

RETURN DATE: AUGUST 4, 2020	:	SUPERIOR COURT
	:	
ROXY NAILS DESIGN, LLC, and	:	JUDICIAL DISTRICT OF
LUIS RAMIREZ,	:	HARTFORD
	:	
Plaintiffs,	:	
	:	
v.	:	AT HARTFORD
	:	
NED LAMONT, in his Official	:	
Capacity as Governor of the State of	:	
Connecticut, and DAVID LEHMAN,	:	
in his Official Capacity as	:	
Commissioner of Economic and	:	
Community Development,	:	
	:	
Defendants.	:	JUNE 8, 2020

**COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiffs Roxy Nails Design, LLC (“Roxy Nails”) and Luis Ramirez, by and through their undersigned counsel, allege the following upon personal knowledge and, as to facts not within personal knowledge, upon information and belief:

FIRST COUNT

**Conn. Const. art. II
Governor’s Shutdown Orders Exceed Statutory Authority**

1. Through this Verified Complaint, Roxy Nails and Mr. Ramirez seek to vindicate their right to operate their nail salon business safely in accordance with guidance issued by Defendant Governor Ned Lamont and Commissioner David Lehman.

2. On March 10, 2020, Governor Lamont declared a public health emergency pursuant to Conn. Gen. Stat. § 19a-131a and a civil preparedness emergency pursuant to Conn. Gen. Stat. § 28-9 to respond to the COVID-19 pandemic.

3. Governor Lamont subsequently issued an order requiring all “non-essential” businesses to shut down on March 20, 2020.

4. The governor delegated to the Connecticut Department of Economic and Community Development (DECD), through Commissioner Lehman, the broad authority to decide what businesses were essential.

5. DECD decreed that nail salons did not qualify as essential businesses.

6. As such, Plaintiff Roxy Nails has been closed by order of Governor Lamont and Commissioner Lehman since March 20, 2020, and Plaintiff Ramirez has been unable to pursue his profession as a nail designer in Connecticut since March 20, 2020 due to the order of Governor Lamont and Commissioner Lehman.

7. During this period of closure, Roxy Nails has struggled to survive as its expenses mount and it is unable to earn income. Upon information and belief, if not allowed to open soon, Roxy Nails faces the imminent danger of closing permanently.

8. In order to be ready to reopen safely once permitted by the state, Mr. Ramirez has spent money from his dwindling savings to take the necessary measures to ensure he can safely offer nail care services to the public.

9. Roxy Nails is therefore in a position to reopen immediately and be in compliance with all applicable safety requirements as soon as the legal impediment imposed by the defendants’ closure order is lifted.

10. According to guidance issued by the DECD, Roxy Nails reopening should have occurred on either May 20, 2020 or June 1, 2020.

11. But despite their intent and ability to conform to state issued safety guidance applicable to similarly situated businesses, Roxy Nails and Mr. Ramirez were not allowed to reopen.

12. Instead, DECD decided in its purported sole authority that other retail businesses would be allowed to reopen on May 20, 2020 and hair salons would be allowed to reopen on June 1, 2020, but nail salons would have to remain closed until at least June 17, 2020. According to the Governor's "Roadmap for reopening Connecticut from Governor Lamont" ("The Roadmap"), which is attached as Exhibit 1, nail salons and hair salons pose the same public health risk.

13. For Roxy Nails, each day that goes by without being able to do business imposes a heavy cost. This loss of liberty for Roxy Nails and Mr. Ramirez violates several provisions of both the Connecticut and United States Constitutions.

14. While Connecticut law gives the governor significant power to respond to emergencies, that power is not unlimited.

15. As described more fully below, the statutes that empower the governor to act during an emergency do not empower the governor or the DECD to allow hair salons and other retail businesses to reopen, while keeping similarly situated businesses like nail salons closed; they do not allow the governor the authority to keep a sector of businesses closed despite their determination that the businesses in the sector could safely operate if they complied with COVID-19 guidelines; and they

do not authorize the governor to delegate broad power to the DECD to make such decisions.

16. Under Connecticut law, the governor and DECD are empowered to act only when authorized by the legislature.

17. The governor's actions and those of the DECD that prevent Roxy Nails from reopening not only exceed applicable statutory authority, they violate the Connecticut Constitution's separation of powers and the equal protection clauses of both the state and federal constitutions.

18. Plaintiffs recognize that the COVID-19 pandemic has created a uniquely difficult situation for Governor Lamont and his administration—indeed, for the entire State of Connecticut. But even in an emergency, constitutional principles and the rule of law still apply.

19. Roxy Nails is prepared to operate safely and according to all guidelines issued by the state. Plaintiffs seek only to be permitted to reopen Roxy Nails on a par with other similarly situated businesses.

PARTIES

Plaintiffs

20. Plaintiff Roxy Nails Design LLC is a limited liability company organized and existing under the laws of the State of Connecticut with its principal place of business located at 528 Park Street in Hartford.

21. Roxy Nails is a small business that offers quality nail care services to the public at affordable prices.

22. Like many small businesses in Connecticut, Roxy Nails has struggled to survive during the pandemic and the government-imposed lock downs.

