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Attorneys for Plaintiff

JWC FITNESS, LLC,

Plaintiff,

v.

GOVERNOR PHILIP DUNTON  
MURPHY, in his official capacity,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
SUSSEX COUNTY  
Docket No.: SSX-L- -20

Civil Action

**COMPLAINT**

Plaintiff, JWC FITNESS, LLC, by and through its undersigned counsel, asserts and alleges the following:

**INTRODUCTION**

1. Governor Murphy declared a public health emergency and a state of emergency on March 9, 2020 (**EXHIBIT A**: Ex. Ord. 103). Such declaration continues to date.

2. Using the extraordinary powers of the Civilian Defense and Disaster Control Act, *N.J.S.A. App. A: 9-33 et seq.*, the Governor has since March 16, 2020 pervasively and intrusively prescribed the course of conduct of the State’s law-abiding citizens, including directing “non-essential” business owners to close their business; or to operate at reduced capacity, or to operate

only under prescribed conditions, on pain of penalty. (**EXHIBIT B:** Ex. Order 104 at par. 7(d); (**EXHIBIT C:** Ex. Order 107 at par. 6-13; 25).

3. This is an action for declaratory relief pursuant to *N.J.S.A. 2A:16-59 and 28 U.S.C. 2201*, that the Plaintiff herein, who has incurred economic business losses due to its compliance with the emergency orders issued for the public benefit are entitled to compensation pursuant to *N.J.S.A. App. A:9-33 et seq.*, and the State and Federal Constitutions.

### **PARTIES**

4. Plaintiff, JWC Fitness, LLC, is a domestic limited liability company that operates as a single member LLC, doing business as CKO Kickboxing Franklin (“Plaintiff”). It maintains its principal place of business at 60 Munsonhurst Rd., Franklin, N.J. It has been closed since March 16, 2020, due solely to the Defendant’s emergency orders. Although allowed to reopen indoors with restrictions on September 1, 2020 per Ex. Order 181, (**EXHIBIT D:** Ex. Ord. 181), Plaintiff has been unable to do so, as the restrictions prevent the business from generating the revenue sufficient to offset the expense of operating indoors. The business has generated little revenue since it was ordered to close. Allowed to operate outdoors in June, 2020, Plaintiff operated at low capacity and generated little revenue. (**EXHIBIT F:** Ex. Ord. 157).

5. Defendant Philip D. Murphy is Governor of the State of New Jersey. He issued the Orders directing closure of Plaintiff’s business and the conditions under which it is permitted to reopen. He is sued in his official capacity.

### **FACTS COMMON TO ALL COUNTS**

6. A novel virus spread *via* human transmission, COVID-19, was declared to be a pandemic by the World Health Organization on March 11, 2020.

7. On March 9, 2020, Governor Murphy issued Executive Order 103 (“E.O. 103”), in which he declared a state of emergency and a public health emergency. *See* **EXHIBIT A**. On March 16, 2020, Governor Murphy issued Executive Order 104 (“E.O. 104”), superseded and incorporated into Executive Order 107 (“E.O. 107”) on March 21, 2020. *See* **EXHIBITS B** and **C**. E.O. 104 directed that business activity characterized as non-essential commercial activity be closed or their operation modified, effective March 18, 2020. (**EXHIBIT B**: E.O. 104 at par. 7; *see also*, **EXHIBIT C**: Ex. Ord. 107 at 6-13).

8. There is no time frame given for any executive order affecting the Plaintiff’s ability to return to the regular operation of their business.

9. The Plaintiff is a business whose regular operation has been affected by Ex. Order 104 and 107 from March 15, 2020 to date. It has suffered economic loss as a direct result of its compliance with Ex. Orders 104 and 107 and all other pertinent, subsequently issued Executive Orders issued pursuant to *N.J.S.A. App. A: 9-33 et seq.*

10. The purpose of the Civilian Defense and Disaster Control Act, *N.J.S.A. App. A: 9-33 et seq.* (hereafter, “Act”), is, in pertinent part, to “provide for the health, safety and welfare of the people of the State of New Jersey and to aid in the prevention of damage to the destruction of property during any emergency ... by prescribing a course of conduct for the civilian population of this state and by centralizing control of all civilian activities having to do with such emergency under the Governor . . . .” *N.J.S.A. App. A:9-33*.

11. The powers vested in the Governor include the power to “commandeer and utilize any personal services and any privately owned property necessary to avoid or protect against any emergency **subject to the future payment of the reasonable value of such services and**

**privately owned property** as hereinafter in this act provided.” *N.J.S.A. App. A:9-34* (emphasis added).

12. *N.J.S.A. App. A:9-51* authorizes the Governor to assume control of all emergency management operations; proclaim an emergency, and “employ, take, or use” “the real or personal property” of any citizen, resident, or business entity of this state, “for the purpose of ... promoting the public health, safety or welfare” of the State. *N.J.S.A. App. A:9-51(a)*.

13. When the Governor acts in accordance with *N.J.S.A. App. A:9-51(a)*, “reasonable compensation” shall be awarded “to the party entitled thereto for any property employed, taken or used under the provisions of this subsection...”, via emergency compensation boards established by the Governor. *N.J.S.A. App. A:9-51(c)*.

14. The right to compensation ceases to accrue when the Governor issues a proclamation declaring an end to the emergency and suspending the powers granted to him pursuant to the Act. *N.J.S.A. App. A:9-51(e)*.

15. On April 2, 2020, Governor Murphy issued Ex. Order 113. *See* **EXHIBIT E**. This Order delegated to the State Director of Emergency Management the authority to reallocate privately-owned medical resources to areas of particular need. (**EXHIBIT E**: Ex. Ord. 113 at par. 1.). Governor Murphy specifically directed the affected property owners be compensated in accordance with the provisions of *N.J.S.A. App. A: 9-51*. (**EXHIBIT E**: Ex. Ord. 113 at par. 2).

16. Unlike Ex. Ord. 113, in which the Defendant recognized his statutory obligation to compensate the private property owners subject to its requirements, the Defendant has never acknowledged that compensation is due to the Plaintiff pursuant to *N.J.S.A. App. A:9-34* and *N.J.S.A. App. A:9-51* for its compliance with Ex. Orders 104 and 107, issued to promote the public welfare. Nor has the Defendant declared an end to the emergency.

17. The Plaintiff has had its property employed, taken, or used within the meaning of *N.J.S.A. App. A:9-51*. It has incurred loss and expense as a result of its compliance with the Defendant's emergency orders.

**FIRST COUNT**  
**(Declaratory Judgment — *N.J.S.A. App. A:9-33 et seq.*)**

18. Paragraphs 1-17 are fully incorporated by reference herein.

19. Plaintiff seeks a declaration of its right to compensation pursuant to the Act pursuant to *N.J.S.A. App. A:9-34* and *N.J.S.A. App. A:9-51*.

**WHEREFORE**, Plaintiff demands a declaratory judgment be entered in its favor and against Defendant that Plaintiff's compliance with Ex. Orders 104 and 107 and such pertinent executive orders issued thereafter pursuant to the Defendant's authority under the Act entitle Plaintiff to compensation as set forth in *N.J.S.A. App. A:9-34* and *N.J.S.A. App. A:9-51*, and that Defendant is accordingly obligated to implement the compensation procedures set forth in the Act.

**SECOND COUNT**  
**(Declaratory Judgment — NJ State Constitution)**

20. Paragraphs 1-19 are fully incorporated by reference herein.

21. "Acquiring, possessing, and protecting property" is a natural and unalienable right. *N.J. Const. [1948], Art.I, sec. 1*.

