

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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ATHLETES UNLEASHED, INC.,

Petitioners,

For Judgment Pursuant to  
Article 78 of the CPLR

VERIFIED PETITION

Index No. \_\_\_\_\_

v.

ANDREW M. CUOMO, GOVERNOR OF NEW YORK;  
NEW YORK STATE DEPARTMENT OF HEALTH; and  
EMPIRE STATE DEVELOPMENT CORPORATION

Respondents.

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Petitioner, ATHLETES UNLEASHED, INC., herein respectfully alleges:

1. At all times relevant hereto, Petitioner ATHLETES UNLEASHED, INC. was and is a New York corporation with a principal place of business located at 3646 California Road, Orchard Park, New York wherein it operates a gym.

2. At all times relevant hereto, Respondent ANDREW M. CUOMO, GOVERNOR OF NEW YORK (the "GOVERNOR") was, and is, the elected governor of the State of New York.

3. At all times relevant hereto, Respondent NEW YORK STATE DEPARTMENT OF HEALTH ("NYSDOH") was, and is, the department of the New York state government responsible for public health.

4. At all times relevant hereto, Respondent EMPIRE STATE DEVELOPMENT CORPORATION (“ESDC”), was, and is, a division of the of the New York state government responsible for commerce and economic development

5. Petitioner’s business has been severely impacted by the pandemic caused by the novel coronavirus and the illness that it causes, COVID-19, and has, through no fault of its own, been forced to cease its operations s as required by governmental order.

6. Indeed, as a result of the COVID-19 pandemic, New York State issued orders requiring, at times, the full or partial suspension of business at a wide range of establishments, which includes enforceable authority by virtue of civil authorities with jurisdiction over Petitioner’s businesses (collectively the “Suspension Orders”).

7. The Suspension Orders include, but are not limited to, the following Executive Orders issued by Governor Andrew Cuomo:

- a. Executive Order 202, issued on March 7, 2020, declaring a “disaster emergency” for all of New York State because of COVID-19;
- b. Executive Order 202.3, issued on March 16, 2020, that any large gathering or event where more than fifty people were expected to attend to be cancelled or postponed indefinitely, and requiring that any gym, fitness centers or fitness classes cease operations effective at 8 pm on March 16, 2020.
- c. Executive Order 202.6, issued on March 18, 2020, set forth a list of categories of businesses deemed essential and authorized ESDC to deem specific business and additional industries essential;

- d. Executive Order 202.57, issued August 20, 2020, allowed gyms, fitness centers or fitness classes to resume operations, provided they were operated pursuant to guidance issued by NYSDOH.
  - e. Executive Order 202.68, issued on October 6, 2020, directed the Department of Health to “determine areas in the State that require enhanced public health restrictions.” In the areas so determined to require enhanced public health restrictions, these additional restrictions include:
    - i. In the most severely restricted areas, or “red zones,” all non-essential businesses, as determined by ESDC, are required to reduce their in-person workforce by 100%;
    - ii. In moderate restricted areas, or “orange zones,” specified businesses, including “gyms, fitness centers or classes, barbers, hair salons, spas, tattoo or piercing parlors, nail technicians and nail salons, cosmetologists, estheticians, the provision of laser hair removal and electrolysis, and all other personal care services” are required to reduce their in-person workforce by 100%;
    - iii. In precautionary restricted areas, or “yellow zones,” non-essential gatherings are limited to no more than 25 people.
8. These various Executive Orders and/or parts thereof have purportedly been continued and/or extended by subsequent Executive Orders. Executive Orders 202.3, 202.6, and 202.68 were purported extended, on November 3, 2020, by Executive Order 202.72; and Executive Order 202.57 was purportedly extended, on November 13, 2020, by Executive Order

202.75. True and correct copies of Executive Orders 202, 202.3, 202.6, 202.57, 202.68, 202.72, 202.75 are attached hereto as **Exhibits A, B, C, D, E, F, and G** respectively.

