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15 *Attorneys for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**  
17  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 **PROFESSIONAL BEAUTY**  
20 **FEDERATION OF CALIFORNIA**, a  
21 California Corporation **CORINNE LAM**,  
22 a California Resident; **P2W LEARNING**  
**SYSTEMS, LLC**, a Delaware Limited  
23 Liability Company; **RONOR LEASING**  
24 **INC.**, a California Corporation; **ZENBI**  
25 **SALONS, INC.**, a California Corporation;  
and; **ROSE IBARRA**, a California  
26 Resident;

27 Plaintiffs,

28 v.

Case Number:

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

- 1) **14<sup>th</sup> AMENDMENT DUE  
PROCESS**
- 2) **14<sup>TH</sup> AMENDMENT EQUAL  
PROTECTION**
- 3) **5<sup>TH</sup> AMENDMENT  
TAKINGS**
- 4) **CAL. CONST. ART. 1 § 1  
RIGHT TO LIBERTY**

1 **GAVIN NEWSOM**, in his official  
2 capacity as the Governor of California;  
3 **XAVIER BECERRA**, in his official  
4 capacity as the Attorney General of  
5 California; **SONIA ANGELL**, in her  
6 official capacity as California Public  
7 Health Officer and Department of Public  
8 Health Director; **LOURDES CASTRO**  
9 **RAMIREZ**, in her official capacity as  
10 Secretary of the California Business,  
11 Consumer Services and Housing Agency;  
12 **KIMBERLY KIRCHMEYER**, in her  
13 official capacity as Director of the  
14 Department of Consumer Affairs;  
15 **KRISTY UNDERWOOD**, in her official  
16 capacity as Executive Officer of the State  
17 Board of Barbering and Cosmetology;  
18 **JACQUELYN CRABTREE**, in her  
19 official capacity as member of the State  
20 Board of Barbering and Cosmetology;  
21 **ANDREW DRABKIN**, in his official  
22 capacity as member of the State Board of  
23 Barbering and Cosmetology; **DERICK**  
24 **MATOS**, in his official capacity as  
25 member of the State Board of Barbering  
26 and Cosmetology; **CALIMAY PHAM**, in  
27 her official capacity as member of the  
28 State Board of Barbering and  
Cosmetology; **LISA THONG**, in her  
official capacity as member of the State  
Board of Barbering and Cosmetology;  
**CHRISTIE TRAN**, in her official  
capacity as member of the State Board of  
Barbering and Cosmetology; **STEVE**  
**WEEKS**, in his official capacity as  
member of the State Board of Barbering  
and Cosmetology; and **KARI**  
**WILLIAMS**, in her official capacity as

- 5) **CAL. CONST. ART. 1 § 7  
RIGHT TO PROPERTY**
- 6) **CAL. CONST. ART. 1 § 19  
TAKINGS WITHOUT  
COMPENSATION**

1 member of the State Board of Barbering  
2 and Cosmetology;

3 Defendants.  
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7  
8 **INTRODUCTION**

9 More than two months have passed since Governor Newsom proclaimed a state  
10 of emergency in California, and throughout that time, he and others in his  
11 administration have vaguely and arbitrarily classified licensed barbering and  
12 cosmetology professionals as “non-essential,” criminalizing the jobs these 500,000 plus  
13 state-licensed professionals perform in every community, large and small, throughout  
14 California. Last week, Defendants began threatening to revoke Plaintiffs’ licenses,  
15 which authorize them to safely serve the public’s personal grooming and beauty needs,  
16 and embody their ability to earn a living.

17 If allowed to stand, Defendants’ arbitrary orders will continue to violate  
18 Plaintiffs’ fundamental rights, inflicting irreversible financial and personal harm to  
19 more than 500,000 licensed beauty professionals in California. They have offered no  
20 exceptions, and identified no future date for reinstatement of these lawful professions.  
21 In doing so, Defendants overstep the authority entrusted to them by the California  
22 Constitution, and violate Plaintiffs’ rights to due process. Plaintiffs hereby request that  
23 this Court provide narrow but appropriate relief to ensure the Governor has adequate  
24 latitude to address the COVID emergency, while also respecting Plaintiffs’ fundamental  
25 rights guaranteed by the constitutions of the United States and the State of California.

26 **NATURE OF THE ACTION**

27 1. In response to the coronavirus emergency, Defendants are depriving  
28 Plaintiffs, their members, employees, tenants, and students of fundamental rights

1 protected by the United States and California constitutions, including due process, equal  
2 protection under the law, the rights to liberty, and just compensation for takings.

3 2. This action presents facial and as-applied challenges to Governor  
4 Newsom’s March 19, 2020 Executive Order N-33-20 (the “Governor’s Order”) attached  
5 hereto as Exhibit 1 and incorporated herein by this reference. The Governor’s Order has  
6 no sunset provision or expiration date. The legislature is in session and has scaled back  
7 its agenda to focus on matters related to the COVID-19 crisis.<sup>1</sup> The Governor  
8 nevertheless continues to use the emergency to exercise unlimited power over Plaintiffs,  
9 having declared their professions, without evidence or due process, as “non-essential,”  
10 and therefore prohibited, subject to criminal prosecution and license revocation. The  
11 Governor’s Order and other related directives may at times be referred to collectively as  
12 the “Orders” in this Complaint.<sup>2</sup>

### 13 PARTIES

14 1. Plaintiff Professional Beauty Federation of California (“Federation”) is a  
15 California Corporation with its principal place of business in Auburn, California. It is a  
16 nonprofit membership organization representing licensed beauty professionals in  
17 California. The Federation serves as a voice for the more than 500,000 licensees in all  
18 sectors of the beauty and barbering industries, including hair, skin, nail care,  
19 electrolysis, and beauty colleges.

20 2. Plaintiff Corinne Lam (“Lam”) is an individual and resident of San Diego  
21 County, California. She holds an individual license to practice as a cosmetologist. The  
22 Board issued License No. 455886 to her on August 25, 2005. At all relevant times, she

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26 <sup>1</sup> President Pro Tempore Atkins’ Memo to Senate Standing Policy Committee Chairs,  
April 10, 2020.

27 <sup>2</sup> As of the date of this filing, the Governor’s Order may be accessed online at the  
28 following URL: Governor’s Order: <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

1 is and was a resident of California and is a professional hairstylist at Salotto Salon &  
2 Blowdry Lounge in San Diego. She is also an officer and shareholder of Plaintiff Zenbi  
3 Salons, Inc.

4 3. Plaintiff P2W Learning Systems, LLC, d/b/a “Paul Mitchell The School,  
5 Sherman Oaks” (“Paul Mitchell”) is a limited liability company formed under the laws  
6 of Delaware with its principal place of business in Sherman Oaks, California. The  
7 Board issued School of Cosmetology License No. 6028 to Paul Mitchell on November  
8 7, 2006. Paul Mitchell operates its beauty school at the Sherman Oaks Galleria.

9 4. Plaintiff Ronor Leasing Inc. d/b/a “Social Salon Suites” (“Salon Suites”) is  
10 a California Corporation with its principal place of business in Glendale, California.  
11 Rose Ibarra, and her spouse Norbert Ibarra, serve as officers of Salon Suites.

12 5. Plaintiff Zenbi Salons, Inc. (“Zenbi”) is a California Corporation with its  
13 principal place of business in San Diego, California. The Board issued establishment  
14 License No. 266850 to Zenbi on June 3, 2010. Zenbi owns and operates the Salotto  
15 Salon & Blowdry Lounge in San Diego, California.

16 6. Plaintiff Rose Ibarra (“Ibarra”) is an individual and resident of California.  
17 The California Board of Barbering and Cosmetology (“the Board”) issued License No.  
18 360595 to her on September 29, 1998. Ibarra has a personal hairstyling business in Los  
19 Angeles County and is an officer and shareholder of Plaintiff Ronor Leasing Inc.

20 7. Defendant Gavin Newsom is made a party to this action in his official  
21 capacity as the Governor of California. The California Constitution vests the “supreme  
22 executive power of the State” in the Governor, who “shall see that the law is faithfully  
23 executed.” Cal. Const. Art. V, § 1. Governor Newsom issued the Governor’s Order on  
24 March 19, 2020.

25 8. Defendant Xavier Becerra is made a party to this action in his official  
26 capacity as the Attorney General of California. Under California law, Becerra is the  
27 chief law enforcement officer with supervision over all sheriffs in the State. California  
28 Const. Art. V, § 13.

1           9. Defendant Sonia Angell is made a party to this action in her official  
2 capacity as California State Public Health Officer. Angell is sued herein in her official  
3 capacity to challenge the constitutionality of her office’s list of “Essential Critical  
4 Infrastructure Workers” issued to complement Newsom’s Executive Order.<sup>3</sup> This list  
5 was issued on or about March 22, 2020 and updated on or about April 28, 2020. It is  
6 attached hereto as Exhibit 2 and incorporated herein by this reference.

