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26 **CALM VENTURES, LLC dba PINEAPPLE HILL SALOON AND GRILL**

27 **UNITED STATES DISTRICT COURT FOR**

28 **THE CENTRAL DISTRICT OF CALIFORNIA**

29 **CALM VENTURES LLC**, a California
30 Limited Liability Company dba
31 **PINEAPPLE HILL SALOON &**
32 **GRILL,**

33 Plaintiff,

CASE NO.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

vs.

1
2 **GAVIN NEWSOM**, in his official
3 capacity as Governor of California;
4 **XAVIER BECERRA**, in his official
5 capacity as the Attorney General of
6 California; **ERICA S. PAN, M.D.,**
7 **M.P.H.**, in her official capacity as the
8 Acting State Public Health Officer for
9 the California Department of Public
10 Health, State of California—Health and
11 Human Services Agency,
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Defendants.

Current lockdown policies are producing devastating effects on short and long-term public health. The results (to name a few) include lower childhood vaccination rates, worsening cardiovascular disease outcomes, fewer cancer screenings and deteriorating mental health- leading to greater excess mortality in years to come, with the working class and younger members of society carrying the heaviest burden.

*....
The most compassionate approach that balances the risks and benefits of reaching herd immunity, is to allow those who are at minimal risk of death to live their lives normally to build up immunity to the virus through natural infection, while better protecting those who are at highest risk. We call this Focused Protection.*

*....
Those who are not vulnerable should immediately be allowed to resume life as normal ...*

~ The Great Barrington Declaration – signed by over 51,970 medical and public health scientists and medical practitioners from around the world and across political ideologies.¹

¹ Available as of the date of filing at <https://gbdeclaration.org/>

1 NOW COME the above-named Plaintiff Calm Ventures LLC dba Pineapple Hill
2 Saloon & Grill (“Plaintiff” or “Pineapple Hill”), by and through its attorneys of record,
3 Geragos & Geragos, APC and Dhillon Law Group, Inc., as and for claims against the
4 above-named Defendants Gavin Newsom (“Newsom”), in his official capacity as
5 Governor of California; Xavier Becerra (“Becerra”), in his official capacity as Attorney
6 General of California and Erica S. Pan (“Dr. Pan”), M.D., M.P.H., in her official
7 capacity as the Acting State Public Health Officer for the California Department of
8 Public Health, State of California—Health and Human Services Agency (hereinafter
9 collectively referred to as “Defendants”), alleges as follows (this “Complaint”).

10 NATURE OF ACTION

11 1. Plaintiff is a restaurant located in Los Angeles County. As a result of
12 Defendants’ Executive Orders and Public Health Orders, Plaintiff has been unable to
13 fully utilize its leased property by serving dining opportunities to the general public.
14 However, just 20 feet away, a major Hollywood production was recently in full
15 operation where it had an outdoor tent set up and was permitted to serve meals to its
16 team of employees and contractors.

17 2. Defendants, in a gross abuse of their power, have seized the Coronavirus
18 pandemic to expand their authority by unprecedented lengths, depriving Plaintiff and all
19 other similarly situated small business owners in California of fundamental rights
20 protected by the U.S. and California Constitutions, including freedom assembly and due
21 process and equal protection under the law. It is this Court’s duty to defend these
22 constitutional principles by safeguarding the many rights and liberties of Californians
23 such as Plaintiff that Defendants so brazenly, arbitrarily and capriciously violate.

24 3. This Action presents facial and as-applied challenges to the California
25 Department of Public Health, State of California—Health and Human Services
26 Agency’s December 3, 2020 Regional Stay At Home Order (the “Regional Order”)
27 attached here as “**Exhibit 1**” and the December 6, 2020 Supplemental Regional Order
28 (“Supplemental Order”) attached here as “**Exhibit 2**”, which violate the constitutional

1 rights of Plaintiff. The Regional Order and the Supplemental Order will be referred to
2 collectively as the “Regional Orders” in this Complaint.

3 4. This Action also presents facial and as-applied challenges to the March 19,
4 2020 Executive Order attached here as “**Exhibit 3**” and the Executive Order dated May
5 4, 2020 that modified the March 19, 2020 Executive Order attached here as “**Exhibit**
6 **4**”, which violate the constitutional rights of Plaintiffs. The two Executive Orders will
7 be referred to collectively as the “Executive Orders” in this Complaint.

8 5. The Regional Orders and Defendants’ enforcement thereof violate (I) the
9 Freedom of Assembly Clause of the First Amendment; (II) substantive rights protected
10 by the Due Process Clauses of the Fifth and Fourteenth Amendments and (III) the Equal
11 Protection Clause of the Fourteenth Amendment.

12 6. The Executive Orders and Defendants’ enforcement thereof violate
13 substantive and procedural rights protected by the Due Process Clauses of the Fifth and
14 Fourteenth Amendment.

15 JURISDICTION AND VENUE

16 7. This action arises under 42 U.S.C. § 1983 in relation to Defendants’
17 deprivation of Plaintiffs’ constitutional rights to freedom of assembly, due process, and
18 equal protection rights under the First and Fourteenth Amendments to the U.S.
19 Constitution. Accordingly, this Court has federal question jurisdiction under 28 U.S.C.
20 §§ 1331 and 1343. This Court has authority to award the requested declaratory relief
21 under 28 U.S.C. § 2201; the requested injunctive relief under 28 U.S.C. § 1343(a); and
22 attorneys’ fees and costs under 42 U.S.C. § 1988.

23 8. The Central District of California is the appropriate venue for this action
24 pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is the District in which
25 Defendants maintain offices, exercise their authority in their official capacities, and will
26 enforce the Orders; and it is the District in which substantially all of the events giving
27 rise to the claims occurred.

