

1 **GERAGOS & GERAGOS**

2 A PROFESSIONAL CORPORATION
3 LAWYERS
4 HISTORIC ENGINE Co. No. 28
5 644 SOUTH FIGUEROA STREET
6 LOS ANGELES, CALIFORNIA 90017-3411
7 TELEPHONE (213) 625-3900
8 FACSIMILE (213) 232-3255
9 GERAGOS@GERAGOS.COM

10 MARK J. GERAGOS (SBN: 108325)

11 mark@geragos.com

12 ALEXANDRA KAZARIAN (SBN: 244494)

13 ak@geragos.com

14 MATTHEW M. HOESLY (SBN: 289593)

15 mhoesly@geragos.com

16 **DHILLON LAW GROUP INC.**

17 177 Post Street, Suite 700
18 San Francisco, California 94108
19 Telephone: (415) 433-1700
20 Facsimile: (415) 520-6593

21 HARMEET K. DHILLON (SBN: 207873)

22 harmeet@dhillonlaw.com

23 MARK P. MEUSER (SBN: 231335)

24 mmeuser@dhillonlaw.com

25 *Attorneys for Plaintiffs,*

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

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; **IMAGES LUXURY NAIL**
33 **LOUNGE, INC.**, a California
34 corporation dba IMAGES LUXURY

CASE NO.: 2:20-cv-11501-JFW (PVCx)

Assigned For All Purposes To The:
Hon. John F. Walter; Courtroom 7A

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE**

1 NAIL LOUNGE; **SUMMIT**
2 **FINANCIAL, INC.**, a California
3 corporation dba IMAGES LUXURY
4 NAIL LOUNGE; **NTDH HOLDINGS,**
5 **INC.**, a California corporation dba
6 IMAGES LUXURY NAIL LOUNGE;
7 **BK SALONS LLC**, a California
8 Limited Liability Company dba POMP
9 SALON; **BELLA N’ HARMONY,**
10 **INC.**, a California corporation dba
11 JOYCE MARIE OF BEVERLY HILLS;
12 **COACHELLA VALLEY**
13 **HOSPITALITY UNITES**, a California
14 corporation

15 Plaintiffs,

16 vs.

17 **GAVIN NEWSOM**, in his official
18 capacity as Governor of California;
19 **XAVIER BECERRA**, in his official
20 capacity as the Attorney General of
21 California; **ERICA S. PAN, M.D.,**
22 **M.P.H.**, in her official capacity as the
23 Acting State Public Health Officer for
24 the California Department of Public
25 Health, State of California—Health and
26 Human Services Agency,

27 Defendants.

28 *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.*

....

RELIEF

Complaint Filed: December 20, 2020

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

6
7 *Those who are not vulnerable should immediately be allowed to resume*
8 *life as normal ...*

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

12 NOW COME the above-named Plaintiffs Calm Ventures LLC dba Pineapple Hill
13 Saloon & Grill (“Pineapple Hill”), Images Luxury Nail Lounge, Inc., Summit Financial,
14 Inc., NTDH Holdings, Inc. collectively dba Images Luxury Nail Lounge (“Luxury Nail
15 Salons”), BK Salons, LLC dba POMP Salon (“Pomp Salon”), Bella ‘N Harmony, Inc.
16 dba Joyce Marie of Beverly Hills (“Joyce Marie”) and Coachella Valley Hospitality
17 Unites, a California corporation (“CVHU”) (collectively, “Plaintiffs”), by and through
18 their attorneys of record, Geragos & Geragos, APC and Dhillon Law Group, Inc., as
19 and for claims against the above-named Defendants Gavin Newsom (“Newsom”), in his
20 official capacity as Governor of California; Xavier Becerra (“Becerra”), in his official
21 capacity as Attorney General of California and Erica S. Pan (“Dr. Pan”), M.D., M.P.H.,
22 in her official capacity as the Acting State Public Health Officer for the California
23 Department of Public Health, State of California—Health and Human Services Agency
24 (hereinafter collectively referred to as “Defendants”), allege as follows (this “First
25 Amended Complaint”).
26
27
28

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

NATURE OF ACTION

1
2 1. Plaintiff Pineapple Hill is a restaurant located in Los Angeles County². As
3 a result of Defendants’ Executive and Regional Orders³, Plaintiff has been unable to
4 fully utilize its leased property by serving dining opportunities to the general public.
5 However, just 20 feet away, a major Hollywood production was recently in full
6 operation where it had an outdoor tent set up and was permitted to serve meals to its
7 team of employees and contractors.

8 2. Plaintiff Images Luxury Nail Lounge, Inc. dba Images Luxury Nail Lounge
9 owns and operates two nail lounges in Orange County, California located at 3881 Alton
10 Parkway, Suite F, Irvine, California 92606 and 6242 Irvine Blvd., Irvine, California
11 92620. As a result of Defendants’ Executive and Regional Orders, Plaintiff Images
12 Luxury Nail Lounge, Inc. has been unable to provide its manicure & pedicure, waxing
13 & threading, and skincare services to the general public.

14 3. Plaintiff Summit Financial, Inc. dba Images Luxury Nail Lounge owns and
15 operates two nail lounges in Orange County, California located at 2525 Eastbluff Drive,
16 Newport Beach, California 92660 and 6705 Quail Hill Parkway, Irvine, California
17 92603. As a result of Defendants’ Executive and Regional Orders, Plaintiff Images
18 Luxury Nail Lounge, Inc. has been unable to provide its manicure & pedicure, waxing
19 & threading, and skincare services to the general public.

20 4. Plaintiff NTDH Holdings, Inc. dba Images Luxury Nail Lounge owns and
21 operates one nail lounge in Orange County, California located at 8597 Irvine Center
22 Drive, Irvine, California 92618 and one nail lounge in Los Angeles County, California
23 located at 4201 McGowen Street, Suite 260, Long Beach, California 90808. As a result
24 of Defendants’ Executive and Regional Orders, Plaintiff Images Luxury Nail Lounge,

25 _____
26 ² There are about 24,292 restaurants in Los Angeles County, and about 150,000 of their
27 workers have lost their jobs because of restaurant closures and limited operations
28 attributable to Defendants’ Executive Orders since the COVID-19 pandemic began.

³ Including Newsom’s so-called “Blue Print for a Safer Economy” see:
<https://covid19.ca.gov/safer-economy/>

1 Inc. has been unable to provide its manicure & pedicure, waxing & threading, and
2 skincare services to the general public.

3 5. Plaintiff BK Salons LLC dba POMP Salon owns and operates a hair salon
4 in Lincoln Village located at 349 Lincoln Center, Stockton, California 95207. In spite
5 of Defendants' Executive and Regional Orders which mandated the closure of its
6 business, Plaintiff Pomp Salon continued offering its salon services to the general
7 public, prompting a police raid on its business which made national news headlines a
8 few weeks ago⁴. They subsequently shut down their operations. As of January 12, 2021,
9 Newsom lifted⁵ his Regional Order in the Sacramento Region, despite the fact that they
10 contradict the mandate set forth in his initial proclamation in early December 2020
11 regarding ICU-bed capacity in that the Sacramento Region only currently has about 9%
12 ICU bed capacity.

