

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**

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' RESPONSE TO
DEFENDANTS' SEPARATE STATEMENT
OF UNDISPUTED FACTS AND
PLAINTIFFS' ADDITIONAL UNDISPUTED
MATERIAL FACTS IN SUPPORT OF
PLAINTIFFS' 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;
Request for Judicial Notice; Declaration of Anna
M. Barvir; Evidentiary Objections; and Proposed
Order for Evidentiary Objections]

Action filed: April 15, 2019

Under Code of Civil Procedure section 437c, subdivision (b), and California Rules of Court, rule 3.1350, Plaintiffs G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated, submit the following Response to Defendants City of Morgan Hill, Morgan Hill Chief of Police David Swing, and Morgan Hill City Clerk Irma Torrez's Separate Statement of Undisputed Facts in Support of Defendants' Motion for Summary Judgment.

RESPONSE TO DEFENDANTS' UNDISPUTED FACTS

#	Moving Parties' Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
1	In November 2016, California Voters enacted Proposition 63 ("Prop. 63") entitled "The Safety for All Act of 2016." (Allison Decl. Ex. 7); (RJN Ex. A).	Undisputed.
2	Prop 63. Section 2 Findings and Declarations sets out findings made by the "people of the State of California". (Allison Decl. Ex. 7); (RJN Ex. A).	Disputed to the extent that it assumes that the "people of the State of California" could effectively make "findings and declarations" absent any proof that voters read, understood, or were even aware of the "findings and declarations" they are purported to have made. Indeed, no "findings and declarations" appeared anywhere on the official ballot that voters did see when voting to adopt Prop 63. L.A. County (Calabasas) 2016 General Election Sample Ballot (attached to Barvir Decl. as Ex. UU); San Luis Obispo County 2016 General Election Sample Ballot (attached to Barvir Decl. as Ex. VV). Otherwise, undisputed that the full text of Proposition 63 includes a section called "Section 2 Findings and Declarations."
3	Finding 8 states: "Under current law, stores that sell ammunition are not required to report to law enforcement when ammunition is lost or stolen. Stores should have to report lost or stolen ammunition within 48 hours of discovering that it is missing so law enforcement can work to prevent that ammunition from being illegally trafficked into the hands of dangerous individuals." (Allison Decl. Ex. 7); (RJN Ex. A).	Undisputed.

4	<p>Finding 9 states: “Californians today are not required to report lost or stolen guns to law enforcement. This makes it difficult for law enforcement to investigate crimes committed with stolen guns, break up gun trafficking rings, and return guns to their lawful owners. We should require gun owners to report their lost or stolen guns to law enforcement.”</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	Undisputed.
5	<p>Prop 63. Section 3 Purpose and Intent sets out the purpose and intent of the people of the State of California in enacting the Safety for All Act of 2016.</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	<p>Disputed to the extent that it assumes that the “people of the State of California” could effectively set forth the “purpose and intent” of Prop 63 absent any proof that voters read, understood, or were even aware of the “purpose and intent” they are purported to have had. Indeed, no “purpose and intent” appeared anywhere on the official ballot that voters did see when voting to adopt Prop 63.</p> <p>Barvir Decl., Exs. UU-VV.</p> <p>Otherwise, undisputed that the full text of Proposition 63 includes a section called “Section 3 Purpose and Intent.”</p>
6	<p>Purpose and Intent 2 states: “To keep guns and ammunition out of the hands of convicted felons, the dangerously mentally ill, and other persons who are prohibited by law from possessing firearms and ammunition.”</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	Undisputed.
7	<p>Purpose and Intent 4 states: “To require all stores that sell ammunition to report any lost or stolen ammunition within 48 hours of discovering that it is missing.”</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	Undisputed.
8	<p>Purpose and Intent 6 states: “To require the reporting of lost or stolen firearms to law enforcement.”</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	Undisputed.
9	<p>Following Prop. 63’s passage, Penal Code 25250 took effect in 2017.</p> <p>(Allison Decl. Ex. 9)</p>	Undisputed.

