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JAN 29 2021

AO 440 (Rev. 06/12) Summons in a Civil Action

Exhibit C

BY CITY ATTORNEY

UNITED STATES DISTRICT COURT

for the

Central District of California ☐

RECEIVED

DUNN ENTERPRISES, INC. DBA ICETOWN, a
California Corporation

JAN 29 2021

City of Riverside
City Clerk's Office

Plaintiff(s)

v.

Civil Action No. 5:21-cv-00048 JWH (SHKx)

GAVIN NEWSOM, in his official capacity as Governor
of California; CITY OF RIVERSIDE, a California
Governmental Agency; COUNTY OF RIVERSIDE, a
California Governmental Agency

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

GAVIN NEWSOM - 1303 10th Street, Suite 1173, Sacramento, CA 95814
CITY OF RIVERSIDE - 3900 Main Street, 7th Floor, Riverside, CA 92522
COUNTY OF RIVERSIDE - 4080 Lemon Street, 4th Floor, Riverside, CA 92501

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Elan J. Dunaev, Esq.
2801 Kelvin Avenue, Suite 551
Irvine, CA 92614
(949) 683-3460
ejdunaevesq@gmail.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 01/13/2021

Edmund Paulson
Signature of Clerk or Deputy Clerk



Civil Action No. 5:21-cv-00048 JWH (SHKx)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ELAN J. DUNAEV, ESQ. (SBN 310060)
ejdunaevesq@gmail.com
2801 Kelvin Avenue, Suite 551
Irvine, California 92614
Telephone: (949) 683-3460

Attorney for Plaintiff,
DUNN ENTERPRISES, INC. DBA ICETOWN

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DUNN ENTERPRISES, INC. DBA
ICETOWN, a California Corporation,

Plaintiff,

vs.

GAVIN NEWSOM, in his official
capacity as Governor of California;
CITY OF RIVERSIDE, a California
Governmental Agency; COUNTY OF
RIVERSIDE, a California
Governmental Agency,

Defendants.

CASE NO.: 5:21-cv-00048

**COMPLAINT FOR
DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND
DAMAGES**

COMES NOW, Plaintiff, DUNN ENTERPRISES, INC. DBA ICETOWN
("Icetown") complains and alleges the following causes of action against
Defendants, GAVIN NEWSOM ("Newsom"), CITY OF RIVERSIDE ("City"), and
COUNTY OF RIVERSIDE ("County") (also collectively referred to as
"Defendants"):

INTRODUCTION

1. From the outset of the Covid-19 pandemic in March of 2020, the State
of California ("State"), as well as local city and county governments, instituted

1 several state-wide orders (the “Orders”) in an attempt to stop the spread of Covid-
2 19. Such Orders have infringed upon Californians’ most basic civil rights and
3 liberties granted to them by the United States Constitution such as the right to work
4 and earn a living for their families. This lawsuit challenges the constitutionality of
5 Defendants’ Orders, as well as challenges the way such Orders have been applied
6 and enforced by the State, City, and County.

7 2. If Defendants’ Orders are permitted to stand and be applied in the
8 manner the State, City, and County have been proceeding, Icetown’s rights under
9 the United States Constitution will continue to be violated and continue to cause
10 insurmountable economic damage to Icetown. Based on the current Orders, Icetown
11 has been deemed a “non-essential” business who must shut down while other
12 businesses, such as large big-box retailers, have been deemed “essential” and may
13 remain open and operational. In addition, specifically relating to training/ice/roller
14 skating facilities, Icetown has been forced to shut down while almost every other
15 training/ice/roller skating facility in Southern California currently remains open.

16 3. Icetown brings this lawsuit challenging the constitutionality of
17 Defendants’ Orders, which have deprived it of basic rights and civil liberties
18 afforded to it under the United States Constitution. Specifically, Icetown seeks (1)
19 equitable and injunctive relief to enjoin the enforcement of Defendants’ Orders; (2)
20 declaratory relief from this Court declaring that Defendants’ Orders violate
21 Icetown’s civil rights and liberties under 42 U.S.C. § 1983 of the Federal Civil
22 Rights Act, as well as the Due Process and Equal Protection Clauses of the Fifth and
23 Fourteenth Amendments of the United States Constitution; (3) attorney’s fees and
24 costs for the work done by Icetown’s counsel in connection with this lawsuit in an
25 amount according to proof; and (4) for such other and further relief as the Court
26 deems just and appropriate.

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1 8. City, at all relevant times, is a California Governmental Agency
2 operating in the State of California, County of Riverside, City of Riverside, and is
3 directly responsible for enforcing the Orders upon which are at issue in this lawsuit.

4 9. County, at all relevant times, is a California Governmental Agency
5 operating in the State of California, County of Riverside, and is directly responsible
6 for enforcing the Orders upon which are at issue in this lawsuit.

7 **FACTUAL ALLEGATIONS**

8 10. On March 19, 2020, in response to the threat of emergence of Covid-
9 19, Newsom issued Executive Order N-33-20 (“Executive Order”) which mandated
10 that all individuals living in the State of California were to stay home or at their
11 place of residence except as needed to maintain continuity of operations of what had
12 been deemed as federal critical infrastructure. A true and correct copy of the
13 Executive Order is attached hereto as **Exhibit 1**.

14 11. Newsom’s Executive Order stated that businesses who had been
15 identified and labeled as critical infrastructure sectors, which meant that they were
16 considered so vital that ceasing their operation would have an effect on security, the
17 economy, and/or public health, could remain open during the Covid-19 pandemic
18 because of the importance of these businesses to the health and well-being of the
19 State of California.

20 12. Newsom declared that the Executive Order was being issued to protect
21 the public health of Californians and that the goal was to “bend the curve,” and
22 disrupt the spread of the virus. In doing so, Newsom instructed the Office of
23 Emergency Services to take all necessary steps to ensure compliance with the
24 Executive Order and that the Executive Order was enforceable pursuant to
25 California Law.

26 13. As a result of Newsom’s Executive Order, businesses which were not
27 considered critical infrastructure sectors, such as Icetown, were deemed “non-
28 essential” and were ordered to shut down all operations, while businesses deemed

1 “essential” by State and local governments were permitted to continue operations.
2 Due to the fear of facing harsh fines, and even imprisonment threatened by the State,
3 City, and County, Icetown shut down the operations of its business as of March 19th
4 to comply with the Executive Order.

5 14. On or about May 7, 2020, as the curve of the Covid-19 virus was
6 “bending,” which was the goal instituted by Newsom and government leaders all
7 across the Country, Newsom announced that he would begin modifying the
8 Executive Order to begin reopening California under what was described at the time
9 as a roadmap which set forth a four-tiered system for reopening California.

10 15. As time passed and substantial medical advancements, treatments, and
11 therapeutics had been developed to control the Covid-19 virus and “bend the curve,”
12 Newsom announced that businesses in California could begin to reopen under
13 specific guidelines and restrictions. Based on guidance from the State, Icetown
14 reopened limited operations in July of 2020 as gyms, fitness centers, and training
15 facilities were permitted to reopen if proper protocols were put in place.

16 16. When Icetown resumed operations, maximum capacity was limited to
17 ten percent (10%) to comply with the State’s orders and ensure social distancing as
18 recommended by the Center for Disease Control and Prevention (“CDC”). In
19 addition, Icetown required all customers and employees to wear masks, many
20 touchless hand sanitizers were installed throughout the building, as well as touchless
21 hand soap and paper towel dispensers were installed for the health, safety, and well-
22 being of Icetown’s customers and employees. Furthermore, enhanced cleaning
23 procedures were instituted as all bathrooms were disinfected every hour, as well as
24 all high touch areas such as door handles, cap rails around the sheets of ice, and
25 benches where athletes sit were disinfected after every event. All seating areas,
26 arcade games, drinking fountains, ATM’s, and showers were closed off to prevent
27 the spread of the Covid-19 virus while operating Icetown’s business.

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1 17. On or about August 28, 2020, as Newsom announced California's new
2 reopening plan called "The Blueprint for a Safe Economy" (the "Blueprint")¹. The
3 Blueprint became effective on August 31, 2020, which set forth four color tiers to
4 categorize each particular county in California. Depending on what color the county
5 where your business is located in would mandate whether you could operate your
6 business, and under specific restrictions which were placed on such category of
7 businesses.

8 18. On September 10, 2020, in an attempt to once again shut down the
9 operations of Icetown, City filed a lawsuit against Icetown for Nuisance in the
10 Riverside County Superior Court, as well sought a Temporary Restraining Order
11 ("TRO") and Preliminary Injunction. On September 14, 2020, City's request for a
12 TRO was granted and Icetown's business was once again shutdown as of that date.

13 19. With the threat of facing an award of substantial damages, as well as
14 attorney's fees and costs in favor of the City, Icetown had no choice but to stipulate
15 to both a preliminary and permanent injunction. At the time of stipulating to the
16 injunction, Icetown had already incurred nearly half a million dollars in debt from
17 rent, utilities, and other related expenses due to the Covid-19 pandemic. Based on
18 that, Icetown could not afford to take the chance of the City being awarded
19 damages, attorney's fees, and costs on top of the debt it had already incurred as a
20 result of the Orders.

21 20. After Icetown stipulated to the injunction, Icetown learned that nearly
22 every other training facility/ice/roller rink in Southern California remains open and
23 are continuing their operations while Icetown has been forced to shut down due to
24 the legal proceedings filed by the City. It is clear that Icetown has been targeted by
25 the State, County, and City and is being treated unfairly and different from other
26 businesses which fall in the same category as Icetown.

27
28 ¹ www.covid19.ca.gov/safer-economy/

1 21. On December 3, 2020, the State of California signed a new Regional
2 Stay at Home Order (the “Regional Order”) which states that if a region’s ICU
3 availability fell below fifteen percent (15%), then once again certain businesses
4 would be classified as being permitted to continue their business operations while
5 others must once again shut down with the threat of fines, losing business licenses,
6 and potentially imprisonment. A true and correct copy of the Regional Order is
7 attached hereto as **Exhibit 2**. The Regional Order went into effect in Southern
8 California on December 6th and pursuant to the order, Icetown is not permitted to
9 resume its operations and must remain shut down.

10 22. Taken together, the fact that Icetown is being targeted and treated
11 unfairly by the State, County, and City, as well as due to the new Regional Order,
12 this has caused catastrophic damage to Icetown. As a result, Icetown has and will
13 continue to face vast difficulties with respect to their financial obligations, and face
14 a very real threat to the survival of its business.

15 23. While some businesses which have been deemed “essential” continue
16 to operate and turn profit during this time, as well as businesses which are identical
17 to Icetown continue to operate and have not been unfairly targeted as Icetown has,
18 Icetown has been decimated at the hands of government overreach and
19 unconstitutionally restrictive orders that have been passed and enforced by
20 Defendants.

21 24. Based on the above, Icetown complains against Defendants, and each
22 of them, for violation of the Federal Civil Rights Act, 42 U.S.C. § 1983 (“FCRA”),
23 to declare and enjoin the enforcement of Newsom’s December 3, 2020, Regional
24 Order, as well as the Blueprint which will remain in place once the Regional Order
25 is terminated (collectively referred to as “Regional Order/Blueprint”).

26 25. 42 U.S.C. § 1983 was enacted “to deter state actors from using the
27 badge of their authority to deprive individuals of their federally guaranteed rights
28 and to provide relief to victims if such deterrence fails.” Wyatt v. Cole, 504 U.S.

