



# CODE OF ETHICS AND CONDUCT COMPLAINT

## QUEJA DEL CÓDIGO DE ÉTICA Y DE CONDUCTA

Riverside Municipal Code Chapter 2.78  
Código Municipal de Riverside Capítulo 2.78

A Public Document  
Un Documento Público

RECEIVED

JUL 22 2021

1. Person filing complaint / 1. Persona que presenta la queja

Name: / Nombre: City Council of the City of Riverside

Address: / Correo electrónico: 3900 Main Street

City of Riverside  
City Clerk's Office  
Phone: / Teléfono: 951-826-5311

2. Official who committed alleged violation / 2. El Oficial (Funcionario) que cometió presunta violación

Name: / Nombre: Chuck Conder

Position: / Puesto: Councilmember

3. Date(s) of alleged violation:

3. Fecha(s) de presunta violación:

See attached City Council Report of May 18, 2021

4. Date you became aware of alleged violation:

4. Fecha en que se enteró de la presunta violación:

See attached City Council report and minutes of May 18, 2021

**Complaints shall be filed with the City Clerk within 180 calendar days of discovery of an alleged violation, but in no event later than three (3) years from the date of the alleged violation.**

Las quejas deben presentarse ante la Secretaría Municipal dentro de los 180 días posteriores al descubrimiento de una presunta violación, pero en ningún caso después de tres años a partir de la fecha de la presunta violación.

5. Specific Prohibited Conduct Section of Code of Ethics and Conduct allegedly violated:

5. Sección específica de conducta prohibida del Código de Ética y Conducta presuntamente violada:

☐ **Use of Official Title or Position for Personal Gain Prohibited**

El uso del título o puesto oficial para beneficio personal es prohibido

☐ **Use or Divulgence of Confidential or Privileged Information Prohibited**

El uso o la divulgación de información confidencial o privilegiada es prohibido

☐ **Use of City Resources for Non-City Purposes Prohibited**

El uso de recursos de la ciudad para fines ajenos a la ciudad es prohibido

☐ **Advocacy of Private Interests of Third Parties in Certain Circumstances Prohibited**

La defensa de los intereses privados de terceros en determinadas circunstancias es prohibido

☐ **Endorsements for Compensation Prohibited**

Endosos por compensación es prohibido

☐ **Violation of Government Code Sections 87100 et seq., Prohibited (Conflict of Interest)**

Violación de las Secciones 87100 et seq., del Código de Gobierno, es prohibido (Conflicto de Intereses)

☐ **Certain Political Activity Prohibited (Coercion of City employees to participate in election activities)**

Ciertas actividades políticas son prohibidas (sugestionar empleados de la ciudad para participar en actividades electorales)

☐ **Display of Campaign Materials in or on City Vehicles Prohibited**

La exhibición de materiales de campaña en vehículos de la ciudad o sobre ellos es prohibido

☐ **Knowingly Assisting Another Public Official in Violating This Code of Ethics and Conduct Prohibited**

Ayudar deliberadamente a otro funcionario público a violar este Código de Ética y Conducta es prohibido

☐ **Negotiation for Employment With Any Party Having a Matter Pending Before City Prohibited**

Negociación de empleo con cualquier parte que tenga un asunto pendiente ante la ciudad es prohibido

☐ **Ex Parte Contact in Quasi-Judicial Matters Prohibited**

Contacto ex parte en asuntos cuasi-judiciales es prohibido

☐ **Attempts to Coerce Official Duties Prohibited**

Intentos de coaccionar los deberes oficiales es prohibido

☐ **Violations of Federal, State, or Local Law Prohibited**

Se prohíben las infracciones de las leyes federales, estatales, o locales

**6. Description of the specific facts of the alleged violation (may submit as attached separate sheet):**  
6. Descripción de los hechos específicos de la presunta violación (puede someter como hoja separada):

See attached City Council report and minute action of May 18, 2021.

**7. Names, addresses, telephone numbers, and email addresses, if known, of each person the complainant intends to call as a witness at the hearing (may identify additional witnesses on a separate sheet):**

7. Nombres, direcciones, números de teléfono y direcciones de correo electrónico, si se conocen, de cada persona a la que el demandante intenta llamar como testigo en la audiencia (puede identificar testigos adicionales en una hoja separada):

Councilmember Edwards, 3900 Main Street, Riverside, CA 92522, (951)826-5242,  
EEdwards@riversideca.gov

Councilmember Andy Melendrez, 4053 Chestnut Street, Riverside, CA 92501, (951)203-6678,  
innorehab@aol.com

Councilmember Fierro, 3900 Main Street, Riverside, CA 92522, (951)826-5905,  
RFierro@riversideca.gov

Councilmember Conder, 3900 Main Street, Riverside, CA 92522, (951)826-2318,  
CConder@riversideca.gov

Councilwoman Plascencia, 3900 Main Street, Riverside, CA 92522, (951)826-5328,  
GPlascencia@riversideca.gov

Councilmember Perry, 3900 Main Street, Riverside, CA 92522, (951)826-2528, JPerry@riversideca.gov

Councilmember Hemenway, 3900 Main Street, Riverside, CA 92522, (951)826-5024,  
SHemenway@riversideca.gov



**8. Attach copies of any and all documents, photographs, recordings, or other tangible materials to be introduced and considered at the hearing.**

8. Adjunte copias de todos y cada uno de los documentos, fotografías, grabaciones y otros materiales que existen y que se presentarán y considerarán en la audiencia.

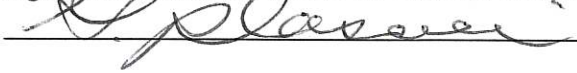
Witnesses, documents, photographs, recordings or other tangible materials, other than those submitted with the complaint or official's reply, shall not be introduced at the hearing or considered by the hearing panel, except upon a finding by the hearing panel that the discovery of the evidence came to the awareness of the proponent after the filing of the complaint or reply and that the proponent disclosed such information to the City Clerk as soon as practicable after becoming aware of its existence. However, the hearing panel may subpoena additional witnesses, documents, photographs, recordings and other tangible evidence to be introduced and considered.

Testigos, documentos, fotografías, grabaciones y otros materiales que existen, que no sean los presentados con la queja o la respuesta del funcionario, no serán presentados en la audiencia o considerados por el panel de audiencia, excepto cuando el panel de audiencia determine que el descubrimiento de la evidencia llegó a conocimiento del proponente después de la presentación de la queja o respuesta y que el proponente divulgó dicha información a la Secretaría Municipal tan pronto como sea posible después de tener conocimiento de su existencia. Sin embargo, el panel de audiencia puede citar a testigos, documentos, fotografías, grabaciones y otras pruebas que existen adicionales para que se presenten y consideren.

**9. Signed under penalty of perjury of the laws of the State of California:**

9. Firmado bajo pena de perjurio de las leyes del Estado de California:

Signature / Firma ON BEHALF OF THE CITY COUNCIL



Date / Fecha

July 22, 2021

**PLEASE NOTE:**

TENGA EN CUENTA:

**The burden of proof is on the complainant and the complainant must prove the violation by a preponderance of the evidence.**

La carga de la prueba descansa sobre la persona que presenta la queja y la persona que presenta la queja debe probar la violación por preponderancia de las pruebas.

**Failure to complete all sections of this form may result in the filing being deemed incomplete and the complainant will be so notified. Incomplete filings will not be processed.**

El no completar todas las secciones de este formulario puede resultar en que la presentación se considere incompleta y se notificará a la persona que presenta la queja. No se procesarán las presentaciones incompletas.

**File completed form and attachments:**

Presentar formulario completo y anexos:

**Office of the City Clerk**

**City of Riverside**

3900 Main Street

Riverside, CA 92522

(951) 826-5557

City\_Clerk@RiversideCA.gov





*City of Arts & Innovation*

## **CITY COUNCIL HOUSING AUTHORITY MINUTES**

TUESDAY, MAY 18, 2021, 1 P.M.

VIRTUAL MEETING

PUBLIC COMMENT IN PERSON/TELEPHONE

ART PICK COUNCIL CHAMBER

3900 MAIN STREET

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### DISCUSSION CALENDAR

CONSIDERATION OF TOTALITY OF FACTS AND ANY INFORMATION PRESENTED OR SUBMITTED BY COUNCILMEMBER CONDER REGARDING POSSIBLE DISCLOSURE OF CLOSED SESSION DISCUSSIONS

Following discussion, it was moved by Councilmember Fierro and seconded by Councilmember Melendrez to forward the complaint against Councilmember Conder regarding possible disclosure of closed session discussions to the Board of Ethics to determine violations of Riverside Municipal Code (1) Section 2.78.060(B) Use or divulgence of confidential or privileged information prohibited and (2) Section 2.78.060(M) Violations of federal, State, or local law prohibited, specifically a Brown Act violation. The motion carried unanimously.

### COMMUNICATIONS

#### CITY ATTORNEY REPORT ON CLOSED SESSIONS

Interim City Attorney Smith announced that the City Council on (1) April 13, 2021, authorized a settlement of \$66,000 in the matter of Johanna Cueva v City of Riverside, et al., and (2) April 20, 2021, authorized a settlement agreement in the matter of Summer Parada, et al. v City of Riverside in the amount of \$24 million, with \$10,000 paid to the plaintiffs, \$2.24 million to plaintiffs Attorney's fees, subject to potential court review approval and remainder allocated as a refund to ratepayers paid over a five-year period all contingent upon (i) the City Council's placement of a ballot measure on a City ballot in November 2021 to approve the City's Electric General Fund Transfer practices as a general tax; and (ii) voter approval of the ballot measure. If the ballot measure does not pass, the litigation will resume and the settlement will not be in effect.

#### ITEMS FOR FUTURE CITY COUNCIL CONSIDERATION

There were no future items requested at this time.

The City Council adjourned at 8:26 p.m.





*City of Arts & Innovation*

# City Council Memorandum

**TO: HONORABLE MAYOR AND CITY COUNCIL** **DATE: MAY 18, 2021**

**FROM: MAYOR PRO TEM JIM PERRY ON** **WARDS: ALL**  
**BEHALF OF THE RIVERSIDE CITY COUNCIL**

**SUBJECT: POSSIBLE DISCLOSURE OF CLOSED SESSION INFORMATION BY COUNCIL MEMBER CHUCK CONDER**

## **ISSUES:**

The issue presented for City Council consideration is a discussion involving Council Member Chuck Conder. This is based upon the possible disclosure of confidential closed session information relating to formal litigation filed against the City of Riverside. This issue is brought forward on behalf of the City Council.

## **RECOMMENDATIONS:**

That the City Council conduct a discussion and consider the totality of facts and any information presented or submitted by Council Member Conder regarding the possible disclosure of closed session discussions, and take whatever action, if any, that the City Council deems appropriate.

## **BACKGROUND:**

The Ralph M. Brown Act located in the California Government Code 54950 was passed in 1953. The Brown Act guarantees the public a right to attend and participate in meetings of local legislative bodies. It solely applies to California city and county agencies, boards, and councils.

A public legislative body may exclude the public from meetings, holding what are called "closed sessions" or "executive sessions" in the following circumstances:

1. To determine whether an applicant for license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license.
2. To its negotiator to grant authority regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property.
3. To confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.
4. To meet with the Attorney General, District Attorney, Agency Counsel, Sheriff, or Chief of Police, or their respective Deputies, or a Security operations manager on matters posing a threat to the security of public services or a threat to the public right of access to public services or public facilities.

5. To consider the appointment, employment, evaluation of performance, discipline, or dismissal of public employee or to hear complaints or charges brought against the employee by another person or employee.
6. To meet with the local agency's designated representative regarding the salaries, salary schedules or fringe benefits of its representation.

The Brown Act expressly authorizes closed sessions to discuss what is considered litigation and pending litigation. That is defined as:

- A. Litigation formally initiated to which the legislative body is party.
- B. A situation where based on the advice of counsel taking into account "existing facts and circumstance" there exists a "significant exposure" to litigation; or
- C. When the agency itself has decided or is deciding whether to initiate litigation.

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interest of the employee.

The Brown Act prohibits the disclosure of confidential information acquired in a closed session by any person present and offers various remedies to address willful breaches of confidentiality. It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. Courts have held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process. Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communication, the entire body is the holder of the privilege and only the entire body can decide to waive the privileges.

## **DISCUSSION:**

During the summer of 2020, it was discovered Icetown remained open to the public during the COVID-19 pandemic in violation of State Law, State Public Health Office, Executive Orders, and CDC Guidelines. All were enacted and aimed to stop the spread of COVID-19. On September 14, 2020, after repeated warnings to close including cease and desist letters, the City of Riverside obtained a court injunction to close Icetown to the public. Attachment A.

On January 12, 2021, the City Council met in closed session to receive a legal update from the City Attorney's Office concerning this injunction. This is agenda item 8b and there was no reportable action by the City Attorney. Attachment B.

On January 13, 2021, the day following the closed session discussion, Dunn Enterprises Inc. DBA Icetown filed a lawsuit against the following: Gavin Newsom, in his capacity as Governor of California; City of Riverside, A California Government Agency; County of Riverside, A California Governmental Agency. This litigation was filed in the United States District Court for the Central District of California for Declaratory Relief, Injunction Relief and Damages. It was received by the Riverside Clerk's Office on January 29, 2021. Attachment C.

As part of this litigation, in connection with Icetown seeking a preliminary injunction, there is a written declaration from Chuck Conder who is identified as a Council Member for the City of Riverside. This declaration was executed on January 25, 2021 at Riverside, California and it has the signature of Chuck Conder. This is 4 days prior to the City receiving a copy of the litigation and 13 days after the Icetown discussion took place in closed session.



On February 12, 2021, the legal matter of Dunn Enterprises, Inc. DBA Icetown was heard in the United States District Court of the Central District of California. The City of Riverside was represented by the City Attorney's Office. At the conclusion of this hearing, Judge John W. Holcomb dismissed the complaint without prejudice and directed the court clerk to close the case. Attachment D.

On March 2, 2021, the City Council, in closed session, received another legal update concerning the injunction and litigation. Based on Council Member Conder's written declaration, he was asked by the interim City Attorney to recuse himself from this discussion. He complied with the request. This is agenda item 15 and there was no reportable action by the City Attorney. Attachment E.

On March 23, 2021, the City Council, in closed session discussed whether to initiate litigation for the possible violation. However, the City Council decided to have an open session discussion on this matter.

The issues involving Icetown were discussed by the City Council a total of two times. They both occurred in closed session on January 12, 2021 and March 2, 2021.

Attached to this report is a copy of the declaration of Chuck Conder for consideration by the members of the City Council.

On April 8, 2021, Mayor Pro Tem Perry contacted Council Member Conder. He requested a meeting between Mayor Lock Dawson, Interim City Attorney Kristi Smith, himself, and Council Member Conder and his Attorney to further discuss this matter.

On April 15, 2021, Mayor Pro Tem Perry asked Council Member Conder if he had spoken with his attorney and this discussion had not taken place.

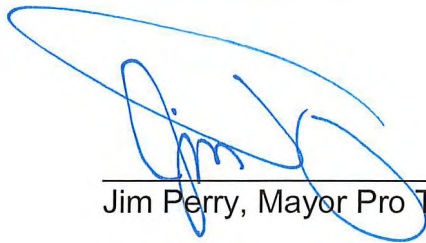
This matter can proceed to an open session discussion without waiving any attorney-client privilege or disclosing what was discussed in closed session. With the agenda and the declaration, it can be stated that the issue was only discussed in closed session. The City Council does not and will not discuss the particulars of what was discussed in closed session; however, any information provided in the declaration could have only been obtained from closed session discussions.

After careful consideration and deliberation concerning the information set forth in this report as well as consideration of any information and/or response provided by Council Member Conder, the City Council must discuss this item and decide how to proceed with this matter.

#### **FISCAL IMPACT:**

There is no fiscal impact associated with this report.

