

JOEY GILBERT LAW

ATTORNEYS AT LAW
LICENSED IN NEVADA & CALIFORNIA

www.joeygilbertlaw.com
201 West Liberty Street, Suite 210
Reno, Nevada 89501

Telephone: (775) 284-7700
Facsimile: (775) 284-3809
joey@joeygilbertlaw.com

November 20, 2020

Via email: kevin@bensonlawnv.com

Via Facsimile: (775) 684-5683 and (702) 486-2505

Honorable Stephen Sisolak
c/o Benson Law Nevada
123 W. Nye Ln Suite 487
Carson City, NV 89706
Attention: Kevin Benson, Esq.


RE: Notice of Lawsuit and Request for TRO / Central Cinema of Ely, Inc. vs. Sisolak

Dear Governor Sisolak:

Please see attached are copies of the Complaint and Application for Temporary Restraining Order and Preliminary and Permanent Injunction and Declaratory Relief filed in the Seventh Judicial District Court in Ely, White Pine County, Nevada today. This is our attempt to notify you pursuant to the requirements for the issue incident TRO. Formal service will be forthcoming.

Should you have any questions, please do not hesitate to contact Joey Gilbert Law at (775) 284-7700.

JOEY GILBERT LAW


JOSEPH S. GILBERT, ESQ.
Attorney at Law

JSG/nv

1 Joseph S. Gilbert, Esq. - NSB 9033
2 Roger M. O'Donnell, Esq. – NSB 14593
3 **JOEY GILBERT LAW**
4 201 W. Liberty Street, Suite 210
5 Reno, Nevada 89501
6 Tel: 775.284.7000
7 Fax: 775.284.3809
8 joey@joeygilbertlaw.com; roger@joeygilbertlaw.com
9 *Counsel for Plaintiffs, Central Cinema of Ely, Inc., Don & Shirley Purinton*

7 **IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WHITE PINE**

9 CENTRAL CINEMA OF ELY, INC, a
10 Nevada Corporation; DON PURINTON, an
11 individual; and SHIRLEY PURINTON, an
12 individual,

12 Plaintiffs/Petitioners,

13 vs.

14 THE HONORABLE STEPHEN F.
15 SISOLAK, as Governor of the State of
16 Nevada,

17 Defendant/Respondent.

Case No.:

Dept. No.:

18 **COMPLAINT**

19 This action seeks to stop the Governor from creating and maintaining a permanent
20 emergency. The Governor's actions consolidate not only executive power, but also legislative
21 power, in himself. Nevada is a Republic, but the Governor is ruling it as an autocrat. The
22 Governor's ongoing actions violate the separation of powers doctrine imbedded in the Nevada
23 Constitution. This Court should strike them down.

25 Accordingly, Plaintiffs Central Cinema of Ely, Inc., Don Purinton, and Shirley Purinton,
26 ("Plaintiffs" and/or "Central Cinema" and "Purintons") by and through their counsel, Joseph S.
27 Gilbert, Esq., and Roger M. O'Donnell, Esq., of Joey Gilbert Law and allege as follows:
28

GENERAL ALLEGATIONS

1
2 1. Plaintiff, Central Cinema of Ely, Inc., is (and at all times relevant herein was) a
3 Nevada corporation formed under NRS Chapter 78 with its principle place of business in Ely,
4 White Pine County, Nevada. At all times mentioned herein, each and every officer and
5 shareholder of Plaintiff resided within Ely, White Pine County, in the State of Nevada.

6
7 2. Plaintiff, Don Purinton, individually, and as a registered officer and shareholder
8 of the Central Cinema of Ely, Inc., is (and at all times relevant herein was) a resident of Ely,
9 White Pine County, State of Nevada.

10 3. Plaintiff, Shirley Purinton, individually, and as a registered officer and
11 shareholder of the Central Cinema of Ely, Inc., is (and at all times relevant herein was) a resident
12 of Ely, White Pine County, State of Nevada.

13
14 4. Defendant, the Honorable Stephen F. Sisolak, as Governor of the State of
15 Nevada (“Defendant Sisolak” and/or “Governor Sisolak”), is (and at all times relevant herein
16 was) the duly elected Governor of the State of Nevada. In his capacity as the State of Nevada’s
17 Governor, he sees that the laws of the State of Nevada are faithfully executed.

18 5. This action challenges the constitutionality of Defendant Sisolak’s executive
19 declarations, regulations, directives, and orders that curb Plaintiffs’ civil rights and liberties by
20 imposing draconian “shelter-in-place” mandates and effectively shuttering so-called “Non-
21 Essential” businesses all across the State of Nevada. If allowed to stand, Defendant Sisolak
22 will not only continue to violate Plaintiffs’ rights under the Nevada Constitution, but will
23 continue to inflict massive and widespread economic damage to Plaintiffs—all while
24 unconstitutionally placing the burden of Defendant’s actions on the backs of both small and
25 large “Non-Essential” businesses—such as those of Plaintiffs—who have already been
26 financially crippled, forced to shut their doors for business and to conduct mass layoffs. Indeed,
27
28

1 Plaintiffs' "Non-Essential" businesses may never financially recover, and my end up entirely
2 out of business, because of Defendant Sisolak's Emergency Directives. This action further
3 challenges the hiding of documents, plans and records related to the State's COVID-19 response
4 through overbroad and illegal Executive Order, Executive Order 2020-01, which purports to
5 declare confidential any documents related to any emergency under the guise of a statute
6 authorizing such confidentiality for terrorism-response documents.
7

8 6. Defendant Sisolak has exceeded his constitutional authority by creating law
9 through executive action in direct conflict with the separation of powers outlined in the Nevada
10 Constitution. The stakes for immediate relief from this Court for Plaintiffs could not be higher.
11

12 7. Plaintiffs bring this action specifically challenging the constitutionality of
13 Defendant Sisolak's Emergency Directives, which have, through a constitutionally defunct
14 process, deprived them of numerous rights and liberties under both the U.S. and Nevada
15 Constitutions.

16 8. Plaintiffs seek: (1) injunctive relief to enjoin the enforcement of Defendant's
17 Emergency Directives and illegal Executive Order; (2) declaratory relief from this Court in
18 declaring that Defendant's Emergency Directives violative of the Nevada Constitution and
19 Defendant's Executive Order is illegal; (3) attorney's fees and costs for the work done by
20 Plaintiffs' counsel in connection with this lawsuit in an amount according to proof; and (4) for
21 such other and further relief as the Court deems just and appropriate.
22

23 9. This action is brought pursuant to the Uniform Declaratory Judgments Act,
24 specifically NRS 30.040, for the purpose of requesting the Court to construe a statute and the
25 rules and regulations set forth by Governor Sisolak during the COVID-19 Pandemic, as well as
26 other claims for relief. Jurisdiction and venue are proper in this Court under NRS 30.030.
27

28 **FACTS**

10. On or about March 13, 2020, President of the United States Donald J. Trump (“POTUS”) proclaimed a National State of Emergency as a result of the threat of the emergence of COVID-19.

11. Since the initial outbreak of COVID-19 in the United States in February and March 2020, the Federal Government's projections of the anticipated national death toll related to the virus have decreased substantially, by an order of magnitude. Yet despite such revisions, Defendant Sisolak has increasingly governed the State of Nevada, and Nevada citizens in general, and Plaintiffs specifically, through executive action.

12. On February 4, 2020, Defendant Governor Sisolak issued Executive Order 2020-01, where he declared all “[d]ocuments, records or other items of information which may reveal the details of a specific emergency plan or other tactical operations by a response agency and any training related to such emergency response plans or tactical operations are hereby deemed confidential and not subject to subpoena or discovery, and not subject to inspection by the general public.... Handbooks, manuals or other forms of information detailing procedures to be followed by response agencies in the event of an act of terrorism or other related emergency are deemed confidential and not subject to subpoena or discover, and not subject to inspection by the general public....” This Executive Order relied on NRS 239C.210, yet issued, and later applied, sweeping declarations far beyond anything authorized by statute.

13. On March 5, 2020, Defendant Sisolak approved an Emergency Regulation to amend NAC 687B to ensure that Nevadans covered by policies of health insurance requested by the Division are able to obtain medical services related to COVID-19 without concern for cost, and to continue obtaining prescriptions despite shortages in supplies. Specifically, a health insurer shall not impose an out-of-pocket cost for a visit when the purpose is for testing for COVID-19.

1 14. On March 12, 2020, Defendant Sisolak issued a Declaration of Emergency,
2 activated the State Emergency Operations Center to “coordinate a response to minimize the
3 impacts, and prevent the further transmission of, COVID-19 to persons in this state.... An
4 Emergency Team be established to coordinate the response to COVID-19.... Law enforcement,
5 including the Nevada Attorney General, will diligently monitor and investigate a coordinated
6 increase in prices for goods or services.... Law enforcement... will diligently ensure that
7 persons or corporations act and perform in a lawful manner which ensures the safety, health,
8 comfort, or repose of any considerable number of the public, do not offend public decency....
9 This declaration will remain in effect until the Chief Medical Officer notifies the Governor that
10 the health event has been abated and the Governor issues an order terminating the emergency.”
11 (“Declaration of Emergency”).
12

13
14 15. On March 15, Defendant Sisolak issued “Emergency Directive 001” closing all
15 K-12 schools.

16 16. Three days later, on March 18, Defendant Sisolak issued “Emergency Directive
17 002” closing all gaming establishments.

18 17. On March 20, Defendant Governor Sisolak issued “Emergency Directive 003”
19 delineating between businesses that *he considered* “Essential” and “Non-Essential,” ordering
20 all “Non-Essential” businesses to cease operations, while simultaneously authorizing
21 “Essential” businesses to remain open, following additional guidelines to reduce the likelihood
22 of transmitting COVID-19, and in effect until April 16.
23

24 18. On March 20, Defendant Sisolak, in joint action with the Governor’s Department
25 of Public Safety, Division of Emergency Management (“DEM”) and Justin Luna (“Luna”),
26 approved and adopted an emergency regulation amending Chapter 414 of the Nevada
27
28

1 Administrative Code to define essential and non-essential businesses (“March 20 Emergency
2 Regulation”).

3 19. On March 22, Defendant Sisolak issued “Emergency Directive 006” suspending
4 “the requirement contained in NRS 241.023(1)(b) that there be a physical location designated
5 for meetings of public bodies where members of the public are permitted to attend and
6 participate...”, authorizing public bodies to enforce such directive at an emergency meeting
7 authorized by NRS 241.020(11), in effect until April 16.
8

9 20. On March 24, Defendant Sisolak issued “Emergency Directive 007” prohibiting
10 the Nevada general public from gathering in groups of ten or more in any indoor or outdoor
11 area, and to abide by social distancing practices in public places, limiting the use of recreational
12 equipment, and subjecting any person who does not comply with criminal prosecution and civil
13 penalties, thereby authorizing all law enforcement to enforce the directive, and in effect until
14 April 16.
15

16 21. Continually, throughout the course of the COVID-19 Pandemic, Defendant
17 Sisolak has updated, amended, and repealed the contents of his Emergency Directives, and
18 thereby has governed nearly every aspect of life in Nevada through executive action.
19

20 22. In the over eight months since the March 12 Declaration of Emergency,
21 Governor Sisolak has declared multiple related emergencies and issued no less than thirty-four
22 (34) Emergency Directives (collectively, the “Emergency Directives”) over a course of time
23 long enough to have seen two (2) separate special legislative sessions begin and adjourn (the
24 31st Special Session and the 32nd Special Session of the Nevada Legislature).
25

26 23. The Nevada Constitution does not give Defendant Sisolak the exercise plenary
27 powers through Emergency Directives that have effectively created a claimed perpetual
28 emergency.

