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 8 **VINEYARD PROPERTIES, LLC,**
 9 **SHARON KRAMER VINEYARD PROPERTIES,**
LLC and SAMMY G’S INC.

10
 11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**
 13

14 LARRY KRAMER VINEYARD
 15 PROPERTIES, LLC, SHARON
 16 KRAMER VINEYARD PROPERTIES,
 LLC and SAMMY G’S INC.,

Case No.: 5:20-cv-2050

**COMPLAINT FOR
 DECLARATORY RELIEF,
 INJUNCTIVE RELIEF, AND JUST
 COMPENSATION**

17 Plaintiffs,

18 vs.

19 CITY OF PALM SPRINGS, and DOES
 20 1 through 10,

21 Defendants.
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1. 14TH AMENDMENT DUE PROCESS;
2. 14TH AMENDMENT EQUAL PROTECTION;
3. FIFTH AMENDMENT TAKINGS;
4. CAL. CONST. ART. 1 § 1 RIGHT TO LIBERTY;
5. CAL. CONST. ART. 1 § 7 RIGHT TO PROPERTY; AND
6. CAL. CONST. ART. 1 § 19 TAKINGS WITHOUT COMPENSATION.

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1 Plaintiffs LARRY KRAMER VINEYARD PROPERTIES, LLC, SHARON
2 KRAMER VINEYARD PROPERTIES, LLC and SAMMY G’S INC.,
3 (collectively, "Plaintiffs") by their undersigned attorneys, bring this civil action for
4 Declaratory Relief, Injunctive Relief, and Just Compensation, and allege as follows:

5 **INTRODUCTION**

6 1. This lawsuit presents facial and as-applied constitutional challenges to
7 approval of a partial closure of Palm Canyon Drive in the City of Palm Springs,
8 California by Defendant City of Palm Springs ("the City" or "Defendant").

9 2. On August 20, 2020, the City approved a partial closure of Palm
10 Canyon Drive between Tahquitz Canyon Way and Baristo Road to allow for an
11 expansion of temporary outdoor dining into the public right-of-way ("the
12 Approval").

13 3. The road closure took affect September 3, 2020 and is expected to last
14 indefinitely, at least until the end of 2020.

15 4. The Approval violates Plaintiffs' rights under the United States
16 Constitution and California Constitution by effectively isolating Plaintiffs from
17 customer traffic in favor of other businesses. The Approval thus inflicts a regulatory
18 taking by negating Plaintiffs' reasonable, investment-backed expectations in the
19 property they own.

20 **THE PARTIES**

21 5. Plaintiff LARRY KRAMER VINEYARD PROPERTIES, LLC is a
22 California corporation that owns and operates a shopping center known as “The
23 Vineyard” located at 245 – 285 S. Palm Canyon Drive. This center includes such
24 tenants as Sammy G's, LG's Steakhouse, Tutti Frutti and retailers including Ooh La
25 La, Shoe La La, and Canyon Beachwear, among others. Its principal place of
26 business in Palm Springs, California.

27 6. Plaintiff SHARON KRAMER VINEYARD PROPERTIES, LLC is a
28 California corporation that owns and operates a shopping center known as “The

1 Vineyard” located at 245 – 285 S. Palm Canyon Drive. This center includes such
2 tenants as Sammy G's, LG's Steakhouse, Tutti Frutti and retailers including Ooh La
3 La, Shoe La La, and Canyon Beachwear, among others. Its principal place of
4 business in Palm Springs, California.

5 7. Plaintiff SAMMY G’S INC. is a California corporation with its
6 principle place of business in Palm Springs, California.

7 8. Defendant City of Palm Springs is a governmental body vested with the
8 authority to enact ordinances and approve governmental action including the subject
9 Approval.

10 9. Defendant Does 1 – 10 are individuals or entities responsible for the
11 Approval whose identity is unknown to Plaintiffs at this time and are thus sued by
12 such fictitious names.

13 10. Each Defendant has acted and continues to act under color of state law
14 with respect to all acts or omissions herein alleged.

15 **JURISDICTION AND VENUE**

16 11. This action is brought under 42 U.S.C. § 1983 in relation to Defendants'
17 deprivation of Plaintiffs' constitutional rights to due process, equal protection, and
18 just compensation for temporary takings under the Fifth and 14th Amendments to
19 the U.S. Constitution.

