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21 Attorneys for Plaintiffs

22 **UNITED STATES DISTRICT COURT**
23 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

24 JANICE ALTMAN, an individual;
25 RYAN GOODRICH, an individual;
26 ALBERT LEE SWANN, an individual;
27 ROMAN KAPLAN, an individual;
28 YAN TRAYTEL, an individual; DMITRIY
DANILEVSKY, an individual; GREG
DAVID, an individual; SCOTT CHALMERS,
an individual; CITY ARMS EAST LLC; CITY
ARMS LLC; CUCKOO COLLECTIBLES LLC
d.b.a. EDDY'S SHOOTING SPORTS;
SECOND AMENDMENT FOUNDATION;
CALIFORNIA GUN RIGHTS FOUNDATION;
NATIONAL RIFLE ASSOCIATION OF
AMERICA; CALIFORNIA ASSOCIATION
OF FEDERAL FIREARMS LICENSEES,
INC.; and FIREARMS POLICY COALITION,
INC.,

Case No. 4:20-cv-02180-JST

**FIRST AMENDED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

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Plaintiffs,

vs.

COUNTY OF SANTA CLARA,
CALIFORNIA; LAURIE SMITH, in her
capacity as Sheriff of the County of Santa Clara;
JEFFREY ROSEN, in his official capacity as
Santa Clara County District Attorney; SARA
CODY, in her official capacity as Santa Clara
County Health Officer; CITY OF SAN JOSE,
CALIFORNIA; SAM LICCARDO, in his
official capacity as Mayor of San Jose;
EDGARDO GARCIA, in his official capacity as
Chief of Police for the City of San Jose; CITY
OF MOUNTAIN VIEW, CALIFORNIA; MAX
BOSEL, in his official capacity as the Chief of
Police for the City of Mountain View;
COUNTY OF ALAMEDA, CALIFORNIA;
GREGORY AHERN, in his capacity as Sheriff
of the County of Alameda; ERICA PAN, in her
capacity as Health Officer of the County of
Alameda; COUNTY OF SAN MATEO,
CALIFORNIA; CARLOS BOLANOS, in his
capacity as Sheriff of the County of San Mateo;
SCOTT MORROW in his capacity as San
Mateo County Health Officer; CITY OF
PACIFICA, CALIFORNIA; DAN STEIDLE, in
his official capacity as the Chief of Police for
the City of Pacifica; COUNTY OF CONTRA
COSTA, CALIFORNIA; DAVID
LIVINGSTON, in his capacity as Sheriff of the
County of Contra Costa; CHRIS FARNITANO,
in his capacity as Health Officer of Contra
Costa County; CITY OF PLEASANT HILL,
CALIFORNIA; BRYAN HILL in his official
capacity as Chief of Police for the City of
Pleasant Hill,

Defendants.

1 Plaintiffs Janice Altman, *et al.* (“Plaintiffs”), by and through counsel of record, bring this
2 complaint for injunctive and declaratory relief against the named Defendants, and allege as
3 follows:

4 **INTRODUCTION**

5 1. California’s local governments, whether legislatively or by executive decree,
6 cannot simply suspend the Constitution. Authorities may not, by decree or otherwise, enact and/or
7 enforce a suspension or deprivation of constitutional liberties. And they certainly may not use a
8 public health crisis as political cover to impose bans and restrictions on rights they do not like.

9 2. Firearm and ammunition product manufacturers, retailers, importers, distributors,
10 and shooting ranges are essential businesses that provide essential access to constitutionally
11 protected fundamental, individual rights.

12 3. If firearms and ammunition could be purchased online like other constitutionally
13 protected artifacts, such as paper, pens, ink, and technology products that facilitate speech, then
14 individuals could simply purchase what they need and have the items delivered to their doorsteps.
15 But because of an onerous and complicated federal, state, and local regulatory scheme, people in
16 California cannot exercise their Second Amendment right to keep and bear arms without going in
17 person to such essential businesses—at least once for ammunition, and at least twice for firearms.

18 4. In California, individuals are required to purchase and transfer firearms and
19 ammunition through state and federally licensed dealers in face-to-face transactions or face serious
20 criminal penalties. Shuttering access to arms, the ammunition required to use those arms, and the
21 ranges and education facilities that individuals need to learn how to safely and competently use
22 arms, necessarily closes off the Constitutional right to learn about, practice with, and keep and bear
23 those arms.

24 5. By forcing duly licensed, essential businesses to close or eliminate key services for
25 the general public, government authorities are foreclosing the only lawful means to buy, sell, and
26 transfer firearms and ammunition available to typical, law-abiding individuals in California. Such
27 a prohibition on the right to keep and bear arms is categorically unconstitutional.

28 6. The circumstances posed by the COVID-19 Novel Coronavirus outbreak present

1 challenges to all of us, including the government. Responding to those challenges, for example,
2 some law enforcement officials are releasing inmates from jails.

3 7. With governments having no legal duty to protect the people they serve, and with
4 no guarantee that law enforcement can or will respond to 911 calls during this crisis or after it (let
5 alone in time to prevent a crime), people who choose to exercise their fundamental, individual
6 rights are not part of the crisis; rather, they are responding rationally to the impacts caused by the
7 crisis.

8 8. Such governmental action during the height of an acknowledged crisis also violates
9 the constitutional checks and balances that are the hallmark of limited government and separation
10 of powers. This suit challenges not only the underlying orders and enforcement policies for their
11 blatant violations of enumerated constitutional rights, it also challenges the manner in which those
12 policies were enacted.

13 9. It is a bedrock principle of our constitutional order that legislatures may not enact
14 overbroad, effectively bound-less laws that give unfettered discretion to executive agencies to
15 ‘figure out’ the details later, while also ‘passing the buck’ to those executive agencies to make and
16 enforce the policies that impact the people’s lives, liberty, and property.

17 10. The need for self-defense during uncertain times is precisely when Plaintiffs and
18 Plaintiffs’ members must be able to exercise their fundamental rights to keep and bear arms. The
19 challenges we all face because of the COVID-19 Coronavirus, or any other such emergency, do
20 not, cannot, and must not justify or excuse government infringements upon fundamental human
21 rights. The declaratory and injunctive relief that Plaintiffs have been forced to seek through this
22 action is necessary to uphold this bedrock principle of the United States Constitution.

23 **PARTIES**

24 *Individual Plaintiffs*

25 11. Plaintiff Janice Altman is a natural person, a citizen of the United States, and a
26 resident of the City of San Jose in the County of Santa Clara, California. Plaintiff Altman is not
27 prohibited from possessing or acquiring arms, including firearms and ammunition, under state and
28 federal law. Plaintiff Altman holds a valid California Firearm Safety Certificate (“FSC”). Plaintiff

1 Altman is concerned about her safety and the safety of her family, wants to exercise her right to
2 keep and bear arms – including firearms, ammunition, magazines, and appurtenances – and would
3 do so, but for the reasonable and imminent fear of arrest and criminal prosecution under
4 Defendants’ laws, policies, orders, practices, customs, and enforcement, and because Defendants’
5 orders and actions have closed firearm and ammunition retailers and ranges.

6 12. Plaintiff Ryan Goodrich is a natural person, a citizen of the United States, and a
7 resident of the County of Contra Costa, California. Plaintiff Goodrich is not prohibited from
8 possessing or acquiring arms, including firearms and ammunition, under state and federal law.
9 Plaintiff Goodrich is concerned about his safety and the safety of his family, wants to practice and
10 exercise his right to keep and bear arms – including firearms, ammunition, magazines, and
11 appurtenances – and would do so, but for the reasonable and imminent fear of arrest and criminal
12 prosecution under Defendants’ laws, policies, orders, practices, customs, and enforcement, and
13 because Defendants’ orders and actions have closed firearm and ammunition retailers and ranges.

14 13. Plaintiff Albert Lee Swann is a natural person, a citizen of the United States, and a
15 resident of the County of Alameda, California. Plaintiff Swann is not prohibited from possessing
16 or acquiring arms, including firearms and ammunition, under state and federal law. Plaintiff Swann
17 is concerned about his safety and the safety of his family, wants to practice and exercise his right
18 to keep and bear arms – including firearms, ammunition, magazines, and appurtenances – and
19 would do so, but for the reasonable and imminent fear of arrest and criminal prosecution under
20 Defendants’ laws, policies, orders, practices, customs, and enforcement, and because Defendants’
21 orders and actions have closed firearm and ammunition retailers and ranges.

