

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

(TYPE OR PRINT NAME)



s/ Anna M. Barvir

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: G. Mitchell Kirk, et al. v. City of Morgan Hill, et al.	CASE NUMBER: 19CV346360
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**PROOF OF ELECTRONIC SERVICE**  
**PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action**.
    - a. My residence or business address is (*specify*):  
180 East Ocean Boulevard, Suite 200, Long Beach, California 90802
    - b. My electronic service address is (*specify*): tharbor@michellawyers.com
  2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:
    - a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):  
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
    - b. To (*electronic service address of person served*): rthompson@fbm.com; jallison@fbm.com;  
hshearer@giffords.org; hfriedman@giffords.org
    - c. On (*date*): June 11, 2020
- ☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: June 11, 2020

Tiffany M. Harbor  
\_\_\_\_\_  
(TYPE OR PRINT NAME OF DECLARANT)

 s/ Tiffany M. Harbor  
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(SIGNATURE OF DECLARANT)

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

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

Plaintiffs and Petitioners,

vs.

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

Defendants and Respondents

Case No: 19CV346360

**[PROPOSED] ORDER RE: PLAINTIFFS’  
EVIDENTIARY OBJECTIONS IN  
SUPPORT OF OPPOSITION TO  
DEFENDANTS’ MOTION FOR  
SUMMARY JUDGMENT**

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

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

Action filed: April 15, 2019

Material Objected To	Grounds for Objection	Ruling on the Objection
<b>Objection No. 1:</b>  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).)	<b>No Citation to Separate Statement/Not Contained in Separate Statement</b>  Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. ( <i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the "Golden Rule" of summary judgment: If the facts are not set forth in the separate statement, they do not exist. ( <i>United Cmty. Church v. Garcin</i> (1991) 231 Cal.App.3d 327, 337, rejected by <i>S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308.)  The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City's failure to include Exhibit 4 (and the "facts" it gleans from Exhibit 4) in its separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts and evidence the City relies on to support its motion, and they cannot dispute the truth or accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to the City's separate statement of undisputed facts).	Sustained: _____  Overruled: _____

**Objection No. 2:**

Declaration of James Allison  
in Support of Defendants’  
Motion for Summary  
Judgment, Exhibit 5 (Brian  
Freskos, *Missing Pieces: Gun  
Theft from Legal Gun Owners  
is on the Rise, Quietly Fueling  
Violent Crime*, The Trace,  
November 20, 2017,  
<https://bit.ly/2izST1h>)

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

Setting out facts and citing  
supporting evidence in the  
memorandum of points and  
authorities is insufficient. All  
material facts must be set forth  
in the separate statement of  
undisputed facts and not  
simply buried in a mound of  
paperwork. (*Mills v. Forestex  
Co.* (2003) 108 Cal.App.4th  
625, 640-641.) Indeed, it is the  
“Golden Rule” of summary  
judgment: If the facts are not  
set forth in the separate  
statement, they do not exist.  
(*United 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

Sustained: \_\_\_\_\_

Overruled: \_\_\_\_\_

1		published by The Trace, a biased news and blog site funded by Everytown for Gun Safety, <sup>1</sup> a nonprofit advocacy organization that advocates for gun control. <sup>2</sup> 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), <sup>3</sup> but it then reveals it is relying on numbers reported by the National Crime Information Center (NCIC), a database maintained by the FBI.	
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10		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 well be false, and Exhibit 5 would thus be misleading and unduly prejudicial.	
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18		<b>Inadmissible Speculation and Conclusions (Evid. Code, §§ 400, 403, 410)</b>	
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20		Exhibit 5 relies on data from the NCIC showing an increase in reported firearm thefts, but the Exhibit baselessly attributes the basis for that increase to an increase in actual thefts, and not simply an increase in reporting by law enforcement. This is inadmissible speculation.	
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<sup>1</sup> “Donor and Financial Transparency”, The Trace <<https://www.thetrace.org/donor-financial-transparency/>> (as of June 5, 2020).

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

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

**Objection No. 3:**

Defendants' Memorandum of Points and Authorities in Support of their Motion for Summary Judgment, pg. 1, lines 10-12 & fn. 2:

"Guns are stolen from an individual owner roughly once every two minutes, but nationally up to 40% of guns that are lost or stolen go unreported."<sup>2</sup>

<sup>2</sup> David Hemenway, Deborah Azrael, and Matthew Miller, "Whose Guns are Stolen? The Epidemiology of Gun Theft Victims," Injury Epidemiology 4, no. 1 (2017); Brian Freskos, "Missing Pieces: Gun Theft from Legal Gun Owners is on the Rise, Quietly Fueling Violent Crime, The Trace, November 20, 2017, <https://bit.ly/2izST1h>. The latter report used public records requests to compile national data on guns reported lost or stolen to law enforcement."

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

Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the "Golden Rule" of summary judgment: If the facts are not set forth in the separate statement, they do not exist. (*United 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).

