

FILED BY FAX

1 C.D. Michel – SBN 144258  
2 Sean A. Brady – SBN 262007  
3 Matthew D. Cubeiro – SBN 291519  
4 MICHEL & ASSOCIATES, P.C.  
5 180 E. Ocean Blvd., Suite 200  
6 Long Beach, CA 90802  
7 Telephone: (562) 216-4444  
8 Facsimile: (562) 216-4445  
9 Email: [cmichel@michellawyers.com](mailto:cmichel@michellawyers.com)

10 Attorneys for Petitioners-Plaintiffs

**FILED**  
APR 22 2020  
Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY \_\_\_\_\_ DEPUTY  
S. VEPA

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SANTA CLARA**

13 LOKEY FIREARMS, a sole proprietorship;  
14 FFLGUARD, LLC, a Delaware limited  
15 liability company; and CALIFORNIA RIFLE  
16 & PISTOL ASSOCIATION,  
17 INCORPORATED, a California corporation,

18 Petitioners-Plaintiffs,

19 v.

20 COUNTY OF SANTA CLARA; SARA H.  
21 CODY, M.D., in her official capacity as  
22 Health Officer of the County of Santa Clara;  
23 LAURIE SMITH, in her official capacity as  
24 Sheriff of the County of Santa Clara; JEFF  
25 ROSEN, in his official capacity as District  
26 Attorney for the County of Santa Clara; and  
27 DOES 1-25,

28 Respondents-Defendants.

Case No.:

20CV365840

**EX PARTE APPLICATION TO STAY  
ENFORCEMENT OF SANTA CLARA  
ORDER REQUIRING LICENSED  
FIREARM DEALERS TO CLOSE OR  
ALTERNATIVELY, FOR TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE**

Hearing Date: TBA  
Hearing Time: TBA  
Department: TBA

1 **EX PARTE APPLICATION TO STAY ENFORCEMENT OF RESPONDENTS' ORDER**  
2 **THAT GUN STORES CLOSE, ALTERNATIVELY, FOR TEMPORARY RESTRAINING**  
3 **ORDER AND ORDER TO SHOW CAUSE**

4 Pursuant to sections 525, 526, and 527 of the Code of Civil Procedure and rules 3.1150  
5 and 3.1200 et seq. of the California Rules Court Plaintiffs-Petitioners Lokey Firearms, FFLGuard,  
6 LLC, and the California Rifle & Pistol Association, Incorporated (collectively "Plaintiffs" or  
7 "Petitioners"), by and through their counsel of record, apply ex parte for an order staying  
8 enforcement of the County of Santa Clara's policy requiring gun stores to close indefinitely in  
9 light of the COVID-19 emergency, and prohibiting Defendants-Respondents County of Santa  
10 Clara, Health Officer Sara H. Cody, M.D., Sheriff Laurie Smith, and District Attorney Jeff Rosen,  
11 their employees, agents, and persons acting with them on their behalf (collectively "Defendants"  
12 or "Respondents" or "the County"), from enforcing said policy during the pendency of this action.

13 Alternatively, Plaintiffs-Petitioners apply for a temporary restraining order immediately  
14 enjoining and prohibiting Defendants their employees, agents, and persons acting with them on  
15 their behalf, from enforcing the County's policy requiring gun stores to close indefinitely in light  
16 of the COVID-19 emergency. Plaintiffs-Petitioners also request that the Court issue an Order to  
17 Show Cause, affording Defendants-Respondents the opportunity to appear and show cause why a  
18 preliminary injunction should not issue restraining and enjoining them from enforcing said policy  
19 for the remainder of this litigation.

20 This application is based on California Code Civil Procedure sections 525, 526, and 527  
21 and California Rules of Court, rules 3.1150 and 3.1200 et seq., on the grounds that: (1) Plaintiffs-  
22 Petitioners are likely to succeed on the merits of their claims that Defendants-Respondents'  
23 enforcement of their order prohibiting the operation of gun stores in their jurisdiction is invalid  
24 because it contravenes a superseding state order, is preempted by state law, and violates the  
25 California Constitution's due process requirements; (2) Plaintiffs-Petitioners will suffer  
26 immediate threat of irreparable harm unless enforcement of such order is stayed by this Court;  
27 and (3) the balance of hardships tips in Plaintiffs-Petitioners' favor.

