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16 Attorneys for Plaintiffs

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 DONALD MCDOUGALL, an
20 individual; JULIANA GARCIA, an
21 individual; SECOND AMENDMENT
22 FOUNDATION; CALIFORNIA GUN
23 RIGHTS FOUNDATION; and
24 FIREARMS POLICY COALITION,
25 INC.,

26 Plaintiffs,

27 vs.

28 COUNTY OF VENTURA,
CALIFORNIA; BILL AYUB, in his
official capacity; WILLIAM T. FOLEY,
in his official capacity, ROBERT
LEVIN, in his official capacity; and
VENTURA COUNTY PUBLIC
HEALTH CARE AGENCY,

Case No. 2:20-cv-02927

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

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Defendants.

Plaintiff Donald McDougall, *et al.* (“Plaintiffs”), by and through counsel of record, bring this complaint for injunctive and declaratory relief against the named Defendants, and allege as follows:

INTRODUCTION

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

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

1 essential businesses—at least once for ammunition, and at least twice for firearms.

2 3. In California, individuals are required to purchase and transfer
3 firearms and ammunition through state and federally licensed dealers in face-to-
4 face transactions or face serious criminal penalties. Shuttering access to arms, the
5 ammunition required to use those arms, and the ranges and education facilities that
6 individuals need to learn how to safely and competently use arms, necessarily
7 closes off the Constitutional right to learn about, practice with, and keep and bear
8 those arms. By forcing duly licensed, essential businesses to close or eliminate key
9 services for the general public, government authorities are foreclosing the only
10 lawful means to buy, sell, and transfer firearms and ammunition available to
11 typical, law-abiding individuals in California. Such a prohibition on the right to
12 keep and bear arms is categorically unconstitutional.

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17 4. The circumstances posed by the COVID-19 Novel Coronavirus
18 outbreak present challenges to all of us, including the government. Responding to
19 those challenges, for example, some law enforcement officials are releasing
20 inmates from jails. With governments having no legal duty to protect the people
21 they serve, and with no guarantee that law enforcement can or will respond to 911
22 calls during this crisis or after it (let alone in time to prevent a crime), people who
23 choose to exercise their fundamental, individual rights are not part of the crisis;
24 rather, they are responding rationally to the impacted caused by the crisis.
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1 5. Such governmental action during the height of an acknowledged crisis
2 also violates the constitutional checks and balances that are the hallmark of limited
3 government and separation of powers. This suit challenges not only the underlying
4 orders and enforcement policies for their blatant violations of enumerated
5 constitutional rights, it also challenges the manner in which those policies were
6 enacted. It is a bedrock principle of our constitutional order that legislatures may
7 not enact overbroad and effectively bound-less laws that give unfettered discretion
8 to executive agencies to ‘figure out’ the details later, while also ‘passing the buck’
9 to those executive agencies to make and enforce the policies that impact the
10 people’s lives, liberty, and property.

11 6. The need for self-defense during uncertain times is precisely when
12 Plaintiffs and Plaintiffs’ members must be able to exercise their fundamental rights
13 to keep and bear arms. The challenges we all face because of the COVID-19
14 Coronavirus, or any other such emergency, does not, cannot, and must not justify
15 or excuse government infringements upon fundamental human rights. The
16 declaratory and injunctive relief that Plaintiffs have been forced to seek through
17 this action is necessary to uphold this bedrock principle of the United States
18 Constitution.

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PARTIES

Individual Plaintiffs

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4 7. Plaintiff Donald McDougall is a natural person, a citizen of the United
5 States, and a resident of Ventura County, California. Plaintiff McDougall is not
6 prohibited from possessing or acquiring arms, including firearms and ammunition,
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8 under state and federal law. Plaintiff McDougall holds a valid California Carry
9 Concealed Weapons License (“CCW”). Plaintiff McDougall is concerned about his
10 safety and the safety of his family, wants to exercise his right to keep and bear
11 arms – including firearms, ammunition, magazines, and appurtenances – and would
12 do so, but for the reasonable and imminent fear of arrest and criminal prosecution
13 under Defendants’ laws, policies, orders, practices, customs, and enforcement, and
14 because Defendants’ orders and actions have closed firearm and ammunition
15 retailers and ranges.

