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13 **MICHEL MOORE, and the CITY OF LOS ANGELES**

14  
15 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
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17 **FOR THE COUNTY OF LOS ANGELES**

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TURNER’S OPERATIONS, INC. et al.,

Petitioners & Plaintiffs,

v.

ERIC GARCETTI et al.,

Respondents & Defendants.

CASE NO: 20STCP01258

**DECLARATION OF JONATHAN H.  
EISENMAN IN OPPOSITION TO  
PLAINTIFFS’ EX PARTE APPLICATION  
FOR A STAY OR TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE**

Hearing Date: April 13, 2020

Hearing Time: 8:30 a.m.

Department: 1

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1. I am licensed to practice law in the State of California and am a deputy city attorney for the City of Los Angeles. I serve in this matter as an attorney for Mayor Eric Garcetti, City Attorney Michael N. Feuer, Los Angeles Police Department Chief of Police Michel Moore, and the City of Los Angeles. I could testify truthfully to the following facts, of which I have personal knowledge.

3. Attached hereto as Exhibit 2 is a true and correct copy of a minute order issued on April 1, 2020, by United States District Judge Consuelo Marshall in *McDougall v. County of Ventura*, No. 2:20-cv-02927-CBM-AS.

5. Attached hereto as Exhibit 4 is a true and correct copy of a Statement of Information for the California Rifle & Pistol Association, Inc., that I retrieved from the website of the California Secretary of State.

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

/s/ Jonathan H. Eisenman  
Jonathan H. Eisenman

# EXHIBIT 1



## **Public Order Under City of Los Angeles Emergency Authority**

**Issue Date: March 19, 2020 (Revised April 10, 2020)**

**Subject: SAFER AT HOME**

The novel coronavirus pandemic is a global emergency that is unprecedented in modern history. Profoundly impacting our daily lives, it has inspired Angelenos to respond with courage, compassion, wisdom and resolve to overcome this crisis and help each other.

In a short period of time and at an unprecedented scale, residents in every community have embraced urgent social distancing best practices and aggressive hygienic precaution, not just to protect themselves, but to protect others. Angelenos understand with exceptional clarity that there is only one way to get through this difficult moment: together.

The City's recent emergency orders — curtailing large public gatherings; temporarily closing many government facilities; closing theaters, bars and entertainment venues; prohibiting restaurants from serving to dine-in customers while permitting take-out, delivery and drive-thru; and a ban on evictions of residential and commercial tenants who cannot pay rent due to financial impacts caused by COVID-19 — have been followed with a willing and generous spirit.

While we have previously taken strong action, now the City must adopt additional emergency measures to further limit the spread of COVID-19.

With this virus, we are safer at home.

Wherever feasible, City residents must isolate themselves in their residences, subject to certain exceptions provided below. This Order is given because, among other reasons, the COVID-19 virus can spread easily from person to person and it is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time

Under the provisions of Section 231(i) of the Los Angeles City Charter and Chapter 3, Section 8.27 of the Los Angeles Administrative Code, I hereby declare the following orders to be necessary for the protection of life and property in the City of Los Angeles, effective on Friday, April, 10, 2020 at 11:59 PM:

1. Subject only to the exceptions outlined in this Paragraph and Paragraph 5 below, all persons living within the City of Los Angeles are hereby ordered to remain in their homes. Residents of the City of Los Angeles who are experiencing homelessness are exempt from this requirement. The City is working, along with partner government agencies and non-governmental organizations, to make more emergency shelters available for the unhoused residents of our City. City of Los Angeles officials and contracted partners responsible for homelessness outreach shall make every reasonable effort to persuade such residents to accept, if offered, temporary housing or shelter, as the Health Officer of the County of Los Angeles recommends that sheltering individuals will assist in reducing the spread of the virus and will protect the individual from potential exposure by allowing the individual access to sanitation tools. People at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.

2. Subject only to the exceptions outlined in this Paragraph and Paragraph 5 below, all businesses within the City of Los Angeles are ordered to cease operations that require in-person attendance by workers at a workplace (including, without limitation, indoor malls and indoor shopping centers, including all stores except for those stores considered essential activities or infrastructure under this Order which are directly accessible to the public from the exterior of the mall or shopping center - the interior of the indoor mall or indoor shopping center shall remain closed to the public). To the extent that business operations may be maintained by telecommuting or other remote means, while allowing all individuals to maintain shelter in their residences, this Order shall not apply to limit such business activities. A business that fails to cease operation despite not meeting an exception in this Paragraph or Paragraph 5 may be subject to having its water and power services shut off by the Department of Water and Power for not being in compliance with the Order. The Deputy Mayor of Public Safety, or his written designee, may, after engagement with and a written warning issued to a noncompliant business, refer that business in writing to the Department of Water and Power to shut off water and power services pursuant to this order. Upon receiving such a written referral, the Department of Water & Power is authorized to shut off water and power services to the noncompliant business operating in violation of the Order

3. All public and private gatherings of any number of people occurring outside a residence are prohibited, except as to those exempted activities described in this Paragraph and Paragraph 5. This provision does not apply to gatherings within a single household or living unit.

