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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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEMURRER TO FIRST AMENDED
PETITION FOR WRIT OF MANDATE
AND/OR PROHIBITION OR OTHER
APPROPRIATE RELIEF; COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF**

Hearing Date: October 1, 2020

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FEE EXEMPT (GOV. CODE, § 6103)

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INTRODUCTION

Petitioners and plaintiffs are a pawn shop, a sporting goods store, and two firearms-advocacy organizations. They complain that Mayor Garcetti’s Safer At Home Order, a temporary emergency measure designed to slow the spread of SARS-CoV-2—the virus that causes COVID-19—impermissibly forced firearms stores in the City of Los Angeles to close. They seek various forms of equitable relief that would prevent the City and several of its officials (collectively, the City) from enforcing the Order.

But the Mayor’s Order nowhere mentions firearms stores, or any stores that sell guns or ammunition, at all. To avoid situations in which people are unnecessarily in close contact with one another—increasing the risk of transmitting SARS-CoV-2—the Order initially closed *all* businesses, making limited exceptions for certain essential businesses that are “critical to the health and well-being of the City” (e.g., hospitals). That meant the closure thousands of businesses, including incidentally stores that sell guns or ammunition. Since then, however, the Order has been revised first to allow sporting goods stores—and now to allow *all* retail stores—in the City to resume operating, on the condition that they observe certain disease-prevention measures. To be clear, that means both the petitioner-pawn shop (Trader’s) and the petitioner-sporting goods store (Turner’s) can be, and presumably now are, open for business. (In fact, Trader’s is classed as a financial institution under the Order, and so has been allowed to be open since April 10.)

Given those facts, and the procedural history of this case, it’s worth asking why we are still here. Of the eleven things that the petitioners have styled “causes of action” in their operative First Amended Petition and Complaint:

- The first eight are predicated on the theory that the Mayor’s Order is invalid because it is preempted either by an emergency order issued by the Governor, or by provisions of state law in the field of firearms licensing and registration. This Court already concluded—in response to the petitioners’ first *ex parte* application for a TRO—that the Mayor’s Order is *not* preempted by the Governor’s emergency order or by state law, as a matter of law. That remains as true now as it was when the Court ruled on the TRO application.

- The ninth cause of action is premised on the theory that the Order offended due process by closing Turner's and Trader's, and preventing members of the firearms-advocacy groups from picking up guns that they'd already purchased. But this Court already concluded, in the same TRO proceedings and on legal (not factual) bases, that petitioners were unlikely to prevail on either a substantive or procedural due process theory. Those legal bases remain applicable on the facts alleged in the operative pleading; consequently, the petitioners' ninth cause of action fails as a matter of law.
- The tenth and eleventh causes of action assert that the Order is being enforced unfairly or arbitrarily against Turner's, which posits that various provisions of the Order in fact rendered it an essential business, entitled to be open from the very beginning. Whatever the merits of the contention that Turner's otherwise should have been classified as an essential business, sporting goods stores have been entitled to be open under the Order since Friday, May 8. And that means that these causes of action are moot.

There is little remaining to be said about the First Amended Petition and Complaint, except this: Not only do the causes of action in it fail as a matter of law, but there is no hope of curing its problems by amendment. No facts that the petitioners could add would change the legal analysis—analysis that this Court has already undertaken—and make preempted an Order that just isn't. Likewise, no facts that the petitioners can allege would take an Order that would pass rational basis review when it actually *did* have the effect of closing one or both of Turner's and Trader's, and change it into an Order that would not clear such a minimal hurdle now that both are open. And, absent an unforeseen about-face in the Order, the petitioners can allege nothing that changes the fact that both Turner's and Trader's now *are* (or at least are allowed to be) open.

The upshot, if it's not already clear, is that the Court should grant the City's demurrer without leave to amend.

1 **FACTS AND PROCEDURAL HISTORY**

2 To stem the spread of SARS-CoV-2 (the virus that causes COVID-19), on March 19, 2020,
3 Mayor Eric Garcetti issued the Safer At Home Order pursuant to his emergency authority under the
4 City Charter and Administrative Code. (First Am. Pet. Ex. G at pp. 73-74.) Subject to limited
5 exceptions, the Order directed “all persons living within the City of Los Angeles . . . to remain in their
6 homes.” (*Id.* at p. 74 ¶ 1.) Likewise, subject to limited exceptions, “all businesses within the City of
7 Los Angeles [were] ordered to cease operations that require in-person attendance by workers at a
8 workplace.” (*Id.* at p. 74 ¶ 2.)

