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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**  
**CENTRAL DISTRICT**

TURNER’S OPERATIONS, INC., a California corporation; TRADERS LOAN AND JEWELRY, INC., a California corporation; FFLGuard, LLC, a Delaware limited liability company; and CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED, a California corporation,

Petitioners-Plaintiffs,

v.

ERIC GARCETTI, in his official capacity as Mayor of the City of Los Angeles; MICHAEL N. FEUER, in his official capacity as City Attorney of the City of Los Angeles; MICHAEL MOORE, in his official capacity as Chief of the Los Angeles Police Department; CITY OF LOS ANGELES; and DOES 1-25,

Respondents-Defendants.

Case No.: 20STCP01258

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER TURNER’S OPERATIONS, INC.’S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE**

Hearing Date: April 28, 2020  
Hearing Time: 8:30 a.m.  
Department: 1

Action Filed: April 3, 2020

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 In response to the COVID-19 pandemic, Mayor Eric Garcetti recently enacted the “Safer  
3 at Home” order, requiring all City of Los Angeles residents to remain at home, unless engaged in  
4 or working on behalf of certain “essential activities” provided in the order. Petitioner-Plaintiff  
5 Turner’s Operations, Inc. (“Turner’s”) operates a retail establishment located in the City of Los  
6 Angeles. Despite engaging in various “essential activities” expressly identified in the Mayor’s  
7 order, officers from the Los Angeles Police Department ordered Turner’s to close its store.

8 Tuner’s is subject to criminal and civil penalties for continuing to operate its store under  
9 the City’s current enforcement of the Mayor’s order. Ex parte relief is necessary to prevent  
10 Petitioner Turner’s from being irreparably harmed by being denied its ability to operate under the  
11 City’s arbitrary enforcement of the Mayor’s Order.

12 **STATEMENT OF FACTS**

13 **I. CALIFORNIA’S STATUTORY SCHEME FOR FIREARM AND AMMUNITION SALES TO LAW  
14 ENFORCEMENT PERSONNEL**

15 Virtually all lawful firearm transactions conducted in California must be processed by a  
16 properly licensed firearms dealer (an “FFL”). (Pen. Code, §§ 26500, 27545.) This generally  
17 includes sales of firearms to law enforcement personnel. (See Pen. Code, § 27600, subd. (a).) Law  
18 enforcement personnel are, however, generally exempt from California restrictions on certain  
19 firearms and firearm accoutrement. Specifically, California peace officers may purchase “large  
20 capacity magazines” that are illegal for the general public to acquire. (Pen. Code, § 32405.) Like  
21 many California law enforcement agencies, LAPD policy allows its officers to use “large capacity  
22 magazines” for duty purposes. (RJN, Ex. M (listing “30 & 40 Round Rifle Magazines”).)  
23 Likewise, California prohibits FFLs from selling any handgun to the general public unless the  
24 handgun appears on California’s approved roster. (Pen. Code, §§ 32000, 32015.) This restriction  
25 does not apply to sales of handguns to peace officers. (Pen. Code, § 32000, subd. (b)(4).) Like  
26 many California law enforcement agencies, LAPD policy allows its officers to use handguns that  
27 are not on the roster for duty purposes. (RJN, Ex. M; *see also* RJN, Ex. N.)

28 Virtually all lawful ammunition transactions conducted in California must also be  
processed by a properly licensed ammunition vendor. (Pen. Code, § 30312, subd. (a)(1).) FFLs

1 like Petitioner Turners’ are automatically also licensed ammunition vendors. (Pen. Code, § 16151,  
2 subd. (b).) While law enforcement personnel can have ammunition shipped directly to them, they  
3 must otherwise obtain it from a licensed vendor or from their agency. (See Pen. Code, § 30312.)

## 4 **II. THE MAYOR’S ORDER**

5 In response to the novel coronavirus (COVID-19) pandemic, Respondent Mayor Garcetti  
6 declared “the existence of a local emergency” for the City of Los Angeles on March 4, 2020,  
7 which, among other provisions, ordered the “Emergency Operations Organization (EOO) to take  
8 the necessary steps for the protection of life, health and safety in the City of Los Angeles.” (RJN,  
9 Ex. E.) On March 15, 2020, Mayor Garcetti issued a “Public Order Under City of Los Angeles  
10 Emergency Authority” which imposed “a series of temporary restrictions” to be placed on a list of  
11 local businesses “in which large numbers of people tend to gather and remain in close proximity.”  
12 (RJN, Ex. F.)