1 158, 161 (1992); Carey v. Phipus, 435 U.S. 247, 254-257 (1978). “A claim under
2 42 United States Code section 1983 may be based on a showing that the defendant,
3 acting under color of state law, deprived the plaintiff of a federally protected right.”
4 Modacure v. B&B Vehicle Processing, Inc., 30 Cal.App.5th 690, 693 (2018).

5 26. Icetown has standing to bring Section 1983 claims since they are an
6 aggrieved in fact business that is the subject of enforcement of the overbroad and
7 unconstitutional Regional Order/Blueprint which has had the effect of obliterating
8 Icetown’s business at no fault of their own. The Regional Order/Blueprint set forth
9 and enforced by the State, County, and City deprive Icetown of its constitutional
10 right and liberty to run its business.

11 27. The Regional Order/Blueprint is in violation of 42 U.S.C. § 1983 as the
12 enforcement of these orders by Defendants should be enjoined due to the following
13 reasons:

- 14 a. The Regional Order/Blueprint violates the Due Process and Equal
15 Protection Clauses of the Fifth and Fourteenth Amendments of the United
16 States Constitution in that it unconstitutionally and disparately applies one
17 set of rules to businesses which have been arbitrarily deemed “essential”
18 versus all other businesses such as Icetown which have been deemed “non-
19 essential,” and must close pursuant to the orders. In addition, Icetown is
20 being treated differently than other, identical, training facilities/ice/roller
21 rinks in Southern California as it is the only such business which has been
22 forced to shut down via a government instituted lawsuit. Icetown contends
23 that all businesses are “essential” to the health, welfare, and well-being of
24 its citizens, as each business is essential to each respective business owner
25 to provide for their families. Furthermore, the goal being attempted to
26 achieve by Defendants could be accomplished through less restrictive
27 means.
28

1 b. The Regional Order/Blueprint amounts to a “partial” or “complete” taking
2 in violation of the Takings Clause of the Fifth Amendment of the United
3 States Constitution in that the refusal to permit Icetown to operate its
4 business constitutes a regulatory taking of private property, for a public
5 purpose, without providing compensation to Icetown. Additionally, The
6 Regional Order/Blueprint violates the Takings Clause of the Fifth
7 Amendment of the United States Constitution in that the refusal to permit
8 businesses that have been deemed “non-essential” to continue to operate
9 constitutes an irrational and arbitrary law which bears no rational basis to a
10 valid government interest. The belief that the ordered shutdown of
11 businesses deemed “non-essential” is necessary to decrease the spread of
12 Covid-19 is an unconstitutional infringement on Icetown’s civil rights and
13 liberties afforded by the United States Constitution. Such government
14 ordered shutdowns have had a devastating and crippling effect on “non-
15 essential” businesses, such as Icetown.

16 c. The Regional Order/Blueprint also violates the Substantive and Procedural
17 Due Process Clauses of the Fifth and Fourteenth Amendments of the
18 United States Constitution.

19 28. The Regional Order/Blueprint is not narrowly tailored to further a
20 compelling government interest, as required by law. Defendants have made many
21 exemptions to the Regional Order/Blueprint to allow “essential” businesses to
22 continue operations and permit mass gatherings for the purposes of protesting. If
23 such activities are permitted by Defendants, then Icetown should be permitted to
24 operate its business as well in a safe manner while abiding by all protocols and
25 guidelines set forth by the CDC.

26 29. Unless injunctive relief is granted by this Court, Icetown will continue
27 to suffer irreparable harm for which it is left without an adequate remedy at law, in
28

1 that it is subject to criminal penalties, fines, and the potential loss of its business
2 license based on the Regional Order/Blueprint.

3 **FIRST CLAIM FOR RELIEF**

4 **(Violation of The Due Process Clause of The Fourteenth**
5 **Amendment of The United States Constitution Against**
6 **Defendants)**

7 30. Icetown re-alleges and incorporates herein by reference each and every
8 allegation in the above paragraphs as though fully set forth herein.

9 31. Icetown has a fundamental property interest in conducting its lawful
10 business which is protected by the Due Process Clause of the Fourteenth
11 Amendment of the United States Constitution.

12 32. The Regional Order/Blueprint and enforcement of such violate
13 Icetown's substantive due process rights afforded to it by the Fourteenth
14 Amendment of the United States Constitution. The Due Process Clause of the
15 Fourteenth Amendment states that "no State shall deprive any person of life, liberty,
16 or property, without due process of law." The fundamental right and liberties
17 protected by the Due Process Clause of the Fourteenth Amendment include most of
18 the rights enumerated in the Bill of Rights. Duncan v. Louisiana, 391 U.S. 145, 147-
19 149 (1968). Additionally, these rights and liberties extend to personal choices
20 which are central to individual dignity and autonomy. Eisenstadt v. Baird, 405 U.S.
21 438, 453 (1972); Griswold v. Connecticut, 381 U.S. 479, 484-486 (1965).

22 33. Icetown was not provided with a constitutionally adequate hearing to
23 present a case for it to not be shut down by State and Local governments. Since the
24 Regional Order/Blueprint deprives Icetown of its constitutional civil rights and
25 liberties, it is required by law that Icetown be afforded the opportunity to show why
26 it would be able to operate within the confines of the CDC guidelines, or decide for
27 themselves to cease operations if they would be unable to comply with such
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1 guidelines. Rather, Icetown was shut down by Defendants without any such
2 opportunity.

3 34. Defendants failed to comply with the procedural and substantive
4 requirements of the United States Constitution by failing to provide Icetown with an
5 opportunity to make a case as to (1) why the Regional Order/Blueprint is
6 unconstitutional and (2) why Icetown should be permitted to continue its operations
7 just as those businesses deemed “essential.”

8 35. Icetown was directly and proximately deprived of their property and
9 ability to lawfully operate its business due to unconstitutional overreach by the
10 government as the Regional Order/Blueprint was made in a procedurally deficient
11 and substantively unlawful manner.

12 36. Icetown was also directly and proximately deprived of their property
13 without a substantive due process of law, which is a violation of the Fourteenth
14 Amendment of the United States Constitution, due to the fact that Defendants’
15 decision to order the shutdown of Icetown was made in reliance on an arbitrary
16 interpretation of the Constitution and related laws.

17 37. Icetown has no adequate remedy at law and will suffer serious
18 irreparable harm to its constitutional rights unless Defendants are enjoined from
19 implementing and enforcing the Regional Order/Blueprint.

20 38. Pursuant to 42 U.S.C. §§ 1983 & 1988, Icetown is entitled to
21 declaratory relief, as well as preliminary and permanent injunctive relief
22 invalidating and restraining enforcement of the Regional Order/Blueprint.

23 39. Icetown was forced to engage the services of private counsel to
24 vindicate its rights under the law, and, therefore, Icetown is entitled to an award of
25 attorney’s fees pursuant to 42 U.S.C. § 1988.

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SECOND CLAIM FOR RELIEF

**(Violation of The Equal Protection Clause of The Fourteenth
Amendment of The United States Constitution Against
Defendants)**

40. Icetown re-alleges and incorporates herein by reference each and every allegation in the above paragraphs as though fully set forth herein.

41. The Fourteenth Amendment of the United States Constitution acts as a constitutional guarantee that all individuals or groups will be treated equally and afforded equal protection under the law which is enjoyed by similar individuals or groups. Specifically, individuals or groups which are similarly situated must be similarly treated. Equal protection is extended when the rules of law are equally applied in all like cases based on similar circumstances.

42. The Regional Order/Blueprint and enforcement of such violates the Fourteenth Amendment of the United States Constitution. The Fourteenth Amendment states that “[n]o State shall...deny to any person within its jurisdiction the equal protection of the laws.” The Equal Protection Clause requires the government to treat individuals and groups impartially, rather than render arbitrary decisions in comparing businesses on certain aspects which are not related to a legitimate government interest.

43. Defendants have arbitrarily and intentionally classified some businesses as “essential” and “non-essential.” Based on such classifications, businesses which have been deemed “essential” are permitted to continue their operations, while “non-essential” businesses must shut down.

44. In addition to classifying some businesses as “essential” versus others “non-essential,” Defendants are treating other businesses which are identical to Icetown (training facilities/ice/roller rinks) differently as nearly every other training facility/ice/roller rink in Southern California remains open and operational, and

1 Icetown is the only such business which has been targeted by State or Local
2 governments via legal proceedings to shut down its operations.

3 45. Strict scrutiny under the Equal Protection Clause of the Fourteenth
4 Amendment of the United States Constitution applies where the classification
5 infringes upon a fundamental right, including the right to due process, right to travel,
6 and right to earn a living. Since such fundamental rights are being infringed upon
7 here, Defendants must satisfy strict scrutiny.

8 46. Defendants cannot satisfy strict scrutiny as their arbitrary
9 classifications are not narrowly tailored to achieve compelling government interests
10 based on the facts stated above.

11 47. Icetown has no adequate remedy at law and will suffer serious
12 irreparable harm to its constitutional rights unless Defendants are enjoined from
13 implementing and enforcing the Regional Order/Blueprint.

14 48. Pursuant to 42 U.S.C. §§ 1983 & 1988, Icetown is entitled to
15 declaratory relief, as well as preliminary and permanent injunctive relief
16 invalidating and restraining enforcement of the Regional Order/Blueprint.

17 49. Icetown was forced to engage the services of private counsel to
18 vindicate its rights under the law, and, therefore, Icetown is entitled to an award of
19 attorney's fees pursuant to 42 U.S.C. § 1988.

20 **THIRD CLAIM FOR RELIEF**

21 **(Violation of The Fifth Amendment of The United States**
22 **Constitution Right to Travel Against Defendants)**

23 50. Icetown re-alleges and incorporates herein by reference each and every
24 allegation in the above paragraphs as though fully set forth herein.

25 51. The Supreme Court has "acknowledged that certain unarticulated rights
26 are implicit in enumerated guarantees... Yet these important but unarticulated rights
27 have nonetheless been found to share constitutional protection in common with
28

1 explicit guarantees.” Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 579-
2 580 (1980).

3 52. “The right to travel is a part of the liberty which the citizen cannot be
4 deprived without the due process of the law under the Fifth Amendment.” Kent v.
5 Dulles, 357 U.S. 116, 127 (1958). Furthermore, “[f]reedom of movement is kin to
6 the right of assembly and to the right of association. These rights may not be
7 abridged.” Aptheker v. Secretary of State, 378 U.S. 500, 520 (1964); De Jonge v.
8 Oregon, 299 U.S. 353 (1937). “Freedom of movement across frontiers in either
9 direction, and inside frontiers as well, was a part of our heritage.” Kent at 126.

10 53. The Supreme Court stated that the reason the right to travel is
11 considered fundamental is because “[f]reedom of movement, at home and abroad, is
12 important for job and business opportunities – for cultural, political, and social
13 activities – for all the commingling which gregarious man enjoys.” Aptheker at 519-
14 520. “Travel abroad, like travel within the country, may be necessary for a
15 livelihood. It may be as close to the heart of the individual as the choice of what he
16 eats, or wears, or reads. Freedom of movement is basic in our scheme of values.”
17 Kent at 126.

18 54. Despite being in a state of emergency due to the Covid-19 pandemic,
19 individuals do not lose their rights and liberties afforded to them by the United
20 States Constitution. “We...place our faith in [the liberties we enjoy], and against
21 restrain, knowing that the risk of abusing liberty so as to give rise to punishable
22 conduct is part of the price we pay for this free society.” Aptheker at 520.

