FILED

AUGUST 18, 2020

SUPERIOR COURT OF NJ
MERCER VICINAGE
CHANCERY

PREPARED BY THE COURT

JUDITH M. PERSICHILLI, R.N., B.S.N., M.A., in her official capacity as the Commissioner of the New Jersey Department of Health, Plaintiff, v. ATILIS GYM BELLMAWR, Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION – GENERAL EQUITY PART MERCER COUNTY DOCKET NO. C-48-20 CIVIL ACTION **ORDER**

THIS MATTER having been opened to the Court, the Hon. Robert Lougy, P.J. Ch., presiding, on the application of Plaintiff Judith M. Persichilli, R.N., B.S.N., M.A., in her official capacity as the Commissioner of the New Jersey Department of Health, represented by Stephen Slocum, Deputy Attorney General, appearing, seeking relief as stated in the Notice of Motion to Compel Compliance with the Court's July 24, 2020 Order and for Attorney's Fees; and Defendant Atilis Gym Bellmawr, represented by John McCann, Esq., appearing, having filed opposition; and Plaintiff, through counsel, having replied during oral argument; and the Court having considered the parties' pleadings, briefs, and arguments; and for the reasons as stated below; and for good cause shown;

IT IS on this 18th day of August 2020 **ORDERED** that:

1. Plaintiff's application for an order imposing monetary sanctions for Defendant's non-compliance is **GRANTED**. For each day Defendant remains in violation of Plaintiff's litigant's this Court's order of July 24, 2020 Defendant Atilis Gym and co-owners Frank Trumbetti and Ian Smith, jointly and severally, shall pay to the State of New Jersey the additional sum of $ 15,497.76.

2. For Defendant's ongoing violation of litigant's rights by its violation of this Court's July 24, 2020 Order on the days of August 1, 2, and 3, 2020, Judgment is hereby entered in favor of the State of New Jersey, against Defendant Atilis Gym of Bellmawr, Frank Trumbetti, and Ian Smith, jointly and severally, in the amount of $ 46,493.28.

3. For Defendant's ongoing violation of litigant's rights by its violation of this Court July 24, 2020 Order on the days of August 10, 11, 12, 13, and 14, 2020, Judgment is hereby entered in favor of the State of New Jersey, against Defendant Atilis Gym of Bellmawr, Frank Trumbetti, and Ian Smith, jointly and severally, in the amount of $ 77,488.80.

4. Plaintiff's application for an order awarding counsel fees and costs is **GRANTED**. Judgment is hereby entered in favor of the State of New Jersey against Defendant Atilis Gym, Frank Trumbetti, and Ian Smith, jointly and severally, in the amount of $ 10,481, representing reasonably attorney's services and fees occasioned by Defendant's non-compliance.

5. Plaintiff shall place or construct a new barricade barring entry into the premises of Atilis Gym of Bellmawr as expeditiously as possible.

6. Following placement or construction of the new barricade barring entry into the premises of Atilis Gym of Bellmawr, Plaintiff shall account for same and submit documentation to this court to review same, which, if approved, shall be due and owed by Defendant.

7. This Order shall be deemed served upon receipt from a Judiciary email account (xxx@njcourts.gov).

/s/ Robert Lougy
ROBERT LOUGY, P.J.Ch.

X OPPOSED

UNOPPOSED

PURSUANT TO RULES 1:6-2(d) AND 1:7-4, THE COURT PROVIDES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter comes before the Court on Plaintiff's application for an order sanctioning Defendant for its ongoing non-compliance with this Court's Order of July 24, 2020. Defendant filed opposition. Plaintiff's counsel replied to that opposition during oral argument. The Court granted Plaintiff's request for oral argument. See R. 1:6-2(d) (stating that, upon request of a party in motions involving matters other than discovery or calendaring, request for oral argument "shall be granted as of right."); see also Raspantini v. Arocho, 364 N.J. Super. 528, 531 (App. Div. 2003) (discussing "clear mandate of the rule" that court grant oral argument as of right upon request).