13 On March 19, 2020, Mayor Garcetti issued a new public order dubbed “Safer at Home,”  
14 declaring that the City “must adopt additional emergency measures to further limit the spread of  
15 COVID-19.” (RJN, Ex. G.) Instead of listing additional businesses that must close, this new order  
16 instead listed certain businesses as “essential” that would *not* be closed. The list was expressly *not*  
17 exhaustive. (*Ibid.*)

18 Exceptions to the Mayor’s March 19th “Safer at Home” order, as relevant to this matter,  
19 provide that “[p]eople may lawfully leave their residence while this Order is in effect only to  
20 engage in the following activities”:

21 a) “Essential Activities,” which include: “obtaining medical supplies, . . . grocery  
22 items (including, without limitation, . . . dry goods. . . , any other household consumer  
23 products and products necessary to maintain the safety and sanitation of residences and  
24 other buildings) for their household, [and] for legally mandated government purposes,”

25 (*Id.* at ¶ 5(ii).);

26 b) “To perform work providing essential products and services or to otherwise carry  
27 out activities specifically permitted in this order,” (*Id.* at ¶ 5(iv).);

28 c) “[L]aw enforcement personnel,” (*Id.* at ¶ 5(vi).);

1 d) “Certain business operations and activities . . . that [] provide services that are  
2 recognized to be critical to the health and well-being of the City,” including:

3 i. “establishments engaged in the retail sale of . . . dry goods . . . and other non-  
4 grocery products, and products necessary to maintaining the safety, sanitation, and  
5 essential operation of residences,” (*Id.* at ¶ 5(vii)(b).);

6 ii. “Food cultivation, including . . . fishing,” (*Id.* at ¶ 5(vii)(c).);

7 iii. “Businesses providing mailing and shipping services, boxes and packaging,  
8 and post office boxes” (*Id.* at ¶ 5(vii)(j).); and

9 iv. “Businesses that supply other essential businesses with the support, services, or  
10 supplies necessary to operate,” (*Id.* at ¶ 5(vii)(o).);

11 e) “[P]rovide any services or goods or perform any work necessary to to [sic] build,  
12 operate, maintain or manufacture essential infrastructure, including . . . internet and  
13 telecommunications systems (including the provision of essential global, national, and  
14 local infrastructure for computing services, business infrastructure, communications,  
15 phone retail sales and servicing, and web-based services).” (*Id.* at ¶ 5(ix).)

16 On March 24, 2020, Mayor Garcetti and Los Angeles City Attorney Michael Feuer issued a joint  
17 statement stating that the City would ensure “strong enforcement” of the “Safer at Home” order.

18 (RJN, Ex. H.) Neither Mayor Garcetti’s March 15 order nor his March 19 order expressly

19 mentions FFLs. Nevertheless, City Attorney Feuer also declared “gun shops to be nonessential  
20 and must close, and that . . . only ‘life-sustaining’ businesses, such as grocery stores and

21 pharmacies, can be open.” (*See* Brady Decl., Ex. 1.) Mayor Garcetti revised his “Safer at Home”  
22 order on April 1, 2020, to expressly states that any “business that fails to cease operation despite  
23 not meeting an exception . . . may be subject to having its water and power services shut off.”

24 (RJN, Ex. L.) The revised order still does not expressly mention gun stores. (*Ibid.*)

25 On April 2, 2020, in reliance on the Mayor’s Order, LAPD officers contacted Petitioner  
26 Turner’s ordering it to cease all operations. (Decl. of William Ortiz Supp. Ex Parte Appn. for  
27 OSC & TRO (“Ortiz Decl.”), ¶ 22.) Fearing criminal or civil penalties for not complying,  
28 Petitioner Turner’s responded by closing its store. (*Ibid.*)



1 On April 10, 2020, Mayor Garcetti revised his “Safer at Home” order to its current form.  
2 As relevant to this matter, that order remains effectively the same as the Mayor’s March 19 order,  
3 with the exception that it adds an exception for “financial institutions . . . and pawn shops.” (See  
4 RJN, Ex. Q.)

