SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-093916 07/06/2020

HONORABLE TIMOTHY J. THOMASON

CLERK OF THE COURT
N. Johnson
Deputy

MOUNTAINSIDE FITNESS ACQUISITIONS L L C — JOEL E SANNES

v.

DOUGLAS A DUCEY — BRETT W JOHNSON

ANTHONY S VITAGLIANO
DAVID R SCHWARTZ
JAMES B REED
ROBERT B ZELMS
COLIN PATRICK AHLER
TRACY A OLSON
ANNI L FOSTER
JUDGE THOMASON

RULING

Plaintiff Mountainside Fitness Acquisitions, LLC ("Mountainside") has applied for a temporary restraining order, to enjoin the Governor of the State of Arizona ("Governor") from enforcing Executive Order 2020-43 (the "EO"), which stopped plaintiff and other indoor fitness clubs and centers from operating until at least July 27, 2020. The Court has considered the Application, Response and Reply, along with the arguments of counsel.[1]

[1] In a consolidated matter, plaintiff Fitness Alliance, LLC dba EOS Fitness ("EOS") has also moved for injunctive relief. EOS operates 22 fitness centers in the Phoenix area. EOS has also taken many steps to ensure that it is being operated in accordance with all federal and state guidelines, and in a clean and safe manner. Indeed, EOS outlines in great detail the measures it took to limit the spread of COVID-19 before the EO was issued. The analysis necessary to address the application submitted by EOS is the same as the requisite analysis on Mountainside's application. Although this ruling refers only to Mountainside, it is equally applicable to the application submitted by EOS.

PRELIMINARY STATEMENT

These are unprecedented times. The world is in the midst of a global pandemic. Hundreds of thousands of people have contracted COVID-19 and thousands of people have died.[2] Governmental leaders at the local, state and national levels are being called on to make critical decisions, when the available medical information is constantly changing.[3] It is not the function of this Court to second guess those decisions.[4] Rather, the sole purpose of this Court is to determine if the Governor's actions in question had a legal and rational basis.

Certain people and businesses are being hurt disproportionally during this crisis, some in incredibly unfair ways. Mountainside may be one of those businesses. The Court certainly sympathizes with Mountainside, and its employees and patrons. Sympathy, however, is not a relevant consideration for the Court. Even though plaintiff seeks equitable relief, this is, first and foremost, a Court of law. As such, the Court is constrained to examine whether the EO passes legal muster.

INJUNCTION STANDARDS

Injunctive relief is in order when "(1) there is a real threat of irreparable injury not remediable by damages; (2) the threatened harm to the [movants] weighs more heavily in the balance than the actual injury to the [opponents]; (3) the [movants] are likely to succeed in the trial on the merits; and (4) public policy favors the injunction." *Burton v. Celentano*, 134 Ariz. 594, 595 (App. 1982). The balance of hardships is the crucial element and can be met by demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury; or (2) the existence of serious questions going to the merits and the balance of hardships tips sharply in the moving party's favor. *Shoen v. Shoen,* 167 Ariz. 58, 63 (App. 1990). This Court has the power to enjoin violations of the Arizona Constitution. *E.g., Williams v. Superior Court in and for Pima County*, 108 Ariz. 154, 157 (1972).

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[2] "At this time, there is no known cure [for COVID-19], no effective treatment, and no vaccine. Because people may be infected but asymptomatic, they may unwittingly infect others." *South Bay United Pentecostal Church v. Newsom,* 140 S. Ct. 1613 (2020) (Me.) (Roberts, C.J., concurring)

[3] There is certainly understandable frustration when the advice and directives the public gets from the government are constantly changing and inconsistent. At the outset of the crisis, for example, the public was told that face masks were of no utility. Now, they are required in certain jurisdictions; we are now told that masks are essential in combating the spread of the virus. In May, Arizona officials told the public that it was safe to re-open, albeit in a measured way. The public is now being told, in essence, that what was said in May was incorrect.