This matter originates from Plaintiff's response to the ongoing public health emergency and Defendant's persistent and willful refusal to comply with numerous executive orders of the Governor, administrative orders of Plaintiff, and the July 24, 2020 order of this Court. Plaintiff is the Commissioner of the New Jersey Department of Health. Defendant is an indoor gym facility. On March 21, 2020, Governor Murphy issued Executive Order 107, which directed that gyms and fitness centers close to mitigate the community spread of the COVID-19 virus. On May 22, 2020, the Court granted Plaintiff's application for temporary restraints that prohibited Defendant from opening its facilities in violation of Executive Order 107 and set a return date of the order to show cause for June 8, 2020. On June 8, 2020, the Court entered an order granting Plaintiff's unopposed request for preliminary restraints. On June 15, 2020, the Court entered an amended consent order granting preliminary restraints that prohibited "any interior recreation activity of any kind to occur" but permitted Defendant to access the premise for operating its nutrition/vitamin store and clothing/apparel store.

Defendant pursued relief in federal court. On June 19, 2020, the Hon. Robert B. Kugler, U.S.D.J., denied Defendant's application for temporary restraints. On June 23, 2020, Defendant withdrew its complaint without prejudice.

On June 26, 2020, Governor Murphy issued Executive Order 157, which stated "gyms, sports facilities, and fitness centers present particularly high risks of COVID-19 transmission" and "it will not be administrable, enforceable, and/or otherwise sufficiently protective of public safety to simply allow business owners to set their own divergent health

measures, done without approval of the State and its health officials." The Order allowed allow gyms and fitness centers "to offer individualized indoor instruction by appointment only where an instructor is offering training to an individual." Ibid.

On July 1, 2020, Plaintiff issued an order specific to Defendant consistent with the provisions of Executive Order 157. It permitted Defendant to "open its indoor premises to the public to offer individualized indoor instruction by appointment only where an instructor is offering training to an individual, and the individual's immediate family members, household members, caretakers, or romantic partners." Ibid. It provided that "[i]f Atilis Gym is offering multiple simultaneous instructions at its facility pursuant to [the preceding paragraph], these instructions must take place in separate rooms or, if they take place in the same room, must be separated by a floor-to-ceiling barrier that complies with all fire code requirements." Ibid. It specified that ""Atilis Gym shall remain closed to the public, including members of the gym, for all gym-related purposes and activities, excluding those activities" specifically allowed under the order.

On July 20, 2020, the Court denied Plaintiff's application to hold Defendant in contempt of this Court's June 15, 2020 order, concluding that Executive Order 157 and Plaintiff's July 1, 2020 order permitted, in fact, a range of indoor recreation activity as specified in the July 1, 2020 order. At the same time, the Order enforced the Commissioner's Order of July 1, 2020, and cautioned Defendant that:

> [a]ny violation of this Order of the Court shall subject Defendant to summary contempt-of-court proceedings per N.J. Court Rule 1:10-1, -3, and any sanctions, penalties, attorneys fees and costs, or other appropriate reliefs available to Plaintiff or the Court.

> Nothing in this Order constrains Plaintiff's rights or authorities to enforce her July 1, 2020 Order per R. 4:67-6 or the authorities enumerated in Paragraph 5 of the 7.1.20 Order. If Plaintiff returns to court to enforce this Order, counsel shall include a certification of attorney services and fees. See R. 1:10-3.

Four days later, Plaintiff returned to court, seeking to enforce this Court's July 20, 2020 order. On July 24, 2020, the Court entered an order finding Defendant in contempt of this Court's July 20, 2020 order. At the request of Defendant's counsel, who indicated that Defendant was going to seek to stay the proceedings, the Court's order did not specify the penalties associated with Defendant's ongoing violations. The Order authorized Plaintiff to lock the doors or "otherwise construct or place barriers on or around the premises to ensure compliance with the court's July 20, 2020 order and the Department's July 1, 2020 Modified Order." Additionally, it directed that "Defendant shall not obstruct Plaintiff in any way from carrying out the terms of this order or otherwise monitoring to ensure compliance with the court's July 20, 2020 order and the Department's July 1, 2020 Modified Order."

On August 3, 2020, Plaintiff advised the Court, by way of correspondence, that Defendant continued to violate this Court's order July 20 and July 24, 2020 orders. On that date, Defendant's counsel withdrew without prejudice a submitted, but not filed, motion seeking to stay these proceedings.