23. Because of the shutdown orders, Roxy Nails been closed since March 20, 2020.

24. Plaintiff Luis Ramirez is the founder and owner of Roxy Nails.

25. Mr. Ramirez is a 2008 graduate of Bulkeley High School in Hartford and a current resident of Enfield, Connecticut.

26. Mr. Ramirez opened Roxy Nails in 2016 and has worked hard since then to grow his business in his hometown.

Defendants

27. Defendant Ned Lamont is the Governor of the State of Connecticut and is responsible for enacting and enforcing executive orders regarding the COVID-19 crisis. Governor Lamont is sued in his official capacity.

28. Defendant David Lehman is the Commissioner of the Connecticut Department of Economic and Community Development (“DECD”). Commissioner Lehman has been delegated authority from the governor to promulgate COVID-19 response regulations in his role as Commissioner. Defendant Lehman is sued in his official capacity.

JURISDICTION AND VENUE

29. This case sets out causes of action arising under the Connecticut Constitution, Federal Constitution, and Connecticut law. Thus, this Court has

jurisdiction pursuant to Conn. Gen. Stat. § 51-164s, which makes the superior court the sole court of original jurisdiction for all claims other than probate claims.

30. This Court has the authority to grant the requested declaratory relief under Conn. Gen. Stat. § 52-29 and injunctive relief under Conn. Gen. Stat. § 52-473.

31. Venue is proper in this Court under Conn. Gen. Stat. § 51-345(3), because Plaintiff Roxy Nails is located in Hartford.

32. Plaintiffs' federal claims arise under 42 U.S.C. §1983. Attorney's fees and costs are authorized pursuant to 42 U.S.C. § 1988.

33. This Court has concurrent jurisdiction to hear plaintiffs' claims under §§ 1983 and 1988.

FACTUAL ALLEGATIONS

The COVID-19 Pandemic

34. The State of Connecticut as well as the rest of the nation is suffering from the COVID-19 virus pandemic.

35. To reduce the spread of the disease, many states including Connecticut ordered residents to stay at home and ordered the shutdown of businesses that were deemed not "essential."

36. Although well-intentioned, the requirement to shut down has inflicted vast economic harm and unemployment. Small businesses have been hit especially hard.

37. The number of infections in Connecticut has peaked and declined sharply from its peak. The state has therefore begun to reopen incrementally.

The Response by Governor Lamont

38. On March 10, 2020, Governor Lamont declared Public Health and Civil Preparedness Emergencies pursuant to Conn. Gen. Stat. §§ 19a-131a and 28-9. Governor Lamont's emergency declarations are set to remain in effect through September 9, 2020.¹ Attached as Exhibit 1.

39. Governor Lamont has thereafter issued several orders requiring the widespread shutdown of businesses throughout the State of Connecticut.

40. In Executive Order No. 7D, for example, Governor Lamont imposed limitations on Restaurant, Bar, and Private Club operations and ordered the closure of off-track betting facilities, indoor gyms, fitness centers, and movie theaters through April 30.² Attached as Exhibit 2.

41. In Executive Order No. 7F, Governor Lamont ordered the closure of all large shopping malls, and all places of public amusement.³ Attached as Exhibit 3.

¹ Declaration of Civil Preparedness and Public Health Emergencies (Mar. 10 , 2020), *available at* <https://portal.ct.gov/-/media/Office-of-the-Governor/News/20200310-declaration-of-civil-preparedness-and-public-health-emergency.pdf?la=en>.

² Executive Order 7D (Mar. 16, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7D.pdf?la=e>;

³ In Executive Order No 7F Governor Lamont ordered the closure of all large shopping malls, and all places of public amusement. Executive Order 7F (Mar. 18, 2020), *available at* <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7F.pdf?la=en>;

42. In Executive Order No. 7G, issued on March 19, 2020, Governor Lamont ordered the shutdown of barbershops, hair salons, tattoo or piercing parlors and other related businesses including nail technicians.⁴ Attached as Exhibit 4.

43. In Executive Order No. 7H Governor Lamont ordered that all “non-essential businesses” should reduce their in-person workforces by 100%, effectively requiring personal service businesses like Roxy Nails where workers cannot service clients remotely to shut down completely.⁵ Attached as Exhibit 5.

44. State officials have encouraged municipalities to charge individuals violating COVID-19 based executive orders with misdemeanors.⁶ Attached as Exhibit 6.

The Delegation of Power to DECD and Commissioner Lehman

45. In Executive Order No. 7H, Governor Lamont declared that the DECD would issue lawfully binding guidance on which businesses would be considered “essential” by March 22, 2020.⁷ Attached as Exhibit 7.

⁴ Executive Order 7G (Mar. 29, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7G.pdf>.

⁵ Executive Order 7H (Mar. 20, 2020), available at <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7H.pdf>

⁶ Emily Brindley & Jesse Leavenworth, *How are towns enforcing Gov. Lamont’s coronavirus executive orders? It depends where you live* (last visited June 6, 2020), available at <https://www.courant.com/coronavirus/hc-news-coronavirus-town-enforcement-executive-orders-20200504-zcojeck3cbaf5kdflxtvyrlqka-story.html>

⁷ Executive Order 7H (Mar. 20, 2020), available at <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7H.pdf>

46. Although Governor Lamont set out some categories of business which were to be deemed essential in Executive Order No. 7H, he emphasized that his list did not exclude additions authorized by DECD.