24. Plaintiffs have been prohibited from operating business as normal as a direct result of Defendant Sisolak's Emergency Declaration and subsequent Emergency Directives. Plaintiffs' business was initially shut down and was later allowed to reopen subject to significant restrictions regarding capacity and operations.

25. Such prohibitions constitute a deprivation of Plaintiffs' rights under the Nevada Constitution because it limits Plaintiffs' otherwise lawful conduct by the force of law without legislative action.

FIRST CLAIM FOR RELIEF

(Declaratory Relief)

26. Plaintiffs reallege paragraphs 1 through 25 of the Complaint as if set out in haec verba.

27. Exercising the plenary power of the State is a legislative function reserved for the Nevada Legislature and specifically withheld from the Nevada Governor (Executive).

28. The Emergency Regulation and subsequent Emergency Directives issued over the last eight months exercise the plenary power of the State of Nevada by, without limitation, classifying individuals and businesses and requiring and/or prohibiting conduct within the State of Nevada.

29. Executive Order 2020-01 declares confidential many documents relied upon to guide the State's response to COVID-19 without the statutory authority to do so. Therefore, Plaintiffs have been denied even the ability to see and comprehend the justification for Governor Sisolak's illegal usurpation of power.

30. There exists a justiciable controversy concerning whether the Governor's interpretation of his emergency powers under NRS 414 conflict with the separation of powers

1 provision of Article 3 of the Nevada Constitution and whether Governor Sisolak had the power
2 to issue Executive Order 2020-01.

3 31. At the very least, (1) the Emergency Directives now in place exist—and when
4 enforced, are enforced—in violation of the separation of powers provision of Article 3 of the
5 Nevada Constitution, and (2) Executive Order 2020-01 must be judicially construed to apply
6 only to documents, plans or responses relevant to terrorism-related emergencies, as
7 contemplated by statute.
8

9 32. Plaintiffs, Central Cinema and Purintons, have a legally protectable interest in
10 the controversy at issue in this case, because (1) their business and livelihood is being
11 irreparably harmed by the ongoing enforcement and/or threat of enforcement of the Emergency
12 Directives promulgated by Governor Sisolak in violation of the separation of powers provision
13 of Article 3 of the Nevada Constitution and (2) the justification for such illegal usurpation of
14 power is being held confidential through Executive Order 2020-01, which lacks statutory
15 authority as applied.
16

17 33. The controversy at issue is ripe for judicial determination because (1) Governor
18 Sisolak's Emergency Directives, are causing irreparable harm to Plaintiffs by subjecting them
19 to requirements and prohibitions (colloquially, laws) which were promulgated (passed) by
20 Governor Sisolak in excess of his authority and in violation of the Separation of Powers
21 provision of Article 3 of the Nevada Constitution and (2) Governor Sisolak is hiding the
22 justification for his actions based on Executive Order 2020-01, but lacks the statutory authority
23 to issue the Order applying confidentiality to any emergency not an act of terrorism.
24

25 34. Plaintiffs have been required to retain counsel and incur expenses and costs for
26 legal services, filing fees and research, all of which could have been avoided by the Governor
27 complying with Nevada Law.
28

35. Defendant Sisolak should be required to compensate Plaintiffs for its costs incurred in prosecuting this action.

36. The Court may award Plaintiffs its costs under the authority given to grant supplemental relief in NRS 30.100.

SECOND CLAIM FOR RELIEF

(Injunctive Relief)

37. Plaintiffs reallege paragraphs 1 through 37 haec verba.

38. Plaintiffs will sustain irreparable harm if the Court does not enjoin the Governor from enforcing the Emergency Directives and applying the baseless confidentiality put forward in Executive Order 2020-01.

39. Plaintiffs have no other plain, speedy, or ordinary remedy to obtain the relief they seek.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendant, as follows:

1. For Declaratory Relief declaring (1) the restrictions posed on Nevada citizens and businesses by Governor Sisolak's Emergency Directives promulgated pursuant to the COVID-19 Declaration of Emergency be null and void as violative of the Nevada Constitution and (2) the confidentiality provisions of Executive order 2020-01, to the extent they purport to apply to any emergency other than one related to acts of terrorism, lack statutory authority and are void;

2. Preliminary and permanent injunction preventing the Governor from enforcing the Emergency Directives or the baseless confidentiality asserted in Executive Order 2020-01;

3. For monetary damages according to proof for loss of earnings in excess of fifteen thousand dollars (\$15,000.00);

4. Further relief as may be just; and

5. Attorneys fees and costs as an item of special damages pursuant to the Uniform

Declaratory Judgment Act, NRS Chapter 30.

AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above referenced matter does not contain the social security number of any person.

DATED this 20th day of November 2020.

JOEY GILBERT LAW

By: /s/ Joseph S. Gilbert

JOSEPH S. GILBERT, ESQ.

Nevada Bar No.: 9033

JOEY GILBERT LAW

201 W. Liberty Street, Suite 210

Reno, Nevada 89501

Tel.: (775) 284-7000

Counsel for Plaintiffs

By: /s/ Roger O'Donnell

ROGER M. O'DONNELL, ESQ.

Nevada Bar No.: 14593

JOEY GILBERT LAW

201 W. Liberty Street, Suite 210

Reno, Nevada 89501

Tel.: (775) 284-7000

Counsel for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Verification

I, DON PURINTON, hereby declare under penalty of perjury under the laws of the State of Nevada I have read the foregoing Complaint and know the facts plead therein of my own personal knowledge, except for those facts plead upon information and belief, and as to those facts, I am informed and do so believe.

DATED this 20th day of November 2020,


DON PURINTON

Joseph S. Gilbert, Esq. - NSB 9033
Roger M. O'Donnell, Esq. - NSB 14593

JOEY GILBERT LAW

201 W. Liberty Street, Suite 210

Reno, Nevada 89501

Tel: 775.284.7000

Fax: 775.284.3809

joey@joeygilbertlaw.com; roger@joeygilbertlaw.com

Counsel for Plaintiffs, Central Cinema of Ely, Inc., and Don & Shirley Purinton

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

CENTRAL CINEMA OF ELY, INC, a
Nevada Corporation; DON PURINTON, an
individual; and SHIRLEY PURINTON, an
individual,

Plaintiffs/Petitioners,

vs.

THE HONORABLE STEPHEN F.
SISOLAK, as Governor of the State of
Nevada,

Defendant/Respondent.

Case No.:

Dept. No.:

**APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
AND PERMANENT INJUNCTION AND DECLARATORY RELIEF**

The Nevada Constitution prohibits the Governor from exercising legislative power. Here, Governor Sisolak has exercised legislative power, requiring and prohibiting certain conduct throughout the entire State, by issuing Emergency Directives that touch and govern nearly every aspect of life, despite decreasingly exigent circumstances and ample time for legislative response. Should Governor Sisolak's Emergency Directives be allowed to continue governing Nevada in contravention of the Legislature's role to wield the State's police power?

///

1 **APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY**
2 **AND PERMANENT INJUNCTION AND DECLARATORY RELIEF**

3 Plaintiffs, Central Cinema of Ely, Inc.; Don Purinton and Shirley Purinton,
4 (“Purintons”) (collectively “Plaintiffs”), by and through their counsel of record, Joseph S.
5 Gilbert, Esq., and Roger M. O’Donnell, Esq., of Joey Gilbert Law, move this Honorable Court
6 pursuant to NRCP 65(a) for a Temporary Restraining Order, Preliminary and Permanent
7 Injunctions and Declaratory Relief prohibiting any type of enforcement of Nevada Governor
8 Stephen Sisolak’s (“Governor Sisolak”) Declaration of Emergency Directives and declaring the
9 same to be null and void as violative of the Nevada Constitution. Plaintiffs further ask this
10 Court issue a restraining order and injunction enjoining and restraining any department,
11 division, agency, office, organization, officer, agent, employee or assignee of the State of
12 Nevada from enforcing unlawful, nullified emergency orders, regulations and/or directives
13 issued by Governor Sisolak on or after March 12, 2020, whether criminally, civilly, judicially
14 or administratively.
15

16 **Factual Background:**

17
18 In Nevada, like in other states, the Governor is currently managing the State’s response
19 to COVID-19 through emergency powers bestowing substantially greater authority than is
20 inherent to his elected position. These emergency powers arose on March 12, 2020, when
21 Governor Sisolak issued a “Declaration of Emergency” in response to a determination that the
22 COVID-19 pandemic presented a substantial risk to the public health and safety of the citizens
23 of Nevada¹.
24

25
26
27
28 ¹ See Declaration of Emergency attached hereto as **Exhibit 1**.

1 Governor Sisolak has exercised sweeping emergency powers over the course the last
2 eight months by issuing 34 Emergency Directives between March 12 and October 8, 2020
3 (“Emergency Directives” or “Directives”), and these Directives directly exercise the police
4 power of the State. Some have restricted the size of gatherings and required people to maintain
5 specified social distancing; others have closed schools, closed businesses, suspended residential
6 evictions by landlords thus interfering with contracts; still others have restricted travel,
7 entertainment and means of earning a livelihood. In essence, the Directives erect a legal
8 framework governing nearly every aspect of personal and public life in Nevada until Governor
9 Sisolak declares the emergency over, thus permitting Governor Sisolak to wield extraordinarily
10 coercive power created through the Directives.
11

12 Furthermore, all Governor Sisolak’s Emergency Directives have been promulgated in
13 the shadow of Executive Order 2020-01, which declares confidential and not subject to
14 inspection nearly every document, plan, or record guiding the State’s (Executive Branch’s
15 unilateral) response to this and other emergencies. Therefore, not only has Governor Sisolak
16 usurped the Legislature’s role, but has done so without the chance for public discourse or
17 disclosure.
18

19 The propriety of the Directives, as well as their effectiveness, has been the subject of
20 much debate, as has the scientific and political theories justifying (or not) the requirements and
21 prohibitions of the Directives. Nonetheless, the Nevada Legislature has taken no action with
22 respect to the subject matter of the Directives, despite twice convening for special legislative
23 sessions within the time since the initial Declaration of Emergency.
24

25 Governor Sisolak has created a permanent emergency. We are now nine months into the
26 COVID-19 Pandemic—twice as long as a legislative session—and Governor Sisolak is
27
28

1 continuing to autocratically rule the State through a series of policy-making Emergency
2 Directives.

3 **Legal Standards:**

4 **Temporary Restraining Order:**

5 Pursuant to NRCP 65(b), “[t]he Court may issue a temporary restraining order without
6 written notice to the adverse party or its attorney only if:

7
8 (A) specific facts in an affidavit or verified complaint clearly show that immediate and
9 irreparable injury, loss, or damage will result to the movant before the adverse party
10 can be heard in opposition; and

11 (B) the movant’s attorney certifies in writing any efforts made to give notice and the
12 reasons why it should not be required. ...

