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Attorney for Plaintiff

Judith M. Persichilli, R.N., B.S.N., M.A.,
In her official capacity as the Commissioner
Of the Department of Health

By: Stephen Slocum (907802012)
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JUDITH M. PERSICHILLI,	:	SUPERIOR COURT OF NEW JERSEY
R.N., B.S.N., M.A., in	:	CHANCERY DIVISION - MERCER COUNTY
her official capacity as	:	GENERAL EQUITY PART
Commissioner of the New	:	DOCKET NO. MER-C-48-20
Jersey Department of	:	
Health,	:	<u>CIVIL ACTION</u>
	:	
Plaintiff,	:	NOTICE OF MOTION FOR CONTEMPT
	:	AND TO ENFORCE LITIGANT'S RIGHTS
v.	:	AS TO JULY 20, 2020 ORDER
	:	
ATILIS GYM OF BELLMAWR,	:	
	:	
Defendant.	:	

To: James Mermigis, Esq.
Christopher Arzberger, Esq.
The Mermigis Law Group, P.C.
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PLEASE TAKE NOTICE that on a date and time to be set by the court, Plaintiff Judith M. Persichilli, R.N., B.S.N., M.A., in her official capacity as Commissioner of the New Jersey Department of

Health, through counsel Gurbir S. Grewal, Attorney General of New Jersey, by Stephen Slocum, Deputy Attorney General, shall move before the Honorable Robert Lougy, P.J.Ch., in the Superior Court of New Jersey, Chancery Division, General Equity Part, Mercer County, for an Order Finding Defendant Atilis Gym in Contempt and Enforcing Litigant's Rights as to the court's July 20, 2020 Order, pursuant to Rule 1:10-3.

PLEASE TAKE FURTHER NOTICE that Plaintiff shall rely upon the Certification of Counsel, and Letter Brief filed herewith in support of its motion. A proposed form of order is also filed herewith.

Plaintiff requests oral argument.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

s/ Stephen Slocum
By: Stephen Slocum (907802012)
Deputy Attorney General

Dated: July 23, 2020

CERTIFICATION OF SERVICE

I hereby certify that the original Notice of motion, Certification of Counsel, Letter Brief, proposed form of order, and this Certification of Service were submitted to the Chambers of the Honorable Robert Lougy, P.J.Ch., on July 23, 2020, via electronic mail and through the JEDS System.

On July 23, 2020, I served a copy of the within Notice of Motion, Certification of Counsel, Letter Brief, proposed form of order, and this Certification of Service by simultaneous regular mail, electronic mail, and facsimile upon:

James Mermigis, Esq.
Christopher Arzberger, Esq.
The Mermigis Law Group, P.C.
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MermigisLaw@gmail.com
Fax: 516-682-0011

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

s/ Stephen Slocum
Stephen Slocum (907802012)
Deputy Attorney General

Dated: July 23, 2020

GURBIR S. GREWAL
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Of the Department of Health

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JUDITH M. PERSICHILLI,	:	SUPERIOR COURT OF NEW JERSEY
R.N., B.S.N., M.A., in	:	CHANCERY DIVISION - MERCER COUNTY
her official capacity as	:	GENERAL EQUITY PART
Commissioner of the New	:	DOCKET NO. MER-C-48-20
Jersey Department of	:	
Health,	:	<u>CIVIL ACTION</u>
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Plaintiff,	:	CERTIFICATION OF COUNSEL
	:	IN SUPPORT OF MOTION FOR CONTEMPT
v.	:	AND TO ENFORCE LITIGANT'S RIGHTS
	:	AS TO JULY 20, 2020 ORDER
ATILIS GYM OF BELLMAWR,	:	
	:	
Defendant.	:	

I, Stephen Slocum, Deputy Attorney General, hereby certify as follows:

1. I am counsel for Plaintiff Judith M. Persichilli, R.N., B.S.N., M.A., in her official capacity as Commissioner of the New Jersey Department of Health, in this matter, and am personally familiar with the subject of this motion.

2. On June 26, 2020, Governor Murphy issued Executive Order 157, establishing rules for individualized instruction at gyms and fitness centers. A true and accurate copy of Executive Order (EO) 157 is attached hereto as **Exhibit A**.

3. As set forth in EO 157, "gyms, sports facilities, and fitness centers present particularly high risks of COVID-19 transmission" and "it will not be administrable, enforceable, and/or otherwise sufficiently protective of public safety to simply allow business owners to set their own divergent health measures, done without approval of the State and its health officials." (Exhibit A).

4. EO 157 permitted the use of gym and fitness center indoor spaces "to offer individualized indoor instruction by appointment only where an instructor is offering training to an individual." (Exhibit A).

5. EO 157 clarified that gyms and fitness centers "cannot yet open their indoor premises to the public" beyond individualized training sessions. (Exhibit A).

6. On July 1, 2020, the Department of Health issued a Modified Order closing Defendant Atilis Gym of Bellmawr (the Modified Order). A true and accurate copy of the July 1, 2020 Modified Order is attached hereto as **Exhibit B**.

7. The Modified Order provides in pertinent part as follows:

- Defendant Atilis Gym of Bellmawr may “open its indoor premises to the public to offer individualized indoor instruction by appointment only where an instructor is offering training to an individual, and the individual’s immediate family members, household members, caretakers, or romantic partners.”
- “If Atilis Gym is offering multiple simultaneous instructions at its facility pursuant to [the preceding paragraph], these instructions must take place in separate rooms or, if they take place in the same room, must be separated by a floor-to-ceiling barrier that complies with all fire code requirements.”
- Defendant “Atilis Gym shall remain closed to the public, including members of the gym, for all gym-related purposes and activities, excluding those activities permitted under” the preceding two paragraphs.
- The Modified Order “shall remain in effect until lifted by the Department.”
- “Failure to comply with the conditions of this order may result in criminal sanctions and/or civil penalties, in addition to any criminal sanctions and/or civil penalties warranted for violations of Executive Order No. 107 (2020) and Executive Order No. 157 (202[0]).”

8. On July 20, 2020, this court entered an Order enforcing the Department's July 1, 2020 Modified Order. A true and accurate copy of this court's July 20, 2020 Order is attached hereto as **Exhibit C.**

9. This court's July 20, 2020 enforcement Order provides in pertinent part as follows:

- The Court enforces the Commissioner's Order of July 1, 2020. Any violation of this Order of the Court shall subject Defendant to summary contempt-of-court proceedings per N.J. Court Rules 1:10-1, -3, and any sanctions, penalties, attorneys fees and costs, or other appropriate relief available to Plaintiff or the Court. Nothing in this Order constrains Plaintiff's rights or authorities to enforce her July 1, 2020 Order per R. 4:67-6 or the authorities enumerated in Paragraph 5 of the 7.1.20 Order. If Plaintiff returns to court to enforce this Order, counsel shall include a certification of attorney services and fees. See R. 1:10-3."

10. On July 21, 2020, Frank Trumbetti, co-owner of Defendant Atilis Gym publicly announced that Defendant would not comply with the court's July 20, 2020 Order, the Department's July 1, 2020 Modified Order, or EO 157. Specifically, Mr. Trumbetti declared: "The bottom line is, we are not going to comply with their non-

laws.” This quotation from Mr. Tumbetti is available in multiple news sources, including The Philadelphia Inquirer. See <https://urldefense.com/v3/https://www.inquirer.com/news/new-jersey/atilis-gym-bellmawr-new-jersey-reopen-governor-phil-murphy-20200721.html> ;!!J30X0ZrnC1oQtba!fBIU6lwcMu2W SdCO-HeLFJDZbJMsCWqLph1qPNlmaVPTBE5QqjzN73Acx1V uot3xOuZueZ5xZo\$ (last visited July 22, 2020).

11. On July 21, 2020, Ian Smith, co-owner of Defendant Atilis Gym also publicly announced that Defendant would not comply with the court’s July 20, 2020 Order, the Department’s July 1, 2020 Modified Order, or EO 157. Specifically, Mr. Smith declared that Defendant has been in direct violation of shutdown orders since July 4, 2020, and confirmed that Defendant removed the facility’s doors from their hinges to frustrate any efforts to enforce closure. Mr. Smith’s video interview and statements are available online. See <https://www.youtube.com/watch?v=ibQC0WF3cG0> (last visited July 22, 2020).

12. On July 22, 2020, the Department of Health inspectors, accompanied by law enforcement, attempted to perform an inspection of Defendant Atilis Gym of Bellmawr to confirm Defendant’s noncompliance with this court’s July 20, 2020 enforcement Order and the Department’s July 1, 2020 Modified Order, but were denied access to the facility by Defendant.

13. The Department of Health inspectors prepared an inspection report of the July 22, 2020 attempted inspection of Defendant Atilis Gym of Bellmawr. A true and accurate copy of the July 22, 2020 Inspection Report is attached hereto as **Exhibit D**.

