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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

DOWNTOWN COURTHOUSE

12 G. MITCHELL KIRK; and CALIFORNIA
13 RIFLE & PISTOL ASSOCIATION,
14 INCORPORATED,

Plaintiffs and Petitioners,

15 vs.

16 CITY OF MORGAN HILL; MORGAN
17 HILL CHIEF OF POLICE DAVID SWING,
18 in his official capacity; MORGAN HILL
19 CITY CLERK IRMA TORREZ, in her
20 official capacity; and DOES 1-10,

Defendants and Respondents.

CASE NO. 19CV346360

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF; VERIFIED
PETITION FOR WRIT OF MANDATE
AND/OR PROHIBITION OR OTHER
APPROPRIATE RELIEF**

INTRODUCTION

I. NATURE OF THE CASE

1. On October 24, 2018, Defendant and Respondent CITY OF MORGAN HILL (the “City”) adopted Ordinance No. 2289 (the “Ordinance”) to amend, inter alia, section 9.04.030 of the Morgan Hill Municipal Code.

2. The intended effect of the Ordinance was to impose upon victims of firearm theft a mandatory requirement that they report such theft to law enforcement. Under the new law, victims of firearm theft in the City—whether residents or visitors—must now report to the City’s Police Department that a firearm has been stolen within 48 hours of the theft or within 48 hours after the victim reasonably becomes aware of the theft.

3. As amended by the Ordinance, the new language of Morgan Hill Municipal Code 9.04.030 reads as follows:

Duty to report theft or loss of firearms. Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Morgan Hill Police Department within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the city of Morgan Hill; or (2) the theft or loss of the firearm occurs in the city of Morgan Hill.

The language of the Ordinance, as now codified at Municipal Code 9.04.030, is the subject of this lawsuit.¹

4. California voters enacted Proposition 63 (“Prop 63”) on November 8, 2016. Prop

¹ Municipal Code 9.04.030’s language mirrors language of theft reporting ordinances recently adopted by other California cities. (See, e.g., Palm Springs Municipal Code 11.16.040 [Ordinance 1899, § 1, adopted 2016] [nearly identical to Morgan Hill Municipal Code 9.04.030].) On information and belief, the Giffords Law Center to Prevent Gun Violence drafted the language of the Ordinance now codified at Morgan Hill Municipal Code 9.04.030 as well as other cities’ similarly worded theft-reporting laws, and then lobbied those cities to adopt the lobbyist-drafted language as a local ordinance notwithstanding the clear preemption of local theft-reporting laws by Prop 63 or the attendant legal liability adopting a preempted ordinance would bring to those cities.

63 was an omnibus gun-control initiative that included, among other things, a mandatory reporting requirement for all victims of firearm theft within the state. Prop 63 created Penal Code section 25250, which requires victims of firearm theft within the state to report to a local law enforcement agency that a firearm has been stolen within *five days* of the theft or within five days after the victim reasonably becomes aware of the theft.

5. By passing Prop 63 and enacting section 25250, voters caused state law to occupy the whole of the field of firearm-theft-reporting, such that a local ordinance that purports to prescribe reporting requirements for firearm theft, like the Ordinance, is preempted.

6. Moreover, Penal Code section 25250 contains a less onerous requirement for firearm victims to report theft, such that the Ordinance criminalizes conduct that the voters of the state have deemed to be permissible—waiting up to five days instead of 48 hours—to report a firearm theft to law enforcement. Thus, the Ordinance and its codification directly conflict with section 25250.

7. California Rifle & Pistol Association, Incorporated notified the City in writing that section 25250 preempted the Ordinance and requested that the City voluntarily repeal the Ordinance. The City, however, ignored the guidance and refused to repeal the Ordinance.

8. Because those preempted portions of the Ordinance continue to remain in effect, and because there is a danger that firearm-theft victims who reside in or who are victimized in the City may be subject to prosecution for conduct that Penal Code section 25250 deems lawful, Plaintiffs-Petitioners seek judicial relief declaring the Ordinance, codified at Municipal Code 9.04.030, to be void as preempted by state law.