22 14. Plaintiff Roman Kaplan is a natural person, a citizen of the United States, and a
23 resident of the County of Contra Costa, California. Plaintiff Kaplan is not prohibited from
24 possessing or acquiring arms, including firearms and ammunition, under state or federal law.
25 Plaintiff Kaplan is the co-owner and operator of Plaintiff City Arms East LLC in Pleasant Hill,
26 California. Plaintiff Kaplan is concerned about his safety and the safety of his customers and the
27 public. On behalf of himself and his customers, Plaintiff Kaplan would conduct training and
28 education, perform FSC testing for and issue FSC certificates to eligible persons, and sell and

1 transfer arms – including firearms, ammunition, magazines, and appurtenances – but for the
2 reasonable and imminent fear of criminal prosecution and loss of his business licenses under
3 Defendants’ laws, policies, orders, practices, customs, and enforcement thereof.

4 15. Plaintiff Yan Traytel is a natural person, a citizen of the United States, and a resident
5 of the County of Contra Costa, California. Plaintiff Traytel is not prohibited from possessing or
6 acquiring arms, including firearms and ammunition, under state or federal law. Plaintiff Traytel is
7 the co-owner and operator of Plaintiff City Arms East LLC in Pleasant Hill, California. Plaintiff
8 Traytel is concerned about his safety and the safety of his customers and the public. On behalf of
9 himself and his customers, Plaintiff Traytel would conduct training and education, perform FSC
10 testing for and issue FSC certificates to eligible persons, and sell and transfer arms – including
11 firearms, ammunition, magazines, and appurtenances – but for the reasonable and imminent fear
12 of criminal prosecution and loss of his business licenses under Defendants’ laws, policies, orders,
13 practices, customs, and enforcement thereof.

14 16. Plaintiff Dmitriy Danilevsky is a natural person, a citizen of the United States, and
15 a resident of the County of San Mateo, California. Plaintiff Danilevsky is not prohibited from
16 possessing or acquiring arms, including firearms and ammunition, under state or federal law.
17 Plaintiff Danilevsky is the owner and operator of Plaintiff City Arms LLC in Pacifica, California.
18 Plaintiff Danilevsky is concerned about his safety and the safety of his customers and the public.
19 On behalf of himself and his customers, Plaintiff Danilevsky would conduct training and
20 education, perform FSC testing for and issue FSC certificates to eligible persons, and sell and
21 transfer arms – including firearms, ammunition, magazines, and appurtenances – but for the
22 reasonable and imminent fear of criminal prosecution and loss of his business licenses under
23 Defendants’ laws, policies, orders, practices, customs, and enforcement thereof.

24 17. Plaintiff Greg David is a natural person, a citizen of the United States, and a resident
25 of the County of Santa Clara, California. Plaintiff David is not prohibited from possessing or
26 acquiring arms, including firearms and ammunition, under state or federal law. Plaintiff David is
27 the owner and operator of Plaintiff Cuckoo Collectibles LLC, d.b.a. Eddy’s Shooting Sports in
28 Mountain View, California. Plaintiff David is concerned about his safety and the safety of his

1 customers and the public. On behalf of himself and his customers, Plaintiff David would conduct
2 training and education, perform FSC testing for, and issue FSC certificates to eligible persons, and
3 sell and transfer arms – including firearms, ammunition, magazines, and appurtenances – but for
4 the reasonable and imminent fear of criminal prosecution and loss of his business licenses under
5 Defendants’ laws, policies, orders, practices, customs, and enforcement thereof.

6 18. Plaintiff Scott Chalmers is a natural person, a citizen of the United States, and a
7 resident of the County of Contra Costa, California. Plaintiff Chalmers is not prohibited from
8 possessing or acquiring arms, including firearms and ammunition, under state and federal law.
9 Plaintiff Chalmers is concerned about his safety and the safety of his family, wants to practice and
10 exercise his right to keep and bear arms – including firearms, ammunition, magazines, and
11 appurtenances – and would do so, but for the reasonable and imminent fear of arrest and criminal
12 prosecution under Defendants’ laws, policies, orders, practices, customs, and enforcement, and
13 because Defendants’ orders and actions have closed firearm and ammunition retailers and ranges.

14 ***Retailer Plaintiffs***

15 19. Plaintiff City Arms LLC (“City Arms”), is a limited liability corporation and holds
16 federal, state, and local licenses to conduct the sales of arms, including firearms, ammunition,
17 magazines, and appurtenances, in Pacifica, California, a city in San Mateo County, California.
18 Plaintiff City Arms is concerned about its safety and the safety of its customers and the public. On
19 behalf of itself and its customers, Plaintiff City Arms would conduct training and education,
20 perform California FSC testing for and issue FSC certificates to eligible persons, and sell and
21 transfer arms – including firearms, ammunition, magazines, and appurtenances – but for the
22 reasonable and imminent fear of criminal prosecution and loss of its licenses because of
23 Defendants’ laws, policies, orders, practices, customs, and enforcement thereof.

24 20. Plaintiff City Arms East LLC (“City Arms East”), is a limited liability corporation
25 and holds federal, state, and local licenses to conduct the sales of arms, including firearms,
26 ammunition, magazines, and appurtenances, in Pleasant Hill, California, a city in Contra Costa
27 County, California. Plaintiff City Arms East is concerned about its safety and the safety of its
28 customers and the public. On behalf of itself and its customers, Plaintiff City Arms East would

1 conduct training and education, perform California FSC testing for and issue FSC certificates to
2 eligible persons, and sell and transfer arms – including firearms, ammunition, magazines, and
3 appurtenances – but for the reasonable and imminent fear of criminal prosecution and loss of its
4 licenses because of Defendants’ laws, policies, orders, practices, customs, and enforcement
5 thereof.

6 21. Plaintiff City Cuckoo Collectibles LLC, d.b.a. Eddy’s Shooting Sports (“Eddy’s”),
7 is a limited liability corporation and holds federal, state, and local licenses to conduct the sales of
8 arms, including firearms, ammunition, magazines, and appurtenances, in Mountain View,
9 California, a city in Santa Clara County, California. Plaintiff Eddy’s Shooting Sports is concerned
10 about its safety and the safety of its customers and the public. On behalf of itself and its customers,
11 Plaintiff Eddy’s Shooting Sports would conduct training and education, perform California FSC
12 testing for and issue FSC certificates to eligible persons, and sell and transfer arms – including
13 firearms, ammunition, magazines, and appurtenances –but for the reasonable and imminent fear of
14 criminal prosecution and loss of its licenses because of Defendants’ laws, policies, orders,
15 practices, customs, and enforcement thereof.

16 ***Institutional Plaintiffs***

17 22. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a nonprofit educational
18 foundation incorporated under the laws of Washington with its principal place of business in
19 Bellevue, Washington. SAF seeks to preserve the effectiveness of the Second Amendment through
20 education, research, publishing, and legal action programs focused on the Constitutional right to
21 possess firearms, and the consequences of gun control. SAF has over 650,000 members and
22 supporters nationwide, including thousands of members in California. SAF brings this action on
23 behalf of itself and its members. Individual Plaintiffs and Retailer Plaintiff are members of SAF.

24 23. Plaintiff California Gun Rights Foundation (“CGF”) is a nonprofit foundation
25 incorporated under the laws of California with its principal place of business in Sacramento,
26 California. CGF serves its members, supporters, and the public through educational, cultural, and
27 judicial efforts to defend and advance Second Amendment and related rights. CGF has thousands
28 of members and supporters in California, including members in Defendants’ respective

1 jurisdictions and the Individual and Retailer Plaintiffs herein. The interpretation and enforcement
2 of the Second Amendment directly impacts CGF's organizational interests, as well as the rights of
3 CGF's members and supporters. CGF has expended and diverted resources, and has been adversely
4 and directly harmed, because of Defendants' laws, policies, practices, and customs challenged
5 herein. CGF brings this action on behalf of itself, its members, supporters who possess all the
6 indicia of membership, and similarly situated members of the public.

7 24. Plaintiff National Rifle Association of America ("NRA") is a nonprofit corporation
8 organized under the laws of the State of New York with its principal place of business in Fairfax,
9 Virginia. The NRA is America's leading provider of gun-safety and marksmanship education for
10 civilians and law enforcement. It is also an important defender of the Second Amendment to the
11 United States Constitution. The NRA has over five million members, and its programs reach
12 millions more. NRA's members reside both outside and within the State of California. NRA
13 represents its members and supporters and brings this action on behalf of itself, its members,
14 supporters who possess all the indicia of membership, and similarly situated members of the
15 public. NRA has expended and diverted resources, and is adversely and directly harmed, because
16 of Defendants' laws, policies, orders, practices, and customs challenged herein.

