

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE SIXTH APPELLATE DISTRICT

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

Case No. H048745

PLAINTIFFS AND APPELLANTS,

V.

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.

**APPELLANTS' APPENDIX  
VOLUME I OF XI  
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Superior Court of California, County of Santa Clara  
Case No. 19CV346360  
Honorable Judge Peter H. Kirwan

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

DOWNTOWN COURTHOUSE

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

Plaintiffs and Petitioners,

15 vs.

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

Defendants and Respondents.

CASE NO. 19CV346360

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF; VERIFIED  
PETITION FOR WRIT OF MANDATE  
AND/OR PROHIBITION OR OTHER  
APPROPRIATE RELIEF**



## INTRODUCTION

### I. NATURE OF THE CASE

1. On October 24, 2018, Defendant and Respondent CITY OF MORGAN HILL (the “City”) adopted Ordinance No. 2289 (the “Ordinance”) to amend, inter alia, section 9.04.030 of the Morgan Hill Municipal Code.

2. The intended effect of the Ordinance was to impose upon victims of firearm theft a mandatory requirement that they report such theft to law enforcement. Under the new law, victims of firearm theft in the City—whether residents or visitors—must now report to the City’s Police Department that a firearm has been stolen within 48 hours of the theft or within 48 hours after the victim reasonably becomes aware of the theft.

3. As amended by the Ordinance, the new language of Morgan Hill Municipal Code 9.04.030 reads as follows:

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.

The language of the Ordinance, as now codified at Municipal Code 9.04.030, is the subject of this lawsuit.<sup>1</sup>

4. California voters enacted Proposition 63 (“Prop 63”) on November 8, 2016. Prop

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<sup>1</sup> Municipal Code 9.04.030’s language mirrors language of theft reporting ordinances recently adopted by other California cities. (See, e.g., Palm Springs Municipal Code 11.16.040 [Ordinance 1899, § 1, adopted 2016] [nearly identical to Morgan Hill Municipal Code 9.04.030].) On information and belief, the Giffords Law Center to Prevent Gun Violence drafted the language of the Ordinance now codified at Morgan Hill Municipal Code 9.04.030 as well as other cities’ similarly worded theft-reporting laws, and then lobbied those cities to adopt the lobbyist-drafted language as a local ordinance notwithstanding the clear preemption of local theft-reporting laws by Prop 63 or the attendant legal liability adopting a preempted ordinance would bring to those cities.

63 was an omnibus gun-control initiative that included, among other things, a mandatory reporting requirement for all victims of firearm theft within the state. Prop 63 created Penal Code section 25250, which requires victims of firearm theft within the state to report to a local law enforcement agency that a firearm has been stolen within *five days* of the theft or within five days after the victim reasonably becomes aware of the theft.

5. By passing Prop 63 and enacting section 25250, voters caused state law to occupy the whole of the field of firearm-theft-reporting, such that a local ordinance that purports to prescribe reporting requirements for firearm theft, like the Ordinance, is preempted.

6. Moreover, Penal Code section 25250 contains a less onerous requirement for firearm victims to report theft, such that the Ordinance criminalizes conduct that the voters of the state have deemed to be permissible—waiting up to five days instead of 48 hours—to report a firearm theft to law enforcement. Thus, the Ordinance and its codification directly conflict with section 25250.

7. California Rifle & Pistol Association, Incorporated notified the City in writing that section 25250 preempted the Ordinance and requested that the City voluntarily repeal the Ordinance. The City, however, ignored the guidance and refused to repeal the Ordinance.

8. Because those preempted portions of the Ordinance continue to remain in effect, and because there is a danger that firearm-theft victims who reside in or who are victimized in the City may be subject to prosecution for conduct that Penal Code section 25250 deems lawful, Plaintiffs-Petitioners seek judicial relief declaring the Ordinance, codified at Municipal Code 9.04.030, to be void as preempted by state law.

9. Plaintiffs-Petitioners further seek to enjoin Defendants-Respondents<sup>2</sup> from training their law enforcement officers on the enforcement of the Ordinance. They further request a writ of mandate or of prohibition or both directing the City Clerk to strike Municipal Code 9.04.030 from the Morgan Hill Municipal Code.

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<sup>2</sup> In matters combining a complaint for declaratory relief and a writ petition, the parties are uniformly referred to as “plaintiff” and “defendant.” (See Code Civ. Proc., §§ 308 & 1063.)

1 **II. DECLARATORY AND WRIT RELIEF IS NECESSARY**

2 10. Declaratory and writ relief is warranted because: (1) an actual controversy has  
3 arisen and now exists between Plaintiffs and Defendants over the validity of the Ordinance; and  
4 (2) there is no adequate remedy in the ordinary course of law.

5 11. The Ordinance, codified at Municipal Code 9.04.030, took effect on October 24,  
6 2018, and has since its enactment been in full force and effect. On information and belief,  
7 Plaintiffs allege that Defendants have, since the law took effect, enforced and currently are  
8 enforcing 9.04.030.

9 12. Thus, victims of firearm theft risk unlawful enforcement and prosecution for  
10 engaging in conduct that California voters deemed lawful. A judicial declaration is necessary and  
11 appropriate at this time so that Plaintiffs may ascertain their rights and duties without first  
12 subjecting themselves to criminal liability by violating the Ordinance. Moreover, Defendants'  
13 ongoing enforcement of an invalid law constitutes a waste of taxpayer funds and an undue burden  
14 on Plaintiffs.

15 **PARTIES**

16 **I. PLAINTIFFS**

17 13. Plaintiff G. MITCHELL KIRK is a resident of Morgan Hill, California, and a  
18 firearm owner. In the event Mr. Kirk is a victim of firearm theft, he is subject to the requirements  
19 of the Ordinance. If he reports such theft to the City's police department within 120 hours after the  
20 theft occurred or he reasonably discovered it to have occurred, he would be subject to prosecution  
21 under the Ordinance, even though his conduct would conform with Penal Code section 25250. Mr.  
22 Kirk has, within the past year, paid sales taxes and property taxes while a resident of the City, with  
23 portions of the proceeds of those taxes transferred to the City for funding general law enforcement  
24 activities of its police department, including training its officers on the enforcement of the  
25 Ordinance.

26 14. Plaintiff CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED  
27 ("CRPA") is a nonprofit membership organization incorporated under the laws of California with  
28 headquarters in Fullerton, California. Among its other activities, CRPA works to preserve and

1 expand constitutional and statutory rights of gun ownership, including the right to self-defense and  
2 the right to keep and bear arms. CRPA accomplishes this through their many educational  
3 offerings, publications, member engagement events, support of legislation, and legislative  
4 initiatives. CRPA has tens of thousands of members and supporters, many of whom reside in  
5 Morgan Hill or the surrounding county, conduct business in Morgan Hill, visit or travel through  
6 Morgan Hill, or are otherwise subject to the Morgan Hill Municipal Code. Their members are  
7 firearm retailers, sportsmen, hunters, junior and youth competitors, Olympians, police officers,  
8 professionals, and loving parents and grandparents. CRPA represents all its members both in their  
9 general interest as citizens and in their particular interest in the right to lawfully own and possess  
10 firearms.

## 11 **II. DEFENDANTS**

12 15. Defendant CITY OF MORGAN HILL is a municipal corporation formed under the  
13 laws of California. The City is the entity that enacted, and is beneficially interested in, the  
14 Ordinance.

15 16. Defendant DAVID SWING is the Chief of Police of the Morgan Hill Police  
16 Department. He is sued in his official capacity. He is charged with enforcing the Ordinance, as  
17 codified in the Morgan Hill Municipal Code.

18 17. Defendant IRMA TORREZ is the City Clerk of Morgan Hill. She is sued in her  
19 official capacity. She is charged with recording, keeping, and printing the ordinances of the City,  
20 including the Ordinance referenced in this Complaint. She is charged with recording and printing  
21 the codification of such ordinances within the Municipal Code for the City.

22 18. Plaintiff is unaware and genuinely ignorant of the true identities of DOES 1  
23 through 10. Doe Defendants are fictitiously named. The true names and capacities, whether an  
24 individual, corporation, heirs, assigns, successor in interest, or otherwise, of the Doe Defendants,  
25 are unknown to Plaintiff at the time of filing of this complaint and petition. Plaintiff will amend  
26 this complaint and petition to show the true names and capacities of these Doe Defendants when  
27 the same have been ascertained. Plaintiff is informed, and believes, and on that basis alleges, that  
28 at all times herein mentioned, Defendants fictitiously designated, and each of them, were the

1 agents, servants, employees, representatives, and/or other persons or entities acting or purporting  
2 to act on Defendants' behalf or over whom Defendants exercise management and control, and  
3 were at all times herein mentioned within the course and scope of such agency and/or  
4 employment. Plaintiff is informed and believes, and on that basis alleges, that each of the  
5 Defendants named as DOES 1 through 10 were in some manner acting unlawfully or otherwise  
6 responsible for the events and happenings hereinafter alleged.

### 7 **JURISDICTION AND VENUE**

8 19. This Court has jurisdiction under sections 525, 526, 1060 and 1085 of the  
9 California Code of Civil Procedure. Plaintiffs lack under section 1086 a "plain, speedy, and  
10 adequate remedy, in the ordinary course of law."

11 20. Because this action is brought against the city of Morgan Hill and its public  
12 officers, Plaintiffs properly bring this action in the county of Santa Clara. (Code Civ. Proc., §§  
13 393, subd. (b), & 394, subd.(a).) Further, at least one Plaintiff resides in the city of Morgan Hill  
14 and the county of Santa Clara.

### 15 **FIRST CAUSE OF ACTION**

#### 16 **FOR DECLARATORY AND INJUNCTIVE RELIEF**

#### 17 **(By All Plaintiffs Against All Defendants)**

18 21. Plaintiffs reallege Paragraphs 1 through 20 and incorporate them as to this cause of  
19 action as though fully set forth herein.

20 22. An actual controversy has arisen and now exists between Plaintiffs and Defendants  
21 relative to their respective rights and duties under the Ordinance, as codified in Morgan Hill  
22 Municipal Code 9.04.030. Plaintiffs contend that the Ordinance is invalid and unenforceable  
23 because it is preempted by state law. On information and belief, Defendants dispute this  
24 contention and contend the Ordinance is valid, continue to print the Ordinance as codified in the  
25 Municipal Code, and continue to enforce the Ordinance, and train their officers to enforce the  
26 Ordinance.

27 23. Plaintiffs desire a declaration on the validity of the Ordinance, as codified in  
28 Municipal Code 9.04.030. A judicial declaration is necessary and appropriate so that Plaintiffs

1 may ascertain their rights and duties without first subjecting themselves to criminal liability by  
2 violating the Ordinance.

3 24. To resolve this controversy, Plaintiffs request that, under Code of Civil Procedure  
4 section 1060, this Court declare that the Ordinance is preempted by state law because: (1) it  
5 duplicates state law that obligates victims of firearms theft to report such theft to a law  
6 enforcement agency; (2) it contradicts state law that sets for the maximum time period by which  
7 such theft must be reported; or (3) it enters into areas fully occupied by the state.

8 25. In addition, Plaintiffs seek an injunction under Code of Civil Procedure sections  
9 525 and 526. The City's wrongful conduct, unless enjoined by order of this Court, will continue to  
10 cause great and irreparable injury to Plaintiffs. For they will be forced to choose between  
11 complying with the reporting requirements of the Ordinance, or complying with the reporting  
12 requirements of Penal Code section 25250 in a manner which violates the Ordinance and causes  
13 Plaintiffs or their members to be subject to local prosecution.

