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Page 1 of 2

## **Testimony on SB 286**

### **Submitted to the Kansas Senate Committee on Assessment and Taxation**

**By Ryan Kriegshauser, Partner, Kriegshauser Ney Law Group**

**Thursday, March 11, 2021**

Thank you Chair Tyson, Vice-Chair Alley, Minority Member Holland and Committee:

My Name is Ryan Kriegshauser, I am an attorney who represents a gym that has brought suit against the state for governmental use compensation under the Kansas Emergency Management Act. Our lawsuit is based on current law and a currently provided remedy under K.S.A. 48-933. Prior to the start of this legislative session, both my client and the Kansas Attorney General agreed to enter a Stay of Proceedings to allow the legislature to take up wide-spread public policy questions such litigation poses. The sheer number of businesses and individuals with similar claims that could be brought under current law implicates potentially hundreds of millions of dollars of liability to the state and county. We have introduced SB 286, the COVID-19 Government Use of Business Compensation Act, as a proposed solution to address this massive amount of potential state and local government liability and to provide some measure of relief to businesses still suffering as a result of government shut down orders.

This bill was compiled from input received from a number of organizations and the Attorney General's Office. While this legislation is not a perfect solution, it attempts provide a reasonable solution to state and local governments' potential liability to thousands of businesses across the state under current law. Even if our case is not ultimately successful, the litigation risk to the state and local subdivisions is very large, and some commentators have described it as potentially "ruinous." While this legislation will likely have a significant fiscal note, that cost is a drop in the bucket compared to the cost of doing nothing.

This bill provides an alternative remedy to businesses to obtain a portion of what they may be due under current law without having to file a formal lawsuit. The bill allows the Attorney General to resolve claims against the state in an efficient and far more cost-effective way than defending numerous lawsuits across the state. In addition, federal funds can be used to assist in softening the impact of this legislation and get funds to those who were most directly and financially affected by government shut down orders.

I want to be clear that our case is filed under current law, and we believe our client has a claim as the law currently stands. Accordingly, the legislature is on notice that it has an opportunity to clarify the nature of state and local liability under K.S.A. 48-933. Inaction by the legislature to create a cost-effective and efficient process for businesses to file claims under K.S.A. 48-933 may be interpreted by a court as complacency regarding the law as it currently stands, especially since a lawsuit has already been filed. This bill could just as easily be called the “COVID-19 Government Liability Reduction Act.” The cost of doing nothing is exponentially higher than the so called “cost” of this bill.

SB 286 provides a reasonable solution to limit the potential liability of the State of Kansas, counties, and municipalities. The bill is a proposed solution to a problem the state and its local subdivisions face under current law. I encourage the legislature act quickly to clarify how compensation for governmental use of businesses should work under the Kansas Emergency Management Act before this issue is taken up in court this summer.

Attached for your convenience are the following Exhibits: (1) the Petition filed in Sedgwick County District Court; (2) the Joint Motion for a Stay of Proceedings; (3) the Court’s Order of Stay; and (4) the Attorney General’s Press Release on the agreed Stay of Proceedings.

# EXHIBIT 1

**IN THE DISTRICT COURT SEDGWICK COUNTY  
EIGHTEENTH JUDICIAL DISTRICT OF KANSAS**

OMEGA BOOTCAMPS INC. and RYAN	)	
FLOYD	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No.
	)	
THE STATE OF KANSAS	)	
	)	
Defendant.	)	
_____	)	

**VERIFIED PETITION FOR COMPENSATION FOR GOVERNMENTAL USE OF  
PRIVATE PROPERTY PURSUANT TO K.S.A. 48-933 AND K.S.A. 26-501 et seq.**

COMES NOW, Plaintiffs Omega Bootcamps Inc. and Ryan Floyd (hereinafter, collectively referred to as the “Plaintiff”), by and through counsel, and bring this action pursuant to K.S.A. 48-933 and K.S.A. 26-501 *et seq.* to seek compensation for governmental use of Plaintiff’s private property interests for the benefit of the general public.