10	<p>Penal Code 25250 states, in part: “Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.”</p> <p>(Allison Decl. Ex. 9)</p>	Undisputed.
11	<p>In November 2018, Morgan Hill City Council adopted Local Ordinance No. 2289.</p> <p>(Allison Decl. Ex. 1)</p>	Undisputed.
12	<p>Local Ordinance No. 2289 amended Municipal Code Section 9.04.030.</p> <p>(Allison Decl. Ex. 1)</p>	Undisputed.
13	<p>Municipal Code Section 9.04.030 now reads:</p> <p>“9.04.030. Duty to report theft or loss of firearms. Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Morgan Hill Police Department within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the City of Morgan Hill; or (2) the theft or loss of the firearm occurs in the City of Morgan Hill.”</p> <p>(Allison Decl. Ex. 2)</p>	Undisputed.
14	<p>Municipal Code 9.04.030 took effect in December 2018.</p> <p>(Allison Decl. Ex. 2)</p>	Undisputed.

///

///

Under Code of Civil Procedure section 437c, subdivision (b), and California Rules of Court, rule 3.1350, Plaintiffs G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated, submit the following Additional Undisputed Material Facts in Support of their Opposition to Plaintiffs' Motion for Summary Judgment.

PLAINTIFFS' ADDITIONAL UNDISPUTED MATERIAL FACTS

#	Plaintiffs' Additional Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
15	<p>On November 8, 2016, California voters enacted Proposition 63, which included, among other things, a requirement that firearm owners report to law enforcement if their firearm is lost or stolen.</p> <p>Pls.' Ver. Compl. Decl. & Inj. Rel. & Verif. Petit. Writ Mand. &/or Prohib. ("Pls.' Verif. Compl."), at ¶ 4 (attached to Decl. Anna M. Barvir ("Barvir Decl.") as Ex. X; Defs.' Ver. Answer Verif. Compl. Decl. & Inj. Rel. & Verif. Petit. Writ Mand. &/or Prohib. ("Defs.' Verif. Answer"), at ¶ 4 (attached to Barvir Decl. as Ex. Y); Pls.' Req. Jud. Ntc. Supp. Oppn. Defs.' Mot. Summ. J. ("Pls.' Req. Jud. Ntc.") Ex. C, at pp. 22-23.</p>	
16	<p>Proposition 63 also created Penal Code section 25270, which lays out which facts must be included in a section 25250 report to law enforcement. These details include "the make, model, and serial number of the firearm, if known by the person, and any additional relevant information required by the local law enforcement agency taking the report."</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, § 25270.</p>	
17	<p>Under Penal Code section 25250, subdivision (b), if a firearm owner recovers any firearm previously reported lost or stolen, they must so inform local law enforcement within five days.</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen Code, § 25250, subd. (b) ("Every person who has reported a firearm lost or stolen under subdivision (a) shall notify the local law enforcement agency in the jurisdiction in which the theft or loss occurred within five</p>	

1		days if the firearm is subsequently recovered by the person.”)	
2	18	Proposition 63 also created a number of exceptions to the state theft-reporting law.	
3		Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, §§	
4		25250, subd. (c), 25255.	
5	19	Under Penal Code section 25250, subdivision (c), created by Proposition 63, no person is required to report the theft or loss of “an antique firearm within the meaning of subdivision (c) of [Penal Code] section 16170.”	
6		Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code §	
7		25250, subd. (c).	
8			
9			
10	20	Under Penal Code section 25255, subdivisions (a) through (d), created by Proposition 63, the state theft-reporting requirement does not apply to:	
11		(1) any law enforcement officer or peace officer acting within the scope of their duties who reports the loss or theft to their employing agency;	
12		(2) any United States marshal or member of the United States armed forces or the National Guard engaged in their official duties;	
13		(3) any federally licensed firearms importer, manufacturer, or dealer who reports the theft or loss in compliance with applicable federal law; or	
14		(4) any person whose firearm was lost or stolen before July 1, 2017.	
15		Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, §	
16		25255.	
17			
18			
19			
20			
21			
22			
23	21	Proposition 63 also created Penal Code section 25260, which requires “every sheriff or police chief [to] submit a description of each firearm that has been reported lost or stolen directly into the Department of Justice Automated Firearms System.”	
24		Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, §	
25		25260.	
26			
27			
28			

