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

12 Donald McDougall an Individual;  
13 Plaintiffs,  
14 v.  
15 COUNTY OF VENTURA CALIFORNIA,  
16 Does 1-20 and Roes 1-20  
17 Defendant.

CASE NO.

**COMPLAINT FOR INJUNCTIVE  
RELIEF VIOLATION OF U.S. CONST  
(42 U.S.C.A. § 1983 (West))**

**(JURY TRIAL DEMANDED)**

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20 Come Now the Plaintiff, Donald McDougall by and through undersigned counsel, and complain of  
21 the Defendant as follows:

22 **THE PARTIES**

- 23 1. Plaintiff Donald McDougall (Plaintiff) is a natural person and a citizen of the United States  
24 residing in Camarillo, California county of Ventura.  
25 2. Defendant County of Ventura (Ventura County) is a county organized under the  
26 Constitution and laws of the State of California.

**JURISDICTION AND VENUE**

- 3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.A. § 131,1343,2201,2202 (West), 42 U.S.C.A. § 1983.
- 4. Venue lies in this Court pursuant to 28 U.S.C.A. § 1391 (West).

**INTRODUCTION**

- 5. This lawsuit is a 42 U.S.C.A. § 1983 action seeking declaratory and injunctive relief from the Ventura County Stay Well at Home Order of the Ventura County Health Officer deprivation of Plaintiff and Ventura County residents’ 14<sup>th</sup> Amendment right to due process and infringement on Plaintiff’s Second Amendment rights.
- 6. On March 19, 2020 Governor Newsom issued Executive Order N-33-20 directing all residents immediately heed current State and public health directives to stay at home.
- 7. Under the executive Order all non-essential businesses were ordered closed.
- 8. Under the executive Order law enforcement and private security was deemed an essential workforce.
- 9. March 20<sup>th</sup>, 2020 Ventura County Health Officer issued a Stay Well at Home Order which ordered all non- essential business closed.
- 10. Stay Well at Home Order in Paragraph 7(e)(15) defines an essential business as businesses that supply other essential businesses with the support or supplies necessary to operate.
- 11. Ventura County deemed Gun Stores as a non-essential business.
- 12. Gun Stores supplies, products needed for law enforcement and private security both which are essential businesses/workforce.
- 13. In California, individuals are required to purchase and transfer firearms and ammunition through state and federally licensed dealers.
- 14. Furthermore, the Second Amendment guarantees citizens the right to keep and bear arms.
- 15. The right to bear arms is a fundamental right enumerated in the Second Amendment.
- 16. The various Orders that have been put in place by Ventura County and the Ventura County Health Officer Robert Levin, MD are unconstitutionally vague, over burdensome, and overly broad, and violate the Second and Fourteenth Amendment rights of Plaintiff and similarly situated Ventura County residents.

1 17. This order essentially bans the sale of guns in Ventura County.

2 **LEGAL AUTHORITIES AND STANDARD OF REVIEW**  
3 **STRICT SCRUTINY**

4 **U.S. Const. amend. II AND XIV**

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

8 19. The Second Amendment “guarantee[s] the individual right to possess and carry weapons in  
9 case of confrontation.” [District of Columbia v. Heller \(2008\) 554 U.S. 570, 592 \[128 S.Ct. 2783, 171 L.Ed.2d 637\]](#). And it “elevates above all other interests the right of law-abiding,  
10 responsible citizens to use arms in defense of hearth and home.” [Id. at p. 635](#).

11 20. The Second Amendment is fully applicable to the States through the Fourteenth  
12 Amendment’s Due Process and Privileges or Immunities Clauses. [McDonald v. City of Chicago, Ill. \(2010\) 561 U.S. 742, 750 \[130 S.Ct. 3020, 177 L.Ed.2d 894\]](#); [id. at p. 805](#)  
13 (Thomas, J., concurring).

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

19 22. Plaintiff alleges violations under the Second and Fourteenth Amendment are fundamental  
20 rights under the U.S. Constitution and therefore Strict Scrutiny should be used to analyze  
21 the infringement. With Strict scrutiny, Ventura County must show a compelling  
22 governmental interest, narrowly tailored to achieve the goal, and the least restrictive way to  
23 achieve that goal.

