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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
DOWNTOWN COURTHOUSE**

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

Plaintiffs and Petitioners,

vs.

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

Defendants and Respondents

Case No: 19CV346360

**PLAINTIFFS' EVIDENTIARY
OBJECTIONS IN SUPPORT OF
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Date: July 2, 2020
Time: 9:00 a.m.
Judge: Judge Peter Kirwan
Dept.: 19

[Filed concurrently with Opposition to
Defendants' Motion for Summary
Judgment; Response to Defendants'
Separate Statement of Undisputed Facts
and Additional Undisputed Material Facts;
Declaration of Anna M. Barvir; Request
for Judicial Notice; and Proposed Order
for Evidentiary Objections]

Action filed: April 15, 2019

Plaintiffs G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated hereby submit the following evidentiary objections in support of their Opposition to Defendants' Motion for Summary Judgment.

Material Objected To	Grounds for Objection
Objection No. 1: Declaration of James Allison in Support of Defendants' Motion for Summary Judgment, Exhibit 4 (David Hemenway, Deborah Azrael, and Matthew Miller, "Whose Guns are Stolen? The Epidemiology of Gun Theft Victims," Injury Epidemiology 4, no. 1 (2017).)	No Citation to Separate Statement/Not Contained in Separate Statement Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. (<i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the "Golden Rule" of summary judgment: If the facts are not set forth in the separate statement, they do not exist. (<i>United Cmty. Church v. Garcin</i> (1991) 231 Cal.App.3d 327, 337, rejected by S.D. <i>Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308.) The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City's failure to include Exhibit 4 (and the "facts" it gleans from Exhibit 4) in its separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts and evidence the City relies on to support its motion, and they cannot dispute the truth or accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to the City's separate statement of undisputed facts).
Objection No. 2: Declaration of James Allison in Support of Defendants' Motion for Summary Judgment, Exhibit 5 (Brian Freskos, <i>Missing Pieces: Gun Theft from Legal Gun Owners is on the Rise, Quietly Fueling Violent Crime</i> , The Trace, November 20, 2017, https://bit.ly/2izST1h)	No Citation to Separate Statement/Not Contained in Separate Statement Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. (<i>Mills v. Forestex Co.</i>

(2003) 108 Cal.App.4th 625, 640-641.)
Indeed, it is the “Golden Rule” of summary judgment: If the facts are not set forth in the separate statement, they do not exist. (*United Cmty. Church v. Garcin* (1991) 231 Cal.App.3d 327, 337, rejected by *S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308.)

The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City’s failure to include Exhibit 5 (and the “facts” it gleans from Exhibit 5) in its separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts and evidence the City relies on to support its motion, and they cannot dispute the truth or accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to the City’s separate statement of undisputed facts).

Unduly Prejudicial (Evid. Code, § 352)

Exhibit 5 is an article published by The Trace, a biased news and blog site funded by Everytown for Gun Safety,¹ a nonprofit advocacy organization that advocates for gun control.² Exhibit 5 contains some research The Trace claims is “conducted by The Trace and more than a dozen NBC TV stations” (Ex. 5, pg. 1),³ but it then reveals it is relying on numbers reported by the National Crime Information Center (NCIC), a database maintained by the FBI.

An NCIC spokesman is quoted in the article as stating that the increase could be partially attributable to a growing number of law enforcement agencies reporting firearm theft as opposed to an actual increase in firearm theft (Ex. 5, pg. 1), which means the basis of the claim The Trace (and the City) are making that firearm thefts are on the rise could very

¹ “Donor and Financial Transparency”, The Trace <<https://www.thetrace.org/donor-financial-transparency/>> (as of June 5, 2020).

² “We Are Everytown for Gun Safety”. Everytown for Gun Safety <<https://everytown.org/who-we-are/>> (as of June 5, 2020).

³ Defendants did not bates-number the exhibit pages submitted, so all references are to the page number labeled on the original article printout.