47. Governor Lamont also declared in Executive Order 7H that any other business could apply to DECD and request that DECD declare that business essential.

48. In Executive Order No. 7S, Governor Lamont delegated to DECD the authority to issue mandatory statewide rules regarding protective measures that essential businesses would be required to use to protect the health of employees and customers.⁸ Attached as Exhibit 8.

49. In Executive Order No. 7V, Governor Lamont delegated to DECD the sole authority to issue additional binding rules for safe workplaces in essential businesses.⁹ Attached as Exhibit 9.

50. In Executive Order No. 7MM, Governor Lamont delegated to DECD the authority to issue rules and guidelines regarding the operation of outside dining and retail.¹⁰ Attached as Exhibit 10.

⁸ Executive Order 7S (Apr. 1, 2020), *available at* <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7S.pdf?la=en>

⁹ Executive Order 7V (Apr. 7, 2020), *available at* <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7V.pdf?la=en>

¹⁰ Executive Order 7MM (May 12, 2020), *available at* <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7MM.pdf?la=en>

51. In Executive Order No. 7PP, Governor Lamont delegated to DECD the authority to promulgate binding regulations for a variety of business sectors that would be allowed to begin to reopen on May 20, 2020.¹¹ Attached as Exhibit 11

52. Governor Lamont authorized the reopening of outdoor dining, offices, retail and malls, museums and zoos, outdoor recreation, but left the details concerning reopening to the sole discretion of DECD.

53. Unlike off-track betting, indoor fitness, and movie theaters, nail salons were not listed by the Governor in Executive Order No. 7PP as a business that was required to remain closed until June 20, 2020.

54. To the contrary, nail salons were listed along with barbershops, restaurants, and eating establishments as the types of businesses that Governor Lamont had concluded could safely reopen if they complied with DECD-promulgated Sector rules.

DECD's COVID-19 Regulations

55. DECD is a state agency whose regular mandate includes being “the state's lead agency responsible for strengthening Connecticut’s competitive position in the rapidly changing, knowledge-based global economy.” Conn. Gen. Stat. § 32-1c.

56. Commissioner Lehman and the DECD deputy commissioners do not possess any medical or scientific expertise, or knowledge regarding epidemiology.

¹¹ Executive Order 7PP (May 18, 2020), available at <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7PP.pdf?la=en>

57. Upon information and belief, Commissioner Lehman personally approved the actions of the DECD pursuant to the authority delegated by Governor Lamont.

58. On March 23, 2020, DECD issued regulations, pursuant to the broad authority it had been delegated by the governor, concerning which businesses would be considered essential.¹² Attached as Exhibit 12.

59. These regulations were promulgated without any formal process for notice and comment rulemaking or certification of emergency rulemaking as required by the Connecticut Uniform Procedure Act.

60. On approximately March 23, 2020, DECD promulgated “safe workplace rules for essential employers” and “essential safe store rules.”¹³ Attached as Exhibit 13.

61. These sector rules were promulgated without any formal process for notice and comment rulemaking or certification of emergency rulemaking as required by the Connecticut Uniform Procedure Act.

¹² Department of Economic and Community Development, Essential Business – Executive Order 7H, *available at* <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Business-Exemptions-for-Coronavirus>.

¹³ Department of Economic and Community Development, Safe Workplace Rules for Essential Employers, *available at* <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Safe-Workplace-Rules-for-Essential-Employers>.

62. On or about May 8, 2020, DECD issued a series of Sector Rules for Hair Salons & Barbershops, Museums and Zoos, Offices, Restaurants, and Retail & Malls.¹⁴ The sector rules for hair salons are attached as Exhibit 14.¹⁵

63. The Sector Rules were promulgated without any formal process for notice and comment rulemaking or certification of emergency rulemaking as required by the Connecticut Uniform Procedure Act.

64. Notwithstanding the inclusion of nail salons in Executive Order No. 7PP, on or about May 8, 2020, DECD determined that nail salons would not be allowed to open until a later reopening phase then planned for June 20, 2020.¹⁶

65. This decision was made without written explanation and also without any formal process for notice and comment rulemaking or certification of emergency rulemaking as required by the Connecticut Uniform Procedure Act.

66. On June 5, 2020, the governor announced that the second phase of reopening (which includes nail salons) would take place on June 17, 2020, rather than June 20, 2020.

¹⁴ Department of Economic and Community Development, Sector Rules and Certification for Reopen, <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Sector-Rules-and-Certification-for-Reopen>

¹⁵ Department of Economic and Community Development, Sector Rules for Hair Salons, https://portal.ct.gov/-/media/DECD/Covid_Business_Recovery/CTReopensHairBarbershopsC5V051220.pdf.

¹⁶ That day, DECD released rule for hair salons and barbershops but not nail salons. See Sector Rules for May 20th Reopen, Hair Salons & Barbershops (May 8, 2020), available at https://portal.ct.gov/-/media/DECD/Covid_Business_Recovery/CTReopensHairBarbershopsC4V1.pdf?la=en.

