUBMITTED,

25 Date: June 1, 2012



26 Donald Kilmer for Plaintiffs
27
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Bar number, and address): Donald Kilmer (Bar # 179986) Law Offices of Donald Kilmer, APC 1645 Willow Street, Suite 150 San Jose, CA 95125 TELEPHONE NO.: (408) 264-8489 FAX NO. (Optional): (408) 264-8487 E-MAIL ADDRESS (Optional): Don@DKLawOffice.com ATTORNEY FOR (Name): Calguns Foundation, Inc., and Gene Hoffman, Plaintiffs	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 County Center MAILING ADDRESS: 400 County Center CITY AND ZIP CODE: Redwood City 94603 BRANCH NAME: Civil Division	CASE NUMBER: <div style="text-align: center; font-size: 1.2em;">CIV 509185</div>
PLAINTIFF/PETITIONER: Calguns Foundation, Inc., et al. DEFENDANT/RESPONDENT: County of San Mateo, et al.	JUDGE: DEPT.: Law and Motion
<div style="text-align: center;">PROOF OF SERVICE—CIVIL</div> Check method of service (only one): <div style="display: flex; justify-content: space-between;"> <div><input type="checkbox"/> By Personal Service</div> <div><input type="checkbox"/> By Mail</div> <div><input type="checkbox"/> By Overnight Delivery</div> </div> <div style="display: flex; justify-content: space-between;"> <div><input type="checkbox"/> By Messenger Service</div> <div><input type="checkbox"/> By Fax</div> <div><input checked="" type="checkbox"/> By Electronic Service</div> </div>	

(Do not use this proof of service to show service of a Summons and complaint.)

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is: **1645 Willow Street, Suite 150**
San Jose, CA 95125
3. ☒ The fax number or electronic service address from which I served the documents is (complete if service was by fax or electronic service): **don@dklawoffice.com**
4. On (date): **June 1, 2012** I served the following documents (specify):
PLAINTIFFS' SUPPLEMENTAL MEMORANDUM

☐ The documents are listed in the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)).

5. I served the documents on the person or persons below, as follows:

a. Name of person served: **David Silberman Representing Defendants: San Mateo County**

b. ☐ (Complete if service was by personal service, mail, overnight delivery, or messenger service.)

Business or residential address where person was served:

c. ☒ (Complete if service was by fax or electronic service.)

(1) Fax number or electronic service address where person was served: **DSilberman@smcgov.org**

(2) Time of service: **6:50 a.m.**

☐ The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).

6. The documents were served by the following means (specify):

a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME:

Early v San Mateo

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CIV 509185

6. b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):

- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*):

c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)

e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

f. ☒ **By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 1, 2012

Donald Kilmer

(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

Don Kilmer

From: Don Kilmer <don@dklawoffice.com>
Sent: Friday, June 01, 2012 6:52 AM
To: David Silberman (DSilberman@smcgov.org)
Cc: Christina Joy Kilmer (christina@dklawoffice.com)
Subject: Calguns Foundation v. San Mateo
Attachments: Supp Memo Jun 1 2012.pdf; POS Jun 1 2012.pdf

David:

Attached is my supplemental memo.

Have you heard anything back from the Court on moving the June 8, 2012 CMC?

Thanks.

Donald E. J. Kilmer, Jr.
Attorney at Law (SBN: 179986)
Law Offices of Donald Kilmer, A.P.C.
Email: Don@DKLawOffice.com
Web: www.DKLawOffice.com
Voice: (408) 264-8489

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Counsel should assume that all correspondence is blind copied to my clients.**