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JEFF FINE  
Clerk of the Superior Court  
By Sharon Szakacs, Deputy  
Date 08/10/2020 Time 15:20:02

Description	Amount
CASE# CV2020-094524 CIVIL NEW COMPLAINT	333.00
TOTAL AMOUNT	333.00

Receipt# 27899342

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MESA GOLFLAND, LTD., an Arizona  
limited partnership,

Plaintiff,

v.

DOUGLAS A. DUCEY, Governor of  
Arizona, in his official capacity;

Defendant.

CASE NO.: CV2020-094524

COMPLAINT

(Injunctive Relief; Declaratory Relief;  
Damages Pursuant to 28 U.S.C. § 1983)

Plaintiff, Mesa Golfland Ltd. (hereinafter "Plaintiff"), by and through undersigned counsel, for its complaint against the Defendant Douglas A. Ducey (hereinafter "Defendant"), alleges and states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is an Arizona corporation with its principal place of business in Maricopa County, Arizona.

2. Defendant Douglas A. Ducey, the Governor of the State of Arizona, sued in his official capacity. All actions of Defendant Ducey alleged herein were taken under color of law.

3. Governor Ducey is referred to herein as "Defendant."



1 “federal guidelines”). Executive order 2020-36 rescinded executive orders 2020-18,  
2 2020-24 and 2020-33.

3 15. On May 13, 2020, Defendant published an official press release allowing  
4 pools that follow guidance from the Arizona Department of Health Services (“ADHS”)  
5 to reopen.

6 16. On May 13 through May 15, 2020, Plaintiff reopened some of the water  
7 attractions at Sunsplash.

8 17. On May 14, 2020, ADHS and Defendant published guidance for the  
9 operation of swimming pools and aquatic venues. At all times, Plaintiff was in  
10 compliance with the ADHS and Defendant’s guidance.

11 18. On June 29, 2020, without any notice to Plaintiff, Defendant issued  
12 executive order 2020-43 (“EO 2020-43”), “Pausing of Arizona’s Reopening, Slowing  
13 the Spread of COVID-19.” Under executive order 2020-43, “water parks” were ordered  
14 to “pause operations” until at least July 27, 2020.

15 19. In executive order 2020-43, “[p]ools operated as part of a public  
16 accommodation, such as those at hotels” were allowed to “continue to operate.”

17 20. Under executive order 2020-43, water parks were to “receive  
18 authorization to reopen” after they “submit a form as prescribed by the Arizona  
19 Department of Health Services [ADHS] that attests the entity is in compliance with  
20 guidance issued by ADHS related to COVID-19 business operations.”

21 21. Plaintiff anticipated that on or before July 27, 2020, it would be allowed  
22 to reopen Sunsplash in accordance with ADHS protocols.

23 22. On information and belief, the Defendant did not prepare or even begin to  
24 prepare protocols for water parks to reopen.

25 23. Plaintiff provided ADHS with its safety-plan for reopening and asked for  
26 authority to reopen based on its safety-plan.

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1           24. Do date, neither Defendant nor ADHS has commented on Plaintiff's  
2 safety-plan to reopen.

3           25. Defendant has not provided Plaintiff with any means by which Plaintiff  
4 can establish that its safety-plan will be effective to reduce the risk of COVID-19  
5 transmission.

6           26. On July 23<sup>rd</sup>, the Defendant effectively revoked any commitment to allow  
7 water parks to reopen with his Executive Order 2020-52 ("EO 2020-52"). EO 2020-52  
8 provides:

9                   The provisions of Executive Order 2020-43, ordered July 27, 2020,  
10 including those pausing busines operations for certain businesses, shall  
11 be extended, remain in place and continue to be reviewed for repeal or  
revisions every two weeks.

12           27. Although water parks like Sunsplash have been ordered closed, the  
13 exception in EO 2020-43 allowing "[p]ools operated as part of a public accommodation,  
14 such as those at hotels" to continue operations has allowed water parks at hotels in  
15 Maricopa County to remain open.

16           28. On information and belief, the following hotels or resorts are operating  
17 water parks:

18                   A. The Oasis at Arizona Grand Resort: The Oasis is a seven-acre water  
19 park with an 8-story water slide, two other water slides, a wave pool,  
20 a lazy river, a 25 person hot tub, a swimming pool, a childrens' pool,  
21 and a restaurant.

22                   B. The Westin Kierland Resort & Spa: Kierland is a water park with a  
23 110-foot water slide, a lazy river, a "Flowrider" surf simulator, two  
24 swimming pools and a hot tub.

25                   C. JW Marriott Phoenix Desert Ridge Resort & Spa: The Desert Ridge  
26 Marriott has five pools, a lazy river, a waterslide and children's splash  
27 area.

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D. Hyatt Regency Gainey Ranch: The Hyatt Regency has a 2.5-acre water playground, with a sand beach and 3-story, high speed waterslide, ten swimming pools, 40 waterspouts and a Grecian-style water temple.

E. Fairmont Scottsdale Princess: Scottsdale Princess has two water slides, three pool areas, and on Saturday nights offers a "Dive-In" movie for guests. It also has a zero-entry deck for young children.

F. Great Wolf Lodge: Great Wolf has a four-story tubing slide, a splash "tree house," a splash pool, a wave pool, a lazy river, and a river-rafting simulation.

G. Ritz Carlton Dove Mountain: The Ritz Carlton Dove Mountain has three swimming pools and a 235-foot water slide.

H. JW Marriott Tucson Starr Pass Resort & Spa: The Tucson JW Marriott resort has a lazy river, multi-level swimming pools, a water slide and dancing fountains.