4. All travel, including, without limitation, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit is prohibited, subject to the exceptions in Paragraph 5.

5. Exceptions. People may lawfully leave their residence while this Order is in effect only to engage in the following activities:

~~(i) First 24 hour allowance. This Order shall not apply, for a 24-hour period following the effective date above, to allow employees and business owners to access to their workplaces to gather belongings or address other administrative needs, so long as social distancing requirements are followed. Such workplaces shall remain closed to the public in accordance with this Order.~~

(ii) Essential Activities. To engage in certain essential activities, including, without limitation, visiting a health or veterinary care professional, obtaining medical supplies or medication, obtaining grocery items (including, without limitation, canned food, dry goods, fresh fruits and vegetables, pet supplies, fresh or frozen meats, fish, and poultry, any other household consumer products and products necessary to maintain the safety and sanitation of residences and other buildings) for their household or to deliver to others, or for legally mandated government purposes. In addition, any travel related to (a) providing care for minors, the elderly, dependents, persons with disabilities, or other vulnerable persons; (b) returning to one's place of residence from outside the City; (c) travelling to one's place of residence located outside the City; (d) compliance with an order of law enforcement or court shall be exempt from this Order; or (e) legally mandated government purposes. Persons engaging in these essential activities are required to maintain reasonable social distancing practices. This includes maintaining a distance of at least six-feet away from others, frequently washing hands with soap and water for at least twenty seconds or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

(iii) Outdoor Activities. Travel for purposes of or to engage in passive outdoor activity and recreation, provided that the individuals comply with social distancing requirements, including, without limitation, walking, running, cycling; use of scooters, roller skates, skateboards, or other personal mobility devices; or travel in a vehicle with household members to a location where it is possible to walk, run or ride a bike, horseback ride or operate personal mobility devices, while maintaining social distancing practices. Indoor and outdoor playgrounds for children, except those located within childcare centers, shall be closed for all purposes. The City of Los Angeles, following the recommendations and directives of the County Department of Public Health, shall cancel its recreational and cultural programming and close its beaches, public beach parking lots, beach access points, piers, park trails, trail heads, and park facilities. Parks shall remain open for passive recreational activities while practicing social distancing. "Recreation and cultural programming" refers to recreational and cultural activities, indoor and outdoor sports leagues, aquatics classes, instructional courses, and group sessions on City-owned and operated park land. "Park facilities," which shall

be closed to the public, refers to the City's Department of Recreation and Parks facilities, including: skate parks, basketball courts, tennis courts, volleyball courts, baseball fields, Venice Boardwalk (except as necessary to travel to an essential business), Griffith Observatory, Travel Town, Griffith Park train rides and pony rides, the Cabrillo Marine Museum, Sherman Oaks Castle, EXPO Center, and aquatics facilities. Census Centers located at Recreation and Parks facilities may remain open, provided strict adherence to social distancing practices.

(iv) Work in Support of Essential Activities. To perform work providing essential products and services or to otherwise carry out activities specifically permitted in this Order.

(v) To care for or support a friend, family member, or pet in another household.

(vi) Emergency Personnel. All first responders, gang and crisis intervention workers, public health workers, emergency management personnel, emergency dispatchers, law enforcement personnel, and related contractors and others working for emergency services providers are categorically exempt from this Order.

(vii) Essential Activities Exempt. Certain business operations and activities are exempt from the provisions of this Order, on the grounds that they provide services that are recognized to be critical to the health and well-being of the City. These include:

(a) All healthcare operations, including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, medical and scientific research, laboratories, healthcare suppliers, home healthcare services providers, veterinary care and pet day care providers (excluding pet grooming and training), mental and behavioral health providers, substance use providers, physical therapists and chiropractors, cannabis dispensaries, or any related and/or ancillary healthcare services, manufacturers and suppliers. Healthcare operations does not include fitness and exercise gyms and similar facilities.

(b) Grocery stores, water retailers, farm and produce stands, supermarkets, convenience stores, warehouse stores, food banks, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet food and medication supply (but not grooming or training), fresh or frozen meats, fish, and poultry, any other household consumer products (such as construction supplies, cleaning and personal care products). This includes stores that sell beer, wine, and liquor, groceries and other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences. The portions of wineries, breweries and tap rooms that provide tastings to the public are closed. Certified farmers markets may operate only if they are able to obtain written approval from the Bureau of Street Services (BSS) and only according to the guidelines set forth by BSS.

(c) Food cultivation, including farming, livestock, and fishing.

(d) Organizations and businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise

needy individuals (including gang prevention and intervention, domestic violence, and homeless services agencies).

(e) Newspapers, television news, radio, magazine, podcast and journalism.

