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21 Attorneys for Plaintiffs

22 **UNITED STATES DISTRICT COURT**

23 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

24 ADAM BRANDY, an individual;
25 JONAH MARTINEZ, an individual;
26 DAEMION GARRO, an individual;
27 DG 2A ENTERPRISES INC., d.b.a.
28 GUN WORLD; JASON MONTES, an
individual; WEYLAND-YUTANI LLC,
d.b.a. MATCH GRADE GUNSMITHS;
ALAN KUSHNER, an individual; THE
TARGET RANGE; TOM WATT, an
individual; A PLACE TO SHOOT, INC.;
SECOND AMENDMENT

Case No. 2:20-cv-02874-AB-AK

**FIRST AMENDED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

1 FOUNDATION; CALIFORNIA GUN
2 RIGHTS FOUNDATION; NATIONAL
3 RIFLE ASSOCIATION OF AMERICA;
4 and FIREARMS POLICY COALITION,
INC.,

5 Plaintiffs,

6 vs.
7

8 ALEX VILLANUEVA, in his official
9 capacity as Sheriff of Los Angeles
10 County, California, and in his capacity as
11 the Director of Emergency Operations;
12 GAVIN NEWSOM, in his official
13 capacity as Governor and Commander in
14 Chief of the State of California; SONIA
15 Y. ANGELL, in her official capacity as
16 California Public Health Officer;
17 BARBARA FERRER, in her official
18 capacity as Director of Los Angeles
19 County Department Of Public Health;
20 COUNTY OF LOS ANGELES; ERIC
21 GARCETTI, in his official capacity as
22 Mayor of the City of Los Angeles,
23 California; CITY OF LOS ANGELES,
24 CALIFORNIA; JUSTIN HESS, in his
25 official capacity as City Manager and
26 Director of Emergency Services for the
27 City of Burbank; and CITY OF
28 BURBANK, CALIFORNIA,

Defendants.

Plaintiffs Adam Brandy, *et al.* (“Plaintiffs”), by and through counsel of record,
bring this complaint for injunctive and declaratory relief against the named

1 Defendants, and allege as follows:

2 **INTRODUCTION**

3
4 1. California’s State and local governments cannot simply suspend the
5 Constitution. Authorities may not, by decree or otherwise, enact and/or enforce a
6 suspension or deprivation of constitutional liberties. And they certainly may not use
7 a public health crisis as political cover to impose bans and restrictions on rights they
8 do not like.
9

10
11 2. Firearm and ammunition product manufacturers, retailers, importers,
12 distributors, and shooting ranges are essential businesses that provide essential
13 access to constitutionally protected fundamental, individual rights. If firearms and
14 ammunition could be purchased online like other constitutionally protected artifacts,
15 such as paper, pens, ink, and technology products that facilitate speech, then
16 individuals could simply purchase what they need and have the items delivered to
17 their doorsteps. But because of an onerous and complicated federal, state, and local
18 regulatory scheme that prevents this, people in California cannot exercise their
19 Second Amendment right to keep and bear arms without such essential businesses.
20
21

22
23 3. In California, individuals are required to purchase and transfer firearms
24 and ammunition through state and federally licensed dealers in face-to-face
25 transactions or face serious criminal penalties. Shuttering access to arms, the
26 ammunition required to use those arms, and the ranges and education facilities that
27
28

1 individuals need to learn how to safely and competently use arms, necessarily closes
2 off the Constitutional right to learn about, practice with, and keep and bear those
3 arms. By forcing duly licensed, essential businesses to close or eliminate key
4 services for the general public, government authorities are foreclosing the only
5 lawful means to buy, sell, and transfer firearms and ammunition available to typical,
6 law-abiding individuals in California. Such a prohibition on the right to keep and
7 bear arms is categorically unconstitutional.
8
9

10
11 4. The circumstances posed by the COVID-19 Novel Coronavirus
12 outbreak present challenges to all of us, including the government. Responding to
13 those challenges, for example, Defendant Los Angeles County Sheriff Alex
14 Villanueva recently released approximately 1,700 inmates from his Los Angeles
15 County jails. And with governments having no legal duty to protect the people they
16 serve, and with no guarantee that law enforcement will even respond to one's 911
17 call during this crisis or after it (let alone in time to prevent a crime), people who
18 choose to turn to their fundamental, individual Second and Fourteenth Amendment
19 rights cannot be denied them.
20
21

22
23 5. The need for self-defense during uncertain times is precisely when
24 Plaintiffs and Plaintiffs' members must be able to exercise their fundamental rights
25 to keep and bear arms. The challenges we all face because of the COVID-19
26 Coronavirus, or any other such emergency, does not, cannot, and must not justify or
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28

1 excuse government infringements upon fundamental human rights.

2
3 **PARTIES**

4 *Individual Plaintiffs*

5
6 6. Plaintiff Adam Brandy is a natural person, a citizen of the United States,
7 and a resident of the County of Los Angeles, California. Plaintiff Brandy is not
8 prohibited from possessing or acquiring arms, including firearms and ammunition,
9
10 under state or federal law. Plaintiff Brandy is concerned about his safety and the
11 safety of his family, wants to practice and exercise his right to keep and bear arms –
12 including firearms, ammunition, magazines, and appurtenances – and would do so,
13
14 but for the reasonable and imminent fear of arrest and criminal prosecution under
15 Defendants’ laws, policies, orders, practices, customs, and enforcement.

16
17 7. Plaintiff Jonah Martinez is a natural person, a citizen of the United
18 States, and a resident of the County of Los Angeles, California. Plaintiff Jonah
19 Martinez is not prohibited from possessing or acquiring arms, including firearms and
20
21 ammunition, under state or federal law. Plaintiff Martinez is concerned about his
22 safety and the safety of his family, wants to practice and exercise his right to keep
23
24 and bear arms – including firearms, ammunition, magazines, and appurtenances –
25 and would do so, but for the reasonable and imminent fear of arrest and criminal
26
27 prosecution under Defendants’ laws, policies, orders, practices, customs, and
28 enforcement.