13
14 Furthermore, “in deciding whether to grant a motion for TRO, courts look to
15 substantially the same factors that apply to a court’s decision on whether to issue a preliminary
16 injunction.”² Therefore, in the interest of judicial economy, Plaintiffs refer to their argument
17 below in support of the Preliminary and Permanent Injunction to support their request for a
18 TRO. Furthermore, Plaintiff’s counsel will simultaneously file a declaration laying out the
19 attempts made and/or to be made to notify Governor Sisolak and the State of Nevada of this
20 request.
21

22 **Preliminary Injunction:**

23 Plaintiffs seek a preliminary and permanent injunction pursuant to NRCP 65. A
24 preliminary injunction is normally available when the moving party can demonstrate that it has
25

26
27
28 ² *Innovation Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1156, 2018 U.S. Dist. LEXIS 105432, 2018 WL 3114530

1 a reasonable probability of success on the merits and that the nonmoving party's conduct, if
2 allowed to continue, will cause irreparable harm for which compensatory relief is inadequate.³

3 Where one branch of the government is infringing on the constitutional authority of
4 another, that is all that is required to show irreparable harm.⁴ Further, “[w]hen an alleged
5 deprivation of a constitutional right is involved, most courts hold that no further showing of
6 irreparable injury is necessary,”⁵ and “unconstitutional activity or the deprivation of a
7 constitutional right constitutes in and of itself irreparable harm.”⁶

8
9 Moreover, Nevada’s Supreme Court has recognized that “acts committed without just
10 cause which unreasonably interfere with a business or destroy its credit or profits, may do an
11 irreparable injury.”⁷

12 Accordingly, because Plaintiffs allege unconstitutional action from Governor Sisolak,
13 all Plaintiffs need show to warrant a Preliminary Injunction is a likelihood of success on the
14 merits, because the constitutional deficiencies for which Plaintiffs seek redress are irreparable
15 harm in and of themselves.

16
17 Notwithstanding the presumption in favor of a finding of irreparable harm discussed
18 above, Plaintiffs will be able to show irreparable harm by conventional methods, as well.
19 Nevada’s Supreme Court has recognized that “acts committed without just cause which
20

21
22
23
24 ³ See *U. Sys. V. Nevadans for Sound Govt.*, 100 P.3d 179, 187 (Nev., 2004); *Dangberg Holdings v. Douglas*
County, 978 P.2d 311, 319 (Nev., 1999).

25 ⁴ See *Overstreet v. Lexington-Fayette Urban Cty. Gov.*, 305 F.3d 566, 578 (6th Cir. 2002) (“plaintiff can
26 demonstrate that a denial of an injunction will cause irreparable harm if the claim is based upon a violation of the
plaintiff’s constitutional rights.”);

27 ⁵ *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984)

28 ⁶ *O’Conner v. Mowbray*, 504 F.Supp. 139, 143 (D. Nev. 1980) (citing 11 Wright & Miller, Fed. Practice & Proc.,
§ 2948 at p. 440)

⁷ *Finkel v. Cashman Profl, Inc.*, 270 P.3d 1259, 1263 (Nev. 2012) (quoting *Sobol v. Capital Management*, 726
P.2d 335, 337 (Nev., 1986)).

1 unreasonably interfere with a business or destroy its credit or profits, may do an irreparable
2 injury⁸.” This is because the Nevada Supreme “[C]ourt [has] reasoned that there is a property
3 right ‘to carry on a lawful business without obstruction,’ and that actions that interfere with the
4 business or destroy its custom, its credit or its profits, do an irreparable injury and thus authorize
5 the issuance of an injunction.”⁹

6
7 **Legal Argument:**

8 **Success on the Merits:**

9 Plaintiffs can show a likelihood of success of the merits for two reasons: **first**, because
10 the Emergency Directives promulgated by Governor Sisolak wield the police power of the State
11 of Nevada, in contravention of the Separation of Powers provision of Nevada’s Constitution,
12 they are unconstitutional on their face; **second**, because even if the Emergency Directives were
13 at some point constitutionally sound, enough time has passed to cause the emergent nature of
14 the COVID-19 pandemic to wane, removing the justification for Gubernatorial Emergency
15 Directives related thereto.
16

17 **Governor Sisolak’s Emergency Directives unconstitutionally wield the police**
18 **power of the State.**

19 Because Governor Sisolak’s Emergency Directives wield the State’s police power, they
20 exist in contravention of the Nevada Constitution.
21

22 Generally, in Nevada, “legislative powers may not be delegated to another branch of
23 government,” but “the legislature ... may delegate the power to determine the facts or state of
24

25
26
27 ⁸ *Finkel v. Cashman Profl, Inc.*, 270 P.3d 1259, 1263 (Nev. 2012) (quoting *Sobol v. Capital Management*, 726
P.2d 335, 337 (Nev., 1986)).

28 ⁹ *Gillespie v Council* 2016 Nev.App. Unpub. Lexis 359 at 8-9 (quoting *Guion v. Terra Mktg.*, 90 Nev. 237, 240
(1974)).

1 things upon which the law makes its own operations depend.”¹⁰ This rule of law comes from
2 Nevada’s constitutional mandate that “[t]he powers of the Government of the State of Nevada
3 shall be divided into three separate departments, — the Legislative, — the Executive and the
4 Judicial; and no persons charged with the exercise of powers properly belonging to one of these
5 departments shall exercise any functions, appertaining to either of the others, except in the cases
6 herein expressly directed or permitted in this constitution.”¹¹

8 The Nevada Supreme Court has held “legislative power is the power of law-making
9 representative bodies to frame and enact laws, and to amend or repeal them. This power is
10 indeed very broad, and, except where limited by Federal or State Constitutional provisions, that
11 power is practically absolute.”¹² Put simply, the legislative power of the State of Nevada
12 encompasses, at its core and at a minimum, the authority to wield the police power of the State
13 to dictate conduct and enact policy.

15 Stated as the negative corollary to these rules of law, Nevada’s Governor is prohibited
16 from wielding the State’s police power.

17 The Nevada Supreme Court examined what may constitute an (im)permissible
18 delegation of legislative authority in *Sheriff, Clark County v Luqman*.¹³ In that case, the
19 legislature, as part of the Controlled Substances Act, authorized “the state pharmacy board to
20 classify drugs into various schedules according to the drug's propensity for harm and abuse.”¹⁴
21 That action was challenged, as granting to the state pharmacy board, an executive agency, the
22 power belonging to exclusively to the legislature to prescribe the elements of certain crimes,
23
24

25
26 ¹⁰ *Sheriff, Clark County v Luqman* 101 Nev. 149, 153 (1985).

27 ¹¹ Nev. Const. art. 3, § 1

¹² *Galloway v. Truesdell*, 83 Nev. 13, 20 (1967).

28 ¹³ *Sherriff, Clark County v. Luqman*, 101 Nev. 149 (1985).

¹⁴ *Id.* at 153

1 which were dependent upon the schedule which certain drugs were placed into. However, the
2 Court, there, concluded the delegation was permissible, because only fact-finding authority was
3 conferred on the executive agency, and the legislation provided a sufficiently definite
4 framework to apply the facts found by the executive agency that no legislative function was
5 impermissibly delegated.

6
7 In reaching this conclusion, the Court stated “the legislature can make the application
8 or operation of a statute complete within itself dependent upon the existence of certain facts or
9 conditions, the ascertainment of which is left to the administrative agency. In doing so the
10 legislature vests the agency with mere fact-finding authority and not the authority to legislate.
11 The agency is only authorized to determine the facts which will make the statute effective.”¹⁵

12
13 Contrastingly, in *Comm'n on Ethics v. Hardy*, the Nevada Supreme Court held it was an
14 unconstitutional delegation of legislative power to allow an executive agency, the Commission
15 on Ethics, to investigate or discipline a legislator for ethical violations related to his voting and
16 nondisclosure of potential conflicts of interest in relation to a vote he participated in because it
17 was a core legislative function.¹⁶ In so holding, the Supreme Court concluded core legislative
18 function included [at least] all functions constitutionally committed to the Legislature.¹⁷ It
19 further found “the Legislature cannot, by enacting a statute that delegates certain powers to
20 another branch of the government, waive any separation of powers violation inherent in such a
21 delegation,”¹⁸ and reiterated that the Nevada Supreme Court “has recognized that separation of
22 powers ‘is probably the most important single principle of government.’”¹⁹

23
24
25
26 ¹⁵*Id.* (internal citations omitted)

27 ¹⁶ *Comm'n on Ethics v. Hardy*, 125 Nev. 285 (2009).

28 ¹⁷ *See generally, Id.*

¹⁸ *Id.* at 300

¹⁹ *Id.* at 299 (quoting *Galloway*, 83 Nev. at 18).

1 Although *Hardy* focused on the legislative branch's disciplinary power, nothing in
2 Nevada's caselaw suggests its reasoning and holding do not apply equally to all legislative
3 power. Therefore, its non-delegation holding should be applied equally to all core legislative
4 functions.

5 In defining the legislative power of the State, our Supreme Court has broadly defined
6 the legislative power. For example, in *Galloway v Truesdale* the Nevada Supreme Court opined
7 "legislative power is the power of law-making representative bodies to frame and enact laws,
8 and to amend or repeal them."²⁰ The *Galloway* Court further concluded this legislative power
9 in nearly limitless, extending to the maximum extent not withheld from it by the U.S. or Nevada
10 Constitutions.²¹ The *Galloway* Court also succinctly defined the executive power of the State
11 of Nevada as "the carrying out and enforcing the laws enacted by the Legislature."²²
12

13
14 Thus, the question here is whether Governor Sisolak's Emergency Directives are a
15 proper executive action, reasonably bound by the framework of the statute so as not to
16 impermissibly perform a legislative function, or, rather, if they are an executive overreach into
17 the legislative function of making laws.

18 In the context of the Emergency Directives, this begs the question: "what is a law."
19 Plaintiffs contend the Emergency Declarations are, indeed, laws. Respondents will,
20 undoubtedly, assert they are something else entirely. Merriam-Webster's first definition for
21 "law" states it is "a binding custom or practice of a community: a rule of conduct or action
22 prescribed or formally recognized as binding or enforced by a controlling authority."²³
23

24
25
26 ²⁰ *Galloway*, 83 Nev. at 20

27 ²¹ *Id.* ("This power is indeed very broad, and, except where limited by Federal or State Constitutional provisions,
that power is practically absolute").

28 ²² *Id.*

²³ Merriam-Webster online dictionary; <https://www.merriam-webster.com/dictionary/law> ; accessed 11/3/20

1 Colloquially, people understand laws as the rules created by their government to delineate the
2 bounds of permissible conduct. Functionally, the Emergency Directives invoke and carry
3 coercive power of the State—they are laws.

4 The Governor’s Emergency Directives prescribe and proscribe conduct within the State
5 of Nevada. By any definition, they are law. Further, they are purportedly authorized by NRS
6 Chapter 414, but Chapter 414 offers no reasonably construable guidance limiting the
7 Emergency Directives such as those scientific principles that governed the pharmacy board in
8 *Lugman*. Unlike in *Lugman*, where the board was instructed what to look for and how to classify
9 substances based on objective criteria, the Governor, under NRS 414, is delegated essentially
10 unlimited authority under NRS Chapter—at least as interpreted and applied by Governor
11 Sisolak, who has issued whatever directives he sees fit to address a perpetual emergency that
12 he, in his sole and unguided opinion, has declared. Nothing in the Chapter 414’s provisions
13 reasonably guides the Governor’s exercise of discretion, so he must exercise any delegated
14 discretion in a manner that does not render the statute unconstitutional as violative of the
15 separation of powers provision of the Nevada Constitution.

16 As Governor Sisolak has construed and applied NRS 414 in his handling of the COVID-
17 19 pandemic, the Emergency Directives more closely resemble the unlimited power to conduct
18 hearings and issue punishments to legislators addressed in *Hardy*. There, the Legislature
19 delegated a core legislative function—the disciplining of its members—to the executive – the
20 Commission on Ethics – and it was declared a constitutional separation of powers violation.
21 Likewise, here, as Governor Sisolak has applied and interpreted NRS 414, the unbridled
22 authority to create laws has been delegated to the executive.