9. Pursuant to Executive Order 202.68, NYSDOH has at various times determined that certain areas of the State require enhanced public health restrictions and has designated these areas in red, orange, and/or yellow zones (collectively, the “Color Zones”).

10. Pursuant to Executive Order 202.57, NYSDOH has issued guidance that gyms, fitness centers or fitness classes must follow.

11. Pursuant Executive Order 202.6, ESDC has determined that many, if not most, business operations are non-essential. Specifically, ESDC has determined that gyms and fitness centers are non-essential.

12. Upon information and belief, Petitioner’s business is located in an area currently designated as an orange zone.

13. Accordingly, pursuant to Executive Order 202.68, as purportedly extended by Executive Order 202.72, Petitioner is prohibited from operating its business at this time.

14. However, the purported extensions of Executive Orders 202.3, 202.6, 202.57, 202.68, and 202.68 by Executive Orders 202.72 and 202.75 are impermissible, illegal, and/or unconstitutional under the New York State Constitution.

15. Under Executive Law 29-a(2)(a), the Governor is empowered to issue (i) directives and (ii) suspensions of existing law for a period of thirty days. While he is further empowered to extend suspensions for an additional thirty days, there exists no authority for him to similarly extend directives.

16. The portion of Executive Order 202.68 establishing the Color Zones is a directive, equivalent to new law, and not a suspension or modification of an existing law.



17. Accordingly, the Governor is without any statutory authority to extend Executive Order 202.68 beyond November 5, 2020, *i.e.*, thirty days after Executive Order 202.68 was issued.

18. The Governor exceeded his statutory authority under Executive Law 29-a(2)(a) when he issued Executive Order 202.72, which purported to extend Executive Order 202.68 for a time period in excess of thirty days.

19. Under Executive Law § 29-a(2)-(2a), the Governor is only empowered to make directives and suspensions for a period of thirty days. While the Governor is further empowered to extend suspensions for additional thirty-day periods, there exists no authority for him to extend directives pursuant to these subsections. These subsections expressly provide:

2. Suspensions pursuant to subdivision one of this section shall be subject to the following standards and limits, which shall apply to any directive where specifically indicated:

a. no suspension or directive shall be made for a period in excess of thirty days, provided, however, that upon reconsideration of all of the relevant facts and circumstances, the governor may extend the suspension for additional periods not to exceed thirty days each...

20. Accordingly, any extension of a directive requires an additional grant of legislative authority from the New York State Legislature.

21. Similarly, the Governor exceeded his statutory authority under Executive Law 29-a(2)(a) when he purported to extend Executive Order 202.6 and 202.57 for a time period in excess of thirty days.

22. Further, Executive Law 29-a and Executive Orders 202.6, 202.56, and 202.68 violate the State and Federal Constitutions as set forth in greater detail below.

**FIRST CAUSE OF ACTION**  
**(Declaring the Extension of Executive Orders 202.6, 202.57, and 202.68 in violation of Executive Law 29-a(2)(a))**

23. Petitioner repeats and realleges each and every paragraph above with the same force and effect as if fully set forth herein.

24. Petitioner has commenced this proceeding pursuant to CPLR §§ 3001 and 7803(2).

25. By issuing Executive Order 202.72, which purports to extend Executive Order 202.68 for a time period beyond thirty days, the Governor has exceeded the limits imposed on his ability to issue directives under Executive Law 29-a(2)(a).

26. By issuing Executive Orders which purport to extend Executive Orders 202.6 and 202.57 for a time period beyond thirty days, the Governor has exceeded the limits imposed on his ability to issue directives under Executive Law 29-a(2)(a).

27. The Governor's purported extension of the directives contained in Executive Orders 202.6, 202.57, and 202.68 prohibit Petitioner from operating its business and amount to an illegal extension beyond the thirty days authorized by Executive Law 29-a(2)(a), and, therefore, these extensions must be declared invalid.