1 8. Plaintiff Daemion Garro is a natural person, a citizen of the United
2 States, and a resident of the County of Los Angeles, California. Plaintiff Garro is not
3 prohibited from possessing or acquiring arms, including firearms and ammunition,
4 under state or federal law. Plaintiff Garro is the owner and operator of DG 2A
5 Enterprises Inc., d.b.a. Gun World (“Gun World”) in Burbank, California. Plaintiff
6 Garro is concerned about his safety and the safety of his customers and the public.
7 On behalf of himself and his customers, Plaintiff Garro would conduct training and
8 education, perform California Firearm Safety Certificate (“FSC”) testing for and
9 issue FSC certificates to eligible persons, and sell and transfer arms – including
10 firearms, ammunition, magazines, and appurtenances – but for the reasonable and
11 imminent fear of criminal prosecution and loss of his license under Defendants’
12 laws, policies, orders, practices, customs, and enforcement thereof.
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18 9. Plaintiff Jason Montes is a natural person, a citizen of the United States,
19 and a resident of the County of Los Angeles, California. Plaintiff Montes is not
20 prohibited from possessing or acquiring arms, including firearms and ammunition,
21 under state or federal law. Plaintiff Montes is the owner and operator Weyland-
22 Yyutani LLC, d.b.a. Match Grade Gunsmiths (“Match Grade”) in Cerritos,
23 California. Plaintiff Montes is concerned about his safety and the safety of his
24 customers and the public. On behalf of himself and his customers, Plaintiff Montes
25 would conduct training and education, perform FSC testing for and issue FSC
26
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1 certificates to eligible persons, and sell and transfer arms – including firearms,
2 ammunition, magazines, and appurtenances – but for the reasonable and imminent
3 fear of criminal prosecution and loss of his license under Defendants’ laws, policies,
4 orders, practices, customs, and enforcement thereof.
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6
7 10. Plaintiff Alan Kushner is a natural person, a citizen of the United States,
8 and a resident of California. Plaintiff Kushner is not prohibited from possessing or
9 acquiring arms, including firearms and ammunition, under state or federal law.
10 Plaintiff Kushner is the owner and operator of The Target Range (“Target Range”),
11 a firearm and ammunition retailer, indoor shooting range, and training facility in Van
12 Nuys, California, a neighborhood of the City of Los Angeles, California. Plaintiff
13 Kushner is concerned about his safety and the safety of his customers and the public.
14 On behalf of himself and his customers, Plaintiff Kushner would conduct training
15 and education, perform FSC testing for and issue FSC certificates to eligible persons,
16 and sell and transfer arms – including firearms, ammunition, magazines, and
17 appurtenances –but for the reasonable and imminent fear of criminal prosecution and
18 loss of his licenses because of Defendants’ laws, policies, orders, practices, customs,
19 and enforcement thereof.
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24
25 11. Plaintiff Tom Watt is a natural person, a citizen of the United States,
26 and a resident of California. Plaintiff Watt is not prohibited from possessing or
27 acquiring arms, including firearms and ammunition, under state or federal law.
28

1 Plaintiff Watt is the owner and operator of A Place To Shoot, Inc. (“A Place To
2 Shoot”), a firearm and ammunition retailer, indoor shooting range, and training
3 facility in Santa Clarita, CA. Plaintiff Watt is concerned about his safety and the
4 safety of his customers and the public. On behalf of himself and his customers,
5 Plaintiff Watt would conduct training and education, perform FSC testing for and
6 issue FSC certificates to eligible persons, and sell and transfer arms – including
7 firearms, ammunition, magazines, and appurtenances –but for the reasonable and
8 imminent fear of criminal prosecution and loss of his licenses because of
9 Defendants’ laws, policies, orders, practices, customs, and enforcement thereof.
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13 *Retailer Plaintiffs*

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15 12. Plaintiff DG2A Enterprises, d.b.a. Gun World, is a corporation holding
16 federal, state, and local licenses to conduct the sales of arms, including firearms,
17 ammunition, magazines, and appurtenances, in Burbank, California. Plaintiff Gun
18 World is concerned about its safety and the safety of its customers and the public.
19 On behalf of itself and its customers, Plaintiff Gun World would conduct training
20 and education, perform California FSC testing for and issue FSC certificates to
21 eligible persons, and sell and transfer arms – including firearms, ammunition,
22 magazines, and appurtenances –but for the reasonable and imminent fear of criminal
23 prosecution and loss of its licenses because of Defendants’ laws, policies, orders,
24 practices, customs, and enforcement thereof.
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1 13. Plaintiff Weyland-Yutani LLC, d.b.a. Match Grade Gunsmiths (“Match
2 Grade”), is a limited liability corporation and holds federal, state, and local licenses
3
4 to conduct the manufacturing and sales of arms, including firearms, ammunition,
5 magazines, and appurtenances, in Cerritos, California. Plaintiff Match Grade is a
6 Veteran-owned, full-service manufacturer, retailer, gunsmith, and machine shop. It
7
8 has gunsmiths that are certified armorers for common firearm manufacturers
9 including Sig Sauer, Smith and Wesson, Springfield Armory, and Glock. Plaintiff
10 Match Grade “can customize anything you can think of,” and its “master gunsmith
11 can manufacture custom parts, build custom rifles,” and configure pistols to
12 customers’ needs. Plaintiff Match Grade is concerned about its safety and the safety
13
14 of its customers and the public. On behalf of itself and its customers, Plaintiff Match
15 Grade would conduct training and education, perform California FSC testing for and
16
17 issue FSC certificates to eligible persons, and sell and transfer arms – including
18
19 firearms, ammunition, magazines, and appurtenances –but for the reasonable and
20
21 imminent fear of criminal prosecution and loss of its licenses under Defendants’
22 laws, policies, orders, practices, customs, and enforcement thereof.

23 14. Plaintiff The Target Range (“Target Range”), is a California
24 corporation holding federal, state, and local licenses to conduct the temporary rental
25
26 and sale of arms, including firearms, ammunition, magazines, and appurtenances, as
27
28 well as to operate an indoor shooting range and training center, in Van Nuys,

1 California. Plaintiff Target Range is concerned about its safety and the safety of its
2 customers and the public. On behalf of itself and its customers, Plaintiff Target
3
4 Range would conduct training and education, perform California FSC testing for and
5 issue FSC certificates to eligible persons, rent arms for education and proficiency
6 training and other lawful purposes, and sell and transfer arms – including firearms,
7
8 ammunition, magazines, and appurtenances –but for the reasonable and imminent
9 fear of criminal prosecution and loss of his license under Defendants’ laws, policies,
10 orders, practices, customs, and enforcement thereof.
11

12 15. Plaintiff A Place To Shoot, Inc. (“A Place To Shoot”), is a California
13 corporation holding federal, state, and local licenses to conduct the temporary rental
14 and sale of arms, including firearms, ammunition, magazines, and appurtenances, as
15 well as to operate an shooting range and training center, in Santa Clarita, California.
16 Plaintiff A Place To Shoot is concerned about its safety and the safety of its
17
18 customers and the public. On behalf of itself and its customers, Plaintiff A Place To
19 Shoot would operate, conduct education and proficiency training, and sell and
20
21 transfer arms – including firearms, ammunition, magazines, and appurtenances – but
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23 for the reasonable and imminent fear of criminal prosecution and loss of his license
24 under Defendants’ laws, policies, orders, practices, customs, and enforcement
25 thereof.
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Institutional Plaintiffs

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2 16. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a nonprofit
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4 educational foundation incorporated under the laws of Washington with its principal
5 place of business in Bellevue, Washington. SAF seeks to preserve the effectiveness
6 of the Second Amendment through education, research, publishing, and legal action
7 programs focused on the Constitutional right to possess firearms, and the
8 consequences of gun control. SAF has over 650,000 members and supporters
9 nationwide, including thousands of members in California. SAF brings this action
10 on behalf of itself and its members. Individual Plaintiffs and Retailer Plaintiff are
11 members of SAF.
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15 17. Plaintiff California Gun Rights Foundation (“CGF”) is a nonprofit
16 foundation incorporated under the laws of California with its principal place of
17 business in Sacramento, California. CGF serves its members, supporters, and the
18 public through educational, cultural, and judicial efforts to defend and advance
19 Second Amendment and related rights. CGF has thousands of members and
20 supporters in California, including members in Los Angeles County and the
21 Individual and Retailer Plaintiffs herein. The interpretation and enforcement of the
22 Second Amendment directly impacts CGF’s organizational interests, as well as the
23 rights of CGF’s members and supporters. CGF has expended and diverted resources,
24 and has been adversely and directly harmed, because of Defendants’ laws, policies,
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1 practices, and customs challenged herein. CGF brings this action on behalf of itself,
2 its members, supporters who possess all the indicia of membership, and similarly
3 situated members of the public. Individual Plaintiffs and Retailer Plaintiff are
4 members of CGF.
5

