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12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**
 14

15
 16 MY DREAM BOUTIQUE, a
 17 California corporation, on behalf of
 18 itself and all others similarly situated;
 19 ANAHIT KHACHATRYAN, an
 20 individual; NELLI VIRABYAN, an
 21 individual; DI ORO SALON, INC., a
 22 California corporation, on behalf of
 23 itself and all others similarly situated;
 24 VARDGES AVETISYAN, an
 25 individual; AL-AZIM INC., a
 26 California corporation, on behalf of
 27 itself and all others similarly situated;
 28 RIAZ MOHAMMED, an individual;
 WESTFIELD PROPERTY
 MANAGEMENT LLC, a Delaware
 limited liability company;
 WESTFIELD TOPANGA OWNER
 LLC, a Delaware limited liability
 company; SHERMAN OAKS
 FASHION ASSOCIATES, LP, a
 Delaware limited liability partnership;
 CULVER CITY MALL LLC, a
 Delaware limited liability company;
 SANTA ANITA SHOPPINGTOWN
 LP, a Delaware limited liability

CASE NO. 2:20-cv-8896

CLASS ACTION COMPLAINT

1 partnership; and VALENCIA TOWN
2 CENTER VENTURE, L.P., a Delaware
3 limited liability partnership,

4 Plaintiffs,

5 v.

6 COUNTY OF LOS ANGELES;
7 COUNTY OF LOS ANGELES
8 BOARD OF SUPERVISORS;
9 DR. MUNTU DAVIS, individually and
10 in his official capacity as County of
11 Los Angeles Health Officer;
12 DR. BARBARA FERRER, in her
13 official capacity as Director, County of
14 Los Angeles Department of Public
15 Health; and ALEX VILLANUEVA, in
16 his official capacity as Sheriff, County
17 of Los Angeles,

18 Defendants.

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1 Plaintiffs My Dream Boutique, a California corporation (“My Dream
2 Boutique”), on behalf of itself and all others similarly situated; Anahit Khachatryan
3 (“Ms. Khachatryan”); Nelli Virabyan (“Ms. Virabyan”); Di Oro Salon, Inc. (“Salon
4 Dioro”), on behalf of itself and all others similarly situated; Vardges Avetisyan (“Mr.
5 Avetisyan”); Al-Azim Inc. (“Al-Azim”), on behalf of itself and all others similarly
6 situated; Riaz Mohammed (“Mr. Mohammed”); Westfield Property Management
7 LLC (“Westfield”); Westfield Topanga Owner LLC; Sherman Oaks Fashion
8 Associates, LP; Culver City Mall LLC; Santa Anita Shoppingtown LP; and Valencia
9 Town Center Venture, L.P. (collectively, “Plaintiffs”) allege as follows against
10 Defendants County of Los Angeles (the “County”); County of Los Angeles Board
11 of Supervisors (the “Board”); Dr. Muntu Davis, individually and in his official
12 capacity as County of Los Angeles Health Officer (“Dr. Davis”); Dr. Barbara Ferrer,
13 in her official capacity as Director, County of Los Angeles Department of Public
14 Health; and Alex Villanueva, in his official capacity as Sheriff, County of Los
15 Angeles (collectively, “Defendants”):

16 **PRELIMINARY STATEMENT**

17 1. This case is about unlawful and unjustifiable action by the County and
18 its officials, ostensibly in the name of protecting public health, that in fact has
19 absolutely no public health justification. Defendants have forced hundreds of
20 businesses in indoor malls to close, kept thousands of County residents out of work,
21 caused millions of dollars in lost wages and revenue, and brought many businesses
22 to the brink of collapse—without offering a single valid, science- or health-based
23 reason for their actions, and despite the extensive measures indoor malls and their
24 tenants have taken to protect employees and customers. In doing so, the County and
25 its officials have overtly discriminated against businesses in indoor malls and their
26 employees without any rational basis whatsoever, trampling the constitutional rights
27 of those businesses and individuals. Plaintiffs bring this lawsuit to stop Defendants’
28 unconstitutional conduct and the massive, irreparable harms Defendants are

1 inflicting on Plaintiffs, other indoor mall businesses in the County, and their
2 employees.

3 2. At the beginning of the COVID-19 pandemic, government officials
4 closed businesses on a dramatic and unprecedented scale, attempting to minimize
5 the spread of the disease at a time they knew little about it. Over the past six months,
6 much has been learned about COVID-19, how it spreads, and how that spread can
7 be minimized or prevented. As a result, federal, state, and local officials have
8 regularly revised their guidance, recognizing that many activities—including
9 commercial activities—can be done safely, especially if employees and customers
10 take sensible and effective precautions, such as maintaining social distance and
11 wearing masks. When Plaintiffs were permitted to reopen for a short period this
12 summer, they took these precautions and more to protect employees and customers.
13 For example, My Dream Boutique (operating a children’s clothing store in Fashion
14 Square), Salon Dioro (operating a hair salon in Fashion Square), and Al-Azim
15 (operating the Metropolis Big & Tall men’s clothing store in Westfield Culver City)
16 each posted signs regarding social distancing, restricted the capacity of the store,
17 required face masks, offered hand sanitizer, implemented extensive cleaning
18 protocols, and kept the entrance open whenever the store was open.

19 3. The County has generally deferred to the State of California with
20 respect to business closures and reopenings. Over the summer, the County allowed
21 Plaintiffs and other businesses to reopen after the State changed its guidance, and
22 backtracked when the State backtracked.

23 4. On August 28, 2020, after extensive review of the relevant data and
24 science, the California Department of Public Health issued a statewide order
25 allowing counties throughout the State to reopen indoor malls and shopping centers
26 subject to sensible and effective restrictions, including 25% maximum capacity,
27 closed common areas, and closed food courts in counties where COVID-19 is
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1 deemed “widespread.”¹ That action is consistent with the actions of state and local
2 governments nationwide. And today, nearly every county has implemented the
3 State’s measured, evidence-based approach, and allowed indoor malls and shopping
4 centers to reopen. Indeed, Orange and San Bernardino Counties, which border Los
5 Angeles County, allowed indoor malls and shopping centers to reopen just days after
6 the August 28 order—and counties with uniformly worse metrics regarding the
7 spread of COVID-19 have done the same. Plaintiffs would reopen their indoor malls
8 and businesses subject to the restrictions put in place by the State.

9 5. Plaintiffs cannot reopen, however, because the County has refused to
10 follow the State’s science-based approach. On September 2, 2020, Dr. Davis, the
11 County of Los Angeles Health Officer, ordered that, in this County, all indoor
12 portions and operations of indoor malls and shopping centers must “remain closed
13 to the public until further notice.”² That action breaks sharply from the County’s
14 previous practice of aligning its business restrictions with those imposed by the
15 State—as one member of the Board recently recognized.³ The County’s forced
16 closure of indoor malls and shopping centers stands in stark contrast to its treatment
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18 ¹ See Exhibit 1, California Department of Public Health, Statewide Public Health
19 Officer Order (Aug. 28, 2020), *available at* [https://www.cdph.ca.gov/Programs/
20 CID/DCDC/CDPH%20Document%20Library/COVID-19/8-28-20_Order-Plan-
Reducing-COVID19-Adjusting-Permitted-Sectors-Signed.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/8-28-20_Order-Plan-Reducing-COVID19-Adjusting-Permitted-Sectors-Signed.pdf).

21 ² See County of Los Angeles Department of Public Health, Order of the Health
22 Officer, Reopening Safer at Work and in the Community for Control of COVID-19
(revised Sept. 2, 2020), *available at* [http://publichealth.lacounty.gov/media/
23 coronavirus/docs/HOO/2020_09_02_HOO_Safer_at_Home.pdf](http://publichealth.lacounty.gov/media/coronavirus/docs/HOO/2020_09_02_HOO_Safer_at_Home.pdf). The most recent
24 County Order of the Health Officer was issued on September 4 with minor changes,
25 and no changes to the County’s restrictions on indoor malls and shopping centers.
See Exhibit 2, County of Los Angeles Department of Public Health, Order of the
26 Health Officer, Reopening Safer at Work and in the Community for Control of
27 COVID-19 (revised Sept. 4, 2020), *available at* [http://publichealth.lacounty.gov
28 /media/Coronavirus/docs/HOO/2020_09_04_HOO_Safer_at_Home.pdf](http://publichealth.lacounty.gov/media/Coronavirus/docs/HOO/2020_09_04_HOO_Safer_at_Home.pdf).

³ See, e.g., Board of Supervisors Meeting, at 2:24:55 (Sept. 15, 2020) (statement of
Supervisor Barger) (“Early on, this Board agreed to align ourselves with the State,
and somewhere along the way . . . we deviated from that. . . . There are areas where
we have been given the green light, such as the indoor malls, but we have decided
. . . to take a stand back.”), *available at* [https://lacounty.granicus.com/MediaPlayer
php?view_id=1&clip_id=8051](https://lacounty.granicus.com/MediaPlayer.php?view_id=1&clip_id=8051).

1 of virtually every other retail establishment, including large and small scale retailers
2 and hair salons and barbershops not inside malls—all of which were permitted to
3 reopen immediately and operate at a minimum at 25% capacity, in accordance with
4 statewide guidelines. And the County’s departure from the State’s order separates
5 it from other California counties—all of which, to Plaintiffs’ knowledge, have
6 allowed indoor malls and shopping centers to reopen.

7 6. There is absolutely no evidence to support the County’s unique and
8 discriminatory treatment of indoor malls and shopping centers. There is no data
9 showing that indoor malls are any less safe than the large retail stores that have been
10 open for months or the “outdoor” malls that the County has permitted to reopen. Nor
11 has the County or any other Defendant offered a data-based explanation—or any
12 reason whatsoever—for this differential treatment. The September 2, 2020 order is
13 out of line with statewide standards, as well as the standards established by state and
14 local governments nationwide.

15 7. The County’s unique—and uniquely unfavorable—treatment of indoor
16 malls and shopping centers is particularly perverse because the County has seen
17 steady improvement in its COVID-19 transmission metrics since issuing the
18 September 2, 2020 order, but has not bothered to reconsider its position.

19 8. This continued unreasoned and unjustified policy has needlessly
20 shuttered hundreds of businesses and thrown thousands of employees out of work,
21 devastating those businesses, their employees, and their families. For example, Al-
22 Azim has been forced to close its Metropolis Big & Tall clothing store, just because
23 it is located in the interior of a County mall. Because Al-Azim depends on foot
24 traffic within the mall to generate business, its sales and profits have plummeted. It
25 has been forced to lay off all of its employees, including Mr. Mohammed and his
26 two brothers, who have operated Metropolis Big & Tall for nearly 30 years. Mr.
27 Mohammed and his brothers have devoted their lives to building and managing their
28 family business, but the forced closure threatens the business’s viability. Similarly,

1 Salon Dioro and My Dream Boutique have been forced to close merely because they
2 are located in the interior of Fashion Square. The owners of these small family
3 businesses have devoted decades to building customer loyalty, but now they have
4 had no choice but to lay off their employees. My Dream Boutique, Salon Dioro, and
5 Al-Azim may permanently shut down their stores if the County does not
6 immediately lift the closure order.

