

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

LEAGUE OF INDPENDENT FITNESS
FACITLITIES 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

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

Joseph T. Froehlich (P71887)
Christopher M. Allen (P75329)
Joshua O. Booth (P53847)
John G. Fedynsky (P65232)

612 W. University
Rochester, MI. 48307
(248) 601-4499
serskine@erskinelaw.com
cvanthomme@erskinelaw.com

Andrew J. Jurgensen (P81123)
Assistant Attorney General
Michigan Department of Attorney General
Attorneys for Defendants
525 West Ottawa Street
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
froehlichj1@michigan.gov
allenc28@michigan.gov
Boothj2@michigan.gov
fedynskyj@michigan.gov
jurgensenA2@michigan.gov

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

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INTRODUCTION

The tone and position throughout Defendants' Response Brief describe the pandemic in Michigan through a lens that has no bearing on the state of COVID-19 in May or June 2020. Instead, the arguments are literally "pulled from the pages" of conditions prior to early April 2020 when Michigan was struggling mightily from the novel coronavirus.¹ Further, Defendants cite numerous times to Exhibits from the World Health Organization (Defendant's Exhibit C) and the Center for Disease Control (Defendant's Exhibit D) from March and April 2020 with no acknowledgement that the views and recommendations of both organizations has evolved since issuing those publications. In fact, the Governor's factual position makes it seem that perhaps the entire state should still be locked down.

Thankfully, the frightening scene described in detail throughout Defendant's Response Brief is not the status of the State of Michigan today. Nor have Plaintiffs ever taken the position that COVID-19 was anything but an emergency that required quick action by the government to flatten the curve and prevent our hospitals and other first responders from becoming overwhelmed. Plaintiffs in the instant matter heeded the Governor's Order on March 16, 2020 and closed their businesses over 13 weeks ago. This lawsuit was not filed until the end of May 2020, when it became apparent that there was no plan to allow for the reopening of Plaintiffs' businesses whatsoever. Even then, the instant motion was not filed until it became even more apparent that, despite opening almost every sector of the economy, the Governor still has no real and concrete plans to this day to decriminalize the reopening of gyms.

¹ See Defendants' Br, PageID.383, footnote 7, *New York Times* article dated March 27, 2020. See also Defendants' Br, PageID.399, footnote 19, *Detroit Free Press* Article dated April 4, 2020. See also Defendants' Br, PageID.398, footnote 18, two articles discussing COVID-19 and an outbreak the first week of February 2020 in South Korea.

ARGUMENT

I. Plaintiffs' Claims Are Justiciable

The Governor and Director are incorrect in their assertions that a) Plaintiffs lack standing to bring their pre-enforcement claims and b) that LIFFT lacks standing.

A. Plaintiffs Have Standing to Bring Their Pre-Enforcement Claims

The Governor and Director, through their actions, have challenged the standing of the individual gym owner Plaintiffs in two ways. First, sadly the defense seeks to put the Plaintiffs in a Cornelian dilemma, giving them two choices with equally harmful effects. Choice one is to follow the law while challenging it, and face losing the lawsuit without standing and potentially lose their businesses. Choice two is to announce that they intend to or that they have already violated the law and risk prosecution by the State of Michigan. Attached as **Exhibit 20** are examples of Plaintiffs' "choice." Plaintiffs will begin to violate what they deem to be an unconstitutional Executive Order by opening their fitness facilities if the Governor does not immediately allow them to reopen. The Plaintiffs will follow the same safety protocols established for Regions 6 and 8, where the Governor has already allowed re-opening of gyms and fitness facilities. To do otherwise will cause Plaintiffs the worse choice of following an unconstitutional Order to their own financial ruin.

The second position taken by the Governor and Director is that Plaintiffs have not alleged that there is a "credible threat of prosecution." However, it is the defense counsel's own state agency that has threatened prosecution and they, above all, should know that the threat is real. Plaintiffs, through the news coverage of Carl the Barber to the Attorney General's own words on the subject make it clear that the threat of prosecution is credible. In an interview with a local news program, Michigan Attorney General Dana Nessel was quoted, when asked about businesses

reopening in violation of the Executive Orders: “If they make the decision to go ahead and violate the law knowing and understanding what the law is -- then, unfortunately they’ll have to pay the consequences for it[.]” (**Exhibit 21**). As such, Plaintiffs certainly meet the Article III standing requirements that Defendants argue are applicable in *McKay v. Federspiel*, 823 F.3d 862, 867 (6th Cir. 2016)(See PageID.389)

B. Plaintiff LIFFT Has Organizational Standing

In this case, Plaintiff LIFFT argues that it has standing as a representative of its members who would have standing to sue individually. Accordingly, for the same reasons that the individual Plaintiffs have standing as mentioned in the previous section, so does LIFFT.

II. Plaintiffs Are Likely to Succeed on the Merits

The Defendants’ reliance upon *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), is not a magic bullet in this case. The Defendants cite *Jacobson* in support of the argument that the State’s conduct taken in response to a pandemic is virtually unreviewable by a court. But in fact, *Jacobson*—which involved only a compulsory smallpox vaccination, not a months-long shutdown of the entire economic and social activity of a State—does not advocate limitless deference to the executive in an epidemic. Instead, a regulation “purporting to have been enacted to protect the public health, the public morals, or the public safety” is valid only if it has a “real or substantial relation to those objects.” *Jacobson*, 197 U.S. at 31. “[The] acknowledged power of a local community to protect itself against an epidemic threatening the safety of all might be exercised in particular circumstances and in reference to particular persons in such an arbitrary, unreasonable manner, or might go so far beyond what was reasonably required for the safety of the public, as to authorize or compel the courts to interfere for the protection of such persons.” *Id.* at 28 (emphasis

added). The executive orders that are at issue in this case go well beyond the scope of permissible state action in response to an epidemic.

A. Defendants Have Not Shown A Real or Substantial Relation Between Executive Order 2020-110 and the Current State of the Public Health

Defendants defend their actions under *Jacobson*, supra, with a sweeping generalization of potential reasons for keeping fitness centers shuttered without indicating what the Governor's actual reasons are for shuttering Plaintiffs' businesses for over 13 weeks. However, even the generalized potential rationale for such a decision does not pass constitutional muster under *Jacobson*.

