

STATE OF VERMONT

SUPERIOR COURT  
RUTLAND UNIT

CIVIL DIVISION  
DOCKET NO. 202-5-20 Rdcv

STATE OF VERMONT,	)
Plaintiff,	)
	)
v.	)
	)
CLUB FITNESS OF VERMONT, INC. and	)
SEAN MANOVILL,	)
Defendants and Counter-Plaintiffs,	)
v.	)
	)
STATE OF VERMONT, THOMAS J.	)
DONOVAN, JR., <i>in his personal capacity,</i>	)
and PHILIP B. SCOTT, <i>in his personal</i>	)
<i>capacity,</i>	)
Counter-Defendants.	)

STIPULATION FOR THE ENTRY OF FINAL JUDGMENT ORDER

For the purposes of resolving the allegations of the Complaint and Amended Counterclaim in the above-captioned matter, the parties, Plaintiffs and Counter-Defendants the State of Vermont, Thomas J. Donovan, Jr., in his personal capacity and Philip B. Scott, in his personal capacity, by and through the Vermont Attorney General’s Office, and Defendants and Counter-Plaintiffs Club Fitness of Vermont, Inc. and Sean Manovill (“Defendants”), by and through their counsel Deborah Bucknam, Esq., hereby stipulate and accept as follows:

WHEREAS, the State alleges in the Complaint filed in this action that Defendants violated Vermont statute and executive order by opening Club Fitness’s two locations on May 1-11, May 15, and May 17, 2020 to in-person business at a

time when fitness centers were required by Executive Order 01-20 and addenda to be closed to in-person business;

WHEREAS, Defendants allege in their Amended Counterclaim that their property was taken by the Governor's executive order, and they are entitled to compensation under 20 V.S.A. § 11, Article 2, Chapter 1 of the Vermont Constitution, and the Fifth Amendment of the United States Constitution, and they are entitled to damages under 42 U.S.C § 1983 and 42 U.S.C. § 1985 for deprivation of their property without due process of law in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution;

WHEREAS, Defendants' Amended Counterclaim was dismissed in full by the Vermont Superior Court, Civil Division, Rutland Unit, on September 24, 2020;

WHEREAS, the parties now desire to resolve the above-captioned matter via a stipulated Final Judgment Order of the Court;

WHEREAS, the Attorney General pursuant to 3 V.S.A. Chapter 7 has the general supervision of matters and actions in favor of the State and may settle such matters as the interests of the State require;

WHEREAS, under 20 V.S.A. § 40, Defendants are potentially liable for civil penalties for each alleged violation;

WHEREAS, the Attorney General believes that this settlement is fair, reasonable, and in the State's interest as it upholds the statutory regime of 20 V.S.A. Chapter 1, and Executive Order 01-20, under which the alleged violations occurred; and

WHEREAS, the proposed Final Judgment Order has been negotiated by and between the parties in good faith, and its implementation will avoid prolonged and complicated litigation between the parties;

NOW, THEREFORE, the parties hereby stipulate and agree as follows:

1. The proposed Final Judgment Order may be entered by the Court;
2. The parties hereby waive all rights to contest or appeal the Final Judgment Order and all orders previously issued by this Court in this matter and they shall not challenge, in this or any other proceeding, the validity of any of the terms of the Final Judgment Order or of this Court's jurisdiction to enter the Final Judgment Order;
3. The Final Judgment Order sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreement signed by the parties and approved by the Court.

DATED at Burlington, Vermont, this 14th day of January, 2021.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

By:   
34383D7642B2429...  
Rachel Smith, Esq.  
Deputy Solicitor General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
(802)828-3178  
rachel.e.smith@vermont.gov

DATED at Walden, Vermont, this 14th day of January, 2021.

Sean Manovill and Club Fitness of Vermont, Inc.

Approved as to form

DocuSigned by:

By: Deborah Bucknam

Deborah Bucknam, Esq.  
Bucknam Law PC  
434 Eastman Road  
Walden, VT 05836  
802 748-5525, Ext 101  
dbucknam@vtlegalhelp.com

DATED at \_\_\_\_\_, this 14th day of January, 2021.

Club Fitness of Vermont, Inc.

DocuSigned by:

By: [Signature]

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Name: Sean Manovill

Title: President and Duly Authorized Agent

DATED at \_\_\_\_\_, this 14th day of January, 2021.

