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GUIDE, LLC;
SEAN COVELL, an individual

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BEST SUPPLEMENT GUIDE, LLC;
SEAN COVELL, an individual,

Plaintiff,

vs.

GAVIN NEWSOM, in his official capacity as the Governor of California; XAVIER BECERRA, in his official capacity as the Attorney General of California; SONIA Y. ANGELL, MD, MPH, in her official capacity as the Director and State Public Health Officer; COUNTY OF SAN JOAQUIN; MARCIA CUNNINGHAM, in her official capacity as the San Joaquin County Director of Emergency Services; MAGGIE PARK, MD, in her official capacity as the Public Health Officer of San Joaquin County; CITY OF LODI; SIERRA BRUCIA, in his official capacity as the Chief of the City of Lodi Police Department, and DOES 1-50, Inclusive,

Defendants.

NOW COME the above-named plaintiffs, Best Supplement Guide LLC, transacting business as Fitness Systems, and Sean Covell, by and through their counsel of record, Brian Chavez-Ochoa, and for their claims against the above-named Defendants allege as follows in this Complaint:

INTRODUCTION

1. The Governor of the State of California, together with State Public Health Officer, and the San Joaquin County Public Health Officer, have imposed state and county-wide orders (the “Orders”) commanding the closure of businesses deemed “nonessential” as part of their effort to counter the spread of COVID-19, the novel coronavirus that appears to have originated from the city Wuhan,

Hubei Province, Peoples' Republic of China. These Orders have, with the bludgeoning blow of the butcher, struck at and virtually destroyed civil rights and liberties of the Plaintiffs.

2. The Plaintiffs bring this action to contest the constitutionality of Defendants' Orders that have curbed, and threaten to continue curbing, Plaintiffs' civil rights and liberties.

3. Defendants' Orders presently violate Plaintiffs' rights under both the U.S. Constitution and the Constitution of the State of California and threaten to continue to violate Plaintiffs' rights while inflicting economic damage to Plaintiffs.

4. Plaintiffs bring this action challenging the constitutionality of Defendants' Orders.

5. Plaintiffs seek that relief made available to them by Title 42 USC 1983, including damages and equitable and injunctive relief to enjoin the enforcement of Defendants' Orders and declaratory relief that that Defendants' Orders violate Plaintiff's federal civil rights under the Constitution and laws of the United States and under the Constitution of the State of California.

6. In addition, Plaintiffs invoke the supplemental jurisdiction of this Court over their claims arising under the Constitution and laws of the State of California.

7. The Plaintiffs herein, Best Supplement Guide LLC and Sean Covell, bring this action claiming injuries to their rights guaranteed to them under the First, Fifth, and Fourteenth Amendments, said injuries inflicted on them by the adoption, promulgation, and enforcement of certain Orders, of the Governor, of the State Public Health Officer, and of the County Public Health Officer.

JURISDICTION AND VENUE

8. Herein, the Plaintiffs complain that the Defendants have deprived them, are depriving them, and will continue to deprive them, of federal constitutional rights, including the rights to freedom of speech, peaceable assembly, expressive association, substantive due process, to procedural due process, to equal protection, to security of their property against a takings without just compensation.

9. The claims asserted by the Plaintiffs are redressable in a civil action for damages, for injunctive relief, and for declaratory judgment as provided in Title 42 U.S.C. § 1983.

10. The United States Congress has conferred on this Court federal question jurisdiction over the Plaintiffs' Title 42 U.S.C. § 1983 claims via its enactment of Title 28 U.S.C. §§ 1331 and 1343.

11. The United States Congress has granted to this Court the authority to award the Plaintiffs their

requested declaratory relief under Title 28 U.S.C. § 2201.

12. The United States Congress has granted to this Court the authority to award the Plaintiffs their requested injunctive relief and damages under Title 28 U.S.C. § 1343(a).

13. The United States Congress has authorized this Court, because Plaintiffs' Complaint presents an appropriate case in which to do so, the authority to award to Plaintiffs' their costs, including a reasonable attorneys' fee award, under Title 42 U.S.C. § 1988.

14. The Eastern District of California is the appropriate venue for this action pursuant to Title 28 U.S.C. §§ 1391(b) (1) and (2) because it is the District in which Defendants maintain offices, do substantial official government work, exercise their authority in their official capacities, and it is the District in which substantially all of the events giving rise to the claims occurred.

15. The Sacramento Division of the United State District Court for the Eastern District of California is the appropriate division of the Court – under Local Rule 120(d) – because the claims set forth herein arise from acts and/or omissions which occurred within the boundaries of the Sacramento division.

16. Congress has conferred on this Court supplemental jurisdiction over all state claims by its enactment of Title 28 U.S.C. §1367, because Plaintiffs' state law claims arise from the same, common nucleus of operative facts as the Plaintiffs' federal claims such that Plaintiffs would ordinarily be expected to try them all in a single judicial proceeding.

PARTIES

The Plaintiffs

17. Plaintiff Best Supplement Guide LLC, transacting business as Fitness System ("Fitness System"), is a California domestic limited liability corporation, with corporation registration number 200815710213.

18. Plaintiff Fitness System was organized in 2008 under California law.

19. Plaintiff Sean Covell ("Covell") is a citizen of the United States and a resident of the State of California, who resides in Sacramento, California.

20. Plaintiff Covell organized and registered Fitness System with the State of California and is the director/manager/president of Fitness System.

The Defendants

The State of California Defendants

21. Defendant Gavin Newsom ("Newsom") is made a party to this Action in his official capacity as the Governor of California.

22. Defendant Xavier Becerra ("Becerra") is made a party to this Action in his official capacity as the Attorney General of California.

23. Defendant Sonia Y. Angell, MD, MPH ("Dr. Angell") is made a party to this Action in her official capacity as the Director and State Public Health Officer.

24. Defendants Newsom, Becerra, and Angell are collectively referred to herein as the "State Defendants."

The County of San Joaquin Defendants

25. Defendant County of San Joaquin (hereinafter "Defendant County") is, and at all times herein mentioned has been, a general law county organized and existing as a municipal corporation under the laws of the State of California.

26. Defendant County of San Joaquin manages and operates the public entity known as the San Joaquin Sheriff Department (hereinafter "SJSD").

27. Defendant County is headed by the Board of Supervisors for San Joaquin County, is and at all times herein mentioned the local government presiding over San Joaquin County with its principal

office at 44 North San Joaquin Street, Stockton, CA 95202.

28. Defendant Marcia Cunningham ("Cunningham") is made a party to this Action in her official capacity as the San Joaquin County Director of Emergency Services.

29. Defendant Maggie Park, MD ("Park") is made a party to this Action in her official capacity as the Public Health Officer of San Joaquin County.

30. Defendants County, Cunningham, and Park, are collectively referred to herein as the "County Defendants."

City of Lodi Defendants

31. Defendant City of Lodi ("Defendant City") is a municipal corporation created by, and existing under, the laws of the State of California and constitutes a "public entity" under the laws of the State of California.

32. Defendant City is governed by an elected City Council.

33. Defendant City operates a public entity the City of Lodi Police Department.

34. Defendant Sierra Brucia ("Brucia") is made a party to this Action in his official capacity as the Chief of the City of Lodi Police Department.

35. Defendants City and Brucia are collectively referred to herein as the “City Defendants.”

FACTUAL ALLEGATIONS

Fitness Systems and the Role of Personal Trainers in Health and Recovery

36. Plaintiff Covell has never been diagnosed with the COVID-19 virus.

37. Plaintiff Covell has never been subjected to a quarantine investigation by the Defendants.

38. The Defendants never had, nor do they now have, any probable cause to suspect or reasonable suspicion to believe that the Plaintiffs are infected with, exposed to, or contaminated with the novel coronavirus, or that the Plaintiffs are under COVID-19 infection, such that the Plaintiffs could spread to or contaminate others if remedial action is not taken.

39. The Defendants never had, nor do they now have, any probable cause to suspect or reasonable suspicion to believe that the Plaintiffs are a serious and imminent risk to the health and safety of others if not detained for isolation.

40. Plaintiff Fitness System operates, among other activities, three membership-based gyms, including a location in the City of Lodi, California.

41. To conduct their business, the Plaintiffs have formulated contracts with individuals and other

businesses for the provision of their facilities and services.

42. Among the goods and services provided by Plaintiff Fitness System through its gyms are personal trainer services.

43. The personal trainer services provided at the gyms of Plaintiff Fitness System include the designing of exercise programs, the coaching of clients to healthier and more active lifestyles, and prevention of injury by ensuring appropriate exercise technique and safety.

44. Personal trainers also assist clients in following through with the exercise regimen recommendations of their clients' physical therapists.

45. Among the personal trainer services offered by Plaintiff Fitness System, several services are directly related to physical therapy, including body composition analysis, cardiovascular output analysis, muscular strength analysis, rehabilitation, mobility work.

46. Plaintiff Fitness System provides various pieces of equipment and machines identical to those found in the offices of physical therapists, including but not limited to, resistance bands, plyometric boxes, and inversion tables.

47. Clients of Fitness System rely on the services of the gym and of personal trainers at the gym to

comply with doctors' orders for training, rehabilitation, and recovery.

48. As the summer approaches, clients of Plaintiff Fitness System that suffer from poorer health find that elevated temperatures make it more difficult to safely accomplish their necessary exercise and rehabilitative activities and require the ability to train in a climate controlled environment.

49. Clients of Plaintiff Fitness System include individuals who have been working hard to reduce obesity (a co-morbidity of COVID-19), to manage or eliminate diabetes (a co-morbidity of COVID-19), to work muscular systems stricken by muscular sclerosis, to recover from severe injuries to shoulders and other muscle systems, and to manage high blood pressure (a co-morbidity of COVID-19).

50. Plaintiffs never wanted to close their business and would not have done so except under threat by the Defendants.

51. Plaintiffs currently desire and plan to reopen their business and have specifically planned to reopen their business.

Gyms and Fitness Facilities: Building Stronger and Healthier Communities

52. The health club, or gym, serves an important role in individual's lives, but also for the community as a whole.

53. Gyms provide a common place where the goal for everyone is the same—to learn the body through physical exercise and improve one's health.

54. The health club is a tool for self-discovery and self-improvement.

55. The health club is an air-conditioned environment for health-oriented individuals to assemble and exchange knowledge, ideas, and stories, and freely engage with other people from a diverse group of economic, social classes and backgrounds.

56. The ability to freely exercise and train with others who share similar goals has been a staple of a healthy society dating back to ancient Greece and the first Gymnasiums and Olympic Games.

57. In the modern era, we teach our children from a very young age how important physical exercise and health is to our individual and community well-being.