[4] Put another way, it is certainly not relevant whether this Court agrees with the wisdom of the Governor's decisions. The Governor was elected by the people to make important policy decisions. This Court was not elected and certainly does not make policy decisions.

PLAINTIFF'S SUMMARY OF FACTS

Plaintiff is the owner of 18 fitness centers in the Phoenix area. From March 20, 2020 until May 13, 2020 (the "Reopening Date") all 18 centers were closed under the authority of the Governor's Executive Order 2020-09. Under that Order, many businesses were forced to close. Other businesses, deemed "essential," were allowed to stay open.[5]

On April 29, 2020, the Governor issued Executive Order 2020-33, which provided that businesses that were not classified as essential could operate and provide goods and services to their customers, if the businesses established and implemented best practices for preventing the transmission of COVID-19. On May 20, Executive Order 2020-36 recognized that Arizona had entered Phase 1 of the Federal Guidelines for Opening Up America Again. The Federal Phase 1 Guidelines provided that "Gyms can open if they adhere to strict physical-distancing and sanitation protocols." Plaintiff, however, delayed opening in order to provide training to employees to ensure compliance with strict physical-distancing standards. Plaintiff also purchased expensive sanitation equipment and imposed strict cleaning requirements. Physical lay-outs of the centers were modified to provide for distancing. Schedules were changed to reduce the number of people at the centers at one time. Sanitizing stations were installed. Employees were required to wear masks and pass health screenings. Members were told to wear masks in common areas and locker rooms. Clearly, plaintiff Mountainside was a good citizen that went above and beyond what was necessary to ensure the health and safety of its patrons and employees.

On June 29, 2020, the Governor issued Executive Order 2020-43. Gyms and fitness centers were ordered to close until at least July 27. The EO provided that gyms may be allowed to reopen if they "submit a form as prescribed by the Arizona Department of Health Services (ADHS) that attests the entity is in compliance with guidance issued by ADHS related to COVID-19 business operations." No such forms are currently available. Plaintiff claims that it is in substantial compliance with the guidance issued by ADHS.

Plaintiff had 1,410 employees as of March 1. Mountainside asserts that is not eligible for federal CARES Act assistance, like the Paycheck Protection Program, due to its size.

ADDITIONAL FACTUAL BACKGROUND

The Governor has submitted declarations from Dr. Cara Christ, Director of ADHS, and Dr. Marjorie Bessel, Chief Clinical Officer for Banner Health. These declarations provide background

[5] It has been well chronicled that many businesses were allowed to stay open that may very well not have been "essential." Government officials, however, had to consider many factors in making the decisions about what businesses were "essential." The courts are in no position to second guess these types of decisions.

on the COVID-19 crisis, the increase in cases as of late and the specific threats of COVID-19 spread in indoor gyms and fitness centers.

By way of summary, COVID-19 is highly contagious and can pose a severe health threat to the elderly and those with other health problems. The virus is transmitted mainly via large respiratory droplets. Social distancing of at least six feet is critical to prevent the spread of the disease.

Unfortunately, since the Reopening in May, cases have skyrocketed. On July 1, the State set a record for newly reported cases of 4,878. Hospital capacity is now being challenged.

Dr. Christ and Dr. Bessel believe that indoor gyms and fitness centers present high risks of infection. Physical exercise is often not conducive to mask wearing. Exercising also results in respiratory droplet secretions that can be easily spread. Physical distancing can be difficult in gyms. The nature of indoor gyms makes management difficult due to use of multiple machines, moving around the facility, use of water fountains and use of .locker rooms. The medical professionals feel that, even if gyms follow all protocols, there is still an unacceptable risk of infection. Many fitness center members return to the center several times a week, increasing the risk of infection further. Other states have closed gyms and fitness centers.

