1 2 3 4 5 6 7	C. D. Michel – SBN 144258 Anna M. Barvir – SBN 268728 Tiffany D. Cheuvront – SBN 317144 MICHEL & ASSOCIATES, P.C. 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802 Telephone: 562-216-4444 Facsimile: 562-216-4445 cmichel@michellawyers.com Attorneys for Plaintiffs/Petitioners G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated	Electronically Filed by Superior Court of CA, County of Santa Clara, on 6/11/2020 4:16 PM Reviewed By: R. Nguyen Case #19CV346360 Envelope: 4446090	
8	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	FOR THE COUNTY	Y OF SANTA CLARA	
10	DOWNTOWN	COURTHOUSE	
11	G. MITCHELL KIRK; and CALIFORNIA RIFLE & PISTOL ASSOCIATION,	Case No: 19CV346360	
12	INCORPORATED,	PLAINTIFFS' EVIDENTIARY OBJECTIONS IN SUPPORT OF	
13	Plaintiffs and Petitioners,	OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	
14	vs.		
15	CITY OF MORGAN HILL; MORGAN HILL	Date: July 2, 2020 Time: 9:00 a.m.	
16	CHIEF OF POLICE DAVID SWING, in his official capacity; MORGAN HILL CITY	Judge: Judge Peter Kirwan Dept.: 19	
17	CLERK IRMA TORREZ, in her official capacity; and DOES 1-10,	[Filed concurrently with Opposition to	
18	Defendants and Respondents	Defendants' Motion for Summary Judgment; Response to Defendants'	
19		Separate Statement of Undisputed Facts and Additional Undisputed Material Facts;	
20		Declaration of Anna M. Barvir; Request for Judicial Notice; and Proposed Order	
21		for Evidentiary Objections]	
22		Action filed: April 15, 2019	
23			
24			
25			
26			
27			
28			
_0		1	
		1	

