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ATTORNEY OR PARTY WITHOUT ATTORNEY:	STATE BAR NO.: 268728	FOR COURT USE ONLY
NAME: Anna M. Barvir	+ *	
FIRM NAME: Michel & Associates, P.C.		
STREET ADDRESS: 180 East Ocean Bouleva	ard, Suite 200	
CITY: Long Beach	STATE: CA ZIP CODE: 90802	on 6/11/2020 4:16 PM
TELEPHONE NO.: (562) 216-4444	FAX NO.: (562) 216-4445	
E-MAIL ADDRESS: abarvir@michellawyers.c	om	Reviewed By: R. Nguyen
ATTORNEY FOR (name): G. Mitchell Kirk, et al		
SUPERIOR COURT OF CALIFORNIA, COL	Envelope: 4446090	
STREET ADDRESS: 161 North First Street		
MAILING ADDRESS: 161 North First Street		
CITY AND ZIP CODE: San Jose 95113		
BRANCH NAME: Old Courthouse		CASE NUMBER:
PLAINTIFF/PETITIONER: G. Mitchell	Kirk, et al.	19CV346360
DEFENDANT/RESPONDENT: City of Morgan Hill, et al.		JUDICIAL OFFICER: Peter Kirwan
OTHER:		reter Kilwaii
PROPOSED C	DRDER (COVER SHEET)	DEPT:
T KOT GGED G	MOLIN (OUTLIN OHLLI)	19

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

- 1. Name of the party submitting the proposed order:
 - G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated
- 2. Title of the proposed order:

[Proposed] Order re: Plaintiffs' Evidentiary Objections in Support of Opposition to Defendants' Motion for Summary Judgment

- 3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Defendants' Motion for Summary Judgment
 - b. Date and time: July 2, 2020, 9:00 a.m.
 - c. Place: Old Courthouse 161 North First Street Department 19 San Jose, CA 95113
- 4. The proposed order was served on the other parties in the case.

Anna M. Barvir	s/ Anna M. Barvir
(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY)

Page 1 of 2

CASE NAME:	CASE NUMBER:
G. Mitchell Kirk, et al. V. City of Morgan Hill, et al.	19CV346360

PROOF OF ELECTRONIC SERVICE PROPOSED ORDER		
1. Iam	at least 18 years old and not a party to this action.	
	My residence or business address is <i>(specify):</i> 180 East Ocean Boulevard, Suite 200, Long Beach, Californía 90802	
b. M	My electronic service address is (specify): tharbor@michellawyers.com	
2. I elec an ec	ctronically served the <i>Proposed Order (Cover Sheet)</i> with a proposed order in PDF format attached, and a proposed order in ditable word-processing format as follows:	
F	On <i>(name of person served) (If the person served is an attorney, the party or parties represented should also be stated.):</i> Roderick M. Thompson, James Allison, Hannah Shearer, Hannah Friedman Attorneys for Defendants/Respondents City of Morgan Hill, Morgan Hill Chief of Police David Swing, and Morgan Hill City Clerk Irma Torrez	
	rthompson@fbm.com; jallison@fbm.com; hshearer@giffords.org; hfriedman@giffords.org	
Ele pro	ectronic service of the <i>Proposed Order (Cover Sheet)</i> with the attached proposed order in PDF format and service of the oposed order in an editable word-processing format on additional persons are described in an attachment.	
	under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Ine 11, 2020	
Tiffany M	M. Harbor s/ Tiffany M. Harbor	
	(TYPE OR PRINT NAME OF DECLARANT) (SIGNATURE OF DECLARANT)	

