

1 JAMES R. WILLIAMS, County Counsel (S.B. #271253)
MELISSA R. KINIYALOCTS, Lead Deputy County Counsel (S.B. #215814)
2 JASON M. BUSSEY, Deputy County Counsel (S.B. #227185)
HANNAH KIESCHNICK, Legal Fellow (S.B. # 319011)
3 OFFICE OF THE COUNTY COUNSEL
70 West Hedding Street, East Wing, Ninth Floor
4 San Jose, California 95110-1770
Telephone: (408) 299-5900
5 Facsimile: (408) 292-7240

6 Attorneys for Defendants
COUNTY OF SANTA CLARA, SARA H. CODY,
7 LAURIE SMITH and JEFF ROSEN

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

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

15 Plaintiffs,

16 v.

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

21 Defendants.

No. 20CV365840

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO EX PARTE
APPLICATION TO STAY
ENFORCEMENT OF SANTA CLARA
ORDER REQUIRING LICENSED
FIREARMS DEALERS TO CLOSE OR
ALTERNATIVELY, FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE**

Date: TBA

Time: TBA

Dept.: TBA

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23 Please take notice that, under California Evidence Code Rule 452(d) and California Rules of
24 Court, rules 3.1113(l) and 3.1306(c), Defendants respectfully request that this Court take judicial
25 notice of the following document, attached hereto as Exhibit A, in connection with their Opposition
26 to the Ex Parte Application to Stay Enforcement of Santa Clara Order Requiring Licensed Firearm
27 Dealers to Close or Alternatively, for Temporary Restraining Order and Order to Show Cause in this
28 matter: Judge Tigar's Order Denying Temporary Restraining Order; Scheduling Order re

1 Application for Preliminary Injunction, ECF No. 22, *Altman v. County of Santa Clara* (N.D. Cal.
2 Apr. 10, 2020) Case No. 4:20-cv-02180-JST.

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Dated: April 22, 2020

Respectfully submitted,

JAMES R. WILLIAMS
County Counsel

By: /s/ Melissa R. Kiniyalocts
MELISSA R. KINIYALOCTS
Lead Deputy County Counsel

Attorneys for Defendants
COUNTY OF SANTA CLARA, SARA H,
CODY, LAURIE SMITH and JEFF ROSEN

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JANICE ALTMAN, et al.,
Plaintiffs,
v.
COUNTY OF SANTA CLARA, et al.,
Defendants.

Case No. 20-cv-02180-JST

**ORDER DENYING TEMPORARY
RESTRAINING ORDER;
SCHEDULING ORDER RE
APPLICATION FOR PRELIMINARY
INJUNCTION**

Re: ECF No. 20

United States District Court
Northern District of California

Earlier today, Plaintiffs filed an “Application for Temporary Restraining Order, and/or in the Alternative, Motion for Issuance of a Preliminary Injunction.” ECF No. 20. The Court will deny the application for temporary restraining order and set a hearing on the request for injunction.

“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 or a verified complaint 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). “A temporary restraining order is distinguished by its ‘underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.’” *Patmont Motor Werks, Inc. v. Pedego LLC*, No. 3:11-cv-00822-LRH (VPC), 2012 WL 13071201, at *1 (D. Nev. Mar. 6, 2012) (quoting *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974)).

Plaintiffs make no effort in their application to meet the requirements of Rule 65(b)(1), and specifically have not shown that an “immediate and irreparable” injury will result that outweighs Defendants’ right to reasonable notice and opportunity to be heard. As the Supreme Court noted

United States District Court
Northern District of California

1 in *Granny Goose*, “[t]he stringent restrictions imposed . . . by Rule 65 on the availability of ex
2 parte temporary restraining orders reflect the fact that our entire jurisprudence runs counter to the
3 notion of court action taken before reasonable notice and an opportunity to be heard has been
4 granted both sides of a dispute.” *Granny Goose*, 415 U.S. at 438-39. Plaintiffs’ ten-day delay
5 between filing their original complaint and seeking equitable relief further support the Court’s
6 conclusion that allowing Defendants a reasonable opportunity to respond is appropriate. *See Lee*
7 *v. Haj*, No. 1:16-cv-00008-DAD(SAB), 2016 WL 8738428, at *2 (E.D. Cal. Feb. 22, 2016)
8 (“Parties facing the threat of immediate and irreparable harm generally seek a temporary
9 restraining order as quickly as possible.” (citations omitted)). The Court therefore denies the
10 request for a temporary restraining order.

11 In issuing this order, the Court expresses no view on whether an injunction is appropriate.
12 *See Toyo Tire & Rubber Co. v. Toyama Tyre Corp.*, No. 2:13-CV-02062-GMN, 2013 WL
13 5970979, at *3 (D. Nev. Nov. 8, 2013) (“Although Plaintiffs may be able to carry their burden for
14 the issuance of a preliminary injunction, the Court cannot find that the issuance of an injunction
15 without notice to Defendants (in the form of a temporary restraining order) is appropriate.”).

16 Defendants’ opposition to Plaintiffs’ application is due by April 24, 2020 at 5:00 p.m.
17 Plaintiffs’ reply is due by May 1, 2020 at 5:00 p.m. The Court will conduct a hearing on May 13,
18 2020 at 2:00 p.m.

19 **IT IS SO ORDERED.**

20 Dated: April 10, 2020

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23 JON S. TIGAR
24 United States District Judge

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1 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
2 PROOF OF SERVICE BY ELECTRONIC MAIL

3 *LOKEY FIREARMS, et al. v, COUNTY OF SANTA CLARA, et al.* Case No.: 20CV365840
4 *al.*

5 I, Kimberly Ide, declare:

6 I am now and at all times herein mentioned have been over the age of eighteen years,
7 employed in Santa Clara County, California, and not a party to the within action or cause; that my
8 business address is 70 West Hedding Street, 9th Floor, San Jose, California 95110-1770. My
9 electronic service address is: kimberly.ide@cco.sccgov.org. On **April 22, 2020**, I caused to be
10 electronically served via the Odyssey E-File system, copies of the following:

11 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS’**
12 **OPPOSITION TO EX PARTE APPLICATION TO STAY ENFORCEMENT OF**
13 **SANTA CLARA ORDER REQUIRING LICENSED FIREARMS DEALERS TO**
14 **CLOSE OR ALTERNATIVELY, FOR TEMPORARY RESTRAINING ORDER AND**
15 **ORDER TO SHOW CAUSE**

14 to the people listed below at the following electronic service address:

15 Michel & Associates
16 C.D. Michel, Esq.
17 Email: cmichel@michellawyers.com

18 Michel & Associates
19 Sean A. Brady, Esq.
20 Email: sbrady@michellawyers.com

21 Michel & Associates
22 Matthew D. Cubeiro, Esq.
23 Email: mcubeiro@michellawyers.com

24 Email: lpalmerin@michellawyers.com

25 I declare under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct, and that this declaration was executed on April 22, 2020.

27 /s/ Kimberly Ide
28 Kimberly Ide

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