22. The State Constitution further provides that: "[p]rivate property shall not be taken for public use without just compensation". *N.J. Const. [1948], Art.I, sec. 20*.

23. Plaintiff owns property that since March 15, 2020 has been taken for the public benefit to manage a public health and state emergency in the manner directed by the Defendant.

It has incurred a complete loss of revenue and other injury to its property as a direct result. The State has not compensated it for its loss.

**WHEREFORE**, Plaintiff is entitled to a judgment in its favor as a matter of law. It demands declaratory relief that its compliance with Ex. Orders 104 and 107 and any such pertinent executive orders as may be issued thereafter are a taking for public use without compensation in violation of the State Constitution, *N.J. Const. [1948], Art. I, sec. 1 & 20*.

**THIRD COUNT**  
**(Declaratory Judgment — U.S. Constitution)**

24. Paragraphs 1-23 are fully incorporated by reference herein.

25. The Fifth Amendment to the U.S. Constitution, incorporated into the Fourteenth Amendment, forbids the taking of private property for public use “without just compensation”.

26. Plaintiff owns property that since March 15, 2020 has been taken for the public benefit to manage a public health and state emergency in the manner directed by the Defendant. It has incurred a complete revenue loss and other injury to its property as a result. It has not been compensated by the State for its loss.

**WHEREFORE**, Plaintiff is entitled to a verdict in its favor as a matter of law. It demands declaratory relief that its compliance with Ex. Orders 104 and 107 and any such pertinent executive orders as may be issued thereafter are a taking for public use without compensation in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution.

*s/Catherine M. Brown*  
Catherine M. Brown

*s/Robert W. Ferguson*  
Robert W. Ferguson

Dated: September 23, 2020

*Attorneys for Plaintiff*

**CERTIFICATION PURSUANT TO RULE 4:5-1**

I hereby certify to the best of my knowledge, information, and belief that the matter in controversy is not the subject of any other pending or contemplated court actions, arbitration proceedings, or administrative proceedings. I further certify that to the best of my knowledge, information, and belief that I am not aware of any non-parties who should be joined in this action.

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

Dated: September 23, 2020

*s/Robert W. Ferguson*  
Robert W. Ferguson

# EXHIBIT A



**EXECUTIVE ORDER NO. 103**

WHEREAS, Coronavirus disease 2019 ("COVID-19") is a contagious, and at times fatal, respiratory disease caused by the SARS-CoV-2 virus; and

WHEREAS, COVID-19 is responsible for the 2019 novel coronavirus outbreak, which was first identified in Wuhan, the People's Republic of China in December 2019 and quickly spread to the Hubei Province and multiple other countries; and

WHEREAS, symptoms of the COVID-19 illness include fever, cough, and shortness of breath, which may appear in as few as two or as long as 14 days after exposure, and can spread from person to person via respiratory droplets produced when an infected person coughs or sneezes; and

WHEREAS, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a "public health emergency of international concern," which means "an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response," and thereafter raised its global risk assessment of COVID-19 from "high" to "very high"; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, as of March 9, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 114,000 confirmed cases of COVID-19 worldwide, with over 4,000 of those cases having resulted in death; and

WHEREAS, as of March 9, 2020, there were more than 500 confirmed cases of COVID-19 in the United States, with 22 of those cases having resulted in death; and

WHEREAS, as of March 9, 2020, there were 11 presumed positive cases of COVID-19 in New Jersey, with 24 additional "Persons Under Investigation" spread across the counties of Bergen, Camden, Cumberland, Essex, Hunterdon, Middlesex, Monmouth, Passaic, Union, and Sussex; and

WHEREAS, as of March 9, 2020, there were 142 positive cases of COVID-19 in the State of New York and seven presumptive positive cases in the Commonwealth of Pennsylvania; and

WHEREAS, the CDC expects that additional cases of COVID-19 will be identified in the coming days, including more cases in the United States, and that person-to-person spread is likely to continue to occur; and

WHEREAS, if COVID-19 spreads in New Jersey at a rate comparable to the rate of spread in other affected areas, it will greatly strain the resources and capabilities of county and municipal governments, including public health agencies, that provide essential services for containing and mitigating the spread of contagious diseases, such as COVID-19, and the situation may become too large in scope to be handled in its entirety by the normal county and municipal operating services in some parts of this State, and this situation may spread to other parts of the State; and

WHEREAS, the spread of COVID-19 may make it difficult or impossible for citizens to obtain consumer goods and other necessities of life due to supply chain disruption and price increases, as well as hamper the delivery of essential services such as police, fire, and first aid; and

WHEREAS, the State's public bidding act, N.J.S.A. 52:34-6 et seq., provides a public exigency exemption, N.J.S.A. 52:34-10(b), that in the event of a threat to the life, health, or safety to the public, advertised bidding is not required to obtain those

goods and services necessary to address the public exigency where the Division of Purchase of Property provides preapproval in accordance with Treasury Circular 18-14-DPP; and

WHEREAS, in the event of a declared emergency pursuant to Treasury Circular 19-10-DPP, the threshold for delegated purchasing by individual State Departments is raised to \$100,000 such that purchases at or below that amount do not require prior approval or action by DPP; and

WHEREAS, the spread of COVID-19 may disrupt the timely delivery of State contracted goods or services, the immediate delivery and fulfillment of which is necessary for the life, safety, or health of the public; and

WHEREAS, the State of New Jersey has been working closely with the CDC, local health departments, and healthcare facilities to monitor, plan for and mitigate the spread of COVID-19 within the State; and

WHEREAS, through Executive Order No. 102, which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by COVID-19; and

WHEREAS, it is critical to prepare for and respond to suspected or confirmed COVID-19 cases in New Jersey, to implement appropriate measures to mitigate the spread of COVID-19, and to prepare in the event of an increasing number of individuals requiring medical care or hospitalization; and

WHEREAS, the State of New Jersey also acts as an employer with tens of thousands of employees, and the spread of COVID-19 requires preparedness for staffing shortages and flexibility in work rules to ensure that its employees can fully comply with all

medically appropriate measures while also ensuring the continuous delivery of State services performed by Executive branch agencies; and

WHEREAS, the continuous delivery of services at the county and municipal level performed by those governments and their employees is also essential; and

WHEREAS, the spread of COVID-19 within New Jersey constitutes an imminent public health hazard that threatens and presently endangers the health, safety, and welfare of the residents of one or more municipalities or counties of the State; and

WHEREAS, it is necessary and appropriate to take action against this public health hazard to protect and maintain the health, safety, and welfare of New Jersey residents and visitors; and

WHEREAS, the facts as set forth above and consultation with the Commissioner of DOH confirms that there exists a public health emergency in the State; and

WHEREAS, New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-107 et seq., prohibits excessive price increases during a declared state of emergency, or for 30 days after the termination of the state of emergency; 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;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey, DO DECLARE and PROCLAIM that a Public Health Emergency and State of Emergency exist in the State of New Jersey, and I hereby ORDER and DIRECT the following:

1. I authorize and empower the State Director of Emergency Management, who is the Superintendent of State Police, in conjunction with the Commissioner of DOH, to take any such emergency measures as the State Director may determine necessary, including the implementation of the State Emergency Operations Plan and directing the activation of county and municipal emergency operations plans, in order to fully and adequately protect the health, safety and welfare of the citizens of the State of New Jersey from any actual or potential threat or danger that may exist from the possible exposure to COVID-19. The State Director of Emergency Management, in conjunction with the Commissioner of DOH, is authorized to coordinate the relief effort from this emergency with all governmental agencies, volunteer organizations, and the private sector.

