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13 MICHEL MOORE, and the CITY OF LOS ANGELES

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

16 TURNER’S OPERATIONS, INC. et al.,

17 Petitioners & Plaintiffs,

18 v.

19 ERIC GARCETTI et al.,

20 Respondents & Defendants.

CASE NO: 20STCP01258

**OPPOSITION TO TURNER’S  
OPERATIONS, INC.’S SECOND EX  
PARTE APPLICATION FOR A  
TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE**

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

1     **OPPOSITION TO TURNER’S OPERATIONS, INC.’S SECOND EX PARTE APPLICATION**  
2                                     **FOR A TEMPORARY RESTRAINING ORDER**

3             Mayor Eric Garcetti’s Safer At Home Order, a temporary emergency measure made in the face  
4 of a deadly pandemic, requires people to stay home unless they are engaged in essential activities.  
5 Those activities are defined to include “services that are recognized to be critical to the health and  
6 well-being of the City.” Plaintiff and petitioner Turner’s Operations, Inc. owns a chain of 28 outdoor-  
7 gear retailers. One of those 28 stores is in the City, and it is closed pursuant to the Mayor’s Order.  
8 Now, 40 days after the Mayor issued that Order, Turner’s argues—on an ex parte basis—that its  
9 shuttered Reseda location fits within one of several categories of essential businesses that can remain  
10 open under the Order.

11             The Court should deny Turner’s ex parte application for a TRO, its second in as many weeks.

12             **No urgency.** If Turner’s wanted to argue that it ought to be classified as essential under the  
13 Order, it could have done so weeks ago. Instead, it devoted its time and resources—never mind the  
14 City’s and this Court’s time and resources—to an ex parte battle over whether state firearms laws  
15 privileged it to remain open in the face of the Mayor’s Order. Having failed at that endeavor, it waited  
16 nearly two weeks more before filing this application.

17             **The balance of harms tips in the public’s favor, not in Turner’s.** Meanwhile, Turner’s  
18 hasn’t fixed one of the problems that caused the Court to deny its previous application: As the Court  
19 found already, the temporary closure of one of Turner’s 28 stores is not enough to show that Turner’s  
20 has been irreparably harmed. Little has changed in the two weeks since the Court made that finding.  
21 Turner’s new application adds that the Reseda location is “above the company average in terms of  
22 sales and volume,” and speculates that the temporarily shuttered store might close permanently.  
23 Simultaneously, Turner’s has placed in the record evidence that in addition to its 28 stores, it also sells  
24 products online and ships them to its customers—further calling into question whether the temporary  
25 closure of one store will harm the company irreparably.

26             The harm to the public remains, as before, an increase in COVID-19 infections brought about  
27 by unnecessary interpersonal contact, and the subsequent strain on the limited public health resources  
28 available to cope with that.

1           **Little likelihood of success on the merits.** Even if the Court were to disregard that the  
2 balance of equities tips against Turner’s, Turner’s still has to show it is likely to succeed on the merits  
3 of its argument that it should be classified as an essential business under the Order. On that score,  
4 Turner’s contends (for example) that because police officers could privately purchase guns from it, it  
5 serves an essential law enforcement function. Those are private purchases, though. The Los Angeles  
6 Police Department provides its officers with service weapons and ammunition.

7           Or, Turner’s offers, it “performs many of the same services as a ‘pawn shop,’” and pawn shops  
8 are essential financial institutions. But one service that Turner’s *cannot* perform, because it doesn’t  
9 have a pawnbroker permit, is to take personal property as security for a loan—in other words, the  
10 service that makes a pawn shop a financial institution under the Order.

11           The sale of “dry goods,” presumably of the sort one would take on a backpacking trip? That is  
12 insufficient to turn Turner’s into a seller of essential “grocery items” for the same reason that selling  
13 candy at the register would not turn a bookstore into an essential business (nor would the fact that the  
14 bookstore might, like Turner’s, have “first aid handbooks for wilderness survival”).

15           The reason: Devoting a small fraction of a store’s inventory or functionality to something like  
16 “dry goods” to be able to call the store essential would be a good way to flout the Mayor’s Order, but  
17 little else. As the Order itself notes, the novel coronavirus that causes COVID-19 is very contagious.  
18 It follows that the spread of the virus can be slowed by taking measures to diminish interpersonal  
19 contact, which will in turn avoid swamping the region’s hospitals. No one wants to continue  
20 temporary emergency measures aimed at reducing unnecessary contact—like distinguishing essential  
21 businesses from non—for a day longer than is necessary. But in the meantime, trying to elide that  
22 distinction, and attempting to get a court’s *ex parte* endorsement of the means of doing so, only risks  
23 extending the crisis by making a dead letter of the Order. The application should be denied.