13 6. Plaintiff Bella 'N Harmony, Inc. dba Joyce Marie of Beverly Hills owns
14 and operates a professional skin care facialist business located at 414 North Camden
15 Drive, Suite 175, Beverly Hills, California 90210. Joyce Marie of Beverly Hills has
16 been in business for over 42 years, one of the first Estheticians to be licensed by the
17 California State Board of Barbering & Cosmetology. As a result of Defendants'
18 Executive and Regional Orders, Plaintiff Joyce Marie of Beverly Hills has been unable
19 to provide its skincare and facial / facial waxing services to the general public.

20 7. Plaintiff Coachella Valley Hospital Unites ("CVHU") is a California
21 corporation that is comprised of so-called "non-essential" restaurant owners⁶ in the
22 Coachella Valley area who have banded together to challenge Defendants'
23 unconstitutional orders. As a result of Defendants' Executive and Regional Orders,
24 Plaintiff CVHU's restaurant members have been unable to fully utilize their leased (or

25 ⁴ <https://ktla.com/news/california/like-it-was-a-drug-raid-stockton-salon-owners-speak-out-against-police-enforcement-visit-due-to-covid-19-violations/>

26 ⁵ <https://www.abc10.com/article/news/health/coronavirus/greater-sacramento-region-stay-home-order/103-18850ada-40d2-4ec2-b143-b0eeafe1340b>

27 ⁶ <https://www.desertsun.com/story/news/2021/01/05/palm-springs-restauranters-rallying-sue-state-over-outdoor-dining-ban/6553887002/>

1 owned) properties for the intended purpose of serving dining opportunities to the
2 general public.

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

10 9. This Action presents facial and as-applied challenges to the California
11 Department of Public Health, State of California—Health and Human Services
12 Agency’s December 3, 2020 Regional Stay At Home Order (the “Regional Order”)
13 attached here as “**Exhibit 1**” and the December 6, 2020 Supplemental Regional Order
14 (“Supplemental Order”) attached here as “**Exhibit 2**”, which violate the constitutional
15 rights of Plaintiffs. The Regional Order and the Supplemental Order will be referred to
16 collectively as the “Regional Orders” in this First Amended Complaint.

17 10. This Action also presents facial and as-applied challenges to the March 12,
18 2020 Executive Order attached here as “**Exhibit 3**”, the March 19, 2020 Executive
19 Order attached here as “**Exhibit 4**” and the Executive Order dated May 4, 2020 that
20 modified the March 19, 2020 Executive Order attached here as “**Exhibit 5**”, all of
21 which violate the constitutional rights of Plaintiffs. These three Executive Orders will
22 be referred to collectively as the “Executive Orders” in this First Amended Complaint.

23 11. Defendants’ enforcement of the Regional Orders violates: (I) the Freedom
24 of Assembly Clause of the First Amendment; (II) substantive rights protected by the
25 Due Process Clauses of the Fifth, Eighth and Fourteenth Amendments and (III) the
26 Equal Protection Clause of the Fourteenth Amendment. Defendants’ enforcement of the
27 Executive Orders violates substantive and procedural rights protected by the Due
28 Process Clauses of the Fifth and Fourteenth Amendments.

1 **JURISDICTION AND VENUE**

2 12. This action arises under 42 U.S.C. § 1983 in relation to Defendants’
3 deprivation of Plaintiffs’ constitutional rights to freedom of assembly, due process, and
4 equal protection rights under the First and Fourteenth Amendments to the U.S.
5 Constitution. Accordingly, this Court has federal question jurisdiction under 28 U.S.C.
6 §§ 1331 and 1343. This Court has authority to award the requested declaratory relief
7 under 28 U.S.C. § 2201; the requested injunctive relief under 28 U.S.C. § 1343(a); and
8 attorneys’ fees and costs under 42 U.S.C. § 1988.

9 13. The Central District of California is the appropriate venue for this action
10 pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is the District in which
11 Defendants maintain offices, exercise their authority in their official capacities, and will
12 enforce the Orders; and it is the District in which substantially all of the events giving
13 rise to Plaintiffs’ claims occurred.

14 **PARTIES**

15 14. At all relevant times, Plaintiff Calm Ventures, LLC dba Pineapple Hill
16 Saloon & Grill is and was a limited liability company organized and authorized to do
17 business and doing business in the State of California. Pineapple Hill owns, operates,
18 and/or manages an old-fashioned, dimly lit, quiet restaurant and bar with a fireplace that
19 serves simple American-inspired fare located in the heart of Sherman Oaks Square at
20 4454 Van Nuys Blvd N, Sherman Oaks, California 91403. At all relevant times,
21 Pineapple Hill has complied with existing local and state orders relating to the statewide
22 effort to curb the spread of COVID-19, and in doing so, has invested considerable time
23 and resources into ensuring a safe and secure CDC-compliant workplace for its
24 employees and patrons, including mandatory mask wearing, socially-distanced outdoor
25 dining, sanitized surfaces after each patron use and temperature checks for employees.

26 15. At all relevant times, Plaintiff Images Luxury Nail Lounge, Inc. dba
27 Images Luxury Nail Lounge is and was a California corporation organized and
28 authorized to do business and doing business in the State of California. Images Luxury

1 Nail Lounge, Inc. owns and operates two nail lounges in Orange County, California
2 located at 3881 Alton Parkway, Suite F, Irvine, California 92606 and 6242 Irvine Blvd.,
3 Irvine, California 92620. At all relevant times, Images Luxury Nail Lounge, Inc. has
4 complied with all existing local and state orders relating to the statewide effort to curb
5 the spread of COVID-19, and in doing so, invested considerable time and resources into
6 ensuring a safe and secure CDC-compliant workplace for its employees, independent
7 contractors and patrons, including mandatory mask wearing, socially-distanced lounge
8 chair stations, sanitized surfaces after each patron use and temperature checks.

9 16. Plaintiff Summit Financial, Inc. dba Images Luxury Nail Lounge is and
10 was a California corporation organized and authorized to do business and doing
11 business in the State of California. Summit Financial, Inc. owns and operates two nail
12 lounges in Orange County, California located at 2525 Eastbluff Drive, Newport Beach,
13 California 92660 and 6705 Quail Hill Parkway, Irvine, California 92603. At all relevant
14 times, Summit Financial, Inc. has complied with all existing local and state orders
15 relating to the statewide effort to curb the spread of COVID-19, and in doing so,
16 invested considerable time and resources into ensuring a safe and secure CDC-
17 compliant workplace for its employees, independent contractors and patrons, including
18 mandatory mask wearing, socially-distanced lounge chair stations, sanitized surfaces
19 after each patron use and temperature checks.