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 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).) Setting out facts and citing sevidence in the memorandural authorities is insufficient. A must be set forth in the separate Star (2003) 108 Cal.App.4th 625 Indeed, it is the "Golden Rujudgment: If the facts are not separate statement, they do Communication C	
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).) Setting out facts and citing sevidence in the memorandurauthorities is insufficient. A must be set forth in the separate Statement, they do to Cmty. Church v. Garcin (19 Cal.App.3d 327, 337, reject. Watercrafts, Inc. v. Wells Fd. (2002) 102 Cal.App.4th 308	
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).) Setting out facts and citing sevidence in the memorandu authorities is insufficient. A must be set forth in the sepa undisputed facts and not sin mound of paperwork. (Mills (2003) 108 Cal.App.4th 625 Indeed, it is the "Golden Rujudgment: If the facts are not separate statement, they do a comparate Statement of Contained in Separate Statement of Contained in Separate Statement of Contained in Separate Statement of Setting out facts and citing sevidence in the memorandu authorities is insufficient. A must be set forth in the sepa undisputed facts and not sin mound of paperwork. (Mills (2003) 108 Cal.App.4th 625 Indeed, it is the "Golden Rujudgment: If the facts are not separate statement, they do a contained in Separate Statement of Contained in	
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).) Setting out facts and citing sevidence in the memorandurauthorities is insufficient. A must be set forth in the separate data and not sin mound of paperwork. (Mills (2003) 108 Cal.App.4th 625 Indeed, it is the "Golden Rujudgment: If the facts are not separate statement, they do Cmty. Church v. Garcin (19 Cal.App.3d 327, 337, reject Watercrafts, Inc. v. Wells Factorial (2002) 102 Cal.App.4th 308	
8 Stolen? The Epidemiology of Gun Theft Victims," Injury Epidemiology 4, no. 1 (2017).) 10 (2017).) 11 (2017).) 12 (2018) 13 (2019) 14 (2019) 15 (2017) 16 (2017) 17 (2018) 18 (2017) 19 (2018) 10 (2017) 10 (2017) 10 (2017) 11 (2017) 12 (2017) 13 (2018) 14 (2018) 15 (2018) 16 (2018) 17 (2018) 18 (2018) 19 (2018) 10 (2018) 11 (2018) 12 (2018) 13 (2018) 14 (2018) 15 (2018) 16 (2018) 17 (2018) 18 (2018) 19 (2018) 10 (2018) 11 (2018) 12 (2018) 13 (2018) 14 (2018) 15 (2018) 16 (2018) 17 (2018) 18 (2018) 19 (2018) 19 (2018) 10 (2018) 11 (2018) 12 (2018) 13 (2018) 14 (2018) 15 (2018) 16 (2018) 17 (2018) 18 (2018) 19 (2018) 19 (2018) 10 (20	
Victims," Injury Epidemiology 4, no. 1 (2017).) must be set forth in the sepa undisputed facts and not sin mound of paperwork. (Mills (2003) 108 Cal.App.4th 625 Indeed, it is the "Golden Ru judgment: If the facts are not separate statement, they do Cmty. Church v. Garcin (19 Cal.App.3d 327, 337, reject Watercrafts, Inc. v. Wells Factor (2002) 102 Cal.App.4th 308	m of points and
mound of paperwork. (Mills (2003) 108 Cal.App.4th 625 Indeed, it is the "Golden Ru judgment: If the facts are no separate statement, they do a Cmty. Church v. Garcin (19 Cal.App.3d 327, 337, reject Watercrafts, Inc. v. Wells For (2002) 102 Cal.App.4th 308	arate statement of
Indeed, it is the "Golden Ru judgment: If the facts are no separate statement, they do a Cmty. Church v. Garcin (19 Cal.App.3d 327, 337, reject Watercrafts, Inc. v. Wells For (2002) 102 Cal.App.4th 308	s v. Forestex Co.
separate statement, they do Cmty. Church v. Garcin (19) Cal.App.3d 327, 337, rejecte Watercrafts, Inc. v. Wells Fa (2002) 102 Cal.App.4th 308	ıle" of summary
Cal.App.3d 327, 337, reject <i>Watercrafts, Inc. v. Wells Fo</i> (2002) 102 Cal.App.4th 308	not exist. (United
14 (2002) 102 Cal.App.4th 308	ed by S.D.
The separate statement serve purpose, informing the oppo	
evidence that must be disputed defeat the motion for summ	ted in order to
City's failure to include Exh "facts" it gleans from Exhib	hibit 4 (and the
statement prejudices Plainting not properly put on notice o	ffs. For they are
evidence the City relies on t motion, and they cannot dis	to support its
accuracy of the facts and ev manner prescribed by the ru	idence in the
summary judgment (i.e., thr	ough a response to
facts).	•
Objection No. 2:	
Declaration of James Allison in Support of Defendants' Motion for Summary Judgment, No Citation to Separate Sta	
Exhibit 5 (Brian Freskos, <i>Missing Pieces: Gun Theft from Legal Gun Owners is on the Rise</i> , Setting out facts and citing s	
26 Quietly Fueling Violent Crime, The Trace, November 20, 2017, https://bit.ly/2izST1h) evidence in the memorandural authorities is insufficient. A	m of points and
must be set forth in the sepa undisputed facts and not sin mound of paperwork. (<i>Mills</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, a nonprofit advocacy organization that advocates for gun control. 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), 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.

