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Attorney for Plaintiff

Judith M. Persichilli, R.N., B.S.N., M.A.,
In her official capacity as the Commissioner
Of the Department of Health

By: Stephen Slocum (907802012)
Deputy Attorney General
(609) 376-3200
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_____	:	SUPERIOR COURT OF NEW JERSEY
JUDITH M. PERSICHILLI,	:	CHANCERY DIVISION - MERCER COUNTY
R.N., B.S.N., M.A., in	:	GENERAL EQUITY PART
her official capacity as	:	
Commissioner of the New	:	DOCKET NO. MER-C-48-20
Jersey Department of	:	
Health,	:	<u>CIVIL ACTION</u>
	:	
Plaintiff,	:	NOTICE OF MOTION FOR ENTRY OF
	:	JUDGMENT FOR \$123,982.08
v.	:	
	:	
ATILIS GYM OF BELLMAWR,	:	
	:	
Defendant.	:	
_____	:	

To: John McCann, Esq.
13 Ponds Way
Oakland, NJ 07436
mccannlaw@comcast.net

PLEASE TAKE NOTICE that on a date and time to be set by the court, Plaintiff Judith M. Persichilli, R.N., B.S.N., M.A., in her official capacity as Commissioner of the New Jersey Department of Health, through counsel Gurbir S. Grewal, Attorney General of New Jersey, by Stephen Slocum, Deputy Attorney General, shall move

before the Honorable Robert Lougy, P.J.Ch., in the Superior Court of New Jersey, Chancery Division, General Equity Part, Mercer County, for entry of judgment against Defendant in the amount of \$123,982.08.

PLEASE TAKE FURTHER NOTICE that Plaintiff shall rely upon the Certification of Counsel and Letter Brief filed herewith in support of its motion. A proposed form of order is also filed herewith.

Pursuant to Rule 1:6-2, it is requested that the court consider this motion on the papers submitted unless opposition is entered, in which case Plaintiff requests oral argument.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

s/ Stephen Slocum
By: Stephen Slocum (907802012)
Deputy Attorney General

Dated: December 10, 2020

CERTIFICATION OF SERVICE

I hereby certify that the original Notice of Motion, Certification of Counsel, Letter Brief, proposed form of order, and this Certification of Service were submitted to the Chambers of the Honorable Robert Lougy, P.J.Ch., on December 10, 2020, via electronic mail and through the JEDS System, and that a copy of all video exhibits were submitted to the court via hand delivery.

On December 10, 2020, I served a copy of the within Notice of Motion, Certification of Counsel, Letter Brief, proposed form of order, and this Certification of Service by electronic mail upon:

John McCann, Esq.
13 Ponds Way
Oakland, NJ 07436
mccannlaw@comcast.net
ggmccannlaw@gmail.com

And a copy of all video exhibits were served via overnight mail.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

s/ Stephen Slocum
Stephen Slocum (907802012)
Deputy Attorney General

Dated: December 10, 2020



State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 112
TRENTON, NJ 08625-0112

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

GURBIR S. GREWAL
Attorney General

MICHELLE L. MILLER
Director

December 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 Brief in Support of Plaintiff's Motion for
Entry of Judgment for \$123,982.08

Dear Judge Lougy:

This office represents Plaintiff Judith M. Persichilli, R.N., B.S.N., M.A., in her official capacity as Commissioner of the New Jersey Department of Health, in this matter. Please accept this letter brief in support of Plaintiff's Motion for entry of Judgment for \$123,982.08, seeking imposition of the daily sanction specified in this court's October 8, 2020 Order with regard to eight identified days in November 2020 that Defendant Atilis Gym remained in violation of this court's Order.



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Procedural History and Statement of Facts

On October 8, 2020, this court entered an order enforcing Plaintiff Commissioner Persichilli’s August 28, 2020 Modified Closure Order directing Defendant Atilis Gym of Bellmawr to comply with the provisions of Executive Order 181. (Certification of Stephen Slocum (“Slocum Cert.”), Exhibit A).¹

The court is familiar with Defendant Atilis Gym’s outrageous conduct in this matter, and same is detailed at length in the court’s August 18, 2020 written decision. To avoid unnecessary repetition, those facts are briefly summarized as follows: In public statements through social media, Atilis Gym co-owners Frank Trumbetti and Ian Smith announced their wanton non-compliance with the operative gubernatorial executive orders, DOH’s closure orders, and this court’s enforcement orders. The co-owners kicked down a wooden barrier erected over the doorway to the gym premises -- the barrier was necessitated by Atilis having

¹ Citations are to the exhibits attached to the Certification of Counsel filed herewith.

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removed the doors from their hinges for the express purpose of frustrating any attempts to lock the building.

Throughout the month of November 2020, Atilis co-owner Ian Smith and several patrons made numerous social media posts which demonstrate at least eight days of Atilis Gym and co-owner Ian Smith violating EO 181, DOH's Modified Closure Order, and this court's October 8, 2020 Order. (Exhibit D). Specifically, the social media posts show the following:

- November 17, 2020: Ian Smith posted a 40-second video with the titles "PSA: WE AINT CLOSING," "AGB WON'T EVER BEND THE KNEE," and "FREEDOM DOESN'T REQUIRE PERMISSION," which shows him touring the gym. The video shows numerous violations of the DOH closure order, including no social distancing, no barriers, no demarcations, more than 60 occupants,² and only one person wearing a mask.
- November 20, 2020: Ian Smith posted a 25-second video showing the interior premises, indicating numerous violations of the DOH closure order, including no social distancing, no barriers, no demarcations, and no masks.

This video is accompanied by the following text:

² Because Atilis's maximum occupancy is 240 people, its maximum operating capacity under EO 181 and the DOH August 28, 2020 Modified Closure Order is 60 people -- 25% of 240.

