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**FILED**  
**SAN MATEO COUNTY**

OCT 20 2011

Clerk of the Superior Court

By

DEPUTY CLERK

9 SUPERIOR COURT OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF SAN MATEO  
11 400 COUNTY CENTER, REDWOOD CITY, CA 94063

12 ULYSSES S. GRANT EARLY, IV,  
13 GENE HOFFMAN and THE  
14 CALGUNS FOUNDATION, INC.,

15 Plaintiffs,

16 vs.

17 COUNTY OF SAN MATEO, and  
18 DOES 1 to 20,

19 Defendants.

Case No.:

**CIV 509185**

**VERIFIED COMPLAINT and  
PETITION FOR INJUNCTIVE /  
DECLARATORY RELIEF**

20 **INTRODUCTION**

- 21 1. This is an action for injunctive/declaratory relief resulting from the unlawful  
22 policies, procedures and practices of the Defendants in maintaining and  
23 administering Chapter 3.68 of the SAN MATEO COUNTY PARK AND  
24 RECREATION AREA RULES. A true and correct copy of the full ordinance  
25 and rules are attached and incorporated by reference.
- 26 2. This action seeks declaratory and injunctive relief that the County's  
27 ordinance is preempted by State law with respect to the possession of  
28 firearms, especially by persons licensed under California Penal Code §§

1 12050 and 25650. (The California legislature has reorganized the Dangerous  
2 Weapons Statutes. Penal Code § 12050 will be repealed and become § 25650  
3 on January 1, 2012. All further references are to the current Penal Code.)

4 **PARTIES**

- 5 3. Plaintiff ULYSSES S. GRANT EARLY, IV (Grant Early) is a natural person  
6 and citizen of the United States and of the State of California. He lives in  
7 Sacramento County and regularly enjoys the parks and recreation areas in  
8 San Mateo County. Plaintiff EARLY is licensed under state law to carry a  
9 loaded and concealable firearm on his person pursuant to the California  
10 Penal Code § 12050. He is a member and contributor to the CALGUNS  
11 FOUNDATION, INC.
- 12 4. Plaintiff GENE HOFFMAN is a natural person and citizen of the United  
13 States and of the State of California. He lives in San Mateo County and  
14 regularly enjoys the parks and recreation areas in San Mateo County.  
15 Plaintiff HOFFMAN is licensed under state law to carry a loaded and  
16 concealable firearm on his person pursuant to the California Penal Code §  
17 12050. He is Chairman of the CALGUNS FOUNDATION, INC.
- 18 5. Plaintiff CALGUNS FOUNDATION, INC., (CGF) is a non-profit organization  
19 incorporated under the laws of California with its principal place of business  
20 in San Carlos, California. The purposes of CGF include supporting the  
21 California firearms community by promoting education for all stakeholders  
22 about California and federal firearms laws, rights and privileges, and  
23 defending and protecting the civil rights of California gun owners. CGF  
24 represents its members and supporters, which include California gun owners.  
25 CGF brings this action on behalf of itself and its supporters, who possess all  
26 the indicia of membership.
- 27 6. Defendant COUNTY OF SAN MATEO is a municipal entity organized under  
28 the Constitution and laws of the State of California.

1 7. At this time, Plaintiffs are ignorant of the names of additional Defendants.  
2 Plaintiffs therefore name these unknown Defendants as DOE Defendants  
3 and reserves the right to amend this complaint when their true names are  
4 ascertained. Furthermore, if/when additional persons and entities are  
5 discovered to have assisted and/or lent support to the wrongful conduct of the  
6 Defendants named herein, Plaintiff reserves the right to amend this  
7 complaint to add those persons and/or entities as Defendants.

8 **CONDITIONS PRECEDENT**

9 8. All conditions precedent have been performed, and/or have occurred, and/or  
10 have been excused, and/or would be futile.

11 **STATEMENT OF FACTS**

12 9. Defendant SAN MATEO COUNTY has promulgated and presumably  
13 enforces an ordinance which prohibits – without relevant exception – the  
14 possession of firearms and deadly weapons in any county park or recreational  
15 area. SAN MATEO ORDINANCE (SMO) § 3.68.080(o).

16 10. Other characteristics of the ordinance include:

- 17 a. Violations of Chapter 3.68 are a misdemeanor. SMO § 3.68.010.
- 18 b. There is a general exception to Chapter 3.68 for “...employees of the  
19 *San Mateo County Parks and Recreation Department, or the San*  
20 *Francisco Water Department, or other public officials acting within the*  
21 *scope of their authorized duties and concession activities...*” as long as  
22 they otherwise comply with all other laws. SMO § 3.68.020.
- 23 i. Curiously – unless they can somehow be defined as “public  
24 officials” – it would appear that the ordinance forbids the  
25 possession of weapons by law enforcement personnel and/or  
26 military personnel (whether on or off duty) unless they are  
27 employees of San Mateo County Department of Parks and  
28 Recreation and/or the San Francisco Water Department.

