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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

16
17 CALVARY CHAPEL LONE MOUNTAIN, a Nevada)
18 Non-profit Organization,) COMPLAINT
19 Plaintiffs,) Case No.:
20

21 THE HONORABLE STEPHEN F. SISOLAK, in his)
22 official capacity as Governor of the State of Nevada,)
23 AARON DARNELL FORD, in his official capacity as)
24 the Attorney General of the State of Nevada, JUSTIN)
25 LUNA, in his official capacity as Chief of the Nevada)
Division of Emergency Management;,, DOES 1)
through 100.)
CIVIL RIGHTS
COMPLAINT FOR
DAMAGES AND
INJUNCTIVE AND
DECLARATORY
RELIEF

26 Defendants.) **JURY TRIAL
DEMANDED**

COMPLAINT

COME NOW, Plaintiffs, CALVARY CHAPEL LONE MOUNTAIN, who bring this action by and through the undersigned attorneys of record, SIGAL CHATTAH, ESQ., of the CHATTAH LAW GROUP, and JOSEPH S. GILBERT, ESQ., of JOEY GILBERT LAW, who hereby complain of Defendants and each of them and allege as follows:

PARTIES

A. The Plaintiffs

1. Plaintiffs CALVARY CHAPEL LONE MOUNTAIN, at all relevant times, is and was a Nevada Non-profit Organization operating and authorized to serve as a Ministry and is operating in the State of Nevada, located in Las Vegas, Nevada (Clark County).

Plaintiffs, CALVARY CHAPEL LONE MOUNTAIN was ordered to cease all gatherings at their locations and bring this action as themselves and on behalf of parishioners for violations of their Free Exercise Clause guaranteed by Amendment I of the United States Constitution and other violations as delineated *infra*.

B. Defendants

1. Defendant HONORABLE STEPHEN F. SISOLAK, was and is at all times relevant herein the Governor of the STATE OF NEVADA.

2. Defendant AARON DARNELL FORD, was and is at all times relevant herein
the Attorney General for the STATE OF NEVADA

3. Defendant, JUSTIN LUNA, was and is at all times relevant herein Chief of the NEVADA DIVISION OF EMERGENCY MANAGEMENT, acting in said capacity and simultaneously with Defendant Governor Sisolak and Attorney General FORD, issued Orders and Emergency Directives under NRS 414 et. seq.

4. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1 through 100, are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each of the Defendants designated herein as a DOE is responsible in some manner for the events and happenings herein referred to. As such, Plaintiffs will seek leave of Court to amend this Complaint to insert the true names and capacities of said Defendant as they become identified.

NATURE OF ACTION AND JURISDICTION

5. This is a civil action under 42 U.S.C § 1983 seeking damages and injunctive relief against Defendants for committing acts, under color of law, with the intent and for the purpose of depriving Plaintiffs of rights secured under the Constitution and laws of the United States; retaliating against Plaintiffs; and for refusing or neglecting to prevent such deprivations and denials to Plaintiffs.

6. This action arises under 42 U.S.C. § 1983 in relation to Defendants' deprivation of Plaintiffs' Constitutional rights to Due Process and Equal Protection under the Fifth and Fourteenth Amendments to the U.S. Constitution. Accordingly, this Court has Federal Question Jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested declaratory relief under 28 U.S.C. § 2201; the requested injunctive relief and damages under 28 U.S.C. § 1343(a); and attorneys' fees and costs under 42 U.S.C. § 1988. Plaintiffs, therefore, seek damages and declaratory and injunctive relief accordingly.

7. The U.S. District Court for the District of Nevada is the appropriate venue for this action pursuant to 28 U.S.C. §§ 1331(b)(1) and (2) because it is the District in which Defendants either maintain offices or do substantial official government work in, exercise

their authority in their official capacities, and will continue to enforce the Orders and Emergency Directives; and it is the District in which substantially all of the events giving rise to the claims occurred.

8. This Court has supplemental jurisdiction over Plaintiffs' State law claims pursuant to 28 U.S.C. § 1337(a) because they are part of the same case and controversy described by Plaintiffs' Federal claims.

INTRODUCTION

9. In the wake of the novel coronavirus (“COVID-19”), the State of Nevada Executive Administrators and their Agencies hastily instituted a series of State and County-wide orders and emergency directives (the “Orders and Emergency Directives”) in an effort to stem the spread of COVID-19. As well-intentioned as these Orders and Emergency Directives are with respect to the general public’s health, safety and welfare, they have come at a steep price with respect to the complete and utter restraint on Nevadans’ civil rights and liberties.

10. This action challenges the constitutionality of Defendants' Orders and Emergency Directives to curb Plaintiffs' civil rights and liberties by ordering draconian "shelter-in-place" orders, effectively shuttering so-called "Non-Essential Businesses" all across the State of Nevada, and restricting the practice of medicine by Nevada physicians and the ability of patients to receive treatment for COVID-19.

11. If allowed to stand, Defendants' Orders and Emergency Directives will not only continue to violate Plaintiffs' rights under both the Nevada and U.S. Constitutions, but Defendants will continue to inflict massive and widespread economic damage to Plaintiffs – all while unconstitutionally placing the burden of Defendants' respective Orders and Emergency Directives on the backs of both small and large "Non-Essential Businesses",

1 such as those of Plaintiffs, who have already been financially crippled, forced to shut their
 2 doors for business and to conduct mass layoffs.

3 12. Accordingly, Plaintiffs bring this action challenging the Constitutionality of
 4 Defendants' Orders and Emergency Directives, which have deprived them of numerous
 5 rights and liberties under both the U.S. and Nevada Constitutions.

