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STATE OF MICHIGAN
IN THE COURT OF CLAIMS

COURT OF CLAIMS

THE GYM 24/7 FITNESS, LLC,
and all those similar situated in Oscoda,
Alcona, Ogemaw, Iosco, Gladwin, Arenac,
Midland, Bay, Saginaw, Tuscola, Sanilac,
Huron, Gratiot, Clinton, Shiawassee, Eaton,
and Ingham Counties,
Plaintiffs,

Case No.: 20-000132 -MZ
Honorable Kelly

VERIFIED
CLASS ACTION
COMPLAINT

v.

STATE OF MICHIGAN,
Defendant

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VERIFIED CLASS ACTION COMPLAINT

NOW COMES Plaintiff THE GYM 24/7 FITNESS, LLC, both individually and as
class representative, by and through counsel, and complains unto this Court as follows:

INTRODUCTION

1. The State of Michigan, by its Governor, seized without compensation the
property interests of businesses across the State thereby forcing indefinite closures of
those businesses operating as gymnasiums, fitness centers, recreation centers, sports
facilities, exercise facilities, exercise studios, and like-kind businesses.

2. Such uncompensated seizures violate the “takings” provisions of the Fifth Amendment, made applicable to States through the Fourteenth Amendment, and also Article X, Section 2 of the Michigan Constitution.

3. Plaintiff THE GYM 24/7 FITNESS, LLC, both individually and as class representative, respectfully requests that this Court order the payment of just compensation pursuant to the Fifth Amendment to the United States Constitution and Article X, Section 2 of the Michigan Constitution for itself and the members of the named class.

PARTIES

4. Plaintiff THE GYM 24/7 FITNESS, LLC is a Michigan limited liability company located in Alma (Gratiot County), Michigan.

5. Defendant STATE OF MICHIGAN is a named party as a state sovereign subject to the obligations and limitations of the State and Federal Constitutions.

JURISDICTION

6. This Court has jurisdiction pursuant to MCL 600.6419.

GENERAL ALLEGATIONS

7. On March 10, 2020, Michigan Governor Gretchen Whitmer declared a state of emergency under Section I of Article V of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq, in response to the COVID-19 outbreak in the State of Michigan.

8. Since this initial declaration, Governor Whitmer has issued countless numbers of executive orders in response to COVID-19 dramatically changing and effecting businesses, individuals, and citizens.

9. Governor Whitmer issued a series of Executive Orders starting on March 10, 2020 and continuing through today for the public purpose of protecting Michigan’s public health, safety and welfare.

10. Throughout these Executive Orders, the one constant has been the continuous ordered “shut down” of gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and like-kind businesses for the public purpose of stopping or minimizing the spread of COVID-19.

11. The Governor has placed the cost of these Executive Orders – issued for the benefit of the public – squarely upon the shoulders of private businesses and has failed to justly compensate affected parties for these takings undertaken for the benefit to the general public.

12. Many gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and like-kind businesses (in whatever legal form) are on the verge of economic collapse as a direct result of the actions taken by Governor Whitmer in response to the novel coronavirus ("COVID-19") health response.

13. Governor Whitmer's claimed authority to enact the Executive Orders derive two emergency statutes which she pronounces as authorizing her actions to stem the spread of COVID-19 across Michigan.

14. This suit does not seek to contest whether Governor Whitmer's decision to issue the Executive Orders that have perpetually closed gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and like-kind businesses since March 10, 2020 were prudent or were not within her authority to issue.

15. Instead, this suit accepts as fact that Governor Whitmer took the action she did against said gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and like-kind businesses (in whatever legal form) solely for a public purpose.

16. However, when the government takes property for a public purpose, the US and Michigan Constitutions require the payment of just compensation if eminent domain proceedings are not first commenced.

17. Notwithstanding their legitimate public purpose, the Governor's Executive Orders halted all economic activity for the Class Members and made it impracticable to benefit from the property interests belonging to the Class Members for any economically beneficial purpose, and inflicted very nearly the same effect for constitutional purposes as appropriating or destroying the property as a whole.

18. Despite issuing the Executive Orders terminating the business operations of gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and like-kind businesses (in whatever legal form) for a readily-apparent public purpose, Governor Whitmer did not provide compensation to Class Members who suffered substantial – and perhaps total – diminution of value in their property interests as a result.

19. The Takings Clauses bar government actors "from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

CLASS ALLEGATIONS

20. This action is brought by Plaintiff, individually and on behalf of gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and like-kind businesses (in whatever legal form) operating in the counties of Oscoda, Alcona, Ogemaw, Iosco, Gladwin, Arenac, Midland, Bay, Saginaw, Tuscola, Sanilac, Huron, Gratiot, Clinton, Shiawassee, Eaton, and Ingham who were subject to the state governmental processes which resulted in the taking.

21. The proposed class consists of all gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and like-kind businesses (in whatever legal form) operating in the counties of Oscoda, Alcona, Ogemaw, Iosco, Gladwin, Arenac, Midland, Bay, Saginaw, Tuscola, Sanilac, Huron, Gratiot, Clinton, Shiawassee, Eaton, and Ingham who were subject to the state governmental COVID-19 responses which resulted in the taking.