5 Failure to comply with Respondent Mayor Garcetti’s “Safer at Home” order “shall  
6 constitute a misdemeanor subject to fines and imprisonment.” (RJN, Ex. Q at ¶ 8.) The order also  
7 “urge[s] the Los Angeles Police Department and the City Attorney to vigorously enforce this  
8 Order via Sections 8.77 and 8.78 of the Los Angeles Administrative Code.” (*Ibid.*)

### 9 **III. PETITIONER TURNER’S**

10 Petitioner Turner’s “perform[s] work providing essential products and services or []  
11 otherwise carr[ies] out activities specifically permitted in [the Mayor’s] order,” including  
12 “services that are recognized to be critical to the health and well-being of the City.” (RJN, Ex. Q  
13 at ¶ 5(iv); Ortiz Decl., ¶¶ 5-16.) That includes “supply[ing] other essential businesses with the  
14 support, services, or supplies necessary to operate.” (RJN, Ex. Q at ¶ 5(vii)(o); Ortiz Decl., ¶¶ 8-  
15 10; *see also* RJN, Ex. M.) Specifically, Petitioner Turner’s sells essential “medical supplies” in  
16 the form first aid kits and first aid handbooks for wilderness survival, (RJN, Ex. Q at ¶ 5(ii); Ortiz  
17 Decl., ¶ 5); and essential “grocery items” in the form of various “dry goods.” (RJN, Ex. Q at ¶  
18 5(ii); Ortiz Decl., ¶ 6.) Turner’s also sells essential products to those engaged in the business of  
19 “food cultivation,” particularly “fishing,” by selling equipment like fishing rods, reels, nets,  
20 waterproof outerwear, and tackle, as well as the state licenses required to lawfully engage in  
21 fishing. (RJN, Ex. Q at ¶ 5(vii)(c); Ortiz Decl., ¶ 11.)

22 Turner’s also sells essential products to law enforcement personnel, including the sale of  
23 tactical gear, firearms, firearm parts and cleaning kits, and ammunition, as well as exclusively law  
24 enforcement products, such as “large capacity magazines” and handguns not listed on California’s  
25 “Roster of Handguns Certified for Sale,” both of which can generally only be sold to law  
26 enforcement. (See Pen. Code, §§ 32310-32455, 31900-32110; RJN, Ex. Q at ¶ 5(vi); Ortiz Decl.,  
27 ¶ 10.)

28 Turner’s also provides “mailing and shipping services” for its customers. (RJN, Ex. Q at ¶

1 5(vii)(j); Ortiz Decl., ¶ 14.) It ships firearms to manufacturers for repair or to out-of-state FFLs  
2 for purposes of lawful transfers to a customer’s family member or otherwise as required by  
3 federal law. (*Ibid.*; *see also* 18 U.S.C. § 922, subd. (a)(2-5).)

4 Turner’s also performs work necessary to operate and maintain essential infrastructure of  
5 the State. (RJN, Ex. Q at ¶ 5(ix); Ortiz Decl., ¶ 16.) This includes populating the State’s DES  
6 system, a web-based service maintained by DOJ which allows FFLs to report the sale, loan,  
7 transfer, redemption, and acquisition of firearms to DOJ. (*See* Pen. Code, §§ 28100-28490; Cal.  
8 Code Regs. tit. 11, §§ 4200-4240.) In populating DES, Petitioner Turner’s provides DOJ with the  
9 information necessary to conduct a background check on a prospective firearms purchaser and to  
10 generate an Automated Firearm System (“AFS”) entry for the transaction. (Pen. Code, §§ 28200-  
11 28255.) Such AFS entries are used by California law enforcement to report to DOJ “the recovery  
12 of any firearms that are illegally possessed, have been used in a crime, or are suspected of having  
13 been used in a crime.” (RJN, Ex. O.) Also, law enforcement personnel generally cannot acquire  
14 firearms without an FFL processing the transfer through the DES. (*See* Pen. Code, § 27600.)  
15 Turner’s also implements the State’s Firearm Safety Certificate program, a state-mandated  
16 educational program for gun purchasers, and populates its internet database. (Pen. Code, §§  
17 31610-31670.) As a licensed ammunition vendor, Turner’s also implements California’s  
18 ammunition background check system, which everyone, including law enforcement, must  
19 undergo to acquire ammunition, and populates the State’s internet-based ammunition-purchase  
20 database. (*See* Pen. Code, § 30370.) In doing so, Turner’s populates DES with the information  
21 necessary to conduct a background check on a prospective ammunition purchaser, much like a  
22 firearms transaction. (Pen. Code, § 30370.) What’s more, the AFS records generated from  
23 processing firearm transactions are, as stated by DOJ, “critical” for individuals seeking to  
24 purchase ammunition. (RJN, Ex. P.)

