

1 **GERAGOS & GERAGOS**

2 A PROFESSIONAL CORPORATION  
3 LAWYERS  
4 HISTORIC ENGINE CO. No. 28  
5 644 SOUTH FIGUEROA STREET  
6 LOS ANGELES, CALIFORNIA 90017-3411  
7 TELEPHONE (213) 625-3900  
8 FACSIMILE (213) 232-3255  
9 [GERAGOS@GERAGOS.COM](mailto:GERAGOS@GERAGOS.COM)

10 MARK J. GERAGOS (SBN: 108325)

11 [mark@geragos.com](mailto:mark@geragos.com)

12 BEN J. MEISELAS (SBN: 277412)

13 [ben@geragos.com](mailto:ben@geragos.com)

14 MATTHEW M. HOESLY (SBN: 289593)

15 [mhoesly@geragos.com](mailto:mhoesly@geragos.com)

16 MATTHEW J. VALLEJO (SBN: 322713)

17 [vallejo@geragos.com](mailto:vallejo@geragos.com)

18 ARTHUR KARAGEZIAN (SBN: 328749)

19 [arthur@geragos.com](mailto:arthur@geragos.com)

20 **DHILLON LAW GROUP INC.**

21 177 Post Street, Suite 700  
22 San Francisco, California 94108  
23 Telephone: (415) 433-1700  
24 Facsimile: (415) 520-6593

25 HARMEET K. DHILLON (SBN: 207873)

26 [harmeet@dhillonlaw.com](mailto:harmeet@dhillonlaw.com)

27 MARK P. MEUSER (SBN: 231335)

28 [mmeuser@dhillonlaw.com](mailto:mmeuser@dhillonlaw.com)

NITTOJ P. SINGH (SBN: 265005)

[nsingh@dhillonlaw.com](mailto:nsingh@dhillonlaw.com)

*Attorneys for Plaintiff PCG-SP Venture I LLC dba V Palm Springs*

24 **UNITED STATES DISTRICT COURT**  
25 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

1 PCG-SP VENTURE I LLC  
2 dba V PALM SPRINGS HOTEL, a  
3 limited liability company;

4 Plaintiff,

5 vs.

6 **GAVIN NEWSOM**, in his official  
7 capacity as Governor of California;  
8 **XAVIER BECERRA**, in his official  
9 capacity as the Attorney General of  
10 California; and **SONIA Y. ANGELL**,  
11 **MD, MPH**, in her official capacity as the  
12 Director and State Public Health Officer,

13 Defendants.

**CASE NO.:** 5:20-cv-1138

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF EX  
PARTE APPLICATION FOR A  
TEMPORARY RESTRAINING  
ORDER**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

<b>TABLE OF CONTENTS</b>	<b>3</b>
<b>TABLE OF AUTHORITIES</b>	<b>4</b>
<b>MEMORANDUM OF POINTS AND AUTHORITIES</b>	<b>7</b>
<b>INTRODUCTION</b>	<b>7</b>
<b>FACTS</b>	<b>7</b>
<b>REQUIREMENTS FOR A RESTRAINING ORDER</b>	<b>11</b>
I.    Without a TRO, Plaintiff’s Hardship is Severe.	11
II.   Plaintiff Is Likely to Succeed on the merits of Its claims and Raises Serious Questions as to the Validity of Defendants’ Orders.	13
A.   Plaintiff has standing to bring Its claims.	13
B.   Defendants’ Orders curtail Plaintiff’s fundamental rights.	14
C.   Defendants’ Orders violate Article 1 of the California Constitution.	20
III.  The Balance of Equities Tips Decidedly in Plaintiff’s Favor.	22
IV.  A Temporary Restraining Order is in the Public Interest.	23
<b>THE COURT SHOULD DISPENSE WITH ANY BOND REQUIREMENT</b>	<b>24</b>
<b>CONCLUSION</b>	<b>25</b>

**TABLE OF AUTHORITIES**

Page(s)

Cases

1  
2  
3  
4 *Armstrong v. Marurak*,  
94 F.3d 566 (9th Cir. 1996).....21  
5 *Associated Gen. Contractors of Cal., Inc. v. Coalition for Economic Equity*,  
6 950 F.2d 1401 (9th Cir. 1991)..... 11  
7 *Bible Club v. Placentia-Yorba Linda School Dist.*,  
573 F. Supp. 2d 1291 (C.D. Cal. 2008) .....24  
8 *Citicorp Servs., Inc. v. Gillespie*,  
9 712 F. Supp. 749 (N.D. Cal. 1989) ..... 11  
10 *City of Cleburne v. Cleburne Living Ctr.*,  
473 U.S. 432 (1985)..... 13  
11 *City of New York*,  
12 438 U.S. 104 (1978)..... 19  
13 *Connally v. General Const. Co.*,  
269 U.S. 385 (1926)..... 16  
14 *Conway v. State Bar*,  
47 Cal. 3d 1107 (1989)..... 14  
15 *Dent v. W. Va.*,  
16 129 U.S. 114 (1889)..... 13  
17 *Doctor John’s, Inc. v. Sioux City*,  
305 F. Supp. 2d 1022 (N.D. Iowa 2004).....24  
18 *Duncan v. Louisiana*,  
19 391 U.S. 145 (1968)..... 19  
20 *Earth Island Inst. v. United States Forest Serv.*,  
351 F.3d 1291 (9th Cir. 2003)..... 11  
21 *Eisenstadt v. Baird*,  
405 U.S. 438 (1972)..... 19  
22 *Engquist v. Ore. Dep’t of Agr.*,  
23 553 U.S. 591 (2008)..... 15  
24 *Euclid v. Ambler Realty Company*,  
272 U.S. 365 (1926)..... 18  
25 *Ex parte Arta*,  
26 52 Cal. App. 380 (1921).....20  
27 *Ex Parte Jentzsch*,  
112 Cal. 468 (1896)..... 15, 17  
28 *Ex parte Martin*,