2. The State Director of Emergency Management, in conjunction with the Commissioner of DOH, shall also supervise and coordinate all activities of all State, regional and local political bodies and agencies in order to ensure the most effective and expeditious implementation of this order, and, to this end, may call upon all such agencies and political subdivisions for any assistance necessary.

3. Given the concurrent invocation of both a State of Emergency pursuant to N.J.S.A. App.A.:9-33 et seq. and a Public Health Emergency as contemplated by N.J.S.A. 26:13-1 et seq., I reserve the right as specifically contemplated by N.J.S.A. 26:13-3 to exercise the authority and powers specific to the Emergency Health Powers Act as I deem necessary and appropriate to ensure the public health for New Jersey's residents.

4. 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 with the State Director of Emergency Management and the Commissioner of DOH in all matters concerning this state of emergency.

5. The Coronavirus Task Force established under Executive Order No. 102 is continued with the Commissioner of DOH as the chair, and shall provide assistance on the State's efforts preparing for and responding to the public health hazard posed by COVID-19.

6. I authorize and empower the executive head of any agency or instrumentality of the State government with authority to promulgate rules to waive, suspend, or modify any existing rule, where the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management and the Commissioner of DOH. Any such waiver, modification, or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

7. All State agencies, and specifically the Departments of Banking and Insurance, Health, Human Services, Education, and the Civil Service Commission are authorized to take appropriate steps to address the public health hazard of COVID-19, including increasing access and eliminating barriers to medical care, protecting the health and well-being of students, and protecting the health and well-being of State, county, and municipal employees while ensuring the continuous delivery of State, county, and municipal services.

8. I authorize and empower the State Director of Emergency Management, in conjunction with the Commissioner of DOH, to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health, safety, or welfare because of the conditions created by this emergency.

9. I authorize and empower the State Director of Emergency Management, in conjunction with the Commissioner of DOH, to utilize all property, equipment, and facilities owned, rented, operated, and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from a residence, dwelling, building, structure, or vehicle during the course of this emergency.

10. I authorize and empower the Adjutant General, in accordance with N.J.S.A. 38A:2-4 and N.J.S.A. 38A:3-6.1, to order to active duty such members of the New Jersey National Guard who, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety, and welfare and to authorize the employment of any supporting vehicles, equipment, communications, or supplies as may be necessary to support the members so ordered.

11. In accordance with the N.J.S.A. App. A:9-34 and N.J.S.A. App. A:9-51, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately-owned property necessary to protect against this emergency.

12. In accordance with N.J.S.A. App. A:9-40, 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 in any way interfere with or impede the achievement of the purposes of this Order.

13. In accordance with N.J.S.A. App. A:9-34, N.J.S.A. App. A:9-40.6, and N.J.S.A. 40A:14-156.4, no municipality or public or semipublic agency shall send public works, fire, police, emergency medical, or other personnel or equipment into any non-contiguous impacted municipality within this State, nor to any impacted municipality outside this State, unless and until such aid has been directed by the county emergency management coordinator or his or her deputies in consultation with the State Director of Emergency Management in conjunction with the Commissioner of DOH.

14. This Order shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

GIVEN, under my hand and seal this  
9<sup>th</sup> day of March,  
Two Thousand and Twenty, and  
of the Independence of the  
United States, the Two  
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor



# EXHIBIT B

**EXECUTIVE ORDER NO. 104**

WHEREAS, through Executive Order No. 102, which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) 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, in accordance with N.J.S.A. App. A:9-34 and -51, I reserved the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, in accordance with N.J.S.A. App. A:9-40, I declared that, due to the State of Emergency, no municipality, county, or any 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 my Executive Orders, or which will in any way interfere with or impede their achievement; and

WHEREAS, on March 11, 2020, COVID-19 was declared to be a global pandemic by the World Health Organization; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency pursuant to his constitutional and statutory powers, including those granted by Sections 201 and 301 of the National Emergencies Act (50 U.S.C. § 1601, *et seq.*) and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5); and

WHEREAS, the President of the United States also determined on March 13, 2020, that the COVID-19 pandemic was of sufficient severity and magnitude to warrant an emergency determination under Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207; and

WHEREAS, as of March 16, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 130,000 confirmed cases of COVID-19 worldwide, with over 6,500 of those cases having resulted in death; and

WHEREAS, as of March 16, 2020, there were more than 4,900 confirmed cases of COVID-19 in the United States, with 67 of those cases having resulted in death; and

WHEREAS, as of March 16, 2020, there were 178 positive cases of COVID-19 in New Jersey, spread across numerous counties; and

WHEREAS, social mitigation strategies for combatting COVID-19 requires every effort to reduce the rate of community spread of the disease; and

WHEREAS, as of March 15, 2020, the CDC recommends that for the next eight weeks, gatherings of 50 or more people be canceled or postponed throughout the United States; and

WHEREAS, public and private preschool programs, elementary and secondary schools, and institutions of higher education are locations where significant numbers of students, educators, and support staff gather, often in close proximity in classrooms, hallways, cafeterias, and gymnasiums; and

WHEREAS, suspending in-person preschool programs, K-12 education, and in-person instruction at institutions of higher education are part of the State's mitigation strategy to combat COVID-19 and reduce the rate of community spread; and

WHEREAS, my Administration is committed to ensuring that all students will continue to have access to a quality education, in addition to school meals that are provided or subsidized for students from low-income families; and

WHEREAS, casinos, racetracks, gyms, fitness centers, movie theaters, performing arts centers, other concert venues, nightclubs, and other entertainment centers, which are vital to the economic health of the State, are also locations where large numbers of individuals gather in close proximity; and

WHEREAS, many individuals also come into contact with common surfaces at gyms, fitness centers, and other entertainment centers; and

WHEREAS, suspending operations at these businesses is part of the State's mitigation strategy to combat COVID-19 and reduce the rate of community spread; and

WHEREAS, even on casino floors, where slot machines or other casino games may be several feet apart, many individuals come into contact with common surfaces; and

WHEREAS, in contrast to gaming at brick-and-mortar facilities, online gaming provides a safe mode of entertainment during a time when physical proximity to other individuals can be dangerous; and

WHEREAS, the CDC has advised that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another; and

WHEREAS, as a result, the CDC has recommended that individuals practice "social distancing" to prevent community spread of the virus; and

WHEREAS, the CDC has defined social distancing as the practice of "remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible"; and

WHEREAS, bars and restaurants are locations where significant numbers of individuals gather in close proximity, making adherence to social distancing protocols impossible or impracticable; and

WHEREAS, to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance; and

WHEREAS, on March 15, 2020, the Director of the National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci, called for "a dramatic diminution of the personal interaction that we see in restaurants and in bars," and recommended pursuing "[w]hatever it takes to do that"; and

WHEREAS, the provision of take-out and delivery services do not pose the same danger of widespread person-to-person contact while still preserving necessary food delivery services for New Jersey residents; and

WHEREAS, narrowing scope of service or hours of operation for restaurants and certain retail establishments permits individuals to access food, clothing, and other essential materials while also limiting unnecessary person-to-person contact; and

WHEREAS, it is critical to ensure that law enforcement resources, particularly those that might otherwise be required to respond to late-night incidents, not be unnecessarily diverted from responding to COVID-19 related issues and maintaining public safety; 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. All gatherings of persons in the State of New Jersey shall be limited to 50 persons or fewer, excluding normal operations at airports, bus and train stations, medical facilities, office environments, factories, assemblages for the purpose of industrial or manufacturing work, construction sites, mass transit, or the purchase of groceries or consumer goods.