(f) Gas service stations, auto part supply, mobile auto repair operations, auto repair shops (including, without limitation, auto repair shops that operate adjacent to or otherwise in connection with an used or retail auto dealership), bicycle repair shops and related facilities. No auto dealership may operate, with the exception of its auto service and part stores. Fully automated or self-service car washes are permitted to operate; car washes that require personnel are not permitted to operate.

(g) Banks, credit unions, financial institutions and insurance companies, and pawn shops.

(h) Hardware and building supply stores, day labor centers, and nurseries.

(i) Plumbers, electricians, custodial/janitorial workers, handyman services, funeral home workers and morticians, moving services, HVAC installers, carpenters, day laborers, landscapers, gardeners, exterminators, property managers and leasing agents, private security personnel and other service providers who provide services to maintain the safety, sanitation, and essential operation to properties and other essential activities discussed in this subsection.

(j) Businesses providing mailing and shipping services, boxes and packaging, and post office boxes.

(k) Educational institutions -- including public and private K-12 schools, colleges, and universities -- for purposes of facilitating distance learning or performing essential functions provided that social distancing of six-feet per person is maintained.

(l) Laundromats, dry cleaners, and laundry service providers.

(m) Restaurants and retail food facilities that prepare and offer food to customers, but only via delivery service, to be picked up, or drive-thru. For those establishments offering food pick-up options, proprietors are directed to establish social distancing practices for those patrons in the queue for pick-up. This includes maintaining a distance of at least six-feet away from others. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and carry out basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or any other gathering site. Cafeterias, commissaries, and restaurants located within hospitals, nursing homes, or similar facilities are also exempt from this Order. Social distancing shall be maintained at a distance of at least six-feet away from others

(n) Businesses that supply or provide storage for products needed for people to work from home.

(o) Businesses that supply other essential businesses with the support, services, or supplies necessary to operate, provided that strict social distancing is maintained. This section includes, without limitation, utility companies.



(p) Individuals and businesses that ship, truck, transport, or provide logistical support to deliver groceries, food, goods, or services directly to residences, or businesses engaged in essential activities or essential infrastructure.

(q) Airlines, taxis, ride sharing services, car rental companies, and other private transportation services providing transportation services necessary for essential activities and other purposes expressly authorized in this Order.

(r) Home-based care for disabled persons, seniors, adults, or children.

(s) Residential facilities and shelters for homeless residents, disabled persons, seniors, adults, children and animals.

(t) Professional services, such as legal, leasing and real estate transactions, payroll or accounting services, when necessary to assist in the permitting, inspection, construction, transfer and recording of ownership of housing, and when necessary to achieve compliance with legally mandated activities. Vacant units and real property may be shown, provided that appointments and other residential viewings must occur virtually or, if a virtual viewing is not feasible, by appointment with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit (except that in-person visits are not allowed when the occupant is still residing in the residence);

(u) Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:

(1) Childcare must be carried out in stable groups of 12 or fewer ("stable" means that the same 12 or fewer children are in the same group each day).

(2) Children shall not change from one group to another.

(3) If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.

(4) Childcare providers shall remain solely with one group of children.

(v) Hotels, motels, shared rental units and similar facilities.

(w) Military/Defense Contractors/FFRDC (Federally Funded Research and Development Centers). For purposes of this Order, essential personnel may leave their residence to provide any service or perform any work deemed essential for national security including, without limitation, defense, intelligence, and aerospace development and manufacturing for the Department of Defense, the Intelligence Community, and NASA and other federal government, and or United States Government departments and agencies. Essential personnel include prime, sub-prime, and supplier contractor employees, at both the prime contract level and any supplier level at any tier, working on federal United States Government contracts, such as contracts for national intelligence and national security requirements.

(x) Businesses that manufacture or sell personal protective equipment or cloth or fabric face coverings, and businesses that sell materials for purposes of assembling such face coverings, subject to the following conditions: for manufacturers, at least 50% of daily production must consist of personal

protective equipment, cloth or fabric face covering or other essential products; for retail businesses, their products may be available to purchasers by delivery or pick-up but may not be open to the public. Nothing in this subsection shall be construed to allow otherwise non-essential businesses to render themselves essential for purposes of this Order by adopting similar sales protocols.

(viii) Government Employees. This Order does not apply to employees of government agencies working within the course and scope of their public service employment. Employees of the City of Los Angeles shall follow any current or future directives issued by the Mayor.

(ix) Essential Infrastructure. Individuals may leave their residences to provide any services or goods or perform any work necessary to to build, operate, maintain or manufacture essential infrastructure, including without limitation construction of public health operations, commercial, office and institutional buildings, residential buildings and housing; airport operations, food supply, concessions, and construction; port operations and construction; water, sewer, gas, electrical, oil extraction and refining; roads and highways, public transportation and rail; solid waste collection, removal, and recycling; flood control and watershed protection; internet and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, phone retail sales and servicing, and web-based services); and manufacturing and distribution companies deemed essential to the supply chains of the industries referenced in this Paragraph, provided that they carry out those services and that work in compliance with social distancing practices as prescribed by the Centers for Disease Control and Prevention and the Los Angeles County Department of Public Health, to the extent possible.