28. Petitioner has a clear legal right to continue to operate its business in the absence of any directive prohibiting it from doing so that has been issued in the prior thirty days.

29. The Governor is prohibited from extending directives for a time period beyond thirty days by the plain text of Executive Law 29-a(2)(a).

30. Petitioner is suffering per se irreparable injury and is threatened with irreparable injury in the future by reason of being directed and forced to cease its lawful business operations, and Petitioner has no plain, adequate, nor complete remedy to protect the constitutional and/or legal rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

31. Petitioner faces the prospect of a loss of its business and the violation of its civil rights and liberties as a result of the Governor purporting to extend Executive Orders 202.6, 202.57, and 202.68 for a period beyond thirty days.

32. Absent an injunction, the harm to Petitioner in the loss of its legal and constitutional right to operate its business exceeds any conceivable harm Respondents or the State of New York would suffer if they were prohibited from continuing to implement and enforce an Executive Order that facially exceeds the Governor's statutory authority; indeed, there can be no harm to the Respondents because Respondents were able to fully enforce Executive Orders 202.6, 202.57, and 202.68 for the thirty-day period authorized by statute.

33. Petitioner is therefore entitled to a declaratory judgment declaring that the purported extension of Executive Orders 202.6, 202.57, and 202.68 violates the plain text of Executive Law 29-a(2)(a), together with a preliminary and permanent injunction prohibiting the enforcement of Executive Orders 202.6, 202.57, and 202.68 by Respondents, and such relief would not be contrary to the public interest.

**SECOND CAUSE OF ACTION**  
**(Declaring the NYSDOH Guidance Issued Pursuant to**  
**Executive Order 202.57 has Expired)**

34. Petitioner repeats and realleges each and every paragraph above with the same force and effect as if fully set forth herein.

35. Petitioner has commenced this proceeding pursuant to CPLR §§ 3001 and 7803(2).

36. The NYSDOH guidance issued pursuant to Executive Order 202.57 severely restricts Petitioner's ability to conduct its business.

37. Petitioner has a clear legal right to continue to operate its business in accordance with pre-existing law in the absence of any directive prohibiting or constraining its ability to do so that has been issued in the prior thirty days.

38. Petitioner is suffering per se irreparable injury and is threatened with irreparable injury in the future by reason of being directed and forced to cease and/or curtail its lawful business operations, and Petitioner has no plain, adequate, nor complete remedy to protect the constitutional and/or legal rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

39. Petitioner faces the prospect of a loss of its business and the violation of its civil rights and liberties as a result of the NYSDOH purporting to continue to enforce the guidance it issued pursuant to Executive Order 202.57 for a period beyond thirty days.

40. Absent an injunction, the harm to Petitioner in the loss of its legal and constitutional right to operate its business exceeds any conceivable harm Respondents or the State of New York would suffer if they were prohibited from continuing to implement and enforce an Executive Order that facially exceeds the Governor's statutory authority; indeed, there can be no harm to the Respondents because Respondents were able to fully enforce Executive Order 202.57 and the guidance promulgated thereunder for the thirty-day period authorized by statute.

41. Petitioner is therefore entitled to a declaratory judgment declaring that the purported extension of Executive Order 202.57 and the NYSDOH guidance issued thereunder for a period in excess of thirty days violates the plain text of Executive Law 29-a(2)(a), together with a preliminary and permanent injunction prohibiting the enforcement of any directives issued under Executive Law 29-a that has been extended beyond thirty days by Respondents, and such relief would not be contrary to the public interest.

### **THIRD CAUSE OF ACTION**

**(Declaring the designation of Color Zones and Enforcement of Guidance on Gyms, Fitness Centers, and Fitness Classes in violation of Executive Law 29-a(2)(a))**

42. Petitioner repeats and realleges each and every paragraph above with the same force and effect as if fully set forth herein.

