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8 ATTORNEY FOR PLAINTIFFS
9 Metroflex Oceanside LLC; etc.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 METROFLEX OCEANSIDE LLC, a
13 California limited liability company;
14 BOULEVARD FITNESS LLC, a
15 California limited liability company;
16 DEADWEIGHT STRENGTH INC., a
17 California corporation; CONVOY
18 STRENGTH, LLC, a California limited
19 liability company; MJT LLC, a
20 California limited liability company;
21 BEING FIT OF MIRA MESA INC., a
22 California corporation; BEING FIT,
23 INC., a California corporation; and
24 RAMONA FITNESS CENTER, LLC, a
25 California limited liability,

26 Plaintiffs,

27 v.

28 GAVIN NEWSOM, in his official
capacity as Governor of California;
XAVIER BECERRA, in his official
capacity as the Attorney General of
California; SANDRA SHREWY, MPH,
MSW in her official capacity as the
Director and State Public Health Officer;
KEVIN FAULCONER, in his official
capacity as Mayor of the City of San
Diego; PETER WEISS, in his official
capacity as Mayor of the City of
Oceanside; SERGE DEDINA, in his
official capacity as Mayor of the City of
Imperial Beach; DONNA FRYE, in her
official capacity as Mayor of the City of
Clairemont; NICK MACCHIONE, in his

Case No. **'20CV2110 CAB AGS**

COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF, AND
DAMAGES

1 official capacity as Director of the
2 County of San Diego Health and Human
3 Services Agency; WILMA WOOTEN,
4 MD, in her official capacity as San Diego
5 County Public Health Officer; MARA
6 W. ELLIOTT, in her official capacity as
7 San Diego City Attorney; WILLIAM D.
8 GORE, in his official capacity as San
9 Diego County Sheriff; DAVID NISLEIT,
10 in his official capacity as San Diego
11 Chief of Police; SUMMER STEPHAN,
12 in her official capacity as San Diego
13 County District Attorney; GREG COX,
14 in his official capacity as a San Diego
15 County Supervisor; DIANNE JACOB, in
16 her official capacity as a San Diego
17 County Supervisor; KRISTIN GASPAR,
18 in her official capacity as an San Diego
19 County Supervisor; NATHAN
20 FLETCHER, in his official capacity as a
21 San Diego County Supervisor; JIM
22 DESMOND, in his official capacity as a
23 San Diego County Supervisor; and
24 DOES 1 through 100,

Defendants.

16 Plaintiffs Metroflex Oceanside, LLC, a California limited liability company;
17 Boulevard Fitness LLC, a California limited liability company; Deadweight Strength,
18 Inc., a California corporation; Convoy Strength, LLC, a California limited liability
19 company; Imperial Beach Fitness, LLC, a California limited liability company; Being
20 Fit of Mira Mesa, Inc., a California corporation; Being Fit, Inc., a California
21 corporation; and Ramona Fitness Center, a California limited liability (hereinafter
22 collectively referred to as “Plaintiffs”), by and through their attorneys of record, Uplift
23 Law, P.C., allege claims against the above-named Defendants Gavin Newsom, in his
24 official capacity as Governor of California; Xavier Becerra, in his official capacity as
25 Attorney General of California; Sonia Y. Angel, MD, MPH, in her official capacity as
26 the Director and State Public Health Officer; Kevin Faulconer, in his official capacity
27 as Mayor of the City of San Diego; Peter Weiss, in his official capacity as Mayor of
28 the City of Oceanside; Serge Dedina, in his official capacity as Mayor of the City of

1 Imperial Beach; Donna Frye, in her official capacity as Mayor of the City of
2 Clairemont; Nick Macchione, in his official capacity as Director of the County of San
3 Diego Health and Human Services Agency; Wilma Wooten, in her official capacity as
4 San Diego County Public Health Officer; Mara W. Elliott, in her official capacity as
5 San Diego City Attorney; William D. Gore, in his official capacity as San Diego
6 County Sheriff; David Nisleit, in his official capacity as San Diego Chief of Police;
7 Summer Stephan, in her official capacity as San Diego County District Attorney; Greg
8 Cox, in his official capacity as a San Diego County Supervisor; Dianne Jacob, in her
9 official capacity as a San Diego County Supervisor; Kristin Gaspar, in her official
10 capacity as an San Diego County Supervisor; Nathan Fletcher, in his official capacity
11 as a San Diego County Supervisor; Jim Desmond, in his official capacity as a San
12 Diego County Supervisor; and DOES 1 through 100 (hereinafter collectively referred
13 to as “Defendants”) as follows:

14 NATURE OF THE ACTION

15 1. Following the outbreak and subsequent global pandemic regarding the
16 novel coronavirus, the State of California began taking purported emergency measures
17 in an effort to slow the spread of COVID-19 such that the medical infrastructure in place
18 is not overwhelmed.

19 2. The sovereign people of the State of California have graciously endured
20 an unprecedented suspension of their civil liberties.

21 3. However, all government power in this country, no matter how well-
22 intentioned, derives only from the state and federal constitutions. Governmental power
23 cannot be exercised in conflict with the constitution, even in a pandemic. The
24 Constitution is not suspended when the government declares a state of disaster. See In
25 Re Salon A La Mode, Et Al., No. 20-0340 (Tex. May 5, 2020) (citing In Re Abbott, No.
26 20-0291, 2020 WL 1943226, at *1 (Tex. Apr. 23, 2020).

27 4. As COVID-19 spread, local officials scrambled to implement a myriad of
28 measures purporting to protect Californians. California’s Governor issued Executive

1 Orders to establish state-wide regulations, which were also implemented and enforced
2 on the county and city level.

3 5. Plaintiffs have filed this Action in an effort to challenge the
4 constitutionality of Defendants' Orders that severely limit Plaintiffs' civil rights and
5 liberties by ordering the citizens of the State of California "shelter-in-place" and
6 effectively close any businesses Defendants have arbitrarily deemed "Non-Essential."

7 6. Defendants' Orders have violated, and continue to violate, Plaintiffs' rights
8 under both the California Constitution, as well as the United States Constitution. As a
9 result of Defendants' unlawful violations of Plaintiffs' civil liberties and rights,
10 Defendants have also caused severe economic damage to Plaintiffs. The economic
11 damages suffered by Plaintiffs is such that Plaintiffs may never financially recover from
12 the harm

13 7. Accordingly, Plaintiffs have filed this Action seeking: 1) equitable and
14 injunctive relief to enjoin enforcement of Defendants' Orders; 2) declaratory relief that
15 Defendants' Orders violate Plaintiffs' civil rights under: a) U.S.C. § 1983 of the Federal
16 Civil Rights Act; b) the Due Process Clause of the Fifth Amendments; c) the Due
17 Process Clause of the Fourteenth Amendments; and c) Article 1, Sections 1, 7, and 19
18 of the California Constitution; 3) attorneys' fees and costs incurred by Plaintiffs' in an
19 amount according to proof; 4) monetary damages; and 5) such other and further relief
20 as this Court deems just and appropriate.