22	<p>Proposition 63 also created Penal Code section 25275, which makes it a crime to report a firearm has been lost or stolen knowing that report to be false.</p> <p>Req. Jud. Ntc. Ex. C, at p. 23; Pen. Code, § 25275, subd. (a) (“No person shall report to a local law enforcement agency that a firearm has been lost or stolen, know that report to be false. A violation of this section is an infraction, punishable by a fine not exceeding two hundred fifty dollars (\$250) for a first offense, and by a fine no exceeding one thousand dollars (\$1000) for a second or subsequent offense.”)</p>	
23	<p>Under Penal Code section 25250, should his firearm be lost or stolen, Plaintiff Kirk has five days to report the loss or theft to local law enforcement in the jurisdiction where the loss or theft occurred.</p> <p>Pls.’ Verif. Compl. ¶ 4, Barvir Decl., Ex. X; Defs.’ Verif. Answer ¶ 4, Barvir Decl., Ex. Y; Req. Jud. Ntc. Ex. C, at pp. 22-23; Pen. Code § 25250, subd. (a); Kirk Decl. Supp. Pls.’ Mot. Summ. J. ¶ 5.</p>	
24	<p>Under Penal Code section 25250, should a member of CRPA have their firearm lost or stolen, they have five days to report the loss or theft to local law enforcement in the jurisdiction where the loss or theft occurred.</p> <p>Pls.’ Verif. Compl. ¶ 4, Barvir Decl., Ex. X; Defs.’ Verif. Answer ¶ 4, Barvir Decl., Ex. Y; Req. Jud. Ntc. Ex. C, at pp. 22-23; Pen. Code § 25250, subd. (a); Barranco Decl. Supp. Pls.’ Mot. Summ. J. ¶ 8.</p>	
25	<p>The penalties for violating Penal Code Section 25250 are listed in Section 25265 and are as follows:</p> <p>“(a) Every person who violates Section 25250 is, for a first violation, guilty of an infraction, punishable by a fine not to exceed one hundred dollars (\$100).</p> <p>(b) Every person who violates Section 25250 is, for a second violation, guilty of an infraction, punishable by a fine not to exceed one thousand dollars (\$1,000).</p> <p>(c) Every person who violates Section 25250 is, for a third or subsequent violation, guilty</p>	

1	of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.”	
2		
3	Pen. Code, § 25265.	
4		
5	26 Violation of MHMC section 9.04.030 include confiscation and/or fines.	
6	Req. Jud. Ntc. Ex. B, at p. 12; Morgan Hill Mun. Code, § 1.19.010 (“This chapter provides for an administrative citation process that may be used by the city to address any violation of the municipal code . . .”); Req. Jud. Ntc. Ex B, at p. 14; Morgan Hill Mun. Code. § 1.19.060, subd. (B) (“If no specific fine amount is set, the amount of the fine shall be one hundred dollars for a first violation, two hundred dollars for a second violation of the same ordinance within one year, and five hundred dollars for each additional violation of the same ordinance within one year”); Req. Jud. Ntc. Ex. A, at p. 10; Morgan Hill Mun. Code, § 9.04.060 (“Any instrument, device or article used or possessed in violation of the provisions of this chapter is declared to be a public nuisance and may be confiscated and possessed by a police officer of the city and turned over to the chief of police under the conditions set forth in this section. If no complaint for violation of this chapter is filed within seventy-two hours of the taking, the instrument or device shall be returned to the person from whom it was taken. If a complaint for violation of this chapter is filed within seventy-two hours, the chief of police may return it to the person from whose possession it was taken upon such conditions as he deems desirable for the public welfare. If the person from whom it was taken is not convicted of a violation of this chapter, then the device or instrument shall be returned to him without any conditions. If there is a conviction and sixty days have expired since the date of conviction, the same may be destroyed by the chief of police or returned to the person from whom it was taken upon such conditions as the chief deems desirable for the public welfare.”)	
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27	27 While the City was considering adopting the ordinance, Plaintiff CRPA twice notified lawmakers of its opposition to the law,	
28		