67. He explained that this date change was made, not for public health reasons but because June 20, 2020 fell on a busy holiday weekend.¹⁷

68. On June 7, DECD issued a series of Sector Rules for those businesses allowed to reopen on June 17, 2020,¹⁸ including personal services such as nail salons. The sector rules for nail salons are attached as Exhibit 15.¹⁹

69. The Sector Rules were promulgated without any formal process for notice and comment rulemaking or certification of emergency rulemaking as required by the Connecticut Uniform Procedure Act.

70. There is no guarantee that nail salons will be allowed to reopen after June 17, 2020, as either the governor or DECD could decide to again move that date further back.

The Roadmap for Reopening

71. On May 26, 2020, Governor Lamont released a “Roadmap for reopening Connecticut from Governor Lamont” (“The Roadmap”).²⁰ Attached as Exhibit 16.

¹⁷ Ken Dixon, Indoor dining, gyms, movie theaters, small weddings and events to reopen June 17, three days early, CT Post (June 5, 2020) (quoting Governor Lamont saying “To avoid having Phase 2 of Connecticut’s reopening efforts take effect during a busy Father’s Day weekend, we’re going to move it up a few days earlier to June 17”).

¹⁸ Department of Economic and Community Development, Sector Rules and Certification for Reopen, <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Sector-Rules-and-Certification-for-Reopen>

¹⁹ Department of Economic and Community Development, Sector Rules https://portal.ct.gov/-/media/DECD/Covid_Business_Recovery-Phase-2/Prsnl-Srvcs_C3_v1.pdf

²⁰ Roadmap for Reopening Connecticut from Governor Lamont (May 26, 2020), available at <https://portal.ct.gov/-/media/Office-of-the-Governor/News/20200526-Governors-Reopen-Report.pdf?la=en>.

72. The Roadmap purports to explain to the public why certain industries were allowed to open earlier than other industries by measuring the public health risk and economic benefit of certain sectors of the economy.

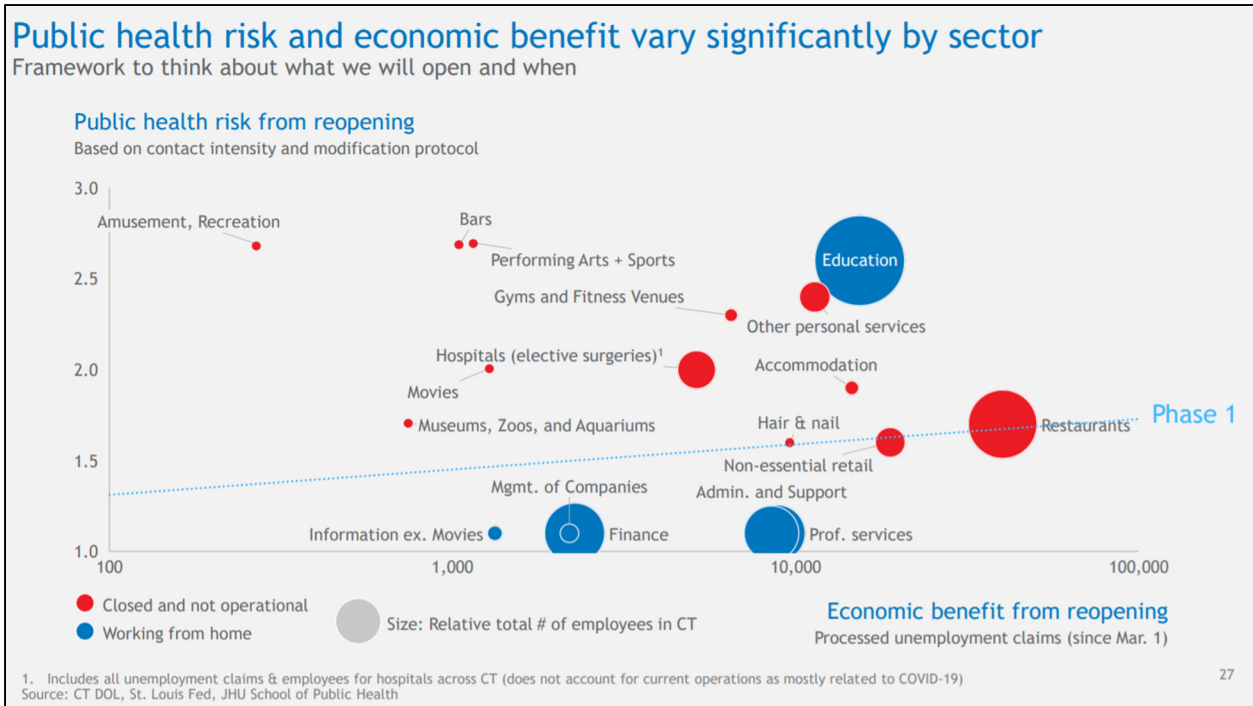
73. Page 26 of the Roadmap explains the factors that were weighed to determine a sector's health risk score. There are two broad categories: Contact Intensity and Modification Potential.

74. According to the Roadmap, contact intensity refers to how frequently and for how long people come into contact in a particular type of business or activity. Modification potential refers to how easily the business or activity can avoid modifications like frequent disinfection and social distancing.

