

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 7. Mediation Questionnaire**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>

9th Cir. Case Number(s)

Case Name

Counsel submitting this form

Represented party/ parties

Briefly describe the dispute that gave rise to this lawsuit.

Defendants issued health directives requiring a county-wide closures of firearms and ammunition retailers for an extended period of time on the basis that these retailers provided "non-essential" services to the public during the pandemic. Plaintiffs challenged these actions on the basis that they violated their Second Amendment rights by "prevent[ing] the Plaintiffs, Plaintiffs' members, and similarly situated members of the public from exercising their rights, including the purchase, sale, transfer of, and training with constitutionally protected arms, ammunition, magazines, and appurtenances, ... thus causing injury and damage that is actionable under 42 U.S.C. § 1983." Plaintiffs further alleged that "the prior orders imposed the additional burdens of restraining residents' right to travel as necessary to exercise the panoply of rights enshrined in the Second Amendment."

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Briefly describe the result below and the main issues on appeal.

Defendants moved to dismiss Plaintiffs' First Amended Complaint for lack of subject matter jurisdiction under FRCP Rule 12(b)(1) and failure to state a claim under FRPC Rule 12(b)(6). The district court rejected Defendants' contention that it lacked subject matter jurisdiction, but agreed that Plaintiffs had failed to sufficiently state a claim for relief under both the framework of *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905) and under a "traditional constitutional analysis" of Second Amendment restrictions because Defendants' actions did not sufficiently burden the Second Amendment rights at stake so as to be actionable under either framework.

The issues on appeal generally include (but are not limited to):

Whether the *Jacobson* framework applies to the restraints at issue and, if so, whether the district court properly applied that framework here in holding that Plaintiffs' complaint failed to state a claim for relief.

Whether the district court's "traditional constitutional analysis" properly articulates and applies the applicable constitutional standards in holding that Plaintiffs' complaint failed to state a claim for relief.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Jonah Martinez, et al v. Alex Villanueva, et al (9th Cir. Case No. 20-56233): where an appeal was recently filed from the district court's dismissal of a complaint involving similar shutdown orders enacted by Los Angeles County.

Altman et al v. County of Santa Clara et al (N.D. Ca. Case No. 4:20-cv-02180-JST): a complaint involving similar shutdown orders enacted by multiple counties in the Bay area, the final disposition of which remains pending.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

**PROOF OF SERVICE
MEDIATION QUESTIONNAIRE**

Donald McDougall, et al v. County of Ventura, et al, Case No. 20-56220

I, Raymond M. DiGuiseppe, declare that I am over the age of 18 and not a party to this case. My business address is: P.O. Box 10790, Southport, NC 28461.

Postal Service

On November 27, 2020, I served the above-referenced document on the party listed below (who is on the Service List for this case but is not listed as an active registered user of the Court's CM/ECF system) by placing a true copy of it in a sealed addressed envelope with postage fully paid and depositing it with the U.S. Postal Service in Southport, North Carolina, to be delivered in the ordinary course of business:

Emily T. Gardner
County of Ventura
Office of the County Counsel
Room 1830
880 S. Victoria Ave.
Ventura, CA 90039

Electronic Service

I further declare that the same document was served the same day through the Court's CM/ECF filing system on the remaining parties on the Service List who are listed as active users of the CM/ECF system (Jerome Clay). I have also separately notified co-counsel of record for Plaintiffs, Ronda Baldwin-Kennedy (who is not currently registered in the CM/ECF system) by emailing her a copy of the same.

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

/s Raymond M. DiGuiseppe Declarant
November 27, 2020