well be false, and Exhibit 5 would thus be 1 misleading and unduly prejudicial. 2 **Inadmissible Speculation and Conclusions** 3 (Evid. Code, §§ 400, 403, 410) 4 Exhibit 5 relies on data from the NCIC showing an increase in reported firearm thefts, 5 but the Exhibit baselessly attributes the basis for that increase to an increase in actual thefts, 6 and not simply an increase in reporting by law enforcement. This is inadmissible speculation. 7 **Objection No. 3:** 8 Defendants' Memorandum of Points and No Citation to Separate Statement/Not 9 Authorities in Support of their Motion for **Contained in Separate Statement** Summary Judgment, pg. 1, lines 10-12 & fn. 10 Setting out facts and citing supporting evidence in the memorandum of points and 11 "Guns are stolen from an individual owner authorities is insufficient. All material facts roughly once every two minutes, but must be set forth in the separate statement of 12 nationally up to 40% of guns that are lost or undisputed facts and not simply buried in a stolen go unreported.2 mound of paperwork. (Mills v. Forestex Co. 13 (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the "Golden Rule" of summary 14 judgment: If the facts are not set forth in the ² David Hemenway, Deborah Azrael, and separate statement, they do not exist. (United Matthew Miller, "Whose Guns are Stolen? 15 Cmty. Church v. Garcin (1991) 231 The Epidemiology of Gun Theft Victims," Cal. App. 3d 327, 337, rejected by *S.D.* 16 Injury Epidemiology 4, no. 1 (2017); Brian Watercrafts, Inc. v. Wells Fargo Bank, N.A. Freskos, "Missing Pieces: Gun Theft from (2002) 102 Cal.App.4th 308.) 17 Legal Gun Owners is on the Rise, Quietly Fueling Violent Crime, The Trace, November The separate statement serves a due process 18 20, 2017, https://bit.ly/2izST1h. The latter purpose, informing the opposing party of the report used public records requests to compile evidence that must be disputed in order to 19 national data on guns reported lost or stolen to defeat the motion for summary judgment. The law enforcement." City's failure to include Exhibit 5 (and the 20 "facts" it gleans from Exhibit 5) in its separate statement prejudices Plaintiffs. For they are 21 not properly put on notice of the facts and evidence the City relies on to support its 22 motion, and they cannot dispute the truth or accuracy of the facts and evidence in the 23 manner prescribed by the rules governing summary judgment (i.e., through a response to 24 the City's separate statement of undisputed facts). 25 Lacks Foundation (Evid. Code, § 403) 26 Because these statements rely on Exhibits 4 27 and 5, and because those exhibits are inadmissible for the reasons presented in 28 Objection Nos. 1 and 2 above, the statements

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

⁴ "Donor and Financial Transparency," The Trace https://www.thetrace.org/donor-

1 organization that advocates for gun control.⁵ Exhibit 5 contains some research The Trace 2 claims is "conducted by The Trace and more than a dozen NBC TV stations" (Ex. 5, pg. 3 1),⁶ but it then reveals it is relying on numbers reported by the National Crime Information 4 Center (NCIC), a database maintained by the FBI. 5 An NCIC spokesman is quoted in the article as 6 stating that the increase could be partially attributable to a growing number of law 7 enforcement agencies reporting firearm theft as opposed to an actual increase in firearm 8 theft (Ex. 5, pg. 1), which means the claim the City is making here--that firearm thefts "have 9 increased significantly in recent years"--could very well be false, and would thus be 10 misleading and unduly prejudicial. **Inadmissible Speculation and Conclusions** 11 (Evid. Code, §§ 400, 403, 410) 12 The City's statement here relies on Exhibit 5, 13 which in turn relies on data from the NCIC showing an increase in reported firearm thefts, 14 but the Exhibit baselessly attributes the basis for that increase to an increase in actual thefts, 15 and not simply an increase in reporting by law enforcement. This is inadmissible speculation. 16 **Objection No. 5:** 17 Defendants' Memorandum of Points and No Citation to Separate Statement/Not 18 Authorities in Support of Motion for **Contained in Separate Statement** Summary Judgment, pg. 1, lines 17-18, pg. 2, 19 line 1 & fn. 5, which read: Setting out facts and citing supporting evidence in the memorandum of points and 20 The consequences of escalating firearm thefts authorities is insufficient. All material facts are devastating: an analysis of tens of must be set forth in the separate statement of 21 thousands of stolen guns recovered by police undisputed facts and not simply buried in a from 2010 to 2016 found that the majority of mound of paperwork. (Mills v. Forestex Co. 22 weapons were recovered only after being used (2003) 108 Cal.App.4th 625, 640-641.) in a crime (and not before).⁵ Indeed, it is the "Golden Rule" of summary 23 judgment: If the facts are not set forth in the separate statement, they do not exist. (*United* 24 *Cmty. Church v. Garcin* (1991) 231 Cal. App. 3d 327, 337, rejected by *S.D.* 25