1 **RELEVANT FACTS**

2 The facts are largely the same as they were when the City responded to Turner’s previous TRO  
3 application. To recap, Mayor Garcetti sought to slow the spread of the novel coronavirus in the City  
4 of Los Angeles by ordering Angelenos “to isolate themselves in their residences.” (P.’s RJN Ex. G  
5 at 39.) The Mayor’s Safer At Home Order identifies limited exceptions to this stay-at-home rule for  
6 “certain essential activities,” such as obtaining healthcare and food, and, correspondingly, for  
7 operating businesses that provide healthcare and sell food. (*Id.* at 41-44.) The Mayor’s Order has  
8 been revised twice and extended once. (P.’s RJN Exs. L, Q.) It is currently due to expire on May 15,  
9 2020. (P.’s RJN Ex. Q at 123.)

10 As is relevant here, plaintiff and petitioner Turner’s Operations, Inc.—a 28-outlet outdoor  
11 goods retailer—first sued Mayor Garcetti, City Attorney Michael N. Feuer, LAPD Chief Michel  
12 Moore, and the City of Los Angeles 15 days after the Mayor’s Order issued. Eight days after that, or  
13 23 days after the Mayor’s Order issued, Turner’s filed an ex parte application for a stay or temporary  
14 restraining order, seeking to enjoin the enforcement of the Mayor’s Order because it believed that  
15 firearms sellers were privileged to continue operating under state law. This Court denied Turner’s  
16 application four days after that, or 27 days after the Mayor’s Order issued. Ten days passed—37 days  
17 from the Mayor’s Order—before Turner’s filed a first amended complaint. Three days later, or 40  
18 days since the Mayor’s Order, Turner’s filed another ex parte application, seeking emergency  
19 injunctive relief on the basis that it operates an essential business that should have been open under the  
20 Order all along.

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## LEGAL STANDARD

A party seeking emergency injunctive relief bears the burden of demonstrating *both* that it is likely to succeed on the merits in the underlying litigation, *and* that in the absence of that relief, it will suffer greater harm than the party whose conduct it seeks to enjoin. (*White v. Davis* (2003) 30 Cal.4th 528, 554; *People ex rel. Feuer v. FXS Management, Inc.* (2016) 2 Cal.App.5th 1154, 1158.) It is the moving party’s burden to establish “all elements necessary to support issuance of a preliminary injunction” (or a temporary restraining order). (*O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481 (*O’Connell*)). “The ultimate goal of any test to be used” in deciding whether to issue emergency injunctive relief “is to minimize the harm which an erroneous interim decision may cause.” (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 73.)

## ARGUMENT

12 **I. Turner’s lack of urgency in seeking a TRO is itself a sufficient reason to deny it.**

13 It has been 40 days since the Mayor issued an Order closing all but essential businesses, and as  
14 of the date of the hearing on this application, exactly two weeks since this Court denied Turner’s  
15 previous TRO application—an application that did not argue that Turner’s was essential under the  
16 Order. But it could have: Almost all of the language on which Turner’s relies to claim that it is  
17 essential was in Mayor’s Order when it was first issued. (Compare P.’s RJN Ex. G at 42-43 with P.’s  
18 RJN Ex. Q at 118-119.) The exception, which proves to be of little help to Turner’s (see § III.A.1,  
19 *post*), is that a subsequent revision to the Order makes explicit that pawn shops are financial  
20 institutions. (Compare P.’s RJN Ex. G at 42 ¶ 5(vii)(g) with P.’s RJN Ex. Q at 119 ¶ 5(vii)(g).)

21 A party seeking the extraordinary remedy of an *ex parte* TRO has to show an urgent need for it.  
22 (*O’Connell, supra*, 141 Cal.App.4th at p. 1481.) Well over a month since the Turner’s outlet in  
23 Reseda should have closed under the Mayor’s Order, and two weeks after coming to this Court with its  
24 first *ex parte* filing, Turner’s forces the City and the Court to respond to an application for relief with  
25 less than 24 hours’ time to review arguments that Turner’s could have long ago presented.  
26 Meanwhile, Turner’s application mentions only as an afterthought that this long-delayed filing is its  
27 second bite at the apple (App. at 3:10-3:11), but in violation of California Rules of Court, rule  
28 3.1150(e), neglects to mention that the first one failed.