20 12. Accordingly, this Court has federal question jurisdiction under 28
21 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested
22 declaratory relief under 28 U.S.C. § 2201; the requested injunctive relief and
23 damages under 28 U.S.C. § 1343(a); and attorneys' fees and costs under
24 42 U.S.C. §1988.

25 13. This Court has supplemental jurisdiction over the claims asserted under
26 California's Constitution, statutes, and regulations.

27 14. The Central District of California is the appropriate venue for this
28 action pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is a District in which

1 Defendants exercise their authority in their official capacities, maintain offices, and
2 where a substantial part of the events or omissions giving rise to Plaintiffs' claims
3 occurred. Additionally, a substantial part of a property which is a subject matter of
4 this action is situated in this judicial district.

5 **FACTUAL ALLEGATIONS**

6 15. On or about March 4, 2020, California Governor Gavin Newsom
7 proclaimed a State of Emergency as a result of the potential threat of COVID-19.

8 16. On or about March 13, 2020, President Donald J. Trump proclaimed a
9 National State of Emergency as a result of the threat of the emergence of a novel
10 coronavirus, SARS-CoV-2, which causes the COVID-19 illness.

11 17. Various states, cities and other governmental entities have attempted to
12 facilitate economic recovery to challenges resulting from the state and federal States
13 of Emergency.

14 18. On August 20, 2020, Defendant City approved a partial closure of Palm
15 Canyon Drive between Tahquitz Canyon Way and Baristo Road to allow for an
16 expansion of temporary outdoor dining into the public right-of-way, and authorized
17 the Palm Springs City Manager to execute all necessary contracts and agreements
18 associated with the partial closure.

19 19. On information and belief, Plaintiffs allege the road closure began at
20 approximately 7:00 a.m. on September 3, 2020 and remains in effect indefinitely, at
21 least until the end of 2020.

22 20. The Approval allows restaurants fronting Palm Canyon Drive to obtain
23 temporary land use permits allowing "al fresco" dining along the roadway for such
24 establishments.

25 21. The Approval did not provide alternative access for other businesses or
26 customers along the closed section of Palm Canyon Drive and did not provide a
27 means of compensation for lost revenue for non-street fronting restaurant businesses.

28 22. Accordingly, the Approval essentially eliminates drive-by customer

1 traffic for businesses in the impacted stretch of Palm Canyon Drive. Plaintiffs have
2 been denied full use and reasonable economic expectations to profit from their
3 businesses as a result of the Approval. Specifically, the Approval has resulted in
4 significant loss of customer traffic upon which Plaintiffs relied for continued
5 business.

6 23. By drastically limiting customer access, the Approval has reduced the
7 value of Plaintiffs' property and businesses. Such reduction in value will continue
8 and increase exponentially. The Approval favors restaurant businesses fronting
9 Palm Canyon Drive to the detriment of Plaintiffs' and similarly situated businesses.

10 24. The Approval thus unduly interferes with Plaintiffs' reasonable
11 investment-backed expectations including preventing Plaintiffs from earning a
12 reasonable return on their investments. The Approval therefore inflicts an
13 uncompensated regulatory taking, both facially and as applied to Plaintiffs.

14 25. Moreover, the loss of business resulting from the Approval jeopardizes
15 Plaintiffs' ability to continue management and operation of Plaintiffs' businesses.
16 Plaintiffs are also threatened with a loss of tenants and ability to continue paying
17 mortgage on their property. Reasonable alternatives to the complete road closure of
18 Palm Canyon Drive exist, which would allow al fresco dining without the negative
19 impact on Plaintiffs' businesses resulting from the Approval.

20 26. The Approval on its face effects a physical taking by depriving property
21 owners, including Plaintiffs, of the right to possess, use and enjoy their property.

22 27. The Approval does not provide Plaintiffs with just compensation for
23 these takings.

24 **CLAIMS FOR RELIEF**

25 **FIRST CLAIM**

26 **VIOLATION OF THE DUE PROCESS LAWS OF THE 14TH AMENDMENT**

27 *(By all Plaintiffs against all Defendants)*

28 28. Plaintiffs incorporate by reference each and every allegation set forth in

1 all preceding paragraphs as if fully set forth herein.