25 Turner’s also sells “products necessary to maintaining the safety, sanitation, and essential  
26 operation of residences,” under California law and the Los Angeles Municipal Code. (RJN, Ex. Q  
27 at ¶ 5(ii); Ortiz Decl., ¶ 7.) This includes safes, lockboxes, and firearm safety devices, all of which  
28 are necessary for law-abiding citizens who own firearms and reside within the City of Los

1 Angeles. The City of Los Angeles mandates that all firearms kept within a residence generally be  
2 stored in a locked container or disabled with a trigger lock that has been approved by DOJ. (L.A.  
3 Mun. Code, § 55.21, subd. (b).) And, California law imposes penalties for persons who store their  
4 firearms in a manner that allows access to their firearm by a child or prohibited person. (Pen.  
5 Code, §§ 25000-25225.)

6 Turner's provides services that only an FFL can facilitate "for legally mandated  
7 government purposes." (RJN, Ex. Q at ¶ 5(ii); Ortiz Decl., ¶ 12.) This includes accepting for  
8 purchase, storage, or surrender of firearms to law enforcement, firearms from persons who  
9 become prohibited from possessing firearms as a result of a conviction, restraining order, or other  
10 prohibiting factor, and who must dispossess themselves of their firearms. (See Pen. Code, §§  
11 33850, subd. (b), 18125-18197, 29800-29830.) Turner's also purchases firearms from non-  
12 immigrant aliens who lawfully possess them but who are leaving the United States and cannot  
13 lawfully export their firearm.

14 Turner's performs many of the same services as a "pawn shop." (RJN, Ex. Q at ¶ 5(vii)(g);  
15 Ortiz Decl., ¶ 21.) It possesses a secondhand dealer's license jointly approved and issued by the  
16 City and the DOJ, allowing it to engage in activities that include firearms taken in trade, taken in  
17 pawn, accepted for sale on consignment, and accepted for auction. (Ortiz Decl., ¶ 21.)

## 18 ARGUMENT

### 19 I. LEGAL STANDARD

20 The primary purpose of interim injunctive relief like a temporary or preliminary injunction  
21 is to preserve the status quo until a court can make a final determination on the merits of the  
22 action. (See *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512.) The test most frequently used  
23 by California trial courts in deciding whether to issue such relief requires the evaluation of two  
24 interrelated factors: (1) the likelihood that plaintiff will succeed on the merits of its claims; and  
25 (2) the harm that plaintiff is likely to suffer if injunctive relief does not issue, balanced against the  
26 harm that the defendant is likely to suffer if it does issue. (*Cohen v. Bd. of Supervisors* (1985) 40  
27 Cal.3d 277, 286 (hereafter *Cohen*.) When addressing these factors, the plaintiff must prove the  
28 likelihood that it will suffer immediate and irreparable harm. (*Triple A Machine Shop, Inc. v.*

1 *California* (1989) 213 Cal.App.3d 131, 138.)