75. According to the Roadmap, contact intensity was given 40% of the weight in determining a final health risk score, while modification potential was given 60% of the weight.

76. A chart on page 27 of the Roadmap shows the public health risk scores of various businesses and activities. It also shows the calculated economic benefit from reopening, which is measured by the number of unemployment claims the state has processed for that type of business since March 1.

77. According to this chart, which is reproduced below, hair and nail salons pose the exact same amount of health risk to the public and likewise produce the same economic benefit to the State:



78. The Roadmap sets out the possibility of the governor re-imposing shutdowns in the event of a second surge or wave of the pandemic.

Plaintiffs are Suffering On-Going Irreparable Injuries

79. Because of the shutdown orders, Roxy Nails has been forced to remain closed since March 20, 2020, and Mr. Ramirez has been unable to work in his profession in the State of Connecticut.

80. Despite the shutdown, Mr. Ramirez and Roxy Nails are still responsible for paying \$1,400 a month in rent for Roxy Nails as well as other bills.

81. Because of the shutdown, Roxy Nails is three months overdue on rent. Mr. Ramirez was able to pay half of the rent for the first month of the shutdown, but he has not been able to pay anything since because of his need to provide basic necessities for himself and his family and his inability to work.

82. Shortly after May 20, 2020, Roxy Nails' Landlord threatened Mr. Ramirez with eviction if he did not pay rent. He also informed Mr. Ramirez that once Roxy Nails is allowed to reopen, Mr. Ramirez will be expected to pay back the rent he owes in weekly installments. If Roxy Nails is not allowed to open soon, Mr. Ramirez fears that he will be evicted and will have to close the business permanently.

83. Mr. Ramirez has seen nail salons in Hartford go permanently out of business in response to the continuing shutdown. He fears that if Roxy Nails is unable to reopen before June 17, he will not be able to keep the business afloat.

84. Mr. Ramirez has applied for small business loans for those impacted by the shutdown, but was informed that the funds have run out.

85. The three nail technicians that Mr. Ramirez hires as independent contractors have told him that they have also been unable to work since March 20, 2020.

86. Nail salons were originally scheduled to reopen as part of the first phase of reopening on May 20, 2020.²¹

87. In reliance on this plan, Mr. Ramirez took a series of precautions to ensure that his salon would be safe. For example:

- a. Mr. Ramirez installed acrylic shields to protect the nail technicians and clients during nail procedures;

²¹ Shaynah Ferreira, Hair Salons Prepping for possible May 20 reopening, News 8 (May 1, 2020), <https://www.wtnh.com/news/health/coronavirus/hair-salons-prepping-for-possible-may-20-reopening/>.

b. Mr. Ramirez removed Roxy's waiting room so that only one client could be inside the business at a time;

c. Mr. Ramirez purchased hand sanitizer for his customers and nail technicians to use; and

d. Mr. Ramirez purchased masks for his nail technicians.

88. On or about May 8, 2020, DECD determined without any public explanation that nail salons would not be allowed to reopen on May 20, 2020 but would be part of the next reopening phase which was planned for no earlier than June 20, 2020.

89. The governor later explained in a press conference that the DECD commissioner thought that because the safety precautions might be too expensive for some nail salons, that they should all be held back from reopening.²²

90. On May 18, 2020, DECD decided without explanation that hair salons could not reopen as planned on May 20, 2020, but would have to wait until June 1, 2020.

²² Zinnia Maldonado Gov. Lamont releases rules for businesses under Phase 1 of Connecticut's reopening plans, Fox 61 (May 8, 2020), <https://www.fox61.com/article/news/health/coronavirus/gov-lamont-to-provide-covid-19-update/520-131990ce-efaa-4ea2-973d-efe958d9f69e>. (quoting the Governor saying "We struggled with this a little bit, and David [the DECD commissioner] and the Reopen Connecticut team working with the associations, came up with very strict parameters in regards to nail salons, and there was a sense maybe that was too expensive, too much too soon and maybe we should hold back on that for a while.").

91. On May 29, 2020, Governor Lamont issued an executive order allowing hair salons (but not nail salons) to open on June 1.²³ Attached as Exhibit 17.

92. Roxy Nails was not allowed to reopen its nail services on either May 20, 2020, or June 1, 2020. Roxy Nails remains closed as of the date of this filing.

93. On June 5, 2020, the governor announced that the second phase of reopening (which includes nail salons) would take place on June 17, 2020 rather than June 20, 2020, not for public health reasons but because June 20, 2020 fell on a busy holiday weekend.

94. Because the Governor and DECD have repeatedly shifted around the reopening dates, without any underlying public health reason, there is no guarantee that nail salons will be allowed to open on June 17, 2020.

95. As a result of DECD's decision, Mr. Ramirez has been forced to close his nail salon, and keep it closed for several weeks longer than other businesses, and already at least a week longer than similarly situated hair salons

96. If the shutdown orders were lifted, Mr. Ramirez would be prepared to immediately reopen Roxy Nails in compliance with all applicable safety requirements.