Prior to comparing the generalizations made by the Defendants, it is important to note that on Friday, June 12, 2020, after this Motion was filed, Governor Whitmer issued Executive Order 2020-120, which opens up even more sectors of the economy, while still leaving gyms shuttered. (**Exhibit 22**). Under the latest Executive Order, day camps, overnight camps, travel camps and troop camps are all allowed to be open. Further, K-12 school sports and other in-person extra-curricular activities are allowed as of June 15, 2020. The only caveat for the schools is that the school "indoor exercise facilities" must remain closed. Under previous Executive Orders, including Executive Order 2020-110, indoor exercise facilities were a subpart of a larger group of facilities closed. But now, the only thing that remains shuttered are **indoor exercise facilities**. Specifically, Paragraph 12(b) of Executive Order 2020-110 used to read as follows:

12. Subject to the exceptions in section 14, the following places are closed to ingress, egress, use, and occupancy by members of the public:
 - b. **Indoor** gymnasiums, fitness centers, recreation centers, sports facilities, **exercise facilities**, exercise studios, and the like. (emphasis added)

Now, Subsection 12(b) of Executive Order 2020-110, as modified by Executive Order 2020-120, reads as follows with respect to K-12 school sports activities and other in-person extra-curricular school activities:

12. Subject to the exceptions in section 14, the following places are closed to ingress, egress, use, and occupancy by members of the public:

b. **Indoor exercise facilities.** (emphasis added)

Accordingly, for K-12 sports, kids are allowed to use indoor gymnasiums, recreation centers, hockey rinks to the extent that they have them, and anything other than “indoor exercise facilities.” There is no similar restriction under Executive Order 2020-120 for camps.

Therefore, as of the date of the filing this Brief, the Governor now allows kids to attend day camps and week-long overnight camps for choir, music, and art. The Governor also allows sports camps, both day and overnight, for cheerleading, volleyball, basketball, football, wrestling, baseball, tennis, gymnastics, hockey, and any other sport one can imagine that is played in school, as long as campers remain six feet apart. There is not even a prohibition on workouts in a camp gym in the new Executive Order. Further, school athletes and campers are allowed to use indoor sports facilities, eat together in the cafeteria, and sleep together in cabins and dorm rooms. The only thing that they cannot do is work out in their school gym.

1. Heavy Breathing, Sweat, Shared Equipment, and asymptomatic transmission

Since the Response Brief in this matter has not shared the Defendants’ *actual* reasons for keeping gyms closed, Plaintiffs are left to sift through the Brief for potential support for Defendants’ position. There are four main *hypothesized* reasons for the Governor’s Orders in Defendants’ Brief for keeping gyms closed that the defense argues make Defendants’ Orders constitutional. Ironically, these possible reasons as stated by the Defendants further highlight that

the Orders are so arbitrary and unreasonable that they make Court intervention essential. These will be discussed separately below.

a. Heavy Breathing

The Governor makes the bare assertion that breathing hard is a potential reason to close down gyms. However, as discussed above and will be discussed below, the Governor allows all sorts of activities that “breathe hard” to remain open. Choir is a perfect example. When people sing, they expel air from their lungs at a much greater velocity than speaking. Under the current Executive Orders, 100 people could gather outdoors and hold a choir practice. 10 people can gather in a home and sing. An unlimited number of people can be part of a choir in a church. An entire congregation can sing at every church service, all causing the same “problem” as breathing hard. As of today, kids can attend summer day camps and overnight camps for choir and K-12 schools can have school choir practice in the school auditorium.

Further, summer camps and K-12 sports practices for cheerleading, basketball, hockey, and a host of other sporting activities, all of which can be performed inside per Executive Order 2020-120, also cause people to breathe harder. K-12 kids breathe hard in virtually every sport and there is no prohibition for them to do so indoors. In fact, cheerleading causes breathing hard from exercise and couples it with shouting out cheers while standing next to other cheerleaders.

To add to the ridiculousness of the Governor’s Orders, a person can even hold a professional style workout in their living room and invite nine friends to join him or her and they would not be in violation of the Governor’s Executive Orders. Apparently, if breathing hard is the concern, it must *only* be a concern in Plaintiffs’ professionally cleaned gyms and not at indoor basketball rinks, hockey rinks, church choirs, or a person’s home, or anywhere else as mentioned above.

b. Sweating

The fact is, there is simply no science behind the notion that “sweating” has anything to do with “virus shedding” and virtually 100% of the science supports the view that sweat cannot and does not spread COVID-19.² The science is that the disease is transmitted by respiratory droplets from talking, breathing, coughing or sneezing. The Defendants cannot and do not offer any support for the position that sweat glands can shed virus.

c. Shared Equipment

Yet another of Defendants’ *possible* explanations for the rationale of the Governor is that “the sharing of exercise equipment” leads to a heightened risk of viral spread. (PageID.398)(See also Exhibit D of Defendants’ Response Brief) However, as Plaintiffs pointed out above (footnote 18) the Brief by Defendants cites only old and outdated information. In fact, as was pointed out in Plaintiffs’ original Brief, the Governor herself *admitted* in a press conference on June 1, 2020 that the “science” about viral spread from surfaces has been largely debunked. (Plaintiffs Br. PageID:277)

The Governor’s comments are most likely based on the CDC updating their opinions about surface spread on May 2020. In May, the CDC has reiterated that surface spread is much less common than previously thought. (See *CDC updates COVID-19 transmission webpage to clarify information about types of spread*, May 22, 2020 (updated May 27, 2020) <https://www.cdc.gov/media/releases/2020/s0522-cdc-updates-covid-transmission.html>) (See also, Stump, Scott. *Coronavirus does not spread easily from touching surfaces, CDC Now Says*. May 21, 2020. <https://www.today.com/health/new-cdc-guidance-coronavirus-doesn-t-spread-easily->

² Instead of citing to the many, many articles and even interviews with Dr. Anthony Fauci which debunk the idea of COVID-19 being transmitted through sweat, Plaintiffs will simply state that it is not possible to find an article that says that one can transmit COVID-19 through sweat.

[touching-surfaces-t182194](#)) However, even after admitting that the science behind the theory that surface spread is much less likely than initially thought, the Defendants' Brief continues to rely on the old guidance as the potential for keeping gyms closed.

d. Asymptomatic Transmission

Finally, the Defendant states that “asymptomatically transmittable virus spreading” is a final reason that the Governor may have for keeping gyms closed longer than any other industry in the state. Once again, Defendants rely on outdated opinions, this time from the World Health Organization. On June 8, 2020, Maria Van Kerkhove, the WHO’s technical lead for the coronavirus response said during a media briefing that “[f]rom the data that we have, it still seems to be rare that an asymptomatic person actually transmits onward to a secondary individual.” (See Howard, Jacqueline, www.cnn.com., June 9, 2020. <https://www.cnn.com/2020/06/08/health/coronavirus-asymptomatic-spread-who-bn/index.html>).

