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7 County of Los Angeles, Sheriff Alex Villanueva, and Barbara Ferrer

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION**

11 ADAM BRANDY, an individual;
12 JONAH MARTINEZ, an individual;
13 DAEMION GARRO, an individual;
14 DG 2A ENTERPRISES INC., d.b.a.
15 GUN WORLD; JASON MONTES,
16 an individual; WEYLAND-YUTANI
17 LLC, d.b.a. MATCH GRADE
18 GUNSMITHS; ALAN KUSHNER,
19 an individual; THE TARGET
20 RANGE; TOM WATT, an
21 individual; A PLACE TO SHOOT,
22 INC.; SECOND AMENDMENT
23 FOUNDATION; CALIFORNIA
24 GUN RIGHTS FOUNDATION;
25 NATIONAL RIFLE ASSOCIATION
26 OF AMERICA; and FIREARMS
27 POLICY COALITION, INC.,

28 Plaintiffs,

vs.

22 ALEX VILLANUEVA, in his
23 official capacity as Sheriff of Los
24 Angeles County, California, and in
25 his capacity as the Director of
26 Emergency Operations; GAVIN
27 NEWSOM, in his official capacity as
28 Governor and Commander in Chief
of the State of California; SONIA Y.
ANGELL, in her official capacity as
California Public Health Officer;
BARBARA FERRER, in her official
capacity as Director of Los Angeles
County Department of Public Health;

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

Honorable André Birotte, Jr.

**SPECIALLY APPEARING
DEFENDANTS COUNTY OF
LOS ANGELES, SHERIFF ALEX
VILLANUEVA, AND BARBARA
FERRER'S OPPOSITION TO
PLAINTIFFS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Declarations of Sheriff Alex
Villanueva and Paul B. Beach filed
concurrently herewith]*

1 “A” (emphasis added).) This announcement was made based on and in accordance
2 with the March 28, 2020 Advisory Memorandum issued by the United States
3 Department of Homeland Security, which identified as “essential workers” those
4 supporting the operation of firearm or ammunition product manufacturers,
5 retailers, importers, distributors and shooting ranges during the national COVID-19
6 pandemic response. (Villanueva Decl., ¶ 19.) Prior to the federal government’s
7 very recent advisement as to the essential nature of these workers, the multitude of
8 emergency orders issued by federal and state officials and agencies, including
9 Governor Newsom, had not provided any specific guidance as to whether firearms
10 retailers should be deemed to be “essential” businesses during this unprecedented
11 and constantly-evolving international emergency.

12 With Sheriff Villanueva’s March 30, 2020 public pronouncement that the
13 Sheriff’s Department’s position will align directly with that of the federal
14 government, the alleged constitutional violations for which Plaintiffs seek redress
15 are not occurring and will not occur. (Villanueva Decl., ¶¶ 19-20.) Yet, Plaintiffs’
16 Application makes no reference to the March 30th pronouncement even though it
17 irrefutably supersedes the earlier March 26th statement from Sheriff Villanueva.²

18 Because there is no actionable dispute, case or controversy concerning the
19 relief being sought by Plaintiffs in their Application, it must be denied with respect
20 to the County Defendants.

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27 ² Since the filing of this Application, County Defendants’ counsel have repeatedly
28 raised this issue – the absence of any case or controversy justifying any injunctive
relief – with Plaintiffs’ counsel. (Beach Decl., ¶¶ 8-10, Ex. “C”).