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- o "Let me make myself abundantly clear. We are FREE MEN. There will absolutely be no shutting down. There will be no restrictions placed upon our live. There will be no motherf[---]ing curfews. No arrests, fines, or judges court order that will change that. Try all you want, but I will make you look foolish and expose you for the cowardly petty tyrants you are. There is not a man breathing that will see me bend the knee and beg for crumbs while he sits at his table and eats - you'll simply have to kill me first. This is our hill. This is how we provide for our families. This is how we serve the community. This is how we protect ourselves and grow into stronger, better versions of ourselves. This is our saving grace. This is the culmination of our hard work, dedication, and sacrifice. This is everything to us. This is a battle you cannot win. This is our hill and I'll die on it before I let you take it. Come and get us. FREE MEN." (Emphasis added).
- One 45-second video on November 20, 2020, shows Ian Smith coaching an individual using equipment; neither is wearing a mask.
- Another 14-second video on November 20, 2020, shows an individual discussing the gym's ongoing food drive and toy drive and shows a brief view of the interior premises, which indicate several violations of the DOH closure order, including no social distancing, no barriers, and no masks.
- Two individuals posted pictures of themselves using gym equipment in Atilis without wearing masks on November 20, 2020, and a third individual posted a video of

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himself using equipment without wearing a mask on November 20, 2020.

- November 21, 2020: Ian Smith appeared on Tucker Carlson Tonight on November 21, 2020. During that interview, Smith says Atilis has had over 72,000 visits since June.
- An individual posted a brief video on November 21, 2020, showing Ian Smith's interview with Tucker Carlson playing inside of the gym. That video briefly shows a few violations of the DOH closure order, including no barriers or demarcations.
- November 22, 2020: Ian Smith posted a 58-second video showing the gym interior. The video shows several violations of the DOH closure order, including no social distancing, no barriers, and no masks.
- November 23, 2020: Ian Smith posted a 97-second video which encourages other businesses to defy closure orders and social distancing limitations and provides instruction in what actions Atilis took and that other businesses may follow to be non-compliant. The video then shows a tour of the gym, which indicates numerous violations of the DOH closure order, including no social distancing, no barriers, no demarcations, more than 60 occupants, and no masks.

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- November 24, 2020: Ian Smith appears in a 73-second video using the Atilis gym equipment. The video shows the interior of the premises and several violations of the DOH closure order, including no social distancing, no barriers, no demarcations, and no masks.
- A video compilation of six individuals' posts on November 24, 2020, highlights numerous violations of the DOH closure order, including no social distancing, no barriers, no demarcations, and no masks.
- November 29, 2020: A video compilation of four individuals' posts highlights numerous violations of the DOH closure order, including no social distancing, no barriers, no demarcations, and no masks.
- November 30, 2020: Ian Smith posted a short video of multiple boxing sparring matches occurring in the gym. The video shows several violations of the DOH closure order, including no social distancing, no demarcations, and no masks.
- Two individuals posted pictures on November 30, 2020, of themselves using gym equipment in Atilis without wearing masks, and a third individual posted a video on November 30, 2020, of himself using equipment without wearing a

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mask; the video also shows other violations of the DOH closure order, including no demarcations.

As demonstrated by the social media posts, Atilis Gym remained in non-compliance with EO 181, DOH's August 28, 2020 Modified Closure Order, and this court's October 8, 2020 Order on at least November 17, 20, 21, 22, 23, 24, 29, and 30, 2020. Ibid.

Pursuant to the court's October 8, 2020 Order, Plaintiff is entitled to \$15,497.76 in additional daily sanctions for each day that Atilis violates this court's October 8, 2020 Order. (Exhibit A). Accordingly, pursuant to the court's Order, Plaintiff now seeks entry of judgment against Atilis for the additional amount of \$123,982.08.

ARGUMENT

THE COURT SHOULD ENFORCE ITS OCTOBER 8, 2020 ORDER.

Rule 1:10 generally provides the process under which a party may be held in contempt. Pursuant to Rule 1:10-3, coercive relief can be ordered if the court is satisfied that the party had the capacity to comply with the order and was "willfully contumacious." See Comment 4.3 to R. 1:10-3.

It is well-settled that "the inherent and ancient jurisdiction of the . . . Chancery Division of the Superior Court . . . is broad enough to comprehend the use of any reasonably appropriate and effective procedures designed to enforce Chancery

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Division judgments or orders, including those attendant upon the use of the process of civil contempt, to compel obedience to such judgments or orders." Lathrop v. Lathrop, 57 N.J. Super. 532, 526 (App. Div. 1959); see also Bd. of Educ. of Twp. of Middletown v. Middletown Twp. Educ. Ass'n., 352 N.J. Super. 501, 509-10 (App. Div. 2001). Where a party is seeking coercive relief, a contempt finding is appropriate if the court is satisfied that "the defendant is able to comply and had no good reason to resist compliance." Schochet v. Schochet, 435 N.J. Super. 542, 549-550 (App. Div. 2014).

Courts have extremely broad discretion in fashioning a remedy to ensure compliance with their orders or judgments. Milne v. Goldenberg, 428 N.J. Super. 184, 198 (App. Div. 2012). Indeed, except where enforcement is "exclusively for the payment of money," Rule 1:10-3 authorizes courts to order the imprisonment of contemptuous parties to compel compliance. See Anyanwu v. Anyanwu, 339 N.J. Super. 278, 290 (App. Div. 2001); In re Manna, 124 N.J. Super. 428, 438 (App. Div. 1973); Essex Cnty. Welfare Bd. v. Perkins, 133 N.J. Super. 189, 195 (App. Div. 1974). Specific to monetary relief, while the purpose is not to impose punitive sanctions, the court has express authority to requirement payment of attorney's fees or other monetary amounts meant to impose a

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“‘sting’ on the offending party within its reasonable economic means.” Comment 4.4.3 to R. 1:10-3.