On August 6, 2020, the Court entered a scheduling order on Plaintiff's newly filed Notice of Motion seeking sanctions against Defendant. On August 7, 2020, Defendant filed a substitution of attorney. On August 10, 2020, the Court entered a modified order granting Defendant's new attorney additional time to oppose Plaintiff's application and granting,

without prejudice, Plaintiff's renewed application to construct a new barricade to the gym and to submit those costs for the Court's consideration as to whether Defendant should be responsible for same.

On August 13, 2020, Defendant filed a motion seeking to stay this Court's proceeding. That application returns to the Court on August 25, 2020.

On August 14, 2020, Defendant appealed the Commissioner's July 1, 2020 order. On that same date, Defendant filed opposition to Plaintiff's present application. The Court heard oral argument on Plaintiff's application later that day.

Factually, this matter is simple. The current COVID-19 public health emergency is a disaster of constitutional magnitude, with staggering human, economic, and fiscal consequences. N.J. Repub. State Comm. v. Murphy, A-82-19, ___ N.J. ___ (Aug. 12, 2020), slip op. at 2-3 (recounting tolls of pandemic, including sickness, death, "enormous" "economic fallout," and fiscal shortfalls), available at *https://www.njcourts.gov/attorneys/assets/opinions/supreme/ a_82_19.pdf?c=cjB* (last visited Aug. 16, 2020); see also id. at 5 ("Laypeople, scientists, and legal scholars alike would agree that COVID-19 is a true disaster with widespread consequences. The pandemic has caused a health emergency, a broad-based economic one that has devastated many individuals and families, and a fiscal crisis for the State."). Exercising authority granted to her by numerous executive orders of the Governor and by the people of New Jersey through the Legislature, Plaintiff ordered that the gym to not conduct any indoor recreational activity other than that specified in the July 1, 2020

order. This Court's order of July 20, 2020 enforced that order. Defendant has violated the Court's order since its issuance.

While Defendant has decried a lack of due process during the Court's all-too-frequent involvement in this matter, Defendant has failed, until most recently, to avail itself of the processes available to it as of right. See R. 2:2-3 (establishing that "appeal may be taken to the Appellate Division as of right … to review final agency decisions of any state administrative agency or officer…"). And Defendant's legal arguments do not and cannot obscure its ongoing violation of this Court's orders. As established by Plaintiff, as memorialized and celebrated by Defendant's owners on social media posts referenced in Plaintiff's application, and as tacitly acknowledged by Defendant in its opposition, Defendant continues to facilitate and host such prohibited activity in a willful and contumacious manner. Kicking down the barrier that this Court authorized Plaintiff to construct and allowing the gym to be used for prohibited behavior establishes Plaintiff's entitlement to relief. Defendant knows what is allowed and prohibited and has seen fit to operate in violation of the orders of this Court and the clearest directives of Plaintiff which, until most recently, Defendant has not seen to challenge or impugn in any manner authorized by court Rule, order, or statute. This Court's order of July 24, 2020 found Defendant in violation of this Court's orders and in violation of litigant's rights. Defendant's conduct since that time only substantiates that conclusion.

Plaintiff seeks relief under Rule 1:10-3. The Rule provides that "[n]otwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may

seek relief by application in the action." "The scope of relief in a motion in aid of litigants' rights is limited to remediation of the violation of a court order." Abbott ex rel. Abbott v. Burke, 206 N.J. 332, 371 (2011). As Justice LaVecchia explained:

> Although Rule 1:10-3 encompasses the notion of civil contempt, we have expressly stated that "we view the process [under Rule 1:10-3] as one of relief to litigants." In re Daniels, 118 N.J. 51, 60 (*per curiam*) (emphasis added) (citing R. 1:10-5, now R. 1:10-3), cert. denied, 498 U.S. 951 (1990). The focus being on the vindication of litigants' rights, relief sought pursuant to Rule 1:10-3 does not necessarily require establishing that the violator of an order acted with intention to disobey. Indeed, courts have recognized that "demonstration of a *mens rea*, wilful disobedience and lack of concern for the order of the court, is necessary for a finding of contempt, *but irrelevant in a proceeding designed simply to enforce a judgment on a litigant's behalf*." Lusardi v. Curtis Point Prop. Owners Ass'n, 138 N.J. Super. 44, 49 (App.Div.1975) (emphasis added); see also N.J. Dep't of Health v. Roselle, 34 N.J. 331, 347 (1961) ("The Appellate Division correctly held that upon a litigant's application for enforcement of an injunctive order, relief should not be refused merely because the violation was not willful.").
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> [In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 17 (2015).]