9. Plaintiffs-Petitioners further seek to enjoin Defendants-Respondents² from training their law enforcement officers on the enforcement of the Ordinance. They further request a writ of mandate or of prohibition or both directing the City Clerk to strike Municipal Code 9.04.030 from the Morgan Hill Municipal Code.

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² In matters combining a complaint for declaratory relief and a writ petition, the parties are uniformly referred to as “plaintiff” and “defendant.” (See Code Civ. Proc., §§ 308 & 1063.)

1 **II. DECLARATORY AND WRIT RELIEF IS NECESSARY**

2 10. Declaratory and writ relief is warranted because: (1) an actual controversy has
3 arisen and now exists between Plaintiffs and Defendants over the validity of the Ordinance; and
4 (2) there is no adequate remedy in the ordinary course of law.

5 11. The Ordinance, codified at Municipal Code 9.04.030, took effect on October 24,
6 2018, and has since its enactment been in full force and effect. On information and belief,
7 Plaintiffs allege that Defendants have, since the law took effect, enforced and currently are
8 enforcing 9.04.030.

9 12. Thus, victims of firearm theft risk unlawful enforcement and prosecution for
10 engaging in conduct that California voters deemed lawful. A judicial declaration is necessary and
11 appropriate at this time so that Plaintiffs may ascertain their rights and duties without first
12 subjecting themselves to criminal liability by violating the Ordinance. Moreover, Defendants'
13 ongoing enforcement of an invalid law constitutes a waste of taxpayer funds and an undue burden
14 on Plaintiffs.

15 **PARTIES**

16 **I. PLAINTIFFS**

17 13. Plaintiff G. MITCHELL KIRK is a resident of Morgan Hill, California, and a
18 firearm owner. In the event Mr. Kirk is a victim of firearm theft, he is subject to the requirements
19 of the Ordinance. If he reports such theft to the City's police department within 120 hours after the
20 theft occurred or he reasonably discovered it to have occurred, he would be subject to prosecution
21 under the Ordinance, even though his conduct would conform with Penal Code section 25250. Mr.
22 Kirk has, within the past year, paid sales taxes and property taxes while a resident of the City, with
23 portions of the proceeds of those taxes transferred to the City for funding general law enforcement
24 activities of its police department, including training its officers on the enforcement of the
25 Ordinance.

26 14. Plaintiff CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED
27 ("CRPA") is a nonprofit membership organization incorporated under the laws of California with
28 headquarters in Fullerton, California. Among its other activities, CRPA works to preserve and

1 expand constitutional and statutory rights of gun ownership, including the right to self-defense and
2 the right to keep and bear arms. CRPA accomplishes this through their many educational
3 offerings, publications, member engagement events, support of legislation, and legislative
4 initiatives. CRPA has tens of thousands of members and supporters, many of whom reside in
5 Morgan Hill or the surrounding county, conduct business in Morgan Hill, visit or travel through
6 Morgan Hill, or are otherwise subject to the Morgan Hill Municipal Code. Their members are
7 firearm retailers, sportsmen, hunters, junior and youth competitors, Olympians, police officers,
8 professionals, and loving parents and grandparents. CRPA represents all its members both in their
9 general interest as citizens and in their particular interest in the right to lawfully own and possess
10 firearms.

11 **II. DEFENDANTS**

12 15. Defendant CITY OF MORGAN HILL is a municipal corporation formed under the
13 laws of California. The City is the entity that enacted, and is beneficially interested in, the
14 Ordinance.

15 16. Defendant DAVID SWING is the Chief of Police of the Morgan Hill Police
16 Department. He is sued in his official capacity. He is charged with enforcing the Ordinance, as
17 codified in the Morgan Hill Municipal Code.

18 17. Defendant IRMA TORREZ is the City Clerk of Morgan Hill. She is sued in her
19 official capacity. She is charged with recording, keeping, and printing the ordinances of the City,
20 including the Ordinance referenced in this Complaint. She is charged with recording and printing
21 the codification of such ordinances within the Municipal Code for the City.