7           10. Defendant Lourdes Castro Ramirez is made a party to this action in her  
8 official capacity as Secretary of the California Business, Consumer Services and  
9 Housing Agency, which oversees the Department of Consumer Affairs (“DCA”) and the  
10 California Board of Barbering and Cosmetology (“the Board”).

11           11. Defendant Kimberly Kirchmeyer is made a party to this action in her  
12 official capacity as Director of the DCA, a division of the State Business, Consumer  
13 Services, and Housing Agency. The DCA administratively oversees the Board.

14           12. Defendant Kristy Underwood is made a party to this action in her official  
15 capacity as Executive Officer of the Board a subdivision of the DCA.

16           13. Defendants Jacquelyn Crabtree, Andrew Drabkin, Derick Matos, Calimay  
17 Phan, Lisa Thong, Christie Tran, Steve Weeks, and Kari Williams are each made parties  
18 to this action in their respective official capacities as members of the Board, a  
19 subdivision of the DCA. The Board of Barbering and Cosmetology is governed by  
20 Division 3, Chapter 10 (Section 7301, *et seq.*) of the California Business & Professions  
21 Code.

22           14. Each Defendant has acted and continues to act under color of state law  
23 with respect to all acts or omissions herein alleged.

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28 <sup>3</sup> Available as of May 10, 2020, at:  
<https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>.

1 **JURISDICTION AND VENUE**

2 15. This action is brought under 42 U.S.C. § 1983 in relation to Defendants’  
3 deprivation of Plaintiffs’ constitutional rights to due process, equal protection, and just  
4 compensation for temporary takings under the Fifth and Fourteenth amendments to the  
5 U.S. Constitution.

6 16. Accordingly, this Court has federal question jurisdiction under 28 U.S.C.  
7 §§ 1331 and 1343. This Court has authority to award the requested declaratory relief  
8 under 28 U.S.C. § 2201; the requested injunctive relief and damages under 28 U.S.C. §  
9 1343(a); and attorneys’ fees and costs under 42 U.S.C. § 1988.

10 17. This Court has supplemental jurisdiction over the claims asserted under  
11 California’s Constitution, statutes, and regulations.

12 18. The Central District of California is the appropriate venue for this action  
13 pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is a District in which Defendants  
14 maintain offices, exercise their authority in their official capacities, have enforced, and  
15 have threatened to enforce the Orders.

16 **FACTUAL ALLEGATIONS**

17 19. On or about January 31, 2020, the U.S. Secretary of Health and Human  
18 Services declared a public health emergency, under section 319 of the Public Health  
19 Service Act (42 U.S.C. 247d), in response to COVID-19.

20 20. On or about March 4, 2020, California Governor Gavin Newsom  
21 proclaimed a State of Emergency as a result of the potential threat of COVID-19.<sup>4</sup>  
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27 <sup>4</sup> As of the date of this filing, the Proclamation of a State of Emergency can be found  
28 online at: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.









1           26.     The Order allows persons to continue working only if they are deemed  
2 “essential workers” in an “essential business.”<sup>8</sup> While some of the deemed-essential  
3 businesses are clearly critical to human needs despite an emergency (e.g., public safety,  
4 food supply chain, utilities), others, when viewed in the light of the prohibitions against  
5 Plaintiffs, are arbitrary as they bear no connection to public health and have been  
6 created for the sole purpose of allowing Defendants’ politically preferred trades and  
7 industries to continue operating while secondary interests are left in economic distress.  
8 The State Public Health Officer’s Directive<sup>9</sup> (herein as “List”) includes the following as  
9 “essential”:

- 10           a.     “Workers supporting the entertainment industries, studios, and other  
11 related establishments, provided they follow COVID-19 public health  
12 guidance around physical distancing.” Licensees supporting the  
13 entertainment industries as beauticians, hair stylists, and manicurists at a  
14 film studio are “essential,” while Plaintiffs’ licensed services to clients  
15 outside the entertainment industry are not. This distinction bears no  
16 connection whatsoever to public health.
- 17           b.     “Workers for health manufacturing ... and distributors of ... cleaning,  
18 sanitizing, disinfecting or sterilization supplies, personal hygiene products,  
19 and tissue and paper towel products” as “essential.” Plaintiffs and other  
20 licensees provide these services, sell shampoo, as well as other hygiene  
21 products. While Plaintiffs are essential for selling of shampoo, they are  
22 deemed non-essential when it comes to the licensed services. Plaintiffs at  
23 least partially fall within the “essential” services exception list, yet

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26 <sup>8</sup> Exhibit 1.

27 <sup>9</sup> As of May 9, 2020, located at:

28 <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>, and attached as  
Exhibit 2.

1 Defendants’ threat to revoke Plaintiffs’ licenses for practicing licensed  
2 activities underscores the irrational, arbitrary and capricious nature of the  
3 Governor’s Order and Defendant’s enforcement.

4 c. “Workers performing services in support of the elderly and disabled  
5 populations who coordinate a variety of services, including health care  
6 appointments and activities of daily living” are deemed essential. Personal  
7 grooming services, including those offered by Plaintiffs, are central to the  
8 daily lives of the elderly and disabled. However, Defendants nevertheless  
9 deny Plaintiffs and other licensees the ability to perform these services  
10 under threat of criminal prosecution and license revocation.

11 d. Workers in laundromats, laundry services, and dry cleaners come in close,  
12 direct contact with the clothing and linens from members of the public,  
13 with no temporal limitation. These items which, if a customer is infected  
14 with COVID-19, pose as high a risk, if not greater, of infection as  
15 Plaintiffs’ licensed activities.

16 27. Accordingly, Governor Newsom’s “essential workers” list prohibits all  
17 workers in the hair, skin, nail care, and electrolysis industries from engaging in their  
18 profession, regardless of the measures taken by these professionals to reduce or  
19 eliminate the risk of the virus spreading. Meanwhile, the List deems the continuity of  
20 services provided by espresso bars, recreational cannabis dispensaries, pet grooming,  
21 chiropractors, and other professions to be so essential to “public infrastructure” that  
22 these activities are permitted to resume under the Governor’s Order, despite posing the  
23 same or greater risks than Plaintiffs’ licensed activities.

24 28. The State Public Health Officer’s directives require, in part, “all  
25 individuals living in the State of California to stay home or at their place of residence  
26 except as needed to maintain continuity of operations of the federal critical  
27  
28

1 infrastructure sectors”.<sup>10</sup> The public health directive provides that its directives “shall  
2 stay in effect until further notice.”<sup>11</sup> The Governor’s Order and its public health  
3 directives, which was the first such “stay-at-home” directive issued in the country,  
4 provides that it “shall stay in effect until further notice.” Thus, without giving any  
5 benchmarks or standards to determine when the proclaimed emergency is over, the  
6 Governor’s Order grants State actors the limitless power to create arbitrary standards  
7 and capriciously enforce them in perpetuity, or “until further notice.” Indeed, Governor  
8 Newsom has indicated in various public remarks that living under his emergency orders  
9 is the “new normal” for 12-18 months into the foreseeable future, certainly into next  
10 year.<sup>12</sup> Governor Newsom has indicated that the prospect of large gatherings and other  
11 elements of “normalcy” will not be considered until the population has achieved herd  
12 immunity and a vaccine is available, which may occur in 12-18 months.<sup>13</sup> Anticipating  
13 that the emergency will persist past the November 2020 election, Governor Newsom  
14 unilaterally—without any action by the legislature—changed the State’s voting rules by  
15 directing that all of the State’s voters be registered to vote-by-mail.<sup>14</sup>

16 29. After being lobbied by the United Cannabis Business Association,<sup>15</sup>  
17 Governor Newsom and Dr. Angell made arbitrary exceptions, amending their original  
18

19 \_\_\_\_\_  
20  
21 <sup>10</sup>The State Public Health Directive was included in the text of Executive Order N-33-  
22 20.

23 <sup>11</sup> *Id.*

24 <sup>12</sup> Press Briefing, April 14, 2020 at 29:55-36:55, accessible May 11, 2020:  
25 <https://www.youtube.com/watch?v=wQW0QGthFV4> (“As I said, normal, it will not be,  
26 at least until we have herd immunity and we have a vaccine...which means they have to  
27 redesign those businesses... if we build that workforce to help us with tracing...  
28 hundreds of thousands of points of contact in terms of our tracing capacity.”)

<sup>13</sup> *Id.*

<sup>14</sup> Executive Order N-64-20, May 8, 2020.

<sup>15</sup> See, e.g., <https://www.wsj.com/articles/california-deems-pot-an-essential-coronavirus-business-11585005903> (last visited on May 10, 2020).

