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MORGAN HILL CHIEF OF POLICE DAVID
12 SWING, MORGAN HILL CITY CLERK IRMA
TORREZ

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE
15

16 G. MITCHELL KIRK; and CALIFORNIA
17 RIFLE & PISTOL ASSOCIATION,
INCORPORATED,

18 Plaintiffs and Petitioners,

19 vs.
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21 CITY OF MORGAN HILL; MORGAN HILL
CHIEF OF POLICE DAVID SWING, in his
22 official capacity; MORGAN HILL CITY
CLERK IRMA TORREZ, in her official
23 capacity; and DOES 1-10,,
24

Defendants and Respondents.

Case No. 19CV346360

**DEFENDANTS' ANSWER TO
COMPLAINT FOR DECLARATORY
RELIEF; VERIFIED PETITION FOR
WRIT OF MANDATE AND/OR
PROHIBITION OR OTHER
APPROPRIATE RELIEF**

Action Filed: April 15, 2019

25 Defendants CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID
26 SWING, MORGAN HILL CITY CLERK IRMA TORREZ ("Defendants") answer as follows
27 Plaintiffs' G. MITCHELL KIRK and CALIFORNIA RIFLE & PISTOL ASSOCIATION,
28 INCORPORATED ("Plaintiffs") verified Complaint For Declaratory Relief; Verified Petition For

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1 Writ of Mandate And/or Prohibition or Other Appropriate Relief (“Complaint”). Any and all
2 allegations not specifically admitted herein are denied. No statement herein constitutes a comment
3 on the legal theories upon which Plaintiff purports to proceed. To the extent the Complaint asserts
4 legal contentions, such legal contentions require no response in this Answer. To the extent any
5 response is required to the headings in the Complaint, Defendants deny the factual allegations, if
6 any, contained in such headings.

7 **I. NATURE OF THE CASE**

8 1. Defendants deny the allegations in paragraph 1 and allege that, on November 28, 2018,
9 the CITY OF MORGAN HILL (“City”) adopted Ordinance No. 2289 (the “Ordinance”).

10 2. Defendants deny the allegations in paragraph 2 and allege that the
11 Ordinance requires individuals to report the loss or theft of a firearm to the City’s Police
12 Department within 48 hours if the loss or theft occurred within the City or the owner of the
13 firearm resides in the City.

14 3. Defendants admit that the Ordinance now reads as written in paragraph 3 of the
15 Complaint. Except as expressly admitted herein, Defendants deny the allegations in Paragraph 3
16 of the Complaint, including footnote 1.

17 4. Defendants deny the allegations in paragraph 4 and allege that California voters
18 passed Proposition 63 (“Prop 63”) on November 8, 2016. Among other things, Prop 63 included a
19 mandatory reporting requirement when firearms are lost or stolen.

20 5. The allegations of Paragraph 5 constitute legal conclusions, to which no answer is
21 required.

22 6. The allegations of Paragraph 6 constitute a legal conclusion, to which no answer is
23 required.

24 7. Defendants admit that California Rifle & Pistol Association, Incorporated notified the
25 City in writing that section 25250 (allegedly) preempted the Ordinance and requested that the City
26 voluntarily repeal the Ordinance. The City did not voluntarily repeal the Ordinance. Except as
27 expressly admitted herein, Defendants deny the allegations in Paragraph 7 of the Complaint.

28 8. Paragraph 8 includes a legal conclusion, to which no answer is required. As to the

1 remaining allegations, Defendants lack information or belief regarding the allegations set forth in
2 Paragraph 8 of the Complaint, and on that basis deny each and every such allegation.

3 9. Defendants lack information or belief regarding the allegations set forth in Paragraph 9
4 of the Complaint, and on that basis deny each and every such allegation.

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

6 10. Paragraph 10 constitutes a legal conclusion, to which no answer is required.

7 11. Defendants deny the allegations in Paragraph 11 and allege that Municipal Code
8 9.04.030 took effect on December 29, 2018. As of the date of this writing, no one has been cited
9 for a violation.