The court’s August 18, 2020 written findings of fact and conclusions of law and the court’s October 8, 2020 oral decision detailed the history of this matter and Atilis Gym’s outrageous behavior and unjustifiable contemptuous conduct. There is no question that Atilis is able to comply with the court’s October 8, 2020 Order or that it is willfully violating that order. The social media posts leave no room for confusion -- on at least eight separate days in November 2020, Atilis Gym freely violated this court’s Order through non-compliance with the DOH August 28, 2020 Modified Closure Order. Those violations, directly exhibited through photographic and video proofs, many posted by co-owner Ian Smith himself, show Atilis not practicing social distancing, not erecting barriers, not placing demarcations, operating above 25% capacity, and not requiring masking by staff or patrons. (Exhibit D). Significantly, Atilis’s contumacious behavior is not limited to simple non-compliance but extends to open contempt and attempts to incite others to engage in contempt. Ibid.

The record in this matter has been well-established. The court’s October 8, 2020 Order calls for additional daily sanctions against Atilis for continued non-compliance and contempt. (Exhibit A). The social media posts unequivocally

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demonstrate non-compliance and contempt on at least eight days in November 2020. (Exhibit D). Accordingly, Plaintiff is entitled to entry of judgment for \$123,982.08 against Atilis.

CONCLUSION

For the reasons set forth above, the court should grant the Commissioner's motion, enforcing the court's October 8, 2020 Order and entering judgment against Defendant in the amount of \$123,982.08.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: s/ Stephen Slocum
Stephen Slocum (907802012)
Deputy Attorney General
Stephen.slocum@law.njoag.gov

c. John McCann, Esq.

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Judith M. Persichilli, R.N., B.S.N., M.A.,
In her official capacity as the Commissioner
Of the Department of Health

By: Stephen Slocum (907802012)
Deputy Attorney General
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_____	:	SUPERIOR COURT OF NEW JERSEY
JUDITH M. PERSICHILLI,	:	CHANCERY DIVISION - MERCER COUNTY
R.N., B.S.N., M.A., in	:	GENERAL EQUITY PART
her official capacity as	:	
Commissioner of the New	:	DOCKET NO. MER-C-48-20
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Plaintiff,	:	CERTIFICATION OF COUNSEL
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v.	:	JUDGMENT FOR \$123,982.08
	:	
ATILIS GYM OF BELLMAWR,	:	
	:	
Defendant.	:	
_____	:	

I, Stephen Slocum, Deputy Attorney General, hereby certify as follows:

1. I am counsel for Plaintiff Judith M. Persichilli, R.N., B.S.N., M.A., in her official capacity as Commissioner of the New Jersey Department of Health, in this matter, and am personally familiar with the subject of this motion.

2. On October 8, 2020, this court entered an Order enforcing the Department of Health's (DOH's) August 28, 2020 Modified Closure Order of Defendant Atilis Gym of Bellmawr. A true and accurate copy of the court's October 8, 2020 Order is attached hereto as **Exhibit A**. A true and accurate copy of DOH's August 28, 2020 Modified Closure Order is attached hereto as **Exhibit B**.

3. DOH's August 28, 2020 Modified Closure Order followed the health and safety standards with regard to gyms and gym activities set forth in Executive Order (EO) 181, issued August 27, 2020. A true and accurate copy of EO 181 is attached hereto as **Exhibit C**.

4. EO 181 specifies:

- "most recreational and entertainment businesses can allow the public into their indoor space for activity, as long as there are strict capacity limits and individuals are wearing face coverings;"
- "health and safety protocols that apply to fitness activities there were previously permitted to resume can help ensure that these activities can continue to occur while minimizing the risk of COVID-19 transmission;"
- "with strict mitigation protocols in place, sage operations can resume inside the facilities,"

- Gyms may reopen “provided that such businesses adopt policies that include, at a minimum,” (a) limited occupancy to 25 percent maximum capacity, excluding staff; (b) require contactless communications; (c) install a physical barrier between customers and employees, or require a six-foot separation; (d) limit equipment use to one person at a time and sanitize between customers; (e) demarcate six-foot spacing; (f) require infection control practices; (g) provide employees time to wash their hands repeatedly; (h) provide sanitization materials to staff and customers; (i) limit restroom and locker room occupancy; (j) require frequent sanitization of high-touch areas; (k) ensure social distancing; (l) separate and send home employees exhibiting symptoms of COVID-19 infection; (m) notify staff of any known exposure to COVID-19 at the worksite; (n) if a known exposure has occurred, disinfect the worksite; (o) follow health and safety guidelines of identified public health offices; and (p) require the use of masks or clothe face coverings.
- Gyms “are permitted to open their indoor premises to the public only where they are in compliance with the health and safety guidelines and standards issued by the Commissioner of the DOH.” (Emphasis added).

5. The August 28, 2020 Modified Closure Order specifies:

- "indoor gyms and fitness centers present particularly high-risk settings for the spread of COVID-19, in part because customers of these facilities engage in physical activities that increase the customers' respiratory activity, which in turn can increase the amount of respiratory droplets or aerosols in a confined setting; and in part because these facilities foster prolonged and close person-to-person contact, including but not limited to the use of personal trainers and spotters, and because they necessitate the communal-use of equipment and other items, such as barbells, dumbbells, and treadmill and cross trainer grips, that may harbor the virus as, according to the National Institutes of Health, the virus may live on plastic and steel surfaces for up to 72 hours;"
- "one study shared by the CDC observed that 'because of the increased possibility of infection through droplets, vigorous exercise in closely confined spaces should be avoided;'"
- "the CDC has determined that COVID-19 can be spread by asymptomatic individuals;"
- "the CDC has also determined that individuals should wear cloth face coverings when in proximity to other

individuals, even if they are not presenting any symptoms of COVID-19, to further reduce the spread of COVID-19;" and

- Atilis Gym must comply with all requirements and guidelines set forth in EO 181.

6. The court's October 8, 2020 Order specifies:

- "The court enforces the Commissioner's August 28, 2020 Modified Closure Order for Atilis Gym of Bellmawr. Any violation of this Order shall subject Defendant to summary contempt-of-court proceedings pursuant to Rules 1:10-1 and 1:10-3, and to any sanctions, penalties, attorney's fees and costs, or other appropriate relief due to Plaintiff or the court."
- "for each day Defendant violates this court's order of July 24, 2020, August 18, 200, and/or this order, Defendant Atilis Gym and co-owners Frank Trumbetti a[n]d Ian Smith, jointly and severally, shall pay to the State of New Jersey the additional sum of \$15,497.76."