28 This application is further based on the Memorandum of Points and Authorities, the  
supporting declarations, and evidence filed concurrently herewith, the Petition for Writ of

1 Mandate and/or Prohibition or Other Appropriate Relief; Complaint for Declaratory and  
2 Injunctive Relief, and upon such further evidence and argument as may be presented before or at  
3 the time of hearing on the motion.

4 On April 16, 2020, Plaintiffs-Petitioners provided County Counsel of Santa Clara James  
5 R. Williams, District Attorney Jeff Rosen, and Deputy District Attorney Adam J. Flores with  
6 electronic mail notice of their intention to seek ex parte relief (Decl. of Sean A. Brady Supp. Ex  
7 Parte Appn. for OSC & TRO (“Brady Decl.”), ¶ 3; Ex. B.) Petitioner-Plaintiffs’ counsel is  
8 informed and believes that Mr. Williams’s business address is 70 West Hedding Street, East  
9 Wing, 9th Floor, San Jose, CA 95110, his phone number is (408) 299-5900, and email address is  
10 [county.counsel@cco.sccgov.org](mailto:county.counsel@cco.sccgov.org). Petitioner-Plaintiffs’ counsel is informed and believes that Mr.  
11 Rosen and Mr. Flores’s business address is 17275 Butterfield Boulevard, Suite A, Morgan Hill,  
12 CA 95037, their phone number is (408) 201-0555, and their email addresses are  
13 [jrosen@dao.sccgov.org](mailto:jrosen@dao.sccgov.org) and [aflores@dao.sccgov.org](mailto:aflores@dao.sccgov.org).

14 Plaintiffs-Petitioners have not made any previous application for such relief.

15  
16 Dated: April 20, 2020

**MICHEL & ASSOCIATES, P.C.**

17  
18 

19 \_\_\_\_\_  
20 Sean A. Brady  
21 Attorneys for Petitioners/Plaintiff  
22  
23  
24  
25  
26  
27  
28



1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF SANTA CLARA

4 I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County,  
5 California. I am over the age eighteen (18) years and am not a party to the within action. My  
6 business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

7 On April 20, 2020, I served the foregoing document(s) described as

8 **EX PARTE APPLICATION TO STAY ENFORCEMENT OF SANTA CLARA ORDER**  
9 **REQUIRING LICENSED FIREARM DEALERS TO CLOSE OR ALTERNATIVELY,**  
10 **FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE**

11 on the interested parties in this action by placing

- 12  the original  
13  a true and correct copy

14 thereof by the following means, addressed as follows:

15 James R. Williams  
16 Office of the County Counsel  
17 County of Santa Clara  
18 70 West Hedding Street  
19 East Wing, 9th Floor  
20 San Jose, CA 95110  
21 Email: [county.counsel@cco.sccgov.org](mailto:county.counsel@cco.sccgov.org)  
22 Email: [james.williams@cco.sccgov.org](mailto:james.williams@cco.sccgov.org)

23 Jeff Rosen  
24 District Attorney  
25 Office of the District Attorney  
26 County of Santa Clara  
27 17275 Butterfield Blvd., Ste A  
28 Morgan Hill, CA 95037  
Email: [jrosen@dao.sccgov.org](mailto:jrosen@dao.sccgov.org)

Adam J. Flores  
Deputy District Attorney  
Office of the District Attorney  
County of Santa Clara  
17275 Butterfield Blvd., Ste A  
Morgan Hill, CA 95037  
Email: [aflores@dao.sccgov.org](mailto:aflores@dao.sccgov.org)

Douglas M. Press  
Melissa Kiniyalocts  
Jason Bussey  
70 West Hedding Street  
East Wing, 9th Floor  
San Jose, CA 95110  
Email: [douglas.press@cco.sccgov.org](mailto:douglas.press@cco.sccgov.org)  
Email: [melissa.kiniyalocts@cco.sccgov.org](mailto:melissa.kiniyalocts@cco.sccgov.org)  
Email: [jason.bussey@cco.sccgov.org](mailto:jason.bussey@cco.sccgov.org)

20 X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic  
21 transmission to the emails shown above. Said transmission was reported and completed  
22 without error.

23 X (STATE) I declare under penalty of perjury under the laws of the State of California that  
24 the foregoing is true and correct.

25 Executed on April 20, 2020, at Long Beach, California.

26 

27 Laura Palmerin