	<p>well be false, and Exhibit 5 would thus be misleading and unduly prejudicial.</p> <p>Inadmissible Speculation and Conclusions (Evid. Code, §§ 400, 403, 410)</p> <p>Exhibit 5 relies on data from the NCIC showing an increase in reported firearm thefts, but the Exhibit baselessly attributes the basis for that increase to an increase in actual thefts, and not simply an increase in reporting by law enforcement. This is inadmissible speculation.</p>
<p>Objection No. 3:</p> <p>Defendants’ Memorandum of Points and Authorities in Support of their Motion for Summary Judgment, pg. 1, lines 10-12 & fn. 2:</p> <p>“Guns are stolen from an individual owner roughly once every two minutes, but nationally up to 40% of guns that are lost or stolen go unreported.”²</p> <p>² David Hemenway, Deborah Azrael, and Matthew Miller, “Whose Guns are Stolen? The Epidemiology of Gun Theft Victims,” <i>Injury Epidemiology</i> 4, no. 1 (2017); Brian Freskos, “Missing Pieces: Gun Theft from Legal Gun Owners is on the Rise, Quietly Fueling Violent Crime, <i>The Trace</i>, November 20, 2017, https://bit.ly/2izST1h. The latter report used public records requests to compile national data on guns reported lost or stolen to law enforcement.”</p>	<p>No Citation to Separate Statement/Not Contained in Separate Statement</p> <p>Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. (<i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the “Golden Rule” of summary judgment: If the facts are not set forth in the separate statement, they do not exist. (<i>United Cmty. Church v. Garcin</i> (1991) 231 Cal.App.3d 327, 337, rejected by <i>S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308.)</p> <p>The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City’s failure to include Exhibit 5 (and the “facts” it gleans from Exhibit 5) in its separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts and evidence the City relies on to support its motion, and they cannot dispute the truth or accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to the City’s separate statement of undisputed facts).</p> <p>Lacks Foundation (Evid. Code, § 403)</p> <p>Because these statements rely on Exhibits 4 and 5, and because those exhibits are inadmissible for the reasons presented in Objection Nos. 1 and 2 above, the statements</p>

1		lack foundation and should be stricken.
2	Objection No. 4:	
3	Defendants’ Memorandum of Points and	No Citation to Separate Statement/Not
4	Authorities in Support of their Motion for	Contained in Separate Statement
5	Summary Judgment, pg. 1, lines 14-16 & fn.	
6	4:	Setting out facts and citing supporting
7	“Lax reporting requirements also thwart law	evidence in the memorandum of points and
8	enforcement’s ability to investigate actual	authorities is insufficient. All material facts
9	thefts from legal owners—which have	must be set forth in the separate statement of
10	increased significantly in recent years... ⁴	undisputed facts and not simply buried in a
11		mound of paperwork. (<i>Mills v. Forestex Co.</i>
12		(2003) 108 Cal.App.4th 625, 640-641.)
13		Indeed, it is the “Golden Rule” of summary
14		judgment: If the facts are not set forth in the
15		separate statement, they do not exist. (<i>United</i>
16		<i>Cnty. Church v. Garcin</i> (1991) 231
17		Cal.App.3d 327, 337, rejected by <i>S.D.</i>
18		<i>Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i>
19		(2002) 102 Cal.App.4th 308.)
20		The separate statement serves a due process
21		purpose, informing the opposing party of the
22		evidence that must be disputed in order to
23		defeat the motion for summary judgment. The
24		City’s failure to include Exhibit 5 (and the
25		“facts” it gleans from Exhibit 5) in its separate
26		statement prejudices Plaintiffs. For they are
27		not properly put on notice of the facts and
28		evidence the City relies on to support its
		motion, and they cannot dispute the truth or
		accuracy of the facts and evidence in the
		manner prescribed by the rules governing
		summary judgment (i.e., through a response to
		the City’s separate statement of undisputed
		facts).
		Lacks Foundation (Evid. Code, § 403)
		Because this statement relies on Exhibit 5, and
		because Exhibit 5 is inadmissible for the
		reasons presented in Objection No. 2, the
		statement lacks foundation and should be
		stricken.
		Unduly Prejudicial (Evid. Code, § 352)
		The City’s statement here relies on Exhibit 5,
		an article published by The Trace, a biased
		news and blog site funded by Everytown for
		Gun Safety, ⁴ a nonprofit advocacy

⁴ “Donor and Financial Transparency,” The Trace <<https://www.thetrace.org/donor->