2 29. The Due Process Clause contains both a substantive and a procedural
3 component. Substantive due process "forbids government to infringe certain
4 'fundamental' liberty interests at all, no matter what process is involved, unless the
5 infringement is narrowly tailored to serve a compelling state interest." *Reno v.*
6 *Flores*, 507 U.S. 292, 301–02 (1993); see also, *Daniels v. Williams*, 474 U.S. 327,
7 331 (1986)(explaining that substantive due process will "bar certain government
8 actions regardless of the fairness of the procedures used to implement them.").
9 Procedural due process "imposes constraints on governmental decisions which
10 deprive individuals of 'liberty' or 'property' interests within the meaning of the Due
11 Process Clause." *Mathews v. Eldridge*, 424 U.S. 319, 322 (1976).

12 30. The Approval violates Plaintiffs' substantive due process rights as
13 follows:

14 a. Plaintiffs' fundamental property interest in conducting
15 lawful business activities is protected by the Due Process Clause
16 of the 14th Amendment. *Medina v. Rudman*, 545 F. 2d. 244,
17 250 (1st Cir. 1976).

18 b. Plaintiffs own businesses and property and have a right to
19 lawfully pursue such businesses, a substantive due process right
20 which is impaired by Defendants' actions.

21 c. Defendants lack any legitimate or compelling interest for
22 depriving Plaintiffs of their right to lawfully pursue their
23 businesses.

24 d. Even if such a legitimate, compelling interest existed,
25 Defendants' Approval is not rationally related or narrowly
26 tailored to further any such interests.

27 31. The Approval and Defendants' enforcement thereof violates procedural
28 due process rights as follows:

1 a. The Approval is arbitrary and favors some businesses,
2 such as street fronting restaurants, to the exclusion of other
3 businesses without adequate protection.

4 b. The subject taking lasts indefinitely with the Approval
5 not providing any mechanism or opportunity to review or
6 challenge the need to continue the Approval in light of
7 developing events.

8 32. Defendants' actions therefore have deprived Plaintiffs of both
9 procedural and substantive due process.

10 33. Plaintiffs have no adequate remedy at law and will suffer serious and
11 irreparable harm to their constitutional rights unless Defendants are enjoined from
12 implementing and enforcing the Approval.

13 34. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
14 declaratory relief and temporary, preliminary, and permanent injunctive relief
15 invalidating or restraining enforcement of the Approval.

16 35. Plaintiffs found it necessary to engage the services of private counsel to
17 vindicate their rights under the law. Plaintiffs are therefore entitled to an Award of
18 attorneys' fees pursuant to 42 U.S.C. § 1988.

19 **SECOND CLAIM**

20 **VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE 14TH**
21 **AMENDMENT**

22 *(By all Plaintiffs against all Defendants)*

23 36. Plaintiffs incorporate by reference each and every allegation set forth in
24 all preceding paragraphs as if fully set forth herein.

25 37. At its core, the Equal Protection Clause of the 14th Amendment to the
26 U.S. Constitution requires states to govern impartially – not draw arbitrary
27 distinctions between businesses based solely on differences that are irrelevant to a
28 legitimate governmental objective.

1 38. Strict scrutiny under the Equal Protection Clause applies where the
2 classification impinges on fundamental rights including the right to due process.
3 Defendants have violated Plaintiffs' procedural and substantive due process rights
4 under the 14th Amendment.

5 39. Defendants cannot satisfy strict scrutiny, because their arbitrary
6 classifications are not narrowly tailored measures that further compelling
7 government interests.

8 40. Defendants have intentionally and arbitrarily categorized California
9 businesses and conduct favoring restaurant businesses fronting Palm Canyon Drive
10 to the exclusion of other businesses either not restaurants or not fronting Palm
11 Canyon Drive. Defendants have therefore arbitrarily discriminated against Plaintiffs
12 in violation of Plaintiffs' equal protection rights.

13 41. Plaintiffs have no adequate remedy at law and will suffer serious and
14 irreparable harm to their constitutional rights unless Defendants are enjoined from
15 implementing and enforcing the Approval.

16 42. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
17 declaratory relief and temporary, preliminary, and permanent injunctive relief
18 invalidating or restraining enforcement of the Approval.

19 43. Plaintiffs found it necessary to engage the services of private counsel to
20 vindicate their rights under the law. Plaintiffs are therefore entitled to an Award of
21 attorneys' fees pursuant to 42 U.S.C. § 1988.