14 26. Further, the City's wrongful conduct, unless enjoined by order of this Court, will  
15 continue to cause great and irreparable injury to Plaintiffs in that Plaintiffs who reside in the City  
16 and who have paid and will continue to pay property tax and sales tax to the City will have such  
17 tax revenue wasted on training and enforcement of a preempted and invalid local ordinance.

18 27. The City's wrongful conduct will be of a continuing nature for which Plaintiffs will  
19 have no adequate remedy at law because it is impossible to determine monetary damages caused  
20 by the City's wrongful conduct.

21 28. Accordingly, Plaintiffs seek a permanent injunction forbidding Defendants, their  
22 agents, employees, representatives, and all those acting in concert with them from enforcing the  
23 Ordinance, and further requiring Defendants to remove corresponding Municipal Code 9.04.030  
24 from the Morgan Hill Municipal Code.

25 **SECOND CAUSE OF ACTION**

26 **FOR A WRIT OF MANDATE AND/OR PROHIBITION**

27 **(By All Plaintiffs Against All Defendants)**

28 29. Plaintiffs reallege Paragraphs 1 through 28 and incorporate them as to this cause of

1 action as though fully set forth herein.

2 30. Based on the plain language and legislative history of Prop 63 and Penal Code  
3 section 25250, the Ordinance, as codified in the Morgan Hill Municipal Code, conflicts with and  
4 is preempted by state law.

5 31. Defendants thus have a clear, present, and ministerial duty *not* to enforce the  
6 Ordinance against Plaintiffs or anyone.

7 32. Plaintiffs are beneficially interested in this matter, as they are subject to  
8 Defendants' enforcement of the Ordinance.

9 33. Defendants' wrongful conduct in enforcing the unlawful Ordinance is of a  
10 continuing nature for which Plaintiffs have no plain, speedy, adequate remedy at law, and which  
11 has and will continue to result in irreparable harm, as set forth above in the general allegations and  
12 First Cause of Action.

13 34. The named individual plaintiffs, and the individuals and entities represented in this  
14 action, are irreparably injured by the mere enactment, existence, and ongoing enforcement of the  
15 invalid Ordinance, the continuing threat of criminal and civil penalties for each separate violation  
16 of the Ordinance, and in the following ways:

17 a. The Ordinance purports to regulate matters already fully occupied by state law. It  
18 also conflicts with state law and deprives Plaintiffs of their rights under these laws,  
19 prohibiting them from actions they wish to take as hereinafter alleged. Plaintiffs are also  
20 irreparably injured as taxpayers and citizens because the Ordinance results in invalid,  
21 improper, and unauthorized conduct of public officials and its administration and  
22 enforcement is a waste of tax funds. Plaintiffs have no adequate remedy at law to redress  
23 these wrongs and protect their rights.

24 b. Plaintiffs, and those represented by Plaintiffs, are lawful firearm owners within the  
25 City who must comply with the Ordinance if they are the victim of a firearm theft. If  
26 Plaintiffs or their members instead chose to comply with state law—Penal Code section  
27 25250—and wait for a period of up to 120 hours after a theft of or learning of a theft of  
28 their firearm to report such theft, they would be subject to prosecution under the Ordinance

1 even though they have fully complied with state law.

2 c. Plaintiffs, and those represented by Plaintiffs who live in the City, are taxpayers  
3 who, within the past year, have paid property tax, or sales tax, or both, with the proceeds  
4 of same, or portions thereof, remitted to the City treasury for use in general law  
5 enforcement purposes. Plaintiffs, as they continue to pay property tax, sales tax, or both,  
6 will continue to see such tax funds wasted in the training of officers of the Morgan Hill  
7 Police Department to enforce the Ordinance, in the enforcement by officers of the  
8 Ordinance, and in the printing, publication, and distribution of the Ordinance, and its  
9 codification in Municipal Code 9.04.030, within the official laws and publications of the  
10 City.

11 d. Plaintiffs and those represented by Plaintiffs, as citizens, properly bring this  
12 complaint for declaratory relief and petition for writ of mandate in the nature of a citizen  
13 mandamus action to promote the public interest in having the general laws obeyed. The  
14 Ordinance is preempted by state law, i.e., Penal Code section 25250. The statute upon  
15 which Plaintiffs rely is intended to assure orderly, consistent, and rational statewide  
16 compliance with firearm-theft-reporting requirements, without regard to whatever  
17 jurisdiction such victim may reside or be passing through. Such a “patchwork” approach  
18 would cause confusion to the public and cause members of the public seeking to comply  
19 with state law to nonetheless be unwitting violators of a local law of which they may have  
20 no knowledge. State law relating to theft-reporting is also intended to provide transparency  
21 and uniform application of laws by law enforcement in order to prevent, e.g., law  
22 enforcement officials in jurisdictions other than the City from having to apply one law to  
23 most victims of firearms theft, but another, more stringent law to a victim of firearms theft  
24 who also happens to be a resident of the City. Thus, the public has an interest in having the  
25 City refrain from enacting and enforcing laws such as the Ordinance, which duplicate or  
26 conflict with state law, otherwise encroach upon a field of law fully occupied by the State,  
27 and cause conflict in other, neighboring jurisdictions where law enforcement may be  
28 required to apply the City’s law in one instance, and state law in another instance, when



1 handling a report of a firearm theft.

2 35. Plaintiffs present important questions of statutory and constitutional interpretation,  
3 questions of public interest which further warrant prompt disposition of this matter.

4 36. Accordingly, Plaintiffs seek a writ of mandate, under Code of Civil Procedure  
5 sections 1085 and 1087, commanding that Defendants (a) stop enforcing the Ordinance, and (b)  
6 remove the Ordinance from any list of municipal ordinances and, specifically, delete the section  
7 requiring the reporting of stolen and lost firearms from Morgan Hill Municipal Code 9.04.030.

8 **PRAYER FOR RELIEF**

9 Wherefore Plaintiffs pray for the following relief:

10 1. For issuance of a declaration that the portion of the challenged Ordinance identified  
11 in Paragraph 3 of this complaint, and codified at Morgan Hill Municipal Code 9.04.030, is  
12 preempted by Penal Code section 25250, and is void and invalid;

13 2. For issuance of a peremptory writ and/or permanent injunction ordering Defendants  
14 to not enforce the Ordinance, and to strike the corresponding Morgan Hill Municipal Code  
15 9.04.030 from its books and records;

16 3. For issuance of a peremptory writ and/or permanent injunction ordering Defendants  
17 to not expend money from the City treasury on training regarding or enforcement of the Ordinance;

18 4. For a declaration that the striking of and enjoining of enforcement of the Ordinance  
19 confers a substantial benefit on the public;

20 5. For an award of reasonable costs of suit and attorney's fees under Code of Civil  
21 Procedure section 1021.5 and under any other state law for which such fees and costs are provided;  
22 and

23 6. For such other relief as may be just and proper.

24  
25 Dated: April 15, 2019

MICHEL & ASSOCIATES, P.C.

26   
27 Anna M. Barvir  
28 Attorneys for Plaintiffs

VERIFICATION

I, the undersigned, declare:

I am one of the petitioners in this action. I have read the above Complaint for Declaratory and Injunctive Relief; Verified Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief and know its contents. All facts regarding my personal circumstances that are alleged in the petition are within my own knowledge, and I know these facts to be true. As to all other facts alleged therein, I am informed and believe, and on those grounds allege, that those matters are also true.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 15, 2019, at Morgan Hill, California.

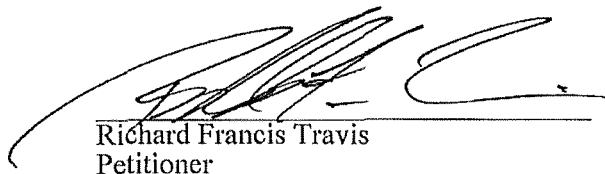
  
G. Mitchell Kirk  
Petitioner

VERIFICATION

I, the undersigned, declare:

I am the Executive Director of California Rifle & Pistol Association, Incorporated (CRPA), one of the petitioners in this action. As Executive Director, I am authorized to make this verification on behalf of CRPA. I have read the above Complaint for Declaratory and Injunctive Relief; Verified Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief and know its contents. All facts alleged in the petition regarding the particular circumstances of CRPA or its members are within my personal knowledge, and I know these facts to be true. As to all other facts alleged therein, I am informed and believe, and on those grounds allege, that those matters are also true.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 15, 2019, at Fullerton, California.

  
Richard Francis Travis  
Petitioner

1 Roderick M. Thompson (State Bar No. 96192)  
rthompson@fbm.com  
2 James Allison (State Bar No. 319204)  
jallison@fbm.com  
3 Farella Braun + Martel LLP  
235 Montgomery Street, 17<sup>th</sup> Floor  
4 San Francisco, California 94104  
Telephone: (415) 954-4400  
5 Facsimile: (415) 954-4480

6 Hannah Shearer (State Bar No. 292710)  
hshearer@giffords.org  
7 Hannah Friedman (State Bar No. 324771)  
hfriedman@giffords.org  
8 Giffords Law Center to Prevent Gun Violence  
268 Bush Street #555  
9 San Francisco, CA 94104  
Telephone: (415) 433-2062  
10 Facsimile: (415) 433-3357

11 Attorneys for CITY OF MORGAN HILL,  
MORGAN HILL CHIEF OF POLICE DAVID  
12 SWING, MORGAN HILL CITY CLERK IRMA  
TORREZ

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE  
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16 G. MITCHELL KIRK; and CALIFORNIA  
17 RIFLE & PISTOL ASSOCIATION,  
INCORPORATED,

18 Plaintiffs and Petitioners,

19 vs.  
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21 CITY OF MORGAN HILL; MORGAN HILL  
CHIEF OF POLICE DAVID SWING, in his  
22 official capacity; MORGAN HILL CITY  
CLERK IRMA TORREZ, in her official  
23 capacity; and DOES 1-10,,  
24

Defendants and Respondents.

Case No. 19CV346360

**DEFENDANTS' ANSWER TO  
COMPLAINT FOR DECLARATORY  
RELIEF; VERIFIED PETITION FOR  
WRIT OF MANDATE AND/OR  
PROHIBITION OR OTHER  
APPROPRIATE RELIEF**

Action Filed: April 15, 2019

25 Defendants CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID  
26 SWING, MORGAN HILL CITY CLERK IRMA TORREZ ("Defendants") answer as follows  
27 Plaintiffs' G. MITCHELL KIRK and CALIFORNIA RIFLE & PISTOL ASSOCIATION,  
28 INCORPORATED ("Plaintiffs") verified Complaint For Declaratory Relief; Verified Petition For

36713\12576766.1

1 Writ of Mandate And/or Prohibition or Other Appropriate Relief (“Complaint”). Any and all  
2 allegations not specifically admitted herein are denied. No statement herein constitutes a comment  
3 on the legal theories upon which Plaintiff purports to proceed. To the extent the Complaint asserts  
4 legal contentions, such legal contentions require no response in this Answer. To the extent any  
5 response is required to the headings in the Complaint, Defendants deny the factual allegations, if  
6 any, contained in such headings.

7 **I. NATURE OF THE CASE**

8 1. Defendants deny the allegations in paragraph 1 and allege that, on November 28, 2018,  
9 the CITY OF MORGAN HILL (“City”) adopted Ordinance No. 2289 (the “Ordinance”).

10 2. Defendants deny the allegations in paragraph 2 and allege that the  
11 Ordinance requires individuals to report the loss or theft of a firearm to the City’s Police  
12 Department within 48 hours if the loss or theft occurred within the City or the owner of the  
13 firearm resides in the City.