1		explaining that section 25250 preempted the City's proposed 48-hour reporting requirement.	
2		Letter from Tiffany D. Cheuvront to Donald Larkin, Morgan Hill City Attorney (June 1, 2018) (attached to Barvir Decl. as Ex. BB, at pp. 54-61); Letter from Tiffany D. Cheuvront to Donald Larkin, Morgan Hill City Attorney (Oct. 22, 2018) (attached to Barvir Decl. as Ex. CC, at pp. 63-66).	
3	28	On October 30, 2018, Plaintiff CRPA again notified Defendant Morgan Hill in writing of its position that Penal Code section 25250 preempted Ordinance No. 2289, requesting that the City voluntarily repeal the Ordinance.	
4		Pls.' Verif. Compl. ¶ 7, Barvir Decl., Ex. X; Defs.' Verif. Answer ¶ 7, Barvir Decl., Ex. Y; Letter from Tiffany D. Cheuvront to Donald Larkin, Morgan Hill City Attorney (Oct. 30, 2018) (attached to Barvir Decl. as Ex. DD, at pp. 68-70).	
5	29	Defendant City of Morgan Hill did not voluntarily repeal Ordinance No. 2289, and it took effect as Morgan Hill Municipal Code 9.04.030 on December 29, 2018. The City has enforced the law since that time and has never disavowed its intention to do so.	
6		Pls.' Verif. Compl. ¶¶ 7, 8, 11 Barvir Decl. Ex. X; Defs.' Verif. Answer ¶¶ 7, 11, Barvir Decl., Ex. Y; Req. Jud. Ntc. Ex. A, at p. 9; Def. Morgan Hill's Resp. Pls.' Form Interrogs., Set One, at p. 8:16-18 (attached to Barvir Decl. as Ex. Z).	
7	30	Plaintiff CRPA also wrote to the city of Palm Springs, notifying local lawmakers that section 25250 preempted its local attempt to shorten the time that firearm-theft victims have to report their property stolen. On November 14, 2018, after receiving CRPA's analysis, the city of Palm Springs voluntarily repealed its 48-hour reporting requirement.	
8		Barvir Decl. Exs. EE-KK, at pp. 71-111.	
9	31	Like Morgan Hill, a number of cities throughout California have adopted their own local firearm theft-reporting laws.	

1		Req. Jud. Ntc. Exs. M-W, at pp. 424-444.	
2	32	The city of Los Angeles requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
3		Req. Jud. Ntc. Ex. M, at p. 423; L.A. Mun. Code, § 55.2	
4			
5	33	The city of Oakland requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
6		Req. Jud. Ntc. Ex. N, at p. 426; Oakland Mun. Code, § 9.36.131.	
7			
8			
9	34	The city of Port Hueneme requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
10		Req. Jud. Ntc. Ex. P, at p. 430; Port Hueneme Mun. Code, § 3914.10.	
11			
12	35	The city of Sacramento requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
13		Req. Jud. Ntc. Ex. Q, at p. 430; Sacramento Mun. Code, § 9.32.180.	
14			
15			
16	36	The city of San Francisco requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
17		Req. Jud. Ntc. Ex. R, at p. 434; S.F. Mun. Code, § 616.	
18			
19	37	The city of Sunnyvale requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
20		Req. Jud. Ntc. Ex. U, at p. 440; Sunnyvale Mun. Code, § 9.44.030.	
21			
22			
23	38	The city of Tiburon requires the reporting of lost or stolen firearms to local law enforcement within 48 hours.	
24		Req. Jud. Ntc. Ex. W, at p. 444; Tiburon Mun. Code, § 32-27.	
25			
26	39	The city of Oxnard requires the reporting of lost or stolen firearms to local law enforcement within 72 hours.	
27		Req. Jud. Ntc. Ex. O, at p. 428; Oxnard Mun.	
28			

1		Code, § 7-141.1.	
2	40	The city of Simi Valley requires the reporting of lost or stolen firearms to local law enforcement within 72 hours.	
3		Req. Jud. Ntc. Ex. T, at p. 438; Simi Valley Mun. Code, § 5-22.12.	
4			
5	41	The city of Thousand Oaks requires the reporting of lost or stolen firearms to local law enforcement within 72 hours.	
6		Req. Jud. Ntc. Ex. V, at p. 442; Thousand Oaks Mun. Code, § 5-11.02.	
7			
8			
9	42	The city of Santa Cruz requires the reporting of lost or stolen firearms to local law enforcement within five days.	
10		Req. Jud. Ntc. Ex. S, at p. 436; Santa Cruz Mun. Code, § 9.30.010.	
11			
12	43	At the October 24, 2018 meeting of the Morgan Hill City Council, councilmembers received within their agenda packets a City Council Staff Report and a PowerPoint Presentation citing that the city of San Jose requires reporting of lost or stolen firearms to local law enforcement within 24 hours.	
13		Req. Jud. Ntc. Ex. F, at pp. 73, 75-76, 277.	
14			
15			
16			
17	44	In adopting MHMC section 9.40.030, the City of Morgan Hill cited four general “reasons for requiring theft reporting.”	
18		Req. Jud. Ntc. Ex. F, at p. 75.	
19			
20	45	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that “[w]hen a crime gun is traced by law enforcement to the last purchaser of record, the owner may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking” and that “[r]eporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it.”	
21		Req. Jud. Ntc. Ex. F, at p. 75.	
22			
23			
24			
25			
26			
27	46	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that “[r]eporting laws help disarm prohibited persons by deterring them from falsely claiming that	
28			

