

**DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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LEAGUE OF INDEPENDENT FITNESS  
FACILITIES AND TRAINERS, INC.,  
BASELINE FITNESS LLC,  
BUILDING YOUR TEMPLE LLC,  
BYT FITNESS 247 LLC,  
CLAWSON FITNESS, LLC,  
CLINTON FITNESS, INC.,  
D-LUX KARATE UNIVERSITY LLC,  
FENTON ATHLETIC CLUB, INC.,  
FENTON KARATE, LLC,  
FUSION FITNESS 24/7 LLC,  
H3 FITNESS LLC,  
I FITNESS PERSONAL TRAINING, INC.,  
JKP FITNESS, LLC,  
JPF ENTERPRISES, LLC,  
M FITNESS CLUB, LLC,  
MH & AB LLC,  
MOTOR CITY CF - ST. CLAIR SHORES, LLC,  
NASCOT ENTERPRISES, LLC,  
PRISON CITY PHYSIQUE LLC,  
RMP FITNESS INC.,  
STRENGTH BEYOND LLC,  
24/7 BOOTCAMP AND BOXING INC., and  
4 SEASONS GYM, LLC,

Plaintiffs,

v.

GRETCHEN E. WHITMER and  
ROBERT GORDON,  
Defendants.

Civil No. 1:20-cv-00458

Hon. Paul L. Maloney

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

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For their First Amended Complaint, Plaintiffs allege as follows:

### INTRODUCTION

1. Based on speculative modeling on the infectiousness and lethality of a new coronavirus, Governor Whitmer has issued executive orders that have shuttered civil society, placed 10 million people under house arrest, and taken jobs away from nearly 1.2 million people, all without due process of law. The Governor has not disclosed and/or disclosed only a minimal amount of the data or methodology used to create the modeling that purportedly justifies this extreme action. At the same time, through Executive Order 2020-38, she has suspended the Freedom of Information Act through June 4, 2020, preventing any independent assessment of whether the modeling used to justify locking down the entire State is reliable.

2. The Governor's initial Executive Order was premised on the perceived need to "flatten the curve" so as to avoid overwhelming the State's hospitals and healthcare centers, not to eradicate the virus. Although the curve has been flattened, the Governor has nonetheless issued stricter and confusing executive orders that unreasonably and unnecessarily interfere with Plaintiffs' constitutional rights.

3. Governor Whitmer's executive orders are unprecedented. For the first time in our State's history—indeed, in our nation's history—the State government is mass quarantining **healthy** people instead of the sick. As a free people, we have the unalienable right to pursue happiness, which includes the freedom to make our own choices about our safety and welfare without unconstitutional interference. In the face of the coronavirus, it

means the freedom to choose whether to stay at home, or to keep calm and carry on with the things that make life worth living.

4. Plaintiffs are affected by the Governor's orders. Under threat of criminal penalties, they have been forced to close or significantly restrict their businesses, depriving them of their liberty and property interests without due process. At the same time, without offering any justification, the Governor has allowed, and is still allowing, other businesses deemed "critical" to stay open, even though: (a) "critical" businesses must adhere to guidance from the U.S. Centers for Disease Control and Prevention ("CDC") on "social distancing"; and (b) Plaintiffs are fully capable of adhering to those same guide-lines if allowed to reopen.

5. Although Michigan, like all States in the Union, is expressly guaranteed a republican form of government under Article IV, Section 4 of the U.S. Constitution, the Governor has unilaterally suspended civil liberties and announced that this state of affairs will continue even over the Legislature's objection. When the Legislature announced bills to limit unilateral action and ensure constitutional government remains intact, Governor Whitmer said "***I'm not going to sign any bill that takes power away from me*** or any future governor."

6. Government by executive order and executive directives —over 90 of them so far—stirs echoes of royal prerogative.

7. Ours is a constitutional republic that empowers government to act within defined limits. Those limits apply at all times and under all circumstances. In war, in peace, and in pandemics. "No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great

exigencies of government. Such a doctrine leads directly to anarchy or despotism....” *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 120–122 (1866).

8. Plaintiffs seek a judicial declaration that the executive orders keeping people in their homes and away from their businesses—and all other orders, rules, and enforcement activity related to them—are unconstitutional under the Dormant Commerce Clause, the Privileges and Immunities Clause, the Privileges or Immunities Clause, the Due Process Clause, the Equal Protection Clause, and State law. Such a declaration, and a corresponding injunction, will yield a more rational, pragmatic response to the virus that saves lives, saves livelihoods, and preserves constitutional norms all at the same time.

9. In short, Plaintiffs bring this lawsuit to define the limits of a State’s police power. Whatever its limits, this legal term of art is not some shibboleth that unlocks absolute executive power and casts our Constitution to the wind. The issues raised in this Complaint are novel, and they will not be rendered moot if the executive order is lifted before the Court issues judgment. The issues presented are capable of repetition and are of such importance that they cannot evade judicial review.

## **PARTIES**

10. Plaintiff League of Independent Fitness Facilities and Trainers, Inc. (“LIFFT”) is a domestic non-profit 501(c)(4) organization with its principal place of business in Wayne County, Michigan. It has over four hundred members throughout the State of Michigan, including but not limited to: Allegan County, Kent County, Kalamazoo County, Macomb County, Oakland County, Ottawa County, and Wayne County, that engage in foreign, interstate, and intrastate commerce. At least 130 of its members operate a fitness facility, with members working out and attending fitness classes in Michigan. Because of Governor

Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, every single one of LIFFT's members have been forced to close or stop training operations since March 16, 2020 through the date of the filing of this Complaint.

11. Plaintiff Baseline Fitness LLC is a Michigan Limited Liability company with its principal place of business in Oakland County. It engages in foreign, interstate, and intrastate commerce. Baseline Fitness operates as a fitness facility in Oakland County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, Baseline Fitness has been forced to close since March 16, 2020 through the date of the filing of this Complaint

12. Plaintiff Building Your Temple LLC is a Michigan Limited Liability company with its principal place of business in Oakland County. It engages in foreign, interstate, and intrastate commerce. Building Your Temple operates as a fitness facility in Oakland County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, Building Your Temple has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

13. Plaintiff BYT Fitness 247 LLC is a Michigan Limited Liability company with its principal place of business in Oakland County. It engages in foreign, interstate, and intrastate commerce. BYT Fitness 247 operates as a fitness facility in Oakland County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, BYT Fitness

247 has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

14. Plaintiff Clawson Fitness, LLC is a Michigan Limited Liability company with its principal place of business in Oakland County. It engages in foreign, interstate, and intrastate commerce. Clawson Fitness operates as a fitness facility in Oakland County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, Clawson Fitness has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

15. Plaintiff Clinton Fitness, Inc. is a Michigan corporation with its principal place of business in Macomb County. It engages in foreign, interstate, and intrastate commerce. Clinton Fitness operates as a fitness facility in Macomb County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, Clinton Fitness has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

16. Plaintiff D-Lux Karate University LLC is a Michigan Limited Liability company with its principal place of business in Macomb County. It engages in foreign, interstate, and intrastate commerce. D-Lux Karate University operates as a fitness facility in Macomb County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, D-Lux Karate University has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

17. Plaintiff Fenton Athletic Club, Inc. is a Michigan corporation with its principal place of business in Genesee County. It engages in foreign, interstate, and intrastate commerce. Fenton Athletic Club operates as a fitness facility in Genesee County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, Fenton Athletic Club has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

18. Plaintiff Fenton Karate, LLC is a Michigan Limited Liability company with its principal place of business in Genesee County. It engages in foreign, interstate, and intrastate commerce. Fenton Karate operates as a fitness facility in Genesee County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, Fenton Karate has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

19. Plaintiff Fusion Fitness 24/7 LLC is a Michigan Limited Liability company with its principal place of business in Wayne County. It engages in foreign, interstate, and intrastate commerce. Fusion Fitness 24/7 operates as a fitness facility in Wayne County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, Fusion Fitness 24/7 has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

20. Plaintiff H3 Fitness LLC is a Michigan Limited Liability company with its principal place of business in Ottawa County. It engages in foreign, interstate, and intrastate

commerce. H3 Fitness operates as a fitness facility in Ottawa County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, H3 Fitness has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

21. Plaintiff I Fitness Personal Training is the d/b/a of a Michigan corporation with its principal place of business in Oakland County. It engages in foreign, interstate, and intrastate commerce. I Fitness Personal Training operates as a fitness facility in Oakland County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, I Fitness Personal Training has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

22. Plaintiff JKP Fitness is a Michigan Limited Liability Company with its principal place of business in Kent County. It engages in foreign, interstate, and intrastate commerce. JKP Enterprises operates as a fitness facility in Kent County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, JKP Enterprises has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

23. Plaintiff JPF Enterprises is a Michigan Limited Liability Company with its principal place of business in Kent County. It engages in foreign, interstate, and intrastate commerce. JPF Enterprises operates as a fitness facility in Kent County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, JPF

Enterprises has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

24. Plaintiff M Fitness Club, LLC is a Michigan Limited Liability Company with its principal place of business in Macomb County. It engages in foreign, interstate, and intrastate commerce. M Fitness Club operates as a fitness facility in Macomb County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, M Fitness Club has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

25. Plaintiff MH & AB LLC is a Michigan Limited Liability Company with its principal place of business in Macomb County. It engages in foreign, interstate, and intrastate commerce. MH & AB operates as a fitness facility in Macomb County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, MH & AB has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

26. Plaintiff Motor City CF – St. Clair Shores, LLC is a Michigan Limited Liability Company with its principal place of business in Macomb County. It engages in foreign, interstate, and intrastate commerce. Motor City CF – St. Clair Shores operates as a fitness facility in Macomb County, with members working out and attending fitness classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, Motor City CF – St. Clair Shores has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

27. Plaintiff Nascot Enterprises is a Michigan Limited Liability Company with its principal place of business in Oakland County, Michigan. It engages in foreign, interstate, and intrastate commerce. Nascot Enterprises operates fitness facilities in Oakland, Macomb, and Wayne Counties, with members attending workouts and classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, Nascot Enterprises has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

28. Plaintiff Prison City Physique LLC is a Michigan Limited Liability Company with its principal place of business in Jackson County, Michigan. It engages in foreign, interstate, and intrastate commerce. Prison City Physique operates as a fitness facility in Jackson County, with members attending workouts and classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, Prison City Physique has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

29. Plaintiff RMP Fitness Inc. is a Michigan corporation with its principal place of business in Macomb County, Michigan. It engages in foreign, interstate, and intrastate commerce. RMP Fitness operates as a fitness facility in Macomb County, with members attending workouts and classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, RMP Fitness has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

30. Plaintiff Strength Beyond LLC is a Michigan Limited Liability Company with its principal place of business in Kalamazoo County, Michigan. It engages in foreign, interstate, and intrastate commerce. Strength Beyond operates as a fitness facility in Kalamazoo

County, with members attending workouts and classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, Strength Beyond has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

31. Plaintiff 24/7 Fitness Bootcamp and Boxing Inc. is a Michigan corporation with its principal place of business in Ingham County, Michigan. It engages in foreign, interstate, and intrastate commerce. 24/7 Fitness Bootcamp and Boxing operates as a fitness facility in Ingham County, with members attending workouts and classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, 24/7 Fitness Bootcamp and Boxing has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

32. Plaintiff 4 Seasons Gym is a Michigan Limited Liability Company with its principal place of business in Gratiot County, Michigan. It engages in foreign, interstate, and intrastate commerce. 4 Seasons Gym operates as a fitness facility in Gratiot County, with members attending workouts and classes in Michigan. Because of the Governor Whitmer's executive orders and Director Gordon's Emergency Order and Emergency Rule, 4 Seasons Gym has been forced to close since March 16, 2020 through the date of the filing of this Complaint.

33. According to IHRSA (International Health & Racquet Sports Association), which is the national governing body that oversees the fitness and gym industry, there are over 1,100 gyms and fitness centers with over 1.5 million members in Michigan as of 2019.

34. Many businesses who have either remained open or are in the process of opening are businesses that are open to the general public. In contrast, Plaintiffs are

member-based fitness facilities and do not receive nearly the amount, if any, of “walk-in” business that retailers, restaurants or other businesses rely on for profit.

35. Defendant Gretchen E. Whitmer is the Governor of the State of Michigan. Plaintiffs sue her in her official capacity only.

36. Defendant Robert Gordon is the Director of the Michigan Department of Health and Human Services. Plaintiffs sue him in his official capacity only.

### **JURISDICTION**

37. This action challenges Governor Whitmer’s Executive Orders 2020-43 through 2020-96 (and their predecessors and future iterations of these orders) (the “**EOs**”), and Director Gordon’s Emergency Order and Emergency Rule (all collectively, the “**Lockdown Orders**”), related to the closure of Plaintiffs’ businesses, which Plaintiffs believe violate the following clauses of the U.S. Constitution:

- (a) Dormant Commerce Clause of Article I, Section 8;
- (b) Privileges and Immunities Clause of Article IV, Section 1;
- (c) Privileges or Immunities Clause of the Fourteenth Amendment;
- (d) Due Process Clause of the Fourteenth Amendment; and
- (e) Equal Protection Clause of the Fourteenth Amendment.

38. The Court therefore has federal-question jurisdiction under Article III of the U.S. Constitution and 28 U.S.C. § 1331.

39. Plaintiffs seek declaratory relief and a preliminary and permanent injunction against the Lockdown Orders and similarly crafted orders and rules issued in the future. Accordingly, they bring this action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651.

40. Plaintiffs also challenge that the EOs as exceeding the Governor's authority under the separation-of-powers doctrine enshrined in Article III, Section 2 of the Michigan Constitution of 1963; the Emergency Powers of the Governor Act ("**Emergency Powers Act**"), Mich. Comp. Laws §§ 10.31–10.33; and the Emergency Management Act, Mich. Comp. Laws §§ 30.401–30.421. Accordingly, Plaintiffs also invoke the Court's supplemental jurisdiction under 28 U.S.C. § 1367.

### VENUE

41. Governor Whitmer is a resident of, and the principal office of the Governor is located in, Lansing, Michigan.

42. Director Gordon's principal office is located in Lansing, Michigan.

43. A substantial part of the events giving rise to the claims in this Complaint occurred in Lansing, Michigan.

44. The city of Lansing is the seat of government for the State of Michigan. Michigan Const. art. III, § 1 (1963). It is located within Ingham County, which is within the territorial jurisdiction of the Western District of Michigan. 28 U.S.C. § 102(b)(1). This Court is therefore a proper venue for this action under 28 U.S.C. § 1391(b)(1)–(2).

### EXECUTIVE ACTION

#### *Executive Orders*

45. The Emergency Powers Act permits a governor, "during times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the State, or reasonable apprehension of immediate danger of a public emergency of that kind, when public safety is imperiled, ... [to] proclaim a state of emergency and designate the area

involved ... [and to] promulgate **reasonable** orders, rules, and regulations as he or she considers necessary to protect life or property or to bring the emergency situation within the affected area under control.” Mich. Comp. Laws § 10.31(1) (emphasis added). Executive orders issued under this Act have the force of law.

46. The Emergency Management Act permits a governor, upon the declaration of an emergency or a disaster, to compel evacuation, to control entry to, exit from, and the occupancy of premises within, the affected area, among other things. Mich. Comp. Laws § 30.405(1). Executive orders issued under this Act have the force of law.

47. On March 11, 2020, Governor Whitmer issued Executive Order 2020-04, which declared a “state of emergency” under both Acts based upon two presumptive diagnoses of coronavirus disease (“**COVID-19**”), a respiratory illness caused by virus named the severe acute respiratory syndrome coronavirus two (“**SARS-CoV-2**” or the “**coronavirus**”).

48. On March 16, 2020 Governor Whitmer issued Executive Order 2020-09 under both Acts. This order closed to the public, restaurants, food courts, cafes, coffee houses, and other places of accommodation. Under this order, “gymnasiums, fitness centers, recreation centers, indoor sports facilities, indoor exercise facilities, exercise studios, and spas” were also forced to close. A willful violation of EO 2020-09 is a misdemeanor for which a person can be imprisoned for up to 90 days and fined up to \$500. Mich. Comp. Laws §§ 10.33 and 30.405(3). All Plaintiffs complied with Executive Order 2020-09 and closed their doors.

49. On March 22, 2020, the Governor issued Executive Order 2020-20 under both Acts. This order closed to the public a wide range of public accommodations, including all restaurants, food courts, cafes, coffeehouses, and other places of public accommodation

offering food or beverages for on-site consumption. A willful violation of EO 2020-20 is a misdemeanor for which a person can be imprisoned for up to 90 days and fined up to \$500. Mich. Comp. Laws §§ 10.33, 30.405(3), and 750.504; EO 2020-20(6).

50. On March 23, 2020, the Governor issued Executive Order 2020-21 under both Acts. This order prohibits all in-person work that the Governor deems “not necessary to sustain or protect life.” A willful violation of EO 2020-21 is a misdemeanor for which a person can be imprisoned for up to 90 days and fined up to \$500. Mich. Comp. Laws §§ 10.33, 30.405(3), and 750.504; EO 2020-20(6).

51. On April 9, 2020, the Governor issued Executive Order 2020-42 under both Acts. This order extends EO 2020-21 through April 30, 2020, while imposing even greater restrictions on the general public than before. A willful violation of EO 2020-42 is a misdemeanor for which a person can be imprisoned for up to 90 days and fined up to \$500. Mich. Comp. Laws §§ 10.33, 30.405(3), and 750.504; EO 2020-42(17).

52. On April 13, 2020, the Governor issued Executive Order 2020-43 under both Acts. This order extends EO 2020-20 through April 30, 2020. A willful violation of EO 2020-43 is a misdemeanor for which a person can be imprisoned for up to 90 days and fined up to \$500. Mich. Comp. Laws §§ 10.33, 30.405(3), and 750.504; EO 2020-42(7).

53. On April 24, 2020, the Governor issued Executive Order 2020-59 under both Acts. This Order extends EO 2020-42 through May 15, 2020. It purports to loosen some restrictions imposed under EO 2020-42 as part of a phased reopening of the economy. A willful violation of EO 2020-59 is a misdemeanor for which a person can be imprisoned for up to 90 days and fined up to \$500. Mich. Comp. Laws §§ 10.33, 30.405(3), and 750.504; EO 2020-59(20).

54. On April 30, 2020, the Governor issued Executive Order 2020-66, terminating the state of emergency under the Emergency Management Act which was set to expire when the state legislature did not approve of an extension of the Act under the terms proposed by the Governor.

55. One minute after terminating the state of emergency under the Emergency Management Act on April 30, 2020, the Governor issued Executive Orders 2020-67 and 2020-68. In Executive Order 2020-67 the Governor declared a new state of emergency under the Emergency Powers of the Governors Act. In Executive Order 2020-68, the Governor declared a new state of emergency under the Emergency Management Act. A willful violation of either EO 2020-67 or 2020-68 is a misdemeanor for which a person can be imprisoned for up to 90 days and fined up to \$500. Mich. Comp. Laws §§ 10.33, 30.405(3), and 750.504; EO 2020-59(20).

56. On May 7, 2020, the Governor issued Executive Order 2020-77 under both Acts. EO 2020-77 started opening the economy slowly, allowing landscapers, the manufacturing sector, garden stores and nurseries, bicycle repair shops, real estate companies, moving companies, a limited amount of retail with major restrictions and construction to reopen with many restrictions. All other sectors, including fitness centers and gyms, remained closed. A willful violation of EO 2020-59 is a misdemeanor for which a person can be imprisoned for up to 90 days and fined up to \$500. Mich. Comp. Laws §§ 10.33, 30.405(3), and 750.504; EO 2020-59(20).

57. On May 18, 2020, the Governor issued Executive Order 2020-92 under both Acts. EO 2020-92 divided the state into eight regions. Further, the EO 2020-92 continued opening the economy slowly, allowing restaurants and bars to reopen at 50% capacity in

Regions 6 and 8 only (the Upper Peninsula and small parts of the northern Lower Peninsula), subject to other provisions of Executive Order 2020-91 which was issued the same day. For Regions 6 and 8 only, EO 2020-92 allowed individuals to gather in a social gathering of up to 10 people, allowed business offices to open if workers cannot work remotely, and allowed retail to return in limited capacity. All other sectors, including fitness centers and gyms, remained closed. A willful violation of EO 2020-59 is a misdemeanor for which a person can be imprisoned for up to 90 days and fined up to \$500. Mich. Comp. Laws §§ 10.33, 30.405(3), and 750.504; EO 2020-59(20).

58. On May 21, 2020, the Governor issued Executive Order 2020-96 under both Acts. EO 2020-96 made hotels and motel workers statewide part of the “critical infrastructure,” but did not allow hotels or motels to open gyms, pools, spas, or dining and entertainment areas. Further, the EO allows auto dealerships to open in a limited capacity statewide as of May 26, 2020. The EO further allows retail stores to open in a limited capacity statewide on May 26, 2020. Finally, the EO will allow non-emergency medical, dental and veterinary services to resume on May 29, 2020. All other sectors, including fitness centers and gyms, which were the first businesses shuttered by the Governor, remained closed. A willful violation of EO 2020-59 is a misdemeanor for which a person can be imprisoned for up to 90 days and fined up to \$500. Mich. Comp. Laws §§ 10.33, 30.405(3), and 750.504; EO 2020-59(20).

***Action by MDHHS***

59. On April 2, 2020, Director Gordon issued an Emergency Order under the Michigan Public Health Code. Mich. Comp. Laws § 333.2253(1). This order requires every

person in Michigan to comply with EO 2020-20 and EO 2020-21, and authorizes police and prosecutors to enforce those EOs as incorporated through the Emergency Order. See <https://perma.cc/K6ZH-HS6N>. This order also applies to EOs 2020-42, 2020-43, and 2020-59. A violation of an MDHHS order is a misdemeanor punishable by imprisonment for up to six months and a fine of \$200, or both. Mich. Comp. Laws § 333.2261. Thus, Director Gordon's Emergency Order effectively doubles the period of incarceration authorized under the Governor's executive orders.

60. At the same time, Director Gordon issued an Emergency Rule establishing a \$1,000 civil penalty for violations of Director Gordon's Emergency Order. See <https://perma.cc/8W5C-E98N>.

61. Since April 2, 2020, any person who violates Governor Whitmer's EOs (and thereby automatically violates Director Gordon's Emergency Order and the Emergency Rule) can now be imprisoned for up to six months, assessed a penal fine of up to \$500, and assessed a civil fine of up to \$1,000.

### GENERAL ALLEGATIONS

62. Although the coronavirus is highly contagious, it does not invariably result in COVID-19. For those who do develop COVID-19, the mortality rate is low. As of May 31, 2020, the State reported on its official coronavirus webpage 57,397 confirmed cases of COVID-19 (including those who no longer have COVID-19), which is roughly .57% of the State population. As of that same date, the State reported 5,747 deaths related to COVID-19. As a result, only 0.057% of the State's population has succumbed to the virus.

63. More important than the total number of cases is that, as of May 31, 2020, **Michigan has only 13,807 active COVID-19 cases**, which includes at least 1,800 cases

involving prisoners in Michigan (who by their very nature cannot spread the virus as easily as someone who is not incarcerated). Michigan currently ranks 18<sup>th</sup> in states with known active cases. See <https://www.worldometers.info/coronavirus/country/us/>. **The 13,807 known active cases represents .14 percent of the population who are capable of spreading the virus to other residents.**

64. In all likelihood, the survival rate in Michigan is far higher than discussed in Paragraph 62 above. Recent antibody testing conducted in New York State and a study in Los Angeles suggest that millions more have been infected with the coronavirus than previously known, and that the supermajority of those previously infected were either asymptomatic or experienced mild reactions to it. In New York, this new information has dropped the mortality rate to 0.5%—*i.e.*, a survival rate of 99.5%. In Los Angeles, it dropped the mortality rate to 0.1–0.3%—*i.e.*, a survival rate of 99.7–99.9%. There is no reason to believe that Michigan is exempt from this good news. Further, the most recent CDC projections in the U.S. show a mortality rate of .2 to .4%. See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>. As more Michiganders are tested, increases in positive tests will yield a higher survival rate.