6 13. In doing so, Plaintiffs seek: (1) equitable and injunctive relief to enjoin the
 7 enforcement of Defendants' Orders and Emergency Directives; (2) declaratory relief from
 8 this Court in declaring that Defendants' Orders and Emergency Directives violate Plaintiff's
 9 civil rights under: (a) 42 U.S.C. § 1983 of the Federal Civil Rights Act ("§ 1983"), (b) the
 10 Due Process and (c) Equal Protection Clauses of the Fifth and Fourteenth Amendments, and
 11 (d) Article 1 and 5 of the Nevada Constitution; (3) attorney's fees and costs for the work
 12 done by Plaintiffs' counsel in connection with this lawsuit in an amount according to proof;
 13 and (4) for such other and further relief as the Court deems just and appropriate.

14 **GENERAL ALLEGATIONS**

15 14. The global COVID-19 pandemic brought on by an infectious and
 16 communicable disease caused by the recently discovered coronavirus, has caused
 17 catastrophic and unprecedented economic damage across the globe, and with it, significant
 18 loss of life and fundamental changes to both world and national economies, and specifically,
 19 the manner in which businesses are permitted to run, if at all.

20 15. To be sure, State and U.S. officials have faced tremendous adversity in
 21 planning, coordinating, and at times executing effective nationwide and statewide policies to
 22 protect the general public's health, safety and welfare during this time of crisis.

23 16. However, these policies, as well-intentioned as they may be, have had an
 24 unlawful and disparate effect on some people, their health and their businesses over other

1 people and their health and their businesses, to the point where life, liberty and the pursuit of
2 happiness have been ripped away from law-abiding citizens and businesses.

3 17. On or about March 13, 2020, President of the United States (“POTUS”)
4 Donald J. Trump proclaimed a National State of Emergency as a result of the threat of the
5 emergence of COVID-19.

6 18. On March 16, 2020, POTUS announced “*15 Days to Slow the Spread*” –
7 Coronavirus Guidelines for America based on the Center for Disease Control (“CDC”)
8 recommendations.

9 19. Though a Federal Mandate was not issued, these guidelines and
10 recommendations for the general public and State Agencies were made based on COVID-19
11 projections established by the CDC and the Institute of Health Metrics and Evaluation
12 (“IHME”).
13

14 20. Over the course of the subsequent thirty days, it became noticeably clear that
15 these projections were grossly over-exaggerated and correlating restrictions were
16 unnecessary.
17

18 21. Specifically, since the initial outbreak in February and March of 2020, the
19 Federal Government’s projections of anticipated U.S. deaths related to the virus have
20 decreased substantially, by an order of magnitude. Yet, despite such revisions, Defendants
21 have continued to increasingly restrict—and in some cases have even outright banned—
22 Plaintiffs’ engagement in constitutionally-protected activities.
23

24 22. On February 04, 2020, Defendant Governor Sisolak issued Executive Order
25 2020-01, finding that “[d]ocuments, records, or other items of information which may reveal
26 the details of a specific emergency plan or other tactical operations by a response agency...
27 are hereby deemed confidential and not subject to subpoena or discovery, and not subject to
28

1 inspection by the general public...,” to include “[h]andbooks, manuals, or other forms of
2 information detailing procedures to be followed by response agencies in the event of an...
3 emergency...” (“Executive Order 2020-01”). Such an Order seeks to prevent accountability
4 of the Defendants’ actions over the days that would follow.

5 23. On March 12, 2020, Defendant Governor Sisolak activated the State
6 Emergency Operations Center, in an effort to coordinate a response and minimize the
7 impact and further transmission of COVID-19 to persons in Nevada, and such declaration
8 was made to remain in effect until the end of the COVID-19 emergency (“Emergency
9 Declaration”).

10 24. Chapter 414 of the Nevada Revised Statutes, entitled *Emergency Management*,
11 delineates the Executive Authority that Defendant Governor Sisolak enjoys, and albeit
12 broadly extends certain powers to the Governor, it does not allow for arbitrary and
13 capricious actions, willful misconduct or grossly negligent conduct taken against the State,
14 or against the residents of Nevada.

15 25. Accordingly, Defendant Governor Sisolak and other named Defendants
16 engaged in actions that were arbitrary and capricious, grossly negligent, willful misconduct
17 and in bad faith, in the execution and enforcement of those powers delineated in Chapter
18 414 of the Nevada Revised Statutes, as stated *infra*.

19 26. NRS 414.110 specifically precludes immunity for such actions that are based
20 on willful misconduct, gross negligence, or bad faith.

21 27. It has become exceedingly clear that Defendant Governor Sisolak and
22 associated Defendants named herein have engaged in gross negligence, bad faith and willful
23 misconduct by issuing Orders and Emergency Directives that are arbitrary and capricious,
24 and not supported by substantial evidence to merit same.

1 28. On March 15, 2020, Defendant Governor Sisolak closed all schools, effective
2 March 16, stating that schools may not reopen earlier than April 6 (“Emergency Directive
3 001”). On April 21, 2020, Defendant Governor Sisolak declared that schools in Nevada
4 were dismissed for the remaining 2020 school year.

5 29. On March 18, 2020, Defendant Governor Sisolak closed all gaming
6 establishments and gaming activity, and such declaration was made to remain in effect until
7 April 16 (“Emergency Directive 002”).

9 **“Essential Businesses” vs. “Non-Essential Businesses”**

10 30. On March 20, 2020, Defendant Governor Sisolak, in joint action with
11 Defendant Department of Public Safety, Division of Emergency Management, adopted an
12 emergency regulation amending Chapter 414 of the Nevada Administrative Code to define
13 “Essential Businesses” and “Non-Essential Businesses”, whereby “Non-Essential
14 Businesses” were to cease operations until April 16, and where “Essential Businesses” were
15 authorized to remain open so long as strict guidelines were followed to reduce the likelihood
16 of transmitting COVID-19. Specifically, adequate social distancing, contactless payments
17 when possible, and delivery only for retail cannabis dispensaries (“Emergency Directive
18 003”).