1		their firearms were lost or stolen.”	
2		Req. Jud. Ntc. Ex. F, at p. 75.	
3	47	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that “[r]eporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner.”	
4		Req. Jud. Ntc. Ex. F, at p. 75.	
5			
6			
7			
8	48	In adopting MHMC section 9.40.030, the City of Morgan Hill claimed that “[r]eporting laws make gun owners more accountable for their weapons.”	
9		Req. Jud. Ntc. Ex. F, at p. 75.	
10			
11	49	In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to serve the City’s interests than the statewide 5-day requirement.	
12		Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 308-309, Ex. J, pp. 347-362.	
13			
14			
15			
16			
17	50	In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to deter false reporting that a firearm has been lost or stolen to cover up criminal activity than the statewide 5-day requirement.	
18		Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.	
19			
20			
21			
22			
23	51	In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to deter false reporting by prohibited persons that a firearm has been lost or stolen than the statewide 5-day requirement.	
24		Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.	
25			
26			
27			
28			

52	<p>In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene than the statewide 5-day requirement.</p> <p>Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.</p>	
53	<p>In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to aid law enforcement in recovering lost or stolen firearm than the statewide 5-day requirement.</p> <p>Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.</p>	
54	<p>In adopting MHMC section 9.40.030, the City of Morgan Hill did not cite any evidence showing that its 48-hour theft-reporting requirement is more likely to make gun owners more accountable for their weapons than the statewide 5-day requirement.</p> <p>Req. Jud. Ntc. Ex. D, at pp. 42, 46-46, Ex. F, at pp. 73-88, 265-289, Ex. H, at pp. 323-326, Ex. J, pp. 347-362.</p>	
55	<p>There is no reliable body of academic or scientific work establishing that firearm theft-reporting requirements, in general, have any impact on the City's purported interests in its 48-hour reporting requirement.</p> <p>Morrall et al., The Science of Gun Policy: A Critical Synthesis of Research Evidence on the Effects of Gun Policies in the United States (Rand Corp. 2018) p. 181 ("RAND Study") (attached to Barvir Decl. as Ex. EE).</p>	
56	<p>There is no reliable body of academic or scientific work that would establish that requiring the reporting of firearm theft or loss to law enforcement within 48 hours is more likely to aid law enforcement than requiring the reporting within 5 days.</p> <p>See RAND Study, at p. 181, Barvir Decl. Ex.</p>	

1	EE.	
2	57	According to the United States Department of Justice, while about 90% of burglaries involving stolen firearms were reported to law enforcement between 2005 and 2010, only about 1 of every 5 firearms had been recovered between 1 day and 6 months after reporting.
3		
4		
5		
6		Langton, U.S. Dept. of Justice, Crime Data Brief: Firearms Stolen During Household Burglaries and Other Property Crimes, 2005-2010 (Nov. 2012) (“USDOJ Crime Brief”) p. 257 (attached to Barvir Decl. as Ex. PP); see also RAND Study, at p. 181, Barvir Decl. Ex. EE.
7		
8		
9		
10	58	According to the United States Department of Justice, although “victimizations involving stolen firearms could have occurred from one day to up to six months before the NCVS [National Crime Victimization Study] interview [from which these statistics were drawn], the amount of time that had elapsed made no significant difference in the percentage of households for which guns had not been recovered at the time of the interview.”
11		
12		
13		
14		
15		USDOJ Crime Brief, at p. 257, Barvir Decl. Ex. PP.
16		
17	59	The Legal Community Against Violence (“LCAV”), now known as the Giffords Law Center to Prevent Gun Violence, has published a series of “model laws” for state and local governments to adopt. Among the model laws the organization has promoted throughout California requires the reporting of lost or stolen firearms.
18		
19		
20		
21		
22		Legal Community Against Violence, Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales (Sept. 2011) (“LCAV Model Laws”) pp. 274, 330-334 (attached to Barvir Decl. at Ex. QQ).
23		
24		
25	60	The LCAV Model Laws cite the federal law requirement that firearm dealers report the loss or theft of firearms in their inventory within 48 hours as justification for the 48-hour limit proposed in the 2011 version of the organization’s theft-reporting model law.
26		
27		
28		