9 The same day, Governor Gavin Newsom issued Executive Order N-33-20. (First Am. Pet. Ex.
10 B at pp. 45-46.) N-33-20 incorporated an order from the State Public Health Officer, which in turn
11 directed “all individuals living in the State of California to stay home.” (*Id.* at p. 45.) N-33-20 made
12 an exception to that rule for people “needed to maintain continuity of operations of the federal critical
13 infrastructure sectors” as they were then “outlined” on a website. (*Ibid.*)

14 On March 28, the federal government revised its advisory list of critical infrastructure sectors
15 to render critical “[w]orkers supporting the operation of firearm or ammunition product manufacturers,
16 retailers, importers, distributors, and shooting ranges.” (First Am. Pet. Ex. D at p. 55.)

17 On April 3, petitioners and plaintiffs Turner’s Operations, Inc. (Turner’s), Trader’s Loan &
18 Jewelry, Inc. (Trader’s), FFLGuard, LLC, and the California Rifle and Pistol Association (collectively,
19 the petitioners) sued Mayor Garcetti, City Attorney Michael N. Feuer, Chief of Police Michel Moore,
20 and the City of Los Angeles (collectively, the City) seeking equitable and writ relief from the Mayor’s
21 Order. (Pet. at p. 1.)

- 22 • Turner’s “is a California corporation and California’s leading hunting, shooting, and
23 fishing specialty store, and carries a complete assortment of firearms, ammunition, and
24 firearm-related safety equipment.” (Pet. ¶ 10.) One Turner’s location, in Reseda,
25 closed as a result of the Mayor’s Order. (*Ibid.*)
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- 1 • Trader’s “is a California corporation and operates a retail store.” (*Id.* ¶ 11.) It “also
2 sells new and pre-owned merchandise that includes firearms.” (*Ibid.*) Trader’s is a
3 pawn shop, as its “other activities relating to pawning items and lending money” make
4 clear. (*Ibid.*)
- 5 • FFLGuard, LLC and the California Rifle and Pistol Association are both firearms
6 advocacy organizations, with memberships consisting of gun stores, gun owners, and
7 would-be gun owners. (*Id.* ¶¶ 12, 13.)

8 The petitioners alleged nine causes of action. The thrust of their claims was that the Mayor’s
9 Order banned firearms sales—because gun stores aren’t “essential businesses” under the Order’s
10 terms—and in doing so, the Order allegedly contravened the petitioner’s due process rights under the
11 California Constitution. (Pet. ¶ 5.) The petitioners further alleged that the Order was preempted by
12 various state gun laws, and even by N-33-20, which they claimed incorporated advisory federal
13 guidelines that deemed gun stores essential infrastructure. (Pet. ¶¶ 3-4.)

14 On April 9, the petitioners applied *ex parte* for a temporary restraining order to prevent the City
15 from enforcing the Order. On April 10, a revised version of the Order made explicit that pawn shops,
16 like Trader’s, were essential businesses (in a class with other financial institutions) and so could be
17 open under the Order. (First Am. Pet. Ex. M at p. 100 ¶ 5(vii)(g).) On April 14, this Court denied the
18 application for a temporary restraining order, in substantial part because the petitioners could not
19 demonstrate, as a matter of law, that N-33-20 or various state laws preempted the Order—which is not
20 at all a ban on firearms sales. (RJN Ex. 1 at pp. 5-6.) The Court also concluded that the Order’s
21 issuance violated neither the petitioners’ procedural nor their substantive due process rights. (*Id.* at
22 pp. 6-8.)

23 The petitioners filed the operative First Amended Petition and Complaint on April 24. It is
24 essentially the same as their original pleading. They added two new causes of action, though, each of
25 which alleged that Turner’s provided various products and services that rendered it essential under
26 even the initial version of the Mayor’s Order (e.g., ““medical supplies’ in the form of first aid kits and
27 first aid handbooks for wilderness survival.”) (First Am. Pet. ¶ 69; see *id.* ¶¶ 68-77.) The petitioners
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1 then applied, ex parte, for another temporary restraining order—which this Court again denied. (RJN
2 Ex. 2.)

3 On May 8, revisions to the Order allowed sporting goods stores to open, provided they could
4 comply with certain disease prevention measures. (RJN Ex. 3 at p. 21 ¶ 5(vii)(y).)

5 On May 20, the Order allowed all retail stores in the City to open, subject to those same
6 measures. (RJN Ex. 4 at p. 31 ¶ 5(vii)(y).)