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

26

27

28

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." 1 Watercrafts, Inc. v. Wells Fargo Bank, N.A. (2002) 102 Cal.App.4th 308.) 2 The separate statement serves a due process 3 purpose, informing the opposing party of the evidence that must be disputed in order to 4 defeat the motion for summary judgment. The City's failure to include Exhibit 5 (and the 5 "facts" it gleans from Exhibit 5) in its separate statement prejudices Plaintiffs. For they are 6 not properly put on notice of the facts and evidence the City relies on to support its 7 motion, and they cannot dispute the truth or accuracy of the facts and evidence in the 8 manner prescribed by the rules governing summary judgment (i.e., through a response to 9 the City's separate statement of undisputed facts). 10 Lacks Foundation (Evid. Code, § 403) 11 Because this statement relies on Exhibit 5, and 12 because Exhibit 5 is inadmissible for the reasons presented in Objection No. 2, the 13 statement lacks foundation and should be stricken. 14 **Unduly Prejudicial (Evid. Code, § 352)** 15 The City's statement here relies on Exhibit 5, 16 an article published by The Trace, a biased news and blog site funded by Everytown for 17 Gun Safety, ⁷ a nonprofit advocacy organization that advocates for gun control.8 18 Exhibit 5 contains some research The Trace claims is "conducted by The Trace and more 19 than a dozen NBC TV stations" (Ex. 5, pg. 1), but it then reveals it is relying on numbers 20 reported by the National Crime Information Center (NCIC), a database maintained by the 21 FBI. 22 An NCIC spokesman is quoted in the article as stating that the increase could be partially 23 attributable to a growing number of law enforcement agencies reporting firearm theft 24 as opposed to an actual increase in firearm 25

26

27

28

⁷ "Donor and Financial Transparency," The Trace <<u>https://www.thetrace.org/donor-financial-transparency/</u>> (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.

1 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 2 would thus be misleading and unduly 3 prejudicial. 4 **Inadmissible Speculation and Conclusions** (Evid. Code, §§ 400, 403, 410) 5 The City's statement here relies on Exhibit 5, 6 which in turn relies on data from the NCIC showing an increase in reported firearm thefts, 7 but the Exhibit baselessly attributes the basis for that increase to an increase in actual thefts, 8 and not simply an increase in reporting by law enforcement. This is inadmissible speculation. 9 **Objection No. 6:** 10 No Citation to Separate Statement/Not Defendants' Memorandum of Points and 11 Authorities in Support of Motion for **Contained in Separate Statement** Summary Judgment, pg. 8, line 8 & fn. 9, 12 which states in pertinent part: Setting out facts and citing supporting evidence in the memorandum of points and 13 "Theft patterns differ across regions.9" authorities is insufficient. All material facts must be set forth in the separate statement of 14 undisputed facts and not simply buried in a mound of paperwork. (Mills v. Forestex Co. 15 ⁹ See Freskos, supra n.2 (explaining 'thieves (2003) 108 Cal.App.4th 625, 640-641.) were more likely to break into homes in areas Indeed, it is the "Golden Rule" of summary 16 where gun ownership rates were high')." judgment: If the facts are not set forth in the separate statement, they do not exist. (*United* 17 Cmty. Church v. Garcin (1991) 231 Cal. App. 3d 327, 337, rejected by S.D. 18 Watercrafts, Inc. v. Wells Fargo Bank, N.A. (2002) 102 Cal.App.4th 308.) 19 The separate statement serves a due process 20 purpose, informing the opposing party of the evidence that must be disputed in order to 21 defeat the motion for summary judgment. The City's failure to include Exhibit 5 (and the 22 "facts" it gleans from Exhibit 5) in its separate statement prejudices Plaintiffs. For they are 23 not properly put on notice of the facts and evidence the City relies on to support its 24 motion, and they cannot dispute the truth or accuracy of the facts and evidence in the 25 manner prescribed by the rules governing summary judgment (i.e., through a response to 26 the City's separate statement of undisputed facts). 27 28