1 83 Cal. App. 2d 164 (1948).....20  
*Farmers Ins. Exch. v. Cal.*,  
2 175 Cal. App. 3d 494, (1985).....22  
3 *For The Wild Rockies v. Cottrell*,  
4 632 F.3d 1127 (9th Cir. 2011).....12  
5 *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*,  
6 415 U.S. 423 (1974).....11  
7 *Grayned v. City of Rockford*,  
8 408 U.S. 104 (1972).....16  
9 *Griswold v. Connecticut*,  
10 381 U.S. 479 (1965).....19  
11 *Jew Ho v. Williamson*,  
12 103 F. 10 (C.C. N.D. Cal. 1900).....20  
13 *Johnson v. Cal. State Bd. of Accountancy*,  
14 72 F.3d 1427 (9th Cir. 1995).....11  
15 *Johnson v. United States*,  
16 135 S. Ct. 2551 (2015).....15  
17 *Jorgensen v. Cassidy*,  
18 320 F.3d 906 (9th Cir. 2003).....23  
19 *Lowe v. S.E.C.*,  
20 472 U.S. 181 (1985).....13  
21 *Lujan v. Defenders of Wildlife*,  
22 504 U.S. 555 (1992).....13  
23 *Marbury v. Madison*,  
24 5 U.S. 137 (1803).....16  
25 *Miller v. Board of Public Works*,  
26 195 Cal. 477 (1925).....18  
27 *College Republicans at San Francisco State Univ. v. Reed*,  
28 523 F. Supp. 2d 1005 1012 (N.D. Cal. 2007).....21, 23  
*Sessions v. Dimaya*,  
138 S. Ct. 1204 (2018).....16  
*Shelton v. Tucker*,  
364 U.S. 479 (1960).....15  
*Stuhlberg Intern Sales Co., Inc. v. John D. Brush & Co., Inc.*,  
240 F.3d 832 (9th Cir. 2001).....11  
*Truax v. Raich*,  
239 U.S. 33 (1915).....19  
*W. Virginia State Bd. of Educ. v. Barnette*,  
319 U.S. 624 (1943).....14

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Statutes

California Government Code § 8629 .....22

California Health & Safety Code, Div. 105, Pt. 1, Ch. 2 .....9

Rules

Rule 65(c) of the Federal Rules of Civil Procedure .....23

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 The deprivation of fundamental human liberties is not an appropriate societal  
4 vaccine for a pandemic. The United States and California Constitutions contain no  
5 exceptions for health crises, and California’s executive branch may not ignore  
6 fundamental constitutional norms on the basis of a health emergency.

7 Plaintiff is a hotel located in Palm Springs, California. In an overreaching  
8 response to the coronavirus pandemic, Defendants arbitrarily declared some Palm  
9 Springs businesses to be essential and others to be non-essential, regardless of their  
10 respective abilities to properly follow CDC- and state-issued public health guidelines.  
11 The arbitrary nature of Defendants’ decision-making process has revealed itself  
12 repeatedly throughout the pandemic, perhaps best exemplified for the purposes of this  
13 matter by the fact that short-term vacation rentals have been permitted to reopen while  
14 Plaintiff’s hotel is forced to remain closed. Plaintiff has a constitutional right to operate  
15 its business, one that may not be casually divested at the whim of the state.  
16

17 A temporary restraining order is in the public interest because it would allow the  
18 critical constitutional issues in this matter to be resolved before Plaintiff’s business, and  
19 its employees’ jobs, no longer exist.

20 **FACTS**

21 Defendants, led by California Governor Gavin Newsom, are using vague  
22 directives, arbitrary reopening decisions, and capricious enforcement threats that have  
23 caused irreversible financial harm to Plaintiff, its employees, similarly situated hotel  
24 businesses, and even the City of Palm Springs.

25 On March 4, 2020, Governor Newsom (the “Governor”) proclaimed a State of  
26 Emergency due to the threat of COVID-19. (Compl., ECF No. 1, ¶ 24.) On March 19,  
27 2020, the Governor issued Executive Order N-33-20 (the “Governor’s Order”) which,  
28 among other things, mandated that “all residents are directed to immediately heed the

1 current State public health directives. (Compl. ¶¶ 7, 24.) The Governor’s Order and  
2 subsequent state public health directives mandate that all individuals living in the State  
3 of California are to “stay home or at their place of residence except as needed to  
4 maintain continuity of operations of the federal critical infrastructure sectors . . . .”  
5 (Compl. ¶ 25.) The goal of the Governor’s Order was to prevent the coronavirus from  
6 spreading, and the Governor’s Order was to remain in effect until further notice.

7  
8 Since the initial outbreak of COVID-19 in the United States in February and  
9 March 2020, the federal government’s projections of the anticipated death toll related to  
10 the virus have decreased substantially—by orders of magnitude. Despite this  
11 development, Defendants have continued to prohibit Plaintiff’s engagement in protected  
12 activities, with no coherent justification. Indeed, on March 18, 2020, the Governor  
13 projected that 56 percent of Californians, or roughly 25.5 million people, could be  
14 infected over the ensuing eight weeks. (Compl. ¶ 34.) The Governor’s March 18, 2020  
15 statement went on to say that “[i]n some parts of our state, our case rate is doubling  
16 every four days.” (Compl. ¶ 34.) As of May 31, 2020, there were 113,006 confirmed  
17 cases of coronavirus in California, which is only 0.4% of the Governor’s projection.  
18 (Compl. ¶ 35.) Studies and data have shown that the Governor’s Order would not only  
19 be of no benefit to preventing the transmission of COVID-19 or death from it—on the  
20 contrary, it could actually be detrimental to such efforts. (Compl. ¶¶ 53–55.)  
21 Regardless of the general efficacy of the Governor’s Order, as of May 29, 2020  
22 Riverside County and Palm Springs have weathered the COVID-19 outbreak extremely  
23 well, with only 323 deaths due to COVID-19 in Riverside County, and just nine of  
24 those in the City of Palm Springs, thus casting further doubt as to the continued  
25 necessity of state-imposed restrictions in those locations. (Compl. ¶ 11.)