17 25. Plaintiff California Association of Federal Firearms Licensees, Inc. ("CAL-FFL")
18 is nonprofit organization incorporated under the laws of California with its principal place of
19 business in Sacramento, California. CAL-FFL serves its members and the public through direct
20 and grassroots issue advocacy, regulatory input, legal efforts, and education. CAL-FFL's
21 membership includes firearm dealers, training professionals, shooting ranges, licensed collectors,
22 and others who participate in the firearms ecosystem. The interpretation and enforcement of the
23 Constitution directly impacts CAL-FFL's organizational interests, as well as the rights of CAL-
24 FFL's members and supporters. CAL-FFL has expended and diverted resources, and has been
25 adversely and directly harmed, because of Defendants' laws, policies, practices, and customs
26 challenged herein. CAL-FFL brings this action on behalf of itself, its members, supporters who
27 possess all the indicia of membership, and similarly situated members of the firearm licensee
28 industry and the public. Retailer Plaintiffs are members of CAL-FFL.

1 California. Defendant Cody is the head of the Santa Clara County Department of Public Health.
2 The Santa Clara Department of Health is the department responsible for public health in Santa
3 Clara County. It enforces some of the laws in the California Health and Safety Codes, including
4 those at issue herein. Defendant Cody is sued in her official capacity.

5 31. Defendant City of San Jose, California is a local governmental entity in Santa Clara
6 County organized under the Constitution and laws of the State of California, possessing legal
7 personhood within the meaning of 42 U.S.C. § 1983. The City is responsible for executing and
8 administering its laws, orders, polices, practices, customs, and actions at issue in this lawsuit.

9 32. Defendant Sam Liccardo is the Mayor of the City of San Jose, California. As
10 Mayor, he is responsible for the direction, enforcement, and execution of the City of San Jose’s
11 laws, orders, policies, practices, customs, and actions at issue in this lawsuit. Defendant Liccardo
12 is sued in his official capacity.

13 33. Defendant Edgardo (“Eddie”) Garcia is the Chief of Police for the City of San Jose,
14 California. As the Chief of Police, he is responsible within the City for the enforcement and
15 execution of laws, orders, policies, practices, customs, and actions at issue in this lawsuit.
16 Defendant Garcia is sued in his official capacity.

17 34. Defendant City of Mountain View, California is a local governmental entity in
18 Santa Clara County organized under the Constitution and laws of the State of California,
19 possessing legal personhood within the meaning of 42 U.S.C. § 1983. The City is responsible for
20 executing and administering its laws, orders, polices, practices, customs, and actions at issue in
21 this lawsuit.

22 35. Defendant Max Bosel is the Chief of Police for the City of Mountain View,
23 California. As the Chief of Police, he is responsible within the City for the enforcement and
24 execution of laws, orders, policies, practices, customs, and actions at issue in this lawsuit.
25 Defendant Bosel is sued in his official capacity.

26 *Alameda Defendants*

27 36. Defendant County of Alameda, California is a local governmental entity organized
28 under the Constitution and laws of the State of California, possessing legal personhood within the

1 meaning of 42 U.S.C. § 1983. The County is responsible for executing and administering its laws,
2 orders, policies, practices, customs, and actions at issue in this lawsuit.

3 37. Defendant Gregory Ahern is the Sheriff of Defendant Alameda County, California
4 and head of Alameda County Sheriff's Office. As the Sheriff, he is responsible within the County
5 for the enforcement and execution of laws, orders, policies, practices, customs, and actions at issue
6 in this lawsuit. Defendant Ahern is sued in his official capacity.

7 38. Defendant Erica Pan is a Public Health Officer for the County of Alameda,
8 California. The Alameda Health Services Department is the department responsible for public
9 health in Alameda County. It enforces some of the laws in the California Health and Safety Codes,
10 including those at issue herein. Defendant Pan is sued in her official capacity.

11 ***San Mateo Defendants***

12 39. Defendant County of San Mateo, California is a local governmental entity
13 organized under the Constitution and laws of the State of California, possessing legal personhood
14 within the meaning of 42 U.S.C. § 1983. The County is responsible for executing and administering
15 its laws, orders, policies, practices, customs, and actions at issue in this lawsuit.

16 40. Defendant Carlos Bolanos is the Sheriff of Defendant San Mateo County,
17 California and head of San Mateo County Sheriff's Office. As Sheriff, he is responsible within the
18 County for the enforcement and execution of laws, orders, policies, practices, customs, and actions
19 at issue in this lawsuit. Defendant Bolanos is sued in his official capacity.

20 41. Defendant Scott Morrow is a Health Officer for the County of San Mateo,
21 California. The San Mateo Health Department is the department responsible for public health in
22 San Mateo County. It enforces some of the laws in the California Health and Safety Codes,
23 including those at issue herein. Defendant Morrow is sued in his official capacity.

24 42. Defendant City of Pacifica, California is a local governmental entity in San Mateo
25 County organized under the Constitution and laws of the State of California, possessing legal
26 personhood within the meaning of 42 U.S.C. § 1983. The City is responsible for executing and
27 administering its laws, orders, policies, practices, customs, and actions at issue in this lawsuit.

28 43. Defendant Dan Steidle is the Chief of Police for the City of Pacifica, California.

1 As the Chief of Police, he is responsible within the City for the enforcement and execution of
2 laws, orders, policies, practices, customs, and actions at issue in this lawsuit. Defendant Steidle is
3 sued in his official capacity.

4 ***Contra Costa Defendants***

5 44. Defendant County of Contra Costa, California is a local governmental entity
6 organized under the Constitution and laws of the State of California, possessing legal personhood
7 within the meaning of 42 U.S.C. § 1983. The County is responsible for executing and administering
8 its laws, orders, policies, practices, customs, and actions at issue in this lawsuit.

9 45. Defendant David Livingston is the Sheriff of Defendant Contra Costa County,
10 California and head of Contra Costa County Sheriff's Office. As Sheriff, he is responsible within
11 the County for the enforcement and execution of laws, orders, policies, practices, customs, and
12 actions at issue in this lawsuit. Defendant Livingston is sued in his official capacity.

13 46. Defendant Chris Farnitano is a Public Health Officer for the County of Contra
14 Costa, California. The Contra Costa Health Services Department is the department responsible for
15 public health in Contra Costa County. It enforces some of the laws in the California Health and
16 Safety Codes, including those at issue herein. Defendant Farnitano is sued in his official capacity.

17 47. Defendant City of Pleasant Hill, California is a local governmental entity in Contra
18 Costa County organized under the Constitution and laws of the State of California, possessing legal
19 personhood within the meaning of 42 U.S.C. § 1983. The City is responsible for executing and
20 administering its laws, orders, policies, practices, customs, and actions at issue in this lawsuit.

21 48. Defendant Max Bryan Hill is the Chief of Police for the City of Pleasant Hill,
22 California. As the Chief of Police, he is responsible within the City for the enforcement and
23 execution of laws, orders, policies, practices, customs, and actions at issue in this lawsuit.
24 Defendant Hill is sued in his official capacity.

25 **JURISDICTION AND VENUE**

26 49. This Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. §§ 1331,
27 1343, 2201, and 2202, and 42 U.S.C. §§ 1983 and 1988, as this action seeks to redress the
28 deprivation under color of the laws, statutes, ordinances, regulations, customs, and usages of the

1 State of California, of the rights, privileges or immunities secured by the United States
2 Constitution.

3 50. Venue lies in this Court under 28 U.S.C. § 1391, as the events giving rise to
4 Plaintiffs' causes of action arose or exist in this District in which the action is brought.

5
6 **STATEMENT OF FACTS COMMON TO ALL CLAIMS**

7 ***Constitutional Background***

8 51. The Second Amendment to the United States Constitution provides:

9 A well-regulated Militia being necessary to the security of a free
10 State, the right of the people to keep and bear Arms shall not be
11 infringed.

12 52. The Second Amendment "guarantee[s] the individual right to possess and carry
13 weapons in case of confrontation." *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). And
14 it "elevates above all other interests the right of law-abiding, responsible citizens to use arms in
15 defense of hearth and home." *Id.* at 635.

16 53. The Second Amendment is fully applicable to the States through the Fourteenth
17 Amendment's Due Process and Privileges or Immunities Clauses. *McDonald v. City of Chicago*,
18 561 U.S. 742, 750 (2010); *id.* at 805 (Thomas, J., concurring). In *McDonald*, the Supreme Court
19 held "that the Second Amendment right is fully applicable to the States." *Id.* at 750. And Justice
20 Thomas further held that the "right to keep and bear arms is a privilege of American citizenship
21 that applies to the States through the Fourteenth Amendment's Privileges or Immunities Clause."
22 *Id.* at 806.

23 54. The Fifth Amendment to the United States Constitution provides, in pertinent part:
24 "No person shall be. . .deprived of life, liberty or property, without due process of law. . . ."