20 17. Plaintiff NTDH Holdings, Inc. dba Images Luxury Nail Lounge is and was
21 a California corporation organized and authorized to do business and doing business in
22 the State of California. NTDH Holdings, Inc. owns and operates one nail lounge in
23 Orange County, California located at 8597 Irvine Center Drive, Irvine, California 92618
24 and one nail lounge in Los Angeles County, California located at 4201 McGowen Street,
25 Suite 260, Long Beach, California 90808. At all relevant times, Summit Financial, Inc.
26 has complied with all existing local and state orders relating to the statewide effort to
27 curb the spread of COVID-19, and in doing so, invested considerable time and
28 resources into ensuring a safe and secure CDC-compliant workplace for its employees,

1 independent contractors and patrons, including mandatory mask wearing, socially-
2 distanced lounge chair stations, sanitized surfaces after each patron use and temperature
3 checks.

4 18. Plaintiff BK Salons LLC dba POMP Salon is and was a limited liability
5 company organized and authorized to do business and doing business in the State of
6 California. BK Salons LLC owns and operates a hair salon in Lincoln Village located at
7 349 Lincoln Center, Stockton, California 95207. At all relevant times, BK Salons LLC
8 invested considerable time and resources into ensuring a CDC-compliant workplace for
9 its employees, independent contractors and patrons, including mandatory mask wearing,
10 socially-distanced chair stations, sanitized surfaces after each patron use and
11 temperature checks. In spite of Defendants’ Executive Orders and Public Health Orders
12 which mandated the closure of its business, Plaintiff BK Salons LLC continued offering
13 its salon services to the general public, prompting a police raid on its business which
14 made national news headlines a few weeks ago. They subsequently closed their salon.

15 19. Plaintiff Bella ‘N Harmony, Inc. dba Joyce Marie of Beverly Hills is and
16 was a California corporation organized and authorized to do business and doing
17 business in the State of California. Bella ‘N Harmony, Inc. owns and operates a
18 professional skin care facialist business located at 414 North Camden Drive, Suite 175,
19 Beverly Hills, California 90210. Bella ‘N Harmony, Inc. has been in business for over
20 42 years. As a result of Defendants’ Executive Orders and Public Health Orders,
21 Plaintiff Bella ‘N Harmony, Inc. has been unable to provide its skincare and facial /
22 facial waxing services to the general public.

23 20. Plaintiff Coachella Valley Hospital Unites (“CVHU”) is a California
24 corporation comprised of so-called “non-essential” restaurant owners⁷ in the Coachella
25 Valley area who have banded together to challenge Defendants’ unconstitutional orders.
26 As a result of Defendants’ Executive Orders and Public Health Orders, Plaintiff

27 _____
28 ⁷ Including, but not limited to: Jake’s Restaurant, Farm Restaurant, Tac/Quila Restaurant,
Sammy G’s Restaurant, Zin Restaurant and Stacy’s Palm Springs—Piano Bar.

1 CVHU’s restaurant members have been unable to fully utilize their leased (or owned)
2 properties for the intended purpose of serving dining opportunities to the general public.

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

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

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

16 24. Each and every Defendant acted under color of state law with respect to all
17 acts or omissions herein alleged.

18 GENERAL FACTUAL ALLEGATIONS

19 25. On or about March 13, 2020, President Donald J. Trump proclaimed a
20 National State of Emergency as a result of the threat of the emergence of the novel
21 coronavirus, also known as COVID-19.⁸

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

25
26 _____
27 ⁸ *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus*
28 *Disease (COVID-19) Outbreak*, whitehouse.gov (Mar. 13, 2020), available at
<https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

1 27. For example, California Governor Gavin Newsom issued a “State of
2 Emergency” order on March 4, 2020 (N-25-20) in response to the threat of the spread of
3 COVID-19 throughout California’s communities (Exhibit 3). In so doing, Newsom
4 subsequently issued Executive Order N-33-20 on March 19, 2020 (Exhibit 4), which,
5 among other things, mandated that “all residents are directed to immediately heed the
6 current State public health directives.”⁹

7 28. On or about March 19, 2020, Dr. Sonia Angell, who was then serving as
8 the California State Public Health Officer, acting pursuant to the authority conferred by
9 Governor Newsom's State Order, issued an order which designated a list of “Essential
10 Critical Infrastructure Workers.” The Order incorporated by reference the U.S.
11 Government's 16 critical infrastructure sectors¹⁰ whose assets, systems, and networks,
12 whether physical or virtual, are considered so vital to the United States that their
13 incapacitation or destruction would have a debilitating effect on security, economic
14 security, public health or safety, or any combination thereof. The Order provided that
15 “Californians working in these 16 critical infrastructure sectors [would] continue their
16 work because of the importance of these sectors to Californians' health and well-being.”
17 All other businesses and organizations were ordered either to cease all operations or to
18 operate under substantial restrictions. Persons not employed in the 16 critical
19 infrastructure areas were required to stay home except as necessary to obtain necessities
20 such food, prescriptions, and healthcare.”

21
22
23 ⁹ Available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>

24 ¹⁰ Including the: (1) Chemical Sector, (2) Commercial Facilities Sector, (3)
25 Communications Sector, (4) Critical Manufacturing Sector, (5) Dams Sector, (6)
26 Defense Industrial Base Sector, (7) Emergency Services Sector, (8) Energy Sector, (9)
27 Financial Services Sector, (10) Food and Agriculture Sector, (11) Government Facilities
28 Sector, (12) Healthcare and Public Health Sector, (13) Information Technology Sector,
(14) Nuclear Reactors Materials, and Waste Sector, (15) Transportation Systems Sector,
and (16) Water and Wastewater Systems Sector.

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

7 30. As a result of the issuance of Newsom’s Order, California businesses, such
8 as those of Plaintiffs’ which were not part of the 16 “critical infrastructure sectors”
9 described above, were therefore deemed “Non-Essential” businesses, and effectively
10 ordered, under penalty of fine and imprisonment, to shut down.

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

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

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

24
25 _____
26 ¹¹ Section 8665 of the California Government Code provides that: “Any person who
27 violates any of the provisions of this chapter...shall be guilty of a misdemeanor and,
28 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 34. Dr. Pan, an unelected, appointed public bureaucrat is issuing orders that
2 have full force of law. These shutdown orders are not being deliberated and enacted by
3 the legislature nor are they following California law for prorogating administrative
4 regulations (See Cal Govt. Code §11340 *et seq.*).

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

9 36. Federal courts have authority over internal delegations of power between
10 state branches of government when “the regulations are so utterly unreasonable and
11 extravagant in their nature and purpose that the property and personal rights of the
12 citizens are unnecessarily, and in a manner wholly arbitrary, interfered with or
13 destroyed without due process of law[.]” *Gundling v. City of Chicago*, 177 U.S. 183,
14 188 (1900).

15 37. Federal courts have authority to review “ordinances, and even legislative
16 enactments ... with a view to determining whether the law or ordinance is a lawful
17 exercise of the police power[.]” *Caroline Dobbins v. City of Los Angeles*, 195 U.S. 223,
18 236 (1904).