22 **THIRD CLAIM**
23 **VIOLATION OF THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT**
24 **BY INTERFERENCE WITH PROPERTY**

25 *(By all Plaintiffs against all Defendants)*

26 44. Plaintiffs incorporate by reference each and every allegation set forth in
27 all preceding paragraphs as if fully set forth herein.

28 45. Plaintiffs complied, and continue to comply, with all state and local

1 requirements to obtain appropriate licenses and/or permits to conduct their
2 businesses and at all time relevant to this Complaint, Plaintiffs had the right to
3 continue to operate under their licenses and their related commercial activities were
4 continuous and lawful pursuant to California law.

5 46. The regulatory actions taken by the Defendants have resulted in
6 Plaintiffs being deprived of all economically beneficial or productive use of their
7 property including, without limitation, their licenses, their leased and owned
8 property, and further threatens the involuntary closing of their businesses and loss of
9 their property. The California Supreme Court has held: "While the police power is
10 very broad in concept, it is not without restriction in relation to the taking of
11 damaging of property. When it passes beyond proper bounds in its invasion of
12 property rights, it in effect comes within the purview of the law of eminent domain
13 and its exercise requires compensation." *House v. Los Angeles County Flood*
14 *Control Dist.*, 25 Cal. 2d 384, 388 (1944).

15 47. Defendants' Approval and the enforcement thereof have caused a
16 regulatory taking of Plaintiffs' property without just compensation in violation of the
17 Takings Clause of the Fifth Amendment to the U.S. Constitution. At a minimum,
18 the effect of Defendants' Approval constitutes a "partial" taking under *Penn Central*
19 *Trans. Co. v. City of New York*, 438 U.S. 104, 124 (1978). As a result, Defendants'
20 blatant violation of the Taking Clause of the Fifth Amendment has caused proximate
21 and legal harm to Plaintiffs.

22 48. Plaintiffs have no adequate remedy at law and will suffer serious and
23 irreparable harm to their constitutional rights unless Defendants are enjoined from
24 implementing and enforcing the Approval.

25 49. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
26 declaratory relief and temporary, preliminary, and permanent injunctive relief
27 invalidating or restraining enforcement of the Approval.

28 50. Plaintiffs found it necessary to engage the services of private counsel to

1 vindicate their rights under the law. Plaintiffs are therefore entitled to an Award of
2 attorneys' fees pursuant to 42 U.S.C. § 1988.

3 **FOURTH CLAIM**
4 **VIOLATION OF THE CALIFORNIA CONSTITUTION RIGHT TO**
5 **LIBERTY**

6 **(CAL CONST. ART. 1 § 1)**

7 *(By all Plaintiffs against all Defendants)*

8 51. Plaintiffs incorporate by reference each and every allegation set forth in
9 all preceding paragraphs as if fully set forth herein.

10 52. Since 1879, the California Constitution has provided intrinsic and
11 unalienable rights and liberties to its citizens. Chief among those rights and liberties
12 are those found in Article 1 of the California Constitution. Article 1, § 1 of the
13 California Constitution provides, in pertinent part:

14 "All people are by nature free and independent and have
15 inalienable rights. Among these are enjoying and defending life and
16 liberty, acquiring, possessing, and protecting property, and pursuing
17 and obtaining safety, happiness, and privacy."

18 53. Defendants' Approval has not only interfered with Plaintiffs' rights and
19 liberties as set forth under Article 1 §§ 1, 7, and 19 of the California Constitution,
20 but has deprived them of the use, enjoyment and ability to operate their respective
21 businesses because of a discriminatory classification as detailed above.

22 54. Defendants' Approval has proximately and legally caused tremendous
23 financial harm to Plaintiffs' businesses which will continue to have deleterious
24 effects unless and until Defendants are enjoined by this Court from enforcing the
25 Approval.

26 55. Restricting access to Plaintiffs' businesses violates Plaintiffs' California
27 constitutional liberty rights. The burden is on state actors to prove these actions
28 meet strict scrutiny, particularly when evidence shows Defendants' conduct

1 irrationally favors one type of business over others.

2 56. Left with no adequate remedy at law, Plaintiffs will suffer serious and
3 irreparable harm to their constitutional rights unless Defendants are enjoined from
4 implementing and enforcing the Approval.

5 57. Plaintiffs have found it necessary to engage the services of private
6 counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an
7 Award of attorneys' fees and costs pursuant to California Code of Civil Procedure
8 § 1021.5.