65. The number of deaths caused by COVID-19, while unquestionably tragic, is not “unprecedented,” as routinely claimed. What is unprecedented is Governor Whitmer’s response to it.

66. In 1918, the deadly Spanish Flu swept the globe, infecting over 500 million people (roughly one third of the world population, killing between 20 million and 50 million people worldwide. Over 675,000 people in the United States lost their lives to the flu. With a population of 3.7 million people, nearly 15,000 Michiganders died in the pandemic. In

response to the Spanish Flu, Governor Albert Sleeper issued an order closing places of public amusement. Individual cities decided whether to close schools. Work continued. Governor Sleeper wisely balanced public health while preserving commerce. The current executive orders fail to do so, overreaching to such extent that the State's economy is spiraling toward a depression.

67. In the 1940s and the early 1950s, annual summer polio epidemics killed thousands of children before a vaccine was found. Even under such dire circumstances, several Michigan governors of both parties, including Governor G. Mennen Williams, refrained from violating constitutional norms with excessive executive orders during those years.

68. In the late 1960s, the Hong Kong Flu swept across the globe killing more than 1 million people. The CDC estimated that 100,000 people died in the U.S. Michigan, like other States, was affected. Governor George Romney did not place residents under house arrest or shutdown the economy then, either.

69. Governor Whitmer repeatedly states that decisions must be made on data and science. Yet, despite the positive State-specific data, the Governor ***tightened restrictions*** through an executive order that the *Wall Street Journal* described as the “most excessive” in the country.

70. Among other enhancements, the new order imposed harsher restrictions on the ability to travel and banned people from visiting their families, working, and purchasing a variety of everyday items at stores. The new order was announced at 3:00 p.m. on April 9th, and became effective at 12:01 a.m. on April 10th—*i.e.*, on less than 12 hours' notice. The

Governor timed EO 2020-42 to prohibit families from gathering to celebrate Easter Sunday and Passover.

71. Although her previous order allowed “critical infrastructure workers” to perform in-person work—defined as those workers described as critical by the director of the U.S. Cybersecurity and Infrastructure Agency (“**CISA**”) in guidance issued March 19th—in compliance with CDC guidance on “social distancing,” Governor Whitmer has expressly, arbitrarily, and capriciously refused to adopt CISA’s updated definition of “critical infrastructure workers,” in EO 2020-42 and EO 2020-59. Other governors who have issued similar executive orders have adopted the updated federal definitions. Governor Whitmer has never explained why these new definitions have not been, and cannot be, adopted in Michigan. This is further evidence that the Governor is unreasonably keeping more Michiganders locked up in their homes than necessary.

72. Taking Governor Whitmer at her word that she wants to make decisions based on data, and lacking confidence in the Governor’s modeling because the underlying data and methodology is unavailable to the public, a group of businesses (not named in this lawsuit) hired Anderson Economic Group (“**AEG**”) to analyze the infection curve and the economic effects of her EOs, and they provided the expert’s report to the Governor on April 13, 2020. The Governor has not responded. At a press conference on April 27, 2020, the Governor confirmed that she has not read the expert’s report in the two weeks since it was delivered.

73. An economic depression is predictable following the shutdown of civil society caused by the Lockdown Orders. Businesses around Michigan are permanently closing because they cannot pay employees and vendors. More will be forced to permanently close the longer that the Lockdown Orders and any similarly drafted successor orders are in place.

74. Consistent with the assessments in the AEG report, in the first month of the lockdown order, nearly 1.2 million Michiganders reportedly filed for unemployment, the largest number of unemployment claims in the State's history. Michigan is among the top five worst states for unemployment. *See* Exhibit 1, AEG Report. According to Jeff Donofrio, Director of the Michigan Department of Labor and Economic Opportunity, this means more than 25% of Michigan's workforce filed for unemployment in the span of four weeks because of the Lockdown Orders. For context, the national average unemployment rate during the Great Depression of 1929 was 26%.

75. Employers fund unemployment benefits. Mich. Comp. Laws § 421.13. The Governor offered scant insight on how the unemployment system can keep paying benefits if employers can't operate their businesses. If businesses can't operate, then they can't generate revenue. And, if they can't generate revenue, then they have no way of paying into the unemployment fund.

76. According to the U.S. Department of the Treasury, as of March 31, 2020, Michigan's unemployment trust fund balance was \$4.55 billion. State officials predict that the fund will be drained in July. *See* <https://perma.cc/R54P-GTMU>. One recent prediction is that the Michigan Unemployment Trust Fund will be drained within two months and incur a \$15 billion deficit. Taxes on businesses may double to pay back the loans that the State would require to keep paying unemployment. This will leave less money for businesses to rehire workers and prolong the economic devastation.

77. Unemployment is not the only factor in play. For those fortunate enough to remain employed during this time, many of them are subject to furloughs, pay cuts, and mandatory sick leave. According to a recent study by the Anderson Economic Group, nearly

1.5 million Michiganders will lose significant income because of the coronavirus and the Governor's orders by the end of April. Exhibit 1, AEG Report.

78. Plaintiffs want to reopen their business to help their current and former employees (whom they hope to rehire) put food on their tables, keep roofs over their heads, and clothes on their backs. Governor Whitmer and Director Gordon forbid them from doing so under pain of criminal punishment and civil fines. Plaintiffs should not be forced to choose between risking criminal prosecution and economic sanctions on the one hand or exercising their constitutional rights on the other.

79. Plaintiffs also want to reopen their businesses to help the public in general (and their members specifically) in their ability to fight COVID-19. It is well documented that obesity, diabetes and hypertension are some of the highest risk factors that can lead to a poorer outcome for Michiganders that are infected with and contract COVID-19. *See* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>. Physical exercise, both cardiovascular exercise and strength training help improve those with at-risk factors associated with COVID-19. *See, eg,* <https://www.norwalkhospital.org/newsroom/article-listing/adults-exercise-and-covid19>.

80. Further, Plaintiffs are in a unique position to help those who have not contracted and may never contract COVID-19, but who are nonetheless struggling during these challenging times. Physical exercise has been proven to assist people with their mental health. Researchers have found that exercise helps with both depression and anxiety, two mental conditions that people across Michigan are struggling with in the face of Defendants' lock down orders, social distancing, job loss, and dealing with unwell family members. *See*

[https://www.ted.com/talks/wendy\\_suzuki\\_the\\_brain\\_changing\\_benefits\\_of\\_exercise?language=en](https://www.ted.com/talks/wendy_suzuki_the_brain_changing_benefits_of_exercise?language=en);  
See also <https://www.psychologytoday.com/us/blog/what-works-and-why/201803/how-your-mental-health-reaps-the-benefits-exercise>.

81. On April 15, 2020, Planet Fitness sent a letter to Governor Whitmer outlining the economic impact that the closures have had on its business, the benefit that gyms have to the health and well-being to the citizens of Michigan, and outlining a comprehensive plan for reopening safely. *See Exhibit 2*, Letter from Planet Fitness to Governor Whitmer, dated April 15, 2020.

82. Likewise, on May 15, 2020, the Michigan Fitness Clubs Association sent a letter to Governor Whitmer. This letter also outlined the economic impact that the closures have had on its business, the benefit that gyms have to the health and well-being to the citizens of Michigan and outlining a comprehensive plan for reopening safely. *See Exhibit 3*, Letter from MFCA to Governor Whitmer, dated May 15, 2020.

83. Also on May 15, 2020, Plaintiff LIFFT, Inc. sent a letter to Governor Whitmer. As with the previous two letters, the letter from LIFFT to the Governor outlined the economic impact that the closures have had on its members, the benefit that gyms have to the health and well-being to the citizens of Michigan and outlining a comprehensive plan for reopening safely. *See Exhibit 4*, Letter from LIFFT, Inc. to Governor Whitmer, dated May 15, 2020.

84. Upon information and belief, there has been no response from the Governor's Office to any of the correspondence outlined in paragraphs 81 through 83.

85. On Friday, May 22, 2020, the initial Complaint was filed in this action. Service was accepted on behalf of Defendants on Tuesday, May 26, 2020.

86. Plaintiffs incorporate all of the foregoing paragraphs into each of the following causes of action.

**COUNT I**  
**DORMANT COMMERCE CLAUSE**

87. “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” 42 U.S.C. § 1983.

88. The Commerce Clause of the U.S. Constitution grants Congress the power “[t]o regulate commerce with foreign Nations, among the several States, and with the Indian Tribes.” U.S. Const. art. I, § 8, cl. 3.

89. In its dormant state, often called the Dormant Commerce Clause, the Commerce Clause precludes States from enacting legislation that discriminates against or impermissibly burdens interstate commerce. State laws that facially discriminate against interstate commerce are invalid *per se* under the Commerce Clause. This is true also of State laws that are facially neutral, if they impermissibly burden interstate commerce in practice. *West Lynn Creamery v. Healy*, 512 U.S. 186, 194–195 (1994).

90. Although the Dormant Commerce Clause is usually invoked to challenge protectionist laws that favor in-state businesses over out-of-state businesses, the Clause has a broader function: to guarantee for all citizens the right to access and participate in interstate commerce. Just as no State can prevent out-of-staters from engaging in commerce

with its residents, no State may prevent its residents from participating in commerce with those located in another State.

91. The Lockdown Orders impermissibly restrict Plaintiffs from exercising the right to engage in interstate commerce:

a. *LIFFT*. A portion of LIFFT's members' annual business involves customers who pay drop-in rates to workout at their fitness facilities. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facilities. The Lockdown Orders have prevented, and still prevent, LIFFT's members' from operating their facilities at all, including selling services to customers from out-of-state customers because the Lockdown Orders categorically prohibit LIFFT's members from operating their fitness facilities. LIFFT's members' have suffered a significant decrease in revenue and have lost business opportunities because of the Lockdown Orders.

b. *Baseline Fitness LLC*. A portion of Baseline Fitness' annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, Baseline Fitness from operating its facility at all, including selling services to customers from out-of- state customers because the Lockdown Orders categorically prohibit Baseline Fitness' facility from operating. Baseline Fitness has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

c. *Building Your Temple LLC*. A portion of Building Your Temple's annual business involves customers who pay drop-in rates to workout at the fitness facility. This

may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, Building Your Temple's facility from operating at all, including selling services to customers from out-of- state customers because the Lockdown Orders categorically prohibit Building Your Temple's facility from operating. Building Your Temple has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

d. *BYT Fitness 247 LLC.* A portion of BYT Fitness 247's annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, BYT Fitness 247's facility from operating at all, including selling services to customers from out-of- state customers because the Lockdown Orders categorically prohibit BYT Fitness 247's facility from operating. BYT Fitness 247 has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

e. *Clawson Fitness.* A portion of Clawson Fitness' annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, Clawson Fitness' facility from operating at all, including selling services to customers from out-of- state customers because the Lockdown Orders categorically prohibit Clawson Fitness' facility from operating. Clawson Fitness has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

f. *Clinton Fitness.* A portion of Clinton Fitness' annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, Clinton Fitness' facility from operating at all, including selling services to customers from out-of- state customers because the Lockdown Orders categorically prohibit Clinton Fitness' facility from operating. Clinton Fitness has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

g. *D-Lux Karate University.* A portion of D-Lux Karate University's annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, D-Lux Karate University's facility from operating at all, including selling services to customers from out-of- state customers because the Lockdown Orders categorically prohibit D-Lux Karate University's facility from operating. D-Lux Karate University has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

h. *Fenton Athletic Club, Inc.* A portion of Fenton Athletic Club's annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, Fenton Athletic Club's facility from operating at all, including selling services to customers from out-of- state customers because the Lockdown Orders

categorically prohibit Fenton Athletic Club's facility from operating. Fenton Athletic Club has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

i. *Fenton Karate, LLC.* A portion of Fenton Karate's annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, Fenton Karate's facility from operating at all, including selling services to customers from out-of- state customers because the Lockdown Orders categorically prohibit Fenton Karate's facility from operating. Fenton Karate has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

j. *Fusion Fitness 24/7.* A portion of Fusion Fitness 24/7's annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, Fusion Fitness 24/7's facility from operating at all, including selling services to customers from out-of- state customers because the Lockdown Orders categorically prohibit Fusion Fitness 24/7's facility from operating. Fusion Fitness 24/7 has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

k. *H3 Fitness LLC.* A portion of H3 Fitness' annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, H3

Fitness' facility from operating at all, including selling services to customers from out-of-state customers because the Lockdown Orders categorically prohibit H3 Fitness from operating its facility. H3 Fitness has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

l. *I Fitness Personal Training.* A portion of I Fitness Personal Training's annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, I Fitness Personal Training's facility from operating at all, including selling services to customers from out-of-state customers because the Lockdown Orders categorically prohibit I Fitness Personal Training from operating its facility. I Fitness Personal Training has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

m. *JKP Fitness.* A portion of JKP Fitness' annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, JKP Fitness' facility from operating at all, including selling services to customers from out-of-state customers because the Lockdown Orders categorically prohibit JKP Fitness from operating its facility. JKP Enterprises has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

n. *JPF Enterprises.* A portion of JPF Enterprises' annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include

guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, JPF Enterprises from operating its facility at all, including selling services to customers from out-of- state customers because the Lockdown Orders categorically prohibit JPF Enterprises' facility from operating. JPF Enterprises has suffered lost business opportunities because of the Lockdown Orders.

o. *M Fitness Club, LLC*. A portion of M Fitness Club's annual business involves customers who pay drop-in rates to workout at the fitness facilities. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facilities. The Lockdown Orders have prevented, and still prevent, M Fitness Club from operating its facilities at all, including selling services to customers from out-of- state customers, because the Lockdown Orders categorically prohibit M Fitness Club from operating its facilities. M Fitness Club has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

p. *MH & AB LLC*. A portion of MH & AB's annual business involves customers who pay drop-in rates to workout at the fitness facilities. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facilities. The Lockdown Orders have prevented, and still prevent, MH & AB from operating its facilities at all, including selling services to customers from out-of- state customers, because the Lockdown Orders categorically prohibit MH & AB from operating its facilities. MH & AB has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

q. *Motor City CF – St. Clair Shores, LLC.* A portion of Motor City CF-St. Clair Shores' annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, Motor City CF-St. Clair Shores from operating its facilities at all, including selling services to customers from out-of- state customers, because the Lockdown Orders categorically prohibit Motor City CF-St. Clair Shores from operating its facilities. Motor City CF-St. Clair Shores has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

r. *Nascot Enterprises.* A portion of Nascot Enterprises' annual business involves customers who pay drop-in rates to workout at the fitness facilities. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facilities. The Lockdown Orders have prevented, and still prevent, Nascot Enterprises from operating its facilities at all, including selling services to customers from out-of- state customers, because the Lockdown Orders categorically prohibit Nascot Enterprises from operating its facilities. Nascot Enterprises has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

s. *Prison City Physique.* A portion of Prison City Physique's annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, Prison City Physique from operating its facilities at all, including selling services to customers from out-of- state customers, because the Lockdown Orders

categorically prohibit Prison City Physique from operating its facilities. Prison City Physique has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

t. *RMP Fitness*. A portion of RMP Fitness' annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, RMP Fitness from operating its facilities at all, including selling services to customers from out-of- state customers, because the Lockdown Orders categorically prohibit RMP Fitness from operating its facilities. RMP Fitness has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

u. *Strength Beyond LLC*. A portion of Strength Beyond's annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, Strength Beyond from operating its facilities at all, including selling services to customers from out-of- state customers, because the Lockdown Orders categorically prohibit Strength Beyond from operating its facilities. Strength Beyond has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

v. *24/7 Fitness Bootcamp and Boxing, Inc.* A portion of 24/7 Fitness Bootcamp and Boxing's annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility.

The Lockdown Orders have prevented, and still prevent, 24/7 Fitness Bootcamp and Boxing from operating its facilities at all, including selling services to customers from out-of- state customers, because the Lockdown Orders categorically prohibit it from operating its facilities. 24/7 Fitness Bootcamp and Boxing has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

w. *4 Seasons Gym*. A portion of 4 Seasons Gym's annual business involves customers who pay drop-in rates to workout at the fitness facility. This may and does include guests from outside of Michigan who are in town vacationing or seeing family and friends who are members of the facility. The Lockdown Orders have prevented, and still prevent, 4 Seasons Gym from operating its facilities at all, including selling services to customers from out-of- state customers, because the Lockdown Orders categorically prohibit 4 Seasons Gym from operating its facilities. 4 Seasons Gym has suffered a decrease in revenue and has lost business opportunities because of the Lockdown Orders.

92. Governor Whitmer and Director Gordon acted under color of State law in an official capacity and within the scope of their official duties when issuing the Lockdown Orders.

93. Plaintiffs seek a declaration that the Lockdown Orders violate the Dormant Commerce Clause, and an injunction against further infringements of their rights under this Clause as described in the Prayer for Relief.

## **COUNT II PRIVILEGES AND IMMUNITIES CLAUSE**

94. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or

other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” 42 U.S.C. § 1983.

95. The Privileges and Immunities Clause of Article IV of the U.S. Constitution provides that “[t]he citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.” U.S. Const. art. IV, § 2, cl. 1.

96. The Privileges and Immunities Clause protects a citizen’s right to pursue a livelihood in a State other than the State in which he is a resident. *Baldwin v. Fish & Game Comm’n of Montana*, 436 U.S. 371 (1978).

97. By June 1, fitness facilities in **forty-two** states have opened or will be open with restrictions: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming. **Notably, gyms in Michigan’s three bordering states of Indiana, Ohio and Wisconsin have also been opened.**

98. The Lockdown Orders impermissibly restrict Plaintiffs from exercising their rights under the Privileges and Immunities Clause:

a. *LIFFT*. The Lockdown Orders have prevented, and continue to prevent, *LIFFT*’s members from seeking clients located outside of Michigan. They also categorically prohibit *LIFFT*’s members from opening their doors to keep people fit and health (mentally and physically), even though fitness facilities like *LIFFT*’s members that are located in other States have been, and remain, free to do so.

b. *Baseline Fitness LLC*. The Lockdown Orders have prevented, and continue to prevent, Baseline Fitness from seeking clients located outside of Michigan. They also categorically prohibit Baseline Fitness from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like Baseline Fitness that are located in other States have been, and remain, free to do so.

c. *Building Your Temple LLC*. The Lockdown Orders have prevented, and continue to prevent, Building Your Temple from seeking clients located outside of Michigan. They also categorically prohibit Building Your Temple from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like Building Your Temple that are located in other States have been, and remain, free to do so.

d. *BYT Fitness 247*. The Lockdown Orders have prevented, and continue to prevent, BYT Fitness 247 from seeking clients located outside of Michigan. They also categorically prohibit BYT Fitness 247 from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like BYT Fitness 247 that are located in other States have been, and remain, free to do so.

e. *Clawson Fitness*. The Lockdown Orders have prevented, and continue to prevent, Clawson Fitness from seeking clients located outside of Michigan. They also categorically prohibit Clawson Fitness from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like Clawson Fitness that are located in other States have been, and remain, free to do so.

f. *Clinton Fitness*. The Lockdown Orders have prevented, and continue to prevent, Clinton Fitness from seeking clients located outside of Michigan. They also categorically prohibit Clinton Fitness from opening its doors to keep people fit and healthy

(mentally and physically), even though fitness facilities like Clinton Fitness that are located in other States have been, and remain, free to do so.

g. *D-Lux Karate University*. The Lockdown Orders have prevented, and continue to prevent, D-Lux Karate University from seeking clients located outside of Michigan. They also categorically prohibit D-Lux Karate University from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like D-Lux Karate University that are located in other States have been, and remain, free to do so.

h. *Fenton Athletic Club*. The Lockdown Orders have prevented, and continue to prevent, Fenton Athletic Club from seeking clients located outside of Michigan. They also categorically prohibit Fenton Athletic Club from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like Fenton Athletic Club that are located in other States have been, and remain, free to do so.

i. *Fenton Karate*. The Lockdown Orders have prevented, and continue to prevent, Fenton Karate from seeking clients located outside of Michigan. They also categorically prohibit Fenton Karate from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like Fenton Karate that are located in other States have been, and remain, free to do so.

j. *Fusion Fitness 24/7*. The Lockdown Orders have prevented, and continue to prevent, Fusion Fitness 24/7 from seeking clients located outside of Michigan. They also categorically prohibit Fusion Fitness 24/7 from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like Fusion Fitness 24/7 that are located in other States have been, and remain, free to do so.

k. *H3 Fitness LLC.* The Lockdown Orders have prevented, and continue to prevent, H3 Fitness from seeking clients located outside of Michigan. They also categorically prohibit H3 Fitness from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like H3 Fitness that are located in other States have been, and remain, free to do so.

l. *I Fitness Personal Training.* The Lockdown Orders have prevented, and continue to prevent, I Fitness Personal Training from seeking clients located outside of Michigan. They also categorically prohibit I Fitness Personal Training from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like I Fitness Personal Training that are located in other States have been, and remain, free to do so.

m. *JKP Fitness.* The Lockdown Orders have prevented, and continue to prevent, JKP Fitness from seeking clients located outside of Michigan. They also categorically prohibit JKP Fitness from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like JKP Fitness that are located in other States have been, and remain, free to do so.

n. *JPF Enterprises.* The Lockdown Orders have prevented, and continue to prevent, JPF Enterprises from seeking clients located outside of Michigan. They also categorically prohibit JPF Enterprises from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like JPF Enterprises that are located in other States have been, and remain, free to do so.

o. *M Fitness Club.* The Lockdown Orders have prevented, and continue to prevent, M Fitness Club from seeking clients located outside of Michigan. They also

categorically prohibit M Fitness Club from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like M Fitness Club that are located in other States have been, and remain, free to do so.

p. *MH & AB*. The Lockdown Orders have prevented, and continue to prevent, MH & AB from seeking clients located outside of Michigan. They also categorically prohibit MH & AB from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like MH & AB that are located in other States have been, and remain, free to do so.

q. *Motor City CF – St. Clair Shores*. The Lockdown Orders have prevented, and continue to prevent, Motor City CF – St. Clair Shores from seeking clients located outside of Michigan. They also categorically prohibit Motor City CF – St. Clair Shores from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like Motor City CF – St. Clair Shores that are located in other States have been, and remain, free to do so.

r. *Nascot Enterprises*. The Lockdown Orders have prevented, and continue to prevent, Nascot Enterprises from seeking clients located outside of Michigan. They also categorically prohibit Nascot Enterprises from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like Nascot Enterprises that are located in other States have been, and remain, free to do so.

s. *Prison City Physique*. The Lockdown Orders have prevented, and continue to prevent, Prison City Physique from seeking clients located outside of Michigan. They also categorically prohibit Prison City Physique from opening its doors to keep people

fit and healthy (mentally and physically), even though fitness facilities like Prison City Physique that are located in other States have been, and remain, free to do so.

t. *RMP Fitness*. The Lockdown Orders have prevented, and continue to prevent, RMP Fitness from seeking clients located outside of Michigan. They also categorically prohibit RMP Fitness from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like RMP Fitness that are located in other States have been, and remain, free to do so.

u. *Strength Beyond*. The Lockdown Orders have prevented, and continue to prevent, Strength Beyond from seeking clients located outside of Michigan. They also categorically prohibit Strength Beyond from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like Strength Beyond that are located in other States have been, and remain, free to do so.

v. *24/7 Fitness Bootcamp and Boxing*. The Lockdown Orders have prevented, and continue to prevent, 24/7 Fitness Bootcamp and Boxing from seeking clients located outside of Michigan. They also categorically prohibit it from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like 24/7 Fitness Bootcamp and Boxing that are located in other States have been, and remain, free to do so.

w. *4 Seasons Gym*. The Lockdown Orders have prevented, and continue to prevent, 4 Seasons Gym from seeking clients located outside of Michigan. They also categorically prohibit 4 Seasons Gym from opening its doors to keep people fit and healthy (mentally and physically), even though fitness facilities like 4 Seasons Gym that are located in other States have been, and remain, free to do so.