7. Social media posts made by Atilis Gym co-owner Ian Smith and patrons of the gym during the month of November 2020 demonstrate ongoing violations of this court's orders, DOH's Modified Closure Order, and EO 181, as well as open acts of contempt, on at least eight days in November 2020. True and

accurate copies of the social media posts are filed herewith as **Exhibit D.**¹

8. The social media posts reveal the following, presented by date:

- November 17, 2020: Ian Smith posted a 40-second video with the titles "PSA: WE AINT CLOSING," "AGB WON'T EVER BEND THE KNEE," and "FREEDOM DOESN'T REQUIRE PERMISSION," which shows him touring the gym. The video shows numerous violations of the DOH closure order, including no social distancing, no barriers, no demarcations, more than 60 occupants, and only one person wearing a mask.
- November 20, 2020: Ian Smith posted a 25-second video showing the interior premises, indicating numerous violations of the DOH closure order, including no social distancing, no barriers, no demarcations, and no masks.

This video is accompanied by the following text:

- o "Let me make myself abundantly clear. We are FREE MEN. There will absolutely be no shutting down. There will be no restrictions placed upon our live. There will be no motherf[---]ing curfews. No arrests, fines, or judges court order that will change that. Try all you want, but I will make you

¹ Due to the aggregate size of the image and video files contained in Exhibit D, the posts cannot be sent via electronic mail. As indicated in the Certification of Service filed herewith, the image and video files are provided to the court and Defendant's counsel on burnt disc.

look foolish and expose you for the cowardly petty tyrants you are. There is not a man breathing that will see me bend the knee and beg for crumbs while he sits at his table and eats - you'll simply have to kill me first. This is our hill. This is how we provide for our families. This is how we serve the community. This is how we protect ourselves and grow into stronger, better versions of ourselves. This is our saving grace. This is the culmination of our hard work, dedication, and sacrifice. This is everything to us. This is a battle you cannot win. This is our hill and I'll die on it before I let you take it. Come and get us. FREE MEN." (Emphasis added).

- One 45-second video on November 20, 2020, shows Ian Smith coaching an individual using equipment; neither is wearing a mask.
- Another 14-second video on November 20, 2020, shows an individual discussing the gym's ongoing food drive and toy drive and shows a brief view of the interior premises, which indicate several violations of the DOH closure order, including no social distancing, no barriers, and no masks.
- Two individuals posted pictures of themselves using gym equipment in Atilis without wearing masks on November 20, 2020, and a third individual posted a video of himself using equipment without wearing a mask on November 20, 2020.

- November 21, 2020: Ian Smith appeared on Tucker Carlson Tonight on November 21, 2020. During that interview, Smith says Atilis has had over 72,000 visits since June.
- An individual posted a brief video on November 21, 2020, showing Ian Smith's interview with Tucker Carlson playing inside of the gym. That video briefly shows a few violations of the DOH closure order, including no barriers or demarcations.
- November 22, 2020: Ian Smith posted a 58-second video showing the gym interior. The video shows several violations of the DOH closure order, including no social distancing, no barriers, and no masks.
- November 23, 2020: Ian Smith posted a 97-second video which encourages other businesses to defy closure orders and social distancing limitations and provides instruction in what actions Atilis took and that other businesses may follow to be non-compliant. The video then shows a tour of the gym, which indicates numerous violations of the DOH closure order, including no social distancing, no barriers, no demarcations, more than 60 occupants, and no masks.
- November 24, 2020: Ian Smith appears in a 73-second video using the Atilis gym equipment. The video shows the

interior of the premises and several violations of the DOH closure order, including no social distancing, no barriers, no demarcations, and no masks.

- A video compilation of six individuals' posts on November 24, 2020, highlights numerous violations of the DOH closure order, including no social distancing, no barriers, no demarcations, and no masks.
- November 29, 2020: A video compilation of four individuals' posts highlights numerous violations of the DOH closure order, including no social distancing, no barriers, no demarcations, and no masks.
- November 30, 2020: Ian Smith posted a short video of multiple boxing sparring matches occurring in the gym. The video shows several violations of the DOH closure order, including no social distancing, no demarcations, and no masks.
- Two individuals posted pictures on November 30, 2020, of themselves using gym equipment in Atilis without wearing masks, and a third individual posted a video on November 30, 2020, of himself using equipment without wearing a mask; the video also shows other violations of the DOH closure order, including no demarcations.

9. The social media posts identified above and filed herewith demonstrate eight specific days in November 2020 of Atilis Gym and co-owner Ian Smith violating EO 181, DOH's Modified Closure Order, and this court's October 8, 2020 Order.

10. The social media post identified above and filed herewith further demonstrate Atilis Gym and co-owner Ian Smith affirmatively and openly mocking this court's authority, engaging in wanton contempt, and encouraging others to undermine this court's authority, demonstrating willful and intentional contempt.

11. Pursuant to the court's October 8, 2020 Order, Plaintiff is entitled to seek judgment against Atilis Gym and co-owners Ian Smith and Frank Trumbetti, jointly and severally, in the amount of \$123,982.08 -- representing the daily sanction amount of \$15,497.76 multiplied by eight days of confirmed non-compliance and contempt.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

s/ Stephen Slocum
Stephen Slocum
Deputy Attorney General

Dated: December 10, 2020

Exhibit A

COPY

FILED

GURBIR S. GREWAL
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Richard J. Hughes Justice Complex
P.O. Box 112
25 Market Street
Trenton, New Jersey 08625
Attorney for Plaintiff

OCTOBER 8, 2020

**SUPERIOR COURT OF NJ
MERCER VICINAGE
CHANCERY**

Judith M. Persichilli, R.N., B.S.N., M.A.,
In her official capacity as the Commissioner
Of the Department of Health

By: Stephen Slocum (907802012)
Deputy Attorney General
(609) 376-3200
Stephen.slocum@law.njoag.gov