10 12. Paragraph 12 constitutes a legal conclusion, to which no answer is required.

11 **PARTIES**

12 **I. PLAINTIFFS**

13 13. Defendants lack information or belief regarding the allegations set forth in Paragraph
14 13 of the Complaint, and on that basis deny each and every such allegation. Defendants deny that
15 if Plaintiff were to report a stolen firearm within 120 hours he would necessarily be subject to
16 prosecution under the Ordinance, even though his conduct would conform with Penal Code
17 section 25250.

18 14. Defendants lack information or belief regarding the allegations set forth in Paragraph
19 14 of the Complaint, and on that basis deny each and every such allegation.

20 **II. DEFENDANTS**

21 15. Defendants admit that CITY OF MORGAN HILL is a municipal corporation formed
22 under the laws of California.

23 16. Defendants admit that DAVID SWING is the Chief of Police of the Morgan Hill Police
24 Department.

25 17. Defendants admit that IRMA TORREZ is the City Clerk of Morgan Hill.

26 18. Defendants lack information or belief regarding the allegations set forth in Paragraph
27 18 of the Complaint, and on that basis deny each and every such allegation.

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20. The allegations in Paragraph 20 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

FIRST CAUSE OF ACTION
FOR DECLARATORY AND INJUNCTIVE RELIEF
(By All Plaintiffs Against All Defendants)

22. Defendants admit that Plaintiffs purport to contend that the Ordinance is invalid and unenforceable because it is preempted by state law. Defendants contend the Ordinance is valid.

24. Defendants admit that Plaintiffs purport to request that this Court declare that the Ordinance is preempted by state law.

26. The allegations in Paragraph 26 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

28. Defendants admit that Plaintiffs purport to request an injunction forbidding Defendants, their agents, employees, representatives, and all those acting in concert with them from enforcing the Ordinance, and further requiring Defendants to remove corresponding Municipal Code 9.04.030 from the Morgan Hill Municipal Code.

SECOND CAUSE OF ACTION
FOR A WRIT OF MANDATE AND/OR PROHIBITION
(By All Plaintiffs Against All Defendants)

29. Defendants admit that Plaintiff purports to incorporate by reference the allegations contained in all previous Paragraphs, and incorporates by this reference their responses to those Paragraphs.

30. The allegations in Paragraph 30 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

31. The allegations in Paragraph 31 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

32. Defendants lack information or belief regarding the allegations set forth in Paragraph 32 of the Complaint, and on that basis deny each and every such allegation.

33. The allegations in Paragraph 33 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

34. The allegations in Paragraph 34 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

a. The allegations in Paragraph 34(a) constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

b. The allegations in Paragraph 34(b) constitute legal conclusions, to which no answer is required. Defendants admit that if Plaintiffs chose to wait for a period of more than 48 hours after learning of a lost or stolen firearm to report the loss or theft, they could be subject to prosecution under the Ordinance.

c. Defendants lack information or belief regarding the allegations set forth in Paragraph 34(c) of the Complaint, and on that basis deny each and every such allegation.

d. The allegations in Paragraph 34(d) constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the

1 barred from bringing or maintaining this action because they have failed to exhaust their
2 administrative remedies.

3 **Fourth Affirmative Defense**

4 **(No Attorneys' Fees)**

5 As a fourth, separate and distinct affirmative defense, Defendants allege that Plaintiffs
6 have failed to state facts sufficient to set forth a claim for recovery of their attorneys' fees.

7 **Fifth Affirmative Defense**

8 **(Irreparable Harm)**

9 As a fifth, separate and distinct affirmative defense, Defendants allege that Plaintiffs have
10 not experienced irreparable harm, making injunctive relief improper.

11 **Sixth Affirmative Defense**

12 **(Ripeness)**

13 As a sixth, separate and distinct affirmative defense, Defendants allege that some or all of
14 Plaintiffs' causes of action are premature and not ripe for adjudication.