21 THE PARTIES

22 Plaintiffs

23 8. Plaintiff Metroflex Oceanside LLC is a California limited liability
24 company authorized and doing business in the State of California as Metroflex
25 Oceanside ("Metro"). Metro's principal place of business is located in Oceanside, San
26 Diego County, California.

27 9. Plaintiff Boulevard Fitness LLC is a California limited liability company
28 authorized and doing business in the State of California as Boulevard Fitness

1 (“Boulevard”). Boulevard’s principal place of business is located in San Diego, San
2 Diego County, California.

3 10. Plaintiff Deadweight Strength Inc. is a California corporation authorized
4 and doing business in the State of California as Deadweight Strength (“Deadweight”).
5 Deadweight’s principal place of business is located in San Diego, San Diego County,
6 California.

7 11. Plaintiff Convoy Strength, LLC is a California limited liability company
8 authorized and doing business in the State of California as Convoy Strength (“Convoy
9 Strength”). Convoy Strength’s principal place of business is located in San Diego, San
10 Diego County, California.

11 12. Plaintiff MJT, LLC is a California limited liability company authorized
12 and doing business in the State of California as IB Fitness (“MJT”). MJT’S principal
13 place of business is located in Imperial Beach, San Diego County, California.

14 13. Plaintiff Being Fit of Mira Mesa, Inc. is a California corporation authorized
15 and doing business in the State of California as Being Fit Fitness Center (“Being Fit”).
16 Being Fit’s principal place of business is located in Mira Mesa, San Diego County,
17 California.

18 14. Plaintiff Being Fit, Inc. is a California corporation authorized and doing
19 business in the State of California as Being Fit Clairemont (“Being Fit Clairemont”).
20 Being Fit Clairemont’s principal place of business is located in Clairemont, San Diego
21 County, California.

22 15. Plaintiff Ramona Fitness Center, LLC is a California limited liability
23 company authorized and doing business in the State of California as Ramona Fitness
24 (“Ramona Fitness”). Ramona Fitness’ principal place of business is located in Ramona,
25 San Diego County, California.

26 Defendants

27 16. Defendant Governor Gavin Newsom (“Newsom” or “Governor”) is made
28 a party to this Action in his official capacity as the Governor of the State of California.

1 The California Constitution vests the “supreme executive power of the State” in the
2 Governor, who “shall see that the law is faithfully executed.” Cal. Const. Art. V, § 1.
3 Governor Newsom signed Executive Order N-33-20 (the “Executive Order”) on or
4 about March 17, 2020.

5 17. Defendant Xavier Becerra (“Becerra”) is made a party to this Action in his
6 official capacity as the Attorney General of California. Under California law, Becerra
7 is the chief law enforcement officer with supervision over all sheriffs in the State of
8 California. Cal. Const. Art. V, § 13.

9 18. Defendant Sandra Shrewy, MPH, MSW (“Shrewy”) is made a party to this
10 Action in her official capacity as the Director and State Public Health Officer and is
11 sued in her official capacity pursuant to Ex Parte Young to challenge the
12 constitutionality of her office’s list of “Essential Critical Infrastructure Workers” which
13 was issued by Shrewy on March 22, 2020 to complement Newsom’s Executive Order.

14 19. Defendant Kevin Faulconer (“Faulconer”) is made a party to this Action
15 in his official capacity as the Mayor of San Diego in the State of California. Faulconer
16 is sued in his official capacity under the rule of Ex Parte Young to enjoin the
17 enforcement of any Order, instituted to shut down all “Non-Essential” businesses.

18 20. Defendant Peter Weiss (“Weiss”) is made a party to this Action in his
19 official capacity as the Mayor of Oceanside in the State of California. Weiss is sued in
20 his official capacity under the rule of Ex Parte Young to enjoin the enforcement of any
21 Order, instituted to shut down all “Non-Essential” businesses.

22 21. Defendant Serge Dedina (“Dedina”) is made a party to this Action in his
23 official capacity as the Mayor of Imperial Beach in the State of California. Dedina is
24 sued in his official capacity under the rule of Ex Parte Young to enjoin the enforcement
25 of any Order, instituted to shut down all “Non-Essential” businesses.

26 22. Defendant Donna Frye (“Frye”) is made a party to this Action in her
27 official capacity as the Mayor of Clairemont in the State of California. Frye is sued in
28

1 her official capacity under the rule of Ex Parte Young to enjoin the enforcement of any
2 Order, instituted to shut down all “Non-Essential” businesses.

3 23. Defendant Nick Macchione (“Macchione”) is made a party to this Action
4 in his official capacity as the Director of the County of San Diego Health and Human
5 Services Agency in the State of California. Macchione is sued in his official capacity
6 under the rule of Ex Parte Young to enjoin the enforcement of any Order, instituted to
7 shut down all “Non-Essential” businesses.

8 24. Defendant Wilma Wooten, MD (“Wooten”) is made a party to this Action
9 in her official capacity as the San Diego County Public Health Officer. Wooten is sued
10 in her official capacity under the rule of Ex Parte Young to enjoin the enforcement of
11 any Order, instituted to shut down all “Non-Essential” businesses.

12 25. Defendant Mara Elliott (“Elliott”) is made a party to this Action in her
13 official capacity as the San Diego City Attorney. Elliott is sued in her official capacity
14 under the rule of Ex Parte Young to enjoin the enforcement of any Order, instituted to
15 shut down all “Non-Essential” businesses.

16 26. Defendant William D. Gore (“Gore”) is made a party to this Action in his
17 official capacity as San Diego County Sheriff. Under California law, Gore has the
18 responsibility to enforce the San Diego County Order in San Diego County. See Cal.
19 Gov’t Code § 26601.

20 27. Defendant David Nisleit (“Nisleit”) is made a party to this Action in his
21 official capacity as San Diego Chief of Police. Under California law, Nisleit has the
22 responsibility to enforce the San Diego County Order in San Diego County. See Cal.
23 Gov’t Code § 26601.

24 28. Defendant Summer Stephan (“Stephan”) is made a party to this Action in
25 her official capacity as the San Diego District Attorney. Under California law, Stephan
26 has the responsibility to enforce the San Diego County Order in San Diego County. See
27 Cal. Gov’t Code § 26601.

28

1 29. Defendant Greg Cox is made a party to this Action in his official capacity
2 as a member of the San Diego County Board of Supervisors, which exercises broad
3 legislative, executive, and quasi-judicial authority under California law, including the
4 supervision of the county sheriff and public health officials. See, e.g., Cal. Gov't Code
5 §§ 25000, et seq.; Cal. Health & Safety Code § 101000.

6 30. Defendant Dianne Jacob is made a party to this Action in her official
7 capacity as a member of the San Diego County Board of Supervisors, which exercises
8 broad legislative, executive, and quasi-judicial authority under California law, including
9 the supervision of the county sheriff and public health officials. See, e.g., Cal. Gov't
10 Code §§ 25000, et seq.; Cal. Health & Safety Code § 101000.