Prepared by:

  
\_\_\_\_\_  
Jim Perry, Mayor Pro Tem

Attachments:

A. City of Riverside's Ex-Parte Application for Temporary Restraining Order and OSC RE:

Preliminary Injunction

- B. City of Riverside City Council Agenda and meeting minutes for January 12, 2021
- C. Dunn Enterprises, INC. DBA Icetown Complaint for Declaratory Relief, Injunctive Relief and Damages
- D. U.S. District Court Order denying Plaintiff's Ex-Parte Application for Temporary Restraining Order and Order to show Cause Re Issuance of a Preliminary Injunction and Dismissing Case for lack of Jurisdiction
- E. City of Riverside City Council agenda and meeting minutes of March 2, 2021

# Exhibit A

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

SEP 14 2020

D. Mathieu

GARY G. GEUSS, City Attorney, SBN 128022  
NEIL D. OKAZAKI, Assistant City Attorney, SBN 201367  
MARY HANNA, Deputy City Attorney, SBN 304074  
OFFICE OF THE CITY ATTORNEY - CITY OF RIVERSIDE  
3750 University Ave., Suite 250  
Riverside, California 92501  
Telephone (951) 826-5567  
Facsimile (951) 826-5540  
Email: [Mhanna@riversideca.gov](mailto:Mhanna@riversideca.gov)

Exempt per Gov. Code § 6103

Attorneys for Plaintiff CITY OF RIVERSIDE, a California charter city  
and municipal corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

PEOPLE OF THE STATE OF CALIFORNIA, )  
by and through, )

The CITY OF RIVERSIDE, a California )  
charter city and municipal corporation, )

Plaintiff, )

v. )

DUNN ENTERPRISES, INC. DBA )  
ICETOWN, an incorporated business entity; )  
MATT DUNAEV, an individual; and DOES 1- )  
25, inclusive, )

Defendants. )

Case No. RIC 2003552

~~[PROPOSED]~~ ORDER GRANTING CITY OF  
RIVERSIDE'S EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND OSC  
RE: PRELIMINARY INJUNCTION

[Filed Concurrently with:

1. Notice of Motion and Motion;
2. Memorandum of Points and Authorities;
3. Declaration of Kelly Moran;
4. Declaration of Mary Hanna;
5. Declaration of Gary Leach;
6. Declaration of Dr. Cameron Kaiser; and
6. Request for Judicial Notice]

Date: 9/11/20<sup>th</sup> 9/14/20

Time: 8:30am

Dept: 1

## TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

Plaintiff CITY OF RIVERSIDE's Ex Parte Application came on for an ex parte hearing on  
September 14, 2020 at 8:30 a.m. in Dept. 1 before the Honorable Judge Craig Riemer  
presiding in the above-entitled court, located at 4050 Main Street, Riverside, California 92501. Plaintiff  
was represented by Deputy City Attorney Mary Hanna.

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**TEMPORARY RESTRAINING ORDER**

**To Defendants DUNN ENTERPRISES, INC. DBA ICETOWN and MATT DUNAEV:**

Based upon the City of Riverside's ("City") Ex Parte Application, Memorandum of Points and Authorities in support thereof, Request for Judicial Notice, Declaration of Mary Hanna, Declaration of Kelly A. Moran, Declaration of Dr. Cameron Kaiser, M.P.H., Declaration of Gary Leach, any and all written materials submitted in support thereof, the arguments of all counsel and parties at the hearing on the matter, and good cause appearing herein, the court grants the City's request for a Temporary Restraining Order against Defendants. This Court finds that there is immediate threat to public health and safety due to the COVID-19 pandemic. The Court further finds that the City is likely to prevail on the merits based upon the violation of State law, including the March 19, 2020 Order of the State Public Health Officer and Executive Orders N-33-20 and N-60-20, *Health and Safety Code* sections 101030, 101040, 120125, 120130, 120135, 120140, 120145, 120175, 120180, and 131080, Government Code sections 8567, 8627, and 8665, the July 2, 2020 Order of the State Public Health Officer to Riverside County and the July 13, 2020 Statewide Order of the Public Health Officer, as cited in the moving papers, at ICE TOWN, located at 10540 Magnolia Ave Ste A, Riverside, CA 92505, as a result of operating an indoor ice rink. The Court also finds that the City and its residents will suffer irreparable harm if the Orders described above are not enforced.

**THE FOLLOWING IS HEREBY ORDERED:**

Defendant, and all of their respective franchisees, franchisors, operators, owners, agents, employees, representatives, members, volunteers, members, private associations, members of a private association, associates, and all persons acting for or in concert with them, and their assignees and successors, are hereby forthwith enjoined and prohibited and ordered to immediately **cease operating, renting, causing, allowing, permitting, aiding, abetting, concealing, or granting the authority or permission to operate, rent, use, lease, host, offer or utilize the indoor ice rink, or other related classes, games, camps, lessons, open skate sessions, skating academy, competitions or tournaments, parties or celebrations of any kind, fundraisers, workout or training sessions that are not on the ice, or training sessions on the ice inside** the property known as ICE TOWN, located at 10540 Magnolia Ave Ste A, Riverside, CA 92505, until such



1 time as this matter comes before the Court at an OSC re Preliminary Injunction scheduled to occur, on  
2 September 29, 2020.

3 **IT IS FURTHER ORDERED** that the City and its personnel, including employees of the Riverside  
4 Police Department, Code Enforcement Departments, Department of Public Health, Department of  
5 Environment Health, the Fire Department and other applicable governmental agencies or retained  
6 investigators are hereby authorized to: enter onto the property known as ICE TOWN, located at 10540  
7 Magnolia Ave Ste A, Riverside, CA 92505, to post notice of this Order in visible locations on said Property,  
8 including, but limited to, on exterior fences, gates, structures, doors or any other structure thereupon and to  
9 distribute this Order to Defendants and/or any other persons present on the Property.

10 **ORDER TO SHOW CAUSE**

11 **To Defendants ICE TOWN and MATT DUNAEV:**

12 Based upon the City of Riverside's ("City") Ex Parte Application, Memorandum of Points and  
13 Authorities in support thereof, Declaration of Mary Hanna, Kelly A. Moran, Declaration of Dr. Cameron  
14 Kaiser, M.P.H., and Declaration of Gary Leach, any and all written materials submitted in support thereof,  
15 the arguments of all counsel and parties at the hearing on the matter, and good cause appearing herein,  
16 Defendants are ordered to appear on September 29 2020 at 8:30 a.m. in Riverside County  
17 Superior Court located at 4050 Main Street, Riverside, California 92501 in Department 1, via telephone, to  
18 show cause why a preliminary injunction should not be ordered prohibiting, restraining, and enjoining  
19 Defendant, and all of their respective franchisors, franchisees, operators, owners, agents, employees,  
20 representatives, members, volunteers, members, private associations, members of a private association,  
21 associates, and all persons acting for or in concert with them, and their assignees and successors, from  
22 **operating, leasing, renting, causing, allowing, permitting, aiding, abetting, concealing, or granting**  
23 **the authority or permission to operate, rent, use, lease, host, offer or utilize the indoor ice rink, or**  
24 **other related classes, games, lessons, camps, open skate sessions, skating academy, competitions or**  
25 **tournaments, fundraisers, celebrations of any kind, workout or training sessions that are not on the**  
26 **ice rink, or training sessions on the ice rink, inside the property known as ICE TOWN, located at 10540**  
27 **Magnolia Ave Ste A, Riverside, CA 92505, until permitted by the State of California, pursuant to State law,**  
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1 including the March 19, 2020 Order of the State Public Health Officer and Executive Orders N-33-20 and  
2 N-60-20, *Health and Safety Code* sections 101030, 101040, 120125, 120130, 120135, 120140, 120145,  
3 120175, 120180, and 131080, Government Code sections 8567, 8627, and 8665, the July 2, 2020 Order of  
4 the State Public Health Officer to Riverside County, and the July 13, 2020 Statewide Public Health Order.

5 Defendants are also **ordered to show cause** why the Court should not order all the provisions of the  
6 temporary restraining order to remain in effect as part of the preliminary injunction order, including that  
7 the City and its personnel, including employees of the Sheriff's Department, City Police Departments, Code  
8 Enforcement Departments, Department of Public Health, Department of Environment Health, the Fire  
9 Department and other applicable governmental agencies or retained investigators are hereby authorized to  
10 enter onto the property known as ICE TOWN, located at 10540 Magnolia Ave Ste A, Riverside, CA 92505,  
11 to post notice of this Order in visible locations on said Property, including, but limited to, on exterior fences,  
12 gates, structures, doors or any other structure thereupon and to distribute this Order to Defendants and/or  
13 any other persons present on the Property.

14 This Order to Show Cause and Temporary Restraining Order shall be served on Defendants no later  
15 than September 15, 2020 by personal service, overnight courier, ~~facsimile~~, or electronic mail.

16 Proof of service shall be filed no later than September 22, 2020

17 Any Opposition papers to the Order to Show Cause shall be filed and served on Plaintiff by personal  
18 service, overnight courier, facsimile, or electronic mail no later than September 22, 2020

19 Any Reply papers to the Order to Show Cause shall be filed and served on Defendants by personal  
20 service, overnight courier, facsimile, or electronic mail no later than September 25, 2020

21 The Temporary Restraining Order granted herein shall expire on September 29, 2020

22  
23  
24 **IT IS SO ORDERED.**

25 Dated: September 14, 2020

26 By: Craig G. Riemer  
Judge of the Superior Court

27 Craig G. Riemer  
28 Judge of the Superior Court



# Exhibit B

## City of Riverside

### City Council

3900 Main St.  
Riverside, CA 92522  
(951) 826-5557

*City of Arts & Innovation*

## Agenda - Revised

Meeting Date: Tuesday, January 12, 2021  
Publication Date: Friday, January 8, 2021

1:00 PM

View Virtual Meeting

Live webcast at

[www.engageriverside.com](http://www.engageriverside.com)

Originally Published: December 31, 2020

### MISSION STATEMENT

**The City of Riverside is committed to providing high quality municipal services to ensure a safe, inclusive, and livable community**

**The City Council will conduct a virtual meeting.**

**View live webcast at [www.engageriverside.com](http://www.engageriverside.com).**

**The Art Pick Council Chamber will be closed to the public.**

**For telephone public comment, call (951) 826-8600. Dial when the agenda item is called to be placed in the queue. Please follow along with the meeting via [www.engageriverside.com](http://www.engageriverside.com), RiversideTV cable channels, or City social media live feeds to ensure you call in at the appropriate time for your item or items. Time is limited to 3 minutes.**

**Public comments regarding items on this agenda or any matters within the jurisdiction of the City Council can be submitted by eComment at [www.engageriverside.com](http://www.engageriverside.com) until two hours before the meeting.**

**Email comments to [City\\_Clerk@riversideca.gov](mailto:City_Clerk@riversideca.gov).**

*PLEASE NOTE--The numerical order of items on this agenda is for convenience of reference. Items may be taken out of order upon request of the Mayor or Members of the City Council.*

*Pursuant to the City Council Meeting Rules adopted by Resolution No. 23618, the Members of the City Council and the public are reminded that they must preserve order and decorum throughout the Meeting. In that regard, Members of the City Council and the public are advised that any delay or disruption in the proceedings or a refusal to obey the orders of the City Council or the presiding officer constitutes a violation of these rules. The City of Riverside is committed to a workplace that requires acceptable behavior from everyone - a workplace that provides dignity, respect, and civility to our*

*employees, customers, and the public.*

*City Council meetings should be a place where all members of our community feel safe and comfortable participating. While there could be a high level of emotion associated with topics on this agenda, the city would like to set the expectations that all members of the public use language appropriate to a professional, respectful public environment.*

*The City of Riverside wishes to make all of its public meetings accessible to the public. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, as required by 42 U.S.C. §12132 of the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to the City's ADA Coordinator at 951-826-5427 at least 72 hours before the meeting, if possible. TTY users call 7-1-1 for telecommunications relay services (TRS).*

*Agenda related writings or documents provided to the City Council are available at [www.engageriverside.com](http://www.engageriverside.com).*

## **1 P.M.**

### **MAYOR CALLS MEETING TO ORDER**

### **PUBLIC COMMENT**

- 1 You are invited to participate by phone at 951-826-8600 to comment on Closed Sessions and any matters within the jurisdiction of the City Council - Individual audience participation is limited to 3 minutes.

### **COMMUNICATIONS**

- 2 California Public Employees Retirement System challenge/financial solvency update (Finance) (All Wards) (5-minute presentation)
- 3 Intergovernmental relations and legislative update (City Manager) (All Wards) (5-minute presentation)
- 4 Homeless solutions update (City Manager) (All Wards) (5-minute presentation)
- 5 Pertinent health, safety, and security updates (City Manager) (All Wards) (15-minute presentation)
- 6 Rules and regulations created or suspended (City Manager) (All Wards) (5-minute presentation)



## DISCUSSION CALENDAR

*This portion of the City Council Agenda is for all matters where staff and public participation is anticipated. Individual audience participation is limited to 3 minutes.*

- 7 Review Proclamation of Local Emergency regarding Novel Coronavirus (COVID-19) proclaimed on March 13, 2020, and ratified by City Council on March 17, 2020 - Continue Local Emergency - Return to City Council in thirty days with further review of Local Emergency (City Manager) (All Wards) (5-minute presentation)

Attachments: [Report](#)  
[Proclamation](#)  
[Resolution](#)

## CLOSED SESSIONS

*Time listed is approximate. The City Council may adjourn to the below listed Closed Sessions at their convenience during this City Council meeting.*

- 8 Pursuant to Government Code §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning Donovan Henry v City of Riverside, et al., RCSC Case No. RIC 1903182

Attachments: [Report](#)

- 8a Pursuant to Government Code §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning Christopher Desrosiers v City of Riverside, Court of Appeal, 4th District, Division 2, Case No. E075949; (Riverside Superior Court, Case No. RIC 1811923)

Attachments: [Report](#)

- 8b Pursuant to Government Code §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning People of the State of California, by and through, the City of Riverside v. Dunn Enterprises, Inc., dba Icetown, etc., et al., RCSC Case No.: RIC2003552

Attachments: [Report](#)

- 9 Pursuant to Government Code §54956.9(d)(2) to confer with and/or receive advice from legal counsel concerning one case of anticipated litigation

Attachments: [Report](#)

- 10 Pursuant to Government Code §54956.9(d)(4) to confer with and/or receive advice from legal counsel concerning three cases of anticipated litigation

Attachments: [Report](#)  
[Revised Report](#)

- 11 Pursuant to Government Code §54957.6 to review the City Council's position and instruct designated representatives regarding salaries, salary schedules, or compensation paid in the form of fringe benefits of all Executive Management employees including the City Attorney and City Clerk, all Management and Confidential employees as defined by PERS, Fire Management Unit, Riverside City Firefighters Association, Riverside Police Officers Association (Police and Police Supervisory Units), Service Employees International Union #721, International Brotherhood of Electrical Workers #47, and Riverside Police Administrators Association

Attachments: Report

- 12 Pursuant to Government Code §54957 for appointment of City Clerk by City Council

Attachments: Report

- 13 Pursuant to Government Code §54957 for appointment of City Attorney by City Council

Attachments: Report

- 14 Pursuant to Government Code §54956.9(b)(3)(c) to confer with and/or receive advice from legal counsel concerning Gary G. Geuss v. City of Riverside, Claim No.: 20-09-06; 20-11-08

Attachments: Report

### **6:15 P.M.**

INVOCATION - Councilmember Conder

PLEDGE OF ALLEGIANCE TO THE FLAG

### **PUBLIC COMMENT**

- 15 You are invited to participate by phone at 951-826-8600 to comment on Consent Calendar items and any matters within the jurisdiction of the City Council - Individual audience participation is limited to 3 minutes.