6
7 18. Plaintiff National Rifle Association of America (“NRA”) is a nonprofit
8 corporation organized under the laws of the State of New York with its principal
9 place of business in Fairfax, Virginia. The NRA is America’s leading provider of
10 gun-safety and marksmanship education for civilians and law enforcement. It is also
11 an important defender of the Second Amendment to the United States Constitution.
12 The NRA has over five million members, and its programs reach millions more.
13 NRA’s members reside both outside and within the State of California, including in
14 Los Angeles County, California. NRA represents its members and supporters and
15 brings this action on behalf of itself, its members, supporters who possess all the
16 indicia of membership, and similarly situated members of the public. NRA has
17 expended and diverted resources, and is adversely and directly harmed, because of
18 Defendants’ laws, policies, orders, practices, and customs challenged herein.
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23 19. Plaintiff Firearms Policy Coalition, Inc. (“FPC”) is a nonprofit
24 organization incorporated under the laws of Delaware with a place of business in
25 Sacramento, California. The purposes of FPC include defending and promoting the
26 People’s rights – especially but not limited to First and Second Amendment rights –
27
28

1 advancing individual liberty, and restoring freedom. FPC serves its members and the
2 public through legislative advocacy, grassroots advocacy, litigation and legal efforts,
3 research, education, outreach, and other programs. FPC's has members in the State
4 of California, including in Los Angeles County, California. FPC represents its
5 members and supporters—who include gun owners, individuals who wish to acquire
6 firearms and ammunition, licensed California firearm retailers, shooting ranges,
7 trainers and educators, and others—and brings this action on behalf of itself, its
8 members, supporters who possess all the indicia of membership, and similarly
9 situated members of the public. FPC has expended and diverted resources, and is
10 adversely and directly harmed, because of Defendants' laws, policies, orders,
11 practices, and customs challenged herein. Individual Plaintiffs and Retailer Plaintiffs
12 are members of FPC.

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18 *State Defendants*

19 20. Defendant Gavin Newsom is the current Governor and Commander-in-
20 Chief of the State of California, and is responsible for executing and administering
21 California's laws, orders, customs, practices, and policies at issue in this lawsuit.
22 Defendant Newsom is sued in his official capacity. Defendant Newsom issued
23 Executive Order N-33-20, and prior orders proclaiming a state of emergency to exist
24 in California due to the threat of COVID-19.
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1 with inherent and delegated powers to execute and enforce laws, orders, customs,
2 and/or practices at issue in this lawsuit. She is sued in her official capacity.
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4 25. Defendant Justin Hess is the City Manager of, as well as the Director of
5 Emergency Services for, Defendant City of Burbank California, with inherent and
6 delegated powers to execute and enforce laws, orders, customs, and/or practices at
7 issue in this lawsuit. He is sued in his official capacity.
8

9 26. Defendant City of Burbank, California is a local governmental entity
10 organized under the Constitution and laws of the State of California, possessing legal
11 personhood within the meaning of 42 U.S.C. § 1983. The City is responsible for
12 executing and administering its laws, orders, customs, practices, and policies at issue
13 in this lawsuit.
14

15 27. Defendant Eric Garcetti is the Mayor of Defendant City of Los Angeles,
16 California, with inherent and delegated powers to execute and enforce laws, orders,
17 customs, and/or practices at issue in this lawsuit. He is sued in his official capacity.
18

19 28. Defendant City of Los Angeles, California is a local governmental
20 entity organized under the Constitution and laws of the State of California,
21 possessing legal personhood within the meaning of 42 U.S.C. § 1983. The City is
22 responsible for executing and administering its laws, orders, customs, practices, and
23 policies at issue in this lawsuit.
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1 **JURISDICTION AND VENUE**

2 29. This Court has jurisdiction over all claims for relief pursuant to 28
3 U.S.C. §§ 1331, 1343, 2201, and 2202, and 42 U.S.C. §§ 1983 and 1988, as this
4 action seeks to redress the deprivation under color of the laws, statutes, ordinances,
5 regulations, customs, and usages of the State of California, of the rights, privileges
6 or immunities secured by the United States Constitution.
7

8
9 30. Venue lies in this Court under 28 U.S.C. § 1391, as the events giving
10 rise to Plaintiffs’ causes of action arose or exist in this District in which the action is
11 brought. Venue is also proper under 28 U.S.C. § 1391, as the venue rules of this State
12 specifically permit this action to be filed in Los Angeles, since Defendants maintain
13 offices within this District. Cal. Code of Civ. Pro. § 401(1).
14
15

16 **STATEMENT OF FACTS COMMON TO ALL CLAIMS**

17 31. The Second Amendment to the United States Constitution provides:
18
19 A well-regulated Militia being necessary to the security of
20 a free State, the right of the people to keep and bear Arms
21 shall not be infringed.

22 32. The Second Amendment “guarantee[s] the individual right to possess
23 and carry weapons in case of confrontation.” *District of Columbia v. Heller*, 554
24 U.S. 570, 592 (2008). And it “elevates above all other interests the right of law-
25 abiding, responsible citizens to use arms in defense of hearth and home.” *Id* at 635.
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1 33. The Second Amendment is fully applicable to the States through the
2 Fourteenth Amendment's Due Process and Privileges or Immunities Clauses.
3
4 *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *id.* at 805 (Thomas, J.,
5 concurring).

6 34. The Fourteenth Amendment to the United States Constitution provides
7
8 in pertinent part:

9 No state shall make or enforce any law which shall abridge
10 the privileges or immunities of citizens of the United
11 States; nor shall any state deprive any person of life,
12 liberty, or property, without due process of law; nor deny
13 to any person within its jurisdiction the equal protection of
the laws.

14 35. Individuals have a right to keep and bear arms, including but not limited
15
16 to, buying, selling, transferring, transporting, and carrying firearms, ammunition,
17 magazines, and appurtenances, under the Second and Fourteenth Amendments to the
18
19 United States Constitution.

20 36. Individuals have a right to due process of the law under the Fifth and
21
22 Fourteenth Amendments to the United States Constitution, the fundamental precepts
23 which of protect them against the enforcement of vague, ambiguous, and arbitrary
24
25 and capricious laws.
26
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28

1 37. Licensed firearm and ammunition retailers are necessary to individuals’
2 lawful acquisition of firearms and ammunition, including but not limited to
3
4 complying with federal and state background check requirements.

5 38. On or about March 4, 2020, Defendant Governor Newsom proclaimed
6
7 a State of Emergency as a result of COVID-19.

8 39. Effective March 19, 2020, Governor Gavin Newsom signed Executive
9
10 Order N-33-20,¹ directing all individuals living in California to “stay home or at their
11
12 place of residence except as needed to maintain continuity of operations of the
13
14 federal critical infrastructure sectors.” Executive Order N-33-is in place until further
15
16 notice. The Governor’s Order directed all California residents “to heed” the
17
18 directives of the State Public Health Officer, Defendant Angell, and incorporated
19
20 into the Executive Order Defendant Angell’s Order of the same date.² An express
21
22 purpose of Defendant Angell’s Order is to “establish consistency across the state.”

23 40. As augmented by the Order of Defendant Angell incorporated into it,
24
25 Executive Order N-33-20 states that the Governor “may designate additional
26
27
28

¹Executive Department, State of California, Executive Order N-33-20,
<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>

² Order of the State Public Health Officer, Mar. 19, 2020,
<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Health%20Order%203.19.2020.pdf>.