21 31. NRS 233B.066(2) mandates that each adopted regulation be accompanied by:
22 (i) a clear and concise explanation of the need a for the adopted regulation; (ii) the estimated
23 economic effect of the regulation on the business which it is to regulate and on the public,
24 which shall be stated separately, and in each case must include: (1) both adverse and
25 beneficial effects; and (2) both immediate and long term effects; (iii) the estimated cost to
26 the agency for enforcement of the proposed regulation; (iv) a description of any regulations
27 of other state or government agencies which the proposed regulation overlaps or duplicates,

1 a statement explaining why the duplication or overlapping is necessary, and if the regulation
2 duplicates or overlaps a federal regulation, the name of the regulating federal agency; (v) if
3 the regulation includes provisions which are more stringent than a federal regulation which
4 regulates the same activity, a summary of such provisions; and (vi) if the regulation
5 provides a new fee or increases an existing fee, the total annual amount the agency expects
6 to collect and the manner in which the money will be used. *See* NRS 233B.066.

7
8 32. Both Defendants Governor Sisolak and Luna endorsed the March 20, 2020
9 emergency regulation amending Chapter 414 of Nevada Administrative Code, and in its
10 accompanying Informational Statement as required by NRS 233B.066(2), affirmed that: (i)
11 there was no economic effect of the regulation on the businesses which it is to regulate; (ii)
12 there was no economic effect of the regulation on the general public which it is to regulate;
13 (iii) there was no estimated cost to the agency for enforcement of the regulation; (iv) the
14 regulation did not overlap or duplicate a federal regulation; (v) the regulation does not
15 include provisions which are more stringent than a federal regulation which regulates the
16 same activity; and (vi) the regulation does not establish a new fee or increase an existing
17 fee.
18

19
20 33. The affirmations made by Defendants Governor Sisolak and Luna in the March
21 20, 2020 Informational Statement are a gross misrepresentation of the stringent measures
22 taken and are a direct violation of subsections (1)(g), (1)(h), (1)(i), and (1)(j) of NRS
23 233B.066.
24

25 34. In their affirmations, Defendants Governor Sisolak and Luna deliberately,
26 willfully, and with a conscious disregard for the truth, violated: NRS 233B.066(1)(g) by
27 refusing to provide the estimated economic effect of the regulation on the businesses and
28 persons which it is regulating; NRS 233B.066(1)(h) by refusing to provide the estimated

1 cost to the agency for enforcement of the regulation; NRS 233B.066(1)(i) by refusing to
2 state the federal regulations which the regulation duplicates and the applicable federal
3 agency; and NRS 233B.066(1)(j) by refusing to delineate the stringent measures that the
4 State of Nevada incorporated, despite no federal mandate for the same.

5 35. On March 20, 2020, Defendant Department of Public Safety, Division of
6 Emergency Management arbitrarily and capriciously passed an Emergency Administrative
7 Regulation amending Chapter 414 of the Nevada Administrative Code, adding a section
8 entitled “Business During Times of Declared Emergency (NRS 414.060, 414.070) ”,
9 whereby Nevada businesses were classified as either an “Essential Licensed Business” or a
10 “Non-Essential Business”.

11 36. Defendants arbitrarily and capriciously classified places of worship “Non-
12 Essential” under Chapter 414 of the Nevada Administrative code.

13 37. Whereby Defendant Ford took no action to prevent or prohibit Defendants
14 Governor Sisolak, Luna, or Department of Public Safety, Division of Emergency
15 Management from adopting the unlawful March 20, 2020 emergency regulation, Ford
16 engaged in willful misconduct.

17 38. On March 22, 2020, Defendant Governor Sisolak suspended certain provisions
18 contained in Chapter 241 of the Nevada Revised Statute (“Open Meeting Law”) until April
19 16, and specifically, suspending requirements pertaining to public meetings and posting
20 notices at physical locations (“Emergency Directive 006”).

21 39. Defendants actions lacked any empirical date for which they were based upon.
22 The designation of essential vs non-essential business was based on the services the
23 business rendered, not business capacity, public health or empirical data.

1 40. Consequently, many essential business including but not limited to box stores
2 such as grocery stores, Costco, Sam's Club, Target, Home Dept, Lowes, and Walmarts were
3 servicing an overwhelming number of patrons, regardless of social distancing guidelines,
4 demonstrating that the Executive Directives were arbitrary capricious and unsubstantiated
5 by any empirical date in support thereof.
6

7 **Right to Travel and Places of Worship**

8 41. On March 24, 2020, Defendant Governor Sisolak directed all Nevadans to
9 implement physical distancing measures to minimize spread of COVID -19, while
10 prohibiting persons from gathering in groups of ten or more in any indoor or outdoor area
11 until April 16 ("Emergency Directive 007"). Further, Emergency Directive 007 also
12 ordered local governments to limit the general public's use of recreational equipment and
13 public spaces such as parks and beaches, and authorized local agents to enforce criminal
14 penalties on any person who does not comply.
15

16 42. Specifically, Defendant Governor Sisolak's Emergency Directive 007 stated:
17

18 a. The Nevada general public shall not gather in groups of ten or more in
19 any indoor or outdoor area, whether publicly owned or privately owned where the
20 public has access by right or invitation, express or implied, whether by payment of
21 money or not, including without limitation, parks, basketball courts, volleyball
22 courts, baseball fields, football fields, rivers, lakes, beaches, streets, convention
23 centers, libraries, parking lots, and private clubs. This provision shall not be
24 construed to apply to the gathering of persons living within the same household, or
25 persons working at or patronizing Essential Licensed Businesses or providing
26 essential services to the public;
27

b. With the exception of persons residing in the same household, the Nevada general public shall, to the extent practicable, abide by social distancing practices by maintaining a minimum six-foot distance between persons in public spaces, whether privately or publicly owned; and

c. Local governments shall limit the Nevada general public's use of recreational equipment, including without limitation, playground equipment, basketball courts, volleyball courts, baseball fields, beaches, or football fields, in a manner that causes the congregation of ten or more persons in a manner contrary to best COVID-19 disease mitigation social distancing practices.

