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9 *Exempt from filing Fee Per Government Code*
10 *§6103*

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF SAN MATEO

13
14 COUNTY OF SAN MATEO,

15 Plaintiff,

16 vs.

17 PACIFICA BEACH YOGA; THOMAS ANTOON,
an individual; and DOES 1 TO 100,

18
19 Defendants.

Case No. 21-CIV-00174

**COMPLAINT FOR INJUNCTIVE RELIEF,
ABATEMENT OF NUISANCE AND
PAYMENT OF FINES**

1 Plaintiff, the County of San Mateo (“the County”) alleges as follows:

2 **INTRODUCTION**

3 1. The SARS-CoV-2 novel coronavirus (“COVID-19”) has caused the most severe pandemic
4 in a century, to date killing more than 28,000 people in California alone. While most County residents,
5 businesses, and institutions have complied with Public Health Orders issued to control the spread of
6 COVID-19, Defendants Pacifica Beach Yoga and its owner Thomas (Tommy) Antoon have chosen to
7 flagrantly and repeatedly violate those Public Health Orders by operating unmasked group in-studio
8 Bikram or “hot” yoga classes two to three times daily, where multiple patrons engage in physical activity
9 within a single, super-heated room.

10 2. Currently, the County is at a critical time to slow the spread of COVID-19 because
11 transmission and death rates attributed to the virus are high and Intensive Care Unit (ICU) capacity is low.
12 The entire Bay Area is under a regional stay-at-home order that requires the closure of indoor gyms and
13 fitness centers, including yoga studios. Defendants, however, have remained open for indoor yoga
14 classes. Further, they have repeatedly failed to require employees and patrons to wear face coverings
15 while inside Pacifica Beach Yoga. County code enforcement officers and local law enforcement have
16 repeatedly attempted to explain to Defendants that their conduct poses grave risks to public health,
17 requested voluntary compliance with Public Health Orders, and attempted to incentivize Defendants’
18 compliance through administrative fines and other efforts short of seeking relief from this Court. But
19 rather than comply with the Public Health Orders, Defendants have repeatedly flouted them and refused to
20 cease indoor yoga sessions. Defendant Antoon has been outspoken about not requiring patrons to use face
21 coverings, frequently advertising on social media about mask-free yoga classes. On January 5, 2021,
22 Defendant Antoon declared to County staff that “I’ll never close,” the citations “ain’t worth a f****”
23 because the County will “never get a nickel,” and “I don’t give a f****” whether County code enforcement
24 officers “live or f****ing die.”

25 3. Defendants have thus clearly shown they will continue to conduct daily indoor and
26 unmasked group yoga sessions despite the risk of spreading COVID-19 or the potential of incurring
27 additional fines for violating Public Health Orders. Defendants’ insistence to conduct these daily
28 sessions poses an ongoing and immediate risk of irreparable harm to the public health and safety in San

1 Mateo County and across California. Accordingly, the County now asks this Court to enjoin Defendants'
2 violations, order that they comply with all applicable Public Health Orders, including the immediate
3 termination of its indoor yoga sessions, and pay the fines levied against them for violating those orders.

4 **THE PARTIES**

5 4. Plaintiff COUNTY is, and at all times relevant herein, a charter county and a political
6 subdivision of the State of California.

7 5. Defendant, PACIFICA BEACH YOGA, is and at all times relevant herein has been, a
8 limited liability company operating within the County of San Mateo, located at 1615 Oceana Boulevard,
9 Pacifica, CA.

10 6. Defendant THOMAS (TOMMY) ANTOON, is, and at all times relevant herein has been,
11 the owner of PACIFICA BEACH YOGA.

12 7. Defendants, named as Does 1-100 are, and at all times relevant herein have been owners,
13 operators, property owners, franchisees, employees, or agents each of the Defendants were and now are
14 the agents, officers, employees, members, representatives, or alter egos of PACIFICA BEACH YOGA.

15 8. Defendants, named as Does 1-100, inclusive, are sued under fictitious names pursuant to
16 Code of Civil Procedure § 474, for the reason that their true names and capacities are presently unknown
17 to Plaintiffs.

18 9. Plaintiffs will amend the Complaint to identify the true names and capacities of such
19 Defendants if and when ascertained.

20 10. Plaintiffs are informed and believe, and on that basis allege, that each of the Doe
21 Defendants is responsible in some manner for the nuisance and violations at issue in this action.

22 11. Plaintiffs are informed and believe, and on that basis allege, that at all times relevant to
23 this action, each of the Defendants were and now are the agents, officers, employees, members,
24 representatives, or alter egos of one or more of the remaining Defendants, and in doing the activities
25 alleged in this Complaint, were acting within the scope of their authority as agents, officers, employees,
26 members, representatives, or alter egos with the permission and consent of the remaining Defendants.

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1 **FACTUAL ALLEGATIONS**

2 **The COVID-19 Pandemic**

3 12. COVID-19 is the viral disease caused by SARS-CoV-2, which refers to the novel
4 coronavirus currently spreading throughout the world.

5 13. The World Health Organization (WHO) declared COVID-19 a pandemic on March 11,
6 2020. That declaration remains in effect.