1 sectors” but does not identify any additional sectors nor provide definitions or clarity
2 on the scope and extent of such sectors. Further, the Order provides that Californians
3 working in critical infrastructure sectors may continue their work because of the
4 importance of these sectors to Californians’ health and well-being. Executive Order
5 N-33-20 states that Californians must nonetheless have access to “necessities,” but
6 the term is not fully defined. It provides that people may “leave their homes or places
7 of residence, whether to obtain or perform” critical infrastructure, or “to otherwise
8 facilitate authorized necessary activities,” so long as they practice social distancing.
9 But Executive Order N-33-20 does not explain what is meant by “authorized
10 necessary activities.”

11
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14
15 41. Executive Order N-33-20 “shall be enforceable pursuant to California
16 law, including, but not limited to, Government Code section 8665.”

17
18 42. Government Code section 8665 states:
19
20 Any person who violates any of the provisions of this
21 chapter or who refuses or willfully neglects to obey any
22 lawful order or regulation promulgated or issued as
23 provided in this chapter, shall be guilty of a misdemeanor
24 and, upon conviction thereof, shall be punishable by a fine
25 of not to exceed one thousand dollars (\$1,000) or by
26 imprisonment for not to exceed six months or by both such
27 fine and imprisonment.

28 43. On the same day the Governor and Defendant Angell issued their
Orders (March 19, 2020), the County of Los Angeles Department of Public Health,
through its Health Officer, issued an Order titled, “Safer at Home Order for Control

1 of COVID-19” (County Order) which addressed, among other things, the “Closure
2 of Non-Essential Businesses and Areas.” The County Order states that it does not
3
4 prohibit any individual or family from “shopping at Essential Businesses,” provided
5 social distancing is practiced “to the extent practicable.” But the County Order
6
7 “requires all ... non-essential businesses to close” and do so “immediately.” The
8 County Order’s reach extends to “all cities in Los Angeles County (except the cities
9 of Pasadena and Long Beach).” And a “[v]iolation of this Order is a misdemeanor
10 punishable by imprisonment, fine, or both under California Health and Section Code
11 120295 *et seq.*”

12
13 44. Health & Safety Code section 120295 states:

14
15 Any person who violates Section 120130 or any section in
16 Chapter 3 (commencing with Section 120175, but
17 excluding Section 120195), is guilty of a misdemeanor,
18 punishable by a fine of not less than fifty dollars (\$50) nor
19 more than one thousand dollars (\$1,000), or by
20 imprisonment for a term of not more than 90 days, or by
21 both. He or she is guilty of a separate offense for each day
22 that the violation continued.

23 45. “Non-Essential Retail Businesses” are defined as “retail establishments
24 that provide goods and services to the public that do not come within the definition
25 of Essential Businesses set forth in Paragraph 13 of this Order.” Paragraph 13 defines
26 “Essential Businesses.” “Essential Businesses” are ... other establishments engaged
27 in the retail sale of ...household consumer products ... and this includes “stores that
28

1 sell ... other ... products necessary to maintaining the safety ... and essential
2 operation of residences.” Other “Essential Businesses” include:

3
4 (a) “establishments engaged in the retail sale of ... household
5 consumer products ... includ[ing] stores that sell ... products necessary to
6 maintaining the safety, sanitation, and essential operation of residences”;...

7
8 (b) “Food cultivation, including farming, livestock, and fishing”;...

9
10 (h) “service providers who provide services to maintain the safety,
11 sanitation, and essential operation to properties and other Essential
12 Businesses;...

13
14 (n) “Businesses that supply other Essential Businesses with the support
15 or supplies necessary to operate”;...

16
17 (q) “Businesses that provide parts and service for Essential
18 Infrastructure”; ... and,

19
20 (u) “Military/Defense Contractors/FFRDC (Federally Funded
21 Research and Development Centers.)”³

22 46. Also on March 19, 2020, Defendant Mayor Garcetti and Defendant City
23 of Los Angeles issued an Order titled, “Public Order Under City of Los Angeles
24

25
26
27 ³ [http://file.lacounty.gov/SDSInter/lac/1070029_COVID-](http://file.lacounty.gov/SDSInter/lac/1070029_COVID-19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf)
28 [19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf](http://file.lacounty.gov/SDSInter/lac/1070029_COVID-19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf).

1 Emergency Authority,” with the subject of “SAFER AT HOME” (“City of LA
2 Order”) ⁴ which ordered and declared “[u]nder the provisions of Section 231(i) of
3 the Los Angeles City Charter and Chapter 3, Section 8.27 of the Los Angeles
4 Administrative Code,” *inter alia*, “all persons living within the City of Los Angeles
5 [] to remain in their homes,” and “all businesses within the City of Los Angeles []
6 to cease operations that require in-person attendance by workers at a workplace
7 (including, without limitation, indoor malls and indoor shopping centers, including
8 all stores except for those stores considered essential activities...)” ⁵

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11
12 47. According to the City of LA Order, failure to comply “shall constitute
13 a misdemeanor subject to fines and imprisonment.” And in the City of LA Order,
14 Defendant Mayor Garcetti “urge[d] the Los Angeles Police Department and the City
15 Attorney to vigorously enforce this Order via Sections 8.77 and 8.78 of the Los
16 Angeles Administrative Code.”
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22 ⁴ March 19, 2020 “Public Order Under City of Los Angeles Emergency
23 Authority”, online at
24 [https://www.lamayor.org/sites/g/files/wph446/f/article/files/SAFER_AT_HOME_
ORDER2020.03.19.pdf](https://www.lamayor.org/sites/g/files/wph446/f/article/files/SAFER_AT_HOME_ORDER2020.03.19.pdf).

25
26 ⁵ “CITY OF LOS ANGELES COVID-19 ORDERS” (March 19, 2020 Order listed
27 under the caption “Below are the Emergency Orders and Memorandum from
28 Mayor Eric Garcetti pertaining to COVID-19”), online at
<https://www.lamayor.org/COVID19Orders>.

1 48. On or about March 22, 2020, in accordance with Defendant Newsom’s
2 Executive Order N-33-20 and her own Order of the State Public Health Officer,
3 Defendant Angell designated a list of “Essential Critical Infrastructure Workers.”⁶
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5 49. On March 24, 2020, Defendant County of Los Angeles Sheriff and
6 Director of Emergency Operations Alex Villanueva declared all firearms retailers in
7 the County of Los Angeles to be “non-essential.”
8

9 50. Also on or about March 24, 2020, in accordance with Defendant
10 Newsom’s Executive Order N-33-20, the San Diego Sheriff declared that firearm
11 retailers would perform a “valuable public service” during the coronavirus pandemic
12 and will be allowed to remain open. Sheriff Gore stated that licensed gun stores help
13 maintain public safety by ensuring that buyers submit to a ten-day waiting period
14 and pass a state license check. Sheriff Gore also warned that gun buyers could turn
15 to the “black market” for illegal weapons if they can’t buy them legally at licensed
16 stores.⁷
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24 ⁶ Essential Critical Infrastructure Workers, Mar. 22, 2020,
25 <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>.