26 On March 22, 2020, California Public Health Officer Sonia Angell, MD, MPH  
27 unilaterally designated a list of “Essential Critical Infrastructure Workers” without  
28 going through any rulemaking procedures. The rules effectively criminalize entire



1 classes of activities known only to the Public Health Officer.<sup>1</sup> Nothing in the California  
2 Health & Safety Code provides authority for the Public Health Officer to act in such a  
3 manner. Plaintiff’s hotel is not among the chosen “essential” businesses permitted to  
4 continue their operations.

5         Since April 16, 2020, when the Governor stated that “[we] have successfully bent  
6 and arguably flattened the curve in the state of California,” the Governor has begun to  
7 slowly modify his Order to allow certain businesses to reopen in accordance with public  
8 health guidelines. Unfortunately for Plaintiff, its employees, and other stakeholders that  
9 rely on tourist and visitor income, Defendants have thus far refused to permit hotels to  
10 reopen despite having permitted other similarly situated “non-essential” businesses to  
11 resume operations. Riverside County specifically has entered into the accelerated  
12 “Stage 2” under the Governor’s Order, effective May 21, 2020, permitting the  
13 reopening of shopping centers and restaurants for dining in. (Compl. ¶ 10.)  
14 Irrationally, short-term vacation rentals are permitted to reopen under the Governor’s  
15 Order, while hotels like Plaintiff’s must remain closed despite their commitment to  
16 strictly adhere to health and safety guidelines promulgated by the state on May 12,  
17 2020. (Compl. ¶ 11; *see* Declaration of Greg Grossman “Grossman Decl.” ¶¶ 1, 3–5.)

18  
19         Plaintiff is especially primed to strictly comply with state health and safety  
20 guidelines. It maintains an open floor plan, has no elevators and no enclosed hallways,  
21 and its public spaces are primarily outdoors. (Compl. ¶ 50; Grossman Decl. ¶ 4.)  
22 Plaintiff’s hotel has already enacted social distancing guidelines, provided enhanced  
23 training on safety procedures to staff, and otherwise gone above and beyond to ensure  
24  
25

---

26  
27  
28 <sup>1</sup> Cal. Health & Saf. Code, Div. 105, Pt. 1, Ch. 2.

1 the hotel is as safe as possible for guests upon reopening. (Compl. ¶ 51; Grossman Decl.  
2 ¶ 4.)

3 The irrationality of the continued prohibition on the operation of Plaintiff’s hotel  
4 business is made even more clear when compared to the State of New York’s policies  
5 on reopening industries. New York, the primary epicenter for the COVID-19 pandemic  
6 in the United States, permits hotels to operate statewide while continuing to disallow  
7 dining in at restaurants. (Compl. ¶ 56.) The fact that the state that is likely the hardest  
8 hit by COVID-19 allows hotels to operate, while California does not, emphasizes the  
9 utter irrationality of the current situation and the lack of rational basis for the  
10 Governor’s Order.

11 Additionally, due to the vague nature of the Governor’s Order, Plaintiff has no  
12 way to know when it will be permitted to resume operations. (Grossman Decl. ¶ 5.)  
13 COVID-19 has absolutely decimated the hotel business in California and nationwide.<sup>2</sup>  
14 Plaintiff is informed and believes that other similarly situated hotel businesses have  
15 resumed operations while disregarding the Governor’s Order. (See Grossman Decl. ¶ 9.)  
16 Plaintiff understands that, while some hotels are permitted to be open for very limited  
17 purposes, e.g., to house certain essential travelers, certain hotels have opened for leisure  
18 guests in defiance of the Governor’s Order. (See Grossman Decl. ¶ 9.) As a result,  
19 Plaintiff and its employees are left in a limbo state in which continuing to act within the  
20 current irrational rules will soon result in the complete closure of Plaintiff’s business,  
21

---

22  
23  
24 <sup>2</sup> See, e.g., COVID-19’S IMPACT ON THE HOTEL INDUSTRY, available as of the  
25 date of filing at: <https://www.ahla.com/covid-19s-impact-hotel-industry>; and  
26 CALIFORNIA: COVID-19 IMPACT ON STATE’S HOTEL INDUSTRY, available as  
27 of the date of filing at:  
28 [https://www.ahla.com/sites/default/files/2020-04/ahla\\_ca\\_one\\_pagersfinal\\_0.pdf](https://www.ahla.com/sites/default/files/2020-04/ahla_ca_one_pagersfinal_0.pdf).

1 while similarly situated businesses that have disregarded those rules will further  
2 prosper. (*See* Grossman Decl. ¶ 1, 3, 5–6.)

3 It is crucial to note that on the very date of the filing of this Application, the City  
4 of Palm Springs sent a letter to Defendants Newsom and Angell and other California  
5 policymakers strongly supporting Plaintiff’s position. This letter “urgently[] request[s]  
6 that the State [of California] immediately allow for the safe re-opening of hotels and  
7 similar lodging facilities for leisure/vacation related purposes.” (Grossman Decl. ¶ 8,  
8 Ex. 1.) As noted in the letter, “Tourism is . . . an enormous economic driver in the  
9 Coachella Valley and the City of Palm Springs in particular. . . . As a result of the stay  
10 at home order, the sharp decline in tourism has caused a significant anticipated budget  
11 deficit for the City’s 2020/21 fiscal year.” (Grossman Decl. ¶ 8, Ex. 1.)