Sean Manovill

DocuSigned by:

[Signature]

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Sean Manovill

STATE OF VERMONT

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 DONOVAN, JR., *in his personal capacity*, )  
 and PHILIP B. SCOTT, *in his personal* )  
*capacity*, )  
 Counter-Defendants. )

FINAL JUDGMENT ORDER

The parties have filed a Stipulation for the Entry of Final Judgment Order. Based upon that Stipulation and 20 V.S.A. § 40 and the Court’s inherent equitable powers, it is ORDERED as follows:

BACKGROUND

1. Defendants are Club Fitness of Vermont, Inc. and Sean Manovill. 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 and one located at 912 Route 4A West, Castleton, Vermont.

2. Defendant Sean Manovill is a real person and the owner and CEO of Defendant Club Fitness.
3. Vermont's Governor is statutorily 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).
4. 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[.]" *Id.* § 8(b)(2)(A).
5. 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." *Id.* § 8(b)(6).
6. 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. *Id.* § 9.
7. 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." *Id.* § 2(1).
8. Once the Governor has declared a state of emergency, he may "enforce all laws, rules, and regulations relating to emergency management[.]" *Id.* § 9(1).

9. 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.” *Id.* § 9(9), 11(6).
10. On March 13, 2020, Governor Phil Scott issued Executive Order 01-20 (EO 01-20) and declared a state of emergency in Vermont due to the pandemic outbreak of COVID-19 and the potential for its spread in Vermont.
11. On March 21, the Governor issued Addendum 4 to EO 01-20, “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.
12. 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. 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.” *Id.* ¶ 5. 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 did not include gyms, health clubs, or fitness centers. *Id.* ¶ 6.

13. Defendants initially closed both Club Fitness locations to in-person operations on March 23 as required by Addendum 4.
14. Defendants opened the Club Fitness locations to in-person business on May 1, 2020, and stayed open each day until May 11. Defendants also opened both Club Fitness locations again on May 15 and 17 to in-person business operations.
15. Fitness centers were not permitted under EO 01-20 and addenda to open to in-person business operations until June 1, 2020, under Addendum 16 to EO 01-20.

PAYMENT TO FOODBANK

16. Pursuant to a Stipulation between the parties, Defendants shall pay one thousand dollars (\$1000.00) to the Vermont Foodbank, Rutland Regional Distribution Center.
17. The payment shall be via check made out to “Vermont Foodbank,” with the memo “for the Rutland Regional Distribution Center” and shall be sent to the following address:

Vermont Foodbank  
33 Parker Road  
Barre, Vermont 05641

18. Notice of such payment shall be submitted to the Office of the Attorney General at the following address:

Deputy Solicitor General Rachel Smith  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05602

19. Payment of the one-thousand dollars (\$1000.00) by Defendants shall be made no later than 20 days from the Court’s approval of this Final Judgment Order.



COMPLIANCE WITH EXECUTIVE ORDERS RELATING TO COVID-19

20. Defendants shall comply with EO 01-20 and all addenda and guidance issued thereunder.

OTHER PROVISIONS

21. **All appeal rights waived.** The parties waive: (a) all rights to contest or appeal this Final Judgment Order; (b) all rights to contest or appeal any and all previous orders issued by the Court in connection with this docket, including the dismissal of Defendants' counterclaims; and (c) all rights to contest the obligations imposed upon Defendants under this Final Judgment Order, in this or any other proceeding involving the State of Vermont.

22. This Final Judgment Order is binding upon the parties and their successors and assigns. Any change in Defendants' ownership, corporate, or other legal status, including any transfer of assets, shall in no way alter the responsibilities of Defendants, their successors, their assigns, or their affiliated companies under this Final Judgment Order.

23. Nothing in this Final Judgment Order shall be construed to create or deny any rights of, or grant or deny any cause of action to any person not a party to this Final Judgment Order.

24. This Final Judgment Order shall become effective only after it is entered as an order of the Court at which time it shall become final.

25. Any violation of this Final Judgment Order shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt.
26. The State of Vermont and this Court reserve continuing jurisdiction to ensure future compliance with all statutes, rules, executive orders, or other law applicable to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.
27. Defendants shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.
28. Nothing in this Final Judgment Order shall be construed as having relieved, modified, or in any manner affected Defendants' obligations to comply with all statutes, regulations, executive orders, or directives applicable to Defendants.
29. The Court finds based on the representations of the parties that the parties have negotiated this Final Judgment Order in good faith, that implementation of this Final Judgment Order will avoid prolonged and complicated litigation between the parties, and that this Final Judgment Order is fair, reasonable, and in the State of Vermont's interest.
30. This Final Judgment Order may be altered, amended, or otherwise modified only by subsequent written agreement signed by the parties or their legal representatives and approved by this Court. Any representations, whether

written or oral, not set forth in this Final Judgment Order shall not be binding upon any party and shall be of no legal force or effect.

SO ORDERED and ENTERED as FINAL JUDGMENT.

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Honorable  
Rutland Superior Court Judge

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Date