11 31. Defendant Kristin Gaspar is made a party to this Action in her official
12 capacity as a member of the San Diego County Board of Supervisors, which exercises
13 broad legislative, executive, and quasi-judicial authority under California law, including
14 the supervision of the county sheriff and public health officials. See, e.g., Cal. Gov't
15 Code §§ 25000, et seq.; Cal. Health & Safety Code § 101000.

16 32. Defendant Nathan Fletcher is made a party to this Action in his official
17 capacity as a member of the San Diego County Board of Supervisors, which exercises
18 broad legislative, executive, and quasi-judicial authority under California law, including
19 the supervision of the county sheriff and public health officials. See, e.g., Cal. Gov't
20 Code §§ 25000, et seq.; Cal. Health & Safety Code § 101000.

21 33. Defendant Jim Desmond is made a party to this Action in his official
22 capacity as a member of the San Diego County Board of Supervisors, which exercises
23 broad legislative, executive, and quasi-judicial authority under California law, including
24 the supervision of the county sheriff and public health officials. See, e.g., Cal. Gov't
25 Code §§ 25000, et seq.; Cal. Health & Safety Code § 101000.

26 34. The true names and capacities, whether individual, corporate, associate, or
27 otherwise, of Defendants DOES 1 through 100, are unknown to Plaintiffs, who
28 therefore sue said Defendants by such fictitious names. Plaintiffs are informed and

1 believe and thereon allege that each of the Defendants designated herein as a DOE is
2 responsible in some manner for the events and happenings herein referred to. As such,
3 Plaintiffs will seek leave of Court to amend this Complaint to insert the true names and
4 capacities of said Defendant as they become identified.

5 35. As alleged herein, Defendants are responsible for the implementation of
6 various Executive Order(s) and other Civil Orders (“Orders”) that are in direct violation
7 of the United States and California Constitutions, including but not limited to, 42 U.S.C.
8 § 1983. Accordingly, each and every Defendant acted under color of state law with
9 respect to all acts or omissions herein alleged.

10 JURISDICTION AND VENUE

11 36. The Court has subject matter jurisdiction over the claims asserted in this
12 action based upon Federal Question Jurisdiction pursuant to 28 U.S.C. §§ 1331 and
13 1343 because this action involves rights derived from the United States Constitution
14 and because the action seeks to prevent Defendants from interfering with federal rights.
15 This Court has authority to award the requested declaratory relief under 28 U.S.C. §
16 2201; the requested injunctive relief and damages under 28 U.S.C. § 1343(a); and
17 attorneys’ fees and costs under 42 U.S.C. § 1988.

18 37. Furthermore, this is, in part, a civil action under 42 U.S.C. § 1983 seeking
19 damages and injunctive relief against Defendants for committing acts, under color of
20 law, with the intent and for the purpose of depriving Plaintiffs of rights secured under
21 the Constitution and laws of the United States, as well as for refusing or neglecting to
22 prevent such deprivations and denials to Plaintiffs.

23 38. Additionally, this action arises under 42 U.S.C. § 1983 in relation to
24 Defendants’ deprivation of Plaintiffs’ Constitutional rights to Due Process and Equal
25 Protection under the Fifth and Fourteenth Amendments to the United States
26 Constitution.

27 39. Jurisdiction is also appropriate in this Court pursuant to 28 U.S.C. §
28 1343(a)(3)–(4) to redress the deprivation, under color of any State law, statute,

1 ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by
2 the Constitution, and to secure equitable or other relief under any Act of Congress
3 providing for the protection of civil rights.

4 40. This Court has supplemental jurisdiction over Plaintiffs’ state law claims
5 pursuant to 28 U.S.C. § 1367(a) because Plaintiffs’ state claims are so related to their
6 federal claims such that they are part of the same case and controversy of those federal
7 claims described herein under Article III of the United States Constitution.

8 41. The U.S. District Court for the Southern District of California is the
9 appropriate venue for this action pursuant to 28 U.S.C. § 1391(b)(1) and (2) because it
10 is the District in which Defendants either maintain offices or do substantial official
11 government work; the District in which Defendants exercise authority in their official
12 capacities; and the District in which Defendants will continue to enforce the Orders and
13 Emergency Directives that are the basis for Plaintiffs’ claims; and the District in which
14 substantially all of the events occurred that have given rise to Plaintiffs’ claims.

15 42. There is a present and actual controversy between and among Plaintiffs
16 and Defendants.

17 43. The relief requested is authorized pursuant to 28 U.S.C. §§ 2201 and 2202
18 (declaratory judgment); 28 U.S.C. § 1651(a) (injunctive relief); 42 U.S.C. § 1988 (right
19 to costs, including attorneys’ fees); and Cal. Gov’t. Code § 8572 (restitution for state
20 commandeering of private or personal property during state of emergency).

21 SUBSTANTIVE ALLEGATIONS

22 I. THE GOVERNOR’S STAY-AT-HOME ORDER

23 44. On March 4, 2020, California Governor Gavin Newsom (“Newsom”)
24 declared a state of emergency to exist in California in light of the COVID-19 pandemic.
25 A true and correct copy of Defendant Newsom’s Proclamation of a State of Emergency
26 is attached hereto and incorporated herein as Exhibit 1.

27 45. On or about March 13, 2020, President Donald J. Trump proclaimed a
28 National State of Emergency as a result of the threat of the emergence of COVID-19.

1 [https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)
2 [emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/).

3 46. Subsequently, on March 19, 2020, Defendant Newsom signed Executive
4 Order N-33-20 (the “Executive Order”). The Executive Order directed all residents “to
5 immediately heed the current State public health directives,” including an order of the
6 state public health officer reprinted in the Executive Order. A true and correct copy of
7 Defendant Newsom’s Executive Order N-33-20 is attached hereto and incorporated
8 herein as Exhibit 2.

9 47. The Executive Order “order[ed] all individuals living in the State of
10 California to stay home or at their place of residence except as needed to maintain
11 continuity of operations of the federal critical infrastructure sector as outlined at
12 <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>.”

13 48. The Executive Order further explained that “[t]he federal government has
14 identified sixteen (16) critical infrastructure sectors whose assets, systems, and
15 networks, whether physical or virtual, are considered so vital to the United States that
16 their incapacitation or destruction would have a debilitating effect on security,
17 economic security, public health or safety, or any combination thereof.” Defendant
18 Newsom therefore “order[ed] that Californians working in these 16 critical
19 infrastructure sectors may continue their work because of the importance of these
20 sectors to Californians’ health and well-being.”

21 49. The Executive Order explained that it aimed “to establish consistency
22 across the state in order to ensure that we mitigate the impact of COVID-19.”

23 50. This March 19, 2020 Executive Order sought to balance the need to protect
24 Californians from infection against the need to maintain Californians’ access to vital
25 supplies and services. In so doing, Defendant Newsom based the policy on one issue:
26 the federal government’s characterization of certain businesses as being a part of the
27 “critical infrastructure” and therefore “essential” to Californians. Thus, those businesses
28

1 deemed “essential” were and are allowed to continue operating as part of California’s
2 coordinated response to COVID-19.

