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12 *Attorneys for Defendants* **ERIC GARCETTI, MICHAEL N. FEUER,**
13 **MICHEL MOORE, and the CITY OF LOS ANGELES**

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

18 TURNER’S OPERATIONS, INC. et al.,

19 Petitioners & Plaintiffs,

20 v.

21 ERIC GARCETTI et al.,

22 Respondents & Defendants.
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CASE NO: 20STCP01258

**NOTICE OF RULING ON EX PARTE
APPLICATION**

Hearing Date: April 14, 2020
Hearing Time: 1:30 p.m.
Department: 1

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Please take notice that petitioners' and plaintiffs' ex parte application for a stay, or in the
3 alternative, for a temporary restraining order, was heard by the Honorable Mary H. Strobel on
4 April 14, 2020 at 1:30 p.m. Sean Brady appeared by CourtCall for petitioners and plaintiffs, and
5 Jonathan Eisenman and Benjamin Chapman appeared by CourtCall for respondents and defendants.
6 Following argument, the Court denied the application. The Court's minute order is attached hereto.

7 Respectfully submitted,

8 Dated: April 15, 2020

9
10 **MICHAEL N. FEUER**, City Atty.
11 **JAMES P. CLARK**, Chief Deputy City Atty.
12 **KATHLEEN A. KENEALY**, Chief Asst. City Atty.
13 **SCOTT MARCUS**, Civil Litigation Branch Chief
14 **BLITHE S. BOCK**, Asst. City Atty.
15 **BENJAMIN F. CHAPMAN**, Deputy City Atty.
16 **JONATHAN H. EISENMAN**, Deputy City Atty.

17 By: /s/ Jonathan H. Eisenman
18 **JONATHAN H. EISENMAN**, Deputy City Attorney
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EXHIBIT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 1

20STCP01258

April 14, 2020

**TURNER'S OPERATIONS, INC., A CALIFORNIA
CORPORATION, et al. vs ERIC GARCETTI, IN HIS
OFFICIAL CAPACITY AS MAYOR OF THE , et al.**

1:30 PM

Judge: Honorable Mary H. Strobel

CSR: REPORTER PRO TEMPORE: Estrella
Herman CSR# 13865

Judicial Assistant: N DiGiambattista

ERM: None

Courtroom Assistant: None

Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Sean A. Brady (Telephonic) (x)

For Respondent(s): Benjamin F Chapman (x) (Telephonic); Jonathan H Eisenman (x)

NATURE OF PROCEEDINGS: EX PARTE APPLICATION OF PETITIONERS, TURNER'S OPERATIONS, INC., TRADERS LOAN AND JEWELRY, INC., FFLGUARD, LLC, AND CALIFORNIA RIFLE & PISTOL ASSOCIATION, INC., TO STAY ENFORCEMENT OF LOS ANGELES ORDER REQUIRING LICENSED FIREARM DEALERS TO CLOSE OR, ALTERNATIVELY, FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

Matter, continued from April 13, 2020, is called for hearing in Department One and argued.

Pursuant to Government Code Sections 68086, 70044 and California Rules of Court Rule 2.956, Estrella Herman/ CSR 13865, is appointed as an official court reporter pro tempore in this proceeding and is ordered to comply with the terms of the court reporter agreement.

The court reads its tentative ruling to counsel.

After hearing oral argument, the court adopts its tentative ruling as the order of the court and is set forth in this minute order.

Petitioners seek an ex parte stay, or alternatively, a Temporary Restraining Order, prohibiting the enforcement of Mayor Garcetti's Safer at Home public order as it applies to temporarily halt the operation of gun stores. Petitioners present no authority that the court may stay this matter, as it is authorized to do for a final administrative order of a public agency under CCP section 1094.5(g) and (h). Those provisions do not apply to a challenge under CCP section 1085 seeking a writ of ordinary mandate. The court therefore considers the ex parte application as seeking a temporary restraining order and order to show cause re preliminary injunction.

