

## Exhibit D

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8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
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11 DUNN ENTERPRISES, INC., d/b/a  
12 ICETOWN, a California  
Corporation,

13 Plaintiff,

14 v.

15 GAVIN NEWSOM, in his official  
capacity as Governor of California;  
16 CITY OF RIVERSIDE, a California  
governmental agency; and  
17 COUNTY OF RIVERSIDE, a  
California governmental agency,

18 Defendants.  
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Case No. 5:21-cv-00048-JWH-SHKx

**ORDER DENYING PLAINTIFF'S  
*EX PARTE* APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
CAUSE RE ISSUANCE OF A  
PRELIMINARY INJUNCTION  
[ECF No. 12], AND DISMISSING  
CASE FOR LACK OF  
JURISDICTION**

## I. INTRODUCTION

This case concerns a challenge to California’s state-wide orders aimed at stemming the spread of COVID-19, which were promulgated by the state government and implemented at the local level by counties and cities. Before the Court is the *ex parte* application of Plaintiff Dunn Enterprises, Inc., d/b/a Icetown (“Icetown”) for a temporary restraining order and an order to show cause regarding the issuance of a preliminary injunction against Defendants Gavin Newsom (in his capacity as the Governor of California), the City of Riverside (the “City”), and the County of Riverside (the “County”).<sup>1</sup> After considering the papers filed in support of and in opposition to the Application,<sup>2</sup> the Court orders that: (1) Icetown’s Application is **DENIED**; and (2) this action is **DISMISSED** for lack of jurisdiction.

## II. BACKGROUND

### A. Factual Background

#### 1. Icetown’s Business and California’s Measures to Mitigate COVID-19

Icetown operates a training facility for both figure skating and ice hockey, located in the county and city of Riverside, California.<sup>3</sup> On March 4, 2020, Governor Newsom declared a State of Emergency to address the then-emerging

<sup>1</sup> See Notice of Pl.’s First *Ex Parte* Appl. for TRO as to Civil Rights Violations [ECF No. 12]; Mem. of P. & A. in Supp. of Pl.’s First *Ex Parte* Appl. (the “Application”) [ECF No. 12-1].

<sup>2</sup> The Court considered the following papers: (1) Pl.’s Compl. (the “Complaint”) [ECF No. 2]; (2) the Application (including its attachments); (3) Def. City of Riverside’s Br. on Jurisdiction in Opp’n to the Application (including its attachments) (the “City Opposition”) [ECF No. 18]; (4) Def. Cty. of Riverside’s Opp’n to the Application (including its attachments) (the “County Opposition”) [ECF No. 20]; (5) Def. Governor Gavin Newsom’s Br. on Jurisdiction Opp’n to the Application (including its attachments) (the “State Opposition”) [ECF No. 23]; and (6) Def. City of Riverside’s Joinder in the County Opposition and the Newsom Opposition (the “City Notice of Joinder”) [ECF No. 24].

<sup>3</sup> See Complaint ¶ 6.

1 threat of the COVID-19 pandemic.<sup>4</sup> Shortly thereafter, on March 19, 2020,  
 2 Governor Newsom issued an executive order directing individuals to “to stay  
 3 home . . . except as needed to maintain continuity of operations of the federal  
 4 critical infrastructure sectors . . . .”<sup>5</sup> Consequently, businesses that were not  
 5 considered “critical infrastructure sectors” (*i.e.*, “non-essential”) were  
 6 required to cease operations, whereas businesses deemed “essential” were  
 7 permitted to continue operations.<sup>6</sup> Icetown’s business fell within the  
 8 non-essential category; thus, Icetown ceased its business operations on  
 9 March 19, 2020.<sup>7</sup>

10 In early May 2020, as the number of COVID-19 cases in California began  
 11 to fall, the State implemented a tiered reopening program and began to loosen  
 12 the restrictions on businesses.<sup>8</sup> Under this program, Icetown was permitted to  
 13 reopen in July 2020, subject to certain restrictions and safety protocols.<sup>9</sup> On  
 14 August 28, 2020, Governor Newsom announced a new version of the tiered  
 15 reopening plan called “The Blueprint for a Safe Economy” (the “Blueprint”).<sup>10</sup>  
 16 Under this program, every county in the State is assigned to a tier based upon its  
 17 COVID-19 test positivity rate and adjusted case rate.<sup>11</sup> The Blueprint requires

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 19 <sup>4</sup> See *id.* at ¶ 10 & Ex. 1 (Executive Order N-33-20 (Mar. 19, 2020) (“E.O.  
 20 N-33-20”)).

