

1 LEROY SMITH, State Bar No. 107702
County Counsel, County of Ventura
2 CHARMAINE H. BUEHNER, State Bar No. 220868
Assistant County Counsel
3 800 South Victoria Avenue, L/C #1830
Ventura, California 93009
4 Telephone: (805) 654-2588
Facsimile: (805) 654-2185
5 E-mail: charmaine.buehner@ventura.org

6 Attorneys for Defendants County of Ventura
(also erroneously sued as Ventura County Public
7 Health Care Agency), Sheriff William Ayub
(erroneously sued as Bill Ayub), Robert
8 Levin and William T. Foley

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 DONALD MCDUGALL, an
individual; JULIANA GARCIA, an
13 individual; SECOND AMENDMENT
FOUNDATION; CALIFORNIA
14 GUN RIGHTS FOUNDATION; and
FIREARMS POLICY COALITION,
15 INC.,

16 Plaintiffs,

17 vs.

18 COUNTY OF VENTURA,
CALIFORNIA; BILL AYUB, in his
official capacity; WILLIAM T.
19 FOLEY, in his official capacity,
ROBERT LEVIN, in his official
20 capacity; and VENTURA COUNTY
PUBLIC HEALTH CARE AGENCY,

21
22 Defendants.

No. 2:20 cv-029927 CBM(ASX)

DECLARATION OF CHARMAINE
H. BUEHNER IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' SECOND EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER

Date:
Time:
Ctrm: 8b
Judge: Hon. Consuelo B. Marshall
Trial: Not Set
Complaint Filed: March 28, 2020

23
24 I, Charmaine H. Buehner, state as follows:

25 1. I am an attorney licensed to practice law in the State of California. I am
26 an Assistant County Counsel with the County of Ventura ("County") and represent
27 defendant County, as well as the individual defendants named in the above-
28 captioned action, all of whom have been named in their official capacity: William

1 Ayub, the County Sheriff, Robert Levin, M.D., the County Health Officer, and
2 William T. Foley, the Director of the Ventura County Health Care Agency, in
3 which the County’s Public Health Department resides. The defendant identified as
4 “Ventura County Public Health Care Agency” is not an agency or department of
5 the County, nor are the Health Care Agency or the Public Health Department legal
6 entities separate from the County. All named defendants are collectively referred
7 to herein as “Defendants.” I have personal knowledge of the facts stated herein
8 and, if called as a witness, I could and would competently testify thereto.

9 2. On April 21, 2020, plaintiffs in this action, Donald McDougall, Juliana
10 Garcia, Second Amendment Foundation, California Gun Rights Foundation and
11 Firearms Policy Coalition (“Plaintiffs”), served the First Amended Complaint and
12 a Motion for Preliminary Injunction (“MPI”) on Defendants, and set a hearing date
13 of May 12, 2020, for the MPI.

14 3. On that same day, April 21, 2020, upon review of the hearing date
15 indicated in Plaintiffs’ MPI notice, I e-mailed Plaintiffs’ counsel, Ronda Baldwin-
16 Kennedy, to advise her that notice of the motion was defective because the MPI
17 was served with only 21 days’ notice of the hearing in violation of Local Rule 6-1.
18 I further informed Ms. Baldwin-Kennedy that a May 12, 2020, hearing date
19 deprives Defendants of a meaningful opportunity to respond to the MPI.
20 Specifically, Local Rule 7-9 requires oppositions to motions be filed 21 days in
21 advance of the hearing date, which would make Defendants’ opposition to the
22 voluminous motion due the same day the motion was served. In response, Ms.
23 Baldwin-Kennedy agreed to request a later hearing date, and the parties filed a
24 joint stipulation, which this court granted on April 22, 2020, and continued the
25 hearing to July 28, 2020. A true and correct copy of my e-mail exchange with
26 Ms. Baldwin-Kennedy is attached to my declaration as Exhibit 1, pages 3-7.

27 4. On Friday afternoon, April 24, 2020, Ms. Baldwin-Kennedy e-mailed me
28 to indicate she planned to file a second ex parte request for a temporary restraining

1 order and asked whether Defendants would file a response. I responded to
2 Ms. Baldwin-Kennedy the same day, explaining that Defendants would oppose
3 Plaintiffs’ additional request for a temporary restraining order, and the bases for
4 Defendants’ opposition. (Exh. 1, pp. 1-2.) Ms. Kennedy did not respond to my e-
5 mail, instead filing the second temporary restraining order application around
6 9:00 p.m. that same day, April 24, 2020.