23 To be clear, Plaintiffs do not seek a declaration NRS 414 is unconstitutional. Plaintiffs
24 do not ask this Court to make an all-encompassing ruling on the statute; Plaintiffs simply seek

1 an injunction and declaratory relief as to the Emergency Directives issued by Governor Sisolak
2 under his March 12, 2020 Declaration of Emergency. Such Emergency Directives create law,
3 that governs the lives of the people of the State of Nevada and that have destroyed Plaintiffs'
4 business and livelihoods.

5 Though not binding on this Court, decisions from the Courts of other states persuasively
6 outline the same position Plaintiffs advocate herein. The Michigan constitution contains a
7 separation of powers provision nearly identical to that of Nevada: "The powers of government
8 are divided into three branches: legislative, executive and judicial. No person exercising powers
9 of one branch shall exercise powers properly belonging to another branch except as expressly
10 provided in this constitution."²⁴ Michigan also has statutory law very similar to Nevada's NRS
11 Chapter 414: MCL 10.31 *et seq.*, which delegates emergency powers to the Michigan Governor
12 and are functionally identical to the delegation of powers in NRS Chapter 414.
13
14

15 Interpreting its separation of powers provision in its Constitution and its emergency
16 powers statute, the Michigan Supreme Court recently ruled "the Governor does not possess the
17 authority to exercise emergency powers under the Emergency Powers of the Governor Act of
18 1945 (the EPGA), MCL 10.31 *et seq.*, because that act is an unlawful delegation of legislative
19 power to the executive branch in violation of the Michigan Constitution."²⁵ Making such a
20 determination, the Court summed its conclusion up by "conclude[ing] that the EPGA is in
21 violation of the Constitution of [Michigan] because it purports to delegate to the executive
22
23
24
25
26
27
28

²⁴ MI Const. Art. 3, § 2

²⁵ *Midwest Inst. of Health, PLLC v. Governor of Mich. (In re Certified Questions from the United States Dist. Court)*, 2020 Mich. LEXIS 1758, 2, (MI. 2020).

1 branch the legislative powers of state government-- including its plenary police powers-- and
2 to allow the exercise of such powers indefinitely.”²⁶

3 Here, Plaintiffs do not ask this Court to declare unconstitutional, as a whole, the
4 provisions of NRS Chapter 414, as the Michigan Court did to its emergency powers statute.
5 Although such an action is likely warranted, it is unnecessary in this case. Rather, Plaintiffs ask
6 this Court to declare unconstitutional the continued enforcement of Governor Sisolak’s
7 Emergency Directives inasmuch as they impose restrictions on Nevada citizens and businesses
8 without legislative decision-making as to what restrictions ought to be applied to which citizens
9 or business and when. It may be proper for the Legislature to put in place guidance and policy
10 contingent on executive determination of facts. It is improper, however, to abrogate legislative
11 function to the executive because of one operative fact, namely, a claimed emergency lasting
12 over eight months.
13
14

15 Because Governor Sisolak’s Emergency Directives exercise a core legislative function
16 by creating policy, and do not constitute an executive fulfillment of legislative guidance, they
17 constitute an impermissible carrying out of a legislative function of the executive, in
18 contravention of the Separation of Powers clause of the Nevada constitution. Plaintiffs thus
19 have a reasonable likelihood of success on the merits.
20

21 *Even if the Emergency Directives were at some point constitutionally sound,*
22 *enough time has passed to cause the exigent nature of the COVID-19*
23 *pandemic to wane, removing the justification for Gubernatorial Emergency*
24 *Directives related thereto.*
25
26
27
28

²⁶ *Id.* at 61

1 If the Court finds Governor Sisolak’s interpretation of NRS 414 sufficient to justify his
2 initial Emergency Directives, the court should nonetheless enjoin their enforcement now,
3 because the emergency no longer exists; therefore, Governor Sisolak has lost his justification
4 to manage the affairs of the State through Emergency Directives.

5 The Nevada Supreme Court has previously touched on what constitutes an ‘emergency’
6 under NRS Chapter 414. In *Nyuland v. Carson City* the Court noted “[t]he express purpose of
7 NRS Chapter 414 is to empower the State and local governments to prepare for and swiftly
8 respond to emergencies and disasters that imperil life and property . . .”²⁷ The Court further
9 noted “[a]n emergency is a sudden and unforeseen crisis, and the damage it causes can spread
10 quickly. . . . Thus, the legislature gave the response authority substantial decision-making
11 latitude, allowing it to make quick decisions to avert disaster.”²⁸
12

13 This interpretation of the purpose and goals of NRS Chapter 414 follows naturally from
14 the generally deferential language of the statute, which allows an emergency to be declared
15 when certain circumstances, “in the determination of the Governor” exist.²⁹ However, the
16 discretion of the governor must be “within the limits of the authority conferred upon the
17 Governor in this chapter.”³⁰
18

19 Thus, the legislature conferred upon the Governor the authority to issue Emergency
20 Directives under a Declaration of Emergency to address a sudden and unforeseen crisis that
21 requires a swift response. Here, the Emergency Directives have exceeded that authority.
22
23
24

25
26
27 ²⁷ *Nyuland v Carson City*, 117 Nev. 913, 34 P.3d 578, 581 (2001) (superseded by statute on other grounds)

28 ²⁸ *Id.*

²⁹ NRS 414.0345 (defining emergency)

³⁰ NRS 414.060(3)(a)

1 The COVID-19 pandemic is no longer sudden or unforeseen. Recent history has
2 demonstrated a tremendous amount of planning and understanding of the disease, as compared
3 to the inception of the COVID-19 pandemic in March, and although its effects are indeed grave,
4 they no longer fall within the purview of “emergency” endorsed by the Nevada Supreme Court.

5 Since Governor Sisolak’s initial Declaration of Emergency on March 12, 2020, he has
6 issued thirty-four (34) separate Emergency Directives. The Most recent Emergency Directive
7 was issued on October 8, 2020, and a total of five (5) of the Emergency Directives were issued
8 after the adjournment of the second Special Legislative Session, which was called in Nevada
9 during the COVID-19 pandemic.
10

11 Emergency Directive 30 was issued on August 14, 2020. Emergency Directive 31 was
12 issued on August 31, 2020. Emergency Directive 32 was issued on September 11, 2020.
13 Emergency Directive 33 was issued on September 30, 2020. Emergency Directive 34 was
14 issued on October 8, 2020.
15

16 The 31st Special Legislative Session of the State of Nevada began on July 8, 2020 and
17 adjourned on July 19, 2020. The 32nd Special Legislative Session of the State of Nevada began
18 on July 31, 2020 and adjourned on August 6, 2020.
19

20 If Nevada required a policy response to dictate how the State would handle COVID-19,
21 the Legislature could and should have addressed the issue in either of its two chances to do so
22 during the effective period of Governor Sisolak’s Declaration of Emergency and Emergency
23 Directives.

24 The history of the handling of the COVID-19 outbreak in Nevada does not comport with
25 the law surrounding emergencies. Governor Sisolak has issued sweeping Emergency Directives
26 controlling the State and its citizens and creating law (in fact, even if not in name) over the
27 course of over eight months. He has unilaterally dictated the State’s response over a prolonged
28

1 period of time, even establishing and modifying policy after the Legislature had the opportunity
2 to address the same policy concerns dealt with in the Emergency Directives and chose not to.

3 Despite the statutory framework allowing the Governor discretion to find facts sufficient
4 to declare an emergency and act accordingly, it defies logic to believe an emergency still exists.
5 Accordingly, this Court must enjoin further enforcement of the Emergency Directives.

6
7 Justice Alito described best the framework for evaluating exigency-based emergency
8 powers:

9 This initial response was understandable. In times of crisis, public
10 officials must respond quickly and decisively to evolving and
11 uncertain situations. At the dawn of an emergency—and the opening
12 days of the COVID–19 outbreak plainly qualify—public officials
13 may not be able to craft precisely tailored rules. Time, information,
14 and expertise may be in short supply, and those responsible for
15 enforcement may lack the resources needed to administer rules that
16 draw fine distinctions. Thus, at the outset of an emergency, it may
17 be appropriate for courts to tolerate very blunt rules. In general, that
18 is what has happened thus far during the COVID–19 pandemic.³¹

19 The rational opinion laid out by Justice Alito mirrors the intent of the Nevada legislature
20 in crafting NRS Chapter 414 and bestowing the emergency powers it does on the Governor.
21 Nevada must be able to act in its defense against unpredictable emergencies, and the legislature
22 has properly granted the Governor authority to deal with truly exigent circumstances. However,
23 time, opportunity for legislative action, and growing information all create weight on the scale
24 against exigency and in favor of a limited view of continuing executive authority. This, too was
25 well explained by Justice Alito:

26 **[A] public health emergency does not give Governors and other**
27 **public officials *carte blanche* to disregard the Constitution for as**
28 **long as the medical problem persists.** As more medical and
scientific evidence becomes available, and as States have time to

³¹ *Calvary Chapel Dayton Valley v. Sisolak*, 540 US ____ (2020), 140 S. Ct. 2603, 2605 (Alito, J. Dissenting).

1 craft policies in light of that evidence, courts should expect policies
2 that more carefully account for constitutional rights.³²
3 Accordingly, the Governor's unconstrained authority to dictate policy and limit or
4 require conduct by Nevadans and Nevada businesses under his Emergency Authority pursuant
5 to NRS Chapter 414 has expired after two emergency legislative sessions and eight months of
6 research into the once-novel disease.

7 With respect to Plaintiffs, specifically, Emergency Directive 21, Section 20 decrees
8 Plaintiffs "shall not exceed the lesser of 50% of the listed fire code capacity or fifty persons³³."
9 This requirement, originally declared to expire on June 30, 2020, was extended to July 31, 2020
10 by operation of Emergency Directive 26. It was subsequently extended indefinitely by
11 Emergency Directive 29, which decreed "[a]ll directives promulgated pursuant to the March
12 12, 2020 Declaration of Emergency or subsections thereof set to expire on July 31, 2020, shall
13 remain in effect for the duration of the current state of emergency, unless terminated prior to
14 that date by a subsequent directive or by operation of law associated with lifting the Declaration
15 of Emergency."³⁴

17 The Nevada legislature has had ample opportunity to address the health concerns posed
18 by theatre goers, but it has declined to take up the issue. Instead, Governor Sisolak has decreed
19 Plaintiffs may not operate beyond the lesser of fifty persons or fifty percent of fire-code
20 capacity. Plaintiffs' business, accordingly, is substantially burdened by executive legislation
21 limiting business-operation by creating the standards under which people and business must
22 operate.
23
24
25

26
27
28 ³² *Id.* (emphasis added).

³³ Declaration of Emergency Directive 021 - Phase Two Reopening Plan

³⁴ Declaration of Emergency Directive 029, Section 4

1 To continue holding Plaintiffs to the standard decreed by Governor Sisolak flies in the
2 face of the reality the Legislature could have addressed business-operation concerns and
3 impermissibly sanctions the executive usurpation of legislative authority in the name of
4 “emergency”—all despite the ever-decreasing exigency of the situation.

5 Governor Sisolak may attempt to argue COVID-19 is no less exigent than it was in
6 March, and therefore requires that he be allowed the same leeway to issue and enforce
7 Emergency Directives based on changing circumstances, but his own actions belie the assertion.
8 Nevada’s 31st Special Legislative Session began July 8, 2020 and adjourned July 19, 2020.
9 During that time, Governor Sisolak issued two separate Emergency Directives – Directives 27
10 and 28.