99. Governor Whitmer and Director Gordon acted under color of State law in an official capacity and within the scope of their official duties when issuing the Lockdown Orders.

100. Plaintiffs seek a declaration that the Lockdown Orders violate the Privileges and Immunities Clause, and an injunction against further infringements of their rights under this Clause as described in the Prayer for Relief.

### **COUNT III PRIVILEGES OR IMMUNITIES CLAUSE**

101. “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” 42 U.S.C. § 1983.

102. The Privileges or Immunities Clause of the Fourteenth Amendment to the U.S. Constitution provides that “[n]o State [can] make or enforce any law [that] abridge[s] the privileges or immunities of citizens of the United States.” U.S. Const. am. XIV, § 1, cl. 2.

103. By June 1, fitness facilities in the following states have opened or will be open: Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming. **Notably, gyms in Michigan’s three bordering states of Indiana, Ohio and Wisconsin have also been opened.**

104. The Lockdown Orders impermissibly restrict Plaintiffs from exercising these rights:

a. *LIFFT*. The Lockdown Orders have prevented, and continue to prevent, LIFFT's members from seeking clients located inside and outside of Michigan. They also categorically prohibit LIFFT's members from opening their doors to keep people fit and health (mentally and physically), even though fitness facilities like their members that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

b. *Baseline Fitness LLC*. The Lockdown Orders have prevented, and continue to prevent, Baseline Fitness from seeking clients located inside and outside of Michigan. They also categorically prohibit Baseline Fitness from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like Baseline Fitness that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

c. *Building Your Temple LLC*. The Lockdown Orders have prevented, and continue to prevent, Building Your Temple from seeking clients located inside and outside of Michigan. They also categorically prohibit Building Your Temple from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like Building Your Temple that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

d. *BYT Fitness 247 LLC*. The Lockdown Orders have prevented, and continue to prevent, BYT Fitness 247 from seeking clients located inside and outside of Michigan. They also categorically prohibit BYT Fitness 247 from opening its doors to keep

people fit and health (mentally and physically), even though fitness facilities like BYT Fitness 247 that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

e. *Clawson Fitness*. The Lockdown Orders have prevented, and continue to prevent, Clawson Fitness from seeking clients located inside and outside of Michigan. They also categorically prohibit Clawson Fitness from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like Clawson Fitness that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

f. *Clinton Fitness*. The Lockdown Orders have prevented, and continue to prevent, Clinton Fitness from seeking clients located inside and outside of Michigan. They also categorically prohibit Clinton Fitness from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like Clinton Fitness that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

g. *D-Lux Karate University*. The Lockdown Orders have prevented, and continue to prevent, D-Lux Karate University from seeking clients located inside and outside of Michigan. They also categorically prohibit D-Lux Karate University from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like D-Lux Karate University that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

h. *Fenton Athletic Club*. The Lockdown Orders have prevented, and continue to prevent, Fenton Athletic Club from seeking clients located inside and outside of

Michigan. They also categorically prohibit Fenton Athletic Club from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like Fenton Athletic Club that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

i. *Fenton Karate*. The Lockdown Orders have prevented, and continue to prevent, Fenton Karate from seeking clients located inside and outside of Michigan. They also categorically prohibit Fenton Karate from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like Fenton Karate that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

j. *Fusion Fitness 24/7*. The Lockdown Orders have prevented, and continue to prevent, Fusion Fitness 24/7 from seeking clients located inside and outside of Michigan. They also categorically prohibit Fusion Fitness 24/7 from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like Fusion Fitness 24/7 that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

k. *H3 Fitness LLC*. The Lockdown Orders have prevented, and continue to prevent, H3 Fitness from seeking clients located inside and outside of Michigan. They also categorically prohibit H3 Fitness from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like H3 Fitness that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

l. *I Fitness Personal Training, Inc.* The Lockdown Orders have prevented, and continue to prevent, I Fitness Personal Training from seeking clients located inside and outside of Michigan. They also categorically prohibit I Fitness Personal Training from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like I Fitness Personal Training that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

m. *JKP Fitness.* The Lockdown Orders have prevented, and continue to prevent, JKP Fitness from seeking clients located inside and outside of Michigan. They also categorically prohibit JKP Fitness from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like JKP Fitness that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

n. *JPF Enterprises.* The Lockdown Orders have prevented, and continue to prevent, JPF Enterprises from seeking clients located inside and outside of Michigan. They also categorically prohibit JPF Enterprises from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like JPF Enterprises that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

o. *M Fitness Club.* The Lockdown Orders have prevented, and continue to prevent, M Fitness Club from seeking clients located inside and outside of Michigan. They also categorically prohibit M Fitness Club from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like M Fitness Club that are

located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

p. *MH & AB*. The Lockdown Orders have prevented, and continue to prevent, MH & AB from seeking clients located inside and outside of Michigan. They also categorically prohibit MH & AB from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like MH & AB that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

q. *Motor City CF – St. Clair Shores*. The Lockdown Orders have prevented, and continue to prevent, Motor City CF – St. Clair Shores from seeking clients located inside and outside of Michigan. They also categorically prohibit Motor City CF – St. Clair Shores from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like Motor City CF – St. Clair Shores that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

r. *Nascot Enterprises*. The Lockdown Orders have prevented, and continue to prevent, Nascot Enterprises from seeking clients located inside and outside of Michigan. They also categorically prohibit Nascot Enterprises from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like Nascot Enterprises that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

s. *Prison City Physique*. The Lockdown Orders have prevented, and continue to prevent, Prison City Physique from seeking clients located inside and outside of

Michigan. They also categorically prohibit Prison City Physique from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like Prison City Physique that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

t. *RMP Fitness*. The Lockdown Orders have prevented, and continue to prevent, RMP Fitness from seeking clients located inside and outside of Michigan. They also categorically prohibit RMP Fitness from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like RMP Fitness that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

u. *Strength Beyond*. The Lockdown Orders have prevented, and continue to prevent, Strength Beyond from seeking clients located inside and outside of Michigan. They also categorically prohibit Strength Beyond from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like Strength Beyond that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

v. *24/7 Fitness Bootcamp and Boxing*. The Lockdown Orders have prevented, and continue to prevent, 24/7 Fitness Bootcamp and Boxing from seeking clients located inside and outside of Michigan. They also categorically prohibit it from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like 24/7 Fitness Bootcamp and Boxing that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

w. *4 Seasons Gym*. The Lockdown Orders have prevented, and continue to prevent, 4 Seasons Gym from seeking clients located inside and outside of Michigan. They also categorically prohibit 4 Seasons Gym from opening its doors to keep people fit and health (mentally and physically), even though fitness facilities like 4 Seasons Gym that are located in other States have been, and remain, free to do so. In fact, fitness facilities in bordering states Indiana, Ohio and Wisconsin have been opened.

105. Governor Whitmer and Director Gordon acted under color of State law in an official capacity and within the scope of their official duties when issuing the Lockdown Orders.

106. Plaintiffs seek a declaration that the Lockdown Orders violate the Privileges or Immunities Clause, and an injunction against further infringements of their rights under this Clause as described in the Prayer for Relief.

#### **COUNT IV PROCEDURAL DUE PROCESS**

107. “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” 42 U.S.C. § 1983.

108. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides that no State can “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1, cl. 3.

109. The procedural component of the Due Process Clause prohibits government from depriving Plaintiffs of liberty and property interests without providing any process before or after the deprivations occurred.

110. To establish a procedural due process claim under 42 U.S.C. § 1983, a plaintiff must show that (1) it had a life, liberty, or property interest protected by the Due Process Clause; (2) it was deprived of this protected interest; and (3) the state did not afford it adequate procedural rights. See *Daily Servs., LLC v. Valentino*, 756 F.3d 893, 904 (CA6 2014).

111. Plaintiffs have a protected liberty interest in the right to live without arbitrary governmental interference with their liberty and property interests. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1988).

112. Liberty “denotes not merely freedom from bodily restraint ***but also the right of the individual to contract, to engage in any of the common occupations of life***, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, ***and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men.***” *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 572 (1972) (emphases added).

113. Plaintiffs had protected liberty and property interests, which Defendants infringed through the Lockdown Orders:

a. LIFFT’s members have been, and are being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating fitness facilities for their members.

b. Baseline Fitness LLC has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

c. Building Your Temple LLC has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

d. BYT Fitness 247 LLC has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

e. Clawson Fitness, LLC has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

f. Clinton Fitness, Inc. has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

g. D-Lux Karate University, LLC has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

h. Fenton Athletic Club, Inc. has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

i. Fenton Karate, LLC has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

j. Fusion Fitness 24/7 LLC has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

k. H3 Fitness LLC has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

l. I Fitness Personal Training, Inc. has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

m. JKP Fitness has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

n. JPF Enterprises has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

o. M Fitness Club has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

p. MH & AB has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

q. Motor City CF – St. Clair Shores has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

r. Nascot Enterprises has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

s. Prison City Physique has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

t. RMP Fitness has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

u. Strength Beyond has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

v. 24/7 Fitness Bootcamp and Boxing has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

w. 4 Seasons Gym has been, and is being, denied the right to intrastate travel and the right to engage in commerce, to-wit: operating a fitness studio for its members.

114. Neither Governor Whitmer nor Director Gordon provided any procedural due process before issuing the Lockdown Orders. Nor do the Lockdown Orders provide any mechanism for post-deprivation review.

115. Governor Whitmer and Director Gordon acted under color of State law in an official capacity and within the scope of their official duties when issuing the Lockdown Orders.

116. As a direct and proximate cause of the failure to provide any pre- or post-deprivation process, Plaintiffs suffered prejudice under threat of criminal and civil sanctions.

117. These orders and rules acknowledge that so-called “critical” businesses and those “noncritical” can safely operate by adhering to “social distancing” rules delineated in

Section 11 of EO 2020-59, including the arbitrary “enhanced social distancing” rules that apply only to the “noncritical” businesses allowed to resume operations.

118. Plaintiffs can operate in full compliance with all of these rules.

119. By failing to provide any pre- or post-deprivation review of the orders and rules shuttering their businesses, Plaintiffs are suffering substantial losses of liberty and property:

a. *LIFFT*. LIFFT’s members have lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. LIFFT’s members will continue to experience financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders, due to individuals cancelling memberships at LIFFT’s members’ fitness facilities that would not otherwise have done so, as well as lost business opportunities for new members.

b. *Baseline Fitness LLC*. Baseline Fitness LLC has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. Baseline Fitness LLC will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

c. *Building Your Temple LLC*. Building Your Temple LLC has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. Building Your Temple will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

d. *BYT Fitness 247 LLC.* BYT Fitness 247 has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. BYT Fitness 247 will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

e. *Clawson Fitness, LLC.* Clawson Fitness has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. Clawson Fitness will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

f. *Clinton Fitness, Inc.* Clinton Fitness has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. Clinton Fitness will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

g. *D-Lux Karate University, LLC.* D-Lux Karate University has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. D-Lux Karate University will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

h. *Fenton Athletic Club, Inc.* Fenton Athletic Club has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. Fenton Athletic

Club will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

i. *Fenton Karate, LLC.* Fenton Karate has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. Fenton Karate will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

j. *Fusion Fitness 24/7 LLC.* Fusion Fitness 24/7 LLC has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. Fusion Fitness 24/7 will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

k. *H3 Fitness LLC.* H3 Fitness has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. H3 Fitness will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

l. *I Fitness Personal Training.* I Fitness Personal Training has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. I Fitness Personal Training will continue to experience significant financial losses in the

second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

m. *JKP Fitness*. JKP Fitness has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. JKP Fitness will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

n. *JPF Enterprises*. JPF Enterprises has lost membership revenue over the eleven weeks since the Lockdown Orders went into effect. JPF Enterprises will continue to experience significant financial losses in the second quarter of 2020 and beyond, as well as lost business opportunities for new members.

o. *M Fitness Club*. M Fitness Club has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. M Fitness Club will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

p. *MH & AB*. MH & AB has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. MH & AB will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

q. *Motor City CF – St. Clair Shores.* Motor City CF – St. Clair Shores has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. Motor City CF – St. Clair Shores will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

r. *Nascot Enterprises.* Nascot Enterprises has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. Nascot Enterprises will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

s. *Prison City Physique.* Prison City Physique has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. Prison City Physique will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

t. *RMP Fitness.* RMP Fitness has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. RMP Fitness will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

u. *Strength Beyond.* Strength Beyond has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. Strength Beyond will continue to

experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

v. *24/7 Fitness Bootcamp and Boxing.* 24/7 Fitness Bootcamp and Boxing has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. 24/7 Fitness Bootcamp and Boxing will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

w. *4 Seasons Gym.* 4 Seasons Gym has lost significant revenue over the eleven weeks since the Lockdown Orders went into effect. 4 Seasons Gym will continue to experience significant financial losses in the second quarter of 2020 and beyond because of the Lockdown Orders due to its members cancelling memberships that would not otherwise have done so, as well as lost business opportunities for new members.

120. The prejudice each Plaintiff has suffered would not have occurred but for Defendants' deprivations of their liberty and property interests.

121. Plaintiffs seek a declaration that the Lockdown Orders violate the procedural component of the Due Process Clause, and an injunction against further infringements of their rights under this Clause as described in the Prayer for Relief.

#### **COUNT V SUBSTANTIVE DUE PROCESS**

122. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or

other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” 42 U.S.C. § 1983.

123. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides that no State can “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1, cl. 3.

124. The substantive component of the Due Process Clause prohibits government from taking action that “shocks the conscience” or “interferes with rights implicit in the concept of ordered liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987) (cleaned up).

125. Plaintiffs have a protected liberty interest in the right to live without arbitrary governmental interference with their liberty and property interests. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1988).

126. Liberty “denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men.” *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 572 (1972) (emphases added).

127. The Lockdown Orders shock the conscience and interfere with Plaintiffs’ deeply-rooted liberty and property rights, including the to work, right to contract, and right to engage in commerce, for all of the reasons described in the General Allegations and in each of the Counts of this Complaint, which are incorporated into this Paragraph by reference.

128. Each Plaintiff could and can conduct business in full compliance with all of the rules imposed on businesses allowed to operate under the Lockdown Orders, or reasonably equivalent and equally safe measures tailored to the unique nature of the in-person operations. Thus, the Lockdown Orders are not narrowly tailored to achieve a compelling governmental interest.

129. Nor is there any rational basis to deprive Plaintiffs of their liberty and property interests in performing services for willing customers when they can do so safely and in the same (or reasonably safe equivalent) manner as other businesses allowed to operate (such as manufacturing, restaurants, bars, and retail).

130. In the alternative, the Lockdown Orders are not reasonably related to a legitimate governmental interest.

131. Governor Whitmer and Director Gordon acted under color of State law in an official capacity and within the scope of their official duties when issuing the Lockdown Orders.

132. Plaintiffs seek a declaration that the Lockdown Orders violate the substantive component of the Due Process Clause, and an injunction against further infringements of their rights under this Clause as described in the Prayer for Relief.

#### **COUNT V EQUAL PROTECTION**

133. “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or

immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” 42 U.S.C. § 1983.

134. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides that no State can “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1, cl. 4.

135. The Lockdown Orders deprive Plaintiffs of the equal protection of the law because they allow some businesses to operate but not Plaintiffs’ businesses, even though they are similarly situated.

136. For example, under EO 2020-96, dentists are now allowed to provide all services safely statewide, according to the Governor, even though the patients cannot wear masks during dental procedures or routine cleanings, and employees will necessarily stand within inches to two feet from their patients’ mouths. The designation that dentists can safely perform routine cleanings and fittings for bite guards is completely arbitrary, considering that other industries that can maintain strict social distancing are not allowed to re-open and in fact can be criminalized for doing so.

137. Each Plaintiff could and can conduct business in full compliance with all of the rules imposed on businesses allowed to operate under the Lockdown Orders, or reasonably equivalent and equally safe measures tailored to the unique nature of the in-person operations. Thus, the Lockdown Orders are not narrowly tailored to achieve a compelling governmental interest.

138. Nor is there any rational basis to deprive Plaintiffs of their liberty and property interests in performing services for willing customers when they can do so safely and in the same (or reasonably safe equivalent) manner as other businesses allowed to operate.

139. In the alternative, the Lockdown Orders are not reasonably related to a legitimate governmental interest.

140. Governor Whitmer and Director Gordon acted under color of State law in an official capacity and within the scope of their official duties when issuing the Lockdown Orders.

141. Plaintiffs seek a declaration that the Lockdown Orders violate the Equal Protection Clause, and an injunction against further infringements of their rights under this Clause as described in the Prayer for Relief.

**COUNT VI  
DECLARATORY JUDGMENT VOID FOR VAGUENESS**

142. There is an actual and present controversy between the parties.

143. Plaintiffs contend that the Lockdown Orders are unconstitutionally vague under the void-for-vagueness doctrine under the U.S. and Michigan constitutions.

144. The void-for-vagueness doctrine requires penal laws to define criminal conduct with sufficient precision that ordinary people can understand what conduct is prohibited, and in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357–358 (1983). This doctrine flows from the Due Process Clause. *Michigan Dep't of State Compliance & Rules Div. v. Michigan Educ. Ass'n*, 251 Mich. App. 110, 116 (2002); U.S. Const., am. XIV; Mich. Const. (1963), art. I, § 17.

145. The Lockdown Orders purport to carry the force of law and (with the exception of Director Gordon's Emergency Rule) makes any willful violation of their terms a misdemeanor punishable by imprisonment or a fine. It is therefore subject to the void-for-vagueness doctrine.

146. EO 2020-42 through EO 2020-96 allow certain businesses to continue operations if they fall within certain “sectors” of the economy, but it does not identify any criteria by which a business owner can safely determine whether his or her business falls within that sector. Incongruities are evident within the order.

147. The very fact that the Governor needs a webpage to answer “frequently asked questions” about the scope of the order shows that it’s vague. Michiganders are smart people. If “ordinary people” could understand the Lockdown Order, then there would be no need for **969 FAQs** on these orders on the State’s coronavirus webpage. The orders are also constantly being “clarified” in news articles, press conferences, and revised orders. Still, pervasive confusion remains each time a new order is released.

148. On information and belief, Governor Whitmer and Director Gordon deny these contentions.

149. Plaintiffs seek a judicial declaration that the Lockdown Orders are void for vagueness, and an injunction against enforcement or adoption of these and similar orders and rules in the future as described in the Prayer for Relief.

## **COUNT VII DECLARATORY JUDGMENT SEPARATION OF POWERS**

150. There is an actual and present controversy between the parties.

151. Plaintiffs contend that EO 2020-43 through EO 2020-96 (and their predecessors) related to the closure of Plaintiffs’ businesses violate the Separation of Powers Clause in Article III, Section 2 of the Michigan Constitution of 1963, and that the EOs prohibit them—directly through the executive order itself and indirectly through Director Gordon’s

Emergency Order and Emergency Rule—from engaging activities in which they would otherwise be free to engage under threat of criminal sanction.

152. The Separation of Powers Clause provides that “[t]he powers of government are divided into three branches: legislative, executive, and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” Mich. Const. (1963) art. III, § 2.

153. The Emergency Powers Act violates the Separation of Powers Clause because it vests governors with total legislative power whenever a governor asserts the existence of an emergency.

154. The Emergency Management Act does not violate the Separation of Powers Clause on its face, but it does as Governor Whitmer has applied it. As the Governor appears to construe it, the Emergency Management Act gives her limitless powers equal in scope to the Emergency Powers Act. The language of the Act does not confer such unlimited powers on the Governor.

155. On information and belief, Governor Whitmer and Director Gordon deny these contentions.

156. Plaintiffs seek a judicial declaration that the Lockdown Orders violate the Separation of Powers Clause, and an injunction against enforcement or adoption of these and similar orders and rules in the future as described in the Prayer for Relief.

**COUNT VIII**  
**DECLARATORY JUDGMENT**  
**UNLAWFUL EXERCISE OF EMERGENCY POWERS ACT**

157. There is an actual and present controversy between the parties.

158. Plaintiffs contend that EO 2020-43 and EO 2020-96 (and their predecessors and subsequent EOs) violate the Emergency Powers Act, if they pass constitutional muster.

159. Viruses, like SARS-CoV-2, and the diseases they can cause, like COVID-19, are not the kind of emergencies contemplated under the Emergency Powers Act, which applies “[d]uring times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a public emergency of that kind, **when public safety is imperiled....**” Mich. Comp. Laws § 10.31.

160. Public health and public safety are distinct legal concepts. Governor Whitmer has not identified a public **safety** emergency in any of the EOs. Instead, she has only selectively quoted from the portion of the Act that allows her to issue orders necessary to protect life or property or to bring the emergency under control. EO 2020-42, Preamble ¶ 4. Absent a public **safety** emergency, the Governor has no power to issue orders under the Emergency Powers Act at all. Neither SARS-CoV-2 nor COVID-19 have presented a public safety emergency.

161. Alternatively, even if SARS-CoV-2 or COVID-19 qualify as a public safety emergency, the Emergency Powers Act does not authorize the *de facto* statewide house arrest imposed under the EOs. The Act says a governor may “designat[e] **specific zones** within the area in which occupancy and use of buildings and ingress and egress of persons and vehicles may be prohibited or regulated.” Mich. Comp. Laws § 10.31(1). Governor Whitmer, however, has regulated occupancy and use of buildings statewide. The EOs violate the Act because it is not limited to specific zones within Michigan.

162. Alternatively, the Emergency Powers Act only authorizes a governor to issue *reasonable* orders that are considered necessary to protect life or property or to bring the emergency under control. Mich. Comp. Laws § 10.31(1).

163. The EOs are objectively unreasonable. There can be nothing more unreasonable than keeping 10 million people under house arrest because 0.38% of the population has contracted a disease that has killed less than 0.03% of the population.

164. Likewise, it is unreasonable to cause nearly 1.2 million men and women to lose their jobs virtually overnight, or to cripple businesses, or to cause businesses to permanently close on those same facts, especially when many of these people reside in counties with less than 25 cases and far fewer (or even no) deaths.

165. Michigan has 83 counties. As of May 16, 2020, three counties in Michigan still had no confirmed cases, and 32 counties had fewer than 25 cases. As of that same date, 21 counties had no deaths, and 57 counties had less than 10 deaths.

166. Similarly, it is unreasonable to maintain these EOs when the policies contained within them have plunged the State into Depression-level unemployment.

167. On information and belief, Governor Whitmer and Director Gordon deny these contentions.

168. Plaintiffs seek a judicial declaration that the Eos violate the Emergency Powers Act, an injunction against enforcement of the Lockdown Orders, and an injunction against similar orders and rules in the future as described in the Prayer for Relief.

**COUNT IX**  
**DECLARATORY JUDGMENT**  
**UNLAWFUL EXERCISE OF EMERGENCY MANAGEMENT ACT**

169. There is an actual and present controversy between the parties.

170. Plaintiffs contend that EO 2020-43 and EO 2020-96 (and their predecessors and subsequent EOs) violate the Emergency Management Act, if they pass constitutional muster.

171. The Emergency Management Act permits a governor to declare a disaster in response to the occurrence of threat of widespread loss of life resulting from natural causes, including an epidemic. See Mich. Comp. Laws § 30.402(e) (including epidemics in the list of causes of disasters). Thus, infectious diseases by themselves are not a permissible reason to invoke the Act—the disease must reach or threaten to reach epidemic status.