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19 8. Plaintiff Garcia is a natural person, a citizen of the United States, and
20 a resident of Ventura County, California. Plaintiff Garcia is not prohibited from
21 possessing or acquiring arms, including firearms and ammunition, under state and
22 federal law. Plaintiff Garcia does not hold a valid California Firearm Safety
23 Certificate (“FSC”) but wishes to obtain one. Plaintiff Garcia is concerned about
24 her safety and the safety of her family, wants to exercise her right to keep and bear
25 arms – including firearms, ammunition, magazines, and appurtenances – and would
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1 do so, but for the reasonable and imminent fear of arrest and criminal prosecution
2 under Defendants’ laws, policies, orders, practices, customs, and enforcement, and
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4 because Defendants’ orders and actions have closed firearm and ammunition
5 retailers and ranges.

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7 ***Institutional Plaintiffs***

8 9. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a nonprofit
9 educational foundation incorporated under the laws of Washington with its
10 principal place of business in Bellevue, Washington. SAF seeks to preserve the
11 effectiveness of the Second Amendment through education, research, publishing,
12 and legal action programs focused on the Constitutional right to possess firearms,
13 and the consequences of gun control. SAF has over 650,000 members and
14 supporters nationwide, including thousands of members in California. SAF brings
15 this action on behalf of itself and its members. Individual Plaintiffs are members of
16 SAF.
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20 10. Plaintiff California Gun Rights Foundation (“CGF”) is a nonprofit
21 foundation incorporated under the laws of California with its principal place of
22 business in Sacramento, California. CGF serves its members, supporters, and the
23 public through educational, cultural, and judicial efforts to defend and advance
24 Second Amendment and related rights. CGF has thousands of members and
25 supporters in California, including members in Defendants’ jurisdiction and the
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1 Individual Plaintiffs herein. The interpretation and enforcement of the Second
2 Amendment directly impacts CGF’s organizational interests, as well as the rights
3 of CGF’s members and supporters. CGF has expended and diverted resources, and
4 has been adversely and directly harmed, because of Defendants’ laws, policies,
5 practices, and customs challenged herein. CGF brings this action on behalf of
6 itself, its members, supporters who possess all the indicia of membership, and
7 similarly situated members of the public.
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11 11. Plaintiff Firearms Policy Coalition, Inc. (“FPC”) is a nonprofit
12 organization incorporated under the laws of Delaware with a place of business in
13 Sacramento, California. The purposes of FPC include defending and promoting the
14 People’s rights – especially but not limited to First and Second Amendment rights
15 – advancing individual liberty and restoring freedom. FPC serves its members and
16 the public through legislative advocacy, grassroots advocacy, litigation and legal
17 efforts, research, education, outreach, and other programs. FPC’s has members in
18 the State of California, including members in Defendants’ respective jurisdiction
19 and the Individual Plaintiffs herein. FPC represents its members and supporters—
20 who include gun owners, individuals who wish to acquire firearms and
21 ammunition, licensed California firearm retailers, shooting ranges, trainers and
22 educators, and others—and brings this action on behalf of itself, its members,
23 supporters who possess all the indicia of membership, and similarly situated
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1 members of the public. FPC has expended and diverted resources, and is adversely
2 and directly harmed, because of Defendants' laws, policies, orders, practices, and
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4 customs challenged herein.

5 *Defendants*

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

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14 13. Defendant Bill Ayub is the Sheriff of Defendant Ventura County,
15 California and head of Ventura County Sheriff's Office. As the Sheriff, he is
16 responsible within the County for the enforcement and execution of the laws,
17 orders, policies, practices, customs, and actions at issue in this lawsuit. Defendant
18 Ayub is sued in his official capacity.
19

20
21 14. Defendant William T. Foley is the Director of the Ventura County
22 Public Health Care Agency, which issues and enforces some of Defendant Ventura
23 County's laws, and related California Government and Health and Safety Codes,
24 including those at issue herein. Defendant Foley is sued in his official capacity.
25

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27 15. Defendant Robert Levin is the Public Health Medical Director and
28 Health Officer for Defendant County of Ventura, California. Defendant Levin

1 issued and enforces the Defendant County’s Order. On information and belief,
2 Defendant Levin reports to Defendant Foley. Defendant Levin is sued in his
3
4 official capacity.

5 16. The Ventura County Public Health Care Agency is the department
6 responsible for public health in Ventura County, which issues and enforces some of
7
8 Defendant Ventura County’s Orders and laws, and related California Government
9 and Health and Safety Codes, including those at issue herein.