1 **II. The balance of harms *continues* to tip overwhelmingly in favor of the City, its officials,**  
2 **and public health.**

3 “There is”—still—“a general rule against enjoining public officers or agencies from  
4 performing their duties,” and before a court can do so, public policy considerations must be weighed  
5 heavily. (*Tahoe Keys Prop. Owners’ Assn. v. State Water Res. Control Bd.* (1994) 23 Cal.App.4th  
6 1459, 1471.) To overcome those considerations, plaintiffs “must make a *significant* showing of  
7 irreparable injury.” (*Ibid.*, italics added.)

8 **A. Turner’s previous application failed to show irreparable harm, and its new**  
9 **application doesn’t fix the problem.**

10 As this Court wrote two weeks ago, because Turner’s “seek[s] to enjoin the operation of an  
11 emergency order adopted to protect health and safety,” it “bear[s] a heavy burden to show the balance  
12 of harms tips in [its] favor.” (Eisenman Decl. Ex. 1 at 6.) It continued, “Turner[’]s has not yet shown  
13 its retail operation[s] are irreparably harmed by a temporary shut down of one of its retail stores.”  
14 (*Ibid.*; see *Optivision, Inc. v. Syracuse Shopping Center Associates* (N.D.N.Y. 1979) 472 F.Supp. 665,  
15 686 [no irreparable harm when plaintiff “has a number of other retail outlets” and its “continued  
16 operation . . . as a corporate entity does not appear to be threatened”].) In the intervening time period,  
17 Turner’s has not developed much additional evidence of harm. Of its Reseda outlet—the only one of  
18 its 28 stores closed by the Order—Turner’s now adds that the store “is above the company average in  
19 terms of sales and volume,” and also “above the company average in terms of consigned and used  
20 guns.” (Ortiz Decl. ¶ 20.) That doesn’t actually say anything about how much the 28-store company  
21 is being harmed by the temporary and emergency closure of one of its outlets. Nor does it say  
22 anything about, for instance, how much business from Reseda might’ve shifted to the next-nearest  
23 Turner’s location, in Pasadena. (Eisenman Decl. ¶ 4.) Or how much business has shifted online, as  
24 one thing that Turner’s new filing *does* make apparent is that it does online sales. (E.g., Ortiz Decl.  
25 Ex. A.)

26 Turner’s also speculates that at some point it might have to furlough or fire staff and “cease  
27 operations at its Reseda location permanently.” (*Id.* ¶ 27.) No one would make light of those  
28 consequences, but they are speculative—there is certainly no indication of their imminence. And they

1 aren't framed in light of an injury to *Turner's*, as the 28-store corporate entity that is the plaintiff and  
2 petitioner seeking the TRO here.

3 **B. The public policy interest in preventing the collapse of the local healthcare system**  
4 **under the burden of COVID-19 remains just as strong as it was when Turner's last**  
5 **failed to enjoin enforcement of the Mayor's Order, two weeks ago.**

6 It hardly needs to be repeated that “[b]ecause SARS-CoV-2”—the virus that causes  
7 COVID-19—“spreads among people in close proximity to one another, any measure that discourages  
8 interpersonal contact helps to slow its spread.” (Eisenman Decl. Ex. 2 ¶¶ 2, 9.) As Turner's itself  
9 observed, the Mayor's Order represents “significant measures that are genuinely designed to promote  
10 public safety in this time of crisis.” (Am. Pet. ¶ 1.)

11 Compared to the still-amorphous harm to Turner's, the harm to the public is the risk of  
12 increasing the number of COVID-19 infections, and so dangerously eroding the hospital capacity  
13 necessary to treat them—never mind the capacity to accommodate other illnesses and injuries  
14 requiring hospitalization. (See Eisenman Decl. Ex. 2 ¶ 8 [extra hospital capacity added to  
15 accommodate non-COVID-19 patients].)

16 **III. Turner's is not an essential business under the Order. It is unlikely to succeed in showing**  
17 **otherwise.**

18 To read Turner's points and authorities, one would think an outdoor-gear retailers is engaged in  
19 every possible kind of essential business in which one could be engaged. It isn't.