### 12 **REQUIREMENTS FOR A TEMPORARY RESTRAINING ORDER**

13 A temporary restraining order (“TRO”) preserves the status quo and prevents  
14 irreparable harm until a hearing can be held on a preliminary injunction application. *See*  
15 *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415  
16 U.S. 423, 439 (1974). The standards for issuing a TRO and a preliminary injunction are  
17 the same. *See, e.g., Stuhlberg Intern Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240  
18 F.3d 832, 839 n.7 (9th Cir. 2001). A court may grant the injunction if the plaintiff  
19 “demonstrates either a combination of probable success on the merits and the possibility  
20 of irreparable injury or that serious questions are raised and the balance of hardships  
21 tips sharply in his favor.” *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d  
22 1291, 1297–98 (9th Cir. 2003) (citing *Johnson v. Cal. State Bd. of Accountancy*, 72  
23 F.3d 1427, 1430 (9th Cir. 1995). “The greater the relative hardship to [the party seeking  
24 the preliminary injunction,] the less probability of success must be shown.” *Id.*

#### 25 **I. Without a TRO, Plaintiff’s Hardship is Severe.**

26 Plaintiff is being denied its fundamental rights to equal protection and due  
27 process—which protect the lawful use of its property—by Defendants’ overly broad  
28

1 Orders. The Ninth Circuit has held that “an alleged constitutional infringement will  
2 often alone constitute irreparable harm.” *Associated Gen. Contractors of Cal., Inc. v.*  
3 *Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991); *see also Citicorp*  
4 *Servs., Inc. v. Gillespie*, 712 F. Supp. 749, 753 (N.D. Cal. 1989) (“In various cases,  
5 courts in the Ninth Circuit have presumed irreparable harm from an alleged violation of  
6 constitutional rights.”). Here, in addition to the infringement of its constitutional rights  
7 generally, Plaintiff has suffered and continues to suffer irreparable harm as the result of  
8 Defendants’ Orders.

9  
10 Even if an actual taking of property has not yet occurred, Defendants’ palpable  
11 and repeated threat of serious penalties for those who violate Defendants’ Orders has  
12 caused Plaintiff to refrain from resuming its lawful business, resulting in irreparable and  
13 ongoing harm. Defendants have segregated Plaintiffs and their livelihoods out of the  
14 economy as “non-essential,” even though less restrictive means of protecting the public  
15 are available. Hotels are heavily regulated, and the V Palm Springs is fully in  
16 compliance with all applicable codes and regulations. Other states have adopted  
17 additional health and safety practices to protect the public. Without immediate relief,  
18 there is no reasonable way for Plaintiff to recover the cash reserves and indebtedness it  
19 is using to cover fixed costs of maintaining its staff and premises. Plaintiff is  
20 desperately treading water to remain in compliance with Defendants’ Orders and keep  
21 alive some hope of resuming its business again.

22  
23 As cash reserves evaporate, Plaintiff will soon reach a point of never being able  
24 to recover, short of seeking bankruptcy protection. This is precisely the type of  
25 irreparable harm that a temporary restraining order can prevent. Prior to the coronavirus  
26 pandemic, many customers made reservations to stay at Plaintiff’s hotel in reliance on  
27 the reasonable belief that the hotel’s business would continue to operate without  
28 arbitrary interruption. Plaintiff maintained and improved the premises in preparation to  
receive its guests. These actions represent reasonable investment-backed expectations.

1 If Plaintiff is unable to utilize its property, then this property has been arbitrarily  
2 deprived of all value. If a temporary restraining order is granted, this economic  
3 devastation can be avoided.

4 **II. Plaintiff Is Likely to Succeed on the merits of Its claims and**  
5 **Raises Serious Questions as to the Validity of Defendants’**  
6 **Orders.**

7 In cases where there is a likelihood of irreparable injury and an injunction would  
8 be in the public interest, a preliminary injunction is appropriate when there are serious  
9 questions going to the merits of the claim, and the balance of hardships tips sharply  
10 towards the plaintiff. *All. For The Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th  
11 Cir. 2011). Defendants’ regulatory actions have arbitrarily infringed on Plaintiff’s  
12 fundamental rights and deprived Plaintiff of its property without compensation in  
13 violation of the Constitution and the provisions of the Emergency Services Act.

14 **A. Plaintiff has standing to bring Its claims.**

15 Standing requires (1) an “injury in fact,” (2) a sufficient “causal connection  
16 between the injury and the conduct complained of,” and (3) a likelihood that the injury  
17 “will be redressed by a favorable decision.” *See Lujan v. Defenders of Wildlife*, 504  
18 U.S. 555, 560 (1992). By being totally deprived of the use of their its property, Plaintiff  
19 has been subject to a taking without just compensation.