### **MAYOR/COUNCILMEMBER COMMUNICATIONS**

- 16 Brief reports on conferences, seminars, and regional meetings attended by Mayor and City Council, Ward updates, and announcements of upcoming events

CONSENT CALENDAR

*All matters listed under the CONSENT CALENDAR are considered routine by the City Council and may be enacted by one motion in the form listed below. There will be no separate discussion of these items unless, before the City Council votes on the motion to adopt, Members of the City Council or staff request specific items be removed from the Consent Calendar for separate action. Removed consent items will be discussed following the Discussion Calendar.*

City Council

## 17      Announcement of committee meetings:

Housing and Homelessness Committee Special Meeting at 3:30 p.m. on Monday, January 4, 2021, Virtual Meeting

Financial Performance and Budget Committee at 3 p.m. on Friday, January 8, 2021, Virtual Meeting

Land Use, Sustainability and Resilience Committee at 3:30 p.m. on Monday, January 11, 2021, Virtual Meeting

City Manager

## 18      Ratify Order of Director of Emergency Services to cease evening public parking garage attendant operations and fee collections during Stay at Home Orders (Ward 1)

Attachments:    Report  
                         Order

General Services

## 19      Purchase two heavy duty aerial personnel-lift vehicles from Altec Industries, Inc., Birmingham, Alabama, for \$270,520 from New Traffic Signals and Miscellaneous Signal Revisions Project Accounts for Public Works Traffic Signal Maintenance Division (All Wards)

Attachments:    Report  
                         Sourcwell  
                         Altec

Police

- 20 Purchase and installation of two Garmin GTN-750HXi Navigation Systems and Becker Digital Audio Systems including wiring and mixer panels for Police Department helicopters from Hanger One Avionics, Inc., for \$211,331.58 with ten percent change order authority for total not-to-exceed \$232,464.73 from Police Department Aviation Unit Non Stock Inventory Account (All Wards)

Attachments: Report  
Quote 1  
Quote 2

Public Works

- 21 Introduce an Ordinance of the City of Riverside, California, amending existing Section 9.04.400(D) of the Riverside Municipal Code regarding conduct on public property adding language to prohibit entering water, shaving, washing clothes, or otherwise pollute any decorative fountain, or allow any minor child or pet to do same (All Wards)

Attachments: Report  
Ordinance

- 22 Introduce an Ordinance of the City of Riverside, California amending Section 10.76.010 of the Riverside Municipal Code designating the prima facie speed limits for streets and portions thereof in accordance with the provisions of sections 10.20.020 and 10.20.030 to establish 35 MPH speed limit zone on Green Orchard Place from Kingdom Drive to Crystal View Terrace (Ward 4)

Attachments: Report  
Ordinance  
Site Map  
Minutes

- 23 A Resolution of the City Council of the City of Riverside, California, amending Resolution No. 22451 known as the Master Parking Schedule Resolution to establish a timed no parking zone between hours of 8 p.m. to 6 a.m. daily on Horizon View Drive from Choi Drive to southerly terminus - Waive further reading (Ward 4)

Attachments: Report  
Resolution  
Site Map  
Minutes



## DISCUSSION CALENDAR

*This portion of the City Council Agenda is for all matters where staff and public participation is anticipated. Individual audience participation is limited to 3 minutes.*

- 24 Councilmember Fierro recommends temporary revision to Electric Rule 4 and Water Rule 4 to allow small commercial customers adversely impacted by COVID-19 restrictions to apply deposit to customer accounts effective until March 31, 2021 - A Resolution of the City Council of Riverside, California, (1) approving and establishing revised Electric Rule 4 and Water Rule 4, effective upon adoption; and (2) making related findings of fact - Waive further reading (City Council) (All Wards) (5-minute presentation)

Attachments:    Report  
                          Resolution  
                          BPU Resolution  
                          Water Rule 04 -Effective 3-31-21  
                          Water Rule 04 - Effective 4-1-21  
                          Electric Rule 04 - Effective 3-31-21  
                          Electric Rule 04 - Effective 4-1-21  
                          Water Rule 04 - Redlined  
                          Electric Rule 04 - Redlined  
                          Presentation

## COMMUNICATIONS

- 25 City Attorney report on Closed Session discussions
- 26 Items for future City Council consideration as requested by Mayor or Members of the City Council - City Manager/City Attorney reports

*The next regular City Council meeting is scheduled for  
Tuesday, January 19, 2021*

*City Council meetings broadcast with closed captioning available on  
AT&T Channel 99, Charter Spectrum Channel 3,  
and Frontier Cable Channel 21  
Rebroadcast Wednesdays at 9 p.m., Fridays at 1 p.m., and Saturdays at 9 a.m.*

*View live Webcast of the City Council Meeting at:  
[www.RiversideCA.gov/Meeting](http://www.RiversideCA.gov/Meeting) or [www.Engageriverside.com](http://www.Engageriverside.com)*

*Follow on Twitter:*

*City of Riverside (@riversidecagov)*

*City Clerk (@RivCityClerk)*

*Parks, Recreation, and Community Services (@rivcaparkandrec)*

*Riverside Fire Department (@RivCAFire)*

*Riverside Police Department (@RiversidePolice)*

*Riverside Public Utilities (@RPUNews)*

*Sign up to receive critical information such as unexpected road closures, utility outages, missing persons, and evacuations of buildings or neighborhoods.*

*[www.RiversideAlert.com](http://www.RiversideAlert.com)*



*City of Arts & Innovation*

## CITY COUNCIL MINUTES

TUESDAY, JANUARY 12, 2021, 1 P.M.  
VIRTUAL MEETING  
PUBLIC COMMENT VIA TELEPHONE  
3900 MAIN STREET

PRESENT: Mayor Lock Dawson, Councilmembers Edwards, Melendrez, Fierro, Conder, Perry, and Hemenway, and Councilwoman Plascencia

ABSENT: None

Mayor Lock Dawson called the meeting to order at 1 p.m.

### ORAL COMMUNICATIONS FROM THE AUDIENCE

There was no one wishing to address the City Council.

### COMMUNICATIONS

#### CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHALLENGE/FINANCIAL SOLVENCY UPDATE

The California Public Employees Retirement System challenge/financial solvency was not held.

#### INTERGOVERNMENTAL RELATIONS AND LEGISLATIVE UPDATE

The City Council received an update on Intergovernmental relations and legislation including an update on the 2021-22 State Budget.

#### HOMELESS SOLUTIONS UPDATE

The City Council received an update on homeless solutions.

#### HEALTH, SAFETY, AND SECURITY UPDATES

The City Council received an update on health, safety, and security.

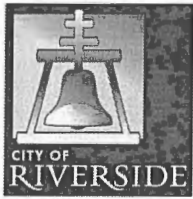
#### RULES AND REGULATIONS CREATED OR SUSPENDED

There was no update on the rules and regulations created or suspended.

### DISCUSSION CALENDAR

#### PROCLAMATION OF LOCAL EMERGENCY REVIEW

Following discussion, it was moved by Councilmember Melendrez and seconded by Councilmember Fierro to (1) receive and order filed the review the Proclamation of Local Emergency regarding Novel Coronavirus (COVID-19) proclaimed on March 13, 2020, and ratified by the City Council on March 17, 2020, until terminated by the City Council;



*City of Arts & Innovation*

## CITY COUNCIL MINUTES

TUESDAY, JANUARY 12, 2021, 1 P.M.  
VIRTUAL MEETING  
PUBLIC COMMENT VIA TELEPHONE  
3900 MAIN STREET

(2) continue the Local Emergency; and (3) return to City Council in thirty days with a further review of the Local Emergency. The motion carried with Councilmembers Edwards, Melendrez, Fierro, Perry, and Hemenway, and Councilwoman Plascencia voting aye and Councilmember Conder voting no.

### CLOSED SESSIONS

The Mayor and City Council adjourned to closed sessions pursuant to Government Code (1) §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning Donovan Henry v City of Riverside, et al., RCSC Case No. RIC 1903182; (2) §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning Christopher Desrosiers v City of Riverside, Court of Appeal, 4th District, Division 2, Case No. E075949; (Riverside Superior Court, Case No. RIC 1811923); (3) §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning People of the State of California, by and through, the City of Riverside v. Dunn Enterprises, Inc., dba Icefown, etc., et al., RCSC Case No.: RIC2003552; (4) §54956.9(d)(2) to confer with and/or receive advice from legal counsel concerning one case of anticipated litigation; (5) §54956.9(d)(4) to confer with and/or receive advice from legal counsel concerning three cases of anticipated litigation; (6) §54957.6 to review the City Council's position and instruct designated representatives regarding salaries, salary schedules, or compensation paid in the form of fringe benefits of all Executive Management employees including the City Attorney and City Clerk, all Management and Confidential employees as defined by PERS, Fire Management Unit, Riverside City Firefighters Association, Riverside Police Officers Association (Police and Police Supervisory Units), Service Employees International Union #721, International Brotherhood of Electrical Workers #47, and Riverside Police Administrators Association; (7) §54957 for appointment of City Clerk by City Council; (8) §54957 for appointment of City Attorney by City Council; and (9) §54956.9(b)(3)(c) to confer with and/or receive advice from legal counsel concerning Gary G. Geuss v. City of Riverside, Claim No.: 20-09-06; 20-11-08.

### RECESS

The Mayor and City Council recessed at 4:22 p.m. and reconvened at 6:15 p.m. with Mayor Lock Dawson presiding and all Councilmembers present.

The Invocation was given by Councilmember Conder.

Mayor Lock Dawson led the Pledge of Allegiance to the Flag.





*City of Arts & Innovation*

## CITY COUNCIL MINUTES

TUESDAY, JANUARY 12, 2021, 1 P.M.  
VIRTUAL MEETING  
PUBLIC COMMENT VIA TELEPHONE  
3900 MAIN STREET

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### ORAL COMMUNICATIONS FROM THE AUDIENCE

There was no one wishing to address the City Council.

### MAYOR/COUNCILMEMBER COMMUNICATIONS

Councilmember Edwards reported on virtual office hours and the Sixth Cycle Housing Element community meeting. Councilmember Fierro reported on the virtual Town Hall for the Magnolia Area Neighborhood Alliance. Councilmember Perry reported on the Housing Element community meeting.

### CONSENT CALENDAR

It was moved by Councilmember Hemenway and seconded by Councilmember Perry to approve the Consent Calendar as presented affirming the actions appropriate to each item with Councilmember Melendrez disqualifying himself from the parking garage attendant operations and fees collections as he owns property within 500 feet of the project. The motion carried unanimously.

### RATIFY ORDER OF DIRECTOR OF EMERGENCY SERVICES - PARKING GARAGE ATTENDANT OPERATIONS AND FEE COLLECTIONS

The City Council ratified the Order of the Director of Emergency Services ceasing evening public parking garage attendant operations and fee collections during the ongoing Stay at Home Orders.

### HEAVY DUTY AERIAL PERSONNEL-LIFT VEHICLES - PUBLIC WORKS TRAFFIC SIGNAL MAINTENANCE

The City Council approved purchase of two heavy duty aerial personnel-lift vehicles from Altec Industries, Inc., Birmingham, Alabama, for the Public Works Traffic Signal Maintenance Division in accordance with Purchasing Resolution No. 23256 Section 602(e) in the amount of \$270,520.

### NAVIGATION SYSTEMS AND DIGITAL AUDIO SYSTEMS - POLICE DEPARTMENT HELICOPTERS

The City Council (1) authorized purchase and installation of two Garmin GTN-750HXi Navigation Systems and two Becker Digital Audio Systems including wiring and mixer panels for the two Police Department helicopters from Hanger One Avionics, Inc., in the amount of \$211,331.58; and (2) authorized an additional change order authority of 10 percent or \$21,133.15, for a total amount not-to-exceed \$232,464.73.



*City of Arts & Innovation*

## **CITY COUNCIL MINUTES**

TUESDAY, JANUARY 12, 2021, 1 P.M.  
VIRTUAL MEETING  
PUBLIC COMMENT VIA TELEPHONE  
3900 MAIN STREET

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### **CONDUCT ON PUBLIC PROPERTY - DECORATIVE FOUNTAINS - ORDINANCE INTRODUCED**

The City Council introduced an ordinance amending Section 9.04.400(D) of the Riverside Municipal Code regarding conduct on public property to prohibit entering the water, shaving, washing clothes, or otherwise polluting any decorative fountain, or allowing any minor child or pet to do the same; whereupon, an Ordinance entitled, "An Ordinance of the City of Riverside, California, Amending Section 9.04.400(D) of the Riverside Municipal Code Regarding Conduct on Public Property," was presented and introduced.

### **SPEED LIMIT ZONE - GREEN ORCHARD/KINGDOM/CRYSTAL VIEW - ORDINANCE INTRODUCED**

The City Council introduced an ordinance to establish a 35 mph speed limit zone on Green Orchard Place from Kingdom Drive to Crystal View Terrace; whereupon, an Ordinance entitled, "An Ordinance of the City of Riverside, California, Amending Section 10.76.010 of the Riverside Municipal Code Designating the Prima Facie Speed Limits for Streets and Portions Thereof in Accordance with the Provisions of Sections 10.20.020 and 10.20.030," was presented and introduced.

### **TIMED NO PARKING ZONE - HORIZON VIEW/CHOI - RESOLUTION**

The City Council adopted a resolution to establish a "No Parking Between the Hours of 8 p.m. to 6 a.m. Daily" Zone on both sides of Horizon View Drive from Choi Drive to the southerly terminus; whereupon, the title having been read and further reading waived, Resolution No. 23668 of the City Council of the City of Riverside, California, Amending Resolution No. 22451 Known as the Master Parking Schedule Resolution to Establish a Timed No Parking Zone on Horizon View Drive, was presented and adopted.

### **DISCUSSION CALENDAR**

#### **ELECTRIC RULE 4 AND WATER RULE 4 - RESOLUTION**

Following discussion, it was moved by Councilmember Fierro and seconded by Councilmember Conder to approve Councilmember Fierro's recommendation to adopt a resolution temporarily amending Riverside Public Utilities Electric and Water Rule 4 "Deposit and Service Turn-On Charge" to allow local small businesses impacted by COVID-19 to apply their deposits to their customer accounts without restriction for the duration of the local emergency; whereupon, the title having been read and further reading waived, Resolution No. 23669 of the City Council of the City of Riverside, California, (1) Approving and Establishing Revised Electric Rule 4 and Water Rule 4,



*City of Arts & Innovation*

## CITY COUNCIL MINUTES

TUESDAY, JANUARY 12, 2021, 1 P.M.  
VIRTUAL MEETING  
PUBLIC COMMENT VIA TELEPHONE  
3900 MAIN STREET

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Effective Upon Adoption; and (2) Making Related Findings of Fact, was presented and adopted. The motion carried unanimously.

### COMMUNICATIONS

#### CITY ATTORNEY REPORT ON CLOSED SESSIONS

Interim City Attorney Smith announced that on August 4, 2020, the City Council unanimously authorized settlement in Nichols v City of Riverside with payment to the plaintiff of \$375,000 for dismissal of the lawsuit.

#### ITEMS FOR FUTURE CITY COUNCIL CONSIDERATION

There were no future items requested at this time.

The City Council adjourned at 6:37 p.m.

Respectfully submitted,

COLLEEN J. NICOL  
City Clerk

RECEIVED

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

*Edna J. Dunaev*  
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:

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**

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

20  
21 COMES NOW, Plaintiff, DUNN ENTERPRISES, INC. DBA ICETOWN  
22 ("Icetown") complains and alleges the following causes of action against  
23 Defendants, GAVIN NEWSOM ("Newsom"), CITY OF RIVERSIDE ("City"), and  
24 COUNTY OF RIVERSIDE ("County") (also collectively referred to as  
25 "Defendants"):

26 **INTRODUCTION**

27 1. From the outset of the Covid-19 pandemic in March of 2020, the State  
28 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.

27 ///

28 ///

4. This lawsuit arises under 42 U.S.C. § 1983 in relation to Defendants' infringement upon Icetown's constitutional rights to be afforded Due Process and Equal Protection under the Fifth and Fourteenth Amendments of the United States Constitution. Therefore, this Court has federal question jurisdiction under 28 U.S.C. §§ 1331 & 1343. Furthermore, this Court has the authority to award the requested declaratory relief under 28 U.S.C. § 2201, the requested injunctive relief under 28 U.S.C. § 1343, and attorney's fees and costs under 42 U.S.C. § 1988.

## PARTIES

7. Newsom has been named as a Defendant in this action in his official capacity as the Governor of California. California Constitution Article V, § 1 provides that Newsom has the supreme executive power of the State to ensure that the law is faithfully executed. Newsom signed Executive Order N-33-20 on March 19, 2020, and the State of California signed a Regional Stay at Home Order on December 3, 2020.

///

///

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 19<sup>th</sup>  
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.