21 <sup>5</sup> *Id.* at ¶ 1.

22 <sup>6</sup> See Complaint ¶ 13; see also E.O. N-33-20 ¶¶ 1–4.

23 <sup>7</sup> See Complaint ¶ 13; Application 6:6–28; Decl. of Elan Dunaev in Supp. of  
 the Application (the “Dunaev Decl.”) [ECF No. 12-2] ¶ 2.

24 <sup>8</sup> See Complaint ¶¶ 14–16; Application 7:1–5.

25 <sup>9</sup> See Complaint ¶¶ 15 & 16; Application 7:6–20; Dunaev Decl. ¶¶ 3 & 4.

26 <sup>10</sup> See Complaint ¶ 17; see also Blueprint for a Safer Economy (last updated  
 Feb. 10, 2021), available at <https://covid19.ca.gov/safer-economy/>. To access  
 27 archived versions of the Blueprint, see California Blueprint Data Archive (last  
 accessed on Feb. 10, 2021), available at  
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/CaliforniaBlueprintDataCharts.aspx>.

28 <sup>11</sup> See generally Blueprint.

counties to take certain health and safety measures depending upon the tier to which a particular county is assigned.<sup>12</sup> The Blueprint is also flexible in the sense that a particular county's tier assignment can change based upon the county's COVID-19 test positivity rate and adjusted case rate, as those metrics increase or decrease over time.<sup>13</sup>

## 2. The State Court Litigation by the City Against Icetown

On September 10, 2020, the City commenced a nuisance action against Icetown in the Riverside County Superior Court<sup>14</sup> and immediately sought a temporary restraining order ("TRO") requiring Icetown to shut down its business operations.<sup>15</sup> The Superior Court held a hearing on the City's application for issuance of a TRO on September 14, 2020, at which counsel for the respective parties were present.<sup>16</sup> Later that day, the Superior Court granted

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<sup>12</sup> *Id.*

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

<sup>14</sup> *People of the State of California, et al. v. Dunn Enterprises, Inc. DBA Icetown, et al.*, Riverside County Superior Court, Case No. RIC2003552 (the "State Proceeding"). The County and Governor Newsom separately request that the Court take judicial notice of the State Proceeding and the pleadings and documents filed therein. *See* Cty. of Riverside's Req. for Judicial Notice (the "County RJN") [ECF No. 20-1]; Req. for Judicial Notice in Supp. of the State Opposition (the "State RJN") [ECF No. 23-1]. The Court **GRANTS** the County RJN and the State RJN and takes judicial notice of the documents attached thereto pursuant to Rule 201 of the Federal Rules of Evidence, *See* Fed. R. Evid. 201 (authorizing courts to take judicial notice of facts that are "generally known within the trial court's territorial jurisdiction" and "matters of public record," but not disputed facts contained therein); *see also* *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986); *Five Points Hotel Partnership v. Pinsonneault*, 835 F. Supp. 2d 753, 757 (D. Ariz. 2011) (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 689-90 (9th Cir. 2001)) (Rule 201 authorizes courts to take judicial notice of the existence of a state court proceeding, and the documents and records filed in that proceeding, but not the disputed facts contained within those documents).

<sup>15</sup> *See* Application 7:27-8:2; Dunaev Decl. ¶ 6.

<sup>16</sup> *See* Decl. of Neil Okazaki in Supp. of the City Opposition (the "Okazaki Decl.") [ECF No. 18-1] ¶ 3; *see generally* Rep.'s Tr. of Proceedings (Sept. 14, 2020) attached as Ex. A to the Okazaki Decl. (the "Transcript") [ECF No. 18-1].