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Jersey Department of	:	
Health,	:	<u>CIVIL ACTION</u>
	:	
Plaintiff,	:	AMENDED ENFORCEMENT ORDER
	:	
v.	:	
	:	
ATILIS GYM OF BELLMAWR,	:	
	:	
Defendant.	:	
_____	:	

This matter having been brought to the court by Gurbir S. Grewal, Attorney General of New Jersey, by Stephen Slocum, Deputy Attorney General, attorney for Plaintiff Judith M. Persichilli, R.N., B.S.N., M.A., in her official capacity as Commissioner of the New Jersey Department of Health, by motion for an Amended Enforcement Order, and John McCann, Esq., counsel for Defendant Atilis Gym of Bellmawr on notice, and the court having considered

the papers submitted and the arguments of counsel, if any, and for good cause shown:

It is on this 8th day of October, 2020 **ORDERED** that:

1. The court enforces the Commissioner's August 28, 2020 Modified Closure Order for Atilis Gym of Bellmawr. Any violation of this Order shall subject Defendant to summary contempt-of-court proceedings pursuant to Rules 1:10-1 and 1:10-3, and to any sanctions, penalties, attorney's fees and costs, or other appropriate relief due to Plaintiff or the court.

2. The court's August 18, 2020 Order is hereby updated to enforce the Commissioner's August 28, 2020 Modified Closure Order rather than the July 1, 2020 Modified Closure Order.

3. Paragraph 5 of the court's August 18, 2020 Order is hereby superseded by the following: "If Defendant Atilis Gym operates beyond the limitations and requirements set by the Commissioner's August 28, 2020 Modified Closure order, Plaintiff may place or construct a new barricade barring entry into the premises of Atilis Gym of Bellmawr as necessary to prevent entry into the premises."

4. All other terms and provisions of the court's August 18, 2020 Order remain in effect.

5. Pursuant to paragraph 1 of the court's August 18, 2020 Order, for each day Defendant violates this court's order of July 24, 2020, August 18, 200, and/or this order, Defendant Atilis Gym

and co-owners Frank Trumbetti ad Ian Smith, jointly and severally, shall pay to the State of New Jersey the additional sum of \$15,497.76.

6. _____

_____.

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

For the reasons as stated on the record on September 18, 2020 and on the date of this Order.

Exhibit B

**STATE OF NEW JERSEY
DEPARTMENT OF HEALTH
ORDER CLOSING ATILIS GYM LOCATED AT 363 W BROWNING RD, BELLMAWR**

WHEREAS, Coronavirus disease 2019 ("COVID-19") is a contagious, and at times fatal, respiratory disease that is responsible for the 2019 novel coronavirus outbreak; and

WHEREAS, COVID-19 is a communicable disease as defined by N.J.A.C. 8:57-1.3; and

WHEREAS, the Emergency Health Powers Act (EHPA), N.J.S.A. 26:13-3, authorizes the Governor of the State of New Jersey, in consultation with the Commissioner of the Department of Health (Department) and the Director of the State Office of Emergency Management, to declare a Public Health Emergency; and

WHEREAS, on March 9, 2020, Governor Murphy issued Executive Order No. 103 declaring a Public Health Emergency pursuant to the EHPA and a State of Emergency pursuant to the New Jersey Civilian Defense and the Disaster Control Act ("DCA"), N.J.S.A. App. A. 9-33, et seq. The Public Health Emergency pursuant to the EHPA has been extended by Executive Order No. 119, 138, 151, 162, 171, and 180; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, Governor Murphy issued a series of Executive Orders to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, and Nos. 140-162 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, among these actions, and in recognition that the Centers for Disease Control and Prevention ("CDC") has advised that social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease and that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another, Governor Murphy issued Executive Order No. 107 (2020) on March 21, 2020 to mitigate community spread of COVID-19, which expressly ordered the closure of all gyms, fitness centers and classes; and

WHEREAS, the rate of reported new cases of COVID-19 in New Jersey has decreased, including a reduction in the total number of individuals being admitted to hospitals for COVID-19, and the State has begun to take certain steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 mean that a considerable number of the State's current measures must remain in place, both to reduce additional new infections and to save lives, until additional metrics - such as expanded testing and use of contact tracing - have been satisfied; and

WHEREAS, after consultation with officials from the Department of Health, Governor Murphy announced a multi-stage plan for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, as of August 28, 2020, the State is in the second stage of the reopening process and has begun to relax restrictions on moderate-risk activities where appropriately safeguarded, including certain outdoor and indoor activities that can meet safeguarding and modification guidelines; and

WHEREAS, consistent with this plan, Governor Murphy has issued a number of Executive Orders, including Executive Orders 133, 142, 143, 146, 147, 152, 153, 154, 156, 157 and 168 which lifted closures of most outdoor recreational facilities and activities, allowed additional numbers of people to gather outdoors, lifted closures of personal care services, and permitted some recreational and entertainment businesses to open indoor and outdoor portions of their premises to the public; and

WHEREAS, as public health experts have observed, even as the State allows some indoor and outdoor recreation with reasonable restrictions, due to the ongoing risk of community spread of COVID-19, the extensive interactions that occur at certain indoor recreational and entertainment operations continue to present a significant risk, and so the restrictions on the indoor operations of certain recreational and entertainment businesses have not been lifted at this time; and

WHEREAS, indoor gyms and fitness centers present particularly high-risk settings for the spread of COVID-19, in part because customers of these facilities engage in physical activities that increase the customers' respiratory activity, which in turn can increase the amount of respiratory droplets or aerosols in a confined setting; and in part because these facilities foster prolonged and close person-to-person contact, including but not limited to the use of personal trainers and spotters, and because they necessitate the communal-use of equipment and other items, such as barbells, dumbbells, and treadmill and cross trainer grips, that may harbor the virus as, according to the National Institutes

of Health, the virus may live on plastic and steel surfaces for up to 72 hours; and

WHEREAS, one study shared by the CDC observed that "because of the increased possibility of infection through droplets, vigorous exercise in closely confined spaces should be avoided"; and

WHEREAS, the CDC has determined that COVID-19 can be spread by asymptomatic individuals; and

WHEREAS, the CDC has also determined that individuals should wear cloth face coverings when in proximity to other individuals, even if they are not presenting any symptoms of COVID-19, to further reduce the spread of COVID-19; and

WHEREAS, Atilis Gym continued to allow members of the public to exercise indoors in non-compliance with Executive Order No. 107, thus posing a threat to the public health by failing to adhere to the measures taken to mitigate the spread of COVID-19; and

WHEREAS, pursuant to the EHPA, N.J.S.A. 26:13-8, the Department has the power "[to] close, direct and compel the evacuation of, or to decontaminate or cause to be decontaminated, any facility of which there is reasonable cause to believe that it may endanger the public health."