	<p>organization that advocates for gun control.⁵ Exhibit 5 contains some research The Trace claims is “conducted by The Trace and more than a dozen NBC TV stations” (Ex. 5, pg. 1),⁶ but it then reveals it is relying on numbers reported by the National Crime Information Center (NCIC), a database maintained by the FBI.</p> <p>An NCIC spokesman is quoted in the article as stating that the increase could be partially attributable to a growing number of law enforcement agencies reporting firearm theft as opposed to an actual increase in firearm theft (Ex. 5, pg. 1), which means the claim the City is making here--that firearm thefts “have increased significantly in recent years”--could very well be false, and would thus be misleading and unduly prejudicial.</p> <p>Inadmissible Speculation and Conclusions (Evid. Code, §§ 400, 403, 410)</p> <p>The City’s statement here relies on Exhibit 5, which in turn relies on data from the NCIC showing an increase in reported firearm thefts, but the Exhibit baselessly attributes the basis for that increase to an increase in actual thefts, and not simply an increase in reporting by law enforcement. This is inadmissible speculation.</p>
<p>Objection No. 5:</p> <p>Defendants’ Memorandum of Points and Authorities in Support of Motion for Summary Judgment, pg. 1, lines 17-18, pg. 2, line 1 & fn. 5, which read:</p> <p>The consequences of escalating firearm thefts are devastating: an analysis of tens of thousands of stolen guns recovered by police from 2010 to 2016 found that the majority of weapons were recovered only <i>after</i> being used in a crime (and not before).⁵</p>	<p>No Citation to Separate Statement/Not Contained in Separate Statement</p> <p>Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. (<i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the “Golden Rule” of summary judgment: If the facts are not set forth in the separate statement, they do not exist. (<i>United Cmty. Church v. Garcin</i> (1991) 231 Cal.App.3d 327, 337, rejected by S.D.</p>

[financial-transparency/](#)> (as of June 5, 2020).

⁵ “We Are Everytown for Gun Safety”. Everytown for Gun Safety
<<https://everytown.org/who-we-are/>> (as of June 5, 2020).

⁶ Defendants did not bates-number the exhibits submitted, so all references are to the page numbers found on the original article printout.

5 Freskos, *supra*, n.2.”

Watercrafts, Inc. v. Wells Fargo Bank, N.A.
(2002) 102 Cal.App.4th 308.)

The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City’s failure to include Exhibit 5 (and the “facts” it gleans from Exhibit 5) in its separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts and evidence the City relies on to support its motion, and they cannot dispute the truth or accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to the City’s separate statement of undisputed facts).

Lacks Foundation (Evid. Code, § 403)

Because this statement relies on Exhibit 5, and because Exhibit 5 is inadmissible for the reasons presented in Objection No. 2, the statement lacks foundation and should be stricken.

Unduly Prejudicial (Evid. Code, § 352)

The City’s statement here relies on Exhibit 5, an article published by The Trace, a biased news and blog site funded by Everytown for Gun Safety,⁷ a nonprofit advocacy organization that advocates for gun control.⁸ Exhibit 5 contains some research The Trace claims is “conducted by The Trace and more than a dozen NBC TV stations” (Ex. 5, pg. 1),⁹ but it then reveals it is relying on numbers reported by the National Crime Information Center (NCIC), a database maintained by the FBI.

An NCIC spokesman is quoted in the article as stating that the increase could be partially attributable to a growing number of law enforcement agencies reporting firearm theft as opposed to an actual increase in firearm

⁷ “Donor and Financial Transparency,” The Trace <<https://www.thetrace.org/donor-financial-transparency/>> (as of June 5, 2020).

⁸ “We Are Everytown for Gun Safety”. Everytown for Gun Safety <<https://everytown.org/who-we-are/>> (as of June 5, 2020).

⁹ Defendants did not bates-number the exhibits submitted, so all references are to the page numbers found on the original article printout.

	<p>theft (Ex. 5, pg. 1), which means the claim the City is making here--that firearm thefts are “escalating”--could very well be false, and would thus be misleading and unduly prejudicial.</p> <p>Inadmissible Speculation and Conclusions (Evid. Code, §§ 400, 403, 410)</p> <p>The City’s statement here relies on Exhibit 5, which in turn relies on data from the NCIC showing an increase in reported firearm thefts, but the Exhibit baselessly attributes the basis for that increase to an increase in actual thefts, and not simply an increase in reporting by law enforcement. This is inadmissible speculation.</p>
<p>Objection No. 6:</p> <p>Defendants’ Memorandum of Points and Authorities in Support of Motion for Summary Judgment, pg. 8, line 8 & fn. 9, which states in pertinent part:</p> <p>“Theft patterns differ across regions.”⁹</p> <p>⁹ See Freskos, supra n.2 (explaining ‘thieves were more likely to break into homes in areas where gun ownership rates were high’).”</p>	<p>No Citation to Separate Statement/Not Contained in Separate Statement</p> <p>Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. (<i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the “Golden Rule” of summary judgment: If the facts are not set forth in the separate statement, they do not exist. (<i>United Cmty. Church v. Garcin</i> (1991) 231 Cal.App.3d 327, 337, rejected by <i>S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308.)</p> <p>The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City’s failure to include Exhibit 5 (and the “facts” it gleans from Exhibit 5) in its separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts and evidence the City relies on to support its motion, and they cannot dispute the truth or accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to the City’s separate statement of undisputed facts).</p>