7 9. Because of the September 2, 2020 order, hundreds of other businesses
8 at indoor malls and shopping centers in the County also remain closed to the public,
9 depriving them of revenue they desperately need and thousands of employees of
10 gainful employment—all without any justification whatsoever or means to challenge
11 the government’s overreaching and arbitrary action.

12 10. The County’s order has arbitrarily deprived Plaintiffs of their core
13 property interests and other legal rights without due process and in violation of their
14 right to equal protection under the law. It must be struck down to prevent the
15 substantial continuing harm that Plaintiffs, hundreds of other businesses, and
16 thousands of employees at indoor malls and shopping centers throughout the County
17 face because of the actions of the County and the other Defendants.

18 **THE PARTIES**

19 11. Plaintiff My Dream Boutique is a California corporation. It owns and
20 operates the store My Dream Boutique, which sells children’s clothing, accessories,
21 and shoes. My Dream Boutique is located in the Fashion Square shopping center in
22 Sherman Oaks, California. My Dream Boutique holds a business license from the
23 City of Los Angeles to operate that location. Currently, My Dream Boutique is
24 closed due to Defendants’ actions.

25 12. Plaintiff Anahit Khachatryan is a resident of the County of Los
26 Angeles. Ms. Khachatryan is an employee and owner of My Dream Boutique.

27 13. Plaintiff Nelli Virabyan is a resident of the County of Los Angeles. Ms.
28 Virabyan is an employee of My Dream Boutique.

1 14. Plaintiff Di Oro Salon, Inc. is a California corporation. It owns and
2 operates Salon Dioro, a full-service boutique salon offering hair, skin, and nail
3 services. Salon Dioro is located in the Fashion Square shopping center in Sherman
4 Oaks, California. Salon Dioro holds a business license from the City of Los Angeles
5 to operate that location. Currently, Salon Dioro is closed due to Defendants' actions.

6 15. Plaintiff Vardges Avetisyan is a resident of the County of Los Angeles.
7 Mr. Avetisyan is an employee and owner of Salon Dioro.

8 16. Plaintiff Al-Azim Inc. is a California corporation. It owns and operates
9 Metropolis Big & Tall, which sells men's clothing. Metropolis Big & Tall is located
10 in the Westfield Culver City shopping center in Culver City, California. Al-Azim
11 holds a business license from the City of Culver City to operate that location.
12 Currently, Metropolis Big & Tall is closed due to Defendants' actions.

13 17. Plaintiff Riaz Mohammed is a resident of the County of Los Angeles.
14 Mr. Mohammed is an employee and owner of Al-Azim.

15 18. Plaintiff Westfield Property Management LLC is a Delaware limited
16 liability company with its headquarters in Century City, California. Westfield is a
17 manager of commercial retail real estate throughout the United States, including
18 Westfield Topanga, Fashion Square, Westfield Culver City, Westfield Santa Anita,
19 and Valencia Town Center. As property manager, Westfield is responsible for
20 operations, including building maintenance and leasing, and employs the
21 management employees for the facilities it manages.

22 19. Plaintiff Westfield Topanga Owner LLC is a Delaware limited liability
23 company with its headquarters in Century City, California. Westfield Topanga
24 Owner LLC owns the Westfield Topanga shopping center in Canoga Park,
25 California.

26 20. Plaintiff Sherman Oaks Fashion Associates, LP is a Delaware limited
27 liability partnership with its headquarters in Century City, California. Sherman Oaks
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1 Fashion Associates, LP owns the Fashion Square shopping center in Sherman Oaks,
2 California.

3 21. Plaintiff Culver City Mall LLC is a Delaware limited liability
4 partnership with its headquarters in Century City, California. Culver City Mall LLC
5 owns the Westfield Culver City shopping center in Culver City, California.

6 22. Plaintiff Santa Anita Shoppingtown LP is a Delaware limited liability
7 partnership with its headquarters in Century City, California. Santa Anita
8 Shoppingtown LP owns the Westfield Santa Anita shopping center in Arcadia,
9 California.

10 23. Plaintiff Valencia Town Center Venture, L.P. is a Delaware limited
11 liability partnership with its headquarters in Century City, California. Valencia
12 Town Center Venture, L.P. owns the Valencia Town Center shopping center in
13 Valencia, California.

14 24. Defendant County of Los Angeles is a charter county organized and
15 existing as a legal subdivision under the laws of the State of California.

16 25. Defendant County of Los Angeles Board of Supervisors is a five-
17 member governing body, elected pursuant to the County of Los Angeles Charter.

18 26. On information and belief, Defendant Dr. Muntu Davis is a resident of
19 the County of Los Angeles. He is a party to this action in his individual capacity
20 and in his official capacity as County of Los Angeles Health Officer.

21 27. Defendant Dr. Barbara Ferrer is a party to this action in her official
22 capacity as Director of the County of Los Angeles Department of Public Health.

23 28. Defendant Alex Villanueva is a party to this action in his official
24 capacity as Sheriff of the County of Los Angeles.

25 **JURISDICTION AND VENUE**

26 29. The Court has subject matter jurisdiction over this action pursuant to
27 28 U.S.C. § 1331 because the action arises under 42 U.S.C. § 1983 and the Equal
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1 Protection and Due Process Clauses of the Fourteenth Amendment to the United
2 States Constitution.

3 30. Jurisdiction is also appropriate in this Court pursuant to 28 U.S.C.
4 § 1343(a)(3) “[t]o redress the deprivation, under color of any State law, statute,
5 ordinance, regulation, custom or usage, of any right, privilege or immunity secured
6 by the Constitution of the United States or by any Act of Congress providing for
7 equal rights of citizens or of all persons within the jurisdiction of the United States.”

8 31. This Court has supplemental jurisdiction over Plaintiffs’ claims
9 asserted under the Constitution of the State of California pursuant to 28 U.S.C.
10 § 1367(a), because Plaintiffs’ state constitutional claims arise from the same nucleus
11 of operative facts as its federal claims and thus form part of the same case or
12 controversy under Article III of the United States Constitution.

13 32. The Central District of California is the appropriate venue for this
14 action pursuant to 28 U.S.C. § 1391(b)(1) and (2) because it is a District in which
15 Defendants reside, maintain offices, exercise their authority in their official
16 capacities, and have enforced the order at issue in this case.

17 **GENERAL ALLEGATIONS**

18 **Plaintiffs Have Safely Operated Retail Stores Inside**
19 **Shopping Malls During The COVID-19 Pandemic**

20 33. COVID-19⁴ was declared a pandemic by the World Health
21 Organization on March 11, 2020, and on March 13, President Trump declared a
22 national emergency. In the days immediately following, state and local officials
23 across the country began issuing “stay-at-home,” “shelter-in-place,” and similar

24 _____
25 ⁴ COVID-19 is a disease caused by the SARS-CoV-2 virus. The World Health
26 Organization recognizes that the disease name, rather than the virus name, is used
27 “to enable discussion on disease prevention, spread, transmissibility, severity and
28 treatment.” World Health Organization, *Why Do the Virus and the Disease Have
Different Names?*, [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) (last visited Sept. 28, 2020). Consistent with that purpose, this complaint will refer to COVID-19 rather than the virus that causes it.

1 orders requiring individuals to remain in their homes with limited exceptions.
2 During this period of great uncertainty about COVID-19 and how it spreads, many
3 of these orders also required all non-essential businesses to temporarily close in-
4 store activities, and some initially required the complete closure of common areas of
5 malls and shopping centers. These closures included Westfield Topanga, Fashion
6 Square, Westfield Culver City, Westfield Santa Anita, and Valencia Town Center,
7 along with malls and shopping centers throughout the United States.

8 34. As state and local governments learned more about COVID-19, how it
9 spreads, and how the likelihood of spread can be minimized, they gradually scaled
10 back restrictions on individuals and commercial activities, including retail
11 operations. These governmental actions were typically combined with sensible,
12 achievable, and effective measures meant to inhibit the person-to-person spread of
13 COVID-19, such as disinfectant protocols, occupancy limitations, social distancing,
14 and the mandatory wearing of face masks.⁵

15 35. My Dream Boutique, Salon Dioro, and Metropolis Big & Tall were
16 open from mid-June to mid-July 2020, when all mall operations were permitted to
17 open in the County. During this time, My Dream Boutique, Salon Dioro, and Al-
18 Azim took extensive precautions to safeguard the health of employees and
19 customers. Among other things, each of the stores posted applicable County
20 protocols in their stores, enforced social distancing requirements, required face
21 masks, offered hand sanitizer in the store and at the entrance, implemented extensive
22 cleaning protocols, and kept the entrances propped open while their stores was open.
23 Salon Dioro installed Plexiglas partitions between each salon station and only
24 allowed customers to use every other station, while My Dream Boutique and Al-

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27 ⁵ See, e.g., Governor of Texas, Executive Order GA 18, at 3 (Apr. 27, 2020),
28 available at https://gov.texas.gov/uploads/files/press/EO-GA-18_expanded_reopening_of_services_COVID-19.pdf.

1 Azim did not allow customers to use dressing rooms. Each of the stores operated at
2 50% maximum capacity at all times, in accordance with County requirements.

3 36. State and local governments overwhelmingly have recognized that,
4 with appropriate limitations and measures, most retail business, including those
5 inside indoor malls and shopping centers, can be operated safely. Indeed, Westfield
6 safely manages multiple indoor malls throughout California (and across the United
7 States), following state and local modifications on operations and its own stringent
8 protocols, and with the utmost attention to the health and safety of its employees,
9 contractors, retailers, and customers.

10 **Westfield’s Shopping Centers Are Safe, But Nonetheless Interior**

11 **Retailers Have Been Forced To Close Indoor Operations**

12 37. On March 19, 2020, due to the COVID-19 pandemic, the County
13 initially ordered the closure of all indoor malls and shopping centers, including
14 Westfield Topanga, Fashion Square, Westfield Culver City, Westfield Santa Anita,
15 and Valencia Town Center. Only “Essential Businesses” with entrances accessible
16 to the public from the exterior of the indoor mall or shopping center were permitted
17 to reopen. On May 26, the County issued an Order allowing indoor operations of
18 malls and shopping centers to reopen. Westfield Topanga, Fashion Square,
19 Westfield Culver City, Westfield Santa Anita, and Valencia Town Center each
20 reopened shortly thereafter, with appropriate and effective safety precautions going
21 above and beyond State and local requirements.