2. All public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, shall be closed to students beginning on Wednesday, March 18, 2020, and shall remain closed as long as this Order remains in effect.

3. All institutions of higher education shall cease in-person instruction beginning on Wednesday, March 18, 2020, and shall cease such in-person instruction as long as this Order remains in effect. The Secretary of the Office of Higher Education shall have the authority to grant a waiver to allow in-person instruction to students on a case-by-case basis where a compelling rationale to allow such access exists. The Secretary of the Office of Higher Education shall coordinate with institutions of higher education to determine appropriate student housing conditions for those students who reside in on-campus housing as their primary residence.

4. The Commissioner of the Department of Education ("DOE"), in consultation with the Commissioner of DOH, shall be authorized to permit schools to remain open on a limited basis for the provision of food or other essential, non-educational services, or for educational or child care services if needed in emergency situations after consultation with the Commissioner of DOH. The Commissioner of DOE shall also have the authority to close any other career or

training facilities over which he has oversight, after consultation with the Commissioner of DOH.

5. The Commissioner of DOE shall continue working with each public school district, and private and parochial schools as appropriate, to ensure that students are able to continue their educations during this time period through appropriate home instruction. Local school districts, charter schools, and renaissance schools, in consultation with the Commissioner of DOE, shall have the authority and discretion to determine home instruction arrangements as appropriate on a case-by-case basis to ensure all students are provided with appropriate home instruction, taking into account all relevant constitutional and statutory obligations.

6. The Secretary of the Department of Agriculture, in conjunction with the Commissioner of DOE, shall take all necessary actions to ensure that all students eligible for free or reduced meals shall continue to receive the services or supports necessary to meet nutritional needs during closures.

7. The following facilities are ordered closed to members of the public, effective 8:00 p.m. on Monday, March 16, 2020. These facilities are to remain closed to the public for as long as this Order remains in effect. 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 this list:

- a. Casino gaming floors, including retail sports wagering lounges, and casino concert and entertainment venues. Online and mobile sports and casino gaming services may continue to be offered notwithstanding the closure of the physical facility.
- b. Racetracks, including stabling facilities and retail sports wagering lounges. Mobile sports wagering

services may continue to be offered notwithstanding the closure of the physical facility.

- c. Gyms and fitness centers and classes.
- d. Entertainment centers, including but not limited to, movie theaters, performing arts centers, other concert venues, and nightclubs.

8. Other non-essential retail, recreational, and entertainment businesses must cease daily operations from 8:00 p.m. until 5:00 a.m.. From 5:00 a.m. until 8:00 p.m., these businesses may remain open if they limit their occupancy to no more than 50 persons and adhere to social distancing guidelines. Examples of essential businesses excluded from this directive include: grocery/food stores, pharmacies, medical supply stores, gas stations, healthcare facilities and ancillary stores within healthcare facilities. 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 list of essential businesses and to the timelines applicable to operating hours.

9. 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, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services. If alcoholic beverages are to be sold from a restaurant, dining establishment or bar with a liquor license, such sales shall be limited to original containers sold from the principal public barroom. All retail sales of alcoholic beverages by limited brewery licensees, restricted brewery licensees, plenary and farm winery licensees (and associated salesrooms), craft distillery licensees and cidery and meadery licensees must be in original containers and must be delivered by licensed entities and/or by customer pick up.



10. In accordance with N.J.S.A. App. A:9-33, et seq., as supplemented and amended, the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine and control the direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic and to prevent ingress or egress from any area that, in the State Director's discretion, is deemed necessary for the protection of the health, safety, and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

11. The Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, shall act through the Superintendent of State Police, to determine and control the direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic, to prevent ingress or egress, and to determine the type of vehicle or vehicles to be operated on such roadways. I further authorize all law enforcement officers to enforce any such order of the Attorney General or Superintendent of State Police within their respective municipalities.

12. 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 Executive Order, or which will in any way interfere with or impede its achievement.

13. 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 Executive Order.

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

15. 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  
16<sup>th</sup> day of March,  
Two Thousand and Twenty, and of  
the Independence of the United  
States, the Two Hundred and  
Forty-Fourth.

[seal]

/s/ Philip D. Murphy  
Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

# EXHIBIT C

**EXECUTIVE ORDER NO. 107**

WHEREAS, through Executive Order No. 102 (2020), which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) 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, in accordance with N.J.S.A. App. A:9-34 and -51, I reserved the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, in accordance with N.J.S.A. App. A:9-40, I declared that, due to the State of Emergency, no municipality, county, or any 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 my Executive Orders, or which will in any way interfere with or impede their achievement; and

WHEREAS, to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, I issued Executive Order No. 104 (2020) on March 16, 2020, the facts and circumstances of which are also adopted by reference herein, which established statewide social mitigation strategies for combatting COVID-19; and

WHEREAS, Executive Order No. 104 (2020) limited the scope of service and hours of operation for restaurants and certain retail establishments to balance the need to allow individuals to access food and other essential materials with the need to limit unnecessary person-to-person contact; and

WHEREAS, Executive Order No. 104 (2020) deemed a subset of businesses as "essential," including grocery/food stores, pharmacies, medical supply stores, gas stations, healthcare facilities, and ancillary stores within healthcare facilities, and it authorized the State Director of Emergency Management, who is the Superintendent of State Police, to make additions, amendments, clarifications, exceptions, and exclusions to that list; and

WHEREAS, Executive Order No. 104 (2020) made clear that such essential businesses may continue operating without limits on their scope of service or hours of operation, absent further amendments by the State Director of Emergency Management; and

WHEREAS, Executive Order No. 104 (2020) and subsequent Administrative Orders issued by the State Director of Emergency Management also placed restrictions on other businesses' scope of service and hours of operation, and also placed restrictions on the size of gatherings in the State; and

WHEREAS, as of March 20, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 234,000 confirmed cases of COVID-19 worldwide, with over 9,800 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were more than 15,000 confirmed cases of COVID-19 in the United States, with at least 201 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were at least 890 positive cases of COVID-19 in New Jersey, with at least 11 of those cases having resulted in death; and

WHEREAS, social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease; and

WHEREAS, the CDC has advised that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another; and

WHEREAS, as a result, the CDC has recommended that individuals practice "social distancing" to prevent community spread of the virus; and

WHEREAS, the CDC has defined social distancing as the practice of "remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible"; and

WHEREAS, to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance; and

WHEREAS, the best way for New Jersey residents to keep themselves, their families, and their communities safe during the COVID-19 outbreak is to stay at home as much as possible; and

WHEREAS, as of March 15, 2020, the CDC recommends that for the next eight weeks, gatherings of 50 or more people be canceled or postponed throughout the United States; and

WHEREAS, as of March 16, 2020, the White House went further than the CDC had and recommended that Americans avoid social gatherings in groups of more than 10 people; and

WHEREAS, restricting the physical presence of individuals in office environments and work sites is critical to preventing future spread of COVID-19; and

WHEREAS, accommodating work-from-home arrangements is an effective means to ensure continuity of operations while also limiting person-to-person contact; and

WHEREAS, the CDC has recommended employers to establish policies and practices to increase the physical distance among employees and between employees; and

WHEREAS, permitting the workforce to work from home may reduce stress on the State's child care system; and

WHEREAS, as of March 19, 2020, I have instructed all State departments and agencies to utilize work-from-home arrangements for both essential and non-essential employees wherever feasible; and

WHEREAS, given the rapidly rising incidence of COVID-19, temporarily closing non-essential retail businesses will strengthen New Jersey's efforts to slow the spread of COVID-19; and

WHEREAS, even as we institute social distancing measures, the number of COVID-19 cases in New Jersey is likely to increase for the immediate future, meaning we must take all possible steps to preserve our health care system's capacity to treat those who require emergency or intensive care; 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. The operative paragraphs of Executive Order No. 104 (2020) are hereby superseded in full. The factual findings of Executive Order No. 104 (2020) remain applicable except to the extent they are in conflict with the factual findings in this or any intervening Executive Order.