3 51. All other businesses, such as Plaintiffs, who did not fall into any of the
4 sixteen (16) “critical infrastructure” sectors, were automatically defined as “Non-
5 Essential” and were forced to immediately cease operations.

6 52. The Executive Order was clear that it was not establishing a state-level
7 baseline inviting county innovation above and beyond a minimum; rather, this
8 Executive Order intended that only certain essential businesses shall be permitted to
9 remain open statewide to provide essential goods and services to all Californians.

10 53. The Public Health Officers (“PHO”) for each county were, in part, tasked
11 with implementing these overreaching orders. It became clear very early on that the
12 PHOs were completely out of their depth. PHOs had been given a vast amount of power
13 that they were incompetent to wield. Unlike the Governor, PHOs are not elected
14 positions. In fact, PHOs, some of whom are tasked with the public health of millions,
15 do not require a degree in science or medicine.

16 54. Defendants Macchione and Wooten issued similar “shelter-in-place,”
17 “stay at home,” and “shut down” orders (the “County Orders”) for all “Non-Essential”
18 businesses on or about March 17, 2020 for the County of San Diego. True and correct
19 copies of these County Orders are attached hereto as Exhibit 3.

20 55. Since the passage of the County Orders, Defendants Gore and Nisleit have
21 sought to vigorously enforce them against Plaintiffs and other “Non-Essential”
22 businesses.

23 56. Additionally, on or about March 22, 2020, Defendant Shrewy issued a
24 comprehensive directive setting forth the types of “Essential Critical Infrastructure
25 Workers” that were to “help state, local, tribal and industry partners as they work to
26 protect communities, while ensuring continuity of functions critical to public health and
27 safety, as well as economic and national security.”

28

1 57. Altogether, Defendants’ Orders have caused widespread and catastrophic
2 damage to the California economy through the government-mandated closure of
3 Plaintiffs’ businesses.

4 58. As a result of Defendants’ Orders mandating closure, Plaintiffs have had
5 difficulty in satisfying their financial obligations, having been forced to lay off a
6 significant number of employees.

7 59. Plaintiffs have further expended large sums of money in an effort to
8 comply with Defendants’ vague Orders.

9 60. On numerous occasions, Plaintiffs have sought clarification regarding
10 Defendants’ Orders and apparently arbitrary or selective enforcement thereof, to no
11 avail.

12 61. The county level orders that were promulgated in response to the
13 Governor’s Order were haphazard, at best, leaving California with a patchwork of
14 entirely different laws for each county. Counties were unable to agree even upon the
15 simplest issues, such as indoor and/or outdoor mask wearing, or the use of gloves.

16 62. Further, upon information and belief, despite repeated requests by media
17 and the press, the scientific data that Defendants relied upon in promulgating their
18 orders has never been disclosed. As early as March and April 2020, the press began
19 requesting information under California’s Public Records Act. To date, no responses
20 have been provided.

21 63. Moreover, Defendants have asserted that violations of their orders carry
22 criminal penalties, threatening jail time and significant fines for businesses and
23 individuals that do not comply.

24 64. Defendants’ Orders violate the Due Process Clause of the Fourteenth
25 Amendment because they fail to give reasonable notice to persons of ordinary
26 intelligence of what actions are forbidden under the law. Plaintiffs have been forced to
27 operate between a rock and a hard place, trying to comply with all of the applicable
28 Orders, but unable to discern what the applicable law permits. This is precisely the

1 dilemma the Due Process Clause’s requirement of fair notice seeks to avoid, particularly
2 where, as here, there is no procedure for Plaintiffs even to challenge the Defendants’
3 Orders.

4 65. Defendant Newsom then directed the Office of Emergency Services to
5 “take all necessary steps to ensure compliance with this Order” and that the “Order shall
6 be enforceable pursuant to California law, including, but not limited to, Government
7 Code section 8665.”

8 66. California Government Code Section 8665 states, “Any person who
9 violates any of the provisions of this chapter or who refuses or willfully neglects to obey
10 any lawful order or regulation promulgated or issued as provided in this chapter, shall
11 be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine
12 not to exceed one thousand dollars (\$1,000) or by imprisonment not to exceed six
13 months or by both such fine and imprisonment.”

14 II. THE GOVERNOR’S REOPENING ORDER

15 67. On May 4, 2020, Governor Newsom issued Executive Order N-60-20
16 concerning the second and third stages of California’s “four-stage framework . . . to
17 allow Californians to gradually resume various activities” (“The Governor’s
18 Reopening Order”). The Governor’s Reopening Order directed the State Public Health
19 Officer to “establish criteria and procedures. . . to determine whether and how
20 particular local jurisdictions may implement public health measures that depart from
21 the statewide directives,” specifically “measures less restrictive than any public health
22 measures implemented on a statewide basis.” A true and correct copy of Defendant
23 Newsom’s Executive Order N-60-20 is attached hereto and incorporated by reference
24 as Exhibit 4.

25 68. The Governor’s Reopening Order also states that it should not be
26 “construed to limit the existing authority of local health officers” to adopt “more
27 restrictive” or “addition[al]” measures” (emphasis added). Under existing law, “[a]
28 county or city may make and enforce within its limits all local, police, sanitary, and

1 other ordinances and regulations not in conflict with general laws.” Cal. Const. art. XI,
2 § 7 (emphasis added).

3 69. And when, as here, the Governor exercises the State’s “police power”
4 during a state of emergency, the Governor’s “orders and regulations shall have the
5 force and effect of law.” Cal. Gov’t Code §§ 8567, 8627. Accordingly, the Governor’s
6 Reopening Order only allows counties to act within their “existing authority”—that is,
7 to adopt measures that are consistent with the Governor’s orders or that address matters
8 on which the Governor’s orders are silent. It does not, and cannot be read to, allow a
9 county to override the Governor’s Order by extending its authority by extending its
10 authority to include criminal penalties and possible imprisonment.

11 IV. PLAINTIFFS’ GYM BUSINESSES

12 Metro

13 70. Plaintiff Metro operates a gym in Oceanside, California, which is in San
14 Diego County.

15 71. Metro specializes in holistic wellness, specifically focusing on nutrition,
16 diet, physical therapy, retail, and personal training.

17 72. Metro addresses its patrons’ physical health by offering personalized diet
18 plans, meal preparation services, sports supplements, personal training, and physical
19 therapy services.

20 73. Additionally, Metro, in taking a holistic approach to wellness, also offers
21 counseling for the general public, emphasizing suicide prevention and catering to
22 combat-injured veterans struggling with Posttraumatic Stress Disorder and

23 74. On or about March 19, 2020, Defendant Newsom issued Executive Order
24 N-33-20, ordering all “non-essential” businesses, including gyms, to close indefinitely
25 in response to the COVID-19 pandemic.

26 75. Executive Order N-33-20 stated that this closure was a temporary, two-
27 week closure to alleviate the stress on hospitals and intensive care units (“ICUs”) from
28 a major influx of COVID-19 patients.

1 76. Metro complied with Executive Order N-33-20 and remained closed as
2 Defendant Newsom extended the closure through May 1, 2020.