(x) Non-Essential Businesses. Businesses regarded under this Order as “non-essential” may be permitted to conduct minimum basic operations including inventory, security, custodial services, payroll and employee benefits processing, and any reasonable activity designed to maximize the ability for its employees to work remotely from their homes.

6. Public Notice of Social Distancing Protocols. The owner, manager, or operator of any business engaged in Essential Activities or Essential Infrastructure under Paragraph 5, shall prepare and post by no later than 11:59 p.m. on April 15, 2020, a Social Distancing Protocol for each of their facilities within the City of Los Angeles. The Social Distancing Protocol must be (i) substantially in the form attached to this Order as Appendix A; (ii) posted at or near the entrance to the facility so that it is easily viewable by the public and employees; and (iii) provided to each employee performing work at the facility. All such businesses shall implement the Social Distancing Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand.

The City of Los Angeles has adopted the County of Los Angeles Department of Public Health Social Distancing Protocol, available for download at <http://coronavirus.lacity.org/socialdistancingprotocol>

Social Distancing Protocols must observe the following safety guidelines:

- a) limit the number of people who may enter into the facility at any one time to ensure that people in the facility can easily maintain, at all times, a minimum six (6) foot distance from others;
- b) designate where lines may form at a facility, marking six (6) foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
- c) provide hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and employees;
- d) post a sign in a conspicuous place at all public entries that instructs members of the public to not enter if they are experiencing symptoms of respiratory illness, including fever or cough, and to maintain social distancing from one another;
- e) regularly disinfect high-touch surfaces, including, without limitation all payment portals, pens, and styluses after each use. Businesses engaged in essential activities and essential infrastructure are encouraged to offer touch-less payment mechanisms, if feasible;
- f) provide employees and contracted workers whose duties require close contact (within 6 feet for 10 minutes or more) with other employees and/or the public with cloth face coverings;
- g) require that members of the public who enter the facility wear a face covering during their time in the facility; and
- h) adhere to communicable disease control recommendations provided by the Los Angeles County Department of Public Health, including guidance for cleaning and disinfecting the site. See guidance posted at [www.publichealth.lacounty.gov/media/Coronavirus/](http://www.publichealth.lacounty.gov/media/Coronavirus/).

7. To the extent that this Order is in conflict with earlier Orders, this Order shall supersede the others.

8. Failure to comply with this Order shall constitute a misdemeanor subject to fines and imprisonment. I hereby urge the Los Angeles Police Department and

the City Attorney to vigorously enforce this Order via Sections 8.77 and 8.78 of the Los Angeles Administrative Code.

9. If any subsection, sentence, clause, phrase, or word of this Order or any application of it to any person, structure, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision shall not affect the validity of the remaining portions or applications of this Order.

This order shall be in place until May 15, 2020, and it may be extended prior to that time.

Dated: April 10, 2020 at Los Angeles, California

Time: \_\_\_\_\_

Filed with the City Clerk

Date: \_\_\_\_\_

Time: \_\_\_\_\_

By: \_\_\_\_\_

# EXHIBIT 2

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES - GENERAL

Case No. 20-CV-02927-CBM-(ASx)	Date March 31, 2020
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Title	Donald McDougall v. County of Ventura California
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Present: The Honorable	CONSUELO B. MARSHALL, UNITED STATES DISTRICT JUDGE
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YOLANDA SKIPPER  
Deputy Clerk

NOT REPORTED  
Court Reporter

Attorneys Present for Plaintiff:

NONE PRESENT

Attorneys Present for Defendant:

NONE PRESENT

**Proceedings:****IN CHAMBERS- ORDER RE EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER (DKT. NOS. 9, 10)**

On March 30, 2020, Plaintiff Donald McDougall applied *ex parte* for an order temporarily restraining Defendant County of Ventura, California (the "County") from ordering the closure of gun stores pursuant to the County's "Stay Well At Home" order (the "County Order"), dated March 20, 2020. (See Dkt. No. 9-1 ("TRO") at p. 1:2-4; Dkt. No. 1, Exh. 1 (County Order).) The County Order was issued to "ensure that the maximum number of persons stay in their places of residence to the maximum extent feasible" in order to combat the spread of the COVID-19 virus. (County Order ¶ 1.) To achieve this goal, the County Order requires, amongst other things, persons currently living in Ventura County "to stay at their places of residence," businesses "to cease all activities at facilities within the County," and to cease traveling within the County. (Id. ¶¶ 2, 4, 6.) The County Order designates certain activities and industries as "Essential Activities" and "Essential Businesses," and exempts those categories from its prohibitions. (Id. ¶¶ 7(a)-(g).) The County Order remains effective until April 19, 2020, or until it is "extended, rescinded, superseded, or amended in writing by the Health Officer" of the County. (Id. ¶ 10.) Plaintiff alleges gun stores are categorized "as a non-essential business" and are therefore prohibited from operating.