I. Westin La Paloma Tucson: The Westin La Paloma in Tucson has five pools and a 177-foot water slide.

J. El Conquistador Tucson: El Conquistador has six pools and a 143-foot waterslide.

K. Pointe Hilton Tapatio Cliffs Resort: The Pointe Tapatio has a 143-foot water slide, two pools and a 40-foot waterfall.

L. The Phoenician: The Phoenician has upper pools and a lounge deck, a mother-of-pearl pool, a 197-foot twisting waterslide, and a splash pad with spray-guns and falling buckets of water.

29. In addition to hotel water parks remaining open, Defendant has kept the Slide Rock State Park open, which charges a fee for individuals to swim, wade and slide down a 1.2 mile section of Oak Creek. Slide Rock is an outdoor water park.









1 58. A justiciable controversy exists between Plaintiff and Defendant.

2 59. Plaintiff is entitled to declaratory relief that the adoption of Executive  
3 Orders 2020-43 and 2020-52 violated Plaintiff's rights to equal protection and so is not  
4 enforceable.

5 60. Plaintiff is entitled to an award of its attorneys' fees and costs pursuant to  
6 the private attorney general doctrine. *Cave Creek Unified Sch. Dist. v. Ducey*, 231 Ariz.  
7 342, 353, ¶ 35, 295 P.3d 440, 451 (App.), aff'd, 233 Ariz. 1, ¶ 35, 308 P.3d 1152 (2013).

8  
9 **Count IV**

10 **(Violation of Equal Protection and Due Process, United States Const., 14<sup>th</sup>**  
11 **Amendment, Injunction and Declaratory Relief and Damages)**

11 61. Plaintiff incorporates all preceding allegations.

12 62. The 14<sup>th</sup> Amendment to the United States Constitution provides, "No state  
13 shall . . . deny to any person within its jurisdiction the equal protection of the laws." It  
14 further provides that no state may "deprive any person of life, liberty or property,  
15 without due process of law."

16 63. Executive Orders 2020-43 and 2020-52 create an arbitrary classification  
17 between "water parks" such as Plaintiff's facility, which is subject to closure, and other  
18 hotel and resort "pools" that in are as much a "water park" as Plaintiff's facilities, which  
19 are not subject to closure.

20 64. Executive Orders 2020-43 and 2020-52 create an arbitrary classification  
21 between "water parks" such as Plaintiff's facility, which is subject to closure, and State-  
22 owned and operated outdoor water parks, such as Slide Rock, which is not subject to  
23 closure.

24 65. Executive Orders 2020-43 and 2020-52 create an arbitrary classification  
25 between "water parks" such as Plaintiff's facility, which is subject to closure, and  
26 municipal water parks, which are not subject to closure

27 66. A justiciable controversy exists between Plaintiff and Defendant.

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1           67. Plaintiff has been damaged by Defendant's adoption and enforcement of  
2 Executive Orders 2020-43 and 2020-52 in an amount to be proven at trial.

3           68. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to declaratory  
4 relief, injunctive relief and damages arising from Defendant's denial of Plaintiff's rights  
5 to equal protection and/or due process of law under the 14<sup>th</sup> Amendment to the United  
6 States Constitution.

7           69. Plaintiff found it necessary to engage the services of private counsel to  
8 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
9 attorneys' fees pursuant to 42 U.S.C. § 1988.

10           **WHEREFORE**, Plaintiff prays for relief against Defendant as follows:

11           A. For temporary, preliminary and permanent injunctive relief  
12 prohibiting Defendant from enforcing Executive Orders 2020-43  
13 and 2020-52 against Plaintiff;

14           B. For a declaration that enforcing Executive Orders 2020-43 and  
15 2020-52 against Plaintiff violates Art. 2, §§ 4 and 13 of the Arizona  
16 Constitution and the 14<sup>th</sup> Amendment to the United States  
17 Constitution;

18           C. For an award of damages to Plaintiff in an amount to be proven at  
19 trial;

20           D. For an award of Plaintiffs' taxable costs and attorneys' fees; and

21           E. For such other relief as the Court deems just and appropriate.

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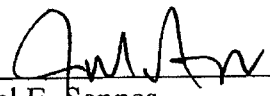
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RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of August 2020.

UDALL SHUMWAY PLC



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CLERK OF THE  
SUPERIOR COURT  
FILED  
S. SZAKACS, DEP

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15 IN AND FOR THE COUNTY OF MARICOPA

16 MESA GOLFLAND, LTD., an Arizona  
17 limited partnership,

18 Plaintiff,

19 v.

20 DOUGLAS A. DUCEY, Governor of  
21 Arizona, in his official capacity;

22 Defendant.

CASE NO. CV 2020-094524

PLAINTIFF'S PETITION FOR  
ISSUANCE OF ORDER TO SHOW  
CAUSE

23 Pursuant to Ariz. R. Civ. P. 7.3 and 65, Plaintiff, Mesa Golfland Ltd. (hereinafter  
24 "Plaintiff"), by and through undersigned counsel, having filed a Complaint for  
25 injunctive relief and declaratory relief and a Verified Application for Temporary,  
26 Preliminary and Permanent Injunctive Relief, requests the Court issue an order to show  
27 cause that Defendant the Hon. Douglas A. Ducey appear to give reason why Plaintiff's  
28 request for temporary injunctive relief should not be granted. A form of Order to Show  
Cause is submitted herewith.

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