	<p>Lacks Foundation (Evid. Code, § 403)</p> <p>Because these statements rely on Exhibit 5, and because Exhibit 5 is inadmissible for the reasons presented in Objection No. 2, the statements lack foundation and should be stricken.</p>
<p>Objection No. 7:</p> <p>Declaration of James Allison in Support of Defendants’ Motion for Summary Judgment, Exhibit 6 (Daniel W. Webster et al., “Preventing the Diversion of Guns to Criminals Through Effective Firearm Sales Laws,” in <i>Reducing Gun Violence in America: Informing Policy with Evidence and Analysis</i> (Baltimore: The Johns Hopkins University Press, 2013), 118.)</p>	<p>No Citation to Separate Statement/Not Contained in Separate Statement</p> <p>Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. (<i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the “Golden Rule” of summary judgment: If the facts are not set forth in the separate statement, they do not exist. (<i>United Cmty. Church v. Garcin</i> (1991) 231 Cal.App.3d 327, 337, rejected by <i>S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308.)</p> <p>The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City’s failure to include Exhibit 6 (and the “facts” it gleans from Exhibit 6) in its separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts and evidence the City relies on to support its motion, and they cannot dispute the truth or accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to the City’s separate statement of undisputed facts).</p>
<p>Objection No. 8:</p> <p>Defendants’ Memorandum of Points and Authorities in Support of their Motion for Summary Judgment, pg. 1, lines 12-14 & fn.3, which read:</p> <p>“Lax reporting requirements embolden straw purchasers and gun traffickers, who can evade responsibility for supplying firearms used in</p>	<p>No Citation to Separate Statement/Not Contained in Separate Statement</p> <p>Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. (<i>Mills v. Forestex Co.</i></p>

1 violent crimes by falsely claiming a gun they
2 supplied had previously been lost or stolen.³

3 ³ See, e.g., Daniel W. Webster et al.,
4 “Preventing the Diversion of Guns to
5 Criminals Through Effective Firearm Sales
6 Laws,” in *Reducing Gun Violence in America:
7 Informing Policy with Evidence and Analysis*
8 (Baltimore: The Johns Hopkins University
9 Press, 2013), 118.”

(2003) 108 Cal.App.4th 625, 640-641.)
Indeed, it is the “Golden Rule” of summary
judgment: If the facts are not set forth in the
separate statement, they do not exist. (*United*
Cnty. Church v. Garcin (1991) 231
Cal.App.3d 327, 337, rejected by *S.D.*
Watercrafts, Inc. v. Wells Fargo Bank, N.A.
(2002) 102 Cal.App.4th 308.)

The separate statement serves a due process
purpose, informing the opposing party of the
evidence that must be disputed in order to
defeat the motion for summary judgment. The
City’s failure to include Exhibit 6 (and the
“facts” it gleans from Exhibit 6) in its separate
statement prejudices Plaintiffs. For they are
not properly put on notice of the facts and
evidence the City relies on to support its
motion, and they cannot dispute the truth or
accuracy of the facts and evidence in the
manner prescribed by the rules governing
summary judgment (i.e., through a response to
the City’s separate statement of undisputed
facts).

Lacks Foundation (Evid. Code, § 403)

Because this statement relies on Exhibit 6, and
because Exhibit 6 is inadmissible for the
reasons presented in Objection No. 7, the
statement lacks foundation and should be
stricken.