7 14. The United States Department of Health and Human Services, the National Institutes of
8 Health, the California Department of Public Health, and the County Public Health Department refer to
9 COVID-19 as a pandemic.

10 15. COVID-19 is highly contagious. Current scientific knowledge indicates that it spreads
11 primarily by respiratory droplets and aerosols through the air. It is often spread by people exhibiting no
12 symptoms (asymptomatic) or prior to exhibiting symptoms (presymptomatic). Symptoms include fever,
13 difficulty breathing, and fatigue. COVID-19 can lead to pneumonia and ultimately death.

14 16. Even if a person exercising feels healthy, he or she can transmit COVID-19 either before
15 symptoms appear (presymptomatic) or without ever experiencing symptoms (asymptomatic).
16 Symptom screening is insufficient to prevent transmission.

17 17. Until enough members of the public are vaccinated, the best way to protect the public
18 from COVID-19 is to undertake risk mitigation measures to prevent transmission and infection, such as
19 avoiding indoor gatherings, wearing face coverings, keeping sufficient physical distances, and avoiding
20 heavy breathing near others while indoors.

21 18. As described below, Public Health Orders are in effect throughout the County and State.
22 But even with those orders, the ongoing ravages of COVID-19 are alarming. As of January 12, 2021,
23 statewide there have been at least 2,747,288 COVID-19 cases and 30,513 deaths, of which at least
24 29,664 cases and 268 deaths occurred among County residents. As of January 12, 2021, public health
25 authorities have confirmed at least 22.9 million total cases in the United States, and over 381,000 deaths.
26 Experts consider this outbreak the worst public health epidemic since the influenza outbreak of 1918.

27 19. Recent case numbers suggest the outbreak is worsening. On January 7, 2021, there were
28 more than 4,000 COVID-19 deaths in the United States—the most virus-related deaths the country has

1 reported in one day since the pandemic’s start. Further, it was the third day in a row of record daily
2 deaths from the disease. For the County, recent data also reflects the highest level of local cases since
3 the beginning of the pandemic and clearly illustrates a “third wave” of infections.

4 20. The Public Health Orders—and public adherence to those orders and public health
5 direction—enabled the County to “flatten the curve” through the fall of 2020, and, for a time, helped
6 avoid some of the more dramatic and devastating impacts from the pandemic that have been experienced
7 elsewhere. The County Health Officer’s initial order to limit gatherings, and later order requiring
8 residents to shelter in place, which preceded similar orders statewide, substantially limited the spread of
9 COVID-19 and likely saved tens of thousands in the County from infection.

10 **Spread of COVID-19 Based on Physical Activity While Congregating Indoors**

11 21. Scientific evidence indicates that indoor activities pose significantly greater risks of viral
12 transmission than outdoor activities. Because COVID-19 is primarily spread from person to person
13 through respiratory droplets and aerosols, these respirations increase when an individual is singing,
14 shouting, talking, coughing, sneezing, or heavily exhaling. It is much easier to catch COVID-19 indoors
15 because air is often either stagnant or recirculated. This allows respiratory droplets and aerosols to hang
16 in the air for a longer period of time, increasing the potential for infection.

17 22. Gyms and fitness centers, including yoga studios, are particularly risky environments
18 because the moist, warm air combined with turbulent air flow from exercising or stretching allows
19 droplets to spread readily. As people exercising breathe more rapidly and deeply, they expel greater
20 numbers of droplets.

21 23. In particular, yoga involves breathing techniques that may cause participants to expel
22 more droplets than they would otherwise. Further, “Bikram yoga” or “hot yoga,” which is conducted in a
23 super-heated confined room, causes participants to perspire more heavily, breathe more deeply, and expel
24 more droplets than they would in the absence of the heated room.

25 24. Unmasked physical exertion leads to a greater risk of transmission than masked physical
26 exertion.

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The Public Health Officer’s Orders and Mandatory Guidance

25. On March 3, 2020, San Mateo County Health Officer Dr. Scott Morrow declared a local health emergency due to COVID-19. This state of emergency was ratified by the County Board of Supervisors on March 10, 2020 and remains in effect.

26. On March 4, 2020, Governor Gavin Newsom declared a state of emergency in California due to the threat of COVID-19. This state of emergency remains in effect.

27. On April 17, 2020, and again on May 19 and June 17, 2020, the County of San Mateo’s Public Health Officer, Dr. Scott Morrow, MD, MPH, issued local health orders requiring individuals to wear face coverings or masks, including while in indoor public spaces. These orders were issued to reduce the spread of respiratory droplets that may contain the COVID-19 virus.

28. On May 4, 2020 Governor Newsom issued Executive Order N-60-20, mandating that “All residents are directed to continue to obey State public health directives” and directing the State Public Health Officer to develop a multi-tiered approach to COVID-19 related public health measures.

29. On June 17, 2020, Dr. Morrow revised the County’s health order to align the County with the State Resilience Roadmap while maintaining local face mask and social distancing requirements. The current health order generally requires that individuals wear face masks when in the presence of other non-household members indoors and when social distancing cannot be maintained outdoors. It also requires businesses and other entities to implement a social distancing protocol and written health and safety plans, including requiring employees to comply, taking reasonable measures to remind customers and the public of the requirements, and refusing to serve customers who do not comply.

