

1 Ronda Baldwin-Kennedy, Esq. (SB #302813)
2 Jerome A Clay, Esq. (SBN#327175)
3 Law Office of Ronda Baldwin-Kennedy
4 5627 Kanan Rd. #614
5 Agoura Hills, CA 91301
6 Ph: (951) 268-8977
7 Fax: (702) 974-0147
8 Email: ronda@lorbk.com

9 Attorney for: Plaintiff Donald McDougall

10
11 **UNITED STATES DISTRICT COURT FOR THE**
12 **CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION**
13

14 Donald McDougall an Individual;
15 Plaintiff,

16 v.

17 COUNTY OF VENTURA CALIFORNIA,
18 Does 1-20 and Does 1-20

19 Defendant.

CASE NO. 2:20 CV-02927

20 **PLAINTIFF’S MEMORANDUM IN**
21 **SUPPORT OF EX PARTE**
22 **APPLICATION FOR TEMPORARY**
23 **RESTRAINING ORDER AND ORDER**
24 **TO SHOW CAUSE WHY A**
25 **PRELIMINARY INJUNCTION**
26 **SHOULD NOT ISSUE**

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INTRODUCTION

1
2 The Plaintiff moves for an order temporarily enjoining Defendant County of Ventura,
3 California (“Ventura County”), from ordering gun stores closed under the Stay Well at Home
4 Order. The continuation of the Gun Store closure leaves the Plaintiff and similar situated Ventura
5 County Residence with no means to exercise their second amendment rights to bear arms in
6 violation of the fourteenth and second amendment.” District of Columbia v. Heller (2008) 554 U.S.
7 570, 592 [128 S.Ct. 2783, 171 L.Ed.2d 637] and McDonald v. City of Chicago, Ill. (2010) 561
8 U.S. 742, 750 [130 S.Ct. 3020, 177 L.Ed.2d 894]; id. at p. 805 (Thomas, J., concurring). In order to
9 preserve the status quo of Plaintiff and similarly situated residents of Ventura County to have
10 access to Gun Stores to purchase of firearms. Plaintiff applies to this Court Pursuant to
11 15 U.S.C.A. § 4 and 25 (West) and Fed. Rules Civ.Proc., rule 6, 28 U.S.C.A., for temporary
12 restraining order. Without such an order guns stores will remain closed for an undetermined
13 amount of time, immediately harming Plaintiff and similarly situated Ventura County Residents.
14 After the Executive order N-33-20 and Stay Well at Home Orders were enacted, Ventura County,
15 upon the advice of County Counsel ordered all gun stores to close until further notice. This
16 temporary ban on the sale of firearms in Ventura County flatly violates the rights to arms and poses
17 an immediate threat to constitutionally protected activities.

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21 Plaintiff purchased a firearm from a Gun Store within the County of Ventura. During the
22 mandatory waiting period, the Executive order N-33-20 and Stay Well at Home Orders were
23 enacted. After the ordered gun store closures, Plaintiff has been unable to pick up his purchased
24 firearm; Plaintiff and similarly situated Ventura county residents are being denied access and use of
25 their property.
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STANDARD OF REVIEW

1
2 Temporary restraining orders are designed to preserve the status quo pending the ultimate
3 outcome of litigation. They are governed by Fed. Rules Civ.Proc., rule 65, 28 U.S.C.A.(b) which
4 requires the moving party to show that “it clearly appears from specific facts shown by affidavit or
5 by the verified complaint that immediate and irreparable injury, loss, or damage will result to the
6 applicant before the adverse party . . . can be heard in opposition....” Under Fed. Rules Civ.Proc.,
7 rule 65, 28 U.S.C.A.(b) and Ninth Circuit case law, a plaintiff may obtain a temporary restraining
8 order only where he or she can “demonstrate immediate threatened injury.” See, e.g., Caribbean
9 Marine Services Co., Inc. v. Baldrige (9th Cir. 1988) 844 F.2d 668, 674 (emphasis in original). The
10 party seeking the temporary restraining order or preliminary injunction must prove the
11 prerequisites by clear and convincing evidence. Granny Goose Foods, Inc. v. Brotherhood of
12 Teamsters and Auto Truck Drivers Local No. 70 of Alameda County (1974) 415 U.S. 423, 441 [94
13 S.Ct. 1113, 39 L.Ed.2d 435].