20 Plaintiff is being forced to refrain from its primary economic activity while  
21 continuing to be responsible for ongoing financial commitments related to maintaining  
22 its business. The V Palm Springs is a hotel in the heart of Palm Springs, which is a  
23 popular location for tourism. Before the Orders, the V Hotel generated consistent  
24 business from guests staying in its rooms. The Orders have prevented both in-state and  
25 out-of-state guests from staying at and visiting the V Hotel.  
26  
27  
28

1                   **B. Defendants’ Orders curtail Plaintiff’s**  
2                   **fundamental rights.**

3                   Some liberties are so important that they are deemed “fundamental rights,” such  
4 that alleged violations of these rights are subject to strict scrutiny review by the Court.  
5 Where strict scrutiny is applied, a court will “strike down the legislation unless the  
6 classification drawn by the legislation is “suitably tailored to serve a compelling state  
7 interest.” *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

8                   Pursuit of one’s livelihood, the right to earn a living, and property are  
9 fundamental rights, and Defendants’ deprivation of these rights from Plaintiff was done  
10 in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution, and  
11 Article I of the California Constitution. “It is undoubtedly the right of every citizen of  
12 the United States to follow any lawful calling, business, or profession he may choose.”  
13 *Lowe v. S.E.C.*, 472 U.S. 181, 228 (1985) (*quoting Dent v. W. Va.*, 129 U.S. 114, 121–  
14 22 (1889)); *see also Conway v. State Bar*, 47 Cal. 3d 1107, 1135 (1989) (holding that  
15 the right to earn a living is “fundamental”); *W. Virginia State Bd. of Educ. v. Barnette*,  
16 319 U.S. 624, 638 (1943) (“One’s right to life, liberty, *and property*, to free speech, a  
17 free press, freedom of worship and assembly, and other fundamental rights may not be  
18 submitted to vote; they depend on the outcome of no elections.” (emphasis added)).  
19

20                   California’s public officials are not excused by the COVID-19 crisis from  
21 narrowly tailoring their Orders to protect fundamental rights. There is no “pandemic  
22 exception” to the constitutions of the United States<sup>3</sup> and California. Before the  
23 Governor’s Order was issued, Plaintiff’s property and activities had long been protected  
24

25 \_\_\_\_\_  
26  
27 <sup>3</sup> *Berean Baptist Church v. Governor Cooper*, Order, p. 2, 4:20-cv-00081-D, ECF No.  
28 18 (U.S. Dist. Ct. of North Carolina, May 16, 2020).

1 by fundamental rights safeguarded by the Constitution, including without limitation,  
2 carrying on a business, performing a licensed activity, and using property for legal and  
3 beneficial use. Instead of allowing the state to publish specific, appropriate guidelines  
4 for Plaintiff's reopening, Defendants have chosen the heavy hand of a blanket  
5 criminalization of Plaintiff's business activities.

6 (i) *Denial of Due Process and Equal Protection*

7 When the government takes away a person's life, liberty, or property, it must  
8 provide adequate procedures. The Governor's Order and Dr. Angell's list violate  
9 Plaintiff's fundamental rights to due process and equal protection. Under the Due  
10 Process Clause of the Fourteenth Amendment, no State shall "deprive any person of  
11 life, liberty, or property, without due process of law." A State "violates this guarantee  
12 by taking away someone's life, liberty, or property under a criminal law so vague that it  
13 fails to give ordinary people fair notice of the conduct it punishes, or so standardless  
14 that it invites arbitrary enforcement." *Johnson v. United States*, 135 S. Ct. 2551, 2556  
15 (2015).  
16

17 The California Supreme Court decision in *Ex Parte Jentsch* was predicated on  
18 the principle that each person has the right to be governed by general rules and that a  
19 statute that singles out some for different treatment is an arbitrary mandate  
20 unrecognized by law. The Equal Protection Clause requires at least a rational reason for  
21 the difference, to ensure that all persons subject to legislation or regulation are indeed  
22 being "treated alike, under like circumstances and conditions." *Engquist v. Ore. Dep't*  
23 *of Agr.*, 553 U.S. 591, 602 (2008). No rational reason for singling out Plaintiffs'  
24 business activities is found here.

25 The Supreme Court recognized that even though a governmental purpose may be  
26 legitimate and substantial, it cannot be pursued by means that broadly stifle  
27 fundamental personal liberties of the type recognized here when the end may be  
28 achieved through narrower means. *See Shelton v. Tucker*, 364 U.S. 479 (1960). Here,

1 the government’s public safety goals could have been narrowly achieved, but the  
2 Defendants chose not to tailor their orders at all, much less narrowly.

3 The Governor’s Order has effectuated a taking of Plaintiff’s property while  
4 denying Plaintiff’s rights and liberties in lawfully operating its business by ordering the  
5 closure of “non-essential” businesses. This unilateral action did not afford Plaintiff with  
6 a constitutionally adequate hearing to present its case for its business to not be shut  
7 down or to be allowed to open as soon as conditions allowed. At a minimum, Plaintiff  
8 avers that it should have been able to decide for itself whether to “shut down” if its  
9 business was not equipped to properly deal with the health and safety guidelines issued  
10 by the federal and California state governments in connection with the COVID-19  
11 crisis.  
12

13 A regulation is constitutionally void on its face when, as matter of due process, it  
14 is so vague that persons “of common intelligence must necessarily guess at its meaning  
15 and differ as to its application.” *Connally v. General Const. Co.*, 269 U.S. 385, 391  
16 (1926). Vague laws “trap the innocent by not providing fair warning.” *Grayned v. City*  
17 *of Rockford*, 408 U.S. 104, 108–09 (1972). If “arbitrary and discriminatory enforcement  
18 is to be prevented, laws must provide explicit standards for those who apply them.” *Id.*  
19 The problem with a vague regulation is that it “impermissibly delegates basic policy  
20 matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis  
21 with the attendant dangers of arbitrary and discriminatory application.” *Id.*; *see also*  
22 *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018). The result of vague and arbitrary  
23  
24  
25  
26  
27  
28



1 rules is selective enforcement, where a public official may exert his or her power  
2 without restraint.<sup>4</sup>