2 **II. PLAINTIFF TURNER’S IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS**

3 **A. Petitioner Turner’s Meets the Requirements for a Writ of Mandate to Issue**  
4 **Requiring the City to Cease Enforcing the Mayor’s Order Against It**

5 “The courts may rely upon mandamus under Code of Civil Procedure section 1085 to  
6 review the validity of a quasi-legislative action.” *Clean Air Constituency v. California State Air*  
7 *Res. Bd.* (1974) 11 Cal.3d 801, 809, citing (Cal. Civil Writs (Cont.Ed.Bar 1970) s 5.37, p. 89.)  
8 This Court has already found the Mayor’s Order to be a legislative act. (Minute Order, p. 5.)  
9 Mandate lies when: (1) the respondent has a clear, present, and ministerial duty to act, and (2) the  
10 petitioner has a beneficial right to performance of that duty. (*People ex rel. Younger v. Cnty. Of El*  
11 *Dorado* (1971) 5 Cal.3d 480, 491.) Code of Civil Procedure § 1086 provides that when a verified  
12 petition is submitted by a party “beneficially interested,” a writ “must be issued in all cases where  
13 there is not a plain, speedy, and adequate remedy, in the ordinary course of law.” Here, Petitioner  
14 Turner’s readily meets each of the criteria for a writ of mandate to issue.

15 **1. Because Petitioner Turner’s Meets Various Exceptions to the Mayor’s**  
16 **Order, the City Has a Clear, Present, and Ministerial Duty to Not Enforce**  
17 **the Mayor’s Order Against Turner’s**

18 “A ministerial act is an act that a public officer is required to perform in a prescribed  
19 manner in obedience to the mandate of legal authority and without regard to his own judgment or  
20 opinion concerning such act’s propriety or impropriety, when a given state of facts exists.”  
21 (*County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 653.) The Mayor’s  
22 Order sets out mandatory directives. One of them is that businesses engaged in or assisting those  
23 engaged in certain “essential activities” be permitted to continue operations, subject to social  
24 distancing protocol. (RJN, Ex. Q at ¶ 6.) The Mayor’s Order expressly identifies and describes the  
25 “essential activities” that qualify a business as exempt from the order’s restrictions. It does not  
26 expressly confer discretion on any official to decide whether a business can operate. As such, if a  
27 business is clearly engaged in “essential activities” it is per se exempt from the Mayor’s Order  
28 and the City has a ministerial duty to recognize the exemption.

As explained above, Petitioner Turner’s engages in various activities that undeniably  
qualify as “essential activities” under the Mayor’s Order and that the City must recognize as

1 exempting Turner’s from the order. For example, there is no reasonable reading of the exemption  
2 in the Mayor’s Order “[t]o perform work providing essential products and services or to otherwise  
3 carry out activities specifically permitted in this order,” that does not include Turner’s supplying  
4 law enforcement personnel with products that are essential for them to perform their duties under  
5 LAPD policy. (See *supra*, Statement of Facts, Part III.) Nor is there any reasonable reading of the  
6 exemption in the Mayor’s Order for “[b]usinesses that supply other essential businesses with the  
7 support, services, or supplies necessary to operate” that does not include Turner’s selling supplies  
8 to fishing businesses. (RJN, Ex. Q at ¶ 5(vii)(o); Ortiz Decl., ¶¶ 8-10; *see also* RJN, Ex. M.) The  
9 same is true for all the other “essential activities” Turner’s engages in described above. But these  
10 two examples alone are sufficient to show that the City has a ministerial duty to recognize  
11 Turner’s as exempt from the Mayor’s Order.

12         Yet, the City has precluded Turner’s from operating, despite Turner’s engaging in various  
13 activities that undeniably meet exceptions to the Mayor’s Order. The City is thus subject to a writ  
14 of mandate from this court compelling it to recognize Turner’s exempt status. (See *Langsam v.*  
15 *City of Sausalito* (1987) 190 Cal.App.3d 871, 873 [court issued a traditional writ of mandate  
16 compelling a city to issue a permit because the petitioner qualified for an exception under the  
17 city’s ordinance and the court refused to add a requirement not contained in the ordinance].)