43. Petitioner has commenced this proceeding pursuant to CPLR §§ 3001 and 7803(2).

44. NYSDOH continues to designate areas as Color Zones as of the date of this Petition.

45. By designating areas to be in Color Zone more than thirty days after the issuance of Executive Order 202.68, NYSDOH is purporting to implement and enforce Executive Order 202.68 for time periods beyond thirty days, contrary to the limits imposed on such directives under Executive Law 29-a(2)(a).

46. Petitioner has a clear legal right to continue to operate its business in the absence of being located in a Color Zone.

47. Petitioner is suffering per se irreparable injury and is threatened with irreparable injury in the future by reason of being directed and forced to cease its lawful business operations, and Petitioner has no plain, adequate, nor complete remedy to protect the constitutional rights

and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

48. Petitioner faces the prospect of a loss of its business and the violation of its civil rights and liberties as a result of the NYSDOH purporting to implement and enforce Executive Orders 202.68 for a period beyond thirty days.

49. Absent an injunction, the harm to Petitioner in the loss of its legal and constitutional and/or legal rights to operate its business exceeds any conceivable harm Respondents or the State of New York would suffer if they were prohibited from continuing to implement and enforce an Executive Order that facially exceeds the Governor's statutory authority; indeed, there can be no harm to the Respondents because Respondents were able to fully enforce the Color Zone restrictions and the guidance the operations of gyms, fitness centers, and fitness classes for the thirty-day period authorized by statute.

50. Petitioner is therefore entitled to a declaratory judgment declaring that the purported the continued designation of Color Zones violates the plain text of Executive Law 29-a(2)(a), together with a preliminary and permanent injunction prohibiting the designation of Color Zones by Respondents, and such relief would not be contrary to the public interest.

**FOURTH CAUSE OF ACTION**  
**(Declaring the Governor and ESDC's Designation of Non-Essential Business**  
**in Violation of Executive Law 29-a(2)(a))**

51. Petitioner repeats and realleges each and every paragraph above with the same force and effect as if fully set forth herein.

52. Petitioner has commenced this proceeding pursuant to CPLR §§ 3001 and 7803(2).

53. Pursuant to directives issued by the Governor under Executive Law 29-a, including Executive Order 202.6, certain businesses have been designated essential businesses.

54. Pursuant to such directives ESDC has been authorized to deem certain businesses and industries essential.

55. Subsequent Executive Orders, including Executive Order 202.68, have contained directives which curtail, limit, or prohibit non-essential business from operating.

56. Respondents have not deemed Petitioner's business to be an essential business, and, therefore, have designated its business to be non-essential.

57. By designating/deeming certain businesses to be essential/non-essential for a period for more than thirty days after the issuance of Executive Order 202.6, Respondents have exceeded the limits imposed on directives under Executive Law 29-a(2)(a).

58. Petitioner has a clear legal right to continue to operate its business in the absence of being designated a non-essential business.

59. Petitioner is suffering per se irreparable injury and is threatened with irreparable injury in the future by reason of being directed and forced to cease its lawful business operations, and Petitioner has no plain, adequate nor complete remedy to protect the constitutional and/or legal rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

60. Petitioner faces the prospect of a loss of its business and the violation of its civil rights and liberties as a result of the Respondents purporting to designate Petitioner's business non-essential for a period beyond thirty days.

61. Absent an injunction, the harm to Petitioner in the loss of its legal and constitutional right to operate its business exceeds any conceivable harm Respondents or the

State of New York would suffer if they were prohibited from continuing to implement and enforce an Executive Order that facially exceeds the Governor's statutory authority; indeed, there can be no harm to the Respondents because Respondents were able to fully enforce the designation of businesses as essential or non-essential for the thirty day period authorize by statute.

62. Petitioner is therefore entitled to a declaratory judgment declaring that the purported the continued designation of its business as non-essential violates the plain text of Executive Law 29-a(2)(a), together with a preliminary and permanent injunction prohibiting the designation of its business as non-essential by Respondents, and such relief would not be contrary to the public interest.