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1 55. The Fourteenth Amendment to the United States Constitution provides in pertinent
2 part:

3 No state shall make or enforce any law which shall abridge the
4 privileges or immunities of citizens of the United States; nor shall
5 any state deprive any person of life, liberty, or property, without due
6 process of law; nor deny to any person within its jurisdiction the
7 equal protection of the laws.

8 56. Individuals have a right to due process of the law under the Fifth and Fourteenth
9 Amendments to the United States Constitution, the fundamental precepts which of protect them
10 against the enforcement of vague, arbitrary and capricious, and overbroad laws.

11 57. Individuals have a right to keep and bear arms, including but not limited to, buying,
12 selling, transferring, transporting, carrying, and practicing safety and proficiency with firearms,
13 ammunition, magazines, and appurtenances, under the Second and Fourteenth Amendments to the
14 United States Constitution.

15 58. In 2008, the United States Supreme Court held that the District of Columbia’s
16 requirement that permitted firearms within the home, but required that said firearms in the home
17 be kept inoperable, made it impossible for citizens to use firearms for the core lawful purpose of
18 self-defense and was hence unconstitutional. *District of Columbia v. Heller*, 554 U.S. 570, 630
19 (2008).

20 59. The “central” – but not only – holding of the Supreme Court in *Heller* was “that the
21 Second Amendment protects a personal right to keep and bear arms for lawful purposes, most
22 notably for self-defense within the home.” *McDonald*, 561 U.S. at 780. “The very enumeration of
23 the right takes out of the hands of government—even the Third Branch of Government—the power
24 to decide on a case-by-case basis whether the right is really worth insisting upon.” *Heller*, 554 U.S.
25 at 634.

26 60. The fundamental right to keep and bear loaded, operable firearms in the home
27 includes the right of legally eligible individuals to lawfully acquire and take possession of firearms,
28 ammunition, magazines, and appurtenances.

 61. Individuals have a right to buy, sell, transfer, and practice with arms, including but
not limited to, firearms, ammunition, magazines, and required appurtenances.

1 69. Government Code section 101029 provides:

2 The sheriff of each county, or city and county, may enforce within
3 the county, or the city and county, all orders of the local health
4 officer issued for the purpose of preventing the spread of any
5 contagious, infectious, or communicable disease. Every peace
6 officer of every political subdivision of the county, or city and
7 county, may enforce within the area subject to his or her jurisdiction
8 all orders of the local health officer issued for the purpose of
9 preventing the spread of any contagious, infectious, or
10 communicable disease. This section is not a limitation on the
11 authority of peace officers or public officers to enforce orders of the
12 local health officer. When deciding whether to request this
13 assistance in enforcement of its orders, the local health officer may
14 consider whether it would be necessary to advise the enforcement
15 agency of any measures that should be taken to prevent infection of
16 the enforcement officers.

17 70. Government Code section 101030 provides:

18 The county health officer shall enforce and observe in the
19 unincorporated territory of the county, all of the following:
20 (a) Orders and ordinances of the board of supervisors, pertaining to
21 the public health and sanitary matters.
22 (b) Orders, including quarantine and other regulations, prescribed
23 by the department.
24 (c) Statutes relating to public health.

25 71. As shown below, County and County Health Officer Defendants' Orders, enforced
26 by Defendant sheriffs and police chiefs, among others, commonly provide:

27 Pursuant to Government Code sections 26602 and 41601 and Health
28 and Safety Code section 101029, the Health Officer requests that the
29 Sheriff and all chiefs of police in the County ensure compliance with
30 and enforce this Order. The violation of any provision of this Order
31 constitutes an imminent threat and menace to public health,
32 constitutes a public nuisance, and is punishable by fine,
33 imprisonment, or both.

34 72. Under Defendants' laws, Orders, and enforcement policies, practices, customs, and
35 actions it is a crime for individuals to leave their homes and go to and from, e.g., firearms and
36 ammunition retailers and shooting ranges in order to comply with state laws regarding the FSC
37 certificate requirement, as well as federal and state laws regarding the purchase and transfer of
38 firearms and ammunition. And under the Defendants' Orders and enforcement policies, it is a crime

1 for, e.g., firearm and ammunition retailers, shooting ranges, and FSC test service providers,
2 including Plaintiffs herein, to operate them.

3 ***State Orders and Federal CISA Guidance Background***

4 73. On or about March 4, 2020, Governor Newsom proclaimed a State of Emergency
5 as a result of COVID-19.

6 74. On March 17, 2020, Governor Newsom told reporters that his declaring martial law
7 was an option if he feels it necessary.¹

8 75. On March 19, 2020, Governor Gavin Newsom signed Executive Order N-33-20,²
9 directing all individuals living in California to “stay home or at their place of residence except as
10 needed to maintain continuity of operations of the federal critical infrastructure sectors.” Executive
11 Order N-33-20 is in place until further notice.

12 76. The Governor’s N-33-20 directed all California residents “to heed” the directives
13 of the State Public Health Officer, Sonia Angell, and incorporated into the Executive Order
14 Director Angell’s Order of the same date.³

15 77. Director Angell’s Order states that all people in California must stay home people
16 “except as needed to maintain continuity of operations of the federal critical infrastructure sectors,
17 as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>.”

18 78. An express purpose of Angell’s Order is to “establish consistency across” – i.e.,
19 throughout – “the state.”

20 79. Notably, on March 28, 2020, the Department of Homeland Security, Cyber-

23 ¹ “We have the ability to do martial law . . . if we feel the necessity.”
24 <https://www.independent.co.uk/news/world/americas/coronavirus-california-martial-law-shelter-in-place-lockdown-army-a9410256.html>.

25 ² Executive Department, State of California, Governor Gavin Newsom Executive Order N-
26 33-20, <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>.

27 ³ Order of the State Public Health Officer, Mar. 19, 2020, <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Health%20Order%203.19.2020.pdf>.

1 Infrastructure Division (“CISA”), issued an updated “ADVISORY MEMORANDUM ON
 2 IDENTIFICATION OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS DURING
 3 COVID-19 RESPONSE”⁴ under its Web page for “Guidance on the Essential Critical
 4 Infrastructure Workforce” during the COVID-19 pandemic.⁵ While the CISA guidance is
 5 “advisory” in nature, its findings and conclusions are inherently entitled to great weight in this
 6 context, particularly since they were “developed, in collaboration with other federal agencies, State
 7 and local governments, and the private sector” for the specific purpose of “help[ing] State, local,
 8 tribal and territorial officials as they work to protect their communities, while ensuring continuity
 9 of functions critical to public health and safety, as well as economic and national security.” To that
 10 very end, CISA specifically determined that “[w]orkers supporting the operation of firearm or
 11 ammunition product manufacturers, retailers, importers, distributors, and shooting ranges” fall
 12 squarely within the “critical infrastructure workforce.”

13 *Santa Clara County Background*

14 80. On or about March 16, 2020, the Public Health Department of the County of Santa
 15 Clara issued an order directing all residents of the County to shelter in place until April 7, 2020
 16 (the “March 16 Order”).⁶

17 81. Under section 3 of the March 16 Order, all non-essential businesses were ordered
 18 to cease all activities at facilities located within the County. There were twenty-one categories of
 19 businesses described as being essential and therefore exempt from the order to close. But under
 20 the Order’s section 10(f), firearm and ammunition retailers and ranges were not “Essential
 21 Businesses.”

22 82. Under section 11 of the March 16 Order, the Defendant Sheriff Smith and all chiefs
 23 of police of the County were tasked with the enforcement of the provisions set forth in the Order.

24
 25 ⁴ At <https://bit.ly/cisa-guidance-2020-3-28>.

26 ⁵ Guidance on the Essential Critical Infrastructure Workforce, [https://www.cisa.gov/
 27 publication/guidance-essential-critical-infrastructure-workforce](https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce).

28 ⁶ [https://www.sccgov.org/sites/phd/DiseaseInformation/novel-coronavirus/Documents/03-
 16-20-Health-Officer-Order-to-Shelter-in-Place.pdf](https://www.sccgov.org/sites/phd/DiseaseInformation/novel-coronavirus/Documents/03-16-20-Health-Officer-Order-to-Shelter-in-Place.pdf).

1 83. On March 31, 2020, the Public Health Department of the County of Santa Clara
2 issued an additional order superseding the March 16, 2020 order and directing all residents of the
3 County to continue to shelter in place until May 3, 2020 (the “March 31 Order”).⁷

4 84. Under section 5 of the March 31 Order, all non-essential businesses are ordered to
5 cease all activities at facilities located within the County. There are twenty-one categories of
6 businesses described as being essential and therefore exempt from the order to close. But under
7 the Order’s section 13(f), firearm and ammunition retailers and ranges are not “Essential
8 Businesses.”