22 38. On July 13, in response to a statewide surge in cases, the California
23 Department of Public Health issued a Statewide Public Health Officer Order closing
24 all indoor malls in the County, although retailers with exterior entrances and
25 essential businesses were permitted to remain open. The County then issued a public
26 health order on July 14 mirroring the new restrictions.

27 39. My Dream Boutique, Salon Dioro, Al-Azim, and the vast majority of
28 retailers at Westfield Topanga, Fashion Square, Westfield Culver City, Westfield

1 Santa Anita, and Valencia Town Center are “interior retailers,” meaning they have
2 no separate entrance accessible to the public from the exterior of the mall; *i.e.*,
3 customers must enter the indoor common area of the mall to access these retailers.
4 “Exterior retailers” are currently permitted to open for indoor operations at 25%
5 capacity (with the exception of restaurants with exterior entrances, which are open
6 only for outdoor dining and takeout), but these retailers constitute only six of
7 Westfield Topanga’s over 200 retailers, five of Fashion Square’s over 100 retailers,
8 19 of Westfield Culver City’s over 160 retailers, 45 of Westfield Santa Anita’s over
9 200 retailers, and 71 of Valencia Town Center’s over 160 retailers. And only a
10 handful of interior retailers at these malls operate non-food service essential
11 businesses, such that they may invite consumers into their spaces by appointment to
12 provide essential services, including optometry appointments. The remaining
13 retailers at Westfield Topanga, Fashion Square, Westfield Culver City, Westfield
14 Santa Anita, and Valencia Town Center—nearly 700 interior retailers—have, like
15 My Dream Boutique, Salon Dioro, and Al-Azim, been permitted to offer sales only
16 through curbside pickup or delivery since July 13.

17 40. These closures have continued despite the extensive COVID-19
18 exposure mitigation protocols that Westfield has implemented to ensure the safety
19 of its retailers, their customers, and its own personnel. Westfield partnered with
20 Bureau Veritas, a recognized world leader in testing, inspection, and certification
21 services, to conduct a review and audit of Westfield’s world-class COVID-related
22 health and safety practices, policies, and procedures. By September 2020, Bureau
23 Veritas had certified several United States shopping centers with the industry-
24 leading hygiene and safety excellence label, “SafeGuard.” This label is applied to a
25 property only after an on-site audit and certification that the property has
26 implemented policies and procedures aligned with local regulatory requirements and
27 health and safety practices which support mitigation of the spread of COVID-19.
28 All of Westfield’s indoor County malls—Westfield Topanga, Fashion Square,

1 Westfield Culver City, Westfield Santa Anita, and Valencia Town Center—have
2 been SafeGuard certified. That is for good reason. As discussed below, Westfield
3 has taken extensive measures to ensure a safe and healthy shopping environment,
4 and its indoor County malls are exceptionally safe.

5 41. ***Westfield Topanga*** is an over 2 million square foot mall. It and its
6 tenants normally employ approximately 4,300 individuals. From October 2016 to
7 December 2019, Westfield Topanga underwent extensive renovations costing over
8 \$70 million, and has upgraded its heating, ventilation, and air conditioning
9 (“HVAC”) systems to use state-of-the-art MERV 11 air filters. The mall has vast
10 and voluminous multistory pavilions that provide ample room for every patron to
11 maintain social distancing and greatly reduce the risks of COVID-19 exposure.
12 Walkways in the mall are 12 to 25 feet wide, and ceiling heights range from 30 to
13 80 feet.

14 42. ***Fashion Square*** is an over 850,000 square foot mall. It and its tenants
15 normally employ approximately 2,000 people. The mall completed a \$1.7 million
16 construction project in January 2020. Walkways in the mall are 12 to 48 feet wide,
17 and ceiling heights range from 20 to 50 feet.

18 43. ***Westfield Culver City*** is an over 1 million square foot mall. It and its
19 tenants normally employ approximately 2,800 people. The walkways and ceiling
20 heights throughout the mall allow for ample social distancing and air flow—with
21 walkways 11 to 30 feet wide and ceilings 19 to 62 feet high.

22 44. ***Westfield Santa Anita*** is an over 1 million square foot mall. It and its
23 tenants normally employ approximately 3,900 individuals. The mall’s walkways are
24 generally over 30 feet wide, and its ceilings are 14 to 50 feet high. The mall
25 implemented a one-way traffic system on the second level to direct customer traffic
26 flow, and also has plans in place to limit vehicular traffic in the event that capacity
27 limits are reached.

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1 45. *Valencia Town Center* is an over 1 million square foot mall. It and its
2 tenants normally employ approximately 3,700 people. Walkways in the mall are 10
3 to 35 feet wide, and ceiling heights range from 35 to 60 feet. Valencia Town Center
4 meticulously analyzed its hourly capacity tracking data from 2019 and confirmed
5 that the mall has more than enough space to reopen while complying with social
6 distancing guidelines.

7 46. In accordance with Westfield's protocols and local, County, and State
8 requirements, Westfield Topanga, Fashion Square, Westfield Culver City, Westfield
9 Santa Anita, and Valencia Town Center have implemented extensive measures to
10 reduce the risk of COVID-19 transmission and to protect employees, retailers, and
11 customers. These measures include signage, queueing markers, traffic flow arrows,
12 and other cues throughout the properties promoting active symptom monitoring;
13 making mask wearing mandatory, hand washing, and physical distancing; hand
14 sanitizers installed at entrances and throughout the malls; dedicated janitorial teams
15 focused on frequent and intense cleaning of all high-touch areas; technology to
16 measure and track visitor capacity in real time and quickly activate mitigation plans;
17 closure of common areas and seating in the food courts; and extensive training and
18 continual patrolling by mall security staff to ensure compliance with all protocols.

19 **California Permits Indoor Malls To Open At Reduced Capacity**

20 47. On August 28, 2020, the California Department of Public Health issued
21 a Statewide Public Health Officer Order establishing a system that places each
22 California county into a Tier based on health data, including case rates per capita
23 and percentage of positive COVID-19 tests. *See* Exhibit 1 ("Statewide Order"). The
24 County is currently in "Tier 1," and Tiers are updated weekly as data is tracked.
25 Beginning August 31, Tier 1 counties were permitted to reopen indoor malls and
26 shopping centers, including their interior retailers, with maximum 25% capacity,
27 closed common areas, and closed food courts. Tier 1 counties were also permitted
28 to open all other indoor retail stores with maximum 25% capacity.

1 48. California’s treatment of indoor malls and their retailers is consistent
 2 with how these businesses are being treated throughout the United States. To
 3 Plaintiffs’ knowledge, no state or California county other than the County of Los
 4 Angeles requires indoor operations of malls and their retailers to remain closed. In
 5 fact, Westfield and its affiliates own 89 shopping centers across the globe, and only
 6 its properties in the County remain closed.

7 **The County Health Officer’s Order Opens All Retail Stores For Business,**
 8 **Except Those Located In Indoor Malls**

9 49. The Statewide Order provides: “A local health jurisdiction may
 10 continue to implement or maintain more restrictive public health measures,” but only
 11 *“if the jurisdiction’s Local Health Officer determines that health conditions in that*
 12 *jurisdiction warrant such measures.”* Statewide Order ¶ 4 (emphasis added). To
 13 Plaintiffs’ knowledge, all California counties except the County of Los Angeles have
 14 aligned with the provisions of the Statewide Order and have allowed indoor malls
 15 and shopping centers to reopen. For example, on August 31, Westfield reopened
 16 indoor operations at malls in Riverside, Santa Clara, and Placer Counties, all of
 17 which were Tier 1 counties at the time of reopening.

18 50. On September 2, 2020, Dr. Davis, the Health Officer for the County of
 19 Los Angeles, issued an order titled “Reopening Safer at Work and in the Community
 20 for Control of COVID-19.” See Exhibit 2 (“County Order”).⁶ Paragraph 9 of the
 21 County Order describes a category of “Lower-Risk Businesses.” “Lower-Risk
 22 Businesses are businesses that are not specified in Paragraph 7 of this Order”—such
 23 as indoor dining, bars, and entertainment venues, which must remain closed—“and
 24 not defined as Essential Businesses in Paragraph 18 of this Order”—such as banks,
 25 hardware stores, and grocery stores.

26
 27
 28 ⁶ The County Order was revised on September 4, 2020, but the revisions are not relevant to this Complaint. See *supra* note 2.

1 51. The County Order defines indoor malls and shopping centers as Lower-
 2 Risk Businesses, recognizing the inherently safe nature of those facilities. County
 3 Order ¶ 7(d). My Dream Boutique, Salon Dioro, Al-Azim, and other interior
 4 retailers in indoor malls, such as retail stores selling clothes, shoes, toys, jewelry,
 5 books, and sunglasses, are also defined as Lower-Risk Businesses. And, in general,
 6 Lower-Risk Businesses, including large department stores, small retailers, and hair
 7 salons and barbershops not inside malls are now able to open to the public with
 8 capacity limitations. *See* County Order ¶ 7(a), (e).

9 52. The County Order thus claims that it “aligns the County with” the
 10 Statewide Order, “which describes a tiered approach to relaxing and tightening
 11 restrictions on activities based upon specified criteria[.]” County Order ¶ 1. And
 12 that is true in many respects. But when it comes to indoor malls and their interior
 13 retailers, the County Order differs sharply from the Statewide Order—as a member
 14 of the Board recently acknowledged.⁷ Even though the County Order recognizes
 15 that these indoor malls and retail businesses are Lower-Risk Businesses, the County
 16 has ordered them to remain closed. Paragraph 9(d) provides:

17 ***For Indoor Malls and Shopping Centers***, defined as: A building with
 18 (7) or more sales or retail establishments with adjoining indoor space,
 19 ***all indoor portions and operations remain closed to the public until***
 20 ***further notice***. Businesses located entirely within the interior of an
 21 Indoor Mall or Shopping Center that are not temporarily closed
 22 pursuant to Paragraph 7 of this Order, may offer goods and services via
 23 outdoor curb-side pickup. Businesses or activities that are part of an
 24 Indoor Mall or Shopping Center and that are not closed pursuant to
 25 Paragraph 7 of this Order, but that are accessible to the public from the
 26 exterior of the Indoor Mall or Shopping Center may remain open to the
 27 public.

28 (Emphasis added.)

53. As a result of Paragraph 9(d), interior retailers at Westfield Topanga,
 Fashion Square, Westfield Culver City, Westfield Santa Anita, and Valencia Town

⁷ *See supra* note 3.

1 Center that are Lower-Risk Businesses, including My Dream Boutique, Salon Dioro,
2 and Al-Azim, are unable to open to the public, and employees of these retailers, such
3 as Ms. Khachatryan, Ms. Virabyan, Mr. Avetisyan, and Mr. Mohammed, are unable
4 to return to work. But they would be able to open to the public and resume work if
5 the retailers had an exterior entrance or were not otherwise located within an indoor
6 mall.