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Courtroom Assistant: None

CSR: REPORTER PRO TEMPORE: Estrella
Herman CSR# 13865

ERM: None

Deputy Sheriff: None

As a result of the COVID-19 pandemic, both Mayor Garcetti and Governor Newsom declared a state of emergency. Pursuant to his authority under the Emergency Services Act, on March 19, 2020 Mayor Garcetti issued a public order, the “Safer at Home” order, requiring the citizens of Los Angeles to remain at home except for certain exempted activities and ordering most businesses to close except for certain exempted businesses. Operation of a gun shop was not one of the exempted activities or businesses.

At about the same time as Mayor Garcetti’s order, Governor Newsom issued Executive Order N-33-20 which required California citizens to comply with state public health directives developed by the Department of Public Health. Within the same order, the State Public Health Officer Order directed California citizens to remain at home except as needed to maintain continuity of operations of 16 federal critical infrastructure sectors as outlined at a specifically identified federal website. At the time of the Executive Order, the federal website listed 16 general categories of critical sectors, but did not specifically identify workers at gun and ammunition stores as falling within a critical sector.

Nine days later, on March 28, 2020 the director of CISA (federal cybersecurity and infrastructure security agency) issued an advisory memorandum on identification of essential critical infrastructure (“Advisory Memo.”) In that Memo, the director listed “workers supporting the operation of firearm or ammunition product manufacturers retailers, importers, distributors and shooting ranges” under one of the 16 critical sectors categories entitled “Law Enforcement, Public Safety, and Other First Responders.”

Petitioners claim the Safer at Home order cannot lawfully be applied to require gun shops to close during the state of emergency. The City disagrees. Petitioners do not directly challenge the authority of the City to adopt and enforce emergency orders under the current circumstances, or dispute the significant threat to public health and safety posed by the COVID-19 pandemic. Rather Petitioners argue that their ex parte application only presents the narrow question of whether city officials operating under emergency authority remain subject to state law. The court narrows the question further. Assuming the City’s emergency authority is restrained by state law, have Petitioners shown the City acted in excess of that authority.

Law applicable to issuance of a temporary restraining order.

In deciding whether to grant a temporary restraining order or preliminary injunction, the court

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looks to two factors: “(1) the likelihood that the plaintiff will prevail on the merits; and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief.” (White v. Davis (2003) 30 Cal.4th 528, 553-54.) The factors are interrelated, with a greater showing on one permitting a lesser showing on the other. (Dodge, Warren & Peters Ins. Services, Inc. v. Riley (2003) 105 Cal.App.4th 1414, 1420.) However, the party seeking an injunction must demonstrate at least a reasonable probability of success on the merits. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 73-74.) The party seeking the injunction bears the burden of demonstrating both a likelihood of success on the merits and the occurrence of irreparable harm. (Savage v. Trammell Crow Co. (1990) 223 Cal.App.3d 1562, 1571.)

Likelihood of success.

Petitioners raise two primary challenges to the Safer at Home Order; preemption and due process.

Preemption.

“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) Local legislation that conflicts with general law is preempted and void. (citations omitted[.]) “A conflict exists if the local legislation ‘ ‘duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.’ ” Garcia v. Four Points Sheraton LAX, (2010) 188 Cal. App. 4th 364, 373.

There is no direct conflict with state law. Petitioner argues that Executive Order N-33-20 which references the 16 critical sectors exempt from the statewide stay at home order preempts any contrary order by the City of Los Angeles. Petitioners reason that the Advisory Memo specifically listing gun shop operations as exempt is part of Newsom’s Executive Order N-33-20. The court disagrees. Executive Order N-33-20 referenced the 16 critical sectors as outlined at the CISA website. At the time, the website did not reference gun stores as exempt. The subsequent Advisory Memo did not operate to retroactively amend the Executive Order. The Executive Order could have specifically stated it would adopt by reference subsequent modifications or interpretations made by CISA to its categories. It did not do so. 1

The court in Gonzalez v. City of Norwalk, (2018) 17 Cal. App. 5th 1295, rejected a similar claim. In that case, a city ordinance imposed a tax on certain telephone service providers, but

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exempted businesses exempted under a specific federal Internal Revenue Code provision. A few years after adoption of the ordinance, courts interpreted the IRC provision more broadly than its previous interpretation. The court found the interpretation at the time of adoption of the ordinance to be operative.