172. Although the World Health Organization has classified SARS-CoV-2 as a pandemic, that is not controlling under Michigan law. The existence of an epidemic must be determined solely from the perspective of the facts as they exist on the ground *in Michigan*.

173. With confirmed infections affecting only 0.38% of the State as of the date of this Complaint, no epidemic actually exists throughout all of Michigan. While a regional epidemic *likely* exists in a few densely populated areas, one does not exist in all 83 counties in Michigan, as demonstrated by persistently low numbers of infections and deaths in the majority of Michigan's counties.

174. In addition, the Emergency Management Act does not contemplate declaring the entire State a disaster area. Among other things, the Act allows a governor to issue orders affecting a “stricken” or “threatened” area, including mandatory evacuation orders, controlling ingress and egress from that area, and the occupancy of premises within that area. Mich. Comp. Laws § 30.405(1)(e)–(g).

175. Moreover, even when grounds exist to declare a disaster, the executive order must indicate, among other things, the nature of the conditions permitting the termination

of the state of disaster. Mich. Comp. Laws § 30.403(3). None of Governor Whitmer's executive orders have articulated objective conditions that, when satisfied, would permit the termination of the state of disaster.

176. On information and belief, Governor Whitmer and Director Gordon deny these contentions.

177. Plaintiffs seek a judicial declaration that the EOs violate the Emergency Management Act, an injunction against enforcement the Lockdown Orders, and an injunction against similar orders and rules in the future as described in the Prayer for Relief.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully ask the Court to grant them the following relief:

- a. A declaratory judgment that the Lockdown Orders:
- b. violate Plaintiffs' constitutional rights as set forth in this Complaint;
- c. are void for vagueness; and/or
- d. violate the Separation of Powers Clause of the Michigan Constitution, the Emergency Powers Act, and/or the Emergency Management Act;
- e. Enjoin Governor Whitmer and Director Gordon from enforcing the Lockdown Orders and from issuing any future orders or rules similar to the invalid ones described in this action;
- f. Award Plaintiffs their reasonable attorneys' fees, costs, and expenses under 42 U.S.C. § 1988 and any other applicable law; and
- g. Any other such further relief to which Plaintiffs may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

**JURY DEMAND**

Under the Seventh Amendment to the U.S Constitution and Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand trial by jury on all issues so triable.

Dated: June 1, 2020

Respectfully submitted,

/s/ Scott M. Erskine  
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**DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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LEAGUE OF INDEPENDENT FITNESS  
FACILITIES AND TRAINERS, INC.,  
BASELINE FITNESS LLC,  
BUILDING YOUR TEMPLE LLC,  
BYT FITNESS 24/7 LLC,  
CLAWSON FITNESS, LLC,  
CLINTON FITNESS, INC.,  
D-LUX KARATE UNIVERSITY LLC,  
FENTON ATHLETIC CLUB, INC.,  
FENTON KARATE, LLC,  
FUSION FITNESS 24/7 LLC,  
H3 FITNESS LLC,  
I FITNESS PERSONAL TRAINING, INC.,  
JKP FITNESS, LLC,  
JPF ENTERPRISES, LLC,  
M FITNESS CLUB, LLC,  
MH & AB LLC,  
MOTOR CITY CF - ST. CLAIR SHORES, LLC,  
NASCOT ENTERPRISES, LLC,  
PRISON CITY PHYSIQUE LLC,  
RMP FITNESS INC.,  
STRENGTH BEYOND LLC,  
24/7 BOOTCAMP AND BOXING INC., and  
4 SEASONS GYM, LLC,

Plaintiffs,

v.

GRETCHEN E. WHITMER and  
ROBERT GORDON,  
Defendants.

Civil No. 1:20-cv-00458

Hon. Paul L. Maloney

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

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ERSKINE LAW, PC  
Scott M. Erskine (P54734)  
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Attorneys for Plaintiffs  
612 W. University

Re: COVID-19 Progression and Effects of Business Closures on Michigan's Workers

The COVID-19 pandemic has created unprecedented public health and economic disturbances across the globe. Michigan has been one of the most affected states in America, with over 22,600 cases reported as of Friday, April 10. Michigan's response (including the first Executive Order issued on March 10), the dramatic efforts of many health care workers, and the extraordinary actions of many employers and volunteers have also been significant.

We all recognize two serious problems: First, we face a severe public health crisis, with tremendous human costs to its victims as well as to the many people who care for them. Second, we are enduring unprecedented costs of travel and gathering restrictions, business closures, prohibitions on work, and cancellations of both private and public events.

Given these twin threats, it is critical that the State's leaders have the best information available to project spread of the virus; to consider the impact of preventative measures such as social distancing and "stay at home" orders; and to understand the scale of the effect of the prohibitions on work and other restrictions on Michigan's workers and our ability to produce the goods and services we need.

Anderson Economic Group has been retained to summarize the best information now available on both the course of the COVID-19 epidemic and its effects on the Michigan economy. In this memorandum, we provide a summary of COVID-19's progression, discuss the impact of the virus and stay at home orders on Michigan's economy, and identify large variances between the identification of "critical" and "essential" workers during this emergency.

### *Approach*

**Epidemiology Model.** Modeling the spread of COVID-19 is a challenging endeavor. Data on the virus are nearly always incomplete, and our ability to test and diagnose people is inconsistent. However, we now have several weeks of consistent, daily data on cases from independent sources. These provide a solid basis for an assessment of the current situation.

We provide below a modeling of the epidemic in the State of Michigan, using daily data and the widely-used SIR epidemiological model. Subject to the limitations of this and every model, we present the evidence on the current situation in Michigan and do so in a manner that provides a superior level of transparency and credibility.

We also identify comparisons from the small number of similar analyses that are now available, including the IHME projections widely presented in the United States. We note that the most recent IHME projections for Michigan are very close to the results we present here.

We provide additional information about the data, the SIR model, and our methodology in “Appendix B: Methodology and Data” on page 17.

**Employment Effects Analysis.** In order to estimate the economic impacts of COVID-19 and stay at home orders, we created a custom model that predicts the economy-wide impacts of the virus and emergency orders, done on a state-by-state basis. Our model estimates not only the impact on job losses, but also the impact on workers across each state who are at risk of losing income—a much larger group than just those who file for unemployment.

This analysis is based on a review of stay at home orders for each state, as well as data from the U.S. Bureau of Economic Analysis, U.S. Bureau of Labor Statistics, and U.S. Department of Labor. Consistent with our intention to provide credible, transparent information, we also reference projections of the impact of these restrictions that were released in mid-March, as well as the unemployment claims figures released in the subsequent weeks, which corroborate these projections.

**State Executive Orders and Federal Homeland Security Classifications.** We review the Department of Homeland Security’s memo and subsequent guidance on critical workers during this emergency and compare it with a similar classification of workers in two Michigan executive orders. We note the significant differences between these two that affect Michigan workers and the residents.

## Findings

Our analysis and review led to the following findings.

### *1. Epidemiological models and current data suggest that COVID-19 infections have peaked in Michigan.*

Epidemiological evidence strongly suggests that Michigan has reached its peak COVID-19 infection rate for the current wave of the epidemic. This evidence includes both our own assessment—using an industry-standard SIR model and U.S.-only data—and the IHME assessment of April 8, which utilizes both U.S. and China data and a unique model IHME developed for this purpose.

**Michigan Results, Standard SIR Model.** The daily Michigan case data used in our analysis was collected by the *New York Times* from State sources and selected because of its consistency and reliability across multiple states.<sup>1</sup> We estimated a standard SIR model using these data, using an iterative re-estimating procedure to reveal both the current projection of the path of the outbreak and the changes in the estimated parameters over time.

For approximately one week now, the data have consistently indicated that the infection rate began slowly, accelerated, and then reached a peak rate in the past week. If this pattern continues, we can expect the number of new cases to slowly drop over time during the current wave of the epidemic.

This pattern—which produces the distinctive “S” curve—is consistent with both theory, and decades of experience across the globe with numerous epidemics. These data strongly indicate the path of the epidemic has begun to slow down, suggesting that social distancing and other mitigation efforts have been effective. The peak number of people infected, shown in the Anderson Economic Group analysis, and the peak hospital utilization, shown in the IHME analysis, both appear to have passed in the week that began April 5, 2020.

See Figure 1 on page 5.

Note that these analyses pre-date the reports from the Easter weekend, which may have been incomplete but which also show a declining number of cases. Furthermore, these analyses focus on the current wave of the epidemic, which is the only wave for which any data are available.

**Comparison with Other Epidemiological Models.** This result is consistent with that of other entities that have modeled Michigan's epidemiology, including those of IHME (as reported April 8) and others. In particular, the most recent IHME results show a nearly identical pattern.<sup>2</sup>

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1. There are minor discrepancies between the NYT compilation, and the daily-reported numbers from the Michigan DHS. These discrepancies are usually under 1%.

**Variation Across Michigan Counties; Results in Detroit Metro Area.** There is significant variation in the intensity of the outbreak across the state. In particular, many counties have reported total cases of less than a dozen. At the same time, Wayne, Oakland, and Macomb Counties have intensive epidemics. Corroborating our results for the State as a whole, each of these three counties, all with large number of cases, demonstrates a similar pattern of acceleration in the number of cases in February and March, and then an apparent peak in the first half of April.

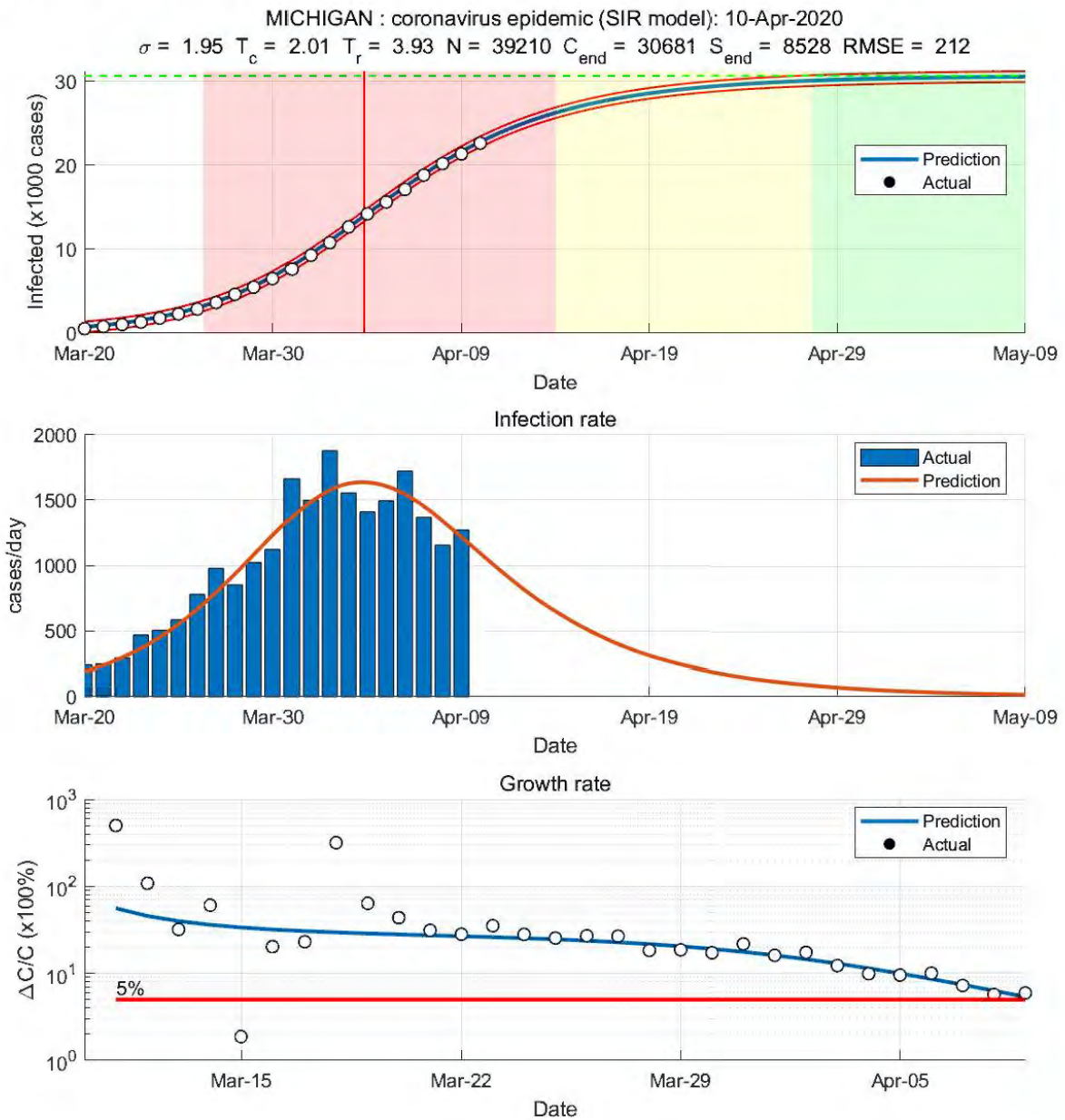
We show similar analyses for these counties in case counts in “Appendix A: Additional Figures” on page 13. See in particular Figure 6 on page 16.

**Limitations of these Data and Epidemiological Models.** We also note the limitations of these data and every epidemiological model in “Appendix B: Methodology and Data” on page 17.

Among these limitations, please note that, for many counties in Michigan, the number of case counts is so small that we do not have enough data to model the course of an epidemic at this point. We, of course, hope the numbers remain small in many such counties. However, we do expect that case numbers in some counties will grow enough to allow later estimation in these counties as well.

- 
2. As noted in the appendix, the IHME model uses a mixture of U.S. and China-reported data, and a unique model that focuses on hospital usage rather than cases. Furthermore, the IHME results have varied significantly over time. This comparison is with the most recently-released results.

**FIGURE 1. COVID-19 Total Infections, Infection Rate, and Growth Rate in Michigan**



2. Michigan’s “stay at home” order, along with decisions made by private citizens and employers, has resulted in a severe contraction in the State’s economy.

*We now have Depression-level unemployment in Michigan, with over 16% of our work-force becoming unemployed in just three weeks. This will grow more severe as time passes and likely affect the incomes of 1.4 million Michigan workers and their families.*

**Executive Orders Restricting Work and Travel.** On March 23, Michigan Governor Gretchen Whitmer issued a “stay at home” order requiring all nonessential workers to stay home and not go their workplace. At the time, Michigan had more reported COVID-19 cases than any other state save for New York and New Jersey. This order—already the second on the epidemic—became effective March 24 and was effective through April 13.<sup>3</sup> The purpose of this order was to suppress the spread of COVID-19, prevent the state’s healthcare system from being overwhelmed, and allow time for the state to procure necessary medical equipment needed to “prevent needless deaths.” On April 9, the governor extended the stay at home order until April 30, strengthened some of the restrictions, and noted that the original stay at home order was effective, but that COVID-19 was still “aggressive and persistent.”<sup>4</sup>

On March 17, Anderson Economic Group estimated that, as a result of COVID-19 and the stay at home orders in this and other states, an unprecedented number of Americans would lose income due to layoffs, furloughs, pay cuts, and mandatory sick leave. We estimated that 1.5 million Michiganders could lose two or more days worth of income, along with 2.0 million workers in Illinois and 3.3 million workers in New York. These estimates are shown in Table 1 below.<sup>5</sup>

**TABLE 1. Projection of Workers Losing Significant Income due to COVID-19 and Stay-at-home Orders, March-April 2020**

| State    | Estimated Number of Workers Losing Significant Income |
|----------|-------------------------------------------------------|
| Michigan | 1,468,720                                             |
| Illinois | 1,958,468                                             |
| New York | 3,327,870                                             |

*Source: Anderson Economic Group estimates, March 19, 2020.*

3. Michigan Governor Executive Order 2020-21, “Temporary requirements to suspend activities that are not necessary to sustain or protect life.” See [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-522626--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html).

As noted above, the first executive order (No. 2020-4, March 10, 2020) declared a state of emergency and noted that the first case had just been identified in the State.

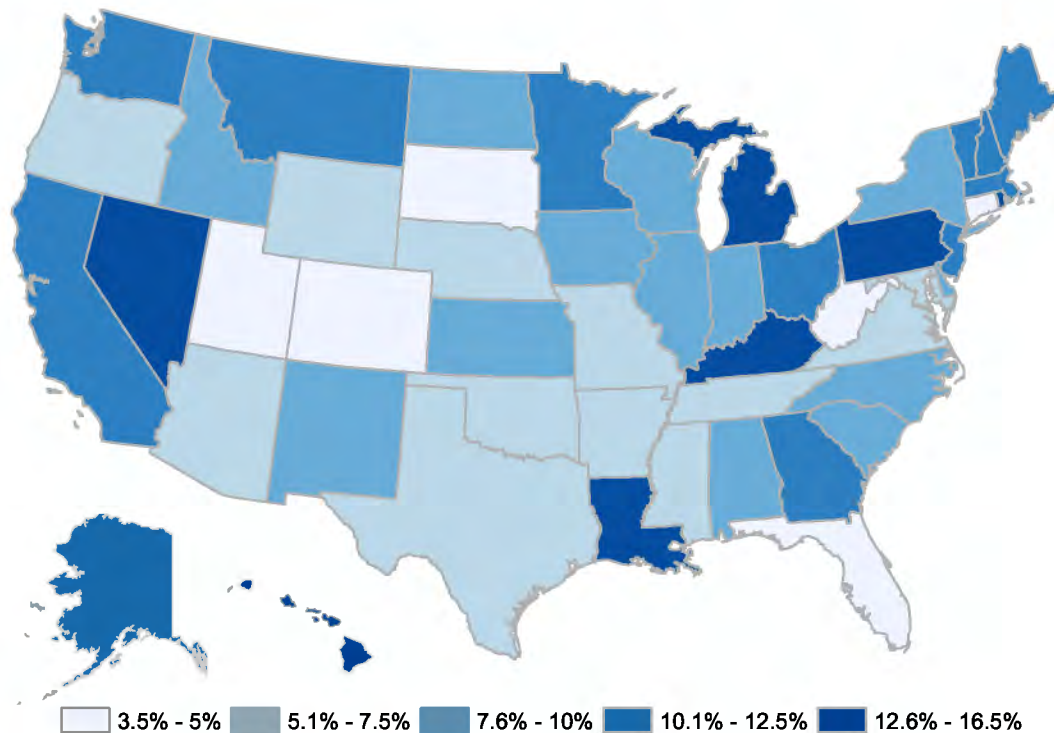
4. Michigan Governor Executive Order 2020-42, “Temporary requirement to suspend activities that are not necessary to sustain or protect life, Rescission of Executive order 2020-21.” See [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-525182--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525182--,00.html).

**Immediate and Large Loss of Employment.** Over the past three weeks, the impact of the stay at home order on the state’s economy has become apparent. Unfortunately, the most recent data in Michigan and other states indicate that our mid-March estimates were probably conservative.

Since March 28, Michigan has recorded over 815,000 unemployment claims. The number of jobless workers has overwhelmed the State’s unemployment offices, underlining the scale of the job loss and suggesting that many more are unemployed than have been able to claim benefits. Even counting only those that filed indicates that approximately 16.5% of the state’s labor force has filed for unemployment in less than three weeks—an unprecedented occurrence. Counting those already filed as of last week, and those already attempting to file this week, Michigan now has depression-level unemployment.

Nationwide, Michigan has been one of the hardest hit states, as shown in Figure 2 below.

**FIGURE 2. Three-Week Initial Unemployment Claims as a Percentage of Total Workforce Size as of April 4, 2020**



Source: Anderson Economic Group analysis of base data from the U.S. Department of Labor, U.S. Bureau of Labor Statistics.

5. See the Anderson Economic Group’s website for most recent estimates of affected workers. <https://www.AndersonEconomicGroup.com/>.

**Impact Throughout Multiple Industries.** While the unemployment claims numbers provide some insight into the current state of the Michigan economy, the impact of COVID-19 extends well beyond just those who were able to file for unemployment in the last three weeks.

Across the Midwest, workers in nearly all industries outside of government are being furloughed, asked to take a pay cut, or are taking mandatory paid time off. The U.S. Department of Labor's three most recent unemployment insurance claims press releases note that, in Michigan, significant increases in unemployment claims are coming from nearly every industry in the state, including food service; manufacturing; construction; retail trade; administrative, support, waste management, and remediation services; health care and social assistance; arts, entertainment and recreation; transportation and warehousing; real estate; professional services; and educational services.<sup>6</sup>

The impact has been especially severe on small business, with many owners struggling to keep their doors open. Although Congress authorized a number of small business lending programs aimed at helping small businesses make it through the epidemic, very few funds have actually been dispersed even though Michigan businesses have been shut down for nearly one month. Small business owners who have applied for relief have encountered a plethora of challenges, including technical glitches, overwhelmed banks, and slow processing times, adding to the already high level of anxiety that small business owners were facing as policymakers ordered all nonessential businesses shut down.

A recent forecast from the University of Michigan Research Seminar in Quantitative Economics predicts that Michigan's unemployment rate in the second quarter of 2020 will average 23 percent—even higher than the forecasted U.S. quarterly peak of 14 percent.<sup>7</sup>

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6. U.S. Department of Labor Unemployment Insurance Weekly Claims report for April 9, 2020, April 2, 2020, and March 26, 2020. See <https://www.dol.gov/>. The comments on individual states are attributed to the state unemployment agencies.

7. Gabriel Ehrlich, George Fulton, and Saul Hymans, "Update April 9: The U.S. and Michigan Economic Outlook for 2020-2022," University of Michigan Ann Arbor Research Seminar in Quantitative Economics." See: <https://lsa.umich.edu/econ/rsqe/forecasts.html>.

*3. The U.S. Department of Homeland Security's memorandum on "essential" workers during the COVID-19 pandemic explicitly recognizes many workers that are not recognized in Michigan's Executive Order.*

On March 19, the Department Homeland Security (DHS) issued a memorandum on the identification of "essential infrastructure workers" during the COVID-19 response.<sup>8</sup> The following guidance from the memorandum is of particular importance:

- The memorandum states that those who work in critical infrastructure industries "have a special responsibility to maintain [their] normal work schedule."
- The memorandum lists a range of "operations and services that are essential to continued critical infrastructure viability." These include management, call centers, construction, telecommunications, information technology, food, agriculture, transportation, energy, wastewater, manufacturing and logistics, and health care workers.
- The memorandum states that "all organizations should implement business continuity plans," and that in the "modern economy, reliance on technology and just-in-time supply chains means that certain workers must be able to access certain sites, facilities, and assets to continue continuity of functions."

On March 28, DHS released a revised memorandum identifying a larger set of essential industries and workers.<sup>9</sup> The occupations and industries identified in this revised document include workers in some of Michigan's most important economic sectors. For example, Trade, Transportation, and Utilities is Michigan's largest sector by employment, with over 800,000 workers, and the State's Manufacturing sector employs 625,000 workers.<sup>10</sup>

These memos note the following items that are especially germane to key industries in Michigan:

- The DHS memo explicitly notes the importance of transportation, logistics, and automotive repair and maintenance.
- The DHS memo classifies "central office personnel" who "maintain and operate central office, data centers, and other network office facilities" as essential employees.
- The DHS memo also notes the essential nature of "workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture..." and many other products.
- The March 28 DHS memo expands its definition of essential workers to a variety of industries, including some that are particularly important to Michigan's economy, such as transportation and manufacturing.