1		Lacks Foundation (Evid. Code, § 403)
2		Because these statements rely on Exhibit 5,
3 4		and because Exhibit 5 is inadmissible for the reasons presented in Objection No. 2, the statements lack foundation and should be stricken.
5	Objection No. 7:	
6	Declaration of James Allison in Support of	No Citation to Separate Statement/Not
7	Defendants' Motion for Summary Judgment,	Contained in Separate Statement
8	Exhibit 6 (Daniel W. Webster et al., "Preventing the Diversion of Guns to	Setting out facts and citing supporting evidence in the memorandum of points and
9	Criminals Through Effective Firearm Sales Laws," in <i>Reducing Gun Violence in America</i> :	authorities is insufficient. All material facts must be set forth in the separate statement of
10	Informing Policy with Evidence and Analysis (Baltimore: The Johns Hopkins University	undisputed facts and not simply buried in a mound of paperwork. (Mills v. Forestex Co.
11	Press, 2013), 118.)	(2003) 108 Ĉal.App.4th 625, 640-641.) Indeed, it is the "Golden Rule" of summary
12		judgment: If the facts are not set forth in the separate statement, they do not exist. (<i>United</i>
13		Cmty. Church v. Garcin (1991) 231 Cal.App.3d 327, 337, rejected by S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.
14		(2002) 102 Cal.App.4th 308.)
15		The separate statement serves a due process purpose, informing the opposing party of the
16		evidence that must be disputed in order to defeat the motion for summary judgment. The
17 18		City's failure to include Exhibit 6 (and the "facts" it gleans from Exhibit 6) in its separate
19		statement prejudices Plaintiffs. For they are not properly put on notice of the facts and
20		evidence the City relies on to support its motion, and they cannot dispute the truth or
21		accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to
22		the City's separate statement of undisputed facts).
23	Objection No. 8:	
24	Defendants' Memorandum of Points and	No Citation to Separate Statement/Not
25	Authorities in Support of their Motion for Summary Judgment, pg. 1, lines 12-14 & fn.3,	Contained in Separate Statement
26	which read:	Setting out facts and citing supporting evidence in the memorandum of points and
27	"Lax reporting requirements embolden straw purchasers and gun traffickers, who can evade responsibility for supplying firearms used in	authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a
28	responsionity for supplying meaning used in	mound of paperwork. (Mills v. Forestex Co.

(2003) 108 Cal.App.4th 625, 640-641.) 1 violent crimes by falsely claiming a gun they Indeed, it is the "Golden Rule" of summary supplied had previously been lost or stolen.³ 2 judgment: If the facts are not set forth in the separate statement, they do not exist. (*United* 3 Cmty. Church v. Garcin (1991) 231 ³ See, e.g., Daniel W. Webster et al., Cal. App. 3d 327, 337, rejected by *S.D.* "Preventing the Diversion of Guns to 4 Watercrafts, Inc. v. Wells Fargo Bank, N.A. Criminals Through Effective Firearm Sales (2002) 102 Cal.App.4th 308.) 5 Laws," in Reducing Gun Violence in America: The separate statement serves a due process Informing Policy with Evidence and Analysis 6 purpose, informing the opposing party of the (Baltimore: The Johns Hopkins University evidence that must be disputed in order to Press, 2013), 118." 7 defeat the motion for summary judgment. The City's failure to include Exhibit 6 (and the 8 "facts" it gleans from Exhibit 6) in its separate statement prejudices Plaintiffs. For they are 9 not properly put on notice of the facts and evidence the City relies on to support its 10 motion, and they cannot dispute the truth or accuracy of the facts and evidence in the 11 manner prescribed by the rules governing summary judgment (i.e., through a response to 12 the City's separate statement of undisputed facts). 13 Lacks Foundation (Evid. Code, § 403) 14 Because this statement relies on Exhibit 6, and 15 because Exhibit 6 is inadmissible for the reasons presented in Objection No. 7, the 16 statement lacks foundation and should be stricken. 17 **Objection No. 9:** 18 No Citation to Separate Statement/Not Declaration of James Allison in Support of 19 **Contained in Separate Statement** Defendants' Motion for Summary Judgment, Exhibit 12 (Douglas J. Wiebe et al., 20 Setting out facts and citing supporting "Homicide and Geographic Access to Gun evidence in the memorandum of points and Dealers in the United States," BMC Public 21 authorities is insufficient. All material facts Health 9:199 (2009): 2, 7, http://www.biomed must be set forth in the separate statement of 22 central. com/1471-2458/9/199) undisputed facts and not simply buried in a mound of paperwork. (Mills v. Forestex Co. 23 (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the "Golden Rule" of summary 24 judgment: If the facts are not set forth in the separate statement, they do not exist. (*United* 25 Cmty. Church v. Garcin (1991) 231 Cal.App.3d 327, 337, rejected by S.D. 26 Watercrafts, Inc. v. Wells Fargo Bank, N.A. (2002) 102 Cal.App.4th 308.) 27 The separate statement serves a due process 28 purpose, informing the opposing party of the