11
12 Nevada’s 32nd Special Legislative Session began on July 31, 2020 and adjourned on
13 August 6, 2020. During that time, Governor Sisolak issued yet another Emergency Directive –
14 Emergency Directive 29 and published the “Road to Recovery: Moving to a New Normal”
15 (attached as Exhibit 2) on August 3, 2020 – in the middle of the Special Legislative session.

16
17 According to Governor Sisolak’s Road to Recovery: Moving to a New Normal
18 publication, “[t]he State of Nevada remains in the response stage to the COVID-19 pandemic
19 and will be for the foreseeable future.”³⁵ Governor Sisolak further states “Nevada has
20 developed a sustainable response model, one that will allow the Administration to utilize all
21 available state and county assets in this response and recovery effort, maximize consistency and
22 accountability, and prioritize the communication of the State’s most accurate data to the public
23 and to decision- makers.”³⁶

24
25
26
27
28 ³⁵ Exhibit 2, Page 1 (as marked)

³⁶ *Id.*

1 Not only does this publication essentially confirm Governor Sisolak has taken the role
2 of the legislature by unilaterally *developing* the State's response plan and dictating how State
3 resources are to be allocated, but it also confirms, by its timing, Governor Sisolak had every
4 opportunity to present the facts to the legislature for policy determination, yet chose instead to
5 consolidate power in the executive office and bypass the people's elected policymakers.

6
7 The Governor's plan purports to assess various metrics related to public health and
8 safety in light of COVID-19 and present the relevant information to the decision-makers to
9 continually develop the State's COVID-19 response. But Governor Sisolak seems to be the
10 only relevant decision-maker for the State.

11
12 Whatever plan exists, it could have been presented to the legislature for debate and
13 adoption, and it could have delegated to the Executive fact-finding authority to determine the
14 operative facts on which the legislatively passed plan would operate. This did not happen.
15 Instead, Governor Sisolak has conferred upon himself the dual role of policymaker and policy
16 implementor. Such a result, even if once justified by exigency, is no longer constitutionally
17 sound given the options which have become available and the prolonged time of the
18 "emergency."

19 **Irreparable Harm**

20
21 Constitutional violations are irreparable harm in and of themselves, so Defendant's
22 actions constitute irreparable harm per se. Beyond this, however, Defendant's actions work to
23 do irreparable harm to Plaintiffs by unjustifiably interfering with their businesses and destroying
24 its customs, credit and profits. Specifically, Plaintiffs have lost approximately sixty-five
25 percent (65%) of their business-revenue because of the Emergency Directives and the autocratic
26 laws they create. The Court should immediately temporarily restrain and ultimately enter
27 Preliminary and Permanent Injunctions stopping such irreparable injury.
28

1 Emergency powers hinge on the severity of the emergency and urgency required to
2 react. The approximate mortality rate of this disease based on a University of Nevada Reno and
3 Washoe County Health District study, which also found the infection rate of COVID-19 to be
4 five times higher than the reported cases, is less than one percent. This study, performed in
5 July, demonstrated a 0.08375% mortality rate (*See* Exhibit 3, “Cases of COVID-19 in Washoe
6 County Are Likely 5 Times Higher Than Reported Cases,” Reno Gazette Journal, Jul 8, 2020).
7 The Governor’s Emergency Authority should be limited by the severity of the emergency and
8 the time available to react. Here, the claimed emergency has been ongoing for more than eight
9 months and is less than 1% fatal (0.03875%). Yet the Governor’s powers to issue Emergency
10 Directives continues unfettered.
11

12 Again, a constitutional violation constitutes irreparable harm per se. Where one branch
13 of the government is infringing on the constitutional authority of another, that is all that is
14 required to show irreparable harm.³⁷ Further, “[w]hen an alleged deprivation of a constitutional
15 right is involved, most courts hold that no further showing of irreparable injury is necessary,”³⁸
16 and “unconstitutional activity or the deprivation of a constitutional right constitutes in and of
17 itself irreparable harm.”³⁹
18

19 For example, in *O’Conner v Mowbray*, the US District Court for the District of Nevada
20 held pro se litigant could not be denied access to the law library any more so than attorney-users
21 of the library could. The constitutional right to equal access to the courts for any and all litigants
22 was implicated by a policy authorizing attorneys to have after-hours access to the Nevada
23

24
25
26
27 ³⁷ *See Overstreet v. Lexington-Fayette Urban County Gov’t*, 305 F.3d 566, 578 (6th Cir. 2002) (collecting
28 authority and finding “plaintiff can demonstrate that a denial of an injunction will cause irreparable harm if the
claim is based upon a violation of the plaintiff’s constitutional rights”).

³⁸ *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984).

³⁹ *O’Conner v. Mowbray*, 504 F.Supp. 139, 143 (D. Nev. 1980)

1 Supreme Court Law Library, while restricting pro se litigants from equal after-hours access.
2 Such a restriction was itself a violation not only because it was held proper to enjoin the
3 restriction of constitutional rights, but also because “[a] judgment for damages for refusal of
4 access to the library (if such could be obtained) would not make plaintiffs whole.”⁴⁰ In so
5 holding, the court there recognized it is incumbent on the courts to prevent unconstitutional
6 activity and acknowledged money could not make a party whole for the deprivation of a
7 fundamental right.
8

9 As the Nevada Supreme Court reiterated in *Finkel v. Cashman Professional, Inc.*,
10 irreparable harm can also be shown by demonstrating unjustifiable actions that unreasonably
11 interfere with a business’s operation, custom, profits or credit.⁴¹ For example, in *Guion v. Terra*
12 *Marketing of Nevada, Inc.*, the Nevada Supreme Court upheld an injunction granted to enjoin
13 the displaying of a sign prominently displaying a false message which “tended to discourage
14 prospective customers from doing business with the respondent.”⁴² There, the Court noted it
15 was appropriate to “restrain tortious acts where it is essential to preserve a business or property
16 interests.”⁴³
17

18 Here, Plaintiffs will first suffer irreparable harm without an injunction because the
19 Emergency Directives are an unconstitutional usurpation of legislative authority by the
20 executive in violation of Nevada’s constitution. It is inarguable Plaintiffs have a constitutional
21 right to be free of unconstitutional restriction under color of law, and executive cannot usurp
22 legislative authority and still rightly apply his restrictions on Plaintiffs.
23

24
25
26 ⁴⁰ *Id.* at 142-43.

27 ⁴¹ *Finkel v. Cashman Prof'l, Inc.*, 128 Nev. 68, 73 (2012) (quoting *Sobol v. Capital Management*, 102 Nev. 444,
446 (1986)).

28 ⁴² *Guion v. Terra Marketing of Nevada, Inc.*, 90 Nev. 237, 239 (1974).

⁴³ *Id.* at 240.

1 Plaintiffs will also suffer irreparable harm because the Emergency Directives constitute
2 unjustifiable action that interferes with, and indeed outright prohibits, the full operation of
3 Plaintiffs' business. As recognized in *Finkel*, *Guion*, and *Sobol*, a business suffers irreparable
4 harm through the loss of operations, customers, profits, and/or credit. In this case, the
5 Emergency Directives that Plaintiffs seek to enjoin utterly obliterate Plaintiffs business. The
6 Emergency Directives have banned and restricted operations, declared unlawful the endeavors
7 undertakes to earn a profit, have resulted in a loss of customers, decimated profits and have
8 damaged business credit by forcing the burden of the State's executive-declared policy on the
9 wallets, balance sheets, and credit accounts of Plaintiffs' business.
10

11 Plaintiffs must severely restrict business activities based on the The severe restrictions
12 created implemented through the Governor's Emergency Directives have transformed
13 Plaintiffs' business from a profitable endeavor to a loss-maker—not because of economic
14 realities or market forces. Rather, Plaintiffs' business became unprofitable as a direct result of
15 Governor Sisolak's Declarations and Emergency Directives that have prohibited Plaintiffs from
16 operating.
17

18 *Executive Order 2020-01 exceeds executive authority by authorizing and/or requiring*
19 *confidentiality of documents, plans and/or records related to emergencies other than acts of*
20 *terrorism.*
21

22 Pursuant to NRS 239C.210, Governor Sisolak is authorized to declare confidential
23 materials "prepared and maintained for the purpose of preventing or responding to an act of
24
25
26
27
28

1 terrorism⁴⁴.” Under the guise of this statutory authority, Governor Sisolak issued a far more
2 sweeping declaration, unconstrained by the statute:

3 Documents, records or other items of information which may reveal the details of
4 a specific emergency response plan or other tactical operations by a response
5 agency and any training relating to such emergency response plans or tactical
6 operations are hereby deemed confidential and not subject to subpoena or
7 discovery, and not subject to inspection by the general public⁴⁵.

8
9 This section, buried in the middle of the Executive Order, hides from the Nevada public
10 essentially all information related to any “specific emergency response plan,” and Governor
11 Sisolak has used this Executive Order to prevent meaningful public insight into the information
12 guiding his Emergency Declarations, discussed above. Not only does this Executive Order
13 surpass statutory guidelines, but it has been used to deceive the Nevada Public by the hiding
14 information supposedly justifying the Executive usurpation of legislative power which the
15 people of the State *exclusively withheld* from the Executive in their Constitution.
16

17 Furthermore, Governor Sisolak justifies Executive Order 2020-01, in part, by stating
18 “WHEREAS, Nevada Revised Statutes 239C.210 provides that certain documents, records, or
19 other items of information prepared and maintained for the purpose of preventing or responding
20 to an act of terrorism may be deemed confidential, not subject to subpoena or discovery, and
21 not subject to inspection by the general public.” Governor Sisolak, therefore, must know he
22 cannot expand the scope of the statutory confidentiality. He does so anyway.
23

24 ///

25
26
27
28 ⁴⁴ NRS 239C.210(1)

⁴⁵ Executive Order 2020-01, § 3

1 This Court must not allow the continued application of Executive Order 2020-01 to any
2 emergency not related to an act of terrorism, most importantly, the perpetual emergency of
3 COVID-19.

4 CONCLUSION

5 This Court must declare unconstitutional the Emergency Directives promulgated by
6 Governor Sisolak pursuant to the COVID-19 Declaration of Emergency because they
7 impermissibly exercise the police power of the state to establish policy, thereby constituting an
8 executive exercise of legislative power in violation of the separation of powers provisions of
9 the Nevada constitution, and the Court must declare Executive Order 2020-01 void as in excess
10 of statutory authority to the extent it authorizes or requires the confidentiality of any document,
11 plan or record related to an emergency other than an act of terrorism. Further, this Court must
12 issue a temporary and permanent injunction prohibiting the enforcement or threatened
13 enforcement, by any means whatsoever, of the Emergency Directives, because the Emergency
14 Directives unconstitutionally restrict Nevada citizens and businesses, Plaintiffs are likely to
15 succeed on the merits, and will suffer irreparable harm if an injunction is not granted. Lastly,
16 the Court must similarly restrain and enjoin the application of Executive Order 2020-01 to any
17 document, plan or record related to any emergency other than an act of terrorism.
18
19
20

21 PRAYER AND RELIEF REQUESTED

22 WHEREFORE, Plaintiffs request that this Court enter orders against Defendant, as
23 follows:

24 1. For Declaratory Relief declaring the restrictions posed on Nevada citizens and
25 businesses by Governor Sisolak's Emergency Directives promulgated pursuant to the COVID-
26 19 State of Emergency to be null and void as violative of the Nevada Constitution, and for
27
28

1 Executive Order 2020-01 to be declared unconstitutional to the extent it authorizes or requires
2 information relating to any emergency other than an act of terrorism be kept confidential ;

3 2. For a Temporary Restraining Order (and ultimately Preliminary and Permanent
4 Injunctions) prohibiting any department, division, agency, office, organization, officer, agent,
5 employee or assignee of the State of Nevada from enforcing the Emergency Directives, orders,
6 regulations and/or declarations issued by Governor Sisolak on or after March 12, 2020, whether
7 criminally, civilly, judicially or administratively. Preliminary and permanent injunction
8 preventing the Governor from enforcing the Emergency Directives, and further prohibiting the
9 application of Executive Order 2020-01 from being applied to documents, plans or records
10 relating to any emergency other than an act of terrorism;
11

12 3. Further relief as may be just and proper.
13

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED this 20th day of November, 2020.