19 38. On May 7, 2020, State Public Health Officer Dr. Angell issued an order
20 permitting the gradual reopening of businesses and activities in California in stages. The
21 order provided for four stages of gradual reopening, with the final stage, Stage 4,
22 consisting of an end to all stay-at-home orders and a full reopening of businesses. As a
23 result, and on or about the beginning of June 2020, Plaintiffs Pineapple Hill and the
24 CVHU’s restaurant businesses re-opened for indoor dining, but were only allowed to do
25 so at 50% capacity. Likewise, Plaintiffs Luxury Nail Salons, POMP Salon and Joyce
26 Marie were authorized to operate indoors, albeit at similar limited capacity limits.

27 39. Thereafter, and on July 13, 2020, the State Public Health Officer issued a
28 further order directing all restaurants in the State of California, such as Plaintiff’s, to

1 again cease indoor dining and salon and hair care services. The order applied to all
2 restaurants and salons regardless of ICU bed capacity availability or the number of
3 deaths experienced in each county. As a result of the July 13, 2020 order, Plaintiffs
4 were also unable to recoup the cost of implementing the safety measures imposed by
5 the May 7, 2020 order as a condition to offering services to their customers.

6 40. On August 28, 2020, Defendant Dr. Pan implemented a statewide order
7 that abandoned the previous, staged re-opening plan promulgated in the May 7, 2020
8 order and dictated that counties would be classified according to a new plan entitled
9 “Blueprint for a Safer Economy” under which a color-coded “tier” system would be
10 used. Under this new color-coded tiered system, each California county is placed in one
11 of four tiers: Purple, Red, Orange, and Yellow—ranging from most to least restrictive,
12 respectively. Unlike the previous staged reopening plan under the May 7, 2020 order,
13 the current “tier” system under the August 28, 2020 order does not provide *any* criteria
14 under which California's businesses and economy would be permitted to fully
15 reopen. Under the respective tiers established pursuant to the August 28, 2020 order,
16 restaurants and salons, such as Plaintiffs’ respective establishments, are required to: (1)
17 cease all indoor dining and indoor salon services (Purple tier); (2) limit indoor dining
18 and indoor salon services capacity to 25% (Red tier); or (3) limit indoor dining and
19 salon services capacity to 50% (Orange and Yellow tiers).

20 41. In making public health decisions, it is important for health officials—who
21 are unelected and thus, unaccountable to the general public—to weigh the overall risk
22 of the given disease to the overall benefits of the imposed public health policy.

23 42. Pursuant to the Center for Disease Control’s (“CDC”) “Considerations for
24 Restaurant and Bar Operators¹²,” updated November 18th, 2020, outdoor dining may
25 occur with relative safety at restaurants if precautionary measures are observed,
26 including but not limited to, social distancing and mask wearing by servers and by
27 patrons (when not eating). Similarly, the CDC provided guidance on how nail, hair and

28 _____
¹² <https://youtu.be/BPdGXvdVKMw> (original CDC video posted 8/31/2020).

1 skin care salons can provide indoor services for their customers with relative safety if
2 similar precautionary measures are observed¹³, including but not limited to, social
3 distancing, mask wearing, increased sanitation, temperature checks, reduced capacity
4 and increased ventilation.

5 43. The CDC includes outdoor dining and salons in the second lowest tier of
6 risk and notes that even this risk can be mitigated by reasonable accommodations such
7 as following those guidelines above, and other actions that are well within the capability
8 of County restaurants and salons.

9 44. Many of the contact tracing studies in the scientific literature that
10 document the most common sources of spread of the COVID-19 infection show no
11 evidence suggesting that outdoor dining or indoor salon-based services are more likely
12 to spread the COVID-19 virus than the activities—including private gatherings—that
13 remain permissible at certain levels. Indeed, the Health Director of San Joaquin County
14 recently admitted at a Board of Supervisors meeting on January 5, 2021, that no cases
15 of COVID-19 have been traced back to salons in the County¹⁴.

16 45. All the while, so-called “essential” businesses like grocery stores have seen
17 unprecedented rates of coronavirus infections making it likelier than ever that a co-
18 worker or customer could be ill, and that a single case could multiply into dozens.¹⁵

19
20
21 ¹³ <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/nail-salon-employers.html>

22 ¹⁴ <http://sanjoaquincountyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2386&Format=Agenda> (see statement at 3:43:51).

23 ¹⁵ 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 46. 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 dining at restaurants to the spread of COVID-19. In addition, and before backtracking,
4 Newsom recklessly maligned the entire salon industry in California by claiming,
5 without evidence, that the first “community spread” of the COVID-19 virus began in a
6 salon¹⁶. Evidence and analysis available since at least May 2020 further establish that
7 actions at issue in this case—the widespread closure of restaurant dining and nail, skin
8 and hair salon-based services—cannot be justified as rationally necessary to protect
9 public health and constitute nothing more than arbitrary and capricious acts.

10 47. Nevertheless, and based on the rise of reported COVID-19 cases and
11 hospitalizations that began in mid-November 2020, Newsom announced on December 3,
12 2020 his newest Regional Stay At Home Order (see Exhibit 1). Coincidentally,
13 Newsom issued the Regional Order the very same day that a state court in Los Angeles
14 County ordered the Los Angeles County Department of Health (“DPH”) to provide
15 specific evidence detailing that the closure of outdoor dining under its “County
16 Restaurant Closure Order” was rationally related to halting the spread of COVID-19.

17 48. The Regional Order, which took effect on December 5, 2020 and, pertinent
18 to the Southern California Region, is triggered if the Southern California Region’s ICU
19 capacity falls below 15%. The Regional Order is effective for three weeks after the
20 trigger. It affects numerous activities and businesses, including all of Plaintiffs’
21 businesses. In pertinent part, the Order prohibits the operation of nail, hair and skin care
22 services being rendered by salons as well as restaurant dining, indoor or outdoor,
23 permitting only take-out or pick-up, irrespective of whether these options are suitable
24 for a given restaurant. The Regional Order will end if the region’s ICU capacity
25 projection for four weeks (three weeks after the order) is above or equal to 15%.

26
27
28 ¹⁶ <https://www.nbcnews.com/news/us-news/california-gov-newsom-says-community-spread-started-nail-salon-n1203491>

1 Conversely, the Order continues if the ICU projection for that period is less than 15%.
2 The assessment will occur on a weekly basis.

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

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

9 50. As of December 6, 2020, the Regional Order has been triggered by the fact
10 that the Southern California Region has less than 15% ICU capacity, resulting in
11 Plaintiffs’ closure of its hair, nail and skin care salons as well as that of all outdoor
12 dining activities after Plaintiffs each spent upwards of tens of thousands of dollars in
13 complying with the State of California’s “Safe Re-Opening Guidelines.”

14 51. While Defendants rely on a 15% ICU capacity trigger in justifying the
15 effective closures of Plaintiffs’ businesses, that justification has been undermined by
16 virtue of a recent report issued by the WHO. According to the WHO, widespread “false
17 positive” PCR testing by COVID laboratories has created a situation in which there is
18 now a significantly higher number of false positive COVID tests than initially thought
19 in the community at large¹⁷. That is, the WHO has recommended that any person who
20 has a positive PCR COVID-19 test who has not presented to a doctor with symptoms of
21 COVID-19 should be retested. In other words, PCR testing is essentially broken and has
22 led to a significant number of “false positive” COVID-19 test as there are major
23 scientific flaws at the molecular and methodological level.