14 3. Defendants admit that the Ordinance now reads as written in paragraph 3 of the  
15 Complaint. Except as expressly admitted herein, Defendants deny the allegations in Paragraph 3  
16 of the Complaint, including footnote 1.

17 4. Defendants deny the allegations in paragraph 4 and allege that California voters  
18 passed Proposition 63 (“Prop 63”) on November 8, 2016. Among other things, Prop 63 included a  
19 mandatory reporting requirement when firearms are lost or stolen.

20 5. The allegations of Paragraph 5 constitute legal conclusions, to which no answer is  
21 required.

22 6. The allegations of Paragraph 6 constitute a legal conclusion, to which no answer is  
23 required.

24 7. Defendants admit that California Rifle & Pistol Association, Incorporated notified the  
25 City in writing that section 25250 (allegedly) preempted the Ordinance and requested that the City  
26 voluntarily repeal the Ordinance. The City did not voluntarily repeal the Ordinance. Except as  
27 expressly admitted herein, Defendants deny the allegations in Paragraph 7 of the Complaint.

28 8. Paragraph 8 includes a legal conclusion, to which no answer is required. As to the

1 remaining allegations, Defendants lack information or belief regarding the allegations set forth in  
2 Paragraph 8 of the Complaint, and on that basis deny each and every such allegation.

3 9. Defendants lack information or belief regarding the allegations set forth in Paragraph 9  
4 of the Complaint, and on that basis deny each and every such allegation.

5 **II. DECLARATORY AND WRIT RELIEF IS NECESSARY**

6 10. Paragraph 10 constitutes a legal conclusion, to which no answer is required.

7 11. Defendants deny the allegations in Paragraph 11 and allege that Municipal Code  
8 9.04.030 took effect on December 29, 2018. As of the date of this writing, no one has been cited  
9 for a violation.

10 12. Paragraph 12 constitutes a legal conclusion, to which no answer is required.

11 **PARTIES**

12 **I. PLAINTIFFS**

13 13. Defendants lack information or belief regarding the allegations set forth in Paragraph  
14 13 of the Complaint, and on that basis deny each and every such allegation. Defendants deny that  
15 if Plaintiff were to report a stolen firearm within 120 hours he would necessarily be subject to  
16 prosecution under the Ordinance, even though his conduct would conform with Penal Code  
17 section 25250.

18 14. Defendants lack information or belief regarding the allegations set forth in Paragraph  
19 14 of the Complaint, and on that basis deny each and every such allegation.

20 **II. DEFENDANTS**

21 15. Defendants admit that CITY OF MORGAN HILL is a municipal corporation formed  
22 under the laws of California.

23 16. Defendants admit that DAVID SWING is the Chief of Police of the Morgan Hill Police  
24 Department.

25 17. Defendants admit that IRMA TORREZ is the City Clerk of Morgan Hill.

26 18. Defendants lack information or belief regarding the allegations set forth in Paragraph  
27 18 of the Complaint, and on that basis deny each and every such allegation.  
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20. The allegations in Paragraph 20 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

**FIRST CAUSE OF ACTION**  
**FOR DECLARATORY AND INJUNCTIVE RELIEF**  
**(By All Plaintiffs Against All Defendants)**

22. Defendants admit that Plaintiffs purport to contend that the Ordinance is invalid and unenforceable because it is preempted by state law. Defendants contend the Ordinance is valid.

24. Defendants admit that Plaintiffs purport to request that this Court declare that the Ordinance is preempted by state law.

26. The allegations in Paragraph 26 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

28. Defendants admit that Plaintiffs purport to request an injunction forbidding Defendants, their agents, employees, representatives, and all those acting in concert with them from enforcing the Ordinance, and further requiring Defendants to remove corresponding Municipal Code 9.04.030 from the Morgan Hill Municipal Code.

**SECOND CAUSE OF ACTION**  
**FOR A WRIT OF MANDATE AND/OR PROHIBITION**  
**(By All Plaintiffs Against All Defendants)**

29. Defendants admit that Plaintiff purports to incorporate by reference the allegations contained in all previous Paragraphs, and incorporates by this reference their responses to those Paragraphs.

30. The allegations in Paragraph 30 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

31. The allegations in Paragraph 31 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

32. Defendants lack information or belief regarding the allegations set forth in Paragraph 32 of the Complaint, and on that basis deny each and every such allegation.

33. The allegations in Paragraph 33 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

34. The allegations in Paragraph 34 constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

a. The allegations in Paragraph 34(a) constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the allegations.

b. The allegations in Paragraph 34(b) constitute legal conclusions, to which no answer is required. Defendants admit that if Plaintiffs chose to wait for a period of more than 48 hours after learning of a lost or stolen firearm to report the loss or theft, they could be subject to prosecution under the Ordinance.

c. Defendants lack information or belief regarding the allegations set forth in Paragraph 34(c) of the Complaint, and on that basis deny each and every such allegation.

d. The allegations in Paragraph 34(d) constitute legal conclusions, to which no answer is required. To the extent a response is required, Defendants deny the





1 barred from bringing or maintaining this action because they have failed to exhaust their  
2 administrative remedies.

3 **Fourth Affirmative Defense**

4 **(No Attorneys' Fees)**

5 As a fourth, separate and distinct affirmative defense, Defendants allege that Plaintiffs  
6 have failed to state facts sufficient to set forth a claim for recovery of their attorneys' fees.

7 **Fifth Affirmative Defense**

8 **(Irreparable Harm)**

9 As a fifth, separate and distinct affirmative defense, Defendants allege that Plaintiffs have  
10 not experienced irreparable harm, making injunctive relief improper.

11 **Sixth Affirmative Defense**

12 **(Ripeness)**

13 As a sixth, separate and distinct affirmative defense, Defendants allege that some or all of  
14 Plaintiffs' causes of action are premature and not ripe for adjudication.

15 **Seventh Affirmative Defense**

16 **(Statute of Limitations)**

17 As a seventh, separate and distinct affirmative defense, Defendants allege that the  
18 Complaint, and some or all of each cause therein, is barred by the applicable statute of limitations.

19 **Eighth Affirmative Defense**

20 **(Waiver)**

21 As an eighth, separate and distinct affirmative defense, Defendants allege that Plaintiffs  
22 have waived, expressly or by implication, the claims asserted in the Complaint.

23 **Ninth Affirmative Defense**

24 **(Estoppel)**

25 As a ninth, separate and distinct affirmative defense, Defendants allege that Plaintiffs'  
26 causes of action are barred, in whole or in part, by the equitable doctrine of estoppel.

1 **Tenth Affirmative Defense**

2 **(Laches)**

3 As a tenth, separate and distinct affirmative defense, Defendants allege that Plaintiffs'  
4 causes of action are barred, in whole or in part, by the equitable doctrine of laches.

5 **Eleventh Affirmative Defense**

6 **(Unclean Hands)**

7 As an eleventh, separate and distinct affirmative defense, Defendants allege that Plaintiffs'  
8 causes of action are barred, in whole or in part, by the equitable doctrine of unclean hands.

9 **Twelfth Affirmative Defense**

10 **(Additional Defenses)**

11 The Complaint is barred by other affirmative defenses that Defendants may allege as those  
12 defenses become known through discovery.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Defendants pray for relief as follows:

- 15 1. That Plaintiffs take nothing by their Complaint and that the Complaint be dismissed  
16 in its entirety, with prejudice;
- 17 2. That Defendants be awarded judgment in this action;
- 18 3. That Defendants be awarded costs of suit and attorneys' fees incurred herein; and,
- 19 4. That Defendants be awarded such other and further relief as the Court deems just  
20 and proper.

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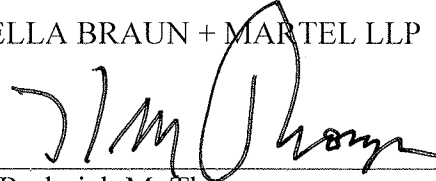
**DEMAND FOR JURY TRIAL**

Defendants CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID SWING, MORGAN HILL CITY CLERK IRMA TORREZ, hereby demand trial by jury in this matter.

Dated: July 19, 2019

FARELLA BRAUN + MARTEL LLP

By:



Roderick M. Thompson

Attorneys for CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID SWING, MORGAN HILL CITY CLERK IRMA TORREZ

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**VERIFICATION**

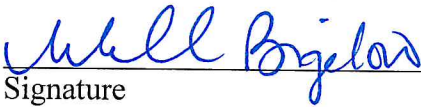
**STATE OF CALIFORNIA, COUNTY OF SANTA CLARA**

I am the Deputy City Clerk for the City of Morgan Hill, and am authorized to make this verification on behalf of the City Clerk, a party to this action. I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on July19, 2019, at Morgan Hill, California.

For Morgan Hill City Clerk Irma Torrez  
Michelle Bigelow  
Deputy City Clerk

  
Signature

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I am the City Attorney for the City of Morgan Hill, a party to this action, and am authorized to make this verification on its behalf. I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on July19, 2019, at Morgan Hill, California.

City of Morgan Hill  
\_\_\_\_\_  
Donald A. Larkin  
City Attorney

  
\_\_\_\_\_  
Signature

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**VERIFICATION**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

I have read the foregoing ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on July 19, 2019, at Morgan Hill, California.

Morgan Hill Chief of Police David Swing  
David Swing

  
Signature

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**PROOF OF SERVICE**

**Kirk v. City of Morgan Hill  
Case No. 19CV346360**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 235 Montgomery Street, 17th Floor, San Francisco, CA 94104.

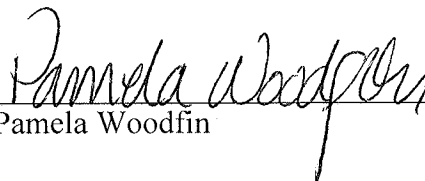
On July 19, 2019, I served true copies of the following document(s) described as on the interested parties in this action as follows: **DEFENDANTS' ANSWER TO COMPLAINT FOR DECLARATORY RELIEF; VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF**

C.D. Michel, Esq.  
Anna M. Barvir, Esq.  
Tiffany D. Cheuvront, Esq.  
MICHEL & ASSOCIATES, P.C.  
180 Est Ocean Blvd., Suite 200  
Long Beach, CA 90802  
Tel: (562) 216-4444  
Fax: (562) 216-4445  
cmichel@michellawyers.com

**BY ELECTRONIC SERVICE:** I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at [www.onelegal.com](http://www.onelegal.com).

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

Executed on July 19, 2019, at San Francisco, California.

  
Pamela Woodfin



CIV-110

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 268728</p> <p>NAME: Anna M. Barvir</p> <p>FIRM NAME: Michel &amp; Associates, P.C.</p> <p>STREET ADDRESS: 180 East Ocean Blvd., Suite 200</p> <p>CITY: Long Beach STATE: CA ZIP CODE: 90802</p> <p>TELEPHONE NO.: (562) 216-4444 FAX NO.: (562) 216-4445</p> <p>E-MAIL ADDRESS: abarvir@michellawyers.com</p> <p>ATTORNEY FOR (Name): G. Mitchell Kirk, et al.</p>	<p><b>Electronically Filed</b> by Superior Court of CA, County of Santa Clara, on 7/26/2019 2:42 PM Reviewed By: A. Floresca Case #19CV346360 Envelope: 3185908</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA</b></p> <p>STREET ADDRESS: 191 North First Street</p> <p>MAILING ADDRESS: 191 North First Street</p> <p>CITY AND ZIP CODE: San Jose, 95113</p> <p>BRANCH NAME: Downtown Superior Court (DTS)</p>	<p>/s/ A. Floresca</p>
<p><b>REQUEST FOR DISMISSAL</b></p>	<p>CASE NUMBER: 19CV346360</p>
<p><b>A conformed copy will not be returned by the clerk unless a method of return is provided with the document.</b></p>	
<p><b>This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)</b></p>	

1. TO THE CLERK: Please **dismiss** this action as follows:
- a. (1) ☒ With prejudice (2) ☐ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition
- (3) ☐ Cross-complaint filed by (name): on (date):
- (4) ☐ Cross-complaint filed by (name): on (date):
- (5) ☐ Entire action of all parties and all causes of action
- (6) ☒ Other (specify):\* Second Cause of Action for a Writ of Mandate and/or Prohibition
2. (Complete in all cases except family law cases.)
- The court ☐ did ☒ did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date: July 11, 2019

Anna M. Barvir

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

\*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.