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7		
8	IN THE SUPERIOR COURT O	F 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,	[PROPOSED] ORDER RE: PLAINTIFFS' EVIDENTIARY OBJECTIONS IN
13	Plaintiffs and Petitioners,	SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION FOR
14	VS.	SUMMARY JUDGMENT
15 16	CITY OF MORGAN HILL; MORGAN HILL CHIEF OF POLICE DAVID SWING, in his official capacity; MORGAN HILL CITY	Date: July 2, 2020 Time: 9:00 a.m. Judge: Judge Peter Kirwan
17	CLERK IRMA TORREZ, in her official capacity; and DOES 1-10,	Dept.: 19
18	Defendants and Respondents	[Filed concurrently with Opposition to Defendants' Motion for Summary Judgment; Response to Defendants'
19 20		Separate Statement of Undisputed Facts and Additional Undisputed Material Facts; Declaration of Anna M. Barvir; Request
21		for Judicial Notice; and Evidentiary Objections]
22		Action filed: April 15, 2019
23		,
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1	Material Objected To	Grounds for Objection	Ruling on the Objection
1	, and the second	Grounds for Objection	Kumig on the Objection
2	Objection No. 1:		
3	Declaration of James Allison	No Citation to Separate Statement/Not Contained in	Sustained:
4	in Support of Defendants' Motion for Summary	Separate Statement	Overruled:
5	Judgment, Exhibit 4 (David Hemenway, Deborah Azrael,	Setting out facts and citing	
6	and Matthew Miller, "Whose	supporting evidence in the memorandum of points and	
7	Guns are Stolen? The Epidemiology of Gun Theft	authorities is insufficient. All material facts must be set forth	
8	Victims," Injury Epidemiology	in the separate statement of undisputed facts and not	
	4, no. 1 (2017).)	simply buried in a mound of	
9		paperwork. (<i>Mills v. Forestex</i> Co. (2003) 108 Cal.App.4th	
10		625, 640-641.) Indeed, it is the "Golden Rule" of summary	
11		judgment: If the facts are not set forth in the separate	
12		statement, they do not exist.	
13		(United Cmty. Church v. Garcin (1991) 231 Cal.App.3d	
14		327, 337, rejected by S.D. Watercrafts, Inc. v. Wells	
15		Fargo Bank, N.A. (2002) 102 Cal.App.4th 308.)	
16		The separate statement serves a	
		due process purpose, informing	
17		the opposing party of the evidence that must be disputed	
18		in order to defeat the motion for summary judgment. The	
19		City's failure to include Exhibit 4 (and the "facts" it	
20		gleans from Exhibit 4) in its	
21		separate statement prejudices Plaintiffs. For they are not	
22		properly put on notice of the facts and evidence the City	
23		relies on to support its motion, and they cannot dispute the	
24		truth or accuracy of the facts and evidence in the manner	
		prescribed by the rules	
25		governing summary judgment (i.e., through a response to the	
26		City's separate statement of undisputed facts).	
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1	Objection No. 2:		
2	Declaration of James Allison in Support of Defendants'	No Citation to Separate Statement/Not Contained in	Sustained:
3	Motion for Summary Judgment, Exhibit 5 (Brian	Separate Statement	Overruled:
4	Freskos, Missing Pieces: Gun	Setting out facts and citing	
5	Theft from Legal Gun Owners is on the Rise, Quietly Fueling	supporting evidence in the memorandum of points and	
	Violent Crime, The Trace,	authorities is insufficient. All	
6	November 20, 2017, https://bit.ly/2izST1h)	material facts must be set forth in the separate statement of	
7	,	undisputed facts and not	
8		simply buried in a mound of paperwork. (<i>Mills v. Forestex</i>	
		<i>Co.</i> (2003) 108 Cal.App.4th	
9		625, 640-641.) Indeed, it is the "Golden Rule" of summary	
10		judgment: If the facts are not	
11		set forth in the separate statement, they do not exist.	
		(United Cmty. Church v.	
12		Garcin (1991) 231 Cal.App.3d 327, 337, rejected by S.D.	
13		Watercrafts, Inc. v. Wells	
14		Fargo Bank, N.A. (2002) 102 Cal.App.4th 308.)	
		,	
15		The separate statement serves a due process purpose, informing	
16		the opposing party of the	
17		evidence that must be disputed in order to defeat the motion	
		for summary judgment. The	
18		City's failure to include Exhibit 5 (and the "facts" it	
19		gleans from Exhibit 5) in its	
20		separate statement prejudices Plaintiffs. For they are not	
		properly put on notice of the	
21		facts and evidence the City relies on to support its motion,	
22		and they cannot dispute the	
23		truth or accuracy of the facts and evidence in the manner	
		prescribed by the rules	
24		governing summary judgment (i.e., through a response to the	
25		City's separate statement of	
26		undisputed facts).	
		Unduly Prejudicial (Evid.	
27		Code, § 352)	
28		Exhibit 5 is an article	