9 85. Under section 15 of the March 31 Order, the Defendant Sheriff Smith and all chiefs
10 of police of the County are tasked with the enforcement of the provisions set forth in the Order.
11 Section 15 of the March 31 Order states:

12 Pursuant to Government Code sections 26602 and 41601 and Health
13 and Safety Code section 101029, the Health Officer requests that the
14 Sheriff and all chiefs of police in the County ensure compliance with
15 and enforce this Order. The violation of any provision of this Order
16 constitutes an imminent threat and menace to public health,
constitutes a public nuisance, and is punishable by fine,
imprisonment, or both.

17 86. As reported by San Jose Mercury News, Defendant Mayor Liccardo said that “one
18 thing we cannot have is panic buying of guns.”⁸ Not only do the City of San Jose Defendants’,
19 including Defendant Mayor Liccardo’s, policies and practices violate the Constitution, they do so
20 with clear animus towards firearm and ammunition retailers, shooting ranges, and the individual
21 people who would access and use them for lawful purposes including self-defense in their home.

22 87. Likewise, Defendant Santa Clara County District Attorney Rosen takes a similar
23 unconstitutional and ideologically driven approach to banning licensed firearm and ammunition
24

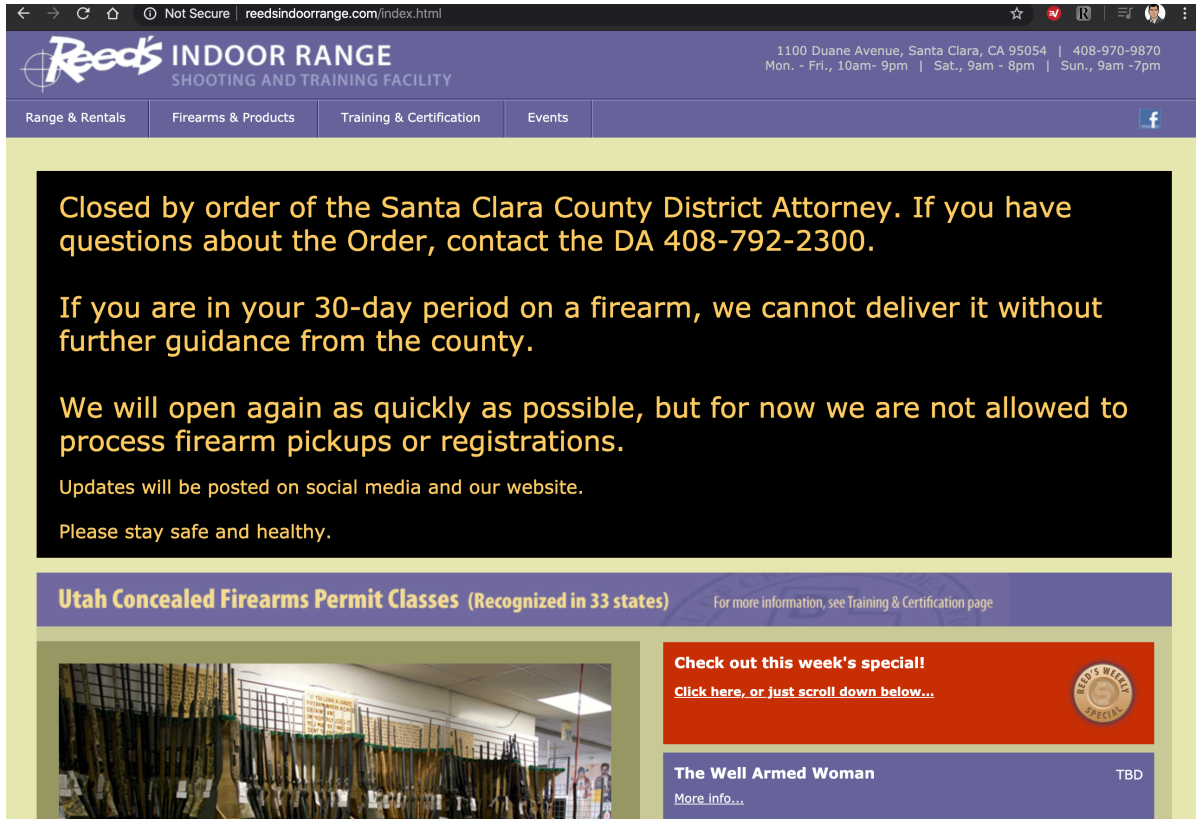
25 _____
26 ⁷ [https://www.sccgov.org/sites/phd/DiseaseInformation/novel-coronavirus/Pages/order-
27 health-officer-033120.aspx](https://www.sccgov.org/sites/phd/DiseaseInformation/novel-coronavirus/Pages/order-health-officer-033120.aspx).

28 ⁸ [https://www.mercurynews.com/2020/03/18/coronavirus-san-jose-orders-gun-store-to-
close-in-one-of-first-tests-of-essential-under-shelter-order/](https://www.mercurynews.com/2020/03/18/coronavirus-san-jose-orders-gun-store-to-close-in-one-of-first-tests-of-essential-under-shelter-order/).

1 retailers and ranges. On the website for Reed’s Indoor Range,⁹ a well-known shooting range,
2 retailer, and training facility in Santa Clara County, a prominent Notice (shown in Image 1, below)
3 states:

4 “Closed by order of the Santa Clara County District Attorney. If you
5 have questions about the Order, contact the DA 408-792-2300. If
6 you are in your 30-day period on a firearm, we cannot deliver it
7 without further guidance from the county. We will open again as
8 quickly as possible, but for now we are not allowed to process
9 firearm pickups or registrations. Updates will be posted on social
10 media and our website. Please stay safe and healthy.”

11 **Image 1**



24 88. Plaintiffs allege on information and belief that the March 16 and March 31 Orders
25 and lists of essential businesses were made by executive decree, without the decision of any
26 legislative body, and further, that even if a legislative body had enacted the Orders, the Orders and

27

28 ⁹ <http://www.reedsindoorange.com>.

1 enforcement of them violate Plaintiffs' constitutional rights.

2 89. On March 30, 2020, Plaintiffs David and Eddy's Shooting Sports received email
3 communication from Defendant Mountain View Police Chief Max Bosel. In the email, Defendant
4 Chief Bosel advised Plaintiff David that Plaintiff Eddy's Shooting Sports was required to close
5 entirely, deemed non-essential, and would not be permitted to operate and sell any merchandise to
6 law-abiding individual adults legally eligible and constitutionally entitled to acquire such items.

7 90. On information and belief, Santa Clara Defendants were actively enforcing the
8 March 16 Order and are now actively enforcing the March 31 Order, shuttering access to arms, the
9 ammunition required to use those arms, and the ranges and education facilities that individuals
10 need to learn how to safely and competently use arms by forcing firearm and ammunition product
11 manufacturers, retailers, importers, distributors, and shooting ranges within the County of Santa
12 Clara to close their doors and stop performing sales and transfers of firearms and ammunition.

13 91. Plaintiff Altman would like to purchase and take possession of firearms and
14 ammunition for her self-defense and other lawful purposes. Plaintiff Altman is concerned that as a
15 result of the COVID-19 crisis, Santa Clara County has released an unknown number of prison
16 inmates back onto the streets of Santa Clara County. Plaintiff Altman is not prohibited from
17 possessing firearms under state or federal law. Furthermore, Plaintiff Altman possesses a valid
18 California FSC. Because Plaintiff Altman has a valid FSC, she can take possession of a purchased
19 firearm and ammunition upon the completion of a background check. Plaintiff Altman resides
20 minutes away from Reed's Indoor Range, a well-known firearm and ammunition retailer, indoor
21 shooting range, and training facility shuttered by the Santa Clara District Attorney, according to
22 the retailer's Website. Due to Defendants' Orders and enforcement actions, she is unable to
23 purchase and take possession of firearms and ammunition. Plaintiff Altman cannot purchase either
24 firearms or ammunition except through a licensed firearms dealer and/or licensed ammunition
25 vendor under California law. Thus, Plaintiff Altman, like Plaintiffs' members and customers and
26 others similarly situated to them, is being prevented from exercising her right to keep and bear
27 loaded, operable firearms for self-defense, including in the home.

28 92. Defendants' Orders, policies, practices, customs, and enforcement actions have and

1 continue to directly or effectively prohibit the travel to and from, and operation of, firearms and
2 ammunition product manufacturers, retailers, importers, distributors, shooting ranges, and FSC test
3 service providers, and thereby deny individuals the right to acquire constitutionally protected
4 goods and services necessary to the exercise of their fundamental rights.