28 ///

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")<sup>1</sup>. 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 <sup>1</sup> [www.covid19.ca.gov/safer-economy/](http://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 6<sup>th</sup> 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.5<sup>th</sup> 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.

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  
28

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.

26 ///

27 ///

28 ///

**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

21 Icetown hereby demands trial by jury in this matter.  
22

23 Dated: January 12, 2021

**ELAN J. DUNAEV, ESQ.**

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

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	<b>Habeas Corpus:</b>	<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	<b>TORTS</b>	<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	<b>PERSONAL INJURY</b>	<b>PERSONAL PROPERTY</b>	<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	<b>Other:</b>	<b>SOCIAL SECURITY</b>
<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	<b>BANKRUPTCY</b>	<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	<b>FORFEITURE/PENALTY</b>	<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	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 890 Other Statutory Actions	<b>REAL PROPERTY</b>	<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	<b>LABOR</b>	<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.

<b>QUESTION A: Was this case removed from state court?</b> <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	
<b>QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question C. If "yes," answer Question B.1, at right.	<b>B.1.</b> 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>B.2.</b> 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.	
<b>QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question D. If "yes," answer Question C.1, at right.	<b>C.1.</b> 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> →  <b>C.2.</b> 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.	
<b>QUESTION D: Location of plaintiffs and defendants?</b>	<b>A.</b> Orange County	<b>B.</b> Riverside or San Bernardino County	<b>C.</b> 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"/>
<b>D.1. Is there at least one answer in Column A?</b> <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. →	<b>D.2. Is there at least one answer in Column B?</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. ↓		
<b>QUESTION E: Initial Division?</b>  Enter the initial division determined by Question A, B, C, or D above: → Eastern	INITIAL DIVISION IN CACD Eastern <input checked="" type="checkbox"/>		
<b>QUESTION F: Northern Counties?</b>  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](http://www.cacd.uscourts.gov/judges-requirements), for additional information.

Clerk, U.S. District Court

January 13, 2021  
Date

By /s/ Edwin Sambrano  
Deputy Clerk

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**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  
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.  
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”)<sup>1</sup>. 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 <sup>1</sup> [www.covid19.ca.gov/safer-economy/](http://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 19<sup>th</sup>  
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 6<sup>th</sup> 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.5<sup>th</sup> 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 (9<sup>th</sup> 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  
10  
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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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  
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.

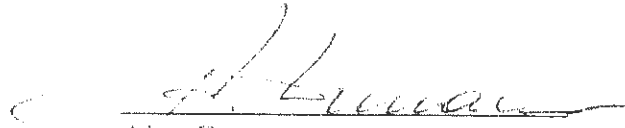
4 6. Now not only does Icetown need to worry about paying back the  
5 expenses they owe, but we now need to somehow rebuild our business since we are  
6 losing customers to other facilities which continue to defy the orders from the State.  
7 It is clear that Icetown has been unfairly singled out 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 26<sup>th</sup> day of January, 2021, at Riverside, California.

4  
5   
6 Alex Dunaev



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  
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

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 JWH**  
**(SHKx)**

**DECLARATION OF AUSTIN**  
**LECHTANSKI**

I, Austin Lechtanski, declare as follows:

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

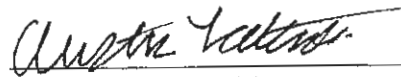
2. I have been a customer of Icetown for several years and was skating at the facility prior to it being shut down by Defendant, CITY OF RIVERSIDE

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 26<sup>th</sup> day of January, 2021, at Yorba Linda,  
19 California.

20  
21   
22 Austin Lechtanski  
23  
24  
25  
26  
27  
28

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  
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  
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 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”)<sup>1</sup>. 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  
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<sup>1</sup> [www.covid19.ca.gov/safer-economy/](http://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 6<sup>th</sup> 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 27<sup>th</sup> day of January, 2021, at Riverside, California.

25  
26 /s/ Elan J. Dunaev

27 Elan J. Dunaev

## Exhibit C Exhibits

# EXHIBIT 1

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

EXECUTIVE ORDER N-33-20

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

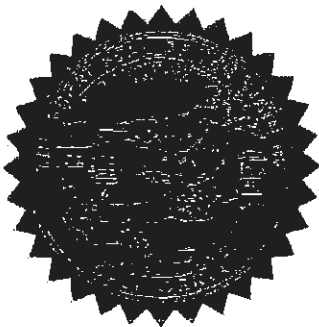
The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 19th day  
of March 2020.



GAVIN NEWSOM  
Governor of California

ATTEST:

ALEX PADILLA  
Secretary of State

# **EXHIBIT 2**



SANDRA SHEWRY, MPH, MSW  
*Acting Director*  
ERICA S. PAN, MD, MPH  
*Acting State Health Officer*

State of California—Health and Human Services Agency  
**California Department of Public Health**



GAVIN NEWSOM  
*Governor*

**Regional Stay At Home Order**  
**12/03/2020**

Upon assessment of the recent, unprecedented rise in the rate of increase in COVID-19 cases, hospitalizations, and test positivity rates across California, the California Department of Public Health (CDPH) is taking immediate actions to prevent the spread of the virus.

The State, like the nation, continues to record an unprecedented surge in the level of community spread of COVID-19. California implemented an accelerated application of the Blueprint Framework metrics on November 16 and a limited Stay at Home Order issued on November 19. However, in the interim, the number of new cases per day has increased by over 112%, (from 8,743 to 18,588) and the rate of rise of new cases per day continues to increase dramatically. The number of new hospital admissions has increased from 777 on November 15, to 1,651 on December 2, and because of the lag between case identification and hospitalizations, we can only expect these numbers to increase.

Current projections show that without additional intervention to slow the spread of COVID-19, the number of available adult Intensive Care Unit (ICU) beds in the State of California will be at capacity in mid-December. This is a sign that the rate of rise in cases, if it continues, is at risk of overwhelming the ability of California hospitals to deliver healthcare to its residents suffering from COVID-19 and from other illnesses requiring hospital care. ICU beds are a critical resource for individuals who need the most advanced support and care and the ability to add additional ICU capacity is limited by the lack of available ICU nurses and physicians as a result of the nationwide surge in hospitalizations and ICU admissions.

Because the rate of increases in new cases continues to escalate and threatens to overwhelm the state's hospital system, further aggressive action is necessary to respond to the quickly evolving situation. While vaccines are promising future interventions, they are not available to address the immediate risks to healthcare delivery in the current surge. The immediate aggressive institution of additional non-pharmaceutical public health interventions is critical to avoid further overwhelming hospitals and to prevent the need to ration care.



**NOW, THEREFORE, I, as Acting State Public Health Officer of the State of California, order:**

1. CDPH will evaluate public health based on Regions, responsive to hospital capacity for persons resident in those Regions.
2. CDPH will evaluate the adult ICU bed capacity for each Region and identify on [covid19.ca.gov](https://covid19.ca.gov) any Regions for which that capacity is less than 15%. When that capacity is less than 15%, the following terms (the Terms of this Order) will apply.
  - a. All gatherings with members of other households are prohibited in the Region except as expressly permitted herein.
  - b. All individuals living in the Region shall stay home or at their place of residence except as necessary to conduct activities associated with the operation, maintenance, or usage of critical infrastructure,<sup>1</sup> as required by law, or as specifically permitted in this order.
  - c. Worship and political expression are permitted outdoors, consistent with existing guidance for those activities.
  - d. Critical infrastructure sectors may operate and must continue to modify operations pursuant to the applicable sector guidance.
  - e. Guidance related to schools remain in effect and unchanged. Accordingly, when this Order takes effect in a Region, schools that have previously reopened for in-person instruction may remain open, and schools may continue to bring students back for in-person instruction under the Elementary School Waiver Process or Cohorting Guidance.
  - f. In order to reduce congestion and the resulting increase in risk of transmission of COVID-19 in critical infrastructure retailers, all retailers may operate indoors at no more than 20% capacity and must follow the guidance for retailers. All access to retail must be strictly metered to ensure compliance with the limit on capacity. The sale of food, beverages, and alcohol for in-store consumption is prohibited.
  - g. To promote and protect the physical and mental well-being of people in California, outdoor recreation facilities may continue to operate. Those facilities may not sell food or drink for on-site consumption. Overnight stays at

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<sup>1</sup> See <https://covid19.ca.gov/essential-workforce/> for full list of California's Critical Infrastructure workforce.

campgrounds are not permitted.

- h. Nothing in this Order prevents any number of persons from the same household from leaving their residence, lodging, or temporary accommodation, as long as they do not engage in any interaction with (or otherwise gather with) any number of persons from any other household, except as specifically permitted herein.
    - i. Terms (a) and (b) of this section do not apply to persons experiencing homelessness.
- 3. Except as otherwise required by law, no hotel or lodging entity in California shall accept or honor out of state reservations for non-essential travel, unless the reservation is for at least the minimum time period required for quarantine and the persons identified in the reservation will quarantine in the hotel or lodging entity until after that time period has expired.
- 4. This order shall take effect on December 5, 2020 at 1259pm PST.
- 5. For Regions where the adult ICU bed capacity falls below 15% after the effective date of this order, the Terms of this Order shall take effect 24 hours after that assessment.
- 6. The Terms of this Order shall remain in place for at least three weeks from the date the order takes effect in a Region and shall continue until CDPH's four-week projections of the Region's total available adult ICU bed capacity is greater than or equal to 15%. Four-week adult ICU bed capacity projections will be made approximately twice a week, unless CDPH determines that public health conditions merit an alternate projection schedule. If after three weeks from the effective date of the Terms of this Order in a Region, CDPH's four-week projections of the Region's total available adult ICU bed capacity is greater than or equal to 15%, the Terms of this Order shall no longer apply to the Region
- 7. After the termination of the Terms of this Order in a Region, each county within the Region will be assigned to a tier based on the Blueprint for a Safer Economy as set out in my August 28, 2020 Order, and the County is subject to the restrictions of the Blueprint appropriate to that tier.
- 8. I will continue to monitor the epidemiological data and will modify this Regional Stay-at-Home Order as required by the evolving public health conditions. If I determine that it is necessary to change the Terms of this Order, or otherwise modify the Regional Stay-at-Home Order, these modifications will be posted at covid19.ca.gov.

9. When operative in a Region, the Terms of this Order supersede any conflicting terms in other CDPH orders, directives, or guidance. Specifically, for those Regions with ICU bed capacity triggering this order, the Terms of this Order shall supersede the State's Blueprint for a Safer Economy and all guidance (other than guidance for critical infrastructure sectors) during the operative period. In all Regions that are not subject to the restrictions in this order, the Blueprint for a Safer Economy and all guidance shall remain in effect.
10. This order is issued pursuant to Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120175, 120195 and 131080; EO N-60-20, N-25-20, and other authority provided for under the Emergency Services Act; and other applicable law.



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Erica S. Pan, MD, MPH  
Acting State Public Health Officer  
California Department of Public Health

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 GEOFF HIRD**

20  
21 I, Geoff Hird, declare as follows:

22 1. I am an ice hockey referee at 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 referee at Icetown for several years and working at the  
27 facility as a referee prior to it being shut down by Defendant, CITY OF  
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1 RIVERSIDE ("City") in September of 2020. While working as a referee at the  
2 facility prior to its forced shutdown, Icetown required all patrons and employees to  
3 wear masks, limited the number of people permitted in the building, closed off all  
4 sitting areas, bleachers, and showers to promote social distancing, had enhanced  
5 cleaning, sanitizing, and disinfecting procedures in place, as well as installed several  
6 hand sanitizing dispensers throughout the building. Icetown put all these measures  
7 in place to abide by the recommendations provided by the Center for Disease  
8 Control and Prevention ("CDC").

9 3. Since Icetown was shut down by the City, I have been forced to referee  
10 ice hockey elsewhere. Specifically, since October of 2020, I have been refereeing  
11 ice hockey at the Center Ice Skating Arena ("Center Ice") located in the city of  
12 Ontario, county of San Bernardino, California, approximately once a week since the  
13 shutdown of Icetown as such facility is open to the public and currently holding  
14 adult league hockey games. In fact, the adult hockey league at Center Ice has nearly  
15 doubled in size since the shutdown of Icetown by the City, as teams have now  
16 moved to Center Ice to play since they are no longer able to play at Icetown. I  
17 desire to referee at Icetown, however I'm unable to do so since it has been shutdown  
18 by the City.

19  
20 I declare under penalty of perjury under the laws of the State of California  
21 and the United States of America that the foregoing is true and correct.

22 Executed this 26<sup>th</sup> day of January, 2021, at Riverside,  
23 California.

24  
25   
26 Geoff Hird

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  
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 JOHNNIE**  
**VIESSMAN**

21 I, Johnnie Viessman, declare as follows:

22 1. I am a floor supervisor for Plaintiff DUNN ENTERPRISES, INC. DBA  
23 ICETOWN ("Icetown") and have been employed by Icetown for fourteen (14)  
24 years. I have personal knowledge of the matters stated in this Declaration, and if  
25 called upon to do so, would competently testify to the facts stated herein.

26 2. For the brief time that Icetown was open and operational since the start  
27 of the Covid-19 pandemic, we required all patrons and employees to wear masks,  
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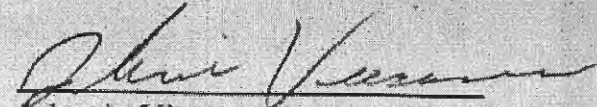
1 limited the number of people permitted in the building, closed off all sitting areas,  
2 bleachers, and showers to promote social distancing, had enhanced cleaning,  
3 sanitizing, and disinfecting procedures in place, as well as installed several hand  
4 sanitizing dispensers throughout the building. Icetown put all these measures in  
5 place to abide by the recommendations provided by the Center for Disease Control  
6 and Prevention ("CDC").

7 3. Since Icetown was shut down by Defendant THE CITY OF  
8 RIVERSIDE ("City") in September of 2020, there has been no work for me at the  
9 facility. Icetown has been unfairly singled out and targeted by the State of  
10 California ("State"), City, and County of Riverside ("County") as it was shut down  
11 via a court ordered injunction in September of 2020, while other businesses continue  
12 to defy the State's orders, however are not being shut down by the State, City, or  
13 County.

14 4. Earlier this month in January of 2021, I personally witnessed IHOP and  
15 Norms restaurants in the city of Riverside open for indoor dining. Additionally, I  
16 also witnessed Crunch Fitness, a gym in the city of Riverside, which was open and  
17 allowing customers to work out inside their gym. These businesses continue to defy  
18 the State's orders, however neither the State, City, nor the County are shutting them  
19 down just as they've done to Icetown.

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 22 day of January, 2021, at Riverside, California.

25  
26   
27 Johnnie Viessman  
28

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.  
20

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

**DECLARATION OF JUSTIN**  
**SOAPES**

21 I, Justin 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  
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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 Yorba Linda located  
11 in the city of Yorba Linda, 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 22 day of January, 2021, at 12:05  
19 California.

20  
21  
22   
23 Justin Soapes  
24  
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26  
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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  
9 **CENTRAL DISTRICT OF CALIFORNIA**

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

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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 MONICA**  
**VIOLA**

21 I, Monica Viola, declare as follows:

22 1. I am the figure skating director for Plaintiff DUNN ENTERPRISES,  
23 INC. DBA ICETOWN ("Icetown") and have held this position with Icetown for five  
24 (5) years. I have personal knowledge of the matters stated in this Declaration, and if  
25 called upon to do so, would competently testify to the facts stated herein.

26 2. For the brief time that Icetown was open and operational since the start  
27 of the Covid-19 pandemic, we required all patrons and employees to wear masks,  
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1 limited the number of people permitted in the building, closed off all sitting areas,  
2 bleachers, and showers to promote social distancing, had enhanced cleaning,  
3 sanitizing, and disinfecting procedures in place, as well as installed several hand  
4 sanitizing dispensers throughout the building. Icetown put all these measures in  
5 place to abide by the recommendations provided by the Center for Disease Control  
6 and Prevention (“CDC”).

7 3. Since Icetown was shut down by Defendant the CITY OF RIVERSIDE  
8 (“City”) in September of 2020, on or about December 22, 2020, I took several of my  
9 figure skating students to the ice rink in Temecula, which is located in County of  
10 Riverside (“County”). Despite the State’s orders, the County has permitted this ice  
11 rink to be open because it is considered “outdoor.” Although this ice rink has been  
12 classified as “outdoor,” it is completely enclosed by a tent, essentially making it an  
13 indoor rink.