ANALYSIS

I. PROBABLE SUCCESS ON THE MERITS

a. General legal principles

Plaintiff asserts three Constitutional challenges—procedural due process, substantive due process and equal protection. There are significant legal hurdles that Mountainside needs to overcome, rendering it extremely difficult for plaintiff to succeed on the merits.

Certain governmental entities in Arizona have the power to declare a state of emergency A.R.S. §26-311(A). A state of emergency can be ordered due to an epidemic. A.R.S. §26-301(15). Under a state of emergency, businesses can be closed and "all necessary regulations to preserve the peace and order" can be imposed. 26-311(B). The Governor has the power to exercise these measures on a state- wide basis. A.R.S. § 26-303(B).

"No person shall be deprived of life, liberty, or property without due process of law." Ariz. Const. Art. 2, sec. 4. Procedural due process can consist of pre-deprivation rights to be heard or post-deprivation rights to due process. Procedural due process generally does not allow for deprivation of a property interest without any right to be heard. Due process requires "opportunity

to be heard 'at a meaningful time and in a meaningful manner.'" *Samiuddin v. Nothwehr*, 243 Ariz. 204, 211, ¶ 20 (2017).

It has long been held that the due process clause does not prevent the government from taking necessary actions during public health emergencies, with little oversight by the courts. *Jacobson v. Massachusetts*, 197 U.S. 11, 29 (1905). "[P]rotection of the health and safety of the public is a paramount governmental interest which justifies summary administrative action. Indeed, deprivation of property to protect the public health and safety is '[o]ne of the oldest examples of permissible summary action.'" *Hodel v. Va. Surface Mining & Reclamation Ass'n,* 452 U.S. 264, 300 (1981). Accordingly, the recent case law has uniformly upheld business closures during the current pandemic. *E.g., Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020); *In re Rutledge*, 956 F.3d 1018, 1031-32 (8th Cir. 2020); *In re: Abbott*, 956 F.3d 696, 704-05 (5th Cir. 2020); *Geller v. de Blasio*, __F. Supp. 2d __, 2020 WL 2520711 at *3 (S.D.N.Y. May 18, 2020); *McGhee v. City of Flagstaff*, No. CV-20-08081-PCT-GMS, 2020 WL 2308479, at *3 (D. Ariz. May 8, 2020). Of course, this certainly does not mean that executive officials have free reign to take whatever actions they feel are necessary. The courts still must ensure that governmental action is not arbitrary and capricious. "While the law may take periodic naps during a pandemic, we will not let it sleep through one." *Maryland Baptist Church, Inc. v. Beshear,* 957 F.3d 610, 615 (6th Cir. 2020).

In response to the Governor's Motion to Dismiss, plaintiff cited *League of Independent Fitness Facilities & Trainers, Inc. v. Whitmer,* __ F. Supp. 3d __, 2020 WL 3421229 (W.D. Mich. June 19, 2020). That decision struck down an emergency closure order by the Governor of Michigan. The Sixth Circuit, however, quickly stayed that decision, holding unequivocally that the Governor's actions were permissible and that the trial court acted improperly. The Sixth Circuit held that a very flexible standard of judicial review applied, which permits "rational speculation" as long as there is "conceivable" support for the Governor's decision. *League of Independent Fitness Facilities & Trainers, Inc. v. Whitmer*, __ F.3d __, 2020 WL 3468281, at *3 (6th Cir. June 24, 2020).

A recent Pennsylvania Supreme Court decision held that due process required an opportunity to be heard regarding the Pennsylvania Governor's COVID executive orders affecting business operations. *Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 898 (Pa. 2020). In *DeVito,* the Pennsylvania Court held that an opportunity to be heard can be provided after the fact. The Pennsylvania Governor's order, that included a process for applying for a waiver, satisfied due process. *Id.* at 897-88.[6]

[6] The *DeVito* decision upheld an executive order by the Governor of Pennsylvania against a challenge under several different legal theories. The post-deprivation process in that case simply allowed businesses that were categorized as non-life sustaining to challenge that categorization.