1 List to declare that cannabis retail stores were “essential” after while maintaining that  
2 Plaintiffs’ licensed activities are “non-essential.” Rather than providing guidance on  
3 how to resume operations as “essential” businesses in a manner that protects public  
4 health, Defendants now instruct Plaintiffs to seek assistance from their “industry  
5 association” for appropriate relief, bypassing decades-old administrative hearing and  
6 legislative controls that would otherwise ensure due process. Instead of due process and  
7 compelling matters of public health, determinations of “essential” and “non-essential”  
8 are handled through an opaque process of lobbying by special interests, unilateral  
9 decrees made on the fly, and no opportunity to appeal or be heard.

10 30. None of the powers expressly granted under the California State  
11 Emergency Services Act allow Governor Newsom to sequester all Californians within  
12 their homes indefinitely, unable to ply their trades or provide for their families legally.<sup>16</sup>

13 31. Since the initial outbreak of COVID-19 in the United States in February  
14 and March 2020, the federal government’s projections of the anticipated national death  
15 toll related to the virus have decreased substantially, by orders of magnitude. Despite  
16 these developments, the Defendants have imposed increasingly stringent restrictions—  
17 and in some cases banning—Plaintiffs’ licensed activities, while allowing individuals in  
18 other classes and groups to perform similar activities that pose equal or greater risks to  
19 public health.<sup>17</sup>

### 20 **THREATENED LICENSE REVOCATIONS**

21 32. For nearly two months, California officials have threatened criminal  
22 prosecution for violations of the Governor’s Order. Defendants have effectively taken  
23 away Plaintiffs’ lawful right to engage in professional state-licensed activities. This has  
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26 \_\_\_\_\_  
26 <sup>16</sup> Cal. Gov’t Code § 8565, et seq.

27 <sup>17</sup> See, e.g.,

28 <https://www.usatoday.com/story/news/investigations/2020/04/09/coronavirus-deaths-u-s-could-closer-60-k-new-model-shows/5122467002/>

1 forced Plaintiffs to lay off employees, forego their property, lose their livelihoods, and  
2 risk financial ruin, all without due process of law.

3 33. As of February 2020, the State Board licenses 313,734 stylists and  
4 cosmetologists, 34,093 barbers, 90,392 estheticians, 129,802 manicurists, 1,679  
5 electrologists, and 53,694 establishments.

6 34. As counties within California and other states make plans to reopen their  
7 economies with specific safeguards, Defendants have threatened to revoke licenses of  
8 cosmetology professionals without any permission or explanation as to how to carry on  
9 their professions in compliance with the “new normal” decreed by Defendants.

10 35. Defendants’ actions have resulted in the *de facto* revocation of hundreds of  
11 thousands of licenses throughout California, depriving licensees, including Plaintiffs, of  
12 all economically and personally beneficial use of them in complete disregard of  
13 applicable law. This was based on an arbitrary determination that their businesses are  
14 “non-essential.”

### 15 **THREATENED DISCIPLINARY ACTION**

16 36. Last week, Defendants escalated their threats. Now, Defendants threaten  
17 Plaintiffs and other licensees with expulsion from their profession if they do not keep  
18 their businesses closed, while “essential” workers and businesses resume operations.  
19 Individuals requesting guidance or relief are directed to seek assistance from their  
20 “industry associations.”

21 37. On May 1, 2020, the Board issued a notice directing all license-holders to,  
22 in part, “abide by the Governor’s stay at home order,” threatening that businesses that  
23 do not follow the Governor’s Order will be subject to “disciplinary action against their  
24 license” and that “[violations] will not be taken lightly” (the “Board’s Directive”). The  
25 only legal authority cited in the Board’s Directive was the Governor’s Order, stating,  
26 “[T]he Board fully supports the Governor’s stay at home order and we expect our  
27 licensees to comply.” A copy of the Board’s Directive is attached hereto as Exhibit 3  
28 and incorporated herein by this reference.

1           38. This legal challenge seeks to curtail the Defendants’ overly broad and  
2 arbitrary orders and restore Plaintiffs’ rights to conduct their professions with  
3 appropriate and specific safeguards against the COVID-19 illness. Plaintiffs represent  
4 licensees who have been devastated by Defendants’ arbitrary and unclear categories  
5 (e.g. “essential” versus “non-essential”) that allow some businesses to operate while  
6 others are required to close. Plaintiffs have asked Defendants what they can do to  
7 resume their professions safely, only to be rebuffed. This unilateral reordering of the  
8 economy is occurring without any legislative or electoral oversight. It also exceeds the  
9 widely-recognized limitations on government authority under the United States  
10 Constitution and California law.

11           39. Plaintiffs and other licensees are well-versed in the latest practices of  
12 health, safety, sanitation, and hygiene required preventing the spread of contagion. The  
13 Board restricts entry to the examination to those applicants who have completed all the  
14 required hours for their field of study. Stylists and cosmetologists are required to  
15 complete 1,600 hours of training. Barbers are required to complete 1,500 hours of  
16 training. Estheticians are required to complete 600 hours of training. Electrologists are  
17 required to complete 600 hours of training. Manicurists are required to complete 350  
18 hours of training. Most of the required training consists of safety, hygiene, and  
19 sanitation protocols. Licensed training programs, including Paul Mitchell, include  
20 comprehensive health and safety measures. As an example, the attached syllabus from  
21 Bellus Academy, a licensed beauty college, is attached hereto as Exhibit 4 and  
22 incorporated herein by this reference.

23           40. Besides the vigorous training described above, Licensees are also subject  
24 to regular inspections and ongoing scrutiny for safety, cleanliness, and sanitation  
25 practices. The Board’s Health & Safety Regulations are attached hereto as Exhibit 5 and  
26 incorporated herein by this reference.

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1                   **DEPRIVATION OF REAL AND PERSONAL PROPERTY**

2           41.   Federation’s members hold licenses issued by the Board. They have been  
3 denied use of these licenses and other property, both real and personal, since the  
4 Governor’s order was issued. They nevertheless remain liable for licensing fees and  
5 other fixed operating costs. On May 5, 2020, the Board directed Plaintiff Lam to seek  
6 assistance from her “industrial association.” Federation is a nonprofit “industrial  
7 association.”

8           42.   Ibarra practices as a freelance hairstylist at various licensed establishments  
9 in the Los Angeles area in California. Ibarra has been denied the use of her license since  
10 the Governor’s Order was issued. As a consequence, Ibarra has been without income  
11 since the Governor’s Order was issued. Ibarra nevertheless remains liable for annual  
12 licensing fees and other fixed operating costs to sustain her profession and livelihood as  
13 a licensed cosmetologist.

14          43.   Salon Suites and its tenants have been denied the use of their real property,  
15 licenses, and other personal property by Defendants. Salon Suites maintains and  
16 subleases 19 hairdressing and cosmetology suites at its leased premises at 540 W.  
17 Colorado Street in Glendale, California. Of these 19 suites 17 are leased by tenants. As  
18 officers of Salon Suites, Rose Ibarra and her spouse Norbert Ibarra are responsible for  
19 the operation and maintenance of the premises in support of Salon Suites’ tenants. All  
20 Salon Suites’ cosmetology tenants have licenses issued by the Board. These tenants  
21 have been denied use of their leased real property, licenses, and other personal property  
22 since the Governor’s Order was issued. Salon Suites has granted a forbearance of rent to  
23 its tenants until such time as they might resume operations when the Governor’s Order  
24 is lifted. As a consequence, Salon Suites and their tenants have been without income  
25 since the Governor’s Order was issued. Salon Suites and its tenants nevertheless remain  
26 liable for monthly rental payments for leased real property, licensing fees, and other  
27 fixed operating costs exceeding \$18,000 per month.



1           44. Lam and Zenbi have been denied the use of their real property, licenses,  
2 and other personal property by Defendants. As a consequence, Zenbi, Lam, her family,  
3 and the Salon’s employees have been without income from the salon since the  
4 Governor’s Order was issued. All of their employees have been furloughed. Zenbi’s  
5 salon has ten employees, all of whom are now on furlough. It has an exclusive leasehold  
6 interest in and continues to pay rent for premises at 16935 W. Bernardo Drive, Suite  
7 185, in San Diego. Zenbi has been denied the use of its license as well as its real and  
8 personal property since Defendants issued the Orders. Lam and Zenbi nevertheless  
9 remain liable for rent on real property, licensing fees, and fixed operating costs of more  
10 than \$5,000 per month.