7 54. Appendix E to the County Order details “Protocols for Shopping Center
8 Operators.” *See* Exhibit 3 (“Appendix E”). Appendix E allows businesses located
9 entirely within the interior of a mall or shopping center only to offer “online ordering
10 and curbside pick-up outside the shopping center” in accordance with the following
11 guidance:

12 Retailers that choose to offer curbside pick-up should set pick-up times
13 for items so that employees are able to bring pre-ordered items [to]
14 customers at a designated site or sites outside the mall. Pick-up sites
15 should be clearly marked and customers should be encouraged to pre-
16 pay for their orders. On arrival, customers should notify the employees
17 that they have arrived for pick-up and should remain in their car. An
18 employee, wearing a cloth face covering should bring the customer’s
19 order to the designated pick-up site in a container (e.g., a bin, shopping
20 cart, or other container) and place it directly in the customer’s trunk.

21 55. The County Order’s allowance of strictly regulated outdoor pickup has
22 not provided meaningful relief to My Dream Boutique, Ms. Khachatryan, Ms.
23 Virabyan, Salon Dioro, Mr. Avetisyan, Al-Azim, Mr. Mohammed, the hundreds of
24 retailers Countywide that have been forced to close, and the thousands of employees
25 Countywide who have lost work. Currently offering curbside pickup are 35 of
26 Westfield Topanga’s 212 interior retailers, 19 of Fashion Square’s 98 interior
27 retailers, 17 of Westfield Culver City’s 142 interior retailers, 28 of Westfield Santa
28 Anita’s 156 interior retailers, and 11 of Valencia Town Center’s 93 interior retailers.
Curbside pickup is just not feasible for many businesses and is not an adequate

1 substitute for in-person shopping, and provides little if any relief to the hundreds of
2 interior retailers at these five malls.

3 56. Al-Azim has not implemented curbside pickup because Metropolis Big
4 & Tall’s business depends on foot traffic within the mall, as do many other interior
5 retailers. Salon Dioro also has not offered curbside pickup because salon services,
6 which cannot be offered curbside, are the heart of its business. My Dream Boutique
7 has attempted to implement a curbside pickup program, but the expense of
8 promoting and managing curbside pickup has not been worth the returns. Since
9 March 2020, My Dream Boutique has only completed about 20 curbside orders.

10 57. Appendix E also details how “Essential Businesses” located in a mall
11 or shopping center’s interior may operate:

12 Essential services that operate inside a shopping center such as medical
13 services (clinics or optometrists) may continue to operate. If these
14 businesses do not have a door that opens to the exterior of the center,
15 these businesses should work by an appointment-only system. Staff
16 should meet each patient/client at the mall entrance and escort them to
17 the service location. As much as feasible other methods such as
18 telemedicine options or on-line services should be offered.

19 58. Very few interior retailers at Westfield Topanga, Fashion Square,
20 Westfield Culver City, Westfield Santa Anita, and Valencia Town Center offer
21 “essential services,” and those that do must operate by appointment only, with
22 employees escorting customers into and out of the mall. Currently only a few
23 optometrists and a UCLA Health primary care office are open by appointment in
24 these locations.

25 59. The County’s forced closure of indoor operations at Westfield
26 Topanga, Fashion Square, Westfield Culver City, Westfield Santa Anita, and
27 Valencia Town Center severely limits Westfield’s and the mall owners’ returns on
28 their significant investments of time and resources devoted to making these malls
prime shopping locations in their neighborhoods. And despite the forced closure,
the mall owners and Plaintiffs must still pay substantial state and local taxes, as if

1 the malls were open for business as usual. This tax burden is significant—
2 Westfield’s indoor County malls generate approximately \$20 million in real estate
3 taxes annually.

4 60. In sum, the County Order requires closure of all indoor operations of
5 malls and their interior retailers, except to the extremely limited extent that interior
6 retailers may offer curbside pickup entirely outside of the mall, and interior Essential
7 Businesses may offer essential services by appointment only. The County Order
8 stands in direct contradiction to the Statewide Order.

9 **Defendants Have Offered No Valid Reason For**
10 **Their Departure From Statewide Policy**

11 61. While indoor malls and their interior retailers are now open and
12 operating safely *elsewhere* in California and the United States, and large and small
13 retail stores *not* located in indoor shopping centers or malls are now open and
14 operating safely in the County, indoor shopping centers and their interior retailers in
15 the County, like My Dream Boutique, Salon Dioro, and Al-Azim, uniquely remain
16 closed, and many of their employees, like Ms. Khachatryan, Ms. Virabyan, Mr.
17 Avetisyan, and Mr. Mohammed, remain out of work—without any explanation or
18 any scientific support. Although the Statewide Order allows local health
19 jurisdictions to implement more restrictive public health measures “if the
20 jurisdiction’s Local Health Officer determines that health conditions in that
21 jurisdiction warrant such measures” (Statewide Order ¶ 4), Dr. Davis has not
22 identified any “health conditions” in the County justifying the County’s refusal to
23 align with the Statewide Order and nationwide practice with respect to indoor malls
24 and shopping centers. Nor has any other Defendant.

25 62. The State’s data does not support treating Los Angeles County
26 differently from other Tier 1 counties. For example, the State currently classifies
27 Los Angeles and Imperial Counties as Tier 1, *i.e.*, counties where COVID-19 is
28 deemed “widespread.” The key factors that the State uses for tiering are uniformly

1 worse in Imperial County: Its most recent adjusted case rate for tiering purposes
2 was 8.9 new COVID-19 positive cases per day per 100,000 people (vs. 7.0 for Los
3 Angeles County) and a 9.0% positivity rate (vs. 2.8% for Los Angeles County).⁸
4 But, inexplicably, indoor malls and shopping centers in Imperial County are allowed
5 to be open, while those in Los Angeles County must remain closed.⁹

6 63. In addition, the State's data for Los Angeles County has been
7 consistently improving. When the County Order was issued, the County's adjusted
8 case rate for tiering purposes was 12.3 (vs. 7.0 now) and its positivity rate was 5.0%
9 (vs. 2.8% now). Despite this improvement in the data, the County has not revisited
10 its decision to close indoor malls and shopping centers, showing that the data and
11 science are not driving the decision.

12 64. The County Order provides no explanation whatsoever for its industry-
13 specific departures from State mandates. *See* County Order ¶¶ 10-14. And there is
14 no valid public health reason for treating indoor malls and their interior retailers
15 differently. The only even arguable distinction between interior retailers (like My
16 Dream Boutique, Salon Dioro, and Al-Azim) and other retailers with exterior
17 entrances, including big box stores, is the need to pass through notably wide, high-
18 ceiled, and well ventilated interior corridors for access—as opposed to narrow
19 outdoor sidewalks where social distancing, mask usage, and other protocols are not
20 enforced—and that distinction does not support treating indoor malls and their
21 interior retailers more restrictively.

22 65. The data and science do not support any hypothesis that those wide and
23 high-ceiled interior corridors pose any greater risk of transmitting COVID-19.
24 Plaintiffs are unaware of any support—and the County Order identifies none—for
25

26 ⁸ *See* California Blueprint for a Safer Economy, [https://covid19.ca.gov/safer-](https://covid19.ca.gov/safer-economy)
economy (last visited Sept. 28, 2020).

27 ⁹ *See* County of Imperial, Order of the Health Officer at 6 (Aug. 30, 2020),
28 available at [http://www.icphd.org/media/managed/healthofficerorders/
Health_Officer_Order_8_30_2020_v2_002_002_.pdf](http://www.icphd.org/media/managed/healthofficerorders/Health_Officer_Order_8_30_2020_v2_002_002_.pdf).

1 the notion that settings such as spacious indoor malls and shopping centers with
 2 modern and well-maintained HVAC systems, and their interior retailers, present
 3 greater risks when compared to the large and small retailers and other businesses
 4 that the County has permitted to remain open.

5 66. The World Health Organization has advised that a “well-maintained
 6 and operated [HVAC] system can reduce the spread of COVID-19 in indoor spaces
 7 by increasing the rate of air change, reducing recirculation of air and increasing the
 8 use of outdoor air.”¹⁰ The Global Heat Health Information Network, an independent
 9 network of scientists and policymakers, completed a review of the available
 10 evidence and concluded: “Air conditioning and ventilation are considered effective
 11 control strategies for preventing workplace infection and ill health,” and “there is no
 12 strong evidence to suggest that a well-maintained air conditioning, ventilation, or
 13 other type of climate control system will contribute to the transmission of COVID-
 14 19.”¹¹

15 67. Indeed, two recent studies reported that the virus was not detected at all
 16 in air samples in the immediate vicinity of COVID-19 patients in hospitals, despite
 17 significant viral load in the patients’ respiratory secretions.¹² Another recent study

18 _____
 19 ¹⁰ *Q&A: Ventilation and Air Conditioning and COVID-19*, WORLD HEALTH
 ORGANIZATION (July 29, 2020), <https://www.who.int/news-room/q-a-detail/q-a-ventilation-and-air-conditioning-and-covid-19> (last visited Sept. 28, 2020).

20 ¹¹ *Q&A: Do Air Conditioning and Ventilation Systems Increase the Risk of Virus
 21 Transmission? If So, How Can This Be Managed?*, GLOBAL HEAT HEALTH
 INFORMATION NETWORK (May 22, 2020), <http://www.ghhin.org/heat-and-covid-19/ac-and-ventilation> (last visited Sept. 28, 2020).

22 ¹² Vincent C. C. Cheng, *et al.*, *Escalating Infection Control Response to the
 23 Rapidly Evolving Epidemiology of the Coronavirus Disease 2019 (COVID-19) Due
 24 to SARS-CoV-2 in Hong Kong*, 41 INFECTION CONTROL AND HOSPITAL
 EPIDEMIOLOGY 493, 497 (2020), available at [https://www.cambridge.org/core/
 25 journals/infection-control-and-hospital-epidemiology/article/escalating-infection-
 26 control-response-to-the-rapidly-evolving-epidemiology-of-the-coronavirus-
 disease-2019-covid19-due-to-sarscov2-in-hong-
 kong/52513ACC56587859F9C601DC747EB6EC](https://www.cambridge.org/core/journals/infection-control-and-hospital-epidemiology/article/escalating-infection-control-response-to-the-rapidly-evolving-epidemiology-of-the-coronavirus-disease-2019-covid19-due-to-sarscov2-in-hong-kong/52513ACC56587859F9C601DC747EB6EC); Sean Wei Xiang Ong, *et al.*,
 27 *Air, Surface Environmental, and Personal Protective Equipment Contamination by
 Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) from a
 28 Symptomatic Patient*, 323 JAMA 1610 (2020), available at
<https://jamanetwork.com/journals/jama/article-abstract/2762692>.