43. Emergency Directive 007 also threatened that any person who does not comply with its Section 1, after receiving notice from law enforcement, may be subject to criminal prosecution and civil penalties under NRS 199.280, NRS 202.450, and another other applicable statutes, regulations, or ordinances.

44. Emergency Directive 007 also instructed that all law enforcement agencies in the State of Nevada were authorized to enforce this Emergency Directive 007, and that the Office of the Attorney General is given concurrent jurisdiction to prosecute respective violations.

45. On March 29, 2020, POTUS recommended the continuation of limitations on gatherings through April 30, 2020.

46. On March 31, 2020, Defendant Governor Sisolak issued yet another directive (“Emergency Directive 010”), extending the Declaration of Emergency to April 30, 2020, and thereby all Emergency Directives promulgated pursuant to. Specifically, with limited exception, Defendant Governor Sisolak ordered all Nevadans to stay in their residences, and

1 prohibited individuals from gathering outside of their homes, save authorized outdoor
2 activity, so long as the activity complies with Emergency Directive 007.

3 47. On April 1, 2020, Defendant Governor Sisolak authorized the Adjunct General
4 to order into active duty such Nevada National Guard personnel “as he deems necessary to
5 assist the state’s response to the COVID-19 pandemic...” and until “such time as the
6 Adjunct General determines the need for assistance no longer exists...” (“Emergency
7 Directive 012”).

8 48. On April 8, 2020, Defendant Governor Sisolak continued the following
9 closures, until April 30 (“Emergency Directive 013”):

10 a. Publicly accessible sporting and recreational venues that encourage
11 social congregation, including without limitation, golf courses, golf driving ranges,
12 tennis courts, basketball courts, volleyball courts, skate parks, bocce ball courts,
13 handball courts, horseshoe pits, or pickleball courts, shall remain closed for the
14 duration that this Directive is in effect; and

15 b. Places of worship shall not hold in-person worship services where ten
16 or more persons may gather, including without limitation, drive-in and pop-up
17 services, for the remainder of the Declaration of Emergency.

18 49. Further, on April 29, 2020, Defendant Governor Sisolak authorized “Non-
19 Essential” retail businesses identified in Emergency Directive 003 to resume retail sales on a
20 curbside or home delivery basis only, while extending Emergency Directives 003, 006, 007,
21 and 010, respectively, until May 15. As part of this Emergency Directive, Defendant
22 Governor Sisolak advised Nevadans to continue to shelter in place, avoid interpersonal
23 contact with persons not residing in their household, and to utilize face coverings in public
24 spaces.

1 50. While “Essential Businesses” continue to operate, and indeed, turn a profit (if
2 not historical profits) during this time of crisis, Plaintiffs’ “Non-Essential Businesses” have
3 suffered immeasurably at the hands of government overreach and unconstitutionally
4 restrictive Orders and Emergency Directives passed and enforced by Defendants, with
5 immense disparate impact across every segment or sector of business in Nevada.
6

7 51. The arbitrary and capricious quarantine of all Counties in the State of Nevada,
8 failing to quarantine Covid -19 positive only individuals and instead quarantining all
9 individuals regardless of whether they were positive or not, or whether the Counties had
10 incidents of Covid-19 was arbitrary and unsupported by any empirical data to substantiate
11 such actions.
12

13 52. It is significant to note that as of the day of this Amended Complaint, Nye
14 County, Lyon County, Douglas County, Lander County and Mineral County have had no
15 deaths due to Covid-19; Humboldt and Elko County had 3 deaths cumulatively, and the only
16 both Washoe and Clark County combined had under 300 deaths since the beginning of the
17 alleged pandemic.
18

19 53. Accordingly, Plaintiffs’ complaint against Defendants, and each of them, for
20 violation of the Federal Civil Rights Act, 42 U.S.C § 1983, to declare and enjoin the
21 enforcement of the following Orders and Emergency Directives:
22

23 a. Defendant Governor Sisolak’s Emergency Directive 003, and
24 Defendant Division of Emergency Management’s corresponding designation of
25 “Essential Licensed Business” and “Non-Essential Business” as delineated in the
26 March 20, 2020 emergency regulation’s amendment of Chapter 414 of the Nevada
27 Administrative Code;
28

b. Defendant Governor Sisolak's Emergency Directive 007, prohibiting Nevadans from gathering in groups of more than 10 people;

c. Defendant Governor Sisolak's Emergency Directive 010 and "Stay At Home" Order issued on March 31, 2020; and

d. Defendant Governor Sisolak's Emergency Directive 013 issued on April 8, 2020, prohibiting places of worship from holding in-person worship services where ten or more persons may gather.

9 54. Plaintiffs have standing to bring § 1983 claims since they are aggrieved in fact,
10 as businesses that are the subject of enforcement of the overbroad and unconstitutional
11 Orders and Emergency Directives which have the effect of forcing Plaintiffs – which are a
12 collection of Nevada businesses and individuals – to bear a public burden by entirely
13 eviscerating Plaintiffs’ ability to operate their respective businesses and restricting their
14 right to receive treatment for a communicable disease.
15

16 55. Plaintiffs have standing to bring § 1983 claims since they are aggrieved in fact,
17 as businesses whose rights have been violated pursuant to Article 1, Section 8, Clause 3 of
18 the U.S. Constitution, which prohibits states from passing legislation that discriminates
19 against or excessively burdens interstate commerce.
20

21 56. Plaintiffs further have standing to bring § 1983 claims since they are aggrieved
22 individuals and Parties that are the subject of enforcement of the overbroad Orders and
23 Emergency Directives infringing on their Free Exercise Clause of the First Amendment to
24 the United States Constitution.