1	published by The Trace, a	
2	biased news and blog site funded by Everytown for Gun	
3	Safety, a nonprofit advocacy organization that advocates for	
	gun control. ² Exhibit 5	
4	contains some research The Trace claims is "conducted by	
5	The Trace and more than a dozen NBC TV stations" (Ex.	
6	5, pg. 1), ³ but it then reveals it	
7	is relying on numbers reported by the National Crime	
8	Information Center (NCIC), a database maintained by the	
	FBI.	
9	An NCIC spokesman is quoted	
10	in the article as stating that the increase could be partially	
11	attributable to a growing	
12	number of law enforcement agencies reporting firearm theft	
13	as opposed to an actual increase in firearm theft (Ex. 5,	
	pg. 1), which means the basis	
14	of the claim The Trace (and the City) are making that firearm	
15	thefts are on the rise could very well be false, and Exhibit 5	
16	would thus be misleading and	
17	unduly prejudicial.	
18	Inadmissible Speculation and Conclusions (Evid. Code, §§	
	400, 403, 410)	
19	Exhibit 5 relies on data from	
20	the NCIC showing an increase in reported firearm thefts, but	
21	the Exhibit baselessly	
22	attributes the basis for that increase to an increase in	
23	actual thefts, and not simply an increase in reporting by law	
	enforcement. This is	
24	inadmissible speculation.	
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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.

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

1		on Exhibits 4 and 5, and	
2		because those exhibits are inadmissible for the reasons presented in Objection Nos. 1	
3		and 2 above, the statements lack foundation and should be	
4		stricken.	
5	Objection No. 4:		
6	Defendants' Memorandum of Points and Authorities in	No Citation to Separate Statement/Not Contained in	Sustained:
7	Support of their Motion for	Separate Statement	Overruled:
8	Summary Judgment, pg. 1, lines 14-16 & fn. 4:	Setting out facts and citing supporting evidence in the	
9	"Lax reporting requirements also thwart law enforcement's	memorandum of points and authorities is insufficient. All	
10	ability to investigate actual thefts from legal owners—	material facts must be set forth in the separate statement of	
11	which have increased significantly in recent years	undisputed facts and not simply buried in a mound of	
12	significantly in recent years	paperwork. (<i>Mills v. Forestex</i> Co. (2003) 108 Cal.App.4th	
13	⁴ Freskos, <i>supra</i> , n.2."	625, 640-641.) Indeed, it is the "Golden Rule" of summary	
14	11051055, 544714, 11.2.	judgment: If the facts are not set forth in the separate	
15		statement, they do not exist. (<i>United Cmty. Church v.</i>	
16		Garcin (1991) 231 Cal.App.3d 327, 337, rejected by S.D.	
17		Watercrafts, Inc. v. Wells Fargo Bank, N.A. (2002) 102	
18		Cal.App.4th 308.)	
19		The separate statement serves a due process purpose, informing	
20		the opposing party of the evidence that must be disputed	
21		in order to defeat the motion for summary judgment. The	
22		City's failure to include Exhibit 5 (and the "facts" it	
23		gleans from Exhibit 5) in its separate statement prejudices	
24		Plaintiffs. For they are not properly put on notice of the	
25		facts and evidence the City relies on to support its motion,	
26		and they cannot dispute the truth or accuracy of the facts	
27		and evidence in the manner prescribed by the rules	
28		governing summary judgment	

1	(i.e., through a response to the City's separate statement of	
2	undisputed facts).	
3	Lacks Foundation (Evid. Code, § 403)	
4	Because this statement relies	
5	on Exhibit 5, and because Exhibit 5 is inadmissible for	
6	the reasons presented in Objection No. 2, the statement	
7	lacks foundation and should be stricken.	
8 9	Unduly Prejudicial (Evid. Code, § 352)	
10	The City's statement here relies on Exhibit 5, an article	
11	published by The Trace, a biased news and blog site	
12	funded by Everytown for Gun Safety, ⁴ a nonprofit advocacy	
13	organization that advocates for gun control. ⁵ Exhibit 5	
14	contains some research The Trace claims is "conducted by	
15	The Trace and more than a dozen NBC TV stations" (Ex.	
16	5, pg. 1), ⁶ but it then reveals it is relying on numbers reported	
17	by the National Crime Information Center (NCIC), a	
18	database maintained by the FBI.	
19	An NCIC spokesman is quoted	
20	in the article as stating that the increase could be partially	
21	attributable to a growing number of law enforcement	
22	agencies reporting firearm theft as opposed to an actual	
23	increase in firearm theft (Ex. 5, pg. 1), which means the claim	
24	the City is making herethat firearm thefts "have increased	
25	 	