1 found that on a January 2020 flight from China to Canada, two patients with COVID-
2 19 (one of whom was actively symptomatic) did not transmit the virus to any of the
3 25 passengers seated nearby.¹³ And there have been no reports of COVID-19
4 transmission due to air recirculation at indoor malls, shopping centers, or retail
5 stores.

6 **The County Order Arbitrarily Treats**
7 **Similarly Situated Businesses Differently**

8 68. At the same time that the County has chosen to depart from the
9 Statewide Order and nationwide practice by closing indoor malls and their interior
10 retailers, the County has allowed comparable businesses to remain open for months,
11 including large retail stores (such as big-box stores and multilevel department stores
12 with elevators and escalators and narrow passage ways) and “outdoor” malls.

13 69. The County Order allows large stores such as Walmart, Target, Costco,
14 Best Buy, and Cost Plus World Market to operate within miles of the County’s
15 indoor malls. Although each of those stores sells essential items, they also on that
16 account are allowed to open all of their departments for in-store shopping and thus
17 sell any other products in their inventory including an enormous variety of non-
18 essential items. However, stores that sell comparable items in the interior of the
19 County’s indoor malls are unable to do so under the County Order, and employees
20 of those stores are unable to resume their work.

21 70. For example, Walmart may sell clothing one mile from Westfield
22 Topanga, but clothing stores such as America Eagle cannot resume indoor operations
23 under the County Order simply because they are located in Westfield Topanga’s
24 interior. Amy’s Hallmark Shop, located in Westfield Santa Anita’s interior, has been
25 forced to stop selling gifts, cards, and stationery, but Cost Plus World Market
26

27 ¹³ Kevin L. Schwartz, *et al.*, *Lack of COVID-19 Transmission on an International*
28 *Flight*, 192 CANADIAN MEDICAL ASSOCIATION JOURNAL E410 (2020), available at
<https://www.cmaj.ca/content/192/15/E410>.

1 continues to sell the same types of items only two miles away. And customers may
2 purchase cell phone cases and chargers at Best Buy less than two miles from
3 Valencia Town Center, but ZAGG is prohibited from welcoming customers in
4 Valencia Town Center's interior to purchase the same products. But there is no
5 reason to believe that, by virtue of their placement, stores within indoor malls and
6 shopping centers (which almost uniformly have wide, high-ceilinged, and well-
7 ventilated interior walkways) as a class are riskier than stores located elsewhere.
8 There is no rational basis for this differential treatment of American Eagle, Amy's
9 Hallmark Shop, ZAGG, and hundreds of other interior retailers—and neither the
10 County nor any other Defendant has offered one.

11 71. The County's arbitrary treatment of interior retailers is evident across
12 the County's indoor malls as well. Large, multilevel stores like Nordstrom, Macy's,
13 and JCPenney have been permitted to operate at Westfield Topanga, Fashion Square,
14 Westfield Culver City, Westfield Santa Anita, and Valencia Town Center for several
15 months, merely because they have exterior entrances. However, numerous stores
16 similarly selling apparel, cosmetics, shoes, and housewares in the malls' interiors
17 have been forced to close—including Metropolis Big & Tall and My Dream
18 Boutique. There is no reason to believe that, by virtue of their placement, stores
19 within indoor malls and shopping centers (which almost uniformly have wide, high-
20 ceilinged, and well-ventilated internal walkways) as a class are riskier than shopping
21 center stores with exterior entrances. There accordingly is no rational basis for this
22 differential treatment among the mall's retailers—and neither the County nor any
23 other Defendant has offered one.

24 72. The arbitrariness of these classifications is particularly evident in the
25 distinction made between department stores (in which varying types of goods are
26 sold within different sections, and under the same roof, of the same commonly
27 owned store) and indoor malls (in which varying types of goods are sold within
28 separately owned stores within the same mall). There is no rational reason to

1 conclude that the separate ownership of the stores within a mall pose a greater risk
2 than the commonly owned but distinct sections of a department store.

3 73. The County Order's irrationality when it comes to distinctions among
4 retail stores is also pronounced because it permits small retailers with narrow aisles
5 and low ceilings to remain open if they have an exterior entrance, but forbids all
6 retailers—no matter how large and well ventilated—to remain closed if they are
7 located in the interior of a mall or shopping center.

8 74. The irrationality of the County Order is further demonstrated by the fact
9 that the County elected to follow the Statewide Order and generally allow hair salons
10 and barbershops to resume operations at 25% maximum capacity, in accordance with
11 Tier 1 restrictions, beginning on September 2, 2020. County Order ¶ 9(e). Yet not
12 only can Salon Dioro, located in Fashion Square's interior and offering haircuts and
13 coloring, not resume operations, but neither can interior retailers such as Express
14 Jewelry and Repairs, which repairs jewelry in Westfield Culver City's interior, a
15 service that requires no person-to-person contact. It is inexplicable that the County
16 Order would choose to defy State guidance with respect to indoor malls—which
17 easily allow for social distancing when at reduced capacity—but to follow the State's
18 directive when it comes to salons and barbershops, as long as the business is not
19 located in the interior of an indoor mall.

20 75. As a result of these irrational policies, consumers seeking products and
21 services are now limited to shopping in a smaller number of governmentally favored
22 businesses, resulting in a greater concentration of consumers in a smaller number of
23 retail locations, rather than a disbursement of those people across large spaces where
24 social distancing would actually be more achievable.

25 **Virtually All Other Jurisdictions Have Rejected Defendants'**

26 **Arbitrary Interior/Exterior Mall Dichotomy**

27 76. The County Order's decision to close indoor malls and their interior
28 retailers while allowing retail stores with exterior entrances to remain open stands in

1 stark contrast to the approaches taken not only by California, but also by state and
2 local governments throughout the country. Although some states and localities
3 initially distinguished between interior and exterior mall and shopping center
4 retailers, they have virtually unanimously eliminated such distinctions as
5 policymakers became aware of the actual science and data. And some states, such
6 as Florida and Texas, never recognized the arbitrary interior/exterior distinction at
7 all.

8 77. To Plaintiffs’ knowledge, no state still prohibits indoor malls and
9 shopping centers from operating, and Los Angeles County is the *only* California
10 county to prohibit indoor mall and shopping center operations while allowing
11 exterior retailers to remain open. In fact, only five of the 32 commercial retail
12 properties that Westfield manages—which span seven states and six California
13 counties—are currently closed: Westfield Topanga, Fashion Square, Westfield
14 Culver City, Westfield Santa Anita, and Valencia Town Center. The County is an
15 extreme outlier, to the detriment of My Dream Boutique, Ms. Khachatryan, Ms.
16 Virabyan, Salon Dioro, Mr. Avetisyan, Al-Azim, Mr. Mohammed, all of the
17 County’s other businesses and residents, and the community at large.

18 **Plaintiffs Have Been Afforded No Process To Challenge The Lack Of Any**
19 **Rational Basis For The County Order Or The Distinctions It Draws**

20 78. According to the County Order, Dr. Davis, as County Health Officer,
21 may “issue Orders that are more restrictive than the guidance and orders issued by
22 the State Public Health Officer” only “after consultation with the Board of
23 Supervisors.” County Order ¶ 25. There is no evidence that Dr. Davis consulted
24 with the Board before issuing the County Order, which is more restrictive than the
25 Statewide Order. The lack of consultation is apparent, as any consultation would
26 have had to occur during a meeting open to the public under California’s Ralph M.
27 Brown Act, California Government Code § 54950 *et seq.*

28

1 79. No other process was available to Plaintiffs or other interested members
2 of the public to present data to the County Health Officer or Board or otherwise
3 influence the County Order before it went into effect.

4 80. Even though the County Order remains effective indefinitely, it does
5 not allow for any process to challenge, before the County Health Officer or Board,
6 its irrational classifications and determinations.

7 81. If a process were available, Plaintiffs would present scientific evidence
8 showing that indoor malls, shopping centers, and their interior retailers present no
9 greater public health risk than outdoor malls, other retailers, big-box stores,
10 barbershops, hair salons, and other businesses that have been allowed to remain open
11 or reopen. In fact, Plaintiffs would present evidence showing that indoor malls and
12 shopping centers are *safer* and allow ample opportunities for social distancing, and
13 that retailers like My Dream Boutique, Salon Dioro, and Al-Azim, as well as
14 managers like Westfield, have made substantial investments and developed stringent
15 protocols to protect employees and customers from the spread of COVID-19.

16 **Defendants' Irrational Actions Have Harmed**

17 **Plaintiffs And Residents Throughout the County**

18 82. The County's arbitrary closure of indoor malls and their interior
19 retailers has caused, and will continue to cause, substantial harms to Plaintiffs, their
20 employees, the community, and the retailers, operators, and employees of indoor
21 malls and shopping centers throughout the County. These harms include monetary
22 losses due to reduced income, sales, and rent payments, and non-monetary and
23 existential losses in the form of the loss of customer goodwill. My Dream Boutique,
24 Salon Dioro, and Al-Azim and other retailers also face the potential long-term loss
25 of customer traffic, as consumers adjust their shopping habits; utilize more and more
26 retailers outside of Westfield Topanga, Fashion Square, Westfield Culver City,
27 Westfield Santa Anita, and Valencia Town Center; and develop potentially long-

28

1 term loyalty and brand affinity for the operating stores as a substitute for those in the
2 interior of County malls.

3 83. Al-Azim has been forced to close its only location due to the County's
4 indefensible policy, simply because it is located in the interior of Westfield Culver
5 City. Al-Azim's business depends on foot traffic in the mall; closing the store has
6 caused sales and profitability to all but vanish. Mr. Mohammed, an owner and
7 employee of Al-Azim, has been devastated by this sudden upheaval of his business.
8 He began the business nearly 30 years ago with his two brothers, and they have
9 poured their hearts and souls into building and running the business while raising
10 their children. The business cannot continue under these conditions, and Al-Azim
11 anticipates that it will be forced to permanently close Metropolis Big & Tall if the
12 County does not immediately lift the closure order.

13 84. Due to the steep dropoff in sales and profitability, Al-Azim is no longer
14 able to pay Mr. Mohammed a salary or shareholder dividends. Mr. Mohammed is
15 living off of savings and minimal unemployment insurance payments to support
16 himself and his family.