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16 The standards for a restraining order are basically the same as for a preliminary injunction.
17 While courts are given considerable discretion in deciding whether a preliminary injunction should
18 enter, and injunctive relief is not obtained as a matter of right, it is also considered to be an
19 extraordinary remedy that should not be granted unless the movant, by a clear showing, carries the
20 burden of persuasion. See Sampson v. Murray (1974) 415 U.S. 61 [94 S.Ct. 937, 39 L.Ed.2d 166];
21 Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R. Co. (1960) 363 U.S. 528 [80
22 S.Ct. 1326, 4 L.Ed.2d 1379]; and Stanley v. University of Southern California (9th Cir. 1994) 13
23 F.3d 1313. In the case of Martin v. International Olympic Committee (9th Cir. 1984) 740 F.2d 670,
24 674–675, the Ninth Circuit stated that a party seeking preliminary injunctive relief must meet the
25 following test.
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1 a court may issue a preliminary injunction if it finds that: (1) the [moving
2 party] will suffer irreparable harm if injunctive relief is not granted, (2) the
3 [moving party] will probably prevail on the merits, (3) in balancing the
4 equities, the [non-moving] party will not be harmed more than [the moving
party] is helped by the injunction, and (4) granting the injunction is in the
public interest.

5 **BACKGROUND**

6 On March 19, 2020 Governor Newsom issued Executive Order N-33-20 directing all
7 residents immediately heed current State and public health directives to stay at home.

8 Under the executive Order all non-essential businesses were ordered closed.

9 Under the executive Order law enforcement and private security was deemed an essential
10 workforce.

11 March 20th, 2020 Ventura County Health Officer issued a Stay Well at Home Order which
12 ordered all non- essential business closed. Stay Well at Home Order in Paragraph 7(e) (15) defines
13 an essential business as businesses that supply other essential businesses with the support or
14 supplies necessary to operate. Ventura County deemed Gun Stores as a non-essential business.
15 Gun Stores supplies, products needed for law enforcement and private security both which are
16 essential businesses/workforce.
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19 In California, individuals are required to purchase and transfer firearms and ammunition
20 through state and federally licensed dealers.

21 Under Federal and State law anyone in California, individuals are required to complete a
22 background check with a 10 day wait period. Once 10 days has passed the purchaser has 30 days to
23 pick up their firearm and complete the transfer documents. Further, it is required that prior to the
24 purchaser removing the firearm from the licensed gun store they do so with a gunlock and gun box.
25 These items are also available for purchased at a gun store. Plaintiff purchased a firearm from a
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1 Gun Store within the County of Ventura. During the mandatory waiting period, the Executive order
2 N-33-20 and Stay Well at Home Orders were enacted.

3 **ARGUMENT**

4 If not preliminarily enjoined, the County of Ventura will continue to violate Plaintiff's
5 Constitutional rights and those Ventura County Residents similar situated with the closure of gun
6 store and its essential Ban on firearm sales. Even a temporary deprivation of a Constitutionally
7 protected activity is generally sufficient to prove irreparable harm. Second Amendment
8 "guarantee[s] the individual right to possess and carry weapons in case of confrontation." District
9 of Columbia, supra, 554 U.S. at p. 592. And it "elevates above all other interests the right of law-
10 abiding, responsible citizens to use arms in defense of hearth and home." Id. at p. 635. Without gun
11 stores to purchase fire arms the Plaintiff and similarly situated Ventura County Residents are being
12 denied a right to bear arms.
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15 The Second Amendment is fully applicable to the States though the Fourteenth
16 Amendment's Due Process and Privileges or Immunities Clauses. McDonald, supra, 561 U.S. at p.
17 750; id. at p. 805 (Thomas, J., concurring).
18

19 The Fourteenth Amendment to the United States Constitution provides in pertinent part: No
20 state shall make or enforce any law which shall abridge the privileges or immunities of citizens of
21 the United States; nor shall any state deprive any person of life, liberty, or property, without due
22 process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

23 Plaintiff alleges violations under the Second and Fourteenth Amendment are fundamental rights
24 under the U.S. Constitution and therefore Strict Scrutiny should be used to analyze the
25 infringement. With Strict scrutiny, Ventura County must show a compelling governmental
26 interest, narrowly tailored to achieve the goal, and the least restrictive way to achieve that goal.
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1 Ventura County may have a compelling government interest, to ensure that the Maximum
2 number of persons stay indoors in order to slow the spread of COVID-19 to the maximum extent
3 possible. (see exhibit a) However, Ventura County did not narrowly tailor and took the most
4 restrictive way to achieve that goal, by closing gun stores. There are least restrictive ways to
5 achieve that goal, Ventura County, allows other business such as drycleaners to remain open using
6 measure such as social distancing, or having customers shop by appointment. None of these
7 measures were taken prior to closing the gun stores.
8