2. All New Jersey residents shall remain home or at their place of residence unless they are 1) obtaining goods or services from essential retail businesses, as described in Paragraph 6; 2) obtaining takeout food or beverages from restaurants, other dining establishments, or food courts, pursuant to Paragraph 8; 3) seeking medical attention, essential social services, or assistance from law enforcement or emergency services; 4) visiting family or other individuals with whom the resident has a close personal relationship, such as those for whom the individual is a caretaker or romantic partner; 5) reporting to, or performing, their job; 6) walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, including staying six feet apart; 7) leaving the home for an educational, religious, or political reason; 8) leaving because of a reasonable fear for his or her health or safety; or 9) leaving at the direction of law enforcement or other government agency.

3. When in public, individuals must practice social distancing and stay six feet apart whenever practicable, excluding immediate family members, caretakers, household members, or romantic partners.

4. Individuals who have to travel pursuant to Paragraph 2 should only use public transportation only if they have no other feasible choice. Individuals who ride public transportation should abide by best social distancing practices, including making



all efforts to stand or sit six feet away from other riders and frequently use sanitizing products.

5. Gatherings of individuals, such as parties, celebrations, or other social events, are cancelled, unless otherwise authorized by any part of this Order. The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make clarifications and issue orders related to this provision.

6. The brick-and-mortar premises of all non-essential retail businesses must close to the public as long as this Order remains in effect. Essential retail businesses, listed below, are excluded from this directive and may remain open during their normal business hours. Essential retail businesses must, wherever practicable, provide pickup services outside or adjacent to their stores for goods ordered in advance online or by phone. Additionally, online and telephonic delivery services are permitted to the extent the retail business is authorized to operate an online or telephonic delivery service under existing law. The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Grocery stores, farmer's markets and farms that sell directly to customers, and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store;
- b. Pharmacies and alternative treatment centers that dispense medicinal marijuana;
- c. Medical supply stores;
- d. Retail functions of gas stations;

- e. Convenience stores;
- f. Ancillary stores within healthcare facilities;
- g. Hardware and home improvement stores;
- h. Retail functions of banks and other financial institutions;
- i. Retail functions of laundromats and dry-cleaning services;
- j. Stores that principally sell supplies for children under five years old;
- k. Pet stores;
- l. Liquor stores;
- m. Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics;
- n. Retail functions of printing and office supply shops; and
- o. Retail functions of mail and delivery stores.

7. Any essential retail business whose brick-and-mortar premises remain open to the public shall abide by social distancing practices to the extent practicable while providing essential services. These include all reasonable efforts to keep customers six feet apart and frequent use of sanitizing products on common surfaces.

8. All restaurants, cafeterias, 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, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses. If alcoholic beverages are to be sold from a restaurant, dining establishment or bar with a liquor license, such sales shall be

limited to original containers sold from the principal public barroom. The on-premises consumption of alcohol is prohibited. All retail sales of alcoholic beverages by limited brewery licensees, restricted brewery licensees, plenary and farm winery licensees (and associated salesrooms), craft distillery licensees and cidery and meadery licensees must be in original containers and must be sold through customer pick up and/or delivered by licensees in accordance with their existing licenses.

9. All recreational and entertainment businesses, including but not limited to the following list, must close to the public as long as this Order remains in effect. 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 this list:

- a. Casino gaming floors, including retail sports wagering lounges, and casino concert and entertainment venues. Online and mobile sports and casino gaming services may continue to be offered notwithstanding the closure of the physical facility.
- b. Racetracks, including stabling facilities and retail sports wagering lounges. Mobile sports wagering services may continue to be offered notwithstanding the closure of the physical facility.
- c. Gyms and fitness centers and classes.
- d. Entertainment centers, including but not limited to, movie theaters, performing arts centers, other concert venues, and nightclubs.
- e. All indoor portions of retail shopping malls. Restaurants and other stores located within

shopping malls that have their own external entrances open to the public, separate from the general mall entrance, may remain open pursuant to the terms and directives of this Order for operating hours and takeout or food delivery services. All entrances and exits to the common area portions of retail shopping malls must remain closed.

- f. All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement parks, water parks, aquariums, zoos, arcades, fairs, children's play centers, funplexes, theme parks, bowling alleys, family and children's attractions.
- g. Facilities where personal care services are performed that, by their very nature, result in noncompliance with social distancing guidelines, including but not limited to cosmetology shops; barber shops; beauty salons; hair braiding shops; nail salons; electrology facilities; spas, including day spas and medical spas, at which solely elective and cosmetic medical procedures are performed; massage parlors, tanning salons, tattoo parlors, and public and private social clubs, whether or not they serve alcohol, including but not limited to facilities owned or operated by the American Legion, Veterans of Foreign Wars, Knights of Columbus, and any other social clubs associated with community service organizations. This excludes any health facilities that provide medically necessary or therapeutic services.

h. All municipal, county, and State public libraries, and all libraries and computer labs at public and private colleges and universities.

10. All businesses or non-profits in the State, whether closed or open to the public, must accommodate their workforce, wherever practicable, for telework or work-from-home arrangements. For purposes of this order, "telework" means the practice of working from home or alternative locations closer to home through the use of technology that equips the individual to access necessary materials.

11. To the extent a business or non-profit has employees that cannot perform their functions via telework or work-from-home arrangements, the business or non-profit should make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue. Examples of employees who need to be physically present at their work site in order to perform their duties include, but are not limited to, law enforcement officers, fire fighters, and other first responders, cashiers or store clerks, construction workers, utility workers, repair workers, warehouse workers, lab researchers, information technology maintenance workers, janitorial and custodial staff, and certain administrative staff.

12. All public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, shall remain closed to students as long as this Order remains in effect.

13. All institutions of higher education shall continue to cease such in-person instruction as long as this Order remains in effect. The Secretary of the Office of Higher Education shall have the authority to grant a waiver to allow in-person instruction to students on a case-by-case basis where a compelling rationale to

allow such access exists. The Secretary of the Office of Higher Education shall coordinate with institutions of higher education to determine appropriate student housing conditions for those students who reside in on-campus housing as their primary residence.

14. The Commissioner of the Department of Education ("DOE"), in consultation with the Commissioner of DOH, shall be authorized to permit schools to remain open on a limited basis for the provision of food or other essential, non-educational services, or for educational or child care services if needed in emergency situations after consultation with the Commissioner of DOH. The Commissioner of DOE shall also have the authority to close any other career or training facilities over which he has oversight, after consultation with the Commissioner of DOH.

15. The Commissioner of DOE shall continue working with each public school district, and private and parochial schools as appropriate, to ensure that students are able to continue their educations during this time period through appropriate home instruction. Local school districts, charter schools, and renaissance schools, in consultation with the Commissioner of DOE, shall have the authority and discretion to determine home instruction arrangements as appropriate on a case-by-case basis to ensure all students are provided with appropriate home instruction, taking into account all relevant constitutional and statutory obligations.

16. The Secretary of the Department of Agriculture, in conjunction with the Commissioner of DOE, shall take all necessary actions to ensure that all students eligible for free or reduced meals shall continue to receive the services or supports necessary to meet nutritional needs during closures.

17. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the provision of health care or medical services to members of the public.

18. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way access to essential services for low-income residents, including but not limited to food banks.

19. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of newspapers, television, radio, and other media services.

20. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of law enforcement agencies.

21. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of the federal government, or the movement of federal officials in New Jersey while acting in their official capacity.

22. In accordance with N.J.S.A. App. A:9-33, et seq., as supplemented and amended, the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine and control the direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic and to prevent ingress or egress from any area that, in the State Director's discretion, is deemed necessary for the protection of the health, safety, and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

23. The Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, shall act through the Superintendent of State Police, to determine and control the direction of the flow of

vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic, to prevent ingress or egress, and to determine the type of vehicle or vehicles to be operated on such roadways. I further authorize all law enforcement officers to enforce any such order of the Attorney General or Superintendent of State Police within their respective municipalities.

24. 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 Executive Order.

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

26. This Order shall take effect on Saturday, March 21, 2020, at 9:00 p.m., 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  
21<sup>st</sup> day of March,  
Two Thousand and Twenty, and  
of the Independence of the  
United States, the Two  
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor



# EXHIBIT D

**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  
27<sup>th</sup> 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 E

**EXECUTIVE ORDER NO. 113**

WHEREAS, through Executive Order No. 102 (2020), which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, on March 9, 2020, through Executive Order No. 103 (2020), the facts and circumstances of which are adopted by reference herein, I declared both a Public Health Emergency and a State of Emergency throughout the State due to the public health hazard created by COVID-19; and

WHEREAS, Executive Order No. 103 (2020) authorized and empowered the State Director of Emergency Management, who is the Superintendent of State Police, in conjunction with the Commissioner of DOH, to take any emergency measures as the State Director may determine necessary in order to fully and adequately protect the health, safety, and welfare of the citizens of New Jersey from any actual or potential threat or danger that may exist from the possible exposure to COVID-19; and

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

WHEREAS, on March 23, 2020, I signed Executive Order No. 109 (2020), the facts and circumstances of which are adopted by reference herein, requiring that all businesses and non-hospital health care facilities submit an inventory to the State of the Personal Protective Equipment ("PPE"), ventilators, respirators, and anesthesia machines they have in their possession that are not required for the provision of critical health care services; and

WHEREAS, on March 28, 2020, I signed Executive Order No. 111 (2020), the facts and circumstances of which are adopted by reference herein, requiring health care facilities to report data concerning their capacity and supplies on a daily basis, including data relating to bed capacity, ventilators, and PPE; and

WHEREAS, the collection and dissemination of this information allows the State to best allocate medical resources, such as PPE, ventilators, respirators, and anesthesia machines, during this state of emergency and public health emergency; and

WHEREAS, the State has taken aggressive steps to expand the capacity of New Jersey's overall health care system, including the assembly of four Federal Medical Stations in three convention center locations around the State, in partnership with the Federal Emergency Management Agency ("FEMA"), the U.S. Army Corps of Engineers ("USACE"), the New Jersey State Police, and the New Jersey National Guard that will result in approximately 1,000 new hospital beds, as well as working with USACE to create additional capacity at hospitals on an accelerated timeline by augmenting existing space in order to address the increase in overall hospitalizations throughout the State; and

WHEREAS, the State has made and continues to make all reasonable efforts to procure medical resources from the federal Strategic National Stockpile, FEMA, existing State caches of supplies, individual and corporate donations, and through traditional private sector purchasing; and

WHEREAS, despite these efforts, there remains a critical shortage of medical resources in the State, particularly in hospitals, healthcare facilities, and emergency response agencies in the northern region of the State where the spread of COVID-19 is particularly acute and where there has been a particularly high volume of COVID-19 hospitalizations; and

WHEREAS, as of April 2, 2020, there were at least 25,590 positive cases of COVID-19 in New Jersey, with at least 537 of those cases having resulted in death; and

WHEREAS, the number of positive cases of COVID-19 and related hospitalizations is expected to continue to rise, establishing a continuing need to meet the demand for medical resources in hospitals, healthcare facilities, and emergency response agencies throughout the State, especially in those regions where the spread of COVID-19 is particularly acute and where there has been a particularly high volume of hospitalizations; and

WHEREAS, the New Jersey Civilian Defense and Disaster Control Act (the "Disaster Control Act") authorizes the Governor to "utilize and employ all the available resources of the State Government and of each and every political subdivision of this State" and to "commandeer and utilize any personal services and any privately owned property necessary to avoid or protect against any emergency" subject to the future repayment of such takings, N.J.S.A. App. A:9-34; and

WHEREAS, the Disaster Control Act empowers the Governor "to employ, take or use the personal services, or real or personal property, of any citizen or resident of this State, or of any firm, partnership or unincorporated association doing business or domiciled in this State, or of any corporation incorporated in or doing business in this State, or the real property of a nonresident located in this State, for the purpose of securing the defense of the State or of protecting or promoting the public health, safety or welfare," N.J.S.A. App. A:9-51(a)(3); and

WHEREAS, the reallocation of medical resources to the regions and health care facilities particularly affected by COVID-19 will protect and promote the public health, safety, and welfare of the State, including by reducing loss of life; and

WHEREAS, the Disaster Control Act also establishes emergency compensation boards in each county of the State, to be composed of three persons appointed by the Governor who shall serve at the will and pleasure of the Governor and without compensation, which will adjudicate any claims for just compensation whenever property is taken or used pursuant to the Disaster Control Act; 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. The State Director of Emergency Management, who is the Superintendent of State Police, is hereby authorized and empowered to exercise the full authority afforded to the Governor under the Disaster Control Act to take or use personal services and/or real or personal property, including medical resources, for the purpose of protecting or promoting the public health, safety, or welfare. The State Director of Emergency Management shall exercise this authority in consultation with the Commissioner of DOH.

2. Compensation shall be provided following the procedures established by the Disaster Control Act, N.J.S.A. App. A:9-51.

3. 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 Executive Order, and to cooperate fully with Administrative Orders issued pursuant to this Executive Order.

4. 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 my Executive Order, or which will or might in any way interfere with or impede its achievement, or the achievement of Administrative Orders issued as authorized by my Executive Order.

5. 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  
2<sup>nd</sup> day of April,  
Two Thousand and Twenty, and  
of the Independence of the  
United States, the Two  
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy  
Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

# EXHIBIT F

**EXECUTIVE ORDER NO. 157**

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, and 151, issued on April 7, 2020, May 6, 2020, and June 4, 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, and Nos. 140-156 (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 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 resumption of non-essential construction, the allowance of a number of lower-risk outdoor activities, and the opening of all retail establishments; and

WHEREAS, consistent with this Plan, I issued Executive Order No. 150 (2020), which permitted restaurants, bars, and other food or beverage establishments to provide in-person dining outdoors, again with social distancing requirements; and

WHEREAS, consistent with this Plan, I issued Executive Order No. 153 (2020), which permitted recreational and entertainment businesses to reopen the outdoor portions of their premises to the public, again with social distancing requirements; and

WHEREAS, while outdoor spaces continue to present a lower risk of COVID-19 transmission than indoor spaces, because of our continued progress in the fight against COVID-19, restaurants, bars, and other food or beverage establishments can begin to offer in-person dining indoors; and

WHEREAS, because of our continued progress, most recreational and entertainment businesses can now allow the public into their indoor spaces for activity, including but not limited to libraries, museums, aquariums, and public and private social clubs; and

WHEREAS, because public health experts have identified that indoor environments present increased risks of transmission as compared to outdoor environments, it is appropriate to impose even stricter social distancing measures and sanitization protocols on indoor dining and indoor recreational and entertainment businesses than are placed on their outdoor counterparts, including capacity limits to limit person-to-person contact and a requirement that individuals wear masks at all feasible times to reduce the risk of COVID-19 transmission when such contact does occur; and