- 1                   ii.     The ordinance does not define "public official."
- 2 11.   Plaintiffs EARLY and HOFFMAN have validly issued licenses pursuant to
- 3       California Penal Code § 12050, to carry a firearm in public. The licenses
- 4       were issued in their respective counties where they reside. To obtain these
- 5       licenses, the plaintiff had to:
- 6       a.     Provide proof of good moral character to the issuing agency,
- 7       b.     Provide proof of good cause to the issuing agency,
- 8       c.     Provide proof that they were either:
- 9               i.     A resident of the county or a city within the county where the
- 10              license was issued, or
- 11             ii.    Show that they spend a substantial period of time in a principal
- 12              place of employment or business in the county where the license
- 13              was issued.
- 14       d.     Provide proof of successful completion of a course of training,
- 15       e.     Complete a criminal background check that was satisfactorily
- 16              reviewed by the issuing agency.
- 17       f.     Pay a statutorily defined fee.
- 18 12.   Plaintiffs EARLY and HOFFMAN have enjoyed the parks and recreational
- 19       areas of SAN MATEO COUNTY in the past and hope to do so in the future.
- 20       Their entry into the county's parks and recreational areas does not diminish
- 21       the "good cause" they have for carrying firearms in public.
- 22 13.   Furthermore, dangerous wild animals are known to inhabit the COUNTY's
- 23       parks and recreational areas, including but not limited to mountain lions.
- 24       Mountain lions have been known to attack humans and small animals,
- 25       sometimes causing great bodily injury and/or death.
- 26 14.   All Plaintiffs contend the ordinance is preempted by state law with respect to
- 27       all persons with Penal Code § 12050 licenses, who seek to enter and enjoy the
- 28       county parks and county recreational areas in SAN MATEO COUNTY.

1 15. Plaintiffs EARLY and HOFFMAN contend that the ordinance is specifically  
2 preempted as to them.  
3

4 **FIRST CLAIM FOR RELIEF – DECLARATORY JUDGMENT**

5 16. Paragraphs 1 through 15 are incorporated by reference.

6 17. Plaintiffs GRANT EARLY, GENE HOFFMAN and THE CALGUNS  
7 FOUNDATION, INC., seek a declaratory judgment from this Court that the  
8 SAN MATEO ordinance forbidding possession of guns in its parks and  
9 recreational areas, to the extent that it does not provide an exception for  
10 persons licensed to carry a firearm under Penal Code § 12050, is preempted  
11 by state law and therefore void.  
12

13 **SECOND CLAIM FOR RELIEF – INJUNCTION**

14 18. Paragraphs 1 through 15 are incorporated by reference.

15 19. Plaintiffs GRANT EARLY, GENE HOFFMAN and THE CALGUNS  
16 FOUNDATION, INC., seek injunctive relief consistent with the declaratory  
17 judgments granted above. Remedies would include but be limited to a  
18 moratorium on enforcement of the ordinance and/or certain provisions.  
19

20 **PRAYER FOR RELIEF**

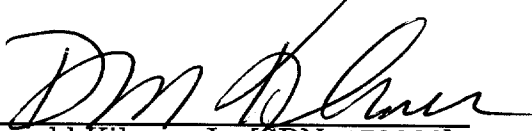
21 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

22 A. For a preliminary injunction, and a permanent injunction, enjoining  
23 Defendant(s) and his/her/their/its agents, servants, and employees, and all  
24 such persons acting under, in concert with, or for him/her/them/it from  
25 enforcing San Mateo Ordinance 3.68.080(o);

26 B. For a declaration by the court of the rights and duties of Plaintiffs and  
27 Defendants herein, and specifically for a declaration that San Mateo  
28 Ordinance 3.68.080(o) is unenforceable against them and persons similarly

- 1 situated;
- 2 C. For reasonable attorney's fees according to proof, pursuant to Code of Civil
- 3 Procedure Section 1021.5;
- 4 D. For costs of suit herein incurred; and
- 5 E. For such other and further relief as the court may deem proper.

6 <sup>19</sup>  
Dated: October 12, 2011,

7   
8  
9 Donald Kilmer, Jr. [SBN: 179986]  
Attorney for Plaintiffs

10  
11 **VERIFICATIONS**

12  
13 I, Grant Early, declare that I am a plaintiff in the above-entitled action. I  
14 have read the complaint this matter. The facts set forth therein are true of my own  
15 personal knowledge. I declare this to be true under penalty of perjury under the  
16 laws of California, I further declare that this declaration was executed in  
17 Sacramento County, California on (date) \_\_\_\_\_.

18  
19 **FAX SIGNATURE**  
20 **ATTACHED**  
21 Grant Early

22  
23 I, Gene Hoffman, declare that I am a plaintiff in the above-entitled action. I  
24 am also the Chairman of the Calguns Foundation, Inc. I have read the complaint  
25 this matter. The facts set forth therein are true of my own personal knowledge. I  
26 declare this to be true under penalty of perjury under the laws of California, I  
27 further declare that this declaration was executed in San Mateo County, California  
28 on (date) \_\_\_\_\_.

29  
30 **FAX SIGNATURE**  
31 **ATTACHED**  
32 Gene Hoffman

1 situated;

2 C. For reasonable attorney's fees according to proof, pursuant to Code of Civil  
3 Procedure Section 1021.5;

4 D. For costs of suit herein incurred; and

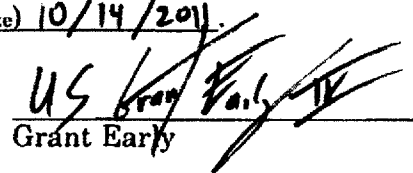
5 E. For such other and further relief as the court may deem proper.

6 Dated: October 12, 2011,  
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10 Attorney for Plaintiffs

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12 I, Grant Early, declare that I am a plaintiff in the above-entitled action. I  
13 have read the complaint this matter. The facts set forth therein are true of my own  
14 personal knowledge. I declare this to be true under penalty of perjury under the  
15 laws of California, I further declare that this declaration was executed in  
16 Sacramento County, California on (date) 10/14/2011.

17   
Grant Early

18 I, Gene Hoffman, declare that I am a plaintiff in the above-entitled action. I  
19 am also the Chairman of the Calguns Foundation, Inc. I have read the complaint  
20 this matter. The facts set forth therein are true of my own personal knowledge. I  
21 declare this to be true under penalty of perjury under the laws of California, I  
22 further declare that this declaration was executed in San Mateo County, California  
23 on (date) 10/12/11.

24   
Gene Hoffman