24 52. Plaintiffs Pineapple Hill and the CVHU’s member restaurants are
25 prohibited from serving meals to the public either indoors or outdoors at their respective

26
27
28 ¹⁷ <https://www.who.int/news/item/20-01-2021-who-information-notice-for-ivd-users-2020-05>

1 establishments even though the CDC has promulgated guidance for restaurants as a
2 result of COVID-19 that are safely being followed across the U.S.¹⁸

3 53. Plaintiffs Luxury Nail Salons, POMP Salon¹⁹ and Joyce Marie are
4 currently prohibited from operating for their intended purposes in providing hair, nail
5 and skin care services to their clients even though the CDC has promulgated guidance
6 for them as a result of COVID-19 that are safely being followed across the U.S. In
7 addition, the CDC has previously endorsed the notion that wearing masks in salons is a
8 safe and effective practice for curbing the spread of COVID-19²⁰.

9 54. Plaintiffs are ready willing and able to follow CDC guidance for serving
10 their respective cliental and have in fact been prepared since the start of the pandemic.

11 55. On information and belief, Plaintiffs have never had a single reported case
12 of coronavirus traced back to their establishments. Plaintiffs have at all times done their
13 best to comply with all regulations related to curbing the spread of COVID-19.

14 56. During a COVID update on December 8, 2020, broadcasted by the
15 California Department of Public Health, Dr. Mark Ghaly admitted that the State
16 conducted no risk-benefit analysis whatsoever when deciding to implement this new
17 Regional Order, explaining that: “The fact is the transmission is now so widespread
18 across every state that most non-essential activities create a serious risk of
19 transmission...Rather than focus on the sector-by-sector restrictions, the top of our
20 message is, as much as you can, stay at home...”²¹

21 57. In that same December 8, 2020 update, Dr. Ghaly addressed the State’s
22 rationale of including the ban on outdoor dining in Newsom’s newest Regional Order:

23 _____
24 ¹⁸ Available as of the date of filing at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html>

25 ¹⁹ As of January 12, 2021, Newsom began allowing businesses, such as POMP Salon, to
26 operate by virtue of lifting his Regional Stay at Home Order for the Sacramento Region.v

27 ²⁰ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6928e2.htm>

28 ²¹ Mark Ghaly M.D., M.P.H., *12/8/2020: CHHS Secretary Dr. Mark Ghaly Provides 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 “The decision to include among other sectors, outdoor dining, and limiting that, turning
2 to restaurants to deliver and provide takeout options instead really has to do with the
3 goal of *trying to keep people at home*, not a comment on the relative safety of outdoor
4 dining.”²² In that same breath of urging the public to stay home, Dr. Ghaly went on to
5 encourage, “Californians are able to do important things... visit a local retailer or
6 worship the outdoors.”²³ Newsom echoed this contradicting message that staying
7 indoors was the goal of lowering the spread of COVID-19 when he tweeted on
8 December 10, 2020, “*Get outdoors with your household safely. Explore your*
9 *neighborhood and CA’s beauty!...Go to a beach. Take your kids to a playground. Go on*
10 *a hike. Walk your dog. We can get through this.*”

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

17 59. While “Essential” businesses continue to operate, and indeed, turn a profit
18 (if not historical profits) during this time of crisis, Plaintiffs’ “Non-Essential”
19 businesses were forced to either completely shut down (and then reopen on occasion) or
20 evolve their business models into outdoor dining. However, now these restaurants, such
21 as those of Pineapple Hill and the CVHU’s member restaurants cannot even operate in
22 outdoor form. As such, they have suffered immensely and continue to suffer while other
23 non-essential businesses have been allowed to open. Defendants’ unconstitutionally
24 restrictive Regional Orders have had immense disparate impact across every segment or
25 sector of business in California, particularly on nail, hair and skin care salons.
26 Accordingly, Plaintiffs seek to enjoin the enforcement of the Regional Orders.

27 _____
28 ²² *Id.*

²³ *Id.*

1 60. Defendants’ Regional Orders are not “narrowly tailored” to further any
2 compelling governmental interest. Defendants’ Regional Orders are also neither
3 rationally related to the State’s interest in curbing the spread of COVID-19. Defendants
4 have granted numerous special exemptions to their bans on public gatherings and
5 conduct, including for purportedly “essential” businesses and activities, provided that
6 social distancing practices are observed. Since these gatherings may be permitted, there
7 can be no doubt that Defendants may, and therefore must, permit Plaintiffs to engage in
8 equivalent business activities provided that Plaintiffs also adhere to the social distancing
9 guidelines currently in place.

10 61. Specifically, the State of California did not initially include Hollywood
11 studios in the list of “Essential Workers” issued in March 2020. But a revised listing,
12 issued in April 2020, declared that workers involved in “the entertainment industries,
13 studios, and other related establishments” to be essential “provided they follow
14 COVID-19 public health guidance around physical distancing.”²⁴

15 62. Then, in November 2020, Newsom provided a *special exemption* to
16 television and film production companies for his earlier limited shelter-in-place order
17 issued before Thanksgiving, which featured a curfew from 10 p.m. to 5 a.m. The
18 workforce on film sets could continue operations throughout the night.²⁵

19 63. Earlier in December 2020, a central coronavirus testing site at the Union
20 Station building faced a temporary closure to accommodate the filming of a remake
21 of “She’s all That” featuring TikTok star Addison Rae. Some 500 appointments were
22 canceled. The negative news cycle resulted in an intervention from the mayor’s office
23 to keep the testing site open.²⁶

24 ²⁴ Available as of the date of filing at:

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

26 ²⁵ Available as of the date of filing at <https://deadline.com/2020/11/entertainment-industry-workers-exempt-from-california-governor-gavin-newsoms-new-stay-at-home-order-1234619285/>

27 ²⁶ Available as of the date of filing at <https://www.nytimes.com/2020/12/01/us/virus-testing-Union-Station-Los-Angeles.html>

1 64. Around the same time, Pineapple Hill’s owner, Angela Marsden, posted
2 a video after her establishment’s outdoor dining area had been shut down by virtue of
3 Defendants’ Regional Orders. Ms. Marsden’s video went viral. 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.²⁷

8 65. In addition, hairstylists and makeup artists are explicitly allowed to
9 perform their State Board of Barbering & Cosmetology licensed services in these
10 Hollywood studios, while those same licensed professionals are prevented from doing
11 the same services in a non-Hollywood studio salon²⁸.