WHEREAS, because indoor dining and indoor recreational and entertainment businesses also both entail a higher risk than indoor retail settings, as the former involves individuals congregating together in one location for a prolonged period of time, while in indoor retail settings, individuals neither congregate in large groups nor remain in close proximity for extended periods and so the risk of COVID-19 spread is reduced, it is also appropriate to impose stricter capacity limits on indoor dining and indoor

recreational and entertainment businesses than are currently imposed on indoor retail settings; and

WHEREAS, although individuals in the indoor premises of all business establishments are required to wear a mask at all times, it is not possible for a customer to wear a mask when consuming food or beverage, meaning that all customers at any indoor food or beverage establishment must only be allowed to consume such food or beverage while seated at their table or at an individual seat, to minimize the risk of any person-to-person contact taking place between patrons without masks in any indoor space; and

WHEREAS, self-serve arrangements at food and beverage establishments, such as buffets, facilitate person-to-person contact and involve the use of common equipment and thus create an unnecessary risk of transmission and must remain prohibited, as the Centers for Disease Control and Prevention ("CDC") have suggested; and

WHEREAS, in heavily regulated industries such as casinos and racetracks, where expert State agencies have special knowledge of and experience with the businesses' operations, these industries can and should be subject to any additional health and safety protocols that those appropriate authorities believe would be consistent with public health and industry operations; and

WHEREAS, even as the State begins to allow recreation and entertainment businesses to reopen their indoor premises to the public with strict social distancing requirements, certain indoor entertainment businesses still pose an unacceptably high risk of transmission of COVID-19 at this time; and

WHEREAS, in particular, performance-based locations such as movie theaters, performing arts centers, and other concert venues, must remain closed to the public at this time, because those

businesses necessitate a large number of individuals congregating together concurrently in one indoor location for an unusually prolonged period of time, even more so than in other recreational and entertainment businesses where individuals do not inherently spend as prolonged an amount of time together in one single room or location, and because there are an especially high number of available outdoor and virtual options for members to the public to view and listen to movies and other performances, whether live or otherwise, that reduce the risk of indoor person-to-person contact and COVID-19 transmission; and

WHEREAS, indoor gyms, sports facilities, and fitness centers present particularly high risks of COVID-19 transmission, where people are congregating in a confined indoor space and working out, which entails sustained physical activity resulting in heavy breathing and exhalations that can increase the risk of COVID-19 spread, and where exercise equipment is shared by many different people over the course of the day, creating an additional danger of COVID-19 spread, and there are a high number of outdoor recreation opportunities to ensure that members of the public can engage in a wide range of exercise and fitness; and

WHEREAS, even as individual performance-based locations and gyms and fitness centers may take additional measures to address COVID-19 transmission, 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; and

WHEREAS, because dance floors by their nature are designed to facilitate especially close person-to-person contact, they must remain closed to the public at this time, even at establishments,

such as food or beverage establishments, that are otherwise now permitted to reopen to the public; and

WHEREAS, because amusement and water parks include many high touch areas that make social distancing guidelines and capacity limits difficult to implement, maintain, monitor, and enforce, they must be subject to stricter capacity limits than other outdoor environments, and like gyms and fitness centers, cannot yet open their indoor premises to the public; and

WHEREAS, because gatherings bring people together to a specific location for a common reason and a common period of time, they create an increased risk of person-to-person interaction and contact among those participants that must be appropriately curtailed, especially when they take place indoors; 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. All retail establishments may open their premises to the public, whether that premises is indoors or outdoors, provided that they adopt policies that include, at minimum, the following requirements:



- a. Limit occupancy of any indoor premises to 50% of the stated maximum store capacity, if applicable, at one time, excluding the retail establishment's employees;
- b. Limit total capacity of any outdoor area to a number that ensures that all individuals can remain six feet apart;
- c. Establish hours of operation, wherever possible, that reserve a designated period of access solely to high-risk individuals, as defined by the CDC;
- d. Install a physical barrier, such as a shield guard, between customers and cashiers/baggers wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment and/or exchange of goods;
- e. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- f. Provide employees break time for repeated handwashing throughout the workday;
- g. Arrange for contactless pay options, pickup, and/or delivery of goods wherever feasible. Such policies shall, wherever possible, consider populations that do not have access to internet service;
- h. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers;
- i. Require frequent sanitization of high-touch areas like restrooms, credit card machines, keypads, counters and shopping carts;

- j. Place conspicuous signage at entrances and throughout the store, if applicable, alerting staff and customers to the required six feet of physical distance;
- k. Demarcate six feet of spacing in check-out lines to demonstrate appropriate spacing for social distancing; and
- l. 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, and require workers to wear gloves when in contact with customers or goods. Businesses must provide, at their expense, such face coverings and gloves 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. If the business is providing medication, medical supplies, or food, the business policy should provide alternate methods of pickup and/or delivery of such goods for such individual. 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 essential retail business nor its staff shall require the individual to produce medical documentation verifying the stated condition.

2. Personal care service facilities, which collectively refers to cosmetology shops; barber shops; beauty salons; hair braiding shops; nail salons; electrology facilities; spas, including day spas and medical spas, at which solely elective and cosmetic medical procedures are performed; massage parlors, tanning salons, and tattoo parlors, may open their premises to the public provided that such businesses adopt policies that they comply with the standards issued by the Division of Consumer Affairs and DOH, as applicable. Additionally, notwithstanding any provision of DOH Executive Directive No. 20-015 or Division of Consumer Affairs Administrative Order No. 2020-09 prohibiting services that would require the removal of a client's face covering, such personal care services may be provided as of 6:00 a.m. on Thursday, July 2, 2020, provided that clients must wear a face covering at all times before and after the service, and subject to Paragraph 3 of this Order and any enhanced standards for the provision of such services as the Division of Consumer Affairs or DOH may adopt, as applicable.

3. Notwithstanding Paragraph 2 of this Order, personal care services offered outside of personal care service facilities or of health facilities providing medically necessary or therapeutic services shall remain prohibited pursuant to Administrative Order No. 2020-10, until explicitly authorized by an order from the State

Director of Emergency Management. If such an order is issued by the State Director of Emergency Management, these personal care services must be provided in a manner that complies with standards issued by the Division of Consumer Affairs and DOH, as applicable, and all other applicable laws and regulations. Nothing in this paragraph shall be construed to preclude an individual from providing personal care services in a shop, office, or other premises licensed, or otherwise authorized by the Division of Consumer Affairs or one of its licensing boards or DOH that is located in a residence, provided they comply with standards issued by the Division of Consumer Affairs and DOH, as applicable, and all other applicable laws and regulations.

4. Restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, bars, and all other holders of a liquor license with retail consumption privileges, collectively referred to as "food or beverage establishments," are permitted to offer in-person service at outdoor areas, defined as open air spaces without a fixed roof, besides a temporary or seasonal awning or cover, provided that the establishment complies with the following requirements:

- a. Ensure all areas designated for food and/or beverage consumption are in conformance with applicable local, State, and Federal regulations;
- b. Limit capacity to a number that ensures all patrons can remain six feet apart from all other patrons at all times, except for those patrons with whom they are sharing a table;
- c. Ensure that tables where individuals or groups are seated remain six feet apart in all directions from any other table or seat and that individual seats

in any shared area that is not reserved for individual groups, such as an outdoor bar area, are also six feet apart in all directions from any other table or seat;

- d. Prohibit patrons being served at outdoor areas from entering the indoor premises of the food or beverage establishment, except to walk through such premises when entering or exiting the food or beverage establishment in order to access the outdoor area, or to use the restroom;
- e. Require patrons being served at outdoor areas to wear a face covering while inside the indoor premises of the food or beverage establishment, unless the patron has a medical reason for not doing so or is a child under two years of age;
- f. Prohibit smoking in any outdoor areas designated for the consumption of food and/or beverages. The requirement that food or beverage establishments impose this prohibition shall sunset at 6:00 a.m. on Thursday, July 2, 2020, although food or beverage establishments can choose to continue this prohibition; and
- g. Abide by all other health and safety standards issued by the Commissioner of the Department of Health, consistent with her authority under the Emergency Health Powers Act.