26 ⁷ NBC San Diego, “Sheriff Will Not Close San Diego County Gun Stores,”
27 <https://www.nbcsandiego.com/news/investigations/sheriff-will-not-close-san-diego-county-gun-stores/2292399/>.
28

1 51. The next day, March 25, 2020, Defendant Sheriff Villanueva “told
2 FOX 11 he’s adding 1,300 deputies to patrol, doubling the current amount, and in an
3 effort to prevent the spread of the coronavirus in jail, he has released 10% of the
4 inmate population from county jails...”⁸

5
6 52. Later the same day, Sheriff Villanueva announced that the *enforcement*
7 of the closure of firearm retailers was temporarily suspended; pending a decision on
8 their classification as non-essential by Defendant Governor Newsom.⁹

9
10 53. The next day, March 26, 2020, Defendant Governor Newsom issued a
11 public statement that each of the 58 county sheriffs had discretion to determine the
12 “essential” nature of firearm and ammunition retailers in each respective county in
13 the State.¹⁰

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16 54. On March 26, 2020, Defendant Sheriff Villanueva, through the Los
17 Angeles County Sheriff’s Twitter account, released an image of his March 26, 2020

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⁸ FOX 11 Los Angeles, “LA County Sheriff orders gun stores to close; adds 1,300 deputies to patrol,” <https://www.foxla.com/news/la-county-sheriff-orders-gun-stores-to-close-adds-1300-deputies-to-patrol>.

⁹ NBC Los Angeles, “LA County Sheriff Reverses Decision on Closing Gun Shops,” <https://www.nbclosangeles.com/news/local/coronavirus-covid-19-los-angeles-county-sheriff-gun-shops-second-amendment/2334792/>.

¹⁰ ABC News Los Angeles, “Deja vu: LA County sheriff closes gun shops again,” <https://abcnews.go.com/US/wireStory/deja-vu-la-county-sheriff-closes-gun-shops-69822931>

1 Order stating, “[b]y order of the Sheriff of Los Angeles County, gun and ammunition
2 stores are not considered essential businesses and must close to the general public,
3
4 in Compliance with Executive Order-N-33-20 and County of Los Angeles Safer at
5 Home Order for Control of COVID-19.”¹¹

6
7 55. Later the same day, Defendant Sheriff Villanueva, lifting his temporary
8 suspension of his prior order, formally reversed his position and stated that firearms
9 retailers are now considered “non-essential” and “must close to the general public,
10
11 in compliance with the Executive Order N-33-20 and the County of Los Angeles
12 Safer at Home Order for Control of COVID-19.”¹²

13
14 56. Defendant Sheriff Villanueva’s March 26 Order has a limited exception
15 allowing people who “have already purchased a firearm” and who *already* have “a
16 valid California Firearms Safety Certificate (CFS)” to “simply [] take possession of
17
18 their firearm.”

19
20 57. Defendant Sheriff Villanueva’s March 26 Order specified that licensed
21
22 firearm retailers would be permitted to sell ammunition only to “security guard
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26 ¹¹ <https://twitter.com/LACoSheriff/status/1243237017049128961/photo/1>.

27 ¹² APNews.com, “Deja vu: LA County Sheriff Closes Gun Shops Again,”
28 <https://apnews.com/c134e74f8813297d139b1d217a48c932>.

1 companies.” Sheriff Villanueva’s Order is a de facto ban on the sale and transfer of
2 ammunition.

3
4 58. Defendant Sheriff Villanueva’s March 26 Order is a de facto ban on the
5 sale and transfer of firearms and new California Firearms Safety Certificate testing
6 and issuance.

7
8 59. Defendant Sheriff Villanueva’s March 26 Order applies to and is being
9 enforced “in the 42 contract cities and unincorporated Los Angeles County areas
10 under [his] jurisdiction.” To make circumstances even less clear, Defendant Sheriff
11 Villanueva “deferred to the discretion of each individual chief of police” for each
12 non-contract city in the County of Los Angeles.

13
14 60. “About half of the 88 cities in [Los Angeles] county” – about 46 of the
15 total number of cities – “contract for law enforcement services from the County of
16 Los Angeles,” and “their ‘police department’ is Los Angeles Sheriff’s Department
17 (“LASD”).”¹³

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20 61. Thus, 42 cities within the County of Los Angeles are subject to the
21 Defendant Sheriff Villanueva’s March 26 Order, and the balance of cities within the
22 County of Los Angeles each have their own interpretations of State Defendants’ and
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25 _____
26 ¹³ kcet.org, "A Guide for the Politically Perplexed in L.A. County", online at
27 [https://www.kcet.org/socal-focus/a-guide-for-the-politically-perplexed-in-la-](https://www.kcet.org/socal-focus/a-guide-for-the-politically-perplexed-in-la-county)
28 [county.](https://www.kcet.org/socal-focus/a-guide-for-the-politically-perplexed-in-la-county)

1 Los Angeles County Defendants’ various orders, delegations, directives, policies,
2 practices, and customs to enforce.

3
4 62. According to a March 26, 2020, Associated Press News (“AP News”) report by Stefanie Dazio and Don Thompson, “[Defendant Los Angeles] County
5 Supervisor Sheila Kuehl said while she personally thinks gun stores are not essential
6 businesses, the conflicting findings by [Defendant Los Angeles County Sheriff]
7 Villanueva and the [Defendant C]ounty likely need to get sorted out by a judge.” She
8 was reported to have said: “Let them go to court about it.”¹⁴

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12 63. According to that same AP News report, Defendant City of Los Angeles
13 “officials have deemed gun shops to be nonessential and must close, and that,
14 according to City of Los Angeles City Attorney Mike Feuer, only “life-sustaining”
15 businesses, such as grocery stores and pharmacies, can be open. Feuer was also
16 reported to have said: “There’s nothing essential about being able to purchase a new
17 handgun.”
18

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20
21 64. On March 27, 2020, this action was commenced against the State
22 Defendants and County of Los Angeles Local Defendants.

23 65. Plaintiff Brandy purchased his first firearm on March 18, 2020. He was
24 eligible to pick up his firearm from Oak Tree Gun Club (an establishment in Los
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28 ¹⁴ Thus, Plaintiffs bring the instant action.

1 Angeles County) on March 28, 2020. Under Defendant Sheriff Villanueva's current
2 Order, Plaintiff Brandy may not purchase any ammunition for it. Plaintiff Brady is
3 also prohibited from purchasing an additional self-defense firearm, much less the
4 ammunition required to actually use it, such as a backup handgun or long gun in case
5 his primary firearm fails or if circumstances suggest or require the use of a different
6 type of firearm, due to Defendant Sheriff Villanueva's March 26 Order. Plaintiff
7 Brandy does not own or possess any ammunition and cannot purchase ammunition
8 except through a licensed ammunition vendor under California law. *See* California
9 Penal Code sections 30352, 30370. Thus, Plaintiff Brandy is prohibited from
10 exercising his right to keep and bear loaded, operable firearms for self-defense of
11 himself and his family, including in his home.

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16 66. Plaintiff Daemion Garro and Gun World have been forced to shut down,
17 reopen, and shut down again due to the extremely vague nature of Governor
18 Newsom's Executive Order and the flip-flopping nature of Sheriff Villanueva's
19 position on the essential nature of firearms retailers. This forced shutdown has
20 prevented Plaintiffs Garro and Gun World from providing necessary services and
21 products to ensure that their customers can exercise their fundamental rights to own
22 firearms for self-preservation. Plaintiff Garro and Gun World business and activities
23 of selling firearms are lawful and necessary for the safety and welfare of the public.
24 Plaintiff Garro's business and activities of selling firearms to the general public are
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1 protected by the United States Constitution, by the laws of the State of California,
2 and authorized under the State and County Orders. Further, as a law-abiding gun
3 owner himself, Plaintiff Garro's individual rights to keep and bear arms are being
4 deprived in the same manner as every other law-abiding gun owner in California
5 who is being and will continue to be barred from obtaining any additional
6 ammunition for the firearms he currently owns and any different or additional
7 firearms he may reasonably require to exercise those rights, for so long as the
8 challenged policies, practices, customs are permitted to remain in effect.
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12 67. Cities within the jurisdiction of the Defendant Los Angeles County
13 Sheriff's Order have admitted to being confused about the State Defendants' and
14 Los Angeles County Local Defendants' differing and changing positions on the
15 essential nature of firearm retailers and ranges, and their ability to continue to
16 operate.
17
18

19 68. The Los Angeles County Sheriff provides contract law enforcement for
20 dozens of cities in Los Angeles County, including the City of Cerritos, where
21 Plaintiff Match Grade is located, and in Santa Clarita, where Plaintiff A Place To
22 Shoot is located.¹⁵
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27 ¹⁵ See MUNICIPALITIES: Municipal Police Services - Contract Cities, online at
28 <http://shq.lasnews.net/content/uoa/CLB/CLEB%20Municipalities.pdf>.