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

15 67. On November 6, 2020, Newsom attended the infamous dinner at French
16 Laundry for Jason Kinney’s birthday in which the bar tab reached \$15,000.00 and
17 dinners started at \$310.00. Jason Kinney is a lobbyist, whose biggest client is Netflix,
18 which has been allowed to operate during the latest round of forced closures as
19 intensive care hospital capacity has dwindled across the state.²⁹

20 68. It is no secret that Hollywood lobbyists and insiders have leveraged their
21 industry’s economic and political contributions to the state’s political power brokers
22 and Democratic machine in order to insulate it from COVID-19 related regulations.
23

24 ²⁷ Available as of the date of filing at https://www.youtube.com/watch?v=3-86gfJosHc&ab_channel=ABC7

25 ²⁸ See: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Regional-Stay-at-Home-Order-.aspx>; see also: <https://covid19.ca.gov/essential-workforce/>; see
26 also: <https://covid19.ca.gov/industry-guidance/>

27 ²⁹ Available as of the date of filing at [https://californiaglobe.com/section-2/gov-
28 newsoms-hollywood-lockdown-exemptions-facilitated-by-lobbyist-pals/](https://californiaglobe.com/section-2/gov-newsoms-hollywood-lockdown-exemptions-facilitated-by-lobbyist-pals/)

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

4 70. Further, the “Big Six” production studios have donated heavily to elected
5 officials and campaigns across California. Netflix and its employees gave \$135,950.00;
6 Walt Disney and Co. and its employees gave \$183,999.00; Paramount and its
7 employees gave \$119,308.00; Sony and its employees gave \$27,961.00; Comcast-
8 NBCUniversal and its employees gave \$251,588.00; and Warner Bros. and its
9 employees gave \$77,050.00.³⁰

10 71. The campaign donations were spent as the firms also deployed lobbyists
11 to shape the pandemic rules governing the entertainment industry.³¹

12 72. As another example of the elitist exceptionalism underpinning the
13 enforcement of the Regional and Executive Orders, on or about January 6, 2021, a
14 horse auction replete with outdoor dining was held at the Finish Line Bar & Grill,
15 which is situated on Los Angeles County property at the Pomona Fairplex³².

16 73. The hypocrisy of the selective enforcement of the Regional and
17 Executive Orders comes as no surprise. Indeed, in a “PSA” announcement on
18 December 2, 2020, Governor Andrew Cuomo of New York admitted that shutdowns

19 ³⁰ Available as of the date of filing at [https://theintercept.com/2020/12/11/hollywood-
20 covid-filming-california-lockdown/](https://theintercept.com/2020/12/11/hollywood-covid-filming-california-lockdown/)

21 ³¹ Mercury Public Affairs, a bipartisan lobbying firm that features former Assembly Speaker
22 Fabian Nuñez and former LA Mayor Antonio Villaraigosa as partners, is currently registered
23 to lobby LA officials on filming issues on behalf of both Comcast-NBCUniversal and the
24 Motion Picture Association. Tracy Arnold, Newsom’s chief deputy cabinet secretary,
25 previously served as partner at Mercury Public Affairs. Paramount Pictures’ lobbyist Greg
26 Campbell previously served as chief of staff to former Assembly Speaker John Pérez. The
27 disclosure for his firm shows that Campbell lobbied the administration on the essential
28 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/>

³² <https://twitter.com/NextLAMayor/status/1346946362550571008>

1 were no longer working: “It's not just mass gatherings causing the spread anymore. The
2 virus is now literally spreading in households. When you eliminate other options for
3 socialization, people will shift their behavior and begin joining together in their homes.
4 We are seeing the impacts of that now, with a significant number of cases originating in
5 households and small gatherings³³.

6 74. In addition, and on January 5, 2020¹, a peer-review article published by
7 several leading and venerated experts at Stanford University concluded that
8 widespread lockdowns do not work for curbing the spread of COVID-19. The
9 researchers concluded that “we fail to find strong evidence supporting a role for more
10 restrictive [non-pharmaceutical interventions] measures in the control of COVID in
11 early 2020”. The researchers also observed that “while small benefits cannot be
12 excluded, we do not find significant benefits on case growth of more restrictive [non-
13 pharmaceutical interventions]. Similar reductions in case growth may be achievable
14 with less restrictive interventions.”³⁴

15 75. Plaintiffs have standing to bring this lawsuit since they are aggrieved in
16 fact businesses that are the subject of enforcement of the overbroad and unconstitutional
17 Regional Orders, which have the effect of forcing Plaintiffs to bear a public burden by
18 virtually eviscerating the ability to operate their businesses.

19 76. Unless and until injunctive relief is granted, Plaintiffs will continue to
20 suffer irreparable harm for which they are left without an adequate remedy at law, in
21 that they can be subject to criminal cases (i.e. misdemeanor citations and fines), have
22 their liquor licenses and business licenses suspended or withdrawn, or have their
23 utilities shut off by the DWP based on the enforcement of the Regional Orders by their
24 local Sheriff's Department. Newsom has made it a point to “prosecute” and “fine” all
25 non-conforming “Non-Essential” businesses that refuse to close their doors and shut
26

27 ³³ [https://www.governor.ny.gov/news/governor-cuomo-releases-new-psa-highlighting-
28 dangers-covid-19-transmission-through-living-room](https://www.governor.ny.gov/news/governor-cuomo-releases-new-psa-highlighting-dangers-covid-19-transmission-through-living-room)

³⁴ <https://onlinelibrary.wiley.com/doi/pdf/10.1111/eci.13484>

1 down their lawful business operations. This was underscored by the notorious armed
2 police raid on POMP Salon’s stylists and customers. On, information and belief, the
3 State has even gone so far as to threaten criminal prosecutions, including murder
4 charges, for any non-compliant, “non-essential” businesses, such as restaurants, that
5 refuse to shut down by serving food and drink indoors or outdoors which lead to a
6 COVID-19 infection among a patron or guest that causes death.

7 **CLAIMS**

8 **FIRST CLAIM FOR RELIEF**

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

10 **(42 U.S.C. § 1983)**

11 *(By Plaintiffs against all Defendants)*

12 77. Plaintiffs incorporate by reference the allegations in the preceding
13 paragraphs, as if fully set forth herein.

14 78. The Regional Orders and Defendants’ enforcement thereof violates the
15 First Amendment, both facially and as-applied to Plaintiffs. The First Amendment of
16 the Constitution protects the “right of the people peaceably to assemble.” The Freedom
17 of Assembly Clause was incorporated against the states in *De Jonge v. Oregon*, 299 U.S.
18 353 (1937).

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

25 80. By denying Plaintiffs Pineapple Hill and the CVHU the ability to conduct
26 outdoor dining which not only previously complied with the State of California’s
27 Orders, but also complies with the CDC guidelines for social distancing, Defendants are
28 in violation of the Freedom of Assembly Clause.

1 81. Likewise, by denying Plaintiffs Luxury Nail Salons, POMP Salon and
2 Joyce Marie the ability to conduct their nail, hair and skin care services through their
3 salons, which not only previously complied with the State of California's Orders, but
4 also complies with the CDC guidelines as set forth herein, Defendants are in violation
5 of the Freedom of Assembly Clause.