1 evidence that must be disputed in order to defeat the motion for summary judgment. The 2 City's failure to include Exhibit 12 (and the "facts" it gleans from Exhibit 12) in its 3 separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts 4 and evidence the City relies on to support its motion, and they cannot dispute the truth or 5 accuracy of the facts and evidence in the manner prescribed by the rules governing 6 summary judgment (i.e., through a response to the City's separate statement of undisputed 7 facts). 8 **Objection No. 10:** 9 Defendants' Memorandum of Points and No Citation to Separate Statement/Not Authorities in Support of their Motion for **Contained in Separate Statement** 10 Summary Judgment, pg. 8, lines 8-11, & fn. 10, which state in pertinent part: Setting out facts and citing supporting 11 evidence in the memorandum of points and authorities is insufficient. All material facts "[W]hich makes sense given that so much gun 12 must be set forth in the separate statement of crime is *local* crime — studies show that undisputed facts and not simply buried in a 'almost one-third (32.2%) of traced crime 13 mound of paperwork. (Mills v. Forestex Co. guns are recovered by police within 10 miles (2003) 108 Cal.App.4th 625, 640-641.) of the [firearms dealer] where they were first Indeed, it is the "Golden Rule" of summary 14 purchased.'10 judgment: If the facts are not set forth in the 15 separate statement, they do not exist. (United Cmty. Church v. Garcin (1991) 231 16 Cal.App.3d 327, 337, rejected by *S.D.* ¹⁰ Douglas J. Wiebe et al., "Homicide and Watercrafts, Inc. v. Wells Fargo Bank, N.A. Geographic Access to Gun Dealers in the 17 (2002) 102 Cal.App.4th 308.) United States," BMC Public Health 9:199 (2009): 2, 7, http://www.biomedcentral.com 18 The separate statement serves a due process /1471-2458/9/199." purpose, informing the opposing party of the 19 evidence that must be disputed in order to defeat the motion for summary judgment. The 20 City's failure to include Exhibit 12 (and the "facts" it gleans from Exhibit 12) in its 21 separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts 22 and evidence the City relies on to support its motion, and they cannot dispute the truth or 23 accuracy of the facts and evidence in the manner prescribed by the rules governing 24 summary judgment (i.e., through a response to the City's separate statement of undisputed 25 facts). Lacks Foundation (Evid. Code, § 403) 26 27 Because this statement relies on Exhibit 12. and because Exhibit 12 is inadmissible for the 28 reasons presented in Objection No. 9, the

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

1 PUBLIC HEALTH 900, 900 (2017). These states' preemption statutes are an instructive 2 comparison, as many of them—modeled after legislation promoted by the gun industry, see 3 id.—express a boilerplate preference for 4 uniform gun laws throughout the state. See, e.g., Ala. Code § 13A-11-61.3 ("The purpose 5 of this section is to establish within the Legislature complete control over regulation 6 and policy pertaining to firearms, ammunition, and firearm accessories in order to ensure that 7 such regulation and policy is applied uniformly throughout this state"); Idaho Code 8 Ann. § 18-3302J(1) (announcing "legislature's 9 intent to wholly occupy the field of firearms regulation within this state"); Utah Code § 76-10 10-500 (firearm preemption law declaring "the need to provide uniform laws throughout the 11 state"). With good reason, this is not the path 12 California has chosen. See, e.g., Pomeranz at 900 (industry-backed preemption laws tie 13 municipalities' hands, leaving them "unable to address acute public health issues" best solved 14 at the local level)." 15 (underlining added for clarity) 16 17 18 19 20 21 22 23 24 25

26

27

28

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

> > 13

PROOF OF SERVICE STATE OF CALIFORNIA COUNTY OF SANTA CLARA

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.

I, Tiffany M. Harbor, am employed in the City of Long Beach, Los Angeles County,

2

1

3

4

5

6

7 8

9

10

11 12

13

14

15

1617

18

19

21

20

2223

24

26

25

27

28

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

Roderick M. Thompson rthompson@fbm.com

Farella Braun + Martel LLP

San Francisco, ČA 94104

235 Montgomery Street, 17th Floor

Attorneys for Defendants/Respondents

James Allison

jallison@fbm.com

thereof by the following means, addressed as follows:

Hannah Shearer
hshearer@giffords.org
Hannah Friedman@giffords.org
Giffords Law Center to F

Giffords Law Center to Prevent Gun Violence

268 Bush Street #555 San Francisco, CA 94104

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.

<u>s/ Tiffany M. Harbor</u> Tiffany M. Harbor