

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Anna M. Barvir (SBN: 268728) Michel & Associates, P.C. 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802		Electronically Filed by Superior Court of CA, County of Santa Clara, on 2/27/2020 4:54 PM Reviewed By: System System Case #19CV346360 Envelope: 4095487
TELEPHONE NO.: (562) 216-4444	FAX NO. (Optional): (562) 216-4445	
E-MAIL ADDRESS (Optional): abarvir@michellawyers.com		
ATTORNEY FOR (Name): G. Mitchell Kirk, et al.		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: Same as above. CITY AND ZIP CODE: San Jose, 95113 BRANCH NAME: Downtown Superior Court		
PLAINTIFF/PETITIONER: G. Mitchell Kirk, et al. DEFENDANT/RESPONDENT: City of Morgan Hill, et al.		
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER: 19CV346360
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: March 4, 2020 Time: 9:00 AM Dept.: 19 Div.: Room: Address of court (if different from the address above): <input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): Anna M. Barvir for Plaintiffs; James A. Allison for Defendants.		

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☐ This statement is submitted by party (name): G. Mitchell Kirk, California Rifle & Pistol Association, Incorporated, City of
 - b. ☒ This statement is submitted **jointly** by parties (names): Morgan Hill, Morgan Hill Chief of Police David Swing, and Morgan Hill City Clerk Irma Torrez
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date): April 15, 2019
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☒ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
4. **Description of case**
 - a. Type of case in ☒ complaint ☐ cross-complaint (Describe, including causes of action):
Complaint for Declaratory & Injunctive Relief (Preemption)

PLAINTIFF/PETITIONER: G. Mitchell Kirk, et al.
 DEFENDANT/RESPONDENT: City of Morgan Hill, et al.

CASE NUMBER:
 19CV346360

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
 Plaintiffs challenge Morgan Hill Municipal Code 9.04.030, requiring the reporting of lost or stolen firearms within 48 hours, as preempted by Penal Code section 25250. Plaintiffs seek declaratory and injunctive relief.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

- a. The party or parties request ☐ a jury trial ☒ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. ☐ The trial has been set for (date):
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*: The parties anticipate that this case will be disposed of on summary judgment, the hearings for which are currently set for July 2, 2020. A trial date should not be set until the Court rules on the cross-motions for summary judgment. Only then will the Court and the parties know if any issue(s) remain(s) for trial.
 c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:
 Anna M. Barvir for Plaintiffs on 3/25/20 to 4/3/20 (professional commitment). James A. Allison for Defendants on 4/1/20 to 4/3/20 (prepaid vacation).

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

- a. ☒ days *(specify number)*: 1
 b. ☐ hours (short causes) *(specify)*:

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
 b. Firm:
 c. Address:
 d. Telephone number:
 e. E-mail address:
 f. Fax number:
 g. Party represented:

☒ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

- a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

- b. **Referral to judicial arbitration or civil action mediation (if available).**

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☒ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:

CRC 3.811(b)(1): Cases that involve a prayer for equitable relief that is not frivolous or insubstantial.

PLAINTIFF/PETITIONER: G. Mitchell Kirk, et al. DEFENDANT/RESPONDENT: City of Morgan Hill, et al.	CASE NUMBER: 19CV346360
---	----------------------------

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

PLAINTIFF/PETITIONER: G. Mitchell Kirk, et al.
 DEFENDANT/RESPONDENT: City of Morgan Hill, et al.

CASE NUMBER:
 19CV346360

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
 b. Reservation of rights: ☐ Yes ☐ No
 c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
 (1) Name of case:
 (2) Name of court:
 (3) Case number:
 (4) Status:
☐ Additional cases are described in Attachment 13a.
 b. ☐ A motion to ☐ consolidate ☐ consolidate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
 The parties expect to file cross motions for summary judgment as to all claims, and they have reserved hearings for such motions to be heard on July 2, 2020 at 9 a.m. in Department 6 of this Court.

16. Discovery

- a. ☐ The party or parties have completed all discovery.
 b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiffs	Written discovery (RFAs, Interrogatories, PODs)	3/30/2020
Plaintiffs	Depositions of named Defendants	3/30/2020
Defendants	Basic written discovery, if any, including RFAs	3/30/2020
Defendants	Depositions of named Plaintiffs	3/30/2020

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

PLAINTIFF/PETITIONER: G. Mitchell Kirk, et al.
 DEFENDANT/RESPONDENT: City of Morgan Hill, et al.