26 57. Defendants' Orders and Emergency Directives are in violation of 42 U.S.C. §
27 1983, as is the enforcement of these Orders and Emergency Directives by Defendants, and
28 should be enjoined under § 1983, due to the following circumstances:

1 a. The Orders and Emergency Directives plainly violate the Due Process
2 and Equal Protection Clauses of the Fifth and Fourteenth Amendments in that they
3 unconstitutionally and disparately apply one set of rules to businesses arbitrarily
4 deemed “Essential Businesses” versus all other businesses (such as Plaintiffs’) that
5 are deemed “Non-Essential Businesses”, which must close pursuant to the Orders
6 and Emergency Directives. Plaintiffs aver that ALL businesses in the State of
7 Nevada are “Essential” to the health, welfare, and well-being of its citizens, and
8 that the general health outcome sought through the passage of these Orders and
9 Emergency Directives (i.e., lowering the curve of COVID-19) could be
10 accomplished through less restrictive means.

12 b. The Orders and Emergency Directives effectively amount to an
13 impermissible “partial” or “complete” taking in violation of the Takings Clause of
14 the Fifth Amendment to the U.S. Constitution in that the prohibition of Plaintiffs’
15 operation of their “Non-Essential Business” constitutes a regulatory taking of
16 private property, for public purpose, without providing just compensation
17 therefore. Furthermore, the Orders and Emergency Directives violate the Takings
18 Clause of the Fifth Amendment in that the complete prohibition of the business
19 operations of “Non-Essential Businesses” constitutes an irrational, arbitrary, and
20 capricious law bearing no rational basis to any valid government interest. The
21 notion that the government-ordered shutdown of “Non-Essential Businesses” (such
22 as Plaintiffs’) is absolutely necessary in curbing the spread of COVID-19
23 constitutes an unconstitutional infringement on Plaintiffs’ civil rights and liberties
24 to operate in a free-market economy. As national and statewide data has recently
25 suggested, the economic impact of the mandatory, unconstitutional closures of
26
27
28

1 “Non-Essential Businesses” has had an unnecessarily devastating and
2 unprecedented crippling effect on local and state economies. ALL businesses are
3 ‘essential’ and necessary to the maintenance of the health, welfare and prosperity
4 of Nevada’s citizens.

5 c. The Orders and Emergency Directives further violate the substantive
6 and procedural due process clauses of the Fifth and Fourteenth Amendments to the
7 U.S. Constitution.

8 d. The Orders and Emergency Directives violate Plaintiffs rights as to
9 conduct business under Article 1, Section 8, Clause 3 of the U.S. Constitution.

10 e. The Orders and Emergency Directives violate Plaintiffs’ rights to the
11 Free Exercise of Religion and are not “narrowly tailored” to further any
12 compelling governmental interest. Defendants have granted numerous special
13 exemptions to their bans on public gatherings and conduct, including for
14 purportedly “Essential Businesses” and activities, provided that social distancing
15 practices are observed. Since these gatherings may be permitted, there can be no
16 doubt that Defendants may, and therefore must, permit Plaintiffs to engage in
17 equivalent business and religious activities provided that Plaintiffs also adhere to
18 the social

19 58. Unless and until injunctive relief is granted, Plaintiffs will continue to suffer
20 irreparable harm for which they are left without an adequate remedy at law, in that they are
21 subject to criminal cases (i.e., misdemeanor citations and fines) based on the enforcement of
22 the Orders and Emergency Directives by law enforcement agencies and their agents.

EQUITABLE ALLEGATIONS

1
2 59. In violation of State and Federal Constitutional and Statutory provisions,
3 Defendants, and their agents and employees, including Defendants DOES 1 to 100, have,
4 and unless enjoined, will continue to subject the Plaintiff class to constitutional violations
5 and injury that will cause Plaintiffs and the other class members harm, and Plaintiffs will be
6 fearful of exercising their right to peacefully pray, assemble, engage in business, and to be
7 treated for COVID-19.
8

9 **CLAIMS FOR RELIEF**

10 **I.**
11 **FIRST CLAIM FOR RELIEF**
12 **VIOLATION OF THE FIFTH AMENDMENT**
13 **Right to travel as enforced by 42 § 1983**
14 ***(Against All Defendants)***

15 60. Plaintiffs incorporate herein by reference each and every allegation contained
16 in the preceding paragraphs of this Complaint as though fully set forth herein.
17

18 61. While not explicitly defined in the U.S. Constitution, the Supreme Court has
19 “acknowledged that certain unarticulated rights are implicit in enumerated guarantees....
20 Yet these important but unarticulated rights [association, privacy, presumed innocent, etc.]
21 have nonetheless been found to share constitutional protection in common with explicit
22 guarantees.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 579-580 (1980).

23 62. “The right to travel is a part of the liberty of which the citizens cannot be
24 deprived without the due process of law under the Fifth Amendment.” *Kent v. Dulles*, 357
25 U.S. 116, 127 (1958).

1 63. Courts have found that “[f]reedom of movement is kin to the right of assembly
2 and to the right of association. These rights may not be abridged. *Aptheker v. Secretary of
3 State*, 378 U.S. 500, 520 (1964).

4 64. The United States Supreme Court has found that this right to travel includes in
5 state, intrastate, or foreign travel. *See, e.g., Kent v. Dulles*, 357 U.S. at 126 (“Freedom of
6 movement across frontiers in either direction, and inside frontiers as well, was a part of our
7 heritage.”).

8 65. The right to travel is fundamental because “[f]reedom of movement, at home
9 and abroad, is important for job and business opportunities – for cultural, political, and
10 social activities – for all the commingling which gregarious man enjoys.” *Aptheker*, 378
11 U.S. at 519-520 (1964). *See also Kent*, 357 U.S. at 126 (where “[t]ravel abroad, like travel
12 within the country, may be necessary for a livelihood. It may be as close to the heart of the
13 individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic
14 in our scheme of values.”).