15 **Seventh Affirmative Defense**

16 **(Statute of Limitations)**

17 As a seventh, separate and distinct affirmative defense, Defendants allege that the
18 Complaint, and some or all of each cause therein, is barred by the applicable statute of limitations.

19 **Eighth Affirmative Defense**

20 **(Waiver)**

21 As an eighth, separate and distinct affirmative defense, Defendants allege that Plaintiffs
22 have waived, expressly or by implication, the claims asserted in the Complaint.

23 **Ninth Affirmative Defense**

24 **(Estoppel)**

25 As a ninth, separate and distinct affirmative defense, Defendants allege that Plaintiffs'
26 causes of action are barred, in whole or in part, by the equitable doctrine of estoppel.

1 **Tenth Affirmative Defense**

2 **(Laches)**

3 As a tenth, separate and distinct affirmative defense, Defendants allege that Plaintiffs'
4 causes of action are barred, in whole or in part, by the equitable doctrine of laches.

5 **Eleventh Affirmative Defense**

6 **(Unclean Hands)**

7 As an eleventh, separate and distinct affirmative defense, Defendants allege that Plaintiffs'
8 causes of action are barred, in whole or in part, by the equitable doctrine of unclean hands.

9 **Twelfth Affirmative Defense**

10 **(Additional Defenses)**

11 The Complaint is barred by other affirmative defenses that Defendants may allege as those
12 defenses become known through discovery.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Defendants pray for relief as follows:

- 15 1. That Plaintiffs take nothing by their Complaint and that the Complaint be dismissed
16 in its entirety, with prejudice;
- 17 2. That Defendants be awarded judgment in this action;
- 18 3. That Defendants be awarded costs of suit and attorneys' fees incurred herein; and,
- 19 4. That Defendants be awarded such other and further relief as the Court deems just
20 and proper.

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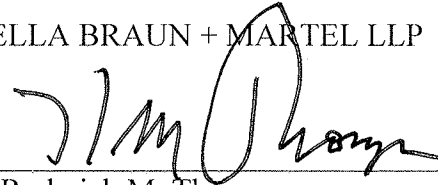
DEMAND FOR JURY TRIAL

Defendants CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID SWING, MORGAN HILL CITY CLERK IRMA TORREZ, hereby demand trial by jury in this matter.

Dated: July 19, 2019

FARELLA BRAUN + MARTEL LLP

By:



Roderick M. Thompson

Attorneys for CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID SWING, MORGAN HILL CITY CLERK IRMA TORREZ

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VERIFICATION

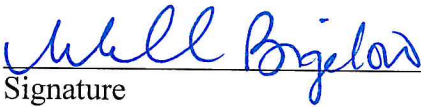
STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I am the Deputy City Clerk for the City of Morgan Hill, and am authorized to make this verification on behalf of the City Clerk, a party to this action. I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on July19, 2019, at Morgan Hill, California.

For Morgan Hill City Clerk Irma Torrez
Michelle Bigelow
Deputy City Clerk


Signature

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I am the City Attorney for the City of Morgan Hill, a party to this action, and am authorized to make this verification on its behalf. I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on July19, 2019, at Morgan Hill, California.

City of Morgan Hill

Donald A. Larkin
City Attorney



Signature

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on July 19, 2019, at Morgan Hill, California.

Morgan Hill Chief of Police David Swing
David Swing


Signature

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PROOF OF SERVICE

**Kirk v. City of Morgan Hill
Case No. 19CV346360**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 235 Montgomery Street, 17th Floor, San Francisco, CA 94104.

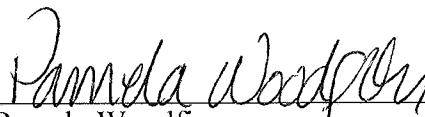
On July 19, 2019, I served true copies of the following document(s) described as on the interested parties in this action as follows: **DEFENDANTS' ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF**

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BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

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

Executed on July 19, 2019, at San Francisco, California.


Pamela Woodfin