23 55. When a government order infringes upon fundamental rights such as
24 the right to travel, it is subject to strict scrutiny and can be justified only if it furthers
25 a compelling government purpose and if no less restrictive means are available.
26 Memorial Hospital v. Maricopa County, 415 U.S. 250, 257-258 (1974); Dunn v.
27 Blumstein, 405 U.S. 330, 339-341 (1972); Shapiro v. Thompson, 394 U.S. 618, 660
28 (1969); Maher v. Roe, 432 U.S. 464, 488 (1977).

1 56. The Regional Order/Blueprint provide that Icetown must cease
2 operations of its business. Mandating that Icetown refrain from conducting its
3 business operations, despite Icetown having the ability to do so in compliance with
4 the guidelines set forth by the CDC, violates Icetown's Constitutional right to travel.

5 57. Unless Defendants are enjoined from enforcing the Regional
6 Order/Blueprint, Defendants will act under color of state law to deprive Icetown of
7 its Constitutional afforded right to travel under the Due Process Clause of the United
8 States Constitution.

9 58. Icetown has no adequate remedy at law and will suffer serious
10 irreparable harm to its constitutional rights unless Defendants are enjoined from
11 implementing and enforcing the Regional Order/Blueprint.

12 59. Pursuant to 42 U.S.C. §§ 1983 & 1988, Icetown is entitled to
13 declaratory relief, as well as preliminary and permanent injunctive relief
14 invalidating and restraining enforcement of the Regional Order/Blueprint.

15 60. Icetown was forced to engage the services of private counsel to
16 vindicate its rights under the law, and, therefore, Icetown is entitled to an award of
17 attorney's fees pursuant to 42 U.S.C. § 1988.

18 **FOURTH CLAIM FOR RELIEF**

19 **(Violation of The Takings Clause of The Fifth Amendment of**
20 **The United States Constitution Against Defendants)**

21 61. Icetown re-alleges and incorporates herein by reference each and every
22 allegation in the above paragraphs as though fully set forth herein.

23 62. The Supreme Court has held that "the Fifth Amendment...was
24 designed to bar Government from forcing people alone to bear public burdens
25 which, in all fairness and justice, should be borne by the public as a whole."
26 Armstrong v. United States, 364 U.S. 40, 49 (1960).

27 63. The California Supreme Court has held that "[w]hile the police power
28 is very broad in concept, it is not without restrictions in relation to the taking of

1 damaging of property. When it passes beyond proper bounds in its invasion of
2 property rights, it in effect comes within the purview of the law of eminent domain
3 and its exercise requires compensation.” House v. Los Angeles County Flood
4 Control District, 25 Cal.2d 384 (1944).

5 64. In House, the court ruled that the only situations where compensation
6 was not required was when (1) a building was destroyed in front of a fire to create a
7 fire break, (2) destroying a diseased animal, (3) destroying a rotten fruit, or (4)
8 destroying an infected tree. In our case here, none of the examples in House apply.

9 65. The Regional Order/Blueprint requires for Icetown to completely shut
10 down its business operations in an attempt to prevent the spread of Covid-19. Such
11 order completely and unconstitutionally deprives Icetown of all economically
12 beneficial use of its business without just compensation, which is a violation of the
13 United States Constitution.

14 66. Although the government’s police power is granted and reserved to the
15 States via the Tenth Amendment of the United States Constitution, it is not
16 constitutionally unlimited. Euclid v. Ambler Realty Company, 272 U.S. 365 (1926).
17 In California, the Constitution gives this power to cities and counties which means
18 that these agencies have the power and authority to make and enforce laws to protect
19 the health and safety of citizens provided that such laws do not conflict with State
20 laws. Cal. Const. Article XI § 7; Miller v. Board of Public Works, 195 Cal. 477
21 (1925). Despite having such power, a government’s police power is restricted by
22 Constitutional considerations, including the Fifth Amendment’s Taking’s Clause, as
23 well as the Due Process and Equal Protection Clauses.

24 67. The Regional Order/Blueprint and enforcement of such amounts to a
25 complete and total physical and regulatory taking of Icetown’s property (i.e.
26 business) without providing compensation in violation of the Takings Clause of the
27 Fifth Amendment of the United States Constitution. If this Court believes that the
28 Regional Order/Blueprint does not amount to a complete taking, the order does, at

1 minimum, constitute a partial taking. Penn Central Trans. Co. v. City of New York,
2 438 U.S. 104, 124 (1978). The Regional Order/Blueprint has caused proximate and
3 legal harm to Icetown as it is in violation of the Takings Clause of the Fifth
4 Amendment of the United States Constitution.

5 68. Icetown has no adequate remedy at law and will suffer serious
6 irreparable harm to its constitutional rights unless Defendants are enjoined from
7 implementing and enforcing the Regional Order/Blueprint.

8 69. Pursuant to 42 U.S.C. §§ 1983 & 1988, Icetown is entitled to
9 declaratory relief, as well as preliminary and permanent injunctive relief
10 invalidating and restraining enforcement of the Regional Order/Blueprint.

11 70. Icetown was forced to engage the services of private counsel to
12 vindicate its rights under the law, and, therefore, Icetown is entitled to an award of
13 attorney's fees pursuant to 42 U.S.C. § 1988.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Icetown prays for an order and judgment against Defendants
16 as follows:

17 (1) Issue a declaratory judgment as follows:

- 18 a. Declaration that Newsom's December 3, 2020 Regional Order is
19 null and void, of no effect, and unconstitutional under the Fifth and
20 Fourteenth Amendments of the United States Constitution.
21 b. Declaration that Newsom's August 28, 2020 Blueprint is null and
22 void, of no effect, and unconstitutional under the Fifth and
23 Fourteenth Amendments of the United States Constitution.

24 (2) Set aside and hold unlawful the Regional Order and Blueprint;

25 (3) Permanently enjoin Defendants and all individuals and entities in active
26 concert or participation with Defendants from enforcing the Regional
27 Order and Blueprint;
28

- 1 (4) Issue a Temporary Restraining Order and Preliminary Injunction
2 preventing Defendants from enforcing or implementing the Regional
3 Order and Blueprint until this Court decides the merits of this lawsuit;
4 (5) Award Icetown damages arising out of its 42 U.S.C. § 1983 claims
5 according to proof;
6 (6) Award Icetown the reasonable value of the loss of its business due to
7 Newsom's Executive Order, Regional Order, and Blueprint pursuant to
8 Cal. Gov. Code § 8572;
9 (7) Award Icetown its costs and attorney's fees incurred in this action; and
10 (8) Grant all other such relief as the Court may deem just and proper.
11
12

13 Dated: January 12, 2021

ELAN J. DUNAEV, ESQ.

14 By: /s/ Elan J. Dunaev
15 Elan J. Dunaev
16 Attorney for Plaintiff,
17 **DUNN ENTERPRISES, INC. DBA**
18 **ICETOWN**

19 **DEMAND FOR JURY TRIAL**

20 Icetown hereby demands trial by jury in this matter.
21

22 Dated: January 12, 2021

ELAN J. DUNAEV, ESQ.

23 By: /s/ Elan J. Dunaev
24 Elan J. Dunaev
25 Attorney for Plaintiff,
26 **DUNN ENTERPRISES, INC. DBA**
27 **ICETOWN**
28

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**I. (a) PLAINTIFFS** (Check box if you are representing yourself ☐)
DUNN ENTERPRISES, INC. DBA ICETOWN**DEFENDANTS** (Check box if you are representing yourself ☐)
GAVIN NEWSOM, CITY OF RIVERSIDE, COUNTY OF RIVERSIDE(b) County of Residence of First Listed Plaintiff Riverside
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Sacramento
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

Elan J. Dunaev, Esq.
2801 Kelvin Avenue, Suite 551, Irvine, CA 92614
(949) 683-3460

Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant
- ☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES—For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1. Original Proceeding
- ☐ 2. Removed from State Court
- ☐ 3. Remanded from Appellate Court
- ☐ 4. Reinstated or Reopened
- ☐ 5. Transferred from Another District (Specify)
- ☐ 6. Multidistrict Litigation - Transfer
- ☐ 8. Multidistrict Litigation - Direct File

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)**CLASS ACTION under F.R.Cv.P. 23:** ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ According to Proof**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
42 U.S.C. Section 1983 for Violations of the Fifth and Fourteenth Amendments of the United States Constitution**VII. NATURE OF SUIT** (Place an X in one box only).

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	SOCIAL SECURITY
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 485 Telephone Consumer Protection Act	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 896 Arbitration		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY:

Case Number:

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF: <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	INITIAL DIVISION IN CACD IS: Western Southern Eastern	
QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question C. If "yes," answer Question B.1, at right.	B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co? <i>check one of the boxes to the right</i> → B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question B.2. <input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	
QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question D. If "yes," answer Question C.1, at right.	C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co? <i>check one of the boxes to the right</i> → C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question C.2. <input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	
QUESTION D: Location of plaintiffs and defendants?	A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
D.1. Is there at least one answer in Column A? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	D.2. Is there at least one answer in Column B? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓		
QUESTION E: Initial Division? Enter the initial division determined by Question A, B, C, or D above: → Eastern	INITIAL DIVISION IN CACD Eastern <input checked="" type="checkbox"/>		
QUESTION F: Northern Counties? Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

IX(a). IDENTICAL CASES: Has this action been previously filed in this court?

☒ NO

☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed in this court?

☒ NO

☐ YES

If yes, list case number(s): _____

Civil cases are related when they (check all that apply):

- ☐ A. Arise from the same or a closely related transaction, happening, or event;
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

- ☐ A. Arise from the same or a closely related transaction, happening, or event;
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): /s/ Elan J. Dunaev

DATE: January 12, 2021

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to:

District Judge **John W. Holcomb**
Magistrate Judge **Shashi H. Kewalramani**

The case number on all documents filed with the Court should read as follows:

5:21-cv-00048 JWH (SHKx)

District judges in the Central District of California refer all discovery-related motions to the assigned magistrate judge pursuant to General Order No. 05-07. Discovery-related motions should be noticed for hearing before the assigned magistrate judge. Please refer to the assigned judges' Procedures and Schedules, available on the Court's website at www.cacd.uscourts.gov/judges-requirements, for additional information.

Clerk, U.S. District Court

January 13, 2021
Date

By /s/ Edwin Sambrano
Deputy Clerk

ATTENTION

The party that filed the case-initiating document in this case (for example, the complaint or the notice of removal) must serve a copy of this Notice on all parties served with the case-initiating document. In addition, if the case-initiating document in this case was electronically filed, the party that filed it must, upon receipt of this Notice, promptly deliver mandatory chambers copies of all previously filed documents to the newly assigned-district judge. See L.R. 5-4.5. A copy of this Notice should be attached to the first page of the mandatory chambers copy of the case-initiating document.