97. As is demonstrated in the Affidavit of Luis Ramirez dated June 8, 2020, filed herewith, Mr. Ramirez intends to open Roxy Nails to the public while observing all of the safety protocols that DECD requires for hair salons that were allowed to

²³ Executive Order 7TT (May 29, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7TT.pdf>.

open up on June 1, 2020 and all safety precautions that DECD announced for nail salons on June 7, 2020. As soon as it is possible, Mr. Ramirez plans to certify to DECD that he is in compliance with these requirements.

98. The only reason Roxy Nails remain closed is fear of fines and penalties, including possibly criminal penalties.

The Governor's Shutdown Orders Exceed Statutory Authority

99. Article Second of the Connecticut Constitution establishes three distinct branches of government:

- a. Legislative power is placed in the hands of the General Assembly.
- b. Executive power is placed in the hands of the Governor.
- c. Judicial power is placed in the hands of judiciary.

100. The Separation of Powers prevents the concentration of different governmental powers in the same hands, thereby protecting individual liberty.

101. Under the Connecticut Constitution, the General Assembly is tasked with the law-making authority. The Governor does not have inherent authority and can only exercise the authority specifically granted to him by the Connecticut Constitution or by the General Assembly.

102. The General Assembly has granted the Governor specific emergency powers during crises impacting the state of Connecticut. However, this grant of authority is not endless or limitless.

103. Those powers permit the Governor to address the exigencies of a disaster or public health emergency. They do not permit the Governor to maintain business

closures when the State has admitted that particular businesses, such as nail salons, pose no greater threat to public health than other businesses, such as hair salons, that have been permitted to reopen.

104. Under a public health emergency, the governor has the authority to impose quarantine or isolation orders. But Governor Lamont's orders keeping nail salons closed but allowing hair salons and other similarly situated businesses to reopen do not fall under the power to "quarantine" or "isolate".

105. Under the applicable statute, quarantine and isolation are only authorized where individuals are "infected with a communicable disease" or "exposed to a communicable disease." Conn. Gen. Stat. § 19a-131(6)-(9).

106. The governor has not, and cannot, provide evidence that Roxy Nails or anyone associated with it has been infected with COVID-19 or exposed to COVID-19.

107. Furthermore, Conn. Gen. Stat. § 19a-131b imposes procedural safeguards on the use of quarantine and isolation that have not been observed by Governor Lamont.

108. These safeguards include the requirement of a written quarantine or isolation order, the right to a hearing to contest a quarantine or isolation order (including the right to counsel if an individual is indigent), the right to appeal an order to the Probate Court, frequent health monitoring, and immediate release when the quarantined or isolated individual or group is no longer infectious.

109. Neither the governor nor the Commissioner of Public Health has complied with any of these procedural safeguards in keeping Roxy Nail salon closed.

110. Accordingly, the governor's orders keeping Roxy Nails closed while allowing similarly situated business to open cannot fall under the statutory authority to quarantine or isolate.

111. The more specific power to quarantine and isolate controls the generalized residual clause, which allows the governor under a Civil Preparedness Emergency to "take such other steps as are reasonably necessary in the light of the emergency to protect the health, safety and welfare of the people of the state, to prevent or minimize loss or destruction of property and to minimize the effects of hostile action." Conn. Gen. Stat. § 28-9(7).

112. The governor cannot bypass the procedural and substantive limits that the General Assembly placed on his power by reliance on this residual clause.

113. Accordingly, the governor's orders preventing Plaintiffs' business to reopen exceeds his statutory authority and violates article second of the Connecticut constitution.

114. Plaintiffs are suffering and will continue to suffer substantial and irreparable harm unless the Court declares that Governor Lamont's orders concerning Plaintiffs are unlawful and enjoins the Defendants from enforcing them against Plaintiffs.

SECOND COUNT

Conn. Const. art. II

DECD Shutdown Orders Exceed Statutory Authority

1. Plaintiffs hereby allege and incorporate by reference the allegations contained in Paragraph 1 through Paragraph 114 of the First Count as Paragraph 1 through Paragraph 114 of this Second Count.

115. Much of the emergency power the General Assembly grants to the governor is personally vested in the office of the governor, or with specific officials who are appointed for their public health expertise and knowledge such as the Commissioner of Emergency Services and Public Protection or the Commissioner of Public Health.

116. For example, the statute authorizing the governor to declare a civil preparedness emergency emphasizes that upon doing so “the governor may *personally take direct operational control.*” Conn. Gen. Stat. § 28-9 (emphasis added)

117. When the General Assembly intended for the governor or public health officials to have the ability to delegate their emergency power, it granted this delegation authority expressly, mentioning specific officials who are expected to play a role in emergency preparedness and response.

118. For example, “The commissioner [of public health] may delegate to an employee of the Department of Public Health or any local health director, as much of the authority of the commissioner described in this section as the commissioner

determines appropriate. Such authorized employee or director shall act as an agent of the commissioner.” Conn. Gen. Stat. § 19a-131a.

119. But the General Assembly has neither granted emergency powers to DECD, nor expressly authorized the Governor to delegate his emergency authority to DECD.

120. DECD is empowered by the General Assembly only to “encourage and promote the development of industry and business in the state,” and to provide financial assistance directed towards the development of business. Conn. Gen. Stat. § 32-1c.

