

**US DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

LYN ALLEN, an individual,

and

Case No.: 20-cv-11020  
Hon. \_\_\_\_\_

CININNATUS, LLC, a Michigan  
limited liability company,  
Plaintiffs,

**COMPLAINT**

v.

GRETCHEN WHITMER, in her  
personal capacity,  
Defendant

\_\_\_\_\_ /

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**COMPLAINT FOR CONSTITUTIONAL VIOLATIONS**

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<sup>1</sup> This lawsuit is being assisted by University of Michigan law students Jacob R. Weaver and others.

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NOW COME Plaintiffs LYN ALLEN and CINCINNATUS, LLC, by and through counsel, and complains as follows:

### INTRODUCTION

1. On April 9, Defendant Governor Gretchen Whitmer announced Executive Order 2020-42 (hereinafter “EO 2020-42” or “the Order”), attached as **Exhibit 1**. The Order allowed individuals with two in-state residences just a single day to choose the residence at which they would remain until further notice from the Governor’s office. The Order barred any Michigan resident from traveling between his or her in-state residences after April 10.

2. Irrationally, EO 2020-42 strictly prohibits Michigan residents from traveling between their in-state residences yet allows out-of-state individuals to travel to second homes within Michigan. Thus, an out-of-state individual may travel back and forth to her second residence in Michigan and a Michigan resident may travel back and forth to her second residence out-of-state, but a Michigan resident cannot travel to her second home located in Michigan.

3. Many other exceptions to this travel ban also exist, including travel to engage in outdoor recreation, to pick up food from a restaurant, and to care for a family member’s pet in another household. Consequently, an individual could travel to a park next to her second home, but she could not

step onto her own property. An individual could even travel across the state to care for a friend’s pet while that friend travels to her second out-of-state residence for the week.

4. This suit is *not* about policy disagreements or the “best available science”; it is about protecting fundamental rights from arbitrary, invasive, and discriminatory government action. “While courts may well be loath to review health regulations . . . in a proper case the duty exists . . . when a claimed unlawful exercise of authority has been visited upon a citizen and redress is asked.” *Rock v. Carney*, 216 Mich. 280, 295–96 (1921) (Wiest, J., concurring in reversal).

5. This civil rights action is brought to challenge the constitutionality of Defendant’s measures as enacted through EO 2020-42 and any similar subsequent amendments that retain the same, including the portion that criminalizes Plaintiffs’ exercise of fundamental rights. Specifically, Plaintiffs challenge EO 2020-42’s prohibition on travel between residences (“the Restriction”). Executive Order 2020-42, § 7(b)(3).

6. Plaintiffs seek a declaratory judgment that the Restriction within EO 2020-42 violates Plaintiffs’ fundamental rights secured by the United States Constitution and the Michigan Constitution of 1963. Plaintiffs also seek nominal damages resulting from the deprivation of their rights.

Additionally, Plaintiffs seek an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable laws.

### **PARTIES**

7. Plaintiff LYN ALLEN is an individual and resident of Wayne County in the state of Michigan.

8. Plaintiff CINCINNATUS, LLC is a limited liability company established under the laws of the State of Michigan. See **Exhibit 2**. It is solely owned and operated by Plaintiff Lyn Allen.

9. Defendant GRETCHEN WHITMER, named solely in her personal capacity, serves as the Governor of the State of Michigan and is responsible for enforcing the laws of the State of Michigan. She also created Executive Order 2020-42 and also is self-charged with implementing executive orders, including disputed Executive Order 2020-42, which took effect on April 9, 2020, at 11:59 PM but was rescinded the same on April 24, 2020 despite essentially no substantive change of circumstances to warrant abandonment of the Restriction.

### **JURISDICTION AND VENUE**

10. This Court has jurisdiction to hear this case under 28 U.S.C. §§ 1331, 1343(a), which confer original jurisdiction on federal district courts to hear suits alleging the violation of rights and privileges under the United

States Constitution, as well as under 28 U.S.C. § 1367, which confers supplemental jurisdiction on federal courts to hear claims related to a claim over which a court has original jurisdiction.

11. Plaintiffs seek relief under 28 U.S.C. §§ 2201–02, 42 U.S.C. §§ 1983 and 1988, and the Fourteenth Amendment of the United States Constitution.

12. Plaintiffs also seek relief under *Smith v. Dep't. of Public Health*, 428 Mich. 540, 544 (1987), which recognized the right of individuals to sue state officers for violations of the Michigan Constitution.