22. The number of injured individuals who have been constitutionally injured is sufficiently numerous to make class action status the most practical method to secure redress for injuries sustained and class wide relief.

23. There are clear questions fact raised by the named Plaintiff's claims common to, and typical of, those raised by the Class it seeks to represent.

24. There are clear questions of law raised by the named Plaintiff's claims common to, and typical of, those raised by the Class it seeks to represent, including

25. The takings (and resulting harms) alleged by the named Plaintiff is typical of the legal violations and harms suffered by all Class members.

26. Plaintiff, as Class representative, will fairly and adequately protect the interests of the Class members and will vigorously prosecute the suit on behalf of the Class; and is represented by sufficiently experienced counsel.

27. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice, preventing possible inconsistent or varying adjudications with respect to individual members of the Class.

28. Defendant acted, failed to act, and/or is continuing to act on grounds generally applicable to all members of the Class.

COUNT I INVERSE CONDEMNATION

29. The prior paragraphs are restated word for word herein.

30. Under the public purpose of preventing the spread of COVID-19, Defendant STATE OF MICHIGAN have taken Plaintiff's and the class members' constitutionally-protected property interests in the form of the on-going operations of their business as gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and like-kind businesses (in whatever legal form) and the resulting revenues and profits therefrom, and have appropriated or "took" said property interests for public use without the payment of just compensation and have failed to commence appropriate condemnation proceedings.

31. Defendant STATE OF MICHIGAN does not intend to pay or otherwise refuses to immediately pay just compensation.

32. An inverse condemnation has occurred and damages are to be awarded.

**COUNT II
STATE CONSTITUTION TAKING – ARTICLE X, SECTION 2**

33. The prior paragraphs are restated word for word herein.

34. Under the public purpose of preventing the spread of COVID-19, Defendant STATE OF MICHIGAN have taken Plaintiff's and the class members' constitutionally-protected property in the form of the on-going operations of their business as gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and like-kind businesses (in whatever legal form) and the resulting revenues and profits therefrom, and have appropriated or "took" said property interests for public use without the payment of just compensation and have failed to commence appropriate condemnation proceedings.

35. Defendants do not intend to pay or otherwise will immediately pay just compensation by or via any known procedures.

36. A taking pursuant to Article X, Section 2 of the Michigan Constitution has occurred and damages in the form of just compensation must be awarded.

**COUNT III
FIFTH/FOURTEENTH TAKING**

37. The prior paragraphs are restated word for word herein.

38. The Fifth Amendment, made applicable to the State of Michigan via the Fourteenth Amendment, is a self-executing constitutional provision requiring the payment of just compensation upon a taking.

39. Because the Fifth Amendment, made applicable to the State of Michigan via the Fourteenth Amendment, is self-executing, this claim is brought directly under the United States Constitution and not pursuant to 42 U.S.C. § 1983.

40. Under the public purpose of preventing the spread of COVID-19, Defendant STATE OF MICHIGAN have taken Plaintiff's and the class members' constitutionally-protected property in the form of the on-going operations of their business as gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and like-kind businesses (in whatever legal form) and the resulting revenues and profits therefrom, and have appropriated or "took" said property interests for public use without the payment of just compensation and have failed to commence appropriate condemnation proceedings.

41. A taking pursuant to Fifth and Fourteenth Amendments to the United States Constitution has occurred and damages in the form of just compensation must be awarded.

RELIEF REQUESTED

42. WHEREFORE, Plaintiff THE GYM 24/7 FITNESS, LLC and the class members respectfully request this Court to—

- a. Enter an order certifying this case as a class action;
- b. Enter an order for damages in amount warranted, specifically including the amount equal to the required “just compensation” mandated by the Fifth Amendment to the United States Constitution and/or Article X, Section 2 of the Michigan Constitution;
- c. Enter an order for an award of nominal and punitive damages awardable under law, if applicable;
- d. Enter an order for an award of actual reasonable attorney fees and litigation expenses pursuant to all applicable laws, rules, or statutes; and
- e. Enter an order for all such other relief the court deems equitable.

Date: July 8, 2020

RESPECTFULLY SUBMITTED:

Philip L Ellison

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VERIFICATION

I, Anita Yvette Clark, being duly sworn hereby declares as follows:

1. I am an owner of THE GYM 24/7 FITNESS, LLC, the plaintiff in the present case, and am citizen of the United States of America, and a resident of the State of Michigan.
2. Regarding the allegations of which I have personal knowledge, I believe them to be true.
3. Regarding the allegations of which I do not have personal knowledge, I believe them to be true based on specified information, documents, or both.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7/8, 2020

Anita Yvette Clark
Anita Yvette Clark

Signed and sworn to before me, this 8th day of July, 2020 by Anita Yvette Clark.

Notary's Signature:

Philip L. Ellison

Notary's Name:

Philip L. Ellison

Notary Public, Saginaw County, State of Michigan

Acting in County of Gratiot, Michigan

My commission expires: 10/08/2023

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