1 ELAN J. DUNAEV, ESQ. (SBN 310060)
2 ejdunaevesq@gmail.com
3 2801 Kelvin Avenue, Suite 551
4 Irvine, California 92614
Telephone: (949) 683-3460

5 Attorney for Plaintiff,
6 **DUNN ENTERPRISES, INC. DBA ICETOWN**

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9
10 DUNN ENTERPRISES, INC. DBA
11 ICETOWN, a California Corporation,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, in his official
15 capacity as Governor of California;
16 CITY OF RIVERSIDE, a California
17 Governmental Agency; COUNTY OF
18 RIVERSIDE, a California
Governmental Agency,

19 Defendants.

CASE NO.: 5:21-cv-00048

**[PROPOSED] TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE
REGARDING ISSUANCE OF A
PRELIMINARY INJUNCTION**

20
21 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

22 Upon review of Plaintiff DUNN ENTERPRISES, INC. DBA ICETOWN's
23 ("Icetown") *Ex Parte* Application for a Temporary Restraining Order ("TRO") and
24 Order to Show Cause Re Issuance of a Preliminary Injunction, as well as the
25 supporting Memorandum of Points and Authorities, the evidence presented in
26 support of Icetown's application via the Declaration of Elan Dunaev, the
27 Declaration of Alex Dunaev, the Declaration of Chuck Conder, the Declaration of
28 Johnnie Viessman, the Declaration of Monica Viola, the Declaration of Nik Nunez,

1 the Declaration of Geoff Hird, the Declaration of Rick Barbeau, the Declaration of
2 Peter Melendez, the Declaration of Zack Daniel, the Declaration of Austin
3 Lechtanski, the Declaration of Justin Soapes, the Declaration of Apryl Soapes and
4 good cause appearing therefrom, the Court finds that Icetown is likely to succeed on
5 the merits, is likely to suffer irreparable harm in the absence of preliminary relief,
6 the balance of equities tip in Icetown's favor, and a TRO and/or injunction is in the
7 public interest. IT IS HEREBY ORDERED:

8 That Icetown's application is **GRANTED**. Defendants GAVIN NEWSOM,
9 THE CITY OF RIVERSIDE, and THE COUNTY OF RIVERSIDE (collectively
10 "Defendants"), and each of them and their respective agents and assigns, and any
11 governmental entity or law enforcement officer, are hereby temporarily ENJOINED
12 from enforcing "The Blueprint for a Safer Economy" (the "Blueprint"), or any other
13 related orders, that prevents Icetown from being allowed to operate its business
14 within the confines of the guidelines and recommendations from the Centers for
15 Disease Control and Prevention ("CDC"). Further, Defendants shall show cause, if
16 any exists, why a preliminary injunction should not issue pending trial, enjoining all
17 Defendants from enforcing the Blueprint, or any other related orders. The hearing
18 for the Order to Show Cause ("OSC") shall be on _____. Defendants
19 shall file and serve any opposition to the OSC on or before _____.
20 Any reply in support thereof shall be filed and served on or before _____.
21

22 **IT IS SO ORDERED.**
23

24 Dated: _____

25 HON. JOHN W. HOLCOMB
26
27
28

1 ELAN J. DUNAEV, ESQ. (SBN 310060)
2 ejdunaevesq@gmail.com
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5 Attorney for Plaintiff,
6 **DUNN ENTERPRISES, INC. DBA ICETOWN**

7 **UNITED STATES DISTRICT COURT**

8 **CENTRAL DISTRICT OF CALIFORNIA**

9
10 **DUNN ENTERPRISES, INC. DBA**
11 **ICETOWN, a California Corporation,**

12 Plaintiff,

13 vs.

14 **GAVIN NEWSOM, in his official**
15 **capacity as Governor of California;**
16 **CITY OF RIVERSIDE, a California**
17 **Governmental Agency; COUNTY OF**
18 **RIVERSIDE, a California**
Governmental Agency,

19 Defendants.
20
21

CASE NO.: 5:21-cv-00048

PLAINTIFF DUNN ENTERPRISES,
INC. DBA ICETOWN'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
ITS *EX PARTE* APPLICATION FOR
A TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE REGARDING ISSUANCE
OF A PRELIMINARY INJUNCTION

22 Plaintiff DUNN ENTERPRISES, INC. DBA ICETOWN ("Icetown") hereby
23 submits the following Memorandum of Points and Authorities in Support of its *Ex*
24 *Parte* Application for a Temporary Restraining Order and Order to Show Cause Re
25 Issuance of a Preliminary Injunction.

26 ///

27 ///

28 ///

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 From the outset of the Covid-19 pandemic in March of 2020, the State of
4 California (“State”), as well as local city and county governments, instituted several
5 state-wide orders (the “Orders”) in an attempt to stop the spread of Covid-19. Such
6 Orders have infringed upon Californians’ most basic civil rights and liberties
7 granted to them by the United States Constitution such as the right to work and earn
8 a living for their families.

9 If Defendants GAVIN NEWSOM (“Newsom”), THE CITY OF RIVERSIDE
10 (“City”), and THE COUNTY OF RIVERSIDE (“County”) (collectively referred to
11 as “Defendants”) Orders are permitted to stand and be applied in the manner
12 Newsom, City, and County have been proceeding, Icetown’s rights under the United
13 States Constitution will continue to be violated and continue to cause
14 insurmountable economic damage to Icetown. Based on the current Orders, Icetown
15 has been deemed a “non-essential” business who must shut down while other
16 businesses, such as large big-box retailers, have been deemed “essential” and may
17 remain open and operational. In addition, specifically relating to training/ice/roller
18 skating facilities, Icetown has been forced to shut down while almost every other
19 training/ice/roller skating facility in Southern California currently remains open.

20 Icetown brings the instant *Ex Parte* Application to challenge the
21 constitutionality of Newsom’s August 28, 2020 reopening plan called “The
22 Blueprint for a Safe Economy” (the “Blueprint”)¹. The Blueprint created four color
23 tiers and categorizes counties by color based on their current statistics relating to
24 Covid-19. The Blueprint allows certain businesses to operate depending on what
25 type of business it is and what color the county where the business is located is
26 currently in. In addition to the Blueprint being unconstitutional itself under the Fifth
27 and Fourteenth Amendments of the United States Constitution, the way that it is

28 ¹ www.covid19.ca.gov/safer-economy/

1 being applied and enforced by Defendants is unconstitutional as certain businesses
2 are being treated very differently than others. For these reasons, this Court should
3 grant Icetown's instant *Ex Parte* Application for a Temporary Restraining Order and
4 Order to Show Cause Re Issuance of a Preliminary Injunction.

5 **II. STATEMENT OF FACTS**

6 On March 19, 2020, in response to the threat of emergence of Covid-19,
7 Newsom issued Executive Order N-33-20 ("Executive Order") which mandated that
8 all individuals living in the State of California were to stay home or at their place of
9 residence except as needed to maintain continuity of operations of what had been
10 deemed as federal critical infrastructure. (Decl. of Elan Dunaev ¶ 2; **Exhibit 1.**)
11 Newsom's Executive Order stated that businesses who had been identified and
12 labeled as critical infrastructure sectors, which meant that they were considered so
13 vital that ceasing their operation would have an effect on security, the economy,
14 and/or public health, could remain open during the Covid-19 pandemic because of
15 the importance of these businesses to the health and well-being of the State of
16 California. Id.

17 Newsom declared that the Executive Order was being issued to protect the
18 public health of Californians and that the goal was to "bend the curve," and disrupt
19 the spread of the virus. In doing so, Newsom instructed the Office of Emergency
20 Services to take all necessary steps to ensure compliance with the Executive Order
21 and that the Executive Order was enforceable pursuant to California Law.

22 As a result of Newsom's Executive Order, businesses which were not
23 considered critical infrastructure sectors, such as Icetown, were deemed "non-
24 essential" and were ordered to shut down all operations, while businesses deemed
25 "essential" by State and local governments were permitted to continue operations.
26 Due to the fear of facing harsh fines, and even imprisonment threatened by the State,
27 City, and County, Icetown shut down the operations of its business as of March 19th
28 to comply with the Executive Order.

1 On or about May 7, 2020, as the curve of the Covid-19 virus was “bending,”
2 which was the goal instituted by Newsom and government leaders all across the
3 Country, Newsom announced that he would begin modifying the Executive Order to
4 begin reopening California under what was described at the time as a roadmap
5 which set forth a four-tiered system for reopening California.

6 As time passed and substantial medical advancements, treatments, and
7 therapeutics had been developed to control the Covid-19 virus and “bend the curve,”
8 Newsom announced that businesses in California could begin to reopen under
9 specific guidelines and restrictions. (Decl. of Elan Dunaev, ¶ 3.) Based on guidance
10 from the State, Icetown reopened limited operations in July of 2020 as gyms, fitness
11 centers, and training facilities were permitted to reopen if proper protocols were put
12 in place. Id.

13 When Icetown resumed operations, capacity was limited to ensure social
14 distancing and masks were required for all customers and employees. (Decl. of Elan
15 Dunaev, ¶ 4.) Furthermore, touchless hand sanitizers, hand soap dispensers, and
16 paper towel dispensers were installed for the health, safety, and well-being of
17 Icetown’s customers and employees. Id. Additionally, enhanced cleaning
18 procedures were instituted and all seating areas, arcade games, drinking fountains,
19 ATM’s, and showers were closed off. Id. All of these procedures were put in place
20 to prevent the spread of the Covid-19 virus while operating Icetown’s business. Id.

21 On or about August 28, 2020, as Newsom announced the Blueprint. (Decl. of
22 Elan Dunaev, ¶ 5.) The Blueprint became effective on August 31, 2020, which set
23 forth four color tiers to categorize each particular county in California. Id.
24 Depending on what color the county where your business is located in would
25 mandate whether you could operate your business, and under specific restrictions
26 which were placed on such category of businesses. Id.

27 On September 10, 2020, in an attempt to once again shut down the operations
28 of Icetown, City filed a lawsuit against Icetown for Nuisance in the Riverside

1 County Superior Court, as well sought a Temporary Restraining Order (“TRO”) and
 2 Preliminary Injunction. (Decl. of Elan Dunaev, ¶ 6.) On September 14, 2020, City’s
 3 request for a TRO was granted and Icetown’s business was once again shutdown as
 4 of that date. Id.

5 With the threat of facing an award of substantial damages, as well as
 6 attorney’s fees and costs in favor of the City, Icetown had no choice but to stipulate
 7 to both a preliminary and permanent injunction. (Decl. of Elan Dunaev, ¶ 7.) At the
 8 time of stipulating to the injunction, Icetown had already incurred nearly half a
 9 million dollars in debt from rent, utilities, and other related expenses due to the
 10 Covid-19 pandemic. Id. Based on that, Icetown could not afford to take the chance
 11 of the City being awarded damages, attorney’s fees, and costs on top of the debt it
 12 had already incurred as a result of the Orders. Id.

13 After Icetown stipulated to the injunction, Icetown learned that nearly every
 14 other training facility/ice/roller rink in Southern California remains open and are
 15 continuing their operations while Icetown has been forced to shut down due to the
 16 legal proceedings filed by the City. (Decl. of Elan Dunaev, ¶ 8.) It is clear that
 17 Icetown has been targeted by the State, County, and City and is being treated
 18 unfairly and different from other businesses which fall in the same category as
 19 Icetown. Id.

20 On December 3, 2020, the State of California signed the Regional Order
 21 which states that if a region’s ICU availability fell below fifteen percent (15%), then
 22 once again certain businesses would be classified as being permitted to continue
 23 their business operations while others must once again shut down with the threat of
 24 fines, losing business licenses, and potentially imprisonment. (Decl. of Elan
 25 Dunaev, ¶ 9; **Exhibit 2.**) The Regional Order went into effect in Southern
 26 California on December 6th and pursuant to the order, Icetown was not permitted to
 27 resume its operations and must remain shut down. Id. As of January 25, 2020, the
 28 State lifted the Regional Order, however advised that the Blueprint would remain in

place. (Decl. of Elan Dunaev, ¶ 10.) The city of Riverside has been categorized in the most restrictive purple tier, which means that Icetown must remain closed. *Id.*

Taken together, the fact that Icetown is being targeted and treated unfairly by the State, County, and City, as well as due to the Blueprint, this has caused catastrophic damage to Icetown. As a result, Icetown has and will continue to face vast difficulties with respect to their financial obligations, and face a very real threat to the survival of its business.