“It is a well established principle of statutory law that, where a statute adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of the reference and not as subsequently modified, and that the repeal of the provisions referred to does not affect the adopting statute, in the absence of a clearly expressed intention to the contrary.” (citations omitted.) Thus, because the Norwalk Municipal Code specifically referenced IRC section 4251, it incorporated that section’s exemptions as they were understood to exist when the voters passed Measure A in 2003.” Id. at 1311.

The state has not occupied the field. Petitioners also argue that City may not apply the Safer at Home order to gun shops, because the state has occupied the field of gun regulation. The court disagrees. Case law specifically recognizes that state regulation does not preempt all local legislation related to firearms, but only specific types of regulation. “The Legislature has never expressed an intent to preempt the entire field of firearm regulation to the exclusion of local control. The Legislature, instead, has chosen to preempt “discrete areas of gun regulation.” (citations omitted).) “That state law tends to concentrate on specific areas, leaving unregulated other substantial areas relating to the control of firearms, indicates an intent to permit local governments to tailor firearms legislation to the particular needs of their communities. [citations omitted.]” *Fiscal v. City and County of San Francisco*, (2008) 158 Cal. App. 4th 895, 905

The state and federal government have adopted extensive legislation related to possession, purchase, registration and sale of firearms. For example, a local governmental agency may not require an individual to obtain a local permit to purchase a firearm if that person is not otherwise prohibited by state law from possessing a firearm. However, the Safer at Home order does not impose any permitting requirements on possession, sale or purchase of firearms. Rather it is a temporary order of general application prohibiting the operation of a vast array of businesses in the City while the state of emergency related to the COVID-19 pandemic remains in place. Petitioners’ characterization of the order as a complete and permanent ban on gun sales within the City is unpersuasive. 2

Due Process.

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Deputy Sheriff: None

Petitioners argue that the Safer at Home order violates California due process requirements. (Ex parte 15-17.) “The concept of ‘due process of law’ guarantees both procedural and substantive rights.” (Bottini v. City of San Diego (2018) 27 Cal.App.5th 281, 315; see Cal. Const. Art. I, § 7(a).)

Procedural due process “require[s] reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest.” (Horn v. County of Ventura (1979) 24 Cal.3d 605, 612.) However, procedural due process principles only apply to government decisions which are “adjudicative” in nature, not those that are “legislative.” (Ibid.) An adjudicatory decision is one where “the government's action affecting an individual was determined by facts peculiar to the individual case.” A legislative decision establishes “a broad, generally applicable rule of conduct on the basis of a general public policy.” (San Diego Bldg. Contractors Assn. v. City Council (1974) 13 Cal.3d 205, 212-213.) “Legislative action generally is not governed by ... procedural due process requirements because it is not practical that everyone should have a direct voice in legislative decisions; elections provide the check there.” (Calvert v. County of Yuba (2006) 145 Cal.App.4th 613, 622-623; see Bi-Metallic Co. v. Colorado (1915) 239 U.S. 441, 445.)

The Safer at Home order has the character of a legislative decision. The order imposes broad restrictions across massive sectors of the City’s economy to slow the spread of the novel coronavirus in the City of Los Angeles. Although the order exempts “certain essential activities” and business categories, Petitioners have not argued or shown that the order was based on a determination of facts peculiar to specific persons or businesses. Petitioners do not show a reasonable probability of success on a procedural due process claim.

“Substantive due process protects against ‘arbitrary legislative action,’ [Citation.] To satisfy substantive due process concerns, ‘the law must not be unreasonable, arbitrary or capricious but must have a real and substantial relation to the object sought to be attained.’” (Bottini, supra, 27 Cal.App.5th at 315.)