7 On May 22, the City filed the instant demurrer, following a telephonic meeting and conference
8 of counsel on May 13.

9 LEGAL STANDARD

10 When a defendant demurs to a complaint, a court assumes all the facts alleged in the complaint
11 are true, reading the document as a whole and giving its constituent parts a reasonable interpretation in
12 the document’s context. (*Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 833-834
13 (*Brown*)). The court also considers any judicially noticeable materials, and to the extent that they
14 contradict allegations in the complaint, the judicially noticeable materials supersede those allegations.
15 (*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400.)

16 Then, having so construed the complaint, a court asks whether the allegations state facts
17 sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) If they do not, the
18 court sustains the demurrer. The court then has discretion to allow the plaintiff leave to amend its
19 pleadings, if there is a reasonable possibility that the plaintiff could allege facts that would cure the
20 operative pleading’s failures. (*Brown, supra*, 28 Cal.App.5th at p. 834.) Conversely, “[l]eave to
21 amend should be denied where the facts are not in dispute and the nature of the claim is clear, but no
22 liability exists under substantive law.” (*Lawrence v. Bank of Am.* (1985) 163 Cal.App.3d 431, 436.)

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ARGUMENT

I. All eight of the petitioners’ preemption-related causes of action fail as a matter of law, as the Court has already determined.

The petitioners’ first (First. Am. Pet. ¶¶ 81-89), second (*id.* ¶¶ 90-97), third (*id.* ¶¶ 98-104), fourth (*id.* ¶¶ 107-114), fifth (*id.* ¶¶ 115-123), sixth (*id.* ¶¶ 124-131), seventh (*id.* ¶¶ 132-142), and eighth (*id.* ¶¶ 143-152) causes of action are all variations on the same theme: That either the Governor’s Executive Order N-33-20 (the first and second causes of action) or some scattershot smattering of state laws (the third, fourth, fifth, sixth, seventh and eighth causes of action) preempt the Mayor’s Order, rendering it unenforceable.

The relevant legal framework is straightforward. The Mayor’s Order could be preempted if it duplicated or contradicted state law, or if it entered an area the Legislature fully occupied either expressly or by implication. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-898.) But “[w]hen,” as here, “local government regulates in an area over which it traditionally has exercised control,” then “California courts will presume the regulation is *not* preempted unless there is a *clear indication* of preemptive intent.” (*T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal. 5th 1107, 1116, cleaned up, italics added.)

As to their N-33-20 preemption claims, the petitioners’ case is premised on the theory that (1) N-33-20 necessarily preempts the Mayor’s Order if they conflict with each other; (2) N-33-20 incorporates federal advisory guidelines for determining what businesses are essential; (3) after the Governor issued N-33-20, the federal guidelines were revised to recommend that gun stores be considered essential, therefore; (4) if the Mayor’s Order does not allow gun stores to open as essential businesses, then N-33-20 conflicts with, and preempts, the Order. (First Am. Pet. ¶¶ 48-50, 82-83, 91-92.) The problem with this theory—as this Court has already held—is that as a matter of law, N-33-20 incorporates only the federal guidelines that were in effect at the time the Governor issued it. (RJN Ex. 1 at pp. 5-6; *accord Gonzalez v. City of Norwalk* (2017) 17 Cal.App.5th 1295, 1311.) Because it is an undisputed fact that the federal guidelines in effect at the issuance of N-33-20 didn’t advise governments to consider gun stores essential (First Am. Pet. ¶ 36), the petitioners cannot prevail on their theory as a matter of law. And no amendment of their pleadings can correct that. The Court

1 should sustain the City’s demurrer to the first and second causes of action without leave to amend.
2 (*Lawrence, supra*, 163 Cal.App.3d at p. 436.)

3 The preemption claims in the third through eighth causes of action are based on the notion that
4 various legislative enactments have either occupied an entire field into which the Order strays (First
5 Am. Pet. ¶¶ 99, 108, 116, 125, 133, 144), or that the Order somehow conflicts with one or another of
6 those enactments by implication (*id.* ¶¶ 54-57). On these causes of action, the petitioners’ theory is
7 that the Order imposes a total ban on firearm sales, and that must surely be preempted by some law or
8 combination of them. This theory also has terminal problems, though, not the least of which is that
9 “the Legislature has chosen *not* to broadly preempt local control of firearms but has targeted certain
10 specific areas for preemption.” (*Great Western Shows v. County of Los Angeles* (2002) 27 Cal.4th
11 853, 864, italics added; see *Cal. Rifle & Pistol Assn. v. City of W. Hollywood* (1998) 66 Cal.App.4th
12 1302, 1313 [recognizing only three fully-preempted firearm-related fields: (1) licensing and
13 registration; (2) carrying of handguns in residences, places of business, or private property; and (3)
14 sales of imitation firearms].)