And while the WHO has since indicated that it’s research is far from complete and not much has known, it is certainly not as clear of a picture as painted by Defendants in their Brief that asymptomatic spread is poses a significant threat. Further, asymptomatic transmission, even if it is not rare, would have no more impact on gyms than it does on the rest of society. The Governor’s position cannot simply be that asymptomatic spread occurs only in gyms.

Finally, with respect to all four of the reasons that the Governor may have in keeping gyms closed through most of the state, those reasons are not unique to Michigan at all. However, attached as **Exhibit 23** is a chart of all 42 states in which gyms are open, the date they opened, and a link for verification. Defendants have not pointed to a single outbreak of COVID-19 at a gym anywhere in the United States, either before social distancing began or after these 42 states have started reopening their fitness facilities in early May (or in South Dakota, which never closed). For all of

the aforementioned reasons, is cannot seriously be said that that the orders “purporting to have been enacted to protect the public health, the public morals, or the public safety” have a “real or substantial relation to those objects.” *Jacobson*, 197 U.S. at 31.

B. Plaintiffs are likely to succeed on their procedural due process claim.

In their Response Brief, Defendants claim that since the closure of gyms for the past 13 weeks throughout much of the state is “temporary,” Plaintiffs’ claims must fail. However, a more accurate term to describe the closure of gyms is indefinite, not temporary. The reason for this is simply that the Governor has not given any timetable for the reopening of an industry that was shuttered on March 16, 2020. The Governor’s own attorneys in fact admitted in oral argument on *Legislature v. Whitmer* in the Michigan Court of Claims that the Governor’s power to keep the state under a State of Emergency could feasibly last her entire term in office. If that is true, then gyms could be temporarily shuttered for over two and a half more years under her “temporary” orders.

Further, Defendants seem to read *Mathews v. Eldridge*, 424 US 319 (1976) as standing for the proposition that only if there is a final taking, as opposed to an indefinite taking, is there a right to procedural due process. However, although *Mathews* does state that due process is necessary for a final taking, it does not state that only a final taking is to receive procedural due process protection. In *Fuentes v. Shevin*, 407 US 67, at 86 (1972), the Supreme Court made it clear that property deprivations of far less than permanent deprivations fall within the Fourteenth Amendment’s procedural due process protection. The Court opined as follows:

The Fourteenth Amendment draws no bright lines around three-day, 10-day or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause. While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind.

Accordingly, the deprivation of a property right of Plaintiffs, which is currently at 91 days and counting, mandates a hearing.

Finally, Plaintiffs are well past the point of needing a hearing to determine whether they are “essential or non-essential” as the Defendants suggest. Plaintiffs demand notice and opportunity to be heard as to why they are being singled out with no data, science, or legitimate reason as to why they are closed and why they were and are still shuttered for so long.

C. Plaintiffs are likely to succeed on their equal protection claim.

Plaintiffs are likely to succeed on their claim under the Equal Protection Clause of the Fourteenth Amended to the United States Constitution, as Defendants have still not provided any rational basis for the greater restrictions imposed on Plaintiffs’ businesses. As stated in Plaintiffs’ initial brief, State action that regulates economic activity in a discriminatory manner violates the Equal Protection Clause unless the State can show a “rational relationship between the disparity of treatment,” along with some “legitimate governmental purpose.” *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 366-67; (2001).

In their response brief, Defendants did not even attempt to demonstrate the rational basis for imposing these greater restrictions against Plaintiffs’ businesses. In fact, Defendants have yet to provide *any* data-supported justification whatsoever for imposing these greater restrictions. The single “study” cited by Defendants, a research letter authored by the CDC, does not support Defendants’ implementation of these disparate, heightened restrictions on fitness centers.³ Further, the study was from February 15, 2020, in South Korea, where there were no social distancing measures in place as South Korea was just beginning to understand the threat.

³ https://wwwnc.cdc.gov/eid/article/26/8/20-0633_article

Instead of providing a rational basis for these disparate, heightened restrictions, Defendants merely assert a conclusory argument that “each challenged restriction has a rational basis” before referencing a series of lesser restrictions that are not even an option for Plaintiffs: “it makes eminent sense to adopt measures that require social distancing, limit person to person contact, and preserve valuable health care resources.” (PageID.405). To be clear, Defendants’ restrictions on Plaintiffs’ businesses do not merely require social distancing, the limitation of person to person contact, or the preservation valuable health care resources. These heightened restrictions instead outright ban Plaintiffs from operating as a gym at their brick and mortar locations no matter how much the facility complies with these other, less restrictive measures.

This disparate treatment is even more apparent using Defendants’ own analogy: “[i]n a drought, where the point is to avoid uncontrolled wildfires, there can be no allowance for those who promise to be really careful with their campfire.” *Id* at 19. In this case, Defendants are allowing some individuals to have a campfire on their campsite if they use a fire pit and keep a hose nearby, while simultaneously barring Plaintiffs from having a campfire on their campsite under any circumstances. When Defendants are tasked with providing the rational basis for this disparate treatment and heightened restriction, Defendants argue that having a fire pit and a hose nearby are rationally based restrictions, despite the fact that Defendants do not even afford that option to Plaintiffs.

Defendants’ purported justification is even more tenuous when you consider that Plaintiffs’ businesses would not be subject to these greater restrictions if they were located in Region 6 or Region 8 of the state. On one hand, Defendants make the evidence-free argument that the indoor exercise occurring within Plaintiffs’ businesses poses a unique risk that warrants these greater restrictions, but at the exact same time Defendants are allowing the exact same type of businesses

to operate with fewer restrictions in other regions of the state. Defendants have not provided any rational basis for why indoor exercise is more or less dangerous in one area of Michigan versus another, and these nonsensical distinctions belie any potential justification for these heightened restrictions.

Plaintiffs have a high likelihood of success on their equal protection claim as Defendants have not provided any data-supported rational basis for the heightened restrictions. While the disparate treatment is clear through the imposition of the heightened restrictions on Plaintiffs' businesses, the rational basis for that disparate treatment is entirely absent. As such, Plaintiffs are likely to succeed on the merits of their equal protection claim.

D. Plaintiffs are likely to succeed on their dormant commerce clause claim

Defendants' heightened restrictions violate the Dormant Commerce Clause because they impose an excessive burden in relation to the putative benefits and because they are not supported by a rational basis. As stated in Plaintiffs' initial brief, the heightened restrictions in question certainly have had a profound effect on interstate commerce. Plaintiffs' businesses engage in interstate commerce in that they have a number of visiting client from out-of-state and they are unable to take delivery of any purchased equipment and supplies from out-of-state businesses during the time they have been forced to close. The burden on Plaintiffs' businesses in this case is also plainly apparent – the forced shutter of the entire fitness facility industry within most regions of the state have caused a devastating loss of revenue for Plaintiffs' businesses.