(SIGNATURE)

Attorney or party without attorney for:

☒ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date: **July 25, 2019**

James Allison

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

\*\* If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).



(SIGNATURE)

Attorney or party without attorney for:

☐ Plaintiff/Petitioner ☒ Defendant/Respondent  
☐ Cross Complainant

(To be completed by clerk)

4. ☒ Dismissal entered as requested on (date): **7/26/2019 2:42 PM**

5. ☐ Dismissal entered on (date): as to only (name):

6. ☐ Dismissal **not entered** as requested for the following reasons (specify):

7. a. ☒ Attorney or party without attorney notified on (date): **7/26/2019 2:42 PM**

b. ☐ Attorney or party without attorney not notified. Filing party failed to provide

☐ a copy to be conformed ☐ means to return conformed copy

/s/ A. Floresca

Date: **7/26/2019 2:42 PM**

Clerk, by \_\_\_\_\_, Deputy

**Clerk of Court**

Page 1 of 2

Plaintiff/Petitioner: G. Mitchell Kirk, et al.  
 Defendant/Respondent: City of Morgan Hill, et al.

CASE NUMBER:  
 19CV346360

### COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

### Declaration Concerning Waived Court Fees

1. The court waived court fees and costs in this action for *(name)*:
2. The person named in item 1 is *(check one below)*:
  - a. ☐ not recovering anything of value by this action.
  - b. ☐ recovering less than \$10,000 in value by this action.
  - c. ☐ recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. ☐ All court fees and court costs that were waived in this action have been paid to the court *(check one)*:      Yes      No

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

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY MAKING DECLARATION)

\_\_\_\_\_  
 (SIGNATURE)

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1 Roderick M. Thompson (State Bar No. 96192)  
rthompson@fbm.com

2 James Allison (State Bar No. 319204)  
jallison@fbm.com

3 Farella Braun + Martel LLP  
235 Montgomery Street, 17<sup>th</sup> Floor  
4 San Francisco, California 94104  
Telephone: (415) 954-4400  
5 Facsimile: (415) 954-4480

6 Hannah Shearer (State Bar No. 292710)  
[hshearer@giffords.org](mailto:hshearer@giffords.org)

7 Hannah Friedman (State Bar No. 324771)  
[hfriedman@giffords.org](mailto:hfriedman@giffords.org)

8 Giffords Law Center to Prevent Gun Violence  
268 Bush Street #555  
9 San Francisco, CA 94104  
Telephone: (415) 433-2062  
10 Facsimile: (415) 433-3357

11 Attorneys for CITY OF MORGAN HILL,  
MORGAN HILL CHIEF OF POLICE DAVID  
12 SWING, MORGAN HILL CITY CLERK IRMA  
TORREZ

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE  
15

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

18 Plaintiffs and Petitioners,

19 vs.  
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21 CITY OF MORGAN HILL; MORGAN HILL  
CHIEF OF POLICE DAVID SWING, in his  
official capacity; MORGAN HILL CITY  
22 CLERK IRMA TORREZ, in her official  
capacity; and DOES 1-10,,  
23

24 Defendants and Respondents.  
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Case No. 19CV346360

**NOTICE OF MOTION AND MOTION  
FOR SUMMARY JUDGMENT**

Filed Concurrently with MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT; DECLARATION OF JAMES  
ALLISON IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT AND EXHIBITS 1  
TO 13; SEPARATE STATEMENT OF  
UNDISPUTED FACTS; REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT

Judge: Hon. Peter Kirwan

Date: July 2, 2020

Time: 9:00 a.m.

Dept.: 19

Action Filed: April 15, 2019

1 TO EACH PARTY AND THEIR ATTORNEYS OF RECORD:

2 YOU ARE HEREBY NOTIFIED THAT on July 2, 2020, at 9:00 AM in Dept. 19 of the  
3 above court, located at 191 N. First St., San Jose, California defendants CITY OF MORGAN  
4 HILL, MORGAN HILL CHIEF OF POLICE DAVID SWING, MORGAN HILL CITY CLERK  
5 IRMA TORREZ ("Defendants") will move for Summary Judgment on Plaintiffs' Complaint  
6 ("Complaint").


7 Defendants' Motion For Summary Judgment is made on the grounds that there is no triable  
8 issue of material fact, such that Defendants are entitled to judgment as a matter of law. This  
9 Motion is based upon this Notice of Motion, the Memorandum of Points and Authorities, the  
10 Separate Statement of Undisputed Facts, the Declaration of James Allison and Exhibits 1-14, the  
11 Request for Judicial Notice, and upon such other oral and documentary evidence as the Court may  
12 permit at the hearing of this Motion.

13 Defendants' Motion For Summary Judgment seeks judgment in Defendants' favor on the  
14 Complaint on grounds that Plaintiffs cannot establish facts sufficient to support their claim that the  
15 Ordinance is preempted by state law.

16 Dated: April 30, 2020

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13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE

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

18 Plaintiffs and Petitioners,

19 vs.

20 CITY OF MORGAN HILL; MORGAN HILL  
21 CHIEF OF POLICE DAVID SWING, in his  
official capacity; MORGAN HILL CITY  
22 CLERK IRMA TORREZ, in her official  
capacity; and DOES 1-10,,  
23

24 Defendants and Respondents.  
25  
26  
27  
28

Case No. 19CV346360

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

Judge: Hon. Peter Kirwan  
Date: July 2, 2020  
Time: 9 a.m.  
Dept: 19  
Action Filed: April 15, 2019

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1 I. INTRODUCTION

2 On November 28, 2018, responding to its citizens' desire to take action on gun violence in  
3 light of the Parkland mass shooting tragedy, the Morgan Hill City Council adopted Local  
4 Ordinance 2289, codified at Municipal Code 9.04.030 ("Morgan Hill Ordinance" or "Ordinance").  
5 The Ordinance promotes public safety by requiring individuals to report the loss or theft of  
6 firearms to Morgan Hill Police within 48 hours of the loss or theft.<sup>1</sup> The Ordinance also requires  
7 gun dealers within Morgan Hill to post signage in stores outlining these requirements and to  
8 distribute the relevant chapter to customers who purchase firearms.

9 Though mass shootings like Parkland receive disproportionate media attention, lost or  
10 stolen firearms have fueled a quieter epidemic of gun violence. Guns are stolen from an  
11 individual owner roughly once every two minutes, but nationally up to 40% of guns that are lost or  
12 stolen go unreported.<sup>2</sup> Lax reporting requirements embolden straw purchasers and gun traffickers,  
13 who can evade responsibility for supplying firearms used in violent crimes by falsely claiming a  
14 gun they supplied had previously been lost or stolen.<sup>3</sup> Lax reporting requirements also thwart law  
15 enforcement's ability to investigate actual thefts from legal owners—which have increased  
16 significantly in recent years<sup>4</sup>—and recover stolen firearms before they are used to harm someone.  
17 The consequences of escalating firearm thefts are devastating: an analysis of tens of thousands of  
18 stolen guns recovered by police from 2010 to 2016 found that the majority of weapons were  
19

20 \_\_\_\_\_  
21 <sup>1</sup> Municipal Code 9.04.030 states that individuals must report within 48 hours of when they knew,  
22 or reasonably should have known, about the loss or theft. While important for ensuring that  
23 individuals are not unfairly penalized for a firearm loss or theft they did not know about, for  
24 simplicity, the caveat of "reasonably should have known" has been omitted throughout.

25 <sup>2</sup> David Hemenway, Deborah Azrael, and Matthew Miller, "Whose Guns are Stolen? The  
26 Epidemiology of Gun Theft Victims," *Injury Epidemiology* 4, no. 1 (2017); Brian Freskos,  
27 "Missing Pieces: Gun Theft from Legal Gun Owners is on the Rise, Quietly Fueling Violent  
28 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.

<sup>3</sup> See, e.g., Daniel W. Webster et al., "Preventing the Diversion of Guns to Criminals Through  
Effective Firearm Sales Laws," in *Reducing Gun Violence in America: Informing Policy with  
Evidence and Analysis* (Baltimore: The Johns Hopkins University Press, 2013), 118.

<sup>4</sup> Freskos, *supra* n.2.

1 recovered only *after* being used in a crime (and not before).<sup>5</sup>

2 Informed by these and other public safety concerns associated with lost or stolen firearms,  
3 Morgan Hill's Ordinance passed by a vote of 4 to 1. On April 15, 2019, the California Rifle and  
4 Pistol Association (CRPA) and G. Mitchell Kirk (together "Plaintiffs") filed this action seeking  
5 declaratory and injunctive relief to invalidate the ordinance.<sup>6</sup> Plaintiffs challenge the Ordinance as  
6 preempted by state law, specifically Penal Code Section 25250, which was enacted when  
7 California voters passed Proposition 63 on November 8, 2016 ("Prop. 63"). Penal Code Section  
8 25250 requires individuals to report the loss or theft of a firearm within five days of the loss or  
9 theft.<sup>7</sup> Plaintiffs argue that the Morgan Hill Ordinance is preempted by this state law because: 1) it  
10 duplicates state law; 2) it contradicts state law; or 3) it enters into an area fully occupied by state  
11 law. Plaintiffs are mistaken.

12 Just as when a city adopts stricter speed limits to better protect its citizens, Morgan Hill's  
13 Ordinance does not duplicate state law. The two laws are not identical and do not criminalize  
14 precisely the same acts. Nor does the Ordinance contradict state law; reporting within 48 hours  
15 complies with both requirements simultaneously. Lastly, state law does not fully occupy the area  
16 of timely reporting requirements for a lost or stolen gun. In adopting Prop. 63, voters did not  
17 indicate any intent to foreclose local regulation, and indeed, local ordinances requiring faster  
18 reporting of a firearm theft or loss already existed when the initiative was passed. Simply put, the  
19 Ordinance goes further than state law in promoting public safety by requiring that law  
20 enforcement be notified of a lost or stolen firearm within two days instead of five. It is not  
21 preempted by state law.

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25 <sup>5</sup> Freskos, *supra* n.2.

26 <sup>6</sup> Plaintiffs also included a cause of action for Writ of Mandate and/or Prohibition but  
subsequently agreed to dismiss this cause of action.

27 <sup>7</sup> Penal Code § 25250 also includes a caveat requiring individuals to report within five days of  
28 when they knew, or reasonably should have known, about the loss or theft. Again, for simplicity's  
sake this caveat has been omitted throughout.

1 **II. STATEMENT OF UNDISPUTED FACTS**

2 **A. Prop. 63: “The Safety for All Act of 2016.”**

3 On November 8, 2016, California Voters enacted Proposition 63 (“Prop. 63”) entitled “The  
4 Safety for All Act of 2016.”