30. On June 18, 2020, the California Department of Public Health issued Guidance that “mandates that face coverings be worn state-wide” in specified high-risk situations to limit the spread of COVID-10, subject to enumerated exceptions. This guidance was updated on November 16, 2020. The State face mask Guidance is consistent with the County’s current health order.

31. On July 1, 2020, the State Public Health Officer issued guidance restricting the operations of various sectors after the “current data reflect that community spread of infection is of increasing concern across the state, and most particularly in those counties on the County Monitoring List.” The Monitoring List was established to identify counties with significant infection rates or

1 troubling patterns in the COVID-19 data, including elevated disease transmission, increased
2 hospitalizations, and limited Intensive Care Unit capacity within the county’s hospitals. Under the
3 guidance, with limited exceptions, every person inside a business facility must wear a face covering at
4 all times, including while exercising.

5 32. On July 13, 2020, the State Public Health Officer issued an order expanding statewide
6 indoor closures for businesses that encourage mixing of individuals beyond immediate households and
7 make physical distancing and wearing face coverings difficult. The order provided that “moving
8 activities outdoors to reduce risk is anchored in the science of disease transmission,” as “recent studies
9 show that transmission is greater in indoor settings due to the release of infectious particles into the air
10 when someone speaks, coughs, sneezes, or sings, which is exacerbated in indoor spaces particularly
11 when lacking appropriate ventilation.” Therefore, for those counties on the Monitoring List for more
12 than three consecutive days, the order required the immediate closure of indoor operations for additional
13 sectors, including gyms and fitness centers.

14 33. On July 29, 2020, the COVID-19 data applicable to San Mateo County caused it to be put
15 on the Monitoring List. And San Mateo County remained on the Monitoring List for three consecutive
16 days. Thus, on August 2, 2020, indoor operations for various sectors, including gyms and fitness
17 centers, had to cease within San Mateo County under the State July 13 Order.

18 34. On August 28, the State Public Health Officer issued an Order to implement the
19 California Department of Public Health’s “Blueprint for a Safer Economy.” The State August 28 Order
20 and State Blueprint rely on a set of four progressive Tiers (purple, red, orange, and yellow), each of
21 which permits a broader range of reopening. Under this framework, every county in California is
22 assigned to a tier based on two criteria: (1) its test positivity rate, which is the seven-day average of the
23 percentage of tests conducted that are positive; and (2) its adjusted case rate, which is the seven-day
24 average of the number of cases per 100,000 persons, with an adjustment downward if the county is
25 conducting more tests than the median county testing rate in the State. In order to advance to the next
26 less restrictive tier, each county must meet data requirements for these two criteria, as well as an equity
27 metric or demonstrate targeted investments to eliminate disparities in levels of COVID-19 transmission,
28 depending on its size.

1 35. Between August 28, 2020 and September 22, 2020, San Mateo County was assigned to
2 Tier 1 (purple), which is the most restrictive of the four tiers. Under the State August 28 Order and State
3 Blueprint, the State prohibited gyms and fitness centers from conducting indoor operations in San Mateo
4 County while the County remained in Tier 1 (purple).

5 36. On September 22, 2020, the State announced that San Mateo County had been moved from
6 Tier 1 (purple) to Tier 2 (red). Under the State August 28 Order and State Blueprint, the State prohibited
7 gyms and fitness centers from conducting indoor operations above 10 percent capacity.

8 37. On October 27, 2020, the State announced that San Mateo County had been moved from
9 Tier 2 (red) to Tier 3 (orange). Under the State August 28 Order and State Blueprint, the State prohibited
10 gyms and fitness centers from conducting indoor operations above 25 percent capacity.

11 38. On November 16, 2020, the State announced that San Mateo County had been moved from
12 Tier 3 (orange) to Tier 2 (red), restricting gyms and fitness centers from conducting indoor operations
13 above 10 percent capacity.

14 39. On November 29, 2020, the County moved back from Tier 2 (red) to Tier 1 (purple),
15 preventing gyms and fitness centers from conducting indoor operations.

16 40. On December 3, 2020, the State Public Health Officer issued a Regional Stay at Home
17 Order. The Regional Stay at Home Order categorizes the State of California into five regions. When a
18 region falls below 15% ICU bed availability, the Order automatically goes into effect the following
19 evening at 11:59 p.m. Once triggered, the Order remains in effect for at least three weeks. After that
20 period, the Order will be lifted when the region's projected ICU capacity meets or exceeds 15%, which
21 will be assessed on a weekly basis after the initial three-week period.

22 41. The County of San Mateo is part of the Bay Area region. On December 16, 2020, the ICU
23 bed availability in the Bay Area region fell below 15% capacity, triggering the Regional Stay at Home
24 Order effective December 17, 2020 at 11:59 p.m. Under the Order, all sectors other than critical
25 infrastructure and retail must close. That Order also prohibits gyms and fitness centers from operating
26 indoors.

