

STATE OF VERMONT

SUPERIOR COURT
RUTLAND UNIT

CIVIL DIVISION
DOCKET NO.

STATE OF VERMONT,)
Plaintiff,)
)
v.)
)
CLUB FITNESS OF VERMONT, INC. and)
SEAN MANOVILL,)
Defendants.)
)

COMPLAINT

The State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and pursuant to 20 V.S.A. § 40 and the general equitable jurisdiction of the Court, hereby makes the following complaint against Club Fitness of Vermont and its owner and CEO, Sean Manovill, and prays this Court enjoin Defendants from operating Club Fitness in violation of the Governor’s orders.

ALLEGATIONS

The Parties

1. The Vermont Attorney General is authorized under 20 V.S.A. § 40 to enforce against violations of provisions taken under Vermont’s Emergency Management laws, including orders of the Governor made under such authority. *See also* 3 V.S.A. §§ 152, 157 (authority of Attorney General to sue and be sued on behalf of the State).
2. Defendant Club Fitness of Vermont a/k/a Club Fitness, Inc. (“Club Fitness”) is a for-profit business that operates two physical fitness centers, one located

at 275 North Main Street, Rutland, Vermont (the Rutland location) and one located at 912 Route 4A West, Castleton, Vermont (the Castleton location). Each Club Fitness location is equipped with exercise equipment such as free weights, weight machines, and treadmills.

3. Defendant Sean Manovill is a real person and the owner and CEO of Defendant Club Fitness. Upon information and belief, Mr. Manovill resides at 239 Creek Road, Castleton, Vermont 05735.
4. As of the filing of this Complaint, Defendants are allowing in-person use of the Club Fitness indoor facilities at both the Rutland and the Castleton locations, in violation of the Governor's emergency executive orders.

Statutory Structure

5. By statute, Vermont's Governor is authorized: "To make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this [emergency management] chapter with due consideration of the plans of the federal government." 20 V.S.A. § 8(b)(1).
6. The Governor is further authorized to "prepare a comprehensive plan and program for the emergency management of this state, such plan and program to be integrated into and coordinated with the emergency management plans of the federal government, the Canadian government, and other states to the fullest possible extent[.]" 20 V.S.A. § 8(b)(2)(A).
7. The Governor may "take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and

necessary for the purpose of securing compliance with the provisions of this chapter and with the orders, rules, and regulations made pursuant thereto.”

20 V.S.A. § 8(b)(6).

8. The Governor “may proclaim a state of emergency within the entire State or any portion or portions of the State” in response to an “all-hazards” event. 20 V.S.A. § 9.
9. An “all-hazards” event includes a “health or disease-related emergency . . . which poses a threat or may pose a threat . . . to property or public safety in Vermont.” 20 V.S.A. § 2(1).
10. Once the Governor has declared a state of emergency, he may “enforce all laws, rules, and regulations relating to emergency management[.]” 20 V.S.A. § 9(1).
11. He may also “order the evacuation of persons living or working within all or a portion of an area for which a state of emergency has been proclaimed” and may “perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population.” 20 V.S.A. § 9(9), 11(6).

COVID-19

12. Since December 2019, the State has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC) and with the United States Health and Human Services Agency to monitor and plan for a

potential outbreak of respiratory illness due to a novel coronavirus known as SARS-CoV-2, which causes a disease known as COVID-19.

13. People with COVID-19 can experience a wide range of symptoms, ranging from mild illness to severe or critical illness. Some people become infected but do not develop any symptoms and do not feel unwell.
14. COVID-19 is a new disease and there is limited information regarding risk factors for severe disease. Older people, and those with underlying medical problems like high blood pressure, heart problems or diabetes, are more likely to develop serious illness, but anyone infected with COVID-19 is at some risk of developing serious illness and dying.
15. People who become seriously ill with COVID-19 may require hospitalization, including admission to an Intensive Care Unit (ICU). These patients often require a ventilator to help them breathe as the illness severely debilitates their lungs. Medical staff caring for these patients require personal protective equipment such as gowns, medical grade facemasks, and eye shields to ensure they do not catch the virus themselves.
16. COVID-19 has an overall fatality rate of approximately 1.8 – 5.7% in the U.S.
17. There is no known cure for COVID-19.
18. There is no known vaccine for COVID-19.