**FIFTH CAUSE OF ACTION**  
**(Declaring Executive Law 29-a(2)(a) Unconstitutional as Applied)**

63. Petitioner repeats and realleges each and every paragraph above with the same force and effect as if fully set forth herein.

64. Petitioner has commenced this proceeding pursuant to CPLR §§ 3001 and 7803(2).

65. Under Executive Law 29-a, directives have the force of law, commensurate with a statute.

66. The extension of a directive issued by the Governor for a period of more than thirty days violates the separation of power set forth in the New York State Constitution.

67. The continued implementation and enforcement by an executive branch department or division of a directive issued by the Governor for a period of more than thirty days violates the separation of power set forth in the Article III, Section 1 of the Constitution of the State of New York, which provides that: "The legislative power of this State shall be vested in



the Senate and Assembly.” The Governor has been legislating each time he issues a directive that exceeds the thirty-day limitation placed on his authority, even though he has no authority to legislate. That authority rests solely with the Senate and Assembly.

68. Petitioner has a clear legal right to continue to operate its business under the pre-existing laws of the State in the absence of a constitutionally valid directive curtailing, limiting, or prohibiting the operation of its business.

69. Petitioner is suffering per se irreparable injury and is threatened with irreparable injury in the future by reason of being directed and forced to cease its lawful business operations, and Petitioner has no plain, adequate nor complete remedy to protect the constitutional and/or legal rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

70. Petitioner faces the prospect of a loss of business and the violation of its civil rights and liberties as a result of the Respondents purporting to extend, implement, and/or enforce directives issued under Executive Law 29-a for a period beyond thirty days.

71. Absent an injunction, the harm to Petitioner in the loss of its legal and constitutional right to operate its business exceeds any conceivable harm Respondents or the State of New York would suffer if they were prohibited from continuing to implement and enforce Executive Orders that violate the separation of powers set forth in the New York State Constitution; indeed, there can be no harm to the Respondents because Respondents can enforce statutes of identical substance to the directives if the State Legislature passed such a statute, in conformance with the bicameral law-making process set forth in the New York State Constitution.

72. Petitioner is therefore entitled to a declaratory judgment declaring that the purported continued designation of its business as non-essential violates the plain text of Executive Law 29-a(2)(a), together with a preliminary and permanent injunction prohibiting the designation of its business as non-essential by Respondents, and such relief would not be contrary to the public interest.

**SIXTH CAUSE OF ACTION**  
**(Declaring Executive Law 29-a Facially Unconstitutional)**

73. Petitioner repeats and realleges each and every paragraph above with the same force and effect as if fully set forth herein.

74. Petitioner has commenced this proceeding pursuant to CPLR §§ 3001 and 7803(2).

75. Under Executive Law 29-a, directives have the force of law, commensurate with a statute.

76. The Constitution of the State of New York requires that statutes be passed by each separate house of the legislature before they can have the force of law.

77. Specifically, Article III, Section 13 of the Constitution of the State of New York provides that: "The enacting clause of all bills shall be 'The People of the State of New York, represented in Senate and Assembly, do enact as follows,' and no law shall be enacted except by bill."

78. Executive Law 29-a unbalances this constitutional framework by allowing the Governor to issue directives, which can only be reversed by a concurrent resolution of both houses of the legislature.

79. Thus, while the consent of both houses of the legislature is required to pass a statute, the consent of either house of the legislature is sufficient to maintain a directive issued by the Governor under Executive Law 29-a.

80. Accordingly, Executive Law 29-a and every directive issued pursuant to Executive Law 29-a violates the principle of bicameralism inherent in the New York State Constitution.

81. The implementation and enforcement by an executive branch department or division of a directive issued by the under Executive Law 29-a thus also violates the principle of bicameralism inherent in the Constitution of the State of New York.

82. Petitioner has a clear legal right to continue to operate its business under the pre-existing laws of the State in the absence of a constitutionally valid directive curtailing, limiting, or prohibiting the operation of its business.