5 *Alameda County Background*

6 93. On or about March 16, 2020, the Public Health Department of the County of
7 Alameda issued an order directing all residents of the County to shelter in place (the “March 16
8 Order”).¹⁰

9 94. Under section 3 of the March 16 Order, all non-essential businesses were ordered
10 to cease all activities at facilities located within the County. There were twenty-one categories of
11 businesses described as being essential and therefore exempt from the order to close. But under
12 the March 16 Order’s section 10(f), firearm and ammunition retailers and ranges were not
13 “Essential Businesses.”

14 95. Defendant Sheriff Ahern and all chiefs of police of the County were tasked with the
15 enforcement of the provisions set forth in the Order.

16 96. On March 31, 2020, the Public Health Department of the County of Alameda
17 issued an additional order superseding the March 16, 2020 order and directing all residents of the
18 County to continue to shelter in place until May 3, 2020 (the “March 31 Order”).¹¹

19 97. Under section 5 of the March 31 Order, all non-essential businesses are ordered to
20 cease all activities at facilities located within the County. There are twenty-one categories of
21 businesses described as being essential and therefore exempt from the order to close. But under
22 the Order’s section 13(f), firearm and ammunition retailers and ranges are not “Essential
23 Businesses.”

24 98. Under section 15 of the March 31 Order, the Defendant Sheriff Ahern and all chiefs
25

26 ¹⁰ <https://www.acgov.org/documents/Final-Order-to-Shelter-In-Place.pdf>.

27 ¹¹ [http://www.acphd.org/media/563688/health-officer-order-20-04-shelter-in-place-
28 20200331.pdf](http://www.acphd.org/media/563688/health-officer-order-20-04-shelter-in-place-20200331.pdf).

1 of police of the County are tasked with the enforcement of the provisions set forth in the Order.
2 Section 15 of the March 31 Order states:

3 Pursuant to Government Code sections 26602 and 41601 and Health
4 and Safety Code section 101029, the Health Officer requests that the
5 Sheriff and all chiefs of police in the County ensure compliance with
6 and enforce this Order. The violation of any provision of this Order
7 constitutes an imminent threat and menace to public health,
8 constitutes a public nuisance, and is punishable by fine,
9 imprisonment, or both.

10 99. On information and belief, Alameda Defendants were actively enforcing the
11 March 16 Order and are now actively enforcing the March 31 Order, shuttering access to arms, the
12 ammunition required to use those arms, and the ranges and education facilities that individuals
13 need to learn how to safely and competently use arms by forcing firearm and ammunition product
14 manufacturers, retailers, importers, distributors, and shooting ranges within the County of Alameda
15 to close their doors and stop performing sales and transfers of firearms and ammunition.

16 100. Plaintiffs allege on information and belief that the March 16 and March 31 Orders
17 and lists of essential businesses were made by executive decree, without the decision of any
18 legislative body, and further, that even if a legislative body had enacted the Orders, the Orders and
19 enforcement of them violate Plaintiffs' constitutional rights.

20 101. Plaintiff Swann wishes to purchase and take possession of firearms and ammunition
21 for self-defense and defense of his home. Plaintiff Swann is not prohibited from possessing
22 firearms or ammunition under state or federal law. Plaintiff Swann would purchase firearms and
23 ammunition in Alameda County. However, due to Defendants' Orders and enforcement actions,
24 he is unable to purchase a self-defense firearm and ammunition. Plaintiff Swann cannot purchase
25 either firearms or ammunition except through a licensed firearms dealer and/or licensed
26 ammunition vendor under California law. Thus, Plaintiff Swann and others similarly situated,
27 including Plaintiffs' members and customers, are being prevented from exercising their right to
28 keep and bear loaded, operable firearms for self-defense, including in the home.

102. Defendants' Orders, policies, practices, customs, and enforcement actions have
and continue to directly or effectively prohibit the travel to and from, and operation of, firearms

1 and ammunition product manufacturers, retailers, importers, distributors, shooting ranges, and
2 FSC test service providers, and thereby deny individuals the right to acquire constitutionally
3 protected goods and services necessary to the exercise of their fundamental rights.

4 ***San Mateo County Background***

5 103. On March 16, 2020, the Public Health Department of the County of San Mateo
6 issued an order directing all residents of the County to shelter in place (the “March 16 Order”).¹²

7 104. Under section 3 of the March 16 Order, all non-essential businesses were ordered
8 to cease all activities at facilities located within the County. There were twenty-one categories of
9 businesses described as being essential and therefore exempt from the order to close. But under
10 the Order’s section 10(f), firearm and ammunition retailers and ranges were not “Essential
11 Businesses.”

12 105. Under section 11 of the March 16 Order, the Defendant Sheriff Bolanos and all
13 chiefs of police of the County were tasked with the enforcement of the provisions set forth in the
14 Order.

15 106. On March 31, 2020, the Public Health Department of the County of San Mateo
16 issued an additional order superseding the March 16, 2020 order and directing all residents of the
17 County to continue to shelter in place until May 3, 2020 (the “March 31 Order”).¹³

18 107. Under section 5 of the March 31 Order, all non-essential businesses are ordered to
19 cease all activities at facilities located within the County. There are twenty-one categories of
20 businesses described as being essential and therefore exempt from the order to close. But under
21 the March 31 Order’s section 13(f), firearm and ammunition retailers and ranges are not “Essential
22 Businesses.”

23 108. Under section 15 of the March 31 Order, the Defendant Sheriff Bolanos and all
24 chiefs of police of the County are tasked with the enforcement of the provisions set forth in the

25 _____
26 ¹²
27 [https://www.smcgov.org/sites/smcgov.org/files/HO%20Order%20Shelter%20in%20Plac
e%2020200316.pdf](https://www.smcgov.org/sites/smcgov.org/files/HO%20Order%20Shelter%20in%20Place%2020200316.pdf).

28 ¹³ <https://www.smcgov.org/sites/smcgov.org/files/Final%203-31%20Order.pdf>.

1 Order. Section 15 of the March 31 Order states:

2 Pursuant to Government Code sections 26602 and 41601 and Health
3 and Safety Code section 101029, the Health Officer requests that the
4 Sheriff and all chiefs of police in the County ensure compliance with
5 and enforce this Order. The violation of any provision of this Order
6 constitutes an imminent threat and menace to public health,
7 constitutes a public nuisance, and is punishable by fine,
8 imprisonment, or both.

9 109. On information and belief, San Mateo Defendants were actively enforcing the
10 March 16 Order and are now actively enforcing the March 31 Order, shuttering access to arms, the
11 ammunition required to use those arms, and the ranges and education facilities that individuals
12 need to learn how to safely and competently use arms by forcing firearm and ammunition product
13 manufacturers, retailers, importers, distributors, and shooting ranges within the County of San
14 Mateo to close their doors and stop performing sales and transfers of firearms and ammunition.

15 110. Plaintiffs allege on information and belief that the March 16 and March 31 Orders
16 and lists of essential businesses were made by executive decree, without the decision of any
17 legislative body, and further, that even if a legislative body had enacted the Orders, the Orders and
18 enforcement of them violate Plaintiffs' constitutional rights.

19 111. On March 23, 2020, Plaintiffs Danilevsky and City Arms LLC were informed by
20 Defendants City of Pacifica and Chief Steidle's Police Department that they were required to halt
21 all new sales of firearms and ammunition because firearm and ammunition retailers, including
22 them, were non-essential businesses and were required to cease all operations and close their doors
23 entirely on April 6, 2020.

24 112. Due to Defendants' Orders and enforcement actions, legally eligible adults are
25 unable to purchase a self-defense firearm and ammunition in San Mateo County. Regular adults
26 cannot purchase either firearms or ammunition except through a licensed firearms dealer and/or
27 licensed ammunition vendor under California law. Thus, legally eligible individual adults,
28 including Plaintiffs' members and customers, are being prevented from exercising his right to keep
and bear loaded, operable firearms for self-defense, including in the home.

113. Defendants' Orders, policies, practices, customs, and enforcement actions have and

1 continue to directly or effectively prohibit the travel to and from, and operation of, firearms and
2 ammunition product manufacturers, retailers, importers, distributors, shooting ranges, and FSC test
3 service providers, and thereby deny individuals the right to acquire constitutionally protected
4 goods and services necessary to the exercise of their fundamental rights.

5 ***Contra Costa County Background***

6 114. On or about March 16, 2020, the Public Health Department of the County of Contra
7 Costa issued an order directing all residents of the County to shelter in place (the “March 16
8 Order”).¹⁴

9 115. Under section 3 of the March 16 Order, all non-essential businesses were ordered
10 to cease all activities at facilities located within the County. There were twenty-one categories of
11 businesses described as being essential and therefore exempt from the order to close. But under
12 the Order’s section 10(f), firearm and ammunition retailers and ranges were not “Essential
13 Businesses.”