10
11 **JURISDICTION AND VENUE**

12 17. This Court has jurisdiction over all claims for relief pursuant to 28
13 U.S.C. §§ 1331, 1343, 2201, and 2202, and 42 U.S.C. §§ 1983 and 1988, as this
14
15 action seeks to redress the deprivation under color of the laws, statutes, ordinances,
16 regulations, customs, and usages of the State of California, of the rights, privileges
17
18 or immunities secured by the United States Constitution.

19 18. Venue lies in this Court under 28 U.S.C. § 1391, as the events giving
20
21 rise to Plaintiffs’ causes of action arose or exist in this District in which the action
22
23 is brought.

24 **STATEMENT OF FACTS COMMON TO ALL CLAIMS**
25 *Constitutional Background*

26 19. The Second Amendment to the United States Constitution provides:
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28 “A well-regulated Militia being necessary to the security of a free State, the right of
the people to keep and bear Arms shall not be infringed.”

1 20. The Second Amendment “guarantee[s] the individual right to possess
2 and carry weapons in case of confrontation.” *District of Columbia v. Heller*, 554
3 U.S. 570, 592 (2008). And it “elevates above all other interests the right of law-
4 abiding, responsible citizens to use arms in defense of hearth and home.” *Id.* at 635.
5

6 21. The Second Amendment is fully applicable to the States through the
7 Fourteenth Amendment’s Due Process and Privileges or Immunities Clauses.
8 *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *id.* at 805 (Thomas, J.,
9 concurring). In *McDonald*, the Supreme Court held “that the Second Amendment
10 right is fully applicable to the States.” *Id.* at 750. And Justice Thomas further held
11 that the “right to keep and bear arms is a privilege of American citizenship that
12 applies to the States through the Fourteenth Amendment’s Privileges or Immunities
13 Clause.” *Id.* at 806.
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17 22. Article IV, § 2, Cl. I of the United States Constitution provides: “The
18 citizens of each state shall be entitled to all privileges and immunities of citizens in
19 the several states.”
20

21 23. The Fifth Amendment to the United States Constitution provides in
22 the pertinent part:
23

24 No person shall ... be deprived of life, liberty, or
25 property, without due process of law...

26 24. The Fourteenth Amendment to the United States Constitution provides
27 in pertinent part:
28

1 No state shall make or enforce any law which shall
2 abridge the privileges or immunities of citizens of the
3 United States; nor shall any state deprive any person of
4 life, liberty, or property, without due process of law; nor
5 deny to any person within its jurisdiction the equal
6 protection of the laws.

7 25. Individuals have a right to travel outside their county of residence.

8 26. Individuals have a right to keep and bear arms, including but not
9 limited to, buying, selling, transferring, transporting, carrying, and practicing safety
10 and proficiency with firearms, ammunition, magazines, and appurtenances, under
11 the Second and Fourteenth Amendments to the United States Constitution.

12 27. In 2008, the United States Supreme Court held that the District of
13 Columbia’s requirement that permitted firearms within the home, but required that
14 said firearms in the home be kept inoperable, made it impossible for citizens to use
15 firearms for the core lawful purpose of self-defense and was hence
16 unconstitutional. *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008).

17 28. In 2010, the United States Supreme Court held that—the Second
18 Amendment right to keep and bear arms is—fundamental to our scheme of ordered
19 liberty and, therefore, incorporated against the states through the Due Process
20 Clause of the Fourteenth Amendment. *McDonald v. Chicago*, 130 S. Ct. 3020,
21 3036 (2010).

22 29. The “central” – but not only – holding of the Supreme Court in *Heller*
23 was “that the Second Amendment protects a personal right to keep and bear arms
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1 for lawful purposes, most notably for self-defense within the home.” *McDonald*,
2 561 U.S. at 780. “The very enumeration of the right takes out of the hands of
3 government—even the Third Branch of Government—the power to decide on a
4 case-by-case basis whether the right is really worth insisting upon.” *Heller*, 554
5 U.S. at 634.
6

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8 30. A two-part test, and tiered scrutiny generally, is inappropriate for laws
9 that infringe upon the Second Amendment right to keep and bear arms, including
10 the Orders and enforcement actions at issue in this case.
11