14. As set forth in the Inspection Report, numerous public health violations and conduct indicating wanton violation of the court's July 20, 2020 Order, the Department's July 1, 2020 Modified Order, and EO 157 were observed and documented, including:

- masks are and personal protective equipment is not provided to staff;
- staff are not required to wear masks or other face coverings;
- the use of masks or other face coverings by patrons is optional only, and patrons were observed not wearing masks or other face coverings;
- Defendant Atilis Gym of Bellmawr obstructed windows, blocking view into the premises, with paper;
- Mr. Trumbetti and Mr. Smith confirmed that no classes are offered in the gym;
- Mr. Trumbetti and Mr. Smith confirmed that gym activities are conducted without floor-to-ceiling partitions, while acknowledging that such partitions are required by EO 157 and the Department's Modified Order;

- in a 15-minute timeframe, investigators observed 12 patrons enter the facility and 5 leaving, all without masks, and necessarily not there for individualized instruction -- as Mr. Trumbetti and Mr. Smith confirmed they are the only employees or staff; and
- Mr. Trumbetti and Mr. Smith asserted that "everyone within the gym are considered romantic partners."

15. Only July 22, 2020, the Camden County Prosecutor's Office performed surveillance of Defendant Atilis Gym of Bellmawr from 4:30AM to 10:20AM and from 4:00PM to 7:00PM, to confirm Defendant's noncompliance with this court's July 20, 2020 enforcement Order and the Department's July 1, 2020 Modified Order.

16. The Detective from the Prosecutor's Office prepared an Investigation Report and Supplemental Report of the July 22, 2020 surveillance of Defendant Atilis Gym of Bellmawr. A true and accurate copy of the July 22, 2020 Investigation Report and Supplemental Report is attached hereto as **Exhibit E**.

17. As set forth in the Investigation Report and Supplemental Report, conduct indicating wanton violation of the court's July 20, 2020 Order, the Department's July 1, 2020 Modified Order, and EO 157 were observed and documented, including:

- between 5:45AM and 10:09AM, a 4.5 hour span of time, 72 patrons entered the gym, only 2 of whom were observed donning masks;

- between 5:45AM and 10:09AM, only 10 of those 72 patrons arrived in pairs (5 sets of 2), and the remaining 62 patrons each arrived individually and in separate vehicles;
- between 4:11PM and 6:11PM, a 2.0 hour span of time, 33 patrons entered the gym, only 10 of whom were observed donning masks; and
- between 4:11PM and 6:11pm, only 11 of those 33 patrons arrived in pairs or sets of 3, and the remaining 22 patrons each arrived individually and in separate vehicles.

18. The Investigation Report and Supplemental Report indicate a number of patrons visiting Defendant Atilis Gym of Bellmawr far in excess of individualized training sessions, especially in light of co-owners Mr. Trumbetti's and Mr. Smith's statements that there are no other employees.

19. The Investigation Report and Supplemental Report indicate that the high number of patrons visiting Defendant Atilis Gym of Bellmawr are not immediate family members, household members, caretakers, or romantic partners, as required by the Department's July 1, 2020 Modified Order, because 84 of those patrons arrived individually and in separate vehicles.

20. The conduct and actions set forth in the July 22, 2020 Inspection Report and Investigation Report and Supplemental

Report, as well as co-owners Trumbetti's and Smith's public admissions, represent clear and open violations of and contempt for this court's July 20, 2020 Order.

21. Plaintiff now moves before the court for an Order Finding Defendant Atilis Gym of Bellmawr in Contempt and Enforcing Litigant's Rights, compelling immediate compliance with the court's June 15, 2020 Amended Preliminary Restraining Order.

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

s/ Stephen Slocum
Stephen Slocum
Deputy Attorney General

Dated: July 23, 2020



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Attorney General

MICHELLE L. MILLER
Director

July 23, 2020

Via Electronic Mail & JEDS System

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

Re: Persichilli v. Atilis Gym of Bellmawr
Docket No.: MER-C-48-20
Letter Brief in Support of Motion for Contempt
and to Enforce Litigant's Rights as to July 20,
2020 Order

Dear Judge Lougy:

This office represents Plaintiff Judith M. Persichilli, R.N., B.S.N., M.A., in her official capacity as Commissioner of the New Jersey Department of Health, in this matter. Please accept this letter brief in lieu of a more formal submission in support of Plaintiff's Motion for Contempt and to Enforce Litigant's Rights as to the court's July 20, 2020 Order.

On July 1, 2020, Commissioner Persichilli entered a Modified Order ("Modified Order") directing Defendant Atilis Gym of Bellmawr ("Atilis Gym"), to comply with the provisions of Executive Order ("EO") 157. Certification of Stephen Slocum



(“Slocum Cert.”), Exhibit B.¹ The Modified Order provided in pertinent part as follows:

Atilis Gym . . . is permitted to open its indoor premises to the public to offer individualized indoor instruction by appointment only where an instructor is offering training to an individual, and the individual’s immediate family members, household members, caretakers, or romantic partners.

If Atilis Gym is offering multiple simultaneous instructions at its facility pursuant to [the preceding paragraph], these instructions must take place in separate rooms or, if they take place in the same room, must be separated by a floor-to-ceiling barrier that complies with all fire code requirements.

Pursuant to the EHPA, Atilis Gym shall remain closed to the public, including members of the gym, for all gym-related purposes and activities, excluding those activities permitted under [the two preceding paragraphs].

This Order shall remain in effect until lifted by the Department.

[Slocum Cert., Exhibit B (emphasis added).]

These provisions directly parallel the requirements of EO 157. See Slocum Cert., Exhibit A.

On July 20, 2020, this court entered an order enforcing the July 1, 2020 Modified Order. Slocum Cert., Exhibit C. When issuing its decision on the record on July 20, 2020, this court

¹ Citations are to the exhibits attached to the Certification of Counsel filed herewith.

was clear that Defendant must strictly comply with all terms of this court's Order and the Department's Modified Order and cautioned Defendant that any violations or contemptuous actions would subject Defendant to immediate contempt-of-court proceedings and sanctions as appropriate. The court specifically cautioned that it would not countenance any gamesmanship by Defendant, such as asserting large numbers of patrons were all family or romantic partners.

On July 21, 2020, the next day following issuance of the court's enforcement Order, each co-owner of Defendant Atilis Gym publicly declared that Defendant would not comply with the court's July 20, 2020 Order. Co-owner Frank Trumbetti specifically declared: "The bottom line is, we are not going to comply with their non-laws." This quotation from Mr. Trumbetti is available in multiple news sources, including The Philadelphia Inquirer. See [https://urldefense.com/v3/ https://www.inquirer.com/news/new-jersey/atilis-gym-bellmawr-new-jersey-reopen-governor-phil-murphy-20200721.html](https://urldefense.com/v3/https://www.inquirer.com/news/new-jersey/atilis-gym-bellmawr-new-jersey-reopen-governor-phil-murphy-20200721.html) ;!!J30X0ZrnC1oQtbA!fBIU6lwcMu2W SdCO-HeLFJDZbJMsCWqLph1qPNlmaVPTBE5QqjzN73Acx1V uot3xOuZueZ5xZo\$ (last visited July 22, 2020). Co-owner Ian Smith similarly confirmed that Defendant would not comply with any shutdown order, has been in open defiance of such orders since July 4, 2020, and affirmatively removed the facility's doors from their hinges to

frustrate any attempts to enforce the closure orders. See <https://www.youtube.com/watch?v=ibQC0WF3cG0> (last visited July 22, 2020).

On July 22, 2020, the Department of Health, accompanied by law enforcement, attempted to perform an inspection of Atilis Gym, to confirm the reported noncompliance with the Modified Order as enforced by this court's July 20, 2020 Order. Slocum Cert., ¶12. The Department inspectors were denied entry into the premises, spoke with the co-owners, and subsequently prepared a report of their findings following the inspection. Slocum Cert., Exhibit D. That report confirmed that Atilis Gym has flagrantly violated the court's July 20, 2020 Order by opening its interior premises to the general public for wide scale use in numbers far exceeding the limitations set by the Department's July 1, 2020 Modified Order and EO 157, without social distancing or the use of masks, sharing communal equipment and high-touch surfaces and engaging in heavy respiration, and not limited to individualized training in separate rooms or rooms with floor-to-ceiling partitions. Slocum Cert., ¶14, Exhibit D. These violations are directly contrary to the limitations imposed by this court's July 20, 2020 Order, the Department's July 1, 2020 Modified Order, and EO 157.

On July 22, 2020, the Camden County Prosecutor's Office performed surveillance of Defendant Atilis Gym of Bellmawr from 4:30AM to 10:20AM and from 4:00PM to 7:00PM, to confirm the reported noncompliance with the Modified Order as enforced by this court's July 20, 2020 Order. Slocum Cert., ¶15. The Prosecutor's Office Detective prepared an Investigation Report and Supplemental Report following the surveillance. Slocum Cert., Exhibit E. That report and supplementation confirmed that Atilis Gym has flagrantly violated the court's July 20, 2020 Order by opening its interior premises to the general public for wide scale use in numbers far exceeding the limitations set by the Department's July 1, 2020 Modified Order and EO 157, without social distancing or the use of masks, and not limited to individualized training in separate rooms or rooms with floor-to-ceiling partitions. Slocum Cert., ¶14, Exhibit D. These violations are directly contrary to the limitations imposed by this court's July 20, 2020 Order, the Department's July 1, 2020 Modified Order, and EO 157.