121. DECD is not empowered to issue emergency regulations concerning which businesses will be deemed “essential,” when businesses can or should reopen, or the applicable safety measures that a business must take during a pandemic.

122. When the General Assembly confirmed Commissioner Lehman, it did not contemplate that Commissioner Lehman would be given such extensive emergency power over businesses in Connecticut.

123. Accordingly, DECD improperly exercised authority that exceeds the scope of DECD’s statutory mandate and violates article second of the Connecticut constitution.

124. The emergency regulations and declarations issued by DECD in response to the COVID-19 pandemic which impact Plaintiffs’ business are therefore unlawful.

125. Plaintiffs are suffering and will continue to suffer substantial and irreparable harm unless the Court declares DECD's regulations and declarations unlawful, as applied to Plaintiffs and enjoins the Defendants from enforcing them against Plaintiffs.

THIRD COUNT

Conn. Const. art. II

Governor's Claim to Broad Emergency Power Violates the Non-Delegation Doctrine

1. Plaintiffs hereby allege and incorporate by reference the allegations contained in Paragraph 1 through Paragraph 125 of the Second Count as Paragraph 1 through Paragraph 125 of this Third Count.

126. While the General Assembly may authorize the governor to issue rules necessary to enforce the laws that it enacts, it cannot delegate the core lawmaking authority to the governor.

127. A statute giving the governor authority must "declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative officer or body must conform, all with a proper regard for the protection of the public interests and with such degree of certainty as the nature of the case permits." *State v. Stoddard*, 126 Conn. 623, 628–29 (1940).

128. Upon declaring a Civil Preparedness Emergency, the governor is allowed to "take such other steps as are reasonably necessary in the light of the emergency to protect the health, safety and welfare of the people of the state, to

prevent or minimize loss or destruction of property and to minimize the effects of hostile action.” Conn. Gen. Stat. § 28-9(7).

129. Since declaring an emergency, Governor Lamont has instituted a reopening plan that admits nail salons and hair salons pose the same risk profile and he has permitted hair salons to reopen according to state health guidelines. As a result, the Governor cannot reasonably or legally claim the authority to keep nail salons closed pursuant to his power under section 28-9(7) to protect the health, safety, and welfare of the people.

130. If section 28-9(7) in fact gave the Governor the power to allow hair salons and other similarly situated businesses to reopen while requiring nail salons to remain closed, this power would lack any restriction on the Governor’s power or any “intelligible principle” supplied by the legislature to guide the governor in the execution of his statutory authority.

131. Such a broad delegation of authority to the governor would be incompatible with the separation of powers and would violate the non-delegation doctrine.

132. Plaintiffs are suffering and will continue to suffer substantial and irreparable harm unless the Court declares the governor’s orders unlawful, as applied to Plaintiffs and enjoins the Defendants from enforcing them against Plaintiffs.

FOURTH COUNT

Conn. Const. art. II

Sub-delegation to DECD Violates the Non-Delegation Doctrine

1. Plaintiffs hereby allege and incorporate by reference the allegations contained in Paragraph 1 through Paragraph 132 of the Third Count as Paragraph 1 through Paragraph 132 of this Fourth Count.

133. The General Assembly has granted emergency power to the governor, but not to DECD.

134. DECD is empowered by statute only to “encourage and promote the development of industry and business in the state,” and to provide financial assistance directing towards the development of business. Conn. Gen. Stat. § 32-1c.

135. DECD is not empowered to issue emergency regulations concerning which businesses are “essential,” when businesses can or should reopen, or the safety measures that a business must take during a pandemic.

136. Governor Lamont purported to sub-delegate his authority to make these determinations to the sole discretion of DECD, acting through Commissioner Lehman.

137. Governor Lamont provided no intelligible principle or limiting standard for DECD and Commissioner Lehman to operate under while making these determinations.

138. This improper delegation of authority to DECD and Commissioner Lehman, without an intelligible principle or any limiting standard supplied by the Connecticut legislature or Governor Lamont, violates the non-delegation doctrine.

139. Plaintiffs are suffering and will continue to suffer substantial and irreparable harm unless the Court declares DECD's orders unlawful, as applied to Plaintiffs and enjoins the Defendants from enforcing them against Plaintiffs.

FIFTH COUNT

**Conn. Const. art. 1, Sections 8 & 20
U.S. Const. – 42 USC 1983; amend XIV**

**Federal & State Equal Protection
Federal and State Substantive Due Process**

1. Plaintiffs hereby allege and incorporate by reference the allegations contained in Paragraph 1 through Paragraph 139 of the Fourth Count as Paragraph 1 through Paragraph 139 of this Fifth Count.

140. Article 1, section 8, of the Connecticut constitution guarantees that no person shall “be deprived of life, liberty, or property without due process of law.”

141. Article 1, section 20, of the Connecticut constitution provides: “No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his civil or political rights because of religion, race, color, ancestry or national origin.”

142. The Fourteenth Amendment to the United States Constitution guarantees that no state shall “deprive any person of life, liberty, or property, without due process of law.”

143. The Fourteenth Amendment of the United States Constitution guarantees that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”

144. Though the government has broad latitude to legislate for public health or safety during an emergency, that power is not unlimited. The Connecticut and U.S. Constitutions limit the scope of the state’s police power, even during a pandemic.