CASE NUMBER:
 19CV346360

17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

18. Other issues

- ☒ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*
 See Attachment 18.

19. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain):*
- b. ☒ After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify):*
 See Attachment 19.

20. Total number of pages attached *(if any)*: 3

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: February 27, 2020

Anna M. Barvir
 (TYPE OR PRINT NAME)

▶ /s/Anna M. Barvir
 (SIGNATURE OF PARTY OR ATTORNEY)

James A. Allison
 (TYPE OR PRINT NAME)

▶ /s/James A. Allison
 (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

SHORT TITLE: G. Mitchell Kirk, et al. v. City of Morgan Hill, et al.	CASE NUMBER: 19CV346360
---	----------------------------

ATTACHMENT (Number): 8

(This Attachment may be used with any Judicial Council form.)

Plaintiffs G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated:

C.D. Michel (SBN: 144258)

cmichel@michellawyers.com

Anna M. Barvir (SBN: 268728)

abarvir@michellawyers.com

Tiffany D. Cheuvront (SBN: 317144)

tcheuvront@michellawyers.com

MICHEL & ASSOCIATES, P.C.

180 E. Ocean Blvd., Suite 200

Long Beach, CA 90802

Tel.: (562) 216-4444

Fax: (562) 216-4445

Defendants City of Morgan Hill, Morgan Hill Chief of Police David Swing, and Morgan Hill City Clerk Irma Torrez:

Roderick M. Thompson (SBN: 96192)

rthompson@fbm.com

James A. Allison (SBN: 319204)

jallison@fbm.com

Farella Braun + Martel LLP

235 Montgomery Street, 17th Floor

San Francisco, CA 94104

Tel.: (415) 954-4400

Fax: (415) 954-4480

Hannah Shearer (SBN: 292710)

hshearer@giffords.org

Hannah Friedman (SBN: 324771)

hfriedman@giffords.org

Giffords Law Center to Prevent Gun Violence

268 Bush Street # 555

San Francisco, CA 94104

Tel.: (415) 433-2062

Fax: (415) 433-3357

Donald Larkin, City Attorney (SBN: 199759)

City of Morgan Hill

17575 Peak Avenue

Morgan Hill, CA 95037

Tel.: (408) 779-7271

Fax: (408) 779-1592

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 6 of 8

(Add pages as required)

SHORT TITLE: G. Mitchell Kirk, et al. v. City of Morgan Hill, et al.	CASE NUMBER: 19CV346360
---	----------------------------

ATTACHMENT (Number): 18*(This Attachment may be used with any Judicial Council form.)*

In accordance with directions from the Court at the September 3, 2019 Case Management Conference, the parties conferred about scheduling their anticipated cross-motions for summary judgment. On or about December 23, 2019, counsel for Plaintiff confirmed with the Court a hearing date of July 2, 2020 in Department 6 of the Santa Clara Superior Court (Judge Zayner) at 9:00 am. The Parties propose the following briefing schedule for the cross motions: motions for summary judgment due on or before May 1, 2020; oppositions due on or before June 11, 2020; and replies due on or before June 26, 2020.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 7 of 8*(Add pages as required)*

SHORT TITLE: G. Mitchell Kirk, et al. v. City of Morgan Hill, et al.	CASE NUMBER: 19CV346360
---	----------------------------

ATTACHMENT (Number): 19

(This Attachment may be used with any Judicial Council form.)

19.b. Meet and Confer: After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following:

Pursuant to rule 3.724(3), the parties have identified the following facts that are uncontested and may be the subject of stipulation:

1. On November 8, 2016, California voters approved Proposition 63, the Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative. As a result, among other things, Penal Code 25250 became law.

2. On November 28, 2018, the City of Morgan Hill adopted Ordinance No. 2289 to amend section 9.04.030 of the Morgan Hill Municipal Code.

Pursuant to rule 3.724(4), the parties have identified the following issues that remain contested:

1. Whether California Penal Code section 25250 preempts Morgan Hill Municipal Code section 9.04.030.

Pursuant to rule 3.724(5), the parties agree that the case can be narrowed by eliminating the following claims or defenses:

1. Second Cause of Action for a Writ of Mandate and/or Prohibition; Plaintiffs have submitted, and Defendants consent to, Plaintiffs' Request for Dismissal with prejudice.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 8 of 8

(Add pages as required)