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

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: April 27, 2020

/s/

CHARMAINE H. BUEHNER
Assistant County Counsel

Attorneys for Defendant County of Ventura
(also erroneously sued as Ventura County Public
Health Care Agency), Sheriff William Ayub
(erroneously sued as Bill Ayub), Robert Levin
and William T. Foley

From: [Buehner, Charmaine](#)
To: [Ronda Baldwin-Kennedy, Esq.](#)
Cc: [Gonzales, Sylvia](#); [Adam Kraut](#)
Bcc: [Smith, Leroy](#); [Barnes, Jeffrey](#); [Walker, Michael](#); [Boada, Alberto](#)
Subject: RE: McDougall v. County of Ventura, Proposed Second TRO Request & Request for L.R. 7-3 Conference
Date: Friday, April 24, 2020 4:10:56 PM
Attachments: [45E552BB3A7741BF8AC261B08AF390FA.png](#)
[003399C00E6D40D7B986D8C4E49270E0.png](#)

Hello Ronda:

The County opposes any additional request for a TRO by your clients for a number of reasons.

First, the Court previously denied your application for a TRO, and the compelling justification for the County's emergency and temporary orders, i.e., the prevention and spread of a "virulent," highly contagious and potentially fatal disease that has no cure, has not changed. (ECF Doc. No. 12.) Plaintiffs' filing of the First Amended Complaint to add a would-be gun purchaser plaintiff, the association plaintiffs, and a "Right to Travel" claim under the Privileges and Immunities clause and the Fifth and Fourteenth Amendments do not change this result. (See e.g., *Shows v. Swain County Sheriff* (W.D.N.C. April 23, 2020) 2020 WL 1953621 [denying TRO to restrain public emergency orders imposition of a curfew in light of pandemic on grounds that the order violated the Privileges & Immunities Clause and the First, Fourth, Fifth and Fourteenth Amendments].) Additionally, in putting the hearing on your clients' motion out until the end of July, despite the parties joint request for a May 19 hearing, the Court has already impliedly rejected your request for a shortened notice period and immediate hearing on this issue (as stated in your Notice of Motion, ECF Doc. No. 20 Pg. ID 99, fn.1).

Second, your clients are unlikely to prevail on the merits of your claims for the reasons stated in the Court's prior order denying your clients application for a TRO (ECF Doc. No. 12), and under *Jacobsen v. Commonwealth* (1905) 197 U.S. 11. Since the Court's order denying your TRO in this case, courts in the Central District and federal courts around the country have widely upheld emergency orders similar to County's orders (both superseded and current) when those courts have analyzed claims of a constitutional violations in this global pandemic. (See e.g. *Brandy v. Villanueva* (C.D. Cal. April 6, 2020) Case No. 2:20-cv-02874, ECF Doc. No. 29 [denying TRO request for would-be gun purchasers and gun shops to enjoin closure of gun shops where plaintiffs asserted Second Amendment claims]), see also *First Baptist Church v. Kelly* (D. Kan. April 18, 2020) 2020 WL 1910021 [denying request to restrain enforcement of emergency public health orders under *Jacobsen v. Commonwealth* (1905) 197 U.S. 11 to allow religious assembly and practice as requested by plaintiffs].) The balance of harms and the public interest, i.e., the preservation of the health and lives of Ventura County residents, tip sharply in the County's favor.

Third, Plaintiffs First Amended Complaint has been mooted, in whole, if not in part, because the FAC is based on County orders (i.e., the County's March 17, 20, 31 and April 9 Orders) that have been superseded and are no longer in effect due to the issuance of new Stay at Home orders issued on April 18 and 20, 2020. (See April 20, 2020 Order, available at https://vcportal.ventura.org/CEO/VCNC/2020-04-18_Signed_15V8544-Final-Final_Master_Ord.pdf.) In addition, the April 20 Order *expressly permits* Mr. McDougall to pick up his alleged previously

purchased firearm provided that social distancing protocols are followed as provided in the Order (See Order at p. 7, paragraph 11.)

Based on the foregoing, I urge you to reconsider your proposed course of action. Finally, **please provide your availability by phone on Wednesday, May 29 or Thursday, May 30, for a conference of the parties under Local Rule 7-3** to discuss the bases for the County's anticipated filing of a Motion, under Fed. R. Civ. Proc. 12(b)(6) to Dismiss the First Amended Complaint.

Best Regards,
Charmaine H. Buehner

Second,
Sent from [Mail](#) for Windows 10

From: [Ronda Baldwin-Kennedy, Esq.](#)
Sent: Friday, April 24, 2020 2:31 PM
To: [Buehner, Charmaine](#)
Cc: [Gonzales, Sylvia](#); [Adam Kraut](#)
Subject: Re: McDougall v. County of Ventura, Case No. 2:20-cv-02927 - Request for Stipulation

CAUTION: If this email looks suspicious, DO NOT click. Forward to
Spam.Manager@ventura.org

Good Afternoon Counsel,

Given the July hearing date and the urgency of the matter, I will be filing an application for a TRO on behalf of all plaintiffs today. Do you anticipate filing a response?