WHEREAS, pursuant to the EHPA, the Department issued an Order to Atilis Gym on May 20, 2020 requiring it to close and prohibited members of the public including members of the gym, from entering the facility; and

WHEREAS, Atilis Gym willfully and repeatedly violated the May 20, 2020 closure order, necessitating multiple enforcement actions by the Department; and

WHEREAS, on July 1, 2020, in recognition of Executive Order No. 157, the Department modified the Closure Order issued to Atilis to permit it to offer individualized indoor instruction by appointment, consistent with the requirement set forth in Executive Order 157; and

WHEREAS, Atilis Gym continued to act in noncompliance with Executive Order No. 157 and the Department's July 1, 2020 closure order, thus posing a threat to the public health by failing to adhere to the measures taken to mitigate the spread of COVID-19 and necessitating a further enforcement action by the Department, which was granted by the Mercer County Superior Court, Chancery Division, on July 20, 2020; and

WHEREAS, on July 24, 2020, due to Atilis Gym's continued non-compliance with Executive Order No. 157 and the Department's July 1, 2020 closure order, the Chancery Division Court entered an order finding Atilis Gym in contempt of the July 20, 2020 order and authorizing the Department 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"; and

WHEREAS, on August 18, 2020, the Chancery Division Court granted the Department's application for monetary sanctions due to Atilis Gym'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"; and

WHEREAS, the State has continued to see a decrease in the rate of reported cases of COVID-19, including a reduction in the total number of individuals being admitted to hospitals for COVID-19 and in the rate of reproduction for COVID-19 infections; and

WHEREAS, on August 27, 2020, the Governor issued Executive Order No. 181 which permitted gyms and fitness centers to resume indoor operations provided they adopt, at a minimum, the specific safety precautions set forth in the Executive Order, including *inter alia*: limiting occupancy to 25 percent of the stated maximum capacity at one time, installing physical barriers between customers and employees wherever feasible, demarcating and posting signs that denote six feet of spacing in all common areas to facilitate social distancing, requiring and enforcing infection control practices, requiring frequent sanitization of high-touch areas, limiting occupancy in restrooms and locker facilities, requiring workers and customers to wear cloth face coverings while in the indoor portion of the premises except where doing so would inhibit that individual's health or where the individual is under two years of age, and requiring ongoing compliance with all guidelines and directives issued by the New Jersey Department of Health, the CDC and the Occupational Health and Safety Administration; and

WHEREAS, on August 27, 2020, the Department issued Executive Directive No. 20-028, "Guidelines for Health Clubs, Gyms and Fitness Centers," which requires all health clubs to comply with the Department's standards entitled "Guidance for Health Clubs/Gyms/Fitness," as amended and supplemented.

THEREFORE, IT IS HEREBY ORDERED THIS 28th DAY OF August 2020,

1. Effective at the same time that Executive Order 181 takes effect: at 6:00 a.m. on Tuesday, September 1,

2020, Atilis Gym located at 363 West Browning Road, Bellmawr, New Jersey 08031 is permitted to open its indoor premises to the public provided that it adopts a policy that includes, at minimum, the following requirements:

- a. Limit occupancy of any indoor premises to 25 percent of the stated maximum capacity, if applicable, at one time, excluding staff;
- b. Require that reservations, cancellations and pre-payments be made via electronic or telephone reservation systems to limit physical interactions. Such policies shall, wherever possible, consider populations that do not have access to internet service or credit cards;
- c. Install a physical barrier, such as a shield guard, between customers and employees wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment;
- d. Limit the use of equipment rented or otherwise provided to one person at a time, excluding immediate family members, caretakers, household members, or romantic partners, and sanitize such equipment before and after use;
- e. Demarcate and post signs that denote six feet of spacing in all commonly used and other applicable areas or where people may form a line;
- f. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- g. Provide employees break time for repeated handwashing throughout the workday;
- h. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers;
- i. Limit occupancy in restrooms and locker facilities that remain open to avoid overcrowding and maintain social distancing through

signage and, where practicable, the utilization of attendants to monitor capacity;

- j. Require frequent sanitization of high-touch areas including, at minimum, the following cleaning protocols:
 - i. Routinely clean and disinfect all high-touch areas in accordance with DOH and CDC guidelines, particularly in spaces that are accessible to staff, customers, or members, or other individuals, including, but not limited to, restroom and locker facilities, counter tops, hand rails, door knobs, other common surfaces, safety equipment, and other frequently touched surfaces including employee used equipment, and ensure cleaning procedures following a known or potential exposure in compliance with CDC recommendations;
 - ii. Clean and disinfect equipment that is rented in accordance with CDC and DOH guidelines; and
 - iii. Train and equip employees to perform the above protocols effectively and in a manner that promotes the safety of the visitors and staff;
- k. Place additional restrictions on areas of the business, as necessary, to limit person-to-person interactions and facilitate appropriate social distancing;
- l. Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day;
- m. Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws;