Defendants have predictably argued that this extreme, excessive burden is justified to control the spread of COVID-19, but Defendants have yet to cite any data that supports this contention. The Shutdown Orders were originally issued under the auspices of “flattening the curve,” but this goal has been met for at least a month and a half per the Governor's own

admission.⁴ As such, even if Defendants’ successfully argued that these heightened restrictions were at one time necessary to achieve the goal of flattening the curve, that is no longer an appropriate justification by today’s measures.

It is worth reiterating at this point that “a burden on interstate commerce that had no rational justification would be invalid.” *Cavel Int’l, Inc v Madigan*, 500 F3d 551, 556 (7th Cir. 2007) (internal citations omitted). As discussed previously, Defendants have yet to provide any data-driven rational justification for the continued forced closings of Plaintiffs’ businesses. This is especially true when you consider that identical businesses can operate under lesser restrictions in other areas of the state.

In sum, the excessive burden caused by the arbitrarily implemented heightened restrictions outweighs the putative benefit of those restrictions. Defendants have failed to introduce any evidence to the contrary, and, as such, Plaintiffs are likely to succeed on their dormant commerce clause claim.

III. Plaintiffs have been irreparably harmed

At the outset, Plaintiffs would ask this Honorable Court to take Judicial Notice of the fact that closing small businesses for 91 days will have irreparable injury to those businesses. Further, the Affidavits attached to this Brief as **Exhibit 20** show that at least one business has lost 100% of its revenue and another over 80% of its revenue. This lawsuit is not gamesmanship on the part of Plaintiffs. The Defendants’ executive orders have taken a devastating toll on Plaintiffs. To pretend that perhaps closing businesses for 91 days and counting has not really harmed Michigan’s small business community Plaintiffs is disingenuous on the part of Defendants to this lawsuit.

⁴ *Michigan Governor Gretchen Whitmer Press Conference Transcript April 27*, available at <https://www.rev.com/blog/transcripts/michigan-governor-gretchen-whitmer-press-conference-transcript-april-27> (“[A]nd so we’ve flattened it...” at 45:53) (last visited June 8, 2020).

Further, while Plaintiffs appreciate Defendants' efforts to turn their business models to online and outdoor classes, Plaintiffs actually built their successful businesses based on indoor workouts at clean and sanitized indoor facilities. Plaintiffs collectively have millions of dollars of indoor workout equipment and even though Bob from Hemlock, Michigan can now have nine friends at his house and can work out with them, it is still a crime for Plaintiffs to have even a single gym member workout in their facilities due to the Defendants' Executive Orders. What Defendants have suggested would be akin to telling a restaurant that they should switch to a model where their chef offers an online cooking tips to its patrons and that should keep the restaurant afloat.

IV. A preliminary injunction will serve the public interest

Plaintiffs will rely on its initial Brief in support of this argument with one caveat. Plaintiffs are contesting the portions of Executive Order 2020-115 only to the extent that Plaintiffs are closed. In other words, Plaintiffs in this case already plan to follow the guidelines for gyms in Regions 6 and 8 that the Governor has established that include social distancing, etc. In fact, many of the Plaintiffs reduced their class sizes voluntarily before the shutdown because they are responsible businesses owners.

CONCLUSION

For the reasons stated in Plaintiffs' original Motion, Brief and this Reply, Plaintiffs request that this Honorable Court grant their motion for a Preliminary Injunction.

[Signature Block Follows]

Dated: June 15, 2020

Respectfully submitted,

/s/ Scott M. Erskine

SCOTT M. ERSKINE (P54714)

CARLY VAN THOMME (P59706)

ERSKINE LAW, PC

Attorneys for Plaintiffs

612 West University Drive

Rochester, Michigan 48307

(248) 601-4497

erskine@erskinelaw.com

Certificate of Compliance

1. This brief complies with the type-volume limitation of W.D. Mich. LCivR 7.2(c) because this brief contains 4,271 words, excluding the parts of the brief exempted by W.D. Mich. LCivR 7.2(c).
2. This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 for Windows in 12-point Times New Roman font.

Dated: June 15, 2020

Respectfully submitted,

/s/ Scott M. Erskine
SCOTT M. ERSKINE (P54714)
CARLY VAN THOMME (P59706)
ERSKINE LAW, PC
Attorneys for Plaintiffs
612 West University Drive
Rochester, Michigan 48307
(248) 601-4497
serskine@erskinelaw.com
cvanthomme@erskinelaw.com

PROOF OF SERVICE

I hereby certify that on June 15, 2020, I presented the foregoing paper to the Clerk of the Court for filing and uploading to the ECF system, which will send notification of such filing to the attorneys of record listed herein and I hereby certify that I have mailed by US Postal Service the document to the involved non participants.

s/ Scott M. Erskine
SCOTT M. ERSKINE (P54714)
CARLY VAN THOMME (P59706)
ERSKINE LAW, PC
Attorneys for Plaintiffs
612 West University Drive
Rochester, Michigan 48307
(248) 601-4497
serskine@erskinelaw.com
cvanthomme@erskinelaw.com

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EXHIBIT 20

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

Joseph T. Froehlich (P71887)
Christopher M. Allen (P75329)
Joshua O. Booth (P53847)
John G. Fedynsky (P65232)
Andrew J. Jurgensen (P81123)

Rochester, MI. 48307
(248) 601-4499
serskine@erskinelaw.com
cvanthomme@erskinelaw.com

Assistant Attorney General
Michigan Department of Attorney General
Attorneys for Defendants
525 West Ottawa Street
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
froehlichj1@michigan.gov
allenc28@michigan.gov
Boothj2@michigan.gov
fedynskyj@michigan.gov
jurgensenA2@michigan.gov

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and
4 SEASONS GYM, LLC,
Plaintiffs,

v.

GRETCHEN E. WHITMER and
ROBERT GORDON,
Defendants.