The Governor's Executive Order 01-20 and Addenda

19. Due to the rapidly growing global concern over COVID-19, the Governor directed the Vermont Department of Health (VDH) to activate the State's

Health Operations Center in February 2020 when VDH began to monitor and later test Vermonters who may have been exposed to COVID-19.

20. In March 2020, the Governor directed Vermont Emergency Management (VEM) to assemble an interagency taskforce, and later to activate the Vermont State Emergency Operations Center (SEOC), in accordance with the Vermont State Emergency Management Plan, to organize prevention, response, and mitigation efforts and share information with local and State officials.
21. On March 13, 2020, the Governor issued Executive Order 01-20 (EO 01-20) and declared a state of emergency in Vermont, effective from March 13 – April 15, due to the pandemic outbreak of COVID-19 and potential for its spread in Vermont.
22. In the weeks since March 13, the Governor has issued addenda amending EO 01-20 and additional directives clarifying its scope and impact on State entities.
23. On March 21, the Governor issued Addendum 4, “Closure of close-contact businesses,” ordering all “gymnasiums, fitness centers and similar exercise facilities” to “cease all in-person operations” as of 8 p.m. on March 23.
24. On March 24, the Governor issued Addendum 6, “Stay Home/Stay Safe,” directing all Vermonters to stay home and leave only for enumerated essential reasons.

25. Addendum 6 also ordered that except “as set forth below, effective Wednesday, March 25, 2020 at 5 p.m. . . . all businesses and not-for-profit entities in the state shall suspend in-person business operations.” Addendum 6, ¶ 3. Addendum 6 excepted only “[b]usinesses and entities providing services or functions deemed critical to public health and safety, as well as economic and national security” (Critical Services). *Id.* ¶ 5. Such businesses “shall remain in operation” subject to “strict adherence to CDC and VDH guidance to ensure recommended social distancing.” *Id.* ¶¶ 4, 5.
26. The list of “[s]ervices or functions in Vermont deemed critical to public health and safety, as well economic and national security” provided in Addendum 6 does not include gyms, health clubs, or fitness centers. Addendum 6, ¶ 6.
27. On April 10, the Governor issued Addendum 9 to EO 01-20. Addendum 9 extended the state of emergency and the effective date of EO 01-20, and all Addenda issued thereunder, until midnight on May 15, 2020. Addendum 9, ¶ 1. As of May 15, 2020, Executive Order 01-20 and all related addenda were extended through June 15, 2020. Addendum 14, ¶ 1.
28. Between April 17 and May 6, the Governor has issued Addenda 10 through 13. These Addenda implement calculated steps of a “phased restart” in which Vermonters may resume limited business and recreational activities, while observing enhanced hygiene and physical distancing measures designed to keep the spread of COVID-19 to a minimum.

29. For example, Addendum 12 states that as of May 4, manufacturing, construction, and distribution operations may resume with no more than 10 people per location as of May 4, as long as they observe health and safety requirements set by the Vermont Agency of Commerce and Community Development (ACCD). Addendum 12, ¶ 5. As of May 11, such operations “may restart with as few employees as necessary to permit full operations while continuing to maintain health and safety,” including observing ACCD guidance. *Id.* ¶ 6.
30. Addendum 13, issued on May 6, states that “Vermonters may leave home to get fresh air and exercise and resume limited social interactions and gatherings of 10 or fewer, preferably in outdoor settings, provided that physical distancing and protocols for hygiene consistent with guidance from [the Vermont Department of Health] and the Centers for Disease Control (CDC), are observed.” And “Vermonters may leave home to participate in outdoor recreation and outdoor fitness activities that require low or no direct physical contact.” Addendum 13, ¶ 1. Moreover: “Effective May 7, 2020, all businesses and non-profit and government entities which support or offer outdoor recreation and outdoor fitness activities that require low or no direct physical contact may begin operations, subject to compliance with the health and safety guidelines and training requirements set out below, and applicable Agency of Commerce and Community Development (ACCD)

guidance.” *Id.* ¶ 4. Among other requirements, Addendum 13 states that any such outdoor recreation business must:

- Eliminate services or transactions that result in touch points and/or staff-customer interactions that are not absolutely necessary.
- Reduce high contact surfaces and common areas, including closing waiting areas, removing picnic tables, closing play structures, and offering only rental equipment that can and will be thoroughly disinfected between users.
- Close indoor facilities that require in-person transactions (such as lobbies, pro-shops and other small retail operations, bars and restaurants), and deliver goods and services for curbside pickup, delivery or via online portals.