58. Gyms give anyone an outlet for extra energy and aggression.

59. The gym is important to many people in developing a sense of who they are and what their body can do.

60. For example, at age 19, Covell was diagnosed with ankylosing spondylitis, a reactive-arthritis condition in his spine.

61. The thought of a future with incredible pain and physical limitation had a severely negative impact on his identity as a young man.

62. Working out at a gym helped Covell to realize a much different future, one without the pain and physical limitations that had seemed inevitable.

63. For decades in the United States, publications have ranked the healthiest cities in America, based on factors such as the overall health of its population, attitude toward overall wellness, and access to local wellness businesses (gyms, spas); see, e.g., <https://www.businessinsider.com/healthiest-cities-to-live-us-exercise-sleep-wellness-2020-1>.

64. In San Joaquin County and California more generally, gyms have been closed for months; parks are marked off with caution tape; basketball hoops have been removed from public courts.

65. While urgently pursuing solutions for the coronavirus and its associated diseases, public health officials have ignored the increase in anger, violence and destruction in our communities and its connection to the very solutions they have imposed on society.

66. Fitness System has received countless messages from clients recounting their mental stress, some with severe depression, and explaining that the gym is the only outlet they have for stress-relief and mental health.

67. The fitness community has lost several athletes to suicide recently, and the suicide rate in the areas where we operate has spiked significantly in Northern California.

68. Exercise has also been shown in numerous clinical studies to be an effective (for some the most effective) form of relief from depression and anxiety, see, e.g.,
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470658/> (last accessed on June 15, 2020).

69. The United States government, through its Centers for Disease Control, recommends 150 minutes of “vigorous” exercise weekly as essential for health.

70. COVID-19 has been particularly damaging and deadly in people with high blood pressure, diabetes and obesity, co-morbidity factors that are all metabolic disorders and can all be better managed and more effectively with the incorporation and continuation of a regular regime of exercise, see <https://www.ncbi.nlm.nih.gov/books/NBK278961/> (last accessed June 15, 2020); <https://www.ncbi.nlm.nih.gov/books/NBK549946/> (last accessed June 15, 2020).

71. The Challenged Orders have exacerbated these health issues by making regular recourse to fitness facilities, fitness classes, and fitness advisers virtually impossible to Californians.

72. The damage of this lockdown to the public generally and to the fitness industry has been absolutely devastating and destructive.

73. By declaring the fitness industry non-essential, despite the importance of the health club to society and despite the understanding that exercise is essential for a healthy and fulfilled life, the Defendants have engendered unfounded fears in the public, with the result that people are now afraid to frequent businesses that have been negatively portrayed by politicians and the media.

74. The panoply of onerous restrictions proposed to be put in place on fitness facilities has had, and the propagation of negative constructs about the supposed enhanced risks of coronavirus transmission in fitness facilities in news media, see, e.g., <https://www.nytimes.com/2020/05/13/well/move/coronavirus-gym-safety.html> (last accessed June 15, 2020); <https://www.healthline.com/health-news/heres-why-covid-19-can-spread-so-easily-at-gyms-and-fitness-classes> (last accessed June 15, 2020), will continue to have the effect of destroying public demand for this sector of the economy.

75. Given the current economic situation and the fact that gyms have been closed for so long, the industry is suffering as it is, for example, for Fitness System, pending cancelations year over year for June is already at 30% increase in its business.

76. Fitness System's first and second quarter 2020 financials have been obliterated, and Fitness System and Covell will absolutely be unable to recoup the loss in revenue for the rest of the year.

77. Fitness System estimates a 20%-25% decline in revenue year over year.

78. National-level firms have already declared they have filed, or are preparing to file, for bankruptcy, see, e.g., <https://www.usatoday.com/story/money/2020/05/30/24-hour-fitness-reportedly-prep-bankruptcy-filing-gyms-reopen/5291159002/> (last visited June 15, 2020); <https://www.cbsnews.com/news/golds-gym-files-bankruptcy-chapter-11-coronavirus-pandemic/> (last visited June 15, 2020), as their boards' analysts foresee significant economic damages and a loss of demand in the fitness industry after the lockdown.

79. Given that Fitness System has made very minimal income for the past 12 weeks, and given its current losses (estimated at this point in time to be over \$1 million) due to the forced shutdown, any further restrictions placed on businesses will make it increasingly difficult for Fitness System to survive.

80. Increased regulations will result in increased payroll costs in order to have additional staff members monitoring social distancing and ensuring everyone is sanitizing, per the recommendations by the CDC.

81. Any further restrictions beyond the original social distancing guidelines and the sanitization and disinfecting of surfaces would cause undo harm, and simply make it unsustainable to continue.

82. To put an additional capacity restriction on health clubs would be extremely detrimental to Fitness System's financial models.

83. By curtailing the number of people allowed inside the facility, Fitness System will lose a significant amount of revenue.

84. Fitness System has already increased its expenditure toward payroll to comply with the social distancing and sanitization requirements.

85. As a tenant, Fitness System is required to pay rent for its entire facility space; increased social distancing reduces the number of members that Fitness System can serve, and of course results in less revenue, while simultaneously increasing payroll costs in order to comply with new regulations.

86. Social distancing itself reduces class size when participants move in a greater area of space (yoga, kickboxing, cross training, etc.).

87. Some members only joined Fitness System because of the group fitness classes, in which they enjoy the variety and the social aspect of the classes.

88. Staff and members have expressed concerns with wearing masks for extended periods of time, especially in a fitness environment in which individuals are expelling CO₂ at a rapid rate.

89. Wearing a mask while working out could potentially lead to overheating or fainting.

90. Imposing an appointment-based system of access to the Fitness System greatly inconveniences clients who have already been denied access to the gym for three months.

91. Fitness System clients often need unscheduled access to the gym to work out at a spur of the moment to improve their mood.

92. The requirement that Fitness System obtain the necessary equipment, supplies, and personnel to conduct temperature screenings of staff and clients further eats out the gym's substance.

93. The problematic nature of a demand for non-contact temperature screening is made evident in medical scientific literature, including, for example, a study entitled "Non-Contact Thermometers for Detecting Fever: A Review of Clinical Effectiveness," published on the National Institute of Health website at <https://www.ncbi.nlm.nih.gov/books/NBK263237/> (last accessed June 15, 2020).

94. That study reached the following disturbing conclusions:

a. "The accuracy of handheld infrared skin thermometers were favored by three studies but also unfavorably by three studies."

b. "Four studies expressed conclusions in favor of the utilization of thermal scanners for fever detection, whereas one study stated that this type of device is unsuitable for this purpose."

c. "The conclusions of a SR, although of low quality, highlighted the poor scientific evidence available for the utilization of infrared skin thermometers and thermal scanners for mass screening."

95. Additionally, given inevitable inaccurate readings, the requirement that Fitness System conduct such measurements could cause customers to become angry, leading to unnecessary conflict between employees and customers.

96. The health club (gym) is fundamental to the fitness, health and safety of a community.

97. Fitness System and Covell seek to help as many people as possible become stronger and healthier.

98. Fitness System and Covell are concerned that a significant increase in restrictions on their business will reduce their ability to serve the community to their full potential.

99. Fitness System and Covell consider it imperative to reopen these pillars of community fully, so the community can become healthier and happier.

A Cascade of Declarations and Orders Responding to COVID-19

100. In December 2019, a novel coronavirus known as SARS- CoV-2 (“the virus”) was first detected in Wuhan, Hubei Province, People’s Republic of China, causing outbreaks of the coronavirus disease COVID-19 to spread globally.

101. On January 31, 2020, Alex Azar, the United States Secretary of Health and Human Services (“HHS”) declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19.

102. Defendant Newsom issued a State of Emergency order on March 4, 2020 in response to the threat of the spread of COVID-19 throughout California’s communities.

103. On or about March 12, 2020, Defendant Park issued a “Declaration of Local Health Emergency” in light of the developing outbreak of the novel coronavirus disease (“COVID-19”).

104. At the time of Defendant Park’s issuance of that “Declaration of a Local Health Emergency,” there were three (3) confirmed cases of COVID-19 infection known to Defendant Park and the Defendant County.

105. On or about March 13, 2020, President Donald J. Trump proclaimed a National State of Emergency as a result of the threat of the emergence of COVID-19 and reported to the United States Congress his declaration.

106. In a cascading series ham-fisted and ultra vires acts following the Declaration of a National State of Emergency, the Governor of California, the California State Public Health Officer, and the San Joaquin Public Health Officer have stripped Plaintiffs of their right to engage in their lawful trade and occupation, and to operate their lawful business, such prohibitions and acts injuring the federal civil rights of the Plaintiffs, and taking Plaintiffs' business enterprises without providing just compensation therefore, all while destroying the business good will that Plaintiffs had established through their business relations with patrons of their business.

107. On March 19, 2020, Defendant Newsom issued Executive Order N-33-20 ("Executive Order").

108. Through his Executive Order, Defendant Newsom mandated that "all individuals living in the State of California" were to "stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors at outlined at: <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>."

109. Defendant Newsom's Executive Order took notice of the fact that the federal government had identified "critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof...."

110. Defendant Newsom ordered "Californians working in these critical infrastructure sectors continue their work because of the importance of these sectors to Californians' health and well-being."

111. Defendant Newsom declared that "this Order is being issued to protect the public health of Californians" and that "our goal is simple, we want to bend the curve, and disrupt the spread of the virus."

112. Defendant Newsom directed the Office of Emergency Services to "take all necessary steps to ensure compliance with this Order" and that the "Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 86654."

113. On March 20, 2020, Defendants Park, Cunningham, and the County issued the first in a series of Orders captioned, "Order of the San Joaquin County Public Health Office and Director of Emergency Services of the County of San Joaquin."

114. The March 20, 2020, Order ("March 20 Order") was repealed and replaced with a subsequent Order dated March 21, 2020 ("March 21 Order").

115. The March 21 Order was repealed and replaced by an Order dated March 26, 2020 ("March 26 Order").

116. The March 26 Order was repealed and replaced by an Order dated April 14, 2020 ("April 14 Order").

117. The April 14 Order was amended by an Order dated April 24, 2020 ("April 24 Order").

118. In most respects similar or identical to its predecessors, the April 14 Order states that it became effective "at 11:59 pm on April 14, 2020 and will continue to be in effect until it is rescinded in writing by the Health Officer."

119. The April 14 Order claims to implement Defendant Newsom's Executive Order N-33-20.

120. Paragraph 3 of the April 14 Order commands "All individuals currently living within the County of San Joaquin ... to stay at home or place of residence."