27 42. At this time, the Bay Area region's projected ICU capacity is below 15% and the Regional
28 Stay at Home Order remains in effect. In sum, in San Mateo County, gyms and fitness centers have

1 (again) been prohibited by the State from operating indoors since November 29, 2020. That prohibition
2 will continue for the foreseeable future, as the Bay Area Region’s ICU capacity was at 4.7% as of
3 January 12, 2021.

4 **Enforcement of Public Health Orders**

5 43. State and local Public Health Orders are mandatory directives, and violation of either is
6 punishable as a misdemeanor. (Health & Saf. Code, §§ 120275; 120295; Gov. Code §§ 8567, 8571,
7 8627, 8665.)

8 44. On August 4, 2020, the County Board of Supervisors adopted Urgency Ordinance No. 20-
9 585 (“Urgency Ordinance”), which creates a comprehensive civil enforcement program to combat the
10 spread of COVID-19. The Urgency Ordinance is intended to facilitate enforcement of all State and
11 County Public Health Orders by providing a significant deterrent to violations.

12 45. The Urgency Ordinance declares that “[a]ll COVID-19 Public Health Orders” are “law of
13 the County” and “necessary for the protection of life and property during the local emergency declared in
14 connection with the COVID-19 pandemic.” A Public Health Order under the ordinance includes any
15 federal, state, or county directive “related to COVID-19 that is now in existence or that may later come
16 into existence.” Further, the Urgency Ordinance provides that any violation of a COVID-19 Public
17 Health Order “shall constitute an immediate danger to public health and safety” as well as “a public
18 nuisance.”

19 46. As a means to enforce COVID-19 Public Health Orders and mitigate the spread of the
20 virus, the Urgency Ordinance provides that enforcement officers may issue violations to commercial
21 entities in violation of any such order. These enforcement officers, which include local law enforcement
22 and County code compliance officers, are to investigate allegations of public health order violations and,
23 when violations are confirmed or observed, issue administrative citations to address the offending
24 activity. A violation will not be issued unless an enforcement officer has previously issued a written
25 warning to that commercial entity.

26 47. The Urgency Ordinance sets a schedule of fines for citations issued pursuant to the
27 Ordinance. For commercial entities, the minimum fine for a violation is \$250 and the maximum fine is
28 \$3,000. The enforcement officer has the discretion to determine the appropriate amount based on (1) the

1 gravity of the public health risk posed by the violation, (2) whether the business has been previously
2 warned, noticed, or cited regarding similar violations, (3) whether the business was making good-faith
3 efforts to comply with COVID-19 Public Health Orders, and (4) any other factor related to the nature,
4 circumstances, extent, and gravity of the violation.

5 48. As part of its Business Engagement and Compliance Program, the County of San Mateo
6 maintains a COVID-19 Business Compliance Unit that investigates and responds to reports of alleged
7 violations of State and County health orders related to COVID-19. The County launched the COVID-19
8 Compliance Unit on October 19, 2020. The County’s enforcement program is primarily a complaint-
9 based system. In response to complaints from the public, County enforcement officers from the COVID-
10 19 Compliance Unit investigate the allegations of businesses violating Public Health Orders. If an officer
11 confirms or observes a violation, he or she issues a warning to the business, unless the business has
12 already been warned in which case the officer may issue a citation for the offending activity.

13 49. In the City of Pacifica, the Pacifica Police Department also has the authority to investigate
14 allegations of businesses violating State and County Public Health Orders. When a violation is
15 confirmed, Pacifica Police Department officers may also issue citations and/or warnings to the business
16 and/or its owner.

17 **Defendants’ Conduct in Violation of the Public Health Orders**

18 50. As described above, the State and County Public Health Orders have required patrons
19 within businesses to wear face coverings and have restricted or prohibited the manner in which indoor
20 gyms and fitness centers may operate since the start of the pandemic. And Defendants have been warned
21 and cited for violating these orders on numerous occasions.

22 51. On October 15, 2020, Mr. Antoon appeared on local television, where he was interviewed
23 by ABC Local News. During the interview, Mr. Antoon states that he has been operating Pacifica Beach
24 Yoga with in-person yoga classes for seven months—since the beginning of the pandemic. When
25 questioned about the State and County Public Health Orders requiring face coverings for businesses
26 operating indoors, Mr. Antoon said, “everyone’s option is to wear a mask. Their option. I’m not
27 requiring them to wear a mask.” A recording of that broadcast is available online at:

28 <https://abc7news.com/pacifica-beach-yoga-defying-covid-19-orders-mask-free-in-person/7057230/>.

1 52. Between October 21, 2020 and October 24, 2020, the County’s COVID-19 Business
2 Compliance Unit received three online complaints about Defendants’ violations of Public Health Orders,
3 including for (1) failing to requiring face coverings for Pacifica Beach Yoga employees or customers, (2)
4 failing to take proper steps to ensure social distancing, and (3) operating indoors with too many people.