PARTIES

1
2 9. At all relevant times, Plaintiff Calm Ventures, LLC dba Pineapple Hill
3 Saloon & Grill (“Plaintiff” or “Pineapple Grill”) is and was a limited liability company
4 organized and authorized to do business and doing business in the State of California.
5 Plaintiff owns, operates, and/or manages an old-fashioned, dimly lit, quiet restaurant
6 and bar with a fireplace that serves simple American-inspired fare located in the heart
7 of Sherman Oaks Square at 4454 Van Nuys Blvd N, Sherman Oaks, California 91403.
8 At all relevant times, Plaintiff has complied with existing local and state orders relating
9 to the statewide effort to curb the spread of COVID-19, and in doing so, has invested
10 considerable time and resources into ensuring a safe and secure CDC-compliant
11 workplace for its employees and patrons, including mandatory mask wearing, socially-
12 distanced outdoor dining, sanitized surfaces after each patron use and temperature
13 checks for employees.

14 10. Defendant Gavin Newsom is made a party to this Action in his official
15 capacity as the Governor of California. The California Constitution vests the “supreme
16 executive power of the State” in the Governor, who “shall see that the law is faithfully
17 executed.” Cal. Const. Art. V, § 1. Newsom signed both the March 19, 2020 and the
18 May 4, 2020 Executive Orders.

19 11. Defendant Xavier Becerra is made a party to this Action in his official
20 capacity as the Attorney General of California. Under California law he is the chief law
21 enforcement officer with supervision over all the execution of laws in the State. Cal.
22 Const. Art. V, § 13.

23 12. Defendant Erica S. Pan, MD, MPH is made a party to this Action in her
24 official capacity as the Acting State Public Health Officer for the California Department
25 of Public Health, State of California—Health and Human Services Agency. She signed
26 the at-issue Regional and Supplemental Orders.

27 13. Each and every Defendant acted under color of state law with respect to all
28 acts or omissions herein alleged.

1 **GENERAL FACTUAL ALLEGATIONS**

2 14. On or about March 13, 2020, President Donald J. Trump proclaimed a
3 National State of Emergency as a result of the threat of the emergence of the novel
4 coronavirus, also known as COVID-19.²

5 15. Since the initial outbreak of COVID-19 in the United States in February
6 and March 2020, Defendants have increasingly restricted—where not outright
7 banned—Plaintiff’s engagement in constitutionally protected activities.

8 16. For example, California Governor Gavin Newsom issued a “State of
9 Emergency” order on March 4, 2020 in response to the threat of the spread of COVID-
10 19 throughout California’s communities (Exhibit 3). In so doing, Newsom subsequently
11 issued Executive Order N-33-20 on March 19, 2020, which, among other things,
12 mandated that “all residents are directed to immediately heed the current State public
13 health directives.”³

14 17. On or about March 19, 2020, Dr. Sonia Angell, who was then serving as
15 the California State Public Health Officer, acting pursuant to the authority conferred by
16 Governor Newsom's State Order, issued an order which designated a list of “Essential
17 Critical Infrastructure Workers.” The Order incorporated by reference the U.S.
18 Government's 16 critical infrastructure sectors⁴ whose assets, systems, and networks,
19

20 ² *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus*
21 *Disease (COVID-19) Outbreak*, whitehouse.gov (Mar. 13, 2020), available as of the
22 date of filing at [https://www.whitehouse.gov/presidential-actions/proclamation-](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)
23 [declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)
24 [outbreak/](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/).

25 ³ Available as of the date of filing at [https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf)
26 [content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf)
27 [ORDER.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf)

28 ⁴ Including the: (1) Chemical Sector, (2) Commercial Facilities Sector, (3)
Communications Sector, (4) Critical Manufacturing Sector, (5) Dams Sector, (6)
Defense Industrial Base Sector, (7) Emergency Services Sector, (8) Energy Sector, (9)
Financial Services Sector, (10) Food and Agriculture Sector, (11) Government Facilities
Sector, (12) Healthcare and Public Health Sector, (13) Information Technology Sector,

1 whether physical or virtual, are considered so vital to the United States that their
2 incapacitation or destruction would have a debilitating effect on security, economic
3 security, public health or safety, or any combination thereof. The Order provided that
4 “Californians working in these 16 critical infrastructure sectors [would] continue their
5 work because of the importance of these sectors to Californians' health and well-being.”
6 All other businesses and organizations were ordered either to cease all operations or to
7 operate under substantial restrictions. Persons not employed in the 16 critical
8 infrastructure areas were required to stay home except as necessary to obtain necessities
9 such food, prescriptions, and healthcare.”⁵

10 18. Further, Newsom declared that “this Order is being issued to protect the
11 public health of Californians” and that “our goal is simple, we want to bend the curve,
12 and disrupt the spread of the virus.” Thereafter, Newsom directed the Office of
13 Emergency Services to “take all necessary steps to ensure compliance with this Order”
14 and that the “Order shall be enforceable pursuant to California law, including, but not
15 limited to, Government Code section 8665.”⁶

16 19. As a result of the issuance of Newsom’s Order, California businesses, such
17 as Plaintiff’s which were not part of the 16 “critical infrastructure sectors” described
18 above, were therefore deemed “Non-Essential” businesses, and effectively ordered,
19 under penalty of fine and imprisonment, to shut down.

20
21
22 _____
23 (14) Nuclear Reactors Materials, and Waste Sector, (15) Transportation Systems Sector,
24 and (16) Water and Wastewater Systems Sector.