22 18. Plaintiff is unaware and genuinely ignorant of the true identities of DOES 1
23 through 10. Doe Defendants are fictitiously named. The true names and capacities, whether an
24 individual, corporation, heirs, assigns, successor in interest, or otherwise, of the Doe Defendants,
25 are unknown to Plaintiff at the time of filing of this complaint and petition. Plaintiff will amend
26 this complaint and petition to show the true names and capacities of these Doe Defendants when
27 the same have been ascertained. Plaintiff is informed, and believes, and on that basis alleges, that
28 at all times herein mentioned, Defendants fictitiously designated, and each of them, were the

1 agents, servants, employees, representatives, and/or other persons or entities acting or purporting
2 to act on Defendants' behalf or over whom Defendants exercise management and control, and
3 were at all times herein mentioned within the course and scope of such agency and/or
4 employment. Plaintiff is informed and believes, and on that basis alleges, that each of the
5 Defendants named as DOES 1 through 10 were in some manner acting unlawfully or otherwise
6 responsible for the events and happenings hereinafter alleged.

7 **JURISDICTION AND VENUE**

8 19. This Court has jurisdiction under sections 525, 526, 1060 and 1085 of the
9 California Code of Civil Procedure. Plaintiffs lack under section 1086 a "plain, speedy, and
10 adequate remedy, in the ordinary course of law."

11 20. Because this action is brought against the city of Morgan Hill and its public
12 officers, Plaintiffs properly bring this action in the county of Santa Clara. (Code Civ. Proc., §§
13 393, subd. (b), & 394, subd.(a).) Further, at least one Plaintiff resides in the city of Morgan Hill
14 and the county of Santa Clara.

15 **FIRST CAUSE OF ACTION**

16 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

17 **(By All Plaintiffs Against All Defendants)**

18 21. Plaintiffs reallege Paragraphs 1 through 20 and incorporate them as to this cause of
19 action as though fully set forth herein.

20 22. An actual controversy has arisen and now exists between Plaintiffs and Defendants
21 relative to their respective rights and duties under the Ordinance, as codified in Morgan Hill
22 Municipal Code 9.04.030. Plaintiffs contend that the Ordinance is invalid and unenforceable
23 because it is preempted by state law. On information and belief, Defendants dispute this
24 contention and contend the Ordinance is valid, continue to print the Ordinance as codified in the
25 Municipal Code, and continue to enforce the Ordinance, and train their officers to enforce the
26 Ordinance.

27 23. Plaintiffs desire a declaration on the validity of the Ordinance, as codified in
28 Municipal Code 9.04.030. A judicial declaration is necessary and appropriate so that Plaintiffs

1 may ascertain their rights and duties without first subjecting themselves to criminal liability by
2 violating the Ordinance.

3 24. To resolve this controversy, Plaintiffs request that, under Code of Civil Procedure
4 section 1060, this Court declare that the Ordinance is preempted by state law because: (1) it
5 duplicates state law that obligates victims of firearms theft to report such theft to a law
6 enforcement agency; (2) it contradicts state law that sets for the maximum time period by which
7 such theft must be reported; or (3) it enters into areas fully occupied by the state.

8 25. In addition, Plaintiffs seek an injunction under Code of Civil Procedure sections
9 525 and 526. The City's wrongful conduct, unless enjoined by order of this Court, will continue to
10 cause great and irreparable injury to Plaintiffs. For they will be forced to choose between
11 complying with the reporting requirements of the Ordinance, or complying with the reporting
12 requirements of Penal Code section 25250 in a manner which violates the Ordinance and causes
13 Plaintiffs or their members to be subject to local prosecution.

14 26. Further, the City's wrongful conduct, unless enjoined by order of this Court, will
15 continue to cause great and irreparable injury to Plaintiffs in that Plaintiffs who reside in the City
16 and who have paid and will continue to pay property tax and sales tax to the City will have such
17 tax revenue wasted on training and enforcement of a preempted and invalid local ordinance.