83. Petitioner is suffering per se irreparable injury and is threatened with irreparable injury in the future by reason of being directed and forced to cease its lawful business operations, and Petitioner has no plain, adequate nor complete remedy to protect the constitutional and/or legal rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

84. Petitioner faces the prospect of a loss of its business and the violation of its civil rights and liberties as a result of the Respondents purporting to extend, implement, and/or enforce directives issued under Executive Law 29-a with the force of law, but without the constitutionally required concurrence of both houses of the legislature.

85. Absent an injunction, the harm to Petitioner in the loss of its legal and constitutional right to operate its business exceeds any conceivable harm Respondents or the

State of New York would suffer if they were prohibited from continuing to implement and enforce Executive Orders that violate the separation of powers set forth in the New York State Constitution; indeed, there can be no harm to the Respondents because Respondents can enforce statutes of identical substance if the State Legislature passed such a statute, in conformance with the bicameral law-making process set forth in the New York State Constitution.

86. Petitioner is therefore entitled to a declaratory judgment declaring that Executive Law 29-a is unconstitutional to the extent it purports to give the Governor the power to issue directives which have the force of law without requiring the consent of the State Legislature in conformance with the bicameral law-making process set forth in the Constitution of the State of New York, together with a preliminary and permanent injunction prohibiting the Governor from enforcing directives under Executive Law 29-a unless and until these directives are approved by both houses of the legislature, and such relief would not be contrary to the public interest.

#### **SEVENTH CAUSE OF ACTION**

##### **(Declaring Executive Order 202.68 Unconstitutional Under the Equal Protection Clause and Corresponding Provision of the New York State Constitution)**

87. Petitioner repeats and realleges each and every paragraph above with the same force and effect as if fully set forth herein.

88. Petitioner has commenced this proceeding pursuant to CPLR §§ 3001 and 7803(2).

89. Executive Order 202.68 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (and corresponding provision of the State Constitution) because its establishment of Color Zones restricts the operation of gyms, fitness centers, and fitness classes, but allows the operation of businesses other than gyms, fitness

centers, and fitness classes, including similarly situated businesses that serve large numbers of people in close proximity to one another.

90. Petitioner has a clear legal right to operate a gym, fitness center, and/or fitness class, and the Respondents have issued and enforced executive orders which do not treat similarly situated parties in the same manner.

91. Petitioner has a clear legal right not to be subject to the subjective and discriminatory decisions and policies being made by Respondents which amount to so-called government acceptance of business over another legal form of business, and not grounded in good science or medical data, and is thus, arbitrary and capricious as well.

92. Petitioner is suffering irreparable injury and is threatened with irreparable injury in the future by reason of being forced to cease the operation of its business, and Petitioner has no plain, adequate nor complete remedy to protect the constitutional rights and to redress the wrongs and illegal acts complained of, other than immediate and continuing injunctive relief.

93. Petitioner faces the prospect of a loss of its businesses and the violation of its civil rights and liberties as a result of Respondents' decision to prohibit Petitioner from operating its business.

94. Absent an injunction, the harm to Petitioner in the loss of its constitutional rights exceeds any conceivable harm Respondent or the State of New York would suffer if they were prohibited from enforcing an Executive Order which violates the Equal Protection Clause.

95. Petitioner is therefore entitled to a declaratory judgment declaring that the prohibition against gyms, fitness centers, and fitness classes from operating in Color Zones violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and corresponding provisions of the New York State Constitution, together with a

preliminary and permanent injunction prohibiting the enforcement of such Executive Order by Respondents and would not be contrary to the public interest.

**EIGHTH CAUSE OF ACTION**  
**(Declaring Executive Order 202.68 Arbitrary and Capricious)**

96. Petitioner repeats and realleges each and every paragraph above with the same force and effect as if fully set forth herein.