20 **1. Turner's isn't a pawn shop.**

21 Turner's argues that because it “performs many of the same services as a ‘pawn shop,’” it  
22 should be treated like one, and so allowed to be open as a financial institution under the Order. (P.'s  
23 Mem. at 11:14-11:17.) But its “secondhand dealer's license jointly approved and issued by the City  
24 and the DOJ” does not allow Turner's to do everything that it says the license allows it to do. (*Ibid.*)  
25 Because while it is true that a secondhand dealer can be described as a business that includes “buying,  
26 selling, trading, taking in pawn, [or] accepting for sale on consignment” (Bus. & Prof. Code, § 21626,  
27 subd. (a)), a secondhand dealer that takes things in pawn must *also* be licensed as a pawnbroker (Fin.  
28

1 Code, §§ 21000, 21300; L.A. Mun. Code, § 103.306(b)).<sup>1</sup> Turner’s never claims to be that, because it  
2 isn’t. It cannot take things in pawn, and it never actually says that it does. It only implies (incorrectly)  
3 that it could, as a secondhand dealer. But it is precisely the act of taking things in pawn—that is, of  
4 “receiving goods, including motor vehicles, in pledge as security for a loan” (Fin. Code, § 21000)—  
5 that makes pawn shops into financial institutions under the Order.

6 **2. Los Angeles police officers don’t need to purchase firearms and ammunition**  
7 **privately for official use.**

8 Turner’s also makes a pitch that it is essential because it “sells essential products to law  
9 enforcement personnel.” (P.’s Mem at 9:22.) That statement glosses over the fact that selling  
10 something to a person who happens to work in law enforcement is not the same as equipping law  
11 enforcement—though Turner’s implies it is. (See *id.* at 9:26 [citing the portion of the Order exempting  
12 law enforcement].) The reality is that the Los Angeles Police Department arms and equips its officers  
13 itself; “public safety is not compromised in any way by a private store’s inability to sell firearms or  
14 ammunition to an LAPD officer.” (Quan Decl. ¶¶ 3-4.)

15 **3. Putting entries in a state database every time it sells a gun doesn’t make**  
16 **Turner’s any more a contributor to essential infrastructure than a used watch**  
17 **dealer would be for doing the same thing.**

18 Continuing to emphasize its gun sales, Turner’s argues that it “performs work necessary to  
19 operate and maintain essential infrastructure.” If it were open and selling guns and ammunition, then  
20 it would be complying with state law and entering sales data in state databases. (P.’s Mem at 10:4-  
21 10:25.) But Turner’s never bothers to explain how populating a database on the completion of a sale  
22 fits within the Order’s “Essential Infrastructure” exemption. (P.’s RJN Ex. Q at 121 ¶ 5(ix).) And it  
23 isn’t hard to see why Turner’s proposition can’t be correct: It would likewise exempt as a participant  
24 in “Essential Infrastructure,” for example, someone who buys and sells used watches. (See Bus. &  
25 Prof. Code, § 21628, subd. (a) [secondhand dealers have to report to an electronic database the  
26 acquisition or sale of tangible personal property].) That is absurd.

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28 <sup>1</sup> The upshot of the statutory scheme is that all licensed pawnbrokers are secondhand dealers,  
but not all secondhand dealers are licensed pawnbrokers. (Fin. Code, § 21306.)



1           **4. Nor does the sale of firearms accessories, which gun owners ought already to**  
2           **have as a precondition of owning a gun, make Turner’s into the seller of**  
3           **“products necessary to maintaining the safety, sanitation, and essential**  
4           **operation of residences.”**

5           Turner’s also sells things like gun safes, which it points out “are necessary for law-abiding  
6 citizens who own firearms and reside within the City of Los Angeles.” (P.’s Mem. at 10:27-11:3.) As  
7 an initial matter, a person who intends to comply with L.A. Municipal Code section 55.21(b)(1) and  
8 keep a firearm safely at home should acquire the safety accessories to do so *before*, or simultaneously  
9 with, bringing a firearm into a residence. But while having those accessories—e.g., a locked  
10 container—may be the best way to comply with the Municipal Code’s safe storage requirements, it is  
11 not the only way to do so. (L.A. Mun. Code, § 52.21(b)(3).)

12           Moreover, the language in the Order doesn’t admit of an interpretation that speaks to the sales  
13 of gun safes, anyway: The exemption on which Turner’s relies, for sales of “products necessary to  
14 maintaining the safety, sanitation, and essential operation of residences,” follows a list of sellers  
15 including “grocery stores, water retailers, farm and produce stands, and other establishments engaged  
16 in the retail sale of canned food, dry goods, fresh fruits and vegetables . . . and other household  
17 consumer products.” (P.’s RJN Ex. Q at 118 ¶ 5(vii)(b).) Those places do not sell gun safes. (See  
18 *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters* (1979) 25 Cal.3d 317, 331,  
19 fn. 10 [when general words follow a list of particular things, “the general words will be construed as  
20 applicable only to persons or things of the same general nature or class of those enumerated”].)