11           45. Paul Mitchell, its employees, and their students have been denied the use  
12 of their real property, licenses, and other personal property by Defendants since the  
13 Governor’s Order was issued. Paul Mitchell leases premises at the Galleria but has been  
14 denied use of this real property due to the Defendants’ actions. Paul Mitchell employs  
15 approximately 33 instructors, 17 of whom are cosmetology licensees. Most of these  
16 employees are now on furlough due to Defendants’ actions. Prior to the Governor’s  
17 Order, Paul Mitchell had an enrollment of 230 students, all of whom were working  
18 towards the Board’s requirements for becoming licensed cosmetologists. Paul Mitchell  
19 nevertheless remains liable for leased real property, licensing fees, and other fixed  
20 operating costs of more than \$60,000 per month.

21           46. Prior to ceasing operations at Salotto Salon, Plaintiffs Lam and Zenbi took  
22 appropriate steps consistent with emerging techniques, Centers for Disease Control  
23 Guidelines, and their license requirements, including without limitation, making  
24 physical alterations to the salon to accommodate social distancing, eliminating indoor  
25 waiting areas, incorporating touch-free check-in, check-out, and payment processing,  
26 and all other safety measures they could identify in order to match safety guidelines  
27 “essential” businesses have been using in their operations.

28

1 47. On May 2, 2020, Plaintiff Lam sent correspondence to the Board  
2 requesting guidance on reopening. On May 4, 2020, the Board responded with no  
3 guidance other than direction to consult with their “industry association for additional  
4 guidance during this time.” The Board offered no process or means to resume  
5 operations as a licensee. Lam’s correspondence with the Board is attached hereto as  
6 Exhibit 6 and incorporated herein by this reference.

7 48. Instead of promulgating conditions or guidelines for the safe practice of  
8 these licensed activities as the Centers for Disease Control and counterparts in  
9 neighboring states have, Defendants have categorically labelled Plaintiffs’ industry  
10 “non-essential,” thereby conscripting Plaintiffs and other licensees to joblessness and  
11 taking their property without due process or legal justification.

12 49. Plaintiffs do not have adverse disciplinary history with the Board.

13 50. Plaintiffs have not contracted COVID-19. They are not aware of coming  
14 into contact with anyone with COVID-19.

15 51. Not one of the licensees or other personnel operating at Plaintiffs’ facilities  
16 has contracted COVID-19 nor, to their knowledge, been exposed thereto.

17 **FEDERAL MONITORING OF CIVIL RIGHTS VIOLATIONS**

18 52. On April 27, 2020, Attorney General William Barr sent a memorandum to  
19 all U.S. Department of Justice United States Attorneys regarding civil rights violations  
20 occurring in various states during the coronavirus crisis.<sup>18</sup> This memorandum is  
21 attached hereto as Exhibit 7 and incorporated herein by this reference.

22 53. In his memorandum, Attorney General Barr directs all United States  
23 Attorneys to identify state directives that could be violating the Constitutional rights  
24 and civil liberties of individual citizens, stating “the Constitution is not suspended in  
25 times of crisis.” Attorney General Barr wrote,

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28 <sup>18</sup> As of May 10, 2020, accessible at: [https://cdn.cnsnews.com/attachment/ag\\_memo\\_-\\_balancing\\_public\\_safety\\_with\\_the\\_preservation\\_of\\_civil\\_rights\\_0.pdf](https://cdn.cnsnews.com/attachment/ag_memo_-_balancing_public_safety_with_the_preservation_of_civil_rights_0.pdf)

1  
2 “If a state or local ordinance crosses the line from an appropriate exercise of  
3 authority to stop the spread of COVID-19 into an overbearing infringement  
4 of constitutional and statutory protections, the Department of Justice may  
5 have an obligation to address that overreach in federal court.”

6 54. Defendants have abused their power by seizing on the coronavirus  
7 pandemic to expand their authority to lengths unprecedented by any prior crisis in  
8 California, including prior natural disasters, wars, and economic crises. This legal  
9 action challenges the very type of overbearing infringement of constitutional and  
10 statutory protections identified by Attorney General Barr.

#### 11 **UNCONSTITUTIONALLY VAGUE “PATHS TO REOPENING”**

12 55. On May 4, 2020, Governor Newsom issued Executive Order N-60-20  
13 concerning the second and third stages of California’s “four-stage framework . . . to  
14 allow Californians to gradually resume various activities” (“The Governor’s Reopening  
15 Order”). The Governor’s Reopening Order directed the State Public Health Officer to  
16 “establish criteria and procedures . . . to determine whether and how particular local  
17 jurisdictions may implement public health measures that depart from the statewide  
18 directives,” specifically “measures less restrictive than any public health measures  
19 implemented on a statewide basis.”

20 56. The Governor’s Reopening Order also states that it should not be  
21 “construed to limit the *existing authority* of local health officers” to adopt “more  
22 restrictive” or “addition[al]” measures” (emphasis added). Under existing law, “[a]  
23 county or city may make and enforce within its limits all local, police, sanitary, and  
24 other ordinances and regulations not in conflict with general laws.” Cal. Const. art. XI,  
25 § 7 (emphasis added). And when, as here, the Governor exercises the State’s “police  
26 power” during a state of emergency, the Governor’s “orders and regulations shall have  
27 the force and effect of law.” Cal. Gov’t Code §§ 8567, 8627.  
28

1 57. The Governor’s Reopening Order only allows counties to act within their  
2 “existing authority”—that is, to adopt measures that are consistent with or more  
3 stringent than the Governor’s orders or that address matters on which the Governor’s  
4 orders are silent.

5 **ENFORCEMENT IS ARBITRARY AND CAPRICIOUS,**  
6 **AND WITHOUT RATIONAL BASIS**

7 58. At a press conference on March 19, 2020, Newsom repeatedly said the  
8 rationale for the Governor’s Order was to “bend the curve.”<sup>19</sup> He also said “[t]he point  
9 of the stay at home order is to make those numbers moot”<sup>20</sup> and put them “in the  
10 dustbin of history.”<sup>21</sup> He added that one goal was to slow down transmission enough to  
11 reduce the strain it might place on hospital resources.<sup>22</sup> Indeed, the strain on hospital  
12 resources *was* a key factual foundation of the emergency proclamation of March 4,  
13 2020.<sup>23</sup> It is this legitimate albeit temporary goal of “bending the curve,” that Newsom  
14 has dismissed in favor of ever-shifting and undefined policy goals, ever beyond the  
15 reach of California’s residents.

16 59. At the outset of the COVID-19 crisis, Governor Newsom wrote in a letter  
17 to President Trump<sup>24</sup> stating that in eight weeks, by May 13, 2020, approximately 56%

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21 <sup>19</sup> March 19, 2020 press briefing at 0:30-0:35, 8:10-8:20, 10:00-10:15, 24:20-24:30,  
22 33:45-33:55, and 35:17-36:00, available as of May 10, 2020 at:

23 <https://www.youtube.com/watch?v=8OeyeK8-S5o>.

24 <sup>20</sup> *Id.* at 35:10-35:20.

25 <sup>21</sup> *Id.* 33:55-34:05.

26 <sup>22</sup> *Id.* at 5:42-8:09.

27 <sup>23</sup> Twelfth paragraph of the Proclamation of a State of Emergency, which as of the date  
28 of this filing can be found online at: [https://www.gov.ca.gov/wp-  
content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf).

<sup>24</sup> As of May 10, 2020, accessible at:

[https://www.gov.ca.gov/wp-content/uploads/2020/03/3.18.20-Letter-USNS-Mercy-  
Hospital-Ship.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.18.20-Letter-USNS-Mercy-Hospital-Ship.pdf)

1 percent of Californians—25.5 million individuals—would be infected by the novel  
2 coronavirus. His letter went on to say that “[i]n some parts of our state, our case rate is  
3 doubling every four days.”<sup>25</sup> On the basis of these projections, he issued his Governor’s  
4 Order on March 19, 2020.

5 60. As of May 7, 2020, there are 58,815 confirmed cases, which is only 0.2%  
6 of Governor Newsom’s projection.

7 61. Newsom expounded on these numbers at his March 19 press conference.  
8 He explained that a hospitalization rate of 20 percent could mean that California would  
9 face a shortfall of 19,543 hospital beds above the state’s current capacity of  
10 approximately 78,000 beds.<sup>26</sup> He added that California had a surge capacity of 10,207  
11 additional beds that could partially offset this shortfall.<sup>27</sup> Thus, he was predicting a total  
12 shortfall of approximately 9,336 beds.<sup>28</sup>

13 62. Mark Ghaly, the governor’s Secretary of Health and Human Services,  
14 explained that the state came up with the 56 percent estimate by “[u]sing the available  
15 literature, advice from the CDC and our understanding and experience in California, we  
16 applied a variety of different measures that looked at an attack rate, that looked at the R<sub>0</sub>  
17 ... we looked at ... hospitalization rates that we had available as well as other outcome  
18 measures.”<sup>29</sup>

19 63. The Secretary also stated that “[w]e knew that the attack rate of 56 percent  
20 that we chose was somewhat in the middle between the high-end and the low-end of  
21 what we’d seen in the literature....”<sup>30</sup>

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25 <sup>25</sup> *Id.*

26 <sup>26</sup> March 19, 2020 press briefing, *supra*, at 5:40-7:32.