12 31. The fundamental, individual right to keep and bear loaded, operable
13 firearms in the home includes the right to lawfully acquire firearms, ammunition,
14 magazines, and appurtenances.
15

16 32. Individuals have a right to buy, sell, transfer, and practice with arms,
17 including but not limited to, firearms, ammunition, magazines, and required
18 appurtenances.
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20 33. Licensed firearm and ammunition retailers and shooting ranges are
21 necessary to individuals’ lawful acquisition of firearms and ammunition, including
22 but not limited to complying with federal and state background check
23 requirements, due to the onerous and complicated web of regulatory schemes that
24 prohibit the exercise of the constitutional right to keep and bear arms without going
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1 in person to these essential businesses – at least once for ammunition and at least
2 twice for firearms.

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4 **FACTS COMMON TO ALL CLAIMS**

5 ***State and Federal Orders***

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7 34. On or about March 4, 2020, Governor Newsom proclaimed a State of
8 Emergency as a result of COVID-19.

9
10 35. On March 19, 2020, Governor Gavin Newsom signed Executive
11 Order N-33-20,¹ directing all individuals living in California to “stay home or at
12 their place of residence except as needed to maintain continuity of operations of the
13 federal critical infrastructure sectors.” Executive Order N-33-20 is in place until
14 further notice.

15
16 36. The Governor’s N-33-20 directed all California residents “to heed”
17 the directives of the State Public Health Officer, Sonia Angell, and incorporated
18 into the Executive Order Director Angell’s Order of the same date.²

19
20 37. Director Angell’s Order states that all people in California must stay
21 home people “except as needed to maintain continuity of operations of the federal
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23
24 ¹ Executive Department, State of California, Governor Gavin Newsom Executive
25 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>.

26 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 critical infrastructure sectors, as outlined at [https://www.cisa.gov/identifying-](https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19)
2 [critical-infrastructure-during-covid-19.](https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19)”
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4 38. An express purpose of Angell’s Order is to “establish consistency
5 across” – i.e., throughout – “the state.”
6

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

5 ***Statutory Background***

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7 40. In California, a violation of a statute is a misdemeanor unless
8 specified to be punishable otherwise. California Penal Code Prelim. Prov. 19.4
9 (‘When an act or omission is declared by a statute to be a public offense and no
10 penalty for the offense is prescribed in any statute, the act or omission is
11 punishable as a misdemeanor.’)
12

13
14 41. Under California law and regulations, individuals must acquire
15 modern firearms from duly licensed firearm retailers. *See generally* Penal Code
16 sections 27545; 28050, et seq.
17

18
19 42. Under California law and regulations, and with few very limited
20 exceptions, individuals must acquire or otherwise transfer and take possession of
21 ammunition from duly licensed firearm and/or ammunition retailers. *See generally*
22 Penal Code sections 30342, et seq.; 30370, et seq.

23
24 43. Under California law and regulations, individuals must acquire a valid
25 Firearm Safety Certificate in order to acquire and take possession of firearms. *See*
26 *generally* Penal Code section 26840.
27
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1 44. Government Code section 26620 states: “The office of county director
2 of emergency services shall be held ex officio by the county sheriff.”
3

4 45. Government Code section 41601 states:

5 For the suppression of riot, public tumult, disturbance of
6 the peace, or resistance against the laws or public
7 authorities in the lawful exercise of their functions, and
8 for the execution of all orders of the local health officer
9 issued for the purpose of preventing the spread of any
10 contagious, infectious, or communicable disease, the
11 chief of police has the powers conferred upon sheriffs by
general law and in all respects is entitled to the same
protection.

12 46. Government Code section 101029 states:

13 The sheriff of each county, or city and county, may
14 enforce within the county, or the city and county, all
15 orders of the local health officer issued for the purpose of
16 preventing the spread of any contagious, infectious, or
17 communicable disease. Every peace officer of every
18 political subdivision of the county, or city and county,
19 may enforce within the area subject to his or her
20 jurisdiction all orders of the local health officer issued for
21 the purpose of preventing the spread of any contagious,
22 infectious, or communicable disease. This section is not a
23 limitation on the authority of peace officers or public
24 officers to enforce orders of the local health officer.
25 When deciding whether to request this assistance in
enforcement of its orders, the local health officer may
consider whether it would be necessary to advise the
enforcement agency of any measures that should be taken
to prevent infection of the enforcement officers.