17 85. My Dream Boutique has similarly been forced to close simply because
18 it operates in the interior of Fashion Square. Although it offers merchandise on its
19 website and through curbside pickup, the store relies on foot traffic within the mall
20 and has seen sales and profitability plummet since the closure. Mother and daughter
21 Ms. Khachatryan and Ms. Virabyan run the store together and have given everything
22 they have to build their family business from scratch. The store must place orders
23 with vendors many months in advance, and the full orders that My Dream Boutique
24 placed prior to the COVID-19 pandemic have recently arrived, without any
25 discounts or relief to the business. Inventory is piling up in the store as it is unable
26 to sell the new arrivals and merchandise from last season. My Dream Boutique
27 could not cancel these orders without threatening the long-term viability of the
28 business, because vendors would cancel the store's accounts if it refused to accept

1 orders. The business cannot continue to operate as inventory and bills pile up—My
2 Dream Boutique estimates that it would have to permanently close in the next month
3 or two if indoor operations at Fashion Square do not reopen.

4 86. Because of the closure and resulting loss of sales, My Dream Boutique
5 is no longer able to pay Ms. Khachatryan or Ms. Virabyan a salary or shareholder
6 dividends. They have relied on unemployment insurance payments and savings to
7 get by, but have been forced to take out large loans to cover payments to vendors
8 and to keep their business afloat.

9 87. Despite the Statewide Order clearing the way for salons and
10 barbershops to reopen throughout California in late August, Salon Dioro remains
11 closed merely due to its location in Fashion Square's interior. The business depends
12 on both foot traffic within the mall, and the loyalty of repeat customers that often
13 see the same stylist for haircuts and coloring for years. Salon Dioro has built this
14 customer loyalty over almost a decade in business at Fashion Square, but the longer
15 the salon remains closed, the more customers will find stylists at other salons, and
16 perhaps make a permanent switch. Mr. Avetisyan is devastated by this downturn of
17 the business he and his wife have worked so hard to build, and Salon Dioro
18 anticipates that it would only continue for another month or two before it is forced
19 to permanently close.

20 88. As a result of the County Order, Salon Dioro is no longer able to pay
21 Mr. Avetisyan a salary or shareholder dividends. Mr. Avetisyan is living off of
22 savings and minimal unemployment insurance payments to support himself and his
23 family.

24 89. My Dream Boutique, Salon Dioro, Al-Azim, and likely hundreds of
25 other interior retailers at Westfield Topanga, Fashion Square, Westfield Culver City,
26 Westfield Santa Anita, and Valencia Town Center would reopen at 25% capacity if
27 permitted by the County. As permitted by the Statewide Order, several Westfield-
28 managed malls in other California counties reopened on August 31, 2020 at 25%

1 capacity, including Palm Desert (Riverside County), Valley Fair (Santa Clara
2 County), and Galleria at Roseville (Placer County). Currently, 72% to 87% of
3 retailers at those malls are open for business. These numbers suggest that a
4 substantial number of interior retailers at the Westfield-managed Los Angeles
5 County malls would quickly reopen at 25% capacity, particularly given that a
6 number of the same retailers operate at the open malls and the currently closed
7 County malls. Interior retailers and their employees throughout the County, fully
8 ready and able to reopen under the Statewide Order's restrictions, are suffering
9 severe damages daily as their businesses remain closed and their employees remain
10 out of work.

11 90. The County Order infringes on the property rights of My Dream
12 Boutique, Salon Dioro, and Al-Azim. Interior retailers, including My Dream
13 Boutique, Salon Dioro, and Al-Azim, lease space specifically to provide retail
14 shopping and services to the public, a safe and lawful purpose that would be possible
15 virtually anywhere else in the country. My Dream Boutique, Salon Dioro, and Al-
16 Azim and other similarly situated interior retailers have property rights in those
17 leases, have licenses allowing them to do business, have property rights in the
18 continued operation of their businesses, and have developed substantial goodwill
19 among customers and the public. Many interior retailers—like My Dream Boutique,
20 Salon Dioro, and Al-Azim—depend critically on foot traffic from the millions of
21 mall patrons annually for sales. The County Order prevents these businesses from
22 operating, depriving them of these property rights. Likewise, Westfield Topanga,
23 Fashion Square, Westfield Culver City, Westfield Santa Anita, and Valencia Town
24 Center are unable to operate for indoor public shopping—even though they are
25 licensed for that purpose, they have developed substantial goodwill among their
26 millions of visitors each year, and their owners have invested hundreds of millions
27 of dollars to make these malls safe and attractive shopping destinations.

28

1 91. The County Order also infringes the rights of Ms. Khachatryan, Ms.
2 Virabyan, Mr. Avetisyan, Mr. Mohammed, and employees of other interior retailers
3 to pursue their chosen occupations. Ms. Khachatryan, Ms. Virabyan, Mr. Avetisyan,
4 and Mr. Mohammed are each employees of companies whose sole business location
5 is in an indoor mall, and is therefore closed due to the arbitrary and irrational County
6 Order. As a result of the store closures, Ms. Khachatryan, Ms. Virabyan, Mr.
7 Avetisyan, and Mr. Mohammed are unable to receive salaries from their companies,
8 and their companies may soon go out of business if the County Order is not lifted
9 immediately.

10 92. Plaintiffs' damages attributable to Defendants' policies are severe and
11 continue to mount each day.

12 93. My Dream Boutique, Salon Dioro, and Metropolis Big & Tall remain
13 closed, are unable to generate meaningful revenue, and incur losses due largely to
14 expenses that cannot be reduced. Were the store allowed to reopen, they would see
15 far more foot traffic and sales. Normally, My Dream Boutique employs five people,
16 Al-Azim employs four people, and about 20 people work at Salon Dioro. However,
17 each of these stores has had to lay off all of its employees.

18 94. These injuries only begin to describe those that interior retailers have
19 suffered and will continue to suffer. Interior retailers selling perishable goods, for
20 example, face significant losses due to the possibility of inventory spoilage while
21 their stores remain closed.

22 95. The sustained closures of Westfield Topanga, Fashion Square,
23 Westfield Culver City, Westfield Santa Anita, and Valencia Town Center also affect
24 the rent retailers pay, causing damage to Westfield and the mall owners. Interior
25 retailers generally pay a minimum monthly rent, certain pass-through charges (such
26 as for maintenance and taxes—which are still fully assessed while the malls remain
27 closed), and a percentage of gross sales. Although retailers are obligated to pay
28 minimum monthly rent during the term of their lease even if their stores are not open,

1 many interior retailers at Westfield Topanga, Fashion Square, Westfield Culver City,
2 Westfield Santa Anita, and Valencia Town Center are unable to generate revenue to
3 pay rent because the County Order prevents them from operating their stores in the
4 mall. Accordingly, many have sought rent concessions and renegotiation of the
5 terms of their leases. The longer the interior of these malls stays closed, the more
6 likely it becomes that retailers will be forced out of business, damaging the retailers,
7 their employees, Plaintiffs, and the community.

8 96. Westfield’s malls are planned and designed in what is referred to in the
9 industry as a “cooperative enterprise” or a “co-dependent enterprise,” with a curated
10 mix of retailers designed to allow for an efficient flow of customers, maximize
11 commercial transactions, and make each mall an attractive lifestyle destination in its
12 particular community. Due to the dependency of the stores upon one another to form
13 a well-functioning whole, departures of retailers can wreak havoc on other retailers
14 and on the revenues and value of the mall itself. Indeed, retail leases often include
15 a “co-tenancy clause” that provides for rent reduction if vacancies in the mall reach
16 a certain threshold. Vacancies in a mall breed additional vacancies because a mall’s
17 reputation is dependent on stores being open and operating, and the effort required
18 to rehabilitate lost reputation is incalculable. Further, when stores close, not only
19 does the mall experience revenue and value loss, but the mall is also forced to incur
20 taxes, maintenance obligations, and other expenses that departing tenants had been
21 paying as part of their lease obligations. The cascading, domino effect of both direct
22 monetary losses and intangible and reputational harm to Westfield’s malls in the
23 County will be overwhelming absent immediate relief from the County Order.

24 97. The County Order is enforceable through criminal sanctions. State law
25 authorizes law enforcement, including Defendant Alex Villanueva, in his official
26 capacity as Sheriff of the County, to enforce orders of the County Health Officer.
27 *See, e.g.*, Cal. Health & Safety Code § 101029; Cal. Gov’t Code § 26602. The
28 County Order itself requests the assistance of law enforcement to “ensure

1 compliance with and enforcement of this Order” and makes “[t]he violation of any
2 provision of this Order . . . a public nuisance . . . punishable by fine, imprisonment,
3 or both.” County Order ¶ 27. Plaintiffs and their employees—along with the many
4 other interior retailers and their employees—would thus face criminal penalties if
5 they violated the terms of the arbitrary and unsupported County Order.

6 **CLASS ACTION ALLEGATIONS**

7 98. My Dream Boutique, Salon Dioro, and Al-Azim (collectively, “Class
8 Plaintiffs”) bring this action pursuant to Federal Rule of Civil Procedure 23(a),
9 (b)(1)(A), (b)(2), and (b)(3) on behalf of themselves and all others similarly situated.

10 The proposed class is defined as follows:

11 All retailers at Westfield Topanga, Fashion Square, Westfield Culver
12 City, Westfield Santa Anita, and Valencia Town Center that do not have
13 an exterior entrance and are not “Essential Businesses” as defined in
14 the County of Los Angeles Health Officer’s Order, titled “Reopening
15 Safer at Work and in the Community for Control of COVID-19,” and
last revised on September 4, 2020, and that thus must remain closed to
the public for in-person shopping under the terms of that Order.

16 99. The proposed class is so numerous that joinder of all members is
17 impractical. According to Plaintiffs’ records, over 550 interior retailers at Westfield
18 Topanga, Fashion Square, Westfield Culver City, Westfield Santa Anita, and
19 Valencia Town Center are not Essential Businesses (approximately 180 retailers at
20 Westfield Topanga, 82 at Fashion Square, 105 at Westfield Culver City, 117 at
21 Westfield Santa Anita, and 74 at Valencia Town Center). Many of them are small
22 businesses that have experienced severe financial hardship due to prolonged closures
23 amid the COVID-19 pandemic and are unable to institute suit on their own behalf.
24 In addition, the County Order was recently issued, and immediate relief from it is
25 necessary. There is insufficient time to join all members of the proposed class.

26 100. There are questions of law and fact that are common to the proposed
27 class. All members of the proposed class are interior retailers at Westfield Topanga,
28

1 Fashion Square, Westfield Culver City, Westfield Santa Anita, and Valencia Town
2 Center that are not Essential Businesses and are thus closed to public, in-person
3 shopping and services due to the County Order. Members of the proposed class have
4 suffered common federal and state constitutional injuries from the County Order,
5 which arbitrarily and irrationally treats proposed class members differently based
6 solely on their location in the interior of a mall—a distinction that has no scientific
7 or other rational basis. Members of the proposed class have suffered, and will
8 continue to suffer, injury to their property rights, financial harms, and loss of
9 goodwill due to the County Order. Their shared common facts and harms will ensure
10 that judicial findings regarding the legality of the County Order will be the same for
11 all members of the proposed class. Should Class Plaintiffs prevail, *all* proposed class
12 members will benefit, as the interior of Westfield Topanga, Fashion Square,
13 Westfield Culver City, Westfield Santa Anita, and Valencia Town Center—and
14 proposed class members’ businesses—will be permitted to reopen.