18         Even if this Court were to construe the City’s enforcement of the Mayor’s Order not as a  
19 ministerial duty but discretionary, there would be the same result. “Normally, mandate will not lie  
20 to control a public agency’s discretion, that is to say, force the exercise of discretion in a  
21 particular manner. However, it will lie to correct abuses of discretion.” *County of Los Angeles*  
22 (2013) 214 Cal.App. at 654, citing *Manjares v. Newton* (1966) 64 Cal.2d 365, 370.) While it is a  
23 petitioner’s burden to show that officials abused their discretion by enforcing a measure in an  
24 arbitrary or capricious manner, “[w]here only one choice can be a reasonable exercise of  
25 discretion, a court may compel an official to make that choice.” (*Bank of Italy v. Johnson* (1926)  
26 200 Cal. 1, 31.)

27         The City’s refusal to recognize that Turner’s meets at least some of the exceptions to the  
28 Mayor’s Order constitutes arbitrary and capricious enforcement of the Mayor’s Order against

1 Turner's. While the "phrase 'arbitrary or capricious' has no precise meaning" or definition,  
2 "courts often characterize unsubstantiated determinations as arbitrary." (*Madonna v. County of*  
3 *San Luis Obispo* (1974) 39 Cal.App.3d 57, 61-62.) As explained above, the only reasonable  
4 conclusion is that Turner's qualifies for the "essential activities" exceptions to the Mayor's Order.  
5 The City has no basis to conclude otherwise. By not recognizing that Turner's is exempt from the  
6 Mayor's Order and thus entitled to operate, the City is abusing its discretion. This Court can and,  
7 respectfully, should compel the City to make the choice to recognize Turner's as exempt.

8 Petitioner Turner's is thus likely to succeed in showing that it is exempt from the Mayor's  
9 Order.

10 **2. Petitioner Turner's Has a Clear, Present, and Beneficial Interest in the**  
11 **Outcome of this Proceeding**

12 A petitioner can establish a beneficial right to the performance of a duty owed by a  
13 respondent, if the petitioner can show some special interest to be served or particular right to be  
14 preserved or protected over and above the interest held in common with the public at large. *Save*  
15 *the Plastic Bag Coal. v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165. Turner's has a  
16 special interest in being allowed to engage in the "essential activities" the City has identified as  
17 exempt from the Mayor's Order requiring the general public to remain at home. A writ issued by  
18 this court compelling the City to recognize Turner's as exempt from the Mayor's Order would  
19 thus immediately benefit Turner's.

20 **3. Turner's Has no Plain, Speedy, Or Adequate Legal Remedy from the**  
21 **Ongoing Harm Caused by the City's Enforcement of the Mayor's Order**

22 Whether a potential alternate remedy is available "in the ordinary course of law" involves  
23 an examination of: (1) the legal foundation for that remedy; and (2) how the remedy relates to the  
24 relief sought by the plaintiff. *Villery v. Dep't of Corr. & Rehab.* (2016) 246 Cal.App.4th 407, 414.  
25 Courts have regarded this examination as one of fact imposed by the circumstances of each  
26 particular case. Unless this Court compels the City to recognize that Turner's is exempt from the  
27 Mayor's Order, Turner's will remain closed indefinitely and unable to perform activities that the  
28 City has deemed "essential" as Turner's is entitled to do.

1           **B.       Petitioner Turner’s Is Entitled to Declaratory Relief that the City Is**  
2           **Improperly Enforcing the Mayor’s Order Against It**

3           Turner’s is challenging the City’s application of “an overarching, quasi-legislative policy”  
4           to close Turner’s store; not merely a specific administrative decision to do so. (*Californians for*  
5           *Native Salmon etc. Assn. v. Dept. of Forestry* (1990) 221 Cal.App.3d 1419, 1429, citing *Venice*  
6           *Town Council*, supra, 47 Cal.App.4th at p. 1566 and *Simi Valley Adventist Hosp. v. Bonta* (2000)  
7           81 Cal.App.4th 346, 354-355.) “Declaratory relief directed to policies of administrative agencies  
8           is not an unwarranted control of discretionary, specific agency decisions.” (*Ibid*; see also *Venice*  
9           *Town Council, Inc. v. City of Los Angeles* (1996) 24 Cal. App. 4th 1547, 1565-1567, citing *Bess v.*  
10           *Park* (1955) 132 Cal.App.2d 49, 52 [finding declaratory relief appropriate because the city’s  
11           interpretation of its responsibilities under the law was a “recurring problem and one involving the  
12           interpretation of a statute”].) The interpretation of a statute is a judicial function—not an  
13           administrative one. (*Bess*, supra, 132 Cal.App.2d at p. 53.) This Court thus has authority to declare  
14           that Turner’s meets the exceptions to the Mayor’s Order. For the reasons above explaining why  
15           Turner’s does meet those exceptions, this Court should make such declaration.