14 4. In addition to the ice rink in Temecula being indoor as it is completely  
15 enclosed by a tent, absolutely no social distancing is being practiced at the rink.  
16 Specifically, human trains of ten (10) or more people were being formed on the ice  
17 where individuals were physically touching each other. Two photographs which I  
18 personally took of these human trains that I witnessed are attached hereto as **Exhibit**  
19 **1.**

20 5. At no time since the Covid-19 pandemic was public skating ever  
21 permitted at Icetown. Due to the fact that public skating was not permitted at  
22 Icetown, no human trains were able to be formed by patrons as the only events  
23 taking place were organized figure skating and youth hockey programs.

24 6. Additionally, Icetown has state of the art equipment in its facility such  
25 as dehumidifiers for the purpose of air circulation. From what I could see, the rink  
26 in Temecula had so such equipment since it is a make-shift rink enclosed by a tent.

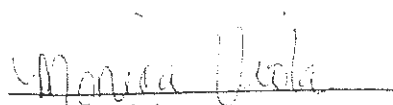
27 7. From my experience, skating at Icetown is much safer than at the rink  
28 in Temecula because (1) Icetown’s programs are controlled and limited which

1 ensure social distancing and (2) Icetown's chiller equipment allows for far greater  
2 air circulation and medical professionals have stated that greater air circulation helps  
3 promote a safer environment relating to Covid-19.

4 8. Despite the above facts, the County permits the rink in Temecula to  
5 operate, however has made sure that Icetown remains shut down.

6  
7  
8 I declare under penalty of perjury under the laws of the State of California  
9 and the United States of America that the foregoing is true and correct.

10 Executed this 19 day of January, 2021, at Riverside, California.

11  
12   
13 Monica Viola

# EXHIBIT 1







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 JWH**  
**(SHKx)**

**DECLARATION OF NIK NUNEZ**

I, Nik Nunez, declare as follows:

1. I have personal knowledge of the matters stated in this Declaration, and if called upon to do so, would competently testify to the facts stated herein.

2. Since August of 2020, I have been playing adult league roller hockey at the The Rinks Corona Inline located in the city of Corona, county of Riverside, California, approximately once a week. The Rinks Corona Inline is open to the public despite the orders from the State of California.



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 Murrieta, California.  
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Nik Nunez

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 JWH  
(SHKx)**

**DECLARATION OF PETER  
MELENDEZ**

I, Peter Melendez, declare as follows:

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

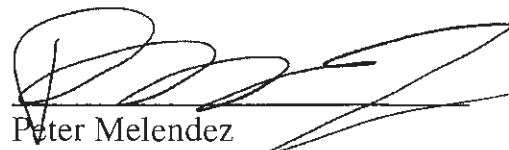
2. I have been a customer of Icetown for several years and was skating at the facility prior to it being shut down by Defendant, CITY OF RIVERSIDE

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 Ontario Ice Skating Center  
11 located in the city of Ontario, county of San Bernardino, California, approximately  
12 once a week since the shutdown of Icetown as such facility is open to the public. I  
13 desire to skate at Icetown, however I'm unable to do so since it has been shutdown  
14 by the City.

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

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

21  
22  
23   
Peter Melendez

PLAINTIFF: Claudia Segura	CASE NUMBER:
DEFENDANT: Beyond Staffing Solutions, Inc., et al	CIVDS1908672

## PROOF OF SERVICE

(After having the other party served as described below, with any of the documents in item 1, have the person who served the documents complete this Proof of Service. Plaintiff cannot serve these papers.)

1. I served the
- a. ☒ Statement of Damages ☐ Other (specify):
- b. on (name): **Beyond Staffing Solutions for Diamond PEO**
- c. by serving ☐ defendant ☒ Other (name and title or relationship to person served): **Andre Avillas - Bookkeeper**  
 Race: Latino Sex: Male Age: 26-30yrs  
 Height: 5'7"-6'0" Weight: 161-180lbs Hair: Brown
- d. ☒ By Delivery ☐ at home ☒ at business  
 (1) date: **10/19/2020**  
 (2) time: **2:20 PM**  
 (3) address: **760 N Euclid St Ste 207, Anaheim, CA 928014124**
- e. ☐ By mailing  
 (1) date:  
 (2) place:
2. Manner of service (check proper box):
- a. ☐ **Personal service.** By personally delivering copies. (CCP § 415.10)
- b. ☒ **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP C 415.20(a))
- c. ☐ **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP C 415.20(b)) **(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)**
- d. ☐ **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP C 415.30) **(Attach completed acknowledgment of receipt.)**
- e. ☐ **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP ? 415.40) **(Attach a signed return receipt or other evidence of actual delivery to the person served.)**
- f. ☐ Other (specify code section):  
☐ additional page is attached.

3. At the time of service I was at least 18 years of age and not a party to this action.

4. Fee for service: \$ **113.90**

5. Person Serving:

- a. ☐ California sheriff, marshal, or constable
- b. ☐ Registered California process server
- c. ☒ Employee or independent contractor of a registered California process server
- d. ☐ Not a registered California process server
- e. ☐ Exempt from registration under Bus. & Prof. Code C 22350(b)

f. Name, address and telephone number and, if applicable, county of registration and number:

**David R. Pighin, DDS Legal Support**  
**2900 Bristol Street**  
**Costa Mesa, CA 92626**  
**Registration: 2181 Phone: (714) 662-5555**

**(For California sheriff, marshal, or constable use only)**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

I certify that the foregoing is true and correct.

Date: **10/20/2020**

Date:

(SIGNATURE)

(SIGNATURE)



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.  
20

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

**DECLARATION OF ZACK DANIEL**

21 I, Zack Daniel, 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  
DECLARATION OF ZACK DANIEL

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 KHS Ice Arena located in the city of  
11 Anaheim, county of Orange, California, approximately once a week since the  
12 shutdown of Icetown as such facility is open to the public. I desire to skate at  
13 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 21<sup>st</sup> day of January, 2021, at CORONA,  
19 California.

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21 

22 Zack Daniel  
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10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 DUNN ENTERPRISES, INC.

13 Plaintiff(s),

14 v.

15 GAVIN NEWSOM, et al.

16 Defendant(s).  
17  
18  
19

Case No. 5:21-cv-00048-JWH-SHK

**STANDING ORDER**

20  
21 **PLEASE READ THIS ORDER CAREFULLY. IT CONTROLS THIS CASE**  
22 **AND DIFFERS IN SOME RESPECTS FROM THE LOCAL RULES.**  
23

- 24 • If this case was removed to this Court, the removing Defendant shall  
25 immediately serve this Order on all other parties.  
26 • Otherwise, Plaintiff shall immediately serve this Order on all parties.  
27  
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1 This action has been assigned to the calendar of Judge John W. Holcomb.

2 The Court and litigants bear joint responsibility for the progress of litigation  
3 in the Federal Courts. To secure the just, speedy, and inexpensive determination of  
4 every action, *see* Fed. R. Civ. P. 1, all counsel are hereby ordered to become  
5 familiar with the Federal Rules of Civil Procedure and the Local Rules of the  
6 Central District of California.

7 The Court further orders as follows:

8 **1. Service of the Complaint.** Plaintiff shall serve the Complaint  
9 promptly in accordance with Rule 4 of the Federal Rules of Civil Procedure and  
10 shall file the proofs of service pursuant to L.R. 5-3.1.

11 **2. Removed Actions.** Any answers filed in state court must be re-filed  
12 in this Court, either as an exhibit to the Notice of Removal or as a separate filing.  
13 Any pending motions must be re-noticed in accordance with L.R. 6-1.

14 **3. Assignment to a Magistrate Judge.** Under 28 U.S.C. § 636, the  
15 parties may consent to have a Magistrate Judge preside over all proceedings. The  
16 Magistrate Judges who accept those designations are identified on the Central  
17 District's website, which also contains the consent form.

18 **4. Electronic Filing.** This Court uses an electronic filing system for  
19 documents. Information regarding the Court's Electronic Case Filing system is  
20 available on the Court's website at [www.cacd.uscourts.gov/cmecf](http://www.cacd.uscourts.gov/cmecf).

21 All documents required to be e-filed in this matter can be found in General  
22 Order No. 10-07 and L.R. 5-4. The Court specifically directs litigants to  
23 L.R. 5-4.3.1, requiring that all electronically filed documents be created by  
24 publishing the document to PDF, and not by scanning paper documents.

25 **5. Mandatory Chambers Copies.** All original filings are to be filed  
26 electronically pursuant to Local Rule 5-4. The Court requires one (1) Mandatory  
27 Chambers Copy of ONLY the following filed documents:  
28

1           a.     Civil matters: Motions and related documents (*e.g.*,  
2           oppositions, replies, exhibits); *ex parte* applications and related documents  
3           (*e.g.*, oppositions and exhibits); and Joint Rule 26(f) reports;

4           b.     Criminal matters: All motions and related documents and  
5           exhibits; plea agreements(s); and sentencing memorandum and objections to  
6           the pre-sentence reports.

7           Mandatory Chambers Copies shall be delivered to the Courtesy Box, located  
8           outside of Courtroom 2 on the second floor of the United States District Court,  
9           3470 Twelfth Street, Riverside, California 92501, no later than 5:00 p.m. on the  
10          first court day following the e-filing. Alternatively, Counsel may transmit such  
11          conformed Mandatory Chambers Copies via FedEx, UPS, or other overnight  
12          service, for delivery no later than 5:00 p.m. on the first court day following the  
13          e-filing, addressed to the Chambers of Judge John W. Holcomb, U.S. District  
14          Court for the Central District of California, Courtroom 2, 3470 Twelfth Street,  
15          Riverside, CA 92501. All Mandatory Chambers Copies shall comply with the  
16          document formatting requirements of L.R. 11-3, *except for the blue-backing*  
17          *requirement of L.R. 11-4.1, which is hereby waived*. If the filing party and its  
18          counsel fail to deliver a Mandatory Chambers Copy in full compliance with this  
19          Order and L.R. 11-3, the Court may, on its own motion, reschedule any related  
20          hearing and impose sanctions.

21          **6. Proposed Orders.** Each party filing or opposing a motion or seeking  
22          the determination of any matter shall serve and electronically lodge a proposed  
23          order that sets forth the relief or action sought and a brief statement of the rationale  
24          for the decision with appropriate citations.

25          **7. Presence of Lead Counsel.** Lead trial counsel for each party must  
26          attend any scheduling and pretrial conferences set by the Court. Failure of lead  
27          trial counsel to appear for those proceedings is a basis for sanctions.  
28

1       **8. Discovery.** All discovery matters have been referred to a United  
2 States Magistrate Judge. The Magistrate Judge's initials follow the District  
3 Judge's initials in the case number assigned to the matter. The words  
4 "DISCOVERY MATTER" shall appear in the caption of all documents relating to  
5 discovery to insure proper routing. Unless the assigned Magistrate Judge explicitly  
6 waives the Mandatory Chambers Copy rule, Counsel shall deliver Mandatory  
7 Chambers Copies of discovery-related papers to the assigned Magistrate Judge  
8 (rather than to this Court).

9       **9. Motions - General Requirements.**

10       a. Time for Hearing Motions. Motions shall be filed and set for  
11 hearing in accordance with L.R. 6-1. Motions will be heard on Fridays  
12 commencing at 9:00 a.m. Any motion noticed for a holiday shall  
13 automatically be set to the next Friday without further notice to the parties.

14       b. Length and Format of Motions. Memoranda of Points and  
15 Authorities in support of or in opposition to motions shall not exceed 25  
16 pages. Replies shall not exceed 12 pages. Only in rare instances, and for  
17 good cause shown, will the Court grant an application to extend these page  
18 limitations. When citing to legal databases, wherever possible cite to  
19 Westlaw rather than Lexis.

20       c. Voluminous Materials. If documentary evidence in support of  
21 or in opposition to a motion exceeds 50 pages, the evidence must be  
22 separately bound and tabbed and include an index. If such evidence exceeds  
23 200 pages, the documents shall be placed in a three-ring binder, with an  
24 index and with each item of evidence separated by a tab divider.

25       d. Withdrawal of, or Non-Opposition to, Motions. In the event  
26 that the parties resolve a pending motion, they must notify the Court  
27 immediately. Sanctions may issue for failure to comply with this  
28 requirement, or the broader requirement set forth in L.R. 7-16 that any party

1 who intends to withdraw a motion, not to oppose a motion, or to seek a  
2 continuance of the hearing date for a motion, must notify the Court by noon  
3 on the Tuesday preceding the hearing date.

4 **10. Motions to Amend.** In addition to the requirements of L.R. 15, all  
5 motions to amend pleadings shall (1) state the effect of the amendment; and  
6 (2) identify the page(s), line number(s), and wording of any proposed change or  
7 addition of material.

8 **11. Class Actions.** Notwithstanding L.R. 23-3, the deadline for the filing  
9 of a motion for class certification will be set during the Scheduling Conference  
10 and/or in a Scheduling Order. If the Court does not expressly set a separate  
11 deadline for the filing of a motion for class certification, then such deadline shall  
12 be the same as the deadline for filing dispositive motions. *No request for relief*  
13 *from L.R. 23-3 is necessary.*

14 **12. Motions for Summary Judgment or Partial Summary Judgment.**  
15 No party may file more than one motion pursuant to Rule 56 of the Federal Rules  
16 of Civil Procedure regardless of whether such motion is denominated as a motion  
17 for summary judgment or summary adjudication. Parties offering evidence in  
18 support of, or in opposition to, a Rule 56 motion must cite to specific page and line  
19 numbers in depositions and paragraph numbers in declarations and affidavits.  
20 Furthermore, such evidence must be authenticated properly. The Court directs the  
21 parties to become familiar with *Orr v. Bank of America, NT & SA*, 285 F.3d 764  
22 (9th Cir. 2002).

23 a. Statements of Undisputed Facts and Genuine Disputes. The  
24 moving party's brief shall be accompanied by a Statement of Undisputed  
25 Facts ("SUF"). The SUF shall be presented in a table format and include the  
26 following columns:

27 i. The first column shall contain the number of the fact  
28 alleged to be undisputed.

ii. The second column shall contain a plain statement of the fact. *Facts shall not be compound.* If, for instance, the required response is that the fact is disputed in part, the fact is compound. Further, neither legal arguments nor conclusions constitute facts.

iii. The third column shall contain a citation to admissible evidence the party believes supports the proffered fact.

For example:

<u>Pl.'s SUF No.</u>	<u>Fact</u>	<u>Supporting Evidence</u>
1.	Plaintiff was driving her car when she went through the intersection.	Decl. of Plaintiff ¶2.
2.	The light was green when Plaintiff went through the intersection.	Decl. of Plaintiff ¶4.
3.	Plaintiff was driving at 35 miles per hour when she traveled through the intersection.	Decl. of Plaintiff ¶ Decl. of Plaintiff's Expert ¶ 14.
...	...	...

The party opposing the summary judgment motion shall include with its opposition a Statement of Genuine Disputes of Material Fact that includes the moving party's table, but the opposing party shall add a fourth column to the moving party's table identifying those facts that are in dispute, briefly explaining the dispute, and citing the evidence supporting the dispute. The opposing party shall not set forth legal or evidentiary objections in the statement of genuine disputes of material fact. For example:

<u>PL's SUF No.</u>	<u>Fact</u>	<u>Supporting Evidence</u>	<u>Def.'s Response</u>
1.	Plaintiff was driving her car when she went through the intersection.	Decl. of Plaintiff ¶ 2.	Undisputed.
2.	The light was green when Plaintiff went through the intersection.	Decl. of Plaintiff ¶ 4.	Disputed. The light was red when Plaintiff traveled through the intersection. (Decl. of Defendant ¶ 6.)
3.	Plaintiff was driving at 35 miles per hour when she traveled through the intersection.	Decl. of Plaintiff ¶ 7; Dec. of Plaintiff's Expert ¶ 14.	Disputed. Plaintiff was driving 52 miles per hour when she went through the intersection. (Decl. of Defendant's Expert ¶ 9.)
...	...	...	...