**Need to Recognize True Extent of Critical and Essential Workers.** As was apparent at the onset of this emergency, and consistent with the guidance from the U.S. government that was cited in Michigan Executive Order 2020-42 and prior orders, it is critical to support

8. Christopher Krebs, "Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response," March 19, 2020.

9. Christopher Krebs, "Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response," March 28, 2020.

10. U.S. Bureau of Labor Statistics, "Economy At a Glance: Michigan," <https://www.bls.gov/>.

“essential” workers in a range of industries. The purpose of the DHS memo was to highlight the importance of these workers and “help State and local officials ensure continuity of functions critical to public health and safety.” However, Michigan Executive Order 2020-42 explicitly states that it does *not* adopt any of the guidance issued by DHS subsequent to the March 19 memorandum, meaning that the Governor’s order excludes those additional industries and workers identified as essential by the DHS as of March 28.<sup>11</sup>

The March 19 DHS memo was issued at a time when stay at home orders were anticipated to be short-term affairs. Since then, stay at home orders across the country have been extended. It is important to recognize that the longer these stay at home orders are in effect, the more workers must be classified as essential in order to maintain supply chains and perform essential services.

The DHS memorandum fully anticipates that changes in conditions over time and differences in the intensity of the outbreak will be taken into account by State and local governments, as well as private sector organizations. Consistent with this explicit guidance, Michigan and other states should take notice of differing infection rates within our state; as well as how changes in the course of the epidemic impact which workers and industries should be classified as essential.

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11. Paragraph 8 of Michigan’s Executive Order 2020-42 states:

“For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). This order does *not* adopt any subsequent guidance document released by this same agency.” [Emphasis in original.]

### *About the Authors*

**Patrick L. Anderson.** Mr. Patrick L. Anderson founded Anderson Economic Group in 1996, and serves as the company's principal and CEO. A nationally-recognized expert in business economics and a sought-after speaker, Mr. Anderson has led several major public policy initiatives in his home state. He was awarded both the Michigan Chamber of Commerce's Leadership Michigan award and the University of Michigan's Neal Staebler award for civic leadership. His writing has earned five prestigious national awards from the National Association of Business Economics.

**Brian R Peterson.** Mr. Peterson is a consultant and director of public policy and economic analysis with Anderson Economic Group. His work focuses on economic and fiscal impact modeling, actuarial analysis, and environmental economics. Prior to joining AEG, Mr. Peterson worked as a policy analyst in regional economic development and transportation planning in the Chicago region.

### *Contributors*

The authors wish to recognize the contribution of the following individuals:

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- Sarp Mertdogan, Analyst, Supported Intelligence LLC
- Milan Batista, Professor at the University of Ljubljana, Slovenia

The conclusions in this memorandum are, of course, those of the authors.

### *About Anderson Economic Group LLC*

Founded in 1996, Anderson Economic Group is a boutique research and consulting firm, with offices in East Lansing, Michigan, and Chicago, Illinois. The experts at AEG have extensive experience in public policy and economic analysis. Clients of Anderson Economic Group include nearly every major institution in the State of Michigan, including colleges, manufacturers, labor unions, state and local governments, and trade associations. Relevant publications from our firm include:

- Annual State Business Tax Burden Rankings, published since 2007.
- "Economic and Fiscal Impacts of the United Auto Works GM Strike," published in 2019.
- "Economic and Fiscal Impacts of a 1332 Affordable Care Act Waiver in Georgia," published in 2019.
- "Michigan Economic Competitiveness Benchmarking Report," published since 2012.
- "Anderson Economic Group Amazon HQ2 Index," published in 2017.
- "AndCan® Index Estimates of National and State-level Cannabis Demand," updated regularly since 2017.
- Numerous benchmarking, comparison, and economic update analyses.

For more information about Anderson Economic Group, please visit our website at <https://www.AndersonEconomicGroup.com>.

*About Supported Intelligence LLC*

Supported Intelligence, LLC is a decision intelligence and data analytics company founded in 2012. Supported Intelligence pioneered a innovative class of decision intelligence technology, which is covered by three U.S. patents as well as patents pending in the U.S. and other countries.

Consultants at Supported Intelligence assembled the data and created the analytics facility to bring in daily reports from numerous sources, including at the state and county level in the United States; analyze the data using the methods identified in this document; and generate the decision intelligence reports highlighted here.

Please visit <https://www.SupportedIntelligence.com> for more information.

Appendix A: Additional Figures

**FIGURE 3. COVID-19 Total Infections, Infection Rate, and Growth Rate in Macomb County, Michigan**

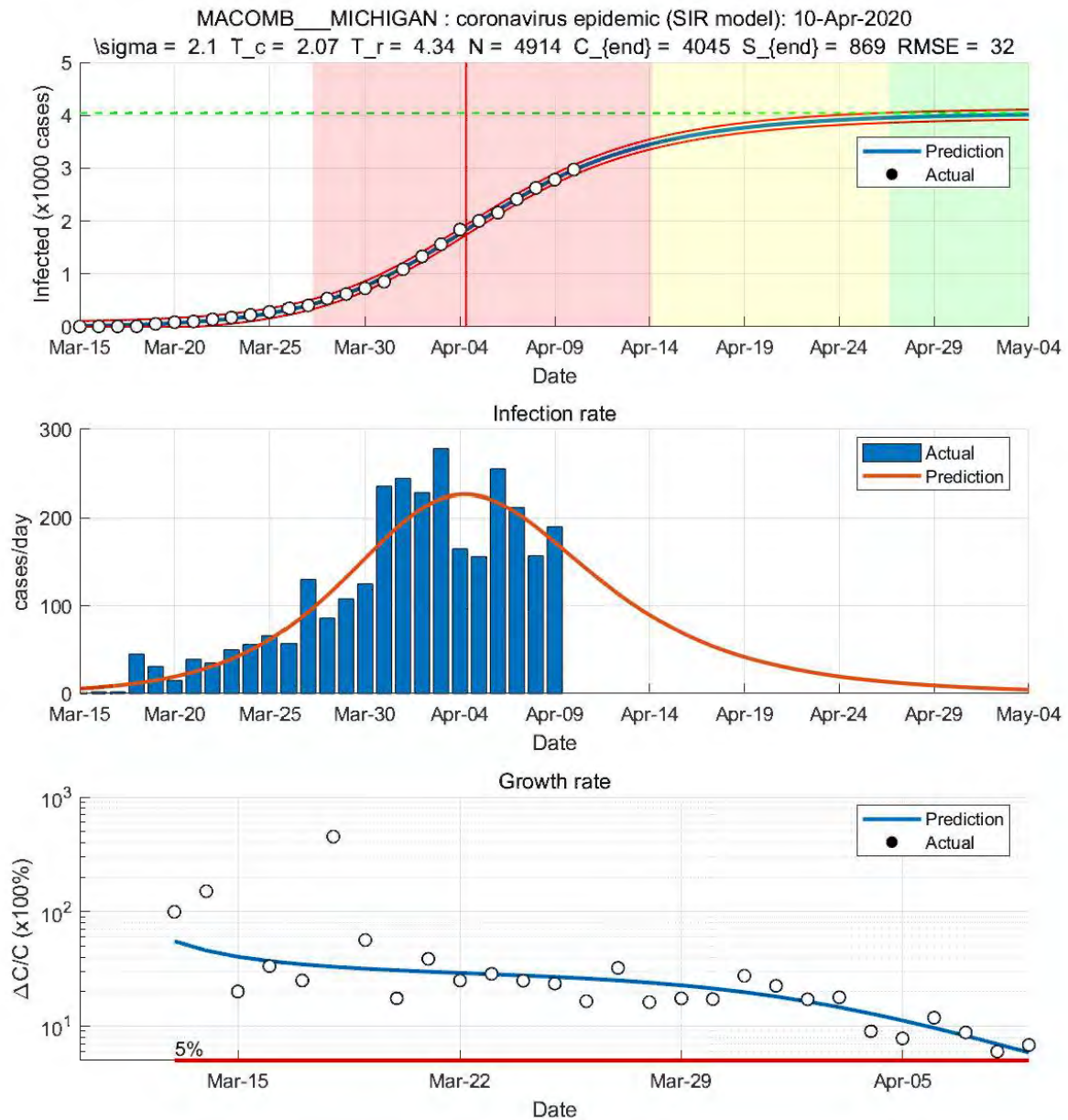


**FIGURE 4. COVID-19 Total Infections, Infection Rate, and Growth Rate in Oakland County, Michigan**

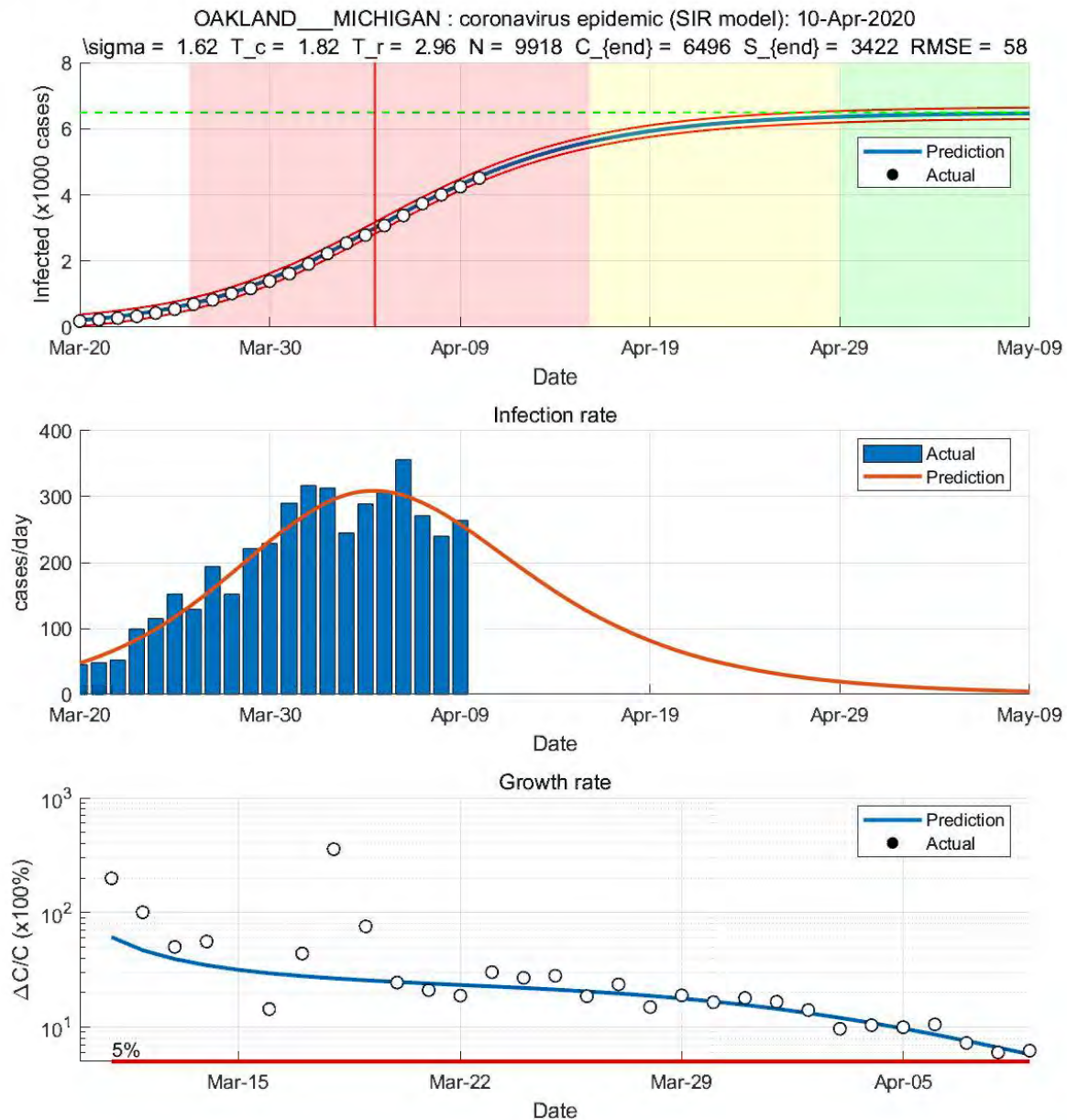


**FIGURE 5. COVID-19 Total Infections, Infection Rate, and Growth Rate in Wayne County, Michigan**

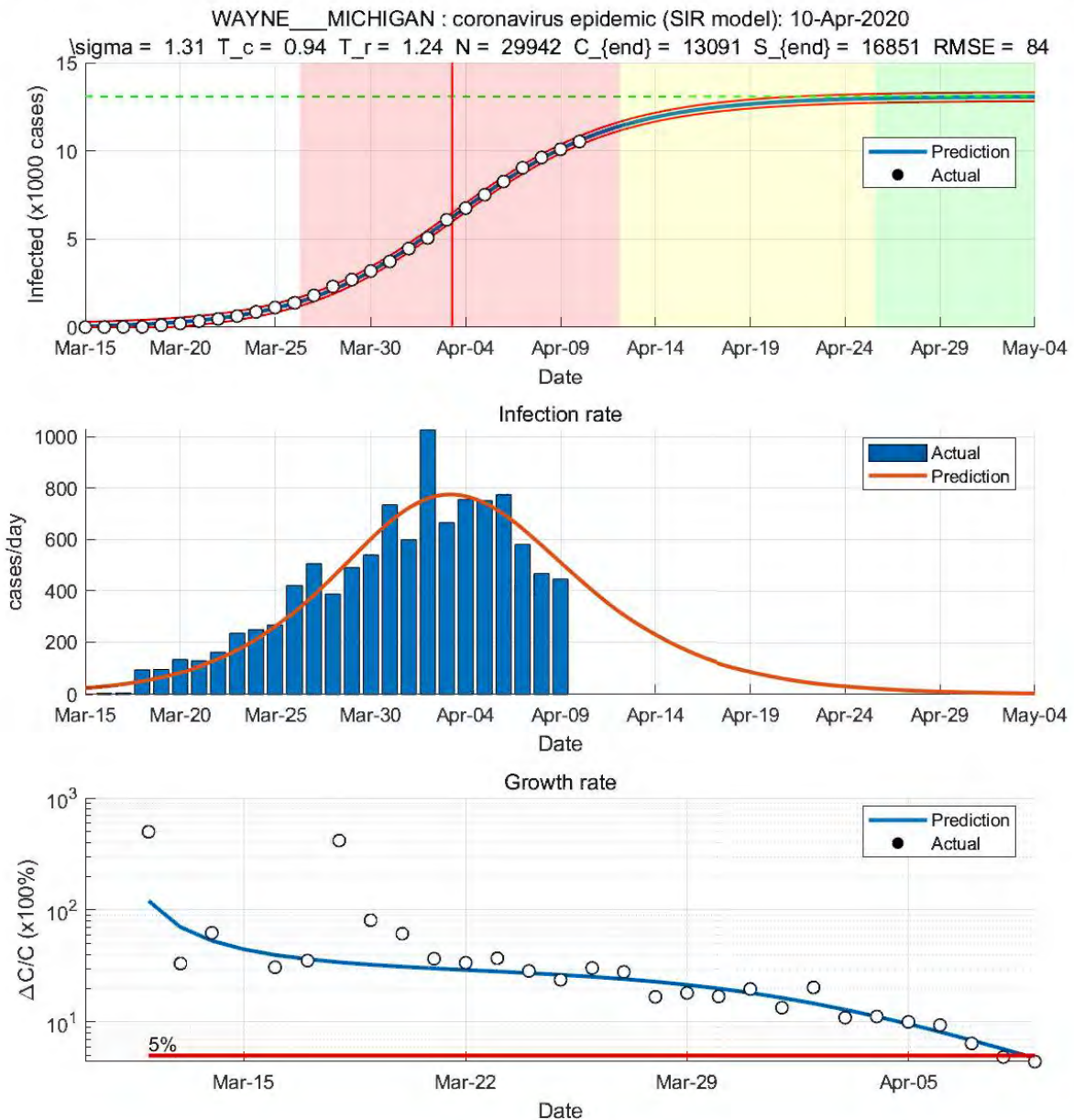
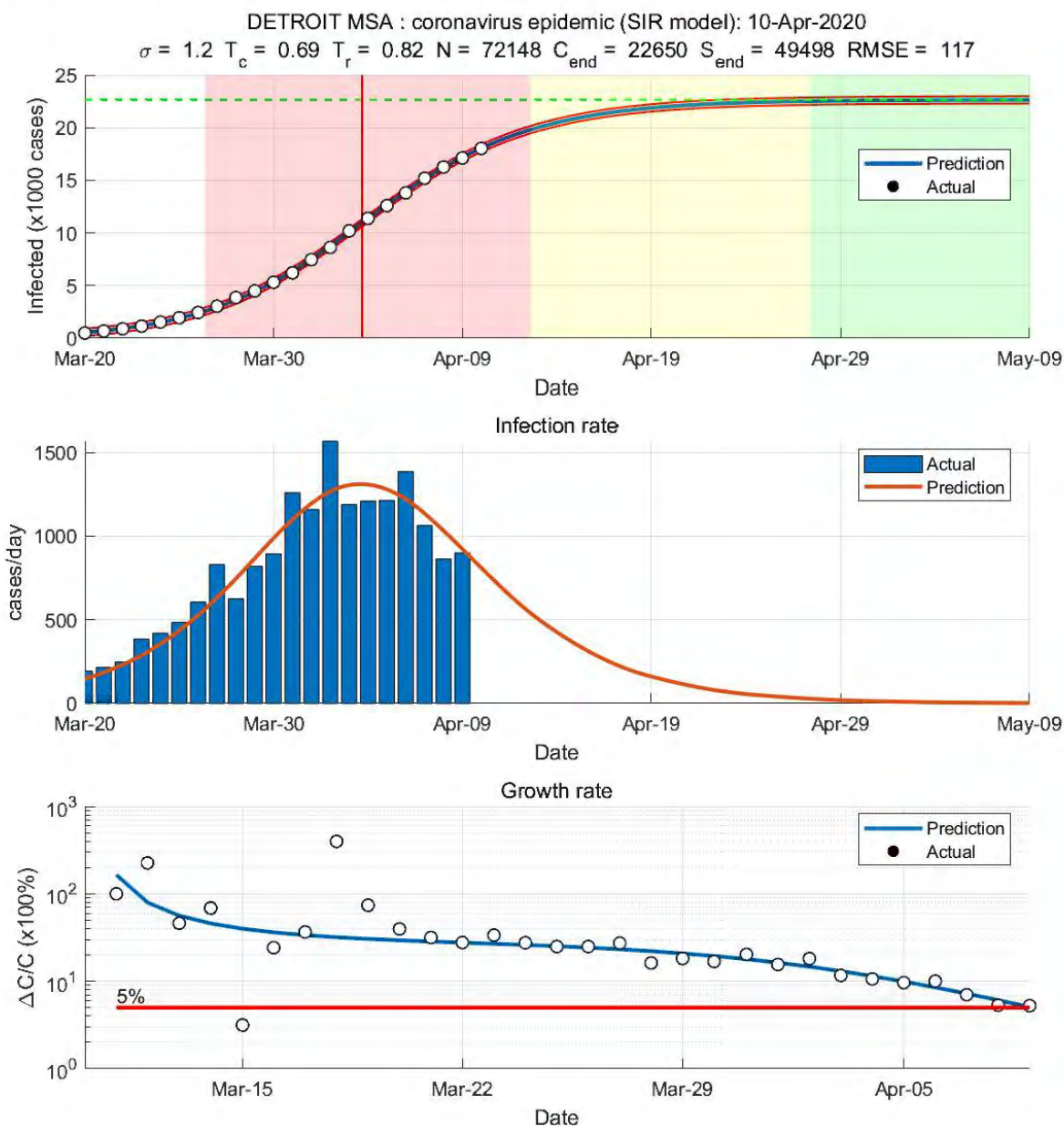


**FIGURE 6. COVID-19 Total Infections, Infection Rate, and Growth Rate in the Detroit Metropolitan Statistical Area**



## *Appendix B: Methodology and Data*

**Data.** The state-level data we used in this analysis were collected by the *New York Times* organization from state and local sources. We selected this data source after reviewing multiple alternatives, and recognizing the benefits of the consistency and data checking this organization brought to the effort.

The NYT website for these data is: <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

The NYT data repository on GitHub is: <https://github.com/nytimes/covid-19-data>.

**Model.** We used a SIR model to forecast the impacts of COVID-19 on states across the U.S. We chose this model after conducting an extensive review of available epidemiological models.

Our review confirmed that the standard SIR model, when consistent daily data are available, often provides the most reliable and understandable assessments. This judgement is based partially on the decades of experience across a wide number of countries and epidemics. The SIR model has been recognized and used as a basis for the diffusion of ideas and other transmissions, as well as for epidemiological studies, since at least 1964.<sup>12</sup> It is also widely described in academic and professional settings, including having many easily-accessible resources, such as an online teaching version provided by the Mathematics Association of America.<sup>13</sup>

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12. An influential article in this development was Goffman W, Newill V. “Generalization of epidemic theory.” *Nature*. 1964;204(4955):225–228. doi: 10.1038/204225a0. This article outlined the now standard nomenclature of “susceptible-infected-removed” subgroups of a population, and stated the standard assumptions such as a homogenous population and regular “mixing” of it. (The “R” portion is now commonly called “recovered.”)

The intellectual roots of this model date back to the early 1900s, in which the first “compartmented” mathematical models, separating population cohorts, were developed. See, e.g. Sooknanan, J., Comissiong, D.M.G. “When behaviour turns contagious: the use of deterministic epidemiological models in modeling social contagion phenomena.” *Int. J. Dynam. Control* 5, 1046–1050 (2017). <https://doi.org/10.1007/s40435-016-0271-9>.

A 1927 article by W.O. Kermack and A.G. McKendrick, “A Contribution to the Mathematical Theory of Epidemics,” *Proceedings of the Royal Society A*, vol. 115 no. 772, is often credited as the first to identify the underlying mathematics of the path of an epidemic. In this 1927 article, they plot the deaths from an epidemic in “the island of Bombay” from December 1905 to July 1906. It followed a bell-shaped curve of the shape shown in SIR and other models a century later.

13. The MAA teaching version, authored by David Smith and Lang Moore, is available at: <https://www.maa.org/press/periodicals/loci/joma/the-sir-model-for-spread-of-disease-the-differential-equation-model>. An overview of this and many variants is presented in H.W. Hethcote, “The Mathematics of Infectious Diseases,” *SIAM Review* 42 (4) (2000).

It is also based on our assessment of how this model and the available data had performed in assessing the COVID-19 outbreak in Italy, Germany, Lombardy (a province in Italy), the United States, New York City, Ohio, Michigan, Illinois, the Detroit metropolitan area and counties, and other areas.

We use the data from various states and a specific implementation of the SIR model to fit the data, and estimate parameters such as  $R_0$  (discussed further below). We use these parameters to estimate a future curve, which represents the prediction based on past data and the assumptions of the model. As noted below, our implementation of the SIR model provides for iterative re-estimating of  $R_0$  values and estimates of the epidemic size and susceptible population.

**Inclusion of Diagnostic Information.** Our implementation of the standard SIR model includes a number of features that allow for inspection of the results, and for a better understanding of the reliability of the model's estimated parameters. These include:

- Our complete results allow for the inspection of prediction errors, allowing readers to compare our historical estimates against historical data.
- Using innovations developed by researchers cited below, we also iteratively re-estimate the model over time, capturing the evolution of model parameters as more data become available.
- We fully disclose the model data and parameters, allowing the results to be replicated by other researchers.
- We explicitly note the known limitations of the model and data.

**Elements of the SIR Model.** The typical curve generated by an SIR model that estimates the number of people infected per day is an "S" shaped curve in which the number of new infections per day begins slowly, then grow exponentially larger before reaching a "peak" point. Following the peak, number of cases per day decrease and slowly reach zero, or the neutral level.

**Parameters.** A key element of the model is known as " $R_0$ ," (sometimes called " $R$  nought") or the reproduction rate of the infection. In the SIR model, if  $R_0$  equals 2, that means for each time period of the outbreak, 1 infected person is expected to infect 2 others.