24 23. Ventura County may have a compelling government interest, to ensure that the Maximum  
25 number of persons stay indoors in order to slow the spread of COVID-19 to the maximum  
26 extent possible. (see exhibit a) However, Ventura County did not narrowly tailor and took  
27 the most restrictive way to achieve that goal, by closing gun stores. There are least  
28 restrictive ways to achieve that goal, Ventura County, allows other business such as

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drycleaners to remain open using measure such as social distancing, or having customers shop by appointment. None of these measures were taken prior to closing the gun stores.

**EXECUTIVE ORDER N-33-20**

24. Effective March 19, 2020, Governor Gavin Newsom signed Executive Order N-33-20, directing all individuals living in California to “stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors.” This Order is in place until further notice. The Executive Order provides that Californians working in critical infrastructure sectors may continue their work because of the importance of these sectors to Californians’ health and well-being. The Executive Order includes a list of Essential Workforce/Critical Infrastructure<sup>1</sup> which named law enforcement and private security as an essential workforce.

**STAY WELL AT HOME ORDER OF THE VENTURA COUNTY HEALTH OFFICER**

25. Effective March 20, 2020, Robert Levin M.D., Ventura County Health Officer signed the Stay Well at Home Order (Exhibit A) which incorporated Executive Order N-33-20, directing all individuals living in Ventura County to “*Stay at their place of residence as required by the Governor’s Executive Order N-33-20, subject to the exemptions set forth in this order*” Further, the Stay Well at Home Order §3 list exemptions to the Order which states in part “*Persons may leave their places of residence only for Essential Activities...to operate or work at Essential Businesses*” §7 (e) (15) defines an essential business as “*Businesses that supply other Essential Businesses with the support or supplies necessary to operate...*”

26. Gun stores provide supplies necessary for the operation of private security and law enforcement, however if gun stores are closed they are not made available to the essential workforce.

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<sup>1</sup> <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>

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27. Further, the order states that violations of the Stay Well at Home Order are a misdemeanor punishable by imprisonment, fine, or both under California Health and Section Code 120295 *et seq.*

**STATEMENT OF FACTS**

28. In California, individuals are required to purchase and transfer firearms and ammunition through state and federally licensed dealers.

29. Under Federal and State law anyone in California, individuals are required to complete a background check with a 10 day wait period. Once 10 days has passed the purchaser has 30 days to pick up their firearm and complete the transfer documents.

30. Further, it is required that prior to the purchaser removing the firearm from the licensed gun store they do so with a gunlock and gun box. These items are also available for purchased at a gun store.

31. Mr. McDougall, purchased a firearm from a Gun Store within the County of Ventura. During the mandatory waiting period, the Executive order N-33-20 and Stay Well at Home Orders were enacted.

32. The County of Ventura upon advice from County Counsel Leroy Smith declared all Gun Stores within the county limits were non-essential and thereby forcing the gun stores to close.

33. After the closure Plaintiff has been unable to pick up his purchased firearm; Mr. McDougal and similarly situated Ventura county residents’ constitutional rights under the second amendment are currently being violated.

**FIRST CAUSE OF ACTION-CLOSING OF GUN STORES**  
**RIGHT TO KEEP AND BEAR ARMS**

[U.S. Const. amend. II AND XIV 42 U.S.C.A. § 1983](#)

34. Plaintiffs incorporate herein by reference paragraphs 1 through 32 as if fully set forth herein.

35. The Second Amendment right is incorporated as against the states and their political subdivisions pursuant to the Due Process Clause of the Fourteenth Amendment.

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36. The Second Amendment right to keep and bear arms is a privilege and immunity of United States citizenship which, pursuant to the Fourteenth Amendment, states and their political subdivisions may not violate.

37. By the closing gun stores, Ventura County currently maintain and actively enforce a set of laws, customs, practices, and policies under color of state law which deprive individuals, including Plaintiff, of their right to keep and bear arms, in violation of the Second and Fourteenth Amendments to the United States Constitution.

38. These closures are essentially banning firearm sales in Ventura County.

39. Plaintiff and similarly situated Ventura County residents are thus damaged in violation of [42 U.S.C.A. § 1983](#). Plaintiff is therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of Ventura County’s unconstitutional customs, policies, and practices.

40. Executive Order N-33-20, Safer at Home Order For Control of COVID- 19 the Ventura County’s policies, practices, and customs prohibit law-abiding individuals from purchasing firearms and ammunition for the purpose of protecting themselves and their families (or for any other purpose). Independently and collectively, these acts stand as a bar on firearms acquisition and ownership and amount to a categorical ban on and infringement of the right to keep and bear arms and the privileges and immunities of citizenship.