Atilis Gym's actions constitute a knowing and willful violation of this court's July 20, 2020 Order and the Department's Modified Order. While EO 157 and the Modified Order permit gyms and fitness centers to provide individualized training sessions, they unambiguously provided that gyms could not open to the public at large. EO 157 clarifies that gyms and fitness centers "cannot

yet open their indoor premises to the public" beyond individualized training sessions. Slocum Cert., Exhibit A. It explains that because "gyms, sports facilities, and fitness centers present particularly high risks of COVID-19 transmission, . . . it will not be administrable, enforceable, and/or otherwise sufficiently protective of public safety to simply allow business owners to set their own divergent health measures, done without approval of the State and its health officials." Ibid. In rendering its decision on the record on July 20, 2020, this court noted that the requirements and limitations of the Department's Modified Order are clear and unambiguous.

Plaintiff now moves before the court for an Order Finding Defendant in Contempt and Enforcing Litigant's Rights as to the court's July 20, 2020 Order, compelling immediate compliance.

ARGUMENT

THE COURT SHOULD FIND DEFENDANT IN CONTEMPT AND EXERCISE ITS DISCRETION TO COMPEL COMPLIANCE.

Atilis Gym is operating in violation of this court's July 20, 2020 order and should be held in contempt. Rule 1:10 generally provides the process under which a party may be held in contempt. Pursuant to Rule 1:10-3, coercive relief can be ordered if the court is satisfied that the party had the capacity to comply

with the order and was "willfully contumacious." See Comment 4.3 to R. 1:10-3. Such is the case here.

It is well-settled that "the inherent and ancient jurisdiction of the . . . Chancery Division of the Superior Court . . . is broad enough to comprehend the use of any reasonably appropriate and effective procedures designed to enforce Chancery Division judgments or orders, including those attendant upon the use of the process of civil contempt, to compel obedience to such judgments or orders." Lathrop v. Lathrop, 57 N.J. Super. 532, 526 (App. Div. 1959); see also Bd. of Educ. of Twp. of Middletown v. Middletown Twp. Educ. Ass'n., 352 N.J. Super. 501, 509-10 (App. Div. 2001). Where a party is seeking coercive relief, a contempt finding is appropriate if the court is satisfied that "the defendant is able to comply and had no good reason to resist compliance." Schochet v. Schochet, 435 N.J. Super 542, 549-550 (App. Div. 2014).

Courts have extremely broad discretion in fashioning a remedy to ensure compliance with their orders or judgments. Milne v. Goldenberg, 428 N.J. Super. 184, 198 (App. Div. 2012). Indeed, except where enforcement is "exclusively for the payment of money," Rule 1:10-3 authorizes courts to order the imprisonment of contemptuous parties to compel compliance. See Anyanwu v. Anyanwu, 339 N.J. Super. 278, 290 (App. Div. 2001); In re Manna, 124 N.J.

Super. 428, 438 (App. Div. 1973); Essex Cnty. Welfare Bd. v. Perkins, 133 N.J. Super. 189, 195 (App. Div. 1974).

Specific to monetary relief, while the purpose is not to impose punitive sanctions, the court has express authority to requirement payment of attorney's fees or other monetary amounts meant to impose a "'sting' on the offending party within its reasonable economic means." Comment 4.4.3 to R. 1:10-3. The Rule unambiguously states that "[t]he court in its discretion may make an allowance for counsel fees . . . to a party accorded relief under this rule." In short, there is no question that the court may grant monetary relief, including but not limited to the payment of attorney's fees.²

The facts presented in the Department's July 22, 2020 inspection report and the Camden County Prosecutor's Office's Investigation Report and Supplemental Report plainly establish Defendant's willful disobedience of the court's July 20, 2020 order and the July 1, 2020 Modified Order. Slocum Cert., Exhibits D, E. The Department's Modified Order provides in no uncertain terms that Defendant may not allow use of its indoor premises for gym patrons, and this court directly cautioned Defendant that

² The court's July 20, 2020 Order directed Plaintiff to provide a certification of attorney services and fees. Slocum Cert., Exhibit C. Due to the emergent nature of this filing, the instant motion is submitted while that certification is pending. Plaintiff does not waive the right to finalize a fee application in the future.

mockingly labeling all patrons as family or romantic partners would not be tolerated. Despite this, Defendant flagrantly and wantonly defies the court's order, exhibiting open contempt and derision for health officials and the court. Ibid. Specifically, investigators observed 12 individuals, 10 without masks, enter the premises during a 15-minute period. Slocum Cert., Exhibit D. Frank Trumbetti and Ian Smith, co-owners of Defendant Atilis Gym, advised that the facility does not provide masks to staff, that staff do not wear masks, and that mask usage by patrons is entirely optional. Ibid. Mr. Trumbetti and Smith advised that, despite knowing that floor-to-ceiling partitions are required by the Department's Modified Order and EO 157, none were in place or in use. Ibid. Acknowledging the requirement that personalized instruction be limited to family members or romantic partners, Mr. Trumbetti and Mr. Smith asserted that "everyone within the gym are considered romantic partners." Ibid. Defendant's assertion that all patrons of the gym are romantic partners directly flies in the face of this court's express warning on the record on July 20, 2020, that such blatant gamesmanship and mockery of the court's order would not be tolerated.

Similarly, Detectives from the Camden County Prosecutor's Office observed 72 patrons, 62 without masks, enter the premises during a 4.5 hour period and another 33 patrons, 23

without masks, enter the premises during a separate 2.0 hour period. Slocum Cert., Exhibit E. Furthermore, 66 of the first 72 patrons arrived individually and in separate vehicles, and 22 of the subsequent 33 patrons arrived individually and in separate vehicles. Ibid. These reports indicate a number of patrons visiting Defendant Atilis Gym of Bellmawr far in excess of individualized training sessions, especially in light of co-owners Mr. Trumbetti's and Mr. Smith's statements that there are no other employees. Slocum Cert., ¶18. These reports also indicate that the high number of patrons visiting Defendant Atilis Gym of Bellmawr are not immediate family members, household members, caretakers, or romantic partners, as required by the Department's July 1, 2020 Modified Order, because 84 of those patrons arrived individually and in separate vehicles. Slocum Cert., ¶19.

Furthermore, each co-owner of Defendant Atilis Gym has publicly declared their willful defiance of this court's July 20, 2020 Order. These statements by Mr. Trumbetti and Mr. Smith are dispositive and remove any possible doubt as to whether Defendant is in contempt.³

³ Plaintiff notes that Mr. Trumbetti's and Mr. Smith's admissions are admissible evidence both as statements by party opponents, N.J.R.E. 803(b), and as statements against interest, N.J.R.E. 803(c)(25). Furthermore, the court may take judicial notice of Defendant's public and publicized admissions. N.J.R.E. 201(b).

This willful disobedience is precisely that contemplated by Rule 1:10-3. See In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 17 (2015) (citing Lusardi v. Curtis Point Prop. Owners Ass'n, 138 N.J. Super. 44, 49 (App. Div. 1975)).

While the Department's Modified Order allows gyms to "offer individualized indoor instruction by appointment only where an instructor is offering training to an individual," Atilis has gone far beyond that, allowing members of the public to use the facility freely without a trainer or instructor. Slocum Cert., Exhibit D.

The Commissioner notes that Defendant has gone to extensive lengths in an effort to create a situation which frustrates enforcement of the court's July 20, 2020 Order. Specifically, as the court is aware, and as Defendant's counsel admitted during oral argument on the record on July 20, 2020, Defendant Atilis Gym has preemptively removed the doors of its facility from their hinges, so that the facility cannot be locked. Additionally, when the Department attempted to conduct an inspection on July 22, 2020, Defendants barred entry and blocked views into the facility. See Slocum Cert., Exhibit D. These actions further highlight the willful and meditated nature of Defendant's contempt.

Controlling precedent emphasizes that a trial court may craft expansive relief "to compel a recalcitrant party to 'do what he ought to do.'" Anyanwu, 339 N.J. Super. at 290 (quoting Manna, 124 N.J. Super. at 438). To that end, mindful that Atilis Gym's actions demonstrate open scorn for this court's July 20, 2020 Order, the Department of Health's Modified Order, and EO 157, the Commissioner respectfully asks this court to exercise its discretion and sound judgment in crafting measures as necessary and appropriate to ensure immediate and unconditional compliance.

The Commissioner is constrained to note the scornful nature of Defendant's actions, in openly and flagrantly deriding this court's July 20, 2020 Order the next day following its issuance. Defendant's conduct is unquestionably contemptuous of this court and should not be tolerated.

Finally, with regard to Defendant's counsel's assertion on the record on July 20, 2020 that a supplemental contempt application would require a hearing and the taking of testimony, Defendant is mistaken. Initially, this court's July 20, 2020 order expressly provides that "[a]ny violation of this Order of the Court shall subject Defendant to summary contempt-of-court proceedings." Slocum Cert., Exhibit C (emphasis added). Furthermore, Rule 1:10-1 authorizes summary contempt-of-court proceedings, especially

where "the character of the conduct or its continuation after an appropriate warning unmistakably demonstrates its willfulness."

For the reasons set forth above, the Commissioner respectfully requests that this court find Atilis Gym in contempt and grant the relief sought in the Motion for Contempt and to Enforce Litigant's Rights as to the July 20, 2020 Order.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: s/ Stephen Slocum
Stephen Slocum (907802012)
Deputy Attorney General
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- c. James Mermigis, Esq.
Christopher Arzberger, Esq.