While some businesses which have been deemed “essential” continue to operate and turn profit during this time, as well as businesses which are identical to Icetown continue to operate and have not been unfairly targeted as Icetown has, Icetown has been decimated at the hands of government overreach and unconstitutionally restrictive orders that have been passed and enforced by Defendants.

III. ARGUMENT

A. Standard for Temporary Restraining Orders and Preliminary Injunctions.

A plaintiff seeking a temporary restraining order and/or preliminary injunction must establish that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that a TRO and/or injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

B. Icetown is Likely to Succeed on the Merits.

1. Icetown has Standing to Bring 42 U.S.C. § 1983 Claims.

42 U.S.C. § 1983 was enacted “to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.” *Wyatt v. Cole*, 504 U.S. 158, 161 (1992); *Carey v. Piphus*, 435 U.S. 247, 254-257 (1978). “A claim under 42 United States Code section 1983 may be based on a showing that the defendant, acting

1 under color of state law, deprived the plaintiff of a federally protected right.”

2 Modacure v. B&B Vehicle Processing, Inc., 30 Cal.App.5th 690, 693 (2018).

3 Icetown has standing to bring Section 1983 claims since they are an aggrieved
4 in fact business that is the subject of enforcement of the overbroad and
5 unconstitutional Blueprint which has had the effect of obliterating Icetown’s
6 business at no fault of their own. The Blueprint set forth and enforced by
7 Defendants deprive Icetown of its constitutional right and liberty to run its business.

8 **2. The Blueprint Violates the Due Process Clause of the Fourteenth**
9 **Amendment of the United States Constitution.**

10 The Blueprint and enforcement of such violate Icetown’s substantive due
11 process rights afforded to it by the Fourteenth Amendment of the United States
12 Constitution. The Due Process Clause of the Fourteenth Amendment states that “no
13 State shall deprive any person of life, liberty, or property, without due process of
14 law.” The fundamental right and liberties protected by the Due Process Clause of
15 the Fourteenth Amendment include most of the rights enumerated in the Bill of
16 Rights. Duncan v. Louisiana, 391 U.S. 145, 147-149 (1968). Additionally, these
17 rights and liberties extend to personal choices which are central to individual dignity
18 and autonomy. Eisenstadt v. Baird, 405 U.S. 438, 453 (1972); Griswold v.
19 Connecticut, 381 U.S. 479, 484-486 (1965).

20 The Blueprint unconstitutionally and disparately applies one set of rules to
21 businesses which have been arbitrarily deemed “essential” versus all other
22 businesses such as Icetown which have been deemed “non-essential,” and must
23 close pursuant to the orders. Furthermore, the Blueprint is not narrowly tailored to
24 further a compelling government interest, as required by law. Defendants have
25 made many exemptions to the Blueprint to allow businesses to continue operations
26 and permit mass gatherings for the purposes of protesting. If such activities are
27 permitted by Defendants, then Icetown should be permitted to operate its business as
28

1 well in a safe manner while abiding by all protocols and guidelines set forth by the
2 Center for Disease Control and Prevention (“CDC”).

3 Additionally, Icetown was not provided with a constitutionally adequate
4 hearing to present a case for it to not be shut down by State and Local governments.
5 Since the Blueprint deprives Icetown of its constitutional civil rights and liberties, it
6 is required by law that Icetown be afforded the opportunity to show why it would be
7 able to operate within the confines of the CDC guidelines, or decide for themselves
8 to cease operations if they would be unable to comply with such guidelines. Rather,
9 Icetown was shut down by Defendants without any such opportunity.

10 Defendants failed to comply with the procedural and substantive requirements
11 of the United States Constitution by failing to provide Icetown with an opportunity
12 to make a case as to (1) why the Blueprint is unconstitutional and (2) why Icetown
13 should be permitted to continue its operations just as those businesses deemed
14 “essential.” Icetown was directly and proximately deprived of their property and
15 ability to lawfully operate its business due to unconstitutional overreach by the
16 government as the Blueprint was made in a procedurally deficient and substantively
17 unlawful manner. Icetown was also directly and proximately deprived of their
18 property without a substantive due process of law, which is a violation of the
19 Fourteenth Amendment of the United States Constitution, due to the fact that
20 Defendants’ decision to order the shutdown of Icetown was made in reliance on an
21 arbitrary interpretation of the Constitution and related laws.

22 *i. Icetown Can Be Open and Operational While Keeping its*
23 *Employees and Customers Safe by Abiding by the*
24 *Recommendations from the CDC.*

25 As was shown for the brief time that Icetown was open since the outset of the
26 Covid-19 pandemic, Icetown can operate its business in a safe manner. During the
27 time that Icetown was open and operational since the start of the pandemic,
28 maximum capacity was limited to ten percent (10%) to comply with the State’s

orders and ensure social distancing as recommended by the CDC. (Decl. of Alex Dunaev, ¶ 8.) In addition, Icetown required all patrons and employees to wear masks, limited the number of people permitted in the building, closed off all sitting areas, bleachers, and showers to promote social distancing, had enhanced cleaning, sanitizing, and disinfecting procedures in place, as well as installed several hand sanitizing dispensers throughout the building. (Decl. of Alex Dunaev, ¶ 8; Decl. of Johnnie Viessman, ¶ 2.) Icetown spent thousands of dollars to put these protocols in place to ensure the safety of all patrons and employees. (Decl. of Alex Dunaev, ¶ 8.) Icetown put all these measures in place to abide by the recommendations provided by the CDC. (Decl. of Alex Dunaev, ¶ 8; Decl. of Johnnie Viessman, ¶ 2.)

By putting the above referenced safety measures in place, all customers and employees are in a safe and controlled environment at Icetown. By no means is Icetown asking the Court to allow it to reopen with no restrictions, and rather understands that the above safety measures will need to be in place until the CDC says otherwise. Icetown will continue to take whatever steps necessary to ensure the safety of all patrons while operating its business in a limited capacity.

3. The Blueprint Violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

The Fourteenth Amendment of the United States Constitution acts as a constitutional guarantee that all individuals or groups will be treated equally and afforded equal protection under the law which is enjoyed by similar individuals or groups. Specifically, individuals or groups which are similarly situated must be similarly treated. Equal protection is extended when the rules of law are equally applied in all like cases based on similar circumstances.

The Blueprint and enforcement of such violates the Fourteenth Amendment of the United States Constitution. The Fourteenth Amendment states that “[n]o State shall...deny to any person within its jurisdiction the equal protection of the laws.” The Equal Protection Clause requires the government to treat individuals and

1 groups impartially, rather than render arbitrary decisions in comparing businesses on
 2 certain aspects which are not related to a legitimate government interest.

3 Defendants have arbitrarily and intentionally classified some businesses as
 4 “essential” and “non-essential.” Based on such classifications, businesses which
 5 have been deemed “essential” are permitted to continue their operations, while
 6 “non-essential” businesses must shut down.

7 *i. Icetown Has Been Targeted and Singled Out and is Being*
 8 *Treated Differently than Other Similarly Situated Businesses.*

9 Defendants are treating other businesses which are identical to Icetown
 10 (training facilities/ice/roller rinks) differently as nearly every other training
 11 facility/ice/roller rink in Southern California remains open and operational, and
 12 Icetown is the only such business which has been targeted by State or Local
 13 governments via legal proceedings to shut down its operations. Specifically, below
 14 are some of the training facilities/ice/roller rinks which are currently, and have been
 15 for months, open and operational:

- 16 • The Rinks Corona located in the city of Corona, county of Riverside. (Decl.
 17 of Nik Nunez.)
- 18 • Center Ice Skating Arena located in the city of Ontario, county of San
 19 Bernardino. (Decl. of Geoff Hird and Rick Barbeau.)
- 20 • Ontario Ice Skating Center located in the city of Ontario, county of San
 21 Bernardino. (Decl. of Peter Melendez.)
- 22 • The Rinks Yorba Linda located in the city of Yorba Linda, county of Orange.
 23 (Decl. of Justin Soapes.)
- 24 • KHS Ice Arena located in the city of Anaheim, county of Orange. (Decl. of
 25 Zack Daniel.)
- 26 • The Rinks Anaheim Ice located in the city of Anaheim, county of Orange.
 27 (Decl. of Apryl Soapes.)

- 1 • East West Ice Palace located in the city of Artesia, county of Los Angeles.
2 (Decl. of Rick Barbeau.)
- 3 • San Diego Ice Arena located in the city of San Diego, county of San Diego.
4 (Decl. of Austin Lechtanski.)

5 Due to the fact that the above facilities are open, Icetown's customers are
6 driving to these other facilities to skate in their programs which are currently, and
7 have been, offered for months. Icetown has already lost, and will continue to lose
8 more customers to these other facilities since they are open and operational. In fact,
9 just as an example, the adult league hockey program at the neighboring Center Ice
10 Skating Arena ("Center Ice") has nearly doubled as a result of the forced shut down
11 of Icetown since teams are now skating in Center Ice's hockey programs. (Decl. of
12 Geoff Hird, ¶ 3.) How is this fair? How can some facilities be open and benefit
13 from the forced shut down of Icetown, while Icetown continues to incur over
14 \$50,000 in debt each month it remains closed? (Decl. of Alex Dunaev, ¶ 4.) How
15 can The Rinks Corona, which is located in the same county as Icetown, be open and
16 operational, while Icetown must remain closed? How can Defendants explain this?

17 Icetown's figure skating director, Monica Viola, took several of her students
18 to the skating rink in Temecula, located in the county of Riverside, on or about
19 December 22, 2020. (Decl. of Monica Viola, ¶ 3.) Despite the State's orders, the
20 County has permitted this ice rink to be open because it is considered "outdoor." Id.
21 Although this ice rink has been classified as "outdoor," it is completely enclosed by
22 a tent, essentially making it an indoor rink. Id.

23 In addition to the ice rink in Temecula being indoor as it is completely
24 enclosed by a tent, absolutely no social distancing is being practiced at the rink.
25 (Decl. of Monica Viola, ¶ 4.) Specifically, human trains of ten (10) or more people
26 were being formed on the ice where individuals were physically touching each
27 other. (Id.; **Exhibit 1.**) At no time since the Covid-19 pandemic was public skating
28 ever permitted at Icetown. (Decl. of Monica Viola, ¶ 5.) Due to the fact that public

1 skating was not permitted at Icetown, no human trains were able to be formed by
2 patrons as the only events taking place were organized figure skating and youth
3 hockey programs. Id.

4 Additionally, Icetown has state of the art equipment in its facility such as
5 dehumidifiers for the purpose of air circulation. (Decl. of Monica Viola, ¶ 6.) Based
6 on Ms. Viola's observations, the rink in Temecula had so such equipment since it is
7 a make-shift rink enclosed by a tent. Id. Based on these facts, skating at Icetown is
8 much safer than at the rink in Temecula because (1) Icetown's programs are
9 controlled and limited which ensure social distancing and (2) Icetown's chiller
10 equipment allows for far greater air circulation and medical professionals have
11 stated that greater air circulation helps promote a safer environment relating to
12 Covid-19.