By: /s/ Joseph S. Gilbert
JOSEPH S. GILBERT, ESQ.
Nevada Bar No.: 9033
JOEY GILBERT LAW
201 W. Liberty Street, Suite 210
Reno, Nevada 89501
Tel.: (775) 284-7000
Counsel for Plaintiffs

By: */s/ Roger O'Donnell*

 ROGER O'DONNELL, ESQ.
 Nevada Bar No.: 14593
 JOEY GILBERT LAW
 201 W. Liberty Street, Suite 210
 Reno, Nevada 89501
 Tel.: (775) 284-7000
Counsel for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>LIST OF EXHIBITS</u>	
<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>
1	<u>Declaration of Emergency</u>
2	Emergency Directive – Emergency Directive 29 and published the “Road to Recovery: Moving to a New Normal” (attached as Exhibit 2) on August 3, 2020
3	Cases of COVID-19 in Washoe County Are Likely 5 Times Higher Than Reported Cases

EXHIBIT 1

To

PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTION AND DECLARATORY RELIEF

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

CENTRAL CINEMA OF ELY, INC, a
Nevada Corporation; DON PURINTON, an
individual; and SHIRLEY PURINTON, an
individual,

Plaintiffs/Petitioners,

vs.

THE HONORABLE STEPHEN F.
SISOLAK, as Governor of the State of
Nevada,

Defendant/Respondent.

Case No.:

Dept. No.:

EXHIBIT 1



DECLARATION OF EMERGENCY

WHEREAS, Nevada Revised Statutes, Chapter 414, authorizes the Governor to issue a proclamation declaring a state of emergency when a natural emergency or disaster of major proportions has occurred within this state, and the assistance of state agencies is needed to supplement the efforts and capabilities of political subdivisions to save lives, protect property, and protect the health and safety of persons in this state, particularly through a coordinated response; and

WHEREAS, the Centers of Disease Control and Prevention (CDC) are responding to an outbreak of a respiratory illness that has since been confirmed in numerous countries, including the United States; and

WHEREAS, the respiratory disease has been named coronavirus disease 2019, abbreviated as COVID-19; and

WHEREAS, the World Health Organization declared the COVID-19 outbreak a pandemic; and

WHEREAS, the State of Nevada has been coordinating with the federal government, as well as local health authorities, health care facilities, and providers of health care to prepare for, and identify possible cases of COVID-19 in the State of Nevada; and

WHEREAS, the nearby states of California, Washington, Oregon, Arizona, and Utah have been impacted by COVID-19 and have already declared a state of emergency; and

WHEREAS, there are multiple confirmed and presumptive cases of COVID-19 in the State of Nevada; and

WHEREAS, the Nevada Department of Health and Human Services is working with local health authorities to identify any other potential cases of COVID-19 in the State; and

WHEREAS, the Chief Medical Officer has reported that a public health emergency exists in the State; and

WHEREAS, the Governor has determined that the State of Nevada is experiencing events that require a coordinated response for the health and safety of the public; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides: "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada."

NOW THEREFORE, I, Steve Sisolak, Governor of the State of Nevada, pursuant to the authority vested in me by the Constitution and laws of the State of Nevada, hereby declare an emergency and direct all state agencies to supplement the efforts of all impacted and threatened counties to save lives, protect property, and protect the health and safety of persons in this state. Under my authority, I will perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.

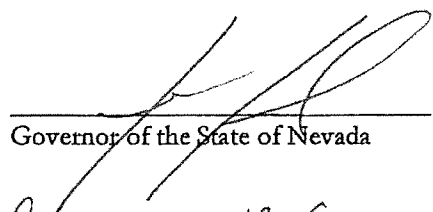
IT IS HEREBY ORDERED THAT:

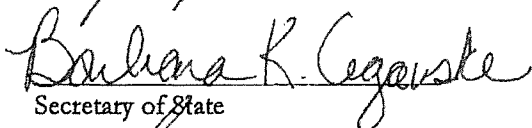
- SECTION 1: The State Emergency Operations Center be activated to coordinate a response to minimize the impacts, and prevent the further transmission of, COVID-19 to persons in this state; and
- SECTION 2: An Emergency Team be established to coordinate the response to COVID-19; and
- SECTION 3: The Emergency Team will consult with the Nevada Tribal Emergency Coordinating Council to ensure a coordinated response to COVID-19; and
- SECTION 4: The Administrator of the State Purchasing Division, pursuant to Nevada Administrative Code 333.114, to the extent necessary, may authorize an emergency purchase for any amount, or provide the using agency with written authorization for the emergency purchase, including, without limitation, a description of the justification for authorizing the emergency purchase, and suspend the standard procurement process to allow the purchase of food, supplies, services, and equipment; and
- SECTION 5: Law enforcement, including the Nevada Attorney General, will diligently monitor and investigate a coordinated increase in prices for goods or services, and particularly goods or services necessary for the health and safety of the public or that result in economic hardships, making false representations, "bait and switch" practices, failure to disclose material facts in conjunction with the sale of goods or services, or the use of coercion, duress, or intimidation in a transaction in violation of consumer protection laws; and
- SECTION 6: Law enforcement, including the Nevada Attorney General, will diligently ensure that persons or corporations act and perform in a lawful manner which ensures the safety, health, comfort, or repose of any considerable number of the public, do not offend public decency, or in any way renders a considerable number of persons insecure in life or the use of property.

SECTION 7: This declaration will remain in effect until the Chief Medical Officer notifies the Governor that the health event has been abated and the Governor issues an order terminating the emergency.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 12th day of March, in the year two thousand twenty.


Governor of the State of Nevada


Secretary of State

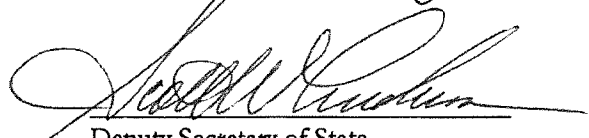

Deputy Secretary of State

EXHIBIT 2

To

**PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY AND PERMANENT INJUNCTION AND DECLARATORY RELIEF**

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

CENTRAL CINEMA OF ELY, INC, a
Nevada Corporation; DON PURINTON, an
individual; and SHIRLEY PURINTON, an
individual,

Plaintiffs/Petitioners,

vs.

THE HONORABLE STEPHEN F.
SISOLAK, as Governor of the State of
Nevada,

Defendant/Respondent.

Case No.:

Dept. No.:

EXHIBIT 2



ROAD TO RECOVERY: Moving to a New Normal

August 3, 2020



Road to Recovery: Moving to a New Normal

The State of Nevada remains in the response stage to the COVID-19 pandemic and will be for the foreseeable future. To be successful, Nevada has developed a sustainable response model, one that will allow the Administration to utilize all available state and county assets in this response and recovery effort, maximize consistency and accountability, and prioritize the communication of the State's most accurate data to the public and to decisionmakers. This is a natural evolution in the State's response, and one that recognizes the need for a deliberate and predictable response to the protracted crisis of a global pandemic.

The plan outlined here provides for these considerations. First, it recognizes the Governor's intent to protect essential capacities and capabilities for addressing this crisis while also protecting vulnerable populations. Second, it provides a structured and predictable approach for political subdivisions in Nevada to understand how State officials are interpreting county-level data and to see what mitigation measures will be put in place to protect the health and safety of Nevadans. And third, it creates a coordinating body and timeline for the rest of the year to assess data and communicate restrictions to local governments.

This first component, the critical statewide metrics, allow the Governor to monitor the elements that are essential to Nevada's overall response. They are key capacities, such as hospital beds, ventilators, and access to personal protective equipment (PPE); they include monitoring all three elements of statewide testing capacity: specimen collection, laboratory testing, and disease investigation (case investigation and contact tracing); and these metrics include the State's ability to prevent outbreaks as they occur and to protect vulnerable populations. These metrics have been essential indicators to decision makers throughout the State since the Governor unveiled his initial plan, and they remain critical today.

The second component, monitoring county criteria, establishes a key innovation that will allow statewide partners to better respond for the long term. Since the beginning of Nevada's response to this pandemic, statewide decision makers have relied on daily data. While these data have improved over time, they have not always been true and current as of their date of release, and therefore, they have not always presented the most reliable depiction of the trends in our state. Nevada will continue to work to improve reporting systems and refine our data on hand, however, the best way to proceed is to lengthen the periods of reporting key data.

Through this plan, counties will all be assessed according to the same data, and all with expanded timelines, as outlined below. These data will be assessed against three criteria,



Road to Recovery: Moving to a New Normal

and decisions will be made regarding increased, static, or decreased mitigation levels for each county based on the current trajectory of the severity and exposure of the virus. Based on the critical statewide metrics described above, the Governor may also impose or relax additional restrictions in a variety of cases.

The final component, ongoing communication, coordination, and collaboration is intended to ensure that this plan can be implemented in a way that meets statewide needs. It establishes the key agencies and leaders at the State and local level and provides a timeline for carrying out this plan. This is intended to ensure that the State's effort is coordinated and that decisions are communicated with as much advance notice and community input as possible.

Together, the three components of this plan will help Nevada continue to evolve and improve its ongoing response over the long term. It will ensure that Nevada's effort remains federally supported, state managed, and locally executed. And it will ensure that we continue to protect the health and safety of all Nevadans.

1: Critical statewide metrics

There are several critical metrics that track statewide resources, efforts, and populations, regardless of which county or tribal nation that they may call home. If there is an elevated risk impacting these metrics in Nevada, the Governor may issue statewide directives to ensure these critical services remain intact.

These metrics have guided Nevada's efforts since the beginning of the statewide response, and they include:

- Hospital Capacity
- Access to Personal Protective Equipment
- Testing Capacity
- Case Investigation and Contact Tracing
- Protection of Vulnerable Populations
- Enforcement

These critical statewide metrics will also be used to evaluate the transmission risk and situation in each county on an ongoing basis, along with the county criteria, which are outlined below.

2: County Criteria

Background



Road to Recovery: Moving to a New Normal

Nevada's counties are diverse in many ways and have been impacted by COVID differently. To ensure that each county is assessed for elevated disease transmission, the Nevada Health Response Team, a collaboration between the Governor's Office, Department of Health and Human Services, and the Division of Emergency Management, have created a county tracker. This tracker will be updated at least weekly to monitor progress.

Understanding the Data Being Monitored

When reviewing the data, a few assumptions should be noted, such as:

- COVID positive case rates among state and federal prison inmates and staff are also included in the disease transmission data.
- Testing data may help explain or provide context for interpreting the elevated disease transmission data.
- County Testing Positivity Rate may not be accurate due to lack of reporting of patient county of residence by providers.