14 116. Under section 11 of the March 16 Order, Defendant Sheriff Livingston and all
15 chiefs of police of the County were tasked with the enforcement of the provisions set forth in the
16 Order.

17 117. On March 31, 2020, the Public Health Department of the County of Contra Costa
18 issued an additional order superseding the March 16, 2020 order and directing all residents of the
19 County to continue to shelter in place until May 3, 2020 (the “March 31 Order”).¹⁵

20 118. Under section 5 of the March 31 Order, all non-essential businesses are ordered to
21 cease all activities at facilities located within the County. There are twenty-one categories of
22 businesses described as being essential and therefore exempt from the order to close. But under
23 the Order’s section 13(f), firearm and ammunition retailers and ranges are not “Essential
24 Businesses.”

25
26
27 ¹⁴ <https://cchealth.org/coronavirus/pdf/HO-COVID19-SIP-0316-2020.pdf>.

28 ¹⁵ <https://www.contracosta.ca.gov/DocumentCenter/View/64727/2020-0331-Health-Officer-Order-COVID19>.

1 119. Under section 15 of the Order, the Defendant Sheriff Livingston and all chiefs of
2 police of the County are tasked with the enforcement of the provisions set forth in the Order.
3 Section 15 of the March 31 Order states:

4 Pursuant to Government Code sections 26602 and 41601 and Health
5 and Safety Code section 101029, the Health Officer requests that the
6 Sheriff and all chiefs of police in the County ensure compliance with
7 and enforce this Order. The violation of any provision of this Order
8 constitutes an imminent threat and menace to public health,
9 constitutes a public nuisance, and is punishable by fine,
10 imprisonment, or both.

11 120. On information and belief, Contra Costa Defendants were actively enforcing the
12 March 16 Order and are now actively enforcing the March 31 Order, shuttering access to arms, the
13 ammunition required to use those arms, and the ranges and education facilities that individuals
14 need to learn how to safely and competently use arms by forcing firearm and ammunition product
15 manufacturers, retailers, importers, distributors, and shooting ranges within the County of Contra
16 Costa to close their doors and stop performing sales and transfers of firearms and ammunition.

17 121. Plaintiffs allege on information and belief that the March 16 and March 31 Orders
18 and lists of essential businesses were made by executive decree, without the decision of any
19 legislative body, and further, that even if a legislative body had enacted the Orders, the Orders and
20 enforcement of them violate Plaintiffs' constitutional rights.

21 122. On March 25, 2020, Plaintiffs Kaplan, Traytel, and City Arms East were informed
22 by the Pleasant Hill Police that the store could no longer make any new sales or transfers of
23 firearms or ammunition.

24 123. On March 31, 2020, in an email to Plaintiff Kaplan, an officer of Defendant' Police
25 Chief Hill's Pleasant Hill Police Department confirmed that they were continuing to enforce a
26 closure order and shut down against Plaintiffs' Kaplan and Traytel's Plaintiff City Arms East.

27 124. Plaintiff Goodrich wishes to purchase and take possession of firearms and
28 ammunition for self-defense, defense of his home, and for work. Plaintiff Goodrich is not
prohibited from possessing firearms or ammunition under state or federal law. Plaintiff Goodrich
is employed as an armored truck driver. Under the Contra Costa Order, Plaintiff Goodrich is

1 considered an essential worker based on his profession, and in order to fulfill his duties, he requires
2 access to firearms and ammunition. However, due to Defendants' Orders and enforcement actions,
3 he is unable to purchase a self-defense firearm and ammunition. Plaintiff Goodrich cannot
4 purchase either firearms or ammunition except through a licensed firearms dealer and/or licensed
5 ammunition vendor under California law. Thus, Plaintiff Goodrich and others similarly situated,
6 including Plaintiffs' members and customers, are being prevented from exercising their right to
7 keep and bear loaded, operable firearms for self-defense, including in the home.

8 125. Plaintiff Chalmers wishes to purchase and take possession of firearms and
9 ammunition for self-defense and defense of his home. Plaintiff Chalmers is not prohibited from
10 possessing firearms or ammunition under state or federal law. Plaintiff Chalmers would purchase
11 firearms and ammunition and pick up a previously purchased firearm in Contra Costa County.
12 However, due to Defendants' Orders and enforcement actions, he is unable to purchase a self-
13 defense firearm and ammunition or pick up his previously purchased firearm or ammunition.
14 Plaintiff Chalmers cannot purchase either firearms or ammunition except through a licensed
15 firearms dealer and/or licensed ammunition vendor under California law. Thus, Plaintiff Chalmers
16 and others similarly situated, including Plaintiffs' members and customers, are being prevented
17 from exercising their right to keep and bear loaded, operable firearms for self-defense, including
18 in the home.

19 126. Defendants' Orders, policies, practices, customs, and enforcement actions have and
20 continue to directly or effectively prohibit the travel to and from, and operation of, firearms and
21 ammunition product manufacturers, retailers, importers, distributors, shooting ranges, and FSC test
22 service providers, and thereby deny individuals the right to acquire constitutionally protected
23 goods and services necessary to the exercise of their fundamental rights.

24 //

25 //

26 //

27 //

28 //

COUNT ONE
DEPRIVATION OF CIVIL RIGHTS
RIGHT TO KEEP AND BEAR ARMS
U.S. CONST., AMENDS. II AND XIV, 42 U.S.C. § 1983

1
2
3
4 127. Plaintiffs incorporate herein by reference the foregoing paragraphs as if fully set
5 forth herein.

6 128. There is an actual and present controversy between the parties.

7 129. As to all claims made in a representative capacity herein, there are common
8 questions of law and fact that substantially affect the rights, duties, and liabilities of many
9 similarly-situated California residents and visitors who knowingly or unknowingly are subject to
10 the statutes, Orders, and enforcement policies, practices, and customs in question.

11 130. Defendants' orders, directives, policies, practices, customs, and enforcement
12 actions prohibit law-abiding individuals from purchasing firearms and ammunition for the purpose
13 of protecting themselves and their families (or for any other purpose). Independently and
14 collectively, these stand as a bar on firearms acquisition, ownership, and proficiency training at
15 shooting ranges, and thus amount to a categorical ban on and infringement of the right to keep and
16 bear arms and the privileges and immunities of citizenship.

17 131. Plaintiffs, Plaintiffs' Members and customers, and those similarly situated to them,
18 seek to exercise their right to keep and bear arms for self-defense of themselves and their families,
19 especially in times of crisis such as this.

20 132. The relief sought in this action is declaratory and injunctive in nature, and the action
21 involves matters of substantial public interest. Considerations of necessity, convenience, and
22 justice justify relief to individual and institutional Plaintiffs in a representative capacity. Further,
23 to the extent it becomes necessary or appropriate, the institutional Plaintiffs are uniquely able to
24 communicate with and provide notice to their thousands of California members and constituents
25 who are or would be party to any identifiable class of individuals for whose benefit this Court may
26 grant such relief.

27 133. Local governments do not have the power to categorically prohibit the keeping and
28 bearing of arms by law-abiding people, nor can they close off the channels of access by which

1 individuals lawfully obtain, transfer, and practice proficiency and safety with, firearms and
2 ammunition.

3 134. Arbitrariness and animus exists within the Defendants' Orders and enforcement
4 actions, as the Orders classify as "essential" a variety of businesses which have no clear connection
5 to *essential* goods and services (let alone expressly constitutionally protected goods and services),
6 particularly in a time of crisis.

7 135. For example, "convenience stores, and other establishments engaged in the retail
8 sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and
9 vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household
10 consumer products necessary for personal hygiene or the habitability, sanitation, or operation of
11 residences" are deemed to expressly fall within this protected category of "Essential" businesses.
12 So too are "auto-supply" stores, businesses that provide "that provide food, shelter, and social
13 services, and other necessities of life for economically disadvantaged or otherwise needy
14 individuals," landscapers, gardeners, "[b]icycle repair and supply shops," and hardware stores.

15 136. But, according to Defendants, firearm and ammunition retailers and shooting ranges
16 are not essential, even though their connection to the *essentials* of life in a crisis – securing the
17 fundamental right of defense of the self and home through all lawful means – is crystal clear, as
18 highlighted in CISA's published guidelines and the Constitution itself.

19 137. In California, individuals are required to purchase and transfer firearms and
20 ammunition through state and federally licensed dealers in face-to-face transactions or face serious
21 criminal penalties.

22 138. Shuttering access to arms, the ammunition required to use those arms, and the
23 ranges and education facilities that individuals need to learn how to safely and competently use
24 arms, necessarily closes off the Constitutional right to learn about, practice with, and keep and bear
25 those arms.