In actual epidemics, we expect the reproduction rate to be a dynamic value that changes over time. In its initial stages, the  $R_0$  value of the epidemic is small, but grows quickly. As the epidemic slows, the  $R_0$  value declines and ultimately decreases to near zero.

**Known Limitations and Common Assumptions in Epidemiological Models.** There are known limitations of this and other epidemiological models. We state the most important ones here:

1. This and other epidemiological models presume that, after some time, the population acquires "herd immunity" that limits further spread of the disease. Users of these models also recognize the likelihood of subsequent waves of the same disease, though of lesser magnitude. For example, numerous variations of influenza cause illness and deaths each year, and are related to similar prior outbreaks.

2. “Comorbidity” causes difficulty in assigning properly both cases and the number recovering and perishing from a disease. In particular, the number of deaths due to influenza each year is very large, and this cannot always be distinguished (especially in the early stages of the epidemic) from the specific disease being studied.
3. In general, these models assume a certain amount of “mixing” of the population. The mathematical treatment of this interaction is never accurate in small settings or specific short time periods, and usable models require significant data and enough time to allow for patterns across entire societies to develop. The amount of mixing also varies by age, and varies across social groups and among areas within a country.
4. In addition, all models rely upon data that are collected with reporting and measurement errors. In this epidemic, differences in testing, and in some countries pressure to mis-report or fail to report results, have clearly caused some difficulties in obtaining accurate data.
5. All statistical models involve uncertainty, and all projections resulting from these models carry with them this uncertainty.
6. This is a new disease. It will react in unpredictable ways with different populations.
7. The population itself changes its behavior over time. This is perhaps the largest unknown at the early stage of a severe epidemic in which a strong change in behavior, and new forms of treatment, occur.

Because of these inherent limitations, we present the model and data along with the available diagnostic and related information, to allow an informed decision. We urge policymakers to consider this information, and additional information, before making their decisions.

**Implementation of Model.** Supported Intelligence adapted an SIR model authored by Milan Batista, Professor at the University of Ljubljana in Slovenia. Mr. Batista and his colleagues describe this model, provide a public file exchange for the code, and apply it to the Coronavirus outbreak in the following publication and websites:

- Batista, Milan. (2020). *Estimation of the final size of the coronavirus epidemic by the SIR model*. Monograph found at ResearchGate.
- A file exchange version is maintained for review by other researchers; it is here: <https://www.mathworks.com/matlabcentral/fileexchange/74658-fitviruscovid19>.
- Related work using this same model for other countries and with different data sources is available here: <https://www.fpp.uni-lj.si/en/research/research-laboratories-and-the-programme-team/research-programme-team/>  
As of the date of this memo, a comparison analysis of the United States (using an April 10 dataset, from a different source than we use in our analysis) is presented. It is consistent with the results we obtain using our data for the United States.

The version used by Supported Intelligence is modified to include the following improvements for the purposes of our work:

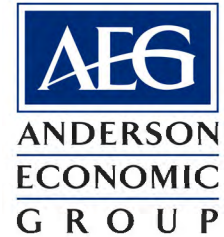
1. Supported Intelligence built a data assembly routine that gathers live data on cases reported per day from the *New York Times*.
2. We provide additional diagnostic information, and have created different data visualizations for the purpose of presenting the results.
3. We clarify a number of terms, and adjust the presentation to date formats common in the United States, to avoid ambiguity and misunderstanding.

To: Daniel McCarthy, Shareholder, Butzel Long

From: Patrick Anderson, Principal  
Brian Peterson, Consultant

Re: COVID-19 Progression & Effects of Business Closures on  
Michigan's Workers (Revised with data through mid-  
April)

Date: April 22, 2020



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*Purpose of this Memorandum*

The COVID-19 pandemic has created unprecedented public health and economic disturbances across the globe. Michigan has been one of the most affected states in America, with over 22,600 cases reported as of Friday, April 10. Michigan's response (including the first Executive Order issued on March 10), the dramatic efforts of many health care workers, and the extraordinary actions of many employers and volunteers have also been significant.

We all recognize two serious problems: First, we face a severe public health crisis, with tremendous human costs to its victims as well as to the many people who care for them. Second, we are enduring unprecedented costs of travel and gathering restrictions, business closures, prohibitions on work, and cancellations of both private and public events.

Given these twin threats, it is critical that the State's leaders have the best information available to project spread of the virus; to consider the impact of preventative measures such as social distancing and "stay at home" orders; and to understand the scale of the effect of the prohibitions on work and other restrictions on Michigan's workers and our ability to produce the goods and services we need.

Anderson Economic Group has been retained to summarize the best information now available on both the course of the COVID-19 epidemic and its effects on the Michigan economy. In this memorandum, we provide a summary of COVID-19's progression, discuss the impact of the virus and stay at home orders on Michigan's economy, and identify large variances between the identification of "critical" and "essential" workers during this emergency.

*Approach*

**Epidemiology Model.** Modeling the spread of COVID-19 is a challenging endeavor. Data on the virus are nearly always incomplete, and our ability to test and diagnose people is inconsistent. However, we now have several weeks of consistent, daily data on cases from independent sources. These provide a solid basis for an assessment of the current situation.

We provide below a modeling of the epidemic in the State of Michigan, using daily data and the widely-used SIR epidemiological model. Subject to the limitations of this and every model, we present the evidence on the current situation in Michigan and do so in a manner that provides a superior level of transparency and credibility.

We also identify comparisons from the small number of similar analyses that are now available, including the IHME projections widely presented in the United States. We note that the most recent IHME projections for Michigan are very close to the results we present here.

We provide additional information about the data, the SIR model, and our methodology in “Appendix B: Data, Methodology, and Limitations” on page 18.

**Employment Effects Analysis.** In order to estimate the economic impacts of COVID-19 and stay at home orders, we created a custom model that predicts the economy-wide impacts of the virus and emergency orders, done on a state-by-state basis. Our model estimates not only the impact on job losses, but also the impact on workers across each state who are at risk of losing income—a much larger group than just those who file for unemployment.

This analysis is based on a review of stay at home orders for each state, as well as data from the U.S. Bureau of Economic Analysis, U.S. Bureau of Labor Statistics, and U.S. Department of Labor. Consistent with our intention to provide credible, transparent information, we also reference projections of the impact of these restrictions that were released in mid-March, as well as the unemployment claims figures released in the subsequent weeks, which corroborate these projections.

**State Executive Orders and Federal Homeland Security Classifications.** We review the Department of Homeland Security’s memo and subsequent guidance on critical workers during this emergency and compare it with a similar classification of workers in two Michigan executive orders. We note the significant differences between these two that affect Michigan workers and the residents.

## Findings

Our analysis and review led to the following findings.

### *1. Epidemiological models and current data suggest that COVID-19 infections have peaked in Michigan.*

Epidemiological evidence strongly suggests that Michigan has reached its peak COVID-19 infection rate for the current wave of the epidemic. This evidence includes both our own assessment—using an industry-standard SIR model and U.S.-only data—and the IHME assessment of April 8, which utilizes both U.S. and China data and a unique model IHME developed for this purpose.

**Update:** This was our conclusion in the original memo dated April 13. With over a week of additional data, this conclusion is now buttressed by results from both Metro Detroit, the State of Michigan, and a number of other counties that we have analyzed.

**Michigan Results, Standard SIR Model.** The daily Michigan case data used in our analysis was collected by the *New York Times* from State sources and selected because of its consistency and reliability across multiple states.<sup>1</sup> We estimated a standard SIR model using these data, using an iterative re-estimating procedure to reveal both the current projection of the path of the outbreak and the changes in the estimated parameters over time.

For approximately one week now, the data have consistently indicated that the infection rate began slowly, accelerated, and then reached a peak rate in the past week. If this pattern continues, we can expect the number of new cases to slowly drop over time during the current wave of the epidemic.

This pattern—which produces the distinctive “S” curve—is consistent with both theory, and decades of experience across the globe with numerous epidemics. These data strongly indicate the path of the epidemic has begun to slow down, suggesting that social distancing and other mitigation efforts have been effective. The peak number of people infected, shown in the Anderson Economic Group analysis, and the peak hospital utilization, shown in the IHME analysis, both appear to have passed in the week that began April 5, 2020.

See Figure 1 on page 6.

Note that these analyses pre-date the reports from the Easter weekend, which may have been incomplete but which also show a declining number of cases. Furthermore, these analyses focus on the current wave of the epidemic, which is the only wave for which any data are available.

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1. There are minor discrepancies between the NYT compilation, and the daily-reported numbers from the Michigan DHS. These discrepancies are usually under 1%.

**Comparison with Other Epidemiological Models.** This result is consistent with that of other entities that have modeled Michigan's epidemiology, including those of IHME (as reported April 8) and others. In particular, the most recent IHME results show a nearly identical pattern.<sup>2</sup>

**Variation Across Michigan Counties; Results in Detroit Metro Area.** There is significant variation in the intensity of the outbreak across the state. In particular, many counties have reported total cases of less than a dozen. At the same time, Wayne, Oakland, and Macomb Counties have intensive epidemics. Corroborating our results for the State as a whole, each of these three counties, all with large number of cases, demonstrates a similar pattern of acceleration in the number of cases in February and March, and then an apparent peak in the first half of April.

We show similar analyses for these counties in case counts in “Appendix A: Additional Figures” on page 12. See in particular Figure 1 on page 13.

**Limitations of these Data and Epidemiological Models.** We also note the limitations of these data and every epidemiological model in “Appendix B: Data, Methodology, and Limitations” on page 18.

Among these limitations, please note that, for many counties in Michigan, the number of case counts is so small that we do not have enough data to model the course of an epidemic at this point. We, of course, hope the numbers remain small in many such counties. However, we do expect that case numbers in some counties will grow enough to allow later estimation in these counties as well.

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2. As noted in the appendix, the IHME model uses a mixture of U.S. and China-reported data, and a unique model that focuses on hospital usage rather than cases. Furthermore, the IHME results have varied significantly over time. This comparison is with the most recently-released results.

2. Michigan’s “stay at home” order, along with decisions made by private citizens and employers, has resulted in a severe contraction in the State’s economy.

*We now have Depression-level unemployment in Michigan, with over 16% of our work-force becoming unemployed in just three weeks. This will grow more severe as time passes and likely affect the incomes of 1.4 million Michigan workers and their families.*

**Executive Orders Restricting Work and Travel.** On March 23, Michigan Governor Gretchen Whitmer issued a “stay at home” order requiring all nonessential workers to stay home and not go their workplace. At the time, Michigan had more reported COVID-19 cases than any other state save for New York and New Jersey. This order—already the second on the epidemic—became effective March 24 and was effective through April 13.<sup>3</sup> The purpose of this order was to suppress the spread of COVID-19, prevent the state’s healthcare system from being overwhelmed, and allow time for the state to procure necessary medical equipment needed to “prevent needless deaths.” On April 9, the governor extended the stay at home order until April 30, strengthened some of the restrictions, and noted that the original stay at home order was effective, but that COVID-19 was still “aggressive and persistent.”<sup>4</sup>

On March 17, Anderson Economic Group estimated that, as a result of COVID-19 and the stay at home orders in this and other states, an unprecedented number of Americans would lose income due to layoffs, furloughs, pay cuts, and mandatory sick leave. We estimated that 1.5 million Michiganders could lose two or more days worth of income, along with 2.0 million workers in Illinois and 3.3 million workers in New York. These estimates are shown in Table 1 below.<sup>5</sup>

**TABLE 1. Projection of Workers Losing Significant Income due to COVID-19 and Stay-at-home Orders, March-April 2020**

| State    | Estimated Number of<br>Workers Losing Significant<br>Income |
|----------|-------------------------------------------------------------|
| Michigan | 1,468,720                                                   |
| Illinois | 1,958,468                                                   |
| New York | 3,327,870                                                   |

*Source: Anderson Economic Group estimates, March 19, 2020.*

3. Michigan Governor Executive Order 2020-21, “Temporary requirements to suspend activities that are not necessary to sustain or protect life.” See [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-522626--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html).

As noted above, the first executive order (No. 2020-4, March 10, 2020) declared a state of emergency and noted that the first case had just been identified in the State.

4. Michigan Governor Executive Order 2020-42, “Temporary requirement to suspend activities that are not necessary to sustain or protect life, Rescission of Executive order 2020-21.” See [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-525182--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525182--,00.html).

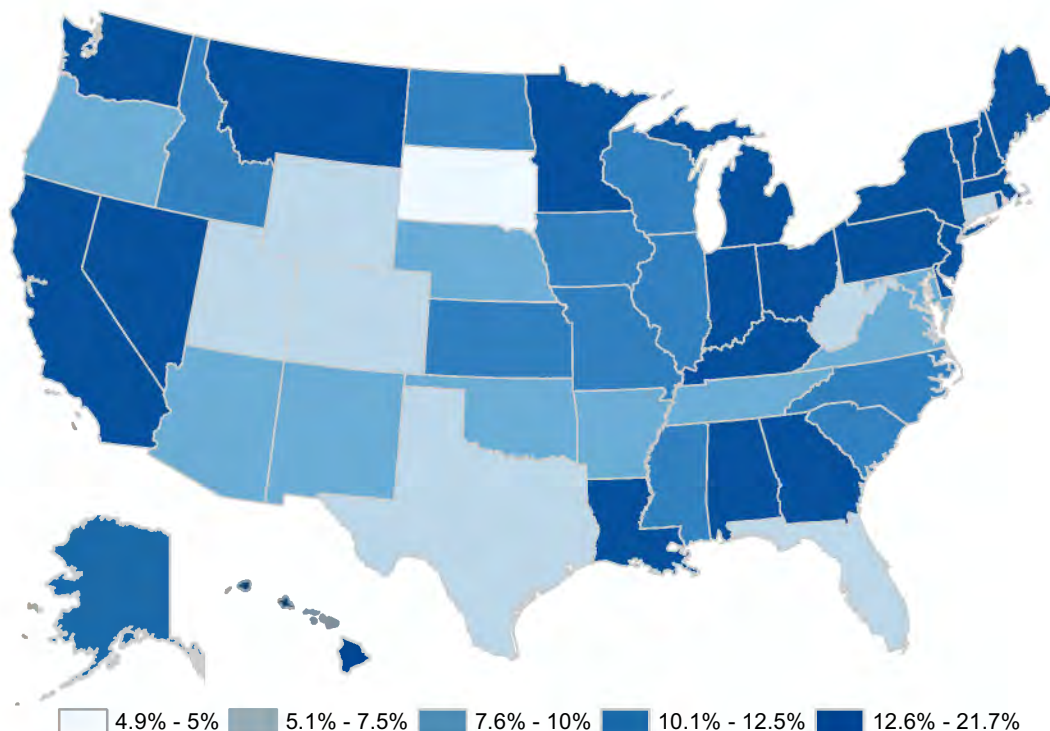
**Immediate and Large Loss of Employment.** Over the past three weeks, the impact of the stay at home order on the state's economy has become apparent. Unfortunately, the most recent data in Michigan and other states indicate that our mid-March estimates were probably conservative.

Since March 28, Michigan has recorded over 815,000 unemployment claims.

**Update.** Since the April 13 memo was released, Michigan recorded another 219,000 initial unemployment claims. After accounting for recent revisions by the Department of Labor, Michigan now has experienced over 910,000 unemployment claims since March 28, and now has over 1 million unemployed workers. The share of Michigan workers now unemployed is 21.2%. As previously noted, Michigan now has depression-level unemployment rates.

Nationwide, Michigan has been one of the hardest hit states, as shown in Figure 1 below.

**FIGURE 1. Three-Week Initial Unemployment Claims as a Percentage of Total Workforce Size as of April 4, 2020**



Source: Anderson Economic Group analysis of base data from the U.S. Department of Labor; U.S. Bureau of Labor Statistics.

5. See the Anderson Economic Group's website for most recent estimates of affected workers.  
<https://www.AndersonEconomicGroup.com/>.

**Impact Throughout Multiple Industries.** While the unemployment claims numbers provide some insight into the current state of the Michigan economy, the impact of COVID-19 extends well beyond just those who were able to file for unemployment in the last three weeks.

Across the Midwest, workers in nearly all industries outside of government are being furloughed, asked to take a pay cut, or are taking mandatory paid time off. The U.S. Department of Labor's three most recent unemployment insurance claims press releases note that, in Michigan, significant increases in unemployment claims are coming from nearly every industry in the state, including food service; manufacturing; construction; retail trade; administrative, support, waste management, and remediation services; health care and social assistance; arts, entertainment and recreation; transportation and warehousing; real estate; professional services; and educational services.<sup>6</sup>

The impact has been especially severe on small business, with many owners struggling to keep their doors open. Although Congress authorized a number of small business lending programs aimed at helping small businesses make it through the epidemic, very few funds have actually been dispersed even though Michigan businesses have been shut down for nearly one month. Small business owners who have applied for relief have encountered a plethora of challenges, including technical glitches, overwhelmed banks, and slow processing times, adding to the already high level of anxiety that small business owners were facing as policymakers ordered all nonessential businesses shut down.

A recent forecast from the University of Michigan Research Seminar in Quantitative Economics predicts that Michigan's unemployment rate in the second quarter of 2020 will average 23 percent—even higher than the forecasted U.S. quarterly peak of 14 percent.<sup>7</sup>

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6. U.S. Department of Labor Unemployment Insurance Weekly Claims report for April 9, 2020, April 2, 2020, and March 26, 2020. See <https://www.dol.gov/>. The comments on individual states are attributed to the state unemployment agencies.

7. Gabriel Ehrlich, George Fulton, and Saul Hymans, "Update April 9: The U.S. and Michigan Economic Outlook for 2020-2022," University of Michigan Ann Arbor Research Seminar in Quantitative Economics." See: <https://lsa.umich.edu/econ/rsqe/forecasts.html>.

*3. The U.S. Department of Homeland Security's memorandum on "essential" workers during the COVID-19 pandemic explicitly recognizes many workers that are not recognized in Michigan's Executive Order.*

On March 19, the Department Homeland Security (DHS) issued a memorandum on the identification of "essential infrastructure workers" during the COVID-19 response.<sup>8</sup> The following guidance from the memorandum is of particular importance:

- The memorandum states that those who work in critical infrastructure industries "have a special responsibility to maintain [their] normal work schedule."
- The memorandum lists a range of "operations and services that are essential to continued critical infrastructure viability." These include management, call centers, construction, telecommunications, information technology, food, agriculture, transportation, energy, wastewater, manufacturing and logistics, and health care workers.
- The memorandum states that "all organizations should implement business continuity plans," and that in the "modern economy, reliance on technology and just-in-time supply chains means that certain workers must be able to access certain sites, facilities, and assets to continue continuity of functions."

On March 28, DHS released a revised memorandum identifying a larger set of essential industries and workers.<sup>9</sup> The occupations and industries identified in this revised document include workers in some of Michigan's most important economic sectors. For example, Trade, Transportation, and Utilities is Michigan's largest sector by employment, with over 800,000 workers, and the State's Manufacturing sector employs 625,000 workers.<sup>10</sup>

These memos note the following items that are especially germane to key industries in Michigan:

- The DHS memo explicitly notes the importance of transportation, logistics, and automotive repair and maintenance.
- The DHS memo classifies "central office personnel" who "maintain and operate central office, data centers, and other network office facilities" as essential employees.
- The DHS memo also notes the essential nature of "workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture..." and many other products.
- The March 28 DHS memo expands its definition of essential workers to a variety of industries, including some that are particularly important to Michigan's economy, such as transportation and manufacturing.

**Need to Recognize True Extent of Critical and Essential Workers.** As was apparent at the onset of this emergency, and consistent with the guidance from the U.S. government that

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8. Christopher Krebs, "Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response," March 19, 2020.

9. Christopher Krebs, "Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response," March 28, 2020.

10. U.S. Bureau of Labor Statistics, "Economy At a Glance: Michigan," <https://www.bls.gov/>.

was cited in Michigan Executive Order 2020-42 and prior orders, it is critical to support “essential” workers in a range of industries. The purpose of the DHS memo was to highlight the importance of these workers and “help State and local officials ensure continuity of functions critical to public health and safety.” However, Michigan Executive Order 2020-42 explicitly states that it does *not* adopt any of the guidance issued by DHS subsequent to the March 19 memorandum, meaning that the Governor’s order excludes those additional industries and workers identified as essential by the DHS as of March 28.<sup>11</sup>

The March 19 DHS memo was issued at a time when stay at home orders were anticipated to be short-term affairs. Since then, stay at home orders across the country have been extended. It is important to recognize that the longer these stay at home orders are in effect, the more workers must be classified as essential in order to maintain supply chains and perform essential services.

The DHS memorandum fully anticipates that changes in conditions over time and differences in the intensity of the outbreak will be taken into account by State and local governments, as well as private sector organizations. Consistent with this explicit guidance, Michigan and other states should take notice of differing infection rates within our state; as well as how changes in the course of the epidemic impact which workers and industries should be classified as essential.

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11. Paragraph 8 of Michigan’s Executive Order 2020-42 states:

“For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available here). This order does *not* adopt any subsequent guidance document released by this same agency.” [Emphasis in original.]

### *About the Authors*

**Patrick L. Anderson.** Mr. Patrick L. Anderson founded Anderson Economic Group in 1996, and serves as the company's principal and CEO. A nationally-recognized expert in business economics and a sought-after speaker, Mr. Anderson has led several major public policy initiatives in his home state. He was awarded both the Michigan Chamber of Commerce's Leadership Michigan award and the University of Michigan's Neal Staebler award for civic leadership. His writing has earned five prestigious national awards from the National Association of Business Economics.

**Brian R Peterson.** Mr. Peterson is a consultant and director of public policy and economic analysis with Anderson Economic Group. His work focuses on economic and fiscal impact modeling, actuarial analysis, and environmental economics. Prior to joining AEG, Mr. Peterson worked as a policy analyst in regional economic development and transportation planning in the Chicago region.

### *Contributors*

The authors wish to recognize the contribution of the following individuals:

- Andrew Miller, Senior Analyst, Anderson Economic Group
- Sarp Mertdogan, Analyst, Supported Intelligence LLC
- Milan Batista, Professor at the University of Ljubljana, Slovenia

The conclusions in this memorandum are, of course, those of the authors.

### *About Anderson Economic Group LLC*

Founded in 1996, Anderson Economic Group is a boutique research and consulting firm, with offices in East Lansing, Michigan, and Chicago, Illinois. The experts at AEG have extensive experience in public policy and economic analysis. Clients of Anderson Economic Group include nearly every major institution in the State of Michigan, including colleges, manufacturers, labor unions, state and local governments, and trade associations. Relevant publications from our firm include:

- Annual State Business Tax Burden Rankings, published since 2007.
- "Economic and Fiscal Impacts of the United Auto Works GM Strike," published in 2019.
- "Economic and Fiscal Impacts of a 1332 Affordable Care Act Waiver in Georgia," published in 2019.
- "Michigan Economic Competitiveness Benchmarking Report," published since 2012.
- "Anderson Economic Group Amazon HQ2 Index," published in 2017.
- "AndCan® Index Estimates of National and State-level Cannabis Demand," updated regularly since 2017.
- Numerous benchmarking, comparison, and economic update analyses.

For more information about Anderson Economic Group, please visit our website at <https://www.AndersonEconomicGroup.com>.

*About Supported Intelligence LLC*

Supported Intelligence, LLC is a decision intelligence and data analytics company founded in 2012. Supported Intelligence pioneered a innovative class of decision intelligence technology, which is covered by three U.S. patents as well as patents pending in the U.S. and other countries.