3 77. On May 1, 2020, Defendant Newsom extended application of Executive
4 Order N-33-20 and the closure of “non-essential” businesses indefinitely.

5 78. Metro hired virologists to evaluate its facility and took every necessary
6 precaution to protect its patrons and the community, investing thousands of dollars in
7 sanitation equipment, disinfectant protocols, and structural improvements to increase
8 the air flow in the facility.

9 79. Despite Metro’s good faith attempts to exceed those precautions imposed
10 on so-called “essential” businesses, Metro was unable to confirm their ability to operate
11 due to Executive Order N-33-20.

12 80. Metro temporarily suspended its membership dues and collected no
13 revenue during the time it remained close in accordance with Executive Order N-33-20.

14 81. Metro, in light of its inability to secure additional financing and lack of
15 revenue, had no choice but to open for business on or about May 8, 2020.

16 82. In response to Metro’s opening, the Oceanside Police Department arrested
17 Mr. Uridel, owner of Metro, for opening the business in alleged violation of Executive
18 Order N-33-20.

19 83. The Oceanside Police further threatened to arrest everyone who remained
20 in the Metro building.

21 84. Metro again closed after Mr. Uridel’s arrest and reopened on May 13,
22 2020.

23 85. Throughout this reopening period, Metro is not aware of any patrons
24 having reported contracting COVID-19 from Metro.

25 86. On June 12, 2020, the County allowed gyms and fitness centers to reopen
26 again. Mr. Uridel diligently followed all sanitation and cleaning protocols but was
27 forced to once again restructure a month later when the state ordered his business to
28 close with modifications to operate only outdoors.

1 87. Metro has invested thousands into creating an outdoor area so its patrons
2 could exercise. Despite fully complying with the orders to modify operations outdoors,
3 the Oceanside Police Department continually came by to alert Metro of its alleged
4 violations.

5 88. Metro has restructured its facility numerous times to satisfy the continually
6 changing state and county orders, despite being given little to no guidance on how to
7 operate in compliance.

8 89. Metro estimates that it has been damaged in the amount of approximately
9 \$16,000 in mandatory restructuring caused by the coronavirus pandemic, including
10 training employees on new COVID-19 procedures, legal consultations, citations,
11 purchases of personal protective equipment, cleaning supplies, and facility upgrades.

12 90. Metro further estimates an an additional \$16,000 in lost revenue from the
13 mandatory closures as a “Non-Essential” business.

14 Boulevard

15 91. Shawn Gilbert is the owner of Boulevard Fitness, a business operation
16 specializing in whole body wellness for all members by offering services for physical,
17 mental, and nutrition guidance.

18 92. Boulevard takes pride in helping its members with their whole body
19 needs, such as weight management, strength building, injury, rehabilitation, and
20 suicide prevention.

21 93. Boulevard is located in a 15,000 square foot facility that boasts a two-
22 story open-air plan with large bay doors and roll-up windows open from floor to
23 ceiling, a roof with built-in fans promoting constant air circulation through the facility,
24 a physical therapy
25 room, and additional outdoor workout area.

26 94. Boulevard shuttered its facility for approximately three months in
27 compliance with the first shutdown order, and in the meantime prepared for the
28 potential of reopening, investing thousands of dollars toward cleaning equipment and

1 supplies, signage, personal protective equipment, and training staff in new policies for
2 safety and cleanliness.

3 95. Additionally, during the time in which Boulevard remained close, it
4 suspended payment of membership dues and collected no revenue.

5 96. Finally, on June 12, 2020, the San Diego County of Public Health
6 announced
7 gyms could finally reopen.

8 97. At such time, Boulevard diligently followed all state and county
9 sanitation protocols. However, one month later, Defendants again placed limitations
10 on Boulevard's business operations.

11 98. In an attempt to comply, Boulevard moved its equipment outdoors, yet
12 Defendants constantly advised Boulevard that it failed to satisfy Defendants' COVID-
13 19 protocols all the while failing to articulate any specific manner in which Boulevard
14 failed to comply.

15 99. Boulevard is informed and believes, and based thereon alleges, that
16 neighboring businesses, such as strip clubs and hookah lounges, remained open
17 without similar harassment from Defendants.

18 100. Boulevard Fitness estimates that it has been damaged in the amount of
19 approximately \$50,000 as a result of training employees on new COVID-19
20 procedures, legal consultations, citations, purchases of personal protective equipment,
21 cleaning supplies, and facility upgrades.

22 Deadweight

23 101. Deadweight occupies a two thousand (2,000) square foot facility located
24 in a warehouse with rollup doors, situated along a dead-end alley in San Diego's
25 Grantville neighborhood.

26 102. During the shutdown, Defendants made daily visits to Deadweight's
27 facilities.

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1 103. On a handful of occasions, San Diego County Sheriff's Department
2 and/or San Diego Police blocked the alley entrance to Deadweight, thereby
3 preventing the free flow of traffic to and from Deadweight.

4 104. On numerous occasions, Defendants San Diego County Sheriff's
5 Department and/or San Diego Police questioned any persons leaving Deadweight and
6 threatened citations.

7 105. The Deadweight facility has three (3) large roll-up doors and four (4)
8 large commercial fans.

9 106. Despite the fans and open-air aspect of the Deadweight facility,
10 Deadweight may not operate under Defendants' arbitrary Orders because the facility
11 is technically under a roof.

12 Convoy Strength

13 107. Convoy Strength, a powerlifting and strength gym located in San Diego,
14 California opened on or about February 1, 2020, as a relocation and expansion of the
15 original Convoy Strength.

16 108. Convoy Strength sanitized its entire facility and updated its floorplan to
17 allow for social distancing. Additionally, new signs and protocols were placed
18 throughout the Convoy Strength facility.

19 109. To prioritize member safety, Convoy Strength hired a dedicated
20 sanitizing crew, suspended guest passes, and implemented a scheduling system for
21 members to stagger their workout times.

22 110. Convoy Strength also limited member occupancy to ten percent (10%) to
23 maximize air flow and safety.

24 111. When gyms were officially allowed to reopen again on June 12, 2020,
25 Convoy Strength maintained the same strict cleaning protocols to ensure the safety of
26 his members.

27 112. Unfortunately, Convoy Strength's operations came to a halt again on July
28 13, 2020, as the state ordered that gyms may only operate outdoors.

1 113. To date, Convoy Strength has suffered damages in the amount of
2 approximately \$142,000 for its loss of business revenue and mandatory investments to
3 remain compliant with the state and county orders, including training new employees
4 on the COVID-19 procedures, legal consultations, dedicated cleaning crews, and
5 purchases for protective and cleaning equipment.

6 MJT

7 114. MJT is a large, 13,000 square foot beachside fitness facility that caters to
8 all anyone who want to improve their fitness, regardless of age or body type. In addition
9 to fitness classes, MJT has individualized workout plans, nutritional guides, and
10 childcare.

11 115. Following Defendants' Order mandating the closure of "Non-Essential"
12 businesses, MJT closed.