In the ex parte, Petitioners argue that the Safer at Home order is the “epitome of arbitrariness” because it targets gun sales “as a consumer activity that people should not engage in during the COVID-19 crisis” but exempts other consumer activities, such as fully automated or self-service car washes. Petitioners also argue that the order is arbitrary because it allows Traders to remain open to service clients, but not Turner’s. The court disagrees with Petitioners’ characterization of the Safer at Home order, which imposes broad restrictions on many business sectors and does not

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“target” gun sales. Moreover, Petitioners acknowledge that “preventing the spread of COVID-19 is undeniably a critical and urgent matter.” The medical evidence supports that “any measure that discourages interpersonal contact helps to slow” the spread of COVID-19 and “action to enforce social distancing is imperative and will save lives.” (Simon Decl. ¶ 9.) Petitioners do not dispute that gun dealers require interpersonal contact to perform their business functions. To address the public health imperative of social distancing, while maintaining critical infrastructure, the Mayor could reasonably differentiate between gun dealers (and other non-exempt businesses) and the permitted “essential activities.” Because financial institutions are deemed essential, the Mayor could also reasonably differentiate between pawnbrokers, such as Traders, that perform a financial lending function and other gun dealers that do not. 3 Petitioners do not show a reasonable probability of prevailing on a substantive due process claim.

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Balance of Harms

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The balance of harms tips in favor of the Respondents. The City has shown that the City is acting to stem the spread of the COVID-19 virus by reducing the opportunities for it to be spread from one person to another. The gravity of the spread of the virus is documented in the states of emergency declared by the federal, state and local government. Petitioners recognize that “preventing the spread of COVID-19 is undeniably a critical and urgent matter.”

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Harm to Petitioners is less weighty. Especially where Petitioners seek to enjoin the operation of an emergency order adopted to protect health and safety, Petitioners bear a heavy burden to show the balance of harms tips in their favor. Petitioners have not met this burden. Petitioner Turners operates 28 retail gun stores, only one of which is affected by the Safer at Home Order. Turners has not shown its retail operation are irreparably harmed by a temporary shut down of one of its retail stores. Petitioner Traders Loan and Jewelry has also not shown irreparable harm. Traders admits its pawn broker operations may continue. Its statement that should the temporary shut down “continue” it might at some point have to lay off staff or shut down entirely is unspecific and conclusory. Further the City takes the position that Traders may continue to sell firearms because it is otherwise exempt as a financial institution (pawn shop).

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Finally, Petitioner California Rifle & Pistol Association has not shown that the interests of its members are irreparably harmed by the Order. Members may continue to purchase firearms from outlets outside the City of Los Angeles. Slight geographic inconvenience is not irreparable harm. CRPA has not shown that those unidentified members who have been approved for a purchase of

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a firearm but will be unable to complete the purchase during the period of the Order will be irreparably harmed by having to wait to obtain their firearm or reinitiate sales at another outlet outside the City.

Conclusion

Petitioners showing of likelihood of success on the merits is not strong. The balance of harms tips heavily in favor of the Respondents. The application for a temporary restraining order is DENIED.

FOOTNOTES:

1- Here, Petitioners argument is further attenuated by the fact the Memo by its own terms is stated to be advisory in nature and not be considered a federal directive or standard.

2- In fact, in its opposition, the City takes the position that guns sales may continue in Traders Loan & Jewelry, because it also operates as a pawn shop, exempted under the "financial institutions" exception in the Safer at Home order.

3- On April 13, 2020, Petitioners submitted a supplemental declaration of Bill Ortiz, who states that "Turner's Reseda location ... holds the same secondhand dealer's license as Trader's Loan ..." and that Turner's Reseda location also services the fishing industry and law enforcement personnel. (Suppl. Ortiz Decl. ¶¶ 4-5.) It is unclear if Turner's has raised these issues with City. This is not the subject matter of the current request for TRO.

Counsel for respondent City is to give notice.

A copy of this minute order is mailed via U.S. Mail to counsel of record.

Certificate of Mailing is attached.

PROOF OF SERVICE

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

LASC Case No. 20STCP01258

I, Maria Cruz, 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, 7th Floor, Los Angeles, California 90012.

On April 15, 2020, I served the foregoing documents described as: **NOTICE OF RULING ON EX PARTE APPLICATION** 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
Email: 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 maria.cruz@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, 8th 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 15, 2020

/s/ Maria Cruz