5 **B. Prop 63. Section 2 Findings and Declarations**

6 Prop 63. Section 2: Findings and Declarations sets out fourteen findings made by the  
7 “people of the State of California,” including:

8 “8. Under current law, stores that sell ammunition are not required to report to law  
9 enforcement when ammunition is lost or stolen. Stores should have to report lost or stolen  
10 ammunition within 48 hours of discovering that it is missing so law enforcement can work  
11 to prevent that ammunition from being illegally trafficked into the hands of dangerous  
12 individuals.”

13 “9. Californians today are not required to report lost or stolen guns to law enforcement.  
14 This makes it difficult for law enforcement to investigate crimes committed with stolen  
15 guns, break up gun trafficking rings, and return guns to their lawful owners. We should  
16 require gun owners to report their lost or stolen guns to law enforcement.”

17 **C. Prop 63. Section 3 Purpose and Intent**

18 Prop 63. Section 3: Purpose and Intent is comprised of nine paragraphs that together set  
19 out the purpose and intent of the people of the State of California in enacting The Safety for All  
20 Act of 2016. This section states, in relevant part:

21 “2. To keep guns and ammunition out of the hands of convicted felons, the dangerously  
22 mentally ill, and other persons who are prohibited by law from possessing firearms and  
23 ammunition.”

24 “4. To require all stores that sell ammunition to report any lost or stolen ammunition  
25 within 48 hours of discovering that it is missing.”

26 “6. To require the reporting of lost or stolen firearms to law enforcement.”

27 **D. Penal Code Section 25250.**

28 Following Prop. 63’s passage, Penal Code § 25250 took effect on July 1, 2017. Penal  
Code § 25250, in relevant part, states:

“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”

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**E. Prop. 63 Voter Guide: For and Against.**

A Voter Guide For Prop. 63 summarized the proposed law and included arguments For and Against the initiative. The “Pro” argument stated, in part, the initiative: “will . . . [r]equire people to notify law enforcement if their guns are lost or stolen, before the weapons end up in the wrong hands.”

The “Pro” Rebuttal stated, in part: “Prop. 63 also requires reporting lost and stolen firearms, to help police shut down gun trafficking rings and locate caches of illegal weapons. Prop. 63 will help police recover stolen guns before they’re used in crimes and return them to their lawful owners.”

**F. Local Regulation Governing Lost or Stolen Reporting Requirements.**

When Prop. 63 was passed, local regulation governing lost or stolen reporting requirements already existed in at least 18 California cities and towns.<sup>8</sup>

**G. Morgan Hill City Local Ordinance No. 2289.**

More than two years after the enactment of Prop. 63, on November 28, 2018, Morgan Hill City Council adopted Local Ordinance No. 2289.

**H. Local Ordinance No. 2289 amended Municipal Code Section 9.04.030.**

Municipal Code Section 9.04.030 now reads:

**“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

<sup>8</sup> Oakland (Mun. Code Sec. 9.36.131 – 48 hours), San Francisco (Police Code Sec. 616 – 48 hours), Los Angeles (Mun. Code Sec. 5512 – 48 hours), Campbell (Mun. Code Sec. 8.12.045 – 48 hours), Berkeley (Mun. Code Sec. 13.75.020 – 48 hours), Sacramento (City Code Sec. 9.32.180 – 48 hours), Port Hueneme (Mun. Code Sec. 3914.10 – 48 hours), Simi Valley (Mun. Code Sec. 5-22.12 – 72 hours), West Hollywood (Mun. Code Sec. 9.27.010 – 48 hours), Thousand Oaks (Mun. Code Sec. 5-11.03 – 72 hours), Richmond (Mun. Code. Sec. 11-97.020 – 48 hours), Sunnyvale (Mun. Code Sec. 9.44.030 – 48 hours), Santa Cruz (Mun. Code Sec. 9.3.010 – 5 days), Huntington Park (Mun. Code Sec. 5.17.05 – 48 hours), Maywood (Mun. Code Sec. 4-4.11 – 48 hours), Oxnard (Mun. Code Sec. 7-141.1 – 72 hours), Tiburon (Mun. Code Sec. 32-27 – 48 hours), and Palm Springs (Mun. Code Sec. 11.16.040 – 48 hours (repealed 2018)).

Hill.”

**I. Municipal Code 9.04.030 took effect on December 29, 2018.**

**III. LEGAL STANDARD**

Summary judgment shall be granted when “there is no triable issue as to any material fact” and “the moving party is entitled to a judgment as a matter of law.” Cal. Civ. Proc. Code § 437c(c); *see also Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th 826, 843 (2001). The purpose of summary judgment is “to provide courts with a mechanism to cut through the parties’ pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute.” *Id.* at 843. When a defendant seeks summary judgment, the defendant need not negate the plaintiff’s claims, but must only show that the “plaintiff cannot establish at least one element of the cause of action.” *Id.* at 853-54. A defendant may meet this burden by showing that an issue is foreclosed as a matter of law or by showing that the plaintiff “does not possess, and cannot reasonably obtain, needed evidence.” *Id.* at 854.

Although the moving party generally holds the burden on a summary judgment motion, where, as here, one party claims the Ordinance is preempted by state law, that party bears the burden regardless of which party moves for summary judgment. *See, e.g. First Resort, Inc. v. Herrera*, 80 F. Supp. 3d 1043, 1055 (N.D. Cal. 2015), *aff’d*, 860 F.3d 1263 (9th Cir. 2017) (placing burden on the party claiming preemption on cross-motions for summary judgment).

**IV. ARGUMENT**

Morgan Hill’s Motion for Summary Judgment should be granted. Morgan Hill passed Local Ordinance 2289 pursuant to its broad police powers and the Ordinance does not conflict with state law. It is not preempted. There is not a triable issue.

**First**, the California Constitution grants local authorities broad power to pass and enforce local regulations, which includes firearms regulation. Indeed, the question is not whether the state legislature has granted Morgan Hill the authority to pass gun regulations, but whether it has specifically taken such authority away. There can be no genuine dispute that the state has not acted to prevent local regulation of lost or stolen reporting requirements.

**Second**, when local governments regulate pursuant to the authority vested by the



1 California Constitution, those regulations are presumed valid absent a clear indication of  
2 preemptive intent by the state legislature. Plaintiff bears the burden of showing this “clear  
3 indication of preemptive intent.” Furthermore, California courts are reticent to find preemption  
4 when local governments regulate in areas of considerable local concern such as firearms. Plaintiff  
5 cannot show a “clear indication of preemptive intent” as the undisputed facts demonstrate the  
6 exact opposite.

7 **Third**, Morgan Hill’s Ordinance is not preempted by state law because it does not conflict  
8 with state law. Absent express preemptive language, which is not present here, California courts  
9 look to whether the Ordinance conflicts with state law by either duplicating or contradicting state  
10 law. Morgan Hill’s Ordinance does neither.

11 **Fourth**, the relevant indicia of legislative intent confirm that neither the state legislature  
12 nor Prop. 63 voters intended to preempt local regulation of lost or stolen firearms reporting  
13 requirements. To begin with, the state legislature has declined, on many occasions, to preempt  
14 gun regulation beyond three discrete areas not implicated here. Instead local governments are left  
15 to exercise their authority in this area given the immense local interests at stake. The legislature’s  
16 actions demonstrate an affirmative intent not to impliedly preempt those areas not expressly  
17 preempted, including lost or stolen reporting requirements. Additionally, the Purpose and  
18 Findings of Prop. 63 demonstrate that voters intended to establish a baseline reporting time  
19 requirement to help facilitate the recovery of lost or stolen firearms. At the time of passage, that  
20 baseline in Prop 63 had already been, and would continue to be, reinforced and supplemented by  
21 many local ordinances that establish stricter reporting requirements.

22 In sum, Morgan Hill’s Ordinance was passed pursuant to Morgan Hill’s constitutionally-  
23 bestowed authority; the Ordinance neither duplicates nor contradicts state law; the state legislature  
24 has intentionally cabined its preemption to only three types of gun regulation, none of which  
25 include lost and stolen reporting; and other relevant evidence indicates the voters did not intend to  
26 preempt local regulations. Morgan Hill’s Ordinance is not preempted as a matter of law.

1           **A.       The California Constitution Grants Municipalities Broad Power to Make and**  
2           **Enforce Regulations.**

3           Under Article XI, section 7 of the California Constitution, a “city may make and enforce  
4 within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with  
5 general laws.” (Cal. Const., art. XI, § 7.) As a California municipality, Morgan Hill enjoys broad  
6 police powers. A municipality’s police powers are as broad as the police powers exercisable by  
7 the State Legislature itself. *See Birkenfeld v. City of Berkeley*, 130 Cal. Rptr. 465, 550 (1976).

8           The right to regulate firearms – including reporting the loss or theft of a firearm – falls  
9 squarely within this broad authority. *See California Rifle & Pistol Assn. v. City of W. Hollywood*,  
10 66 Cal. App. 4th 1302, 1310 (1998) (“Our starting point in this case, therefore, is that the City also  
11 has the constitutional power to regulate in the area of firearms control.”).

12           **B.       Plaintiffs Bear the Burden of Rebutting the Presumption Against Preemption**  
13           **Because Morgan Hill Regulated Pursuant to its Police Powers.**

14           The Morgan Hill City Council enacted the Ordinance regulating the reporting of lost or  
15 stolen firearms as part of its traditional police powers. “[W]hen local government regulates in an  
16 area over which it traditionally has exercised control ... California courts will presume, absent a  
17 clear indication of preemptive intent from the Legislature, that such regulation is not preempted by  
18 state statute.” *Coyne v. City & Cty. of San Francisco*, 9 Cal. App. 5th 1215, 1225 (Ct. App. 2017)  
19 (citations omitted). The party claiming that general state law preempts a local ordinance—  
20 including a firearms ordinance—has the burden of rebutting this presumption by demonstrating  
21 legislators’ “preemptive intent.” *Id.*; *see also Big Creek Lumber Co. v. Cty. of Santa Cruz*, 38 Cal.  
22 4th 1139, 1149 (2006); *Calguns Found., Inc. v. Cty. of San Mateo*, 218 Cal. App. 4th 661, 666–67  
23 (2013) (citations omitted) (“[t]he presumption against preemption accords with our more general  
24 understanding that it is not to be presumed that the Legislature in the enactment of statutes intends  
25 to overthrow long-established principles of law unless such intention is made clearly to appear  
26 either by express declaration or by necessary implication”).

27           Courts are particularly reluctant to depart from the presumption against preemption when  
28 considering a local regulation that covers an area of significant local interest differing from one  
locality to another. *Big Creek Lumber*, 38 Cal. 4th at 1149. The California Supreme Court has

1 held, that the regulation of firearms covers just such an area. *See, e.g. Galvan v. Super. Ct. of City*  
2 *& Cty. of San Francisco*, 70 Cal. 2d 851, 864 (1969) (overturned by statute) (“That problems with  
3 firearms are likely to require different treatment in San Francisco County than in Mono County  
4 should require no elaborate citation of authority.”).