18 27. The City's wrongful conduct will be of a continuing nature for which Plaintiffs will
19 have no adequate remedy at law because it is impossible to determine monetary damages caused
20 by the City's wrongful conduct.

21 28. Accordingly, Plaintiffs seek a permanent injunction forbidding Defendants, their
22 agents, employees, representatives, and all those acting in concert with them from enforcing the
23 Ordinance, and further requiring Defendants to remove corresponding Municipal Code 9.04.030
24 from the Morgan Hill Municipal Code.

25 **SECOND CAUSE OF ACTION**

26 **FOR A WRIT OF MANDATE AND/OR PROHIBITION**

27 **(By All Plaintiffs Against All Defendants)**

28 29. Plaintiffs reallege Paragraphs 1 through 28 and incorporate them as to this cause of

1 action as though fully set forth herein.

2 30. Based on the plain language and legislative history of Prop 63 and Penal Code
3 section 25250, the Ordinance, as codified in the Morgan Hill Municipal Code, conflicts with and
4 is preempted by state law.

5 31. Defendants thus have a clear, present, and ministerial duty *not* to enforce the
6 Ordinance against Plaintiffs or anyone.

7 32. Plaintiffs are beneficially interested in this matter, as they are subject to
8 Defendants' enforcement of the Ordinance.

9 33. Defendants' wrongful conduct in enforcing the unlawful Ordinance is of a
10 continuing nature for which Plaintiffs have no plain, speedy, adequate remedy at law, and which
11 has and will continue to result in irreparable harm, as set forth above in the general allegations and
12 First Cause of Action.

13 34. The named individual plaintiffs, and the individuals and entities represented in this
14 action, are irreparably injured by the mere enactment, existence, and ongoing enforcement of the
15 invalid Ordinance, the continuing threat of criminal and civil penalties for each separate violation
16 of the Ordinance, and in the following ways:

17 a. The Ordinance purports to regulate matters already fully occupied by state law. It
18 also conflicts with state law and deprives Plaintiffs of their rights under these laws,
19 prohibiting them from actions they wish to take as hereinafter alleged. Plaintiffs are also
20 irreparably injured as taxpayers and citizens because the Ordinance results in invalid,
21 improper, and unauthorized conduct of public officials and its administration and
22 enforcement is a waste of tax funds. Plaintiffs have no adequate remedy at law to redress
23 these wrongs and protect their rights.

24 b. Plaintiffs, and those represented by Plaintiffs, are lawful firearm owners within the
25 City who must comply with the Ordinance if they are the victim of a firearm theft. If
26 Plaintiffs or their members instead chose to comply with state law—Penal Code section
27 25250—and wait for a period of up to 120 hours after a theft of or learning of a theft of
28 their firearm to report such theft, they would be subject to prosecution under the Ordinance

1 even though they have fully complied with state law.

2 c. Plaintiffs, and those represented by Plaintiffs who live in the City, are taxpayers
3 who, within the past year, have paid property tax, or sales tax, or both, with the proceeds
4 of same, or portions thereof, remitted to the City treasury for use in general law
5 enforcement purposes. Plaintiffs, as they continue to pay property tax, sales tax, or both,
6 will continue to see such tax funds wasted in the training of officers of the Morgan Hill
7 Police Department to enforce the Ordinance, in the enforcement by officers of the
8 Ordinance, and in the printing, publication, and distribution of the Ordinance, and its
9 codification in Municipal Code 9.04.030, within the official laws and publications of the
10 City.