27 <sup>27</sup> *Id.* at 7:20-7:40.

28 <sup>28</sup> *Id.*

29 <sup>29</sup> *Id.* at 28:49-31:11.

30 <sup>30</sup> *Id.*

1           64. Newsom admitted that his numbers did not account for any mitigation  
2 measures put in place. Rather, those numbers assumed that “we’re just along for the  
3 ride[.]”<sup>31</sup>

4           65. Contrastingly, several infectious disease experts, including Professor of  
5 Epidemiology John P.A. Ioannidis of Stanford University, called this an extreme, worst-  
6 case scenario that was unlikely to happen.<sup>32</sup> These experts have been proven correct,  
7 and the Governor, wrong.

8           66. Although the California Emergency Services Act provides the Governor  
9 with the power to unilaterally promulgate regulations in an emergency, such regulations  
10 must at least be reasonable. Because such regulations may severely impinge the civil  
11 liberties of the populace and curb an individual’s freedom, only a clear showing of  
12 emergent necessity may justify their imposition. Freedom of movement is a  
13 fundamental right which may be restricted only where necessary to further the most  
14 compelling state interest, and such regulations must be narrowly circumscribed in order  
15 to withstand a constitutional challenge for overbreadth and vagueness. *Gayle v.*  
16 *Governor of Guam*, 414 F. Supp. 636, 638-39 (D. Guam 1976) (citing *Carroll v. United*  
17 *States*, 267 U.S. 132 (1925); *People v. McKelvy*, 23 Cal.App.3d 1027 (1972).

18           67. It is a widely accepted and understood principle that the judiciary defers to  
19 the executive branch during states of emergencies. However, the judiciary must at least  
20 review the executive’s claims of emergency and not serve as a mere rubber-stamp.  
21 Additionally, a deferential “hands-off” approach goes out the window if the legislature  
22 has limited the executive’s exercise of emergency authority. *See Humanitarian Law*  
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25 <sup>31</sup> *Id.* at 24:20-24:40.

26 <sup>32</sup> Newsom: 56 % of Californians Could Get Coronavirus If Nothing Is Done, San  
27 Francisco Chronicle, March 19, 2020, available as of May 10, 2020 at:  
28 [https://webcache.googleusercontent.com/search?q=cache:sokxG9\\_b-2oJ:https://www.sfchronicle.com/health/article/Newsom-56-of-Californians-could-get-coronavirus-15144438.php+&cd=1&hl=en&ct=clnk&gl=us](https://webcache.googleusercontent.com/search?q=cache:sokxG9_b-2oJ:https://www.sfchronicle.com/health/article/Newsom-56-of-Californians-could-get-coronavirus-15144438.php+&cd=1&hl=en&ct=clnk&gl=us).

1 *Project v. U.S. Treasury Dep't*, 578 F.3d 1133, 1145 (9th Cir. 2009) (reviewing  
2 Executive Order 13224—President’s Bush invocation of authority under the  
3 International Emergency Economic Powers Act or IEEPA, declaration of national  
4 emergency, sanctioning of terrorist groups, and authorizing of Treasury to designate  
5 further terrorist groups for sanctioning—in ruling that it was not unconstitutionally  
6 vague); *see also United States v. Nazemzadeh*, No. 11 CR 5726 L, 2014 WL 310460, at  
7 8 (S.D. Cal. Jan. 28, 2014) (“[IEEPA was] a response to two developments: first,  
8 extensive use by Presidents of emergency authority under section 5(b) of the Trading  
9 with the Enemy Act of 1917 to regulate both domestic and international economic  
10 transactions unrelated to a declared state of emergency . . .”). The California Legislature  
11 has set the procedures and limitations on the executive’s emergency powers at  
12 California Government Code section 8550, *et seq.* These laws are not mere surplusage,  
13 and the Governor’s actions must be measured against limitations placed on his office’s  
14 powers by the people through their elected representatives.

15 68. California state courts also assess an executive’s declaration of emergency,  
16 its justifications, and orders promulgated under said declaration. *See California Corr.*  
17 *Peace Officers Assn. v. Schwarzenegger*, 163 Cal. App. 4th 802, 818 (2008) (assessing  
18 whether Governor’s declaration met requirements of Emergency Services Act before  
19 ruling that the declaration and the emergency cited—and overcrowded prisons—met the  
20 requirements).

21 69. Defendant Newsom admitted that the underlying public health goals giving  
22 rise to his Governor’s Order have been achieved. During a briefing on April 16, 2020,  
23 Newsom stated that “[we] have successfully bent and arguably flattened the curve in the  
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1 state of California.”<sup>33</sup> Therefore, by Governor Newsom’s own admission, no rational  
2 basis exists any longer to justify the Governor’s Order.

3 70. The statutory authority by which the Defendants purport to exercise their  
4 purportedly untrammelled authority also requires the immediate discontinuation of the  
5 Orders once the emergency conditions have abated. California Government Code  
6 section 8567 provides “[w]henver the state of war emergency or state of emergency  
7 has been terminated, the orders and regulations shall be of no further force or effect.”  
8 Section 8629 further requires that the Governor “shall proclaim the termination of a  
9 state of emergency at *the earliest possible date* that conditions warrant.” (Emphasis  
10 added.) Continuing the state of emergency despite the abatement of the emergency  
11 conditions giving rise to it is *ultra vires*, would constitute an abuse of discretion, and is  
12 plainly subject to judicial review. That time has now come.

13 71. On information and belief, Plaintiffs allege that conditions giving rise to  
14 the Governor’s Proclamation on March 4, 2020 no longer meet the requirements of  
15 California Government Code section 8558, which requires conditions that “by reason of  
16 their magnitude, are or are likely to be beyond the control of the services, personnel,  
17 equipment, and facilities of any single county, city and county, or city and require the  
18 combined forces of a mutual aid region or regions to combat.”

19 **INDEFINITE CURTAILMENT OF FUNDAMENTAL RIGHTS**

20 72. By Defendant Newsom’s own admission, the basis for the Governor’s  
21 Order is now resolved and the Governor’s Order should be regarded as null and void,  
22 particularly as it pertains to fundamental rights. Defendants must now show compelling  
23 state interests requiring them to maintain the Orders and their onerous, invasive  
24 requirements.

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27 <sup>33</sup> April 16, 2020 briefing by the Governor at 37:20, transcript available as of May 10,  
28 2020, at: <https://www.rev.com/blog/transcripts/gov-gavin-newsom-california-covid-19-briefing-transcript-april-16>.

1 73. As of May 10, 2020, nearly eight weeks after Newsom’s announcement,  
2 the number of COVID-19 cases so far in California according to the California  
3 Department of Public Health is 66,680.<sup>34</sup>

4 74. As of May 10, 2020, according to the California Department of Public  
5 Health, the total number of *suspected* COVID-19 cases—including ICU treatment—  
6 was 1,301. Adding these together with confirmed COVID-19 hospitalizations (3,248)  
7 yields a total of 4,549 patients requiring hospitalization statewide.<sup>35</sup> These numbers  
8 were compiled from the reports of 98% of all hospitals in California.<sup>36</sup>

9 75. These conditions are infinitesimal in comparison to the 20 percent  
10 hospitalization rate and the 56 percent infection rate predicted by Newsom at his March  
11 19, 2020 press conference. Such figures would represent approximately 5 million  
12 Californians requiring hospitalization. Without minimizing its significance, 6,096  
13 patients statewide compared to Newsom’s projection of 25.5 million infections, over 5  
14 million total hospitalizations, nearly 100,000 simultaneous hospitalizations, and a  
15 9,336-bed shortfall, shows at a minimum that Defendants have relied on grossly flawed  
16 and exaggerated predictions since the imposition of the Governor’s Order, and have  
17 failed to deviate from them despite improved knowledge of the facts. Neither the  
18 threatened infection rate nor the hospitalization rate has manifested. Even if the  
19 mitigation measures imposed by the Orders prevented these rates from manifesting,  
20 Defendants bear the burden of demonstrating that the current draconian measures are  
21 narrowly tailored under current circumstances to account for Plaintiffs’ fundamental  
22 rights.

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25 <sup>34</sup> <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>  
26 (last visited on May 11, 2020).