3 This emergency is unlike any in our nation’s history. Long-lasting state-declared  
4 “emergencies” are rare precisely because they do not serve the Republic well. The  
5 Governor’s Order is so vague in terms of its scope and application as to run afoul of the  
6 Due Process Clause of the Fourteenth Amendment.<sup>5</sup> Defendants have made numerous  
7 carve-outs and exceptions to the stay-at-home order under the guise of “essential  
8 infrastructure activities.” Instead of a transparent and equitable system of due process,  
9 with notice, hearings, and rights to appeal, determinations of “essential” and “non-  
10 essential” are handled through an opaque process of lobbying by special interests. For  
11 example, after being lobbied by the United Cannabis Business Association,<sup>6</sup> Governor  
12 Newsom and Dr. Angell, amended their original list of essential workers and activities  
13 to declare that recreational cannabis retail stores were “essential” while maintaining that  
14 Plaintiff’s similarly licensed activities are “non-essential.” This was the ad hoc method  
15 from the earliest stages of the declared emergency. On or about March 12, 2020 when  
16 gatherings of more than 250 were banned by Governor Newsom, he immediately  
17 announced special exemptions from the ban for Disneyland, other theme parks, casinos,  
18

---

19  
20  
21  
22 <sup>4</sup> “To what purpose are powers limited, and to what purpose is that limitation committed  
23 to writing, if these limits may at any time be passed by those intended to be restrained?”  
24 Hon. John James Marshall, *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

25 <sup>5</sup> The New York Times, for example, reported that “Gov. Gavin Newsom of California  
26 on Thursday ordered Californians—all 40 million of them—to stay in their houses.” As  
27 of the date of this filing, the article is available online at the following URL:

28 <https://www.nytimes.com/2020/03/19/us/California-stay-at-home-order-virus.html>.

<sup>6</sup> See, e.g., <https://www.wsj.com/articles/california-deems-pot-an-essential-coronavirus-business-11585005903> (last visited on May 10, 2020).

1 and theaters.<sup>7</sup> There was no rational nexus to public health for these exemptions, and  
2 there is no rational reason to continue to ban Plaintiff from the use of its business  
3 property. Workers at “Big box” retailers such as Costco, chain drugstores, and larger  
4 grocery stores are not required to have the number of hours of health and safety training  
5 that Plaintiff’s employees possess, yet they have been permitted to work with few  
6 restrictions. Rather than narrowly tailoring their Orders by providing guidance on how  
7 Plaintiff’s industry may resume operations in a manner that protects public health,  
8 Defendants simply bypassed decades-old administrative hearing and legislative controls  
9 that would otherwise ensure due process, filling the void with no process at all.

10 Statutes that impact occupations based on arbitrary distinctions have long been  
11 disfavored in California, even if the laws were purportedly to *benefit* labor. The  
12 arbitrary nature of the distinction between “essential” and “non-essential” workers was  
13 the exact reason the California Supreme Court in *Ex Parte Jentsch*, 112 Cal. 468  
14 (1896) granted *habeus corpus* and effectively struck down a law that prohibited barbers  
15 from working on Sundays. The California Supreme Court noted that our government is  
16 not designed to be paternal in form and the law that punished barbers criminally for  
17 working on Sundays while allowing “essential” workers such as steam-car operators  
18 and members of the press to work on Sundays rested on an arbitrary mandate  
19 unrecognized by the law. Defendants make the same error, offering no evidence that  
20 Plaintiff and others in its industry have any greater adverse impact on the health and  
21 safety of the public than those whose work constitutes “essential” activities. Into the  
22 ninth week of this total suspension of all legal economic activity in Plaintiff’s industry,  
23

24  
25 \_\_\_\_\_  
26  
27 <sup>7</sup> [https://losangeles.cbslocal.com/2020/03/12/coronavirus-california-disneyland-](https://losangeles.cbslocal.com/2020/03/12/coronavirus-california-disneyland-closures-governor-newsom-covid/)  
28 [closures-governor-newsom-covid/](https://losangeles.cbslocal.com/2020/03/12/coronavirus-california-disneyland-closures-governor-newsom-covid/).

1 with the flush of emergency well behind us, Defendants still refuse to even attempt  
2 justify their arbitrary decrees.

3 (ii) *Takings Clause*

4 Defendants' Orders mandated that because Plaintiff's business is a "non-  
5 essential" business, it was required to "shut down" and cease all operations as a means  
6 to help curb the spread of COVID-19. Such a mandate completely and  
7 unconstitutionally deprives Plaintiff of all economically beneficial use of its businesses  
8 without just compensation. While the "police power" is inherent in a sovereign  
9 government and is reserved for the states in the 10th Amendment to the U.S.  
10 Constitution, it is not without constitutional limits. *See Euclid v. Ambler Realty*  
11 *Company*, 272 U.S. 365 (1926) (holding that local governments may protect the general  
12 welfare through the enactment of residential zoning ordinances).

13  
14 In California specifically, the Constitution directly gives this power to cities and  
15 counties. As such, these entities have the power and authority to make and enforce laws  
16 to protect public health and safety to the extent that they do not conflict with California  
17 state laws. *See Cal. Const. art. XI, § 7; Miller v. Board of Public Works*, 195 Cal. 477  
18 (1925). However, a government's "police power" in this area is restricted by  
19 constitutional considerations, including the Fifth Amendment's "Takings Clause," as  
20 well as due process and equal protection. Defendants' Orders and the enforcement  
21 thereof have caused a complete and total regulatory and physical taking of Plaintiff's  
22 property without just compensation in violation of the Takings Clause of the Fifth  
23 Amendment to the U.S. Constitution.

24 At a minimum, the effect of Defendants' Orders constitutes a "partial" taking  
25 under the Penn-Central three-factor test. *See Penn Central Trans. Co. v. City of New*  
26 *York*, 438 U.S. 104, 124 (1978). As a result, Defendants' blatant violation of the  
27 Takings Clause has caused proximate and legal harm to Plaintiff.  
28

1                   **C. Defendants’ Orders violate Article 1 of the**  
2                   **California Constitution.**

3           All Californians “are by nature free and independent and have inalienable rights.  
4 Among these are enjoying and defending life and liberty, acquiring, possessing, and  
5 protecting property, and pursuing and obtaining safety, happiness, and privacy.” Cal.  
6 Const. art. I, § 1. The fundamental liberties protected by the California Constitution  
7 include most of the rights enumerated in the Bill of Rights. *See Duncan v. Louisiana*,  
8 391 U.S. 145, 147–49 (1968).

