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September 10, 2020

**Via Electronic Mail & JEDS System**

Honorable Robert Lougy, J.S.C.  
Mercer County Civil Courthouse  
175 South Broad Street, 3rd Floor  
Trenton, NJ 08650

Re: Persichilli v. Atilis Gym of Bellmawr  
Docket No.: MER-C-48-20

Letter Reply Brief in Further Support of  
Plaintiff's Motion for Entry of an Amended  
Enforcement Order

Dear Judge Lougy:

This office represents Plaintiff, Commissioner Persichilli in her official capacity, in this matter. Please accept this letter reply brief in further support of Plaintiff's Motion for Entry of an Amended Enforcement Order, enforcing the Commissioner's August 28, 2020 Modified Closure Order for Defendant Atilis Gym of Bellmawr and otherwise upholding and maintaining the terms and provisions of the court's August 18, 2020 Order in this matter.



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**PROCEDURAL HISTORY AND STATEMENT OF FACTS**

The Commissioner adopts the procedural and factual recitation set forth in the motion papers, filed August 31, 2020, supplemented as follows:

On September 2, 2020, the court held a brief case management conference on the record. On September 3, 2020, the court entered a scheduling order, setting a briefing schedule and oral argument date for the Commissioner’s pending motion.

Defendant’s opposition includes a certification from Atilis Gym co-owner Frank Trumbetti,<sup>1</sup> asserting that, “[a]s of August 21, 2020, Atilis Gym ceased its operation as a gym and began operating as a rally site for Rik Mehta for Senate.”

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<sup>1</sup> It appears Mr. Trumbetti’s certification waives the privileges invoked in Defendant’s pending motion for a stay, wherein Defendant asserted that Mr. Trumbetti has been wholly unable to execute a certification in this matter due to concerns of self-incrimination.

(Certification of Frank Trumbetti at ¶ 1). The basis for the certification is unclear, as Defendant Atilis Gym continues to hold itself out to the public as a gym, offering gym services. See, e.g., <https://www.facebook.com/chrislambert163> (Atilis Gym's Facebook page, with an August 26, 2020 post affirmatively declaring Atilis Gym is indeed a gym) (last visited September 10, 2020); <https://www.theatilisgym.com/?fbclid=IwAR21Z6jaR6NopnFUhjD446ZcZZ1uyxzzQA58uWaunhAGR8pMow8C2TsYQ> (Atilis Gym's website, describing the facility as "South Jersey's Premier Fitness Facility," and making no reference to Rik Mehta) (last visited September 10, 2020); <https://twitter.com/TheAtilisGym> (Atilis Gym's Twitter account, identifying the facility as the "Hardest Working Gym in the Delaware Valley" and providing the amount of gym membership fees) (last visited September 10, 2020); <https://www.instagram.com/atilisgymbellmawr/?hl=en> (Atilis Gym's Instagram account, confirming it is indeed a gym, providing the amount of gym membership fees, and confirming that Atilis Gym continues to operate as a gym after declaring itself connected to the Rik Mehta campaign) (last visited September 10, 2020); [https://www.gofundme.com/f/mk6ez-atilis-bellmawr-court-relief?utm\\_source=customer&utm\\_campaign=p\\_cp+share-sheet&utm\\_medium=copy\\_link-tip](https://www.gofundme.com/f/mk6ez-atilis-bellmawr-court-relief?utm_source=customer&utm_campaign=p_cp+share-sheet&utm_medium=copy_link-tip) (Atilis Gym's gofundme.com fundraiser entitled "Atilis Bellmawr Court Relief," which remains

open and collecting funds for the express purpose of remaining open as a gym, and which has now accrued \$319,371 as of the filing of this letter brief) (last visited September 10, 2020).

Because Defendant Atilis Gym is very clearly still operating as a gym, the Commissioner's Motion for Entry of an Amended Enforcement Order should be granted.