Civil No. 1:20-cv-00458

Hon. Paul L. Maloney

AFFIDAVIT OF BASELINE
FITNESS LLC

ERSKINE LAW, PC
Scott M. Erskine (P54734)

Joseph T. Froehlich (P71887)
Christopher M. Allen (P75329)

Carly Van Thomme (P59706)
Attorneys for Plaintiffs
612 W. University
Rochester, MI. 48307
(248) 601-4499
serskine@erskinelaw.com
evanthomme@erskinelaw.com

Joshua O. Booth (P53847)
John G. Fedynsky (P65232)
Andrew J. Jurgensen (P81123)
Assistant Attorney General
Michigan Department of Attorney General
Attorneys for Defendants
525 West Ottawa Street
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
froehlichj1@michigan.gov
allene28@michigan.gov
Boothj2@michigan.gov
fedynskyj@michigan.gov
jurgensenA2@michigan.gov

AFFIDAVIT OF BASELINE FITNESS LLC

1. My name is Nick Carignan and I am the Owner of Baseline Fitness LLC, with its principal place of business in Wayne County, Michigan. I am over the age of 18 and am fully competent to make this affidavit. The facts stated herein are true and complete to my personal knowledge.
2. Since March 16th, 2020, Baseline Fitness LLC has lost approximately 35% of its revenue.
3. Since March 16th, 2020, Baseline Fitness' paying memberships went from 125 to 87.
4. The Governor's order on March 16, 2020 to close fitness facilities, and every iteration thereafter keeping them closed, has caused a substantial financial crisis for my business. If the indefinite closures continue, I stand to lose my business,

as there is no more money to keep it going with such a drastic decrease in revenue.

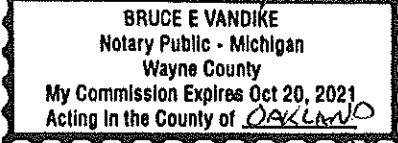
5. Accordingly, if the Executive Order is not immediately rescinded, I will be left with no choice but to open my fitness facility anyway in the coming days, pursuant to the guidelines imposed on the fitness facilities that were permitted to open in regions 6 and 8.



Nick Carignan, Owner
Baseline Fitness LLC

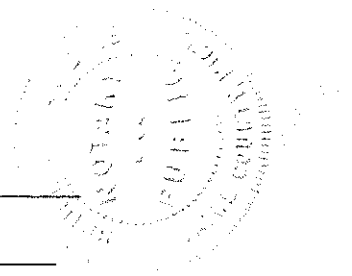
Subscribed and sworn to me this 15 day of June, 2020

Notary's Stamp:


BRUCE E VANDIKE
Notary Public - Michigan
Wayne County
My Commission Expires Oct 20, 2021
Acting In the County of OAKLAND

Notary's Signature:





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

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

**AFFIDAVIT OF BUILDING YOUR
TEMPLE, LLC AND BYT FITNESS
24/7 LLC**

ERSKINE LAW, PC	Joseph T. Froehlich (P71887)
Scott M. Erskine (P54734)	Christopher M. Allen (P75329)
Carly Van Thomme (P59706)	Joshua O. Booth (P53847)
Attorneys for Plaintiffs	John G. Fedynsky (P65232)
612 W. University	Andrew J. Jurgensen (P81123)
Rochester, MI. 48307	Assistant Attorney General
(248) 601-4499	Michigan Department of Attorney General
	Attorneys for Defendants
	525 West Ottawa Street
	P.O. Box 30754

erskin@erskinlaw.com
evanthomme@erskinlaw.com

Lansing, MI 48909
(517) 335-7573
froehlich1@michigan.gov
allenc28@michigan.gov
Boothj2@michigan.gov
fedynskyj@michigan.gov
jurgensenA2@michigan.gov

AFFIDAVIT OF BUILDING YOUR TEMPLE, LLC AND BYT FITNESS 24/7 LLC

1. My name is Bryan Beaune and I am the Owner of Building Your Temple, LLC and BYT Fitness 24/7 LLC, with its principal places of business in Oakland County, Michigan. I am over the age of 18 and am fully competent to make this affidavit. The facts stated herein are true and complete to my personal knowledge.
2. Since March 16th, 2020, Building Your Temple, LLC has lost approximately 50% of its revenue.
3. Since March 16th, 2020, BYT Fitness 24/7, LLC has lost 100% of its revenue.
4. Since March 16th, 2020, the shared memberships between Building Your Temple, LLC and BYT Fitness 24/7 LLC have gone from 402 to 199.
5. Since March 16th, 2020, Building Your Temple, LLC and BYT Fitness 24/7 LLC have had to lay off all eight of their independent contractors, without any known return date.
6. The Governor's order on March 16, 2020 to close fitness facilities, and every iteration thereafter keeping them closed, has caused a substantial financial crisis for my businesses. If the indefinite closures continue, I stand to lose both businesses, as there is no more money to keep them going with such a drastic decrease in revenue.
7. Accordingly, if the Executive Order is not immediately rescinded, I will be left with no choice but to open my fitness facilities anyway in the coming days, pursuant to the guidelines imposed on the fitness facilities that were permitted to open in regions 6 and 8.


Bryan Beaune, Owner
Building Your Temple, LLC
BYT Fitness 24/7 LLC

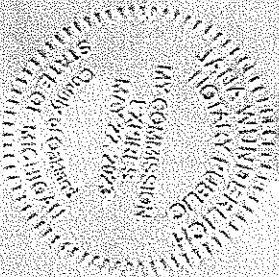
Subscribed and sworn to me this 15. day of June, 2020

Notary's
Stamp:

JANA WUNDERLICH
Notary Public - State of Michigan
County of Oakland
My Commission Expires May 22, 2023
Acting in the County of Oakland

Notary's
Signature:

Jana Wunderlich



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

LEAGUE OF INDPENDENT FITNESS
FACITLITIES 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

**AFFIDAVIT OF D-LUX KARATE
UNIVERSITY, LLC**

ERSKINE LAW, PC
Scott M. Erskine (P54734)
Carly Van Thomme (P59706)
Attorneys for Plaintiffs
612 W. University
Rochester, MI. 48307

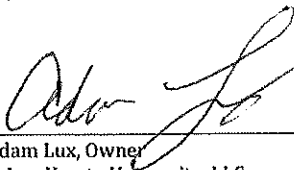
Joseph T. Froehlich (P71887)
Christopher M. Allen (P75329)
Joshua O. Booth (P53847)
John G. Fedynsky (P65232)
Andrew J. Jurgensen (P81123)
Assistant Attorney General

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serskine@erskinelaw.com
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Michigan Department of Attorney General
Attorneys for Defendants
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allenc28@michigan.gov
Boothj2@michigan.gov
fedynskyj@michigan.gov
jurgensenA2@michigan.gov

AFFIDAVIT OF D-LUX KARATE UNIVERSITY, LLC

1. My name is Adam Lux and I am the Owner of D-Lux Karate University, LLC, with its principal place of business in Macomb County, Michigan. I am over the age of 18 and am fully competent to make this affidavit. The facts stated herein are true and complete to my personal knowledge.
2. Since March 16th, 2020, D-Lux Karate University has lost approximately 60% of its revenue and 50% of its members.
3. The Governor's order on March 16, 2020 to close fitness facilities, and every iteration thereafter keeping them closed, has caused a substantial financial crisis for my business. If the indefinite closures continue, I stand to lose my business, as there is no more money to keep it going with such a drastic decrease in revenue.
4. Accordingly, if the Executive Order is not immediately rescinded, I will be left with no choice but to open my fitness facility anyway in the coming days, pursuant to the guidelines imposed on the fitness facilities that were permitted to open in regions 6 and 8.