25 ⁵ Available as of the date of filing
26 at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Health%20Order%203.19.2020.pdf>

27 ⁶ Section 8665 of the California Government Code provides that: “Any person who
28 violates any of the provisions of this chapter...shall be guilty of a misdemeanor and,
upon conviction thereof, shall be punishable by a fine of not to exceed one thousand
dollars (\$1,000) or by imprisonment for not to exceed six months or by both such fine
and imprisonment.”

1 20. In issuing his March 4, 2020 State of Emergency and March 19, 2020
2 Stay-at-Home Order, Newsom specified that California’s response to the coronavirus
3 pandemic “must be done using a gradual, science-based and data-driven framework”
4 with the objectives of reducing social, emotional, and economic disruptions.

5 21. On May 4, 2020, Newsom, again acting pursuant to emergency powers
6 under State Law, issued Executive Order N-60-20. This order permitted businesses to
7 begin reopening in stages, as determined by the State Public Health Officer. It also
8 directed the State Public Health Officer to develop criteria to determine “whether and
9 how ... local health officers may ... issue directives less restrictive than measures ...
10 implemented on a statewide basis pursuant to the statewide directives of the State
11 Public Health Officer.” (See Exhibit 4).

12 22. Newsom has abused his Emergency Powers to give dictatorial power to an
13 unelected, appointed public bureaucrat.

14 23. Dr. Pan, an unelected, appointed public bureaucrat is issuing orders that
15 have full force of law. These shutdown orders are not being deliberated and enacted by
16 the legislature nor are they following California law for prorogating administrative
17 regulations (See Cal Govt. Code §11340 *et seq.*).

18 24. Under California law, Newsom does have the power to suspend
19 “regulatory statutes” but the California Emergency Service Act does not give him the
20 authority to suspend the California Constitution, laws of general applicability, or rights
21 guaranteed by the U.S. Constitution. (Cal. Govt. Code §8571.)

22 25. Federal courts have authority over internal delegations of power between
23 state branches of government when “the regulations are so utterly unreasonable and
24 extravagant in their nature and purpose that the property and personal rights of the
25 citizens are unnecessarily, and in a manner wholly arbitrary, interfered with or
26 destroyed without due process of law[.]” *Gundling v. City of Chicago*, 177 U.S. 183,
27 188 (1900).

28

1 26. Federal courts have authority to review “ordinances, and even legislative
2 enactments ... with a view to determining whether the law or ordinance is a lawful
3 exercise of the police power[.]” *Caroline Dobbins v. City of Los Angeles*, 195 U.S. 223,
4 236 (1904).

5 27. On May 7, 2020, State Public Health Officer Dr. Angell issued an order
6 permitting the gradual reopening of businesses and activities in California in stages. The
7 order provided for four stages of gradual reopening, with the final stage, Stage 4,
8 consisting of an end to all stay-at-home orders and a full reopening of businesses. As a
9 result, and on or about the beginning of June 2020, Plaintiff’s business re-opened for
10 indoor dining, but was only allowed to do so at 50% capacity.

11 28. Thereafter, and on July 13, 2020, the State Public Health Officer issued a
12 further order directing all restaurants in the State of California, such as Plaintiff’s, to
13 again cease indoor dining service. The order applied to all restaurants regardless of ICU
14 bed capacity availability or the number of deaths experienced in each county. As a
15 result of the July 13, 2020 order, Plaintiff was also unable to recoup the cost of
16 implementing the safety measures imposed by the May 7, 2020 order as a condition to
17 offering indoor dining to their customers.

18 29. On August 28, 2020, Defendant Dr. Pan implemented a statewide order
19 that abandoned the previous, staged re-opening plan promulgated in the May 7, 2020
20 order and dictated that counties would be classified according to a new plan entitled
21 “Blueprint for a Safer Economy” under which a color-coded “tier” system would be
22 used. Under this new color-coded tiered system, each California county is placed in one
23 of four tiers: Purple, Red, Orange, and Yellow—ranging from most to least restrictive,
24 respectively. Unlike the previous staged reopening plan under the May 7, 2020 order,
25 the current “tier” system under the August 28, 2020 order does not provide *any* criteria
26 under which California's businesses and economy would be permitted to fully
27 reopen. Under the respective tiers established pursuant to the August 28, 2020 order,
28 restaurants, such as Plaintiff’s establishment, are required to: (1) cease all indoor dining

1 (Purple tier); (2) limit indoor dining capacity to 25% (Red tier); or (3) limit indoor
2 dining capacity to 50% (Orange and Yellow tiers).

3 30. In making public health decisions, it is important for health officials—who
4 are unelected and thus, unaccountable to the general public—to weigh the overall risk
5 of the given disease to the overall benefits of the imposed public health policy.

6 31. Pursuant to the Center for Disease Control’s (“CDC”) “Considerations for
7 Restaurant and Bar Operators,” updated November 18th, 2020, outdoor dining may
8 occur with relative safety at restaurants if precautionary measures are observed,
9 including but not limited to, social distancing and mask wearing by servers and by
10 patrons (when not eating).

11 32. The CDC includes outdoor dining in the second lowest tier of risk and
12 notes that even this risk can be mitigated by reasonable accommodations such as
13 spacing tables appropriately, encouraging mask wearing by servers, frequent sanitizing
14 of surfaces, and other actions that are well within the capability of County restaurants.

15 33. Many of the contact tracing studies in the scientific literature that
16 document the most common sources of spread of COVID infection show no evidence
17 suggesting that outdoor dining is more likely to spread the COVID virus than the
18 activities – including private gatherings – that remain permissible.