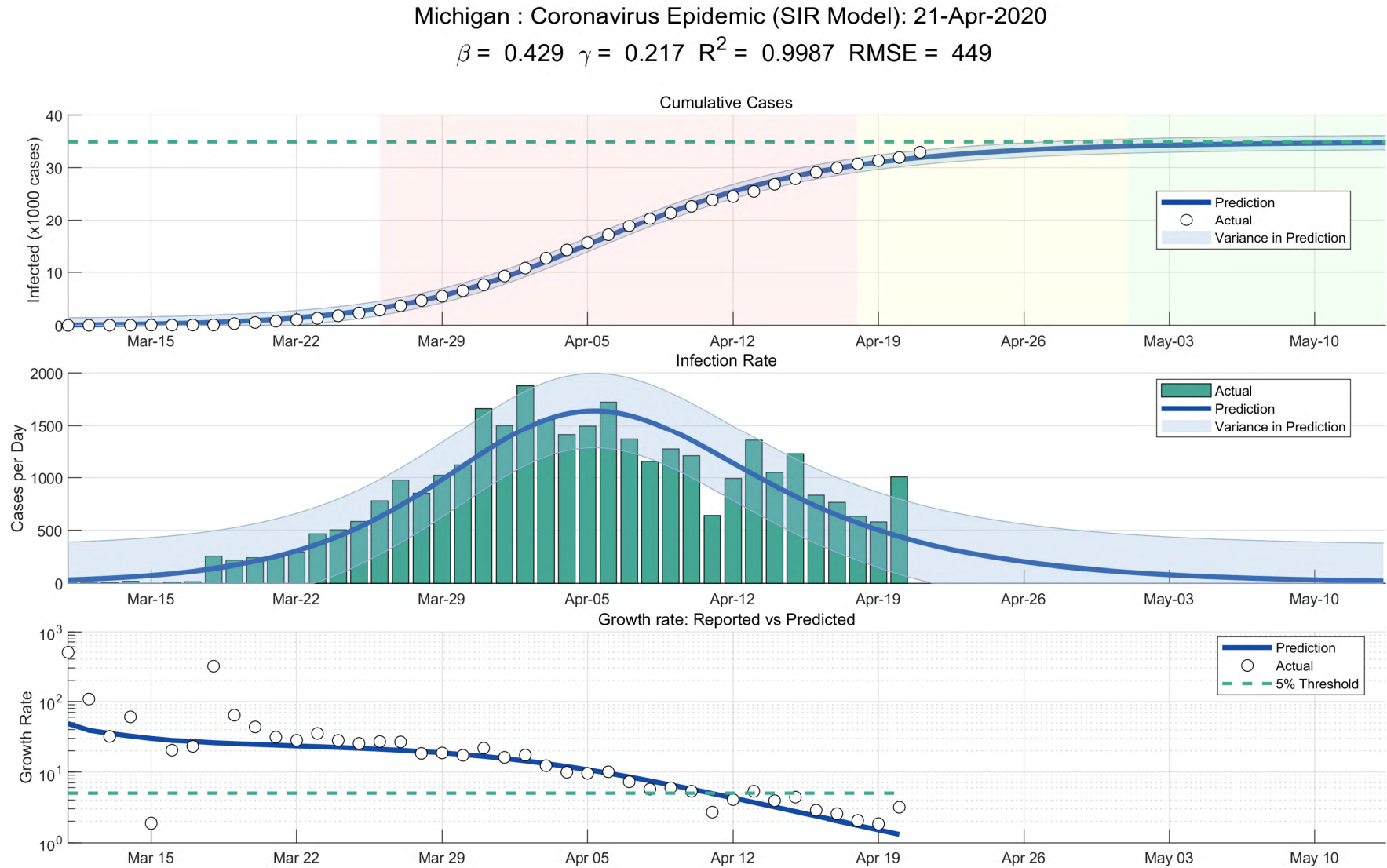
Consultants at Supported Intelligence assembled the data and created the analytics facility to bring in daily reports from numerous sources, including at the state and county level in the United States; analyze the data using the methods identified in this document; and generate the decision intelligence reports highlighted here.

Please visit <https://www.SupportedIntelligence.com> for more information.

## **Appendix A: Additional Figures**

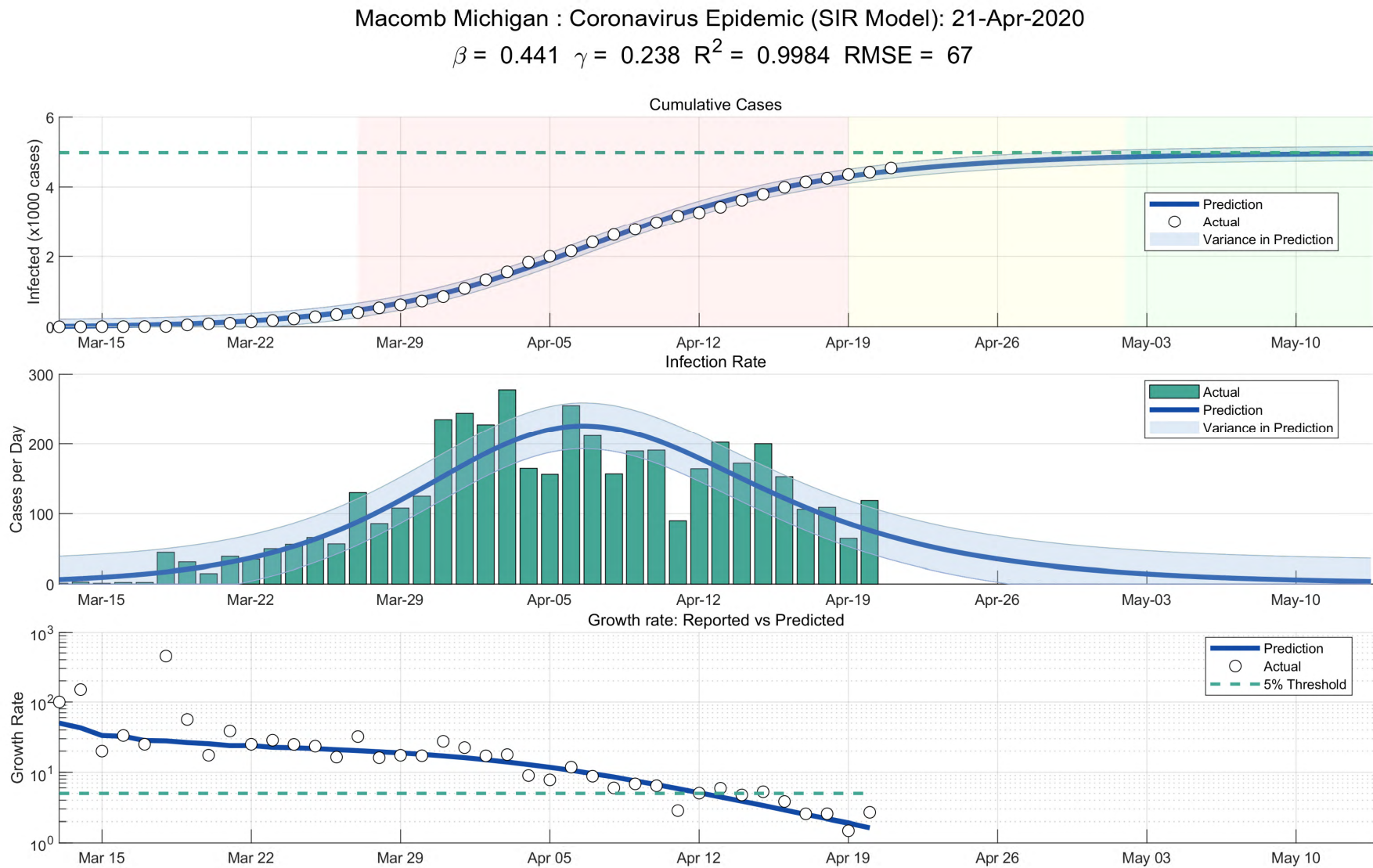
- “COVID-19 Total Infections, Infection Rate, and Growth Rate in Michigan” on page 13
- “COVID-19 Total Infections, Infection Rate, and Growth Rate in Macomb County, Michigan” on page 14
- “COVID-19 Total Infections, Infection Rate, and Growth Rate in Oakland County, Michigan” on page 15
- “COVID-19 Total Infections, Infection Rate, and Growth Rate in Wayne County, Michigan” on page 16
- “COVID-19 Total Infections, Infection Rate, and Growth Rate in the 3-County Detroit Metropolitan Area (Wayne, Oakland, Macomb)” on page 17

FIGURE 1. COVID-19 Total Infections, Infection Rate, and Growth Rate in Michigan



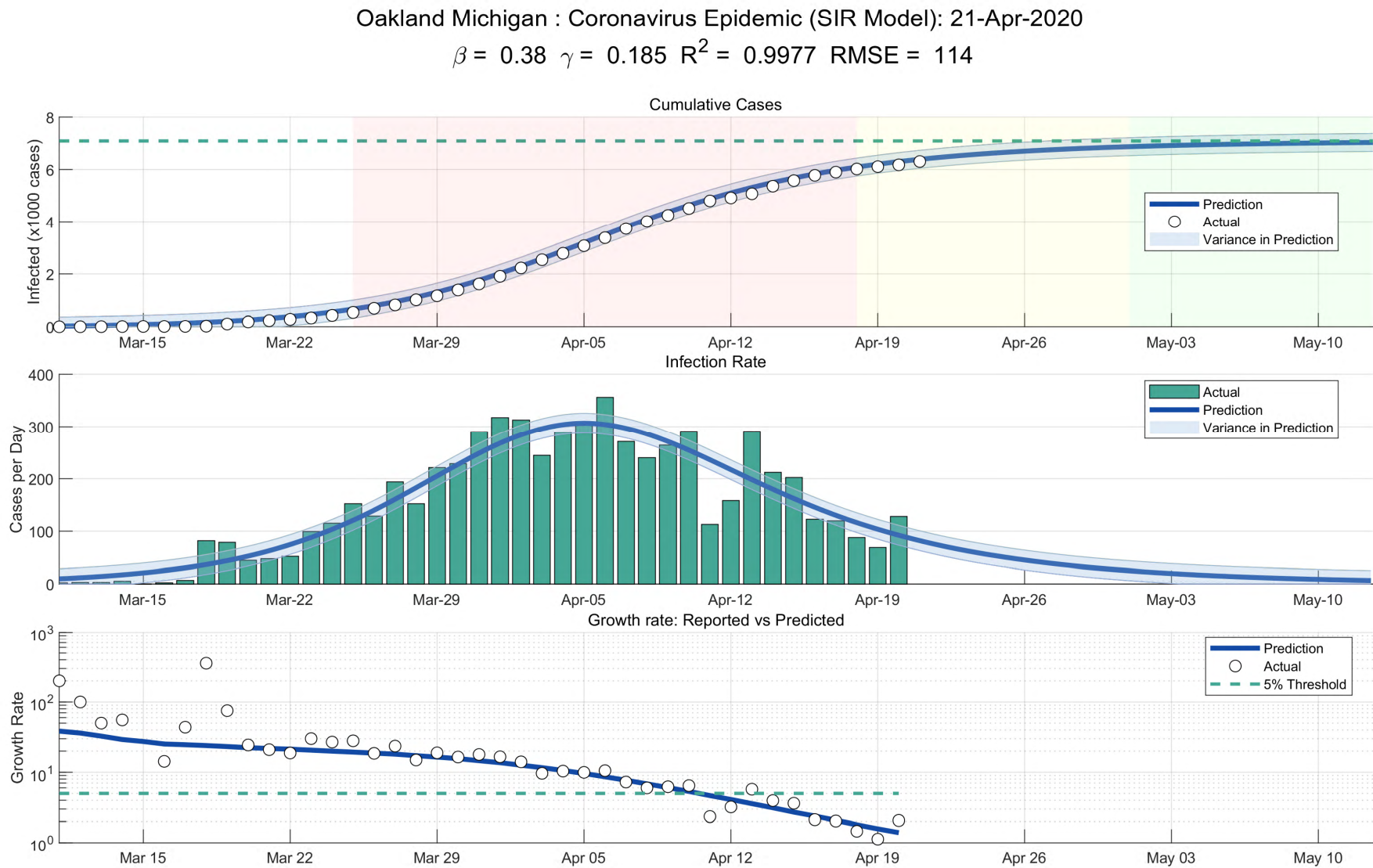
Analysis by Anderson Economic Group LLC using data compiled from state reports and methods described in memorandum.  
 These data will be revised regularly and are subject to reporting and other errors.

FIGURE 2. COVID-19 Total Infections, Infection Rate, and Growth Rate in Macomb County, Michigan



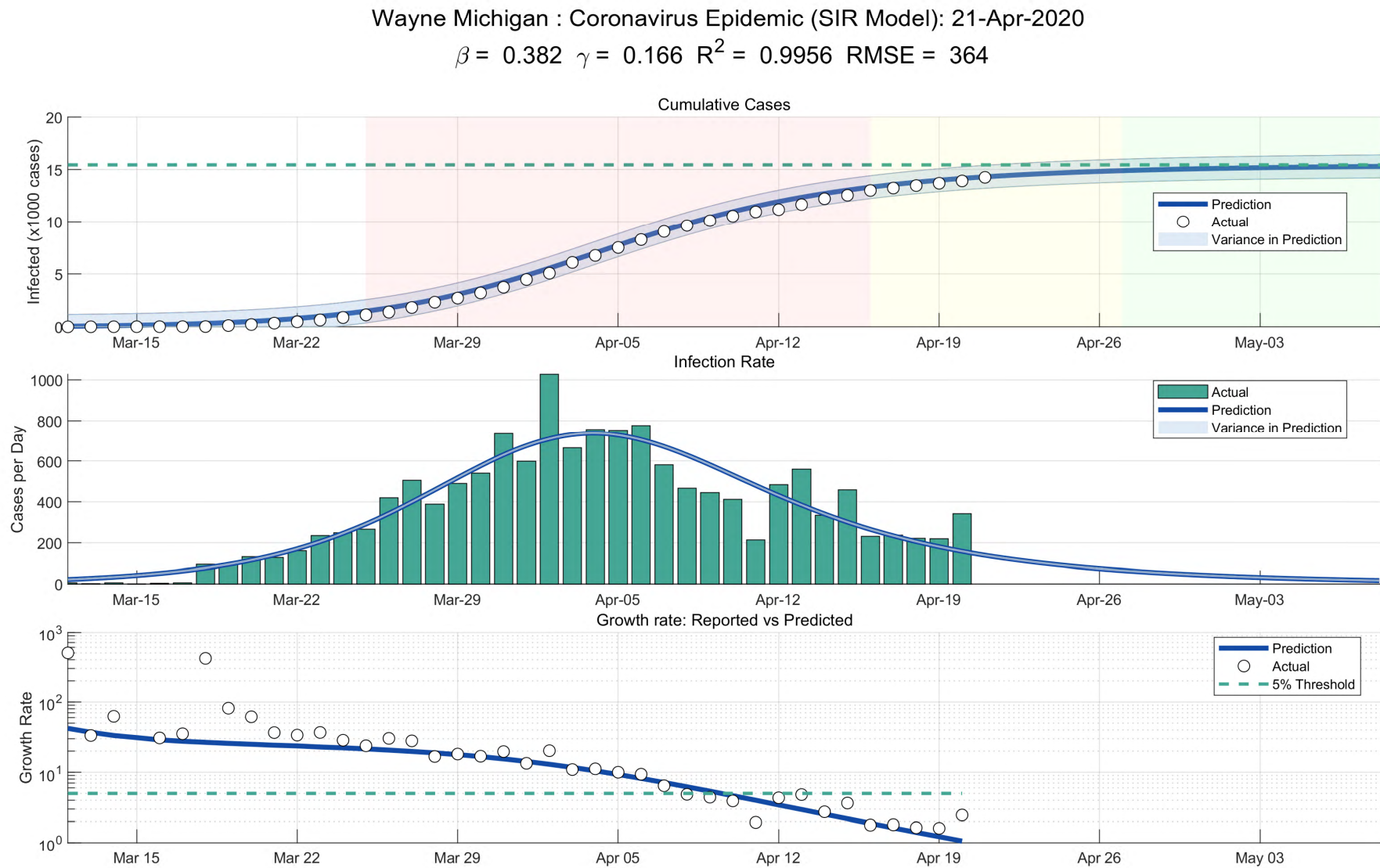
Analysis by Anderson Economic Group LLC using data compiled from state reports and methods described in memorandum.  
 These data will be revised regularly and are subject to reporting and other errors.

FIGURE 3. COVID-19 Total Infections, Infection Rate, and Growth Rate in Oakland County, Michigan



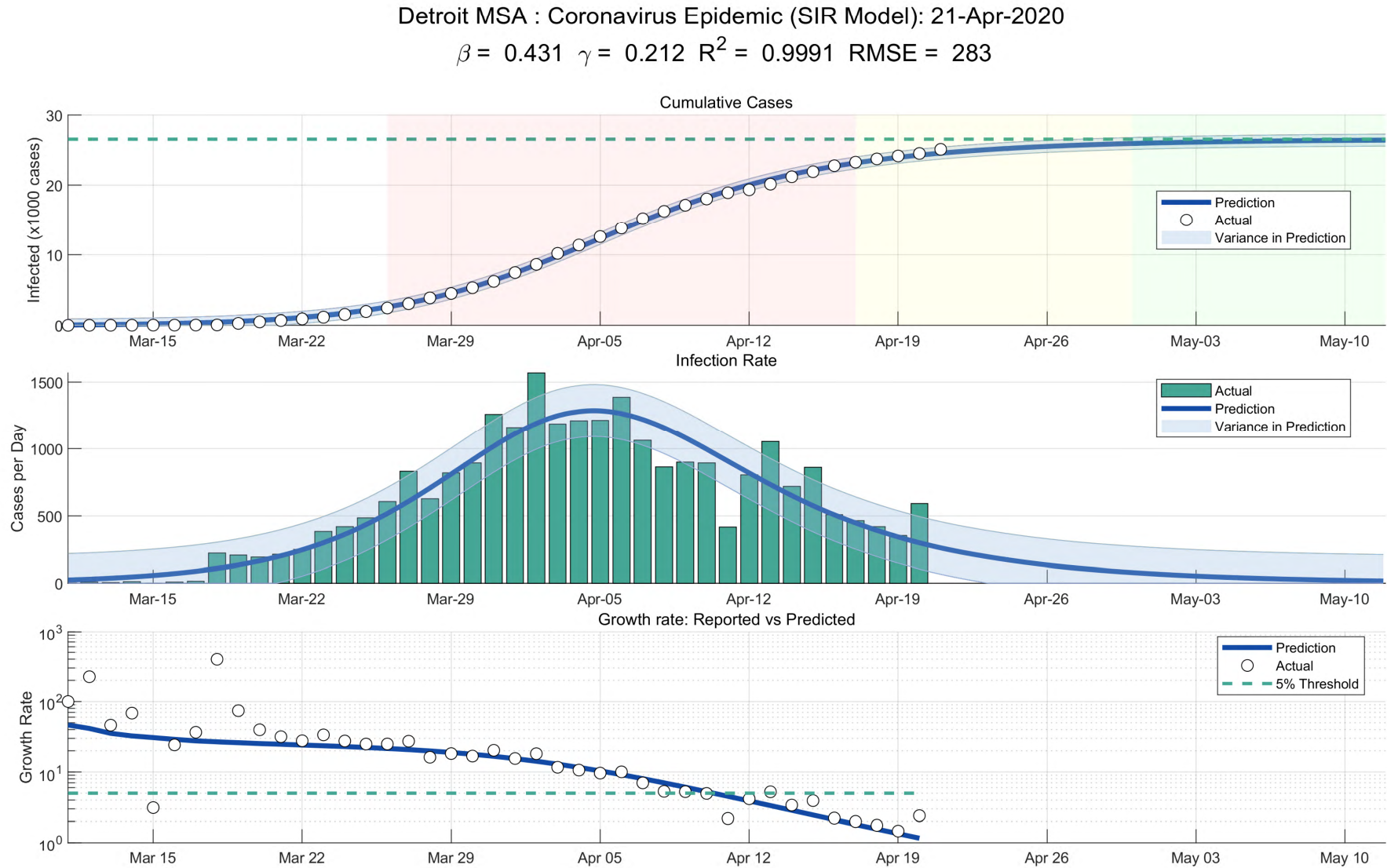
Analysis by Anderson Economic Group LLC using data compiled from state reports and methods described in memorandum.  
 These data will be revised regularly and are subject to reporting and other errors.

FIGURE 4. COVID-19 Total Infections, Infection Rate, and Growth Rate in Wayne County, Michigan



Analysis by Anderson Economic Group LLC using data compiled from state reports and methods described in memorandum.  
 These data will be revised regularly and are subject to reporting and other errors.

FIGURE 5. COVID-19 Total Infections, Infection Rate, and Growth Rate in the 3-County Detroit Metropolitan Area (Wayne, Oakland, Macomb)



Analysis by Anderson Economic Group LLC using data compiled from state reports and methods described in memorandum.  
 These data will be revised regularly and are subject to reporting and other errors.

## Appendix B: Data, Methodology, and Limitations

April 22, 2020

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### Terms of Use

*All users of this information must acknowledge the purpose, limitations, and lack of warranty for this analysis and the related data, and accept the requirement to disclose these terms to any person to whom they provide this information:*

**1. Purpose.** Our purpose is to provide information useful to others who may face a decision regarding their activities in the coming months. The purpose is not to diagnose or treat any disease; provide health advice; provide legal advice; or even to make unconditional forecasts of the number of cases or patients.

**2. Known Limitations and Errors in Data.** This analysis relies upon data that have known errors, omissions, and limitations. These include:

- The diagnosis and classification of those afflicted with Covid-19 has been inconsistent across jurisdictions, and across time.
- Daily case counts are subject to reporting and compilation errors.
- The proper location for a case is often unclear, particularly with travelers and people who live near borders.
- In some situations, governments have retroactively re-classified cases.
- In some areas of the world, governments have censored, suppressed, or otherwise failed to report accurately the relevant data.
- Given the volume of data and the frequency with which it is revised, some inadvertent errors are certain to arise.
- The underlying data, and therefore the estimated parameters and the estimated and projected paths, will change over time.

**3. Known Limitations of Epidemiological Models.** Every model is an approximation of reality. Like every other model, the one used here will never completely represent the underlying behavior, and will often distort some portion of it.

**4. No Warranty on Information.** There is NO WARRANTY provided for any of this information, including no warranty of merchantability or fitness.

**5. Requirement to Disclose these Terms.** If you provide this information to any other person, you must disclose to them these terms and provide a copy of this statement.

*If you do not acknowledge and accept these terms, then you should not read, share, or rely upon this information.*

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### *Data*

**Data.** The state-level data we used in this analysis were collected by the *New York Times* organization from state and local sources. We selected this data source after reviewing multiple alternatives, and recognizing the benefits of the consistency and data checking this organization brought to the effort.

- The NYT website for these data is: <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.
- The NYT data repository on GitHub is: <https://github.com/nytimes/covid-19-data>.

**Discrepancies in Data Sources; Revisions over Time.** There are discrepancies among sources for data, even for the same areas. These discrepancies arise for a number of reasons, including lapses in reporting; differences in classification; and ambiguities regarding the location of the persons. Furthermore, government entities routinely revise these data, and in many cases have retroactively reclassified patients. For these reasons, users of these data should expect that analyses prepared on different dates will often show different historical data, as well as different projected data.

### *Comparison and Alternative Sources of Data and Analysis*

There are multiple other sources of data, as well as alternative sources of analysis. These have widely-varying quality, and some are sponsored by organizations that advocate for specific policies as well as report data.

We urge readers of our analyses to compare the information they have obtained from us with information from other sources. Here are an example of comparison sources of information, for the State of Michigan in the United States:

- <https://covid19.healthdata.org/united-states-of-america/michigan>
- <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html#epi-curve>
- <https://www.uofmhealth.org/covid-19-update>
- <https://www.michigan.gov/coronavirus>

### *Model*

We used a SIR model to forecast the impacts of COVID-19 on states across the U.S. We chose this model after conducting an extensive review of available epidemiological models.