If a party fails to dispute a fact properly by offering evidence that does not contradict the proffered fact, the Court will deem the fact undisputed for purposes of the motion. *See* Fed. R. Civ. P. 56(e)(2), L.R. 56-3.

If the party opposing the summary judgment motion wishes to include its own set of undisputed facts, it may include them in a second table at the end of its statement of genuine disputes of material fact. The opposing party's undisputed facts shall be set forth in the same manner as the moving party's SUF. For example:

<u>Def.'s SUF No.</u>	<u>Fact</u>	<u>Supporting Evidence</u>
1.	The tires on Plaintiff's car had only 1 millimeter of tread remaining at the time of the accident.	Decl. of Mechanic ¶ 5.
...	...	...

If either party fails to provide a pin cite to the supporting evidence, the Court will deem the proffered fact (or dispute) unsupported. *See generally Christian Legal Soc. v. Wu*, 626 F.3d 483, 488 (9th Cir. 2010) (“Judges are not like pigs, hunting for truffles buried in briefs.” (quoting *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (*per curiam*)) (alteration omitted))).

b. Objections to Evidence. Parties shall file any legal objections to the other party’s proffered evidence under separate cover. The evidentiary objections should be presented in a three-column format and include the following columns:

i. The first column shall contain the number of the fact objected to, using the numbering submitted in the moving party’s SUF if applicable.

ii. The second column shall identify the item objected to, including its page and line number if applicable.

iii. The third column shall set forth a concise objection (*e.g.*, hearsay, lacks foundation, etc.) with a citation to the Federal Rules of Evidence or, where applicable, a case citation.

For example:

<u>Fact No.</u>	<u>Fact</u>	<u>Objection</u>
3.	Plaintiff was driving at 35 miles per hour when she traveled through the intersection. (Decl. of Plaintiff ¶ 7; Decl. of Plaintiff’s Expert ¶ 14)	Irrelevant. F.R.E. 402.
...	...	...

**13. Ex Parte Applications.** *Ex Parte* applications are considered on the papers and are not usually set for hearing. Counsel are advised that this Court

1 allows *ex parte* applications solely for extraordinary relief. Sanctions may be  
 2 imposed for misuse of *ex parte* applications. *See In re Intermagnetics Am., Inc.*,  
 3 101 B.R. 191 (Bankr. C.D. Cal. 1989). Counsel also should become familiar with  
 4 *Mission Power Engineering Co. v. Continental Casualty Co.*, 883 F. Supp. 488  
 5 (C.D. Cal. 1995), regarding *ex parte* applications.

6 The Court directs Counsel's attention to L.R. 7-19. The moving party's  
 7 declaration in support of an *ex parte* application shall show compliance with  
 8 L.R. 7-19 and this Order, and it shall include a statement of opposing counsel's  
 9 position. Failure to do so ensures the application will be DENIED. If counsel does  
 10 not intend to oppose an *ex parte* application, counsel must inform the Courtroom  
 11 Deputy Clerk (951-328-4462). As with all motion papers, counsel must deliver a  
 12 Mandatory Chambers Copy in accordance with Paragraph 5 above. Counsel will  
 13 be notified by the Courtroom Deputy Clerk of the Court's ruling, or of a hearing  
 14 time and date if the Court determines that a hearing is necessary.

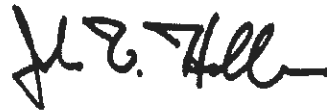
15 **14. Stipulations.** Stipulations extending scheduling dates set by this  
 16 Court are not effective unless approved by the Court. Continuances will be  
 17 granted only upon a showing of good cause.

18 **15. Communications with Chambers.** Unless requested to do so,  
 19 counsel shall not attempt to contact the Court or its staff by telephone or by any  
 20 other *ex parte* means. Counsel are directed to review the Central District's website  
 21 at [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov) for the Local Rules, filing procedures, judges'  
 22 procedures and schedules, calendars, forms, and Pacer access. Counsel may  
 23 contact the Courtroom Deputy Clerk, Irene Vazquez, by telephone at  
 24 951-328-4462 or by email at [irene\\_vazquez@cacd.uscourts.gov](mailto:irene_vazquez@cacd.uscourts.gov) only in the event  
 25 that counsel cannot find the desired information through all available resources.

26 **16. Telephonic and Video Appearances.** Counsel must request a  
 27 telephonic or video appearance for a hearing through the Courtroom Deputy Clerk,  
 28



1 by email at JWH\_Chambers@cacd.uscourts.gov, at least one week before  
2 the scheduled hearing.

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4 Dated: January 14, 2021

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John W. Holcomb  
UNITED STATES DISTRICT JUDGE

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

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DUNN ENTERPRISES, INC.

Plaintiff(s)

v.

GAVIN NEWSON, et al.

Defendant(s).

CASE NUMBER:

5:21-cv-00048-JWH-SHK

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**NOTICE TO PARTIES OF  
COURT-DIRECTED ADR PROGRAM**

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**NOTICE TO PARTIES:**

It is the policy of this Court to encourage settlement of civil litigation when such is in the best interest of the parties. The Court favors any reasonable means, including alternative dispute resolution (ADR), to accomplish this goal. *See* L.R. 16-15. Unless exempted by the trial judge, parties in all civil cases must participate in an ADR process before trial. *See* L.R. 16-15.1.

The district judge to whom the above-referenced case has been assigned is participating in an ADR Program that presumptively directs this case to either the Court Mediation Panel or to private mediation. *See* General Order No. 11-10, §5. For more information about the Mediation Panel, visit the Court website, [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov), under "ADR."

Pursuant to L.R. 26-1(c), counsel are directed to furnish and discuss with their clients the attached ADR Notice To Parties *before* the conference of the parties mandated by Fed.R.Civ.P. 26(f). Based upon the consultation with their clients and discussion with opposing counsel, counsel must indicate the following in their Joint 26(f) Report: 1) whether the case is best suited for mediation with a neutral from the Court Mediation Panel or private mediation; and 2) when the mediation should occur. *See* L.R. 26-1(c).

At the initial scheduling conference, counsel should be fully prepared to discuss their preference for referral to the Court Mediation Panel or to private mediation and when the mediation should occur. The Court will enter an Order/Referral to ADR at or around the time of the scheduling conference.

Clerk, U.S. District Court

January 13, 2021  
Date

By /s/ Edwin Sambrano  
Deputy Clerk

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

**NOTICE TO PARTIES: COURT POLICY ON SETTLEMENT  
AND USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)**  
**Counsel are required to furnish and discuss this Notice with their clients.**

Despite the efforts of the courts to achieve a fair, timely and just outcome in all cases, litigation has become an often lengthy and expensive process. For this reason, it is this Court's policy to encourage parties to attempt to settle their disputes, whenever possible, through alternative dispute resolution (ADR).

ADR can reduce both the time it takes to resolve a case and the costs of litigation, which can be substantial. ADR options include mediation, arbitration (binding or non-binding), neutral evaluation (NE), conciliation, mini-trial and fact-finding. ADR can be either Court-directed or privately conducted.

The Court's ADR Program offers mediation through a panel of qualified and impartial attorneys who will encourage the fair, speedy and economic resolution of civil actions. Panel Mediators each have at least ten years of legal experience and are appointed by the Court. They volunteer their preparation time and the first three hours of a mediation session. This is a cost-effective way for parties to explore potential avenues of resolution.

This Court requires that counsel discuss with their clients the ADR options available and instructs them to come to the initial scheduling conference prepared to discuss the parties' choice of ADR option. The ADR options available are: a settlement conference before the magistrate judge assigned to the case or the magistrate judge in Santa Barbara, the Court Mediation Panel, and private mediation. Counsel are also required to indicate the client's choice of ADR option in advance of the initial scheduling conference. *See* L.R. 26-1(c) and Fed.R.Civ.P. 26(f).

Clients and their counsel should carefully consider the anticipated expense of litigation, the uncertainties as to outcome, the time it will take to get to trial, the time an appeal will take if a decision is appealed, the burdens on a client's time, and the costs and expenses of litigation in relation to the amounts or stakes involved.

Each year thousands of civil cases are filed in this district, yet typically no more than one percent go to trial. Most cases are settled between the parties, voluntarily dismissed, resolved through Court-directed or other forms of ADR, or dismissed by the Court as lacking in merit or for other reasons provided by law.

For more information about the Court's ADR Program, the Mediation Panel, and the profiles of mediators, visit the Court website, [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov), under "ADR."

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.  
20

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

**DECLARATION OF RICK**  
**BARBEAU**

21 I, Rick Barbeau, 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 East West Ice Palace located in  
11 the city of Artesia, county of Los Angeles, California, as well as at the Center Ice  
12 Skating Arena located in the city of Ontario, county of San Bernardino, California,  
13 approximately once a week since the shutdown of Icetown as such facility is open to  
14 the public. I desire to skate at Icetown, however I'm unable to do so since it has  
15 been shutdown by the City.

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

20 Executed this 26 day of January, 2021, at 11:00am,  
21 California.

J

22  
23   
24 Rick Barbeau

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  
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 RICK**  
**BARBEAU**

20  
21 I, Rick Barbeau, declare as follows:

22 1. I am a current customer of Plaintiff, DUNN ENTERPRISES, INC.  
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24 this Declaration, and if called upon to do so, would competently testify to the facts  
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24 Rick Barbeau

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**

**PLAINTIFF DUNN ENTERPRISES,  
INC. DBA ICETOWN'S NOTICE OF  
INTERESTED PARTIES**

**[L.R. 7.1-1]**

The undersigned, counsel of record for Plaintiff, DUNN ENTERPRISES, INC. DBA ICETOWN, certifies that the following parties may have a pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal.

- (1) Plaintiff Dunn Enterprises, Inc. dba Icetown;
- (2) Defendant Gavin Newsom;
- (3) Defendant City of Riverside;
- (4) Defendant County of Riverside.



1 Dated: January 12, 2021

**ELAN J. DUNAEV, ESQ.**

2  
3 By: /s/ Elan J. Dunaev

4 Elan J. Dunaev

5 Attorney for Plaintiff,

**DUNN ENTERPRISES, INC. DBA**  
**ICETOWN**

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**

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

20  
21 Plaintiff DUNN ENTERPRISES, INC. DBA ICETOWN ("Icetown") hereby  
22 respectfully applies, on an *ex parte* basis, for a temporary restraining order ("TRO")  
23 pending an order to show cause ("OSC") regarding the issuance of a preliminary  
24 injunction.

25 This application is made on the grounds that Defendants GAVIN NEWSOM  
26 ("Newsom"), THE CITY OF RIVERSIDE ("City"), and THE COUNTY OF  
27 RIVERSIDE ("County") (collectively referred to as "Defendants") have infringed  
28 upon Icetown's rights and freedoms afforded to it under the United States

1 Constitution. Specifically, Newsom's August 28, 2020 reopening plan called "The  
2 Blueprint for a Safe Economy" (the "Blueprint"), which allows certain businesses to  
3 operate depending on what type of business it is and what color the county where  
4 the business is located is currently in, is in violation of the Due Process Clause of  
5 the Fourteenth Amendment, as well as the Fifth Amendment Right to Travel and  
6 Takings Clause of the Fifth Amendment. Additionally, the manner in which the  
7 Blueprint is being enforced is in violation of the Equal Protection Clause of the  
8 Fourteenth Amendment. Icetown has been targeted and singled out by Defendants  
9 and been forced to shut down, while other businesses continue to defy Defendants'  
10 orders yet are permitted to continue operations. Due to Defendants' actions,  
11 Icetown is likely to prevail on the merits, has suffered irreparable harm, the balance  
12 in equities tip in Icetown's favor as Defendants will suffer little to no harm  
13 compared to what Icetown will suffer if the instant *Ex Parte* Application is denied,  
14 and a TRO/preliminary injunction is in the public's interest to ensure that  
15 individuals' constitutionally protected freedoms cannot be taken away via arbitrary,  
16 government overreach.

17 Since none of the Defendants have made an appearance in this matter as of  
18 the date of this *Ex Parte* Application, Icetown is unaware of counsel for any of the  
19 Defendants. (Decl. of Elan Dunaev, ¶ 11.) However, Icetown will provide notice of  
20 this *Ex Parte* Application to Defendants via personal service. *Id.* This *Ex Parte*  
21 Application is being sent to the process server on January 28, 2021, and Icetown has  
22 been advised that it will be served on all Defendants no later than February 2, 2021.  
23 (Decl. of Elan Dunaev, ¶ 12.) Once Icetown receives a proof of service from its  
24 process server, Icetown will file such proof of service immediately. *Id.*

25 This application is based on this *Ex Parte* Application, the accompanying  
26 Memorandum of Points and Authorities, 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 upon any further evidence and argument the Court considers.  
5  
6  
7

8 Dated: January 27, 2021

**ELAN J. DUNAEV, ESQ.**

9  
10 By: /s/ Elan J. Dunaev

Elan J. Dunaev

Attorney for Plaintiff,

**DUNN ENTERPRISES, INC. DBA  
ICETOWN**

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

**PLAINTIFF DUNN ENTERPRISES,  
INC. DBA ICETOWN'S *EX PARTE*  
APPLICATION FOR A  
TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
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1 Constitution. Specifically, Newsom's August 28, 2020 reopening plan called "The  
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5 the Fourteenth Amendment, as well as the Fifth Amendment Right to Travel and  
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7 Blueprint is being enforced is in violation of the Equal Protection Clause of the  
8 Fourteenth Amendment. Icetown has been targeted and singled out by Defendants  
9 and been forced to shut down, while other businesses continue to defy Defendants'  
10 orders yet are permitted to continue operations. Due to Defendants' actions,  
11 Icetown is likely to prevail on the merits, has suffered irreparable harm, the balance  
12 in equities tip in Icetown's favor as Defendants will suffer little to no harm  
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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 upon any further evidence and argument the Court considers.  
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6  
7

8 Dated: January 27, 2021

**ELAN J. DUNAEV, ESQ.**

9  
10 By: /s/ Elan J. Dunaev

11 Elan J. Dunaev

12 Attorney for Plaintiff,

**DUNN ENTERPRISES, INC. DBA  
13 ICETOWN**  
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## Exhibit D

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8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
10

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

18  
 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  
 24 the Application (the “Dunaev Decl.”) [ECF No. 12-2] ¶ 2.

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

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

27 <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  
 28 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>.

<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  
18  
19

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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  
the Equal Protection Clause of the Fourteenth Amendment of the United States  
28 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*,  
 21

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

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

19   
20 \_\_\_\_\_  
21 John W. Holcomb  
22 UNITED STATES DISTRICT JUDGE  
23  
24  
25

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.



# Exhibit E

## City of Riverside

### City Council

3900 Main St.  
Riverside, CA 92522  
(951) 826-5557

*City of Arts & Innovation*

## Agenda - Revised

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Meeting Date: Tuesday, March 2, 2021  
Publication Date: Friday, February 26, 2021

1:00 PM

View Virtual Meeting  
Live webcast at  
[Engageriverside.com](http://Engageriverside.com) or  
[WatchRiverside.com](http://WatchRiverside.com)

Originally Published: February 18, 2021

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### MISSION STATEMENT

**The City of Riverside is committed to providing high quality municipal services to ensure a safe, inclusive, and livable community**

**The City Council will conduct a virtual meeting.**

**The Art Pick Council Chamber will be closed to the public.  
View live webcast at [www.engageriverside.com](http://www.engageriverside.com).**

**For telephone public comment, call (951) 826-8600. Dial when the agenda item is called to be placed in the queue. Please follow along with the meeting via [www.engageriverside.com](http://www.engageriverside.com), RiversideTV cable channels, or City social media live feeds to ensure you call in at the appropriate time for your item or items. Time is limited to 3 minutes.**

**Public comments regarding items on this agenda or any matters within the jurisdiction of the City Council can be submitted by eComment at [www.engageriverside.com](http://www.engageriverside.com) until two hours before the meeting.  
Email comments to [City\\_Clerk@riversideca.gov](mailto:City_Clerk@riversideca.gov).**

*PLEASE NOTE--The numerical order of items on this agenda is for convenience of reference. Items may be taken out of order upon request of the Mayor or Members of the City Council.*

*Pursuant to the City Council Meeting Rules adopted by Resolution No. 23618, the Members of the City Council and the public are reminded that they must preserve order and decorum throughout the Meeting. In that regard, Members of the City Council and the public are advised that any delay or disruption in the proceedings or a refusal to obey the orders of the City Council or the presiding officer constitutes a violation of these rules. The City of Riverside is committed to a workplace that requires acceptable behavior from everyone - a workplace that provides dignity, respect, and civility to our*

employees, customers, and the public.