### **ARGUMENT**

#### **POINT I**

#### **THE COURT SHOULD ENFORCE THE COMMISSIONER'S AUGUST 28, 2020 MODIFIED CLOSURE ORDER.**

Defendant Atilis Gym's opposition completely misses the mark on this issue. Defendant argues that the Commissioner's August 28, 2020 Modified Closure Order "is arbitrary and capricious." (Br. at 1). However, "the validity of an agency order shall not be justiciable in an enforcement proceeding." R. 4:67-6(c)(3); see also In re Valley Rd. Sewerage Co., 295 N.J. Super. 278, 290 (App. Div. 1996) (noting "the exclusive jurisdiction of the Appellate Division to review the merits of state agency determinations pursuant to R. 2:2-3(a)(2)"); Bacon v. N.J. State Dep't of Educ., 443 N.J. Super. 24, 37 (App. Div. 2015) (trial court's powers in Rule 4:67-6 proceedings are "strictly limited to enforcement of an order"); State Dep't of Env'tl. Prot. v. Mazza & Sons, Inc., 406 N.J. Super. 13, 23 (App. Div. 2009) (the defendant in an enforcement action may not collaterally attack

the merits of the administrative order before the trial court).

To the extent Atilis Gym contests the merits of the August 28, 2020 Modified Closure Order, that challenge must proceed in the Appellate Division. Absent any valid opposition to entry of an order enforcing the August 28, 2020 Modified Closure Order, and for the reasons set forth in the Commissioner's moving papers, enforcement should be granted.

**POINT II**

**THE COURT SHOULD UPHOLD ALL TERMS AND PROVISIONS IN ITS AUGUST 18, 2020 ORDER.**

Atilis Gym argues that the factual predicates underlying the court's comprehensive August 18, 2020 Order have changed. (Br. at 2-3). This is inaccurate. While incidental circumstances necessarily evolve over time, the foundations of the court's decision remain static -- the legal authorities set out in statute, court rule, and precedent remain; the factual history of Atilis Gym's wanton contempt remains; the reasoning and justification for the relief granted in the court's August 18, 2020 Order remain.

Indeed, the only would-be-meaningful change Defendant identifies is its assertion that Atilis Gym of Bellmawr "ceased its operation as a gym and began operating as a rally site for Rik Mehta for Senate." (Certification of Frank Trumbetti at ¶ 1). However, that assertion is facially incredible. As of the filing of this letter brief, Atilis Gym holds itself out to the public as

a gym, offering gym services, on at least five public platforms. See, e.g., <https://www.facebook.com/chrislambert163> (Facebook); <https://www.theatilisgym.com/?fbclid=IwAR21Z6jaR6NopnFUhjD446ZcZZ1uyxzZQA58uWaunhAGR8pMow8C2TsYQ> (private website); <https://twitter.com/TheAtilisGym> (Twitter); <https://www.instagram.com/atilisgymbellmawr/?hl=en> (Instagram); [https://www.gofundme.com/f/mk6ez-atilis-bellmawr-court-relief?utm\\_source=customer&utm\\_campaign=p\\_cp+share-sheet&utm\\_medium=copy\\_link-tip](https://www.gofundme.com/f/mk6ez-atilis-bellmawr-court-relief?utm_source=customer&utm_campaign=p_cp+share-sheet&utm_medium=copy_link-tip) (gofundme). Again, Atilis Gym's assertion is simply incredible.

Atilis Gym further argues that an evidentiary hearing is necessary based on State Department of Environmental Protection v. Mazza & Sons, Inc., 406 N.J. Super. 13 (App. Div. 2009). (Br. at 3). However, Defendant's reliance upon Mazza is misplaced. In Mazza, the Appellate Division clarified that, despite the prohibition on a trial court reviewing the merits of an administrative order, the State agency is not entitled to "automatic enforcement of one of its orders simply by filing a complaint under Rule 4:67-6." 406 N.J. Super. at 29. Rather, the State agency bears the burden of showing "that the court's assistance is necessary to secure compliance." Ibid. (citing Marshall v. Matthei, 327 N.J. Super. 512, 527-28 (App. Div. 2000)). The evidentiary hearing contemplated by Mazza is only required

where there is a genuine question of the regulated party's compliance or ability to comply. Ibid. (citations omitted).

Here, given the history of this matter since May 2020 and Atilis gym's overt and wanton contemptuous actions well-documented in the record, there can be no question that the Commissioner has met her burden of showing that the court's assistance is necessary to secure compliance. Similarly, against that vast backdrop, there can be no question that Atilis Gym is able to comply with the orders entered against it but willfully chooses not to. Defendant's call for an unnecessary evidentiary hearing amounts to no more than a blatant delay tactic.

**CONCLUSION**

For the reasons set forth above and in the Commissioner's moving papers, the court should grant the Commissioner's motion, enforcing the August 28, 2020 Modified Closure Order and upholding all terms and provisions of the court's August 18, 2020 Order.

Respectfully submitted,

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