11 d. Plaintiffs and those represented by Plaintiffs, as citizens, properly bring this
12 complaint for declaratory relief and petition for writ of mandate in the nature of a citizen
13 mandamus action to promote the public interest in having the general laws obeyed. The
14 Ordinance is preempted by state law, i.e., Penal Code section 25250. The statute upon
15 which Plaintiffs rely is intended to assure orderly, consistent, and rational statewide
16 compliance with firearm-theft-reporting requirements, without regard to whatever
17 jurisdiction such victim may reside or be passing through. Such a “patchwork” approach
18 would cause confusion to the public and cause members of the public seeking to comply
19 with state law to nonetheless be unwitting violators of a local law of which they may have
20 no knowledge. State law relating to theft-reporting is also intended to provide transparency
21 and uniform application of laws by law enforcement in order to prevent, e.g., law
22 enforcement officials in jurisdictions other than the City from having to apply one law to
23 most victims of firearms theft, but another, more stringent law to a victim of firearms theft
24 who also happens to be a resident of the City. Thus, the public has an interest in having the
25 City refrain from enacting and enforcing laws such as the Ordinance, which duplicate or
26 conflict with state law, otherwise encroach upon a field of law fully occupied by the State,
27 and cause conflict in other, neighboring jurisdictions where law enforcement may be
28 required to apply the City’s law in one instance, and state law in another instance, when

1 handling a report of a firearm theft.

2 35. Plaintiffs present important questions of statutory and constitutional interpretation,
3 questions of public interest which further warrant prompt disposition of this matter.

4 36. Accordingly, Plaintiffs seek a writ of mandate, under Code of Civil Procedure
5 sections 1085 and 1087, commanding that Defendants (a) stop enforcing the Ordinance, and (b)
6 remove the Ordinance from any list of municipal ordinances and, specifically, delete the section
7 requiring the reporting of stolen and lost firearms from Morgan Hill Municipal Code 9.04.030.

8 **PRAYER FOR RELIEF**

9 Wherefore Plaintiffs pray for the following relief:

10 1. For issuance of a declaration that the portion of the challenged Ordinance identified
11 in Paragraph 3 of this complaint, and codified at Morgan Hill Municipal Code 9.04.030, is
12 preempted by Penal Code section 25250, and is void and invalid;

13 2. For issuance of a peremptory writ and/or permanent injunction ordering Defendants
14 to not enforce the Ordinance, and to strike the corresponding Morgan Hill Municipal Code
15 9.04.030 from its books and records;

16 3. For issuance of a peremptory writ and/or permanent injunction ordering Defendants
17 to not expend money from the City treasury on training regarding or enforcement of the Ordinance;

18 4. For a declaration that the striking of and enjoining of enforcement of the Ordinance
19 confers a substantial benefit on the public;

20 5. For an award of reasonable costs of suit and attorney's fees under Code of Civil
21 Procedure section 1021.5 and under any other state law for which such fees and costs are provided;
22 and

23 6. For such other relief as may be just and proper.

24
25 Dated: April 15, 2019

MICHEL & ASSOCIATES, P.C.

26 
27 Anna M. Barvir
28 Attorneys for Plaintiffs

VERIFICATION

I, the undersigned, declare:

I am one of the petitioners in this action. I have read the above Complaint for Declaratory and Injunctive Relief; Verified Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief and know its contents. All facts regarding my personal circumstances that are alleged in the petition are within my own knowledge, and I know these facts to be true. As to all other facts alleged therein, I am informed and believe, and on those grounds allege, that those matters are also true.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 15, 2019, at Morgan Hill, California.

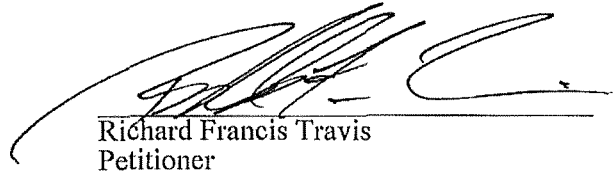

G. Mitchell Kirk
Petitioner

VERIFICATION

I, the undersigned, declare:

I am the Executive Director of California Rifle & Pistol Association, Incorporated (CRPA), one of the petitioners in this action. As Executive Director, I am authorized to make this verification on behalf of CRPA. I have read the above Complaint for Declaratory and Injunctive Relief; Verified Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief and know its contents. All facts alleged in the petition regarding the particular circumstances of CRPA or its members are within my personal knowledge, and I know these facts to be true. As to all other facts alleged therein, I am informed and believe, and on those grounds allege, that those matters are also true.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 15, 2019, at Fullerton, California.



Richard Francis Travis
Petitioner