13. Venue is proper under 28 U.S.C. § 1391(b).

## **FACTS**

### **EO 2020-42**

14. On March 10, 2020, Defendant declared a state of emergency under Section 1 of Article V of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 *et seq*, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 *et seq*, in response to the COVID-19 outbreak in the State of Michigan. See Executive Order 2020-4.

15. Since this initial declaration, Defendant has issued dozens of executive orders in response to COVID-19. The order at issue in this case is

Executive Order 2020-42.

16. On April 9, 2020, at 11:59 PM, EO 2020-42 took effect.

17. EO 2020-42 prohibits individuals from leaving their residences for any reason not expressly authorized under EO 2020-42. This includes a prohibition on travel between two residences within the State of Michigan after April 10, 2020. EO 2020-42, § 7(b)(3).

18. Exceptions to the Restriction include travel to and from another state; travel for the purposes of recreating; travel for the purpose of purchasing groceries, medication, and other goods; travel to go to work if employed as a “critical employee”; travel for the purpose of medical or dental care; travel for the purpose of attending court hearings; and travel for the purpose of caring for pets.

19. Violations of EO 2020-42 are punishable by fines and criminal penalties.

20. EO 2020-42 was to remain in effect until April 30, 2020, at 11:59 PM. but was suspended by newly issued Executive Order 2020-59.

### **Plaintiff Lyn Allen**

21. Plaintiff Lyn Allen (“Plaintiff Allen”) currently resides at 1429 Devonshire Rd., Grosse Pointe Park, MI 48230. Plaintiff Allen has self-isolated in her home for over 14 days, only traveling outside of her home for

essential needs and maintaining a distance of at least 6 feet from others. She has displayed no symptoms of COVID-19 within this period.

22. Plaintiff Allen owns a deeded fractional ownership share (hereinafter “the Timeshare”) at 2E Fish House, Glen Arbor, MI 49636 (Parcel # 45-006-604-002-40) in Glen Arbor, Michigan, through her limited liability corporation, Cincinnatus, LLC.

23. The deed to the Timeshare entitles Plaintiff Allen to use the property from April 17, 2020, to April 24, 2020, and again from June 12, 2020, to June 19, 2020.

24. Because of the divided nature of the Timeshare, Plaintiff Allen was unable to access her property before Defendant’s self-selected April 10 deadline mandated in the Order. None of the exceptions in EO 2020-42 apply to her situation. Under threat of fines and criminal penalties, EO 2020-42 barred Plaintiff Allen from traveling to and enjoying the use of her property.

25. In stark contrast to its prohibitions against Plaintiff Allen, the Order’s bar did not prevent the Timeshare’s co-owners, who reside in Indiana, from traveling to and enjoying the use of the very same property. Nor would the regulations prohibit Plaintiff Allen from traveling out-of-state then returning to her current residence.

26. Based on the foregoing facts, the Regulation in EO 2020-42

violates well-established fundamental rights protected by both the United States Constitution and the Michigan Constitution of 1963.

**COUNT I**  
**SUBSTANTIVE DUE PROCESS – FOURTEENTH AMENDMENT**  
**RIGHT TO TRAVEL**  
**42 U.S.C. § 1983**

27. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

28. The United States Supreme Court has long recognized a right to *interstate* “travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.” *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969), *overruled in part by Edelman v. Jordan*, 415 U.S. 651 (1974). Even indirect burdens on the right to travel require heightened scrutiny. *Shapiro*, 394 U.S. at 630–31. The right to interstate travel is implicated when a state regulation actually deters travel, when the regulation’s primary purpose is to impede travel, or when it uses “any classification which serves to penalize the exercise of that right.” *Attorney Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986).

29. The Sixth Circuit has recognized a fundamental right to *intrastate* travel for the purpose of access under the Fourteenth Amendment of the United States Constitution. *See Johnson v. City of Cincinnati*, 310 F.3d 484, 495 (6th Cir. 2002). This right to intrastate travel is implicated when a



regulation actually deters travel, when a regulation's primary object is to impede travel, or when the regulation uses a classification that serves to penalize the exercise of the right to intrastate travel. See *League of United Latin Am. Citizens*, 500 F.3d 523, 535 (6th Cir. 2007).