19 34. Grocery stores have seen unprecedented rates of coronavirus infections
20 making it likelier than ever that a co-worker or customer could be ill, and that a single
21 case could multiply into dozens.⁷

22
23
24 ⁷ Available as of the date of filing at https://www.latimes.com/california/story/2020-12-20/coronavirus-outbreaks-los-angeles-grocery-stores-essential-businesses?utm_source=sfmc_100035609&utm_medium=email&utm_campaign=News+Alert%3a+Supermarkets+in+L.A.+County+see+unprecedented+coronavirus+infection+rates+-+00000176-811&utm_term=https%3a%2f%2fwww.latimes.com%2fcalifornia%2fstory%2f2020-12-20%2fcoronavirus-outbreaks-los-angeles-grocery-stores-essential-businesses&utm_id=19649&sfmc_id=2418716

1 35. Since issuing his first order in March 2020, Newsom has relied on nothing
2 more than general “field investigations”, none of which specifically show a relation of
3 outdoor dining at restaurants to the spread of COVID-19. Evidence and analysis
4 available since at least May 2020 further establish that actions at issue in this case—the
5 widespread closure of outdoor dining—cannot be justified as rationally necessary to
6 protect public health and constitute nothing more than arbitrary and capricious acts.

7 36. Nevertheless, and based on the rise of reported COVID-19 cases and
8 hospitalizations that began in mid-November 2020, Newsom announced on December
9 3, 2020 his newest Regional Stay At Home Order (“Regional Order”). Coincidentally,
10 Newsom issued the Regional Order the very same day that a state court in Los Angeles
11 County ordered the Los Angeles County Department of Health (“DPH”) to provide
12 specific evidence detailing that the closure of outdoor dining under its “County
13 Restaurant Closure Order” was rationally related to halting the spread of COVID-19.

14 37. The Regional Order, which took effect on December 5, 2020 and, pertinent
15 to the Southern California Region, is triggered if the Southern California Region’s ICU
16 capacity falls below 15%. The Regional Order is effective for three weeks after the
17 trigger. It affects numerous activities and businesses, including Plaintiff’s. In pertinent
18 part, the Order prohibits restaurant dining, indoor or outdoor, permitting only take-out
19 or pick-up. The Regional Order will end if the region’s ICU capacity projection for four
20 weeks (three weeks after the order) is above or equal to 15%. Conversely, the Order
21 continues if the ICU projection for that period is less than 15%. The assessment will
22 occur on a weekly basis.

23 38. As a part of the Regional Order, Dr. Pan, an unelected bureaucrat stated:

24 “I will continue to monitor the epidemiological data and will modify this
25 Regional Stay-at Home Order as required by the evolving public health
26 conditions. If I determine that it is necessary to change the Terms of this
27 Order, or otherwise modify the Regional Stay-at-Home Order, these
28 modifications will be posted at covid19.ca.gov.” ~ Paragraph 8 of Exh. 1.

1 39. As of December 6, 2020, the Regional Order has been triggered by the fact
2 that the Southern California Region has less than 15% ICU capacity, resulting in
3 Plaintiff shutting down its outdoor dining activities after spending tens of thousands of
4 dollars in complying with the State of California’s “Safe Re-Opening Guidelines.”

5 40. Plaintiff is prohibited from serving meals to the public either indoors or
6 outdoors at its establishment even though the CDC has promulgated guidance for
7 restaurants as a result of COVID-19 that are safely being followed across the U.S.⁸

8 41. Plaintiff is ready willing and able to follow CDC guidance for serving its
9 cliental.

10 42. On information and belief, Plaintiff has never had a single reported case of
11 coronavirus traced back to its establishment. Plaintiff has at all times done its best to
12 comply with all local and state regulations related to curbing the spread of COVID-19.

13 43. During a COVID update on December 8, 2020 broadcasted by the
14 California Department of Public Health, Dr. Mark Ghaly admitted that the State
15 conducted no risk-benefit analysis whatsoever when deciding to implement this new
16 Regional Order, explaining that: “The fact is the transmission is now so widespread
17 across every state that most non-essential activities create a serious risk of
18 transmission...Rather than focus on the sector-by-sector restrictions, the top of our
19 message is, as much as you can, stay at home...”⁹

20 44. In that same December 8, 2020 update, Dr. Ghaly specifically addressed
21 the State’s rational of including the ban on outdoor dining in Newsom’s newest
22 Regional Order: “The decision to include among other sectors, outdoor dining, and
23 limiting that, turning to restaurants to deliver and provide takeout options instead really
24

25 _____
26 ⁸ Available as of the date of filing at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html>

27 ⁹ Mark Ghaly M.D., M.P.H., 12/8/2020: CHHS Secretary Dr. Mark Ghaly Provides
28 *Update on COVID-19 in California*, California Department of Public Health, available
as of the date of filing at <https://www.youtube.com/watch?v=ydrEN5zSS-s>.