6 82. Defendants cannot meet the no-less-restrictive-alternative test. The CDC's
7 social distancing guidelines are appropriate to limit the spread of COVID-19. Imposing
8 more restrictive requirements that target restaurants and salon establishments such as
9 those of these Plaintiffs, while at the same time allowing the entertainment industry,
10 major retailers, grocery stores, marijuana dispensaries and others to operate indoors or
11 outdoors is not the least restrictive means of achieving Defendants' public safety goals.

12 83. Requiring Plaintiffs to abstain from conducting outdoor dining activities
13 and providing nail, hair and skin care services, despite substantial modifications to their
14 existing safety protocols to satisfy the public health interests at stake, violates Plaintiffs'
15 Constitutional right to peaceably assemble.

16 84. 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 Regional Orders as applied to Plaintiffs.

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

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

25 **SECOND CLAIM FOR RELIEF**

26 **Due Process Clauses of Fifth and Fourteenth Amendments to U.S. Constitution**
27 **(42 U.S.C. § 1983)**

1 (By Plaintiffs against all Defendants)

2 87. Plaintiffs incorporate by reference the allegations in the preceding
3 paragraphs, as if fully set forth herein.

4 88. The Regional Orders and Defendants' enforcement thereof violate the Due
5 Process Clauses of the Fifth and Fourteenth Amendments, both facially and as-applied
6 to Plaintiffs.

7 89. The Due Process Clauses of the 5th and 14th Amendment provides, in
8 pertinent part, that: "No State shall make or enforce any law which shall abridge the
9 privileges or immunities of citizens of the United States; nor shall any State deprive any
10 person of life, liberty, or property, without due process of law; nor deny to any person
11 within its jurisdiction the equal protection of the laws.

12 90. As set forth herein, Defendants' Regional Orders have had a disparate
13 impact on Plaintiffs and have unfairly targeted Plaintiffs' businesses, specifically their
14 ability to earn a living by conducting their nail, hair, skincare and outdoor dining
15 services, despite the total lack of scientific evidence or data to support the
16 implementation of the Regional Orders as applied to Plaintiffs. As such, Plaintiffs have
17 been deprived of their Constitutionally protected liberties and rights.

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

21 92. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
22 declaratory relief and temporary, preliminary, and permanent injunctive relief
23 invalidating and restraining enforcement of the Regional Orders.

24 93. Plaintiffs have found it necessary to engage the services of private counsel
25 to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
26 attorneys' fees pursuant to 42 U.S.C. § 1988.

27 **THIRD CLAIM FOR RELIEF**

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

1 (42 U.S.C. § 1983)

2 (By Plaintiffs against all Defendants)

3 94. Plaintiffs incorporate by reference the allegations in the preceding
4 paragraphs, as if fully set forth herein.

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

11 96. Defendants intentionally and arbitrarily categorize individuals, businesses
12 and conduct as either “essential” or “non-essential.” Those persons or businesses
13 classified as “essential,” or as participating in essential services, are permitted to go
14 about their business and activities provided certain social distancing practices are
15 employed. Those classified as “non-essential,” or as engaging in non-essential activities
16 (such as Plaintiffs’ businesses), are required to heed the State’s directives and adjust
17 and/or shut down aspects of their businesses—including the entirety of their operations.

18 97. Strict scrutiny under the Equal Protection Clause applies where, as here,
19 the classification impinges on a fundamental right, including the right to assembly, the
20 right to travel, among others.

21 98. Defendants cannot satisfy strict scrutiny, because their arbitrary
22 classifications are not narrowly tailored measures that further compelling government
23 interests, for the reasons stated above.

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

27 100. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
28 declaratory relief and temporary, preliminary, and permanent injunctive relief

1 invalidating and restraining enforcement of the Regional Orders.

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

5 **FOURTH CLAIM FOR RELIEF**

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

7 **(42 U.S.C. § 1983)**

8 *(By Plaintiffs against all Defendants)*

9 102. Plaintiffs incorporate by reference the allegations in the preceding
10 paragraphs, as if fully set forth herein.

11 103. The Executive Orders and Defendants' enforcement thereof violate the
12 substantive and procedural aspects of the Due Process Clauses of the Fifth and
13 Fourteenth Amendments, both facially and as-applied to Plaintiffs.

14 104. The Due Process Clause of the 14th Amendment provides, in pertinent part,
15 that: "No State shall ... deprive any person of life, liberty, or property, without due
16 process of law[.]"

17 105. The Due Process Clause of the 5th Amendment provides in pertinent part
18 that: "No person shall be ... deprived of life, liberty, or property, without due process of
19 law; nor shall private property be taken for public use, without just compensation."

20 106. As set forth herein, Defendants' Executive Orders have unlawfully violated
21 Plaintiffs' procedural due process rights by delegating authority to an unelected,
22 appointed bureaucrat who is exercising this power to deprive Plaintiffs from being able
23 to lawfully operate their businesses.

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

1 108. Defendants also have violated Plaintiffs’ procedural due process rights by
2 ignoring California law as to the promulgation of administrative regulations as set forth
3 in the California Administrative Procedures Act (Cal. Gov. Code §11340 *et. seq.*),
4 including but not limited to the procedures for enacting emergency regulations (Cal.
5 Gov. Code §11346.1).

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

10 110. The Due Process clause “forbids the government to infringe [on]
11 fundamental liberty interests at all, no matter what process is provided, unless the
12 infringement is narrowly tailored to serve a compelling state interest.” *Washington v.*
13 *Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotations omitted).

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

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

20 113. It protects—in addition to all the enumerated freedoms in the Bill of
21 Rights—a wide array of liberties.

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

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

26 116. The “involuntary confinement of an individual for any reason, is a
27 deprivation of liberty which the State cannot accomplish without due process of law.”
28

1 *Connor v. Donaldson*, 422 U.S. 563, 580 (1975). Also, any “confinement must cease
2 when those reasons [giving rise to it] no longer exist.” *Id.*

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

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

8 119. Both the Executive Orders and the Regional Orders mandate that
9 Californians stay at home and shut down their “non-essential” businesses.

10 120. Both the Executive Orders and the Regional Orders violate Plaintiffs’
11 constitutional rights to liberty.

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

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

16 123. 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 Regional Orders.

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

22 125. Plaintiffs have found it necessary to engage the services of private counsel
23 to vindicate its rights under the law. Plaintiff is therefore entitled to an award of
24 attorneys’ fees pursuant to 42 U.S.C. § 1988.

25 **FIFTH CLAIM FOR RELIEF**

26 **EXCESSIVE FINES / CRUEL AND UNUSUAL PUNISHMENT**

27 **(42 U.S.C. § 1983)**

28 126. Plaintiffs incorporate by reference the allegations in the preceding

1 paragraphs, as if fully set forth herein.

2 127. Plaintiffs principals, employees and independent contractors face a
3 possibility of incarceration in jail plus a fine plus for engaging in the so-called “non-
4 essential” business activities if they elect to ignore Defendants’ Orders. In addition, a
5 well-developed body of research demonstrates that involuntary employment is linked to
6 a host of serious adverse health effects, including a greatly increased risk of early death.
7 Indeed, the relationship between unemployment and poor health has been well
8 documented³⁵.