30. Based on the aforementioned facts, EO 2020-42 implicates and infringes upon the fundamental right to intrastate travel for the purposes of access.

31. When a violation of the fundamental right to intrastate travel occurs that is of the breadth of the violation at issue in this case, the Sixth Circuit applies strict scrutiny. *Johnson*, 310 F.3d at 501.

32. EO 2020-42 cannot withstand strict scrutiny because it infringes upon Plaintiff Allen's fundamental right without doing so by the least restrictive means possible to accomplish the State's goals. Even if the Court were to apply intermediate scrutiny, EO 2020-42 would fall based on its wildly underinclusive and wildly overinclusive nature.

33. By reason of the aforementioned, Defendant has deprived Plaintiff Allen of her fundamental right to intrastate travel for the purpose of access protected by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983. Plaintiffs have thus suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling

them to relief.

**COUNT II**  
**SUBSTANTIVE DUE PROCESS**  
**RIGHT TO TRAVEL**  
**ARTICLE I, § 17, MICHIGAN CONSTITUTION**

34. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

35. “The federal and Michigan constitutions guarantee that the state cannot deny people ‘life, liberty, or property without due process of law.’ Due process, which is similarly defined under both constitutions, specifically enforces the rights enumerated in the Bill of Rights, and it also provides for substantive and procedural due process.” *In re AMB*, 248 Mich. App. 144, 209 (2001) (citing *Kampf v. Kampf*, 237 Mich. App. 377, 381–382 (1999) (citations omitted)).

36. Michigan courts have long recognized a “fundamental right” to intrastate travel, see *Musto v. Redford Twp.*, 137 Mich. App. 30, 34 (1984). This right to intrastate travel is implicated when a regulation actually deters travel, when a regulation’s primary object is to impede travel, or when the regulation uses a classification that serves to penalize the exercise of the right to intrastate travel. *Musto*, 137 Mich. App. at 34 (holding that the same constitutional analysis should be applied to intrastate travel as has been applied to interstate travel).

37. Based on the aforementioned, EO 2020-42 implicates and infringes on Plaintiff Allen's fundamental right to intrastate travel.

38. Precedent establishes that courts should analyze substantive due process claims under Article I, Section 17, of the Michigan Constitution of 1963 the same way that courts analyze substantive due process claims under the Fourteenth Amendment of the United States Constitution. See *In re AMB*, 248 Mich. App. at 209. Consequently, when a violation of the fundamental right to intrastate travel occurs such as the one at issue in this case, strict scrutiny applies. *Johnson*, 310 F.3d at 501.

39. EO 2020-42 cannot withstand strict scrutiny because it is not narrowly tailored to a compelling governmental interest; it infringes upon Plaintiff Allen's fundamental right without doing so by the least restrictive means possible to accomplish the State's goals. See *Shepherd Montessori Center Milan v. Ann Arbor Charter Twp.*, 259 Mich. App. 315, 335 (2003) (citing *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972)). Even if the Court were to apply intermediate scrutiny, EO 2020-42 would fall based on its wildly underinclusive and wildly overinclusive nature.

40. By reason of the aforementioned customs and policies created, adopted, and enforced under color of State law, Defendants have violated Plaintiff Allen's right to intrastate travel as recognized by Article I, § 17 of the

Michigan Constitution of 1963, resulting in irreparable harm and entitling them to relief. *Smith*, 410 N.W.2d at 751.

**COUNT III**  
**EQUAL PROTECTION – FOURTEENTH AMENDMENT**  
**42 U.S.C. § 1983**

41. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

42. A state violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution when (1) it treats an individual disparately as compared to similarly-situated persons, (2) it acted with discriminatory purpose, and (3) its regulation does not meet constitutional scrutiny. *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265 (1977).

43. As set forth in this Complaint, there exists a fundamental right to *intrastate* travel for the purpose of access. See *Johnson v. City of Cincinnati*, 310 F.3d 484, 495 (6th Cir. 2002).

44. EO 2020-42 deprives Michigan residents, including Plaintiff Allen, of their fundamental right to intrastate travel for the purpose of accessing a second residence while allowing out-of-state residents to exercise their fundamental right to intrastate travel for the purpose of accessing a second residence.

45. EO 2020-42 intentionally, explicitly, and irrationally discriminated between in-state and out-of-state residents. See **Exhibit 1** at § 7(b)(1), (3).