5 53. On October 28, 2020, the County’s COVID-19 Business Compliance Unit’s supervisor,
6 Wayne Hoss, visited Pacifica Beach Yoga, and issued it a warning notice, which explained that the Unit
7 had received four complaints that the business was violating COVID-19 Public Health orders, including
8 having “too many people,” not taking “steps to maintain social distancing,” and not “requiring face
9 coverings to be worn by customers.” At the time, yoga studios were permitted to operate at 10 percent
10 capacity and businesses could not allow patrons indoors without face coverings. The warning notice
11 cited the applicable Public Health Orders and directed Pacifica Beach Yoga to correct the violations.
12 Unit Supervisor Hoss posted the notice on the business’s front door and also mailed a copy of the notice
13 to its address.

14 54. On November 9, 2020, the County’s COVID-19 Business Compliance Unit received two
15 additional online complaints about Defendants’ violations of Public Health Orders, including for (1) not
16 requiring face coverings, (2) employees not wearing face coverings, and (3) advertising “mask free” hot
17 yoga classes on its Instagram page.

18 55. Five days later, on November 14, 2020, County Compliance Officer Evan Kubota visited
19 Pacifica Beach Yoga to investigate the complaints. There, Officer Kubota encountered a woman inside
20 not wearing a face covering as well as Defendant Antoon, who was also not wearing a face covering.
21 Defendant Antoon admitted that some patrons attending yoga classes did not wear face coverings. As a
22 result, Officer Kubota issued Pacifica Beach Yoga a \$250 administrative citation for failing to comply
23 with the Public Health Orders requiring face coverings. Officer Kubota posted the November 14, 2020
24 administrative citation on the business’s front door and also mailed a copy of the citation to its address.

25 56. On November 29, 2020, the County returned to Tier 1 (purple) and all indoor gym and
26 fitness centers were required to close. As of December 17, 2020 at 11:59 p.m., the Regional Stay at
27 Home Order became effective, also clearly banning indoor yoga studios from conducting indoor yoga
28 sessions.

1 57. On December 1, 2020, the County’s COVID-19 Business Compliance Unit received
2 another online complaint that Pacifica Beach Yoga was not complying with Public Health Orders,
3 including for (1) conducting indoor operations despite the County being in Tier 1 (purple), (2) business
4 not taking steps to maintain social distancing, (3) not requiring face coverings to be worn by customers,
5 and (4) employees were not wearing face coverings.

6 58. The County’s COVID-19 Business Compliance Unit received 14 additional online
7 complaints about Defendants’ violating Public Health Orders between December 19, 2020 and December
8 22, 2020, including for (1) conducting indoor operations while the County was in Tier 1 (purple), (2)
9 allowing customers indoors without face coverings, (3) employees not wearing face coverings, and (4)
10 advertising that customers need not wear face coverings while indoors.

11 59. On December 26, 2020, the County’s COVID-19 Compliance Unit received another
12 online complaint against Pacifica Beach Yoga for violating Public Health Orders. On that same day,
13 Officer Kubota visited Pacifica Beach Yoga at 8:30 a.m. because the online class schedule listed a one-
14 hour hot yoga class to begin at 8:00 a.m. Officer Kubota observed a hot yoga class being conducted;
15 when the patrons exited Pacifica Beach Yoga, most were not wearing face coverings. Officer Kubota
16 approached the studio’s front door and told Defendant Antoon that he was issuing an administrative
17 citation for Pacifica Beach Yoga having violated COVID-19-related Public Health Orders. The \$500
18 administrative citation explained that Pacifica Beach Yoga was unlawfully (1) operating a fitness facility
19 indoors, (2) failing to require employees and customers to wear face coverings, and (3) failing to ensure
20 social distancing. In response, Defendant Antoon swore, yelled, and raised his middle finger at Officer
21 Kubota. Officer Kubota posted the December 26, 2020 administrative citation on the business’s front
22 door and also mailed a copy of the citation to its address.

23 60. On December 26, 2020, the same day Officer Kubota issued the \$500 administrative
24 citation to Pacifica Beach Yoga, Defendant Antoon left a phone message at the County’s COVID-19
25 Business Compliance Unit where he stated:

26 Yeah, message is for Evan . . . whatever his little name is. Stop sending me citations.
27 Stop harassing me. You have no authority but to do nothing but harass people and try
28 to bully people. Do not come by my business again or you will face the wrath of me.
 Do not step on my property, do not call me, do nothing to associate with my business.

1 My business will remain open. I'll do as I want. You have no right to fine me nothing.
2 You're a peasant. Stay away.

3 61. A day later, on December 27, 2020, Supervisor Hoss called Defendant Antoon and told
4 him to refrain from threatening compliance officers and to comply with the Public Health Orders. In
5 response, Defendant Antoon swore at Supervisor Hoss and said he was not closing his yoga studio.

6 62. On December 29, 2020, the County's COVID-19 Business Compliance Unit received two
7 additional online complaints against Pacifica Beach Yoga for not complying with Public Health Orders,
8 including for (1) operating a fitness facility indoors, (2) failing to require employees and customers to
9 wear face coverings, and (3) failing to ensure social distancing.