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

1 2		significantly in recent years"could very well be false, and would thus be misleading and unduly prejudicial.	
3		Inadmissible Speculation and	
4		Conclusions (Evid. Code, §§ 400, 403, 410)	
5 6		The City's statement here relies on Exhibit 5, which in	
7		turn relies on data from the NCIC showing an increase in	
8		reported firearm thefts, but the Exhibit baselessly attributes	
9		the basis for that increase to an increase in actual thefts, and	
10		not simply an increase in reporting by law enforcement. This is inadmissible	
11		speculation.	
12	Objection No. 5:		
13	Defendants' Memorandum of Points and Authorities in	No Citation to Separate Statement/Not Contained in	Sustained:
14	Support of Motion for Summary Judgment, pg. 1,	Separate Statement	Overruled:
15	lines 17-18, pg. 2, line 1 & fn. 5, which read:	Setting out facts and citing supporting evidence in the	
16	The consequences of	memorandum of points and authorities is insufficient. All	
17	escalating firearm thefts are devastating: an analysis of tens	material facts must be set forth in the separate statement of	
18	of thousands of stolen guns recovered by police from 2010	undisputed facts and not simply buried in a mound of	
19	to 2016 found that the majority of weapons were recovered	paperwork. (<i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th	
20	only <i>after</i> being used in a crime (and not before). ⁵	625, 640-641.) Indeed, it is the "Golden Rule" of summary	
21		judgment: If the facts are not set forth in the separate	
22	5 Freskos, supra, n.2."	statement, they do not exist. (<i>United Cmty. Church v.</i>	
23		Garcin (1991) 231 Cal.App.3d 327, 337, rejected by S.D.	
24		Watercrafts, Inc. v. Wells Fargo Bank, N.A. (2002) 102	
25		Cal.App.4th 308.)	
26		The separate statement serves a due process purpose, informing the opposing party of the	
2728		the opposing party of the evidence that must be disputed in order to defeat the motion	
20		in order to deteat the motion	

for summary judgment. The 1 City's failure to include Exhibit 5 (and the "facts" it 2 gleans from Exhibit 5) in its 3 separate statement prejudices Plaintiffs. For they are not properly put on notice of the 4 facts and evidence the City relies on to support its motion, 5 and they cannot dispute the truth or accuracy of the facts 6 and evidence in the manner 7 prescribed by the rules governing summary judgment (i.e., through a response to the 8 City's separate statement of 9 undisputed facts). **Lacks Foundation (Evid.** 10 Code, § 403) 11 Because this statement relies on Exhibit 5, and because 12 Exhibit 5 is inadmissible for 13 the reasons presented in Objection No. 2, the statement lacks foundation and should be 14 stricken. 15 **Unduly Prejudicial (Evid.** Code, § 352) 16 17 The City's statement here relies on Exhibit 5, an article published by The Trace, a 18 biased news and blog site funded by Everytown for Gun 19 Safety,⁷ a nonprofit advocacy organization that advocates for 20 gun control.⁸ Exhibit 5 contains some research The 21 Trace claims is "conducted by The Trace and more than a 22 dozen NBC TV stations" (Ex. 5, pg. 1),9 but it then reveals it 23 is relying on numbers reported by the National Crime 24 Information Center (NCIC), a 25

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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.