5 Within the general category of firearms regulation, the reporting of lost or stolen firearms  
6 in particular implicates particularly localized interests. Local law enforcement track and  
7 investigate firearms that go missing in their communities and who must expend resources  
8 responding to crimes perpetrated with stolen guns. Theft patterns differ across regions,<sup>9</sup> which  
9 makes sense given that so much gun crime is *local* crime — studies show that “almost one-third  
10 (32.2%) of traced crime guns are recovered by police within 10 miles of the [firearms dealer]  
11 where they were first purchased.”<sup>10</sup> Furthermore, the legislative record confirms that the Morgan  
12 Hill City Council focused on the local benefits of the Ordinance. (*See* Allison Decl. Ex. 11). The  
13 Council recognized that legislation requiring reporting of lost or stolen guns was recommended by  
14 the Association of Bay Area Governments (of which Morgan Hill is a member) as a “model  
15 ordinance[...for cities and counties to pursue” to help reduce gang-related youth gun violence in  
16 neighboring San Mateo County. *Id.* at 203, 217. This recommendation, coupled with the fact that  
17 many gun crimes occur close to home, demonstrates Morgan Hill’s compelling local interests in  
18 reporting measures that prevent lost or stolen guns from entering the criminal market. While it is  
19 already well-established that firearms regulation implicates local concerns, *see Galvan*, 70 Cal. 2d  
20 at 864, these local interests specific to the Ordinance strengthen the usual presumption against  
21 preemption with extra force.

22 For these reasons, Morgan Hill’s Ordinance enjoys a strong presumption against  
23 preemption. The Ordinance is within Morgan Hill’s traditional police powers and covers an area  
24 of significant local interest that differs from one locality to another. As discussed in Section C.3,  
25 *infra*, the undisputed facts compel applying the presumption here. The Ordinance is neither

26 <sup>9</sup> *See* Freskos, *supra* n.2 (explaining “thieves were more likely to break into homes in areas where  
27 gun ownership rates were high”)

28 <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, <http://www.biomedcentral.com/1471-2458/9/199>.

1 expressly nor impliedly preempted by state law, let alone is it “made clearly to appear” that such  
2 preemption was intended.

3 **C. The Ordinance Is Not Preempted By State Law as It Does Not Conflict With**  
4 **State Law.**

5 An otherwise valid local ordinance is preempted by state law if it conflicts with state law.  
6 *Great W. Shows, Inc. v. Cty. of Los Angeles*, 27 Cal. 4th 853, 860 (2002). A conflict arises if the  
7 local law: 1) duplicates state law; 2) contradicts state law; or 3) enters an area fully occupied by  
8 general law, either expressly or by implication. *Id.* The Ordinance does not conflict with state law  
9 under any of the three categories outlined above.

10 **1. The Ordinance Does Not Duplicate State Law Because It Differs From**  
11 **State Law.**

12 The first way a local ordinance can conflict with state law is if it duplicates state law. A  
13 local ordinance duplicates a state statute where it “criminalize[s] precisely the same acts which are  
14 prohibited by the statute.” *See Nordyke v. King*, 27 Cal. 4th 875, 883 (2002) (citations omitted).

15 In *Nordyke v. King*, the California Supreme Court found that an Alameda County  
16 prohibition on possessing a firearm on county property was not duplicative of state law which  
17 prohibited carrying a loaded firearm, and a concealable firearm, without a license. *Id.* Even  
18 though an individual carrying a loaded, concealable firearm on county property would be in  
19 violation of both the state statutes and the local ordinance, the Court found that the ordinance did  
20 not “criminalize precisely the same acts which are prohibited by the statute and is therefore not  
21 duplicative.” *Id.* (citations omitted).

22 The Ordinance does not criminalize precisely the same acts as state law and thus does not  
23 duplicate state law. The Ordinance requires the reporting of a lost or stolen firearm to the Morgan  
24 Hill Police within 48 hours of the loss or theft whenever: (1) the person resides in Morgan Hill; or  
25 (2) the loss or theft occurs in Morgan Hill. (*See Allison Decl. Ex. 2*). State law requires the  
26 reporting of a lost or stolen firearm to local law enforcement in the jurisdiction where the theft  
27 occurred within five days of the loss or theft. *See Cal. Pen. Code § 25250*. Where the Ordinance  
28 requires the report within 48 hours, state law requires the report within five days. Where the

1 Ordinance requires the report to Morgan Hill Police when the loss or theft occurs to a Morgan Hill  
2 resident, state law requires reporting in the jurisdiction where the loss or theft occurred. In light of  
3 these distinctions, the Ordinance does not duplicate state law.

4 While the Ordinance and state law both prohibit some acts (i.e. waiting until day six to  
5 report the loss or theft), there are other acts that would be punishable under the Ordinance but not  
6 state law or vice-versa. For example, a Morgan Hill resident who had their gun stolen in San  
7 Francisco and who only timely reported to San Francisco law enforcement would be in violation  
8 of the Ordinance but not state law. Alternatively, a Morgan Hill resident who had their gun stolen  
9 in San Francisco and who only timely reported to the Morgan Hill Police would be in violation of  
10 state law but not the Ordinance. Just as the Alameda County ordinance in *Nordyke* did not  
11 criminalize precisely the same acts as state law, the Morgan Hill Ordinance does not criminalize  
12 precisely the same acts as state law. *See Nordyke*, 27 Cal. 4th at 883. The Ordinance is not  
13 duplicative of state law.

14 **2. The Ordinance Does Not Contradict State Law Because One Can**  
15 **Reasonably Abide By Both State Law and The Ordinance.**

16 The second way local legislation can be preempted for conflicting with state law is if it  
17 contradicts state law. A local ordinance is contradictory to state law when the local “ordinance  
18 directly requires what [a state] statute forbids or prohibits what the state enactment demands.”  
19 *City of Riverside v. Inland Empire Patients Health and Wellness Ctr., Inc.*, 56 Cal. 4th 729, 743-  
20 44 (2013). An ordinance is only contradictory to state law if it is “inimical to or *cannot be*  
21 *reconciled with*” state law. *O’Connell v. City of Stockton*, 41 Cal. 4th 1061, 1068 (2007)  
22 (emphasis added). As the California Supreme Court has explained, “no inimical conflict will be  
23 found where it is reasonably possible to comply with both the state and local laws.” *City of*  
24 *Riverside*, 56 Cal. 4th at 743-44.

25 Here, the Ordinance requires a gun owner to report the loss or theft of a firearm within 48  
26 hours. Prop. 63 allows a gun owner to wait up to five days before reporting a loss or theft; it does  
27 not require an individual to wait that long. One can reasonably comply with both the Ordinance  
28

1 and state law by reporting a loss or theft within 48 hours.<sup>11</sup> Put another way, “[t]he Ordinance  
2 does not mandate what state law expressly forbids, nor does it forbid what state law expressly  
3 mandates.” *Great W. Shows*, 27 Cal. 4th at 866.

4 **i. Morgan Hill Can Narrow the Options Available Under State**  
5 **Law and Still Not Contradict it.**

6 The Ordinance tightens the window during which one must report the loss or theft of a  
7 firearm, but does not prevent compliance with both state and local law and thus does not  
8 contradict state law. For over a century, California courts have recognized a municipality’s ability  
9 to implement stricter requirements than state law, so long as one can reasonably comply with both.  
10 *See, e.g. Am. Fin. Servs. Assn. v. City of Oakland*, 4 Cal. Rptr. 3d 745, 756 (Ct. App. 2003)  
11 (collecting cases), rev’d on other grounds by, 34 Cal. 4th 1239, 104 P.3d 813 (2005).

12 In 1909 in *Ex Parte Hoffman*, the California Supreme Court found that a Los Angeles  
13 ordinance prohibiting the sale of milk that had been further diluted beyond the state law standards  
14 was not preempted and did not contradict state law. The Court considered the question of whether  
15 a local jurisdiction may pass more stringent requirements, based on local needs, than the state-  
16 imposed law. In concluding it may, the Court stated, “[t]he correctness of the principle may not be  
17 doubted. If the state should pass a law declaring it unlawful to erect a chimney of a height  
18 exceeding 150 feet, would any one (sic) seriously contend that a city of the state within the  
19 earthquake zone might not, by ordinance, in the clear exercise of the police power, for the benefit  
20 of its citizens, still further restrict the height of chimneys?” *Ex parte Hoffman*, 155 Cal. 114, 118,  
21 99 P. 517, 519 (1909), overruled in part by *Ex parte Lane*, 58 Cal. 2d 99, 372 P.2d 897 (1962).<sup>12</sup>

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23  
24 <sup>11</sup> Moreover, in circumstances where a Morgan Hill resident’s firearm is stolen outside of Morgan  
25 Hill, a person can easily comply with both laws by reporting to Morgan Hill police within 48  
hours and making a separate report within 5 days in the jurisdiction where the loss or theft  
occurred.

26 <sup>12</sup> The *Hoffman* holding has been questioned insofar as it stood for the unmitigated permission for  
27 local regulation in an area **fully occupied** by state law, however that is not the situation with  
Morgan Hill’s Ordinance. *See Ex parte Lane*, 58 Cal. 2d 99, 105 (1962) (stating that *Hoffman*,  
28 among others, is overruled insofar as it stands for the proposition that a locality may impose  
stricter requirements than state law mandates **when the state has already fully occupied the**

1 This precedent allowing for stricter local requirements than state law applies to gun  
2 regulations. In *Great Western Shows, Inc. v. County of Los Angeles*, the California Supreme Court  
3 held that a county ordinance banning gun shows on county property did not contradict, and was  
4 not preempted by, a state statute regulating gun shows. *Great W. Shows*, 27 Cal. 4th 853. The  
5 Court held that since the state law merely permitted gun shows rather than mandating them, the  
6 county’s gun show ban did not contradict state law. Similarly, state law in this case merely  
7 permits reporting of a lost or stolen firearm during days three, four, or five following the loss or  
8 theft. It does not mandate waiting more than 48 hours to report. The Ordinance does not  
9 contradict state law.

10 **ii. Dealers Within Morgan Hill Can Reasonably Comply with State**  
11 **Law and the Local Ordinance.**

12 Gun dealers, in addition to individual gun owners, are also reasonably capable of  
13 complying with both state law and the Ordinance. Prop. 63 requires gun dealers in California to  
14 post signage in their establishment stating that lost or stolen firearms must be reported within five  
15 days to local law enforcement. Similarly, the Ordinance requires gun dealers within Morgan Hill  
16 to post the relevant Municipal Code chapter within their establishment and to deliver a copy of the  
17 relevant chapter to anyone who purchases a firearm from them. (*See Allison Decl. Ex. 3*). As  
18 noted *supra*, state law and the Ordinance are not contradictory – one can reasonably comply with  
19 both. So too can dealers comply with the posting requirements of each; neither requirement  
20 prohibits posting additional information, and posting both required notices will ensure gun  
21 purchasers in Morgan Hill are fully informed about how to comply with both state and local  
22 reporting laws. For these reasons and those discussed above, the Ordinance is not preempted by  
23 state law by reason of contradiction.

24 **3. The Ordinance Is Not Preempted Because State Law Does Not**  
25 **Expressly or Impliedly Occupy the Entire Field of Lost or Stolen**  
**Reporting Requirements.**

26 The last possible avenue of “conflict” preemption requires a showing that state law

27  
28 **field.)** (emphasis added). Since, as discussed in Section X, *infra*, state law does not fully occupy  
the field of firearm regulation, the Ordinance is not preempted and *Hoffman’s* reasoning applies.

1 expressly preempts the Ordinance or impliedly occupies the entire field of lost or stolen reporting  
2 requirements. Neither is true here.