**INTRODUCTION**

Plaintiff files this Verified Petition to seek compensation from the State of Kansas (“State” or “Defendant”) for use of its business property in coping with the COVID-19 pandemic. Since the initial state and local emergency declarations in March 2020, the State and Sedgwick County (Kansas) have issued sequential emergency public health orders pursuant to the Kansas Emergency Management Act (“KEMA”) to mitigate the spread of COVID-19. Such emergency orders both prohibited business use of Plaintiff’s property and constituted government use of the property in coping with the declaration of the pandemic. The government used Plaintiff’s property by asserting use proscriptions and control over Plaintiff’s property for the benefit of the general public to control the spread of COVID-19 virus.

KEMA grants extraordinary powers to the governor, adjutant general, counties, cities, interjurisdictional disaster agencies, or other emergency management forces in the state to issue orders directing the commandeering or use of private property interests to cope with a disaster. KEMA also provides that private property owners shall be compensated in the event property is commandeered or otherwise used in coping with a disaster. Defendant's emergency shut down orders prohibiting business use of all or targeted areas of Plaintiff's property constituted government "use" of property during declared emergency thus entitling Plaintiff to compensation for such use pursuant to K.S.A. 48-933 and K.S.A. 26-501 et seq.

### **THE PARTIES**

1. Omega Bootcamps Inc. is Kansas corporation with its principal business location in Sedgwick County, Kansas. Omega Bootcamps Inc. is a specialized health and well-being semi-private fitness studio and gym.
2. Ryan Floyd is an individual and the sole officer and shareholder of Omega Bootcamps Inc. He is a resident of Sedgwick County, Kansas.
3. The State of Kansas is a governmental entity subject to a claim for use compensation pursuant to K.S.A. 48-933 and K.S.A. 26-501 et seq.
4. Sedgwick County, Kansas, ("Sedgwick County") is a governmental entity subject to a claim for use compensation pursuant to K.S.A. 48-933 and K.S.A. 26-501 et seq. However, Sedgwick County is not added as a defendant to this lawsuit as a party at this time. The Plaintiff reserves the right to add Sedgwick County, Kansas, in the event that Plaintiff deems Sedgwick County's conduct directly actionable and not otherwise imputed to the State. Nothing in this Petition should be construed as absolving Sedgwick County of liability for compensation under

KEMA due to it not being added as a party at this time. Plaintiff reserves the right to add Sedgwick County in the future.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction and Plaintiff has a right to a hearing and the appointment of appraisers under 48-933 and K.S.A. 26-501 et seq.

6. Venue is proper in Sedgwick County, Kansas. The applicable orders affected Plaintiff's business operations in Sedgwick County and applied to Sedgwick County residents and businesses. Plaintiff Omega Bootcamps Inc. has its principal business location in Sedgwick County, Kansas and the harm done to Plaintiff occurred in Sedgwick County.

### **ALLEGATIONS COMMON TO ALL COUNTS**

7. The United States and the State of Kansas has been in the midst of a declared Pandemic involving "COVID-19," a respiratory virus, since March 2020.

8. On March 12, 2020, the Governor of the State of Kansas issued a Disaster Proclamation related to COVID-19, activating certain powers under KEMA, stating that the area affected by the disaster extended uniformly throughout all 105 counties in Kansas, including Sedgwick County ("March 12 State Disaster Declaration"). A copy of the March 12 State Disaster Declaration is attached hereto as **Exhibit A**.

9. On March 16, 2020, Peter F. Meitzner, the Chair of the Sedgwick County Commission issued a Proclamation of Local Disaster ("March 16 County Disaster Declaration") related to COVID-19 that expressly activated certain powers under KEMA. The March 16 County Disaster Declaration stated in part:

"WHEREAS, COVID-19 has created a state of local disaster in Sedgwick County, Kansas, as defined by K.S.A. 48-904, resulting in imminent threat of widespread or severe damage, injury or loss of life or property resulting from an epidemic, contagious or infectious disease. . .