Best Regards,

Ronda N. Baldwin-Kennedy, Esq.
Law Office of Ronda Baldwin-Kennedy

5627 Kanan Road Ste. 614
Agoura Hills, CA 91301
P: [951-268-8977](tel:951-268-8977)
F: [702-974-0147](tel:702-974-0147)

This e-mail message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, any distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply email. E-Fax: [702-974-0147](tel:702-974-0147)

Get [Outlook for iOS](#)

From: Buehner, Charmaine <Charmaine.Buehner@ventura.org>
Sent: Tuesday, April 21, 2020 5:17:30 PM
To: Ronda Baldwin-Kennedy, Esq. <ronda@lorbk.com>
Cc: Gonzales, Sylvia <Sylvia.Gonzales@ventura.org>
Subject: RE: McDougall v. County of Ventura, Case No. 2:20-cv-02927 - Request for Stipulation

Ronda:

Thank you very much.

Charmaine H. Buehner
Tel: 805-654-2588

This message and its attachments, if any, are confidential attorney work product and are protected by the attorney-client privilege. If you are not the intended recipient of this material, please delete it immediately and inform the sender at Charmaine.Buehner@ventura.org. Thank you.

From: Ronda Baldwin-Kennedy, Esq. <ronda@lorbk.com>
Sent: Tuesday, April 21, 2020 5:17 PM
To: Buehner, Charmaine <Charmaine.Buehner@ventura.org>
Cc: Gonzales, Sylvia <Sylvia.Gonzales@ventura.org>
Subject: Re: McDougall v. County of Ventura, Case No. 2:20-cv-02927 - Request for Stipulation

CAUTION: If this email looks suspicious, DO NOT click. Forward to
Spam.Manager@ventura.org

Hi Charmaine,

Per our phone conversation the language is approved. You may add my electronic signature and file.

Ronda Baldwin-Kennedy

Get [Outlook for iOS](#)

From: Buehner, Charmaine <Charmaine.Buehner@ventura.org>
Sent: Tuesday, April 21, 2020 4:21:27 PM
To: Ronda Baldwin-Kennedy, Esq. <ronda@lorbk.com>
Cc: Gonzales, Sylvia <Sylvia.Gonzales@ventura.org>
Subject: RE: McDougall v. County of Ventura, Case No. 2:20-cv-02927 - Request for Stipulation

Ms. Kennedy:

Thank you for your prompt response and agreement to the proposed May 19 date.

This is the draft language for the stipulation:

Defendants, County of Ventura, Sheriff William Ayub, Dr. Robert Levin and Director William T. Foley (collectively “Defendants”) and plaintiffs Donald McDougall, Juliana Garcia, Second Amendment Foundation, California Gun Rights Foundation and Firearms Policy Coalition, Inc. (collectively “Plaintiffs”), by and through their respective counsel of record, stipulate and agree as follows:

1. On March 28, 2020, Plaintiffs filed the complaint in this action but did not serve it on Defendants (ECF Doc. No. 1).
2. On March 30, 2020, Plaintiffs filed an ex parte application for a temporary restraining order (ECF Doc. Nos. 9 & 10.), which the Court denied on April 1, 2020 (ECF Doc. No. 12).
3. On April 14, 2020, Plaintiffs filed a first amended complaint (ECF Doc. No. 19) and a motion for preliminary injunction (ECF Doc. No. 20 (“MPI”).
4. On April 21, 2020, Plaintiffs served the operative complaint and MPI on Defendants. Plaintiffs set a hearing date on the MPI for May 12, 2020.
5. No prior continuances have been requested by any party.
6. Plaintiffs service of the MPI does not provide Defendants with sufficient notice of the motion under Local Rule 6-1, nor does it provide Defendants with a meaningful opportunity to respond to the MPI, given that under Local Rule-7-9, Defendants opposition to the MPI would be otherwise due on the same day Plaintiffs served the motion.
7. Plaintiffs and Defendants agree that the MPI should be heard in a manner that affords Defendants a meaningful opportunity to respond, and that the new hearing date should be set on May 19, 2020, or as soon thereafter as is convenient for the Court, with Defendants’ opposition to be filed in accordance with Local Rule 7-9.

IT IS SO STIPULATED.

If this language is acceptable to you, please advise that I have permission to file a stipulation containing same together with a proposed order.

Thank you.