9 128. Studies have further established that adverse health effects and
10 unemployment are not merely correlated, but rather that diminished mental and physical
11 health is *caused by* unemployment. One study found that “higher levels of depression
12 are a result of unemployment³⁶.” Another study observed evidence supporting a causal
13 explanation for the association between unemployment and mortality³⁷. A third study
14 found that “the health deterioration from unemployment is likely to be large,” and
15

16 ³⁵ Pharr et al., *The Impact of Unemployment on Mental and Physical Health, Access to*
17 *Health Care and Health Risk Behaviors* (Dec. 25, 2011) International Scholarly
18 Research Notices 1, 1 <https://bit.ly/3qt9aG3> [as of Jan. 18, 2021] (hereafter Pharr.)
19 “Unemployment has an adverse effect on health,” which is “still demonstrable when
20 social class, poverty, age and pre-existing morbidity are adjusted for.” Wilson &
21 Walker, *Unemployment and health: A review* (1993) 107 Pub. Health 153, abstract
22 <http://bit.ly/35NdVT1> [as of Jan. 18, 2021].) “The unemployed tend to have higher
23 levels of impaired mental health including depression, anxiety, and stress, as well as
24 higher levels of mental health hospital admissions, chronic disease . . . and premature
25 mortality.” (Pharr, at p. 1 <http://bit.ly/39jZfeZ>; see Linn et al., *Effects of Unemployment*
26 *on Mental and Physical Health* (1985) 75 Am. J. of Pub. Health 502, 502
27 <https://bit.ly/3i24lAt> [as of Jan. 18, 2021].) “Unemployment is associated with
28 unhealthy behaviors such as increased alcohol and tobacco consumption and decreased
29 physical activity,” while employment is correlated with “better health, improved self-
30 confidence, self-esteem, and happiness.” (Pharr, at p. 1 <http://bit.ly/39jZfeZ>.)

³⁶ Pharr, *supra*, at p. 1 <http://bit.ly/39jZfeZ>.

³⁷ (Clemens et al., *What is the effect of unemployment on all-cause mortality? A cohort*
study using propensity score matching (2015) 25 European J. of Pub. Health 115
<https://bit.ly/3shFYmU> [as of Jan. 18, 2021].)

1 estimated “an almost 10% worse health (in absolute terms) from being unemployed
2 compared to being employed³⁸.” This third study noted other research findings that
3 unemployment has a negative health effect that extends beyond the period of
4 unemployment, and concluded that unemployment is “a public health problem.”

5 129. With respect to the implementation of Newsom’s latest Regional Orders,
6 Defendants offered no explanation whatsoever to justify the massive social, economic
7 and health costs to Plaintiffs and their businesses, despite Plaintiffs’ willingness and
8 ability to operate their respective businesses in compliance with CDC-related guidelines.

9 130. It is unconscionable that Plaintiffs and their employees and independent
10 contractors could, in perpetuity, (as Defendants’ Orders have no sunset), face ruinous
11 fines and months of incarceration for attempting to earn a living when there are zero
12 factual or scientific bases that exist so as to support the notion that Plaintiffs’ businesses
13 are responsible for the spread of COVID-19.

14 131. The Excessive Fines Clause “was taken verbatim from the English Bill of
15 Rights of 1689,” *United States v. Bajakajian*, 524 U.S. 321, 335 (1998), which itself
16 formalized a longstanding English prohibition on disproportionate fines. The Charter of
17 Liberties of Henry I, issued in 1101, stated that “[i]f any of my barons or men shall have
18 committed an offence he shall not give security to the extent of forfeiture of his money,
19 as he did in the time of my father, or of my brother, but *according to the measure of the*
20 *offence so shall he pay . . .*” *Sources of English Legal and Constitutional History* ¶ 8,
21 at 50 (M. Evans & R. Jackeds. 1984) (emphasis added). Expanding this principle,
22 Magna Carta required that “ameracements (the medieval predecessors of fines) should be
23 proportioned to the offense and that they should not deprive a wrongdoer of his
24 livelihood,” *Bajakajian*, 524 U.S. 335. “A free man shall be amerced for a small fault
25 only according to the measure thereof, and for a great crime according to its magnitude,
26

27 ³⁸ (Norström et al., *Does unemployment contribute to poorer health-related quality of*
28 *life among Swedish adults?* (2019) 19 BMC Pub. Health 1, 1 <https://bit.ly/38Mcbv8> [as
of Jan. 18, 2021].)

1 saving his position; and in like manner, a merchant saving his trade, and a villein saving
2 his tillage, if they should fall under Our mercy.” Magna Carta, ch. 20 (1215), in A.
3 Howard, Magna Carta: Text & Commentary 42 (rev. ed. 1998). *Timbs v. Indiana*, 139 S.
4 Ct. 682, 693 (2019).

5 132. Here, and because Defendants’ underlying Orders are arbitrary and
6 capricious and lack no rational basis with respect to their stated purposes (i.e. to curb
7 the spread of COVID-19) as applied to Plaintiffs’ businesses, the punishment set forth
8 in these Orders for non-compliance is wholly unreasonable and indeed cruel.

9 133. Plaintiffs have no adequate remedy at law and will suffer serious and
10 irreparable harm to their rights unless Defendants Orders are restrained.

11 134. Plaintiffs have found it necessary to engage the services of private counsel
12 to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
13 attorney’s fees and costs pursuant to 42 U.S.C. § 1988.

14 **PRAYER FOR RELIEF**

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

17 A. An order and judgment declaring that the Regional Orders and the Blue
18 Print for A Safer Economy, facially and as-applied to Plaintiffs, violates the First, Fifth,
19 Eighth and Fourteenth Amendments to the U.S. Constitution.

20 B. An order and judgment declaring that the Executive Orders—N-25-20, N-
21 33-20 and N-60-20—facially and as-applied to Plaintiffs, violate the Fifth, Eighth and
22 Fourteenth Amendments to the U.S. Constitution.

23 C. An order temporarily, preliminarily, and permanently enjoining and
24 prohibiting Defendants from enforcing the Blue Print for a Safer Economy Regional
25 Orders;

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

28 E. For attorneys’ fees and costs;

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

2
3 Date: January 21, 2021

DHILLON LAW GROUP INC.

4
5 By: /s/ Harmeet K. Dhillon

6 HARMEET K. DHILLON (SBN: 207873)

7 harmmeet@dhillonlaw.com

8 MARK P. MEUSER (SBN: 231335)

9 mmeuser@dhillonlaw.com

10 **GERAGOS & GERAGOS, APC**

11
12 By: /s/ Mark J. Geragos

13 MARK J. GERAGOS (SBN: 108325)

14 mark@geragos.com

15 ALEXANDRA KAZARIAN (SBN: 244494)

16 ak@geragos.com

17 MATTHEW M. HOESLY (SBN: 289593)

18 mhoesly@geragos.com

19 *Attorneys for Plaintiffs,*

20 CALM VENTURES, LLC dba PINEAPPLE

21 HILL SALOON AND GRILL *et al.*