Id.

31. As of this filing, the Governor has given no indication whether, when, or under what circumstances fitness centers may safely reopen. *See* Addendum 14, ¶ 5 (“Businesses and non-profit and government entities which have not been authorized to resume operations as of the date of this Executive Order shall be addressed at a later date.”).
32. The Governor has directed ACCD to develop additional guidance as to which businesses are determined to be critical to public health and safety, as well as economic security. Addendum 6, ¶ 7. ACCD has developed “Sector Specific Guidance” to help Vermont businesses determine whether they meet the definition of “critical to public health and safety, as well as economic and national security.” *See* ACCD, “Stay Home Stay Safe Sector Specific Guidance,” <https://accd.vermont.gov/content/stay-home-stay-safe-sector-specific-guidance#health-beauty> (last visited May 14, 2020).

33. The ACCD Sector Specific Guidance for “Health and Beauty” states:

Gyms, fitness studios, salons, spas, and other similar businesses and the retail operations that support these businesses should cease, including employee-to-employee interactions within the business. **The Phased Restart Work Safe Guidance does not allow these businesses to resume operations.**

Id.

COVID-19 in Vermont

34. On March 7 and 11 of 2020, VDH detected the first two cases of COVID-19 in Vermont.

35. On March 11, 2020, the WHO characterized COVID-19 as a pandemic.

36. Both contact and travel-related cases and community contact transmissions (“community spread”) of COVID-19 have been detected in Vermont and its surrounding region and this transmission is expected to continue.

37. “Community spread” means some people who have been infected with the virus are not sure how or where they became infected.

38. The incubation period for the virus—the period during which a person who has been exposed to the virus does not yet show symptoms of infection—is thought to be between 2 and 14 days.

39. SARS-CoV-2 is able to be transmitted during the pre-symptomatic incubation period, and by people who are infected but are asymptomatic.

40. The virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes, or possibly even breathes.

41. The virus can live for several hours on surfaces.
42. Viral transmission is more likely when people are in close proximity or contact with one another.
43. There is evidence that the virus spreads more easily indoors than outdoors.
44. The virus may be most transmissible in indoor spaces with poor ventilation or air circulation.
45. Behavioral modifications can reduce transmission of the virus. Without any behavioral modifications, the virus spreads very easily and sustainably between people.
46. Behavioral modifications that slow the spread of the virus include: wearing masks, frequent hand washing, frequent washing of surfaces touched by many people, and distancing from other people by at least six feet.
47. Even with behavioral modifications, the virus can and does spread.
48. Because of the way the virus spreads, indoor gyms or fitness centers are places where the virus is particularly likely to be transmitted. This is because indoor gyms are enclosed spaces where people congregate for up to an hour or more at a time to do strenuous activities involving shared equipment. With heavy breathing indoors and frequent touching of surfaces, the risk of transmission is high.
49. In addition, any place where people congregate with non-household members risks increasing the rate of viral transmission from its current rate under the Stay Home order in Vermont.

