

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

ST. LOUIS COUNTY, MISSOURI, )  
                                  )  
Plaintiff,                   ) Cause No.  
                                  )  
v.                             ) Division  
                                  )  
HOUSE OF PAIN GYM SERVICES, LLC, ) **INJUNCTIVE RELIEF REQUESTED**  
                                  )  
Defendant.                  )

**PETITION OF ST. LOUIS COUNTY, MISSOURI FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AGAINST  
DEFENDANT HOUSE OF PAIN GYM SERVICES, LLC**

COMES NOW Plaintiff, St. Louis County, Missouri (“St. Louis County,” the “County,” or “Plaintiff”), by and through its undersigned counsel, and for its Petition for Temporary Restraining Order and Preliminary and Permanent Injunctive Relief against Defendant House of Pain Gym Services, LLC (“Defendant”), states as follows:

**NATURE OF THE ACTION**

1. This action is brought by St. Louis County against Defendant, the operator of two gyms in the County. The County is in the midst of a public health crisis caused by the COVID-19 virus. While the County is not alone in this regard, COVID-19 has had a particularly significant effect on the County, as compared to other locations (including elsewhere in the State of Missouri).

2. In an attempt to curtail the spread of COVID-19 in the County, the County is currently under a stay-at-home order (the “Stay-at-Home Order”). Among other things, the Stay-at-Home Order directs non-Essential Businesses, such as gyms, to reduce their operations significantly.

3. Defendant is aware of the Stay-at-Home Order, but continues to operate its gyms, which are located in the County, in violation of the Stay-at-Home Order.

4. This action is brought in the interests of public health, safety, and welfare to compel compliance with the Stay-at-Home Order.

### **PARTIES, JURISDICTION, AND VENUE**

5. Plaintiff St. Louis County, Missouri, is a charter county of the State of Missouri, exercising all powers bestowed upon it by the Missouri Constitution and the laws of the state.

6. Defendant House of Pain Gym Services, LLC is a limited liability company duly registered with the Missouri Secretary of State, organized and doing business within St. Louis County, Missouri, at 251 Chesterfield Industrial Blvd, Chesterfield, Missouri, 63005, and 12632 Dorsett Rd, Maryland Heights, Missouri, 63043.

7. A substantial part of the events giving rise to the claims asserted herein occurred within St. Louis County, Missouri.

8. This Court has personal jurisdiction over Defendant in that Defendant is an LLC registered and operating in Missouri, and Defendant committed the conduct described herein in this State. Moreover, as noted, Defendant's wrongful conduct alleged herein occurred in St. Louis County, Missouri.

9. Venue is appropriate in this Court pursuant to Mo. Rev. Stat. § 508.010, in that Defendant resides in St. Louis County, and Plaintiff (and the community) were and continue to be injured in St. Louis County, where the acts complained of herein occurred and continue to occur.

## **BACKGROUND**

10. St. Louis County, along with the rest of the world, is in the midst of an unprecedented global health crisis due to the COVID-19 virus. *See In re Rutledge*, No. 20-1791, --- F.3d ----, 2020 WL 1933122, at \*1 (8th Cir. Apr. 22, 2020); *SH3 Health Consulting, LLC v. Page*, Case No. 4:20-cv-00605 SRC (E.D. Mo. May 8, 2020) (Doc. 27, Memorandum and Order) (“*SH3 Health Consulting*”), at 3. “On January 20, 2020, the United States Centers for Disease Control and Prevention (‘CDC’) reported the United States’ first case of coronavirus in the State of Washington.” *Legacy Church, Inc. v. Kunkel*, No. CIV 20-0327 JB\SCY, 2020 WL 1905586, at \*2 -3 (D.N.M. Apr. 17, 2020). On March 13, 2020, the President of the United States declared the COVID-19 outbreak a national emergency. *Id.*; *SH3 Health Consulting*, at 3-4.

11. Every day, the number of people infected with COVID-19 continues to rise, along with the virus’ death toll. As of May 8, 2020, testing has revealed 1,219,066 cases in the United States, with 73,297 deaths. *SH3 Health Consulting*, at 3. As of that same date, the County has 3,792 confirmed cases of COVID-19 and 244 deaths. *Id.* By way of comparison, as of that same date, the entire State of Missouri has 9,489 cases of, and 449 deaths on account of, COVID-19. *Id.* In other words, COVID-19 is disproportionately prevalent in the County (and in the City of St. Louis) as compared to the rest of the State. *See id.*, at 3-4.