Objection No. 9:

18 Declaration of James Allison in Support of
19 Defendants’ Motion for Summary Judgment,
20 Exhibit 12 (Douglas J. Wiebe et al.,
21 “Homicide and Geographic Access to Gun
22 Dealers in the United States,” BMC Public
23 Health 9:199 (2009): 2, 7, [http://www.biomed](http://www.biomedcentral.com/1471-2458/9/199)
24 [central.com/1471-2458/9/199](http://www.biomedcentral.com/1471-2458/9/199))

**No Citation to Separate Statement/Not
Contained in Separate Statement**

Setting out facts and citing supporting
evidence in the memorandum of points and
authorities is insufficient. All material facts
must be set forth in the separate statement of
undisputed facts and not simply buried in a
mound of paperwork. (*Mills v. Forestex Co.*
(2003) 108 Cal.App.4th 625, 640-641.)
Indeed, it is the “Golden Rule” of summary
judgment: If the facts are not set forth in the
separate statement, they do not exist. (*United*
Cnty. Church v. Garcin (1991) 231
Cal.App.3d 327, 337, rejected by *S.D.*
Watercrafts, Inc. v. Wells Fargo Bank, N.A.
(2002) 102 Cal.App.4th 308.)

The separate statement serves a due process
purpose, informing the opposing party of the

	<p>evidence that must be disputed in order to defeat the motion for summary judgment. The City’s failure to include Exhibit 12 (and the “facts” it gleans from Exhibit 12) in its separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts and evidence the City relies on to support its motion, and they cannot dispute the truth or accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to the City’s separate statement of undisputed facts).</p>
<p>Objection No. 10:</p> <p>Defendants’ Memorandum of Points and Authorities in Support of their Motion for Summary Judgment, pg. 8, lines 8-11, & fn. 10, which state in pertinent part:</p> <p>“[W]hich makes sense given that so much gun crime is <i>local</i> crime — studies show that ‘almost one-third (32.2%) of traced crime guns are recovered by police within 10 miles of the [firearms dealer] where they were first purchased.’¹⁰</p> <p>¹⁰ Douglas J. Wiebe et al., “Homicide and Geographic Access to Gun Dealers in the United States,” BMC Public Health 9:199 (2009): 2, 7, http://www.biomedcentral.com/1471-2458/9/199.”</p>	<p>No Citation to Separate Statement/Not Contained in Separate Statement</p> <p>Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. (<i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the “Golden Rule” of summary judgment: If the facts are not set forth in the separate statement, they do not exist. (<i>United Cmty. Church v. Garcin</i> (1991) 231 Cal.App.3d 327, 337, rejected by <i>S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308.)</p> <p>The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City’s failure to include Exhibit 12 (and the “facts” it gleans from Exhibit 12) in its separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts and evidence the City relies on to support its motion, and they cannot dispute the truth or accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to the City’s separate statement of undisputed facts).</p> <p>Lacks Foundation (Evid. Code, § 403)</p> <p>Because this statement relies on Exhibit 12, and because Exhibit 12 is inadmissible for the reasons presented in Objection No. 9, the</p>

1		statement lacks foundation and should be stricken.
2		
3	Objection No. 11:	No Citation to Separate Statement/Not Contained in Separate Statement
4	Declaration of James Allison in Support of	Setting out facts and citing supporting
5	Defendants' Motion for Summary Judgment,	evidence in the memorandum of points and
6	Exhibit 13 (Jennifer L. Pomeranz & Mark	authorities is insufficient. All material facts
7	Pertschuk, <i>State Preemption: A Significant</i>	must be set forth in the separate statement of
8	<i>and Quiet Threat to Public Health in the</i>	undisputed facts and not simply buried in a
9	<i>United States</i> , 107 Am. J. Public Health 900,	mound of paperwork. (<i>Mills v. Forestex Co.</i>
10	900 (2017).)	(2003) 108 Cal.App.4th 625, 640-641.)
11		Indeed, it is the "Golden Rule" of summary
12		judgment: If the facts are not set forth in the
13		separate statement, they do not exist. (<i>United</i>
14		<i>Cnty. Church v. Garcin</i> (1991) 231
15		Cal.App.3d 327, 337, rejected by <i>S.D.</i>
16		<i>Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i>
17		(2002) 102 Cal.App.4th 308.)
18		The separate statement serves a due process
19		purpose, informing the opposing party of the
20		evidence that must be disputed in order to
21		defeat the motion for summary judgment. The
22		City's failure to include Exhibit 13 (and the
23		"facts" it gleans from Exhibit 13) in its
24		separate statement prejudices Plaintiffs. For
25		they are not properly put on notice of the facts
26		and evidence the City relies on to support its
27		motion, and they cannot dispute the truth or
28		accuracy of the facts and evidence in the
		manner prescribed by the rules governing
		summary judgment (i.e., through a response to
		the City's separate statement of undisputed
		facts).
	Objection No. 12:	No Citation to Separate Statement/Not Contained in Separate Statement
	Defendants' Memorandum of Points and	Setting out facts and citing supporting
	Authorities in Support of their Motion for	evidence in the memorandum of points and
	Summary Judgment, pg. 13, fn. 13, which	authorities is insufficient. All material facts
	states:	must be set forth in the separate statement of
		undisputed facts and not simply buried in a
	"In contrast to California's narrow preemption	mound of paperwork. (<i>Mills v. Forestex Co.</i>
	of defined areas of gun regulation, forty-three	(2003) 108 Cal.App.4th 625, 640-641.)
	states preempt all, or substantially all, aspects	Indeed, it is the "Golden Rule" of summary
	of firearms regulation. <u>See Jennifer L.</u>	judgment: If the facts are not set forth in the
	<u>Pomeranz & Mark Pertschuk, <i>State</i></u>	separate statement, they do not exist. (<i>United</i>
	<u><i>Preemption: A Significant and Quiet Threat to</i></u>	<i>Cnty. Church v. Garcin</i> (1991) 231
	<u><i>Public Health in the United States</i>, 107 AM. J.</u>	