50. As of the morning of May 14, 2020, the Vermont Department of Health reports:
 - a. 932 total cases of COVID-19 in Vermont;
 - b. 53 deaths attributed to COVID-19 in Vermont;
 - c. 5 currently hospitalized due to COVID-19;
 - d. 13 hospitalized “under investigation” related to COVID-19; and
 - e. 27 people being monitored in Vermont for COVID-19.
51. COVID-19 cases have been documented in every county in Vermont. Rutland County has 49 reported cases and one death as of the morning of May 14, 2020.
52. Because COVID-19 is caused by a novel coronavirus, the population has no existing immunity. In other words, every person in the State is potentially at risk of infection.
53. If COVID-19 spreads unchecked, it will overwhelm the capacity of the State’s health care system to care for those with serious illness. The State could experience shortages in needed inpatient hospital beds, intensive care unit beds, ventilators, and personal protective equipment for hospital staff.
54. If the State experiences shortages in needed beds and equipment, people will be unable to get the care they need and the fatality rate will increase dramatically.
55. One of the only tools available to fight this imminent public health crisis is to try to slow the spread of the virus. Slowing the spread of the virus will reduce

the number of patients needing emergent medical care at the same time. This is the best way to try to ensure that everyone who needs life-saving medical resources in Vermont will have access to them when they are most needed.

56. As of early May, Vermont currently appears to be past the initial peak surge of COVID-19 cases. At this time, as detailed below, Vermont is gradually beginning to reopen some of the activities that had been shut down during the initial spread of the virus.
57. The speed and manner in which Vermont reopens its economy will affect the rate of transmission of COVID-19 cases.
58. The State has commissioned modeling of best- and worst-case scenarios for Vermont's projected future numbers of COVID-19 cases.
59. Some of the factors that influence the rate of infection in these models include whether and to what extent the State resumes "non-essential" work, and whether and to what extent the State adopts behavioral changes. Behavioral changes include wearing masks, continued social distancing, and continued personal and organizational hygiene such as frequent washing of hands and surfaces.
60. COVID-19 infection rates vary dramatically based on the above factors, but especially based on the extent to which non-essential businesses re-open. If only half of the workforce resumes non-essential work, the transmissibility of COVID-19 will be about 50% of what it would be if everybody resumes work.

61. Masks and other behavioral changes are only projected to reduce transmissibility by an additional 5% when half the work force returns to non-essential business.
62. According to the most recent projections, if Vermont were to continue the stay at home order for all but essential businesses, by June 28 the State would be hospitalizing 0-6 patients per day, have 0-2 patients in the ICU every day, and have less than one death per week.
63. By contrast, if the State were to re-open the entire economy (with the exception of schools), by June 28 the State would need to hospitalize 1000-2000 patients per day, with 300-500 ICU patients per day. Roughly 30-80 people would die every day as a result of COVID-19 in this scenario.
64. One of the State's goals throughout the pandemic is to keep the number of people needing hospitalization and acute care as a result of COVID-19 infections within the State's resources to care for them.
65. Because of the incubation period of the virus, it takes approximately two weeks for the change in transmission rate to be revealed in the population's incidence of infection. By phasing in the re-opening of different sectors and activities in a coordinated way, the State can monitor how reducing different restrictions correlates with changes in the transmission rate.
66. If any one phase of re-opening correlates with a greater than expected rate of transmission, the State can adjust subsequent phases accordingly.

67. If individuals and businesses do not follow the prescribed phases of re-opening, the State risks experiencing a second surge in COVID-19 cases which could overwhelm the State's healthcare resources, including the ability to supply sufficient personal protective equipment and critical medical equipment to handle a dramatic surge in need.
68. Much is still unknown about the virus and its transmission. If individuals and businesses do not follow the prescribed phases of re-opening, it will particularly jeopardize the health and safety of workers in critical industries, such as healthcare and grocery stores, and of those living and working in high-risk facilities such as long-term care facilities.

Enforcement

69. The Attorney General "may bring an action for injunctive relief in the superior court of the county in which a violation occurs to compel compliance with the provisions of [the Emergency Management] chapter." 20 V.S.A. § 40.
70. A person who "violates any provision of [the Emergency Management] chapter or any rule adopted under [the Emergency Management] chapter shall be fined not more than \$1,000.00 for each violation. Each day a violation continues shall be deemed to be a separate violation." 20 V.S.A. § 40(b).