## **ST. LOUIS COUNTY’S AUTHORITY IN TIMES OF A PUBLIC HEALTH CRISIS**

12. St. Louis County, by and through its health authorities, is empowered by the Missouri Constitution, the Statutes of Missouri, and its County Charter with the police power to issue and enforce business restriction and closure orders for the protection of the health of St. Louis County residents. *See, e.g.*, Mo. Const., Art. IV, § 18; Mo. Rev. Stat. § 192.300; 19 CSR § 20-20.050; *see also St. Louis v. McCoy*, 18 Mo. 238 (Mo. 1853); *Metcalf v. City of St. Louis*, 11

Mo. 102 (Mo. 1847); *Avanti Petroleum, Inc. v. St. Louis Cty.*, 974 S.W.2d 506, 508 (Mo. Ct. App. 1998).

13. The Director of the St. Louis County Department of Public Health (the “Director”) is further vested with the powers and duties required by law to be performed by a county hospital commissioner and by any county hospital officer, and with the powers and duties conferred upon deputy state health commissioners and county health officers by law. *See* St. Louis County Charter (“Charter”) § 4.130 (attached hereto and incorporated herein as Exhibit A); SLCRO §§ 600.010, 600.030 (attached hereto and incorporated herein as composite Exhibit B).

14. Specifically, among other things, the Director has the power to enforce public health laws, and to establish and maintain activities and clinics necessary to promote the public health within St. Louis County. Charter, Ex. A, § 4.130(5), (6); SLCRO § 602.020 (attached hereto and incorporated herein as Exhibit C).

15. In exercising its broad public health powers, St. Louis County is authorized to protect its citizens from known health hazards using any reasonable method. *Avanti Petroleum*, 974 S.W.2d at 509. If a regulatory action is reasonably related to public health, the action is “fairly referable to the County’s police power.” *Readey v. St. Louis Cty. Water Co.*, 352 S.W.2d 622, 627 (Mo. 1961).

#### **THE DIRECTOR’S AMENDED STAY-AT-HOME ORDER**

16. On March 13, 2020, St. Louis County Executive Dr. Sam Page declared a state of emergency in St. Louis County, Missouri, in response to the COVID-19 public health crisis. *See* SLCRO § 703.070 (attached hereto and incorporated herein as Exhibit D); Chapter 44, RSMo.

17. Pursuant to authority granted by, among other things, the Missouri Constitution, the Statutes of Missouri, St. Louis County's Charter, and certain Executive Orders, the Director thereafter issued an Amended Stay-at-Home Order, *i.e.*, the Stay-at-Home Order,<sup>1</sup> as an emergency measure to attempt to curtail the transmission of COVID-19 in St. Louis County. (See Stay-at-Home Order, attached hereto and incorporated herein as Exhibit E.)<sup>2</sup>

18. The Stay-at-Home Order generally requires all non-Essential Businesses, such as gyms, to cease all activities within St. Louis County, except for certain exceptions inapplicable here.<sup>3</sup> (Stay at Home Order, Ex. E., at § IV.C.2.)

19. To address non-compliance with the Stay-at-Home Order, and to deter non-compliance by others, the County Counselor is delegated the authority to take appropriate actions with respect to any business that has failed to comply or attempted to fail to comply with this Order, including emergency injunctive or other civil relief as the County Counselor deems appropriate. (Stay-at-Home Order, Ex. E., § IV.I.)

20. The Stay-at-Home Order bears a real and substantial relation to the protection of the public health and safety: it attempts to limit the transmission of COVID-19 by reducing the frequency and proximity of person-to-person contact. *See Readey*, 352 S.W.2d at 627. It

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<sup>1</sup> The Original Order and Amended Order contain a reference to §193.300, RSMo, which due to scrivener's error should instead read § 192.300, RSMo

<sup>2</sup> On May 8, 2020, the St. Louis County Department of Public Health, through the Director, issued "Business and Individual Guidelines and Social Distancing and Re-Opening" (the "New Guidelines"). (The New Guidelines are attached hereto and incorporated herein as Exhibit J.) The New Guidelines begin easing restrictions on individuals and some businesses effective May 18, 2020. (See *id.*)