1 has to do with the goal of *trying to keep people at home*, not a comment on the relative
2 safety of outdoor dining.”¹⁰

3 45. In that same breath of urging the public to stay home, Dr. Ghaly went on to
4 encourage, “Californians are able to do important things... visit a local retailer or
5 worship the outdoors.”¹¹ Newsom echoed this contradicting message that staying
6 indoors was the goal of lowering the spread of COVID-19 when he tweeted on
7 December 10, 2020, “*Get outdoors with your household safely. Explore your*
8 *neighborhood and CA’s beauty! ... Go to a beach. Take your kids to a playground. Go*
9 *on a hike. Walk your dog. We can get through this.*”

10 46. Further, Dr. Ghaly admitted that there were lesser restrictive means
11 available to ensure outdoor dining could continue safely, “*we have worked hard with*
12 *[the restaurant] industry to create safer ways for outdoor dining to happen.* Keeping
13 tables farther apart, to ensuring masking happens as much as possible, to create
14 opportunities for air circulation, *to continue all of those factors make sectors like*
15 *outdoor dining a lower risk.*”¹²

16 47. While “Essential” businesses continue to operate, and indeed, turn a profit
17 (if not historical profits) during this time of crisis, Plaintiff’s “Non-Essential” restaurant
18 business that was forced to evolve into an outdoor dining restaurant during this
19 pandemic, and now cannot even operate in outdoor form, has suffered immensely and
20 continues to suffer while other non-essential businesses have been allowed to open.
21 Defendants’ unconstitutionally restrictive Regional Orders have had immense disparate
22 impact across every segment or sector of business in California. Accordingly, Plaintiff
23 seeks to enjoin the enforcement of the Regional Orders.

24 48. Defendants’ Regional Orders are not “narrowly tailored” to further any
25 compelling governmental interest. Defendants’ Regional Orders are neither rationally
26

27 ¹⁰ *Id.*

28 ¹¹ *Id.*

¹² *Id.*

1 related to the State’s interest in curbing the spread of COVID-19. Defendants have
2 granted numerous special exemptions to their bans on public gatherings and conduct,
3 including for purportedly “Essential” businesses and activities, provided that social
4 distancing practices are observed. Since these gatherings may be permitted, there can be
5 no doubt that Defendants may, and therefore must, permit Plaintiff to engage in
6 equivalent business activities provided that Plaintiff also adhere to the social distancing
7 guidelines currently in place.

8 49. Specifically, the State of California did not initially include Hollywood
9 studios in the list of “Essential Workers” issued in March 2020. But a revised listing,
10 issued in April 2020, declared that workers involved in “the entertainment industries,
11 studios, and other related establishments” to be essential “provided they follow
12 COVID-19 public health guidance around physical distancing.”¹³

13 50. Then, in November 2020, Newsom provided a *special exemption* to
14 television and film production companies for his earlier limited shelter-in-place order
15 issued before Thanksgiving, which featured a curfew from 10 p.m. to 5 a.m. The
16 workforce on film sets could continue operations throughout the night.¹⁴

17 51. Earlier in December 2020, a central coronavirus testing site at the Union
18 Station building faced a temporary closure to accommodate the filming of a remake
19 of “She’s all That” featuring TikTok star Addison Rae. Some 500 appointments were
20 canceled. The negative news cycle resulted in an intervention from the mayor’s office
21 to keep the testing site open.¹⁵

24 ¹³ Available as of the date of filing at:

25 <https://files.covid19.ca.gov/pdf/EssentialCriticalInfrastructureWorkers.pdf>

26 ¹⁴ Available as of the date of filing at [https://deadline.com/2020/11/entertainment-](https://deadline.com/2020/11/entertainment-industry-workers-exempt-from-california-governor-gavin-newsoms-new-stay-at-home-order-1234619285/)
27 [industry-workers-exempt-from-california-governor-gavin-newsoms-new-stay-at-home-](https://deadline.com/2020/11/entertainment-industry-workers-exempt-from-california-governor-gavin-newsoms-new-stay-at-home-order-1234619285/)
28 [order-1234619285/](https://deadline.com/2020/11/entertainment-industry-workers-exempt-from-california-governor-gavin-newsoms-new-stay-at-home-order-1234619285/)

¹⁵ Available as of the date of filing at [https://www.nytimes.com/2020/12/01/us/virus-](https://www.nytimes.com/2020/12/01/us/virus-testing-Union-Station-Los-Angeles.html)
[testing-Union-Station-Los-Angeles.html](https://www.nytimes.com/2020/12/01/us/virus-testing-Union-Station-Los-Angeles.html)

1 52. Around the same time, Plaintiff’s principal—Angela Marsden—posted a
2 video just after her establishment’s outdoor dining area had been shut down by virtue
3 of Defendants’ Regional Orders. Ms. Marsden’s video went viral¹⁶. In her video, Ms.
4 Marsden displays the hypocrisy, lunacy and total disparity between her own socially
5 distanced outdoor set-up at her establishment juxtaposed by a similarly situated set-
6 up containing outdoor tents and chairs associated with the NBC Universal production
7 set for the series “Good Girls,” which was allowed to proceed as essential work.¹⁷

8 53. The disparity in exemptions, such as described herein, is causally related
9 to state officials, such as Newsom, supporting their campaign donors at the expense
10 of small businesses and has nothing to do with science and data.

11 54. On November 6, 2020, Newsom attended the infamous dinner at French
12 Laundry for Jason Kinney’s birthday in which the bar tab reached \$15,000.00 and
13 dinners started at \$310.00. Jason Kinney is a lobbyist, whose biggest client is Netflix,
14 which has been allowed to operate during the latest round of forced closures as
15 intensive care hospital capacity has dwindled across the state.¹⁸

16 55. It is no secret that Hollywood lobbyists and insiders have leveraged their
17 industry’s economic and political contributions to the state’s political power brokers
18 and Democratic machine in order to insulate it from COVID-19 related regulations.

