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September 8, 2020

**Via Electronic Mail-JEDS**

The Honorable Robert Lougy, J.S.C.  
Mercer County Civil Courthouse  
175 South Broad Street, 3rd Floor  
Trenton, N.J. 08650

RE: Judith M. Persichilli v. Atilis Gym Bellmawr  
Docket No.: MER-C-48-20

Dear Judge Lougy:

This office represents Atilis Gym Bellmawr. Please accept this letter brief in opposition to Plaintiff's motion for an amend enforcement Order filed on August 31 2020. Specifically, Defendant does not consent to the portion of Plaintiff's August 28, 2020 Final Agency Decision which is limiting Defendant to open its business to allow only 25% of its capacity on its premises. *See* Pl. Ex. B. Defendant objects on the grounds that this decision is not supported by any quantifiable data, with no public input, without regard to the Administrative Procedure Act, and is thus arbitrary and capricious.

**LEGAL ARGUMENT**

**Point I**

**Amending the Court's August 18, 2020 Order is  
Improper as the Factual Predicates Have  
Changed.**

Plaintiff submits to the Court that "the factual predicates or legal authorities set forth in the court's August 18, 2020 Order have not changed". *See* Plaintiff's Brief Page 7. This is wholly false and could not be further from the truth. First, plaintiff is disregarding that fact that they concede the July 1, 2020 Closure Order is fundamentally different than the August 28, 2020 Order. The former of which allows for indoor training only with personal training, while the latter is allowing gyms to open up indoor training without the same. Thus, if the Court would want to find defendant in contempt, plaintiff would have to seek a new court finding of such. The State is asking for a continual finding of contempt from a wholly new order. Accordingly, the Court should not require defendant to pay a \$15,497.76 daily fine without a new finding. In sum, the factual reliance which the Court found in making its earlier August 18, 2020 Order is fundamentally different.

Moreover, as of August 21, 2020 Atilis Gym is now an extension of the Rik Mehta for Senate campaign in which persons gather to exercise their constitutionally protected First Amendment rights. Therefore, any fines levied against defendant by way of the Court's August 18, 2020 Order should be cut off by the August 21, 2020 announcement of the Atilis Gym now being a gathering for Rik Mehta supporters. (See Exhibit A Certification of Frank Trumbetti) Importantly, defendant has not collected any payment from former gym members in connection with them attending any functions located on its premises. Persons that appear on site are now

requested if they chose to act as volunteers for the Rik Mehta for Senate campaign as a condition upon entering the premises. Thus, they have changed from a profit-business to a politically protected group.

**POINT II**

**Defendant is Entitled to An Evidentiary Hearing**

It has been held that “if there is a contested issue of fact regarding the defendant's compliance with the order or ability to comply, the trial court must conduct an evidentiary hearing to resolve the factual dispute.” DEP v. Mazza and Sons, Inc., 406 N.J. Super. 13, 31 (App. Div. 2009). Here, it has been alleged that the facts surrounding prior Court orders have not changed. This is squarely disputed by defendant. There are new enforcement orders with different requirements by plaintiff, as well as the changed circumstances including defendant's operation is now a political operation. Pursuant to Executive Order 173, starting on August 4, 2020 indoor activities were capped at 25% for political functions. Therefore, the total amount of fines levied against defendant cut off on August 21, 2020 upon associating with Rik Mehta for Senate.

**Conclusion**

For the reasons stated above, the Court should deny in part Plaintiff's Order to Amend its prior Order.

Respectfully yours,

/s/ John McCann  
John McCann, Esq.

**EXHIBIT A**

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JUDITH M. PERSICHILLI, R.N., B.S.N.,  
M.A., in her official capacity as  
Commissioner of the New Jersey  
Department of Health

*Plaintiff,*

v.

ATILIS GYM BELLMAWR,  
*Defendant*

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: MER-C-48-20

CIVIL ACTION

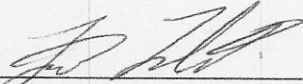
**CERTIFICATION OF FRANK  
TRUMBETTI**

I, FRANK TRUMBETTI of full age, hereby certify as follows:

1. As of August 21, 2020, Atilis Gym ceased its operation as a gym and began operating as a rally site for Rik Mehta for Senate.
2. Atilis Gym is now an extension of the Rik Mehta for Senate campaign.
3. Rik Mehta is a candidate for the office of United States Senate.
4. Upon the above-mentioned date, Atilis Gym stopped accepting payment from its gym members.
5. To gain access to the premises, any person is required to agree to be a volunteer for the Rik Mehta for Senate Campaign.
6. Volunteering activities can vary from making phone calls in favor of Rik Mehta's candidacy, to disseminating flyers for the Rik Mehta campaign, or any other activities they deem appropriate.

7. In assenting to this agreement to volunteer Rik Mehta for Senate, all persons seeking entry are asked to fill out a form agreeing to this. (See Exhibit A)

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

By:   
\_\_\_\_\_

Frank Trumbetti

Dated: 9/7/2020