26 47. Government Code section 101030 states:

27 The county health officer shall enforce and observe in the
28 unincorporated territory of the county, all of the

1 following: (a) Orders and ordinances of the board of
2 supervisors, pertaining to the public health and sanitary
3 matters[,] (b) Orders, including quarantine and other
4 regulations, prescribed by the department[, and] (c)
5 Statutes relating to public health.

6 48. As shown below, County and County Health Officer Defendants’
7 Orders, enforced by Defendant sheriffs and police chiefs, among others, commonly
8 state:

9 Pursuant to Government Code sections 26602 and 41601
10 and Health and Safety Code section 101029, the Health
11 Officer requests that the Sheriff and all chiefs of police in
12 the County ensure compliance with and enforce this
13 Order. The violation of any provision of this Order
14 constitutes an imminent threat and menace to public
15 health, constitutes a public nuisance, and is punishable by
16 fine, imprisonment, or both.

17 49. Under Defendants’ laws, Orders, and enforcement policies, practices,
18 customs, and actions it is a crime for individuals to leave their homes and go to and
19 from, e.g., firearms and ammunition retailers and shooting ranges in order to
20 comply with state laws regarding the FSC certificate requirement, as well as
21 federal and state laws regarding the purchase and transfer of firearms and
22 ammunition. And under the Defendants’ Orders and enforcement policies, it is a
23 crime for, e.g., firearm and ammunition retailers, shooting ranges, and FSC test
24 service providers to operate them.
25

26 **Ventura County Orders**
27
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1 50. On March 17, 2020, Defendant Levine issued an order directing all
2 residents of the County to shelter in place and restrict conduct (the “March 17
3 Order”).⁴

4
5 51. On March 20, 2020, Defendant Levine issued an additional order
6 supplementing and extending the March 17, 2020 Order and directing all residents
7 of the County to continue to shelter in place and restrict conduct until April 19,
8 2020 (the “March 20 Order”).⁵

9
10
11 52. On March 31, 2020, Defendant Levine issued an additional order
12 supplementing and extending the March 17 and March 20 Orders and directing all
13 residents of the County to continue to shelter in place and restrict conduct until
14 April 19, 2020 (the “March 31 Order”).⁶

15
16 53. On April 9, 2020, Defendant Levine issued yet an additional order,
17 supplementing and amending the existing March 17, March 20, and March 31
18

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24 _____
24 ⁴ https://vcportal.ventura.org/CEO/VCNC/2020-03-17_Ventura_County_Public_Health_Order.pdf.

25
26 ⁵ <https://s30623.pcdn.co/wp-content/uploads/2020/03/StayWellAtHomeOrder.pdf>.

27 ⁶ https://vcportal.ventura.org/covid19/docs/March_31_2020_Order.pdf.

28

1 Orders (the “April 9 Order”).⁷ Furthermore, the April 9 Order bans all gatherings,
2 and added three types of businesses to the list of “Essential Businesses”.

3
4 54. Under the Orders, the operation of firearm and ammunition retailers
5 and shooting ranges are not “Essential Businesses,” and individuals going to and
6 from them is not “Essential Travel.”

7
8 55. Notably, the March 20 Order prohibits travel unless it is related to
9 “Essential Travel” or “Essential Activities” as defined by the Order. Such travel
10 and activities do not include departing Ventura County to a surrounding one for the
11 purposes of obtaining firearms and/or ammunition.

12
13 56. Pursuant to Section 8 of the April 9 Order, Defendant Sheriff Ayub
14 and all chiefs of police of the County are tasked with the enforcement of the
15 provisions set forth in the Order.

16
17 57. Section 8 (Compliance) of the April 9 Order states:

18
19 The violation of any provision of this Order constitutes a
20 threat to public health and public nuisance per se...
21 [p]ursuant to Government Code sections 26602 and
22 4160I and Health and Safety Code section 101029, the
23 Health Officer requests that the Sheriff and all chiefs of
24 police in the County ensure compliance with and enforce
25 this Order.

26
27 ⁷ https://vcportal.ventura.org/covid19/docs/2020-04-09_COVID19_PH_Order_April_9_2020.pdf.