26 139. By forcing duly licensed, essential businesses to close or eliminate key services for
27 the general public, government authorities are foreclosing the only lawful means to buy, sell, and
28 transfer firearms and ammunition available to typical, law-abiding individuals in California.

1 140. Because firearm and ammunition transfers must be facilitated by a licensed dealer,
2 Defendants' orders, directives, policies, practices, customs, and enforcement actions amount to a
3 ban on purchasing and transferring firearms and ammunition. As a result, law-abiding citizens who
4 wish to comply with state laws – by submitting to, for example, background checks, waiting period
5 laws, in-person transfers and safety tests and demonstrations – are foreclosed from acquiring
6 firearms and ammunition legally.

7 141. Defendants' laws, orders, policies, practices, customs, enforcement actions, and
8 omissions are untailed and irrational, and expressly allow some goods retailers to continue
9 operating but prevent Retailer Plaintiffs and others similarly situated from operating and selling
10 their goods to their customers and members of the public, including Individual Plaintiffs and
11 Institutional Plaintiffs' members, thereby violating Plaintiffs', Plaintiffs' members' and
12 customers', and others similarly situated person's rights.

13 142. Individual and Retailer Plaintiffs reasonably fear that Defendants will enforce
14 against them their respective stay-home and closure Orders and Defendants' related laws, policies,
15 practices, and customs in their respective jurisdictions.

16 143. Institutional Plaintiffs reasonably fear that Defendants will enforce against their
17 members – including Individual and Retailer Plaintiffs and similarly situated persons – the
18 challenged laws, policies, practices, and customs.

19 144. Defendants' laws and ongoing enforcement and threats of enforcement of their
20 respective Orders and directives violate the Second and Fourteenth Amendments.

21 145. Defendants' laws, orders, policies, practices, customs, and ongoing enforcement
22 and threats of enforcement of their various orders and directives against the Plaintiffs, the
23 Plaintiffs' members and customers, and similarly situated members of the public, which prevent
24 the Plaintiffs, Plaintiffs' members and customers, and similarly situated members of the public
25 from exercising their rights, including the purchase, sale, transfer of, and training with
26 constitutionally protected arms, ammunition, magazines, and appurtenances, as well as their right
27 and ability to travel to, access, and use them to acquire constitutionally protected goods and
28 services, are thus causing injury and damage that is actionable under 42 U.S.C. § 1983.

1 are mandated by state law to effect firearm transfers, such as the initiation of background checks,
2 administration and collection of personal identifying data (including fingerprints), administration
3 of waiting period laws, administration of firearm safety tests, and safe handling demonstrations,
4 all of which must be conducted in person pursuant to state law.

5 152. These same Retailer Plaintiffs fall within the essential meaning of “Essential
6 Businesses” definitions in the Defendants’ orders, and within any other reasonable definition of
7 that term, because they are establishments engaged in the retail sale of household consumer
8 products necessary for maintaining the safety of its residents, including the sale or transfer of
9 pistols, rifles, shotguns, ammunition, accessories, and components necessary for the defense of
10 their home, selves, and defense of others. They are service providers who provide products such
11 as firearms, ammunition, and servicing of same that are needed to maintain the safety and essential
12 operation of residences (home and personal defense) and other essential businesses. They are
13 businesses that provide goods to residences and essential businesses. They are, in every meaningful
14 sense, “essential,” as CISA has recognized.

15 153. However, the Defendants’ orders and enforcement actions deprive and/or fail to
16 accord these business such status; they do not define critical terms; they encompass protected and
17 non-protected actions; they omit definitions of key terms; they operate as complete bans; they do
18 not require specific intent to commit an unlawful act; and they permit and encourage arbitrary and
19 erratic arrests and convictions with too much discretion committed to law enforcement. Their
20 vagueness and overbreadth run afoul of the due process clause because the subject Orders fail to
21 give adequate guidance to those who would be law-abiding, to advise them of the nature of the
22 offense with which they may be charged, or to guide courts in trying those who are accused of
23 violating such orders. Plaintiffs, including retailers and consumers, cannot be required to guess at
24 the meaning of such orders and whether they fall within the nebulous terms and lists purportedly
25 defining what is and is not “essential.” Defendants’ standard-less standards leave Plaintiffs, and
26 all those similarly situated, subject to whimsical, *ad hoc* determinations that they do not satisfy
27 whatever Defendants may deem sufficiently “essential” at any given moment in time. And any
28 such determination brings with it the prosecutorial hammers of law enforcement. As a direct result,

1 the Defendants' orders and enforcement policies must be invalidated on their face and as applied.

2 154. This vague, arbitrary and capricious classification scheme of the Defendants is
3 made even more constitutionally egregious because it bypassed the constitutionally authorized
4 method for enacting laws in America. Legislatures are supposed to enact laws. Executive agencies
5 are supposed to enforce those laws. Plaintiffs contend that even if a legislative body had made
6 these irrational and constitutionally repugnant rules, they would be invalid. And while the
7 constitutional harms that arise under the facts of this case are not made more (or less) illegal
8 because of the violation of separation of powers, that harm arises from both the substance of
9 unconstitutional polices, and also from the process that gave rise to those policies.

10 155. Defendants' laws and ongoing enforcement and threats of enforcement of their
11 various orders and directives against the Plaintiffs, the Plaintiffs' members and customers, and
12 similarly situated members of the public, as well as their ongoing policies and practices, are
13 unconstitutionally vague, arbitrary and capricious, overly-broad, fail to provide adequate notice,
14 and place Plaintiffs, Plaintiffs' members and customers, and similarly situated members of the
15 public at risk of serious criminal and civil liability, including arrest, prosecution, loss of rights,
16 fines, and, with respect to the Retailer Plaintiffs, loss of their licenses, as they can neither determine
17 the meaning of nor conform their conduct to the standard-less standards imposed by Defendants'
18 orders and actions. Defendants' orders and actions violate the Fifth and Fourteenth Amendment
19 rights of Plaintiffs, Plaintiffs' members and customers, and similarly situated members of the
20 public and are thus causing injury and damage that is actionable under 42 U.S.C. § 1983.

21
22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for the following relief:

24 1. A declaratory judgment that the Defendants' Orders and laws, enforcement
25 policies, practices, customs, and actions individually and collectively: (1) prohibit the operation of
26 firearm and ammunition product manufacturers, retailers, importers, distributors, shooting ranges,
27 and FSC test providers; (2) deny individuals the right and ability to travel to and from, access, and
28 use firearm and ammunition product retailers, FSC test providers, and shooting ranges to acquire,

1 take possession of, and practice proficiency with constitutionally protected items; (3) deny
2 individuals the right and ability to travel to and from, and operate, firearm and ammunition product
3 manufacturers, retailers, importers, distributors, shooting ranges, and FSC test providers so that
4 individuals can acquire, take possession of, and practice proficiency with constitutionally protected
5 items; (4) deny individuals fundamental due process of law and adequate notice by imposing
6 unconstitutionally vague, arbitrary and capricious, and overly-broad standards; and, (5) violate the
7 Second, Fifth, and Fourteenth Amendments to the United States Constitution;

8 2. A preliminary and permanent injunction restraining Defendants and their officers,
9 agents, servants, employees, and all persons in concert or participation with them who receive
10 notice of the injunction, from enforcing Defendants' Orders and laws, enforcement policies,
11 practices, customs, and actions that individually and collectively: (1) prohibit the operation of
12 firearm and ammunition product manufacturers, retailers, importers, distributors, shooting ranges,
13 and FSC test providers; (2) deny individuals the right and ability to travel to and from, access, and
14 use firearm and ammunition product retailers, FSC test providers, and shooting ranges to acquire,
15 take possession of, and practice proficiency with constitutionally protected items; (3) deny
16 individuals the right and ability to travel to and from, and operate, firearm and ammunition product
17 manufacturers, retailers, importers, distributors, shooting ranges, and FSC test providers so that
18 individuals can acquire, take possession of, and practice proficiency with constitutionally protected
19 items; (4) deny individuals fundamental due process of law and adequate notice by imposing
20 unconstitutionally vague, arbitrary and capricious, and overly-broad standards; and, (5) violate the
21 Second, Fifth, and Fourteenth Amendments to the United States Constitution;

22 3. Nominal damages¹⁶ against all Defendants;
23

24 ¹⁶ Plaintiffs herein give notice that pre-litigation investigation is continuing in this urgent and
25 expedited matter and that this complaint may be further amended to add additional claims and
26 requests for relief, including but not limited to actual damages, once the facts are more fully
27 developed. Additionally, counsel for the institutional plaintiffs are continuing to investigate the
28 claims of additional potential parties with substantially similar claims who may also suffer
constitutional and economic damages as a result of the individual and/or collective orders and/or
enforcement actions of Defendants named herein.