"Rule 1:10-3 allows a court to enter an order to enforce litigant's rights commanding a disobedient party to comply with a prior order" or face sanctions. Milne v. Goldenberg, 428 N.J. Super. 184, 198 (App. Div. 2012).

"Sanctions under the Rule are intended to coerce a party's compliance." Ibid.; see also Ridley v. Dennison, 298 N.J. Super. 373, 381 (App. Div. 1997) ("Relief under R. 1:10-3, whether it be the imposition of incarceration or a sanction, is not for the purpose of punishment, but as a coercive measure to facilitate the enforcement of the court order."). "[A] proceeding to enforce litigants' rights under Rule 1:10-3 'is essentially a civil proceeding

to coerce the defendant into compliance with the court's order for the benefit of the private litigant.'" Pasqua v. Council, 186 N.J. 127, 140 (2006) (citation omitted). "[P]unishment [under Rule 1:10-3] is not the objective, though a sanction imposed by the court to compel compliance may inflict punishment's sting." Franklin Twp. Bd. of Educ. v. Quakertown Educ. Ass'n, 274 N.J. Super. 47, 54 (App. Div. 1994) (quoting East Brunswick Bd. of Educ. v. East Brunswick Educ. Ass'n, 235 N.J. Super. 417, 420-21 (App. Div. 1989)).

The sanctions available to the Court are as broad as may be reasonably appropriate and necessary, including monetary sanctions. Ibid. The availability of monetary sanctions is appropriate and authorized, id. at 55 – indeed, Defendant's brief in opposition quotes authority endorsing its availability, see Def.'s Br., at 3 (quoting Ridley, 298 N.J. Super. at 381 (noting that court did "not dispute the view that a monetary sanction imposed pursuant to R. 1:10-3 is a proper tool to compel compliance with a court order.")) – and provides the Court an option other than the "frequently undesirable alternative of incarceration as 'the only available compliance sanction,'" id. at 56 (quoting East Brunswick Bd. of Educ., 235 N.J. Super. at 422).

The Court addresses Defendant's various arguments raised in opposition to Plaintiff's application. Defendant argues that Plaintiff violated its constitutional rights by bringing its application under Rule 1:10-3, rather than Rule 1:10-2. That argument fails as the Rules have different purposes: Rule 1:10-3 affords litigants an avenue to enforce a court's order, Pasqua, 186 N.J. at 140; Rule 1:10-2 establishes governs summary contempt proceedings instituted by the court. East Brunswick Bd. of Educ., 234 N.J. Super. at 420-21. Plaintiff's application

before this Court does not seek to hold Defendant criminally responsible or punish the owner's alleged violations of criminal offenses, the object of ongoing proceedings in municipal court. Plaintiff's pleas for relief before this Court sound in compelling compliance. The Court weighs the appropriate sanctions against Defendant for that express and sole purpose.

Second, Defendant argues that Plaintiff's requested relief violates N.J.S.A. 2A:10-5. That statute provides:

> Any person who shall be adjudged in contempt of the Superior Court by reason of his disobedience to a judgment, order or process of the court, shall, where the contempt is primarily civil in nature and before he is discharged therefrom, pay to the clerk of the court, for every such contempt, a sum not exceeding $50 as a fine, to be imposed by the court, together with the costs incurred.
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> [Ibid.]

The Appellate Division extinguished this argument years ago. In East Brunswick Board of Education, the court discussed the narrow scope of that statutory provision, 235 N.J. Super. at 421, assumed that "a coercive monetary sanction unrelated to damages but in excess of the N.J.S.A. 2A:10-5 fine is permitted," and proceeded to explain that "the monetary sanction, nevertheless, must be fashioned in an amount sufficient to sting and force compliance, but must not be so excessive as to constitute ruinous punishment," id. at 422. In short, "the statute should not be construed as a limitation on available compliance sanctions." Ibid. Subsequent opinions, such as Milne and Franklin Twp. Bd. of Education, have endorsed judicial authority to impose monetary sanctions in excess of the statutory amount.