In addition, the Arizona Constitution provides that "(n)o law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations." Ariz. Const. Ar. 2, sec. 13. The State, however, has the power to act in the interest of the public health, safety, morals and other phases of public welfare. *State v. Double Seven Corp.,* 70 Ariz. 287, 293 (1950). "[A] classification must be based on some natural principle of public policy and must be reasonably intended to effect some result which is naturally within the state's police power." *Id*. at 294.

b. Procedural due process

Procedural due process is "not a technical conception with a fixed content unrelated to time, place and circumstance." *Gilbert v. Homar*, 520 U.S. 924, 930 (1997). In emergency situations, there is generally no pre-deprivation due process requirement. *Id*.; *DeVito*, *supra.*

A due process challenge involves two components. First, there must be deprivation of a constitutionally-protected liberty or property interest. Second, there must be no adequate procedural protections. *Brewster v. Bd. Of Educ. of Lynwood Unified Sch. Distr.,* 149 F. 3d 971, 982 (9th Cir. 1998).

The Governor has raised compelling arguments on procedural due process that will make it difficult for Mountainside to prevail. First, EO 2020-43 may not deprive Mountainside of a constitutionally-protected property interest. *See Alpha, LLC v. Dartt*, 232 Ariz. 303, 305, ¶11 (App. 2013). The activity of running a business may not be a constitutionally protected property interest, at least if the government interference with the business is only temporary. *See College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.,* 527 U.S. 666, 675 (1999).

Mountainside claims that the comments from the Supreme Court in *College Savings Bank* were dicta and that constitutionally-protected interests are implicated here, citing *Benner v. Wolf,* __ F. Supp. 3d __, 2020 WL 2564920 (M.D. Pa. May 21, 2020). While the *Benner* decision did accept the notion that a temporary shut-down could implicate procedural due process, the decision upheld the governmental action, finding that a post-deprivation procedure was sufficient process. *Id*. at *4. The recent decisions have uniformly held that no pre-deprivation process is required in addressing the COVID-19 crisis. "Protection of the health and safety of the public is a paramount governmental interest which justifies summary administration action. Indeed, deprivation of property to protect the public health and safety is '[o]ne of the oldest examples of permissible summary action.'" *Hodel,* 452 U.S. at 300. As such, even if a temporary shut- down of a business does implicate a constitutionally protected property interest, it is clear that no pre-deprivation process is required.

One recent decision has in fact held that temporary closure orders do not implicate procedural due process rights. *Talleywhacker Inc. v. Cooper,* __ F. Supp. 3d __, 2020 WL 3051207, *12 (E.D.N.C. June 8, 2020). Certainly a permanent taking or a permanent shutdown order would implicate a Constitutionally-protected property interest. A temporary shut-down order, however, may not deprive the business owner of a Constitutionally-protected property interest. In any event, to the extent that a property interest is implicated here, the EO does provide sufficient post-deprivation process on its face.

Constitutionally sufficient process is included in the EO. As noted above, no pre-deprivation hearing was required. Because "government officials need to act promptly and decisively when they perceive an emergency," under these circumstances, no pre-deprivation process is due. *Sinaloa Lake Owners Ass'n v. City of Simi Valley,* 882 F.2d 1398, 1406 (9th Cir. 1989), *overruled on other grounds by Armednariz v. Penman,* 75 F.3d 1311 (9th Cir. 1996).[7]

Under the EO, affected businesses are allowed to submit forms to ADHS attesting compliance and requesting authorization to reopen. The EO specifically states that "(t)o receive authorization to open, entities shall complete and submit a form as prescribed by the Arizona Department of Health Services that attest the entity is in compliance with guidance issued by ADHS…" No specific timeline is discussed in the EO. It is certainly reasonable to conclude, however, that businesses that submit the form and attest that they are complying should be able to reopen by July 27.

