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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

GHOST GOLF, INC., DARYN COLEMAN, SOL Y LUNA MEXICAN CUISINE, and NIEVES RUBIO, Plaintiffs, **v.** **GAVIN NEWSOM, in his official capacity as Governor of California, XAVIER BECERRA, in his official capacity as Attorney General of California, SANDRA SHEWRY, in her official capacity as Acting Director of the California Department of Public Health, ERICA S. PAN, in her official capacity as Acting State Public Health Officer,** Defendants.	Case No. 20CECG03170 **DECLARATION OF DR. JAMES WATT, MD, MPH, IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION** Date: December 15, 2020 Time: 3:30 p.m. Dept: 501 Judge: The Hon. D. Tyler Tharpe Trial Date: None Set Action Filed: October 26, 2020 **(Exempt from Filing Fees: Gov. Code, § 6103.)**

School of Medicine. In these positions, I teach graduate students in public-health schools and medical schools about communicable disease control, and I also mentor graduate students.

6. During my career, I have published over 60 scientific peer-reviewed papers focused on infectious diseases. As a physician scientist, my research has focused on the diverse challenges that we face in preventing infectious diseases, including emerging infections, and vaccine safety and efficacy.

7. I have provided international consultation to address infectious diseases in many regions of the world. I have served on a variety of advisory panels on communicable disease control, including at the CDC and the World Health Organization (WHO).

8. My professional accomplishments have been recognized through honors and awards including the U.S. Public Health Service Achievement Medal in 2000, the National Center for Infectious Diseases Honor Award in 2001, and Outstanding Achievement Awards from the CDPH in 2015 and 2016.

The California Department of Public Health

9. CDPH is one of 17 departments and offices within the California Health and Human Services Agency (CHHS). CDPH's fundamental responsibilities include infectious disease control and prevention, food safety, environmental health, laboratory services, patient safety, emergency preparedness, chronic disease prevention and health promotion, family health, health equity, and vital records and statistics. CDPH's mission is to advance the health and well-being of California's diverse people and communities.

10. CDPH's Center for Infectious Diseases protects California's population from the threat of preventable infectious diseases and assists those living with an infectious disease in securing prompt and appropriate access to healthcare, medications, and associated support services. The Division of Communicable Disease Control works to promptly identify, prevent, and control infectious diseases that pose a threat to public health, including emerging and re-emerging infectious diseases, vaccine-preventable agents, bacterial toxins, bioterrorism, and pandemics.

clinical trials have been undertaken, but there has been insufficient time for completion, analysis, and peer review of many of these studies and trials.

18. During the short time that SARS-CoV-2 has been identified as a human pathogen, as teams of scientists have released studies and data, scientific knowledge and understanding have rapidly changed. In some cases, guidance to the public has shifted in accordance with these shifts in understanding. For example, guidance about the use of face coverings is based on emerging evidence about pre-symptomatic (occurring before an infected person becomes symptomatic) and asymptomatic (occurring even if an infected person never shows symptoms) transmission of the virus.

19. While there is much that remains unclear and uncertain about the novel coronavirus, there are some areas where there is a consensus among scientists about certain characteristics or features of the virus, as described below.

A. Symptoms, Morbidity, and Mortality of COVID-19

20. People infected with the COVID-19 virus have reported a wide range of symptoms, from none at all or mild symptoms to severe and life-threatening illness. Common symptoms include fever, body ache, dry cough, fatigue, chills, and headache. In some people, COVID-19 causes more severe symptoms like high fever, severe cough, and shortness of breath, which often indicates pneumonia. Some of those infected with COVID-19 experience neurological symptoms, gastrointestinal symptoms, or both. Specific neurological symptoms seen in people with COVID-19 include loss of smell, inability to taste, muscle weakness, tingling or numbness in the hands and feet, dizziness, confusion, delirium, seizures, and stroke.

21. The virus can cause severe disease and death in individuals of any age. Older adults and people of any age who have serious underlying medical conditions are at higher risk for severe illness or death from COVID-19.

22. Some data suggest that there may be serious lingering effects for some of those who recover from COVID-19, and that even those who are asymptomatic or have mild illness may suffer from lingering long-term effects. See DeeDee Stiepan, "Long-term symptoms,

26. While all of the mechanisms by which COVID-19 spreads are not yet clear, there is consensus among epidemiologists that the most common mode of transmission of SARS-CoV-2 is from person to person, through respiratory particles such as those that are produced when an infected person coughs or sneezes or projects his or her voice through speaking, singing, and other vocalization. These particles can land in the mouths, noses, or eyes of people who are nearby or possibly can be inhaled into their lungs. See https://www.who.int/news-room/q-a-detail/q-a-how-is-covid-19-transmitted.

27. Some evidence exists that SARS-CoV-2 might also be spread through aerosol transmission, that is, through smaller particles (of less than 5 microns) emitting from an infected person, including through speaking, singing, and other vocalization, that can travel farther than respiratory droplets. See https://apps.who.int/iris/rest/bitstreams/1286634/retrieve.