9 **FIFTH CLAIM**
10 **VIOLATION OF THE CALIFORNIA CONSTITUTION RIGHT TO**
11 **PROPERTY**

12 **(CAL. CONST. ART. 1 § 7)**

13 *(By all Plaintiffs against all Defendants)*

14 58. Plaintiffs incorporate by reference each and every allegation set forth in
15 all preceding paragraphs as if fully set forth herein.

16 59. Article 1, § 7 of the California Constitution provides "[a] person may
17 not be deprived of life, liberty or property without due process of law or denied
18 equal protection of the laws".

19 60. Restricting Plaintiffs' ability to conduct lawful business in the State of
20 California despite reasonable alternative measures available violates Plaintiffs'
21 California constitutional liberty rights.

22 61. Plaintiffs have no adequate remedy at law, and will suffer serious and
23 irreparable harm to their constitutional rights unless Defendants are enjoined from
24 implementing and enforcing the Approval.

25 62. Plaintiffs have found it necessary to engage the services of private
26 counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an
27 Award of attorneys' fees and costs pursuant to California Code of Civil Procedure
28 § 1021.5.

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SIXTH CLAIM
VIOLATION OF THE CALIFORNIA CONSTITUTION TAKINGS
WITHOUT COMPENSATION
(CAL. CONST. ART. 1 § 19)

(By all Plaintiffs against all Defendants)

63. Plaintiffs incorporate by reference each and every allegation set forth in all preceding paragraphs as if fully set forth herein.

64. Article 1, § 19 of the California Constitution provides, in pertinent part:

"Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probably amount of just compensation."

65. California courts have routinely held that the California Constitution provides just compensation to property owners when their land is taken for public use, because the law seeks to bar the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. *Jefferson Street Ventures, LLC v. City of Indio*, 236 Cal. App. 4th 1175 (2015).

66. The principle underlying just compensation for property taken for public use is to put the owner in as good a position monetarily as he or she would have occupied if his or her property had not been taken. *City of Carlsbad v. Rudvalis*, 109 Cal. App. 4th 667 (2003).

67. The constitutional guarantee of just compensation for property taken by the government is not only intended to protect the landowner (or business owner), but also protects the public by limiting its liability to losses that can fairly be

1 attributed to the taking. *Emeryville Redevelopment v. Harcros Pigments, Inc.*, 101
2 Cal. App. 4th 1083 (2002).

3 68. Requiring Plaintiffs to bear the burden of the street closure while
4 allowing restaurant businesses to take advantage of such closure, despite the
5 availability of other reasonable measures which would not impair Plaintiffs' property
6 rights, violates Plaintiffs' California constitutional liberty rights.

7 69. Plaintiffs have no adequate remedy at law, and will suffer serious and
8 irreparable harm to their constitutional rights unless Defendants are enjoined from
9 implementing and enforcing the Approval.

10 70. Plaintiffs have found it necessary to engage the services of private
11 counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an
12 Award of attorneys' fees and costs pursuant to California Code of Civil Procedure
13 § 1021.5.

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15 **PRAYER FOR RELIEF**

16 Plaintiffs respectfully request the following:

17 1. A declaration and judgment that the Approval violates the 14th
18 Amendment Due Process Clause of the United States Constitution;

19 2. A declaration and judgment that the Approval violates the 14th
20 Amendment Equal Protection Clause of the United States Constitution;

21 3. A declaration and judgment that the Approval violates the Fifth
22 Amendment Takings Clause of the United States Constitution;

23 4. A declaration and judgment that the Approval violates the California
24 Constitution Right to Liberty;

25 5. A declaration and judgment that the Approval violates the California
26 Constitution Right to Property;

27 6. A declaration and judgment that the Approval violates the California
28 Constitution Takings without Compensation;

1 7. An Order temporarily, preliminarily, and permanently enjoining and
2 prohibiting Defendants from enforcing the Approval;

3 8. An Award of just compensation for Defendants' taking of Plaintiffs'
4 property;

5 9. An Award of damages or restitution for Defendants' violation of
6 Plaintiffs' rights under the U.S. Constitution and California Constitution;

7 10. Attorneys' fees and costs;

8 11. Such other relief as the Court may deem just and proper.
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11 DATED: October 1, 2020

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& CAUDILL, LLP**

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