Mountainside argues that there is no real due process protection because the form is not even available yet. Mountainside has concerns that the process set forth in the EO may not be in place at any time soon, rendering any purported process illusory. Mountainside's point is well taken.

On its face, the EO does contain sufficient post deprivation process. During oral argument, however, the Governor's counsel was less than reassuring that the procedure provided for in the EO will be implemented any time soon. Indeed, the Court was not provided a date by which the form will be available; rather, the Court was told that the form will "hopefully" be available by July 27. Obviously, if the form is not available until July 27, businesses will not be able to reopen by July 27. There will certainly be some time needed to review and verify the forms.

Timing here is everything. In order for the procedure set forth in the EO to have any real meaning, it must be in place and available to aggrieved businesses in a timely fashion. If not, then the purported process is in fact illusory. Justice delayed is indeed justice denied. If process is not

[7] Certainly the leeway provided to the government at the outset of the pandemic was broader than it should be now, several months later. Nonetheless, the government still needs to be able to act quickly and decisively as information becomes available and situations change.

provided in a reasonably timely fashion, then there really is no process. In sum, the process provided must be adequate.

There must be real post-deprivation process. While the EO does have post-deprivation process on its face, the Court is greatly concerned about implementation. The Court is not in a position to set some arbitrary date by which the forms must be available. Rather, the Court will only say that, if the form is not available well in advance of July 27, then the Governor runs the real risk of depriving aggrieved businesses of any real process at all. If meaningful process is not provided, then injunctive relief may ultimately be ordered.

Procedural due process does not completely disappear in time of hardship. *See Benner,* 2020 WL 2564920, *5. The *Benner* decision upheld shut down orders by the Governor of Pennsylvania. The court also made it clear, however, that some post-deprivation process was required. *Id.* While the procedural due process need not reach perfection, it does need to "achieve adequacy." *Id.; see also DeVito, supra.* The same is true here.

The Court in *Benner* noted that the post deprivation process could "overwhelm an already taxed system and result in fewer business (sic) receiving review." *Benner,* 2020 WL 2564920, *5. Certainly, the post-deprivation process does not have to be so extensive and complicated to result in overwhelming the system. The process set forth in the EO, however, should not overwhelm the system. Indeed, it appears to be a straightforward system that should allow affected parties to submit the necessary paperwork and, if appropriate, receive authorization to reopen in a timely fashion, without any undue burden on the government.

The post-deprivation process in the EO is, on its face, sufficient. As such, Mountainside has not shown that it will be likely to succeed on the merits of the procedural due process claim, at this time.

c. Substantive due process

There is no dispute that the rational basis test applies here. Under that test, a court will uphold a law "if it has any conceivable rational basis to further a legitimate governmental interest." *Arizona Downs v. Arizona Horsemen's Found*., 130 Ariz. 550, 555 (1981). This is a deferential test. A governmental act is upheld so long as "any set of facts…rationally justifies" the law. *Id.* at 556.

The EO likely passes rational basis. There is no dispute here that COVID-19 presents an emergency justifying governmental action. As noted above, two noted physicians have provided medical opinions supporting the notion that closing fitness centers is advisable. These medical opinions provide a rational basis for the EO.

One can certainly quibble with the wisdom of the decision.[8] Indeed, a very reasonable argument can be made that fitness centers that are taking the steps Mountainside has taken to comply with governmental regulations should be kept open, particularly when other businesses are allowed to stay open. The legal question, however, is not whether the decision was correct. Rather, it only had to have a rational basis. In all likelihood, the decision to close gyms passes the rational basis test.

During oral argument, Mountainside's counsel emphasized that the real issue here is "what rational basis the state can offer for the conclusion which is inherent in EO-43 that the state's own protocols for fitness centers were not good enough to allow fitness centers to remain reopened but the protocols for other businesses are good enough to allow them to remain open? That is the distinction." Consistency, however, is not required to pass the rational basis test, particularly during times when the available information is constantly changing. The Governor certainly felt that the protocols put in place were sufficient in May. Things have changed, however, since May. Making a different decision now than what was done in May does not mean that the recent decision was not a rational one.