27 <sup>35</sup> *Id.*

28 <sup>36</sup> As of May 10, 2020, available at: [https://public.tableau.com/views/COVID-19PublicDashboard/Covid-19Hospitals?%3Aembed=y&%3Adisplay\\_count=no&%3AshowVizHome=no](https://public.tableau.com/views/COVID-19PublicDashboard/Covid-19Hospitals?%3Aembed=y&%3Adisplay_count=no&%3AshowVizHome=no).

1           76. On information and belief, part of the data that Newsom depended on for  
2 his claim of 25.5 million infections in California within eight weeks in his March 18,  
3 2020, letter was the initial rate of infection in Wuhan, the originating epicenter of  
4 COVID-19. Then, the numbers apparently showed a frightening infection reproduction  
5 rate (“R<sub>0</sub>”) of 5.7.<sup>37</sup>

6           77. However, now the R<sub>0</sub> of COVID-19 without mitigation efforts is  
7 understood to be approximately 2.2-2.7.<sup>38</sup> With mitigation efforts, the R<sub>0</sub> of COVID-19  
8 has been driven further down. The current R<sub>0</sub> for California is estimated to be 0.83 and  
9 has remained at or below 0.84 since approximately April 21, 2020 and has been at 1 or  
10 below since approximately April 10, 2020.<sup>39</sup> At rates below 1, the virus is not  
11 considered to be spreading.

12           78. Effective lowering of the R<sub>0</sub> of COVID-19 need not be done with  
13 draconian shutdown orders. Social distancing and vigilant sanitation procedures suffice,  
14 as seen in Taiwan and other locations which have relied on temperature checkpoints and  
15 sanitation to contain the spread of the virus, to great effect.<sup>40</sup>

16           79. On April 27, 2020, an independent study released by a team at Stanford  
17 University estimated that, based on antibody tests of 3,300 people, as much as 4.16% of  
18 Santa Clara County’s population (81,000 individuals), had contracted SARS-CoV-2 by  
19  
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22 <sup>37</sup> Sanche S, Lin YT, Xu C, Romero-Severson E, Hengartner N, Ke R. High  
23 contagiousness and rapid spread of severe acute respiratory syndrome coronavirus 2. As  
24 of May 10, 2020, available at: <https://doi.org/10.3201/eid2607.200282> and:  
25 [https://wwwnc.cdc.gov/eid/article/26/7/20-0282\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article).

26 <sup>38</sup> *Id.*

27 <sup>39</sup> As of May 10, 2020, available at: <https://rt.live/>.

28 <sup>40</sup> As of May 10, 2020, accessible at: <https://www.cbsnews.com/news/coronavirus-taiwan-great-example-pandemic/> (Taiwan has reported 400 confirmed cases of COVID-19 infections out of a population of 24 million; no shelter in place order was ever issued).

1 April 3 and 4, 2020.<sup>41</sup> Santa Clara had 39 deaths as of April 4, 2020<sup>42</sup> out of a county  
2 population of 1,927,852.<sup>43</sup> This reflects a death rate of those infected with SARS-CoV-2  
3 of not more than 0.048%.

4 80. On April 10, 2020, Los Angeles County had 8,430 confirmed cases 241  
5 deaths;<sup>44</sup> on April 11, 2020, Los Angeles County had 8,873 cases and 265 deaths, for an  
6 approximate death rate of 2.98 percent.<sup>45</sup> On April 20, 2020, the preliminary results of a  
7 collaborative antibody study done between the University of South California and the  
8 Public Health Department of Los Angeles County were released. Based on 863 tests,  
9 researchers estimated that as many as 5.6 percent of Los Angeles County's population,  
10 or 442,000, already had COVID-19 on April 10 and 11.<sup>46</sup> Under this new testing, the  
11 death rate decreases from 2.98 percent to 0.599 percent of infections.

12 81. A similar antibody test in and by New York City showed that 21 percent of  
13 the population (1,763,737) were or had been infected with SARS-CoV-2 With the  
14 current number of confirmed deaths (12,571),<sup>47</sup> the putative death rate among those  
15 infected is 0.71 percent.

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18 <sup>41</sup> As of May 10, 2020, accessible at:

19 <https://www.medrxiv.org/content/10.1101/2020.04.14.20062463v2.full.pdf>.

20 <sup>42</sup> As of May 10, 2020, accessible at: [https://www.santaclaraca.gov/i-want-to/stay-](https://www.santaclaraca.gov/i-want-to/stay-informed/newsroom/coronavirus-updates/archived-covid-19-news-updates)  
21 [informed/newsroom/coronavirus-updates/archived-covid-19-news-updates](https://www.santaclaraca.gov/i-want-to/stay-informed/newsroom/coronavirus-updates/archived-covid-19-news-updates).

22 <sup>43</sup> <https://www.census.gov/quickfacts/fact/table/santaclaracountycalifornia/PST045219>

23 <sup>44</sup> As of May 10, 2020, accessible at:

24 [http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=me-](http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=media&ou=ph&prog=media&prid=2309)  
25 [dia&ou=ph&prog=media&prid=2309](http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=media&ou=ph&prog=media&prid=2309).

26 <sup>45</sup> As of May 10, 2020, accessible at:

27 [http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=me-](http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=media&ou=ph&prog=media&prid=2311)  
28 [dia&ou=ph&prog=media&prid=2311](http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=media&ou=ph&prog=media&prid=2311).

29 <sup>46</sup> As of May 10, 2020, accessible at:

30 [http://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?](http://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2328)  
31 [prid=2328](http://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2328).

32 <sup>47</sup> As of May 10, 2020, accessible at: [https://www1.nyc.gov/site/doh/covid/covid-19-](https://www1.nyc.gov/site/doh/covid/covid-19-data.page)  
33 [data.page](https://www1.nyc.gov/site/doh/covid/covid-19-data.page).

1           82. A similar antibody study by Miami-Dade County told a similar story: the  
2 confirmed number of deaths (1,268)<sup>48</sup> divided by the estimated number of infections  
3 (221,000)<sup>49</sup> gave a putative death rate of 0.57 percent.

4           83. Each of the studies described above indicates that the COVID-19 mortality  
5 rate falls significantly short of those associated with other epidemics, including the  
6 1917-1918 Spanish Flu, believed to have caused at least 2.5 percent of the infected to  
7 die.<sup>50</sup>

8           84. Studies and health data show that the Governor’s Order would not only be  
9 of *no* benefit to preventing the transmission of COVID-19 or death from it—it could  
10 actually be detrimental to such efforts.

11           85. The Governor’s Order should be terminated because: (1) the factual basis  
12 of the state of emergency—the overwhelming of hospital resources—has not occurred,  
13 and we are past any significant risk of such overwhelming; (2) the State and the people  
14 of California are now aware through public information campaigns and the procurement  
15 of medical resources for COVID-19; (3) residents have been educated and are  
16 implementing infection rate mitigation efforts through social distancing, hygiene, and  
17 other means; (4) the models the Governor’s Order was based on have proven  
18 completely invalid; and (5) the infection rate has been reduced to a manageable level,  
19 which many other governments have used to justify lifting COVID-19 restrictions far  
20 less onerous than the ones imposed by Defendants.

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25 <sup>48</sup> As of May 10, 2020, accessible at:  
26 <https://www.miamiherald.com/news/coronavirus/article242395581.html>.

27 <sup>49</sup> As of May 10, 2020, accessible at: [https://www.miamidade.gov/releases/2020-04-24-](https://www.miamidade.gov/releases/2020-04-24-sample-testing-results.asp)  
28 [sample-testing-results.asp](https://www.miamidade.gov/releases/2020-04-24-sample-testing-results.asp).

<sup>50</sup> As of May 10, 2020, accessible at:  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3291398/>.

1 86. As of May 10, 2020, there was a total of 78,771 deaths<sup>51</sup> in the United  
2 States out of a total population of 328,239,523. Based on these numbers, the United  
3 States' actual death rate due to COVID-19 is approximately 0.02 percent (or 1 for every  
4 4,167). Nearly 40% of those deaths have occurred in nursing homes. In California, the  
5 percentage of deaths occurring in nursing homes is about 38.4% as of information  
6 reported through May 7, 2020,<sup>52</sup> a ratio that is expected to rise.

7 87. As of May 10, 2020, there was a total of 2,745 deaths<sup>53</sup> in California out of  
8 a total population of 39,512,223. Based on these numbers, the California's actual death  
9 rate due to COVID-19 is approximately 0.0069 percent (or 1 for every 14,394).

10 **CALIFORNIA FEDERAL COURTS ARE TREATING FEDERAL AND STATE**  
11 **EXECUTIVE ORDERS DIFFERENTLY**

12 88. A troubling dichotomy has emerged in California federal courts during the  
13 COVID-19 pandemic. Some courts have given broad deference to the state executive  
14 branch, even when actions such as the Governor's Order infringe upon fundamental  
15 rights and also exceed statutory authority.<sup>54</sup>

16 89. At the same time, other courts have closely scrutinized the constitutionality  
17 of the exercise of federal executive power, striking down many executive actions taken  
18 by, most recently, President Trump.