Adam Lux, Owner
D-Lux Karate University, LLC

Subscribed and sworn to me this 15 day of June, 2020
JAMES A THOMAS
Notary Public - State of Michigan
County of Macomb
My Commission Expires Sep 6, 2025
Notary's Stamp: Acting in the County of Macomb
Notary's Signature: 



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

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

AFFIDAVIT OF H3 FITNESS, LLC

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

Joseph T. Froehlich (P71887)
Christopher M. Allen (P75329)
Joshua O. Booth (P53847)
John G. Fedynsky (P65232)
Andrew J. Jurgensen (P81123)

Rochester, MI. 48307
(248) 601-4499
serskine@erskinelaw.com
cvanthomme@erskinelaw.com

Assistant Attorney General
Michigan Department of Attorney General
Attorneys for Defendants
525 West Ottawa Street
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
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allenc28@michigan.gov
Boothj2@michigan.gov
fedynskyj@michigan.gov
jurgensenA2@michigan.gov

AFFIDAVIT OF H3 FITNESS, LLC

1. My name is Matthew Haverdink and I am the Owner of H3 Fitness, LLC, with its principal place of business in Ottawa County, Michigan. I am over the age of 18 and am fully competent to make this affidavit. The facts stated herein are true and complete to my personal knowledge.
2. Since March 16th, 2020, H3 Fitness, LLC has lost approximately 90% of its revenue.
3. Since March 16th, 2020, H3 Fitness has gone from 160 paying members down to 30.
4. Since March 16th, 2020, H3 Fitness has had to lay off all seven of its employees, without any known return date.
5. The Governor's order on March 16, 2020 to close fitness facilities, and every iteration thereafter keeping them closed, has caused a substantial financial crisis for my business. If the indefinite closures continue, I stand to lose my business, as there is no more money to keep it going with such a drastic decrease in revenue.
6. Accordingly, if the Executive Order is not immediately rescinded, I will be left with no choice but to open my fitness facility anyway in the coming days, pursuant to the

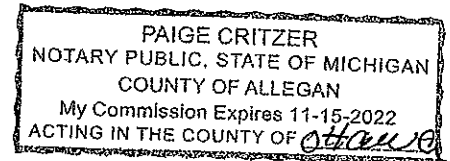
guidelines imposed on the fitness facilities that were permitted to open in regions 6 and 8.

Matthew Haverdink
Matthew Haverdink, Owner
H3 Fitness, LLC

Subscribed and sworn to me this 15th day of June, 2020

Notary's Stamp: _____

Notary's Signature: Paige Critzer



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

LEAGUE OF INDPENDENT FITNESS
FACITLITIES 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

**AFFIDAVIT OF I FITNESS
PERSONAL TRAINING**

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

Joseph T. Froehlich (P71887)
Christopher M. Allen (P75329)
Joshua O. Booth (P53847)
John G. Fedynsky (P65232)
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Rochester, MI. 48307
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serskine@erskinelaw.com
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Assistant Attorney General
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froehlichj1@michigan.gov
allenc28@michigan.gov
Boothj2@michigan.gov
fedynskyj@michigan.gov
jurgensenA2@michigan.gov

AFFIDAVIT OF I FITNESS PERSONAL TRAINING

1. My name is George Shaouni and I am the Owner of I Fitness Personal Training, with its principal place of business in Oakland County, Michigan. I am over the age of 18 and am fully competent to make this affidavit. The facts stated herein are true and complete to my personal knowledge.
2. Since March 16th, 2020, I Fitness Personal Training has lost 100% of its revenue.
3. The Governor's order on March 16, 2020 to close fitness facilities, and every iteration thereafter keeping them closed, has caused a substantial financial crisis for my business. If the indefinite closures continue, I stand to lose my business, as there is no more money to keep it going without any revenue.
4. Accordingly, if the Executive Order is not immediately rescinded, I will be left with no choice but to open my fitness facility anyway in the coming days, pursuant to the

guidelines imposed on the fitness facilities that were permitted to open in regions 6 and 8.



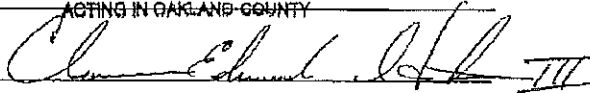
George Shaouni, Owner
I Fitness Personal Training

Subscribed and sworn to me this 15 day of June, 2020

CLARENCE EDWARD HAWKINS III
NOTARY PUBLIC - MICHIGAN
OAKLAND COUNTY
MY COMMISSION EXPIRES 07/01/2026
ACTING IN OAKLAND COUNTY

Notary's Stamp:

Notary's Signature:



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

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

**AFFIDAVIT OF NASCOT
ENTERPRISES, LLC**

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

Joseph T. Froehlich (P71887)
Christopher M. Allen (P75329)
Joshua O. Booth (P53847)
John G. Fedynsky (P65232)
Andrew J. Jurgensen (P81123)

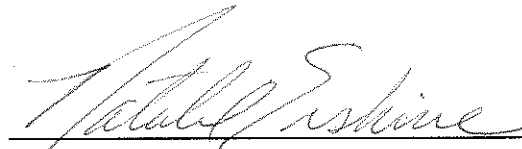
Rochester, MI. 48307
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Assistant Attorney General
Michigan Department of Attorney General
Attorneys for Defendants
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allenc28@michigan.gov
Boothj2@michigan.gov
fedynskyj@michigan.gov
jurgensenA2@michigan.gov

AFFIDAVIT OF NASCOT ENTERPRISES, LLC

1. My name is Natalie Erskine and I am the Owner and Managing Director of Nascot Enterprises, LLC, with its principal place of business in Oakland County, Michigan. I am over the age of 18 and am fully competent to make this affidavit. The facts stated herein are true and complete to my personal knowledge.
2. Nascot Enterprises has three fitness studios, only one of which had opened by March 16, 2020, and two of which were opening in early May 2020 and late June 2020, respectively.
3. Since March 16th, 2020, the first location has lost 81.53% of its revenue.
4. Since March 16th, 2020, Nascot Enterprises has gone from 164 paying members to 43, with a substantially decreased membership rate to compensate for virtual classes.
5. Since the two other locations are months behind opening, Nascot Enterprises has and will continue to lose tens of thousands of dollars in rent, utility payments, and payroll with no income.
6. The Governor's order on March 16, 2020 to close fitness facilities, and every iteration thereafter keeping them closed, has caused a substantial financial crisis for our business. If it continues, we stand to lose all three locations, as there is no more money to keep them going without revenue.
7. Accordingly, if the Executive Order is not immediately rescinded, I will be left with no choice but to open the fitness facilities anyway in the coming days, pursuant to the

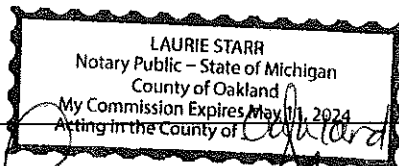
guidelines imposed on the fitness facilities that were permitted to open in regions 6 and 8.