<sup>3</sup> Non-Essential Businesses may continue: (i) "Minimum Basic Operations," that is, "the minimum necessary activities to maintain the value of a business's inventory, provide security, process payroll or employee benefits, or to facilitate employees of the business being able to continue to work remotely from their Residences"; and (ii) "business activities consisting of employees or contractors performing activities at their own Residences (*i.e.* working from home)." (Stay-at-Home Order, Ex. E., §§ III.P., IV.C.2.)

accomplishes this in a variety of ways, including restricting the operations of non-Essential Businesses. (*See Stay-at-Home Order, Ex. E, passim.*)

21. The Stay-at-Home Order is a lawful enactment in the time of a public health crisis. *See, e.g., Jacobson v. Massachusetts*, 197 U.S. 11, 25-38 (1905); *In re Rutledge*, 2020 WL 1933122, at \*4-8; *SH3 Health Consulting*, at 6-20; *Frank v. City of St. Louis*, No. 4:20-CV-00597 SEP, --- F. Supp. 3d ----, 2020 WL 2116392, at \*3 (E.D. Mo. May 2, 2020).

### **DEFENDANT'S VIOLATION OF THE STAY-AT-HOME ORDER**

22. The County notified Defendant on or about April 24, 2020, via USPS mail sent to its address at 251 Chesterfield Industrial Boulevard in Chesterfield, Missouri, that the County had received complaints from the public that Defendant was operating in violation of the Stay-at-Home Order. (*See April 24, 2020 Letter to House of Pain Chesterfield*, attached hereto and incorporated herein as Exhibit F.) Despite this, Defendant continued to operate its business in violation of the Stay-at-Home Order.

23. On May 6, 2020, additional notice was hand-delivered to Defendant at its business located at 12632 Dorsett Rd, Maryland Heights, Missouri, 63043, and to Defendant at its business located at 251 Chesterfield Industrial Blvd, Chesterfield, Missouri, 63005, by a St. Louis County police officer. (Affidavit of Officer Richard Vencill (“Vencill Aff.”), attached hereto and incorporated herein as Exhibit G, ¶¶ 3-14 and Exhibit 1 and Exhibit 2 thereto.)

24. Despite the notice given to Defendant by the County, Defendant’s website currently states that it is fully open to the public from 7am—8pm, daily. (*See Screenshot of Website, attached hereto and incorporated herein as Exhibit H; see also <https://houseofpain.com/gym/>.*

25. Additionally, media outlets in the St. Louis area have reported that both of Defendant's locations are open for business in violation of the Stay-at-Home Order, and that Defendant has expressed that “[n]either location will bend” in their decision to remain open to the public. Fox 2 Now, “St. Louis County gyms not backing down despite orders to close,” *available at:* <https://fox2now.com/news/fox-files/st-louis-county-gyms-not-backing-down-despite-orders-to-close/> (last accessed May 10, 2020); KSDK, “2 gyms in St. Louis County open despite stay-at-home order,” *available at:* <https://www.ksdk.com/article/news/local/gyms-st-louis-county-reopen-despite-stay-at-home-order/63-87cbca0a-ab62-418a-a499-03bb83b3dd18> (last accessed May 10, 2020).

26. On May 7, 2020, legal counsel for Defendant corresponded with counsel for St. Louis County. (*See* May 7, 2020 Correspondence, attached hereto and incorporated herein as Exhibit I.) This correspondence indicates that Defendant intends to continue operating in violation of the Stay-at-Home Order. (*See id.*)

27. Also on May 7, 2020, St. Louis County police observed both locations of Defendant's business operating open to the public. (Vencill Aff., Ex. G, ¶ 15.)

28. In correspondence to Defendant on May 9, 2020, the County notified Defendant, through its legal counsel, that if Defendant did not communicate its intent to come into compliance with the Stay-at-Home Order by 5:00 p.m. on May 10, 2020, the County would take legal action against Defendant. (*See* May 9, 2020 Correspondence, attached hereto and incorporated herein as Exhibit K.)

29. Defendant, through its legal counsel, responded to the County's notice later that day, contending that the Stay-at-Home Order is “blatantly unconstitutional” and the County's efforts to bring Defendant into compliance with the Stay-at-Home Order constituted “tyrannical

persecution." (See May 9, 2020 Correspondence, attached hereto and incorporated herein as Exhibit L.) In any case, Defendant's correspondence makes clear that Defendant intends to continue operating in violation of the Stay-at-Home Order. (*See id.*)

30. Defendant continues, and will continue, to remain fully open to the public, in violation of the Stay-at-Home Order and despite endangering the health of St. Louis County residents through the increased risk of spreading COVID-19 in the community.