121. Paragraph 3 of the April 14 Order warns that "[a]ll persons may leave their residences only for Essential Activities"

122. Paragraph 5 of the April 14 Order commands "All businesses with a facility or jobsite in the

County, except Essential Businesses, ... to cease all activities at facilities located within the County except as needed to perform Minimum Basic Operations....”

123. While allowing “Essential Businesses” to continue operation in order to provide essential goods and services, the April 14 Order also allows “Essential Businesses” to remain “open to the public and stock the portions of their retail storefronts dedicated to non-essential products.”

124. Paragraph 6 of the April 14 Order commands the closure of, among other establishments, gyms.

125. Paragraph 7 of the April 14 Order prohibits all travel “except for Essential Travel” as defined in the Order.

126. To remove any doubt about the reach of the prohibition on travel, paragraph 7 of the April 14 Order prohibits all travel into or out of San Joaquin County except “to perform Essential Activities.”

127. Paragraph 15 of the April 14 Order requests that the Defendant Brucia, as Chief of the City of Lodi Police Department, “ensure compliance with and enforce this Order.”

128. On or about April 11, 2020, Defendant Park and Defendant County issued an additional guidance on the subject of the use of face coverings in public, in light of the Centers for Disease Control’s (“CDC”) recommendation that such coverings or masks be

used in public when social distancing measures are difficult to maintain.

129. Within the April 11, 2020, guidance, Defendant Park and Defendant County warned residents of San Joaquin County, "San Joaquin County residents remain under a Stay at Home Order and people should NOT feel that they can go outside more because they are wearing a face covering."

130. Also on April 14, 2020, Defendants Park, Cunningham, and the County issued a 10-page document entitled, "Questions about San Joaquin County Public Health Officer and Director of Emergency Services Order Directing Individuals to Stay at Home due to Covid-19 ("April 14 Q&A").

131. The April 14 Q&A reiterates that the April 14 Order will remain in effect "until it is rescinded in writing by the Health Officer[.]" that San Joaquin residents are commanded to stay at home except as permitted under the April 14 Order, that the April 14 Order "is mandatory," that the April 14 Order "is a legal Order issued under the authority of California law," that "you are required to comply," and that "[v]iolation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both."

132. The April 14 Q&A also provides guidance on how residents of San Joaquin County may file complaints and reports against individuals and businesses suspected of disregarding the April 14 Order.

133. The April 24 Order, which amended in certain respects, the April 14 Order, continues the forced closure of gyms.

134. On May 8, 2020, Defendants Park, Cunningham, and San Joaquin County issued an Order of the San Joaquin Public Health Officer and Director of Emergency Services of the County of San Joaquin ("May 8 Order").

135. By its terms, the May 8 Order repealed and replaced the April 14 Order.

136. In all respect relevant to the instant litigation, the terms of the May 8 Order are the same.

137. Under the terms of the May 8 Order, Fitness System and Covell continue to be absolutely prohibited from re-opening the Fitness System gym in Lodi, California.

138. By its terms, the May 8 Order "shall become effective at 11:59 a.m. on May 8, 2020, and will continue to be in effect until it is rescinded in writing by the Health Officer."

The Taking: Plaintiff Fitness System Compelled to Close

139. As a consequence of the Orders complained of herein, Plaintiff Fitness System has been compelled, against its right and desire to remain in operation, to close its facilities to its members.

140. Although the financial harm continues to mount with each additional day of compulsory closure, the Plaintiffs estimate that the current losses of business amount to approximately a million dollars (\$1,000,000.00).

141. As a direct and proximate result of the Orders complained of herein, and the threats and enforcement of those Orders, Fitness System and Covell have suffered the loss of the business goodwill that they have engendered through the years of their operation of their business prior to the promulgation of the Orders.

142. Because the Orders have affected a regulatory taking of the Plaintiffs' business and property, leaving the Plaintiff with no economically viable use of its business properties, the Plaintiffs retained the services of counsel to obtain relief from the burden of the Orders.

Counsel Correspond: Enforcement Threats
Confirmed

143. In late April, 2020, the Plaintiffs announced on their company website their intention to reopen their facilities on May 1, 2020, while reaffirming their commitment to do so in full compliance with the CDC's guidance on social distancing, the use of coverings for the mouth and nose, and frequent sanitation of the machines, equipment, and facilities of their business.

144. In addition, Plaintiff Covell discussed the Plaintiffs' planned reopening in media interviews.

145. On information and belief, the Defendant County learned of the plan to reopen.

146. On April 30, 2020, the Defendant City directed three City of Lodi Police Department officers to the Plaintiffs' Lodi location.

147. The police officers brought with them and delivered to the Plaintiffs' employees a letter from county counsel.

148. The police officers told the Plaintiffs' employees they were there to "educate" them.

149. The police officers further told those employees that, if the Plaintiffs opened the Plaintiffs' Lodi facility, the consequences would include that on the first day Plaintiff Covell would be fined and that if the facility opened a the second day, Plaintiff Covell would be arrested.

150. The letter delivered by the police officers was prepared by Defendant County's Counsel, J. Mark Myles.

151. J. Mark Myles, County Counsel, in his letter, advised that reopening of the Plaintiffs' facilities would be "a violation of the County Public Health Officer's order of April 14, 2020."

152. In his letter, County Counsel further warned, "Any person who refuses or willfully neglects to comply with this emergency order is guilty of a misdemeanor, punishable by fine and/or imprisonment."

153. Finally, in his letter, County Counsel warned that "there are civil and administrative penalties that can be imposed upon you as a result of continued operation" and that "The County of San Joaquin is prepared to pursue all available civil and criminal sanctions should you open your facility to the public."

154. At the bottom of the County Counsel's April 30 letter, there appears a notation indicating that a copy of the letter was also provided to the City Attorney for the City of Lodi.

155. In effect, and on belief, in fact, County Counsel's letter constituted a final decision of the Defendants on the application of the Orders complained of herein, thereby satisfying any asserted requirement of finality as a challenge to the ripeness of this dispute for judicial determination.

A Seemingly Unending Train of Abuses and Usurpations in the Guise of Public Health Orders Is Destroying Plaintiffs' Business, Visiting Wreck and Ruin on the Plaintiffs' Federal Constitutional and Civil Rights

156. Defendants' Orders complained of herein have caused catastrophic damage to the business and

interests of the Plaintiffs by the means of the compulsory closure of the Plaintiffs' facility on the basis that certain government officials have decided that Plaintiffs' business is "Non-Essential."

157. The strong-arm and forced closure of the Plaintiffs' facilities has disastrously impacted the Plaintiffs' financial obligations.

158. The strong-arm and forced closure of the Plaintiffs' facilities has deprived the Plaintiffs of all economically feasible uses of their property.

159. Prior to the issuance of the Orders complained of herein, the Plaintiffs' had approximately 5900 active accounts covering all three of the Plaintiffs' gym locations.

160. Although the accounts numbered approximately 5900, some of those accounts actually represent more than a single client using the Plaintiffs' gym facilities.

161. Although the Plaintiffs have been compelled to close their gym, they have retained their employees, putting them to various tasks, including painting, sterilizing equipment, teaching online classes without charge via the Zoom teleconferencing application.

162. Although the Plaintiffs have been compelled to close their gym, the Orders complained of herein, as understood by them, have permitted them to continue to conduct the sale of supplements

curbside, as supplement sales has been deemed essential by the state, such sales have, however, been virtually nonexistent because, on belief, individuals who would otherwise purchase supplements are fearful of police harassment if they visit the locations.

163. Although the Plaintiffs have been compelled to close their gym, necessary maintenance services have still been required to be performed to maintain the gym's physical plant and facilities including pest control, HVAC services, and related physical plant maintenance and repair.

164. Because the Plaintiffs have been compelled to close their gym, clients have not been billed or charged since mid-March 2020 and the Plaintiffs' gym has not produced any income.

165. Consequent to the compelled closure of the Plaintiffs' facilities, they have been contacted by members seeking to cancel their memberships including approximately 75 email requests for membership cancellation since mid-March 2020.

166. Neither the State of California nor the Defendant County nor the Defendant City has fulfilled their constitutional obligation to provide the Plaintiffs with any compensation, not to mention just compensation, for the regulatory deprivation of their property.

167. "Essential" businesses continue to operate during the period of the April 14 Order and its predecessors.

168. Plaintiffs' "Non-Essential" business is being destroyed by government overreach in the form of unconstitutional orders promulgated and enforced by Defendants.

169. Plaintiffs complain against Defendants, and each of them, that they, the Defendants, have violated the Plaintiffs' federal civil rights by promulgation the Orders set forth hereinabove, together with the threat to enforce those Orders, and with the enforcement of Orders, including Executive Order N-33-20, Defendant Angell's "Essential Critical Infrastructure Workers" guidance, and the April 14 Order (and its predecessors) issued by Defendants Park, Cunningham, and County.

170. Plaintiffs' business was not identified as part of the "critical infrastructure sectors" described above, were deemed "Non-Essential" businesses.

171. Because the Plaintiffs' business was "Non-Essential," Plaintiffs were compelled, under threat of citation, prosecution, fine, imprisonment, and loss of business licensing, to shut down their gym business.

172. The Plaintiffs have set out hereinabove good and sufficient grounds to demonstrate that they are aggrieved in fact by the complained of Orders conferring on them necessary standing to bring their complaint before this Court.

173. Defendants' Orders and the threat and enforcement of them inflict substantial violations of the Plaintiffs' rights protected by Title 42 U.S.C. Section 1983, as is the enforcement of these Orders by Defendants, which should be enjoined as provided by Title 42 USC 1983.

174. Moreover, as set out more fully below, the Orders complained of herein constitute and affect a regulatory "partial" or "complete" taking, which, in the absence of just compensation, violates the Takings Clause of the Fifth Amendment of the U.S. Constitution.

175. The Orders complained of herein are not "narrowly tailored" to further any compelling governmental interest.

176. The absence of narrow tailoring is evidenced by the Swiss cheese of exceptions throughout the Orders.

177. The acts alleged herein were the product of a policy or custom of the Defendants, which policy or custom caused the constitutional violation alleged herein.

178. The acts alleged herein were taken by the Defendants, and each of them, under color of state law.

179. The acts alleged herein taken by the Defendants, and each of them, has deprived the Plaintiffs of all valuable use of their property.

180. The Executive Order applies to every person present in California no matter their circumstances, exhibiting no tailoring whatever.

181. The Executive Order commands that no Californian, except for reasons approved by Defendants Newsom and Angell, can freely move about anywhere in the entire United States of America.