10 63. On January 5, 2021, Officer Evan Kubota revisited Pacifica Beach Yoga to investigate the
11 most recent online complaints. Officer Kubota observed patrons exiting the yoga studio with yoga mats,
12 many of whom were covered in sweat and not wearing masks. As a result of the public health violations,
13 Officer Kubota issued a \$3,000 citation to Pacifica Beach Yoga. At 2:17 a.m., the next day, Defendant
14 Antoon left a second vulgar and menacing phone message at the County's COVID-19
15 Business Compliance Unit. In the message, Defendant Antoon states:

16 Yeah, this is Pacifica Beach Yoga. I don't, there's a problem with you guys. You
17 seem to keep coming by my business. You're not welcome at my business, ok? F***
18 you. You understand what 'f*** you' means? Don't ever come by my business again.
19 Stop putting citations, which you know ain't worth a f***. You'll never get a nickel.
20 You'll never get nothing. I'll never close. So do what you think you need to f***ing
21 do, but stop coming by my business because it really bothers my clients. You
22 understand? I don't give a f*** whether you guys live or f***ing die, because you
23 don't care whether I live or f***ing die. So don't come by my f***ing business no
24 more. I'm tired of telling you this. It's the same thing over and over again. You're
25 harassing me. I have a bad heart. You're about to put me into cardiac arrest, you
26 f***ing scumbags. Stay away from my f***ing business. Understand? I'm open. I'm
27 still open. I just ripped it off the door. I'm ripping it into pieces. You're not getting
28 paid. I'm running another class right now. Putting it right in your f***ing faces.
Every f***ing minute of the day, I'm going to stick it right in your f***ing faces, you
lowlife scumbags. Shame on you. Come see me, b**ches.

64. The COVID-19 Business Compliance Unit received three additional online complaints
against Pacifica Beach Yoga for not complying with Public Health Orders between January 7, 2021 and
January 12, 2021, including for (1) operating a fitness facility indoors, (2) failing to require employees

1 and customers to wear face coverings, and (3) failing to ensure social distancing.

2 65. In total, COVID-19 Business Compliance Unit has received no fewer than 26 online
3 complaints against Pacifica Beach Yoga alleging violations of Public Health Orders related to COVID-
4 19.

5 66. In addition to the COVID-19 Business Compliance Unit's efforts to stop Defendants from
6 violating State and County Public Health Orders, the Pacifica Police Department has also attempted to
7 persuade Defendant Antoon to follow the law. On at least five separate occasions, the Pacifica Police
8 Department has spoken to Defendant Antoon and either issued him a warning or an administrative citation
9 for COVID-19-related violations of Health and Safety Code section 120295. These events include the
10 following: (1) May 1, 2020, Case No. 20-1287, warning citation issued; (2) October 13, 2020, Case No.
11 20-3083 verbal warning provided; (3) October 15, 2020, Case No. 20-3108, warning citation issued; (4)
12 December 26, 2020, Case No. 20-3842, administrative citation issued; and (5) December 31, 2020, Case
13 No. 20-3896, administrative citation issued.

14 **Defendants' Continued Violation of Public Health Orders in the Face of Accumulating Fines**

15 67. Defendants have knowingly and repeatedly violated the County Public Health Orders and
16 the State Public Health Orders and continue to do so.

17 68. Defendants have admitted that they have no intention of complying with the County and
18 State Public Health Orders, despite the County issuing warnings and administrative citations, totaling
19 \$3,750 in penalties for violations of Public Health Orders related to the COVID-19 pandemic. The \$3,750
20 in total penalties Defendants have accrued is in addition to the fines imposed for the administrative
21 citations issued by the Pacifica Police Department.

22 69. To date, Defendants have not paid for any of the administrative citations issued against
23 them by the County. Also, Defendants have openly expressed they have no intention to pay those
24 penalties.

25 70. Pacifica Beach Yoga's class schedule, which is available online at
26 <https://pacificabeachyoga.karmasoftonline.com/schedule>, shows that the business is currently offering
27 live, in-studio Bikram (hot) yoga classes all this week, including on January 13, 2021 (three classes),
28 January 14, 2021 (three classes), January 15, 2021 (three classes), January 16, 2021 (two classes), and

1 January 17, 2021 (two classes). The schedule also indicates that Defendant Antoon is the yoga instructor
2 conducting four of those classes.

3 71. During the last several months, Pacifica Beach Yoga’s Instagram and Facebook postings
4 have advertised Defendants’ refusal to observe the State and County Public Health Orders requiring
5 businesses to ensure employees and patrons wear face coverings while indoors. For instance, on October
6 22, 2020, Pacifica Beach Yoga posted a message stating, “MASK FREE FEAR FREE. NO GERM
7 INFESTED PODS. MASKS ARE YOUR CHOICE.”

8 72. Pacifica Beach Yoga’s Instagram and Facebook pages have also advertised Defendants will
9 not observe the State Public Health Order prohibiting gyms and fitness centers from operating indoors
10 while the County is in Tier 1 (purple). As an example, on January 11, 2021, Pacifica Beach Yoga posted
11 Instagram and Facebook messages stating, “pacifica_beach_yoga Open for business mask free, fear free,
12 coward free come one come all #recallgavinnewsom.”