1 the City's application and entered a TRO against Icetown, thereby shutting  
2 down Icetown's business operations.<sup>17</sup>

3 On October 5, 2020, the parties entered into a stipulation for a  
4 preliminary injunction, which they filed in the Superior Court.<sup>18</sup> The parties  
5 subsequently stipulated to a permanent injunction on November 24, 2020,  
6 which also provided for the entry of judgment against Icetown in the State  
7 Proceeding.<sup>19</sup> The Superior Court entered judgment against Icetown on  
8 December 17, 2020.<sup>20</sup>

### 9 **B. Procedural Background of This Action**

10 Icetown filed its Complaint commencing this action on January 13, 2021.  
11 Icetown seeks declaratory relief, injunctive relief, and damages, based upon  
12 allegations that Defendants' conduct violates Icetown's rights guaranteed by the  
13 Fifth and Fourteenth Amendments of the United States Constitution.<sup>21</sup>

14 Icetown filed the instant Application on January 28, 2021. On February 3,  
15 2021, the Court conducted a status conference on Icetown's Application—at  
16 which counsel for all of the parties were present—and set a briefing schedule for  
17 Defendants to file their respective substantive oppositions and for Icetown to file  
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19  
20 <sup>17</sup> See Application 8:2-4; Dunaev Decl. ¶ 6; County RJN, Ex. B (Order  
21 Granting TRO (Sept. 14, 2020)).

22 <sup>18</sup> See County RJN, Ex. C; State RJN, Ex. 6; *see also* Complaint ¶ 19;  
Application 8:5-12.

23 <sup>19</sup> See County RJN, Ex. D; State RJN, Ex. 7; *see also* Complaint ¶ 19;  
Application 8:5-12.

24 <sup>20</sup> See County RJN, Ex. D; State RJN, Ex. 7.

25 <sup>21</sup> See *generally* Complaint. Icetown asserts four claims for relief against  
26 Defendants: (1) Violation of the Due Process Clause of the Fourteenth  
27 Amendment of the United States Constitution, *id.* at ¶¶ 30-39; (2) Violation of  
28 the Equal Protection Clause of the Fourteenth Amendment of the United States  
Constitution, *id.* at ¶¶ 40-49; (3) Violation of the Fifth Amendment of the  
United States Constitution Right to Travel, *id.* at ¶¶ 50-60; and (4) Violation of  
the Takings Clause of the Fifth Amendment of the United States Constitution,  
*id.* at ¶¶ 61-70.

1 its reply.<sup>22</sup> In addition to setting a briefing schedule for the Application, in view  
 2 of Icetown's acknowledgement of the State Proceeding and the stipulated  
 3 permanent injunction in both its Complaint and the Application,<sup>23</sup> the Court  
 4 gave Defendants the option to bifurcate their respective oppositions to the  
 5 Application and to file briefs addressing the issue of whether this Court has  
 6 jurisdiction over this action.<sup>24</sup>

7 On February 9, 2021, the City filed its bifurcated brief regarding  
 8 jurisdiction,<sup>25</sup> and the County filed its substantive opposition to Icetown's  
 9 Application.<sup>26</sup> Governor Newsom filed his bifurcated brief regarding  
 10 jurisdiction on February 10, 2021.<sup>27</sup> The City joined in the opposition of the  
 11 County and the jurisdictional brief of Governor Newsom on February 11, 2020.<sup>28</sup>

12 As provided in the Court's Status Conference Order, Icetown's replies to  
 13 Defendants' respective jurisdictional briefs were due within 24 hours of the  
 14 filing of each such brief.<sup>29</sup> Icetown did not file any reply. Accordingly, the Court  
 15 regards the jurisdictional issue as fully briefed.

### 16 **III. DISCUSSION**

17 In its Complaint, Icetown purports to invoke this Court's jurisdiction  
 18 pursuant to 28 U.S.C. §§ 1331 and 1343. In view of Icetown's acknowledgment  
 19 of the State Proceeding and the stipulated permanent injunction, pursuant to  
 20 Rule 12(b)(h)(3) of the Federal Rules of Civil Procedure, the Court, *sua sponte*,  
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22 <sup>22</sup> See Minutes of Video Hearing Re Status Conference Re Pl.'s Application  
 23 (the "Status Conference Order") [ECF No. 17].

24 <sup>23</sup> See Complaint ¶¶ 18 & 19; Application 7:27-8:12.

25 <sup>24</sup> See Status Conference Order ¶ 1.

26 <sup>25</sup> See City Opposition.

27 <sup>26</sup> See County Opposition.

28 <sup>27</sup> See State Opposition.