City Council meetings should be a place where all members of our community feel safe and comfortable participating. While there could be a high level of emotion associated with topics on this agenda, the city would like to set the expectations that all members of the public use language appropriate to a professional, respectful public environment.

The City of Riverside wishes to make all of its public meetings accessible to the public. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, as required by 42 U.S.C. §12132 of the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to the City's ADA Coordinator at 951-826-5427 at least 72 hours before the meeting, if possible. TTY users call 7-1-1 for telecommunications relay services (TRS).

Agenda related writings or documents provided to the City Council are available at [www.engage-riverside.com](http://www.engage-riverside.com).

## **1 P.M.**

MAYOR CALLS MEETING TO ORDER

### **PUBLIC COMMENT**

- 1 You are invited to participate by phone at 951-826-8600 to comment on Closed Session items and any matters within the jurisdiction of the City Council - Individual audience participation is limited to 3 minutes.

### **COMMUNICATIONS**

- 2 Intergovernmental relations and legislative update (City Manager) (All Wards) (5-minute presentation)
- 3 California Public Employees Retirement System challenge/financial solvency update (Finance) (All Wards) (5-minute presentation)
- 4 Homeless solutions update (City Manager) (All Wards) (5-minute presentation)
- 5 Pertinent health, safety, and security updates (City Manager) (All Wards) (15-minute presentation)
- 6 Rules and regulations created or suspended (City Manager) (All Wards) (5-minute presentation)

**PUBLIC HEARINGS/PLANNING REFERRALS AND APPEALS**

*Audience participation is encouraged. Individual audience participation is limited to 3 minutes.*

- 7 Case P20-0134 - Gaby Adame on behalf of Riverside Unified School District - A Resolution of the City Council of Riverside, California, making its findings and determinations in the matter of Resolution of Intention No. 23671; and making its order vacating an approximately 7,268-square foot public right-of-way consisting of a segment of Seventh Street and an approximately 3,150 square foot area consisting of an unimproved public alley located on the west side of Franklin Avenue between Seventh Street and University Avenue - Waive further reading - Determine project is exempt from further California Environmental Quality Act review pursuant to Section 15061(b)(3) (Common Sense Exemption) of California Environmental Quality Act Guidelines, as project will not have significant effect on environment - West of Franklin Avenue between Seventh Street and University Avenue (Community and Economic Development) (Ward 2) (5-minute presentation)

**Attachments:** [Report](#)  
[Resolution](#)  
[Legal Description](#)  
[2-2-21 CC Report](#)  
[PC Report](#)  
[R-23671](#)  
[Presentation](#)  
[Notice](#)

- 8 2019-2020 United States Department of Housing and Urban Development Annual Action Plan Amendment options including reprogramming CARES Act funding from United Way of the Inland Valleys Microenterprise Business Grant Assistance Program to 2019-2020 Food Resiliency Program - Memorandum of Understanding with Community and Economic Development for 2019-2020 Food Resiliency Program (Community and Economic Development Department) (All Wards) (10-minute presentation)

**Attachments:** [Report](#)  
[Notice](#)  
[Presentation](#)

- 9 CALL TOLL-FREE AT (866)967-5773 FOR PUBLIC COMMENT - ADDITIONAL PUBLIC COMMENT AND CITY COUNCIL VOTE AT 6:15 P.M. - Tax Equity and Fiscal Responsibility Act Public Hearing - A Resolution of the City Council of the City of Riverside approving the issuance by the California Statewide Communities Development Authority of Multifamily Housing Revenue Bonds for not-to-exceed \$15,000,000 for St. Michael's Apartments for acquisition and development of 50-unit multifamily rental housing project - Waive further reading - 4070 Jackson Street (Finance) (Ward 5) (10-minute presentation)

Attachments:    Report  
                          Resolution  
                          Presentation  
                          Notice

### PRESENTATION

- 10 Priority Based Budgeting update (City Manager) (All Wards) (5-minute presentation)

Attachments:    Presentation

### CLOSED SESSIONS

*Time listed is approximate. The City Council may adjourn to the below listed Closed Sessions at their convenience during this City Council meeting.*

- 11 Pursuant to Government Code §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning Summer Parada, et al. v City of Riverside, Riverside Superior Court Case No. RIC 1818642

Attachments:    Report

- 12 Pursuant to Government Code §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning City of Riverside v. ASAP Holding Co., et al., RCSC Case No. RIC 2003318

Attachments:    Report

- 13 Pursuant to Government Code §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning Christopher Desrosiers v City of Riverside, Court of Appeal, 4th District, Division 2, Case No. E075949; (Riverside Superior Court Case No. RIC 1811923)

Attachments:    Report

- 14 Pursuant to Government Code §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning Shawn Casteel v. City of Riverside, et al., RCSC Case No. RIC 1906046

Attachments: Report

- 15 Pursuant to Government Code §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning City of Riverside v. Dunn Enterprises, Inc., dba Icetown, etc., et al.; RCSC Case No.: RIC2003552

Attachments: Report

- 16 Pursuant to Government Code §54956.8 to instruct City's Negotiator, Al Zelinka, regarding price and terms of payment for the purchase, sale, exchange, or lease of 1393 University Avenue (Farm House Motel) APN: 250-190-009, by Bailey California Properties, LLC; Scott Bailey, Kyler Bailey, Alyssa Digangi and Beverly Bailey, Negotiators

Attachments: Report

- 17 Pursuant to Government Code §54956.9(d)(2) to confer with and/or receive advice from legal counsel concerning one case of anticipated litigation

Attachments: Report

- 18 Pursuant to Government Code §54956.9(d)(4) to confer with and/or receive advice from legal counsel concerning one case of anticipated litigation

Attachments: Report

- 19 Pursuant to Government Code §54957.6 to review the City Council's position and instruct designated representatives regarding salaries, salary schedules, or compensation paid in the form of fringe benefits of all Executive Management employees including the City Attorney and City Clerk, all Management and Confidential employees as defined by PERS, Fire Management Unit, Riverside City Firefighters Association, Riverside Police Officers Association (Police and Police Supervisory Units), Service Employees International Union #721, International Brotherhood of Electrical Workers #47, and Riverside Police Administrators Association

Attachments: Report

- 20 Pursuant to Government Code §54957 for appointment of City Clerk by City Council

Attachments: Report

- 21 Pursuant to Government Code §54957 for appointment of City Attorney by City Council

Attachments: Report

- 22 Pursuant to Government Code §54957 for performance evaluation of City Manager

Attachments: Report

### **6:15 P.M.**

INVOCATION - Councilmember Fierro

PLEDGE OF ALLEGIANCE TO THE FLAG

### **PUBLIC COMMENT**

- 23 You are invited to participate by phone at 951-826-8600 to comment on Consent Calendar items and any matters within the jurisdiction of the City Council - Individual audience participation is limited to 3 minutes.

### **MAYOR/COUNCILMEMBER COMMUNICATIONS**

- 24 Brief reports on conferences, seminars, and regional meetings attended by Mayor and City Council, Ward updates, and announcements of upcoming events

### **PRESENTATION**

- 24a Mayor Lock Dawson to present a proclamation in partnership with Councilmember Edwards and Councilwoman Plascencia to commemorate March as Women's History Month

### **CONSENT CALENDAR**

*All matters listed under the CONSENT CALENDAR are considered routine by the City Council and may be enacted by one motion in the form listed below. There will be no separate discussion of these items unless, before the City Council votes on the motion to adopt, Members of the City Council or staff request specific items be removed from the Consent Calendar for separate action. Removed consent items will be discussed following the Discussion Calendar.*

### **City Attorney**

- 25 Addition of Holland and Hart to law firm panel for power purchase agreement representation for not-to-exceed \$50,000 from Outside Legal Services Account (All Wards)

Attachments:    Report  
                         Agreement

- 26      Outside counsel expenditures for October 1 through December 31, 2020 (All Wards)

Attachments:    Report  
                         Expenditure Report

### City Clerk

- 27      Minutes of February 5, 9, and 16, 2021

Attachments:    2-5-21 Minutes  
                         2-9-21 Minutes  
                         2-16-21 Minutes

### City Council

- 28      Announcement of committee meeting:

Housing and Homelessness Committee at 3:30 p.m. on Monday, February 22, 2021, Virtual Meeting

### Finance

- 29      Award Bid 7804 to Ferguson Waterworks, Riverside, for \$212,826.14 from Fiscal Year 2020-21 Central Stores Account for copper pipe inventory with four additional twelve-month periods (All Wards)

Attachments:    Report  
                         Bid Award Recommendation  
                         BPU Minutes  
                         BPU Report

### Human Resources

- 30      Memorandum of Understanding with Service Employees' International Union Local 721, Refuse Unit, through June 30, 2022 - A Resolution of the City Council of the City of Riverside, California, amending Resolution No. 21052 to amend Parts I and II of the Fringe Benefits and Salary Plan, to reflect various updates and changes in connection with the Memorandum of Understanding with the Service Employees' International Union (SEIU) Local 721, Refuse Unit - Waive further reading (All Wards)



**Attachments:**    Report  
                          Resolution  
                          Fringe Benefits and Salary Plan  
                          MOU - Redlined

## Museum

- 31      National Trust for Historic Preservation grant of \$5,000 for Harada House exhibition  
         - Supplemental appropriation (All Wards)

**Attachments:**    Report  
                          Agreement

- 32      Accession of one 1870s woman's dress and supporting archival resources (All  
         Wards)

**Attachments:**    Report  
                          Minutes

- 33      Accession of one citrus packing industry tool (All Wards)

**Attachments:**    Report  
                          Minutes

- 34      Deaccession of six hundred eighty-one tools and components from Brendel Tool  
         Collection (All Wards)

**Attachments:**    Report  
                          Minutes  
                          Objects for Teaching Collection  
                          Objects for Transfer, Sale, or Destruction

- 35      Deaccession of twenty-three Hoopa Valley Tribe sacred objects including four  
         dance aprons, hair ornaments, and headdresses each, two dance baskets,  
         dentalium strings, and purses each, and one dress, headband, string bag,  
         necklace, and pipe each (All Wards)

**Attachments:**    Report  
                          Minutes

Public Works

- 36 Increase change order authority for Bid 7696 with H&H General Contractors, Inc., for \$116,031 from Measure A Capitol Outlay Fund Major Streets Rehabilitation Account for revised contract amount of \$5,362,690 for modifications to irrigation facilities encountered during Iowa Avenue Improvements from Martin Luther King Boulevard to University Avenue (Ward 2)

Attachments: [Report](#)  
[Location Map](#)

- 37 A Resolution of the City Council of the City of Riverside, California, amending Resolution No. 22451 known as the Master Parking Schedule Resolution to establish Timed 2-Hour, Timed No Parking, and Passenger Loading Zones on Market Street between First and Second Streets - Waive further reading (Ward 1)

Attachments: [Report](#)  
[Resolution](#)  
[Site Map](#)  
[Letter](#)

PUBLIC HEARINGS/PLANNING REFERRALS AND APPEALS

*Audience participation is encouraged. Individual audience participation is limited to 3 minutes.*

- 38 CALL TOLL-FREE AT (866)967-5773 FOR PUBLIC COMMENT - ADDITIONAL PUBLIC COMMENT AND CITY COUNCIL VOTE AT 6:15 P.M. - Tax Equity and Fiscal Responsibility Act Public Hearing - A Resolution of the City Council of the City of Riverside approving the issuance by the California Statewide Communities Development Authority of Multifamily Housing Revenue Bonds for not-to-exceed \$15,000,000 for St. Michael's Apartments for acquisition and development of 50-unit multifamily rental housing project - Waive further reading - 4070 Jackson Street (Finance) (Ward 5) (10-minute presentation)

Attachments: [Report](#)  
[Resolution](#)  
[Notice](#)  
[Presentation](#)

## DISCUSSION CALENDAR

*This portion of the City Council Agenda is for all matters where staff and public participation is anticipated. Individual audience participation is limited to 3 minutes.*

- 39 Award Bid 7705 to All American Asphalt, Corona, for \$2,681,359 from Gas Tax Road Maintenance and Rehabilitation Account for Fiscal Year 2019-20 Senate Bill-1 Maintenance and Traffic Improvement Projects at various City locations (Public Works) (Wards 1, 4, 5, 6, and 7) (5-minute presentation)

Attachments: Report  
Project Location Map  
Bid Award Recommendation  
Presentation

## COMMUNICATIONS

- 40 City Attorney report on Closed Session discussions
- 41 Items for future City Council consideration as requested by Mayor or Members of the City Council - City Manager/City Attorney reports

\* \* \* \* \*

*A City Council Special meeting is scheduled for  
Friday, March 5, 2021*

*The next regular City Council meeting is scheduled for  
Tuesday, March 9, 2021*

*City Council meetings broadcast with closed captioning available on  
AT&T Channel 99,  
Charter Spectrum Channel 3,  
and Frontier Cable Channel 21  
Rebroadcast Wednesdays at 9 p.m., Fridays at 1 p.m., and Saturdays at 9 a.m.*

*View live Webcast of the City Council Meeting at:  
[www.RiversideCA.gov/Meeting](http://www.RiversideCA.gov/Meeting) or  
[www.Engageriverside.com](http://www.Engageriverside.com)*

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*City Clerk (@RivCityClerk)*

*Parks, Recreation, and Community Services (@rivcaparkandrec)*

*Riverside Fire Department (@RivCAFire)*

*Riverside Police Department (@RiversidePolice)*

*Riverside Public Utilities (@RPUNews)*

\* \* \* \* \*

*Sign up to receive critical information such as unexpected road closures, utility outages, missing persons, and evacuations of buildings or neighborhoods.*

*[www.RiversideAlert.com](http://www.RiversideAlert.com)*



*City of Arts & Innovation*

## CITY COUNCIL MINUTES

TUESDAY, MARCH 2, 2021, 1 P.M.  
VIRTUAL MEETING  
PUBLIC COMMENT VIA TELEPHONE  
3900 MAIN STREET

PRESENT: Mayor Lock Dawson, Councilmembers Edwards, Melendrez, Fierro, Conder, Perry, and Hemenway, and Councilwoman Plascencia

ABSENT: None

Mayor Lock Dawson called the meeting to order at 1 p.m.

### ORAL COMMUNICATIONS FROM THE AUDIENCE

Karen Johnson spoke regarding the Dale Senior Center activities. Errol Koschewitz spoke regarding the Governor, senior citizens, and City finances. Rich Gardner spoke regarding the St. Michael's project. Scott Andrews spoke regarding CARES Act funding, vaccination program, and street paving. Jason Hunter spoke regarding return to in-person public meetings. Ms. Beltran spoke regarding the senior food program. One caller spoke regarding the vaccination sites.

### COMMUNICATIONS

#### INTERGOVERNMENTAL RELATIONS AND LEGISLATIVE UPDATE

The City Council received an update on Intergovernmental relations and legislation.

#### CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHALLENGE/FINANCIAL SOLVENCY UPDATE

Following discussion and without formal motion, the City Council received and ordered filed the California Public Employees Retirement System challenge/financial solvency update.

#### HOMELESS SOLUTIONS UPDATE

Following discussion and without formal motion, the City Council received and ordered filed the homeless solutions update.

#### HEALTH, SAFETY, AND SECURITY UPDATES

The City Council received an update on health, safety, and security.

#### RULES AND REGULATIONS CREATED OR SUSPENDED

There was no update on rules and regulations created or suspended.