**SECOND CAUSE OF ACTION – NEW FIREARM PURCHASE**  
**EQUAL PROTECTION**

[U.S. Const. amend. XIV 42 U.S.C.A. § 1983](#)

41. Paragraphs 1 through 39 are incorporated as though fully stated herein.

42. By forcing gun stores to close Ventura County currently maintain and actively enforce a set of laws, customs, practices, and policies under color of state law which deprive individuals, including the Plaintiff, of their right to equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution. Plaintiff and similarly situated Ventura County residence are thus damaged in violation of [42 U.S.C.A. § 1983](#).

43. Ventura County Residents who wish to purchase firearms post Executive Order N-33-20 and The Stay Well at Home Order are unable to purchase firearms, as other Ventura County Residents were able to do so pre Orders.

1 44. Plaintiff is therefore entitled to declaratory and permanent injunctive relief against  
2 continued enforcement of unconstitutional customs, policies, and practices.

3 45. Plaintiffs incorporate herein by reference paragraphs 1 through 34 as if fully set forth  
4 herein.

5 **INJUNCTIVE RELIEF-STANDARD**

6 46. Plaintiffs incorporate herein by reference paragraphs 1 through 43 as if fully set forth  
7 herein.

8 47. Plaintiffs are entitled to preliminary injunctive relief if they show: (1) likely success on the  
9 merits; (2) likely irreparable harm absent preliminary relief; (3) the balance of equities tips  
10 in their favor; and (4) an injunction is in the public’s interest. [Pimentel v. Dreyfus](#) (9th Cir.  
11 2012) 670 F.3d 1096, 1105–06; [Sierra Forest Legacy v. Rey](#) (9th Cir. 2009) 577 F.3d 1015,  
12 1021. Under our “sliding scale” approach, a stronger showing of one element may offset a  
13 weaker showing of another, as long as plaintiffs “establish that irreparable harm is likely.”  
14 All for [Alliance for the Wild Rockies v. Cottrell](#) (9th Cir. 2011) 632 F.3d 1127, 1131.

15 48. Plaintiff enjoys a fundamental right to keep and bear arms. [McDonald, supra](#), 561 U.S.  
16 742,130S.Ct. 3020, 2010 (2010) (majority op.), at \*113 (Thomas, J.). “[T]he inherent right  
17 of self-defense has been central to the Second Amendment right.” [District of Columbia,](#)  
18 [supra](#), 128 S.Ct. at p. 2817.

19 49. However, if gun stores are not open and made available to the essential workforce Plaintiff  
20 and similarly situated residence of Ventura County they will continue to suffer irreparable  
21 harm.

22 50. There is no way to quantify, in terms of money damages, the inability to engage in  
23 protected Second Amendment activity such as the purchase of firearms.

24 51. Plaintiff will prevail on the merits as Ventura County closures of gun stores violate  
25 Plaintiff’s and similarly situated Ventura County resident’s second amendment rights.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray for the following relief:

- 28 1. Plaintiff request a preliminary and permanent injunction restraining Ventura County  
and their officers, agents, servants, employees, and all persons in concert or  
participation with them who receive notice of the injunction, from enforcing Stay

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Well at Home Order on gun stores situated within Ventura County and Ventura County’s policies, practices, and customs that individually and/or collectively prohibit the purchase and sale of firearms and ammunition;

2. An injunction directing Ventura County and their officers, agents, servants, employees, and all persons in concert or participation with them who receive notice of the injunction, to cease and desist enacting or enforcing any Order or declaration that firearm and ammunition retailers are not an essential business, or, in the alternative, an injunction preventing Ventura County from enforcing their laws, policies, practices, and customs that prevent individuals from buying and selling arms in accordance with State and federal laws;
3. Nominal damages against Ventura County;
4. All other and further relief, including injunctive relief, against Ventura County as necessary to effectuate the Court’s judgment, or as the Court otherwise deems just and equitable; and,
5. Attorney’s fees and costs pursuant to [42 U.S.C.A. § 1988 \(West\)](#) and any other applicable law. Attorney Fees and Costs pursuant to [42 U.S.C.A. § 1988](#); Costs of suit; and
6. Any other further relief as the Court deems just and appropriate.

Dated: March 28, 2020

**/S/ Ronda Baldwin-Kennedy**  
Ronda Baldwin-Kennedy, Esq.