15 101. Class Plaintiffs’ claims are typical of the claims of the proposed class.
16 Class Plaintiffs and proposed class members raise common legal claims and are
17 united in their interests and injuries. Class Plaintiffs are interior retailers at Fashion
18 Square and Westfield Culver City that are not Essential Businesses, and have thus
19 been forced to close to the public by the County Order. The other class members
20 are interior retailers at Westfield Topanga, Fashion Square, Westfield Culver City,
21 Westfield Santa Anita, and Valencia Town Center that are not Essential Businesses,
22 and have thus been forced to close to in-person public shopping and services by the
23 County Order. Class Plaintiffs and the members of the proposed class are thus
24 victims of the same, unlawful order, for which Defendants are responsible.

25 102. Class Plaintiffs are adequate representatives of the proposed class.
26 Class Plaintiffs seek relief on behalf of the proposed class as a whole and have no
27 interest antagonistic to other members of the proposed class. To the contrary, Class
28 Plaintiffs’ interests are *aligned* with those of other proposed class members: Class

1 Plaintiffs' businesses depend on foot traffic from the mall; when more stores are
2 open, more shoppers come to the mall, increasing Class Plaintiffs' potential
3 customer base. Class Plaintiffs' goal is to declare the unlawful County Order
4 invalid, to prevent enforcement of the County Order against Class Plaintiffs and
5 other retailers at Westfield Topanga, Fashion Square, Westfield Culver City,
6 Westfield Santa Anita, and Valencia Town Center, and to obtain compensation for
7 the property, financial, and other harms the County Order has inflicted on them.
8 Class Plaintiffs seek the same remedies for all class members. They are represented
9 by attorneys from Latham & Watkins LLP, who are experienced in class actions and
10 complex constitutional litigation against government actors, and have the resources
11 to successfully obtain class relief. Class Plaintiffs and their counsel intend to
12 prosecute this action vigorously.

13 103. Members of the proposed class may be ascertained from Plaintiffs'
14 business records and can be personally notified of the pendency of this action by
15 first-class mail, e-mail, personal service, and/or published notice calculated to reach
16 all such members.

17 104. As this action involves the validity of the County Order, inconsistent or
18 varying adjudications with respect to individual members of the proposed class
19 could establish incompatible standards of conduct for Defendants. *See* Fed. R. Civ.
20 P. 23(b)(1)(A).

21 105. Defendants have acted or refused to act on grounds that apply generally
22 to the proposed class, and final declaratory and injunctive relief is appropriate
23 respecting the proposed class as a whole. *See* Fed. R. Civ. P. 23(b)(2).

24 106. The questions of fact and law common to Class Plaintiffs and members
25 of the proposed class predominate over any questions affecting individual members.
26 A class action is superior to other available methods for fairly and efficiently
27 adjudicating this controversy because, among other things: (a) the County Order
28 applies to all proposed class members, Class Plaintiffs and proposed class members

1 are entitled to uniform relief, and individualized actions could result in incompatible
2 standards of conduct for Defendants; (b) members of the proposed class could not
3 reasonably be expected to seek legal redress individually, as they are suffering
4 severe financial hardship from the continued forced closure of their businesses; (c)
5 time is of the essence to keep Class Plaintiffs and other proposed class members
6 from going out of business; (d) it is desirable to concentrate this litigation in this
7 District since Class Plaintiffs, other proposed class members, Westfield, Westfield
8 Topanga, Fashion Square, Westfield Culver City, Westfield Santa Anita, Valencia
9 Town Center, and Defendants are all located in the District; (e) the class action
10 procedure provides the benefits of adjudicating the issues raised in a single
11 proceeding, economies of scale, and comprehensive supervision by a single court;
12 and (f) this action presents no unusual management difficulties. *See* Fed. R. Civ. P.
13 23(b)(3).

14 107. For these reasons, this case should be certified as a class action.

15 **FIRST CAUSE OF ACTION**

16 **(42 U.S.C. § 1983 and *Ex Parte Young*—Equal Protection)**

17 108. All of the foregoing paragraphs are incorporated as though fully set
18 forth herein.

19 109. The Fourteenth Amendment to the United States Constitution forbids
20 Defendants from “deny[ing] any person . . . the equal protection of the laws.” The
21 basic principle animating this command is that the government must treat similarly
22 situated persons similarly; “[w]hen those who appear similarly situated are
23 nevertheless treated differently, the Equal Protection Clause requires at least a
24 rational reason for the difference.” *Engquist v. Or. Dep’t of Agric.*, 553 U.S. 591,
25 602 (2008).

26 110. Under the County Order, many businesses—including big-box retailers
27 like Walmart, large department stores located in malls, and small businesses,
28 including barbershops—are allowed to open to the public, if they have an exterior

1 entrance. Yet similarly situated non-essential businesses located in indoor malls and
2 shopping centers cannot open to the public for in-person shopping and services at
3 all—just because of their interior locations. And even the operations of essential
4 businesses located in indoor malls and shopping centers are restricted by comparison
5 with like businesses not located in indoor malls or shopping centers. County Order
6 ¶ 9(d); *see* Appendix E.

7 111. There is no rational reason for this difference in treatment. The
8 Statewide Order allows indoor malls and shopping centers to reopen, and the County
9 Order classifies indoor malls and shopping centers as Lower-Risk Businesses, the
10 same classification given to many other businesses that are allowed to open. County
11 Order ¶ 9. The County Order cites no evidence supporting the determination to force
12 indoor malls and shopping centers to remain closed while allowing other, similar
13 businesses to open. And there is none. According to the scientific evidence, indoor
14 malls and shopping centers, and the stores connected to them, pose no greater public
15 health risk than other, similar businesses that are allowed to open.

16 112. The only distinguishing feature of the interior stores that must stay
17 closed is the need to pass through the vast common areas of indoor malls for access.
18 But retail shopping—including at stores that are allowed to remain open—almost
19 always involves being indoors. There is nothing about the indoor common areas of
20 indoor malls and shopping centers that makes transmission of COVID-19 there more
21 likely than in other retail properties. To the contrary, the common areas of indoor
22 malls and shopping centers generally are wider and higher ceilinged than the
23 narrower aisles of big-box stores and department stores, much less the far more
24 cramped spaces inside smaller stores and businesses, and thus offer better air
25 circulation and more room for social distancing—factors key to inhibiting the spread
26 of COVID-19.

27 113. Moreover, interior retailers like Class Plaintiffs, and indoor mall and
28 shopping center managers like Westfield, stand ready to abide by capacity

1 limitations, social distancing measures, and other guidelines meant to inhibit the
2 spread of COVID-19. Indeed, Plaintiffs have invested significant resources and
3 developed stringent protocols meant to protect employees and customers that go
4 beyond what many jurisdictions require.

5 114. The disparate treatment visited on indoor malls and shopping centers is
6 wholly irrational and violates equal protection. Plaintiffs and the proposed class
7 have suffered harm to their property rights, financial harm, and harm to their
8 goodwill on account of the County Order, and will continue to suffer such harms
9 unless Defendants are enjoined from enforcing the County Order against them.

10 **SECOND CAUSE OF ACTION**

11 **(42 U.S.C. § 1983 and *Ex Parte Young*—Due Process)**

12 115. All of the foregoing paragraphs are incorporated as though fully set
13 forth herein.

14 116. The Fourteenth Amendment to the United States Constitution forbids
15 Defendants from “depriv[ing] any person of life, liberty, or property, without due
16 process of law.” This prohibition includes a substantive component—protection
17 from arbitrary government action—and a procedural component—a guarantee of
18 appropriate process before a governmental deprivation of a protected interest. *See,*
19 *e.g., Daschke v. Hartenstein*, 420 F. Supp. 3d 919, 937 (D. Ariz. 2019) (citing cases).

20 117. By forcing interior retailers to remain closed to the public, the County
21 Order deprives Plaintiffs and proposed class members of several interests protected
22 by due process, including, among other things, the right to use Westfield Topanga,
23 Fashion Square, Westfield Culver City, Westfield Santa Anita, and Valencia Town
24 Center, and premises leased to interior retailers, for their intended, longstanding, and
25 otherwise lawful purpose of providing indoor shopping and services to the public;
26 the right to allow public access to the interior of Westfield Topanga, Fashion Square,
27 Westfield Culver City, Westfield Santa Anita, and Valencia Town Center, and the
28 premises leased to interior retailers, including Class Plaintiffs and proposed class

1 members; the right to pursue one’s chosen occupation; the right to continued
2 business operations; rights under business licenses; and business goodwill. *See, e.g.,*
3 *Soranno’s Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1316-17 (9th Cir. 1989).

4 118. These deprivations are wholly arbitrary. The Statewide Order allows
5 indoor malls and shopping centers to reopen, and the County Order classifies indoor
6 malls and shopping centers as Lower-Risk Businesses, a category that is generally
7 allowed to reopen. There is no scientific evidence showing that indoor malls and
8 shopping centers pose any greater public health risk than businesses that the County
9 Order allows to open, nor any rational basis for inferring such a distinction. And the
10 County Order does not even attempt to provide any valid public health-related reason
11 for treating indoor malls and shopping centers differently.

12 119. The County Order also fails to afford those whose rights it compromises
13 any process whatsoever. Before the County Order went into effect, Plaintiffs,
14 proposed class members, and other interested members of the public had no
15 opportunity to present data showing that indoor malls and shopping centers are safe,
16 and that the distinctions the County Order draws are irrational. Nor does the County
17 Order provide any post-deprivation process. Even though the County Order has no
18 fixed end date, and could remain effective for the foreseeable future, it provides no
19 process for challenging the arbitrary distinctions it draws between businesses
20 allowed to open and those forced to stay closed. *See* County Order ¶ 28.

21 120. There is no justification for this total lack of process. The COVID-19
22 pandemic has persisted for months, and absent some process for challenging the
23 County Health Officer’s decision indoor malls and shopping centers could remain
24 closed indefinitely, for no valid reason. “[E]ven the war power does not remove
25 constitutional limitations safeguarding essential liberties.” *Bowles v. Willingham*,
26 321 U.S. 503, 521 (1944) (citation omitted).

27 121. If due process were available, Plaintiffs would present scientific
28 evidence showing that indoor malls and shopping centers present no greater public

1 health risk than outdoor malls, other retailers, big-box stores, barbershops, hair
2 salons, and other businesses that have been allowed to remain open or reopen.