It certainly may seem inconsistent for gyms and fitness centers that are following protocols to be forced to close, while other businesses are permitted to stay open, even if they are not complying with protocols. As noted above, however, the Governor's medical advisors are providing him with their medical opinions that fitness centers, even those currently in compliance with the guidelines, pose undue risks. The operative question is not whether those opinions are correct. Indeed, as the *League* decision held, even "rational speculation" is permitted as long as there is some "conceivable" support for the Governor's decision. *League*, 2020 WL 3468281, at *3. As such, there is some rational support for treating businesses differently. Plaintiff is unlikely to prevail on substantive due process.

d. Equal protection

Since this case does not involve any suspect class, the rational basis test applies to the equal protection challenge. This test is deferential and requires Mountainside to show that "there is no conceivable basis for" EO 2020-43. *Martin v. Reinstein*, 195 Ariz. 293, 310 (App. 1999).

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[8] It is, of course, easy to second -guess. Many decisions made by governmental officials across the country have been flat out wrong. Indeed, the Governor himself seems to be admitting that the orders to reopen in May were premature. The point here, however, is that wide latitude must be given to governmental officials in these situations. While one might question the wisdom of some of the decisions, the Governor is being advised by highly trained and experienced people. There can be no question that Dr. Christ and Dr. Bessel are highly qualified and dedicated physicians, making the best recommendations they can under extremely difficult circumstances. This Court has no business second-guessing their decisions.

The EO passes that test. The CDC has reported that COVID-19 transmits person-to-person via respiratory droplets. Indoor gyms are places where droplets can be spread. As noted above, one might be able to question the wisdom of the Governor's decision. There is no doubt, however, that there is a rational basis for the decision which imposes a temporary stoppage of business. Other courts have upheld similar restrictions. *E.g., League*, 2020 WL 3468281, at *3 ("The idea that heavy breathing and sweating in an enclosed space containing many shared surfaces creates conditions likely to spread the virus is a paradigmatic example of 'rational speculation' that fairly support the Governor's treatment of indoor fitness facilities.").

Mountainside relies on a non-peer reviewed study from Norway. That study did at least generally find that it is possible to control the spread of the virus at training facilities. However, a study published by the CDC regarding South Korea indicates that the evidence on this issue is unsettled, at best.

It is clear that the science on this subject is at its infancy and remains unsettled. The Governor, however, is not required to back his decision with precise scientific data, particularly when it does not yet exist. He has certainly consulted with knowledgeable professionals. The EO clearly had a rational and reasonable basis. As such, the order that gyms and fitness centers close does not deprive Mountainside of equal protection under the Constitution.

e. A.R.S. § 26-304[9]

Mountainside also brings an argument based on A.R.S. § 26-304, dealing with the Emergency Council. Mountainside, however, makes no argument that the EO is somehow void or unenforceable because the Emergency Council may not have been adequately consulted. Nothing in the statute requires the Governor to consult with the Emergency Council before issuing emergency orders. There is no requirement that the Emergency Council provide input into emergency orders. While the Emergency Council is to monitor emergency situations, there is no statutory suggestion that any emergency order is invalid or unenforceable if that monitoring does not occur. This statute clearly provides no basis for relief.

II. IRREPARABLE INJURY

Irreparable injury is harm not remediable by damages and for which there is no adequate legal remedy. *See IB Prop. Holdings, LLC v. Rancho Del Mar* Apartments*, Ltd. Partnership*, 228 Ariz. 61, 65, ¶ 10 (App. 2011). Mountainside has not established any irreparable injury.

[9] This statute is part of the Emergency Management portion of the Arizona Revised Statutes. Section 26-304 deals specifically with the State Emergency Council, which makes recommendations to the Governor and monitors emergencies declared by the Governor.