15 66. Even though we are in a state of emergency, and people may abuse the right to
16 travel, citizens do not lose their constitutional rights. *See Aptheker*, 378 U.S. at 520 (“Those
17 with the right of free movement use it at times for mischievous purposes. But that is true of
18 many liberties we enjoy. We nevertheless place our faith in them, and against restraint,
19 knowing that the risk of abusing liberty so as to give rise to punishable conduct is part of the
20 price we pay for this free society.”).

21 67. When a government practice restricts fundamental rights like the right to
22 travel, it is subject to “strict scrutiny” and can be justified only if it furthers a compelling
23 governmental purpose, and even then, only if no less restrictive alternative is available. *See,*
24 *e.g., Memorial Hospital v. Maricopa County*, 415 U.S. 250, 257-258 (1974); *Dunn v.*

Blumstein, 405 U.S. 330, 339-341 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 89 (1969), *Maher v. Roe*, 432 U.S. 464, 488 (1977).

68. Defendant Sisolak’s Emergency Directives mandate that Plaintiffs stay at home and shut down their “Non-Essential Businesses”.

69. Requiring Plaintiffs to abstain from conducting business operations, even those in compliance with the CDC's social distancing guidelines, violates Plaintiffs' Constitutional right to travel.

70. Unless enjoined, Defendants will act under color of law to deprive Plaintiffs of their right to travel as protected by the Due Process Clause.

71. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their Constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders and Emergency Directives.

72. Pursuant to 42 U.S. C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders and Emergency Directives.

73. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S. C. § 1988.

II.
SECOND CLAIM FOR RELIEF
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT
(*Against All Defendants*)

74. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

1 75. Plaintiffs have a fundamental property interest in conducting lawful business
2 activities that are protected by the Due Process Clause of the Fourteenth Amendment.

3 76. The Orders and Emergency Directives, and Defendants' enforcement thereof,
4 violate Plaintiffs' substantive due process rights secured by the Fourteenth Amendment to
5 the U.S. Constitution. Under the Due Process Clause of the Fourteenth Amendment, no
6 State shall "deprive any person of life, liberty, or property, without due process of law."
7 The fundamental liberties protected by this Clause include most of the rights enumerated in
8 the Bill of Rights. *See Duncan v. Louisiana*, 391 U.S. 145, 147-149 (1968). In addition,
9 these liberties extend to certain personal choices central to individual dignity and autonomy,
10 including intimate choices that define personal identity and beliefs. *See, e.g., Eisenstadt v.*
11 *Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 484-486 (1965).

12 77. Defendants', which expressly deprive Plaintiffs of their rights and liberties by
13 prohibiting the lawful operation of their businesses by ordering the closure of "Non-
14 Essential Businesses", did not afford Plaintiffs with a constitutionally adequate hearing with
15 which to present their case for their businesses to not be shut down. At a minimum,
16 Plaintiffs aver that they should have been able to decide for themselves whether or not to
17 "shut down", if their businesses / business models were not properly equipped to deal with
18 the health and safety guidelines as issued by the Federal and State Governments in
19 connection with the COVID-19 crisis.

20 78. Defendants failed to comply with the procedural and substantive requirements
21 of the U.S. Constitution in connection with Plaintiffs' rights and liberties as they relate to
22 their respective properties / businesses, which would have given Plaintiffs a meaningful
23 opportunity to respond to the proposed Orders and Emergency Directives, and to explain
24 how and why they were so deeply flawed and unconstitutional as applied to Plaintiffs.

1 79. Because Defendants' decisions in issuing the Emergency Directives were made
2 in reliance on procedurally deficient and substantively lawful processes, Plaintiffs were
3 directly and proximately deprived of their property and liberties, and consequently, their
4 ability to lawfully operate their businesses, without unconstitutional government overreach.

5 80. Because Defendants' decisions were made in reliance upon an arbitrary and
6 capricious interpretation of the Nevada Constitution and related laws and statutes with
7 respect to their ability to order the state-wide "closure" of all "Non-Essential Businesses",
8 Plaintiffs were directly and proximately deprived of their property rights and liberties absent
9 substantive due process of law, in violation of the Fourteenth Amendment to the U.S.
10 Constitution.

11 81. Plaintiffs have no adequate remedy at law and will suffer serious and
12 irreparable harm to their constitutional rights unless Defendants are enjoined from
13 implementing and enforcing the Orders and Emergency Directives.

14 82. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory
15 relief and temporary, preliminary, and permanent injunctive relief invalidating and
16 restraining enforcement of the Orders and Emergency Directives.

17 83. Plaintiffs found it necessary to engage the services of private counsel to
18 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
19 attorneys' fees pursuant to 42 U.S.C. § 1988.

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III.

THIRD CLAIM FOR RELIEF

VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH

AMENDMENT

(Against All Defendants)

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5 84. Plaintiffs incorporate herein by reference each and every allegation contained
 6 in the preceding paragraphs of this Complaint as though fully set forth herein.

7 85. At its core, the Equal Protection Clause of the Fourteenth Amendment to the
 8 U.S. Constitution functions as a constitutional guarantee that no person or group will be
 9 denied the protection under the law that is enjoyed by similar persons or groups. In other
 10 words, persons similarly situated must be similarly treated. Equal protection is extended
 11 when the rules of law are applied equally in all like cases and when persons are exempt
 12 from obligations greater than those imposed upon others in like circumstances.