19 56. To highlight this issue, just Netflix’s quarterly lobbying spending alone
20 nearly tripled as it jumped from \$24,437.00 to \$70,725.00 a quarter. The jump in
21 spending includes increased fees to Axiom Advisors, the firm founded by Kinney.
22
23

24 ¹⁶ Available as of the date of filing at
25 [https://www.cnn.com/videos/business/2020/12/06/california-restrictions-restaurant-](https://www.cnn.com/videos/business/2020/12/06/california-restrictions-restaurant-owner-angela-marsden-vercammen-nr-vpx.cnn)
26 [owner-angela-marsden-vercammen-nr-vpx.cnn](https://www.cnn.com/videos/business/2020/12/06/california-restrictions-restaurant-owner-angela-marsden-vercammen-nr-vpx.cnn)

27 ¹⁷ Available as of the date of filing at [https://www.youtube.com/watch?v=3-](https://www.youtube.com/watch?v=3-86gfJosHc&ab_channel=ABC7)
28 [86gfJosHc&ab_channel=ABC7](https://www.youtube.com/watch?v=3-86gfJosHc&ab_channel=ABC7)

¹⁸ Available as of the date of filing at [https://californiaglobe.com/section-2/gov-](https://californiaglobe.com/section-2/gov-newsoms-hollywood-lockdown-exemptions-facilitated-by-lobbyist-pals/)
[newsoms-hollywood-lockdown-exemptions-facilitated-by-lobbyist-pals/](https://californiaglobe.com/section-2/gov-newsoms-hollywood-lockdown-exemptions-facilitated-by-lobbyist-pals/)

1 57. Further, the “Big Six” production studios have donated heavily to elected
2 officials and campaigns across California. Netflix and its employees gave \$135,950.00;
3 Walt Disney and Co. and its employees gave \$183,999.00; Paramount and its
4 employees gave \$119,308.00; Sony and its employees gave \$27,961.00; Comcast-
5 NBCUniversal and its employees gave \$251,588.00; and Warner Bros. and its
6 employees gave \$77,050.00.¹⁹

7 58. The campaign donations were spent as the firms also deployed lobbyists
8 to shape the pandemic rules governing the entertainment industry.²⁰

9 59. Plaintiff has standing to bring this lawsuit since it is an aggrieved in fact
10 business that is the subject of enforcement of the overbroad and unconstitutional
11 Regional Orders, which have the effect of forcing Plaintiff to bear a public burden by
12 virtually eviscerating Plaintiff’s ability to operate its business.

13 60. Unless and until injunctive relief is granted, Plaintiff will continue to suffer
14 irreparable harm for which it is left without an adequate remedy at law, in that it can be
15 subject to criminal cases (i.e. misdemeanor citations and fines), have its liquor license
16 and business license suspended or withdrawn, or have its utilities shut off by the DWP
17 based on the enforcement of the Regional Orders by the Los Angeles County Sheriff’s
18 Department. Newsom has made it a point to “prosecute” and “fine” all non-conforming
19

20 ¹⁹ Available as of the date of filing at [https://theintercept.com/2020/12/11/hollywood-](https://theintercept.com/2020/12/11/hollywood-covid-filming-california-lockdown/)
21 [covid-filming-california-lockdown/](https://theintercept.com/2020/12/11/hollywood-covid-filming-california-lockdown/)

22 ²⁰ Mercury Public Affairs, a bipartisan lobbying firm that features former Assembly Speaker
23 Fabian Nuñez and former LA Mayor Antonio Villaraigosa as partners, is currently registered
24 to lobby LA officials on filming issues on behalf of both Comcast-NBCUniversal and the
25 Motion Picture Association. Tracy Arnold, Newsom’s chief deputy cabinet secretary,
26 previously served as partner at Mercury Public Affairs. Paramount Pictures’ lobbyist Greg
27 Campbell previously served as chief of staff to former Assembly Speaker John Pérez. The
28 disclosure for his firm shows that Campbell lobbied the administration on the essential
worker memorandum from the governor’s economic affairs office earlier this year. Campbell
jointly serves clients through a partnership with a lobbyist named Jim DeBoo. That
relationship may serve him well. On Wednesday, DeBoo was announced as Newsom’s new
chief of staff to replace outgoing chief of staff Ann O’Leary. Available as of the date of filing
at <https://theintercept.com/2020/12/11/hollywood-covid-filming-california-lockdown/>

1 “Non-Essential” businesses that refuse to close their doors and shut down their lawful
2 business operations. And, on information and belief, the State has even gone so far as to
3 threaten criminal prosecutions, including murder charges, for any non-compliant
4 businesses that refuse to shut down by serving food and drink indoors or outdoors
5 which lead to a COVID-19 infection among a patron or guest that causes death.

6 **CLAIMS**

7 **FIRST CLAIM FOR RELIEF**

8 **Violation of First Amendment Freedom of Assembly Clause**

9 **(42 U.S.C. § 1983)**

10 *(By Plaintiff against all Defendants)*

11 61. Plaintiff incorporates by reference the allegations in the preceding
12 paragraphs, as if fully set forth herein.

13 62. The Regional Orders and Defendants’ enforcement thereof violates the
14 First Amendment, both facially and as-applied to Plaintiff. The First Amendment of the
15 Constitution protects the “right of the people peaceably to assemble.” The Freedom of
16 Assembly Clause was incorporated against the states in *De Jonge v. Oregon*, 299 U.S.
17 353 (1937).

18 63. “The right of free speech, the right to teach, and the right of assembly are,
19 of course, fundamental rights.” *Whitney v. California*, 274 U.S. 357, 373 (1927). When
20 a government practice restricts fundamental rights, it is subject to “strict scrutiny” and
21 can be justified only if it furthers a compelling government purpose and, even then,
22 only if no less restrictive alternative is available. *See, e.g., San Antonio Indep. Sch. Dist.*
23 *v. Rodriguez*, 411 U.S. 1, 16-17 (1973); *Dunn v. Blumstein*, 405 U.S. 330 (1972).