PUBLIC HEALTH 900, 900 (2017). These states’ preemption statutes are an instructive comparison, as many of them—modeled after legislation promoted by the gun industry, *see id.*—express a boilerplate preference for uniform gun laws throughout the state. *See, e.g.,* Ala. Code § 13A-11-61.3 (“The purpose of this section is to establish within the Legislature complete control over regulation and policy pertaining to firearms, ammunition, and firearm accessories in order to ensure that such regulation and policy is applied uniformly throughout this state”); Idaho Code Ann. § 18-3302J(1) (announcing “legislature’s intent to wholly occupy the field of firearms regulation within this state”); Utah Code § 76-10-500 (firearm preemption law declaring “the need to provide uniform laws throughout the state”). With good reason, this is not the path California has chosen. *See, e.g., Pomeranz at 900 (industry-backed preemption laws tie municipalities’ hands, leaving them “unable to address acute public health issues” best solved at the local level).*”

(underlining added for clarity)

Cal.App.3d 327, 337, rejected by *S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308.)

The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City’s failure to include Exhibit 13 (and the “facts” it gleans from Exhibit 13) in its separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts and evidence the City relies on to support its motion, and they cannot dispute the truth or accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to the City’s separate statement of undisputed facts).

Lacks Foundation (Evid. Code, § 403)

Because these statements rely on Exhibit 13, and because Exhibit 13 is inadmissible for the reasons presented in Objection No. 11, the statements lack foundation and should be stricken.

Relevance (Evid. Code, § 210)

The City’s statements, relying on Exhibit 13, that California has chosen not to preempt all aspects of firearm regulation are irrelevant strawmen. This case is not about preemption of all aspects of firearm regulation. Rather, this case is about whether California has preempted the City’s authority to adopt a very specific type of firearm regulation, i.e., a theft or loss reporting requirement at odds with state laws regarding theft or loss reporting.

What’s more, much of what the City relies on in Exhibit 13 addresses the way *other* states have opted to preempt all manner of firearm regulation. That is wholly irrelevant to the legal analysis of preemption in *California*.

Dated: June 11, 2020

MICHEL & ASSOCIATES, P.C.

s/ Anna M. Barvir

Anna M. Barvir

Attorneys for Plaintiffs

PROOF OF SERVICE
STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

I, Tiffany M. Harbor, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

On June 11, 2020, I served the foregoing document(s) described as

**PLAINTIFFS' EVIDENTIARY OBJECTIONS IN SUPPORT OF OPPOSITION
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

on the interested parties in this action by placing

[] the original
[X] a true and correct copy

thereof by the following means, addressed as follows:

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 X (BY ELECTRONIC TRANSMISSION) As follows: I served a true and correct copy by electronic transmission via One Legal. Said transmission was reported and completed without error.

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

Executed on June 11, 2020, at Long Beach, California.

s/ Tiffany M. Harbor
Tiffany M. Harbor