Certainly Mountainside was damaged greatly by the initial shutdown and is being damaged again by the latest temporary shutdown. The only damage, however, is lost money. This is not irreparable.[10]

III. THE BALANCE OF THE HARDSHIPS AND PUBLIC INTEREST

The hardships to Mountainside and those similarly situated have been severe and may have been unfair. The public has a great interest in having businesses up and running in a profitable and safe manner. Mountainside is, by all accounts, an excellent, well-run company, that is not only profitable, but also a good citizen, concerned about the community.

Furthermore, the public has a strong interest in ensuring that elected officials do not overstep their boundaries and abuse their powers. Arguments can be made that, during the pandemic, some elected officials may have taken steps that overreached and may have been illegal. The courts must take a very serious look when government shuts down private enterprise, purportedly for the greater good. The courts are the last protection against government officials acting without legal authority. The public has the right to expect that their governments are not acting without sanction of law.[11]

We elect people, however, to deal with emergency situations such as this one. People in high office must be given wide latitude in their decision making in emergency situations. The public has a very strong interest in dealing with public health concerns like this one. The hardships could become even more immense if the spread of the virus is not curtailed. *See In re Abbott*, 954 F.3d 772, 795 (5th Cir. 2020) ("In the unprecedented circumstances now facing our society, even a minor delay in fully implementing the state's emergency measure could have major ramifications…").

DISPOSITION

Once again, this Court does not decide who here is "right" and "wrong." The government has the weight of the law on its side. The burden that Mountainside has is immense. The Governor does not have to prove that his decision was correct. This Court must give extreme deference to the EO. The EO clearly had a rational basis. It is unlikely that Mountainside will prevail on the merits. As noted above, however, there must be some reasonable post-deprivation process

[10] EOS claims that it might be in danger of having to permanently cease operations. This claim, however, is speculative. As noted above, EOS should have the opportunity to be open again within the next few weeks. Given the steps that it has taken to comply with ADHS guidelines, EO should have an excellent chance of being open after July 27, if the Governor makes the necessary forms available in a timely fashion.

[11] At the same time, the current shutdown is temporary. Mountainside might be back in business by the end of this month.

provided. Mountainside has also not shown that it will be irreparably injured by the EO. As such, the request for a temporary restraining order is denied.

IT IS ORDERED setting a Telephonic Status Conference on **July 9, 2020 at 11:00 a.m. (1 hour)** before:

THE HONORABLE TIMOTHY THOMASON
MARICOPA COUNTY SUPERIOR COURT
EAST COURT BUILDING
101 W JEFFERSON
7TH FLOOR, COURTROOM 713
PHOENIX, AZ 85003
TEL 602-506-0573

NOTE:* *Counsel shall be available for the conference call on a telephone land line and not on cellular phones, in order to maximize all participants' ability to hear and be heard.

The parties shall call 602-506-9695 to access the Conference Bridge. (The long distance toll free number is 1-855-506-9695). The system will prompt you to enter the conference pass code. Enter the code 3728495 followed by the # (pound) sign. If disconnected for any reason, repeat instructions above. **Note:** Participants who call in prior to the Moderator (Court staff) opening the bridge will hear music while waiting.

Note: Counsel shall have their calendars available for this proceeding.

NOTE: All court proceedings are recorded by audio and video method and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is $140 for a half-day and $280 for a full day.

NOTE: Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-79 requires all individuals entering a court facility to wear a mask or face covering at all times they are in the court facility. With limited exceptions, the court will not provide masks or face coverings. Therefore, any individual attempting to enter the court facility must have an appropriate mask or face covering to be allowed entry to the court facility. Any person who refuses to wear a mask or face covering as directed will be denied entrance to the court facility or asked to leave. In addition, all individuals entering a court facility will be subject to a health screening

protocol. Any person who does not pass the health screening protocol will be denied entrance to the court facility.