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Attorney for Plaintiff

Judith M. Persichilli, R.N., B.S.N., M.A.,
In her official capacity as the Commissioner
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JUDITH M. PERSICHILLI,	:	SUPERIOR COURT OF NEW JERSEY
R.N., B.S.N., M.A., in	:	CHANCERY DIVISION - MERCER COUNTY
her official capacity as	:	GENERAL EQUITY PART
Commissioner of the New	:	DOCKET NO. MER-C-48-20
Jersey Department of	:	
Health,	:	<u>CIVIL ACTION</u>
	:	
Plaintiff,	:	ORDER OF CONTEMPT
	:	AND ENFORCING LITIGANT'S RIGHTS
v.	:	AS TO JULY 20, 2020 ORDER
	:	
ATILIS GYM OF BELLMAWR,	:	
	:	
Defendant.	:	

This matter having been brought to the Court by Gurbir S. Grewal, Attorney General of New Jersey, by Stephen Slocum, Deputy Attorney General, attorney for Plaintiff Judith M. Persichilli, R.N., B.S.N., M.A., in her official capacity as Commissioner of the New Jersey Department of Health, on a motion for an Order of Contempt and Enforcing Litigant's Rights, on notice to James Mermigis, Esq., and Christopher Arzberger, Esq., counsel for

Defendant Atilis Gym of Bellmawr, and the court having considered the papers submitted and the arguments of counsel, if any, and for good cause shown:

It is on this ___ day of _____, 2020 **ORDERED** that:

1. Defendant Atilis Gym is found in contempt of the court's July 20, 2020 Order enforcing the Department of Health's July 1, 2020 Modified Order.

2. Defendant Atilis Gym shall pay to this court the sum of \$_____, representing judicial costs occasioned by Defendant's contempt, which the court finds reasonable and owed. Payment shall be by check made payable to "_____" and sent to this court's attention. Payment shall be made within _____ days of the date of this Order.

3. For each day which Defendant remains in contempt of court and fails to wholly comply with all terms of this court's July 20, 2020 order enforcing the Department of Health's July 1, 2020 Modified Order, Defendant shall pay to this court the additional sum of \$_____, which the court finds reasonable and calculated to compel Defendant's compliance.

4. Plaintiff is authorized to place locks on the doors to Atilis Gym of Bellmawr or otherwise construct or place barriers on or around the premises to ensure compliance with the court's July 20, 2020 Order and the Department's July 1, 2020 Modified Order.

5. Defendant shall not obstruct Plaintiff in any way from carrying out the terms of this order or otherwise monitoring to ensure compliance with the court's July 20, 2020 Order and the Department's July 1, 2020 Modified Order.

6. Defendant shall not deny Plaintiff entry into the premises of Atilis Gym of Bellmawr for the purposes of inspection.

7. _____

_____.

8. _____

_____.

9. Plaintiff's counsel shall serve a copy of this Order upon all interested parties and attorneys of record within _____ days from the receipt thereof.

10. This Order shall be deemed served upon receipt from a Judiciary email account (xxx@njcourts.gov).

Hon. Robert Lougy, P.J.Ch.

____ Opposed
____ Unopposed

Exhibit A

EXECUTIVE ORDER NO. 157

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119, 138, and 151, issued on April 7, 2020, May 6, 2020, and June 4, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, and Nos. 140-156 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, to further limit community spread from person-to-person contact through use of social mitigation measures, Executive Order No. 107 (2020) closed all recreational and

entertainment businesses, and limited all restaurants, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, to offering food delivery and/or take-out services only; and

WHEREAS, given the decrease in the rate of reported new cases of COVID-19 in New Jersey, including a reduction in the total number of individuals being admitted to hospitals for COVID-19, the State can take steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 mean that many of the State's current measures must remain in place, both to reduce additional new infections and to save lives; and

WHEREAS, after consultation with officials from the Department of Health ("DOH"), I announced a multi-stage New Jersey's Road Back Plan (the "Plan") for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, the State is implementing its reopening process and has begun to relax restrictions on certain businesses, including the resumption of non-essential construction, the allowance of a number of lower-risk outdoor activities, and the opening of all retail establishments; and

WHEREAS, consistent with this Plan, I issued Executive Order No. 150 (2020), which permitted restaurants, bars, and other food or beverage establishments to provide in-person dining outdoors, again with social distancing requirements; and

WHEREAS, consistent with this Plan, I issued Executive Order No. 153 (2020), which permitted recreational and entertainment businesses to reopen the outdoor portions of their premises to the public, again with social distancing requirements; and

WHEREAS, while outdoor spaces continue to present a lower risk of COVID-19 transmission than indoor spaces, because of our continued progress in the fight against COVID-19, restaurants, bars, and other food or beverage establishments can begin to offer in-person dining indoors; and

WHEREAS, because of our continued progress, most recreational and entertainment businesses can now allow the public into their indoor spaces for activity, including but not limited to libraries, museums, aquariums, and public and private social clubs; and

WHEREAS, because public health experts have identified that indoor environments present increased risks of transmission as compared to outdoor environments, it is appropriate to impose even stricter social distancing measures and sanitization protocols on indoor dining and indoor recreational and entertainment businesses than are placed on their outdoor counterparts, including capacity limits to limit person-to-person contact and a requirement that individuals wear masks at all feasible times to reduce the risk of COVID-19 transmission when such contact does occur; and

WHEREAS, because indoor dining and indoor recreational and entertainment businesses also both entail a higher risk than indoor retail settings, as the former involves individuals congregating together in one location for a prolonged period of time, while in indoor retail settings, individuals neither congregate in large groups nor remain in close proximity for extended periods and so the risk of COVID-19 spread is reduced, it is also appropriate to impose stricter capacity limits on indoor dining and indoor

recreational and entertainment businesses than are currently imposed on indoor retail settings; and

WHEREAS, although individuals in the indoor premises of all business establishments are required to wear a mask at all times, it is not possible for a customer to wear a mask when consuming food or beverage, meaning that all customers at any indoor food or beverage establishment must only be allowed to consume such food or beverage while seated at their table or at an individual seat, to minimize the risk of any person-to-person contact taking place between patrons without masks in any indoor space; and

WHEREAS, self-serve arrangements at food and beverage establishments, such as buffets, facilitate person-to-person contact and involve the use of common equipment and thus create an unnecessary risk of transmission and must remain prohibited, as the Centers for Disease Control and Prevention ("CDC") have suggested; and

WHEREAS, in heavily regulated industries such as casinos and racetracks, where expert State agencies have special knowledge of and experience with the businesses' operations, these industries can and should be subject to any additional health and safety protocols that those appropriate authorities believe would be consistent with public health and industry operations; and

WHEREAS, even as the State begins to allow recreation and entertainment businesses to reopen their indoor premises to the public with strict social distancing requirements, certain indoor entertainment businesses still pose an unacceptably high risk of transmission of COVID-19 at this time; and

WHEREAS, in particular, performance-based locations such as movie theaters, performing arts centers, and other concert venues, must remain closed to the public at this time, because those

businesses necessitate a large number of individuals congregating together concurrently in one indoor location for an unusually prolonged period of time, even more so than in other recreational and entertainment businesses where individuals do not inherently spend as prolonged an amount of time together in one single room or location, and because there are an especially high number of available outdoor and virtual options for members to the public to view and listen to movies and other performances, whether live or otherwise, that reduce the risk of indoor person-to-person contact and COVID-19 transmission; and

WHEREAS, indoor gyms, sports facilities, and fitness centers present particularly high risks of COVID-19 transmission, where people are congregating in a confined indoor space and working out, which entails sustained physical activity resulting in heavy breathing and exhalations that can increase the risk of COVID-19 spread, and where exercise equipment is shared by many different people over the course of the day, creating an additional danger of COVID-19 spread, and there are a high number of outdoor recreation opportunities to ensure that members of the public can engage in a wide range of exercise and fitness; and

WHEREAS, even as individual performance-based locations and gyms and fitness centers may take additional measures to address COVID-19 transmission, it will not be administrable, enforceable, and/or otherwise sufficiently protective of public safety to simply allow business owners to set their own divergent health measures, done without approval of the State and its health officials; and

WHEREAS, because dance floors by their nature are designed to facilitate especially close person-to-person contact, they must remain closed to the public at this time, even at establishments,

such as food or beverage establishments, that are otherwise now permitted to reopen to the public; and

WHEREAS, because amusement and water parks include many high touch areas that make social distancing guidelines and capacity limits difficult to implement, maintain, monitor, and enforce, they must be subject to stricter capacity limits than other outdoor environments, and like gyms and fitness centers, cannot yet open their indoor premises to the public; and

WHEREAS, because gatherings bring people together to a specific location for a common reason and a common period of time, they create an increased risk of person-to-person interaction and contact among those participants that must be appropriately curtailed, especially when they take place indoors; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. All retail establishments may open their premises to the public, whether that premises is indoors or outdoors, provided that they adopt policies that include, at minimum, the following requirements:

- a. Limit occupancy of any indoor premises to 50% of the stated maximum store capacity, if applicable, at one time, excluding the retail establishment's employees;
- b. Limit total capacity of any outdoor area to a number that ensures that all individuals can remain six feet apart;
- c. Establish hours of operation, wherever possible, that reserve a designated period of access solely to high-risk individuals, as defined by the CDC;
- d. Install a physical barrier, such as a shield guard, between customers and cashiers/baggers wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment and/or exchange of goods;
- e. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- f. Provide employees break time for repeated handwashing throughout the workday;
- g. Arrange for contactless pay options, pickup, and/or delivery of goods wherever feasible. Such policies shall, wherever possible, consider populations that do not have access to internet service;
- h. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers;
- i. Require frequent sanitization of high-touch areas like restrooms, credit card machines, keypads, counters and shopping carts;

- j. Place conspicuous signage at entrances and throughout the store, if applicable, alerting staff and customers to the required six feet of physical distance;
- k. Demarcate six feet of spacing in check-out lines to demonstrate appropriate spacing for social distancing; and
- l. Require workers and customers to wear cloth face coverings while in the indoor portion of the premises, except where doing so would inhibit that individual's health or where the individual is under two years of age, and require workers to wear gloves when in contact with customers or goods. Businesses must provide, at their expense, such face coverings and gloves for their employees. If a customer refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must decline the individual entry into the indoor premises. If the business is providing medication, medical supplies, or food, the business policy should provide alternate methods of pickup and/or delivery of such goods for such individual. Nothing in the stated policy should prevent workers or customers from wearing a surgical-grade mask or other more protective face covering if the individual is already in possession of such equipment, or if the business is otherwise required to provide such worker with more protective equipment due to the

nature of the work involved. Where an individual declines to wear a face covering in the indoor premises due to a medical condition that inhibits such usage, neither the essential retail business nor its staff shall require the individual to produce medical documentation verifying the stated condition.

2. Personal care service facilities, which collectively refers to cosmetology shops; barber shops; beauty salons; hair braiding shops; nail salons; electrology facilities; spas, including day spas and medical spas, at which solely elective and cosmetic medical procedures are performed; massage parlors, tanning salons, and tattoo parlors, may open their premises to the public provided that such businesses adopt policies that they comply with the standards issued by the Division of Consumer Affairs and DOH, as applicable. Additionally, notwithstanding any provision of DOH Executive Directive No. 20-015 or Division of Consumer Affairs Administrative Order No. 2020-09 prohibiting services that would require the removal of a client's face covering, such personal care services may be provided as of 6:00 a.m. on Thursday, July 2, 2020, provided that clients must wear a face covering at all times before and after the service, and subject to Paragraph 3 of this Order and any enhanced standards for the provision of such services as the Division of Consumer Affairs or DOH may adopt, as applicable.

3. Notwithstanding Paragraph 2 of this Order, personal care services offered outside of personal care service facilities or of health facilities providing medically necessary or therapeutic services shall remain prohibited pursuant to Administrative Order No. 2020-10, until explicitly authorized by an order from the State

Director of Emergency Management. If such an order is issued by the State Director of Emergency Management, these personal care services must be provided in a manner that complies with standards issued by the Division of Consumer Affairs and DOH, as applicable, and all other applicable laws and regulations. Nothing in this paragraph shall be construed to preclude an individual from providing personal care services in a shop, office, or other premises licensed, or otherwise authorized by the Division of Consumer Affairs or one of its licensing boards or DOH that is located in a residence, provided they comply with standards issued by the Division of Consumer Affairs and DOH, as applicable, and all other applicable laws and regulations.

4. Restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, bars, and all other holders of a liquor license with retail consumption privileges, collectively referred to as "food or beverage establishments," are permitted to offer in-person service at outdoor areas, defined as open air spaces without a fixed roof, besides a temporary or seasonal awning or cover, provided that the establishment complies with the following requirements:

- a. Ensure all areas designated for food and/or beverage consumption are in conformance with applicable local, State, and Federal regulations;
- b. Limit capacity to a number that ensures all patrons can remain six feet apart from all other patrons at all times, except for those patrons with whom they are sharing a table;
- c. Ensure that tables where individuals or groups are seated remain six feet apart in all directions from any other table or seat and that individual seats

in any shared area that is not reserved for individual groups, such as an outdoor bar area, are also six feet apart in all directions from any other table or seat;

- d. Prohibit patrons being served at outdoor areas from entering the indoor premises of the food or beverage establishment, except to walk through such premises when entering or exiting the food or beverage establishment in order to access the outdoor area, or to use the restroom;
- e. Require patrons being served at outdoor areas to wear a face covering while inside the indoor premises of the food or beverage establishment, unless the patron has a medical reason for not doing so or is a child under two years of age;
- f. Prohibit smoking in any outdoor areas designated for the consumption of food and/or beverages. The requirement that food or beverage establishments impose this prohibition shall sunset at 6:00 a.m. on Thursday, July 2, 2020, although food or beverage establishments can choose to continue this prohibition; and
- g. Abide by all other health and safety standards issued by the Commissioner of the Department of Health, consistent with her authority under the Emergency Health Powers Act.

5. Effective at 6:00 a.m. on Thursday, July 2, 2020, food or beverage establishments are permitted to offer in-person service at indoor areas, provided that the establishment complies with the following requirements:

- a. Limit the number of patrons in indoor areas to 25 percent of the food or beverage establishment's indoor capacity, excluding the food or beverage establishment's employees;
- b. Ensure that tables where individuals or groups are seated are six feet apart in all directions from any other table or seat and that individual seats in any shared area that is not reserved for individual groups, such as an indoor bar area, are also six feet apart in all directions from any other table or seat;
- c. Require patrons to wear face coverings while inside the indoor premises of the food or beverage establishment, except when seated at their table or in their individual seat. This requirement does not apply if the patron has a medical reason for not wearing a face covering or is a child under two years of age;
- d. Food or beverage establishments with table service may only allow patrons to place orders when seated, and only wait staff may bring food or beverages to seated patrons;
- e. Patrons may only consume food or beverages while seated; and
- f. Abide by all other health and safety standards issued by the Commissioner of the Department of Health, including infection control practices and other sanitization protocols, consistent with her authority under the Emergency Health Powers Act.

6. Nothing in this Order shall prevent a food or beverage establishment that offers take-out options from allowing an individual who is seeking take-out rather than table service to enter the indoor premises of the establishment to place an order, make payment, and pick up food or beverages, including in situations where a food or beverage establishment makes outdoor areas without table service available. Such individuals shall wear a face covering while inside the indoor premises of the food or beverage establishment, unless the individual has a medical reason for not doing so or is a child under two years of age.

7. Prior to 6:00 a.m. on Thursday, July 2, 2020, the rules for recreational and entertainment businesses that were instituted in Executive Order No. 153 (2020) remain in effect. As of 6:00 a.m. on Thursday, July 2, 2020, all recreational and entertainment businesses may open their entire premises, whether indoor or outdoor, to the public, unless otherwise prohibited by this Order, provided that such businesses adopt policies that include, at minimum, the following requirements:

- a. Limit the number of patrons in any indoor premises to 25 percent of the stated maximum capacity, if applicable, at one time, excluding the recreational or entertainment business's employees;
- b. Limit total capacity of any outdoor area to a number that ensures that all individuals can remain six feet apart, except for amusement parks, water parks, and pools, which are limited to 50 percent capacity, excluding the employees of those businesses;

- c. Require that reservations, cancellations and pre-payments be made via electronic or telephone reservation systems to limit physical interactions. Such policies shall, wherever possible, consider populations that do not have access to internet service or credit cards;
- d. Install a physical barrier, such as a shield guard, between visitors and employees wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment;
- e. Limit the use of equipment rented or otherwise provided by the business to one person at a time, excluding immediate family members, caretakers, household members, or romantic partners, and sanitize such equipment before and after use;
- f. Demarcate and post signs that denote six feet of spacing in all commonly used and other applicable areas or where people may form a line;
- g. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- h. Provide employees break time for repeated handwashing throughout the workday;
- i. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers;
- j. Limit occupancy in restrooms that remain open to avoid over-crowding and maintain social distancing through signage and, where practicable, the utilization of attendants to monitor capacity;

- k. Require frequent sanitization of high-touch areas including, at minimum, the following cleaning protocols:
 - i. Routinely clean and disinfect all high-touch areas in accordance with DOH and CDC guidelines, particularly in spaces that are accessible to staff, customers, or members, or other individuals, including, but not limited to, restroom and locker facilities, counter tops, hand rails, door knobs, other common surfaces, safety equipment, and other frequently touched surfaces including employee used equipment, and ensure cleaning procedures following a known or potential exposure in compliance with CDC recommendations;
 - ii. Clean and disinfect equipment that is rented in accordance with CDC and DOH guidelines; and
 - iii. Train and equip employees to perform the above protocols effectively and in a manner that promotes the safety of the visitors and staff;
- l. Place additional restrictions on areas of the business, as necessary, to limit person-to-person interactions and facilitate appropriate social distancing;
- m. Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day;

- n. Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws;
- o. Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness;
- p. Continue to follow guidelines and directives issued by the New Jersey Department of Health, the CDC and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe and healthy work environment;
- q. Require workers and customers to wear cloth face coverings while in the indoor portion of the premises, except where doing so would inhibit that individual's health or where the individual is under two years of age, and require workers to wear gloves when in contact with customers or goods. Businesses must provide, at their expense, such face coverings and gloves for their employees. If a customer refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must decline the individual entry into the indoor premises. Nothing in the stated policy should prevent workers or customers from wearing a surgical-grade mask or other more protective face covering if the individual is already in possession of such equipment, or if the business is otherwise required

- to provide such worker with more protective equipment due to the nature of the work involved. Where an individual declines to wear a face covering in the indoor premises due to a medical condition that inhibits such usage, neither the essential retail business nor its staff shall require the individual to produce medical documentation verifying the stated condition; and
- r. The requirement listed above in Paragraph 7(q) shall not apply where impracticable, such as when individuals are eating or drinking while seated, or in an aquatic space such as a pool.