24 64. By denying Plaintiff’s ability to conduct outdoor dining which not only
25 previously complied with the State of California’s Orders, but also complies with the
26 CDC guidelines for social distancing, Defendants are in violation of the Freedom of
27 Assembly Clause. Defendants cannot meet the no-less-restrictive-alternative test. The
28 CDC’s social distancing guidelines are appropriate to limit the spread of COVID-19.

1 Imposing more restrictive requirements that target restaurants and establishments such
2 as Plaintiff's, while at the same time allowing the entertainment industry, major
3 retailers, grocery stores, marijuana dispensaries and others to operate indoors or
4 outdoors is not the least restrictive means of achieving Defendants' public safety goals.

5 65. Requiring Plaintiff to abstain from conducting outdoor dining activities,
6 despite substantial modifications to satisfy the public health interests at stake, violates
7 Plaintiff's Constitutional right to peaceably assemble.

8 66. Plaintiff has no adequate remedy at law and will suffer serious and
9 irreparable harm to its constitutional rights unless Defendants are enjoined from
10 implementing and enforcing the Regional Orders as applied to Plaintiff.

11 67. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to declaratory
12 relief and temporary, preliminary, and permanent injunctive relief invalidating and
13 restraining enforcement of the Regional Orders.

14 68. Plaintiff has found it necessary to engage the services of private counsel to
15 vindicate its rights under the law. Plaintiff is therefore entitled to an award of attorneys'
16 fees pursuant to 42 U.S.C. § 1988.

17 **SECOND CLAIM FOR RELIEF**

18 **Due Process Clauses of Fifth and Fourteenth Amendments to U.S. Constitution**

19 **(42 U.S.C. § 1983)**

20 *(By Plaintiff against all Defendants)*

21 69. Plaintiff incorporates by reference the allegations in the preceding
22 paragraphs, as if fully set forth herein.

23 70. The Regional Orders and Defendants' enforcement thereof violate the Due
24 Process Clauses of the 5th and 14th Amendments, both facially and as-applied to
25 Plaintiff.

26 71. The Due Process Clauses of the 5th and 14th Amendment provides, in
27 pertinent part, that: "No State shall make or enforce any law which shall abridge the
28 privileges or immunities of citizens of the United States; nor shall any State deprive any

1 person of life, liberty, or property, without due process of law; nor deny to any person
2 within its jurisdiction the equal protection of the laws.

3 72. As set forth herein, Defendants’ Regional Orders have had a disparate
4 impact on Plaintiff and have unfairly targeted Plaintiff’s business, specifically its ability
5 to earn a living by conducting outdoor dining, despite the total lack of scientific
6 evidence or data to support the implementation of the Regional Orders as to Plaintiff.
7 As such, Plaintiff has been deprived of its Constitutionally protected liberties and rights.

8 73. Plaintiff has no adequate remedy at law and will suffer serious and
9 irreparable harm to its constitutional rights unless Defendants are enjoined from
10 implementing and enforcing the Regional Orders.

11 74. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to declaratory
12 relief and temporary, preliminary, and permanent injunctive relief invalidating and
13 restraining enforcement of the Regional Orders.

14 75. Plaintiff has found it necessary to engage the services of private counsel to
15 vindicate its rights under the law. Plaintiff is therefore entitled to an award of attorneys’
16 fees pursuant to 42 U.S.C. § 1988.

17 **THIRD CLAIM FOR RELIEF**

18 **Equal Protection Clause of Fourteenth Amendment to U.S. Constitution**

19 **(42 U.S.C. § 1983)**

20 *(By Plaintiff against all Defendants)*

21 76. Plaintiff incorporates by reference the allegations in the preceding
22 paragraphs, as if fully set forth herein.

23 77. The Regional Orders and Defendants’ enforcement thereof violate the
24 Fourteenth Amendment, both facially and as-applied to Plaintiffs. The Fourteenth
25 Amendment of the Constitution provides that “[n]o State shall . . . deny to any person
26 within its jurisdiction the equal protection of the laws.” Equal protection requires the
27 state to govern impartially—not draw arbitrary distinctions between individuals based
28 solely on differences that are irrelevant to a legitimate governmental objection.

1 78. Defendants intentionally and arbitrarily categorize individuals, businesses
2 and conduct as either “essential” or “non-essential.” Those persons or businesses
3 classified as “essential,” or as participating in essential services, are permitted to go
4 about their business and activities provided certain social distancing practices are
5 employed. Those classified as “non-essential,” or as engaging in non-essential activities
6 (such as Plaintiff), are required to heed the State’s directives and adjust and/or shut
7 down aspects of their businesses—up to and including the entirety of their operations.

8 79. Strict scrutiny under the Equal Protection Clause applies where, as here,
9 the classification impinges on a fundamental right, including the right to assembly, the
10 right to travel, among others.

11 80. Defendants cannot satisfy strict scrutiny, because their arbitrary
12 classifications are not narrowly tailored measures that further compelling government
13 interests, for the reasons stated above.

14 81. Plaintiff has no adequate remedy at law and will suffer serious and
15 irreparable harm to their constitutional rights unless Defendants are enjoined from
16 implementing and enforcing the Regional Orders.

17 82. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to declaratory
18 relief and temporary, preliminary, and permanent injunctive relief invalidating and
19 restraining enforcement of the Regional Orders.

20 83. Plaintiff has found it necessary to engage the services of private counsel to
21 vindicate their rights under the law. Plaintiff is therefore entitled to an award of
22 attorneys’ fees pursuant to 42 U.S.C. § 1988.

23 **FOURTH CLAIM FOR RELIEF**

24 **Due Process Clause of Fifth and Fourteenth Amendment to U.S. Constitution**

25 **(42 U.S.C. § 1983)**

26 *(By Plaintiff against all Defendants)*

27 84. Plaintiff incorporates by reference the allegations in the preceding
28 paragraphs, as if fully set forth herein.