182. In the absence of judicial relief, in the forms of a temporary restraining order, a preliminary injunction and a permanent injunction, the Plaintiffs will continue to suffer irreparable harm for which they are left without an adequate remedy at law, in that they are subject to criminal prosecution, and upon conviction, fines and/or imprisonment, as well as the threatened loss of their licenses to conduct business.

183. The Plaintiffs herein expressly acknowledge that the State Defendants are not answerable in damages for the harms they have inflicted on the Plaintiffs and the Plaintiffs expressly repudiate any assertion that they seek any relief against the State Defendants except equitable relief in the nature of a forward-looking temporary restraining order and preliminary and permanent injunctions. Homicide in Minneapolis Provokes Outrage Across Nation and in California

184. On May 25, 2020, Minneapolis, Minnesota, police officers killed an African-American citizen, on information and belief, by compressing his neck and chest with a choke hold effected by a police officer placing his knee on Mr. Floyd's neck and causing him to asphyxiate.

185. In horror, citizens in communities across America took to the streets, sidewalks, and parks of their communities, their State Capitols, and the Nation's Capitol, to express their outrage at the police disregard for the life of Mr. Floyd.

186. On May 25, 2020, Defendant Angell modified the terms and conditions of the State's Stay at Home Order.

187. The State of California describes that amendment on its COVID-19 website, at <https://covid19.ca.gov/stay-home-except-for-essential-needs/#political> (last accessed June 3, 2020).

188. According to the State's website, Defendant Angell amended the Stay at Home Order as follows: "On May 25, 2020, in an effort to balance First Amendment interests with public health, the State Public Health Officer created an exception to the prohibition against mass gatherings for faith-based services and cultural ceremonies as well as protests. Those types of gatherings are permitted so long as they do not exceed 100 attendees or 25% of the capacity of the space in which the gathering is held,

whichever is lower. All other mass gatherings are prohibited until further notice.”

189. The same webpage also includes a series of questions and answers, on information and belief constituting official guidance of Defendants Newsom and Angell.

190. One of the questions asked and answered on the page is, “Can I engage in political protest gatherings?” <https://covid19.ca.gov/stay-home-except-for-essential-needs/#political> (last accessed June 3, 2020).

191. The answer provided by the Defendants, regarding the right to engage in political protest gatherings, despite the Statewide Stay at Home Orders and local public health orders is: “Yes, as explained below, although in-person protests present special public health concerns. Even with adherence to physical distancing, bringing members of different households together to engage in in-person protest carries a higher risk of widespread transmission of COVID-19. Such gatherings may result in increased rates of infection, hospitalization, and death, especially among more vulnerable populations. In particular, activities like chanting, shouting, singing, and group recitation negate the risk-reduction achieved through six feet of physical distancing. For this reason, people engaging in these activities should wear face coverings at all times. Therefore, it is strongly recommended that those exercising their right to engage in political expression (including, for example, their right to petition the government)

should utilize alternative channels, such as the many online and broadcasting platforms available in the digital age, in place of in-person gatherings. However, state public health directives do not prohibit in-person protests as long as (1) attendance is limited to 25% of the relevant area's maximum occupancy, as defined by the relevant local permitting authority or other relevant authority, or a maximum of 100 attendees, whichever is lower, and (2) physical distancing of six feet between persons or groups of persons from different households is maintained at all times. Failure to maintain adequate physical distancing may result in an order to disperse or other enforcement action. Face coverings are strongly recommended. Participants must maintain a physical distance of six feet from any uniformed peace officers and other public safety personnel present, unless otherwise directed, and follow all other requirements and directives imposed by local health officers and law enforcement, or other applicable authorities. This limitation on attendance will be reviewed at least once every 21 days, beginning May 25, 2020. This review will assess the impacts of these imposed limits on public health and provide further direction as part of a phased-in restoration of gatherings that implicate the First Amendment."

192. On June 1, 2020, Defendant Newsom spoke at a press conference at Genesis Church and addressed the killing of George Floyd, the societal causes of both his killing and the outrage of people across the Nation at the homicide, and related topics.

193. Defendant Newsom endorsed and approved the use of public demonstrations and protests to decry the killing of Mr. Floyd and to expose to the light of public opinion the institutional causes of it.

194. Among the remarks Defendant Newsom made at the press conference were the following:

a. "For those of you out there protesting, I want you to know that you matter. I care, we care."

b. "I want you to know that I have a unique responsibility to prove that to you. You've lost patience and so have I. You are right to feel wronged. You are right to feel the way that you are feeling. We have a responsibility to do better and be better."

c. "We hear you and we have a responsibility now to prove to you, not just to assert that we are capable of being better and doing more as a society."

d. "And those that want to express themselves, and have, Thank you. God bless you. Keep doing it. Your rage is real, express it, so that we can hear it. Let's not let others drown that rage, and those that want to express that rage in a responsible and thoughtful way."

e. "To those of you who've said, I can't stand on the periphery any longer, I need to be part of this effort, thank you."

195. At no time during his conference did Defendant Newsom warn that demonstrations, protests, and prayer vigils were unlawful under State or local Stay at Home Orders, nor did Defendant Newsom state, or even intimate, that the State of California would enforce Stay at Home Orders in response to the demonstrations, protests, or prayer vigils.

196. Defendant Newsom's remarks were recorded and a video of them is available online at <https://www.youtube.com/watch?v=va7rl5seIXQ&feature=youtu.be> (last viewed June 3, 2020).

197. In addition, Defendant Newsom's press conference was widely reported in news media, including:

a. "You are right to feel wronged': Newsom responds to weekend violence" <https://ktla.com/news/local-news/curfews-enacted-national-guard-troops-deployed-in-california-amid-nationwide-outrage-over-police-violence/> (last accessed June 3, 2020).

b. "Gov. Gavin Newsom mourns the pain of the black community, addresses George Floyd protests" <https://abc7news.com/gavin-newsom-california-protests-george-floyd-death-looting/6225002/> (last accessed June 3, 2020).

c. "Newsom Welcomes Protest Rage; Decries Violence and Theft" <https://www.nbclosangeles.com/news/california-news/newsom-welcomes-protest-rage-decries->

violence- and-theft/2372890/ (last accessed June 3, 2020).

d. "Newsom: "The Black Community Is Not Responsible For What Is Happening"
<https://www.caprado.org/articles/2020/06/01/watch-live-gov-gavin-newsom-on-covid-19-protests-across-state/> (last accessed June 3, 2020).

e. "An Emotional Gov. Newsom Talks Privilege, Race Amid Protests":
<https://www.nbcbayarea.com/news/california/an-emotional-gov-newsom-talks-privilege-race-amid-protests/2299774/> (last accessed June 3, 2020).

198. On June 1, 2020, Defendant Park caused to be released, as a product of San Joaquin County Public Health Officer, a video message addressing the ongoing demonstrations, prayer vigils, and protests that have arisen following the killing of Mr. George Floyd.

199. Defendant Park's video is available for viewing online at
<https://www.youtube.com/watch?v=GW3dsL-L-5k&feature=youtu.be> (last accessed June 3, 2020).

200. Defendant Park did not state, warn, or advise that residents of San Joaquin County were required to remain at home except for permissible purposes previously identified in the May 8 Order (and its predecessors) or in the state-wide Stay at Home Orders of Defendants Newsom and Angell.

201. Rather, Defendant Park provided guidance about how to conduct oneself during such protests, including reiterating social distancing, use of face coverings, and hand sanitation practices.

202. On information and belief, the exact text of Defendant Park's public statement was:

"Hello, I'm Dr. Park, San Joaquin County Public Health Officer. First, I want to acknowledge the pain and frustration being felt by our communities of color. As we find peaceful ways to express ourselves and speak out, please remember that the COVID-19 pandemic still poses a threat to our community's most vulnerable members. I am especially concerned about the continued disproportionate impacts of COVID-19 on people of color in our community. We need everyone's help to prevent more COVID-19 infections, hospitalizations, and deaths and urge you to follow public health guidelines and recommendations during protests. First, if you do not feel well or you live or work with someone who is high risk for COVID-19, please avoid large gatherings and consider alternative ways to protest. If you plan to attend a protest in person, observe the following safety guidelines: Maintain 6 feet of physical distance at all times between people from different households; Even with physical distancing, gathering at protests carries a higher risk of widespread transmission of COVID-19. In particular, activities like chanting, shouting, and singing, can easily spread the virus. For this reason, people engaging in protests should wear face coverings at all times. Bring hand sanitizer; Wash or sanitize

hands after touching surfaces. Do not shake hands, hug, high-five or otherwise touch people who do not live in your household. Say hello to friends from a distance and connect virtually after the event. Do not conduct long, face-to-face conversations with other protesters. After the event, monitor yourself for symptoms of COVID- 19 illness, get tested if you become ill and consider getting tested in a couple of weeks, even if you don't develop symptoms. In the event of injury or severe distress, please do not delay care such as visiting urgent care or the emergency department. Protest organizers should remember that protest gatherings are limited to 25% of an area's maximum occupancy, or a maximum of 100 attendees, whichever is lower. Our local COVID-19 case counts have recently been increasing, which means we are at risk of having to close businesses again. Please help our community stay open by taking these guidelines seriously. For more information on how to stay safe and information on free COVID-19 testing sites, please visit: www.sjcphs.org."

203. The San Joaquin County Public Health Service, an entity of Defendant San Joaquin County, promoted and published Defendant Park's guidance for public protests on its official Twitter account (@sjcphs). The promotion, which is depicted below, may be found online at <https://twitter.com/sjcphs/status/1267605249948184577> (last accessed June 3, 2020).

204. Subsequent to the killing of Mr. Floyd, and to the May 25 amendment to the State Public Health

Officer's Stay at Home Order (the amendment permitting public protests), Defendant Newsom's June 1 press conference, and Defendant Park's video message, California has seen widespread demonstrations, protests, and prayer vigils, as well as looting and rioting.

205. These activities have neither been limited in number to 100 persons, nor isolated in a few locations around the State:

a. Hundreds gathered for protest in the City of Pasadena, as evidenced by this message from the City of Pasadena thanking "the hundreds of community members who gathered in front of City Hall last night in passionate, nonviolent protest." The message, reproduced here, is at <https://twitter.com/PasadenaGov/status/1267489352549937152> (last accessed June 3, 2020).

b. In the City of Los Angeles, the Los Angeles Police Department ("LAPD") reported that "[t]housands of peaceful demonstrators marched in solidarity" in what the LAPD referred to as "the best of Los Angeles." The message can be found at <https://twitter.com/LAPDHQ/status/1267962512621748224> (last accessed June 3, 2020).

c. "We Are With You': Napa Police During George Floyd Demonstration," including report of 300 gathered despite 100 person limit <https://patch.com/california/napavalley/we-are-you-apa-police-during-george-floyd-demonstration>

d. "Outrage Over George Floyd's Death Spills Onto Bay Area Freeways, Streets"

<https://www.nbcbayarea.com/news/local/outrage-over-george-floyds-death-spills-onto-bay-area-freeway-streets/2299500/>

e. "LAPD Chief Says Demonstrations 'Should Be Occurring' As Protesters Gather Downtown For Second Night", including LAPD Police Chief remark:

"“Street demonstrations are and should be occurring across this country and in this city to bring voices to injustices,” he said. “It is part of the very democracy of what makes this country great.””