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION – VIOLATION OF THE STATE AND COUNTY PUBLIC HEALTH**
15 **ORDERS**

16 73. Plaintiffs reallege and incorporate by reference paragraphs 1 through 72 of this Complaint.

17 74. Under Article XI of the California Constitution, section 7, the County of San Mateo has
18 authority to “make and enforce within its limits all local, police, sanitary, and other ordinances and
19 regulations not in conflict with general laws.” Further, State and local Public Health Orders are mandatory
20 directives, and violation of either is punishable as a misdemeanor. (Health & Saf. Code, §§ 120275;
21 120295; Gov. Code, §§ 8567, 8571, 8627, & 8665.) Moreover, a violation of a county ordinance, such as
22 the County’s Urgency Ordinance, is a misdemeanor and may be redressed by civil action. (Gov. Code §
23 25132.)

24 75. Based upon the trajectory of the COVID-19 pandemic, the State, by and through the
25 Governor and State Health Officer, currently prohibits indoor operations of gyms and fitness centers, which
26 includes yoga studios, in San Mateo County to protect the public health pursuant to Government Code
27 Section 8630.

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1 76. Both State and County Public Health Orders require businesses and other entities to
2 implement social distancing protocols and written health and safety plans, which include requiring
3 employees to wear face coverings, and refusing to serve customers who do not wear face coverings.

4 77. In light of Defendants’ continued and intentional noncompliance with the Public Health
5 Orders, despite and in the face of County’s efforts to obtain compliance, this litigation has become a
6 necessary measure to protect the public health by preventing further or wider community spread of
7 COVID-19 and thereby to prevent additional cases of COVID-19, including serious illnesses and deaths.

8 78. The wrongful conduct of Defendants, unless enjoined and restrained by the Court, will
9 cause and continue to cause great and irreparable injury to the general public, including all persons within
10 San Mateo County, by creating a significant risk of further community spread of COVID-19, including
11 hospitalizations and deaths, and straining the already limited hospital ICU capacity.

12 79. Plaintiffs have no adequate remedy at law because damages cannot compensate for the risk
13 of societal disruption, illnesses, and deaths caused by Defendants’ disregard of mandatory Public Health
14 Orders designed to slow the spread and minimize the ill effects of a global pandemic.

15 **SECOND CAUSE OF ACTION**

16 **DEFENDANTS’ ACTIONS CONSTITUTE A PUBLIC NUISANCE**

17 80. Plaintiff realleges and incorporates by reference paragraphs 1 through 79 of this Complaint.

18 81. The County is informed and believes that Defendants intend to willfully violate the
19 directives of the Public Health Orders by continuing to conduct indoor yoga classes to its patrons.

20 82. The County’s Urgency Ordinance holds that the failure to comply with Public Health
21 Orders “constitutes an imminent threat and menace to public health and is a public nuisance” and that
22 “any violation of a Public Health Order shall constitute an immediate danger to public health and safety . .
23 . and shall constitute a public nuisance.”

24 83. The Public Health Orders are necessary for the health and safety of the citizens of San
25 Mateo County and the State of California as a whole. As the increase in COVID-19 cases statewide has
26 shown, irreparable injury will result if such laws are not followed. As of January 11, 2021, there have
27 been **29,664** confirmed cases of COVID-19 in San Mateo County and **268** deaths caused by the virus.
28 (<https://www.smchealth.org/data-dashboard/county-data-dashboard>).

1 84. By refusing to comply with State law, including the March 19, 2020 Stay-at-Home Order,
2 Executive Order N-60-20, and the August 28, 2020 Statewide Public Health Officer's Order, and the
3 December 3, 2020 Regional Stay at Home Order, Defendants are committing a crime punishable by fine,
4 imprisonment or both. (Pen. Code § 19, Gov. Code §§ 8665 & 23132; Health & Saf. Code § 12095; San
5 Mateo County Ordinance 20-585.) Based on the number of citizens who have already been infected with
6 the COVID-19 virus in San Mateo County and the concern that this virus is rapidly spreading and will
7 continue to spread throughout the winter months in conjunction with flu season, Defendants' blatant
8 disregard for the regulations requiring businesses to ensure face coverings are worn as well as prohibiting
9 operation of indoor gyms and fitness centers constitutes a public nuisance that should be abated
10 immediately.

11 85. Indoor gatherings, alone and especially when coupled with increased breathing from
12 physical exercise and failures to socially distance and wear face coverings, significantly heighten the risk
13 of widespread transmission throughout the community of COVID-19. Such conduct is injurious to health
14 on a community-wide basis, poses a danger to human life, and is unsafe and detrimental to the public
15 health, safety, and welfare. Accordingly, the wrongful conduct of Defendants and each of them, as
16 alleged herein, constitutes a public nuisance in violation of state law and County ordinance.

17 86. Defendants received sufficient notice regarding the violations and the prohibition on
18 operating an indoor yoga studio.

19 87. The wrongful conduct of Defendants and each of them, as alleged herein, constitutes a
20 public nuisance per se.