1 58. On information and belief, Defendants are actively enforcing their
2 Orders, shuttering businesses and thus individuals' access to arms, the ammunition
3 required to use those arms, and the ranges and education facilities that individuals
4 need to learn how to safely and competently use arms by forcing firearm and
5 ammunition product manufacturers, retailers, importers, distributors, and shooting
6 ranges within the County of Ventura to close their doors and stop performing sales
7 and transfers of firearms and ammunition.
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10
11 59. Plaintiff McDougall would like to take possession of a firearm that he
12 ordered which is currently in the possession of a licensed firearm dealer. Plaintiff
13 McDougall would also like to retrieve a firearm that is in the possession of a
14 licensed gunsmith. Plaintiff McDougall is not prohibited from possessing firearms
15 under state or federal law. Furthermore, Plaintiff McDougall possesses a California
16 Carry Concealed Weapons License ("CCW"). He can take possession of a
17 purchased firearm and ammunition upon the completion of a background check.
18 However, due to Defendants' Orders and enforcement actions, he is unable to
19 retrieve his firearms and unable to acquire ammunition.
20
21

22
23 60. Plaintiff Garcia would like to purchase a firearm and ammunition for
24 self-defense. Plaintiff Garcia is not prohibited from possessing firearms under state
25 or federal law. Plaintiff Garcia does not possess a FSC but desires to obtain one.
26 However, due to Defendants' Orders and enforcement actions, she is unable to
27
28

1 obtain a FSC nor able to purchase a self-defense firearm and ammunition. Plaintiff
2 Garcia cannot purchase either firearms or ammunition except through a licensed
3 firearms dealer and/or licensed ammunition vendor under California law.

5 61. Plaintiffs McDougall and Garcia, Plaintiffs' members, and similarly
6 situated individuals are being prevented from exercising their fundamental,
7 individual right to keep and bear arms for self-defense.

9 62. Plaintiffs McDougall and Garcia, and Plaintiffs' members, and
10 similarly situated individuals are being prevented from traveling outside Ventura
11 County to exercise their fundamental, individual right to keep and bear arms for
12 self-defense.
13
14

15
16 **COUNT ONE**
17 **DEPRIVATION OF CIVIL RIGHTS**
18 **RIGHT TO KEEP AND BEAR ARMS**
19 **U.S. CONST., AMENDS. II AND XIV, 42 U.S.C. § 1983**

20 63. Plaintiffs incorporate herein by reference the foregoing paragraphs as
21 if fully set forth herein.

22 64. There is an actual and present controversy between the parties.

23
24 65. Defendants' orders, directives, policies, practices, customs, and
25 enforcement actions prohibit law-abiding individuals from purchasing firearms and
26 ammunition for the purpose of protecting themselves and their families (or for any
27 other purpose). Independently and collectively, these stand as a bar on firearms
28

1 acquisition, ownership, and proficiency training at shooting ranges, and thus
2 amount to a categorical ban on and infringement of the right to keep and bear arms
3 and the privileges and immunities of citizenship.
4

5 66. Plaintiffs, Plaintiffs' Members, and those similarly situated to them,
6 seek to exercise their right to keep and bear arms for self-defense of themselves
7 and their families, especially in times of crisis such as this.
8

9 67. As to all claims made in a representative capacity herein, there are
10 common questions of law and fact that substantially affect the rights, duties, and
11 liabilities of many similarly-situated California residents and visitors who
12 knowingly or unknowingly are subject to the California statutes, regulations,
13 policies, practices, and customs in question.
14

15 68. The relief sought in this action is declaratory and injunctive in nature,
16 and the action involves matters of substantial public interest. Considerations of
17 necessity, convenience, and justice justify relief to individual and institutional
18 Plaintiffs in a representative capacity. Further, to the extent it becomes necessary
19 or appropriate, the institutional Plaintiffs are uniquely able to communicate with
20 and provide notice to their thousands of California members and constituents who
21 are or would be party to any identifiable class of individuals for whose benefit this
22 Court may grant such relief.
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1 69. Local governments do not have the power to categorically prohibit the
2 keeping and bearing of arms by law-abiding people, nor can they close off the
3 channels of access by which individuals lawfully obtain, transfer, and practice
4 proficiency and safety with firearms and ammunition – even for brief periods of
5 time.
6

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8 70. Arbitrariness and animus exists within the Defendants’ Orders and
9 enforcement actions, as the Orders classify as “essential” a variety of businesses
10 which have no clear connection to *essential* goods and services (let alone expressly
11 constitutionally protected goods and services), particularly in a time of crisis.
12