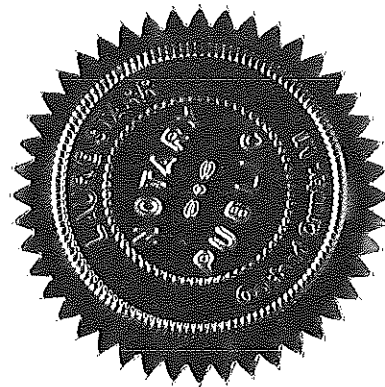
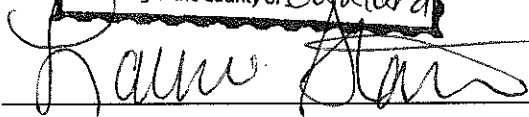
Natalie Erskine, Managing Director
Nascot Enterprises, LLC

Subscribed and sworn to me this 15th day of June, 2020

Notary's Stamp: _____



Notary's Signature: _____



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

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

**AFFIDAVIT OF THE STRENGTH
DEPOT, LLC**

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

Joseph T. Froehlich (P71887)
Christopher M. Allen (P75329)
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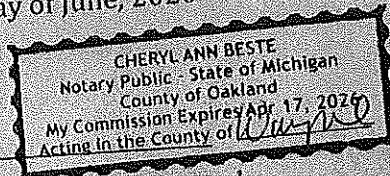
AFFIDAVIT OF THE STRENGTH DEPOT, LLC

1. My name is Shane Rickman and I am the Co-Owner of The Strength Depot, LLC, with its principal place of business in Wayne County, Michigan and which is a member of LIFFT. I am over the age of 18 and am fully competent to make this affidavit. The facts stated herein are true and complete to my personal knowledge.
2. Since March 16th, 2020, The Strength Depot has lost approximately 30% of its membership revenue.
3. The Governor's order on March 16, 2020 to close fitness facilities, and every iteration thereafter keeping them closed, has caused a substantial financial crisis for our business. If the indefinite closures continue, we stand to lose my business, as there is no more money to keep it going with such a drastic decrease in membership revenue.

4. Accordingly, if the Executive Order is not immediately rescinded, we will be left with no choice but to open our fitness facility anyway in the coming days, pursuant to the guidelines imposed on the fitness facilities that were permitted to open in regions 6 and 8.

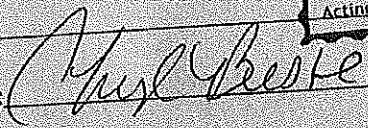

Shane Rickman, Co-Owner
The Strength Depot LLC

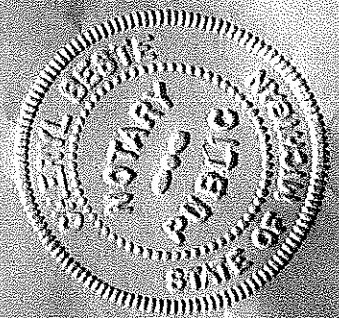
Subscribed and sworn to me this 15th day of June, 2020



Notary's Stamp:

Notary's Signature:

 6/15/20



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

LEAGUE OF INDEPENDENT FITNESS
FACILITIES AND TRAINERS, INC.,
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GRETCHEN E. WHITMER and
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Civil No. 1:20-cv-00458

Hon. Paul L. Maloney

EXHIBIT 21

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

Joseph T. Froehlich (P71887)
Christopher M. Allen (P75329)
Joshua O. Booth (P53847)
John G. Fedynsky (P65232)
Andrew J. Jurgensen (P81123)

Rochester, MI. 48307
(248) 601-4499
serskine@erskinelaw.com
cvanthomme@erskinelaw.com

Assistant Attorney General
Michigan Department of Attorney General
Attorneys for Defendants
525 West Ottawa Street
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
froehlichj1@michigan.gov
allenc28@michigan.gov
Boothj2@michigan.gov
fedynskyj@michigan.gov
jurgensenA2@michigan.gov

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LOCAL NEWS

Michigan attorney general issues warning to businesses violating Gov. Whitmer's order

Brighton gym violated order, opened

Hank Winchester, Consumer Investigative Reporter**Kayla Clarke**, Web Producer

Published: May 11, 2020, 7:20 pm

Tags: [Help Me Hank](#), [News](#), [Local](#), [State](#), [Crime](#), [Gretchen Whitmer](#), [Dana Nessel](#), [Coronavirus](#), [COVID-19](#), [Lansing](#), [Ingham County](#), [Brighton](#), [Livingston County](#)**LANSING, Mich.** – Businesses who continue to violate Michigan Gov. Gretchen Whitmer's stay-at-home order could face legal

READ: Michigan Gov. Gretchen Whitmer extends stay-at-home order until May 28



A gym in Brighton opened last week and is still open as of Monday. The owner is not making any apologies for going against the governor's orders. The owner said customers were eager to come back and his livelihood depends on the business. While it was closed he was concerned about his financial future.

"I listened to the orders and shut my business down completely but went to work immediately in a different regard and started researching everything I could on the subject," gym owner James Gray said.

MORE: Brighton gym opens despite Michigan Gov. Whitmer's stay-at-home order

"I don't think we've put the virus into proper perspective," Gray said. "What if the three of us six months from now look at the nation was destroyed in many ways. We put 40 million people out of work, the housing market collapses -- all of these things went down and the information was there but we weren't really focusing on the right things."

Nessel wants action to be taken against those violating the order. The first step is a warning.

"If they make the decision to go ahead and violate the law knowing and understanding what the law is -- then, unfortunately they'll have to pay the consequences for it," Nessel said.

Nessel's team has been in touch with police agencies across the state asking them to investigate businesses that are violating the governor's order.