46. When the government's disparate treatment infringes on the exercise of fundamental rights, courts analyze the government's conduct under strict scrutiny. The regulation must be narrowly tailored to serve a compelling government interest. *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969). Consequently, the government must have chosen the least restrictive means of achieving its objective. *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972).

47. The challenged portions of EO 2020-42 cannot withstand strict scrutiny because they infringe upon Plaintiff Allen's fundamental right without doing so by the least restrictive means possible to accomplish the State's goals. Consequently, EO 2020-42 violates the Equal Protection Clause of the Fourteenth Amendment.

48. By reason of the aforementioned, Defendant has deprived Plaintiffs of their right to equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. Plaintiffs have thus suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory, injunctive, and monetary relief.

**COUNT IV  
EQUAL PROTECTION  
ARTICLE I, § 2, MICHIGAN CONSTITUTION**

49. Plaintiffs hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

50. The Michigan Court of Appeals has recognized that the right to travel is a “fundamental constitutional right.” See *Musto*, 137 Mich. App. at 35.

51. The Michigan Supreme Court has held that, when a governmental restraint impinges on one class’s exercise of a fundamental right while not impinging on another class’s exercise of the same right, that restraint is subject to strict scrutiny. See *Doe v. Dept. of Social Servs.*, 439 Mich. 650, 662 (1992). Any such unequally-applied restraint on a fundamental right will be struck down under the Michigan Constitution of 1963’s Equal Protection Clause unless the restraint is “precisely tailored to serve a compelling governmental interest.” *Id.*

52. EO 2020-42 deprives Michigan residents, including Plaintiff Allen, of their fundamental right to travel while allowing out-of-state residents to exercise the same fundamental right to travel.

53. EO 2020-42 intentionally and explicitly discriminates between in-state and out-of-state residents. See **Exhibit 1** at § 7(b)(1), (3).

54. Because the right to travel is a fundamental right, EO 2020-42's discrimination regarding the right to travel is subject to strict scrutiny. See *Doe*, 439 Mich. at 662.

55. The challenged portions of EO 2020-42 cannot withstand strict scrutiny because they are not precisely tailored to serve a compelling governmental interest; the challenged portions infringe upon Plaintiff Allen's fundamental right to travel without doing so by the least restrictive means possible to accomplish the State's goals. See *Shepherd Montessori Center Milan v. Ann Arbor Charter Twp.*, 259 Mich. App. 315, 335 (2003) (citing *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972)). Consequently, EO 2020-42 violates the Equal Protection Clause of the Michigan Constitution of 1963. See Mich. Const. art. I, § 2.

56. By reason of the aforementioned customs and policies created, adopted, and enforced under color of State law, Defendants have violated Plaintiff Allen's right to equal protection under state law as guaranteed by Article I, Section 2 of the Michigan Constitution of 1963, resulting in irreparable harm and entitling them to declaratory, injunctive, and monetary relief. *Smith*, 410 N.W.2d at 751.

## RESERVATION OF OTHER CLAIMS

57. Due to the binding precedent of *DLX, Inc v. Kentucky*, 381 F.3d 511, 527-528 (6th Cir. 2004), this Court lacks jurisdiction to hear, adjudicate, and award just compensation damages provided by the US Constitution and Article X, Section 2 of the Michigan Constitution, and Plaintiffs reserve the ability to bring such actions in the Michigan Court of Claims.

## REQUESTED RELIEF

58. WHEREFORE, Plaintiffs respectfully ask this Court:
- a. to declare that Defendant GRETCHEN WHITMER violated Plaintiffs' constitutional rights as set forth in this Complaint;
  - b. to award nominal damages of \$1.00 in favor of each Plaintiff and against Defendant GRETCHEN WHITMER in her personal capacity;
  - c. to award Plaintiffs' reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law(s); and
  - d. to grant such other and further relief as this Court should find just and proper.



Date: April 25, 2020

RESPECTFULLY SUBMITTED:

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GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

## EXECUTIVE ORDER

No. 2020-42

**Temporary requirement to suspend activities that  
are not necessary to sustain or protect life**

**Rescission of Executive Order 2020-21**

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

SECRETARY OF SENATE  
2020 APR 9 PM 2:48

To suppress the spread of COVID-19, to prevent the state's health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. The order limited gatherings and travel, and required workers who are not necessary to sustain or protect life to stay home.