29 <sup>28</sup> See City Notice of Joinder.

<sup>29</sup> See Status Conference Order ¶ 2.

1 considers whether it has subject matter jurisdiction over this action. For the  
2 reasons set forth below, the Court finds that it lacks subject matter jurisdiction  
3 over this action under the *Rooker-Feldman*<sup>30</sup> doctrine.

4 Federal courts are courts of limited jurisdiction. Accordingly, “[t]hey  
5 possess only that power authorized by Constitution and statute.” *Kokkonen v.*  
6 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In every federal case, the  
7 basis for federal jurisdiction must appear affirmatively from the record. *See*  
8 *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006).

9 The *Rooker-Feldman* doctrine applies to cases “brought by state-court  
10 losers complaining of injuries caused by state-court judgments rendered before  
11 the district court proceedings commenced and inviting district court review and  
12 rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*,  
13 544 U.S. 280, 284 (2005). Under this doctrine, federal courts do not have  
14 jurisdiction to hear direct appeals from the judgments of state courts. *See*  
15 *Verizon Maryland, Inc. v. Pub. Serv. Comm’n of Maryland*, 535 U.S. 635, 644 n.3  
16 (2002) (the doctrine “recognizes that 28 U.S.C. § 1331 is a grant of original  
17 jurisdiction, and does not authorize district courts to exercise appellate  
18 jurisdiction over state-court judgments”); *Cooper v. Ramos*, 704 F.3d 772, 777  
19 (9th Cir. 2012). Ultimately, the purpose of the doctrine is to “protect state  
20 judgments from collateral federal attack.” *Doe & Assoc. Law Offices v.*  
21 *Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001).

22 The *Rooker-Feldman* doctrine applies not only to final state court orders  
23 and judgments, but also to interlocutory orders and non-final judgments issued  
24 by a state court. *Id.*; *Worldwide Church of God v. McNair*, 805 F.2d 888, 893 n.3  
25 (9th Cir. 1986). Courts in this district and elsewhere have held that a settlement  
26 agreement may constitute a state court judgment for the purposes of the

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27 <sup>30</sup> See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia*  
28 *Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983).



1 *Rooker-Feldman* doctrine. *See, e.g., William Villa v. Heller*, 885 F. Supp. 2d 1042  
 2 (S.D. Cal. 2012); *Sherrard v. Panazuelos*, No. 10-CV-9196, 2011 WL 1131523, at  
 3 \*2 (C.D. Cal. Feb. 4, 2011); *Wittich v. Wittich*, No. 06-CV-1635, 2006 WL  
 4 3437407, at \*3 (E.D.N.Y. Nov. 9, 2006) (“for purposes of *Rooker-Feldman*,  
 5 because plaintiff now seeks to overturn the settlement, alleging that the  
 6 Settlement Agreement violated his rights, the Court deems plaintiff a losing  
 7 party in a state court action”); *Green v. City of New York*, 438 F. Supp. 2d 111,  
 8 119 (E.D.N.Y. 2006) (federal courts treat “settlement agreements as final  
 9 judgments for purposes of the *Rooker-Feldman* doctrine”); *Allianz Ins. Co. v.*  
 10 *Cavagnuolo*, No. 03-Civ-1636, 2004 WL 1048243, at \*6 (S.D.N.Y. May 7, 2004)  
 11 (settlement agreement may constitute a final judgment under *Rooker-Feldman*).

12 Accordingly, the *Rooker-Feldman* doctrine “bars a district court from  
 13 exercising jurisdiction not only over an action explicitly styled as a direct  
 14 appeal,” but also “the de facto equivalent of such an appeal.” *Campos*, 704 F.3d  
 15 at 777. To determine whether an action functions as a *de facto* appeal, the court  
 16 must “pay close attention to the relief sought by the federal-court plaintiff.”  
 17 *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003) (internal quotation  
 18 marks and citation omitted). An action functions as a forbidden *de facto* appeal  
 19 when the plaintiff is: “[1] assert[ing] as his injury legal errors by the state court  
 20 and [2] see[king] as his remedy relief from the state court judgment.” *Kougasian*  
 21 *v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004) (citing *Noel v. Hall*, 341 F.3d  
 22 1148, 1163 (9th Cir. 2003)).