Charmaine H. Buehner
Tel: 805-654-2588

This message and its attachments, if any, are confidential attorney work product and are protected by the attorney-client privilege. If you are not the intended recipient of this material, please delete it immediately and inform the sender at Charmaine.Buehner@ventura.org. Thank you.

From: Ronda Baldwin-Kennedy, Esq. <ronda@lorbk.com>
Sent: Tuesday, April 21, 2020 3:44 PM
To: Buehner, Charmaine <Charmaine.Buehner@ventura.org>
Cc: Gonzales, Sylvia <Sylvia.Gonzales@ventura.org>
Subject: Re: McDougall v. County of Ventura, Case No. 2:20-cv-02927 - Request for Stipulation

Dear Counsel,

My clients are agreeable to a May 19, 2020 date.

Best Regards,

Ronda N. Baldwin-Kennedy, Esq.
Law Office of Ronda Baldwin-Kennedy
5627 Kanan Road Ste. 614
Agoura Hills, CA 91301
P:951-268-8977
F: 702-974-0147

This e-mail message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, any distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply email. **E-Fax: 702-974-0147**

From: Buehner, Charmaine <Charmaine.Buehner@ventura.org>
Sent: Tuesday, April 21, 2020 3:27 PM
To: Ronda Baldwin-Kennedy, Esq. <ronda@lorbk.com>
Cc: Gonzales, Sylvia <Sylvia.Gonzales@ventura.org>
Subject: RE: McDougall v. County of Ventura, Case No. 2:20-cv-02927 - Request for Stipulation

Dear Ms. Kennedy:

My email below contains an obvious typo, highlighted below, apologies. The County is amenable to a new hearing date of **May 19**, or thereafter as mutually agreeable by the parties.

Charmaine H. Buehner
Tel: 805-654-2588

This message and its attachments, if any, are confidential attorney work product and are protected by the attorney-client privilege. If you are not the intended recipient of this material, please delete it immediately and inform the sender at Charmaine.Buehner@ventura.org. Thank you.

From: Buehner, Charmaine
Sent: Tuesday, April 21, 2020 2:26 PM
To: Ronda Baldwin-Kennedy, Esq. <ronda@lorbk.com>
Cc: Gonzales, Sylvia <Sylvia.Gonzales@ventura.org>
Subject: McDougall v. County of Ventura, Case No. 2:20-cv-02927 - Request for Stipulation
Importance: High

Dear Ms. Kennedy:

I have been assigned as the handling attorney for the above-referenced case, and am pleased to make your acquaintance with this email. Please direct any future correspondence concerning this matter to my attention. I write to alert your office to a timing problem with the motion for preliminary injunction (“MPI”) that you served on my office today, April 21, 2020, and request your immediate response.

The MPI is set for hearing on May 12, 2020, only 21 days from today. There are two problems with the timing of the hearing you set. First, notice of the motion does not comply with Local Rule 6-1, which requires 28 days’ notice absent court order. No such order has been made. Second, your motion denies the County of a meaningful opportunity to respond to your 85-page motion, given that our opposition would be due today under Local Rule 7-9. This is plainly insufficient notice under long-established precedent. (*Granny Goose Foods, Inc. v. Brotherhood of Teamsters of Alameda County* (1974) 415, 423, 432 [same-day notice insufficient to afford defendant meaningful opportunity to respond] cited by *Federal Trade Comm’n v. Enforma Natural Products, Inc.* (9th Cir. 2004) 362 F.3d 1204, 1217; see also *Four Seasons Hotels & Resorts, B.V. v. Conscorcio Barr, S.A.* (11th Cir. 2003) 320 F.3d 1205, 1212 [2 day notice insufficient time to allow for meaningful response from defendant].)

Based on the foregoing, I propose the parties stipulate to a mutually agreeable briefing timeline and hearing date. To this end, I propose a hearing date of **May 5**, which makes the County’s opposition due on May 28. If you are amenable to my proposal, or would like to discuss alternative dates, please advise. Assuming we can agree, I will circulate a draft stipulation and request for order for filing today or tomorrow. **In the absence of such a stipulation, and given the immediate deadlines plaintiffs have imposed on defendants’ opposition, I will seek the continuance on an ex parte basis, and will file same after 5pm today.**

I look forward to hearing from you and can be reached at the below number.

Best Regards,

Charmaine H. Buehner
Assistant County Counsel
County of Ventura
800 South Victoria Avenue, L/C 1830
Ventura, California 93009

Tel: 805-654-2588
Fax: 805-654-2185

This message and its attachments, if any, are confidential attorney work product and are protected by the attorney-client privilege. If you are not the intended recipient of this material, please delete it immediately and inform the sender at Charmaine.Buehner@ventura.org. Thank you.