19 90. In *United States v. California*, 921 F.3d 865 (9th Cir. 2019), the Court  
20 allowed states to order state law enforcement to be uncooperative with federal  
21 immigration authorities.

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24 <sup>51</sup> As of May 10, 2020, accessible at: <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

25 <sup>52</sup> As of May 9, 2020, accessible at: <https://freopp.org/the-covid-19-nursing-home-crisis-by-the-numbers-3a47433c3f70>

26 <sup>53</sup> As of May 10, 2020, accessible at: <https://covid19.ca.gov/>

27 <sup>54</sup> *Gish v. Newsom*, 5:20-cv-00755, Doc. #51 (D.C. C.D 4/23/20); *Cross Culture*  
28 *Christian Center v. Newsom*, 2:20-cv-00832, Doc. #23 (D.C. E.D. 5/5/20).

1 91. In *California v. Trump*, 407 F.Supp.3d 869, 892 (N.D. Cal. 2019), the court  
2 gave a close reading to 10 U.S.C. § 2801(a)’s use of the term “military installation” to  
3 bar President Trump’s use of military funds for a border wall, despite acknowledging  
4 that he was in the right in his declaration of a state of emergency.

5 92. In *Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1087-88 (9th Cir. 2020), the  
6 Court went so far as to cite U.S. obligations to asylum seekers under a U.N. refugee  
7 treaty as a basis for rejecting President Trump’s rule that asylum seekers “must enter  
8 through official port of entry.”

9 93. California’s federal courts have treated claims challenging executive  
10 actions, including under emergency authority, very differently depending upon which  
11 executive is claiming broad deference. This dichotomy poorly serves the administration  
12 of justice.

13 **CLAIMS FOR RELIEF**

14 **FIRST CLAIM:**

15 **VIOLATION OF THE DUE PROCESS CLAUSE OF**  
16 **THE FOURTEENTH AMENDMENT**

17 *(By All Plaintiffs Against All Defendants)*

18 94. Plaintiffs incorporate by reference each and every allegation set forth in all  
19 preceding paragraphs as if fully set forth herein.

20 95. The Due Process Clause contains both a substantive and a procedural  
21 component. *United States v. Salerno*, 481 U.S. 739, 746 (1987). Substantive due process  
22 “forbids the government to infringe certain ‘fundamental’ liberty interests at all, no  
23 matter what process is provided, unless the infringement is narrowly tailored to serve a  
24 compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 301–02 (1993); *see*  
25 *also Daniels v. Williams*, 474 U.S. 327, 331 (1986) (explaining that substantive due  
26 process will “bar certain government actions regardless of the fairness of the procedures  
27 used to implement them.”). Procedural due process “imposes constraints on  
28 governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests



1 within the meaning of the Due Process Clause.” *Mathews v. Eldridge*, 424 U.S. 319,  
2 322 (1976). Procedural due process does not forbid the government from depriving  
3 individuals of a protected interest, but rather requires the government to employ  
4 adequate procedures that ensure the fairness of any deprivation. *See McNabb v. United*  
5 *States*, 318 U.S. 332, 347 (1943).

6 96. The Orders and Defendants’ enforcement thereof violate Plaintiffs’  
7 substantive due process rights as follows:

8 a. Plaintiffs’ fundamental property interest in conducting lawful  
9 business activities is protected by the Due Process Clause of the Fourteenth  
10 Amendment. *Medina v. Rudman*, 545 F.2d 244, 250 (1st Cir. 1976)  
11 (included among the substantive rights so protected is the right to pursue  
12 one’s vocation under a state-granted license) (citing *Paul v. Davis*, 424  
13 U.S. 693 (1976)).

14 b. Plaintiffs have been issued cosmetology licenses by the State of  
15 California, and therefore have a right to lawfully pursue that vocation, a  
16 substantive due process right impaired by Defendants’ actions.

17 c. Defendants lack any legitimate or compelling interest for depriving  
18 Plaintiffs of their right to lawfully pursue their vocations.

19 d. Even if such a legitimate, compelling interest existed, Defendants’  
20 Orders are not rationally related or narrowly tailored to further any such  
21 interest.

22 97. The Orders and Defendants’ enforcement thereof violate Plaintiffs’  
23 procedural due process rights as follows:

24 a. The Governor’s Order and Dr. Angell’s List of “Essential” Workers  
25 and Businesses are arbitrary to the point of contradicting themselves, and  
26 thus are invalidated by the Fourteenth Amendment’s procedural due  
27 process protections.  
28

1 b. Procedural due process, at a minimum, would require Plaintiffs  
2 having a meaningful opportunity to respond to the Order (or the  
3 continuation thereof) and explain how and why it is constitutionally invalid  
4 as applied to Plaintiffs. However, the Governor's Order and Dr. Angell's  
5 List have prevented Plaintiffs from challenging the application of the Order  
6 and the List to them, denying them any process whatsoever before their  
7 rights were forcibly taken.

8 c. Further, this taking lasts indefinitely, with neither the Order nor the  
9 List providing for any mechanism or opportunity to review or challenge  
10 the need to continue the Order in the light of developing events.

11 98. Defendants' actions therefore have deprived Plaintiffs of both procedural  
12 and substantive Due Process.

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

16 100. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to  
17 declaratory relief and temporary, preliminary, and permanent injunctive relief  
18 invalidating or restraining enforcement of the Orders.

19 101. Plaintiffs found it necessary to engage the services of private counsel to  
20 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
21 attorneys' fees pursuant to 42 U.S.C. § 1988.

## 22 **SECOND CLAIM**

### 23 **VIOLATION OF THE EQUAL PROTECTION CLAUSE OF** 24 **THE FOURTEENTH AMENDMENT**

25 *(By All Plaintiffs Against All Defendants)*

26 102. Plaintiffs incorporate by reference each and every allegation set forth in all  
27 preceding paragraphs as if fully set forth herein.

28

1           103. At its core, the Equal Protection Clause of the 14th Amendment to the U.S.  
2 Constitution requires states to govern impartially—not draw arbitrary distinctions  
3 between businesses based solely on differences that are irrelevant to a legitimate  
4 governmental objective.

5           104. Strict scrutiny under the Equal Protection Clause applies where the  
6 classification impinges on fundamental rights (*San Antonio Ind. School Dist. v.*  
7 *Rodriguez*, 411 U.S. 1, 17 (1973)), including the right to due process and the right to  
8 travel (both interstate and intrastate), among others. Defendants have violated Plaintiffs’  
9 procedural and substantial due process rights under the Fourteenth Amendment.

10           105. Defendants cannot satisfy strict scrutiny, because their arbitrary  
11 classifications are not narrowly tailored measures that further compelling government  
12 interests.

13           106. Defendants have intentionally and arbitrarily categorized California  
14 businesses and conduct as either “essential” or “non-essential.” Those businesses  
15 classified as “essential,” or as participating at least partly in “essential services,” are  
16 permitted to go about their business and activities, even when the businesses also  
17 provide “non-essential” goods and services. Those classified as “non-essential,” are  
18 required to completely shut down. Entertainment providers are deemed essential,  
19 whereas Plaintiffs, who provide basic personal grooming services (which would be  
20 legal if provided to entertainment industry consumers as opposed to the average  
21 Californian), are not. Many businesses which sell personal hygiene supplies and hair  
22 dye are deemed essential, but Plaintiffs, who sell such supplies as part of their grooming  
23 services, are not. Defendants have therefore arbitrarily discriminated against Plaintiffs  
24 in violation of Plaintiffs’ equal protection rights.

25           107. 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.

28

1 108. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to  
2 declaratory relief and temporary, preliminary, and permanent injunctive relief  
3 invalidating and restraining enforcement of the Orders.

4 109. Plaintiffs found it necessary to engage the services of private counsel to  
5 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
6 attorneys' fees pursuant to 42 U.S.C. § 1988.

7 **THIRD CLAIM**  
8 **VIOLATION OF THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT**  
9 **BY INTERFERENCE WITH LICENSES AND PROPERTY**

10 *(By All Plaintiffs Against All Defendants)*

11 110. Plaintiffs incorporate by reference each and every allegation set forth in all  
12 preceding paragraphs as if fully set forth herein.

13 111. Plaintiffs complied and continue to comply with the State's requirements  
14 to obtain the appropriate licenses and/or permits to conduct their businesses and at all  
15 times relevant to this Complaint, Plaintiffs had the right to continue to operate under  
16 their licenses, and their related commercial activities were continuous and lawful  
17 pursuant to California law, and particularly the regulations promulgated by the  
18 Department of Consumer Affairs – Board of Barbering and Cosmetology.