3 **i. State Law Does Not Expressly Preempt the Ordinance.**

4 Neither Prop. 63, nor Penal Code § 25250, includes express preemption language  
5 regarding the reporting of lost or stolen firearms. Plaintiffs do not contend otherwise.  
6 Plaintiffs also do not, and cannot, contend that state law includes express preemption language  
7 regarding firearms regulation generally. In fact, the opposite is true. Recognizing the significant  
8 local interests at stake, the California Legislature has declined to generally preempt the regulation  
9 of firearms and instead has chosen only to preempt local gun regulations in three discrete  
10 categories: (1) the licensing or registration of commercially manufactured firearms (Cal. Gov’t  
11 Code § 53071); (2) licensing or permitting with respect to concealable firearms (*id.* § 25605(b));  
12 and (3) regulation of imitation firearms (*id.* § 53071.5). There is no comparable legislative  
13 declaration of intent to preempt lost or stolen firearms reporting requirements.<sup>13</sup>

14 Regulations requiring the reporting of lost or stolen firearms within a given timeframe are  
15 not reasonably, or even remotely, analogous to the categories of licensing and registration laws the  
16 Legislature has expressly preempted. Unlike licensing and registration regulations, Morgan Hill’s  
17 Ordinance applies only after an owner has been *dispossessed* of their firearm; the ordinance is  
18 designed to aid local law enforcement in investigating crimes, not regulate guns while in the  
19 possession of lawful owners. Accordingly, Morgan Hill’s Ordinance does not enter into a field of

20 \_\_\_\_\_  
21 <sup>13</sup> In contrast to California’s narrow preemption of defined areas of gun regulation, forty-three  
22 states preempt all, or substantially all, aspects of firearms regulation. *See* Jennifer L. Pomeranz &  
23 Mark Pertschuk, *State Preemption: A Significant and Quiet Threat to Public Health in the United*  
24 *States*, 107 AM. J. PUBLIC HEALTH 900, 900 (2017). These states’ preemption statutes are an  
25 instructive comparison, as many of them—modeled after legislation promoted by the gun industry,  
26 *see id.*—express a boilerplate preference for uniform gun laws throughout the state. *See, e.g.,* Ala.  
27 Code § 13A-11-61.3 (“The purpose of this section is to establish within the Legislature complete  
28 control over regulation and policy pertaining to firearms, ammunition, and firearm accessories in  
order to ensure that such regulation and policy is applied uniformly throughout this state”); Idaho  
Code Ann. § 18-3302J(1) (announcing “legislature’s intent to wholly occupy the field of firearms  
regulation within this state”); Utah Code § 76-10-500 (firearm preemption law declaring “the need  
to provide uniform laws throughout the state”). With good reason, this is not the path California  
has chosen. *See, e.g.,* Pomeranz at 900 (industry-backed preemption laws tie municipalities’  
hands, leaving them “unable to address acute public health issues” best solved at the local level).



1 regulation which the state has expressly reserved for itself.

2 Furthermore, California courts have confirmed that the Legislature’s specific intent to  
3 preempt within these three discrete areas shows an intent not to preempt gun regulation generally.  
4 *See California Rifle & Pistol Assn.*, 66 Cal. App. 4th at 1311 (“The statutes, the judicial rulings  
5 interpreting the statutes, and the legislative responses to the judicial rulings demonstrate that the  
6 Legislature has carefully avoided a blanket preemption in the field of firearms regulation”); *see*  
7 *also Olsen v. McGillicuddy*, 15 Cal. App. 3d 897 (1971) (applying same reasoning and  
8 determining legislature has intentionally avoided blanket preemption in firearms regulation).  
9 Since the Ordinance is not related to any expressly preempted areas, and the Legislature’s  
10 considered, limited action shows an intent to not preempt firearms regulation generally, the  
11 Ordinance does not enter into an area expressly preempted by state law.

12 **ii. State Law Does Not Impliedly Preempt the Ordinance.**

13 Absent express language of preemption, state law only preempts the Ordinance if relevant  
14 indicia “clearly indicate” an *implied* intent to preempt by occupying the field. *See Sherwin-*  
15 *Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993); *California Rifle & Pistol Assn.*, 66 Cal.  
16 App. 4th at 1302. Courts consider three indicia of intent to impliedly occupy a field: (1) the  
17 subject matter has been so fully and completely covered by general law as to clearly indicate that  
18 it has become exclusively a matter of state concern; (2) the subject matter has been partially  
19 covered by general law couched in such terms as to indicate clearly that a paramount state concern  
20 will not tolerate further or additional local action; or (3) the subject matter has been partially  
21 covered by general law, and the subject is of such a nature that the adverse effect of a local  
22 ordinance on the transient citizens of the state outweighs the possible benefit to the locality.  
23 *Sherwin-Williams*, 4 Cal. 4th at 898. Courts look to the legislative scheme’s whole purpose and  
24 scope when determining such intent. *Galvan*, 70 Cal. 2d at 859. When California voters enact a  
25 state law by ballot initiative, voter intent is considered in place of the Legislature’s. *See Persky v.*  
26 *Bushey*, 21 Cal. App. 5th 810, 818-19 (2018).

27 In each of these three forms of implied preemption, the Legislature’s intent (here voters’  
28 intent) to preempt must be “clear.” *E.g.*, *Sherwin-Williams*, 4 Cal. 4th at 893. That is because

1 determining if the Legislature impliedly intended to preempt local regulation begs the question of  
2 why it did not simply say it was doing so, as it has done many times before. *California Rifle &*  
3 *Pistol Assn.*, 66 Cal. App. 4th at 1317. As discussed in Section C.3.i, supra, the Legislature has  
4 avoided preempting gun regulation generally. A finding of implied preemption absent a “clear”  
5 indication of intent to preempt would disregard the Legislature’s intentional avoidance of express  
6 preemption. *See id.* at 1318 (“To rule that the Legislature implicitly intended to preempt,  
7 notwithstanding the clear record that the Legislature has expressly avoided preemption by the  
8 careful wording of its enactments, would be to disregard the Legislature's own pronouncements.”).

9 Here, there is nothing to indicate, let alone “clearly indicate,” that the Legislature impliedly  
10 intended to occupy the field of lost and stolen firearms reporting, thereby preempting the  
11 Ordinance. Plaintiffs cannot meet their burden of proving implied legislative intent; to the  
12 contrary, the precedents and undisputed facts discussed below establish that the Legislature has  
13 *not* impliedly occupied this field of regulation.

14 **a. First, Lost or Stolen Firearms Reporting Is Not So Fully**  
15 **and Completely Covered By General Law As To Clearly**  
16 **Indicate It is Exclusively a Matter of State Concern.**

17 The only state law that covers the reporting of lost or stolen firearms by individual firearms  
18 owners is Penal Code § 25250, enacted through Prop. 63. Penal Code § 25250 requires, with  
19 some exceptions, reporting lost or stolen firearms within five days of a loss or theft. This one law  
20 does not “fully and completely” cover the area such that it has become “exclusively a matter of  
21 state concern.” This is particularly so given that Prop. 63 was enacted against a backdrop of  
22 preexisting local lost or stolen reporting laws that went further than state law. *See infra* at p.17.

23 In *Galvan v. Superior Court*, the California Supreme Court considered whether state law  
24 preempted a local ordinance requiring gun registration (this decision predated, and indeed  
25 motivated, the California legislature’s express preemption of certain local gun registration laws).  
26 *Galvan*, 70 Cal. 2d 851 (overturned by statute). In noting only three state laws at that time relating  
27 to the registration of guns, the Court said “[t]hese statutes cannot reasonably be said to show a  
28 general scheme for the regulation of the subject of gun registration, and there is no basis for a  
conclusion that these statutes show a legislative intent to make the subject of gun registration

1 immune from local regulation.” *Galvan*, 70 Cal. 2d at 860. Until the legislature expressly  
2 identified local firearm registration laws as preempted, the California Supreme Court was  
3 unwilling to interpret three isolated state registration laws as overriding localities’ presumptive  
4 authority to regulate in this area.

5 In *California Rifle & Pistol Assn. v. City of W. Hollywood*, the court considered whether a  
6 West Hollywood ordinance banning the sale of certain firearms was preempted by state law. 66  
7 Cal. App. 4th at 1318. In discussing the first indicia of intent for implied preemption, the court  
8 found that the Legislature’s express preemption in three areas of gun regulation —none of which  
9 covered firearms sales —indicated that the Legislature did not intend to impliedly preempt  
10 firearms sales. The court stated “[t]he very existence of the three code sections discussed above,  
11 each of which specifically preempts a narrowly limited field of firearms regulation, is a rather  
12 clear indicator of legislative intent to leave areas not specifically covered within local control.  
13 Thus state law does not ‘clearly indicate’ that the Legislature has intended a preemption here; in  
14 fact, it clearly indicates the opposite.” *California Rifle & Pistol Assn.*, 66 Cal. App. 4th at 1318.

15 The *California Rifle & Pistol Assn* court’s reasoning applies equally well to Morgan Hill’s  
16 Ordinance. Reporting lost or stolen firearms does not fall within an area expressly preempted, and  
17 the Legislature’s inaction indicates no implied preemption, especially in light of its measured  
18 approach to express preemption. *See id.* at 1318. The one state law related to individuals reporting  
19 lost or stolen firearms falls far short of establishing lost or stolen firearms reporting as “so fully  
20 and completely covered by general law as to clearly indicate that it has become exclusively a  
21 matter of state concern.” *See Galvan*, 70 Cal. 2d at 860; *Sherwin-Williams*, 4 Cal. 4th at 898.

22 Plaintiffs may contend that Prop. 63’s signage requirement indicates an intent for state  
23 law to regulate to the exclusion of local ordinances since Prop. 63 requires gun dealers to post the  
24 state law requirements in the establishment. This ignores that Courts look to the whole scheme  
25 and purpose when determining legislative intent. *Galvan*, 70 Cal. 2d at 859. The purpose of Prop.  
26 63, as laid out in the “Purpose and Intent” Section of the initiative, is “[t]o keep guns and  
27 ammunition out of the hands of convicted felons, the dangerously mentally ill, and other who are  
28 prohibited by law from possessing firearms and ammunition.” And “[t]o require the reporting of

1 lost or stolen firearms to law enforcement.” The signage requirement, when considered in context  
2 of the purpose of the statute, does not indicate an intent to fully occupy the field.

3 Taken as a whole, the relevant indicia of intent do not indicate a legislative intent to  
4 preempt. Rather, as the *California Rifle & Pistol Assn* court put it, state law does not “clearly  
5 indicate” that the Legislature intended a preemption of the Ordinance, “in fact, it clearly indicates  
6 the opposite.” 66 Cal. App. 4th at 1318.

7 **b. Second, State Law Governing Lost or Stolen Firearms Is**  
8 **Not Couched in Such Terms as To Indicate Clearly That**  
9 **a Paramount State Concern Will Not Tolerate Further or**  
10 **Additional Local Action.**

11 The second way that state law could preempt the Ordinance by implication is if “there has  
12 been partial coverage of the field by general law couched in such terms as to indicate that there is  
13 a paramount state concern which will not tolerate further or additional local requirements.”  
14 *Galvan*, 70 Cal. 2d at 863 (citation omitted). However, far from clearly indicating an intolerance  
15 for local action, Prop. 63 — the only state law relevant to the reporting of lost or stolen firearms  
16 — left existing local ordinances untouched. Prior to the enactment of Prop. 63, seventeen  
17 localities in California required reporting of lost or stolen firearms sooner than 5 days after the  
18 loss or theft was reasonably discovered. (*See* Allison Decl. Ex. 10). In imposing a state-law  
19 maximum period for reporting firearm loss or theft, Prop. 63 was completely silent about these  
20 more stringent local ordinances or the need for a five-day standard in particular. This cannot be  
21 interpreted as an intolerance for local ordinances on the reporting of firearm loss or theft.