16           **III.       THE BALANCE OF HARMS TIPS SHARPLY IN PETITIONER’S FAVOR**

17           The Court must next balance the harm Petitioner is likely to suffer if injunctive relief does  
18           not issue against the harm the City is likely to suffer if it does. (*Cohen*, supra, 40 Cal.3d at p.  
19           286.) In evaluating that balance, courts can consider *any* of several factors: “(1) the inadequacy of  
20           any other remedy; (2) the degree of irreparable injury the denial of the injunction will cause; (3)  
21           the necessity to preserve the status quo; [and] (4) the degree of adverse effect on the public  
22           interest or interests of third parties the granting of the injunction will cause.” (*Id.* at p. 286, fn. 5.)

23           **A.       Absent Preliminary Relief, Turner’s Will Suffer Irreparable Harm Without**  
24           **Adequate Remedy at Law**

25           “To qualify for preliminary injunctive relief plaintiffs must show irreparable injury, either  
26           existing or threatened.” (*City of Torrance v. Transl. Living Ctrs. for L.A.* (1982) 30 Cal.3d 516,  
27           526, citing *7978 Corp. v. Pitchess* (1974) 41 Cal.App.3d 42, 46; see also Code Civ. Proc., § 526,  
28           subd. (a)(2).) Irreparable harm is present where a plaintiff will suffer an injury for which adequate  
                  compensation is difficult, if not impossible, to ascertain. (*Wind v. Herbert* (1960) 186 Cal.App.2d

1 276, 285, citing Civ. Code, § 3422.) The City’s conduct has caused and, unless enjoined, will  
2 continue to cause this very sort of injury to Turner’s.

3         The California Supreme Court has recognized that discontinuing a “method of conducting  
4 . . . business[] as alleged because of fear of arrest and prosecution” under an unlawful measure is  
5 sufficient irreparable injury. (*McKay Jewelers, Inc. v. Bowron* (1942) 19 Cal.2d 595, 599.) The  
6 City’s enforcement of the Mayor’s Order against Turner’s indefinitely prohibits it from operating  
7 its business, despite engaging in various “essential activities” that qualify it for exceptions to the  
8 Mayor’s Order. That alone is sufficient irreparable harm. Yet, Turner’s is further irreparably  
9 harmed because being shut down indefinitely could result in its businesses permanently ending.  
10 (Ortiz Decl., ¶ 27.) Turner’s is thus irreparably harmed by the City’s enforcement of the Mayor’s  
11 Order against it and will continue to suffer such harm should such enforcement continued while  
12 this case is pending.

13         **B. Preliminary Relief Is Necessary to Preserve the Status Quo**

14         “The general purpose of a preliminary injunction is to preserve the status quo until the  
15 merits of the action can be determined.” (*Harbor Chevrolet Corp. v. Machinists Local Union*  
16 *1484* (1959) 173 Cal.App.2d 380, 384.) The balance of harms thus tips in favor of a party seeking  
17 injunctive relief when necessary to preserve “the last actual peaceable, uncontested status which  
18 preceded the pending controversy.” (*People v. Hill* (1977) 66 Cal.App.3d 320, 331.) To that end,  
19 the California Supreme Court has recognized that preliminary injunctions preventing enforcement  
20 of measures in effect for only a short time effectively *maintain* the status quo. (*King v. Meese*  
21 (1987) 43 Cal.3d 1217, 1227.) The City’s enforcement of the Mayor’s Order requiring Turner’s to  
22 close did not occur until March 25, 2020,, and ultimately ordering Turner’s to cease all operations  
23 on April 2, 2020, making it mere weeks old. (Ortiz Decl., ¶ 22; *See also* RJN, Exs. G, H, L, Q.)  
24 The Mayor’s Order itself has since been revised. (RJN, Exs. L, Q.) Stopping its enforcement thus  
25 maintains the status quo as is necessary to prevent the various irreparable harms discussed above.  
26 (See *supra*, Argument, Part III.A.)