Defendant's third point states that it has good reason to not comply: Defendant's economic survival. But that is not a defense at all. At the first proceeding in this matter, in May 2020, the Court advised Defendant's counsel that the Appellate Division had exclusive initial responsibility to consider the legality of the Commissioner's order or the executive orders of the Governor. R. 2:2-3. They chose not to pursue their appellate rights until August 13, 2020. Additionally, Rule 4:67-6 – Plaintiff's initial vehicle for bringing the matter to this Court – explains that, in circumstances such as this, "the validity of an agency order shall not be justiciable in an enforcement proceeding." Defendant is not free to ignore orders with which it does not agree. It can pursue the appellate rights to which it is entitled of the Governor's executive orders, of the Commissioner's numerous final agency decisions, and the orders of this Court; it can seek reconsideration of this Court's order that it is violating; it cannot, however, sit on those rights, violate administrative and judicial orders, and feign to be the injured party to justify its lawlessness. That is not how things work.

Finally, Defendant asserts without reference to any legal authority or limiting principle that the Court cannot consider Defendant's war chest of more than $ 263,000 in donated funds when considering an appropriate monetary sanction. It relies upon the language Defendant has posted on the website that generates the funding, which provides:

> This fund will be for the defense of Atilis Gym Bellmawr members as well as staff and volunteers. Money will also be utilized to pay the bills for the months we have been closed due to the COVID pandemic. A few of the members, along with owners Frank and Ian were served with summons throughout the week. The Atilis Bellmawr Attorney Kevin Barry will be representing all of our staff and members who incur any charges. **This fund is to support the efforts to reopen and stay open,**

> **as well as assist in any financial hardships the staff or members endure due to the shutdown.** From the bottom of our hearts we thank every one of you for supporting us through this tough time- and we are thankful for any funds donated to us. All money not used will be donated to other businesses who have been fined for reopening.
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> [Ex. B to Plaintiff's Notice of Motion (emphasis added).]

Rather than supporting Defendant's argument that the money is beyond the Court's consideration in fashioning an appropriate sanction, the language explains that Defendant will use the funds to "support the efforts to reopen and stay open," two activities that are, beyond cavil, unlawful for Defendant at this time and the very subject of Plaintiff's application.

Neither the Rule nor caselaw constrains the sources that the Court may consider; rather, "in structuring the sanction [the Court] must consider the offending party's ability to pay and the sanction's impact on that party in light of its income, status and objectives, as well as the sanction's impact on innocent third parties." East Brunswick Bd. of Educ., 235 N.J. Super. at 422-23; see also Pressler & Verniero, Current N.J. Court Rules, cmt. 4.4.3 on R. 1:10-3 (2020) ("While a monetary sanction payable to the aggrieved party is not necessarily limited to the amount of the aggrieved party's actual damage, it must nevertheless be rationally related to the desideratum of imposing a 'sting' on the offending party within its reasonable economic means."). In East Brunswick Board of Education, for example, the trial court imposed fines of $10,000 a day; the Appellate Division reversed that directive, finding that the court made no necessary findings regarding the enumerated factors, had "no

evidence regarding the Association's income and assets," and noted that the sanction was well beyond the defendant's means. Id. at 423.

Defendant submitted no factual opposition to Plaintiff's detailed and analytical justification for the sought sanction amount. See R. 1:6-6 ("If a motion is based on facts not appearing of record, or not judicially noticeable, the court may hear it on affidavits made on personal knowledge, setting forth only facts which are admissible in evidence to which the affiant is competent to testify and which may have annexed thereto certified copies of all papers or parts thereof referred to therein."). Plaintiff apprised the Court of the funds available and the rate at which they continue to grow through donations. If Defendant had any demonstrable history or plan for using the funds to "assist in any financial hardships the staff or members endure due to the shutdown" – laudable goals by any measure – the Court presumes Defendant would have offered that to argue that the funds are something other than a war chest for its continued non-compliance.

Nor does Defendant challenge the logic of Plaintiff's calculations. As of August 14, 2020, Defendant's fundraising efforts had amassed $263,000. The funds increased at a rate of $9,053 per day. Based upon Defendant's membership fees and numbers, Plaintiff calculates that Defendant earns $267.96 per day. Plaintiff requests monetary sanctions of $15,497.76, an "amount [] based upon specific facts and documentation and [] carefully calculated and crafted with the express and sole purpose of compelling Defendant's compliance with this court's July 24, 2020 Order." Pl.'s Br., at 7.