Plaintiff purchased a handgun from the Camarillo Gun store on or about March 9, 2020. (Dkt. No. 9, Exh. 1 (McDougall Decl.) at ¶ 2.) By law, the purchaser of the firearm must wait 10 days from the time of purchase to pick up the firearm from the store, during which a background check of the purchaser is conducted. See Cal. Penal Code § 16815 ("No firearm shall be delivered ... [w]ithin 10 days of the application to purchase[.]"). The purchaser then has 30 days to retrieve the purchased firearm. See Cal. Penal Code § 28220(f). During the 10-day waiting period for the handgun Plaintiff purchased, Plaintiff alleges the County Order was enacted and required all gun stores in Ventura County to close until further notice. (Id. at p. 1:14-26.) Plaintiff declares he cannot have his background check processed while the gun store is closed, retrieve the handgun he purchased, or purchase additional ammunition or firearms. (McDougall Decl. at ¶¶ 2-3.)

Federal Rule of Civil Procedure 65(b)(1) provides:

The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit ... clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1). In this case, Plaintiff states that he provided notice to the Defendant by email. Assuming that notice satisfies Rule 65(b), then the Court must analyze the merits of the requested TRO. The standard for issuing a TRO is similar to the standard for issuing a preliminary injunction, and requires the party seeking relief to show (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of injunctive relief, (3) that the balance of equities is in his favor, and (4) that injunctive relief is in the public interest. See *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008).

To evaluate the merits of a Second Amendment claim, the Ninth Circuit “asks whether the challenged law burdens conduct protected by the Second Amendment; and (2) if so, what level of scrutiny should be applied.” *Fyock v. Sunnyvale*, 779 F.3d 991, 996 (9th Cir. 2015) (quotation omitted). The Court employs intermediate scrutiny if the challenged regulation does not place a substantial burden on that right. *Id.* at 988-999.

Here, Plaintiff argues strict scrutiny applies because his rights under the Second and Fourteenth Amendments of the United States Constitution have been violated as a result of the County Order because he has not been provided information concerning his background check or commencement of the 10-day waiting period to retrieve his firearm and cannot travel outside Ventura County to purchase a firearm or ammunition elsewhere, thereby burdening his ability to acquire a handgun. Although the County Order may implicate the Second Amendment by impacting “the ability of law-abiding citizens to possess the ‘quintessential self-defense weapon’ – the handgun,” *Fyock*, 779 F.3d at 999 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008)), this Court finds that intermediate scrutiny is appropriate because the County Order “is simply not as sweeping as the complete handgun ban at issue in *Heller*.” *Id.* The County Order does not specifically target handgun ownership, does not prohibit the ownership of a handgun outright, and is temporary. Therefore, the burden of the County Order on the Second Amendment, if any, is not substantial, so intermediate scrutiny is appropriate.

To survive intermediate scrutiny, the County Order must promote a “substantial government interest that would be achieved less effectively absent the regulation.” *Id.* at 1000. Plaintiff does not dispute that mitigation of the spread of the COVID-19 virus is a compelling interest, but offers no evidence or argument disputing the County's determination that its mitigation effort would be as effective without closure of non-essential businesses. Therefore, Plaintiff has not demonstrated he is likely to succeed on the merits of his claim.

Plaintiff also fails to demonstrate that the requested injunctive relief is in the public interest or that the balance of the equities favors the grant of an injunction. As in *Winter*, this case involves “complex, subtle, and professional decisions” by the County, which are entitled to deference. *Id.* at 24. Furthermore, while the public interest is served by protecting Second Amendment rights, the public interest is also served by protecting the public health by limiting the spread of a virulent disease. Under these facts, Plaintiff has not demonstrated that the balance of the equities and public interest favors the injunction.

Therefore, the Court **DENIES** Plaintiff's request for a temporary restraining order.

**IT IS SO ORDERED.**

# EXHIBIT 3



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: CV 20-02874-AB (SKx)

Date: April 6, 2020

Title: *Adam Brandy, et al. v. Alex Villanueva, et al.*

Present: The Honorable **ANDRÉ BIROTTE JR., United States District Judge**

Carla Badirian

N/A

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Appearing

None Appearing

**Proceedings: [In Chambers] ORDER DENYING PLAINTIFFS' EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER (DKT. NO. 14)**

**I. INTRODUCTION**

Before the Court is Plaintiffs Adam Brandy's, Jonah Martinez's, Daemion Garro's, DG2A Enterprises, Inc.'s, Jason Montes's, Weyland-Yutani LLC's, Alan Kushner's, The Target Range's, Tom Watt's, A Place To Shoot's, Second Amendment Foundation's, California Gun Rights Foundation's, National Rifle Association of America's, and Firearms Policy Coalition, Inc.'s ("Plaintiffs") *ex parte* application for a Temporary Restraining Order ("TRO") against Defendants Alex Villanueva, Gavin Newsom, Sonia Y. Angell, Barbara Ferrer, County of Los Angeles, City of Los Angeles, and Eric Garcetti ("Defendants"). (Dkt. No. 14.) Defendants oppose Plaintiffs' *ex parte* application. (Dkt. Nos. 19, 23, 24.) For the reasons stated below, the Court **DENIES** Plaintiffs' *ex parte* application.