Our review confirmed that the standard SIR model, when consistent daily data are available, often provides a reliable and understandable assessment. This judgement is based partially on the decades of experience across a wide number of countries and epidemics.

It is also based on our assessment of how this model and the available data had performed in assessing the COVID-19 outbreak in Italy, Germany, Lombardy (a province in Italy), the United States, New York City, Ohio, Michigan, Illinois, the Detroit metropolitan area and counties, and other areas.

The SIR model is a “compartmentalized” model, meaning that it presumes the population can be classified as if they are in different “compartments,” and can move among them when they become infected with a disease and when they recover or perish from it. The acronym comes from “Susceptible-Infected-Removed.”

We use the data from various states and a specific implementation of the SIR model to fit the data, and estimate parameters such as  $R_0$  (discussed further below). We use these parameters to estimate a future curve, which represents the prediction based on past data and the assumptions of the model. As noted below, our implementation of the SIR model provides for iterative re-estimating of  $R_0$  values and estimates of the epidemic size and susceptible population.

**History of the Use of the SIR Model.** The SIR model has been recognized and used as a basis for the diffusion of ideas and other transmissions, as well as for epidemiological studies, since at least 1964.<sup>1</sup> The model was originally published in 1927, in an article that helped establish the basis for modern studies of epidemiology.<sup>2</sup>

It is also widely described in academic and professional settings, including having many easily-accessible resources, such as an online teaching version provided by the Mathematics Association of America.<sup>3</sup>

---

1. An influential article in this development was Goffman W, Newill V. “Generalization of epidemic theory.” *Nature*. 1964;204(4955):225–228. doi: 10.1038/204225a0. This article outlined the now standard nomenclature of “susceptible-infected-removed” subgroups of a population, and stated the standard assumptions such as a homogenous population and regular “mixing” of it. (The “R” portion is now commonly called “recovered.”)

The intellectual roots of this model date back to the early 1900s, in which the first “compartmented” mathematical models, separating population cohorts, were developed. See, e.g. Sooknanan, J., Comissiong, D.M.G. “When behaviour turns contagious: the use of deterministic epidemiological models in modeling social contagion phenomena.” *Int. J. Dynam. Control* 5, 1046–1050 (2017). <https://doi.org/10.1007/s40435-016-0271-9>.

2. The 1927 article by W.O. Kermack and A.G. McKendrick, “A Contribution to the Mathematical Theory of Epidemics,” *Proceedings of the Royal Society A*, vol. 115 no. 772, outlined the SIR model, is often credited as the first to identify the underlying mathematics of the path of an epidemic. In this 1927 article, they plot the deaths from an epidemic in “the island of Bombay” from December 1905 to July 1906. It followed a bell-shaped curve of the shape shown in SIR and other models a century later.

3. The MAA teaching version, authored by David Smith and Lang Moore, is available at: <https://www.maa.org/press/periodicals/loci/joma/the-sir-model-for-spread-of-disease-the-differential-equation-model>. An overview of this and many variants is presented in H.W. Hethcote, “The Mathematics of Infectious Diseases,” *SIAM Review* 42 (4) (2000).

**Alternatives and Limitations of the SIR Model.** Every model is an approximation to reality, and all have limitations. In the case of the SIR model, known limitations include:

- The model only focuses on one wave of an epidemic.
- The model assumes that “removed” individuals attain immunity from the disease. For some novel diseases, this has not been demonstrated.
- The model relies on certain assumptions (such as homogenous population and consistent mixing of the population) that are rarely accurate.

Furthermore, all models rely upon data—and the available data are never perfect in epidemiological studies.

There are alternatives to this model, many of which are variations on it. As with alternative sources of data, readers should consider whether an alternative model should be also be considered.

**Inclusion of Diagnostic Information.** Our implementation of the standard SIR model includes a number of features that allow for inspection of the results, and for a better understanding of the reliability of the model’s estimated parameters. These include:

- Our complete results allow for the inspection of prediction errors, allowing readers to compare our historical estimates against historical data.
- Using innovations developed by researchers cited below, we also iteratively re-estimate the model over time, capturing the evolution of model parameters as more data become available.
- We fully disclose the model data and parameters, allowing the results to be replicated by other researchers.
- We explicitly note the known limitations of the model and data.

**Elements of the SIR Model.** The typical curve generated by an SIR model that estimates the number of people infected per day is an “S” shaped curve in which the number of new infections per day begins slowly, then grow exponentially larger before reaching a “peak” point. Following the peak, number of cases per day decrease and slowly reach zero, or the neutral level.

**Parameters.** A key element of the model is known as “R0,” (sometimes called “R nought”) or the reproduction rate of the infection. In the SIR model, if R0 equals 2, that means for each time period of the outbreak, 1 infected person is expected to infect 2 others.

In actual epidemics, we expect the reproduction rate to be a dynamic value that changes over time. In its initial stages, the R0 value can grow quickly. As the epidemic slows, the R0 value declines and ultimately decreases to near zero.

- See “Exhibit: Key Variables in SIR Model ” on page 22.

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*Exhibit: Key Variables in SIR Model*

Reproduction Rate

- R = Reproduction number, number of people infected by each infected person
- R<sub>0</sub> = Basic reproduction number (“R nought”) calculated by Beta/Gamma (with scale factors)
- Beta = Average contact frequency
- Gamma = Average removal frequency

Population and Epidemic Size

- N = Population size (approximate initial size of susceptible population)
- C<sub>end</sub> = Epidemic size (total recovered population)
- S<sub>end</sub> = Final number of susceptible individuals left

Implied Timing

- Day = epidemic day number
- date0 = start day

Errors, Uncertainty, and Model Fit

- RMSE = Root mean square error
- AdjR<sup>2</sup> -- adjusted R<sup>2</sup> (“R squared”) statistic

Data

- C = reported case data
  - C<sub>e</sub> = projected case data, given the model, data, and parameters
  - Diff = difference between reported and projected cases
-

### *Known Limitations and Common Assumptions in Epidemiological Models*

There are known limitations of this and other epidemiological models. We state the most important ones here:

1. This and other epidemiological models presume that, after some time, the population acquires “herd immunity” that limits further spread of the same strain of the disease.
2. There is a likelihood of subsequent waves of the same disease. These are typically of lesser magnitude. For example, numerous variations of influenza cause illness and deaths each year, and are related to similar prior outbreaks. In general, only one wave is represented by this type of model.
3. “Comorbidity” causes difficulty in assigning properly both cases and the number recovering and perishing from a disease. In particular, the number of deaths due to influenza each year is very large, and this cannot always be distinguished (especially in the early stages of the epidemic) from the specific disease being studied.
4. In general, these models assume a certain amount of “mixing” of the population. The mathematical treatment of this interaction is never accurate in small settings or specific short time periods, and usable models require significant data and enough time to allow for patterns across entire societies to develop. The amount of mixing also varies by age, and varies across social groups and among areas within a country.
5. In addition, all models rely upon data that are collected with reporting and measurement errors. In this epidemic, differences in testing, and in some countries pressure to mis-report or fail to report results, have clearly caused some difficulties in obtaining accurate data.
6. All statistical models involve uncertainty, and all projections resulting from these models carry with them this uncertainty.
7. This is a new disease. It will react in unpredictable ways with different populations.
8. The population itself changes its behavior over time. This is perhaps the largest unknown at the early stage of a severe epidemic in which a strong change in behavior, and new forms of treatment, occur.

Because of these inherent limitations, we present the model and data along with the available diagnostic and related information, to allow an informed decision. We urge policymakers to consider this information, and additional information, before making their decisions.

### *Implementation of Model*

Supported Intelligence adapted an SIR model authored by Milan Batista, Professor at the University of Ljubljana in Slovenia. Mr. Batista and his colleagues describe this model, provide a public file exchange for the code, and apply it to the Coronavirus outbreak in the following publication and websites:

- Batista, Milan. (2020). *Estimation of the final size of the coronavirus epidemic by the SIR model*. Monograph found at ResearchGate.
- A file exchange version is maintained for review by other researchers; it is here: <https://www.mathworks.com/matlabcentral/fileexchange/74658-fitviruscovid19>.
- Related work using this same model for other countries and with different data sources is available here: <https://www.fpp.uni-lj.si/en/research/research-laboratories-and-the-programme-team/research-programme-team/>  
As of the date of this memo, a comparison analysis of the United States (using an April 10 dataset, from a different source than we use in our analysis) is presented. It is consistent with the results we obtain using our data for the United States.

The version used by Supported Intelligence is modified to include the following improvements for the purposes of our work:

1. Supported Intelligence built a data assembly routine that gathers live data on cases reported per day from the *New York Times*.
2. We provide additional diagnostic information, and have created different data visualizations for the purpose of presenting the results.
3. We clarify a number of terms, and adjust the presentation to date formats common in the United States, to avoid ambiguity and misunderstanding.

**DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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LEAGUE OF INDEPENDENT FITNESS  
FACILITIES AND TRAINERS, INC.,  
BASELINE FITNESS LLC,  
BUILDING YOUR TEMPLE LLC,  
BYT FITNESS 247 LLC,  
CLAWSON FITNESS, LLC,  
CLINTON FITNESS, INC.,  
D-LUX KARATE UNIVERSITY LLC,  
FENTON ATHLETIC CLUB, INC.,  
FENTON KARATE, LLC,  
FUSION FITNESS 24/7 LLC,  
H3 FITNESS LLC,  
I FITNESS PERSONAL TRAINING, INC.,  
JKP FITNESS, LLC,  
JPF ENTERPRISES, LLC,  
M FITNESS CLUB, LLC,  
MH & AB LLC,  
MOTOR CITY CF - ST. CLAIR SHORES, LLC,  
NASCOT ENTERPRISES, LLC,  
PRISON CITY PHYSIQUE LLC,  
RMP FITNESS INC.,  
STRENGTH BEYOND LLC,  
24/7 BOOTCAMP AND BOXING INC., and  
4 SEASONS GYM, LLC,

Plaintiffs,

v.

GRETCHEN E. WHITMER and  
ROBERT GORDON,  
Defendants.

Civil No. 1:20-cv-00458

Hon. Paul L. Maloney

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

---

ERSKINE LAW, PC  
Scott M. Erskine (P54734)  
Carly Van Thomme (P59706)  
Attorneys for Plaintiffs  
612 W. University



April 15, 2020

The Honorable Gretchen Whitmer  
Governor of Michigan  
111 S. Capitol Ave.  
Lansing, MI 48909

Dear Governor Whitmer:

On behalf of our **1,300** Michigan-based employees and **667,000** members across our 80 Planet Fitness clubs located throughout Michigan, we applaud you for your decisive measures to mitigate the spread of COVID-19 in our state. As you consider measures to re-open the economy of our great state, we would like to urge you to make gyms a priority in the first tranche. As you know, the fitness industry plays a significant role in our economy and an even more vital role in the health and well-being of Michiganders. It has been well documented that exercise helps improve the immune system, helps with anxiety and depression and is proven to reduce the occurrence of many chronic diseases. By providing a safe and clean environment for our members to exercise, we are helping them achieve these greater levels of wellness.

To help you understand the economic impact of our business, the following is a summary of the last twelve months ending March 2020:

|                       |                                                            |
|-----------------------|------------------------------------------------------------|
| <b>\$33.4m</b>        | in total employee wages                                    |
| <b>\$0.44m</b>        | in state unemployment insurance                            |
| <b>\$2.46m</b>        | in real estate taxes paid                                  |
| <b>\$1.82m</b>        | in personal property taxes                                 |
| <b>\$0.20m</b>        | in sales and use tax                                       |
| <b><u>\$18.7m</u></b> | in construction supporting hundreds of trades people in MI |
| <b>\$57.02m</b>       | <b>in total support of Michigan's economy</b>              |

These statistics are exclusive to Planet Fitness and do not contemplate the rest of the gym industry in Michigan. According to IHRSA (International Health & Racquet Sports Association), which is the governing body that oversees the fitness and gym industry, there are over 1,000 gyms and fitness centers with over 1.5 million members in Michigan as of 2019.

In addition, and more importantly, the safety and well-being of our members and staff are our highest priority. As the single largest purveyor of health and fitness in the State of Michigan, we feel that we are well positioned to address operating guidelines not only for our business, but for gyms and fitness centers in general. To that end, we have put together an overview of our recommendations for your consideration. The attached document outlines many of the current standards that are followed in our club operations along with a number of new and/or



enhanced recommendations focused on sanitation and physical distancing protocols. The safety and well-being of members and staff is paramount.

The procedures and guidelines attached, and other best practices, would be implemented to protect all employees, members and the public during the current pandemic. Furthermore, these procedures and guidelines would remain in effect until Executive Order 2020-42 (COVID-19) is cancelled and beyond, if needed.

Thank you for your consideration and we look forward to working with you to arrive at the best possible solution to re-opening our businesses.

Respectfully,  
Planet Fitness Franchisees of Michigan

Adam Willaey  
Chief Executive Officer  
Impact Fitness, LLC

Julian Monterosso  
Managing Partner  
JP Fitness, LLC

Thomas Purther  
Chief Executive Officer  
Cambridge Fitness, LLC

Elaine Berry  
CEO/Owner  
Planet Fitness Berry, Inc.

Lonni Bhirdo/Ken DeBusscher  
Managing Partners  
Slim Cherry, LLC

Bryan Rief  
Chief Executive Officer  
PF Michigan Group, LLC

**DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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LEAGUE OF INDEPENDENT FITNESS  
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RELIEF**

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ERSKINE LAW, PC  
Scott M. Erskine (P54734)  
Carly Van Thomme (P59706)  
Attorneys for Plaintiffs  
612 W. University

## Michigan Fitness Clubs Association

Michigan Fitness Clubs Association  
133 W. Main Street  
Suite 266  
Northville, MI 48167

May 15, 2020

The Honorable Gretchen Whitmer  
Governor of Michigan  
111 S. Capitol Ave.  
Lansing, MI 48909

Dear Governor Whitmer:

On behalf of health clubs and fitness studios across Michigan, thank you for your commitment to protecting public health and supporting the economy during this challenging time. While we are all competitors, when it comes to the health, safety and wellness of our employees and the people of Michigan, we are in total agreement and speak as one voice.

As various sectors open and you consider measures to re-open others, we would like to urge you to make health clubs and fitness studios a priority. As you know, the fitness industry plays a significant role in our economy and an even more vital role in the health and well-being of Michiganders. While it is well documented that exercise helps improve the immune system, helps with anxiety and depression, reduces the likelihood and impact of many chronic diseases, and lowers medical expenses, in the case of Covid-19, fitness is Michigan's path out of this pandemic. By providing a safe and clean environment for our members to exercise, we help Michigan achieve greater levels of wellness and the strength to survive this pandemic.

Candidly, a vaccine being at least 12 months away, the only way for Michigan's people, businesses and government to return to normalcy in the foreseeable future is to achieve herd immunity (meaning 70-80% of the population must be exposed to the coronavirus). According to the CDC, the leading factor in Covid-19 hospitalizations and complications is obesity, meaning Michigan has to get fit to survive the pandemic.

The CDC confirms, the majority of patients being hospitalized have one or more underlying conditions with the most common being hypertension (49.7%) and obesity (48.3%). Among patients aged 18–49 years, obesity was the most prevalent underlying condition.

<https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm>

**"BMI [obesity] is the Achilles' heel for American [Covid] patients. . . ."** states Jennifer Lighter, an epidemiologist at New York University's Langone School of Medicine.

Sanjum Sethi, a cardiologist at Columbia University Medical Center, says his hospital is seeing a surprising number of younger patients with obesity, but no other conditions such as diabetes or high blood pressure. On April 12, [he tweeted](#) that, **for obese patients, "the prognosis is extremely grim. They are NOT dying from comorbidities. They are dying from COVID-19."**

<https://www.sciencenews.org/article/coronavirus-covid19-obesity-risk-factor>

Regrettably, these statistics are repeatedly confirmed in multiple studies—59% of hospitalized patients are obese with an average BMI of 33. Patients with a BMI of 30-34 were twice as likely to get admitted to the hospital, and patients with a BMI of 35 or higher were three times as likely to end up in the intensive care unit.

<https://www.webmd.com/lung/news/20200429/obesity-new-risk-factors-for-young-covid-patients>

Regarding the economic impact of our business, the following is a summary of recent figures:

|                  |                                                            |
|------------------|------------------------------------------------------------|
| \$150.3m         | in total employee wages                                    |
| \$2.0m           | in state unemployment insurance                            |
| \$11.07m         | in real estate taxes paid                                  |
| \$8.19m          | in personal property taxes                                 |
| \$0.90m          | in sales and use tax                                       |
| <u>\$84.15m</u>  | in construction supporting hundreds of trades people in MI |
| <b>\$257.02m</b> | <b>in total support of Michigan's economy</b>              |

According to IHRSA (International Health & Racquet Sports Association), which is the national governing body that oversees the fitness and gym industry, there are over 1,100 gyms and fitness centers with over 1.5 million members in Michigan as of 2019.

Finally, and more importantly, the safety and well-being of our members and staff are our highest priority. To that end, we have put together an overview of our recommendations for your consideration. The attached document outlines many of the current standards that are followed in our club operations along with a number of new and/or enhanced recommendations focused on sanitation and physical distancing protocols. The safety and well-being of members and staff is paramount.

The procedures and guidelines attached, and other best practices, would be implemented to protect all employees, members and the public during the current pandemic. Furthermore, these procedures and guidelines would remain in effect until Executive Order 2020-42 (COVID-19) is cancelled and beyond if needed.

Thank you for your consideration and we look forward to working with you to arrive at the best possible solution to re-opening our businesses. We are not just a significant contributor to Michigan's economy, our industry is critical to Michigan's plan to survive this pandemic.

Sincerely,

*Bryan Rief & Donald Jordan*

**Michigan Fitness Clubs Association**

**DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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LEAGUE OF INDEPENDENT FITNESS  
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ERSKINE LAW, PC  
Scott M. Erskine (P54734)  
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Attorneys for Plaintiffs  
612 W. University

# Fax

1 of 4

**Fax** +1 (517) 335-6863

:

**To:** Governor Gretchen Whitmer

**From:** LIFFT, inc

**Subject:** Safe Reopening Of Small Fitness

**Phone:** +1 (707) 330-8318

**Email:** info@LIFFT.org

**Date** May 15, 2020

**Pages:** 4

:

☐ Urgent ☐ Please Reply ☐ For Review ☐ Please Comment

**Comments:**

# LIFFT, INC

Gov Gretchen Whitmer  
P.O. Box 30013  
Lansing, Michigan 48909

14 May 2020

Dear Gov Gretchen Whitmer,

LIFFT is a coalition of small, independently owned gyms and personal trainers who have organized to form a collective voice. We, as well as our members, have been greatly impacted by the extended stay at home executive orders crafted in response to the current COVID 19 pandemic affecting our state.

The health and welfare of our members and communities is dramatically worsening due to the lack of access to our facilities and services. Mental health struggles, alcohol and substance abuse, suicidal ideation and suicide attempts, and domestic violence are all on the rise, due at least in a significant part to lack of access to outlets that allow for decompression for those struggling with them.

Physical fitness, as well, directly impacts some of the most significant risk factors for worsened morbidity and mortality from COVID 19. Obesity, diabetes, and hypertension are all associated with a worse prognosis in this disease; our services help individuals mitigate their risk factors and improve their overall health and wellness.

Our members respect science and infectious disease. A proposal to safely open our facilities at a reduced occupancy initially has been crafted following CDC and OSHA guidance and is included for your review as follows:

As Michigan small business owners who own and run independent fitness facilities of less than 250 members/10000 sq feet, we propose the following safe reopening policies:



PHONE 707.330.8318  
EMAIL [info@lifft.org](mailto:info@lifft.org)  
WEBSITE [www.lifft.org](http://www.lifft.org)

1. Reclassification of small fitness facilities as defined above as appropriate for phase 4 opening. Facilities typically provide a minimum of 28 sq ft for each person using a facility and access to numbers of patrons is limited to this number. During phase 4, facilities would operate at 25% of normal capacity, or 100 sq feet allotted per member. Facilities will provide their own specific strategies to ensure this number is not exceeded and will detail them in their own site-specific plans. At phase 5, we will move to 50% of capacity maximum, and at phase 6, full capacity of facility can resume.
2. Prominent signage will be placed for patrons to perform "self-health checks" before entering the facility. An electronic document can be sent easily to members as well containing the health screening questionnaire with recommendations to quarantine for 14 days if a member were to answer yes to any of the following in the health inventory assessment. E.g: Have you or anyone in your household experienced a temperature above 99.5 (oral), developed a sustained headache, cough, feeling generally unwell, congestion, sore throat, allergy symptoms that don't respond to antihistamines, abdominal pain/vomiting/diarrhea, sudden onset of loss of smell and/or taste, or purple painful spots on toes or fingers. Additionally, all employees of the facilities will perform the same health inventory and perform self-temperature checks. If they are deemed to be possible COVID19 infection, they will leave the premises and quarantine at home. They may return to facility 7 days after fever resolves if present, or when symptom free for 7 days if fever absent, or after a total of 14 days after they entered quarantine has elapsed.
3. Patrons and employees will wash hands prior to entering training area and again before leaving facility. Adequate supplies of appropriate handwashing agents will be provided by facility.
4. Patrons will maintain a minimum of 6 ft of distance between each other while training. No equipment is to be shared, including bars, squat racks, deadlift platforms, and benches. There will be no community chalk; patrons must supply their own for their personal use only.
5. Patrons will wear a mask that covers both their nose and mouth while they are in the facility. This is to prevent droplet exposure in an environment where people are breathing more heavily under physical stress. If a patron is unable to mask, they will not be permitted to train in the facility until such time as masks are no longer deemed advisable by the CDC or local government.
6. Shirts and shoes will be worn at all times.
7. Classes and training will be "staged", i.e, there will be no overlap between members' reserved time slots. All members from prior time slot must leave before those who have reserved the next time slot may enter.
8. Patrons will be reminded by signage to not touch face, mouth, or eyes while in facility.

9. Drinking fountains will remain off during the pandemic. Patrons must bring their own water bottles from home.

10. Patrons must wipe off equipment with a disinfectant solution that will be amply available throughout the facility. They must wipe off equipment with the solution before and after use.

11. The facility will be swept and mopped nightly, including bathrooms. All frequently used objects and surfaces will be disinfected at the end of each day, as well as throughout the day by facility staff and patrons.

12. If a patron is found to have COVID19, or develops symptoms suggestive of COVID 19 within 48 hours of being at the facility, they must notify the facility immediately. At that time, the facility will be closed for a thorough cleaning and disinfecting of all surfaces before it will be reopened to members. Additionally, facility will notify all members in the facility when the patron with presumed COVID19 was present so that they may quarantine according to current guidelines and prevent community spread.

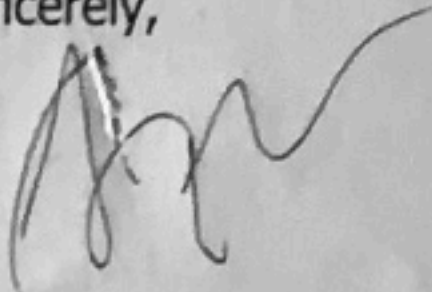
**CDC guidelines for safe reopening are listed below and have been covered in full in our proposal.**

<https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>

- social distancing (specifically, staying 6 feet away from others when you must go into a shared space)
- frequently washing hands or use alcohol-based (at least 60% alcohol) hand sanitizer when soap and water are not available
- wearing cloth face coverings
- avoiding touching eyes, nose, and mouth
- staying home when sick
- cleaning and disinfecting frequently touched objects and surfaces

Thank you for your kind consideration.

Sincerely,



Tina Kinsley, MD  
President, LIFFT



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