14 86. The Orders and Emergency Directives, and Defendants' enforcement thereof,
 15 violate the Fourteenth Amendment, both facially and as-applied to Plaintiffs. The
 16 Fourteenth Amendment of the Constitution provides that “[n]o State shall . . . deny to any
 17 person within its jurisdiction the equal protection of the laws.” Equal protection requires the
 18 State to govern impartially—not draw arbitrary distinctions between businesses based solely
 19 on differences that are irrelevant to a legitimate governmental objection.

21 87. Defendants have intentionally and arbitrarily categorized Nevada businesses
 22 and conduct as either “Essential” or “Non-Essential.” Those businesses classified as
 23 “Essential,” or as participating in “Essential Services”, are permitted to go about their
 24 business and activities provided certain social distancing practices are employed. Those
 25 classified as “Non-Essential,” or as engaging in “Non-essential” activities, are required to
 26

1 shut down and have their workers stay in their residences, unless it becomes absolutely
2 necessary for them to leave for one of the enumerated “Essential” activities.

3 88. Strict scrutiny under the Equal Protection Clause applies where, as here, the
4 classification impinges on a fundamental right – the right to free exercise, including the
5 right to due process and the right to travel (both interstate and intrastate), the right to
6 privacy, the right to worship, among others.

7 89. Defendants cannot satisfy strict scrutiny because their arbitrary classifications
8 are not narrowly tailored measures that further compelling government interests, for the
9 reasons stated above.

10 90. Plaintiffs have no adequate remedy at law and will suffer serious and
11 irreparable harm to their constitutional rights unless Defendants are enjoined from
12 implementing and enforcing the Orders and Emergency Directives.

13 91. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory
14 relief and temporary, preliminary, and permanent injunctive relief invalidating and
15 restraining enforcement of the Orders and Emergency Directives.

16 92. Plaintiffs found it necessary to engage the services of private counsel to
17 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
18 attorneys’ fees pursuant to 42 U.S.C. § 1988.

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IV.
FOURTH CLAIM FOR RELIEF
VIOLATION OF THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT
(*Against All Defendants*)

25 93. Plaintiffs incorporate herein by reference each and every allegation contained
26 in the preceding paragraphs of this Complaint as though fully set forth herein.

1 94. The United States Supreme Court has long held that “the Fifth
2 Amendment...was designed to bar Government from forcing people alone to bear public
3 burdens which, in all fairness and justice, should be borne by the public as a whole.” *See*
4 *Armstrong v. United States* 364 U.S. 40, 49. (1960)

5 95. Defendants’ Orders and Emergency Directives mandated that because
6 Plaintiffs were “Non-Essential Businesses”, they were required to “shut down” and cease all
7 operations as a means to help curb the spread of COVID-19. Such a mandate completely
8 and unconstitutionally deprived Plaintiffs of all economically beneficial use of their
9 businesses without just compensation.

10 96. While the “police power” is inherent in a sovereign government and is reserved
11 for the States in the Tenth Amendment to the U.S. Constitution, it is not without
12 constitutional limits. *See Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926) (holding
13 that local governments may protect the general welfare through the enactment of residential
14 zoning ordinances). However, a government’s “police power” in this area is restricted by
15 Constitutional considerations, including the Fifth Amendment’s “Takings Clause”, as well
16 as Due Process and Equal Protection.

17 97. Defendants’ Orders and Emergency Directives, and Defendants’ enforcement
18 thereof, has caused both a complete and total regulatory and physical taking of Plaintiffs’
19 property without just compensation in violation of the Takings Clause of the Fifth
20 Amendment to the U.S. Constitution. At a minimum, the effect of Defendants’ Orders and
21 Emergency Directives constitutes a “partial” taking under the Penn- Central three-factor
22 test. *See Penn Central Trans. Co. v. City of New York* , 438 U.S. 104, 124 (1978). As a
23 result, Defendants’ blatant violation of the Takings Clause of the Fifth Amendment has
24 caused proximate and legal harm to Plaintiffs.

98. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders and Emergency Directives.

99. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining enforcement of the Orders and Emergency Directives.

100. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

V.
FIFTH CLAIM FOR RELIEF
VIOLATION OF THE NEVADA CONSTITUTION
ARTICLE I DECLARATION OF RIGHTS
(Against All Defendants)

101. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

102. Since 1864, the Nevada Constitution has provided intrinsic and unalienable rights and liberties to its citizens. Chief among those rights and liberties are those found in Article I of the Nevada Constitution. Article I, Section 1, of the Nevada Constitution provides, in pertinent part, that “[a]ll men are by Nature free and equal and have certain inalienable rights among which are those of enjoying and defending life and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and happiness...”

103. Similarly, Article I, Section 8, provides that no person shall be deprived of life, liberty, or property, without due process of law.

104. Defendants' Orders and Emergency Directives have not only interfered with Plaintiffs' rights and liberties as set forth under Article I, Sections 1, 4, 8, 10, and 11 of the Nevada Constitution, but have further deprived them of the use, enjoyment and ability to operate their respective businesses on account of a discriminatory classification as "Non-Essential Businesses".

105. Defendants' Orders and Emergency Directives have proximately and legally caused tremendous financial harm not just to Plaintiffs' businesses, but to the entire Nevada economy, which will continue to have deleterious effects unless and until Defendants are enjoined by this Court from enforcing their respective Orders and Emergency Directives.

106. Requiring Plaintiffs to abstain from conducting lawful business in the State of Nevada, despite other compliance measures being taken to satisfy the public health interests at stake, violates their Nevada Constitutional liberty rights.

107. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their Constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders and Emergency Directives.

108. Plaintiffs have found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are entitled to an award of attorneys' fees thereon.

VI.
SIXTH CLAIM OF RELIEF
VIOLATION OF NEVADA CONSTITUTION
Right to Liberty (Nev. Const. Art. 1, § 4)
(Against All Defendants)

109. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

110. Article 1, Section 4, of the Nevada Constitution provides, in pertinent part, that “[t]he free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed in this State...”