Facts relating to Defendant

71. Upon information and belief, Defendant Club Fitness initially closed pursuant to Addendum 4.

72. Upon information and belief, Defendant Club Fitness may have re-opened as early as May 1, when Rutland police received the first complaint about the club's opening.¹
73. As of the filing of this Complaint, Defendant Club Fitness is open and available for Club members and/or members of the public to enter and use its equipment and facilities at its Rutland and Castleton locations.
74. The Rutland location is approximately 4,000 square feet. Both facilities are equipped with fitness equipment such as free weights, weight machines, and treadmills.
75. On May 3, 2020, Rutland Police Corporal Andrew Heath Plemmons went to the Rutland location and observed two people inside lifting weights, one male and one female. The weight lifters were within six feet of each other and not wearing masks.
76. Corporal Plemmons spoke with Defendant Manovill and advised him that Club Fitness was not in compliance with the Governor's Stay Home order. Corporal Plemmons spoke with Defendant Manovill for several minutes trying to get him to comply with the order, but Defendant Manovill indicated that he would remain open for business.
77. On May 6, Corporal Plemmons again responded to a complaint that Defendants were open for business. Corporal Plemmons observed six people

¹ See Olivia Lyons, *Defiant Rutland fitness club owner violates emergency order*, WCAX, <https://www.wcax.com/content/news/Defiant-Rutland-fitness-club-owner-violates-emergency-order-570319581.html> (May 8, 2020) ("He opened the doors to his gym on May 1st.").

exercising in the Rutland location, plus a staff member. Some of the people exercising were within six feet of each other. No one was wearing a mask. Two people left while Corporal Plemmons was there and he did not see anyone clean or sanitize the equipment they had been using. Defendant Manovill was not there, but Corporal Plemmons spoke with him on the phone and confirmed that he had received a cease and desist letter from the Attorney General's Office.

78. Upon information and belief, Club Fitness was closed on May 9-11, 2020, after discussions with the Attorney General's Office.
79. On May 15, Corporal Plemmons went to the Rutland location and observed six vehicles in the parking lot, one of which had a New York license plate. Inside the business Corporal Plemmons observed five people actively exercising. No one was wearing masks. Some of them were less than six feet apart. There were no hand sanitizing stations and no signage advising customers to wear masks, keep a safe distance, or clean equipment.
80. Defendant Manovill stated that he cleans the equipment himself and does not allow more than ten people in the building at a time.
81. On May 15, Castleton Police Chief Peter Mantello visited the Club Fitness Castleton location at 912 Route 4A West, Castleton, Vermont. Chief Mantello observed the door to the business wide open, with three people exercising and one staff member present. No one was wearing masks. No signs appeared to instruct customers present to wear masks, observe physical distancing, or

clean equipment after use. The staff member present told Chief Mantello that “his boss, Sean, directed him in opening the business as long as they were compliant with the COVID-19 requirements.”

VIOLATIONS OF LAW

COUNT ONE

Violation of Executive Order 01-20 and its Addenda

82. Paragraphs 1-81 above are incorporated by reference and realleged.
83. By opening the 275 North Main Street location for indoor, in-person fitness services on or after May 1, 2020, Defendant violated EO 01-20, Addenda 4 and 6, and guidance issued thereunder.
84. By allowing indoor, in-person operation of fitness services in the 275 North Main Street location on or after May 1, 2020, Defendant placed its members and members of the public-at-large at risk due to the spread of COVID-19.
85. Pursuant to 20 V.S.A. § 40, Defendant is liable for civil penalties of not more than \$1,000 for each day for each violation of an executive order issued under Vermont’s Emergency Management chapter and may be ordered to come into compliance with the provisions of the Emergency Management chapter, including executive orders issued thereunder.

RELIEF SOUGHT

WHEREFORE, based on the allegations set forth above, the State of Vermont respectfully requests the Court award the following relief:

1. An Order requiring that Defendants comply with EO 01-20 and any and all addenda and guidance issued thereunder, including the prohibition of indoor, in-person fitness services;
2. An Order adjudicating Defendants liable for the violations of Vermont statutes and executive orders set forth above;
3. An Order levying civil penalties against Defendants in accordance with 20 V.S.A. § 40(b);
4. An Order requiring Defendants to reimburse the State for its costs and expenses in investigating and prosecuting this action; and
5. Such other relief as the Court may deem just and appropriate.

DATED at Burlington, Vermont this 15th day of May, 2020.

Respectfully submitted,

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL



By: _____

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