21 88. The public nuisance created by Defendants, and each of them, as alleged herein, unless
22 enjoined and restrained by the Court, will cause and continue to cause great and irreparable injury to the
23 general public, including all persons within San Mateo County, by creating a significant risk of further
24 community spread of COVID 19, including hospitalizations and deaths.

25 89. Plaintiffs have no adequate remedy at law because the amount of the damages to the
26 general public's health, safety, and welfare is unascertainable and damages cannot compensate for the
27 societal disruption, illness, and deaths caused by Defendants' disregard of mandatory Public Health
28 Orders that are designed to slow the spread and minimize the ill effects of a devastating pandemic.

1 90. Plaintiffs also have no adequate remedy at law because Defendants are undeterred by
2 monetary fines

3 91. The County of San Mateo cannot be fully compensated in damages and is without a plain,
4 speedy or adequate remedy at law because the exact amount of the damages to the general public's
5 health, safety and welfare are unascertainable.

6 92. Unless each Defendant is restrained and enjoined by order of this Court and/or the Court
7 provides other equitable relief permissible by law, Defendants will continue to operate indoor yoga
8 classes to its patrons, as evidenced by their continuing actions and knowing refusal to comply with the
9 State laws.

10 **THIRD CAUSE OF ACTION**

11 **DEFENDANT'S NONPAYMENT OF CITATIONS**

12 93. Plaintiff realleges and incorporates by reference paragraphs 1 through 92 of this
13 Complaint.

14 94. To date, the County of San Mateo has imposed one warning and three administrative
15 citations to Defendants between October 28, 2020 and January 5, 2020, which amounts to \$3,750 in
16 fines. To date, those fines have not been paid and Defendants have stated their intention not to pay.

17 95. Violations of county ordinances may be "redressed by civil action." (Gov. Code, §
18 25132.)

19 96. As detailed above, the County is informed and believes that Defendants do not intend to
20 comply with the State Public Health Orders or pay the fines and interest assessed for past violations of
21 those orders.

22 97. Unless each Defendant is compelled by order of this Court, Defendants will not pay the
23 citations' fines imposed by the San Mateo County Enforcement Officers, as evidenced by their failure to
24 pay the fines thus far, past statements about not paying the fines, and continuing refusal to comply with
25 the State and County Public Health Orders.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as to all
28 causes of action as follows:

1 A. For a temporary restraining order, a preliminary injunction, and a permanent injunction, all
2 enjoining and prohibiting Defendants, and all of their respective franchisees, franchisors, operators,
3 owners, agents, employees, representatives, members, volunteers, members, private associations,
4 renters, members of a private association, associates, and all persons acting for or in concert with them,
5 and their assignees and successors, are hereby forthwith enjoined and prohibited and ordered to
6 immediately cease operating, leasing, renting, causing, allowing, permitting, aiding, abetting,
7 concealing, or granting the authority or permission to operate, rent, use, lease, host, offer or utilize the
8 indoor operation of a yoga studio, gym, fitness center, fitness or other exercise equipment, or other
9 related classes or training sessions at the property known as Pacifica Beach Yoga, located at 1615
10 Oceana Boulevard, Pacifica, CA 94044, until such time as the indoor operation is permitted by the
11 County and the State of California, including pursuant to the March 19, 2020 Order of the State Public
12 Health Officer; Executive Orders N-33-20 and N-60-20; Health and Safety Code sections 101030,
13 101040, 120125, 120130, 120135, 120140, 120145, 120175, 120180, and 131080; Government Code
14 sections 8567, 8627, and 8665; and San Mateo County Ordinance 20-585.

15 B. For individual and separate liability of civil penalties as to each Defendant
16 pursuant to Government Code sections 8665 and 25132, Health & Safety Code section 120295 and San
17 Mateo County Ordinances 20-585, for One Thousand Dollars (\$1,000.00) per day accruing from January
18 13, 2021, until such time as the public nuisance is permanently abated;

19 C. For an order permitting Plaintiff and its enforcement officers the authority to take all
20 reasonable and necessary steps—including, without limitation, blocking public access to the property
21 known as Pacifica Beach Yoga, located at 1615 Oceana Boulevard, Pacifica, CA 94044—to ensure
22 compliance with all COVID-19 Public Health Orders in the event Defendants fail to comply with this
23 Court’s preliminary injunction;

24 D. For payment of all fines, which to date add up to \$3,750, as well as interest accrued on all
25 past due fines, levied against Defendants for failing to comply with the State and County Public Health
26 Orders.

27 E. For costs of suit;

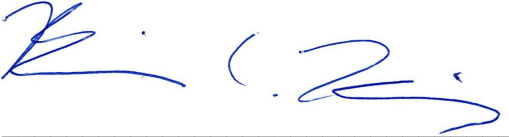
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1 F. For attorney's fees; and

2 G. For such other and further relief as the court deems just and proper.

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4 Dated: January 14, 2020

Respectfully submitted,
JOHN C. BEIERS, COUNTY COUNSEL

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6 

7 By: _____
8 Brian C. Kinney, Deputy

9 Attorneys for Plaintiff
10 COUNTY OF SAN MATEO
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