13 116. Unable to provide its members with concrete responses regarding
14 reopening, IB Fitness' members began canceling their memberships.

15 117. While MJT remained closed, MJT suspended membership fees and
16 collected no dues throughout its closure.

17 118. When, pursuant to Defendants' Orders, MJT was allowed to reopen with
18 limitations, MJT took precautions as required by Defendants' Orders.

19 119. Despite MJT'S good faith efforts to comply with Defendants' Orders,
20 Defendants, by and through the San Diego County Sheriff's Department or San Diego
21 Police Department, harassed MJT and its patrons, claiming that MJT somehow failed
22 to comply with Defendants' Orders. At no point did Defendants identify or
23 communicate to MJT with specificity how MJT was allegedly in non-compliance with
24 Defendants' Orders.

25 120. As a direct and proximate result of Defendants' Orders, MJT has suffered
26 damages in the amount of approximately \$102,000 as a result of hiring extra staff
27 members, training employees in new COVID-19 procedures, legal consultations,
28

1 citations, movers, security to patrol outdoor gym equipment, cleaning supplies, and
2 other upgrades to MJT’S facility.

3 ///

4 Being Fit

5 121. Being Fit is a well-respected fitness conglomeration in the Mira Mesa
6 neighborhood of San Diego, California that has offered the community health and
7 fitness options for over twenty-five years, including, among other things, group classes,
8 personal training, outdoor group exercises.

9 122. Being Fit generated no revenue during said the shut down and collected
10 no dues from its members, as it was unfair to charge its members for a facility and
11 services they could not use.

12 123. During the mandatory closure of allegedly “Non-Essential” businesses,
13 Being Fit’s revenue dropped from approximately \$31,000 per month to \$0 per month,
14 all while continuing to incur expenses.

15 124. As a result of Defendants’ Orders, Being Fit has been damaged in the
16 amount of approximately \$1,000,000 for hiring and training employees on the new
17 COVID-19 procedures, legal consultations, outdoor equipment, sanitation equipment,
18 personal protective equipment, and professional cleaning services.

19 Being Fit Clairemont.

20 125. Being Fit Clairemont is a fitness facility located in Clairemont, California
21 in San Diego County that offers a multitude of programs aimed at improving
22 cardiovascular health, such as circuit training, Zumba classes, and High Intensity
23 Interval Training (HIIT) classes.

24 126. During the approximately shutdown, Being Fit Clairemont invested heavily
25 into developing COVID-19 safety protocol, as well as the procurement of personal
26 protection equipment for employees.

27 127. As a result of Defendants’ Orders both closing “Non-Essential” businesses
28 and limiting the operations of “Non-Essential” businesses, Being Fit Clairemont has

1 been damaged in the amount of approximately \$98,000, consisting of added costs of
2 employee training on COVID-19 procedures; legal consultations; cleaning supplies, and
3 lost revenue.

4 Ramona Fitness

5 128. Following Defendant Newsom’s Order, Ramona Fitness closed for
6 approximately eighty-five (85) days, during which time it lost approximately \$250,000.

7 129. Plaintiff Ramona Fitness is informed and believes, and based thereon
8 alleges, that the San Diego District Attorney’s Office and/or San Diego County Sheriff’s
9 Department further targeted Ramona Fitness as the first business to be charged with
10 five (5) misdemeanors for allegedly remaining open as a “non-essential” business. Such
11 allegations have cost Ramona Fitness not only monetarily in requiring Ramona Fitness
12 to defend against such claims, but also as negatively affecting Ramona Fitness’
13 reputation in the community.

14 130. Ramona Fitness was also considered one of Southern California’s top
15 senior, silver sneaker facilities, meaning insurance companies previously paid Ramona
16 Fitness to host daily senior fitness classes.

17 FIRST CLAIM FOR RELIEF

18 VIOLATION OF THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT

19 (By Plaintiffs against All Defendants)

20 131. Plaintiffs incorporate by reference and re-allege each and every allegation
21 set forth in all preceding paragraphs as if fully set forth herein.

22 132. The United States Supreme Court has long held that “the Fifth
23 Amendment...was designed to bar Government from forcing people alone to bear
24 public burdens which, in all fairness and justice, should be borne by the public as a
25 whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

26 133. Defendants’ Orders and Emergency Directives mandated that because
27 Plaintiffs were “Non-Essential” businesses, they were required to shutter and cease all
28 operations as a means to slow the spread of the novel COVID-19. Such a mandate

1 completely and unconstitutionally deprived Plaintiffs of all economically beneficial use
2 of their businesses without just compensation.

3 134. Although a sovereign government has an inherent “police power” that is
4 reserved for the States by the Tenth Amendment to the United States Constitution, such
5 “police power” is not without Constitutional limits. See *Euclid v. Ambler Realty Co.*,
6 272 U.S. 365 (1926).

7 135. The government’s “police power” is restricted by Constitutional
8 considerations, including but not limited to the Fifth Amendment’s “Takings Clause.”

9 136. Defendants’ Orders, combined with Defendants’ enforcement thereof, has
10 caused a total or partial regulatory taking of Plaintiffs’ property without just
11 compensation in violation of the Takings Clause of the Fifth Amendment to the United
12 States Constitution. At a minimum, the effect of Defendants’ Orders constitute a
13 “partial” taking under the Penn Central three-factor test. See *Penn Cent. Transp. Co. v.*
14 *City of New York*, 438 U.S. 104, 124 (1978). As a result, Defendants’ violation of the
15 Takings Clause of the Fifth Amendment has proximately and legally harmed Plaintiffs.

16 137. Plaintiffs have no adequate remedy at law and will suffer serious and
17 irreparable harm to their Constitutional rights unless Defendants are enjoined from
18 implementing and enforcing the Orders and Emergency Directives, namely, the
19 financial harm Plaintiffs have suffered and continue to suffer as a result of Defendants’
20 unlawful Orders and Emergency Directives is such that Plaintiffs may be forced to
21 permanently close.

22 138. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
23 declaratory relief, as well as temporary, preliminary, and permanent injunctive relief
24 invalidating the Orders and Emergency Directives and restraining enforcement thereof.

25 139. Accordingly, Plaintiffs have found it necessary to engage the services of
26 private counsel to vindicate their rights under law and therefore are entitled to an award
27 of attorneys’ fees pursuant to 42 U.S.C. § 1988.

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2 SECOND CLAIM FOR RELIEF

3 VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH
4 AMENDMENT

5 (By Plaintiffs against All Defendants)

6 140. Plaintiffs incorporate by reference and re-allege each and every allegation
7 set forth in all preceding paragraphs as if fully set forth herein.

8 141. The Due Process Clause of the Fourteenth Amendment provides that “[n]o
9 State shall . . . deprive any person of life, liberty, or property, without due process of
10 law.” The fundamental liberties protected by the Due Process Clause include most of
11 the rights enumerated in the Bill of Rights. See *Duncan v. Louisiana*, 391 U.S. 145,
12 147-149 (1968).