97. There is no valid or sound scientific or medical rationale for prohibiting gyms, fitness centers, and fitness classes from operating while allowing supermarkets, malls, and other businesses with large numbers of customers from operating, as has been done by Respondents. As a result, the Executive Order is arbitrary, capricious and an abuse of discretion, and unlawful based violation of the right of free expression.

98. Essentially, under the pretext of the COVID-19 pandemic, the Respondents are seeking to institute a blanket prohibition against group exercise.

99. Respondents have promulgated this Executive Order with *no* findings, studies, or evidence to support the distinction prohibiting people from exercise in groups while allowing people in much larger groups.

100. Petitioner has commenced this proceeding pursuant to Petitioner has commenced this proceeding pursuant to CPLR §§ 3001 and 7803(3).

101. By reason of the foregoing, the decision of Respondents to allow certain forms of businesses to continue to operate while prohibiting businesses that provide exercise opportunities is arbitrary, capricious, and an abuse of discretion.

102. This is particularly the case here where all scientific evidence suggests that healthy and active people are less susceptible to experiencing severe health consequences as the result of a COVID-19 infection.

103. Respondents' arbitrary and capricious decision has caused a serious financial hardship on Petitioner and has eviscerated Petitioner's ability to operate its business.

104. Petitioner has suffered irreparable injury.

WHEREFORE, Petitioner demands judgment:

- A. On its First Cause of Action, declaring that the Governor's extension of Executive Orders 202.6, 202.57, and 202.68 for a period of time in excess of thirty days violates Executive Law 29-a(2)(a);
- B. On its Second Cause of Action, declaring that the enforcement of NYSDOH's guidance issued under Executive Order 202.57 for a period of time in excess of thirty days violates Executive Law 29-a(2)(a);
- C. On its Third Cause of Action, declaring NYSDOH's designation of Color Zones more than thirty days after the issuance of Executive Order 202.68 violates Executive Law 29-a(2)(a);
- D. On its Fourth Cause of Action, declaring that the Governor and ESDC's designation of essential and non-essential businesses for a period of time in excess of thirty days violates Executive Law 29-a(2)(a);
- E. On its Fifth Cause of Action, declaring that the Governor's issuance of directives for a period of time in excess of thirty days violates the separation of powers contained in the New York State Constitution.
- F. On its Sixth Cause of Action, declaring that that the Governor's issuance of directives without the approval of both houses of the legislature violates the bicameral law-making process contained in the New York State Constitution.

- G. On its Seventh Cause of Action, declaring that Executive Order 202.68 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and corresponding provisions of the New York State Constitution;
- H. On its Eighth Cause of Action, declaring that Executive Order 202.68 is arbitrary, capricious, and an abuse of discretion;
- I. Preliminarily during the pendency of this proceeding and permanently thereafter enjoining and restraining Respondents from enforcing or implementing any directives for a time period of more than thirty days;
- J. Awarding Petitioner its costs and disbursements in this proceeding; and
- K. Awarding such other and further relief as the Court deems just and proper.

DATED: November 30, 2020  
Buffalo, New York

LIPSITZ GREEN SCIME CAMBRIA LLP

By: 

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Todd J. Aldinger, Esq.

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## CORPORATE VERIFICATION

STATE OF NEW YORK    )  
                                  )SS:  
COUNTY OF ERIE        )

**Robert F. Dinero**, being duly sworn, deposes and says that he is the Owner and Vice-President of Petitioner, ATHLETES UNLEASHED, INC., in the within action and that he has read the foregoing Verified Petition and knows the contents thereof, that the same is true to Deponent's knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters Deponent believes them to be true. Deponent has made this verification, and not the Petitioner, because the Petitioner is a corporation.

  
\_\_\_\_\_  
**ROBERT F. DINERO**

Subscribed and sworn to before me  
this 30 day of November, 2020.

  
\_\_\_\_\_  
Notary Public

Todd J. Aldinger  
Notary Public, State of New York  
Comm. No. 01AL622222  
Qualified in Erie County  
My Commission Expires 07/12/2022