8. The following recreational and entertainment businesses may open their outdoor spaces to the public, but may not open their indoor spaces to the public, except that members of the public may enter the indoor premises of the recreational business when entering or exiting the establishment in order to access the outdoor area, or to use the restroom:

- a. "Health clubs," as defined by N.J.S.A. 56:8-39, which include gyms and fitness centers, as well as any health club facilities located in hotels, motels, condominiums, cooperatives, corporate offices, or other business facilities;
- b. Entertainment centers where performances are viewed or given, including movie theaters, performing arts centers, other concert venues; and
- c. Amusement or water parks that are indoors.

9. Any establishment open to the public, including a food or beverage establishment, must cordon off any indoor or outdoor dance floors to the public.

10. Notwithstanding the prohibition on health clubs opening their indoor spaces to the public, such health clubs may open indoor premises to the public to offer individualized indoor instruction by appointment only where an instructor is offering training to an individual, and the individual's immediate family members, household members, caretakers, or romantic partners. If a health club is offering multiple simultaneous instructions at the same facility, these instructions must take place in separate rooms or, if they take place in the same room, must be separated by a floor-to-ceiling barrier that complies with all fire code requirements.

11. Notwithstanding the other requirements contained in this Order, casinos, including casino gaming floors and retail sports wagering lounges, may only reopen their premises to the public if they comply with any and all additional requirements imposed by the Division of Gaming Enforcement, and racetracks may only reopen their premises to the public if they comply with any and all existing and additional requirements imposed by any relevant State entity, including the New Jersey Racing Commission and the New Jersey Office of Emergency Management.

12. Notwithstanding the above paragraphs, amusement and water parks are permitted to open their outdoor premises to the public only where they are in compliance with the health and safety standards issued by the Commissioner of the DOH.

13. Notwithstanding the above paragraphs, pool facilities are permitted to open to the public only where they are in compliance with the health and safety standards issued by the Commissioner of the DOH. Effective at 6:00 a.m. on Thursday, July 2, 2020, aquatic recreation facilities and water fountains

(those considered recreational, not those for drinking) are permitted to be open to the public.

14. Effective at 6:00 a.m. on Thursday, July 2, 2020, playgrounds, including playgrounds at pool facilities, are permitted to be open to the public.

15. Individuals who are at any of these businesses at a specific time, a specific location, and for a common reason, such as a poker tournament at a casino, a wedding at a restaurant, or an outdoor concert or movie screening, are subject to the State gathering limits in effect at that time, which were most recently laid out in Executive Order No. 156 (2020).

16. Any prior requirements imposed by an Executive Order issued on or after March 21, 2020, that are inconsistent with the terms of this Order are hereby superseded.

17. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

18. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Order.

19. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order,

or which will or might in any way interfere with or impede its achievement.

20. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

21. This Order shall take effect immediately, and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
26th day of June,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

Exhibit B



State of New Jersey
DEPARTMENT OF HEALTH
PO BOX 360
TRENTON, N.J. 08625-0360
www.nj.gov/health

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

JUDITH M. PERSICILLI, RN, BSN, MA
Commissioner

STATE OF NEW JERSEY
DEPARTMENT OF HEALTH
MODIFIED ORDER CLOSING ATILIS GYM LOCATED AT
363 W BROWNING RD, BELLMAWR

WHEREAS, Coronavirus disease 2019 ("COVID-19") is a contagious, and at times fatal, respiratory disease that is responsible for the 2019 novel coronavirus outbreak; and

WHEREAS, COVID-19 is a communicable disease as defined by N.J.A.C. 8:57-1.3; and

WHEREAS, the Emergency Health Powers Act (EHPA), N.J.S.A. 26:13-3, authorizes the Governor of the State of New Jersey, in consultation with the Commissioner of the Department of Health (Department) and the Director of the State Office of Emergency Management, to declare a Public Health Emergency; and

WHEREAS, on March 9, 2020, Governor Murphy issued Executive Order No. 103 declaring a Public Health Emergency pursuant to the EHPA and a State of Emergency pursuant to the New Jersey Civilian Defense and the Disaster Control Act ("DCA"), N.J.S.A. App. A. 9-33, et seq. The Public Health Emergency pursuant to the EHPA has been extended by Executive Order No. 119, 138 and 151; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, Governor Murphy issued a series of Executive Orders to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, and Nos. 140-146 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, among these actions, and in recognition that the Centers for Disease Control and Prevention ("CDC") has advised that social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease and that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another,

Governor Murphy issued Executive Order No. 107 (2020) on March 21, 2020 to mitigate community spread of COVID-19, which expressly ordered the closure of all gyms, fitness centers and classes; and

WHEREAS, because the rate of reported new cases of COVID-19 in New Jersey has decreased, including a reduction in the total number of individuals being admitted to hospitals for COVID-19, the State has begun to take certain steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 mean that a considerable number of the State's current measures must remain in place, both to reduce additional new infections and to save lives, until additional metrics - such as expanded testing and use of contact tracing - have been satisfied; and

WHEREAS, after consultation with officials from the Department of Health, Governor Murphy announced a multi-stage plan for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, as of May 20, 2020, the State began the reopening process and began to relax restrictions on low-risk activities where appropriately safeguarded; and

WHEREAS, consistent with this plan, Governor Murphy issued a number of Executive Orders, including Executive Orders 133, 142, 143, 146 and 147, which lifted closures and/or prohibitions of parks, beaches, lakefronts, and several outdoor recreational facilities and activities, given repeated observations from public health experts, including but not limited to the CDC, that outdoor environments present reduced risks of COVID-19 transmission as compared to indoor environments; and

WHEREAS, indoor gyms and fitness centers present particularly high-risk settings for the spread of COVID-19 as they foster prolonged and close person-to-person contact, including but not limited to through the use of personal trainers and spotters, and because they necessitate the communal-use of equipment and other items, such as barbells, dumbbells, and treadmill and cross trainer grips, that may harbor the virus as, according to the National Institutes of Health, the virus may live on plastic and steel surfaces for up to 72 hours; and

WHEREAS, one study shared by the CDC observed that "because of the increased possibility of infection through droplets, vigorous exercise in closely confined spaces should be avoided"; and

WHEREAS, the CDC has determined that COVID-19 can be spread by asymptomatic individuals; and

WHEREAS, the CDC has also determined that individuals should wear cloth face coverings when in proximity to other individuals, even if they are not presenting any symptoms of COVID-19, to further reduce the spread of COVID-19; and

WHEREAS, as of May 20, 2020, Atilis Gym located at 363 West Browning Road, Bellmawr, New Jersey 08031 continued to operate in non-compliance with Executive Order No. 107, thus posing a threat to the public health by failing to adhere to the measures taken to mitigate the spread of COVID-19; and

WHEREAS, although Atilis Gym was purporting to take its own measures to address COVID-19 transmission, Atilis Gym was not approved to reopen under the terms of Executive Order No. 107, which reflects a judgment that it would not be administrable, enforceable, and/or otherwise sufficiently protective of public safety to simply allow business owners to set their own divergent health measures, done without approval of the State and its health officials; and

WHEREAS, although Atilis Gym was purporting to take its own measures to address COVID-19 transmission, these particular measures did not sufficiently address the risks of COVID-19 in an indoor gym because the community presence of the virus was still too great to allow for the relaxation of the mitigation measures that were in place and necessary to reduce the transmission of COVID-19 in such congregate indoor settings; and

WHEREAS, pursuant to the EHPA, N.J.S.A. 26:13-8, the Department has the power "[to] close, direct and compel the evacuation of, or to decontaminate or cause to be decontaminated, any facility of which there is reasonable cause to believe that it may endanger the public health"; and

WHEREAS, pursuant to the EPHA, the Department issued an Order to Atilis Gym on May 20, 2020, requiring it to close and prohibited members of the public, including members of the gym, from entering the facility; and

WHEREAS, the State has continued to see a decrease in the rate of reported new cases of COVID-19, including a reduction in the total

number of individuals being admitted to hospitals for COVID-19, and in the rate of reproduction for COVID-19 infections; and

WHEREAS, on June 26, 2020, the Governor issued Executive Order No. 157, which continues to recognize that gym settings pose a high risk for the spread of COVID-19 and, as a result, continued to prohibit health clubs, which include gyms and fitness centers, from opening their indoor spaces to the public; however, with the continued reduction of the spread of COVID-19 in the State, the Executive Order eased this restriction by allowing health clubs to "[o]pen [their] indoor premises to the public to offer individualized indoor instruction by appointment only where an instructor is offering training to an individual, and the individual's immediate family members, household members, caretakers, or romantic partners. If a health club is offering multiple simultaneous instructions at the same facility, these instructions must take place in separate rooms or, if they take place in the same room, must be separated by a floor-to-ceiling barrier that complies with all fire code requirements"; and

WHEREAS, in recognition of Executive Order 157, it is appropriate to modify the Closure Order issued to Atilis Gym to permit it to offer individualized indoor instruction by appointment only, consistent with the requirements set forth in the Executive Order.