<https://losangeles.cbslocal.com/2020/05/28/groups-protesting-police-brutality-george-floyd-second-night-los-angeles/>

f. "Hollywood protest: Massive demonstration draws thousands demanding justice after death of George Floyd," reporting that "[t]housands of protesters turned up in Hollywood Tuesday afternoon for a second day to demand justice following the in-custody death of George Floyd by Minneapolis police." <https://abc7.com/community-events/live-hundreds-in-hollywood-for-protest-promoted-by-rapper-yg/6226822/>

g. "1,000 gather in Manhattan Beach to demand justice for George Floyd"

<https://www.dailybreeze.com/2020/06/02/hundreds-gather-in-manhattan-beach-to-demand-justice-for-george-floyd/>

h. "San Diego protesters march to city hall, county admin building downtown" including "For a fourth night in a row, hundreds of San Diego protesters joining in a nationwide spate of anti-police-brutality demonstrations marched, chanted and carried signs, calling for an end to racial inequities in law enforcement while remaining largely peaceful and orderly."

<https://www.cbs8.com/article/news/local/protests-continue-across-san-diego/509-429d32ad-c512-4164-9a77-a522549bc4c0>

i. "UPDATES: Protests wind down after mostly civil night in Redding", including "Crowd has swelled to several hundred chanting protesters, but it has remained peaceful."

<https://www.redding.com/story/news/2020/06/02/preparation-underway-reddings-california-march-justice-george-floyd-march-protest-black-lives-matter/3122906001/>

j. "Bay Area's George Floyd protests keep spreading, thousands march in Fremont, Redwood City, San Francisco's Great Highway" including "Bay Area protests over the police killing of George Floyd in Minneapolis spread for a fifth day on Tuesday, with thousands taking to the streets in Fremont, Redwood City and San Francisco's Great Highway, areas not usually at the heart of demonstrations, and rallies also taking place in San Jose and Oakland."

<https://www.mercurynews.com/2020/06/02/bay-areas-george-floyd-protests-keep-spreading-thousands-march-in-fremont-san-franciscos-great-highway/>

Uncertain Trumpets: Newsom To Allow Gyms to Open, Park To Allow Card Rooms and Gaming but Not Gyms, Then Park Allows Gyms

206. On May 27, 2020, Defendant Newsom participated in a “roundtable discussion” with representatives of the fitness industry, to discuss about reopening the fitness industry amid the COVID-19 pandemic.

207. The roundtable was widely reported by news media, including, for example, in the San Francisco Chronicle, see <https://www.sfchronicle.com/business/article/Newsom-signals-guidelines-for-reopening-15298433.php>.

208. During the roundtable, Defendant Newsom advised that the State of California was in the process of preparing guidance for re-opening of fitness facilities as part of the State’s Resilience Roadmap.

209. On June 5, 2020, Defendant Newsom announced his intention to permit the re-opening of several business sectors in California that had previously been shuttered under the Challenged Orders, including fitness facilities, among other business sectors.

210. Defendant Newsom announced that plans for the reopening of schools, day camps, bars, gyms, campgrounds and professional sports with modifications as soon as June 12, 2020.

211. Defendant Newsom also released guidance for counties to guide them in reopening a broad range of other businesses including hotels, casinos, museums, zoos and aquariums, along with guidelines for resuming music, film and television production.

212. In implementing this next phase of the "Roadmap to Recovery," the rules for reopening schools and day camps will apply statewide.

213. With respect to the other affected industries -- bars, gyms, campgrounds, professional sports, hotels, casinos and card rooms, museums, zoos, and aquariums -- those industry sectors will only reopen as counties provide "attestations" to the State regarding the number of coronavirus cases, testing, and preparedness.

214. On June 5, 2020, the California Department of Public Health ("CDPH") published a press release captioned, "California Public Health Officials Provide COVID-19 Update," available at <http://www.oesnews.com/california-public-health-officials-provide-covid-19-update/> (last accessed June 15, 2020). In the June 5 news release, Defendant Angell made the following statement, explaining that local health officials were ultimately responsible for making decisions on the timing of the reopening of various sectors of the economy:

a. "As we continue to release guidance on how different sections can reopen with modifications, it is important to remember guidance doesn't mean 'go.'

Your local health officer will make the final decision about which sectors will open, guided by data specific to your community."

215. CDPH's June 5, 2020, news release further explained the effect of Defendant Angell's announcement:

a. "Given the state's vast geographic diversity, many counties have attested to epidemiological readiness and overall preparedness and are able to move at their own pace into Stage 3 depending on local conditions. California provides guidance on how local jurisdictions should modify behavior and operations to reduce risk for infection should they decide to reopen a specific sector. If the state has not yet released guidance for a sector, then that sector cannot yet be reopened. Local officials in counties with attestations determine when specific sectors of their economy that have state guidance posted will reopen. It is up to the local jurisdiction to make decisions regarding reopening specific sectors based upon the epidemiology and readiness of the county."

216. In fact, Defendant Park submitted just such an attestation as referred to in CDPH's June 5, 2020, news release. 217. CDPH made Defendant San Joaquin County's attestation available online at: <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/San%20Joaquin%20Attestation.pdf>. 218. On information and belief, Defendant Park's submission of the attestation on behalf of Defendant San Joaquin County was the necessary precondition

under which Defendant Park, Defendant Cunningham, and Defendant San Joaquin County could then proceed to authorize the reopening of closed economic sectors, including fitness facilities such as Fitness System, among others.

219. Along with Defendant Newsom's June 5 announcement, the State of California published its "COVID-19 INDUSTRY GUIDANCE: Fitness Facilities," see <https://covid19.ca.gov/pdf/guidance-fitness.pdf> (last accessed June 14, 2020).

220. In addition to the guidance for reopening of fitness facilities, CDPH also release a series of other guidance documents for economic sectors that could be reopened as soon as June 12, 2020, including:

a. "COVID-19 INDUSTRY GUIDANCE: Campgrounds, RV Parks, and Outdoor Recreation," published at <https://covid19.ca.gov/pdf/guidance-campgrounds.pdf> (last accessed June 15, 2020);

b. "COVID-19 INDUSTRY GUIDANCE: Hotels, Lodging, and Short Term Rentals," published at <https://covid19.ca.gov/pdf/guidance-hotels-lodging-rentals.pdf> (last accessed June 15, 2020);

c. "COVID-19 INDUSTRY GUIDANCE: Cardrooms, Satellite Wagering Facilities, and Racetracks," published at <https://covid19.ca.gov/pdf/guidance-cardrooms-racetracks.pdf> (last accessed June 15, 2020);

d. "COVID-19 INDUSTRY GUIDANCE: Family Entertainment Centers," published at <https://covid19.ca.gov/pdf/guidance-family-entertainment.pdf> (last accessed June 15, 2020);

e. "COVID-19 INDUSTRY GUIDANCE: Restaurants, Bars, and Wineries," published at <https://covid19.ca.gov/pdf/guidance-restaurants-bars.pdf> (last accessed June 15, 2020);

f. "COVID-19 INDUSTRY GUIDANCE: Museums, Galleries, Zoos, and Aquariums," published at <https://covid19.ca.gov/pdf/guidance-zoos-museums.pdf> (last accessed June 15, 2020).²²¹.

Notwithstanding the attestation made by Defendant Park and accepted by CDPH, Defendant Park concluded that it would not be safe and reasonable to reopen fitness facilities beginning on 14 June 12, 2020.

222. The "COVID-19 INDUSTRY GUIDANCE: Fitness Facilities" is a fifteen-page document that sets out basic guidance and information for the re-opening of fitness facilities, including gyms.

223. The basic guidance provided in the "COVID-19 INDUSTRY GUIDANCE: Fitness Facilities" imposes significant, new, and additional burdens on fitness facilities, including gyms.

224. The significant, new, and additional burdens will make it increasingly difficult for health clubs, including Fitness Systems, to survive.

225. The significant, new, and additional burdens will impose increased payroll costs on health clubs, including Fitness System, in order to provide additional staff members for purposes of monitoring social distancing and ensuring everyone is sanitizing per CDC recommendations.

226. Any further restrictions beyond the original social distancing guidelines and the sanitization and disinfecting of surfaces would cause undo harm, and simply make it unsustainable to continue in business.

227. Although Defendant Newsom and the State of California signaled that fitness facilities, including gyms, could be part of the business re-opening beginning as soon as June 12, 2020, that is not the case for gyms located in San Joaquin County, California.

228. While Defendant Newsom signaled a general willingness to allow the re-opening of fitness facilities in California, in fact, Defendant Newsom and Defendant Angell have deferred to local public health officials in making the final decision whether fitness facilities within their jurisdictions may open, and under what conditions they may do so.

229. Despite Defendants Newsom's and Angell's signaling that California fitness facilities might be able to open as soon as June 12, 2020, Defendants Park, Cunningham, and San Joaquin County concluded otherwise.

230. On June 11, 2020, Defendants Park, Cunningham, and San Joaquin County issued a news release captioned, "San Joaquin County Announces Reopening of Stage 3 Businesses and Activities," published at: http://www.sjcphs.org/assets/20200611_PR_SJC%20Announces%20Reopening%20of%20Stage%203%20Businesses%20and%20Activities.pdf (last accessed June 15, 2020).

231. In the June 11 news release, Defendants Park, Cunningham, and San Joaquin County announced that they were authorizing the reopening on June 12, 2020, of five previously closed economic sectors, including:

- a. Schools
- b. Day Camps
- c. Casinos/Card rooms/Racetracks (without spectators)
- d. Campgrounds/Outdoor recreation including pools, and
- e. Hotels for leisure.

232. In the same June 11 news release, however, Defendants Park, Cunningham, and San Joaquin County prohibited several additional economic sectors from reopening, including: Businesses that are still not allowed to be open include:

- a. Bars and wineries
- b. Family entertainment centers/Movie theaters
- c. Film TV and Movie Production
- d. Gyms
- e. Pro-Sports with spectator audiences, and
- f. Zoos and museums.