9           In addition, these liberties extend to certain personal choices central to individual  
10 dignity and autonomy, including intimate choices that define personal identity and  
11 beliefs. *See, e.g., Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v.*  
12 *Connecticut*, 381 U.S. 479, 484–86 (1965). Engaging in the vocation of one’s own  
13 choosing is central to individual dignity and autonomy.<sup>8</sup>

14           For more than 120 years, California courts have recognized that citizens have the  
15 constitutional right to engage in business. The state’s police powers for regulating such  
16 business or occupation are subject to constitutional limits. The Governor’s Order and  
17 Dr. Angell’s list are tantamount to a statewide quarantine, indiscriminate between  
18 healthy and infected people—but with millions able to go to work, while other millions,  
19 arbitrarily chosen, are unable to do so. California courts have held that Public Health  
20 Officials’ authority is limited. Before exercising their full powers to quarantine, there  
21 must be “reasonable grounds [] to support the belief that the person so held is infected.”  
22

23  
24  
25  
26 <sup>8</sup> “It requires no argument to show that the right to work for a living in the common  
27 occupations of the community is of the very essence of the personal freedom and  
28 opportunity that it was the purpose of the [Fourteenth] Amendment to secure.”  
Hon. Charles Evans Hughes, *Truax v. Raich*, 239 U.S. 33, 41 (1915).

1 *Ex parte Martin*, 83 Cal. App. 2d 164 (1948). Public Health Officials must be able to  
2 show “probable cause to believe the person so held has an infectious disease . . . .” *Id.*  
3 Dr. Angell goes well beyond this authority by restricting millions of “non-essential”  
4 workers to their homes.

5 California courts have found that “a mere suspicion [of a contagious disease],  
6 unsupported by facts giving rise to reasonable or probable cause, will afford no  
7 justification at all *for depriving persons of their liberty* and subjecting them to virtual  
8 imprisonment under a purported order of quarantine.” *Ex parte Arta*, 52 Cal. App. 380,  
9 383 (1921) (emphasis added). The California Supreme Court struck down a quarantine  
10 order in San Francisco when 10,000 people were similarly quarantined without  
11 distinction. The Court noted that the defendants in that case, as would be the case here  
12 as well, had no information concerning individuals upon which to found any belief that  
13 they were infected or spreading infections and if that were the case “dealing with a  
14 single case or a single fact, it would, of course, be insufficient. But, when it comes to  
15 dealing with a large population, -- 10,000 or more, -- the court must recognize that the  
16 lack of information on the part of the defendants is an infirmity that belongs to their  
17 case on the merits.” *Jew Ho v. Williamson*, 103 F. 10, 15 (C.C. N.D. Cal. 1900). These  
18 courts found it “purely arbitrary, unreasonable, unwarranted, wrongful, and oppressive  
19 interference with the personal liberty of complainant” who had “never had or contracted  
20 said bubonic plague; that he has never been at any time exposed to the danger of  
21 contracting it, and has never been in any locality where said bubonic plague, or any  
22 germs of bacteria thereof, has or have existed.” *Id.* at 10.

24 Requiring Plaintiff to abstain from conducting lawful business in the State of  
25 California, despite other compliance measures being taken to satisfy the public health  
26 interests at stake, violates its liberty rights under the California Constitution.  
27  
28

1           **III. The Balance of Equities Tips Decidedly in Plaintiff’s Favor.**

2           A Court considering an application for a TRO must identify the harm that a TRO  
3 might cause a defendant and weigh it against the injury to a plaintiff. *Armstrong v.*  
4 *Marurak*, 94 F.3d 566, 568 (9th Cir. 1996). The hardships asserted by the State are  
5 vastly outweighed by the hardship to Plaintiff.

6           The Fifth and Fourteenth amendments to the U.S. Constitution and Article 1 of  
7 the California Constitution secure Plaintiff’s fundamental rights to engage in business  
8 activities of its own choosing. Plaintiff has shown facially and as-applied invalidity of  
9 Defendants’ Orders, demonstrating that leaving these Orders in place for even a brief  
10 period of time “would substantially chill the exercise of fragile and constitutionally  
11 fundamental rights,” and thereby constitute an intolerable hardship to Plaintiff. *College*  
12 *Republicans at San Francisco State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1012 (N.D.  
13 Cal. 2007). As mentioned above, Defendants’ ban on operating businesses deemed  
14 “non-essential,” even while socially distanced with personal protective equipment and  
15 any number of appropriate safety measures such as used in other states at this time,  
16 deprives Plaintiff and many California citizens of their ability to exercise their  
17 fundamental rights to engage in business activities of their own choosing and for which  
18 they obtained state-required permits and licenses.

19           In contrast, temporarily enjoining Defendants’ enforcement of the Orders will not  
20 result in hardship to Defendants, who are in a position to adopt, at least on an interim  
21 basis, a more narrowly crafted set of equally applied provisions that enable the  
22 government to achieve any legitimate ends without unjustifiably invading First and  
23 Fourteenth Amendment freedoms. *See Id.* In addition, Defendants will suffer no  
24 legitimate harm by accommodating Plaintiff’s exercise of fundamental rights in the  
25 same manner Defendants are accommodating thousands of other businesses.  
26  
27  
28

1           **IV. A Temporary Restraining Order is in the Public Interest.**

2           The requirement that issuance of a preliminary injunction be in the “public  
3 interest” is usually satisfied when it is clear that core constitutional rights would remain  
4 in jeopardy unless the court intervened. *Reed*, 523 F. Supp. 2d at 1101.