13 The above facts referenced above is evidence that the decisions on which
14 businesses can and cannot operate is not based on science. If such decisions were
15 based on actual science, one would see that skating at Icetown is far safer than at the
16 rink in Temecula. However, somehow the very same county in which Icetown is
17 located allows the rink in Temecula to operate despite it being completely enclosed,
18 and human trains being formed by ten (10) or more individuals. This is clear
19 evidence of unequal treatment by the government.

20 In addition to other training facilities/ice/roller rinks, there are other
21 businesses in the city of Riverside which continue to defy the State of California's
22 ("State") orders, yet are permitted to operate and have not been shut down.
23 Specifically, IHOP and Norms restaurants in the city of Riverside are currently
24 offering **indoor** dining, which is a clear violation of the Blueprint. (Decl. of Johnnie
25 Viessman, ¶ 4.) Events Sports Grill, which is located in the same plaza as Icetown,
26 is also currently offering **indoor** dining. (Decl. of Alex Dunaev, ¶ 7.) Crunch
27 Fitness, a gym located in the city of Riverside, is also allowing its customers to
28

1 work out **inside** their gym, which is not permitted under the Blueprint. (Decl. of
2 Johnnie Viessman, ¶ 4.)

3 *ii. **The City of Riverside Itself Acknowledges that Icetown Has***
4 ***Been Targeted and Singled Out.***

5 The City itself has admitted that Icetown is being treated differently than
6 other similarly situated businesses. The City has a total of seven (7)
7 Councilmembers who have weekly meetings to discuss current issues within the
8 City. (Decl. of Chuck Conder, ¶ 3.) During those meetings, Icetown's closure,
9 among other issues, has been openly discussed. *Id.* Chuck Conder, one of the City's
10 Councilmembers, urged his fellow Councilmembers to (1) allow Icetown to reopen
11 its business and (2) forgive all rent which has been charged to Icetown during the
12 time that the business has been shut down due to the Covid-19 pandemic and by the
13 superior court via an injunction. *Id.*

14 In response to Mr. Conder's proposal, he was the only Councilmember in
15 favor of these actions while the remaining six refused to allow Icetown to reopen, as
16 well as refused to forgive any rent that has been charged to Icetown during the time
17 the business has been shut down. (Decl. of Chuck Conder, ¶ 4.) Mr. Conder advised
18 that the City's Councilmembers have acknowledged that in fact, Icetown is the **only**
19 business in the City of Riverside which is currently under an injunction from the
20 courts. (Decl. of Chuck Conder, ¶ 5.) Furthermore, the City's Councilmembers and
21 related staff acknowledged the fact that there were other businesses in the City of
22 Riverside which were defying the State's orders, however none of those businesses
23 were being legally forced to shut down or having lawsuits filed against them just as
24 Icetown faced. *Id.*

25 During one of the City Council's recent meetings, the Councilmembers
26 admitted that Icetown is being treated differently than other businesses in the City of
27 Riverside because "they were going to make an example out of Icetown." (Decl. of
28 Chuck Conder, ¶ 6.) The Councilmembers are aware of other businesses in the City

1 of Riverside which are not complying with the State's orders, however refuse to do
2 anything against them and rather continue to single out Icetown. Id.

3 The fact that one of the City's own Councilmembers has admitted and
4 provided written testimony under penalty of perjury attesting that the City is aware
5 that other businesses are defying the State's orders, however refuse to do anything
6 about it is a clear and utter violation of the Equal Protection Clause of the United
7 States Constitution. The City Council are elected officials and put in place to assist
8 in enforcing the State's orders, yet they consciously have singled out Icetown in
9 order to "make an example out of them." This is outright ridiculous and shameful
10 that the State's orders are being enforced in this manner by the City. The United
11 States Constitution, which was written by our founding fathers, requires that all
12 similarly situated individuals be treated equally under the law. **It is clear as day**
13 **that is not occurring here.**

14 If Defendants are going to enforce the unconstitutional Blueprint, they must
15 do so **equally among all businesses.** Defendants do not have the right to pick and
16 choose which businesses they go after and which businesses they allow to remain
17 open. The manner in which Defendants are attempting to enforce the Blueprint, as
18 shown by the facts stated above, is clearly unconstitutional. Treating businesses
19 which are similarly situated differently, which is exactly what Defendants are doing,
20 is a clear violation of the Equal Protection clause. This Court must step in and strike
21 down the Blueprint in its entirety, as well as enjoin the manner in which Defendants
22 are enforcing such an unconstitutional order.

23 **4. The Blueprint Violates the Fifth Amendment Right to Travel of the**
24 **United States Constitution.**

25 The Supreme Court has "acknowledged that certain unarticulated rights are
26 implicit in enumerated guarantees... Yet these important but unarticulated rights
27 have nonetheless been found to share constitutional protection in common with
28 explicit guarantees." Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 579-

1 580 (1980). “The right to travel is a part of the liberty which the citizen cannot be
 2 deprived without the due process of the law under the Fifth Amendment.” Kent v.
 3 Dulles, 357 U.S. 116, 127 (1958). Furthermore, “[f]reedom of movement is kin to
 4 the right of assembly and to the right of association. These rights may not be
 5 abridged.” Aptheker v. Secretary of State, 378 U.S. 500, 520 (1964); De Jonge v.
 6 Oregon, 299 U.S. 353 (1937). “Freedom of movement across frontiers in either
 7 direction, and inside frontiers as well, was a part of our heritage.” Kent at 126.

8 The Supreme Court stated that the reason the right to travel is considered
 9 fundamental is because “[f]reedom of movement, at home and abroad, is important
 10 for job and business opportunities – for cultural, political, and social activities – for
 11 all the commingling which gregarious man enjoys.” Aptheker at 519-520. “Travel
 12 abroad, like travel within the country, may be necessary for a livelihood. It may be
 13 as close to the heart of the individual as the choice of what he eats, or wears, or
 14 reads. Freedom of movement is basic in our scheme of values.” Kent at 126.

15 Despite being in a state of emergency due to the Covid-19 pandemic,
 16 individuals do not lose their rights and liberties afforded to them by the United
 17 States Constitution. “We...place our faith in [the liberties we enjoy], and against
 18 restrain, knowing that the risk of abusing liberty so as to give rise to punishable
 19 conduct is part of the price we pay for this free society.” Aptheker at 520.

20 When a government order infringes upon fundamental rights such as the right
 21 to travel, it is subject to strict scrutiny and can be justified only if it furthers a
 22 compelling government purpose and if no less restrictive means are available.
 23 Memorial Hospital v. Maricopa County, 415 U.S. 250, 257-258 (1974); Dunn v.
 24 Blumstein, 405 U.S. 330, 339-341 (1972); Shapiro v. Thompson, 394 U.S. 618, 660
 25 (1969); Maher v. Roe, 432 U.S. 464, 488 (1977).

26 The Blueprint provides that Icetown must cease operations of its business.
 27 Mandating that Icetown refrain from conducting its business operations, despite
 28 Icetown having the ability to do so in compliance with the guidelines set forth by the

1 CDC, violates Icetown's Constitutional right to travel. Unless Defendants are
 2 enjoined from enforcing the Blueprint, Defendants will act under color of state law
 3 to deprive Icetown of its Constitutional afforded right to travel under the Due
 4 Process Clause of the United States Constitution.

5 **5. The Blueprint Violates the Takings Clause of the Fifth Amendment**
 6 **of the United States Constitution.**

7 The Supreme Court has held that "the Fifth Amendment... was designed to
 8 bar Government from forcing people alone to bear public burdens which, in all
 9 fairness and justice, should be borne by the public as a whole." Armstrong v. United
 10 States, 364 U.S. 40, 49 (1960). The California Supreme Court has held that "[w]hile
 11 the police power is very broad in concept, it is not without restrictions in relation to
 12 the taking of damaging of property. When it passes beyond proper bounds in its
 13 invasion of property rights, it in effect comes within the purview of the law of
 14 eminent domain and its exercise requires compensation." House v. Los Angeles
 15 County Flood Control District, 25 Cal.2d 384 (1944). In House, the court ruled that
 16 the only situations where compensation was not required was when (1) a building
 17 was destroyed in front of a fire to create a fire break, (2) destroying a diseased
 18 animal, (3) destroying a rotten fruit, or (4) destroying an infected tree. In our case
 19 here, none of the examples in House apply.

20 The Blueprint requires for Icetown to completely shut down its business
 21 operations in an attempt to prevent the spread of Covid-19. Such order completely
 22 and unconstitutionally deprives Icetown of all economically beneficial use of its
 23 business without just compensation, which is a violation of the United States
 24 Constitution.

25 Although the government's police power is granted and reserved to the States
 26 via the Tenth Amendment of the United States Constitution, it is not constitutionally
 27 unlimited. Euclid v. Ambler Realty Company, 272 U.S. 365 (1926). In California,
 28 the Constitution gives this power to cities and counties which means that these

1 agencies have the power and authority to make and enforce laws to protect the
 2 health and safety of citizens provided that such laws do not conflict with State laws.
 3 Cal. Const. Article XI § 7; Miller v. Board of Public Works, 47 S. Ct. 460 (1927).
 4 Despite having such power, a government's police power is restricted by
 5 Constitutional considerations, including the Fifth Amendment's Taking's Clause, as
 6 well as the Due Process and Equal Protection Clauses.

7 The Blueprint and enforcement of such amounts to a complete and total
 8 physical and regulatory taking of Icetown's property (i.e. business) without
 9 providing compensation in violation of the Takings Clause of the Fifth Amendment
 10 of the United States Constitution. If this Court believes that the Blueprint does not
 11 amount to a complete taking, the Blueprint does, at minimum, constitute a partial
 12 taking. Penn Central Trans. Co. v. City of New York, 438 U.S. 104, 124 (1978).
 13 The Blueprint has caused proximate and legal harm to Icetown as it is in violation of
 14 the Takings Clause of the Fifth Amendment of the United States Constitution.

15 **C. Icetown Will Suffer Irreparable Harm.**

16 Courts have held that the loss of constitutionally protected freedoms, for even
 17 a short period of time, constitutes irreparable harm. Monterey Mechanical Co. v.
 18 Wilson, 125 F.3d 702, 715 (9th Cir. 1997). As has been analyzed in great detail
 19 above, Defendants' actions have violated, and if permitted, will continue to violate
 20 the freedoms granted to Icetown by the United States Constitution. Thus, Icetown
 21 will certainly suffer irreparable harm if this Court denies the instant *Ex Parte*
 22 Application.

23 As a result of Defendants' continuous infringement upon Icetown's
 24 constitutional freedoms, Icetown is at risk of closing its door permanently due to the
 25 financial devastation which the forced shut down of the business has caused. An ice
 26 rink is unique business in that the monthly expenses are astronomically high
 27 whether or not the business is open or closed. (Decl. of Alex Dunaev, ¶ 4.)
 28 Specifically, Icetown's monthly expenses are in excess of \$50,000.00 per month

1 even when the business is closed. Id. Thus, since the beginning of the pandemic in
 2 March of 2020, Icetown has incurred nearly \$500,000.00 in debt due to ongoing
 3 expenses such as rent and utilities to keep the ice up. Id. Icetown's property
 4 manager has recently informed them that all back rent would be owed within one
 5 year. Id. If Icetown is unable to reopen, it would be impossible for them to repay all
 6 back rent owed and will be forced to close its doors permanently. Id.