233. Defendants Park, Cunningham, and San Joaquin offered as justification for reopening of Schools, Day Camps, Casinos/Card rooms/Racetracks (without spectators), Campgrounds/Outdoor recreation including pools, and Hotels for leisure the assertion that "counties bordering San Joaquin County are opening additional sectors of the economy" and that "the nearby availability of such activities and business will likely result in the residents of San Joaquin County traveling outside of the County potentially increasing the spread of COVID-19."

234. Yet, in Sacramento County and in Stanislaus County, two counties bordering San Joaquin County to the north and to the south, the local government and public health officials have permitted the reopening of fitness facilities, including gyms.

235. As a consequence of Defendants Parks', Cunningham's, and San Joaquin County's decision,

residents of San Joaquin County that could be remaining near home and within San Joaquin County will be required to travel out of county to take advantage of the reopening of fitness facilities in those other counties.

236. Moreover, Defendants Park, Cunningham, and San Joaquin County have not identified or offered any rational basis for the reopening of card rooms in San Joaquin County, while keeping fitness facilities closed.

237. As a consequence of the irrational decision-making of Defendants Park, Cunningham, and San Joaquin County, Fitness System remained shuttered, but Cameo Club, Casino Real, King's Card Club, Parkwest Casino Lodi, Star's Casino, Westlane, are free to resume operations.

238. Four days later, on June 16, 2020, Defendants Park, Cunningham, and San Joaquin County reversed the position staked out one week earlier, and issued new guidance, under which, subject to the State's "The "COVID-19 INDUSTRY GUIDANCE: Fitness Facilities" guidelines and requirements.

239. Defendants Park, Cunningham, and San Joaquin County published that decision at: [http://www.sjcphs.org/documents/20200616_Public%20Health%20Order %206162020%20final.pdf](http://www.sjcphs.org/documents/20200616_Public%20Health%20Order%206162020%20final.pdf) (last accessed June 20, 2020).

240. On June 18, 2020, Defendant Newsom announced that public health officials, presumably Defendant Angell, would now “require” all Californians to wear face coverings in public.

241. The CDPH issued guidance, “GUIDANCE FOR THE USE OF FACE COVERINGS,” regarding how to use face coverings, the times and locations where face coverings were required to be worn, and identifying circumstances (age, illness, and the like) that would excuse compliance.

242. Defendants Newsom and Angell caused that guidance to be published at https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf (last accessed June 20, 2020).

243. Pursuant to that guidance, “People in California must wear face coverings when they are in the high-risk situations listed below”:

- a. Inside of, or in line to enter, any indoor public space;
- b. Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank;
- c. Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle;

d. Engaged in work, whether at the workplace or performing work off-site, when:

i. Interacting in-person with any member of the public;

ii. Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time;

iii. Working in any space where food is prepared or packaged for sale or distribution to others;

iv. Working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;

v. In any room or enclosed area where other people (except for members of the person's own household or residence) are present when unable to physically distance.

e. Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present. When no passengers are present, face coverings are strongly recommended.

f. While outdoors in public spaces when maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible.

244. The guidance provides exceptions from the requirement to wear face coverings for:

a. Persons age two years or under. These very young children must not wear a face covering because of the risk of suffocation.

b. Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.

c. Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.

d. Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

e. Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.

f. Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least six feet

away from persons who are not members of the same household or residence.

g. Persons who are engaged in outdoor work or recreation such as swimming, walking, hiking, bicycling, or running, when alone or with household members, and when they are able to maintain a distance of at least six feet from others.

h. Persons who are incarcerated. Prisons and jails, as part of their mitigation plans, will have specific guidance on the wearing of face coverings or masks for both inmates and staff.

245. On July 13, 2020, Defendant Angell issued a Statement and a new Order, the effect of which is, once again, to force the complete closure of Fitness System's and Covell's Lodi gym.

246. Defendant Angell caused her July 13, 2020, Statement to be published at:
<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf> (last accessed July 20, 2020).

247. Defendant Angell's July 13, 2020, Order is also published at:
<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf> (last accessed July 20, 2020). 248. In the July 13, 2020, Order, Defendant Angell

included an "Order for Closure of Additional Sectors for Counties on Monitoring List."

249. The Monitoring List gathers those counties that are experiencing increasing numbers of COVID-19 infections, related hospitalizations, and the like, as explained more fully by the Defendants at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/CountyMonitoringDataStep1.aspx> (last accessed July 20, 2020).

250. Defendant Angell included San Joaquin County on the State's County Monitoring List.

251. In the July 13 Order, Defendant Angell ordered inter alia San Joaquin to close "all indoor operations" of "Gyms and Fitness Centers," "Places of Worship," "Protests," "Offices for Non-Critical Infrastructure Sectors," "Personal Care Services (including nail salons, massage parlors, and tattoo parlors)," "Hair salons and barbershops," and "Malls."

252. In response to Defendant Angell's July 13 Order, Defendant Park issued an updated Order titled, "ORDER OF THE SAN JOAQUIN COUNTY PUBLIC HEALTH OFFICER IMPLEMENTING THE DIRECTIVES OF THE GOVERNOR OF CALIFORNIA AND THE CALIFORNIA STATE PUBLIC HEALTH OFFICER."

253. Defendant County and Park published the updated Order at: http://www.sjcphs.org/documents/20200713_Stay_At_Home_Order.pdf (last accessed July 20, 2020).

254. Defendant Park's July 13 Order states: "On July 13, 2020, the Governor of the State of California and the State Public Health Officer directed that businesses in the following sectors in counties that have been on the County Monitoring List, including San Joaquin County, cease indoor operations...."

255. Defendant Park's July 13 Order compels the complete discontinuation of indoor operations for numerous sectors of the economy, including "Fitness Centers," "Worship Services," "Protests," "Offices for Non-essential sectors," "Personal Care Services, like nail salons, body waxing and tattoo parlors," "Hair Salons and barbershops," and "Indoor malls."

256. Defendant Park's July 13 Order, unlike previous iterations, permits certain outdoor operations of affected businesses to continue in operation: "Outdoor operations of business within these sectors, with appropriate modifications, including physical distancing and face coverings, are allowed." 257. Fitness System's and Covell's business operations and health education and training programs are not capable of being relocated outdoors as the space leased by them for those purposes is indoors.

COUNT ONE
FIRST AND FOURTEENTH AMENDMENTS
(By Plaintiffs against All Defendants)

258. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding

paragraphs of this Complaint as though fully set forth herein.

259. In Count I, Plaintiffs seek damages based on Defendant's violation of their rights under the First and Fourteenth Amendments, including the right to freedom of speech and freedom of assembly and freedom of expressive association against the County and City Defendants and equitable relief, including injunctive relief, against all Defendants.

260. Fitness System and Covell have engaged in an enterprise of helping others pursue goals in health, fitness, and modification of lifestyle.

261. To accomplish the common goals of the Plaintiffs and their clients, Fitness System and Covell conduct a broad variety of activities that fully embody the exercise of the constitutionally dimensioned rights to freedom of speech, freedom of assembly, and freedom of expressive association.

262. The rights of the Plaintiffs at stake herein are supremely precious and delicate and require breathing space to survive.

263. Those activities include individual interactions between personal trainers and clients, between class instructors and their students, and the like.

264. Up until the effective dates of the Executive Order and the April 14 Order, Fitness System, Covell, their employees, the gym's personal trainers, and clients of the gym regularly engaged in the

exchange of ideas and information in the areas of health, exercise, diet, and related matters.

265. Upon the effective date of the Executive Order and the April 14 Order, all such exercises of the rights to freedom of speech, of assembly, and of expressive association were brutally and completely crushed as a result of the purpose and effects of the Orders complained of herein.

266. The prohibition of speech, assembly, and expressive association worked by the Orders complained of herein is complete.

267. Because a complete prohibition on expression, assembly, and expressive association is subject to strict scrutiny under the federal Constitution, the Defendants' Orders can only survive scrutiny if they are in service of a compelling government interest and are served by means narrowly drawn to serve the purpose thereof.

268. While the prevention and control of a public health pandemic may, generally, be categorized, without more, as a compelling government interest, the Defendants have not relied on such an overarching interest as compelled them to conclude that all concourse among the residents of California present risks of harm to that interest or that all engagement, including commercial engagement, must be suppressed in service of the asserted interest.

269. Rather, the Defendants have concluded that many activities in daily life are entirely permissible even while demanding and forcing the closure of the Plaintiffs' gym, including commuting to and from places of employment, working at places of employment, traveling to and from grocery stores, hardware stores, pharmacies, and other excepted commercial businesses.

270. The multitude of exemptions and exceptions within the classifications of essential and non-essential activities and businesses demonstrates that the assertedly compelling government interest is not at stake in the promulgation or enforcement of the Orders complained of herein.

271. The State and County Defendants, while silencing Fitness System and Covell, have taken a variety of steps to accommodate, protect, and encourage public demonstrations, protests, and prayer vigils responding to the homicide of George Floyd, including making changes to the State Stay at Home Order, and providing affirmative feedback to the messages of such First Amendment activities.

272. The preference of one topical category of speech over another topical category of speech constitutes content-based restriction of speech protected by the First Amendment and subjects the Challenged Orders to that level of scrutiny that is "strict in theory but fatal in fact."

273. Further, the means selected by the Defendants, the complete prohibition of the Plaintiffs' operation

of its gym facilities with its attendant complete prohibition of the constitutionally protected expressive activities conducted thereat, the suppression of the right to travel, and the like are not narrowly tailored to any lawful and legitimate purpose of the Defendants. The Plaintiffs have no adequate remedy at law.

274. The Plaintiffs have already suffered serious and irreparable injury and will continue to do so unless and until the Defendants are enjoined by this Court from enforcing the Orders complained of herein.

275. The Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders by the Defendants.

276. Accordingly, as provided in Title 42 USC 1983, the Plaintiffs are entitled to a declaratory judgment, an injunction, and, from the County and County Defendants and the City and City Defendants, damages, all as further prayed in their Prayer for Relief.

COUNT TWO
TAKINGS CLAUSE OF THE FIFTH AMENDMENT
(By Plaintiffs against All Defendants except
Defendants
Newsom, Becerra, and Angell)

277. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding

paragraphs of this Complaint as though fully set forth herein.

278. In Count II, Plaintiffs seek damages based on Defendant's violation of their rights under the Takings Clause of the Fifth Amendment to the United States Constitution.

279. The Fifth Amendment prohibits the taking of private property without just compensation.

280. The Fifth Amendment is applicable to the States through the Fourteenth Amendment to the United States Constitution.

281. At all times relevant hereto, the Plaintiffs had a vested property right in the operation of their lawful business.

282. In purpose and effect, the Orders complained of hereinabove have accomplished a per se regulatory taking of the property of the Plaintiffs for which the Constitution commands that the Plaintiffs should have been justly compensated.