28. Studies show that SARS-CoV-2 can live on certain surfaces for a period of time, suggesting that fomite transmission (through touching a surface where the live virus is present) is possible. Fomite transmission presently is not believed to be a common method by which individuals can be infected by the virus. See https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html.

29. There is broad consensus that people who are not experiencing symptoms can still spread SARS-CoV-2. See "Transmission of SARS-CoV-2: implications for infection prevention precautions," WHO Scientific Brief (Jul. 9, 2020), available at https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions.

30. Multiple studies provide evidence for asymptomatic and pre-symptomatic transmission, examples of which include those set forth below.

i. An article in the journal Nature Medicine reporting an investigation of 94 patients with COVID-19 found that that 44 percent of secondary cases were infected before the index case developed symptoms. Xi He, et al., "Temporal dynamics of viral shedding and transmissibility of COVID-19," Nature Medicine, vol. 26 (Apr. 15, 2020), pp. 672-675, available at www.nature.com/articles/s41591-020-0869-5.

D. Community Spread of COVID-19

33. An area experiences community spread when residents are becoming infected with the virus in community settings, and it is not possible to identify the source of exposure in some cases.

34. A state of emergency due to COVID-19 was declared in California on March 4, 2020, and COVID-19 was declared a global pandemic by the WHO on March 11, 2020. COVID-19 has been spreading in the community (community spread) in most California counties since then.

35. Leaving a home that is free of COVID-19 and interacting with others outside the home when COVID-19 is being transmitted in the community increases individuals' risk of contracting the disease. The more individuals interact with others in the community, the more likely that COVID-19 will spread.

Activities with Increased Risk of Transmission COVID-19

A. Gatherings

36. There is broad consensus among epidemiologists that transmission (and thus spread) of the novel coronavirus is more likely when people are in close proximity to one another, particularly when they are within about six feet of each other. Greater physical distance between people can increase the possibility of dispersion of the virus and reduce the viral dose that people may be exposed to.

37. While keeping six feet of separation between individuals and wearing cloth face coverings can reduce the risk of disease transmission, such distancing does not eliminate the risk of transmission altogether. As a consequence, any gathering increases the risk of individual and community transmission of COVID-19, and the risk increases commensurately with the size of the group (other factors being equal).

38. Gatherings where individuals are in close proximity to others are especially risky because, as noted above, COVID-19 can be spread by people who are not showing symptoms, and therefore individuals who are present will not know from mere observation whether others in close proximity are more or less likely to be carrying the virus.

The case studies addressing super-spreading incidents in indoor settings include those set forth below.

i. In a published (but not peer-reviewed) study by Hiroshi Nishiura, et al., examining 110 cases of the COVID-19 virus, the authors found that among the 27 primary cases within the group who generated secondary cases, the odds that a primary case transmitted COVID-19 in a closed environment was 18.7 times greater compared to an open-air environment. The authors found it "plausible that closed environments contribute to secondary transmission of COVID-19 and promote super-spreader events." See "Closed environments facilitate secondary transmission of coronavirus disease 2019 (COVID-19)," available at https://www.medrxiv.org/content/10.1101/2020.02.28.20029272v2.full.pdf.

ii. Another published study of cases reported by the local Municipal Health Commissions of 320 municipalities in China between January 4, 2020, and February 11, 2020, states that all but one of the 318 outbreaks (involving 1245 confirmed cases), and every outbreak causing three or more infections, involved a transmission in an indoor environment. See Hu Qian, et al., "Indoor transmission of SARS-CoV-2" [pre-print] published in medRxiv on April 4, 2020, and can be found at https://onlinelibrary.wiley.com/doi/10.1111/ina.12766.

C. Gatherings in Restaurants and Bars

44. The science of disease transmission and recent studies have shown that transmission is greater in indoor settings. The release of infectious particles into the air when someone speaks, coughs, sneezes, or sings, is a greater risk in indoor spaces because there is reduced ventilation and reduced dispersion of infectious particles. Restaurants and bars are considered high risk environments for transmission because they are settings where people from different households share the same space for prolonged periods of time. Further, eating and drinking require removal of face coverings which can increase the spread of infectious particles. Additionally, physical movement within the establishment, duration of time spent in the establishment, and the degree of social mixing among individuals and groups outside one's household may all be significant in these sectors, which substantially elevates the risk of transmission even where face coverings can be worn.

49. There is also widespread consensus that it is appropriate to impose restrictions on gatherings when COVID-19 is circulating, because of the increased risk of transmission when groups of individuals gather. Such restrictions are particularly important in settings that are believed to have an increased risk of transmission.

50. Based on general principles of infection control in public health, measures that depend on widespread individual compliance are generally less effective at preventing transmission than systematic measures like prohibiting gatherings, because they are more difficult to obtain compliance with and to sustain.

California's Response to the COVID-19 Pandemic

A. Overview of Orders and Their Purpose

51. I am familiar with the guidance issued by the CDPH and the State of California, including Executive Orders N-33-20 and N-60-20 and the related Public Health Officer Orders, as well as subsequent orders, directives and guidances, including the Blueprint for a Safer Economy reopening plan and related Orders.