7 In addition to being nearly \$500,000.00 in debt, Icetown continues to lose
 8 customers to nearby facilities which have remained open in defiance of the State's
 9 orders. (Decl. of Alex Dunaev, ¶ 5.) Since Icetown is the only facility who is on a
 10 court-ordered shutdown, customers are being forced to drive to nearby facilities
 11 which are not being shut down by the government. As one example, Icetown has
 12 lost many of their adult league hockey teams to neighboring Center Ice Skating
 13 Arena, located in Ontario, California, since the forced shut down of Icetown. Id. In
 14 fact, Center Ice's adult league has doubled in size since the shutdown of Icetown in
 15 September of 2020 due to teams moving to Center Ice from Icetown. (Id.; Decl. of
 16 Geoff Hird, ¶ 3.) Now not only does Icetown need to worry about paying back the
 17 expenses they owe, but now needs to somehow rebuild its business since they are
 18 losing customers to other facilities which continue to defy the orders from the State.

19 **D. The Balance of Equities Tip in Icetown's Favor.**

20 Based on the facts which have been outlined above in this Memorandum, the
 21 balance of equities without a doubt tip in Icetown's favor. Again, if Icetown is
 22 unable to reopen its doors, it is at risk of permanently closing. (Decl. of Alex
 23 Dunaev, ¶ 4.) Alex Dunaev, the president of Icetown, invested every penny that he
 24 had to open Icetown in September of 1997, and has worked tirelessly for the past
 25 twenty-three (23) years to build Icetown from the ground up. (Decl. of Alex
 26 Dunaev, ¶ 2.) Now, as a result of the Covid-19 pandemic, and more specifically,
 27 due to being unfairly targeted by Defendants, Mr. Dunaev/Icetown is at risk of
 28

1 losing everything. Id. Icetown is everything that Mr. Dunaev has and what he relies
2 on to provide for his family. Id.

3 In addition to Mr. Dunaev and Icetown itself, Icetown employs approximately
4 twenty (20) individuals who have also been financially devastated as a result of the
5 forced shut down of the business. (Decl. of Alex Dunaev, ¶ 3.) Icetown's
6 employees are residents and good upstanding residents of Riverside, yet some are
7 facing the real possibility of homelessness if Icetown is unable to reopen and give
8 them their jobs back. Id.

9 All that Icetown is asking the Court to do is permit it to operate its legal
10 business in a safe and appropriate manner. Icetown has been punished for merely
11 trying to operate its business to put food on the table for many, while doing so in
12 compliance with the guidelines and recommendations from the CDC. If this Court
13 denies the instant *Ex Parte* Application, it will be put Icetown's principals and
14 employees in financial ruin, while Defendants will not suffer whatsoever.
15 Therefore, the balance of equities clearly tip in Icetown's favor.

16 **E. A Temporary Restraining Order and/or Preliminary Injunction is in**
17 **the Public Interest.**

18 The Court granting Icetown's *Ex Parte* Application is in the public interest as
19 not infringing upon individuals' constitutionally protected freedoms is something
20 that is in the interest of the public. All individuals want to ensure that the freedoms
21 that have been granted to them for being a citizen of the United States of America
22 by our founding fathers, will continue to be protected at all costs. Citizens of this
23 Country want to have assurance that they will have the ability to work and operate a
24 lawful business in order to provide for their families without government
25 interference. This has been something that has been engrained in our Country's
26 values for years, however has now been taken away by government overreach. The
27 granting of the instant *Ex Parte* Application will ensure that the government can no
28 longer arbitrarily decide for its citizens whether they can operate their lawful

1 business in order to put food on the table for their families. Ensuring that citizens of
2 this Country have the peace of mind knowing that everything they have worked for
3 cannot be taken away by arbitrary, government decisions, is certainly in the interest
4 of the public.

5 **IV. CONCLUSION.**

6 In light of the forgoing, Icetown respectfully requests this Court to grant its
7 *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause
8 Re Issuance of a Preliminary Injunction.

9
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11
12 Dated: January 27, 2021

ELAN J. DUNAEV, ESQ.

13 By: /s/ Elan J. Dunaev

14 Elan J. Dunaev

15 Attorney for Plaintiff,

16 **DUNN ENTERPRISES, INC. DBA**
17 **ICETOWN**
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5 Attorney for Plaintiff,
6 **DUNN ENTERPRISES, INC. DBA ICETOWN**

7 **UNITED STATES DISTRICT COURT**
8
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 DUNN ENTERPRISES, INC. DBA
11 ICETOWN, a California Corporation,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, in his official
15 capacity as Governor of California;
16 CITY OF RIVERSIDE, a California
17 Governmental Agency; COUNTY OF
18 RIVERSIDE, a California
Governmental Agency.

19 Defendants.

CASE NO.: 5:21-cv-00048 JWH
(SHKx)

DECLARATION OF ALEX
DUNAEV

20
21 I, Alex Dunaev, declare as follows:

22 1. I am the President of Plaintiff DUNN ENTERPRISES, INC. DBA
23 ICETOWN ("Icetown"). I have personal knowledge of the matters stated in this
24 Declaration, and if called upon to do so, would competently testify to the facts stated
25 herein.

26 2. In September of 1997, I put every penny that I had into this business
27 and opened Icetown. I have worked tirelessly for the past twenty-three (23) years to
28

1 build Icetown from the ground up. Now, due to the Covid-19 pandemic, and more
2 specifically, due to being unfairly targeted and shut down by Defendant THE CITY
3 OF RIVERSIDE ("City). I am at risk of losing everything. If Icetown is unable to
4 reopen shortly, I will lose the business and every penny that I have put into it for the
5 past twenty-three (23) years. This would financially devastate my family and I.

6 3. Icetown employs approximately twenty (20) individuals who have also
7 been financially devastated as a result of the forced shut down of our business. Our
8 employees are residents and good upstanding residents of Riverside, yet some are
9 facing the real possibility of homelessness if Icetown is unable to reopen and give
10 them their jobs back. In addition to the employees, Icetown is the only facility in
11 Southern California to offer a sled hockey program for both children and adults with
12 disabilities. This allows children and adults to fulfill their dreams of playing hockey
13 despite their disabilities.

14 4. Icetown is a unique business wherein our monthly expenses are
15 astronomical whether we are open or closed. Specifically, even while we have been
16 shut down during the pandemic, our monthly expenses are over \$50,000.00 per
17 month. Thus, since the pandemic began in March of 2020, we are nearly
18 \$500,000.00 in debt. I have recently spoken to our property manager at the City,
19 wherein she informed me that all back rent would be owed within one year. If
20 Icetown is unable to reopen now, it will be impossible for us to repay all back rent
21 owed within one year and we will be forced to close our doors permanently.

22 5. Since the City obtained an injunction against Icetown in September of
23 2020, Icetown has lost many customers to other facilities in nearby areas which
24 remain open in defiance of the orders from the State of California ("State"). As just
25 one example, we have lost many of our adult league hockey teams to neighboring
26 Center Ice Skating Arena, located in Ontario, California, as they have been forced to
27 go elsewhere since Icetown has been shut down by the City. I have been informed
28 by one of our referees, Geoff Hird, who has been forced to referee hockey games at

1 Center Ice, that the adult hockey league at Center Ice has doubled in size since the
2 shutdown of Icetown in September of 2020 due to teams moving to Center Ice from
3 Icetown.

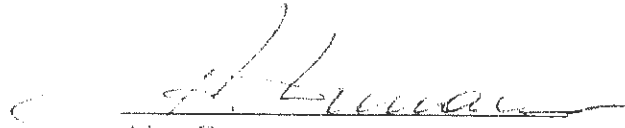
4 6. Now not only does Icetown need to worry about paying back the
5 expenses they owe, but we now need to somehow rebuild our business since we are
6 losing customers to other facilities which continue to defy the orders from the State.
7 It is clear that Icetown has been unfairly singled out and targeted by the State, City,
8 and County of Riverside ("County") as it was shut down via a court ordered
9 injunction in September of 2020, while other businesses continue to defy the State's
10 orders, however are not being shut down by the State, City, or County.

11 7. Specifically, earlier this month in January of 2021, I personally
12 witnessed Events Sports Grill ("Events"), which is located in the city of Riverside
13 and in the same plaza as Icetown, being open for indoor dining. Despite Events
14 defying the State's orders, there have been no repercussions for them doing so while
15 Icetown remains shutdown by the City for defying the very same orders.

16 8. For the brief time that Icetown was open and operational since the start
17 of the Covid-19 pandemic, maximum capacity was limited to ten percent (10%) to
18 comply with the State's orders and ensure social distancing as recommended by the
19 Center for Disease Control and Prevention ("CDC"). In addition, we required all
20 patrons and employees to wear masks, limited the number of people permitted in the
21 building, closed off all sitting areas, bleachers, and showers to promote social
22 distancing, had enhanced cleaning, sanitizing, and disinfecting procedures in place,
23 as well as installed several hand sanitizing dispensers throughout the building.
24 Icetown spent thousands of dollars to put these protocols in place to ensure the
25 safety of all patrons and employees. Icetown put all these measures in place to
26 abide by the recommendations provided by the CDC.

1 I declare under penalty of perjury under the laws of the State of California
2 and the United States of America that the foregoing is true and correct.

3 Executed this 26th day of January, 2021, at Riverside, California.

4
5 
6 Alex Dunaev

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5 Attorney for Plaintiff,
6 **DUNN ENTERPRISES, INC. DBA ICETOWN**

7 **UNITED STATES DISTRICT COURT**
8
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 DUNN ENTERPRISES, INC. DBA
11 ICETOWN, a California Corporation,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, in his official
15 capacity as Governor of California;
16 CITY OF RIVERSIDE, a California
17 Governmental Agency; COUNTY OF
18 RIVERSIDE, a California
Governmental Agency,

19 Defendants.
20

CASE NO.: 5:21-cv-00048 JWH
(SHKx)

DECLARATION OF APRYL
SOAPES

21 I, Apryl Soapes, declare as follows:

22 1. I am a current customer of Plaintiff, DUNN ENTERPRISES, INC.
23 DBA ICETOWN ("Icetown"). I have personal knowledge of the matters stated in
24 this Declaration, and if called upon to do so, would competently testify to the facts
25 stated herein.


26 2. I have been a customer of Icetown for several years and was skating at
27 the facility prior to it being shut down by Defendant, CITY OF RIVERSIDE
28

1 ("City") in September of 2020. While skating at the facility prior to its forced
2 shutdown, Icetown required all patrons and employees to wear masks, limited the
3 number of people permitted in the building, closed off all sitting areas, bleachers,
4 and showers to promote social distancing, had enhanced cleaning, sanitizing, and
5 disinfecting procedures in place, as well as installed several hand sanitizing
6 dispensers throughout the building. Icetown put all these measures in place to abide
7 by the recommendations provided by the Center for Disease Control and Prevention
8 ("CDC").

9 3. Since Icetown was shut down by the City, I have been forced to skate
10 elsewhere. Specifically, I have been skating at the The Rinks Anaheim Ice located
11 in the city of Anaheim, county of Orange, California, approximately once a week
12 since the shutdown of Icetown as such facility is open to the public. I desire to skate
13 at Icetown, however I'm unable to do so since it has been shutdown by the City.

14
15
16 I declare under penalty of perjury under the laws of the State of California
17 and the United States of America that the foregoing is true and correct.