27         **C. The Public Interest Will Be Served, Not Harmed, by Preliminary Relief**

28         A third consideration in the balance of harms analysis is “the degree of adverse effect on



1 the public interest or interests of third parties the granting of the injunction will cause.” (*Cohen*,  
2 *supra*, 40 Cal.3d at p. 286, fn. 5.) Where the public interest would be harmed by the issuance of a  
3 preliminary injunction, courts are understandably reluctant to grant such relief. But when the  
4 public interest is *served* by injunctive relief, the balance should tip in the movant’s favor. The  
5 latter is the case here.

6 The City has determined, at least implicitly, that the public interest is served by allowing  
7 businesses engaged in certain “essential activities” to operate, despite the risk of spreading  
8 COVID-19 by doing so. The City cannot argue on one hand that the public interest is served by  
9 allowing those businesses to operate and then on the other argue that closing such businesses also  
10 serves the public interest because it helps prevent the spread of COVID-19. Preliminary relief will  
11 allow Turner’s to immediately supply essential products and services to the public, including to  
12 law enforcement personnel, which the City concedes furthers public safety. The public interest  
13 will thus be served, not harmed, by granting Turner’s the relief it seeks here.

14 **D. If Relief Is Granted, Respondents Will Suffer No Harm Sufficient to**  
15 **Outweigh the Harm to Turner’s Absent Such Relief**

16 Given the substantial likelihood that Turner’s will succeed on the merits, the harm to the  
17 City in ceasing enforcement of the Mayor’s Order against Turner’s is slight. Indeed, the Mayor  
18 himself has already weighed the harms at issue here and decided that allowing businesses  
19 engaged in “essential activities” to continue operating, even if it increases the risk of spreading  
20 COVID-19, is less harmful than closing those businesses. Because Turner’s is one of those  
21 businesses, the City cannot claim it will suffer harm from the Court temporarily enjoining  
22 enforcement of the Mayor’s Order against Turner’s. Turners’ merely asks that the City treat it like  
23 other exempt businesses and simply let it operate. No further action or funding is required of the  
24 City to do so. What’s more, Turner’s is subject to the behavioral guidelines the City has  
25 implemented for all other businesses operating during this health crisis. In short, the City cannot  
26 make any legitimate claim that it will somehow be harmed should the Mayor’s Order be stayed  
27 temporarily when it has less intrusive measures to accomplish its legitimate objectives that do not  
28 unduly burden Turner’s.



1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES

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 27, 2020, I served the foregoing document(s) described as

8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER**  
9 **TURNER'S OPERATIONS, INC.'S EX PARTE APPLICATION FOR TEMPORARY**  
10 **RESTRAINING ORDER AND ORDER TO SHOW CAUSE**

11 on the interested parties in this action by placing  
12 [ ] the original  
13 [X] a true and correct copy  
14 thereof by the following means, addressed as follows:

15 Benjamin F. Chapman, Deputy City Attorney  
16 Email: [benjamin.chapman@lacity.org](mailto:benjamin.chapman@lacity.org)  
17 Jonathan H. Eisenman, Deputy City Attorney  
18 Email: [jonathan.eisenman@lacity.org](mailto:jonathan.eisenman@lacity.org)  
19 200 North Main Street, 7th Floor, City Hall East  
20 Los Angeles, CA 90012  
21 Fax No.: (213) 978-0763

22 \_\_\_\_\_ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and  
23 processing correspondence for mailing. Under the practice it would be deposited with the  
24 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,  
25 California, in the ordinary course of business. I am aware that on motion of the party  
26 served, service is presumed invalid if postal cancellation date is more than one day after  
27 date of deposit for mailing an affidavit.

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

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

Executed on April 27, 2020, at Long Beach, California.



\_\_\_\_\_  
Laura Palmerin