## II. BACKGROUND

On March 4, 2020, the Governor of California, Gavin Newsom, declared a state of emergency in California as a result of the spread of COVID-19, a dangerous illness caused by SARS-CoV-2 (i.e., the novel coronavirus). (Dkt. Nos. 14-2, 21.)

On March 19, 2020, Governor Newsom signed Executive Order N-33-20, which ordered “all individuals living in the State of California to stay at home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors[.]” (Dkt. No. 14-2.) Noting that “[t]he federal government has identified 16 critical infrastructure sectors,” Executive Order N-33-20 states that “Californians working in those 16 critical infrastructure sectors may continue their work . . . .” (*Id.*) The Executive Order further provides that the Public Health Officer “may designate additional sectors as critical in order to protect the health and well-being of all Californians.” (*Id.*) On March 26, Governor Newsom publicly stated that he would defer to local sheriffs as to whether firearms and ammunition retailers constitute essential businesses that may remain open. (Dkt. No. 23-2.)

On the same day, March 19, 2020, the County of Los Angeles Department of Public Health issued the “Safer at Home Order for Control of COVID-19” (“County Order”). (Dkt. No. 14-2.) Pursuant to the County Order, the Los Angeles Health Officer ordered, among other things, the closure of all non-essential retail businesses, including all indoor malls and indoor shopping centers. (*Id.*) On March 30, 2020, Los Angeles County Sheriff Alex Villanueva (“Sheriff Villanueva”) publicly announced that the Los Angeles County Sheriff’s Department will treat businesses that sell or repair firearms, or sell ammunition, as essential businesses under the County Order, allowing them to continue operations. (Dkt. No. 23-2.). Sheriff Villanueva’s March 30, 2020 announcement reversed a prior decision to categorize firearms and ammunition retailers as non-essential businesses under the County Order. (*Id.*)

On March 19, 2020, the Mayor of the City of Los Angeles, Eric Garcetti, issued the “Safer at Home” Order, which ordered “all businesses within the City of Los Angeles . . . to cease operations that require in-person attendance by workers at a workplace[.]” with the exception of certain essential businesses. (Dkt. No. 20-1). The March 19, 2020 Safer at Home order did not include businesses that sell or repair firearms or sell ammunition as essential businesses. (*Id.*) Mayor Garcetti issued a revised order on April 1, 2020 (“City Order”), which similarly orders the

closure of all non-essential businesses and does not include firearms or ammunition retailers as essential businesses. (*Id.*)

Plaintiffs, which include individuals, businesses, and gun rights organizations, seek to enjoin enforcement of all three of these orders on the grounds that the orders infringe Plaintiffs' rights under the Second Amendment to the United States Constitution and that the orders are unconstitutionally vague.

### III. LEGAL STANDARD

To obtain a TRO, Plaintiffs must show: (1) that they are likely to succeed on the merits of the claims, (2) that they are likely to suffer irreparable injury absent issuance of a TRO, (3) that the balance of equities tips in their favor, and (4) that injunctive relief is in the public interest. *See Santos v. JP Morgan Chase Bank, N.A.*, No. CV 10-9712, 2010 WL 5313740, at \*1 (C.D. Cal. Dec. 17, 2010).

### IV. DISCUSSION

#### **a. Plaintiffs' Second Amendment claim against Executive Order N-33-20 is not ripe for judicial resolution.**

Defendants Gavin Newsom and Sonia Y. Angell ("State Defendants") oppose Plaintiffs' TRO application on the ground that the Second Amendment claim against Executive Order N-33-20 is not ripe for judicial resolution.

"For a suit to be ripe within the meaning of Article III [of the United States Constitution], it must present concrete legal issues, presented in actual cases, not abstractions." *See Colwell v. Dept. of Health and Human Servs.*, 558 F.3d 1112, 1123 (9th Cir. 2009) (alteration added) (internal quotation marks omitted). Although Plaintiffs need not await arrest or prosecution, "the threat of enforcement must at least be credible, not simply imaginary or speculative." *See Thomas v. Anchorage Equal Rights Com'n*, 220 F.3d 1134, 1140 (9th Cir. 2000) (en banc). (internal quotation marks omitted).