Elevated Disease Transmission

The 30-day case rate and 14-day testing positivity rate are used to assess the level of COVID-19 burden in a county. For each measure, the higher the number, the more a county is impacted by COVID-19. However, it is important to look at this data in the context of average number of tests per day, as well as who is being tested. In general, higher number of tests per day indicates more widespread testing for COVID-19 beyond individuals who have symptoms. This means that more individuals who either do not have COVID-19 or have COVID-19 but are asymptomatic will be tested. As a result, as the number of tests per day increases, the case rate may increase (due to the identification of asymptomatic cases) and the testing positivity rate may decrease (due to more testing among individuals who do not have COVID-19). Accordingly, the specific criteria for ongoing assessment of counties are as follows:

1. **Average number of tests per day (per 100,000) < 150.** The average number of molecular tests resulted during the previous week in a county, divided by the number of people living in the county. This number is then multiplied by 100,000 to control for varying populations in counties. Due to reporting delay, this is reported over a 14-day period with a 7-day lag. Counties that average fewer than 150 tests per day will meet this criterion.
2. **Case rate (per 100,000) > 200.** The total number of cases diagnosed and reported over a 30-day period divided by the number of people living in the county. This number is then multiplied by 100,000 to control for varying populations in

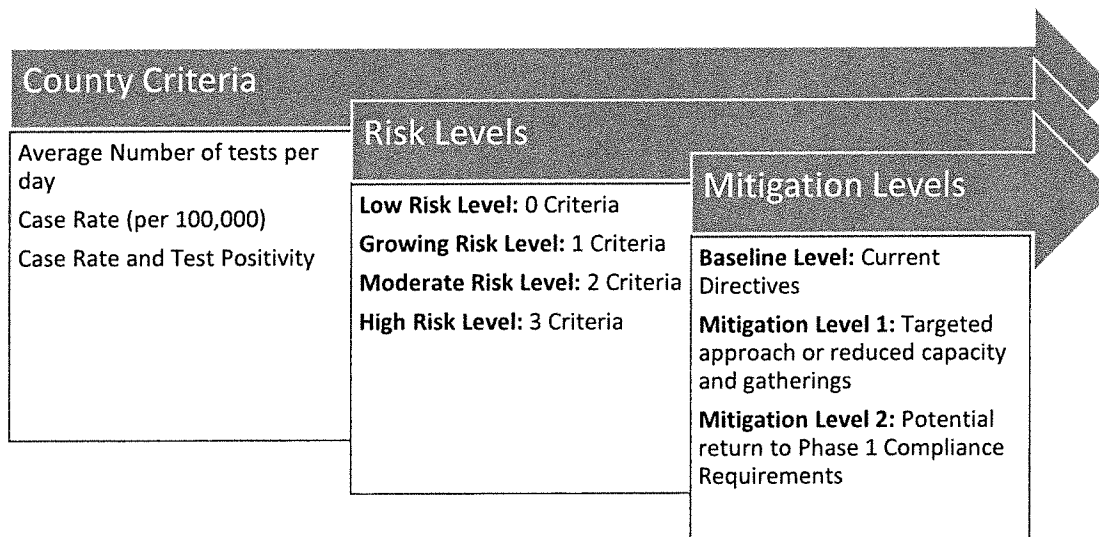


Road to Recovery: Moving to a New Normal

counties. Counties with a case rate greater than 200 per 100,000 will meet this criterion.

3. **Case rate (per 100,000) > 50 AND testing positivity > 7.0%.** This is reported over a 14-day period with a 7-day lag. The total number of confirmed cases (identified via positive molecular tests) divided by the total number of unique people tested (molecular only). This number is then multiplied by 100 to get a percentage. Due to reporting delay (which may be different between positive and negative tests), there is a 7-day lag. Counties with a test positivity > 7.0% paired with case rate greater than 50 per 100,000 will meet this criterion.

A county is flagged for elevated disease transmission if it meets two of the three criteria in consecutive weeks. As described in greater detail in the section below, a county experiencing increased risk with respect to meeting two or more of these criteria for two or more consecutive weeks will enter an assessment and review process with the state that could result in changing the county's mitigation level. As shown below, *the criteria determine the risk level and the risk level determine the mitigation level.*



It is important to note that these criteria are slightly different than the similar criteria used in determining the outcomes provided in Directive 027, which closed bars in certain counties. These changes were driven by input from statewide partners and refinements determined by members of the Nevada Health Response team. Due to these changes, the jurisdictions meeting two or three criteria have changed.



Road to Recovery: Moving to a New Normal

County-level Implementation and Actions

The level of mitigation that may be required in each county is determined by both the degree of severity and the duration at the level (growth and reduction of severity). However, there may be items of special consideration or mitigating circumstances that impact the level of mitigation requested or required of the county. For example, if specific data is available that indicates the exposure risk in a particular county is due to a specific business or type of business or is isolated in a particular region within one community, mitigation may apply to those entities or areas only.

If a county is found to be at a higher level the first week, they will enter a warning week. During the warning week a county or entity will be notified of the criteria used to determine the risk, and following that there will be a consultation with that entity or jurisdiction as well as a discussion regarding next steps that could be taken and any available public health assistance from the State. The Local Empowerment Advisory Committee (LEAP) may also be involved in the consultation.

- **Severity of Exposure Risk**

- **Low Risk Level:** County met 0 criteria
- **Growing Risk Level:** County met 1 criterion
- **Moderate Risk Level:** County met 2 criteria
- **High Risk Level:** County met 3 criteria

- **Duration**

The speed at which mitigation levels may increase is implemented at a shorter duration than relaxing mitigation levels. Therefore, increases in mitigation measure may occur within a week or two if the trend is showing increased spread but lessening or relaxing of those mitigation levels will be reviewed at longer intervals.

- Static Example
 - A county remains at a Low or Growing Risk Level: Remain at Baseline Mitigation Level
- Enhanced Mitigation Example
 - Week 1 at Same or Increased Risk Level: Warning Week at Baseline Mitigation Level
 - Week 2 at Same or Increased Risk Level: Mitigation Level 1
 - Week 5 at Same or Increased Risk Level: Mitigation Level 2
- Relaxing of Mitigation Example (if county started at Mitigation Level 2)
 - Week 1 at Same or Decreased Risk Level, with a score of less than 2: Planning Week



Road to Recovery: Moving to a New Normal

- Week 3 at Same or Decreased Risk Level, with a score of less than 2: Reduction of Mitigation Level by 1 (to Mitigation of Level 1)
 - Week 5 at Same or Decreased Risk Level, with a score of less than 2: Reduction of Mitigation to Baseline Mitigation Level
- Items of Special Consideration and Mitigating Circumstances Related to Clusters/Outbreaks may include, but are not limited to, the following items:
 - COVID-19 conditions in regional geography and tribal nations
 - Cases in institutional settings
 - Long-term Care Facilities (residents)
 - Prisons (inmates)
 - Cases among families/households

Mitigation Level

Mitigation levels may be targeted to specific industries, businesses, or communities based on findings during case investigation and contact tracing and other pertinent details affecting the disease progression locally. These mitigation levels are recommended to reduce the spread of infection and may be modified based on state and county consultation.

- **Baseline Mitigation Level:**
 - Maintain Statewide Directive Compliance
- **Mitigation Level 1**
 - Continue Statewide Directive Compliance and
 - ***Either*** take targeted action to address spread based on data
 - ***Or*** high-risk settings where face coverings may need to be removed (food establishment, pool, gym/fitness location, and bar) may move to 25% capacity
 - ***And*** public gatherings cannot exceed 25 people
- **Mitigation Level 2:**
 - Continue Statewide Directive Compliance and
 - ***Either*** take targeted action to address spread based on data
 - ***Or*** state or local business licenses may be removed for targeted businesses if outbreak at those locations cannot be controlled
 - ***And*** potential return to Phase 1 recommendations, which may include closure of high-risk businesses to curbside and delivery only services,



Road to Recovery: Moving to a New Normal

closure of pools, curfew provisions imposed and further reductions of public gatherings

NOTE: Schools fall under a different criterion than the mitigation requirements noted above.

Targeted Approach

This new approach will ensure the State, in coordination with each county, can assess all available data, evaluate key metrics, and make timely decisions based on the disease burden and transmission risk in each region throughout Nevada. Reviewing this critical data and metrics such as status of hospitalizations, disease investigation reports, and more will allow the State to better understand the capacity of each county to respond and then take targeted actions to help mitigate the spread. The goal of this targeted approach is to address identified risk areas and take action, and to avoid broad-based closures or limitations that could harm businesses who may not be the cause of spread.

In the case that there is not enough data or information needed to take a targeted approach in a county, or if a county is not collaborating with the State in a productive manner, the Task Force and/or the Governor maintain the right to take action and implement mitigation measures in accepted high risk settings.

4. Ongoing Communication, Coordination, and Collaboration

COVID-19 Response Task Force

State Agency Accountability

A task force will be established to support this concept and to ensure statewide adoption. At a minimum, it will be made up of heads of key state agencies, private sector representatives, and local representatives. This task force will be charged with ensuring accountability for state-level efforts, coordinating essential activities between departments, and providing a sustainable model for receiving and sharing data and vetting proposals and recommendations.

The task force will be chaired by the Governor's COVID-19 Response Director and representatives from the following agencies should be appointed by the chair:

1. Department of Health and Human Services
2. Department of Business and Industry
3. Division of Emergency Management
4. Department of Education
5. Nevada National Guard
6. Governor's Office of Finance



Road to Recovery: Moving to a New Normal

7. Nevada Hospital Association
8. Nevada Association of Counties
9. Nevada League of Cities
10. Nevada State Public Health Laboratory
11. Other necessary members at the determination of the chair

To ensure the success of this approach, the task force shall perform the following duties:

1. Meet on at least a weekly basis
2. Provide a current situation report on COVID-19 in Nevada, including weekly case numbers and county-level analysis
3. Provide an overview of the COVID-19 response effort in Nevada, including enforcement numbers from throughout the state and other findings
4. Assess county status per these guidelines and make decisions for actions to be taken over the next week
5. Collaborate with county representatives to determine best methods for reducing the community burden of COVID-19

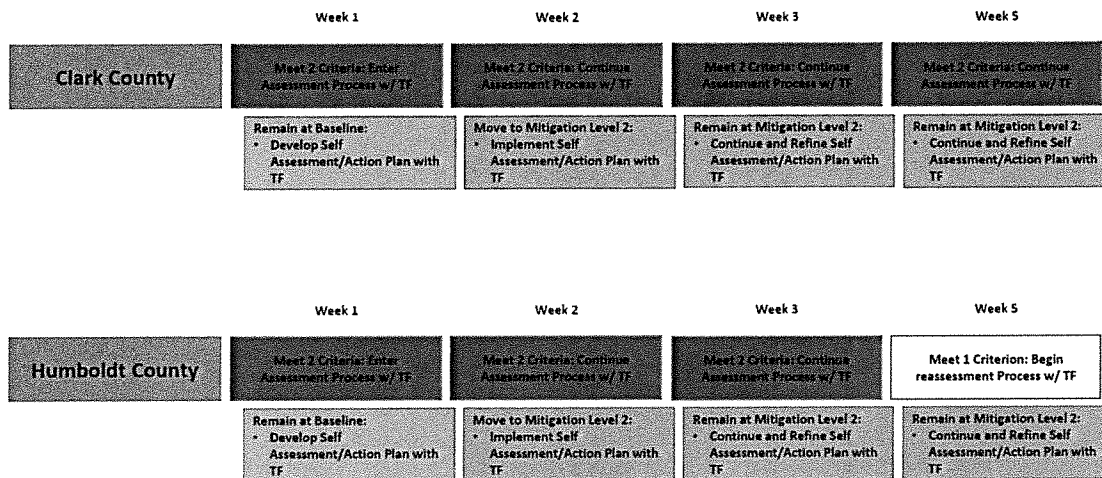
County Accountability

Following the weekly meetings of the task force, the Governor's COVID-19 Response Director and related team will reach out to county leadership and inform them of the State's assessment of county exposure risk, based on county criteria data and critical statewide metrics. Counties not experiencing elevated COVID-19 risk will be informed that they will remain at the Baseline Mitigation Level. Counties experiencing elevated COVID-19 risk will enter the state assessment process with the task force.