1 69. Plaintiff Match Grade retained counsel to obtain legal advice in relation
2 to Defendant Sheriff Villanueva’s March 26 Order to determine whether it could
3 continue to operate. Further, Plaintiff Match Grade has ceased new sales due to
4 Defendant Sheriff Villanueva’s March 26 Order which has resulted in Plaintiff
5 Match Grade having to reduce hours of staff. Plaintiff Match Grade believes that it
6 will suffer further harm, including economic damages, and be forced to lay off its
7 specialized staff if the offending State and local orders and enforcement actions are
8 not enjoined.
9
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12 70. Further, as a law-abiding gun owner himself, the individual rights to
13 keep and bear arms of Plaintiff Montes (the owner and operator of Match Grade) are
14 being deprived in the same manner as every other law-abiding gun owner in
15 California who is being and will continue to be barred from obtaining any additional
16 ammunition for the firearms he currently owns and any different or additional
17 firearms he may reasonably require to exercise those rights, for so long as the
18 challenged policies, practices, customs are permitted to remain in effect.
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21
22 71. The City of Burbank issued the following statement on March 25, 2020,
23 regarding firearm and ammunition stores:
24

25 There has been confusion on certain categories of essential
26 businesses, including gun shows. The County has clarified gun
27 shops are essential businesses under the Safer at Home Order,
28 which aligns with the Governor’s stay at home executive order,
and may remain open. Unfortunately, the Sheriff added to the
confusion yesterday when he announced gun shops should be

1 closed, but last night he reversed himself. The City is under the
2 jurisdiction of Los Angeles County Public Health for purposes of
3 the pandemic, and as such the City follows their orders.¹⁶

4 72. However, on March 27, 2020, Defendant Hess and Defendant City of
5 Burbank issued a new order (“Burbank March 27 Order”) that only allows “essential
6 businesses” under Local Defendants’ Safer at Home for Control of COVID-19 to
7 continue to operate subject to the City’s operating rules. A violation of the City’s
8 order is a misdemeanor crime under Burbank Municipal Code Section 1-1-105.¹⁷
9

10
11 73. State Defendant Governor Newsom’s Executive Order N-33-20, and
12 State Defendant State Public Health Officer Angell’s March 19, 2020 Order and
13 March 22, 2020 list of “Essential Critical Infrastructure Workers,” are collectively
14 referred to as the “State Defendants’ Orders”.
15

16 74. Local Defendant City of Burbank, California and Local Defendant
17 Justin Hess’s March 25, 2020 Statement, and March 27, 2020, document captioned
18 “A Proclamation Instituting New Social Distancing Rules in the City of Burbank to
19 Prevent the Spread of COVID-19 by Director of Emergency Services,” are
20 collectively referred to as the “Burbank Defendants’ Orders”.
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25 ¹⁶ Burbank Police COVID-19 Updates, <https://www.burbankpd.org/covid19>.

26
27 ¹⁷ Burbank March 27 Order, online at
28 <https://www.burbankca.gov/home/showdocument?id=53116>.

1 75. Local Defendant City of Los Angeles, California and Local Defendant
2 Mayor Eric Garcetti’s “Public Order Under City of Los Angeles Emergency
3 Authority” is collectively referred to as the “City of Los Angeles Defendants’
4 Order”.

5
6 76. Local Defendant County of Los Angeles, California, and Local
7 Defendant Director of the Los Angeles County Department of Public Health Barbara
8 Ferrer’s “Safer at Home Order for Control of COVID-19” order, and Local
9 Defendant Los Angeles County Sheriff Alex Villanueva’s various Orders and
10 declarations, including his March 26 Order, are collectively referred to as the
11 “County of Los Angeles Defendants’ Orders”.

12
13 77. Plaintiffs, Plaintiffs’ Members and customers, and those similarly
14 situated to them, seek to exercise their right to keep and bear arms for self-defense
15 of themselves and their families, especially in times of crisis such as this.

16
17 78. The vague, arbitrary and capricious, overbroad, and mercurial nature of
18 the Defendants’ contradictory orders, policies, practices, customs, declarations, and
19 enforcement actions has only served only to further confuse Plaintiffs, Plaintiffs’
20 Members and customers, and those similarly situated to them, who seek to exercise
21 their rights and understand the laws without being subject to criminal and civil
22 liability for violations of said orders.

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1 79. Notably, on March 28, 2020, the Department of Homeland Security,
2 Cyber-Infrastructure Division (“CISA”), issued an “ADVISORY
3 MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL
4 INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE,” online at
5 <https://bit.ly/cisa-guidance-2020-3-28>, under its Web page for “Guidance on the
6 Essential Critical Infrastructure Workforce” during the COVID-19 pandemic.¹⁸
7
8 While the CISA’s guidance is advisory in nature, its findings and conclusions are
9 inherently entitled to great weight in this context, particularly since they were
10 “developed, in collaboration with other federal agencies, State and local
11 governments, and the private sector” for the specific purpose of “help[ing] State,
12 local, tribal and territorial officials as they work to protect their communities, while
13 ensuring continuity of functions critical to public health and safety, as well as
14 economic and national security.” To that very end, CISA specifically determined
15 that “[w]orkers supporting the operation of firearm or ammunition product
16 manufacturers, retailers, importers, distributors, and shooting ranges” fall squarely
17 within the “critical infrastructure workforce.”
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26 ¹⁸ Guidance on the Essential Critical Infrastructure Workforce,
27 [https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-](https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce)
28 [workforce](https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce).