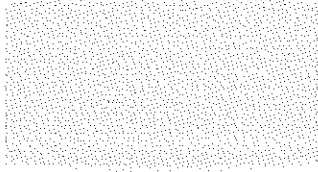
So far, no action has been taken against the gym in Brighton.

Livingston County Sheriff Mike Murphy isn't convinced Whitmer's order is legal and said he won't enforce the order.

READ: Michigan attorney general confirms Gov. Whitmer's executive orders are enforceable

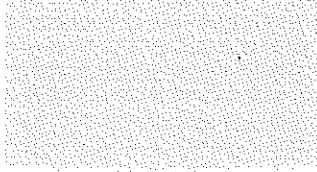


Watch the video above for the full report.

ABOUT THE AUTHORS:**Hank Winchester**

Hank Winchester is Local 4's Consumer Investigative Reporter and the head of WDIV's "Help Me Hank" Consumer Unit. He works to solve consumer complaints, reveal important recalls and track down thieves who have ripped off metro Detroiters.

[email](#) [twitter](#) [instagram](#)

**Kayla Clarke**

Kayla is a Web Producer for ClickOnDetroit. Before she joined the team in 2018 she worked at WILX in Lansing as a digital producer.

[email](#) [twitter](#)

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STRENGTH BEYOND LLC,
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4 SEASONS GYM, LLC,

Plaintiffs,

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Civil No. 1:20-cv-00458

Hon. Paul L. Maloney

EXHIBIT 22

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

Joseph T. Froehlich (P71887)
Christopher M. Allen (P75329)
Joshua O. Booth (P53847)
John G. Fedynsky (P65232)
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Rochester, MI. 48307
(248) 601-4499
serskine@erskinelaw.com
cvanthomme@erskinelaw.com

Assistant Attorney General
Michigan Department of Attorney General
Attorneys for Defendants
525 West Ottawa Street
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
froehlichj1@michigan.gov
allenc28@michigan.gov
Boothj2@michigan.gov
fedynskyj@michigan.gov
jurgensenA2@michigan.gov

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Executive Order 2020-120 (COVID-19) (June 12, 2020)

EXECUTIVE ORDER

No. 2020-120

Returning overnight camps to operation

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended (EMA), MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended (EPGA), MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State

of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the Emergency Powers of the Governor Act, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the Emergency Management Act.

Those executive orders have been challenged in *Michigan House of Representatives and Michigan Senate v Whitmer*. On May 21, 2020, the Court of Claims ruled that Executive Order 2020-67 is a valid exercise of authority under the Emergency Powers of the Governor Act but that Executive Order 2020-68 is not a valid exercise of authority under the Emergency Management Act. Both of those rulings are being challenged on appeal.

On May 22, 2020, I issued Executive Order 2020-99, again finding that the COVID-19 pandemic constitutes a disaster and emergency throughout the State of Michigan. That order constituted a state of emergency declaration under the Emergency Powers of the Governor Act of 1945. And, to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has declined to grant an extension request, that order also constituted a state of emergency and state of disaster declaration under that act.

The Emergency Powers of the Governor Act provides a sufficient legal basis for issuing this executive order. In relevant part, it provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

Nevertheless, subject to the ongoing litigation and the possibility that current rulings may be overturned or otherwise altered on appeal, I also invoke the Emergency Management Act as a basis for executive action to combat the spread of COVID-19 and mitigate the effects of this emergency on the people of Michigan, with the intent to preserve the rights and protections provided by the EMA. The EMA vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). This executive order falls within the scope of those powers and duties, and to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has not granted an extension request, they too provide a sufficient legal basis for this order.

To suppress the spread of COVID-19, to prevent the state's health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, to establish the public health infrastructure necessary to contain the spread of infection, and to avoid needless deaths, it was reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in

Michigan to stay home and stay safe. In Executive Orders 2020-42, 2020-59, 2020-70, 2020-77, 2020-92, 2020-96, 2020-110, and 2020-115, I extended that initial order, modifying its scope as needed and appropriate to match the ever-changing circumstances presented by this pandemic.

The measures put in place by these executive orders have been effective: the number of new confirmed cases each day continues to drop. Although the virus remains aggressive and persistent—on June 11, 2020, Michigan reported 59,496 confirmed cases and 5,737 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We are now in the process of gradually resuming in-person work and activities. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

After considering the public health data, I find it reasonable and necessary at this point to allow overnight camps to resume operations as of June 15, 2020, subject to guidance from the Department of Licensing and Regulatory Affairs. I likewise find it reasonable and necessary to lift its suspension of school sports activities and other in-person extracurricular school activities, subject to rules on social distancing and the closure of indoor exercise facilities.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Notwithstanding any other executive order, residential, travel, and troop camps within the meaning of Rule 400.11101(n), (p), or (q) of the Michigan Administrative Code may open as of 12:01 am on June 15, 2020, subject to guidance issued by the Department of Licensing and Regulatory Affairs.
2. Section I(1) of Executive Order 2020-65 is amended by striking the second sentence and replacing it with: "Consistent with the rules described in Executive Order 2020-110 (including any rules on social distancing and the closure of indoor exercise facilities) and Executive Order 2020-115, whichever order applies to the region in which the school is located, and any orders that follow from them, K-12 school sports activities and other in-person extracurricular school activities may resume."

Given under my hand and the Great Seal of the State of Michigan.

GRETCHEN WHITMER
GOVERNOR

Date: June 12, 2020

Time: 12:18 pm

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Executive Order 2020-99 (COVID-19) (May 22, 2020) - Declaration of State of Emergency

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Executive Order 2020-102 (COVID-19) (May 22, 2020)

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EXHIBIT 23

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

Joseph T. Froehlich (P71887)
Christopher M. Allen (P75329)
Joshua O. Booth (P53847)
John G. Fedynsky (P65232)
Andrew J. Jurgensen (P81123)

Rochester, MI. 48307
(248) 601-4499
serskine@erskinelaw.com
cvanthomme@erskinelaw.com

Assistant Attorney General
Michigan Department of Attorney General
Attorneys for Defendants
525 West Ottawa Street
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
froehlichj1@michigan.gov
allenc28@michigan.gov
Boothj2@michigan.gov
fedynskyj@michigan.gov
jurgensenA2@michigan.gov

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Delaware	6/1/20	https://6abc.com/delaware-coronavirus-covid-19-reopening-plan/6186356/
Florida	5/18/20	https://www.clickorlando.com/news/local/2020/05/15/florida-gyms-studios-given-green-light-to-reopen-by-gov-ron-desantis/
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