1		database maintained by the FBI.	
2 3 4 5 6 7		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 herethat firearm thefts are "escalating"-	
8 9		-could very well be false, and would thus be misleading and unduly prejudicial.	
10 11		Inadmissible Speculation and Conclusions (Evid. Code, §§ 400, 403, 410)	
12		The City's statement here relies on Exhibit 5, which in	
13 14		turn relies on data from the NCIC showing an increase in reported firearm thefts, but the Exhibit baselessly attributes	
15 16		the basis for that increase to an increase in actual thefts, and not simply an increase in	
17 18		reporting by law enforcement. This is inadmissible speculation.	
19	Objection No. 6:		
20	Defendants' Memorandum of Points and Authorities in Support of Motion for	No Citation to Separate Statement/Not Contained in Separate Statement	Sustained:
21	Summary Judgment, pg. 8,	•	Overruled.
22	line 8 & fn. 9, which states in pertinent part:	Setting out facts and citing supporting evidence in the memorandum of points and	
23	"Theft patterns differ across regions.9	authorities is insufficient. All material facts must be set forth	
24	. 8	in the separate statement of undisputed facts and not	
25	⁹ See Freskos, supra n.2	simply buried in a mound of paperwork. (<i>Mills v. Forestex</i>	
26	(explaining 'thieves were more likely to break into homes in	Co. (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the	
27	areas where gun ownership rates were high')."	"Golden Rule" of summary judgment: If the facts are not	
28		set forth in the separate	

1		statement, they do not exist. (<i>United Cmty. Church v.</i>	
2		Garcin (1991) 231 Cal.App.3d 327, 337, rejected by S.D.	
3		Watercrafts, Inc. v. Wells Fargo Bank, N.A. (2002) 102	
4		Cal.App.4th 308.)	
5		The separate statement serves a due process purpose, informing	
6		the opposing party of the evidence that must be disputed	
7		in order to defeat the motion for summary judgment. The	
8		City's failure to include Exhibit 5 (and the "facts" it	
9		gleans from Exhibit 5) in its separate statement prejudices	
10		Plaintiffs. For they are not properly put on notice of the	
11		facts and evidence the City relies on to support its motion,	
12		and they cannot dispute the truth or accuracy of the facts	
13		and evidence in the manner prescribed by the rules	
14		governing summary judgment (i.e., through a response to the	
15		City's separate statement of undisputed facts).	
16		Lacks Foundation (Evid.	
17		Code, § 403)	
18		Because these statements rely on Exhibit 5, and because	
19		Exhibit 5 is inadmissible for the reasons presented in	
20		Objection No. 2, the statements lack foundation and should be	
21		stricken.	
22	Objection No. 7:		
23	Declaration of James Allison	No Citation to Separate Statement/Not Contained in	Sustained:
24	in Support of Defendants' Motion for Summary	Separate Statement	Overruled:
25	Judgment, Exhibit 6 (Daniel W. Webster et al., "Preventing	Setting out facts and citing supporting evidence in the	
26	the Diversion of Guns to Criminals Through Effective	memorandum of points and authorities is insufficient. All	
27	Firearm Sales Laws," in	material facts must be set forth in the separate statement of	
28	Reducing Gun Violence in America: Informing Policy	undisputed facts and not	

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

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

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

1	recovered by police within 10	paperwork. (Mills v. Forestex	
2	miles of the [firearms dealer]	Co. (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the	
	where they were first purchased.'10	"Golden Rule" of summary	
3	purchased.	judgment: If the facts are not set forth in the separate	
4		statement, they do not exist.	
_	¹⁰ Douglas J. Wiebe et al.,	(United Cmty. Church v.	
5	"Homicide and Geographic Access to Gun Dealers in the	Garcin (1991) 231 Cal.App.3d 327, 337, rejected by S.D.	
6	United States," BMC Public	Watercrafts, Inc. v. Wells	
7	Health 9:199 (2009): 2, 7,	Fargo Bank, N.A. (2002) 102 Cal.App.4th 308.)	
	http://www.biomedcentral.com	,	
8	/1471-2458/9/199."	The separate statement serves a due process purpose, informing	
9		the opposing party of the	
10		evidence that must be disputed in order to defeat the motion	
10		for summary judgment. The	
11		City's failure to include Exhibit 12 (and the "facts" it	
12		gleans from Exhibit 12) in its	
13		separate statement prejudices Plaintiffs. For they are not	
13		properly put on notice of the	
14		facts and evidence the City	
15		relies on to support its motion, and they cannot dispute the	
1.0		truth or accuracy of the facts	
16		and evidence in the manner prescribed by the rules	
17		governing summary judgment	
18		(i.e., through a response to the City's separate statement of	
		undisputed facts).	
19		Lacks Foundation (Evid.	
20		Code, § 403)	
21		Because this statement relies	
		on Exhibit 12, and because	
22		Exhibit 12 is inadmissible for the reasons presented in	
23		Objection No. 9, the statement	
24		lacks foundation and should be stricken.	
		Sureken.	
25	Objection No. 11:		
26	Declaration of James Allison	No Citation to Separate	Sustained:
27	in Support of Defendants'	Statement/Not Contained in Separate Statement	Overruled:
	Motion for Summary Judgment, Exhibit 13 (Jennifer	_	<u> </u>
28	L. Pomeranz & Mark	Setting out facts and citing	
		15	