- n. Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness;
 - o. Continue to follow guidelines and directives issued by the New Jersey Department of Health, the CDC and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe and healthy work environment;
 - p. Require workers and customers to wear cloth face coverings while in the indoor portion of the premises, except where doing so would inhibit that individual's health or where the individual is under two years of age. Atilis must provide, at its expense, such face coverings for its employees. If a customer refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by Atilis at the point of entry, then Atilis must decline the individual entry into the indoor premises. This requirement shall not apply when wearing a face covering would inhibit that individual's health, including when in the water and in other situations where the presence of a mask would pose a risk to the individual's safety, or where the individual is under two years of age. Workers or customers may wear a surgical-grade mask or other more protective face covering if the individual is already in possession of such equipment, or if Atilis is otherwise required to provide its workers with more protective equipment due to the nature of the work involved. Where an individual declines to wear a face covering in the indoor premises due to a medical condition that inhibits such usage, neither Atilis nor its staff shall require the individual to produce medical documentation verifying the stated condition.
2. Notwithstanding the above requirements, Atilis will be permitted to open its indoor premises to the public only as long as it remains in compliance with the health and safety guidelines and standards issued by the Commissioner of the DOH, including but not limited to Executive Directive No. 20-028, "Guidelines for Health

Clubs, Gyms and Fitness Centers," and the accompanying "Guidance for Health Clubs/Gyms/Fitness."

3. With the execution of this Modified Closure Order, the Department's July 1, 2020 Modified Closure Order is hereby lifted.
4. This Order shall remain in effect until lifted by the Department.
5. Failure to comply with the conditions of this order may result in criminal sanctions and/or civil penalties, in addition to any criminal sanctions and/or civil penalties warranted for violations of Executive Order No. 107 (2020), Executive Order No. 157 (2020), and Executive Order No. 181 (2020).
6. This Order does not purport to impact Atilis's mercantile licensure with the Borough of Bellmawr.

Dated: August 28, 2020



Judith M. Persichilli, R.N., B.S.N., M.A.
Commissioner
New Jersey Department of Health

RIGHT TO APPEAL:

This Emergency Closure Order constitutes a Final Agency Decision of the New Jersey Department of Health which may be appealed to the Superior Court, Appellate Division, pursuant to the procedures and timeframes set forth in New Jersey Court Rule 2:2-3.

Exhibit C

EXECUTIVE ORDER NO. 181

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, 171, and 180, issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, August 1, 2020, and August 27, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, and Nos. 177-180 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, to further limit community spread from person-to person contact through use of social mitigation measures, Executive Order No. 107 (2020) closed all recreational and entertainment businesses, and limited all restaurants, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, to offering food delivery and/or take-out services only; and

WHEREAS, given the decrease in the rate of reported new cases of COVID-19 in New Jersey, including a reduction in the total number of individuals being admitted to hospitals for COVID-19, the State has taken and can take steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 mean that many of the State's current measures must remain in place, both to reduce additional new infections and to save lives; and

WHEREAS, after consultation with officials from the Department of Health ("DOH"), I announced a multi-stage New Jersey's Road Back Plan (the "Plan") for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, the State is implementing its reopening process and has begun to relax restrictions on certain businesses, including the opening of all retail businesses, and resumption of limited indoor recreation and outdoor dining; and

WHEREAS, because of our continued progress, most recreational and entertainment businesses can allow the public into their indoor spaces for activity, as long as there are strict capacity limits and individuals are wearing face coverings; and

WHEREAS, a limited number of indoor entertainment businesses still pose a higher risk of transmission of COVID-19 at this time, such as performance-based locations such as movie theaters, performing arts centers, other concert venues, and nightclubs, because those businesses necessitate individuals congregating together concurrently in one indoor location for a prolonged period of time, which is different than indoor retail settings, and even most recreational and entertainment businesses where individuals do not inherently spend a prolonged amount of time together in one location; and

WHEREAS, Executive Order No. 157 (2020) permitted certain recreation and entertainment businesses, including those businesses that offered fitness activities, to reopen subject to their compliance with specified health and safety protocols; and

WHEREAS, issuing health and safety protocols that apply to fitness activities that were previously permitted to resume can help ensure that these activities can continue to occur while minimizing the risk of COVID-19 transmission; and

WHEREAS, while gyms and fitness centers involve people congregating in a confined space and exercising, individuals are typically utilizing the facility for a short period of time, so that with strict mitigation protocols in place, safe operations can resume inside the facilities; and

WHEREAS, certain businesses that were permitted to resume operations were required to adopt policies and procedures that incorporated critical health and safety guidelines, including

through Executive Orders Nos. 122, 157, and 163 (2020), and which required that staff wear gloves at worksites; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") has now advised that gloves should be worn in certain limited circumstances, such as when caring for a sick individual or while cleaning, but that frequent handwashing is generally the preferable method to maintain appropriate hand hygiene; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. "Health clubs," as defined by N.J.S.A. 56:8-39, which include gyms and fitness centers, as well as amusement and water parks, can open their indoor premises as of 6:00 a.m. on Tuesday, September 1, 2020, provided that such businesses adopt policies that include, at minimum, the following requirements:

- a. Limit occupancy of any indoor premises to 25 percent of the stated maximum capacity, if applicable, at one time, excluding staff;
- b. Require that reservations, cancellations, and pre-payments be made via electronic or telephone reservation systems to limit physical interactions. Such policies shall, wherever possible, consider

populations that do not have access to internet service or credit cards;

- c. Install a physical barrier, such as a shield guard, between customers and employees wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment;
- d. Limit the use of equipment rented or otherwise provided by the business to one person at a time, excluding immediate family members, caretakers, household members, or romantic partners, and sanitize such equipment before and after use;
- e. Demarcate and post signs that denote six feet of spacing in all commonly used and other applicable areas or where people may form a line;
- f. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- g. Provide employees break time for repeated handwashing throughout the workday;
- h. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers;
- i. Limit occupancy in restrooms and locker facilities that remain open to avoid over-crowding and maintain social distancing through signage and, where practicable, the utilization of attendants to monitor capacity;
- j. Require frequent sanitization of high-touch areas including, at minimum, the following cleaning protocols:

- i. Routinely clean and disinfect all high-touch areas in accordance with DOH and CDC guidelines, particularly in spaces that are accessible to staff, customers, or members, or other individuals, including, but not limited to, restroom and locker facilities, counter tops, hand rails, door knobs, other common surfaces, safety equipment, and other frequently touched surfaces including employee used equipment, and ensure cleaning procedures following a known or potential exposure in compliance with CDC recommendations;
- ii. Clean and disinfect equipment that is rented in accordance with CDC and DOH guidelines; and
- iii. Train and equip employees to perform the above protocols effectively and in a manner that promotes the safety of the visitors and staff;
- k. Place additional restrictions on areas of the business, as necessary, to limit person-to-person interactions and facilitate appropriate social distancing;
- l. Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day;
- m. Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws;

- n. Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness;
- o. Continue to follow guidelines and directives issued by the New Jersey DOH, the CDC and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe, and healthy work environment; and
- p. Require workers and customers to wear cloth face coverings while in the indoor portion of the premises, except where doing so would inhibit that individual's health or where the individual is under two years of age. Businesses must provide, at their expense, such face coverings for their employees. If a customer refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must decline the individual entry into the indoor premises. This requirement shall not apply when wearing a face covering would inhibit that individual's health, including when in the water and in other situations where the presence of a mask would pose a risk to the individual's safety, or where the individual is under two years of age. Nothing in the stated policy should prevent workers or customers from wearing a surgical-grade mask or other more protective face covering if the individual is already in possession of such equipment, or if the business is otherwise required

to provide such worker with more protective equipment due to the nature of the work involved. Where an individual declines to wear a face covering in the indoor premises due to a medical condition that inhibits such usage, neither the business nor its staff shall require the individual to produce medical documentation verifying the stated condition.

2. Notwithstanding the provisions of Paragraph 1, above, health clubs, amusement parks, and water parks are permitted to open their indoor premises to the public only where they are in compliance with the health and safety guidelines and standards issued by the Commissioner of the DOH.

3. Recreational and entertainment businesses that provide fitness instruction and which were permitted to resume operations pursuant to Executive Order No. 157 (2020) must adhere to the protocols outlined in Paragraph 1 and to guidance issued by the Commissioner of Health.

4. Paragraphs 8 and 10 of Executive Order No. 157 (2020) are superseded to the extent that they are inconsistent with the provisions of this Order.

5. Any type of event at one of the above-described facilities that involves individuals who are there at a specific time, a specific location, and for a common reason, such as a fitness class at a gym or a birthday party at an amusement park, are subject to the applicable gathering limits, which were most recently laid out in Executive Order No. 173 (2020).

6. Businesses subject to the requirements of Executive Orders Nos. 122, 157, and 165 (2020) are no longer required to mandate that workers wear gloves on the premises or when in contact

with customers or goods. Such businesses may adopt policies that require staff to wear gloves, in addition to regular hand hygiene. Where a business requires its staff to wear gloves while at the worksite, the business must provide such gloves to staff. The specified businesses must ensure that staff practice regular hand hygiene when interacting with the public. Paragraphs 1 and 3 of Executive Order No. 122 (2020), paragraphs 1 and 7 of Executive Order No. 157 (2020), and paragraphs 1, 2, 3, 4, and 5 of Executive Order No. 165 (2020) are superseded to the extent that they are inconsistent with the provisions of this Order.

7. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

8. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Order.

9. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

10. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

11. This Order shall take effect immediately, and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
27th day of August,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fifth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

Exhibit D

Video and Image Files, Labeled as Follows:

1_ 11.17.20_ video
2_ 11.20.20_ video
3_ 11.20.20_ video
4_ 11.20.20_ video
5a_ 11.20.20_ picture 1
5b_ 11.20.20_ picture 2
5c_ 11.20.20_ video
6_ 11.21.20_ video
7_ 11.21.20_ video
8_ 11.22.20_ video
9_ 11.23.20_ video
10_ 11.24.20_ video
11_ 11.24.20_ video
12_ 11.29.20_ video
13_ 11.30.20_ video
14a_ 11.30.20_ picture 1
14b_ 11.30.20_ picture 2
14c_ 11.30.20_ video

GURBIR S. GREWAL
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Trenton, New Jersey 08625
Attorney for Plaintiff

Judith M. Persichilli, R.N., B.S.N., M.A.,
In her official capacity as the Commissioner
Of the Department of Health

By: Stephen Slocum (907802012)
Deputy Attorney General
(609) 376-3200
Stephen.slocum@law.njoag.gov

_____	:	SUPERIOR COURT OF NEW JERSEY
JUDITH M. PERSICHILLI,	:	CHANCERY DIVISION - MERCER COUNTY
R.N., B.S.N., M.A., in	:	GENERAL EQUITY PART
her official capacity as	:	
Commissioner of the New	:	DOCKET NO. MER-C-48-20
Jersey Department of	:	
Health,	:	<u>CIVIL ACTION</u>
	:	
Plaintiff,	:	ORDER ENTERING JUDGMENT AGAINST
	:	DEFENDANT FOR \$123,982.08
v.	:	
	:	
ATILIS GYM OF BELLMAWR,	:	
	:	
Defendant.	:	
_____	:	

This matter having been brought to the court by Gurbir S. Grewal, Attorney General of New Jersey, by Stephen Slocum, Deputy Attorney General, attorney for Plaintiff Judith M. Persichilli, R.N., B.S.N., M.A., in her official capacity as Commissioner of the New Jersey Department of Health, by motion for entry of judgment, and John McCann, Esq., counsel for Defendant Atilis Gym of Bellmawr on notice, and the court having considered the papers

submitted and the arguments of counsel, if any, and for good cause shown:

It is on this ___ day of _____, _____ **ORDERED** that:

1. Plaintiff's motion for entry of judgement is granted.

2. 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 **\$123,982.08**, which the court finds reasonable and calculated to compel Defendant's compliance.

3. Any violation of this Order shall subject Defendant to summary contempt-of-court proceedings pursuant to Rules 1:10-1 and 1:10-3, and to any sanctions, penalties, attorney's fees and costs, or other appropriate relief due to Plaintiff or the court.

4. _____

_____.

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

Hon. Robert Lougy, P.J.Ch.

____ Opposed
____ Unopposed