*City of Arts & Innovation*

## CITY COUNCIL MINUTES

TUESDAY, MARCH 2, 2021, 1 P.M.  
VIRTUAL MEETING  
PUBLIC COMMENT VIA TELEPHONE  
3900 MAIN STREET

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### PUBLIC HEARINGS/PLANNING REFERRALS AND APPEALS

#### CASE P20-0134 - STREET AND ALLEY VACATION - LONGFELLOW ELEMENTARY SCHOOL FUTURE EXPANSION - SEVENTH STREET AND UNIVERSITY AVENUE

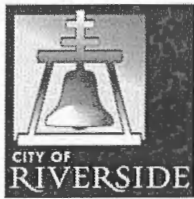
Hearing was called for a proposal by Gaby Adame, on behalf of Riverside Unified School District, to vacate a segment of Seventh Street and an unimproved public alley located west of Franklin Avenue between Seventh Street and University Avenue. No one spoke on the matter. The public hearing was officially closed. Following discussion, it was moved by Councilmember Melendrez and seconded by Councilmember Perry to (1) determine the proposed project is exempt from further California Environmental Quality Act review pursuant to Section 15061(b)(3) (Common Sense Exemption) of the California Environmental Quality Act Guidelines, as the project will not have a significant effect on the environment; (2) approve Planning Case P20-0134 Street and Alley Vacation based on the findings summarized in the Planning Commission staff report and subject to the recommended conditions; and (3) adopt a Resolution vacating the subject right-of-way pursuant to the Public Streets, Highways and Service Easements Vacation Law; whereupon, the title having been read and further reading waived, Resolution No. 23860 of the City Council of Riverside, California, Making Its Findings and Determinations in the Matter of Resolution of Intention No. 23671; and Making Its Order Vacating an Approximately 7,268-square Foot Public Right-of-Way Consisting of a Segment of Seventh Street and an Approximately 3,150 Square Foot Area Consisting of an Unimproved Public Alley Located on the West Side of Franklin Avenue Between Seventh Street and University Avenue, was presented and adopted. The motion carried unanimously.

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT 2019-2020 AMENDMENT OPTIONS - COMMUNITY DEVELOPMENT BLOCK GRANT CARES ACT FUNDING - AMENDMENT TO MEMORANDUM OF UNDERSTANDING FOR 2019-20 FOOD RESILIENCY PROGRAM

This item was removed from the agenda.

#### CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY - REVENUE BONDS - 50-UNIT MULTIFAMILY RENTAL HOUSING - ST. MICHAEL'S APARTMENTS - 4070 JACKSON - RESOLUTION - CONTINUED LATER IN THE DAY

Hearing was called under the Tax Equity and Fiscal Responsibility Act (TEFRA) regarding the issuance of revenue bonds, future refunding bonds, and the related plan of financing to finance or refinance the acquisition, rehabilitation, and development of a 50-unit multifamily rental housing project located at 4070 Jackson Street, generally known as St. Michael's, and adopt a resolution to authorize the issuance of revenue bonds or refunding bonds in an aggregate principal amount not-to-exceed \$15,000,000 by the



*City of Arts & Innovation*

## CITY COUNCIL MINUTES

TUESDAY, MARCH 2, 2021, 1 P.M.  
VIRTUAL MEETING  
PUBLIC COMMENT VIA TELEPHONE  
3900 MAIN STREET

California Statewide Communities Development Authority, on behalf of St. Michaels LP, a California limited partnership for the Project, which includes a plan of financing for the purpose of financing or refinancing the Project. Two people spoke on the matter. The public hearing continued later in the evening.

### PRESENTATION

#### PRIORITY BASED BUDGETING UPDATE

Following discussion and without formal motion, the City Council received and ordered filed the Priority Based Budgeting update.

### CLOSED SESSIONS

The Mayor and City Council adjourned to closed sessions pursuant to Government Code (1) §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning Summer Parada, et al. v City of Riverside, Riverside Superior Court Case No. RIC 1818642; (2) §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning City of Riverside v. ASAP Holding Co., et al., RCSC Case No. RIC 2003318; (3) §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning Christopher Desrosiers v City of Riverside, Court of Appeal, 4th District, Division 2, Case No. E075949; (Riverside Superior Court Case No. RIC 1811923); (4) §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning Shawn Casteel v. City of Riverside, et al., RCSC Case No. RIC 1906046; (5) §54956.9(d)(1) to confer with and/or receive advice from legal counsel concerning City of Riverside v. Dunn Enterprises, Inc., dba IceTown, etc., et al., RCSC Case No.: RIC2003552; (6) §54956.8 to instruct City's Negotiator, Al Zelinka, regarding price and terms of payment for the purchase, sale, exchange, or lease of 1393 University Avenue (Farm House Motel) APN: 250-190-009, by Bailey California Properties, LLC; Scott Bailey, Kyler Bailey, Alyssa Digangi and Beverly Bailey, Negotiators; (7) §54956.9(d)(2) to confer with and/or receive advice from legal counsel concerning one case of anticipated litigation; (8) §54956.9(d)(4) to confer with and/or receive advice from legal counsel concerning one case of anticipated litigation; (9) §54957.6 to review the City Council's position and instruct designated representatives regarding salaries, salary schedules, or compensation paid in the form of fringe benefits of all Executive Management employees including the City Attorney and City Clerk, all Management and Confidential employees as defined by PERS, Fire Management Unit, Riverside City Firefighters Association, Riverside Police Officers Association (Police and Police Supervisory Units), Service Employees International Union #721, International Brotherhood of Electrical Workers #47, and Riverside Police Administrators Association;



*City of Arts & Innovation*

## CITY COUNCIL MINUTES

TUESDAY, MARCH 2, 2021, 1 P.M.  
VIRTUAL MEETING  
PUBLIC COMMENT VIA TELEPHONE  
3900 MAIN STREET

(10) §54957 for appointment of City Clerk by City Council; (11) §54957 for appointment of City Attorney by City Council; and (12) §54957 for performance evaluation of City Manager.

### RECESS

The Mayor and City Council recessed at 2:35 p.m. and reconvened at 6:20 p.m. with Mayor Lock Dawson presiding and all Councilmembers present.

The Invocation was given by Councilmember Fierro.

Councilmember Fierro led the Pledge of Allegiance to the Flag.

### ORAL COMMUNICATIONS FROM THE AUDIENCE

Aurora Chavez spoke regarding the St. Michael's project and homeless individuals in the parks. Errol Koschewitz spoke regarding the government and seniors in facilities.

### MAYOR/COUNCILMEMBER COMMUNICATIONS

Councilmember Edwards reported on the Housing and Community Engagement Toolkit Launch at the UCR Center for Social Innovation, the Housing Element update community meeting, and office hours. Councilmember Conder reported on his participation in Reading Across America. Councilmember Perry thanked the Public Works Department for quick incident response, reported on his participation in Reading Across America, the Community Engagement series, and congratulated Ward 6 Council Assistant Sandy Garcia on her wedding. Councilmember Hemenway reported on his participation in Reading Across America. Mayor Lock Dawson reported on safety and security along the Santa Ana River bottom and illegal activity increase.

### PRESENTATION

Mayor Lock Dawson presented a proclamation in partnership with Councilmember Edwards and Councilwoman Plascencia commemorating March as Women's History Month.

### CONSENT CALENDAR

It was moved by Councilmember Hemenway and seconded by Councilmember Perry to approve the Consent Calendar as presented affirming the actions appropriate to each item with (1) Councilmember Conder voting no on the Memorandum of Understanding with Service Employees' International Union, Local 721, Refuse Unit; and





*City of Arts & Innovation*

## CITY COUNCIL MINUTES

TUESDAY, MARCH 2, 2021, 1 P.M.  
VIRTUAL MEETING  
PUBLIC COMMENT VIA TELEPHONE  
3900 MAIN STREET

(2) Councilmember Melendrez disqualifying himself from the adoption of Resolution to amend the Master Parking Schedule to establish a Timed 2-Hour, Timed No Parking, Passenger Loading Zones on Market Street as he owns property within 500 feet of the project. The motion carried unanimously.

### OUTSIDE COUNSEL PANEL ADDITION

The City Council (1) added the law firm of Holland and Hart to the City's approved attorney panel; (2) approved an expenditure in an amount not to exceed \$50,000 to represent the City for the negotiation of a power purchase agreement; and (3) authorized the Interim City Attorney to execute the standard Attorney Services Agreement with Holland and Hart.

### OUTSIDE COUNSEL EXPENDITURE REPORT

The City Council received and ordered filed the Outside Counsel Expenditure Report for the period of October 1, 2020, through December 31, 2020.

### MINUTES

The minutes of the meetings of February 5, 9, and 16, 2021, were approved as presented.

### BID 7804 - COPPER PIPE INVENTORY

The City Council (1) awarded Bid 7804 to Ferguson Waterworks, Riverside, for the purchase of copper pipe for Fiscal Year 2020-21 in the amount of \$212,826.14, with a renewal option for four additional twelve (12) month periods; and (2) authorized the City Manager, or his designee, to execute all necessary documents, including making minor and non-substantive changes.

### MEMORANDUM OF UNDERSTANDING REVISIONS - SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 721 - RESOLUTION

The City Council (1) approved the Memorandum of Understanding effective July 1, 2020, through June 30, 2022, which incorporates the negotiated revisions; (2) authorized the City Manager, or his designee, to execute the Memorandum of Understanding on behalf of the City, including making minor and non-substantive changes; and (3) adopted the Resolution amending the Master Fringe Benefits and Salary Plan to reflect the revised MOU provisions as outlined in the written staff report; whereupon, the title having been read and further reading waived, Resolution No. 23681 of the City Council of the City of Riverside, California, Amending Resolution No. 21052 to Amend Parts I and II of the Fringe Benefits and Salary Plan, to Reflect Various Updates and Changes in Connection with the



*City of Arts & Innovation*

## CITY COUNCIL MINUTES

TUESDAY, MARCH 2, 2021, 1 P.M.  
VIRTUAL MEETING  
PUBLIC COMMENT VIA TELEPHONE  
3900 MAIN STREET

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Memorandum of Understanding with the Service Employees' International Union (SEIU) Local 721, Refuse Unit, was presented and adopted.

### NATIONAL TRUST FOR HISTORIC PRESERVATION GRANT - HARADA HOUSE EXHIBITION - SUPPLEMENTAL APPROPRIATION

The City Council (1) approved the acceptance of grant funding in the amount of \$5,000 from the National Trust for Historic Preservation for a Harada House exhibition; (2) authorized the City Manager or his designee to execute all grant documents with National Trust for Historic Preservation including making minor and non-substantive changes to documents associated with the grant; and (3) authorized an increase in revenue and appropriation of expenditures in the amount of \$5,000 each to the Grants and Restricted Programs Fund National Trust Historic Preservation Account.

### ACCESSION OF ONE 1870'S WOMAN'S DRESS AND SUPPORTING ARCHIVAL RESOURCES

The City Council approved accession into the Museum of Riverside's permanent collection of one 1870s woman's dress and supporting archival resources.

### ACCESSION OF ONE CITRUS PACKING INDUSTRY TOOL

The City Council approved accession into the Museum of Riverside's permanent collection of one citrus packing industry tool.

### DEACCESSION OF SIX HUNDRED EIGHTY-ONE TOOLS AND COMPONENTS - BRENDDEL TOOL COLLECTION

The City Council approved deaccession from the Museum of Riverside's permanent collection of six hundred eighty-one tools and tool components from the Brendel Tool Collection.

### DEACCESSION OF TWENTY-THREE SACRED OBJECTS - HOOPA VALLEY TRIBE

The City Council approved deaccession from the Museum of Riverside's permanent collection of twenty-three sacred objects of the Hoopa Valley Tribe.

### CHANGE ORDER INCREASE - BID 7696 - IOWA AVENUE IMPROVEMENTS - MARTIN LUTHER KING BOULEVARD/UNIVERSITY AVENUE

The City Council authorized an increase in contract change order authority with H&H General Contractors, Inc., Highland, for modifications to irrigation facilities encountered during the construction of Bid 7696 - Iowa Avenue Improvements from Martin Luther King Boulevard to University Avenue, in the amount of \$116,031, for a revised contract amount of \$5,362,690, in accordance with Purchasing Resolution No. 23256, Sections 802(e).



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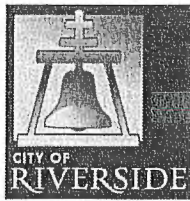
### **TIMED 2-HOUR AND TIMED NO PARKING ZONES - MARKET - RESOLUTION**

The City Council adopted a resolution amending the Master Parking Schedule to (1) establish a "2-Hour Parking Between the Hours of 9 a.m. to 6 p.m. Daily" zone on the west side of Market Street from 131 feet south of First Street to 56 feet north of Second Street; (2) establish a "No Parking Between the Hours of 10 p.m. to 4 a.m. Daily" zone on the west side of Market Street from 131 feet south of First Street to 56 feet north of Second Street; and (3) establish a "No Parking Passenger Loading Zone" on the west side of Market Street from 76 feet south of First Street to 56 feet north of Second Street; whereupon, the title having been read and further reading waived, Resolution No. 23682 of the City Council of the City of Riverside, California, Amending Resolution No. 22451 Known as the Master Parking Schedule Resolution to Establish Timed 2-Hour, Timed No Parking, and Passenger Loading Zones on Market Street, was presented and adopted.

### **PUBLIC HEARINGS/PLANNING REFERRALS AND APPEALS**

**CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY - REVENUE BONDS - 50-UNIT MULTIFAMILY RENTAL HOUSING - ST. MICHAEL'S APARTMENTS - 4070 JACKSON - RESOLUTION - CONTINUED FROM EARLIER IN THE DAY**

Hearing was called under the Tax Equity and Fiscal Responsibility Act (TEFRA) regarding the issuance of revenue bonds, future refunding bonds, and the related plan of financing to finance or refinance the acquisition, rehabilitation, and development of a 50-unit multifamily rental housing project located at 4070 Jackson Street, generally known as St. Michael's, and adopt a resolution to authorize the issuance of revenue bonds or refunding bonds in an aggregate principal amount not-to-exceed \$15,000,000 by the California Statewide Communities Development Authority, on behalf of St. Michaels LP, which includes a plan of financing for the purpose of financing or refinancing the Project. Two persons spoke on the matter. The public hearing was officially closed. Following discussion, it was moved by Councilwoman Plascencia and seconded by Councilmember Melendrez to (1) adopt a resolution authorizing the issuance of revenue bonds or refunding bonds in an amount not to exceed \$15,000,000 by the California Statewide Communities Development Authority, on behalf of St. Michaels LP, a California limited partnership company for the Project, which includes a plan of financing for the purpose of financing or refinancing the Project; and (2) authorize the City Manager, or designee, to execute all required documents and make certain changes as required, including making minor non-substantive changes and/or corrections; whereupon, the title having been read and further reading waived, Resolution No. 23683 of the City Council of the City of Riverside Approving the Issuance by the California Statewide Communities Development Authority of Multifamily Housing Revenue Bonds for



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St. Michael's Apartments, was presented and adopted. The motion carried with Councilmembers, Edwards, Melendrez, Fierro, Perry, Hemenway and Councilwoman Plascencia voting aye and Councilmember Conder voting no.

### DISCUSSION CALENDAR

#### BID 7705 - FISCAL YEAR 2019-20 SENATE BILL-1 MAINTENANCE AND TRAFFIC IMPROVEMENT PROJECTS - VARIOUS CITY LOCATIONS

Following discussion, it was moved by Councilmember Perry and seconded by Councilwoman Plascencia to (1) award a construction contract for Bid 7705 for Fiscal Year 2019-2020 Senate Bill-1 Maintenance and Traffic Improvements to All American Asphalt, Corona, in the amount of \$2,681,359; and (2) authorized the City Manager, or his designee, to execute the construction contract with All American Asphalt, including making minor non-substantial changes. The motion carried unanimously.

### COMMUNICATIONS

#### CITY ATTORNEY REPORT ON CLOSED SESSIONS

Interim City Attorney Smith announced there were no reportable actions on closed sessions.

#### ITEMS FOR FUTURE CITY COUNCIL CONSIDERATION

There were no future items given at this time.

The City Council adjourned at 7:17 p.m.

Respectfully submitted,

EVA ARSEO  
Interim City Clerk

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 JWH  
(SHKx)**

**DECLARATION OF CHUCK  
CONDER**

I, Chuck Conder, declare as follows:

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

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

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.

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6 Chuck Conder  
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