15 And as this Court already noted, while “[t]he state and federal government have adopted
16 extensive legislation related to possession, purchase, registration and sale[s] of firearms,” the Order
17 “does not impose any permitting requirements on possession, sale or purchase of firearms.” (RJN
18 Ex. 1 at p. 6.) Instead, it is “a temporary order of general application prohibiting the operation of a
19 vast array of businesses in the City”—though it now doesn’t really even do *that* anymore (RJN Ex. 4
20 at p. 31 ¶ 5(vii)(y))—“while the state of emergency related to the COVID-19 pandemic remains in
21 place.” (RJN Ex. 1 at p. 6.) The petitioners’ characterization of the Order as a ban on firearm sales is,
22 this Court found, “unpersuasive.” (*Ibid.*) Indeed, it’s not just unpersuasive, it’s wrong as a matter of
23 law: Calling the Order a ban on firearm sales because it had the effect of closing some stores that sell
24 firearms and ammunition makes as much sense as calling it a ban on clothing sales, or book sales, or
25 clown-wig sales, as it likewise would have had the effect of closing stores that sold those things. (Cf.
26 *Korean Am. Legal Advocacy Found. v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 389 [an
27 ordinance imposing conditions that “may have some indirect impact on the sale of alcoholic beverages
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1 does not transmute the purpose and scope of the ordinance into a regulation merely seeking to control
2 alcohol sales”].)

3 Once again, no facts that the petitioners could allege would change the conclusion that the
4 Order survives preemption by a hodgepodge of state gun laws; that result turns only on a reading of
5 the applicable law and the judicially noticeable Order itself. (See *Garcia v. Four Points Sheraton LAX*
6 (2010) 188 Cal.App.4th 364, 373 [preemption is a question of law].) Consequently, the Court
7 should—as with the first and second causes of action—sustain the demurrer to the petitioners’ third
8 through eighth causes of action, without leave to amend. (*Lawrence, supra*, 163 Cal.App.3d at
9 p. 436.)

10 **II. The ninth cause of action, alleging a violation of the California Constitution’s due process**
11 **protections, also fails as a matter of law—again, as this Court has already concluded.**

12 The ninth cause of action turns on allegations that by closing gun stores, the Order violated
13 both the stores’ due process rights (for Turner’s and Trader’s) and the due process rights of the
14 members of the two firearms advocacy groups, who had purchased guns that they were unable to
15 retrieve. (First. Am. Pet. ¶¶ 155-157.)

16 Again, the legal framework is straightforward. Article I, section 7 of the California
17 Constitution declares that “[a] person may not be deprived of life, liberty, or property without due
18 process of law.” That declaration protects against two things. As a matter of substantive due process,
19 it protects against “arbitrary legislative action.” (*Bottini v. City of San Diego* (2018) 27 Cal.App.5th
20 281, 315.) As a matter of procedural due process, it can require notice and an opportunity to be heard
21 before the government deprives someone of a protected liberty or property interest. (*Ibid.*)

22 This Court has already concluded that neither due process right was violated.

23 First, as to the petitioners’ procedural due process rights: The Court correctly found that
24 enacting the Order was a legislative decision, because it “establishes ‘a broad, generally applicable
25 rule of conduct on the basis of a general public policy.’” (RJN Ex. 1 at p. 7, quoting *San Diego*
26 *Building Contractors Assn. v. City Council of San Diego* (1974) 13 Cal.3d 205, 212-213.) In contrast,
27 “[a]n adjudicatory decision is one where ‘the government’s action affecting an individual was
28 determined by facts peculiar to the individual case.’” (*Ibid.*) And, as the Court observed, “procedural

1 due process principles apply only to government decisions which are ‘adjudicative’ in nature.” (RJN
2 Ex. 1 at p. 7, citing *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.) As a matter of law,
3 procedural due process requirements generally do *not* apply to legislative decisionmaking. (RJN Ex. 1
4 at p. 7, citing *Bi-Metallic Co. v. Colorado* (1915) 239 U.S. 441, 445; *Calvert v. County of Yuba* (2006)
5 145 Cal.App.4th 613, 622-623.) In other words, the Court has already reached the inexorable *legal*
6 conclusion, based on the judicially noticeable Order, that the petitioners’ procedural due process
7 challenge to the Order must fail.