21           **5. Incidental food or first-aid-kit sales do not turn a retail sporting goods store**  
22           **into an essential business.**

23           Speaking of food sales, Turner’s also contends that its sale of “dry goods” exempts it as  
24 essential, like a grocery store, or that its sale of “first aid kits and first aid handbooks for wilderness  
25 survival” makes it something like a pharmacy. (P.’s Mem. 9:15-9:18.) If this were true, every store  
26 that could put a box of candy by the cash register would open tomorrow, gutting the Order. The  
27 reality is that in deciding whether a business is essential, “the City looks to the general purposes of the  
28 business, as suggested by indicia such as its name, permits, advertising, website, and the amount of

1 physical space devoted to a particular product category as opposed to another.” (Singer Decl. ¶ 5.)  
2 For example, if a bookstore—not an essential business—“sells snack items by the cash register,” it  
3 doesn’t become essential by doing so. (*Id.* ¶¶ 4-5.) The County of Los Angeles, which has an order  
4 similar to the Mayor’s, makes the same kinds of distinctions. For instance, it excludes from its  
5 essential businesses those that “sell only prepackaged non-potentially hazardous food which is  
6 incidental to the primary retail business.” (*Id.* ¶ 6.)

7 Suffice it to say, by the City’s metrics—or any other reasonable ones—Turner’s is nothing like  
8 a grocery store or a pharmacy. (See Eisenman Decl. Ex. 3 [Turner’s website].)

9 **6. Issuing fishing licenses—which the state also issues directly, online—is**  
10 **insufficient to change a retail sporting goods store into part of the fishing**  
11 **industry necessary to support life in the City.**

12 Finally, Turner’s argues that because it sells “fishing rods, reels, nets, waterproof outerwear,  
13 and tackle, as well as the state licenses required to lawfully engage in fishing,” then it ought to be  
14 deemed essential as providing “[f]ood cultivation, including farming, livestock, and fishing.” (P.’s  
15 Mem. at 9:19-9:21; P.’s RJN Ex. Q at 118 ¶ 5(vii)(c).)<sup>2</sup> The provision Turner’s cites does not, by  
16 itself, exempt *every* business that provides *any* upstream service or item used by someone who goes  
17 fishing. After all, if that were the standard, a clothing retailer could demand to open by pointing to the  
18 fact that the Order allows people to engage in certain outdoor activities in the City’s parks (RJN Ex. Q  
19 at 117 ¶ 5(iii)) and citing the section of the Los Angeles Municipal Code that requires those people to  
20 be wearing clothes while doing so (L.A. Mun. Code, § 63.44(B)(20)).

21 Again—absurd.

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27 <sup>2</sup> Incidentally, the California Department of Fish and Wildlife, which also sells fishing  
28 licenses, has closed its physical licensing desks—directing people who want to purchase fishing  
licenses to its online ordering platform—precisely to avoid unnecessary interpersonal contact and  
the risk of spreading the novel coronavirus. (Eisenman Decl. Ex. 4.)

1 **CONCLUSION**

2 No urgency in filing it, no showing that the balance of harms tips in its favor, and little  
3 likelihood of succeeding on the merits with its scattershot approach: The Court should deny Turner’s  
4 application.

5 Respectfully submitted,

6 Dated: April 28, 2020

7  
8 **MICHAEL N. FEUER**, City Atty.  
9 **JAMES P. CLARK**, Chief Deputy City Atty.  
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By: /s/ Jonathan H. Eisenman  
**JONATHAN H. EISENMAN**, Deputy City Attorney

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**PROOF OF SERVICE**

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

LASC Case No. 20STCP01258

I, Ava Smith, 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, 6th Floor, Los Angeles, California 90012.

On April 28, 2020, I served the foregoing documents described as: **OPPOSITION TO TURNER'S OPERATIONS, INC.'S SECOND EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE** on the interested parties:

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**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 document(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 [ava.smith@lacity.org](mailto:ava.smith@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, 8<sup>th</sup> 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 28, 2020

\_\_\_\_\_  
/s/ Ava Smith