145. The Connecticut and U.S. Constitutions do not allow government to treat similarly situated entities differently unless the reason for doing so bears a rational relationship to a legitimate governmental interest.

146. When the government restricts the right to earn a living in the interest of public health, the means chosen must be rationally related to that end.

147. Plaintiffs have been deprived of due process of law because, as applied to them, the restrictions imposed by the defendants’ orders and regulations are an arbitrary and unreasonable deprivation of their right to lawfully operate.

148. Plaintiffs have also been deprived of equal protection of law because they have been treated differently than similarly situated businesses in an arbitrary and unreasonable fashion.

149. There is not rational distinction grounded in public health or safety between nail salons and hair salons.

150. Governor Lamont has publicly produced the data that was relied upon by DECD in determining when various sectors should be allowed to open. That data

shows his determination that hair and nail salons had an equivalent risk and economic benefit for reopening.

151. In light of that data, there is no rational or conceivable basis for determining that treating hair and nail salons differently was justified.

152. Yet the Governor Lamont and Commissioner Lehman have arbitrarily and without justification allowed hair salons to safely reopen while observing applicable state safety guidelines on June 1, 2020, but have refused to allow nail salons the same ability until at least June 17, 2020.

153. Plaintiffs have been denied due process and equal protection of the laws because there is no rational reason to treat Roxy Nails differently than similarly situated businesses by forcing it to remain closed, while allowing similarly situated businesses to reopen safely.

154. Plaintiffs are suffering and will continue to suffer substantial and irreparable harm unless the Court declares that Governor Lamont and Commissioner Lehman's orders, rules and regulations unlawful, as applied to Plaintiffs and enjoins the defendants from enforcing them against Plaintiffs.

SIXTH COUNT

**Conn. Const. art. I, Section 9
U.S. Const. – 42 USC, § 1983 – amend. XIV**

Federal & State Procedural Due Process

1. Plaintiffs hereby allege and incorporate by reference the allegations contained in Paragraph 1 through Paragraph 154 of the Fifth Count as Paragraph 1 through Paragraph 154 of this Sixth Count.

155. Article 1, section 8, of the Connecticut constitution guarantees that no person shall “be deprived of life, liberty, or property without due process of law.”

156. The Fourteenth Amendment to the United States Constitution guarantees that no state shall “deprive any person of life, liberty, or property, without due process of law.”

157. Shutting down a business is a significant incursion on the rights to liberty and property.

158. Because a weighty private interest is at issue and the risk of erroneous deprivation is high, it is particularly important that robust procedural protections be extended to Plaintiffs.

159. At minimum, an individual suffering a deprivation of life, liberty or property by the government must be entitled to a hearing at “a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

160. The Connecticut legislature has granted the governor specific emergency powers to respond to emergencies facing the State of Connecticut.

161. But the legislature has also placed procedural and substantive safeguards on that authority to protect against arbitrary deprivations of liberty, even in the midst of a crisis necessitating quarantine or isolation. Conn. Gen. Stat. §§ 19a-13b–13d.

162. The existence of these procedural protections evidences the General Assembly’s recognition that significant liberty interests are at stake in the exercise

of emergency power, and that meaningful process is due to offset the risk or erroneous deprivations.

163. Governor Lamont and Commission Lehman have ordered the shutdown of large swaths of the Connecticut economy without observing any meaningful procedural protections such as an individualized process or right to appeal their determinations.

164. Plaintiffs have been denied due process as a result of Roxy Nails being arbitrarily shut down without the required minimal process.

165. Plaintiffs are suffering and will continue to suffer substantial and irreparable harm unless the Court declares that Governor Lamont and Commissioner Lehman's orders, rules and regulations unlawful, as applied to Plaintiffs and enjoins the defendants from enforcing them against Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Roxy Nails Design LLC and Luis Ramirez respectfully request the Court to enter judgment in their favor and award them the following relief against Defendants Ned Lamont and David Lehman for each count of this Complaint:

1. Granting the Plaintiffs' concurrently filed application for an ex parte temporary injunction (temporary restraining order) without the requirement of paying a bond;

2. Declaring enforcement of the Governor's Executive Orders which compel the shutdown of Roxy Nails to be unlawful and/or a violation of the Plaintiffs' rights;

3. Declaring enforcement of the DECD's emergency rules against Plaintiffs to be unlawful and/or a violation of the Plaintiffs' rights;

4. Granting an order preliminarily, and thereafter, permanently enjoining Defendants and Defendants' officers, agents, affiliates, servants, successors, employees, and persons from enforcing the Governor's executive orders or DECD's emergency rules against Plaintiffs without the requirement of paying a bond;

5. Entering judgment for Plaintiffs and against Defendants for deprivation of Rights;

6. Awarding Plaintiffs' costs and attorneys' fees as authorized by 42 USC § 1988, and any other applicable law; and

7. Awarding such further relief as the Court deems just and proper.

Dated: June 8, 2020

Respectfully submitted,

PLAINTIFFS ROXY NAILS DESIGN, LLC
and LUIS RAMIREZ

By: /s/ John M. Tanski (Juris No. 426246)
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