13 71. For example, “convenience stores, and other establishments engaged
14 in the retail sale of unprepared food, canned food, dry goods, non-alcoholic
15 beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as
16 well as hygienic products and household consumer products necessary for personal
17 hygiene or the habitability, sanitation, or operation of residences” are deemed to
18 expressly fall within this protected category of “Essential” businesses. So too are
19 “auto-supply” stores, businesses that provide “that provide food, shelter, and social
20 services, and other necessities of life for economically disadvantaged or otherwise
21 needy individuals,” and hardware stores.
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26 72. But, according to Defendants, firearm and ammunition retailers and
27 shooting ranges are not essential, even though their connection to the *essentials* of
28

1 life in a crisis – securing the fundamental right of defense of the self and home
2 through all lawful means – is crystal clear, as highlighted in CISA’s published
3 guidelines and the Constitution itself.
4

5 73. In California, individuals are required to purchase and transfer
6 firearms and ammunition through state and federally licensed dealers in face-to-
7 face transactions or face serious criminal penalties.
8

9 74. Shuttering access to arms, the ammunition required to use those arms,
10 and the ranges and education facilities that individuals need to learn how to safely
11 and competently use arms, necessarily closes off the Constitutional right to learn
12 about, practice with, and keep and bear those arms.
13
14

15 75. By forcing duly licensed, essential businesses to close or eliminate
16 key services for the general public, government authorities are foreclosing the only
17 lawful means to buy, sell, and transfer firearms and ammunition available to
18 typical, law-abiding individuals in California.
19

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

3
4 77. Moreover, Defendants’ laws, orders, policies, practices, customs,
5 enforcement actions, and omissions criminalize and penalize conduct including but
6 not limited to an individual’s leaving their home, going to, and coming from a
7 firearm and/or ammunition retailer, violating Plaintiffs’, Plaintiffs’ members, and
8 similarly situated individuals’ rights.

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11 78. Plaintiffs reasonably fear that Defendants will enforce against them
12 their Orders and Defendants’ related policies, practices, and customs.

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14 79. Institutional Plaintiffs reasonably fear that Defendants will enforce
15 against their members – including Individual Plaintiffs and similarly situated
16 persons – the challenged orders, laws, policies, practices, and customs.

17
18 80. Defendants’ laws and ongoing enforcement and threats of
19 enforcement of their respective Orders and directives violate the Second and
20 Fourteenth Amendments.

21
22 81. Defendants’ Orders, laws, policies, practices, customs, and ongoing
23 enforcement and threats of enforcement of their various orders and directives
24 against the Plaintiffs, the Plaintiffs’ members and customers, and similarly situated
25 members of the public, which prevent the Plaintiffs, Plaintiffs’ members, and
26 similarly situated members of the public from exercising their rights, including the
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1 purchase, sale, transfer of, and training with constitutionally protected arms,
2 ammunition, magazines, and appurtenances, are thus causing injury and damage
3 that is actionable under 42 U.S.C. § 1983.
4

5 **COUNT TWO**
6 **DEPRIVATION OF CIVIL RIGHTS**
7 **RIGHT TO TRAVEL**
8 **U.S. CONST., ART. IV § 2; AMENDS. V, XIV, 42 U.S.C. § 1983**

9 82. Plaintiffs incorporate by reference the foregoing paragraphs as if fully
10 set forth herein.

11 83. Article IV, Section 2, Clause 1 of the United States Constitution
12 requires that “[t]he Citizens of each State shall be entitled to all Privileges and
13 Immunities of Citizens in the several States.” The Privileges and Immunities
14 Clause provides important protections for non-residents who enter the state to
15 obtain employment, or for any other purposes, including the right to travel. *Saenz*
16 *v. Roe*, 526 U.S. 489, 502 (1999).
17
18

19 84. The right to freely travel is fundamental; founded on the guarantees of
20 substantive due process under the Fifth and Fourteenth Amendments as it is both
21 implicit in the concept of ordered liberty *and* deeply rooted in this County’s history
22 and tradition. “[T]he right of locomotion, the right to remove from one place to
23 another according to inclination, is an attribute of liberty ... secured by the 14th
24 amendment.” *Williams v. Fears*, 179 U.S. 270, 274 (1900); *Kent v. Dulles*, 357
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1 U.S. 116 (1958)(“The right to travel is a part of the ‘liberty’ of which the citizen
2 cannot be deprived without the due process of law under the Fifth Amendment.”).