3 122. The continued forced closure of indoor malls and shopping centers, as
4 well as their interior retailers, violates due process. Plaintiffs and the proposed class
5 have suffered harm to their property rights, financial harm, and harm to their
6 goodwill on account of the County Order, and will continue to suffer such harms
7 unless Defendants are enjoined from enforcing the County Order against them.

8 **THIRD CAUSE OF ACTION**

9 **(42 U.S.C. § 1983—*Monell*)**

10 123. All of the foregoing paragraphs are incorporated as though fully set
11 forth herein.

12 124. Pursuant to *Monell v. Department of Social Services of the City of New*
13 *York*, 436 U.S. 658 (1978), the County and the Board are liable for damages when a
14 County policy, custom, or practice is the moving force behind a constitutional
15 violation. *See, e.g., Castro v. County of Los Angeles*, 833 F.3d 1060, 1073 (9th Cir.
16 2016) (en banc).

17 125. Dr. Davis, the County Health Officer, is a county officer and
18 policymaker authorized to issue orders on behalf of the County, to enforce those
19 orders, and to request the assistance of law enforcement in enforcing those orders.
20 *See, e.g., Cal. Health & Safety Code §§ 101000, 101029, 101030, 101040.* The
21 County Order represents an official policy, custom, or practice of the County.

22 126. The County Order directly causes the constitutional violations
23 described above. Under state law and the Statewide Order, indoor malls and
24 shopping centers are allowed to open. The County Order—and only the County
25 Order—requires the arbitrary, irrational, and discriminatory closure of indoor malls
26 and shopping centers.

27 127. The County and the Board have exhibited deliberate indifference to
28 constitutional rights by, for example, allowing the County Health Officer to issue

1 the County Order without the consultation directed under the terms of the County
2 Order.

3 128. Under *Monell*, the County and the Board are liable for damages
4 resulting from the constitutional violations described above.

5 **FOURTH CAUSE OF ACTION**

6 **(California Constitution—Article I, § 7)**

7 129. All of the foregoing paragraphs are incorporated as though fully set
8 forth herein.

9 130. Under article I, § 7 of the Constitution of the State of California, “[a]
10 person may not be deprived of life, liberty, or property without due process of law
11 or denied equal protection of the laws.” This provision is “self-executing.”
12 *Katzberg v. Regents of the Univ. of Cal.*, 58 P.3d 339, 342 (Cal. 2002); *see* Cal.
13 Const. art. I, § 26 (“The provisions of this Constitution are mandatory and
14 prohibitory, unless by express words they are declared to be otherwise.”). And it is
15 “not dependent on [the rights] guaranteed by the United States Constitution.” Cal.
16 Const. art. I, § 24.

17 131. “California’s state equal protection guarantee . . . is broader than its
18 federal counterpart.” *People v. Cowan*, 260 Cal. Rptr. 3d 505, 536 (Ct. App. 2020)
19 (Streeter, J., concurring); *see id.* (collecting cases). The irrational closure of indoor
20 malls and shopping centers while other Lower-Risk Businesses are allowed to open,
21 which violates federal equal protection principles, necessarily also violates
22 California equal protection principles.

23 132. California’s due process guarantee is also broader than its federal
24 counterpart, focusing on the “due process liberty interest to be free from arbitrary
25 adjudicative procedures” and “protect[ing] a broader range of interests” than the
26 United States Constitution. *Ryan v. Cal. Interscholastic Fed’n—San Diego Section*,
27 114 Cal. Rptr. 2d 798, 814 (Ct. App. 2001). As discussed above, the County Order
28 arbitrarily forces the closure of indoor malls and shopping centers and deprives

1 Plaintiffs and the proposed class of, among other things, the right to use Westfield
2 Topanga, Fashion Square, Westfield Culver City, Westfield Santa Anita, and
3 Valencia Town Center, and premises leased to interior retailers, for their intended,
4 longstanding, and otherwise lawful purpose of providing indoor shopping and
5 services to the public; the right to allow public access to the interior of Westfield
6 Topanga, Fashion Square, Westfield Culver City, Westfield Santa Anita, and
7 Valencia Town Center, and the premises leased to interior retailers, including Class
8 Plaintiffs and proposed class members; the right to pursue one’s chosen occupation;
9 the right to continued business operations; rights under business licenses; and
10 business goodwill—all without any pre- or post-deprivation process whatsoever.
11 The County Order therefore offends California due process principles.

12 133. The County Order violates article I, § 7 of the California Constitution.
13 Plaintiffs and the proposed class have suffered harm to their property rights,
14 financial harm, and harm to their goodwill on account of the County Order, and will
15 continue to suffer such harms unless Defendants are enjoined from enforcing the
16 County Order against them.

17 **FIFTH CAUSE OF ACTION**

18 **(California Constitution—Improper Delegation Of Legislative Power)**

19 134. All of the foregoing paragraphs are incorporated as though fully set
20 forth herein.

21 135. The California Constitution prohibits State and local governmental
22 entities from delegating legislative power. *See Kugler v. Yocum*, 445 P.2d 303, 304-
23 05 (Cal. 1968); *see id.* at 305 (“[T]he doctrine prohibiting delegation of legislative
24 power . . . is well established in California.”). To prevent an unlawful delegation of
25 legislative power, a legislative body must, at a minimum, “declare a policy, fix a
26 primary standard, and authorize executive or administrative officers to prescribe
27 subsidiary rules and regulations that implement the policy and standard and to
28 determine the application of the policy or standard to the facts of particular cases.”

1 *Birkenfeld v. City of Berkeley*, 550 P.2d 1001, 1028 (Cal. 1976). In addition, a
2 legislative body must “establish an effective mechanism to assure the proper
3 implementation of its policy decisions.” *Id.* at 1029; *see Gerawan Farming, Inc. v.*
4 *Agric. Lab. Rels. Bd.*, 405 P.3d 1087, 1103 (Cal. 2017) (“[A] statute delegating
5 legislative power must be accompanied by ‘safeguards adequate to prevent its
6 abuse.’” (quoting *Kugler*, 445 P.2d at 306)).

7 136. If the County Order was not an executive action subject to due process
8 and other limitations, then it was a legislative act. But if the County Order was a
9 legislative act, it would plainly transgress California principles regarding the
10 delegation of legislative power.

11 137. Dr. Davis’s authority to issue the County Order is based on California
12 Health & Safety Code §§ 101040, 101085, and 120175. *See* County Order at 2.
13 Section 101040(a) allows a health officer to “take any preventive measure that may
14 be necessary to protect and preserve the public health from any public health hazard
15 during any ‘state of war emergency,’ ‘state of emergency,’ or ‘local emergency,’ as
16 defined by Section 8558 of the Government Code, within his or her jurisdiction.”
17 Section 101040(b) defines “preventive measure” broadly, meaning “abatement,
18 correction, removal or any other protective step that may be taken against any public
19 health hazard that is caused by a disaster and affects the public health.” Section
20 101085(a)(1) allows a health officer, during a health emergency, to require
21 information needed “to take any action necessary to abate the health emergency . . .
22 or protect the health of persons in the jurisdiction, or any area thereof, who are, or
23 may be affected.” Section 120175 requires a health officer who knows that a
24 reportable infectious disease exists within his or her jurisdiction to “take measures
25 as may be necessary to prevent the spread of the disease or occurrence of additional
26 cases.”

27 138. These statutes do not provide any articulable standard to guide a health
28 officer’s actions. These statutes do not require a health officer to make any findings

1 based on evidence, and they provide no standards to judge what measures are
2 “necessary to protect and preserve the public health” and when those measures are
3 no longer “necessary.” The statutes give health officers virtually limitless authority
4 to take any “protective step” they deem necessary in their sole discretion.

5 139. Moreover, the statutes provide absolutely no safeguards to prevent
6 abuse. There is no requirement that the health officer periodically review his or her
7 orders, and there is no statutory process to challenge a health officer’s order. Even
8 if the lack of safeguards were defensible during short-term health emergencies, it is
9 completely indefensible during a global pandemic that has already lasted months and
10 may persist for many more. The authority of the unelected health officer to regulate
11 conduct for an indefinite period of time cannot go unchecked. *Cf. Birkenfeld*, 550
12 P.2d at 1029-30 (charter amendment invalid because it effectively prevented rent
13 control board from adjusting rents, “making inevitable the arbitrary imposition of
14 unreasonably low rent ceilings” for an “indefinite period”).

15 140. The concerns underlying the nondelegation principle are on full display
16 here. The County Order provides no reason why it is “necessary to protect and
17 preserve the public health” to force indoor malls and shopping centers to stay closed
18 when other retail businesses may open. Nor is there in fact any valid public health
19 reason to force indoor malls and shopping centers to remain closed. Yet Dr. Davis’s
20 decision to force them to stay closed is effective indefinitely, County Order ¶ 28,
21 and is not subject to administrative review.

22 141. The statutory delegation of legislative power to health officers is
23 invalid, on its face and as applied to the County Order. As a result, the County Order,
24 issued pursuant to California Health & Safety Code §§ 101040, 101085, and 120175,
25 is ultra vires and cannot be enforced. Plaintiffs and the proposed class have suffered
26 harm to their property rights, financial harm, and harm to their goodwill on account
27 of the County Order, and will continue to suffer such harms unless Defendants are
28 enjoined from enforcing the County Order against them.

PRAYER FOR RELIEF

WHEREFORE, Class Plaintiffs, on behalf of themselves and the proposed class, and the other Plaintiffs pray for the following relief:

1. Certification of this action as a class action under Federal Rule of Civil Procedure 23(a), (b)(1)(A), (b)(2), and (b)(3), appointment of Class Plaintiffs as class representatives, and appointment of Latham & Watkins LLP as class counsel;

2. Judgment in favor of Plaintiffs and the proposed class and against Defendants on all causes of action alleged herein;

3. General, special, compensatory, and incidental damages according to proof;

4. A declaration that the County Order is invalid for one or more of the reasons alleged herein;

5. Injunctive relief preventing the County Order from being enforced against Plaintiffs and the proposed class;

6. Any and all other equitable relief, including preliminary and permanent injunctive relief, that the Court deems appropriate;

7. An award to Plaintiffs for costs, expenses, and reasonable attorneys' fees as permitted by law; and

8. An award of such other and further relief as the Court deems just and proper.

Dated: September 28, 2020

LATHAM & WATKINS LLP

Michael G. Romey
Richard P. Bress
Andrew D. Prins
Sarah F. Mitchell
Eric J. Konopka

By /s/ Michael G. Romey
Michael G. Romey
Attorneys for Plaintiffs and the Proposed Class

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: September 28, 2020

LATHAM & WATKINS LLP

Michael G. Romey
Richard P. Bress
Andrew D. Prins
Sarah F. Mitchell
Eric J. Konopka

By /s/ Michael G. Romey
Michael G. Romey
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