These counties in the state assessment process will be asked to complete a local risk assessment and action plan based on the Critical Statewide Metrics and provide them to the task force; the task force will evaluate the risk assessment and action plan based on state and federal data; and once approved by the task force, a local strike team will be responsible for implementing the action plan and reporting metrics to the task force. An example of this process for two counties is provided below:



Road to Recovery: Moving to a New Normal



Additionally, during the assessment process, counties will be asked to include details on activities, industries, or businesses experiencing the greatest reports of possible exposure sites within the region. This includes the broad categories to support more public messaging efforts (ex: reminder to food establishments to require face coverings until food is served if there is an increased spread in restaurants). Additionally, the counties will be provided a list of the businesses or locations named through the disease investigation process. If there are notable outliers where infection seems to be spreading at disproportionately high rates, the local strike team consisting of applicable city, county, state, or other regulatory entities that have oversight over the business or location will be deployed to conduct a thorough investigation of the business and develop a mitigation plan for that business based on the findings of the investigation.

###

EXHIBIT 3

To

**PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY AND PERMANENT INJUNCTION AND DECLARATORY RELIEF**

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

CENTRAL CINEMA OF ELY, INC, a
Nevada Corporation; DON PURINTON, an
individual; and SHIRLEY PURINTON, an
individual,

Plaintiffs/Petitioners,

vs.

THE HONORABLE STEPHEN F.
SISOLAK, as Governor of the State of
Nevada,

Defendant/Respondent.

Case No.:

Dept. No.:

EXHIBIT 3

reno gazette journal

NEWS

Cases of COVID-19 in Washoe County are likely 5 times higher than reported cases

Siobhan McAndrew Reno Gazette Journal

Published 10:51 a.m. PT Jul. 8, 2020 | Updated 1:50 p.m. PT Jul. 8, 2020

This story has been updated to include comments and details from the University of Nevada, Reno and the Washoe County Health District.

The number of people in Washoe County with coronavirus is likely thousands more than what is being reported.

That is just one of the findings coming out of an antibody study done by the Washoe County Health District and the University of Nevada, Reno.

The study gives insight into how prevalent COVID-19 was compared to positive test results that were being reported in June.

Read more: Dr. Mark Pandori is working to uncover secrets of COVID-19's spread in Nevada

The study took blood samples from 234 adults from a random group of 1,270 households from 128 census blocks in Washoe County. The tests were done on June 9 and 10 when the number of reported cases was 1,832.

According to the study, the number of people infected was as much as five times higher, meaning more than 8,200 people in the general population were likely infected.

Of the 234 people who were randomly chosen, six were found to have COVID-19 antibodies. Initial findings found that of those six, only one reported having symptoms. Using weighted values to the people tested based on age, sex and race, health officials said there are as many as five times as many people infected as were reported.

It is the first study of its kind in Nevada and one of few done across the country, according to Wei Yang, a UNR professor of epidemiology, biostatistics and environmental health.

"We tried to capture any potential risk factors that will help us," Yang said of asking participants to fill out a long form. He said researchers will do a deeper analysis of the results to study risk factors, job, travel or if symptoms were present.

Antibodies give insight into who may have been infected. Unlike the COVID-19 test, which can tell what is happening in real time, antibody testing lets you look back at what has happened.

"Antibody testing from a scientific perspective is a great proposition," Dr. Mark Pandori, who runs the Nevada State Lab, told the Reno Gazette Journal in June. Pandori and his team of researchers did the testing for the study. It's just one of a few similar studies being run at the lab. "It affords us to do something we rarely get to do. You get to look back in time."

What the results also show is that the percentage of people dying from COVID-19 is likely much less than what health experts estimated.

In June when the number of cases was estimated at around 1,800, there were 67 deaths, giving an approximate fatality rate closer to 4 percent. With more than 8,000 likely infected it shows that the virus is killing fewer than 1 percent.

Heather Kerwin, the epidemiology program manager at the health district, said the results show that there were infections and transmission chains completely missed.

"We know that in our community and across the nation, with all infectious diseases, that you are really only looking at the tip of the iceberg," Kerwin said.

Kerwin said the results can be used to see who is being missed in testing.

*Siobhan McAndrew tells stories about the people of Northern Nevada and covers education in Washoe County. Read her journalism right here. **Consider supporting her work by subscribing to the Reno Gazette Journal.***

Joseph S. Gilbert, Esq. - NSB 9033
Roger M. O'Donnell, Esq. - NSB 14593

JOEY GILBERT LAW

201 W. Liberty Street, Suite 210

Reno, Nevada 89501

Tel: 775.284.7000

Fax: 775.284.3809

joey@joeygilbertlaw.com; roger@joeygilbertlaw.com

Counsel for Plaintiffs, Central Cinema of Ely, Inc., Don & Shirley Purinton

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

CENTRAL CINEMA OF ELY, INC, a
Nevada Corporation; DON PURINTON, an
individual; and SHIRLEY PURINTON, an
individual,

Plaintiffs/Petitioners,

vs.

THE HONORABLE STEPHEN F.
SISOLAK, as Governor of the State of
Nevada,

Defendant/Respondent.

Case No.:

Dept. No.:

**DECLARATION OF JOSEPH S. GILBERT, ESQ., IN SUPPORT OF REQUEST FOR
TEMPORARY RESTRAINING ORDER**

I, Joseph S. Gilbert, Esq., make this Declaration pursuant to NRS. 53.045

1. I am an attorney duly licensed to practice law in the State of Nevada and I represent Plaintiffs in the above-entitled action.
2. I make this Declaration in support of Plaintiffs' Application for Temporary Restraining Order and Preliminary and Permanent Injunction and Declaratory Relief and, filed concurrently herewith.
3. This Declaration is made upon my own personal knowledge, some of which has been gained through my participation as Counsel for Plaintiffs, including in this action.
4. The following attempts have been made to notify Defendant, Governor Sisolak of this

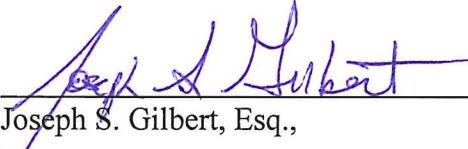
1 action and the TRO it requests:

- 2 a. A true and correct PDF copy of all documents being filed herewith has been
3 emailed to Kevin Benson, the newly appointed general counsel for the
4 Governor's Office, to kevin@bensonlawnv.com which is the email address for
5 Kevin Benson on the Nevada Bar's attorney "find an attorney" website.
- 6 b. A Facsimile copy of each and every pleading being filed herewith has been sent
7 to (775) 684-5683, which is the fax number publicly listed for the State Capitol
8 Building in Carson City on the "Contact" website for the Governor's Office.
- 9 c. A Facsimile copy of each and every pleading being filed herewith has been sent
10 to (702) 486-2505, which is the fax number publicly listed for the Grant Sawyer
11 State Office Building in Las Vegas on the "Contact" website for the Governor's
12 Office.
- 13 d. A copy of each and every pleading being filed herewith will be provided to Battle
14 Born Process Service, a process service company in the State of Nevada, for
15 service on Governor Sisolak and on Attorney General Aaron Ford.

16 5. Further, affiant sayeth naught.

17 I hereby affirm under penalty of perjury that the assertions of this Declaration are true.

18 EXECUTED on November 20, 2020.

19
20 
21 Joseph S. Gilbert, Esq.,

22 **AFFIRMATION**

23 The above-signed hereby affirms this document does not contain the social security
24 number of any person.

25
26
27
28

Case No.

Dept. No.

The undersigned hereby affirms this document
Does not contain a social security number.

In The Seventh Judicial District Court

OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WHITE PINE

CENTRAL CINEMA OF ELY, INC, a Nevada Corp;
DON & SHIRLEY PURINTON,

Plaintiff,

Vs.

THE HONORABLE STEPHEN F. SISOLAK, as Governor
of the State of Nevada; and STATE OF NEVADA,

Defendant.

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOU BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS (The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members, and legislators each has 45 days after service of this summons within which to file an answer to the complaint). READ THE INFORMATION BELOW VERY CAREFULLY.

If you intend to defend this lawsuit, within 20 days (or 45 days for State of Nevada) after this summons is served on you (not counting the day of service), you must:

1. File with the Clerk of Court a formal written answer to the complaint or petition.
2. Pay the required filing fee to the court, or file an Application to Proceed In Forma Pauperis and request a waiver of the filing fee.
3. Serve a copy of your answer upon the Plaintiff whose name and address is shown below.

If you fail to respond, the Plaintiff can request your default. The court can then enter a judgment against you for the relief demanded in the complaint or petition.

Dated this _____ day of _____, 20____

NICHOLE BALDWIN
CLERK OF COURT

Issued on Behalf of Plaintiff:

By:

Plaintiff's

Name: Joey Gilbert, Esq. & Roger M. O'Donnell, Esq.

Deputy Clerk

Address: Joey Gilbert Law / 201 W. Liberty St., Ste. 210

Reno, NV 89501 / (775)284-7700 / Email: joey@joeygilbertlaw.com & roger@joeygilbertlaw.com

City

State

Zip

Joseph S. Gilbert, Esq. - NSB 9033

Roger M. O'Donnell, Esq. – NSB 14593

JOEY GILBERT LAW

201 W. Liberty Street, Suite 210

Reno, Nevada 89501

Tel: 775.284.7000

Fax: 775.284.3809

joey@joeygilbertlaw.com; roger@joeygilbertlaw.com

Counsel for Plaintiffs, Central Cinema of Ely, Inc., Don & Shirley Purinton

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

CENTRAL CINEMA OF ELY, INC, a
Nevada Corporation; DON PURINTON, an
individual; and SHIRLEY PURINTON, an
individual,

Plaintiffs/Petitioners,

vs.

THE HONORABLE STEPHEN F.
SISOLAK, as Governor of the State of
Nevada,

Defendant/Respondent.

Case No.:

Dept. No.:

REQUEST FOR SUBMISSION

COME NOW Plaintiffs, CENTRAL CINEMA OF ELY, INC, a Nevada Corporation;
DON PURINTON, an individual; and SHIRLEY PURINTON, an individual, by and through
their attorneys, Joseph S. Gilbert, Esq. and Roger M. O'Donnell, Esq., Of Joey Gilbert Law,
and hereby requests the Plaintiffs' Application for Temporary Restraining Order and
Preliminary and Permanent Injunction and Declaratory Relief filed concurrently herewith be

///

///

///

1 submitted to the Court for decision.

2 **AFFIRMATION**
3 **(Pursuant to NRS 239B.030)**

4 The undersigned does hereby affirm that the preceding document filed in the above
5 referenced matter does not contain the social security number of any person.

6 DATED this 20th day of November 2020.

7 **JOEY GILBERT LAW**

8 By: /s Joseph S. Gilbert

9 JOSEPH S. GILBERT, ESQ.

10 Nevada Bar No.: 9033

11 JOEY GILBERT LAW

12 201 W. Liberty Street, Suite 210

13 Reno, Nevada 89501

14 Tel.: (775) 284-7000

15 *Counsel for Plaintiffs*

16 By: /s Roger O'Donnell

17 ROGER M. O'DONNELL, ESQ.

18 Nevada Bar No.: 14593

19 JOEY GILBERT LAW

20 201 W. Liberty Street, Suite 210

21 Reno, Nevada 89501

22 Tel.: (775) 284-7000

23 *Counsel for Plaintiffs*