1 85. The Executive Orders and Defendants’ enforcement thereof violate the
2 substantive and procedural aspects of the Due Process Clauses of the 5th and 14th
3 Amendments, both facially and as-applied to Plaintiff.

4 86. The Due Process Clause of the 14th Amendment provides, in pertinent part,
5 that: “No State shall ... deprive any person of life, liberty, or property, without due
6 process of law[.]”

7 87. The Due Process Clause of the 5th Amendment provides in pertinent part
8 that: “No person shall be ... deprived of life, liberty, or property, without due process of
9 law; nor shall private property be taken for public use, without just compensation.”

10 88. As set forth herein, Defendants’ Executive Orders have unlawfully violated
11 Plaintiff’s procedural due process rights by delegating authority to an unelected,
12 appointed bureaucrat who is exercising this power to deprive Plaintiff from being able
13 to operate its lawful businesses at all.

14 89. Procedural due process “protects rights created by state law and guarantees
15 that no significant deprivation of life, liberty or property will take place until notice has
16 been provided and the individual has a meaningful opportunity to be heard.” *Cleveland*
17 *Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985).

18 90. Defendants also have violated Plaintiff’s procedural due process rights by
19 ignoring California law as to the promulgation of administrative regulations as set forth
20 in the California Administrative Procedures Act (Cal. Gov. Code §11340 *et. seq.*),
21 including but not limited to the procedures for enacting emergency regulations (Cal.
22 Gov. Code §11346.1).

23 91. “No right granted or secured by the Constitution of the United States can
24 be impaired or destroyed by a state enactment, whatever may be the source from which
25 the power to pass such enactment may have been derived.” *Connolly v. Union Sewer*
26 *Pipe Co.*, 184 U.S. 540, 558 (1902).

27 92. The Due Process clause “forbids the government to infringe [on]
28 fundamental liberty interests at all, no matter what process is provided, unless the

1 infringement is narrowly tailored to serve a compelling state interest.” *Washington v.*
2 *Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotations omitted).

3 93. This applies to “fundamental rights and liberties which are deeply rooted in
4 this Nation’s history and tradition and implicit in the concept of ordered liberty.”
5 *Chavez v. Martinez*, 538 U.S. 760, 775 (2003) (internal quotations and citations
6 omitted) (*partially overruled on other grounds by Saucier v. Katz*, 533 U.S. 194
7 (2001)).

8 94. Substantive due process “includes more than the absence of physical
9 restraint.” *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997) (citation omitted).

10 95. It protects—in addition to all the enumerated freedoms in the Bill of
11 Rights—a wide array of liberties.

12 96. Citizens have a fundamental right to be free from confinement without due
13 process of law. *Hamdi v. Rumsfeld*, 542 U.S. 507, 531 (2004).

14 97. It is self-evident that the right to freely come and go from one’s home is a
15 fundamental right. *See Aptheker*, 378 U.S. at 520.

16 98. The “involuntary confinement of an individual for any reason, is a
17 deprivation of liberty which the State cannot accomplish without due process of law.”
18 *Connor v. Donaldson*, 422 U.S. 563, 580 (1975). Also, any “confinement must cease
19 when those reasons [giving rise to it] no longer exist.” *Id.*

20 99. Quarantine laws may be permitted as to infected individuals, but not the
21 public at large. *Robinson v. State of California*, 370 U.S. 660, 666 (1962).

22 100. A quarantine law that banned introduction of cattle into a state for several
23 months of the year regardless of whether the cattle were diseased or not was held to be
24 unconstitutional. *Railroad Company v. Husen*, 95 U.S. 465, 473 (1877).

25 101. Both the Executive Orders and the Regional Orders mandate that
26 Californians stay at home and shut down their “non-essential” businesses.

27 102. Both the Executive Orders and the Regional Orders violate Plaintiff’s
28 constitutional right to liberty.

1 103. The State Order is tantamount to a state-wide confinement of most
2 Californians, regardless of whether they are infected with COVID-19.

3 104. Unless enjoined, Defendants will act under color of state law to deprive
4 Plaintiffs of their right to liberty as protected by the Due Process Clause.

5 105. Plaintiff has no adequate remedy at law and will suffer serious and
6 irreparable harm to its constitutional rights unless Defendants are enjoined from
7 implementing and enforcing the Regional Orders.

8 106. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to declaratory
9 relief and temporary, preliminary, and permanent injunctive relief invalidating and
10 restraining enforcement of the Regional Orders.

11 107. Plaintiff has found it necessary to engage the services of private counsel to
12 vindicate its rights under the law. Plaintiff is therefore entitled to an award of attorneys'
13 fees pursuant to 42 U.S.C. § 1988.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment
16 against Defendants as follows:

17 A. An order and judgment declaring that the Regional Orders, facially and as-
18 applied to Plaintiff, violates the First, Fifth, and Fourteenth Amendments to the U.S.
19 Constitution.

20 B. An order and judgment declaring that the Executive Orders, facially and
21 as-applied to Plaintiff, violate the Fifth and Fourteenth Amendments to the U.S.
22 Constitution.

23 C. An order temporarily, preliminarily, and permanently enjoining and
24 prohibiting Defendants from enforcing the Regional Orders;

25 D. An order temporarily, preliminarily, and permanently enjoining and
26 prohibiting Defendants from enforcing the Executive Orders;

27 E. For attorneys' fees and costs;

28 F. Such other and further relief as the Court deems appropriate and just.

1 Date: December 20, 2020

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