1 **2. Plaintiffs’ Application For A Temporary Restraining Order Against**
2 **The County Defendants Must Be Denied Because The County**
3 **Defendants Are Not Preventing The Firearms Industry From Lawfully**
4 **Conducting Business.**

5 Article III of the United States Constitution limits federal court jurisdiction
6 to “actual, ongoing cases or controversies.” *Lewis v. Cont’l Bank Corp.*, 494 U.S.
7 472, 477 (1990). “A case or controversy must exist at all stages of review, not
8 just at the time the action is filed.” *Wolfson v. Brammer*, 616 F.3d 1045, 1053
9 (9th Cir. 2010). “A case is moot when the issues presented are no longer ‘live’ or
10 the parties lack a legally cognizable interest in the outcome.” *City of Erie v.*
11 *Pap’s A.M.*, 529 U.S. 277, 287 (2000); *County of Los Angeles v. Davis*, 440 U.S.
12 625, 631 (1979) (if “the issues presented are no longer ‘live’ or the parties lack a
13 legally cognizable interest in the outcome”, the case is moot); *see also United*
14 *States v. Geophysical Corp. of Alaska*, 732 F.2d 693, 698 (9th Cir. 1984) (“[a]
15 claim is moot if it has lost its character as a present, live controversy.”).

16 It is well-established that an injunctive relief claim is rendered moot as a
17 matter of law by the voluntary cessation of the alleged wrongful activity if “(1)
18 there is no reasonable expectation that the [alleged] wrong will be repeated, and
19 (2) interim relief or events have completely and irrevocably eradicated the effects
20 of the alleged violation.” *Barnes v. Healy*, 980 F.2d 572, 580 (9th Cir. 1992). In
21 other words, a claim becomes moot when it is clear that the allegedly wrongful
22 behavior could not reasonably be expected to recur. *Friends of the Earth, Inc. v.*
23 *Laidlaw Environmental Services*, 528 U.S. 167, 190 (2000); *see e.g., Hendrickson*
24 *v. eBay Inc.*, 165 F. Supp.2d 1082, 1095 (C. D. Cal. 2001) (summary judgment on
25 Lanham Act claim for injunctive relief where defendant ceased running allegedly
26 infringing advertisements and had no intention of running the advertisements in
27 the future).

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1 Moreover, while a “temporary restraining order preserves the status quo
2 and prevents irreparable harm until a hearing can be held on a preliminary-
3 injunction application”, the present “status quo” is fundamentally different from
4 the “status quo” upon which this Application is based. *See American Civil*
5 *Liberties Union of Northern California v. Burwell*, 2017 WL 4551492, at *6
6 (N.D. Cal. Oct. 11, 2017) (citing *Granny Goose Foods, Inc. v. Bhd. of Teamsters*
7 *& Auto Truck Drivers*, 415 U.S. 423, 429 (1974)). In fact, that “status quo” had
8 already changed with Sheriff Villanueva’s March 30 announcement from what
9 Plaintiffs state in their Application.

10 Here, there is no dispute that Plaintiffs challenge the purported effects of
11 Sheriff Villanueva’s statement of March 26, 2020 despite the fact that on March
12 30, 2020, after the federal government provided guidance on a national level,
13 Sheriff Villanueva made it explicitly clear that the firearms industry will be
14 deemed “essential” in direct conjunction with the federal government’s March 28,
15 2020 guidance on this issue.

16 The County Defendants anticipate that Plaintiffs will argue, based on pure
17 speculation and conjecture, that an injunction is needed because Sheriff
18 Villanueva *might* reverse his position. First, Plaintiffs’ assertion is without merit.
19 (Villanueva Decl., ¶¶ 20-21.) In the Ninth Circuit, it is clear that such speculation
20 and conjecture are insufficient as a matter of law to create a factual dispute that
21 overrides the irrefutable mootness of the subject legal claim. *McIndoe v.*
22 *Huntington Ingalls Inc.*, 817 F.3d 1170, 1173 (9th Cir. 2016) (“arguments based
23 on conjecture or speculation are insufficient...”); *R.W. Beck & Assocs. v. City &*
24 *Borough of Sitka*, 27 F.3d 1475, 1481 (9th Cir. 1994) (arguments based on
25 conjecture or speculation are insufficient to raise a genuine issue of material fact).
26 Moreover, government officials must be afforded a presumption of good faith
27 with respect to formal policy announcements, like that which Sheriff Villanueva
28 made here. *See Sossamon v. Lone Star of Texas*, 560 F.3d 316, 325 (5th Cir.

1 2009) (“Without evidence to the contrary, we assume that formally announced
2 changes to official governmental policy are not mere litigation posturing.”).