1 84. Defendants’ orders, directives, policies, practices, customs, and
2 enforcement actions prohibit law-abiding individuals from purchasing firearms and
3 ammunition for the purpose of protecting themselves and their families (or for any
4 other purpose). Independently and collectively, these stand as a bar on firearms
5 acquisition and ownership and amount to a categorical ban on and infringement of
6 the right to keep and bear arms and the privileges and immunities of citizenship.
7

9 85. State and local governments do not have the power categorically to
10 prohibit the keeping and bearing of arms by law-abiding people, nor to close off the
11 channels of access by which individuals lawfully obtain and transfer firearms and
12 ammunition.
13

14 86. Because firearm and ammunition transfers must be facilitated by a
15 licensed dealer, Defendants’ orders, directives, policies, practices, customs, and
16 enforcement actions amount to a ban on purchasing and transferring firearms and
17 ammunition. As a result, law-abiding citizens who wish to comply with state laws –
18 by submitting to, for example, background checks, waiting period laws, in-person
19 transfers and safety tests and demonstrations – are foreclosed from acquiring
20 firearms and ammunition legally.
21

22 87. Defendants’ policies, laws, acts, and omissions are untailed and
23 irrational, and expressly allow some goods retailers to continue operating but prevent
24 Retailer Plaintiffs and others similarly situated from operating and selling their
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1 goods to their customers and members of the public, including Individual Plaintiffs
2 and Institutional Plaintiffs' members, thereby violating Plaintiffs' rights. The
3
4 CISA's recently published "Guidance on the Essential Critical Infrastructure
5 Workforce" strongly punctuates this point, through its considered determination that
6
7 "[w]orkers supporting the operation of firearm or ammunition product
8 manufacturers, retailers, importers, distributors, and shooting ranges" fall squarely
9 within the "critical infrastructure workforce" and thus should not only be permitted
10 to, but supported in, continuing their essential operations for the benefit of the public.
11

12 88. Individual and Retailer Plaintiffs reasonably fear that Defendants will
13 enforce against them State Defendants' Orders, Burbank Defendants' Orders, City
14 of Los Angeles Defendants' Order, County of Los Angeles Defendants' Orders, and
15 Defendants' related policies, practices, and customs.
16

17 89. Institutional Plaintiffs reasonably fear that Defendants will enforce
18 against their members –including Individual and Retailer Plaintiffs and similarly
19 situated persons – the challenged laws, policies, practices, and customs.
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22 90. Defendants' laws and ongoing enforcement and threats of enforcement
23 of State Defendants' Orders, Burbank Defendants' Orders, City of Los Angeles
24 Defendants' Order, County of Los Angeles Defendants' Orders, against the Plaintiffs
25 and/or the Plaintiffs' members, as well as their ongoing customs, polices, and/or
26 practices of State Defendants' Orders, Burbank Defendants' Orders, City of Los
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1 Angeles Defendants’ Order, County of Los Angeles Defendants’ Orders,, violate the
2 Second and Fourteenth Amendments.

3
4 91. Defendants’ laws, policies, practices, customs, and ongoing
5 enforcement and threats of enforcement of their various orders and directives against
6 the Plaintiffs, the Plaintiffs’ members and customers, and similarly situated members
7 of the public, which prevent the Plaintiffs, Plaintiffs’ members and customers, and
8 similarly situated members of the public from exercising their rights, including the
9 purchase, sale, transfer of, and training with constitutionally protected arms,
10 ammunition, magazines, and appurtenances – are thus causing injury and damage
11 that is actionable under 42 U.S.C. § 1983.
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15 **COUNT TWO**
16 **DEPRIVATION OF CIVIL RIGHTS**
17 **DUE PROCESS**
18 **U.S. CONST., AMENDS. V AND XIV, 42 U.S.C. § 1983**

19 92. Plaintiffs incorporate herein by reference paragraphs 1 through 91 as if
20 fully set forth herein.

21 93. There is an actual and present controversy between the parties.

22
23 94. Defendants’ conflicting and confusing orders, policies, practices,
24 customs, and enforcement actions are arbitrary and capricious, overbroad,
25 unconstitutionally vague, and violate Plaintiffs, Plaintiffs’ members and customers,
26 and similarly situated members of the public’s Due Process rights.
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1 95. No one of reasonable intelligence, or high intelligence for that matter,
2 with honest intentions of complying with the various conflicting directives at the
3 state and local level could determine to any reasonable degree of certainty whether
4 a firearm and/or ammunition retailer is or is not an “essential” business that can or
5 should remain open to serve the constitutionally protected needs of the general public
6 in this time of crisis.
7

8
9 96. The general edict of Defendant Governor Newsom in Executive Order
10 N-33-20 expressly declared that “all residents are directed to immediately heed the
11 current State public health directives.” He specifically cited and incorporated into
12 the edict those directives set forth in the Safer at Home Order for Control of COVID-
13 19. Besides his later *ad hoc* response to a question posed at a news conference,
14 stating he would ultimately leave it to local sheriffs to determine whether gun shops
15 in the localities are “essential,” the Governor has not since issued any formal
16 statements or other amendments to his initial Order advising residents to follow the
17 directives of anyone other than the State Public Health Officer on the matter of which
18 retailers may continue operating as “essential” businesses.
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23 97. An *ad hoc* statement of the Governor at a news conference, reaching
24 only those who happened to be tuned into the broadcast or who read a news article
25 about it later, cannot reasonably be deemed to have superseded an official written
26 publication posted on the Governor’s website and circulated statewide. Similarly,
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28

1 such a statement could not reasonably be deemed to have superseded the Local
2 Defendants’ orders. The County’s Order specifically provides that it “does not
3
4 supersede any stricter limitation imposed by a local public entity within the *Los*
5 *Angeles County Public Health Jurisdiction.*” Because the County Sheriff is not part
6
7 of the public health jurisdiction, any “stricter limitation” he may have declared in
8 this respect would *not* supersede this Order, leaving it unaffected. Consequently,
9
10 residents of Los Angeles County are effectively left with two distinctly different
11
12 standards on this same subject – the orders of the State and County Health Officers,
13
14 which do *not* expressly deem firearm retailers as “non-essential,” and the Sheriff’s
15
16 declaration which does expressly deem them as “non-essential.” This conflict alone
17
18 produces constitutionally intolerable vagueness because residents have no clear idea
19
20 or notice of which of these directives applies in the first instance.

17
18 98. Moreover, to whatever extent the Governor’s *ad hoc* press conference
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20 declaration deferring to local sheriffs here may have the force of law, as the County
21
22 Sheriff is currently using it, that declaration itself violates fundamental principles of
23
24 due process, because it sets the stage for the very sort of arbitrary and capricious
25
26 enforcement at the heart of the void-for-vague doctrine. If allowed to stand, citizens
27
28 around the state will be faced with varying declarations, edicts, and orders
concerning whether and under what circumstances firearm retailers may remain in
operation as “essential” service providers. This can already be seen in the existing

1 conflict between San Diego and Los Angeles County, where the residents of these
2 two Southern California counties within close proximity to one another are being
3 subjected to two completely different forms of law enforcement concerning the same
4 subject even though it all of them in the very same way.
5

6
7 99. And what is to be made of the 46 “non-contract” cities within the
8 County of Los Angeles that are *not* subject to the Defendant Sheriff Villanueva’s
9 declaration that firearms retailers are “non-essential?” Since, according to the
10 Sheriff’s own words, the declaration does not apply to these cities, all of them will
11 apparently be left to establish and implement their individual determinations,
12 creating the possibility of significant variation throughout the entire County.
13
14

15 100. A similar breed of arbitrariness subsists within the County’s Safer at
16 Home Order itself, as the order classifies as “essential” a variety of businesses which
17 have no clear connection to *essential* goods and services, particularly in a time of
18 crisis. For example, mowing, landscaping, gardening, and personal grooming
19 services are deemed to expressly fall within this category, while firearms retailers
20 are not, even though their connection to the *essentials* of life in a crisis – securing
21 the fundamental right of defense of the self and home through all lawful means – is
22 crystal clear, as highlighted in CISA’s published guidelines.
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26 101. Additionally, while the Safer at Home Order does not expressly include
27 firearms retailers as “essential” businesses, it does not expressly *exclude* them either,
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1 creating further confusion since, again, the Order stands independent of and
2 unaffected by the declaration of the Sheriff. For instance, Paragraph 13(a) of the
3 Order defines “Essential Businesses” as including “establishments engaged in the
4 retail sale of ... other household consumer products ... [including] stores that sell ...
5 products necessary to maintaining the safety ... and essential operation of
6 residences.” Paragraph 13(h) also “other service providers who provide services to
7 maintain the safety ... and essential operation of properties and other Essential
8 Businesses.” And Paragraph 13(n) includes businesses that “supply other Essential
9 Businesses with the support or supplies necessary to operate.” Paragraph 13(o)
10 protects “businesses that ship ... goods ... to residences, Essential Businesses[.]”