With respect to Executive Order N-33-20, State Defendants have shown that the order does not require the closure of firearms or ammunition retailers. In particular, under Executive Order N-33-20, the decision to order the closure of firearms retailers lies with county sheriffs, not with the Governor or Public Health Officer. (Dkt. No. 23-2). Although it is hypothetically feasible that the State of California could issue a subsequent order requiring the closure of firearms and

ammunition retailers, such a dispute “hangs on future contingencies that may or may not occur,” making Plaintiffs’ challenge too speculative to present a justiciable controversy within the meaning of Article III. *See In re Coleman*, 560 F.3d 1000, 1005 (9th Cir. 2009).

**b. Plaintiffs’ Second Amendment claim against the County Order presents a case or controversy.**

Defendants County of Los Angeles, Sheriff Villanueva, and Barbara Ferrer oppose Plaintiffs’ TRO application on the ground that Plaintiffs’ Second Amendment claim against the County Order does not present a case or controversy within the meaning of Article III.

Under Article III, “[a] claim is moot if it has lost its character as a present, live controversy.” *Rosemere Neighborhood Ass’n v. EPA*, 581 F.3d 1169, 1172–73 (9th Cir. 2009). Under the voluntary cessation exception to mootness, however, “the mere cessation of [allegedly] illegal activity in response to pending litigation does not moot a case, unless the party alleging mootness can show that the allegedly wrongful behavior could not reasonably be expected to recur.” *Id.* (alteration added) (internal quotation marks omitted). Although a statutory change is “usually enough to render a case moot . . . a policy change not reflected in statutory changes or even in changes in ordinances or regulations will not necessarily render a case moot.” *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014) (internal quotation marks omitted). As a general matter, courts “are less inclined to find mootness where the new policy . . . could easily be abandoned or altered in the future.” *Id.* at 972. (internal quotation marks omitted).

Defendants County of Los Angeles, Sheriff Villanueva, and Barbara Ferrer argue that Plaintiffs’ Second Amendment claim against the County Order is now moot because Sheriff Villanueva has stated that firearms and ammunition retailers constitute essential businesses under the County Order and thus may remain open. However, this change in policy is not reflected in changes in ordinances or regulations, but rather came from Sheriff Villanueva’s public announcement. (Dkt. No. 23-2). Further, Sheriff Villanueva previously ordered the closure of firearms and ammunition retailers on March 24, 2020, and Sheriff Villanueva states in his declaration that he “do[es] not know, nor would it be appropriate to speculate, how in the future the COVID-19 crisis is going to impact the County that [he] is sworn to protect.” (*Id.*) (alterations added). Accordingly, because Sheriff Villanueva’s shift in policy could easily be abandoned or altered in the future, Plaintiffs’ Second

Amendment claim against the County Order has not lost its character as a present, live controversy.

**c. Plaintiffs fail to demonstrate a likelihood of success on the merits of their Second Amendment claim against the County Order or City Order.**

Defendants County of Los Angeles, Sheriff Villanueva, Barbara Ferrer, City of Los Angeles, and Eric Garcetti oppose Plaintiffs' TRO application against the County Order and City Order on the ground that Plaintiffs have not demonstrated a likelihood of success on the merits of their claims.

To determine the merits of a Second Amendment claim, courts have adopted a two-step inquiry which "(1) asks whether the challenged law burdens conduct protected by the Second Amendment and (2) if so, directs courts to apply an appropriate level of scrutiny." *See United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013). Where it is unclear whether a challenged law burdens conduct protected by the Second Amendment, courts follow a "well-trodden and judicious course" of assuming that the Second Amendment applies and analyzing the regulation under the appropriate level of scrutiny. *See Pena v. Lindley*, 898 F.3d 969, 976 (9th Cir. 2018) (internal quotation marks omitted).

Assuming without deciding that the County and City Orders burden conduct protected by the Second Amendment by "affecting the ability of law-abiding citizens to possess [a handgun]," *Fyock v. Sunnyvale*, 779 F.3d 991, 999 (9th Cir. 2015), intermediate scrutiny is warranted because the County and City Orders are "simply not as sweeping as the complete handgun ban at issue in [*District of Columbia v. Heller*, 554 U.S. 570 (2008).]" *Id.*; *see also Donald McDougal v. Cty. of Ventura Cal.*, 20-CV-02927-CBM-ASx (C.D. Cal. March 31, 2020) (holding that the City Order is subject to intermediate scrutiny).

In applying intermediate scrutiny to the County and City Orders, the Court must consider (1) whether the government's stated objective is significant, substantial, or important, and (2) whether there is a reasonable fit between the challenged regulation and the asserted objective. *See Chovan*, 735 F.3d at 1139. The City's and County's stated objective—reducing the spread of COVID-19, a highly dangerous and infectious disease—undoubtedly constitutes an important government objective. Moreover, because this disease spreads where "[a]n infected person coughs, sneezes, or otherwise expels aerosolized droplets containing the virus," (Dkt. No. 21) the closure of non-essential businesses, including firearms

and ammunition retailers, reasonably fits the City's and County's stated objectives of reducing the spread of this disease. Accordingly, Plaintiffs fail to demonstrate a likelihood of success on the merits of the Second Amendment claim against the County and City Orders.