3 Indeed, in carrying out their immense responsibilities as leaders of the
4 largest County in the United States, the County Defendants have had to deal with
5 countless enormous and unprecedented challenges in responding to the ever-
6 growing COVID-19 pandemic. On March 31, 2020, the federal government
7 announced that even with the continuation of national stay-at-home guidelines
8 and even more aggressive measures instituted by various states, including
9 California, , the currently estimated range of COVID-19 related American deaths
10 is between 100,000 and 240,000.³

11 Thus, the sheer size, scope and significance of the County Defendants’ task
12 cannot be over-estimated. An untold and unknowable number of lives are at
13 stake, and every moment counts as County officials try their very best to
14 minimize the scale of this relentlessly expanding world-wide medical, economic
15 and human tragedy.

16 In the midst of these up-to-now unimaginable circumstances, the County
17 Defendants are having to defend against this Application, which seeks immediate
18 relief for an alleged constitutional violation that does not exist. Los Angeles
19 County residents are free to lawfully purchase firearms and ammunition at their
20 local firearms retailers, and they will continue to be free to do so in accordance
21 with longstanding state and federal regulations. Thus, there is no need for an
22 injunction against the County Defendants, and the Application must be denied.

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26 ³ [https://www.cnn.com/2020/03/31/politics/trump-white-house-guidelines-](https://www.cnn.com/2020/03/31/politics/trump-white-house-guidelines-coronavirus/index.html)
27 [coronavirus/index.html](https://www.cnn.com/2020/03/31/politics/trump-white-house-guidelines-coronavirus/index.html). Unfortunately, these estimates are just that – estimates.
28 No one knows how much higher the actual number of deaths may ultimately be.

1 **3. Not Only Is This Action Moot As To The County Defendants, The**
 2 **Application Should Be Denied Because Plaintiffs' Claims Have No**
 3 **Merit.**

4 Plaintiffs' Memorandum of Points and Authorities mostly focuses on their
 5 argument that Plaintiffs will succeed on the merits of their constitutional claims.
 6 (*See* ECF 14-1 at pp. 8:9-25:22.) The County Defendants do not respond to these
 7 arguments in-depth because they are based on a factual scenario that, with respect
 8 to the County Defendants, does not exist, thereby rendering moot Plaintiffs'
 9 corresponding legal arguments.

10 Nevertheless, the County Defendants alert the Court to a very recent order
 11 from this District Court denying a plaintiff's application for a temporary
 12 restraining order challenging the enforcement of a very similar Stay at Home
 13 Order issued by the County of Ventura in the matter of *McDougall v. County of*
 14 *Ventura*, Case No. 20-CV-02927-CBM-(ASx). (Beach Decl., ¶ 11; Ex. "E".)⁴

15 On April 1, 2020, the Honorable Consuelo B. Marshall *denied* a plaintiff's
 16 TRO application, noting that Ventura County's Stay at Home Order did not
 17 "specifically target handgun ownership, does not prohibit the ownership of a
 18 handgun outright, and is temporary." (Beach Decl., Ex. "E.") Judge Marshall
 19 ruled further that Ventura County's Order promoted a substantial and compelling
 20 government interest ("protecting the public health by limiting the spread of a
 21 virulent disease"), the balance of equities did not favor the granting of an
 22 injunction, and the County's "complex, subtle, and professional decisions" are
 23 entitled to deference. *Id.* (quoting *Winter v. Nat. Res. Def. Council*, 555 U.S. 7,
 24

25 ⁴ The *McDougall* plaintiff alleged that he purchased a handgun at the Camarillo
 26 Gun Store on March 9, 2020 and that the Ventura Order now prohibits him, in
 27 violation of the Second Amendment, from having his background check
 28 completed because Ventura County gun stores are now closed until further notice.
 (Ex. "E".) The *McDougall* plaintiff's allegations are substantively identical to the
 claims of Plaintiffs Brandy and Martinez in this action. (ECF 9 at p: 5:5-28.)