The measures put in place by Executive Order 2020-21 have been effective, but this virus is both aggressive and persistent: on April 8, 2020, Michigan reported 20,346 confirmed cases of COVID-19 and 959 deaths from it. To win this fight, and to protect the health and safety of our state and each other, we must be just as aggressive and persistent. Though we have all made sacrifices, we must be steadfast. Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-21, clarify them, and extend their duration to April 30, 2020. This order takes effect on April 9, 2020 at 11:59 pm. When this order takes effect, Executive Order 2020-21 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. Subject to the exceptions in section 7 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.
3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention ("CDC"), including remaining at least six feet from people from outside the individual's household to the extent feasible under the circumstances.
4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations.
  - (a) For purposes of this order, workers who are necessary to sustain or protect life are defined as "critical infrastructure workers," as described in sections 8 and 9 of this order.
  - (b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in section 10 of this order.

5. Businesses and operations that employ critical infrastructure workers may continue in-person operations, subject to the following conditions:
  - (a) Consistent with sections 8 and 9 of this order, businesses and operations must determine which of their workers are critical infrastructure workers and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work. Businesses and operations need not designate:
    - (1) Workers in health care and public health.
    - (2) Workers who perform necessary government activities, as described in section 6 of this order.
    - (3) Workers and volunteers described in section 9(d) of this order.
  - (b) In-person activities that are not necessary to sustain or protect life must be suspended until normal operations resume.
  - (c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in section 10 of this order. Stores that are open to the public must also adhere to the rules described in section 11 of this order.
6. All in-person government activities at whatever level (state, county, or local) that are not necessary to sustain or protect life, or to support those businesses and operations that are necessary to sustain or protect life, are suspended.
  - (a) For purposes of this order, necessary government activities include activities performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders.
  - (b) Such activities also include, but are not limited to, public transit, trash pick-up and disposal (including recycling and composting), activities necessary to manage and oversee elections, operations necessary to enable transactions that support the work of a business's or operation's critical infrastructure

workers, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.

- (c) For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. Workers performing such activities need not be designated.
- (d) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 10 of this order.

7. Exceptions.

- (a) Individuals may leave their home or place of residence, and travel as necessary:
  - (1) To engage in outdoor physical activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor physical activity includes walking, hiking, running, cycling, kayaking, canoeing, or other similar physical activity, as well as any comparable activity for those with limited mobility.
  - (2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) of this order may leave their home for work without being designated.)
  - (3) To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.
  - (4) To perform necessary government activities, as described in section 6 of this order.
  - (5) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including procedures that, in accordance with a duly implemented nonessential procedures postponement plan, have not been postponed).
  - (6) To obtain necessary services or supplies for themselves, their family or household members, their pets, and their vehicles.
    - (A) Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to

purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences. Individuals may also leave the home to drop off a vehicle to the extent permitted under section 9(i) of this order.

- (B) Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
  - (7) To care for a family member or a family member's pet in another household.
  - (8) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.
  - (9) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
  - (10) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
  - (11) To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
  - (12) To attend a funeral, provided that no more than 10 people are in attendance at the funeral.
- (b) Individuals may also travel:
- (1) To return to a home or place of residence from outside this state.
  - (2) To leave this state for a home or residence elsewhere.
  - (3) Between two residences in this state, through April 10, 2020. After that date, travel between two residences is not permitted.
  - (4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.
- (c) All other travel is prohibited, including all travel to vacation rentals.
8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available

here). This order does *not* adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

- (a) Health care and public health.
- (b) Law enforcement, public safety, and first responders.
- (c) Food and agriculture.
- (d) Energy.
- (e) Water and wastewater.
- (f) Transportation and logistics.
- (g) Public works.
- (h) Communications and information technology, including news media.
- (i) Other community-based government operations and essential functions.
- (j) Critical manufacturing.
- (k) Hazardous materials.
- (l) Financial services.
- (m) Chemical supply chains and safety.
- (n) Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:

- (a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of workers required to perform in-person work as permitted under this order. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.
- (b) Workers at suppliers, distribution centers, or service providers, as described below.
  - (1) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may designate their workers as critical infrastructure workers, provided

that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

- (2) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in subprovision (1) of this subsection may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
  - (3) Consistent with the scope of work permitted under subprovision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
  - (4) Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.
- (c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.
  - (d) Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
  - (e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
  - (f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
  - (g) Workers at laundromats, coin laundries, and dry cleaners.