Plaintiff argues that monetary sanctions sought will "discincentiviz[e] Atilis Gym from remaining open and impos[e] a 'sting' upon it within its reasonable economic means" by depleting its funds in a reasonable number of days. Plaintiff notes that her department does not benefit from the sanctions, directly; rather, the monies would go to the General Fund. Finally, "this monetary sanction is requested to financially disincentivize Atilis Gym from reopening and avoid the possibility of an escalation of force and risk of violence to compel compliance." Id. at 7-8.

The Court imposes the sanction sought by Plaintiff. First, the Court notes that, since its Notice of Motion in support of sanctions, Defendant's funds have continued to grow, warranting within this Court's discretion a sanction higher than that sought by Plaintiff. The Court reserves the right to revisit the amount set herein if the sting proves insufficient to compel compliance. Second, the sanction amount sought by Plaintiff is reasonable given the resources that Defendant has raised to fund its noncompliance. Because Defendant raised the funds for the express purpose of bankrolling its non-compliance, the amount does not constitute "ruinous punishment," East Brunswick Bd. of Educ., 235 N.J. Super. at 422, and is within Defendant's "reasonable economic means," Pressler & Verniero, cmt. 4.4.3 on R. 1:10-3. Defendant has the ability to pay the sanction from the funds. Given the deeper reserves Defendant now has, Defendant's war chest will last more than ten days. Finally, the Court does not find that the sanction affects innocent third parties, as Defendant informed the persons who contributed to the account that it intended to use the monies to fund its continued non-compliance. If Defendant wants to use the funds to pay its bills and support

its employees and members affected by the pandemic, it can close the gym immediately, preserve what remains of the corpus of the account, and use the monies for legitimate purposes.

The Court imposes the sanctions on the dates specified in the decretory paragraph above and for every date thereafter that Defendant has remained or remains in non-compliance with this Court's July 24, 2020 order.

The Court turns to Plaintiff's application for counsel fees and costs. Rule 1:10-3 affords the Court discretion to "make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule." Ibid. "[T]his rule provision allowing for attorney's fees recognizes that as a matter of fundamental fairness, a party who willfully fails to comply with an order or judgment entitling his adversary to litigant's rights is properly chargeable with his adversary's enforcement expenses." Pressler & Verniero, cmt. 4.4.5 on R. 1:10-3.

In support of the fee application, Plaintiff's counsel submitted a certification of attorney services and fees documenting 43.8 hours of legal services at the hourly rate of $235. The Court has reviewed the certification and finds that the hours expended were reasonable and necessary to counsel's representation of Plaintiff. During oral argument, Defendant's most able counsel acknowledged the same. Likewise, the hourly rate is more than reasonable given counsel's experience and competency. Again, Defendant's counsel acknowledged the same. The Court is confident of the reasonableness of Plaintiff's fee application, see RPC 1.5(a) ("A lawyer's fee shall be reasonable."), and Defendant does not

contend otherwise. Although the fairness underpinnings of the rule's counsel fees provision does not require the Court to consider the recalcitrant party's ability to pay, the Court finds Defendant has the ability to pay Plaintiff's counsel fees from its war chest of funds.

Plaintiff has made multiple applications to this Court and incurred legal fees in doing so with the sole and express purpose of enforcing the orders of this Court. As between Defendant and the taxpayers of New Jersey that would otherwise bear the costs of Plaintiff's efforts to enforce the orders of this Court, it is not a close question. The Court grants Plaintiff's application for counsel fees in the amount of $ 10,481.

The Court turns briefly and finally to the question of barricading the entrance to Defendant's premises. The Court entered a consent order that granted the owners access to the interior of the premises for specific retail operations. Additionally, after the Court granted Plaintiff's application to construct a barrier to the premises, the owners of Defendant saw fit to destroy the barriers and to resume their activities inside. At oral argument, Plaintiff's most able counsel advised that, for various legitimate concerns of Plaintiff's employees and law enforcement, that barrier has not yet been constructed. Plaintiff is authorized to rebuild a barrier of suitable durability and Defendant is responsible for the costs. The temporary relief on these claims for relief afforded in this Court's order of August 10, 2020 is hereby made permanent. Plaintiff shall submit proof of costs as soon as reasonably practicable.