THEREFORE, IT IS HEREBY ORDERED THIS 1st DAY OF JULY 2020,

1. Effective at the same time as Executive Order 157 takes effect: at 6:00 a.m. on Thursday, July 2, 2020, Atilis Gym located at 363 West Browning Road, Bellmawr, New Jersey 08031 is permitted to open its indoor premises to the public to offer individualized indoor instruction by appointment only where an instructor is offering training to an individual, and the individual's immediate family members, household members, caretakers, or romantic partners.
2. If Atilis Gym is offering multiple simultaneous instructions at its facility pursuant to paragraph 1 above, these instructions must take place in separate rooms or, if they take place in the same room, must be separated by a floor-to-ceiling barrier that complies with all fire code requirements.
3. Pursuant to the EHPA, Atilis Gym shall remain closed to the public, including members of the gym, for all gym-

related purposes and activities, excluding those activities permitted under paragraphs 1 and 2 above.

4. This Order shall remain in effect until lifted by the Department.
5. Failure to comply with the conditions of this order may result in criminal sanctions and/or civil penalties, in addition to any criminal sanctions and/or civil penalties warranted for violations of Executive Order No. 107 (2020) and Executive Order No. 157 (202).

Judith M. Persichilli

Dated: 7/1/20

Judith M. Persichilli, R.N., B.S.N., M.A.
Commissioner
New Jersey Department of Health

RIGHT TO APPEAL:

This Emergency Closure Order constitutes a Final Agency Decision of the New Jersey Department of Health which may be appealed to the Superior Court, Appellate Division, pursuant to the procedures and timeframes set forth in New Jersey Court Rule 2:2-3.

Exhibit C

COPY

FILED

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
P.O. Box 112
25 Market Street
Trenton, New Jersey 08625
Attorney for Plaintiff

JULY 20, 2020

**SUPERIOR COURT OF NJ
MERCER VICINAGE
CHANCERY**

Judith M. Persichilli, R.N., B.S.N., M.A.,
In her official capacity as the Commissioner
Of the Department of Health

By: Stephen Slocum (907802012)
Deputy Attorney General
(609)376-3200
Stephen.slocum@law.njoag.gov

JUDITH M. PERSICHILLI,	:	SUPERIOR COURT OF NEW JERSEY
R.N., B.S.N., M.A., in	:	CHANCERY DIVISION - MERCER COUNTY
her official capacity as	:	GENERAL EQUITY PART
Commissioner of the New	:	DOCKET NO. MER-C-48- ²⁰ 29
Jersey Department of	:	
Health,	:	<u>CIVIL ACTION</u>
	:	
Plaintiff,	:	ORDER OF CONTEMPT
	:	AND ENFORCING LITIGANT'S RIGHTS
v.	:	
	:	
ATILIS GYM OF BELLMAWR,	:	
	:	
Defendant.	:	

This matter having been brought to the Court by Gurbis S. Grewal, Attorney General of New Jersey, by Stephen Slocum, Deputy Attorney General, attorney for Plaintiff Judith M. Persichilli, R.N., B.S.N., M.A., in her official capacity as Commissioner of the New Jersey Department of Health, on a motion for an Order of Contempt and Enforcing Litigant's Rights, on notice to Christopher Arzberger, Esq., counsel for Defendant Atilis Gym of Bellmawr, and

the court having considered the papers submitted and the arguments of counsel, if any, and for good cause shown:

It is on this 20th day of July, 2020 **ORDERED** that:

1. Defendant Amicus Cyber is found in contempt of the court's June 15, 2020 Amended Preliminary Restraining Order.

2. To ensure enforcement of the court's June 15, 2020 Amended Preliminary Restraining Order and this Order, Plaintiff may physically bar all entrances to Defendant's facility located at 363 West Browning Road, Bellmawr.

3. _____

~~The Court enforces the Commissioner's Order of July 1, 2020. Any violation of this Order of the Court shall subject Defendant to summary contempt-of-court proceedings per N.J. Court Rules 1:10-1, -3, and any sanctions, penalties, attorneys fees and costs, or other appropriate reliefs available to Plaintiff or the Court. Nothing in this Order constrains Plaintiff's rights or authorities to enforce her July 1, 2020 Order per R. 4:67-6 or the authorities enumerated in Paragraph 5 of the 7.1.20 Order. If Plaintiff returns to court to enforce this Order, counsel shall include a certification of attorney services and fees. See R. 1:10-3.~~

_____ .

4. Plaintiff's counsel shall serve a copy of this Order upon all interested parties and attorneys of record within 10 days from the receipt thereof.

5. This Order shall be deemed served upon receipt from a Judiciary email account (xxx@njcourts.gov).

/s/ Robert Lougy
ROBERT LOUGY, P.J. Ch.

Opposed

Unopposed

Exhibit D

REPORT OF INSPECTION

ASSIGNMENT #

License/ID #	Category Other	Sub-Category	Activity Type Investigation	Evaluation Not Applicable
Name of Owner(s), Partnership or Corporation Atilis Gym		Trade Name		E-mail Address
Establishment Location (Street Address) 363 W Browning Rd		City Bellmawr	Zip Code 08031	County Camd
Telephone No. 9856) 861-4638				
Establishment Mailing Address (if different)		Changes	Revised Information:	
Name of Inspecting Official Ryan Reighn Siobhon Pappas		REHS Lic. # B-2407 B-2009	Est. Code:	Total Hours:
				Reinspection on or After:

TIME/ACTIVITY REPORT (Codes: 1-Travel, 2-Inspection, 3-Administration, 4-Personal)

Date	Code	Began	Ended	Date	Code	Began	Ended	Date	Code	Began	Ended
7/22/20	1	0945	1000		2	1000	1130		3	1130	

Item	Remarks
------	---------

R = Repeat Violation from the previous inspection

Upon arrival at the firm, I, Ryan Reighn, REHI, NJ DOH and Siobhan Pappas, Ph.D. Office of Local Public Health, DOH presented credentials to Mr. Ian Smith and Mr. Frank Trumbetti who stated they were co-owners. Both owners agreed to be interview in front of the gym. During the interview process we asked to obtain entrance into the facility and were denied access. A request to take photographs of the interior was also denied. Mr. Smith stated we could photograph from outside the facility, but all windows and doors were covered in brown paper. All information given in this report by owners could not be verified during investigation due to refused entrance into facility. The Covid-19 Screening Questionnaire was conducted and is attached. Mr. Trumbetti stated the firm has done the following: All members have their temperature taken upon arrival into facility using a biometric touchless scanner with alarm at 100.4F; members must sign waivers; complete health questionnaires and use hand-sanitizer prior to using the facility. Pens are used once and then cleaned at the end of each day; individuals are given a spray bottled filled with Eco-Lab sanitizer. Sanitizer is metered out by auto metering device installed by Eco-Lab which has serviced the unit twice since installation. Bottles are to be used by members during their workout. Water fountains are closed, showers are closed, bathrooms cleaned twice per day. Mask wearing within the facility is optional. No classes are being offered. Owners stated they are the only employees at the gym, but family members do assist in running the operation. When asked about one to one instruction per E.O. 157, Mr. Trumbetti stated yes, and that everyone within the gym are considered romantic partners. Mr. Smith stated equipment within the gym has been moved to accommodate social distancing when feasible. Some equipment can't be social distanced, so signage has been posted on it. Softer equipment such as yoga matts, boxing gloves, and yoga blocks have been removed. Additionally, Mr. Trumbetti spoke extensively regarding the additional ventilation and air purification systems added to the facility. When asked if partitions such as floor to ceiling curtains had been added, Mr. Trumbetti stated partitions must comply with local fire codes and are "oppressive restrictions" and that plastic curtains are not allowed. Owners asked that their request for a meeting to discuss protocols for gyms such as theirs be added to the report.

Prior to establishing contact with the owners at approximately 10:15, we observed 12 patrons entering the facility, and 5 leaving without wearing masks. Two patrons were seen entering wearing masks.

Signature of Inspecting Official

A handwritten signature in black ink, appearing to be 'R. K.', is written over the signature line.

Type text here

Name of Person Receiving Copy of Report



**PUBLIC HEALTH AND FOOD PROTECTION PROGRAM
PRELIMINARY COVID-19 QUESTIONNAIRE**

DATE: 7/22/2020	INSPECTOR: REIGN
PIC/TITLE: Ian Smith/ Owner Frank Trumbetti/Owner	Name of the establishment: Atilis Gym
EMAIL:	Location Address: 363 W Browning Rd, Bellmawr NJ

Questions	Yes	No
Do you have policies and procedures on COVID-19?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Have you provided COVID-19 related training to employees?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Are employees required to wear masks/face coverings?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Do you provide masks/face coverings or other appropriate PPE's to your employees?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Do you have a sick leave policy?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Do you have any employees out on sick leave?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Do you have adequate supply of cleaning, disinfecting and sanitizing agents?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Do you require employee health screening prior to work?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Do you maintain 6ft social distancing between employees inside the establishment?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Have you modified your establishment to allow social/physical distancing in close proximity work areas?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Additional Comments
Owners stated they are the only paid employees.