22 The ballot measure’s text also indicates there is no “paramount state concern” such that  
23 additional local action cannot be tolerated. The Purpose section of Prop. 63 states, in part, that it  
24 is intended “[t]o keep guns and ammunition out of the hands of convicted felons, the dangerously  
25 mentally ill, and other persons who are prohibited by law from possessing firearms and  
26 ammunition.” Shortening the reporting timeframe for lost or stolen firearms only furthers this  
27 purpose. *See Fiscal v. City & Cty. of San Francisco*, 158 Cal. App. 4th 895, 915 (2008) (“[C]ourts  
28 have found, in the absence of express preemptive language, that a city or county may make  
additional regulations, different from those established by the state, if not inconsistent with the

1 purpose of the general law.”).

2 Reinforcing this conclusion, Prop. 63 also notes a clear intention to require “the reporting  
3 of lost or stolen firearms to law enforcement,” but it does not include any specific timeframe by  
4 which reporting should be accomplished. (*See* Allison Decl. Ex. 7). This is in contrast to  
5 timeframes expressly provided elsewhere in Prop. 63. Specifically:

- 6 • A separate provision of Prop. 63 requires licensed ammunition *sellers* (not  
7 individuals) to report lost or stolen ammunition. The statement of purpose provides  
8 that the initiative intends to require sellers to “report any lost or stolen ammunition  
**within 48 hours** of discovering it is missing.” *Id.*
- 9 • By contrast, there is no such time frame provided in the description of the purpose  
10 for individual reporting or lost or stolen firearms, which only states that the purpose  
11 is “to require the reporting of lost or stolen firearms to law enforcement.” *Id.*
- 12 • Similarly, Prop. 63 Section 2 outlines the findings of the people of California.  
13 With respect to seller reporting, Section 8 states, “...Stores should have to report  
14 lost or stolen ammunition **within 48 hours** of discovering that it is missing...” *Id.*
- 15 • But as to individuals, Section 9 states, “Californians today are not required to report  
16 lost or stolen guns to law enforcement. This makes it difficult for law enforcement  
17 to investigate crimes committed with stolen guns, break up gun trafficking rings,  
18 and return guns to their lawful owners. **We should require gun owners to report  
19 their lost or stolen guns to law enforcement.**” *Id.*

20 The discrepancy between these two provisions demonstrates that the purpose of the 48-  
21 hour stolen ammunition reporting requirement for *sellers* may be to remove localities’ ability to  
22 mandate a shorter reporting requirement for ammunition sellers. But because there is no  
23 corresponding statement that 5 days is the only appropriate timeframe for individuals to report lost  
24 or stolen firearms, Prop. 63 indicates an intent to allow further local regulation in this area. While  
25 it is an omission rather than an affirmative statement to this effect, an affirmative showing is not  
26 the test. State legislative enactments are *assumed* not to preempt. Therefore, Plaintiffs must not  
27 only show that the voters departed from this presumption by barring local legislation, but also that  
28 the voters’ intent is *so* clear as to not tolerate *any* local action. *See California Rifle & Pistol Assn.*,  
66 Cal. App. 4th at 1320 (“The relevant question is not whether a statute grants the City a power,  
but whether a statute deprives the City of a power already bestowed upon the City by the  
Constitution.”). By failing to mention a 5-day reporting requirement, in particular, anywhere in its

1 express statement of purpose or voter findings (in contrast to other timeframes that were expressly  
2 mentioned), Prop. 63 does not support such an interpretation.

3 As a final factor weighing against a finding of implied preemption on the basis of a  
4 “paramount state interest,” courts have routinely recognized that gun regulation is a matter of *local*  
5 concern. In *Great Western Shows, Inc. v. County of Los Angeles*, the Court held that “we are  
6 reluctant to find such a paramount state concern, and therefore implied preemption, when there is  
7 a significant local interest to be served that may differ from one locality to another. It is true today  
8 as it was more than 30 years ago when we stated it in *Galvan*, “[t]hat problems with firearms are  
9 likely to require different treatment in San Francisco County than in Mono County.” 27 Cal. 4th  
10 at 866–67 (citations omitted). These local interests are even more pronounced in the unique  
11 context of ordinances regulating the loss or theft of firearms. As discussed *supra* at p.8, gun crime  
12 is local crime, and it is *local* law enforcement who are tasked with investigating lost or stolen  
13 firearms and responding to crimes committed with these weapons. Prop. 63’s Purpose and  
14 Findings, coupled with the differing interests of local municipalities, lead to one conclusion:  
15 Morgan Hill’s Ordinance is not preempted by implication.

16 **c. Third, Morgan Hill’s Ordinance Does Not Have a**  
17 **Significant Adverse Effect on Transient Citizens.**

18 The last reason a court might find an ordinance impliedly preempted is if it substantially  
19 burdens transient citizens. Morgan Hill is unaware of any firearm ordinance being invalidated on  
20 this basis, and courts have held that gun sale, use, and possession regulations have a minimal  
21 adverse effect on transient citizens. See *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 1119  
22 (1997); *Galvan*, 70 Cal. 2d at 864–865; *Great W. Shows*, 27 Cal. 4th 853. Morgan Hill’s  
23 Ordinance would only come into play for transient citizens if their gun was lost or stolen within  
24 Morgan Hill *and* they wished to wait to report it until day three, four, or five. Even then, the  
25 effect is minimal. See *Great W. Shows*, 27 Cal. 4th at 867 (“As for the third test, we agree with  
26 previous cases that “[l]aws designed to control the sale, use or possession of firearms in a  
27 particular community have very little impact on transient citizens, indeed, far less than other laws  
28 that have withstood preemption challenges.”) (Citations omitted).

1 The Ordinance, by its express language, only applies when a gun is lost by, or stolen from,  
2 a resident of Morgan Hill or when the loss or theft occurs in Morgan Hill. (Allison Decl. Ex. 2).  
3 Penal Code § 25250 requires an individual to report a loss or theft to local law enforcement. Pen.  
4 Code § 25250. Since non-residents of Morgan Hill must only report under the Ordinance when  
5 the loss or theft occurs in Morgan Hill, and state law already requires reporting to “local law  
6 enforcement” which would be Morgan Hill Police, the adverse effect on transient citizens is  
7 limited to the restricted timeframe during which an individual must report – namely 48 hours  
8 instead of five days. The final indicia of intent weighs in favor of finding no preemption.

9 **V. CONCLUSION**


10 Like all California municipalities, Morgan Hill enjoys a Constitutional right to regulate  
11 within its police powers for the health and safety of its citizens. The city has chosen to do so in  
12 the area of lost or stolen firearm reporting, motivated by a recent and dangerous increase in gun  
13 thefts nationwide, coupled with documented evidence that stolen guns fuel gun trafficking, straw  
14 purchasing, and gun crimes close to home.

15 Gun regulations generally, and reporting requirements for lost or stolen firearms  
16 specifically, fall squarely within Morgan Hill’s police powers and, absent a clear legislative intent  
17 to preempt, will not be disturbed by state law. Far from a “clear intent to preempt,” the relevant  
18 evidence and accompanying case law demonstrates the legislature, in this instance the voters,  
19 affirmatively intended not to preempt existing lost or stolen reporting ordinances, leaving Morgan  
20 Hill free to regulate as it sees fit. Morgan Hill’s Motion for Summary Judgment should be  
21 granted.

22 Dated: April 30, 2020

FARELLA BRAUN + MARTEL LLP

23  
24 By:

  
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25  
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27 HILL CHIEF OF POLICE DAVID SWING, MORGAN  
28 HILL CITY CLERK IRMA TORREZ

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TORREZ

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE  
15

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

18 Plaintiffs and Petitioners,

19 vs.  
20

21 CITY OF MORGAN HILL; MORGAN HILL  
CHIEF OF POLICE DAVID SWING, in his  
22 official capacity; MORGAN HILL CITY  
CLERK IRMA TORREZ, in her official  
23 capacity; and DOES 1-10,,  
24

Defendants and Respondents.

Case No. 19CV346360

**SEPARATE STATEMENT OF  
UNDISPUTED FACTS**

Judge: Hon. Peter Kirwan

Date: July 2, 2020

Time: 9:00 a.m.

Dept: 19

Action Filed: April 15, 2019

25 Pursuant to California Code of Civil Procedure Section 437c(b), Defendants City of  
26 Morgan Hill, Chief of Police David Swing in his official capacity, and Morgan Hill City Clerk  
27 Irma Torrez in her official capacity (“Defendants”) hereby submit this Separate Statement of  
28



Undisputed Material Facts, together with references to supporting evidence, in support of their Motion for Summary Judgment. The facts set forth below are dispositive of Plaintiffs Kirk and California Rifle and Pistol Association’s cause of action for declaratory and injunctive relief.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>1. In November 2016, California Voters enacted Proposition 63 (“Prop. 63”) entitled “The Safety for All Act of 2016.”</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	
<p>2. <u>Prop 63. Section 2 Findings and Declarations</u> sets out findings made by the “people of the State of California”.</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	
<p>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.”</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	
<p>4. 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>	

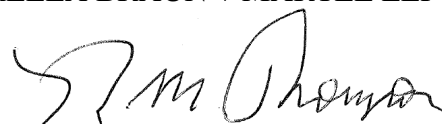
Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>5. <u>Prop 63. Section 3 Purpose and Intent</u> sets out the purpose and intent of the people of the State of California in enacting the Safety for All Act of 2016.</p> <p>(Allison Decl. Ex. 7); (RJN Ex. A).</p>	
<p>6. 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>	
<p>7. 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>	
<p>8. 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>	
<p>9. Following Prop. 63's passage, Penal Code 25250 took effect in 2017.</p> <p>(Allison Decl. Ex. 9)</p>	
<p>10. 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>	
<p>11. In November 2018, Morgan Hill City Council adopted Local Ordinance No. 2289.</p> <p>(Allison Decl. Ex. 1)</p>	

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>12. Local Ordinance No. 2289 amended Municipal Code Section 9.04.030.</p> <p>(Allison Decl. Ex. 1)</p>	
<p>13. Municipal Code Section 9.04.030 now reads:</p> <p><b>"9.04.030. Duty to report theft or loss of firearms.</b></p> <p>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>	
<p>14. Municipal Code 9.04.030 took effect in December 2018.</p> <p>(Allison Decl. Ex. 2)</p>	

Dated: April 30, 2020

FARELLA BRAUN + MARTEL LLP

By:



Roderick M. Thompson

Attorneys for CITY OF MORGAN HILL, MORGAN HILL CHIEF OF POLICE DAVID SWING, MORGAN HILL CITY CLERK IRMA TORREZ

## PROOF OF SERVICE

Case Name: *Kirk, et al. v. City of Morgan Hill, et al.*

Court of Appeal Case No.: H048745

Superior Court Case No.: 19CV346360

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, Long Beach, California 90802.

On August 25, 2021, I served a copy of the foregoing document(s) described as:  
**APPELLANTS' APPENDIX, VOLUME I OF XI**, as follows:

Anthony P. Schoenberg  
[tschoenberg@fbm.com](mailto:tschoenberg@fbm.com)  
James Allison  
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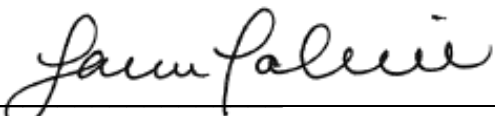
Hannah Shearer  
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Giffords Law Center to Prevent  
Gun Violence  
262 Bush Street #555  
San Francisco, CA 94104

*Attorneys for Defendants and Respondents City of Morgan Hill, et al.*

These parties were served as follows: I served a true and correct copy by electronic transmission through TrueFiling. Said transmission was reported and completed without error.

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

Executed on August 25, 2021, at Long Beach, California.

  
\_\_\_\_\_  
Laura Palmerin  
Declarant