111. Nevada Courts have routinely held that the Nevada Constitution mirrors the Free Exercise Clause in the First Amendment. Emergency Directive 013, passed April 8, 2020, which precludes attendance at places of worship, lacks a compelling state interest as to such religiously-motivated Orders and Emergency Directives.

112. Requiring places of worship to limit the number of parishioners physically present violates the Free Exercise Clause of the Nevada and United States Constitutions, and whereby Emergency Directive 013 specifically precludes the Free Exercise of Religion in Nevada.

113. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their Constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders and Emergency Directives.

114. Plaintiffs have found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are entitled to an award of attorneys' fees thereon.

VII.
SEVENTH CLAIM FOR RELIEF
VIOLATION OF THE NEVADA CONSTITUTION
Right to Liberty (Nev. Const. Art. 1, § 8)
(Against All Defendants)

115. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

1 116. Article 1, Section 8, of the Nevada Constitution provides, in pertinent part, that
2 “[n]o person shall be deprived of life, liberty, or property, without due process of law. Private
3 property shall not be taken for public use without just compensation having been first made,
4 or secured, except in cases of war, riot, fire, or great public peril, in which case compensation
5 shall be afterward made...”

6 117. Moreover, the principle behind the concept of just compensation for property
7 taken for public use is to put the owner in as good a position pecuniary as he or she would
8 have occupied if his or her property had not been taken.

9 118. Finally, the Constitutional guarantee of just compensation for property taken
10 by the Government is not only intended to protect the landowner (or business owner), but it
11 also protects the public by limiting its liability to losses that can fairly be attributed to the
12 taking.

13 119. Requiring Plaintiffs to abstain from conducting lawful business in the State of
14 Nevada, despite other compliance measures being taken to satisfy the public health interests at
15 stake, violates their Nevada Constitutional liberty rights.

16 120. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
17 harm to their Constitutional rights unless Defendants are enjoined from implementing and
18 enforcing the Orders and Emergency Directives.

19 121. Plaintiffs have found it necessary to engage the services of private counsel to
20 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys'
21 fees and costs thereon.

22 25 **REQUESTED RELIEF**
23

24 26 WHEREFORE, Plaintiffs request that this Court:

27 27 (1) 28 Issue a declaratory judgment with the following:

(a) Declaration that Defendant Governor Sisolak's Executive Order 2020-01, Emergency Directives 001, 002, 003, 006, 007, 010, 013, and 016, and their corresponding emergency regulations dated March 20, 2020 and March 23, 2020 are null and void, of no effect, as:

(i) Unconstitutional under the Fifth Amendment;

(ii) Unconstitutional under the Fourteenth Amendment;

(iii) Arbitrary and capricious, an abuse of discretion, or otherwise

not in accordance with the U.S. and/or Nevada Constitutions;

(iv) Contrary to Constitutional right, power, privilege, or immunity

in violation of the U.S. and/or Nevada Constitutions; and

(v) In excess of statutory jurisdiction, authority, or limitations, or

short of statutory right in violation of the U.S. and/or Nevada Constitutions;

(b) Declaration that Defendant's March 20, 2020 enumerated list of

“Essential Businesses” versus “Non-Essential Businesses” following Defendant Governor Sisolak’s Emergency Directives is null and void, of no effect, as:

(i) Unconstitutional under the Fifth Amendment;

(ii) Unconstitutional under the Fourteenth Amendment;

(iii) Arbitrary and capricious, an abuse of discretion, or otherwise

not in accordance with the U.S. and/or Nevada Constitutions;

(iv) Contrary to Constitutional right, power, privilege, or immunity

in violation of the U.S. and/or Nevada Constitutions; and

(v) In excess of statutory jurisdiction, authority, or limitations, or

short of statutory right in violation of the U.S. and/or Nevada Constitutions;

(c) Declaration that Defendant Governor Sisolak's April 8, 2020 prohibition of gathering in places of worship is null and void, of no effect, as:

(i) Unconstitutional under the First Amendment;

(ii) Unconstitutional under the Fourteenth Amendment;

(iii) Arbitrary and capricious, an abuse of discretion, or otherwise

not in accordance with the U.S. and/or Nevada Constitutions;

(iv) Contrary to Constitutional right, power, privilege, or immunity

in violation of the U.S. and/or Nevada Constitutions; and

(v) In excess of statutory jurisdiction, authority, or limitations, or

short of statutory right in violation of the U.S. and/or Nevada Constitutions;

(2) Set aside and hold unlawful Defendants' Orders and Emergency Directives;

(3) Permanently enjoin Defendants and all persons and entities in active concert or participation with Defendants, including law enforcement authorities and their agents, from enforcing the Orders and Emergency Directives;

(4) Issue a TRO and a preliminary injunction preventing Defendants from enforcing or implementing the Orders and Emergency Directives until this Court decides the merits of this lawsuit;

(5) Permanently enjoin Defendants and all persons and entities in active concert or participation with Defendants from enforcing the Orders and Emergency Directives unless they are issued in accordance with all procedural and substantive due process requirements of the U.S. Constitution;

(6) Award Plaintiffs damages arising out of their § 1983 Claims, and specifically, under the Fifth Amendment to the U.S. Constitution, and Article 1, Section 8, of the Nevada Constitution's Takings Clause(s);

1 (7) Award Plaintiffs the reasonable value of the loss of their businesses by virtue
2 of Defendant Governor Sisolak's Orders and Emergency Directives;

3 (8) For such other and further relief to which Plaintiffs may show themselves
4 justly entitled; and

5 (9) For an award of reasonably attorneys' fees and his costs on his behalf
6 expended as to such Defendants pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1988.
7

8 **AFFIRMATION**

9 The undersigned does hereby affirm that this document does not contain the social
10 security number of any person.

11 DATED this 20th day of May 2020.

12 **CHATTAH LAW GROUP**

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