For  (Type text here)

Exhibit E



CAMDEN COUNTY PROSECUTOR'S OFFICE
INVESTIGATION REPORT

1. Unit MAJOR CRIMES	2. Unit File # MC-0160-20-07	3. Promis Gavel #	
4. Case Agency(s) Camden County Prosecutor's Office; New Jersey Department of Health; Bellmawr Police Department			
5. Crime Other	6. N.J.S.	7. Date 07/22/2020	8. Time 05:30 AM
9. Location of Crime 1). Incident date & Time: (07/22/2020 5:30 AM -); Address: 363 W BROWNING RD BELLMAWR, NJ 08031;			
10. Person Reporting Incident / Crime:			
11. Suspect(s) Ian Smith Frank Trumbetti	12. Person Info(s): [REDACTED]	13. Address(s): [REDACTED]	
14. Victim(s): N/A	15. Person Info(s):	16. Address(s):	
17. Stolen / Missing Property:		18. Weapon Used:	

NARRATIVE

Wednesday, July 22, 2020

On Wednesday, July 22, 2020, at approximately 4:30 A.M., I arrived at the

**Camden County Prosecutor's Office
200 Federal St,
Camden, New Jersey**

at which time I made contact with

**Sgt. Dennis Convery
Camden County Prosecutor's Office
Major Crimes Unit,
Det. Briana Hagan**

and

**Camden County Prosecutor's Office
Major Crimes Unit,
Det. James Brining
Camden County Prosecutor's Office
Major Crimes Unit,**



Case#

MC-0160-20-07

Promis Gavel#

to further investigate executive order violations by

Atilis Gym
363 W. Browning Rd,
Bellmawr, New Jersey.

At approximately 5:46 A.M., the above-mentioned law enforcement personnel arrived to the parking lot directly outside of Atilis Gym, at which time I observed the front double doors to the gym to be in the closed position, with what appeared to be tan construction paper covering the windows of the gym thus obstructing any view of the interior of the gym.

As the above-mentioned law enforcement personnel remained in the direct vicinity of Atilis Gym, my view of the parking lot and front doors of same were never blocked, hindered or obstructed in anyway thus granting me a continuous view of the gym in its entirety. Surveillance of the above location was then initiated, to which the following is a brief synopsis:

- 5:45 A.M. – One (1) Black Chevrolet Silverado to be parked directly outside of the gym with doors open. One (1) W/M appeared to be walking from the inside of the gym to the aforementioned truck to retrieve several small plastic bags from the interior of the truck then returning to the interior of the gym.
- 6:08 A.M. Through 7:06 A.M. – Approximately Six (6) Individuals were observed to arrive at the gym in separate vehicles and enter into same.
- 7:06 A.M. – One (1) Red Chevrolet Silverado (NJ) V10EKR arrived at the gym. One (1) W/M who matched the description of the owner of the gym appeared to dismount the truck and enter into the gym. During the course of this surveillance, this same male was observed to exit and walk to the aforementioned truck to place items into and remove items from same.
- 7:07 A.M. Through 8:08 A.M. – Approximately twenty (20) individuals were observed to arrive at the gym and enter same. Four (4) out of the twenty (20) individuals were observed to arrive within two (2) vehicles, respectively. The remaining sixteen (16) individuals arrived in in their own separate vehicles. Additionally, during this time frame, five (5) individuals were observed to exit the gym.
- 8:12 A.M. Through 9:14 A.M. – Approximately twenty-two (22) individuals were observed to arrive at the gym and enter same. Six (6) out of the twenty-two (22) individuals were observed to arrive within three (3) vehicles, respectively. The remaining sixteen (16) individuals arrived in their own separate vehicles. Additionally, during this time frame, fifteen (15) individuals were observed to exit the gym.
- 9:19 A.M. Through 10:09 A.M. – Approximately twenty-three (23) individuals were observed to arrive at the gym and enter same. None of the individuals appeared to have arrived within the same vehicle. Additionally, during this time frame, two (2) individuals were observed to exit the gym.

During the entirety of the above surveillance, approximately two (2) individuals were observed to have donned a protective face covering mask entering into and upon exiting the gym. Furthermore, approximately half of all



CAMDEN COUNTY PROSECUTOR'S OFFICE
INVESTIGATION REPORT

	Case#	MC-0160-20-07	Promis Gavel#	
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individuals who were observed to have entered into the gym were observed to be in possession of a duffel style gym bag. For complete details please refer to notes taken during the above-mentioned surveillance.

At approximately 10:20 A.M., we terminated surveillance on the individuals entering and exiting the Atilis gym, however, due to personnel from the

New Jersey Department of Health
369 S Warren St,
Trenton, New Jersey,

who arrived to Atilis Gym and who wished to make contact with the owners of same, we remained in the immediate vicinity. I then observed two (2) males who resembled

Ian Smith
W/M/33

and

Frank Trumbetti
W/M/51

who are the owners of Atilis gym approach the New Jersey Department of Health personnel at which time a conversation ensued which resulted in the New Jersey Department of Health personnel to depart the gym without entering the gym.

SUB MODULES

Reporting Detective ALEXANDER L BURCKHARDT	Reporting Detective Signature 	Date of Report 7/22/2020	Supervisor Signature
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CAMDEN COUNTY PROSECUTOR'S OFFICE
SUPPLEMENTAL REPORT

1. Unit MAJOR CRIMES	2. Unit File # MC-0160-20-07	3. Promis Gavel #	
4. Case Agency(s) Camden County Prosecutor's Office; New Jersey Department of Health; Bellmawr Police Department			
5. Crime Other	6. N.J.S.	7. Date 07/22/2020	8. Time 05:30 AM
9. Location of Crime 1). Incident date & Time: (07/22/2020 5:30 AM -); Address: 363 W BROWNING RD BELLMAWR, NJ 08031;			
10. Person Reporting Incident / Crime:			
11. Suspect(s) Ian Smith Frank Trumbetti	12. Person Info(s): [REDACTED]	13. Address(s): [REDACTED]	
14. Victim(s): N/A	15. Person Info(s):	16. Address(s):	
17. Stolen / Missing Property:		18. Weapon Used:	

NARRATIVE

Wednesday, July 22, 2020

On Wednesday, July 22, 2020, at approximately 4:00 P.M., I arrived at

Bellmawr Police Department

21 E Browning Rd,

Bellmawr, New Jersey,

whereupon arrival I met with

Sgt. Dennis Convery

Camden County Prosecutor's Office

Major Crimes Unit,

Det. Briana Hagan

Camden County Prosecutor's Office

Major Crimes Unit,

Det. James Brining

Camden County Prosecutor's Office

Major Crimes Unit,

Det. Mike Batista

Camden County Prosecutor's Office

Major Crimes Unit



CAMDEN COUNTY PROSECUTOR'S OFFICE
SUPPLEMENTAL REPORT

	Case#	MC-0160-20-07	Promis Gavel#	
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and

Det. Allison Dube-Smith
Camden County Prosecutor's Office
Major Crimes Unit

to further investigate executive order violations by

Atilis Gym
363 W. Browning Rd,
Bellmawr, New Jersey.

The above-mentioned law enforcement personnel arrived to the parking lot directly outside of Atilis Gym, at which time surveillance was re-established of individuals entering into and out of the aforementioned gym. Furthermore, my view of the parking lot and front doors of same were never blocked, hindered or obstructed in anyway thus granting me a continuous view of the gym in its entirety. Surveillance of the above location was initiated, to which the following is a brief synopsis:

- 4:11 P.M. Through 4:50 P.M. – Approximately fifteen (15) individuals were observed to arrive at the gym and enter into same. Four (4) of the fifteen (15) individuals were observed to arrive within two (2) vehicles, respectively. The remaining eleven (11) individuals arrived in their own separate vehicles.
- 5:01 P.M. Through 6:11 P.M. – Approximately eighteen (18) individuals were observed to arrive at the gym and enter into same. Seven (7) of the eighteen (18) individuals were observed to arrive within three (3) vehicles, respectively. The remaining eleven (11) individuals arrived in their own separate vehicles. Additionally, during this time frame, five (5) individuals were observed exiting the gym.

During the above surveillance, approximately ten (10) individuals were observed to not have donned a protective face covering mask while entering into or exiting the gym. Furthermore, approximately half of all individuals who were observed to have entered into the gym were observed to be in possession of a duffel style gym bag. For complete details please refer to notes taken during the above-mentioned surveillance.

At approximately 7:00 P.M., the above-mentioned law enforcement personnel terminated their surveillance of the individuals entering into and exiting the Atilis Gym. We then departed and returned to the

Camden County Prosecutor's Office
200 Federal St,
Camden, New Jersey.

Nothing further to report.

Reporting Detective ALEXANDER L BURCKHARDT	Reporting Detective Signature  BURCKHARDT, ALEXANDER L	Date of Report 7/22/2020	Supervisor Signature  CONVERY, DENNIS
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