5           In this instance, quite possibly the only remedy available to Plaintiff is an order  
6 to stay enforcement action or invalidate Defendants’ Orders. California courts have  
7 consistently held that damages inflicted in the course of a *proper exercise* of the state’s  
8 police power are noncompensable. *Farmers Ins. Exch. v. Cal.*, 175 Cal. App. 3d 494,  
9 (1985) (emphasis added). Because Plaintiff argues that the Defendants have acted *ultra*  
10 *vires* in this situation, an injunction restraining Defendants from enforcing their Orders  
11 that violate the Constitution may well be Plaintiff’s only remedy.

12           As time passes since the Governor’s original proclamation of a State of  
13 Emergency, the Governor’s Order—with its overly broad and perpetual nature—  
14 becomes a more and more glaring departure<sup>9</sup> from the powers granted under the  
15 California Emergency Services Act. California Government Code § 8629 provides, in  
16 relevant part, “The Governor *shall* proclaim the termination of a state of emergency at  
17 the earliest possible date that conditions warrant.” Cal. Gov’t Code § 8629 (emphasis  
18 added). The Governor and the Public Health Officer are not engaged in the “proper  
19 exercise” of police power in arbitrarily selecting businesses as “essential” or “non-  
20 essential.” None of the powers delineated in Government Code section 8570 or  
21 elsewhere authorize the Governor to close entire sectors of the economy for months on  
22  
23

24 \_\_\_\_\_  
25  
26 <sup>9</sup> Governor Newsom credited the IHME model with being the basis for the policies at  
27 issue here, a model that has come under heavy criticism.  
28 <https://www.statnews.com/2020/04/17/influential-covid-19-model-uses-flawed-methods-shouldnt-guide-policies-critics-say/>.

1 end. The Governor simply ordered Plaintiff and countless California citizens to shutter  
2 their businesses, cease working, remain at home, and refrain from earning a living  
3 “until further notice.” Defendants have offered no evidence that this relates in any way  
4 to the health and safety of the public based on classifications made by the Public Health  
5 Officer who likewise acted without statutory authority.<sup>10</sup>

6 While the instant Motion does not seek a global cancellation of the Governor’s  
7 Order or his Emergency Proclamation, this Court surely has the authority to delay  
8 arbitrary and capricious enforcement of the “essential” versus “non-essential”  
9 guidelines issued by Dr. Angell that are incorporated into Governor Newsom’s Order.

10 **THE COURT SHOULD DISPENSE WITH ANY BOND**  
11 **REQUIREMENT**

12 Rule 65(c) of the Federal Rules of Civil Procedure provides that a TRO or  
13 preliminary injunction may be issued “only if the movant gives security in an amount  
14 that the court considers proper to pay the costs and damages sustained by any party  
15 found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). However,  
16 the Court has discretion as to whether any security is required and, if so, the amount  
17 thereof. *See, e.g., Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003).

18 Plaintiffs request that the Court waive any bond requirement because enjoining  
19 Defendants from unconstitutionally enforcing the orders as to First Amendment  
20 protected activities will not financially affect Defendants, who already categorically  
21 exempted specified non-constitutionally-protected activities from compliance. A bond  
22 would, however, be burdensome on Plaintiff, where Plaintiff is already heavily  
23

24  
25  
26  
27 <sup>10</sup> Accessible as of May 18, 2020: [https://www.theepochtimes.com/no-spike-in-ccp-](https://www.theepochtimes.com/no-spike-in-ccp-virus-in-places-reopening-says-hhs-secretary_3354015.html)  
28 [virus-in-places-reopening-says-hhs-secretary\\_3354015.html](https://www.theepochtimes.com/no-spike-in-ccp-virus-in-places-reopening-says-hhs-secretary_3354015.html).



1 burdened under these circumstances. *See, e.g., Bible Club v. Placentia-Yorba Linda*  
2 *School Dist.*, 573 F. Supp. 2d 1291, n.6 (C.D. Cal. 2008) (waiving requirement of  
3 student group to post a bond where case involved “the probable violation of [the club’s]  
4 First Amendment rights” and minimal damage to the District issuing injunction); *citing*  
5 *Doctor John’s, Inc. v. Sioux City*, 305 F. Supp. 2d 1022, 1043–44 (N.D. Iowa 2004)  
6 (“[R]equiring a bond to issue before enjoining potentially unconstitutional conduct by a  
7 governmental entity simply seems inappropriate, because the rights potentially  
8 impinged by the governmental entity’s actions are of such gravity that protection of  
9 those rights should not be contingent upon an ability to pay.”).

10 **CONCLUSION**

11 Plaintiff’s fundamental constitutional rights to procedural and substantive due  
12 process, and equal protection—rights that should protect Plaintiff—will remain in  
13 jeopardy so long as Plaintiff’s business activities are prohibited as “non-essential.”  
14 Accordingly, issuance of injunctive relief during this case’s proceedings is proper.

15 Dated: June 4, 2020

16 **GERAGOS & GERAGOS, APC**

17 /s/ Mark J. Geragos

18 Mark J. Geragos, SBN 108325

19 Ben J. Meiselas, SBN 277412

20 Matthew M. Hoesly, SBN 289593

21 Matthew J. Vallejo, SBN 322713

22 Arthur Karagezian, SBN 328749

**DHILLON LAW GROUP INC.**

/s/ Harmeet K. Dhillon

Harmeet K. Dhillon, SBN 207873

Mark P. Meuser, SBN 231335

Nitoj P. Singh, SBN 265005

*Attorneys for Plaintiff*

*PCG-SP Venture I LLC dba V Palm Springs*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28