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15 102. As so defined, the Order could reasonably be interpreted to mean
16 firearm retailers fall within the intended definition of “essential businesses,” contrary
17 to the Sheriff’s “non-essential declaration.
18

19 103. Plaintiffs are comprised of individuals eligible to possess and acquire
20 firearms and ammunition, firearm and ammunition retailers, education facilities and
21 shooting ranges, and institutional entities who desire to shop, purchase, transfer and
22 sell firearms, including ammunition, magazines, and appurtenances, but are
23 precluded from doing so — without reasonable fear of criminal prosecution — as a
24 direct result of the unlawful, vague, and unduly overbroad laws, orders, policies,
25 practices, customs, and enforcement issued by Defendants in this case.
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1 104. Retailer Plaintiffs, and others similarly situated, are firearms dealers
2 supplying retail sales and services for self-defense and law enforcement (itself an
3 essential service). These sales include items like firearms, ammunition, accessories,
4 appurtenances, survival gear, and other consumer products both at retail and online
5 (including shipping). The services include those that are mandated by state law to
6 effect firearm transfers, such as the initiation of background checks, administration
7 and collection of personal identifying data (including fingerprints), administration
8 of waiting period laws, administration of firearm safety tests, and safe handling
9 demonstrations, all of which must be conducted in person pursuant to state law.
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13 105. These same Plaintiffs fall within the essential meaning of “Essential
14 Businesses” definitions in the County’s Safer at Home Order, and within any other
15 reasonable definition of that term, because they are establishments engaged in the
16 retail sale of household consumer products necessary for maintaining the safety of
17 its residents, including the sale or transfer of pistols, rifles, shotguns, ammunition,
18 accessories, and components necessary for the defense of their home, selves, and
19 defense of others. They are service providers who provide products such as firearms,
20 ammunition, and servicing of same that are needed to maintain the safety and
21 essential operation of residences (home and personal defense) and other essential
22 businesses. They are businesses that ship goods to residences and essential
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1 businesses. They are, in every meaningful sense, “essential,” as CISA has recognized
2 and as San Diego County has declared in expressly deeming them such.
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4 106. However, the subject Orders deprive or fail to accord these business
5 such status; they do not define critical terms; they encompass protected and non-
6 protected actions; they omit definitions of key terms; they operate as complete bans;
7 they do not require specific intent to commit an unlawful act; and they permit and
8 encourage arbitrary and erratic arrests and convictions with too much discretion
9 committed to law enforcement. This breadth and built-in vagueness run afoul of the
10 due process clause because the subject Orders fail to give adequate guidance to those
11 who would be law-abiding, to advise them of the nature of the offense with which
12 they may be charged, or to guide courts in trying those who are accused of violating
13 such Orders. Plaintiffs, including retailers and consumers, cannot be required to
14 guess at the meaning of such Orders. As a direct result, such Orders must be
15 invalidated on their face and as applied.
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20 107. The subject Orders are also unconstitutionally vague and overly broad
21 because they are worded in a standard-less way that invites arbitrary enforcement.
22 This impermissible uncertainty is illustrated when sheriffs from two different
23 counties (San Diego and Los Angeles) openly and publicly disagree on whether gun
24 shops/firearm retail stores (including shipping activities) are essential businesses or
25 not. If the Governor of the State of California, the State Public Health Officer, 58
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1 county sheriffs, the 88 cities within Los Angeles County, the various county counsel,
2 city leaders and police chiefs, and local health officials of each municipality cannot
3 agree on and clearly declare what individuals and businesses are or are not “covered”
4 under the State Defendants’ orders, and how local authorities should interpret and
5 apply them, then it is neither reasonable nor feasible for persons of reasonable
6 intelligence and honest intentions, including Plaintiffs and Plaintiffs’ members and
7 customers, to understand and abide by such Orders.
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11 108. Defendants’ laws and ongoing enforcement and threats of enforcement
12 of their various orders and directives against the Plaintiffs, the Plaintiffs’ members
13 and customers, and similarly situated members of the public, as well as their ongoing
14 policies and practices are unconstitutionally vague, arbitrary and capricious, fail to
15 provide adequate notice, and place Plaintiffs, Plaintiffs’ members and customers,
16 and similarly situated members of the public at risk of serious criminal and civil
17 liability, including arrest, prosecution, loss of rights, fines, and, with respect to the
18 Retailer Plaintiffs, loss of their licenses. Defendants’ orders and actions violate the
19 Fifth and Fourteenth Amendment rights of Plaintiffs, Plaintiffs’ members and
20 customers, and similarly situated members of the public and are thus causing injury
21 and damage that is actionable under 42 U.S.C. § 1983.
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26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray for the following relief:
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1 1. A declaratory judgment that the operation of firearm and ammunition
2 product manufacturers, retailers, importers, distributors, and shooting ranges are
3 essential under the State Defendants’ Orders and the Federal Government’s March
4 28, 2020 “Essential Critical Infrastructure Workforce” Guidance and allowed to
5 operate, or in the alternative, that State Defendants’ Orders, enforcement policies,
6 practices, and customs individually and/or collectively prohibit the operation of
7 licensed firearm and ammunition product manufacturers, retailers, importers,
8 distributors, and shooting ranges and thus individually and/or collectively violate the
9 Second, Fifth, and Fourteenth Amendments;
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13 2. If State Defendants’ Orders, enforcement policies, practices, and
14 customs individually and/or collectively prohibit the operation of licensed firearm
15 retailers and shooting ranges and thus individually and/or collectively violate the
16 Second, Fifth, and Fourteenth Amendment, a preliminary and permanent injunction
17 restraining State Defendants and their officers, agents, servants, employees, and all
18 persons in concert or participation with them who receive notice of the injunction,
19 from enforcing State Defendants’ Orders and enforcement policies, practices, and
20 customs that individually and/or collectively violate the Second, Fifth, and
21 Fourteenth Amendments;
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26 3. A declaratory judgment that Local Defendants’ Orders, including the
27 County of Los Angeles Defendants’ Orders, Burbank Defendants’ Orders, and City
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1 of Los Angeles Defendants’ Order, and Local Defendants’ enforcement policies,
2 practices, and customs challenged herein individually and/or collectively violate the
3
4 Second, Fifth, and Fourteenth Amendments;

5 4. A preliminary and permanent injunction restraining Local Defendants
6 and their officers, agents, servants, employees, and all persons in concert or
7 participation with them who receive notice of the injunction, from enforcing their
8 respective Orders and enforcement policies, practices, and customs that individually
9 and/or collectively violate the Second, Fifth, and Fourteenth Amendments;
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12 5. Nominal damages against Local Defendants;

13 6. All other and further relief, including injunctive relief, against
14 Defendants as necessary to effectuate the Court’s judgment, or as the Court
15 otherwise deems just and equitable; and,
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17 7. Attorney’s fees and costs pursuant to 42 U.S.C. § 1988 and any other
18 applicable law.
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20 Respectfully submitted this 29th day of March 2020.
21

22 **SEILER EPSTEIN LLP**

23 */s/ George M. Lee*
24 _____
25 George M. Lee

26 Attorney for Plaintiffs
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