9 **A. Plaintiff Is Likely to Succeed on the Merits**

10 The Fourteenth Amendment to the United States Constitution provides in pertinent part: No
11 state shall make or enforce any law which shall abridge the privileges or immunities of citizens of
12 the United States; nor shall any state deprive any person of life, liberty, or property, without due
13 process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
14 Plaintiff's complaint alleges violations under the Second and Fourteenth Amendments which are
15 fundamental rights under the U.S. Constitution and therefore Strict Scrutiny should be used to
16 analyze the infringement. With Strict scrutiny, Ventura County must show a compelling
17 governmental interest, narrowly tailored to achieve the goal, and the least restrictive way to
18 achieve that goal.
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21 Ventura County may have a compelling government interest, to ensure that the Maximum
22 number of persons stay indoors in order to slow the spread of COVID-19 to the maximum extent
23 possible. (Exhibit A attached here to Stay Well at Home Order DK# 1 at page 1-7) However,
24 Ventura County did not narrowly tailor and took the most restrictive way to achieve that goal, by
25 closing gun stores. There are least restrictive ways to achieve that goal, Ventura County, allows
26 other business such as drycleaners to remain open using measure such as social distancing, or
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1 having customers shop by appointment. None of these measures were taken prior to closing the
2 gun stores.

3 **VIOLATIONS OF EXECUTIVE ORDER N-33-20;**

4 **STAY WELL AT HOME ORDER**

5
6 Effective March 19, 2020, Governor Gavin Newsom signed Executive Order N-33-20,
7 directing all individuals living in California to “stay home or at their place of residence except as
8 needed to maintain continuity of operations of the federal critical infrastructure sectors.” This
9 Order is in place until further notice. The Executive Order provides that Californians working in
10 critical infrastructure sectors may continue their work because of the importance of these sectors to
11 Californians’ health and well-being. The Executive Order includes a list of Essential
12 Workforce/Critical Infrastructure which named law enforcement and private security as an
13 essential workforce.

14 Effective March 20, 2020, Robert Levin M.D., Ventura County Health Officer signed the
15 Stay Well at Home Order (Exhibit A) which incorporated Executive Order N-33-20, directing all
16 individuals living in Ventura County to “Stay at their place of residence as required by the
17 Governor’s Executive Order N-33-20, subject to the exemptions set forth in this order” Further,
18 the Stay Well at Home Order §3 list exemptions to the Order which states in part “Persons may
19 leave their places of residence only for Essential Activities...to operate or work at Essential
20 Businesses” §7 (e) (15) defines an essential business as “Businesses that supply other Essential
21 Businesses with the support or supplies necessary to operate...”
22 Gun stores provide supplies necessary for the operation of private security and law enforcement,
23 however if gun stores are closed they are not made available to the essential workforce.

24 The action by Ventura County firmly establishes a prima facie case and a likelihood of
25 success on the merits.

1 **B. The Public is Likely to Suffer Irreparable Harm in the Absence of Preliminary Relief**

2 Plaintiff's gun is locked in a gun store within the County of Ventura; Plaintiff has cleared
3 the back ground check required by State law. Under Federal and State law Plaintiff thirty (30) days
4 after clearing the back ground check to transfer ownership of the gun. We are nearing the end of
5 the thirty (30) days; if the gun is not transferred the Plaintiff would have to start the entire process
6 over again, paying the required fees a second time.

7 Anyone caught violating the Stay Well at Home Order could be charged with a
8 misdemeanor punishable by imprisonment, fine, or both under California Health and Section Code
9 120295 et seq. Therefore if the Plaintiff or any similarly situated Ventura County Resident
10 attempted to leave their homes to purchase a fire arm they could be charged with a misdemeanor
11 (Exhibit A attached here to Stay Well at Home Order DK# 1 at page 6 sec. 7g and page 2 sec. 6)
12 For the foregoing reasons it is likely the public will suffer irreparable harm without a TRO

13
14 **C. Preliminary Relief Will Not Impose an Undue Burden on Tribune**

15 This motion for TRO merely seeks to have Venture County open gun stores and use less
16 restrictive ways to achieve their government interest. There are reasonable less restrictive ways
17 such as social distancing; these measures will not impose an undue burden on the Ventura County.

18 **D. Preliminary Relief Advances the Public Interest**

19 Preserving the status quo by maintaining Plaintiff and similarly situated Ventura County
20 Residents Constitutional rights to bear arms. Residents of Ventura County are unable to purchase
21 fire arms in the County of Ventura and they are not allowed to leave their homes nor the County to
22 purchase fire arms from an open gun store located in another county. The Orders prohibit inter
23 county travel except for permitted reasons; the purchase of a firearm is not a permitted reason.

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25
26 Relief is necessary to protect the public interest (Exhibit A attached here to Stay Well at
27 Home Order DK# 1 at page 6 sec.7g and page 2 sec. 6)