1		LCAV Model Laws, at pp. 333-334, Barvir Decl. Ex. OO.	
2	61	In 2011, the Association of Bay Area Governments (“ABAG”) published a report recommending that area cities and counties, including the City of Morgan Hill, adopt model ordinances requiring the reporting of lost or stolen firearms.	
3		Req. Jud. Ntc. Ex. F, at pp. 75-76, 89-104; Association of Bay Area Governments, A High Price to Pay: The Economic and Social Costs of Youth Gun Violence in San Mateo County (Sept. 2011) (“ABAG Report”) p. 193 (attached to Barvir Decl. at Ex. MM).	
4			
5			
6			
7			
8			
9	62	LCAV has assisted ABAG in its efforts to promote gun control laws in the Bay Area region of California, and it prepared the model laws for ABAG’s Youth Gun Violence Task Force. Among those model laws was a requirement for the reporting of firearm theft or loss.	
10		Legal Community Against Violence, 2009 California Report: Recent Developments in Federal, State, and Local Gun Laws (June 12, 2009) pp. 391-392 (attached to Barvir Decl. as Ex. RR).	
11			
12			
13			
14			
15			
16	63	In enacting Penal Code section 25250, the statewide theft-reporting requirement, Proposition 63 voters recognized that such laws help law enforcement “investigate crimes committed with stolen guns, break up gun trafficking rings, and return guns to their lawful owners.”	
17		Req. Jud. Ntc. Ex. C, at p. 22.	
18			
19			
20			
21	64	Supporters of Proposition 63, which created Penal Code section 25250, informed voters that the reporting of lost and stolen firearms would “help police shut down gun trafficking rings and locate caches of illegal weapons,” “recover stolen guns before they’re used in crimes and return them to their lawful owners.”	
22		Ballot Pamp., Gen. Elec. (Nov. 8, 2016) rebuttal to argument against Prop. 63, p. 403 (attached to Barvir Decl. as Ex. SS).	
23			
24			
25			
26			
27			
28	65	The ballot language of Proposition 63 read as	

1	follows:	
2	“PROPOSITION 63	
3	FIREARMS. AMMUNITION SALES.	
4	INITIATIVE STATUTE. Requires	
5	background check and Department of Justice	
6	authorization to purchase ammunition.	
7	Prohibits possession of large-capacity	
8	ammunition magazines. Establishes	
9	procedures for enforcing laws prohibiting	
10	firearm possession by specified persons.	
11	Requires Department of Justice’s	
12	participation in federal National Instant	
13	Criminal Background Check System. Fiscal	
14	Impact: Increased state and local court and	
15	law enforcement costs, potentially in the tens	
16	of millions of dollars annually, related to a	
17	new court process for removing firearms	
18	from prohibited persons after they are	
19	convicted.”	
20	Barvir Decl., Exs. UU-VV.	
21	66 In 2014, the Center for Civic Design raised	
22	concerns with the length of voter guides,	
23	concluding that there is:	
24	“[S]trong evidence from many sources that	
25	voters feel that preparing for an election can	
26	be an overwhelming task. The number of	
27	pages is one of the factors that figures into	
28	the “20-second test.” If recipients get a large	
	document in the mail, they’re less likely to	
	even flip through it, regardless of how	
	compelling the cover might be.”	
	Center for Civil Design, “Final report on	
	Recommendations for Voter Guides in	
	California” at p. 417 (Oct. 10, 2014)	
	(attached to Barvir Decl. as Ex. TT).	
	67 Proposition 63 also created a separate	
	requirement that firearm retailers notify	
	consumers of the statewide theft-reporting	
	requirement on a sign that reads, in part:	
	“If a firearm you own or possess is lost or	
	stolen, you must report the loss or theft to a	
	Local law enforcement agency where the loss	
	or theft occurred within five days of the time	
	you knew or reasonably should have known	
	that the firearm had been lost or stolen.”	
	Req. Jud. Ntc. Ex. C, at p. 24; Pen. Code, §	

26835, subd. (a)(9).

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, Laura Palmerin, 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' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF
UNDISPUTED FACTS AND PLAINTIFFS' ADDITIONAL UNDISPUTED
MATERIAL FACTS IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

on the interested parties in this action by placing

☐ the original
☒ a true and correct copy

thereof by the following means, addressed as follows:

Roderick M. Thompson
rthompson@fbm.com

James Allison
jallison@fbm.com

Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Attorneys for Defendants/Respondents

Hannah Shearer

hshearer@giffords.org

Hannah Friedman

hfriedman@giffords.org

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.

s/ Tiffany M. Harber
Tiffany M. Harber