18 Executed this 24 day of January, 2021, at Fontana,
19 California.

20
21 
22 Apryl Soapes

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5 Attorney for Plaintiff,
6 **DUNN ENTERPRISES, INC. DBA ICETOWN**

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9
10 DUNN ENTERPRISES, INC. DBA
11 ICETOWN, a California Corporation,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, in his official
15 capacity as Governor of California;
16 CITY OF RIVERSIDE, a California
17 Governmental Agency; COUNTY OF
18 RIVERSIDE, a California
Governmental Agency,

19 Defendants.
20

CASE NO.: 5:21-cv-00048 JWH
(SHKx)

DECLARATION OF AUSTIN
LECHTANSKI

21 I, Austin Lechtanski, declare as follows:

22 1. I am a current customer of Plaintiff, DUNN ENTERPRISES, INC.
23 DBA ICETOWN ("Icetown"). I have personal knowledge of the matters stated in
24 this Declaration, and if called upon to do so, would competently testify to the facts
25 stated herein.

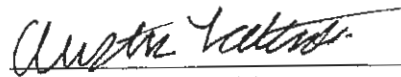
26 2. I have been a customer of Icetown for several years and was skating at
27 the facility prior to it being shut down by Defendant, CITY OF RIVERSIDE
28

1 ("City") in September of 2020. While skating at the facility prior to its forced
2 shutdown, Icetown required all patrons and employees to wear masks, limited the
3 number of people permitted in the building, closed off all sitting areas, bleachers,
4 and showers to promote social distancing, had enhanced cleaning, sanitizing, and
5 disinfecting procedures in place, as well as installed several hand sanitizing
6 dispensers throughout the building. Icetown put all these measures in place to abide
7 by the recommendations provided by the Center for Disease Control and Prevention
8 ("CDC").

9 3. Since Icetown was shut down by the City, I have been forced to skate
10 elsewhere. Specifically, I have been skating at the San Diego Ice Arena located in
11 the city of San Diego, county of San Diego, California, approximately once a week
12 since the shutdown of Icetown as such facility is open to the public. I desire to skate
13 at Icetown, however I'm unable to do so since it has been shutdown by the City.

14
15
16 I declare under penalty of perjury under the laws of the State of California
17 and the United States of America that the foregoing is true and correct.

18 Executed this 26th day of January, 2021, at Yorba Linda,
19 California.

20
21 
22 Austin Lechtanski
23
24
25
26
27
28

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5 Attorney for Plaintiff,
6 **DUNN ENTERPRISES, INC. DBA ICETOWN**

7 **UNITED STATES DISTRICT COURT**
8
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 DUNN ENTERPRISES, INC. DBA
11 ICETOWN, a California Corporation,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, in his official
15 capacity as Governor of California;
16 CITY OF RIVERSIDE, a California
17 Governmental Agency; COUNTY OF
18 RIVERSIDE, a California
Governmental Agency,

19 Defendants.

CASE NO.: 5:21-cv-00048 JWH
(SHKx)

DECLARATION OF CHUCK
CONDER

20
21 I, Chuck Conder, declare as follows:

22 1. I am a Councilmember for the City of Riverside. I have personal
23 knowledge of the matters stated in this Declaration, and if called upon to do so,
24 would competently testify to the facts stated herein.

25 2. I am aware that the Defendant CITY OF RIVERSIDE previously filed
26 suit against Plaintiff DUNN ENTERPRISES, INC. DBA ICETOWN ("Icetown") in
27 the Superior Court for the County of Riverside and obtained an injunction against
28

1 Icetown shutting down the business' operations until the State of California allows
2 them to reopen.

3 3. My six fellow Councilmembers for the City of Riverside and I have
4 had weekly meetings over the past several months in which Icetown's closure,
5 among others, has been openly discussed. During those meetings, I urged my fellow
6 Councilmembers to (1) allow Icetown to reopen its business and (2) forgive all rent
7 which has been charged to Icetown during the time that the business has been shut
8 down due to the Covid-19 pandemic and by the Superior Court via an injunction. I
9 have made this request on behalf of Icetown and every other business occupying
10 facilities owned by the City of Riverside who have been forced to close upon City
11 orders.

12 4. My proposals have been rejected and I was the only Councilmember in
13 favor of these actions while the remaining six refused to allow Icetown to reopen, as
14 well as refused to forgive any rent that has been charged to Icetown during the time
15 the business has been shut down.

16 5. It has been acknowledged that in fact, that Icetown is the only business
17 in the City of Riverside which is currently under an injunction from the courts.
18 Furthermore, staff and my fellow Councilmembers acknowledged the fact that there
19 were other businesses in the City of Riverside which were defying the State's
20 orders, however none of those businesses were being legally forced to shut down or
21 having lawsuits filed against them just as Icetown faced.

22 6. Additionally, Icetown is being treated differently than other businesses
23 in the City of Riverside because "they were going to make an example out of
24 Icetown." It is clear to me that Icetown has been unfairly targeted and is not being
25 treated similarly to other businesses in the City of Riverside. The Councilmembers
26 are aware of other businesses in the City of Riverside which are not complying with
27 the State's orders, however refuse to do anything against them and rather continue to
28 single out Icetown.

1 I declare under penalty of perjury under the laws of the State of California
2 and the United States of America that the foregoing is true and correct.

3 Executed this 25 day of January, 2021, at Riverside, California.

4 
5
6 Chuck Conder

1 ELAN J. DUNAEV, ESQ. (SBN 310060)
2 ejdunaevesq@gmail.com
3 2801 Kelvin Avenue, Suite 551
4 Irvine, California 92614
Telephone: (949) 683-3460

5 Attorney for Plaintiff,
6 **DUNN ENTERPRISES, INC. DBA ICETOWN**

7 **UNITED STATES DISTRICT COURT**

8 **CENTRAL DISTRICT OF CALIFORNIA**

9
10 **DUNN ENTERPRISES, INC. DBA**
11 **ICETOWN, a California Corporation,**

12 Plaintiff,

13 vs.

14 **GAVIN NEWSOM, in his official**
15 **capacity as Governor of California;**
16 **CITY OF RIVERSIDE, a California**
17 **Governmental Agency; COUNTY OF**
18 **RIVERSIDE, a California**
Governmental Agency,

19 Defendants.

CASE NO.: 5:21-cv-00048 JWH
(SHKx)

DECLARATION OF ELAN
DUNAEV

20
21 I, Elan Dunaev, declare as follows:

22 1. I am an attorney at law duly licensed to practice before all courts of the
23 State of California, including the Central District of California, and am attorney of
24 record for Plaintiff DUNN ENTERPRISES, INC. DBA ICETOWN ("Icetown") in
25 this litigation. I have personal knowledge of the matters stated in this Declaration,
26 and if called upon to do so, would competently testify to the facts stated herein.
27
28

1 2. On March 19, 2020, in response to the threat of emergence of Covid-
2 19, Newsom issued Executive Order N-33-20 ("Executive Order") which mandated
3 that all individuals living in the State of California were to stay home or at their
4 place of residence except as needed to maintain continuity of operations of what had
5 been deemed as federal critical infrastructure. Newsom's Executive Order stated
6 that businesses who had been identified and labeled as critical infrastructure sectors,
7 which meant that they were considered so vital that ceasing their operation would
8 have an effect on security, the economy, and/or public health, could remain open
9 during the Covid-19 pandemic because of the importance of these businesses to the
10 health and well-being of the State of California. A true and correct copy of the
11 Executive Order is attached hereto as **Exhibit 1**.

12 3. As time passed and substantial medical advancements, treatments, and
13 therapeutics had been developed to control the Covid-19 virus and "bend the curve,"
14 Newsom announced that businesses in California could begin to reopen under
15 specific guidelines and restrictions. Based on guidance from the State, Icetown
16 reopened limited operations in July of 2020 as gyms, fitness centers, and training
17 facilities were permitted to reopen if proper protocols were put in place.

18 4. When Icetown resumed operations, capacity was limited to ensure
19 social distancing and masks were required for all customers and employees.
20 Furthermore, touchless hand sanitizers, hand soap dispensers, and paper towel
21 dispensers were installed for the health, safety, and well-being of Icetown's
22 customers and employees. Additionally, enhanced cleaning procedures were
23 instituted and all seating areas, arcade games, drinking fountains, ATM's, and
24 showers were closed off. All of these procedures were put in place to prevent the
25 spread of the Covid-19 virus while operating Icetown's business.

1 5. On or about August 28, 2020, as Newsom announced a new reopening
2 plan called “The Blueprint for a Safe Economy” (the “Blueprint”)¹. The Blueprint
3 became effective on August 31, 2020, which set forth four color tiers to categorize
4 each particular county in California. Depending on what color the county where
5 your business is located in would mandate whether you could operate your business,
6 and under specific restrictions which were placed on such category of businesses.

7 6. On September 10, 2020, in an attempt to once again shut down the
8 operations of Icetown, City filed a lawsuit against Icetown for Nuisance in the
9 Riverside County Superior Court, as well sought a Temporary Restraining Order
10 (“TRO”) and Preliminary Injunction. On September 14, 2020, City’s request for a
11 TRO was granted and Icetown’s business was once again shutdown as of that date.

12 7. With the threat of facing an award of substantial damages, as well as
13 attorney’s fees and costs in favor of the City, Icetown had no choice but to stipulate
14 to both a preliminary and permanent injunction. At the time of stipulating to the
15 injunction, Icetown had already incurred nearly half a million dollars in debt from
16 rent, utilities, and other related expenses due to the Covid-19 pandemic. Based on
17 that, Icetown could not afford to take the chance of the City being awarded
18 damages, attorney’s fees, and costs on top of the debt it had already incurred as a
19 result of the Orders.

20 8. After Icetown stipulated to the injunction, Icetown learned that nearly
21 every other training facility/ice/roller rink in Southern California remains open and
22 are continuing their operations while Icetown has been forced to shut down due to
23 the legal proceedings filed by the City. It is clear that Icetown has been targeted by
24 the State, County, and City and is being treated unfairly and different from other
25 businesses which fall in the same category as Icetown.

26 9. On December 3, 2020, the State of California signed the Regional
27 Order which states that if a region’s ICU availability fell below fifteen percent
28

¹ www.covid19.ca.gov/safer-economy/

1 (15%), then once again certain businesses would be classified as being permitted to
2 continue their business operations while others must once again shut down with the
3 threat of fines, losing business licenses, and potentially imprisonment. The
4 Regional Order went into effect in Southern California on December 6th and
5 pursuant to the order, Icetown was not permitted to resume its operations and must
6 remain shut down. A true and correct copy of the Regional Order is attached hereto
7 as **Exhibit 2**.

8 10. As of January 25, 2020, the State lifted the Regional Order, however
9 advised that the Blueprint would remain in place. The city of Riverside has been
10 categorized in the most restrictive purple tier, which means that Icetown must
11 remain closed.

12 11. Since none of the Defendants have made an appearance in this matter
13 as of the date of this *Ex Parte* Application, I am unaware of counsel for any of the
14 Defendants. However, I will provide notice of this *Ex Parte* Application to
15 Defendants via personal service.

16 12. This *Ex Parte* Application is being sent to the process server on
17 January 28, 2021, and I have been advised that it will be served on all Defendants no
18 later than February 2, 2021. Once I receive a proof of service from our process
19 server, I will file such proof of service immediately.

20
21
22 I declare under penalty of perjury under the laws of the State of California
23 and the United States of America that the foregoing is true and correct.

24 Executed this 27th day of January, 2021, at Riverside, California.

25
26 /s/ Elan J. Dunaev

27 Elan J. Dunaev