**COUNT I**  
**(Public Nuisance)**

31. Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully set forth herein.

32. Defendant's continued operation of its gyms, in violation of the Stay-at-Home Order, is an unreasonable interference with community rights, including public health, safety, and welfare.

33. Defendant's continued operation of its gyms, in violation of the Stay-at-Home Order, constitutes an unreasonable and unlawful use of Defendant's property, causing an injury to endangering the community.

34. Defendant's conduct is in violation of lawful state and local agency and government orders, and has a profound and serious impact on the health, safety and welfare of the people in St. Louis County, Missouri, the State of Missouri, and the greater United States.

35. In short, Defendant's continued operation of its gyms, in violation of the Stay-at-Home Order, constitutes a public nuisance.

**COUNT II**  
**(Emergency Injunctive and Other Civil Relief**  
**Pursuant to Section IV.I. of the Stay-at-Home Order)**

36. Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully set forth herein.

37. Defendant's conduct as set forth hereinabove fails to comply with the Stay-at-Home Order.

38. St. Louis County gave notice to Defendant on April 24, May 6, and May 9, 2020, that Defendant's conduct failed to comply with the Stay-at-Home Order. Along with said notice, St. Louis County requested that Defendant notify the County that it would come into compliance with said Order.

39. In written correspondence to the County on May 7 and May 9, 2020, Defendant, by and through its legal counsel, expressly conveyed its refusal to comply with the Stay-at-Home Order and its intent to continue to operate open to the public in violation thereof.

**PRAYER FOR TEMPORARY RESTRAINING ORDER AND**  
**PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

40. Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully set forth herein.

41. Injunctive relief against Defendant should issue without delay because all prerequisites for the entry of a temporary restraining order have been satisfied:

a. The County is likely to succeed on the merits, in that Defendant's continued operation of its gyms violates the Stay-at-Home Order and constitutes a public nuisance;

b. Immediate and irreparable harm has occurred, and will continue to occur, in the absence of injunctive relief against Defendant;

c. The balance of the equities and the public interest in maintaining the restrictions and limitations set forth in the Stay-at-Home Order, which attempt to curtail the transmission of COVID-19, overwhelmingly weigh in favor of the County; and

d. The County has no adequate remedy at law if Defendant is permitted to continue to operate its gyms in violation of the Stay-at-Home Order, thereby endangering the health, safety, and welfare of the community.

42. Unless enjoined, Defendant will continue or repeat the acts and conduct set forth hereinabove, or similar like or related acts and conduct.

43. In addition to injunctive relief, Defendant should be ordered to:

- a. provide a complete list of every person who entered the gym since it opened to public use, including each person's name and contact information, to be used by Plaintiff's contact tracing employees; and
- b. pay the costs associated with COVID-19 tests for every individual on said list.

### **CONCLUSION**

WHEREFORE, Plaintiff St. Louis County, Missouri respectfully requests that this Court enter its Order temporarily and immediately enjoining Defendant House of Pain Gym Services, LLC from continuing to operate its gyms in violation of the Stay-at-Home Order, requiring Defendant to provide, no later than 24 hours after entry of the Court's Order, a complete list of every person who entered the gym since the Stay at Home Order became effective on March 19, 2020 at 12:01 A.M., including each person's name and contact information, and requiring Defendant to pay the costs associated with COVID-19 tests for every individual on said list. In addition, following a hearing on Plaintiff's application for a preliminary injunction or a consolidated hearing on Plaintiff's application for a preliminary and permanent injunction,

Plaintiff requests that this Court issue its Order preliminarily and/or permanently prohibiting Defendant from continuing to operate its gyms in violation of the Stay-at-Home Order, requiring Defendant to provide a complete list of every person who entered the gym since it opened to public use, including each person's name and contact information, and pay the costs associated with COVID-19 tests for every individual on said list.

Respectfully submitted,

**BETH ORWICK  
COUNTY COUNSELOR**

Dated: May 11, 2020

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**CERTIFICATE OF SERVICE AND**  
**CERTIFICATE OF COMPLIANCE WITH RULE 55.03(a)**

I hereby certify that a copy of the foregoing pleading was served via electronic mail on this 11th day of May 2020, on the parties listed below. In addition, the undersigned counsel certifies under Rule 55.03(a) of the Missouri Rules of Civil Procedure that he has signed the original of this Certificate and the foregoing pleading.

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