3
4 85. The right to move freely about one's neighborhood or town, even by
5 automobile, is “implicit in the concept of ordered liberty” and “deeply rooted in the
6 Nation's history.” *Lutz v. City of York, Pa.*, 899 F.2d 255, 268 (3d Cir. 1990).

7
8 86. It would be meaningless to describe the right to travel between states
9 as a fundamental precept of personal liberty and not to acknowledge a correlative
10 constitutional right to travel within a state.

11
12 *King v. New Rochelle Mun. Hous. Auth.*, 442 F.2d 646, 648 (2d Cir. 1971).

13
14 87. The right to travel in a state and between states is especially important
15 when the travel is related to the exercise of other fundamental rights, such as the
16 right to keep and bear arms.

17
18 88. Defendants’ laws and ongoing enforcement and threats of
19 enforcement of their various orders and directives against the Plaintiffs, the
20 Plaintiffs’ members and customers, and similarly situated members of the public,
21 as well as their ongoing policies and practices are arbitrary and capricious,
22 overbroad, effectively bound-less, fail to provide adequate notice, and place
23 Plaintiffs, Plaintiffs’ members and customers, and similarly situated members of
24 the public at risk of serious criminal and civil liability, including arrest,
25 prosecution, loss of rights, fines, and, with respect to the Retailer Plaintiffs, loss of
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1 their licenses. Defendants' orders and actions violate Plaintiffs', Plaintiffs'
2 members, and similarly situated members of the public's right to travel, and are
3
4 thus causing injury and damage that is actionable under 42 U.S.C. § 1983.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for the following relief:

8 1. A declaratory judgment that the Defendants' Orders, laws,
9 enforcement policies, practices, customs, and actions individually and collectively:

10 (1) prohibit the operation of firearm and ammunition product manufacturers,
11 retailers, importers, distributors, shooting ranges, and FSC test providers; (2) deny

12 individuals the right and ability to travel to, access, and use firearm and
13 ammunition product retailers, FSC test providers, and shooting ranges to acquire,
14

15 take possession of, and practice proficiency with constitutionally protected items;
16
17 (3) deny individuals the right and ability to travel to and from firearm and
18

19 ammunition product manufacturers, retailers, importers, distributors, shooting
20 ranges, and FSC test providers so that individuals can acquire, taken possession of,
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22 and practice proficiency with constitutionally protected items; and (4) violate Art.
23 IV, § 2 of and the Second, Fifth, and Fourteenth Amendments to the United States
24

25 Constitution;

26 2. A preliminary and permanent injunction restraining Defendants and
27 their officers, agents, servants, employees, and all persons in concert or
28

1 participation with them who receive notice of the injunction, from enforcing
2 Defendants' Orders and laws, enforcement policies, practices, customs, and actions
3 that individually and collectively: (1) prohibit the operation of firearm and
4 ammunition product manufacturers, retailers, importers, distributors, shooting
5 ranges, and FSC test providers; (2) deny individuals the right and ability to travel
6 to, access, and use firearm and ammunition product retailers, FSC test providers,
7 and shooting ranges to acquire, take possession of, and practice proficiency with
8 constitutionally protected items; (3) deny individuals the right and ability to travel
9 to and from firearm and ammunition product manufacturers, retailers, importers,
10 distributors, shooting ranges, and FSC test providers so that individuals can
11 acquire, taken possession of, and practice proficiency with constitutionally
12 protected items; and (4) violate Art. IV, § 2 of and the Second, Fifth, and
13 Fourteenth Amendments to the United States Constitution;

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19 3. Nominal damages⁸ against Defendants;
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22 ⁸ Plaintiffs herein give notice that pre-litigation investigation is continuing in this
23 urgent and expedited matter and that this complaint may be further amended to add
24 additional claims and requests for relief, including but not limited to actual
25 damages, once the facts are more fully developed. Additionally, counsel for the
26 institutional plaintiffs are continuing to investigate the claims of additional
27 potential parties with substantially similar claims who may also suffer
28 constitutional and economic damages as a result of the individual and/or collective
orders and/or enforcement actions of Defendants named herein.