**Lacks Foundation (Evid. Code, § 403)**

Because these statements rely

Sustained: \_\_\_\_\_

Overruled: \_\_\_\_\_

1		on Exhibits 4 and 5, and because those exhibits are inadmissible for the reasons presented in Objection Nos. 1 and 2 above, the statements lack foundation and should be stricken.	
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5	<b>Objection No. 4:</b>		
6	Defendants' Memorandum of Points and Authorities in Support of their Motion for Summary Judgment, pg. 1, lines 14-16 & fn. 4:	<b>No Citation to Separate Statement/Not Contained in Separate Statement</b>	Sustained: _____
7			Overruled: _____
8	"Lax reporting requirements also thwart law enforcement's ability to investigate actual thefts from legal owners—which have increased significantly in recent years... <sup>4</sup>	Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. ( <i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the "Golden Rule" of summary judgment: If the facts are not set forth in the separate statement, they do not exist. ( <i>United Cmty. Church v. Garcin</i> (1991) 231 Cal.App.3d 327, 337, rejected by <i>S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308.)	
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13	<sup>4</sup> Freskos, <i>supra</i> , n.2."		
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1	(i.e., through a response to the	
2	City's separate statement of	
3	undisputed facts).	
4	<b>Lacks Foundation (Evid.</b>	
5	<b>Code, § 403)</b>	
6	Because this statement relies	
7	on Exhibit 5, and because	
8	Exhibit 5 is inadmissible for	
9	the reasons presented in	
10	Objection No. 2, the statement	
11	lacks foundation and should be	
12	stricken.	
13	<b>Unduly Prejudicial (Evid.</b>	
14	<b>Code, § 352)</b>	
15	The City's statement here	
16	relies on Exhibit 5, an article	
17	published by The Trace, a	
18	biased news and blog site	
19	funded by Everytown for Gun	
20	Safety, <sup>4</sup> a nonprofit advocacy	
21	organization that advocates for	
22	gun control. <sup>5</sup> Exhibit 5	
23	contains some research The	
24	Trace claims is "conducted by	
25	The Trace and more than a	
26	dozen NBC TV stations" (Ex.	
27	5, pg. 1), <sup>6</sup> but it then reveals it	
28	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 claim	
	the City is making here--that	
	firearm thefts "have increased	

<sup>4</sup> "Donor and Financial Transparency," The Trace <<https://www.thetrace.org/donor-financial-transparency/>> (as of June 5, 2020).

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

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

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

1 for summary judgment. The  
2 City's failure to include  
3 Exhibit 5 (and the "facts" it  
4 gleans from Exhibit 5) in its  
5 separate statement prejudices  
6 Plaintiffs. For they are not  
7 properly put on notice of the  
8 facts and evidence the City  
9 relies on to support its motion,  
10 and they cannot dispute the  
11 truth or accuracy of the facts  
12 and evidence in the manner  
13 prescribed by the rules  
14 governing summary judgment  
15 (i.e., through a response to the  
16 City's separate statement of  
17 undisputed facts).

18 **Lacks Foundation (Evid.  
19 Code, § 403)**

20 Because this statement relies  
21 on Exhibit 5, and because  
22 Exhibit 5 is inadmissible for  
23 the reasons presented in  
24 Objection No. 2, the statement  
25 lacks foundation and should be  
26 stricken.

27 **Unduly Prejudicial (Evid.  
28 Code, § 352)**

The City's statement here  
relies on Exhibit 5, an article  
published by The Trace, a  
biased news and blog site  
funded by Everytown for Gun  
Safety,<sup>7</sup> a nonprofit advocacy  
organization that advocates for  
gun control.<sup>8</sup> 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),<sup>9</sup> but it then reveals it  
is relying on numbers reported  
by the National Crime  
Information Center (NCIC), a

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

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

<sup>9</sup> 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		An NCIC spokesman is quoted in the article as stating that the increase could be partially attributable to a growing number of law enforcement agencies reporting firearm theft as opposed to an actual increase in firearm theft (Ex. 5, pg. 1), which means the claim the City is making here--that firearm thefts are "escalating"--could very well be false, and would thus be misleading and unduly prejudicial.	
3		<b>Inadmissible Speculation and Conclusions (Evid. Code, §§ 400, 403, 410)</b>	
4		The City's statement here relies on Exhibit 5, which in turn relies on data from the NCIC showing an increase in reported firearm thefts, but the Exhibit baselessly attributes the basis for that increase to an increase in actual thefts, and not simply an increase in reporting by law enforcement. This is inadmissible speculation.	
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19	<b>Objection No. 6:</b>		
20	Defendants' Memorandum of Points and Authorities in Support of Motion for Summary Judgment, pg. 8, line 8 & fn. 9, which states in pertinent part:	<b>No Citation to Separate Statement/Not Contained in Separate Statement</b>	Sustained: _____
21	"Theft patterns differ across regions." <sup>9</sup>	Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. ( <i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the "Golden Rule" of summary judgment: If the facts are not set forth in the separate	Overruled: _____
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26	<sup>9</sup> See Freskos, supra n.2 (explaining 'thieves were more likely to break into homes in areas where gun ownership rates were high')."		
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	<p>statement, they do not exist. (<i>United Cmty. Church v. Garcin</i> (1991) 231 Cal.App.3d 327, 337, rejected by <i>S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308.)</p> <p>The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City’s failure to include Exhibit 5 (and the “facts” it gleans from Exhibit 5) in its separate statement prejudices Plaintiffs. For they are not properly put on notice of the facts and evidence the City relies on to support its motion, and they cannot dispute the truth or accuracy of the facts and evidence in the manner prescribed by the rules governing summary judgment (i.e., through a response to the City’s separate statement of undisputed facts).</p> <p><b>Lacks Foundation (Evid. Code, § 403)</b></p> <p>Because these statements rely on Exhibit 5, and because Exhibit 5 is inadmissible for the reasons presented in Objection No. 2, the statements lack foundation and should be stricken.</p>	
<p><b>Objection No. 7:</b></p> <p>Declaration of James Allison in Support of Defendants’ Motion for Summary Judgment, Exhibit 6 (Daniel W. Webster et al., “Preventing the Diversion of Guns to Criminals Through Effective Firearm Sales Laws,” in <i>Reducing Gun Violence in America: Informing Policy</i></p>	<p><b>No Citation to Separate Statement/Not Contained in Separate Statement</b></p> <p>Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