8 Second, the petition also fails to allege the facts necessary to demonstrate a substantive due
9 process violation. The Order satisfies substantive due process if it satisfies rational-basis review.
10 (*Perkey v. Dep’t of Motor Vehicles* (1986) 42 Cal.3d 185, 189.) That means that the Court must start
11 from the premise that the Order satisfies due process, and the petitioners must allege facts showing
12 that the Order is not “reasonably related to promoting the public health, safety, comfort and welfare”
13 or that the means by which it does so are not “reasonably appropriate to that purpose.” (*Suter v. City*
14 *of Lafayette* (1997) 57 Cal.App.4th 1109, 1130.) Those facts must evince “a complete absence of even
15 a debatable rational basis” for the Order (*Birkenfeld v. Berkeley* (1976) 17 Cal.3d 129, 161), or offer
16 an “unquestionable” showing that the Order lacks a reasonable relationship to its purpose (*Wilke &*
17 *Holzheiser, Inc. v. Dept. of Alcoholic Beverage Control* (1966) 65 Cal.2d 349, 359).

18 Suffice it to say, the First Amended Petition does not do that. Indeed, like the Order itself (e.g.,
19 RJN Ex. 3 at p. 15), the First Amended Petition *recognizes* the public health need that the Order is
20 meant to serve (First. Am. Pet. ¶ 1). What the First Amended Petition doesn’t do is allege any facts
21 showing the means by which the Order serves that purpose are not “reasonably appropriate” to it. And
22 it is unlikely that such facts ever *could* be alleged, again making amendment of the pleadings here
23 futile.

24 The Court should sustain the demurrer to the ninth cause of action without leave to amend.
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1 **III. The tenth and eleventh causes of action, alleging that Turner’s should have been allowed**
2 **to open as an essential business all along, are moot: All retail stores in the City may now**
3 **open, if they impose various disease prevention measures.**

4 Finally, the tenth and eleventh causes of action—seeking relief that would allow Turner’s to
5 open—are premised on allegations that Turner’s has always sold essential goods, and so should never
6 have closed under the Order in the first place. (First Am. Pet. ¶¶ 68-77, 164, 174.) Whatever the
7 dubious merits of that proposition (RJN Ex. 2 at pp. 11-12), the Order now allows all “[r]etail stores”
8 to operate “for delivery and/or curbside pick up only,” and subject to various other disease prevention
9 protocols (RJN Ex. 4 at p. 31 ¶ 5(vii)(y)). Sporting goods stores like Turner’s have in fact been
10 allowed to open, under the same conditions, since May 8. (RJN Ex. 3 at p. 21 ¶ 5(vii)(y).) That means
11 the tenth and eleventh causes of action are moot, and the Court should sustain the demurrer as to them,
12 too. (See, e.g., *Roger v. County of Riverside* (2020) 44 Cal.App.5th 510, 530 [a claim for declaratory
13 relief is mooted when the underlying controversy ends]; *Scripps Health v. Marin* (1999) 72
14 Cal.App.4th 324, 332 [a claim for injunctive relief is mooted when the allegedly wrongful conduct has
15 ceased].)

16 And, yet again, the demurrer should be sustained without leave to amend. It’s likely the
17 petitioners will object particularly to this proposition, and claim that they can allege facts showing that
18 Turner’s is unable both simultaneously (1) to comply with the Order’s requirements for operating
19 safely during the pandemic and (2) to satisfy the various legal requirements for selling firearms.
20 (Never mind that up to this point, Turner’s has alleged an ability to comply with specific disease
21 prevention protocols, First Am. Pet. ¶ 78.) So, the petitioners will again insist, the Order is a firearm
22 sales ban. Suffice it to say, the petitioners are unlikely to successfully allege facts that transmogrify
23 the Order into something the Court has already concluded it’s not. (RJN Ex. 1 at p. 6.) There is no
24 cause of action that arises from Turner’s inability both to satisfy a rule of general applicability and the
25 various restrictions inherent in the sale of firearms. There is no need for leave to amend.
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CONCLUSION

The Court should sustain the City's demurrer as to each and every cause of action in the First Amended Petition and Complaint, without leave to amend.

Respectfully submitted,

Dated: May 22, 2020

MICHAEL N. FEUER, 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, Maria Cruz, 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, 7th Floor, Los Angeles, California 90012.

On May 22, 2020, I served the foregoing documents described as: **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO FIRST AMENDED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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

Dated: May 22, 2020

_____/s/ Maria Cruz_____

PROOF OF SERVICE