23 Here, Icetown candidly acknowledges in both its Complaint and in the  
 24 instant Application that it *voluntarily* agreed to the stipulated permanent  
 25 injunction and judgment entered in the State Proceeding.<sup>31</sup> This point is  
 26 significant because although Icetown does not explicitly seek the vacatur of the

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27 <sup>31</sup> See Complaint ¶¶ 18 & 19; Application 7:27–8:12; *see also* County RJN,  
 28 Ex. D; State RJN, Ex. 7.



1 judgment entered in the State Proceeding, with respect to each of its  
 2 constitutional claims, Icetown seeks, among other relief, “preliminary and  
 3 permanent injunctive relief invalidating and restraining enforcement of the  
 4 Regional Order/Blueprint.”<sup>32</sup> The State Proceeding, including the resulting  
 5 permanent injunction and judgment entered therein, was an action to enforce  
 6 the Blueprint. Furthermore, Icetown asserts the same constitutional claims and  
 7 arguments in this action that it raised at the initial hearing in the State  
 8 Proceeding on the City’s application for a TRO.<sup>33</sup> And, despite being afforded  
 9 an opportunity to submit further briefing regarding its constitutional claims after  
 10 the TRO was entered in the State Proceeding, Icetown declined to do so.<sup>34</sup>  
 11 Instead, Icetown voluntarily stipulated to the entry of a preliminary injunction  
 12 and, eventually, to a permanent injunction and to the entry of an adverse  
 13 judgment in the State Proceeding. Therefore, in this action, Icetown effectively  
 14 seeks to overturn the permanent injunction and judgment in the State  
 15 Proceeding by alleging that the permanent injunction and judgment entered by  
 16 the Superior Court violate Icetown’s constitutional rights.

17 This procedural posture fits squarely within the *Rooker-Feldman*  
 18 framework because Icetown’s constitutional claims in this action are  
 19 “inextricably intertwined” with an issue resolved by the Superior Court in its  
 20 judicial decision. *See Feldman*, 460 U.S. at 483 n.16. As the Ninth Circuit has  
 21 explained, *Feldman* stands for the proposition that, to the extent that a  
 22 constitutional claim or issue is “inextricably intertwined” with “an issue  
 23 resolved by the local court in its judicial decision,” the federal district court  
 24 cannot address that issue because “the district court would be, in effect, hearing  
 25 a forbidden appeal from the judicial decision of the local court.” *Noel*, 341 F.3d

26 <sup>32</sup> Complaint ¶¶ 38, 48, & 69.

27 <sup>33</sup> *See* City Opposition 3:1–6:2; State Opposition 3:23–4:17.

28 <sup>34</sup> *See* City Opposition 5:9–19.

1 at 1157. Here, it is evident that Icetown seeks to undo the permanent injunction  
2 and judgment entered in the State Proceeding.<sup>35</sup> The *Rooker-Feldman* doctrine  
3 deprives this Court of subject matter jurisdiction over such actions.

4 **IV. CONCLUSION**

5 Based upon the foregoing, the Court hereby **ORDERS** as follows:

6 1. On its own motion, pursuant to Rule 12(h)(3) of the Federal Rules  
7 of Civil Procedure, the Court finds and concludes that it does not have  
8 jurisdiction under 28 U.S.C. §§ 1331 over any of the claims that Icetown asserts  
9 against Defendants. Accordingly, Icetown's Complaint is **DISMISSED**,  
10 **without prejudice** to Icetown pursuing such claims in a court with appropriate  
11 jurisdiction.

12 2. Icetown's instant Application is **DENIED as moot**.

13 3. The Court makes no findings, and reaches no conclusions,  
14 regarding the merits of Icetown's constitutional claims.

15 4. The Clerk is **DIRECTED** to close the case.

16 **IT IS SO ORDERED.**

17  
18 Dated: February 12, 2021

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20 \_\_\_\_\_  
21 John W. Holcomb  
22 UNITED STATES DISTRICT JUDGE  
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26 <sup>35</sup> The Court notes that despite having an opportunity to do so, Icetown did  
27 not file any reply (timely or otherwise) to Defendants' respective jurisdictional  
28 briefs. The absence of any denial by Icetown that this action is effectively its  
attempt to appeal the outcome of the State Proceeding further supports the  
conclusion that this Court lacks subject matter jurisdiction.