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

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

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



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

<p>Pertschuk, <i>State Preemption: A Significant and Quiet Threat to Public Health in the United States</i>, 107 Am. J. Public Health 900, 900 (2017).)</p>	<p>supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth in the separate statement of undisputed facts and not simply buried in a mound of paperwork. (<i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the “Golden Rule” of summary judgment: If the facts are not set forth in the separate statement, they do not exist. (<i>United Cmty. Church v. Garcin</i> (1991) 231 Cal.App.3d 327, 337, rejected by <i>S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308.)</p> <p>The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City’s failure to include Exhibit 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).</p>	
<p><b>Objection No. 12:</b></p> <p>Defendants’ Memorandum of Points and Authorities in Support of their Motion for Summary Judgment, pg. 13, fn. 13, which states:</p> <p>“In contrast to California’s narrow preemption of defined</p>	<p><b>No Citation to Separate Statement/Not Contained in Separate Statement</b></p> <p>Setting out facts and citing supporting evidence in the memorandum of points and authorities is insufficient. All material facts must be set forth</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>areas of gun regulation, forty-three states preempt all, or substantially all, aspects of firearms regulation. <i>See</i> <u>Jennifer L. Pomeranz &amp; Mark Pertschuk, <i>State Preemption: A Significant and Quiet Threat to Public Health in the United States</i>, 107 AM. J. PUBLIC HEALTH 900, 900 (2017).</u></p> <p>These states’ preemption statutes are an instructive comparison, as many of them—modeled after legislation promoted by the gun industry, <i>see id.</i>—express a boilerplate preference for uniform gun laws throughout the state. <i>See, e.g.,</i> Ala. Code § 13A-11-61.3 (“The purpose of this section is to establish within the Legislature complete control over regulation and policy pertaining to firearms, ammunition, and firearm accessories in order to ensure that such regulation and policy is applied uniformly throughout this state”); Idaho Code Ann. § 18-3302J(1) (announcing “legislature’s intent to wholly occupy the field of firearms regulation within this state”); Utah Code § 76-10-500 (firearm preemption law declaring “the need to provide uniform laws throughout the state”). With good reason, this is not the path California has chosen. <i>See, e.g., Pomeranz at 900 (industry-backed preemption laws tie municipalities’ hands, leaving them “unable to address acute</i></p>	<p>in the separate statement of undisputed facts and not simply buried in a mound of paperwork. (<i>Mills v. Forestex Co.</i> (2003) 108 Cal.App.4th 625, 640-641.) Indeed, it is the “Golden Rule” of summary judgment: If the facts are not set forth in the separate statement, they do not exist. (<i>United Cmty. Church v. Garcin</i> (1991) 231 Cal.App.3d 327, 337, rejected by <i>S.D. Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> (2002) 102 Cal.App.4th 308.)</p> <p>The separate statement serves a due process purpose, informing the opposing party of the evidence that must be disputed in order to defeat the motion for summary judgment. The City’s failure to include Exhibit 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).</p> <p><b>Lacks Foundation (Evid. Code, § 403)</b></p> <p>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.</p> <p><b>Relevance (Evid. Code, § 210)</b></p> <p>The City’s statements, relying</p>
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<p>1 <u>public health issues” best</u></p> <p>2 <u>solved at the local level).”</u></p> <p>3 (underlining added for clarity)</p>	<p>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.</p> <p>What’s more, much of what the City relies on in Exhibit 13 addresses the way <i>other</i> states have opted to preempt all manner of firearm regulation. That is wholly irrelevant to the legal analysis of preemption in <i>California</i>.</p>	
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14 **IT IS SO ORDERED.**

15 Dated: \_\_\_\_\_

16 \_\_\_\_\_  
17 Honorable Peter Kirwan  
18 Judge of the Superior Court