**d. Plaintiffs fail to demonstrate a likelihood of success on the merits of their Due Process claim.**

Plaintiffs challenge Executive Order N-33-20, the County Order, and the City Order on the additional ground that these orders are unconstitutionally vague.

To demonstrate that a challenged statute is vague in violation of the Due Process Clause, Plaintiffs must show that the law is "so vague that it fails to give ordinary people fair notice of the conduct it punishes, or [is] so standardless that it invites arbitrary enforcement." *See Johnson v. United States*, 135 S. Ct. 2551, 2556 (2015) (alteration added).

All three orders at issue in this case are both clear and explicit. Under Executive Order N-33-20, all Californians are ordered to stay home or at their place of residence, with the exception of Californians working in the critical infrastructure sectors designated by the federal government and California's Public Health Officer. Under the County and City Orders, all non-essential businesses are ordered closed, with the exception of numerous categories of businesses delineated in detail in both orders. (Dkt. Nos. 14-2, 20-2.) Both orders extensively define which businesses are permitted to remain open, and which businesses must close. (*see* Dkt. Nos. 14-2, 20-2.) Accordingly, Plaintiffs likely cannot show that the orders fail to give ordinary people fair notice of what conduct is prohibited or invite arbitrary enforcement.

**V. CONCLUSION**

For the reasons stated above, Plaintiffs' *ex parte* application for a TRO is **DENIED**.

**IT IS SO ORDERED.**

# EXHIBIT 4





# State of California Secretary of State

**N**

## Statement of Information

(Domestic Nonprofit, Credit Union and General Cooperative Corporations)

**Filing Fee: \$20.00. If this is an amendment, see instructions.**  
**IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM**

1. CORPORATE NAME

2. CALIFORNIA CORPORATE NUMBER

This Space for Filing Use Only

**Complete Principal Office Address** (Do not abbreviate the name of the city. Item 3 cannot be a P.O. Box.)

3. STREET ADDRESS OF PRINCIPAL OFFICE IN CALIFORNIA, IF ANY CITY STATE ZIP CODE

4. MAILING ADDRESS OF THE CORPORATION CITY STATE ZIP CODE

**Names and Complete Addresses of the Following Officers** (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

5. CHIEF EXECUTIVE OFFICER/ ADDRESS CITY STATE ZIP CODE

6. SECRETARY ADDRESS CITY STATE ZIP CODE

7. CHIEF FINANCIAL OFFICER/ ADDRESS CITY STATE ZIP CODE

**Agent for Service of Process** If the agent is an individual, the agent must reside in California and Item 9 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 9 must be left blank.

8. NAME OF AGENT FOR SERVICE OF PROCESS [Note: The person designated as the corporation's agent MUST have agreed to act in that capacity prior to the designation.]

9. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY STATE ZIP CODE

### Common Interest Developments

10. ☐ Check here if the corporation is an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act, (California Civil Code section 4000, et seq.) or under the Commercial and Industrial Common Interest Development Act, (California Civil Code section 6500, et seq.). The corporation must file a Statement by Common Interest Development Association (Form SI-CID) as required by California Civil Code sections 5405(a) and 6760(a). Please see instructions on the reverse side of this form.

11. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

DATE TYPE/PRINT NAME OF PERSON COMPLETING FORM TITLE SIGNATURE



**PROOF OF SERVICE**

*Turner Operations, Inc. et al. v. Eric Garcetti, et al.*

LASC Case No. 20STCP01258

I, Ava Smith, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 North Main Street, City Hall East, 6th Floor, Los Angeles, California 90012.

On April 12, 2020, I served the foregoing documents described as: **DECLARATION OF JONATHAN H. EISENMAN IN OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION FOR A STAY OR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE** on the interested parties:

C.D. Michel  
Sean A. Brady  
Matthew D. Cubeiro  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802  
Email: [cmichel@michellawyers.com](mailto:cmichel@michellawyers.com)  
Email: [sbrady@michellawyers.com](mailto:sbrady@michellawyers.com)

☐ **BY MAIL** – I am readily familiar with the practice of the Los Angeles City Attorney's Office for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is placed for collection and mailing. On the date referenced above, I placed a true copy of the above documents(s) in a sealed envelope and placed it for collection in the proper place in our office at Los Angeles, California.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address [ava.smith@lacity.org](mailto:ava.smith@lacity.org) to the persons at the email addresses listed in the Service List

☐ **BY PERSONAL SERVICE:** I placed a true copy of the above document(s) in a sealed envelope for delivery via messenger by Los Angeles City Attorney's Document Services, 200 No. Main Street, 8<sup>th</sup> Floor, City Hall East, Los Angeles, CA 90012.

☐ **BY OVERNIGHT DELIVERY:** I served the documents by placing them in an envelope or package addressed to the persons listed above and providing them to UPS Courier for delivery.

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

Dated: April 12, 2020

\_\_\_\_\_/s/ Ava Smith