5. Effective at 6:00 a.m. on Thursday, July 2, 2020, food or beverage establishments are permitted to offer in-person service at indoor areas, provided that the establishment complies with the following requirements:

- a. Limit the number of patrons in indoor areas to 25 percent of the food or beverage establishment's indoor capacity, excluding the food or beverage establishment's employees;
- b. Ensure that tables where individuals or groups are seated are six feet apart in all directions from any other table or seat and that individual seats in any shared area that is not reserved for individual groups, such as an indoor bar area, are also six feet apart in all directions from any other table or seat;
- c. Require patrons to wear face coverings while inside the indoor premises of the food or beverage establishment, except when seated at their table or in their individual seat. This requirement does not apply if the patron has a medical reason for not wearing a face covering or is a child under two years of age;
- d. Food or beverage establishments with table service may only allow patrons to place orders when seated, and only wait staff may bring food or beverages to seated patrons;
- e. Patrons may only consume food or beverages while seated; and
- f. Abide by all other health and safety standards issued by the Commissioner of the Department of Health, including infection control practices and other sanitization protocols, consistent with her authority under the Emergency Health Powers Act.

6. Nothing in this Order shall prevent a food or beverage establishment that offers take-out options from allowing an individual who is seeking take-out rather than table service to enter the indoor premises of the establishment to place an order, make payment, and pick up food or beverages, including in situations where a food or beverage establishment makes outdoor areas without table service available. Such individuals shall wear a face covering while inside the indoor premises of the food or beverage establishment, unless the individual has a medical reason for not doing so or is a child under two years of age.

7. Prior to 6:00 a.m. on Thursday, July 2, 2020, the rules for recreational and entertainment businesses that were instituted in Executive Order No. 153 (2020) remain in effect. As of 6:00 a.m. on Thursday, July 2, 2020, all recreational and entertainment businesses may open their entire premises, whether indoor or outdoor, to the public, unless otherwise prohibited by this Order, provided that such businesses adopt policies that include, at minimum, the following requirements:

- a. Limit the number of patrons in any indoor premises to 25 percent of the stated maximum capacity, if applicable, at one time, excluding the recreational or entertainment business's employees;
- b. Limit total capacity of any outdoor area to a number that ensures that all individuals can remain six feet apart, except for amusement parks, water parks, and pools, which are limited to 50 percent capacity, excluding the employees of those businesses;

- c. 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;
- d. Install a physical barrier, such as a shield guard, between visitors and employees wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment;
- e. 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;
- f. 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;
- g. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- h. Provide employees break time for repeated handwashing throughout the workday;
- i. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers;
- j. Limit occupancy in restrooms that remain open to avoid over-crowding and maintain social distancing through signage and, where practicable, the utilization of attendants to monitor capacity;



- k. 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;
- l. Place additional restrictions on areas of the business, as necessary, to limit person-to-person interactions and facilitate appropriate social distancing;
- m. 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;

- n. 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;
- o. Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness;
- p. 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;
- q. 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, and require workers to wear gloves when in contact with customers or goods. Businesses must provide, at their expense, such face coverings and gloves 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. 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 essential retail business nor its staff shall require the individual to produce medical documentation verifying the stated condition; and

r. The requirement listed above in Paragraph 7(q) shall not apply where impracticable, such as when individuals are eating or drinking while seated, or in an aquatic space such as a pool.

8. The following recreational and entertainment businesses may open their outdoor spaces to the public, but may not open their indoor spaces to the public, except that members of the public may enter the indoor premises of the recreational business when entering or exiting the establishment in order to access the outdoor area, or to use the restroom:

- a. "Health clubs," as defined by N.J.S.A. 56:8-39, which include gyms and fitness centers, as well as any health club facilities located in hotels, motels, condominiums, cooperatives, corporate offices, or other business facilities;
- b. Entertainment centers where performances are viewed or given, including movie theaters, performing arts centers, other concert venues; and
- c. Amusement or water parks that are indoors.

9. Any establishment open to the public, including a food or beverage establishment, must cordon off any indoor or outdoor dance floors to the public.

10. Notwithstanding the prohibition on health clubs opening their indoor spaces to the public, such health clubs may open 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. If a health club is offering multiple simultaneous instructions at the same facility, 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.

11. Notwithstanding the other requirements contained in this Order, casinos, including casino gaming floors and retail sports wagering lounges, may only reopen their premises to the public if they comply with any and all additional requirements imposed by the Division of Gaming Enforcement, and racetracks may only reopen their premises to the public if they comply with any and all existing and additional requirements imposed by any relevant State entity, including the New Jersey Racing Commission and the New Jersey Office of Emergency Management.

12. Notwithstanding the above paragraphs, amusement and water parks are permitted to open their outdoor premises to the public only where they are in compliance with the health and safety standards issued by the Commissioner of the DOH.

13. Notwithstanding the above paragraphs, pool facilities are permitted to open to the public only where they are in compliance with the health and safety standards issued by the Commissioner of the DOH. Effective at 6:00 a.m. on Thursday, July 2, 2020, aquatic recreation facilities and water fountains

(those considered recreational, not those for drinking) are permitted to be open to the public.

14. Effective at 6:00 a.m. on Thursday, July 2, 2020, playgrounds, including playgrounds at pool facilities, are permitted to be open to the public.

15. Individuals who are at any of these businesses at a specific time, a specific location, and for a common reason, such as a poker tournament at a casino, a wedding at a restaurant, or an outdoor concert or movie screening, are subject to the State gathering limits in effect at that time, which were most recently laid out in Executive Order No. 156 (2020).

16. Any prior requirements imposed by an Executive Order issued on or after March 21, 2020, that are inconsistent with the terms of this Order are hereby superseded.

17. 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.

18. 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.

19. 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.

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

21. 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  
26<sup>th</sup> day of June,  
Two Thousand and Twenty, and  
of the Independence of the  
United States, the Two  
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

# Civil Case Information Statement

## Case Details: SUSSEX | Civil Part Docket# L-000388-20

**Case Caption:** JWC FITNESS, LLC VS MURPHY PHILIP

**Case Initiation Date:** 09/23/2020

**Attorney Name:** ROBERT WILLIAM FERGUSON III

**Firm Name:** STERN KILCULLEN & RUFOLLO, LLC

**Address:** 325 COLUMBIA TURNPIKE STE 110 PO BOX  
992

FLORHAM PARK NJ 079320992

**Phone:** 9735351900

**Name of Party:** PLAINTIFF : JWC Fitness, LLC

**Name of Defendant's Primary Insurance Company**  
(if known): Unknown

**Case Type:** CIVIL RIGHTS

**Document Type:** Complaint

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Are sexual abuse claims alleged by: JWC Fitness, LLC?** NO

## THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** YES

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

09/23/2020

Dated

/s/ ROBERT WILLIAM FERGUSON III

Signed