13 142. The liberties afforded by the Due Process Clause of the Fourteenth
14 Amendment further extend to one’s personal choices central to individual dignity and
15 autonomy, including intimate choices that relate to personal beliefs. See, e.g., *Eisenstadt*
16 *v. Baird*, 405 U.S. 438, 453 (1972).

17 143. A State “violates this guarantee by taking away someone’s life, liberty, or
18 property under a criminal law so vague that it fails to give ordinary people fair notice
19 of the conduct it punishes, or so standardless that it invites arbitrary enforcement.”
20 *Johnson v. United States*, 135 S. Ct. 2551, 2556 (2015).

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

24 145. Defendants’ Orders fail to provide sufficient notice of which actions will
25 potentially subject Plaintiffs to civil or the criminal penalties. It would, at best, be
26 unclear to any person of ordinary intelligence what Defendants’ Orders collectively
27 prohibit and/or allow.

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1 146. In addition, Defendants’ Orders purport to impose criminal liability on
2 Plaintiffs and their employees should they fail to follow Defendants’ Orders. Moreover,
3 Defendants have, at times, threatened to impose criminal liability on Plaintiffs’ patrons.

4 147. The Executive Orders, and Defendants enforcement thereof, violate
5 Plaintiffs’ substantive due process rights secured by the Fourteenth Amendment to the
6 United States Constitution.

7 148. In addition, Defendant Counties have violated the Due Process Clause
8 insomuch as it fails to provide any meaningful procedure for challenging its
9 determination that a business is non-essential, either pre or post deprivation of
10 Plaintiffs’ constitutional right to use of their property. *Logan v. Zimmerman Brush Co.*,
11 455 U.S. 422, 432-33 (1982). Instead, Defendants simply announced that Plaintiffs’
12 Gyms were not essential, without any formal process.

13 149. Defendants’ Orders expressly deprived, and continue to deprive, Plaintiffs
14 of their rights and liberties in lawfully operating their businesses by ordering the closure
15 of “Non-Essential” businesses without affording Plaintiffs with a constitutionally
16 adequate hearing to present their case in favor of allowing Plaintiffs’ businesses to
17 remain open.

18 150. Accordingly, Defendants failed to comply both procedural and substantive
19 due process requirements as provided for by the Fourteenth Amendment of the United
20 States Constitution when depriving Plaintiffs of their rights and liberties as they relate
21 to Plaintiffs’ respective properties / businesses, which would have given Plaintiffs a
22 meaningful opportunity to respond to the Executive Orders and explain how and why
23 the Executive Orders were unconstitutional as applied to Plaintiffs.

24 151. Because Defendants’ Orders are based upon a procedurally deficient and
25 substantively unlawful process, Defendants directly and proximately damaged
26 Plaintiffs by depriving Plaintiffs of their ability to lawfully operate their respective
27 businesses without unconstitutional government intervention.
28

1 152. Defendants’ Orders that require Plaintiffs to abstain from conducting
2 lawful business in the State of California, violates Plaintiffs’ rights under the United
3 States Constitution.

4 153. Plaintiffs have no adequate remedy at law and will suffer serious and
5 irreparable harm to their Constitutional rights unless Defendants are enjoined from
6 implementing and enforcing the Orders and Emergency Directives, namely, the
7 financial harm Plaintiffs have suffered and continue to suffer as a result of Defendants’
8 unlawful Orders and Emergency Directives is such that Plaintiffs may be forced to
9 permanently close.

10 154. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
11 declaratory relief and temporary, preliminary, and permanent injunctive relief
12 invalidating and restraining enforcement of the Orders.

13 155. Plaintiffs respectfully seek a declaration that the Defendant Counties’
14 Orders violates the Due Process Clause of the Fourteenth Amendment to the U.S.
15 Constitution.

16 THIRD CLAIM FOR RELIEF

17 VIOLATION OF THE CALIFORNIA CONSTITUTION

18 Right to Liberty (Cal. Const. Art. 1, § 1)

19 (By Plaintiffs against All Defendants)

20 156. Plaintiffs incorporate by reference and re-allege each and every allegation
21 set forth in all preceding paragraphs as if fully set forth herein.

22 157. Article 1, § 1 of the California Constitution provides, in relevant part,
23 “Article 1, Section 1: All people are by nature free and independent and have inalienable
24 rights. Among these are enjoying and defending life and liberty, acquiring, possessing,
25 and protecting property, and pursuing and obtaining safety, happiness, and privacy.”

26 158. Defendants Orders have interfered both with Plaintiffs’ rights and liberties,
27 as set forth in Article 1, Sections 1, 7, and 19 of the California Constitution, as well as
28 deprived Plaintiffs of the use, enjoyment, and ability to operate their respective

1 businesses on account of a discriminatory and arbitrary classification as “Non-
2 Essential” businesses.

3 159. Defendants’ Orders have proximately and legally caused Plaintiffs’
4 financial harm, which will continue unless and until this Court enjoins Defendants from
5 enforcing their respective Orders.

6 160. Defendants’ Orders that require Plaintiffs to abstain from conducting
7 lawful business in the State of California, violates Plaintiffs’ rights under the California
8 Constitution.

9 161. Plaintiffs have no adequate remedy at law and will suffer serious and
10 irreparable harm to their Constitutional rights unless Defendants are enjoined from
11 implementing and enforcing the Orders and Emergency Directives, namely, the
12 financial harm Plaintiffs have suffered and continue to suffer as a result of Defendants’
13 unlawful Orders and Emergency Directives is such that Plaintiffs may be forced to
14 permanently close.

15 162. Accordingly, Plaintiffs have found it necessary to engage the services of
16 private counsel to vindicate their rights under law and therefore are entitled to an award
17 of attorneys’ fees pursuant to California Code of Civil Procedure § 1021.5.

18 FOURTH CLAIM FOR RELIEF

19 VIOLATION OF THE CALIFORNIA CONSTITUTION

20 Right to Liberty (Cal. Const. Art. 1, § 7)

21 (By Plaintiffs against All Defendants)

22 163. Plaintiffs incorporate by reference and re-allege each and every allegation
23 set forth in all preceding paragraphs as if fully set forth herein.

24 164. Article 1, Section 7 of the California Constitution provides, in pertinent
25 part:

26 Article 1, Section 7:

27 (a) A person may not be deprived of life, liberty, or property without
28 due process of law or denied equal protection of the laws; provided,

1 that nothing contained herein or elsewhere in this Constitution
2 imposes upon the State of California or any public entity, board, or
3 official any obligations or responsibilities which exceed those
4 imposed by the Equal Protection Clause of the 14th Amendment to
5 the United States Constitution with respect to the use of pupil school
6 assignment or pupil transportation. In enforcing this subdivision or
7 any other provision of this Constitution, no court of this State may
8 impose upon the State of California or any public entity, board, or
9 official any obligation or responsibility with respect to the use of
10 pupil school assignment or pupil transportation, (1) except to
11 remedy a specific violation by such party that would also constitute
12 a violation of the Equal Protection Clause of the 14th Amendment
to the United States Constitution, and (2) unless a federal court
would be permitted under federal decisional law to impose that
obligation or responsibility upon such party to remedy the specific
violation of the Equal Protection Clause of the 14th Amendment of
the United States Constitution.