52. The purpose of the State's public health measures combatting the COVID-19 pandemic is to protect all people from infection with SARS-CoV-2, the coronavirus that causes COVID-19, which can result in severe disease and death, and to reduce the spread of that virus in the community. By reducing community spread, we can decrease death and disability in our community, especially among those vulnerable populations such as the elderly and those with underlying medical conditions at highest risk for poor outcomes, and ensure that critical infrastructure, particularly health care facilities, are not overwhelmed.

53. Given that the novel coronavirus is newly recognized and knowledge about it is evolving, the State's pandemic response was designed to be, and has been, a work in progress that must be adjusted in real time based on new data and circumstances that arise during the course of the pandemic in different parts of the State. The conditions of the pandemic have varied greatly and likely will continue to do so. In accordance with these realities, as scientific understanding about transmission, prevention, and control of COVID-19 has increased, the State has been able to increasingly tailor its public health measures to the risk of transmission posed by particular

58. On May 7, 2020, the PHO announced that statewide data supported the gradual movement of the State into stage 2 of the roadmap. The PHO indicated that she would progressively designate sectors, establishments, and activities that could reopen with certain modifications, based on public health and safety needs and at a pace designed to protect public health and safety.

59. The staged reopening outlined in the reopening plan and subsequent guidance was intended to, and has, varied between and among counties, depending on their rates of infection and medical capacities. Regions with low infection rates generally started moving through reopening stages more rapidly than regions with higher infection rates. However, in areas that experienced an increased infection rate and reduced medical capacity, the State slowed aspects of the opening process or reinstated the stay-at-home order. See https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-19-County-Variance-Attestation-Memo.aspx.

D. The July 1, 2020, Guidance

60. Unfortunately, during the month of June 2020, many parts of California experienced a spike in cases and hospitalizations. These higher levels of community spread increased the likelihood of infection among individuals at high risk of serious outcomes from COVID-19, including the elderly and those with underlying health conditions who might live or otherwise interact with an infected individual. In addition, the higher levels increased the likelihood of COVID-19 transmission in congregate settings such as nursing homes, homeless shelters, jails and prisons. Infection of vulnerable populations in these settings can be catastrophic, leading to high rates of morbidity and mortality of residents and high strain on the hospital delivery system.

61. To combat this increased spread, on July 1, 2020 the State issued new guidance restricting many activities.

62. In particular, the July 1, 2020, guidance provided that, in Counties on the County Monitoring List due disease transmission rate, hospitalization rate, and hospital capacity "all brewpubs, breweries, bars, and pubs" must close, both indoors and outdoors, unless they are offering sit down, dine-in meals as described under the actions section of the State's prior June

E. The July 13, 2020, Guidance

67. The rate of COVID-19 infections and hospitalizations generally continued to increase in counties on the County Monitoring List after the July 1, 2020 guidance was issued.

68. On July 13, 2020, based on the continued worsening circumstances in those counties, the State and CDPH issued additional guidance applicable to those counties.

69. This guidance extended the ban on both inside and outside operation of bars, pubs, and breweries not serving food to the entire state. The guidance also temporarily barred the following activities indoors throughout the state:

> Dine-in restaurants
> Wineries and tasting rooms
> Movie theaters
> Family entertainment centers (for example: bowling alleys, miniature golf, batting cages and arcades)
> Zoos and museums
> Cardrooms

Finally, the guidance temporarily required counties on the County Monitoring List to temporarily close certain indoor activities, this time including worship services:

> Gyms and fitness centers
> Places of worship and cultural ceremonies like weddings and funerals
> Offices for non-critical infrastructure sectors
> Personal care services, (like nail salons, body waxing)
> Hair salons and barbershops
> Shopping malls

See Statewide Public Health Officer Order, July 13, 2020.

F. The Blueprint for a Safer Economy

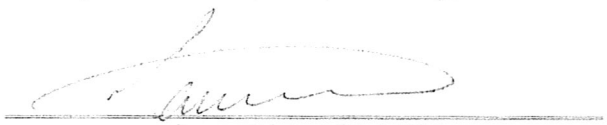
70. The restrictions imposed in July 2020 successfully reduced the rate of infection throughout California, and on August 31, 2020 the State released a new plan for relaxing restrictions, the "Blueprint for a Safer Economy."

71. The Blueprint creates four tiers (purple to yellow, in order of decreasing restrictions) wherein geographic areas with similar infection rates are grouped together. The Blueprint built on the statewide roadmap process but refined the approach to make it more user friendly and uniquely applicable to specific communities and the level of transmission that community was

severe COVID-19 cases. In addition, COVID-19 has impacted the availability of hospital beds in areas with extensive transmission. Due to the impact of large numbers of COVID-19 cases being hospitalized, persons needing hospitalization for other reasons could have more complications if they must be sent long distances due to lack of hospital beds. By slowing the spread of COVID-19, the State has been able to reduce the number of cases while new treatments and vaccines are being developed.

75. While California's cases have recently risen, they are still lower than many states, and most hospitals have not yet been overwhelmed as in other states. The lower infection rate and lower burden placed on California hospitals followed the interventions occurring in California that were not in place recently in many of these other states.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30th day of November, 2020, in Albany, California.



James Watt, MD, MPH