19 112. The California Supreme Court has held the right to engage in a licensed  
20 profession is a property right of such high character that revocation of that license  
21 should only occur upon clear proof that the licensee has forfeited the same, and only in  
22 strict conformity to the statute authorizing its forfeiture. *Cavassa v. Off*, 206 Cal. 307  
23 (1929). The licenses are therefore personal property to which the takings clause applies.

24 113. The regulatory actions taken by the Defendants have resulted in Plaintiffs  
25 being deprived of all economically beneficial or productive use of their property  
26 including, without limitation, their licenses, their leased property, and their business  
27 property, and further resulted in the involuntary closing of their businesses, ultimately  
28 making them worse than worthless, in that they have to pay license fees, rent, property

1 maintenance, and related expenses for property they are barred by law from using. The  
2 California Supreme Court has found that “While the police power is very broad in concept, it  
3 is *not without restrictions* in relation to the taking of damaging of property. When it passes  
4 *beyond proper bounds in its invasion of property rights*, it in effect comes within the purview  
5 of the law of eminent domain and its exercise requires compensation.” *House v. Los Angeles*  
6 *County Flood Control Dist.*, 25 Cal.2d 384 (1944). (Emphasis added).

7 114. Defendants’ Orders and the enforcement thereof has caused both a  
8 complete and total regulatory and physical taking of Plaintiffs’ property without just  
9 compensation in violation of the Takings Clause of the Fifth Amendment to the U.S.  
10 Constitution. At a minimum, the effect of Defendants’ Orders constitutes a “partial”  
11 taking under the *Penn-Central* three-factor test. See *Penn Central Trans. Co. v. City of*  
12 *New York*, 438 U.S. 104, 124 (1978). As a result, Defendants’ blatant violation of the  
13 Takings Clause of the 5<sup>th</sup> Amendment has caused proximate and legal harm to Plaintiffs.  
14

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

18 116. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to  
19 declaratory relief and temporary, preliminary, and permanent injunctive relief  
20 invalidating and restraining enforcement of the Orders.

21 117. Plaintiffs found it necessary to engage the services of private counsel to  
22 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
23 attorneys’ fees pursuant to 42 U.S.C. § 1988.  
24  
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28

1 **FOURTH CLAIM**  
2 **VIOLATION OF THE CALIFORNIA CONSTITUTION**  
3 **RIGHT TO LIBERTY (CAL. CONST. ART. 1, § 1)**

4 *(By All Plaintiffs Against All Defendants)*

5 118. Plaintiffs incorporates herein by reference each and every allegation  
6 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

7 119. Since 1879, the California Constitution has provided intrinsic and  
8 unalienable rights and liberties to its citizens. Chief among those rights and liberties are  
9 those found in Article 1 of the California Constitution. Article 1, Sections 1 of the  
10 California Constitution provides, in pertinent part:

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

15 120. Defendants' Orders have not only interfered with Plaintiffs' rights and  
16 liberties as set forth under Article 1, Sections 1, 7, and 19 of the California Constitution,  
17 but have deprived them of the use, enjoyment and ability to operate their respective  
18 businesses because of a discriminatory classification as "non-essential" businesses.

19 121. Defendants' Orders have proximately and legally caused tremendous  
20 financial harm not just to Plaintiffs businesses, but to the entire California economy,  
21 which will continue to have deleterious effects unless and until Defendants are enjoined  
22 by this Court from enforcing their respective Orders.

23 122. Requiring Plaintiffs to abstain from conducting lawful business in the State  
24 of California merely because their businesses have been arbitrarily deemed "non-  
25 essential," despite other compliance measures being taken to satisfy the public's  
26 important health interests, violates their California Constitutional liberty rights. The  
27 burden is on State actors to prove these actions meet strict scrutiny, particularly when  
28

1 evidence shows that the risk of shortfalls in hospital equipment, supplies, and personnel  
2 have faded into irrelevance in conjunction with a drastic decline in morbidity and  
3 mortality occurrence and projections.

4 123. Left with no adequate remedy at law, Plaintiffs will suffer serious and  
5 irreparable harm to their constitutional rights unless Defendants are enjoined from  
6 implementing and enforcing the Orders.

7 124. Plaintiffs have found it necessary to engage the services of private counsel  
8 to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
9 attorney fees and costs pursuant to California Code of Civil Procedure Section 1021.5.

10 **FIFTH CLAIM**

11 **VIOLATION OF THE CALIFORNIA CONSTITUTION**

12 **RIGHT TO PROPERTY (CAL. CONST. ART. 1, § 7)**

13 *(By All Plaintiffs Against All Defendants)*

14 125. Plaintiffs incorporates herein by reference each and every allegation  
15 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

16 126. Article 1, Section 7 of the California Constitution provides, in pertinent  
17 part:

18 (a) A person may not be deprived of life, liberty, or property without  
19 due process of law or denied equal protection of the laws; provided, that  
20 nothing contained herein or elsewhere in this Constitution imposes upon the  
21 State of California or any public entity, board, or official any obligations or  
22 responsibilities which exceed those imposed by the Equal Protection Clause  
23 of the 14th Amendment to the United States Constitution with respect to the  
24 use of pupil school assignment or pupil transportation. In enforcing this  
25 subdivision or any other provision of this Constitution, no court of this State  
26 may impose upon the State of California or any public entity, board, or  
27 official any obligation or responsibility with respect to the use of pupil  
28 school assignment or pupil transportation, (1) except to remedy a specific  
violation by such party that would also constitute 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



1 the specific violation of the Equal Protection Clause of the 14th Amendment  
2 of the United States Constitution.

3 127. Requiring Plaintiffs to abstain from conducting lawful business in the State  
4 of California, despite the availability of compliance measures available and being taken  
5 by so-called “essential businesses” to satisfy the public health interests at stake, violates  
6 their California Constitutional liberty rights.

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

10 129. Plaintiffs have found it necessary to engage the services of private counsel  
11 to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
12 attorney fees and costs pursuant to California Code of Civil Procedure Section 1021.5.

### 13 **SIXTH CLAIM**

#### 14 **VIOLATION OF THE CALIFORNIA CONSTITUTION**

#### 15 **TAKINGS WITHOUT COMPENSATION (CAL. CONST. ART. 1, § 19)**

16 *(By All Plaintiffs Against All Defendants)*

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

19 131. Article 1, Section 19 of the California Constitution provides, in pertinent  
20 part: Article 1, Section 19:

21 (a) Private property may be taken or damaged for a public use and only when  
22 just compensation, ascertained by a jury unless waived, has first been paid to,  
23 or into court for, the owner. The Legislature may provide for possession by  
24 the condemnor following commencement of eminent domain proceedings  
25 upon deposit in court and prompt release to the owner of money determined  
26 by the court to be the probable amount of just compensation.

27 132. California courts have routinely held that the California Constitution  
28 provides just compensation to property owners when their land is taken for public use,  
because the law seeks to bar the government from forcing some people alone to bear

1 public burdens which, in all fairness and justice, should be borne by the public as a  
2 whole. *Jefferson Street Ventures, LLC v. City of Indio*, 236 Cal. App. 4th 1175 (2015).

3 133. The principle underlying just compensation for property taken for public  
4 use is to put the owner in as good a position monetarily as he or she would have  
5 occupied if his or her property had not been taken. *City of Carlsbad v. Rudvalis*, 109  
6 Cal. App. 4th 667 (2003).

7 134. Finally, the constitutional guarantee of just compensation for property  
8 taken by the government is not only intended to protect the landowner (or business  
9 owner), but it also protects the public by limiting its liability to losses that can fairly be  
10 attributed to the taking. *Emeryville Redevelopment v. Harcros Pigments, Inc.*, 101 Cal.  
11 App. 4th 1083 (2002).

12 135. Requiring Plaintiffs to abstain from conducting lawful business in the State  
13 of California, despite the availability of other compliance measures being taken to  
14 satisfy the public health interests at stake, violates their California Constitutional liberty  
15 rights.

16 136. 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.

19 137. Plaintiffs have found it necessary to engage the services of private counsel  
20 to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
21 attorney fees and costs pursuant to California Code of Civil Procedure Section 1021.5.

22 **PRAYER FOR RELIEF**

23 Plaintiffs respectfully request that this Court:

24 138. For an order and judgment providing injunctive and declaratory relief;

25 139. An order temporarily, preliminarily, and permanently enjoining and  
26 prohibiting Defendants from enforcing the Orders against Plaintiffs as to practicing  
27 their professions;

28 140. For attorneys' fees and costs.

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

2  
3 Date: May 12, 2020

DHILLON LAW GROUP INC.

4 By: /s Harmeet Dhillon  
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