1	Pertschuk, State Preemption:	supporting evidence in the	
2	A Significant and Quiet Threat	memorandum of points and	
2	to Public Health in the United	authorities is insufficient. All material facts must be set forth	
3	States, 107 Am. J. Public	in the separate statement of	
	Health 900, 900 (2017).)	undisputed facts and not	
4		simply buried in a mound of	
5		paperwork. (<i>Mills v. Forestex</i> Co. (2003) 108 Cal.App.4th	
5		625, 640-641.) Indeed, it is the	
6		"Golden Rule" of summary	
7		judgment: If the facts are not	
7		set forth in the separate statement, they do not exist.	
8		(United Cmty. Church v.	
0		Garcin (1991) 231 Cal.App.3d	
9		327, 337, rejected by S.D. Watercrafts, Inc. v. Wells	
10		Fargo Bank, N.A. (2002) 102	
		Cal.App.4th 308.)	
11		The separate statement serves a	
12		due process purpose, informing	
		the opposing party of the	
13		evidence that must be disputed in order to defeat the motion	
14		for summary judgment. The	
		City's failure to include	
15		Exhibit 13 (and the "facts" it	
16		gleans from Exhibit 13) in its separate statement prejudices	
10		Plaintiffs. For they are not	
17		properly put on notice of the	
18		facts and evidence the City relies on to support its motion,	
10		and they cannot dispute the	
19		truth or accuracy of the facts	
20		and evidence in the manner	
20		prescribed by the rules governing summary judgment	
21		(i.e., through a response to the	
22		City's separate statement of	
22		undisputed facts).	
23	Objection No. 12:		
24	Defendants' Memorandum of	No Citation to Sonarate	Sustained:
24	Points and Authorities in	No Citation to Separate Statement/Not Contained in	Sustailieu.
25	Support of their Motion for	Separate Statement	Overruled:
26	Summary Judgment, pg. 13,	Catting out foots and siting	
26	fn. 13, which states:	Setting out facts and citing supporting evidence in the	
27	"In contrast to California's	memorandum of points and	
	narrow preemption of defined	authorities is insufficient. All	
28		material facts must be set forth	
		1.6	

1 areas of gun regulation, fortythree 2 states preempt all, or substantially all, aspects of 3 firearms regulation. See Jennifer L. Pomeranz & Mark 4 Pertschuk, State Preemption: 5 A Significant and Quiet Threat to Public Health in the United 6 States, 107 Am. J. PUBLIC HEALTH 900, 900 (2017). 7 These states' preemption statutes are an instructive 8 comparison, as many of 9 them-modeled after legislation promoted by the 10 gun industry, see id.—express a boilerplate preference for 11 uniform gun laws throughout the state. See, e.g., Ala. Code § 12 13A-11-61.3 ("The purpose of 13 this section is to establish within the Legislature 14 complete control over regulation and policy 15 pertaining to firearms, 16 ammunition, and firearm accessories in order to ensure 17 that such regulation and policy is applied uniformly 18 throughout this state"); Idaho Code Ann. § 18-3302J(1) 19 (announcing "legislature's 20 intent to wholly occupy the field of firearms 21 regulation within this state"); Utah Code § 76-10-500 22 (firearm preemption law declaring "the need to provide 23 uniform laws throughout the 24 state"). With good reason, this is not the path California has 25 chosen. See, e.g., Pomeranz at 900 (industry-backed 26 preemption laws tie municipalities' hands, leaving 27 them "unable to address acute

28

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 iudgment: 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 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

2	public health issues" best solved at the local level)." (underlining added for clarity)	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
12		legal analysis of preemption in California.
13		Cangoriua.
14	IT IS SO ORDERED.	
6 I	Dated:	
17		Honorable Peter Kirwan
.8		Judge of the Superior Court
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