- (h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
  - (i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.
10. Businesses, operations, and government agencies that continue in-person work must adhere to sound social distancing practices and measures, which include but are not limited to:
- (a) Developing a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available [here](#). Such plan must be available at company headquarters or the worksite.
  - (b) Restricting the number of workers present on premises to no more than is strictly necessary to perform the business's, operation's, or government agency's critical infrastructure functions or its minimum basic operations.
  - (c) Promoting remote work to the fullest extent possible.
  - (d) Keeping workers and patrons who are on premises at least six feet from one another to the maximum extent possible.
  - (e) Increasing standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
  - (f) Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
  - (g) Any other social distancing practices and mitigation measures recommended by the CDC.
11. Any store that remains open for in-person sales under section 5 or 9(f) of this order must:
- (a) Establish lines to regulate entry in accordance with subsections (c) and (d) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.

- (b) Consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
  - (c) For stores of less than 50,000 square feet of customer floor space, limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.
  - (d) For stores of more than 50,000 square feet:
    - (1) Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space. The amount of customer floor space must be calculated to exclude store areas that are closed under subprovision (2) of this subsection.
    - (2) Close areas of the store—by cordoning them off, placing signs in aisles, posting prominent signs, removing goods from shelves, or other appropriate means—that are dedicated to the following classes of goods:
      - (A) Carpet or flooring.
      - (B) Furniture.
      - (C) Garden centers and plant nurseries.
      - (D) Paint.
    - (3) By April 13, 2020, refrain from the advertising or promotion of goods that are not groceries, medical supplies, or items that are necessary to maintain the safety, sanitation, and basic operation of residences.
    - (4) Create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.
  - (e) The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in subsections (c) and (d) of this section as necessary to protect the public health.
12. No one shall advertise or rent a short-term vacation property except as necessary to assist in housing a health care professional or volunteer aiding in the response to the COVID-19 crisis.
13. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior

guidance, a place of religious worship, when used for religious worship, is not subject to penalty under section 17 of this order.

14. Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority.
15. This order takes effect on April 9, 2020 at 11:59 pm and continues through April 30, 2020 at 11:59 pm. When this order takes effect, Executive Order 2020-21 is rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.
16. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (1) data on COVID-19 infections and the disease's rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health-care workforce; (4) the state's capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.
17. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 9, 2020

Time: 2:07 pm



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GRETCHEN WHITMER  
GOVERNOR

By the Governor:

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SECRETARY OF STATE



Form Revision Date 02/2017

## ARTICLES OF ORGANIZATION

For use by DOMESTIC LIMITED LIABILITY COMPANY

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned executes the following Articles:

### Article I

The name of the limited liability company is:

CINCINNATUS, LLC

### Article II

Unless the articles of organization otherwise provide, all limited liability companies formed pursuant to 1993 PA 23 have the purpose of engaging in any activity within the purposes for which a limited liability company may be formed under the Limited Liability Company Act of Michigan. You may provide a more specific purpose:

### Article III

The duration of the limited liability company if other than perpetual is:

### Article IV

The street address of the registered office of the limited liability company and the name of the resident agent at the registered office (P.O. Boxes are not acceptable):

1. Agent Name: LYN ALLEN  
2. Street Address: [REDACTED]  
Apt/Suite/Other:  
City: GROSSE POINTE PARK  
State: MI Zip Code: 48230

3. Registered Office Mailing Address:  
P.O. Box or Street Address: [REDACTED]  
Apt/Suite/Other:  
City: GROSSE POINTE PARK  
State: MI Zip Code: 48230

Signed this 1st Day of May, 2019 by the organizer(s):

Signature	Title	Title if "Other" was selected
Lyn Allen	Organizer	

By selecting ACCEPT, I hereby acknowledge that this electronic document is being signed in accordance with the Act. I further certify that to the best of my knowledge the information provided is true, accurate, and in compliance with the Act.

Decline  Accept

**MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**

**FILING ENDORSEMENT**

***This is to Certify that the*** ARTICLES OF ORGANIZATION

***for***

CINCINNATUS, LLC

***ID Number:*** 802317963

***received by electronic transmission on*** May 01, 2019 ***, is hereby endorsed.***

***Filed on*** May 01, 2019 ***, by the Administrator.***

***The document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.***



***In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 1st day of May, 2019.***

***Julia Dale, Director***

***Corporations, Securities & Commercial Licensing Bureau***