13 165. The guarantee of equal protection under the California Constitution is
14 substantially equivalent and analyzed similarly to that provided by the Equal Protection
15 Clause of the Fourteenth Amendment to the United States Constitution. See *Kenneally*
16 *v. Med. Bd.*, 27 Cal. App. 4th 489 (App. 2 Dist. 1994).

17 166. Article 1, § 1 of the California Constitution has further been judicial
18 defined as meaning no person or class of persons shall be denied the same protections
19 of the laws enjoyed by other persons or other classes in like circumstances in the lives,
20 liberty, and property, and in their pursuit of happiness. See *People v. Romo*, 14 Cal.3d
21 189 (1975); *Gray v. Whitmore*, 17 Cal. App. 3d 1 (1971).

22 167. Defendants' Orders that require Plaintiffs to abstain from conducting
23 lawful business in the State of California, violates Plaintiffs' rights under the California
24 Constitution.

25 168. Plaintiffs have no adequate remedy at law and will suffer serious and
26 irreparable harm to their Constitutional rights unless Defendants are enjoined from
27 implementing and enforcing the Orders and Emergency Directives, namely, the
28 financial harm Plaintiffs have suffered and continue to suffer as a result of Defendants'

1 unlawful Orders and Emergency Directives is such that Plaintiffs may be forced to
2 permanently close.

3 169. Accordingly, Plaintiffs have found it necessary to engage the services of
4 private counsel to vindicate their rights under law and therefore are entitled to an award
5 of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

6 FIFTH CLAIM FOR RELIEF

7 VIOLATION OF CALIFORNIA GOVERNMENT CODE § 8572

8 Commandeering Private Property or Personnel

9 (By Plaintiffs against Defendant Newsom)

10 170. Plaintiffs incorporate by reference and re-allege each and every allegation
11 set forth in all preceding paragraphs as if fully set forth herein.

12 171. The State of California's Government Code, Title 2, Chapter 7, Article 3,
13 Section 8572, states in pertinent part:

14 In the exercise of the emergency powers hereby vested in
15 him during a state of war emergency or state of
16 emergency, the Governor is authorized to commandeer or
17 utilize any private property or personnel deemed by him
18 necessary in carrying out the responsibilities hereby vested
19 in him as Chief Executive of the state and the state shall
20 pay the reasonable value thereof.

21 172. On March 4, 2020, Defendant Newsom declared a "State of Emergency"
22 in response to the threat of the spread of COVID-19 throughout California's
23 communities.

24 173. Subsequently, on or about March 19, 2020, Defendant Newsom issued
25 Executive Order N-33-20. See Exhibit 2.

26 174. Executive Order N-33-20 states, in relevant part, that "all individuals
27 living in the State of California" "stay home or at their place of residence except as
28 needed to maintain continuity of operations of the federal critical infrastructure sectors
outlined at <https://www.cisa.gov/identifying-criticalinfrastructure-during-covid-19>."

1 175. Defendant Newsom’s Order further “identified 16 critical infrastructure
2 sectors (discussed herein) whose assets, systems, and networks, whether physical or
3 virtual, are considered so vital to the United States that their incapacitation or
4 destruction would have a debilitating effect on security, economic security, public
5 health or safety, or any combination thereof” such that Defendant Newsom ordered that
6 “Californians working in these 16 critical infrastructure sectors continue their work
7 because of the importance of these sectors to Californians’ health and well-being.”

8 176. Defendant Newsom’s Order continued, “this Order is being issued to
9 protect the public health of Californians” and that “our goal is simple, we want to bend
10 the curve, and disrupt the spread of the virus.”

11 177. Defendant Newsom then directed the Office of Emergency Services to
12 “take all necessary steps to ensure compliance with this Order” and that the “Order shall
13 be enforceable pursuant to California law, including, but not limited to, Government
14 Code section 8665.”

15 178. California Government Code Section 8665 states, “Any person who
16 violates any of the provisions of this chapter or who refuses or willfully neglects to obey
17 any lawful order or regulation promulgated or issued as provided in this chapter, shall
18 be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine
19 not to exceed one thousand dollars (\$1,000) or by imprisonment not to exceed six
20 months or by both such fine and imprisonment.”

21 179. As a result of the issuance of the Governor’s Order, California businesses,
22 such as Plaintiffs, were not included in any of the sixteen (16) “critical infrastructure
23 sectors,” and therefore were “non-essential” and effectively ordered, under penalty of
24 fine and threat of imprisonment, to cease conducting any of their lawful daily business
25 activities.

26 180. By virtue of this Executive Order, Defendant Newsom commandeered and
27 utilized Plaintiffs’ businesses for the purpose of slowing the spread of COVID-19. To
28 date, however, the State of California has not paid Plaintiffs the “reasonable value

1 thereof” in exchange for Defendant Newsom’s commandeering and utilization of
2 Plaintiffs’ “non-essential” businesses.

3 181. Plaintiffs have found it necessary to engage the service of counsel to
4 vindicate their rights under California Government Code Section 8572. Plaintiffs are
5 entitled to an award of attorneys’ fees and costs pursuant to California Code of Civil
6 Procedure Section 1021.5.

7 PRAYER FOR RELIEF


8 WHEREFORE, Plaintiffs respectfully pray that this Court:

- 9 A. Issue a declaratory judgment, pursuant to 28 U.S.C. § 2201 and Rule 57 of the
10 Federal Rules of Civil Procedure, that Defendants’ Orders listed above violate
11 the Due Process Clause as applied to Plaintiffs because they fail to provide
12 fair notice of what the law requires;
- 13 B. Set aside Defendants’ Orders; holding Defendants’ Orders to be unlawful;
- 14 C. Permanently enjoin Defendants and all persons and entities acting in concert
15 with Defendants, including but not limited to any law enforcement agencies,
16 from enforcing Defendants’ Orders;
- 17 D. Issue a Temporary Restraining Order and a preliminary injunction preventing
18 Defendants from enforcing or implementing their Orders until this Court rules
19 upon the merits of this lawsuit;
- 20 E. Permanently enjoin Defendants and all persons or entities acting in concert
21 with Defendants, including but not limited to any law enforcement agencies,
22 from enforcing the Orders;
- 23 F. Award damages arising out of their § 1983 Claims, and specifically under
24 the Fifth Amendment of the U.S. Constitution and Article 1, Section 19 of
25 the California Constitution’s Taking Clause(s);
- 26 G. Award Plaintiffs the reasonable value of the loss of the respective businesses
27 by virtue of Defendants’ Orders pursuant to California Government Code
28 Section 8572;

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- H. Award reasonable attorneys' fees and costs incurred in this action pursuant to 42 U.S.C. § 1988 and Cal. Gov't Code § 8572; and
- I. Any other such relief as this Court may deem just and proper.

Dated: October 26, 2020 UPLIFT LAW, P.C.

By: 

Melissa G. Fulgencio
Stephanie Beale
Attorneys for Plaintiffs