283. Consequent to the decision of the Supreme Court in *Knick vs. Township of Scott*, the Plaintiffs are not required to exhaust California state remedies for the taking.

284. At no time were the Plaintiffs provided with just compensation for the Taking of their property via regulatory taking.

285. Defendants' Orders compelled the closure of the Plaintiffs' gym facilities because Plaintiffs were "Non- Essential" businesses, and as such were required to "shut down" and cease all operations as a means to help curb the spread of COVID-19.

286. The Defendants' Orders completely deprived the Plaintiffs of all economically beneficial use of their businesses without just compensation.

287. Accordingly, as provided in Title 42 USC 1983, the Plaintiffs are entitled to a declaratory judgment and damages, from the County and County Defendants and the City and City Defendants,, all as further prayed in their Prayer for Relief.

**COUNT THREE
THE DUE PROCESS AND PRIVILEGES AND
IMMUNITIES CLAUSES OF THE FOURTEENTH
AMENDMENT**

(By Plaintiffs against All Defendants)

288. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

289. The Plaintiffs are guaranteed the right to travel as part of the liberties of which they cannot be deprived without the due process of law under the Fourteenth Amendment.

290. The Plaintiffs' right to travel includes the right to travel intrastate.

291. The Plaintiffs' right to travel is fundamental in nature under the Constitution of the United States.

292. The Plaintiffs have been stripped of their right to travel by operation of the Executive Order and by the April 14 Order (and its predecessors), without regard to the fact that their right to travel is a constitutionally protected dimension of their right to engage in their lawful occupation and trade.

293. Whatever abuse of the right to travel that the Defendants fear may be inflicted by individuals who respond to the COVID-19 pandemic, the correct and constitutional response readily available to the Defendants is to employ the force of government to remedy abuses of the right, not to prohibit broadly and indiscriminately the enjoyment of the right by the Plaintiffs or the public at large.

294. The Orders complained of herein, injurious as they are to the fundamental right to travel, are not in service of a compelling government interest and are not narrowly tailored and are capable of being preserved through less restrictive means, including, but not limited to, punishing the abuse of the right.

295. The Executive Order and the April 14 Order (and its predecessors) mandate that Plaintiffs stay at home and shut down their "Non-Essential" businesses.

296. Requiring Plaintiffs to abstain from conducting business operations, even those in compliance with

the CDC's social distancing guidelines, violates Plaintiffs' Constitutional right to travel.

297. The Executive Order, the April 14 Order (and its predecessors), and the threats and enforcement of them constitute acts taken under color of State law depriving Plaintiffs of their right to travel as protected by the Due Process Clause.

298. The Plaintiffs have no adequate remedy at law.

299. The Plaintiffs have already suffered serious and irreparable injury and will continue to do so unless and until the Defendants are enjoined by this Court from enforcing the Orders complained of herein.

300. The Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders by the Defendants.

301. Accordingly, as provided in Title 42 USC 1983, the Plaintiffs are entitled to a declaratory judgment, an injunction, and, from the County and County Defendants and the City and City Defendants, damages, all as further prayed in their Prayer for Relief.

COUNT FOUR
DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT
(By Plaintiffs against All Defendants)

302. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

303. Section one of the Fourteenth Amendment to the United States Constitution states, in pertinent part as follows:

304. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law."

305. Under its procedural aspect, the Due Process Clause of the Fourteenth Amendment prohibits the States from depriving a person of life, liberty, or property except if accomplished with appropriate procedural safeguards.

306. Under its substantive aspect, the Due Process Clause of the Fourteenth Amendment prohibits the States from subjecting any person to the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.

307. By summarily confining plaintiff and class members to their respective residences, without due process of law, Governor Gavin Newsom and Doe defendants, have, as a matter of law, injured Plaintiffs, in violation of their rights, to be free of confinement, without legal due process, pursuant to

Section One of the Fourteenth Amendment to the United States Constitution.

308. The Executive Order and the April 14 Order (and its predecessors) are unconstitutionally vague, as to scope and duration, and appears to permit residents to be released from residential confinement only for the purpose of obtaining food, medication and/or healthcare without objectively specifying the extent a resident may be released from residential confinement.

309. The Orders herein complained of – effectively sentencing Californians, including Plaintiff Covell – to residential confinement is open-ended and entirely subjective, and based upon the subjective whims of the Defendants.

310. Plaintiffs have a fundamental property interest in conducting lawful business activities that are protected by the Due Process Clause of the Fourteenth Amendment.

311. Pursuant to the Fourteenth Amendment to the United States Constitution, the Plaintiffs are entitled to substantive due process prior to being deprived of any property interest by the Defendants.

312. At all relevant times, the Plaintiffs had vested property interests in their conduct and operation of their business.

313. At all relevant times, the Plaintiffs had vested property interests in their business goodwill.

314. At all relevant times, the Plaintiffs had vested property interests in the conduct of their lawful occupation.

315. Here, without due process, Defendants arbitrarily and unlawfully stripped the Plaintiffs of their property interest in their business.

316. The Executive Order, the April 14 Order, and Defendants' threats and enforcement thereof all violate Plaintiffs' substantive due process rights secured by the Fourteenth Amendment to the U.S. Constitution.

317. Prior to taking final action, Defendants Newsom, Angell, County, City, Cunningham, Park, and Brucia willfully failed and refused to conduct any evidentiary or other due process hearing, failed to provide documentation upon which the changes in to the vested property rights of the Plaintiffs were based, failed to give any explanation as to the purported just cause for removing Plaintiffs' property rights, did not allow Plaintiffs to call sworn witnesses to testify on their behalf, and in fact did not provide any justification whatsoever for stripping the Plaintiffs of their vested property rights.

318. The Defendants are directly restrained and prohibited by the Due Process Clause of the Fourteenth Amendment from depriving the Plaintiffs of life, liberty, or property, without due process of law.

319. The fundamental liberties protected by the Due Process Clause of the Fourteenth Amendment virtually mirror those right protected from federal intrusion by the various provisions of the Bill of Rights, including the right of the Plaintiffs to make choices that are central to individual dignity and autonomy.

320. The Executive Order, the April 14 Order (and its predecessors), and the threats and enforcement of them by the Defendants did not afford Plaintiffs with a constitutionally adequate process to determine whether and to what extent, under the Constitution of the United States, those Orders could permissibly restrict and prohibit the Plaintiffs' in the conduct of their business.

321. In the promulgation of the Executive Order and the April14 Order (and its predecessors), Defendants disregarded and trammled on the procedural and substantive requirements of the Due Process Clause.

322. The Executive Order and the April 14 Order violate the Due Process rights of the Plaintiffs because those Orders are void for unconstitutional vagueness.

323. The Defendants' Orders and the Defendants' threats and enforcement of those Orders are the direct and proximate cause of the substantial deprivation of liberty and property worked by the Defendants on the rights and interests of the Plaintiffs.

324. The Defendants acts complained of herein directly and proximately deprived the Plaintiffs' of their property and liberty rights without due process of law, in violation of the Fourteenth Amendment to the U.S. Constitution.

325. The Plaintiffs have no adequate remedy at law.

326. The Plaintiffs have suffered, and will continue to suffer serious and irreparable harm to their constitutional rights unless the Defendants are enjoined from implementing and enforcing the Orders.

327. Accordingly, as provided in Title 42 USC 1983, the Plaintiffs are entitled to a declaratory judgment, an injunction, and, from the County and County Defendants and the City and City Defendants, damages, all as further prayed in their Prayer for Relief.

COUNT FIVE
EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT
(By Plaintiffs against All Defendants)

328. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

329. The Executive Order, the April 14 Order (and its predecessors), and Defendants' threats and

enforcement thereof deny to the Plaintiffs the equal protection of the laws.

330. The Defendants' division of businesses and activities of the citizens of the State of California between those deemed to be "essential" and those deemed to be "non-essential" is an irrational classification that injures the fundamental rights of the Plaintiffs to travel, to freely associate with others, and to conduct their lawful trade or occupation.

331. The Defendants' division of businesses and activities of the citizens of the State of California between those deemed to be "essential" and those deemed to be "non-essential" constitutes arbitrary and capricious government action that has irreparably harmed the Plaintiffs.

332. Because the Defendants' Orders and acts complained of herein impinge on fundamental rights, including the right to travel, the right to due process of law, and the liberty to conduct one's trade, business, or occupation, those Orders and acts are subject to strict scrutiny under the Equal Protection Clause.

333. The arbitrary classifications established in the Executive Order and the April 14 Order (and its predecessors) are not narrowly tailored measures that further compelling government interests, as stated hereinabove.

334. The decisions of the State and County Defendants to accommodate, encourage, and endorse the public demonstrations, protests, and prayer vigils provoked by the homicide of George Floyd embody a preference for those messages decrying police abuse and civil rights denials to communities of color by law enforcement over the messages of the Plaintiffs.

335. Such preference for one message, and the accommodation of it, embodies a classic violation of the Equal Protection Clause.

336. The Plaintiffs have no adequate remedy at law.

337. The Plaintiffs have already suffered serious and irreparable harm to their constitutional rights.

338. The Plaintiffs will continue to suffer serious and irreparable harm unless the Defendants are enjoined from implementing and enforcing the Orders complained of herein.

339. Accordingly, as provided in Title 42 USC 1983, the Plaintiffs are entitled to a declaratory judgment, an injunction, and, from the County and County Defendants and the City and City Defendants, damages, all as further prayed in their Prayer for Relief.

COUNT SIX
CONTRACTS CLAUSE OF THE UNITED STATES
CONSTITUTION
(By Plaintiffs against All Defendants)

340. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

341. Article I, Section 10, Clause 1 of the United States Constitution states, "No State shall ... pass any ... Law impairing the Obligation of Contracts"

342. The Plaintiffs were, at the time of the promulgation of the Executive Order and the April 14 Order (and its predecessors), parties to contracts with its clients for the provision of their services and the use of their facilities by their clients.

343. The contracts to which the Plaintiffs were parties with their clients were lawful, freely negotiated, willingly entered by the parties to them, and executed with the expectation of ongoing exchanges of benefits between the parties, an expectation both reasonable and legitimate at the time of the making of those nearly 6000 contracts.

344. The Executive Order and the April 14 Order (and its predecessors) have ordered and accomplished the complete closure of the Plaintiffs' gym facilities.

345. The object and purpose of the contracts between the Plaintiffs and their clients was to provide access to the facilities of the gym and the support and services made available therein.

346. Under legal coercion, the Plaintiffs have been utterly barred from satisfying the terms and obligations established under its contracts with its clients as a direct and proximate result of the Executive Order and the April 14 Order (and its predecessors).

347. Consequently, the impairment of the Plaintiffs' contractual relationships with their clients is certainly substantial because it has worked, virtually, a complete cancellation of those contracts, as the Plaintiffs may not, under the Orders complained of herein, open their gym facilities for use by their contractual clients.

348. Unlike utilities services, alcohol sales, or firearms sales, or pawn shops, the enterprise of the Plaintiffs, the operation of gym facilities for the use and benefits of its clients, is not now, and never has been, a business or industry subject to close regulation by the State of California, the County of San Joaquin, or the City of Lodi.

349. The requirement of the business license to conduct the business of a gym facility does not constitute heavy or close government regulation.

350. There is no significant and legitimate public purpose behind the Orders complained of herein because there is no rational relationship between those Orders and any reasonable and legitimate interest of the government.

351. The Executive Order and the April 14 Order do not satisfy the requirement that the adjustment of the rights and responsibilities of contracting parties is based on reasonable conditions.

352. The Executive Order and the April 14 Order are not of a character appropriate to the public purpose justifying the promulgation and enforcement of the Orders complained of herein.

353. The Plaintiffs have no adequate remedy at law to the Contract Clause violation inflicted on them by the Defendants.

354. The Plaintiffs have already suffered serious and irreparable harm to their constitutional right to contract free from impairment.

355. The Plaintiffs will continue to suffer serious and irreparable harm unless the Defendants are enjoined from implementing and enforcing the Orders complained of herein.

356. Accordingly, as provided in Title 42 USC 1983, the Plaintiffs are entitled to a declaratory judgment, an injunction, and, from the County and County Defendants and the City and City Defendants, damages, all as further prayed in their Prayer for Relief.

COUNT SEVEN
LIBERTY CLAUSE OF THE CALIFORNIA
CONSTITUTION
(By Plaintiffs against All Defendants)

357. Plaintiff incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

358. The United States Congress has granted to this Court the authority, in its discretion, to hear and decide those claims of the Plaintiffs arising under the law of the State of California that are substantially related to the claims arising under federal law.

359. The California Constitution guarantees to the Plaintiffs the right to liberty, the right to acquire, possess, and protect property, and the right to pursue and obtain safety, happiness, and privacy.

360. The Executive Order and the April 14 Order (and its predecessors) have interfered with Plaintiffs' rights and liberties as set forth under Article 1, Sections 1 of the California Constitution, depriving the Plaintiffs of the use, enjoyment and ability to operate their business as a consequence of being discriminatorily classified as a "Non-Essential" business.

361. The Executive Order and the April 14 Order (and its predecessors) are the proximate and legal cause of the injury to, and denial of, the Plaintiffs right to liberty under the California Constitution.

362. The Orders complained of herein are not a legitimate exercise of the police public health and

safety power to quarantine the Plaintiffs because there is no reasonable ground on which the Defendants can claim to believe that the Plaintiffs are infected by an infectious disease.

363. In promulgating the Orders complained of herein, and in threatening to, and enforcing those Orders, neither Defendant Angell, nor Defendant Park, nor Defendant Cunningham have satisfied the California Constitution's requirement that there is probable cause to believe the Plaintiffs have an infectious disease.

364. The Orders complained of herein are arbitrary, unreasonable, unwarranted, and wrongful, and constitute oppressive interference with the personal liberty of the Plaintiffs in the absence of any basis therefore.

365. The California Constitution's right to liberty prohibits the imposition of quarantine on these Plaintiffs because there is not even a mere suspicion that the Plaintiffs are infected with COVID-19, or are asymptomatic carriers of the novel coronavirus responsible for the COVID-19 disease.

366. The Executive Order and the April 14 Order (and its predecessors) completely prohibit the Plaintiffs from conducting lawful business in the State of California even though other measures, including the social distancing protocols established by the CDC, satisfy the public health interests at stake.

367. Consequently, the Orders complained of herein violate the Plaintiffs' right to liberty under the California Constitution.

368. The Plaintiffs have no adequate remedy at law for this deprivation of the right to liberty under the California Constitution.

369. The Plaintiffs will suffer serious and irreparable harm to their constitutional right to liberty under the California Constitution unless Defendants are enjoined from implementing and enforcing the Orders.

370. California Code of Civil Procedure Section 1021.5 authorizes the award of attorneys' fees to the Plaintiffs in this case under the terms of that provision of law.

371. Accordingly, as provided in Title 42 USC 1983, the Plaintiffs are entitled to a declaratory judgment, an injunction, and, from the County and County Defendants and the City and City Defendants, damages, all as further prayed in their Prayer for Relief.

COUNT EIGHT
EQUAL PROTECTION CLAUSE THE
CALIFORNIA CONSTITUTION
(By Plaintiffs against All Defendants)

372. Plaintiff incorporates herein by reference each and every allegation contained in the preceding

paragraphs of this Complaint as though fully set forth herein.

373. Article 1, Section 7 of the California Constitution prohibits the State of California from denying to any person the equal protection of the laws.

374. The California constitutional guarantee of equal protection is substantially equivalent to the Fourteenth Amendment's guarantee of equal protection such that claims under the California Equal Protection Clause are subject to virtually the same analysis as federal Equal Protection Clause claims.

375. The Executive Order, the April 14 Order (and its predecessors), and Defendants' threats and enforcement thereof deny to the Plaintiffs the equal protection of the laws guaranteed to them under the Equal Protection Clause of the California Constitution.

376. The Defendants' division of businesses and activities of the citizens of the State of California between those deemed to be "essential" and those deemed to be "non-essential" is an irrational classification that injures the fundamental rights of the Plaintiffs to travel, to freely associate with others, and to conduct their lawful trade or occupation.

377. The Defendants' division of businesses and activities of the citizens of the State of California

between those deemed to be “essential” and those deemed to be “non-essential” constitutes arbitrary and capricious government action that has irreparably harmed the Plaintiffs.

378. Because the Defendants’ Orders and acts complained of herein impinge on fundamental rights, including the right to travel, the right to due process of law, and the liberty to conduct one’s trade, business, or occupation, those Orders and acts are subject to strict scrutiny under the Equal Protection Clause of the California Constitution.

379. The arbitrary classifications established in the Executive Order and the April 14 Order (and its predecessors) are not narrowly tailored measures that further compelling government interests, as stated hereinabove.

380. The Plaintiffs have no adequate remedy at law.

381. The Plaintiffs have already suffered serious and irreparable harm to their constitutional rights.

382. The Plaintiffs will continue to suffer serious and irreparable harm unless the Defendants are enjoined from implementing and enforcing the Orders complained of herein.

383. Accordingly, the Plaintiffs are entitled to a declaratory judgment, an injunction, and, from the County and County Defendants and the City and City Defendants, damages, all as further prayed in their Prayer for Relief.

COUNT NINE
THE TAKINGS CLAUSE OF THE CALIFORNIA
CONSTITUTION
(By Plaintiffs against All Defendants)

384. Plaintiff incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

385. The California Constitution, Article 1, Section 19, authorizes the taking of private property for public use only upon payment of just compensation.

386. The Executive Order and the April 14 Order (and its predecessors) compel the Plaintiffs to forego entirely their lawful business gym business in the State of California, destroying the Plaintiffs' legitimate expectations of return on investment and leaving no economically viable use of their property to them.

387. The Defendants have not provided just compensation to the Plaintiffs, nor have the Defendants taken any step preliminary to or suggestive of any intention to justly compensate the Plaintiffs for the taking inflicted upon them.

388. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders.

389. Accordingly, the Plaintiffs are entitled to a declaratory judgment that the Orders complained of herein constitute a taking under the California Constitution, together with an award of just compensation therefor, all as further prayed in their Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully pray that this Court:

- a. Declare that the Challenged Orders, as identified hereinabove, are null and void, of no effect;
- b. Grant a TRO and a preliminary injunction to prevent the Defendants from enforcing or implementing their Orders until this Court decides the merits of this lawsuit;
- c. Permanently enjoin the Defendants, and each of them, and all persons and entities in active concert or participation with Defendants, from enforcing the Orders;
- d. Award to the Plaintiffs compensatory damages for the injury to their federal civil and constitutional rights, as well as fix a just compensation for the taking of the Plaintiffs' property, all as authorized by Title 42 USC 1983;
- e. Award to the Plaintiffs compensatory damages for the injury to their California constitutional and civil rights as authorized under state law;

f. Award to the Plaintiffs the reasonable value of the loss of their businesses commandeered from them by virtue of Defendant Newsom's Executive Order, as authorized under Cal. Gov. Code § 8572;

g. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action; and

h. Grant all other such relief as the Court may deem just and proper.

JURY DEMAND

For all causes herein so triable, the Plaintiffs demand trial by jury.

Dated: July 27, 2020

[Counsel Signature Block Omitted]

[Verification Omitted]

ADDENDUM OF CONSTITUTIONS, STATUTES,
RULES

US Constitution

U.S. Constitution, Art. I, § 10:

No state shall ... pass any ... law impairing the
obligation of contracts

U.S. Constitution, Amend. I:

Congress shall make no law respecting an
establishment of religion, or prohibiting the free
exercise thereof; or abridging the freedom of speech,
or of the press; or the right of the people peaceably to
assemble, and to petition the government for a
redress of grievances.

U.S. Constitution, Amend. VI:

[N]or shall private property be taken for public use,
without just compensation.

U.S. Constitution, Amend. XIV:

All persons born or naturalized in the United States,
and subject to the jurisdiction thereof, are citizens of
the United States and of the state wherein they
reside. No state shall make or enforce any law which
shall abridge the privileges or immunities of citizens
of the United States; nor shall any state deprive any
person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Statutes

Title 28 USC 1291:

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

Title 28 USC 1331:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Title 28 USC 1343(a)(3):

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

...

(3)To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

Title 28 USC 1367(a):

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

Title 42 USC 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a

judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Federal Rules of Civil Procedure

Rule 8(a):

(a) Claim for Relief. A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Rule 9(a)-(b)

(a) Capacity or Authority to Sue; Legal Existence.

- (1) In General. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) Raising Those Issues. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

Rule 12(b)(6)

...

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

...

(6) failure to state a claim upon which relief can be granted.

...

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

California Constitution

Liberty Clause

Cal. Const. Art. I, § 1:

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

Cal. Const. Art. I, § 7:

A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws

Cal. Const. Art. I, § 19:

Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been

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paid to, or into court for, the owner.