Upon signing this Proclamation, I declare that Sedgwick County, Kansas is in a state of local disaster emergency, as defined by K.S.A. 48-904.”

A copy of the March 16 County Disaster Declaration is attached as **Exhibit B**.

10. Upon information and belief, Sedgwick County has at all times hereunder continued to extend the March 16 County Disaster Declaration since it was issued until the filing of this case as it is referenced in the local health orders referenced herein.

11. The March 16 County Disaster Declaration is in effect at the time this Petition is filed and there is genuine belief that it will continue to be extended or re-issued as needed.

12. On March 24, 2020, Dr. Garold Minns, the Sedgwick County Local Health Officer (“LHO”), issued an Emergency Order of Local Health Officer that directed individuals to stay home unless participating in certain allowed activities (“March 24, 2020 LHO Order”). The order also directed specific businesses to cease operations so as to benefit the general public. A copy of the March 24, 2020 LHO Order is attached as **Exhibit C**.

13. The March 24, 2020 LHO Order expressly relied on the March 16, 2020 County Disaster Declaration by stating, “WHEREAS, on March 16, 2020, the Chairman of the Board of County Commissioners found that a disaster was imminent within Sedgwick County, Kansas as a result of the COVID-19 infectious and contagious disease...” *See Exhibit C.*

14. The March 24, 2020 LHO Order was “effective 12:01 A.M. on Wednesday, March 25, 2020” and remained “in effect for 30 days, until April 23, 2020, unless sooner amended superseded, or rescinded.” *See Exhibit C.*

15. Among other things, the March 24, 2020 LHO Order allowed individuals to only “perform work providing essential products and services at an Essential Business or to otherwise

carry out activities specifically permitted in this Order.” *See* Exhibit C, Section 1, Paragraph B.iv.

16. In addition, the March 24, 2020 LHO Order allowed individuals to “work for or obtain services at any ‘Healthcare Operations,’” however, “fitness and exercise gyms” were specifically excluded. *See* Exhibit C, Section 1, Paragraph B.vii.

17. The March 24, 2020 LHO Order definition for “Essential Business” did not include gyms or fitness centers. *See* Exhibit C.

18. In responding to KSN News, the county unequivocally stated that “gymnasiums and fitness centers” could not remain open under the March 24, 2020 LHO Order.<sup>1</sup>

19. Accordingly, for the benefit of the general public, the Plaintiff’s business was targeted and ordered to cease operation by the March 24, 2020 LHO Order at 12:01 A.M. on Wednesday, March 25, 2020 for 30 days, until April 23, 2020, unless sooner amended superseded, or rescinded. *See* Exhibit C.

20. By issuing the March 24, 2020 LHO Order, the Sedgwick County LHO was operating in concert with the March 12 State Disaster Declaration. Accordingly, the Sedgwick County actions should be construed as operating in concert with the State of Kansas, making the State of Kansas responsible for compensation related to the March 24, 2020 LHO Order under the plain language of K.S.A. 48-933.

21. At the time the order shut down its business, Plaintiff intended and wished to operate its business and otherwise use its property for its gym and fitness center operations but was prohibited from doing so by Sedgwick County’s use of such property pursuant to an order

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<sup>1</sup> “Update – Sedgwick County stay-at-home order: Frequently Asked Questions,” *KSN News* (March 24, 2020) available at <https://www.ksn.com/news/health/coronavirus/coronavirus-in-kansas/sedgwick-county-stay-at-home-order-frequently-asked-questions/> (last accessed December 2, 2020).



by Dr. Garold Minns, the Sedgwick County LHO, in coping with the COVID-19 disaster on behalf of the general public.

22. Over the next few weeks, Kansas Governor Laura Kelly issued a number of executive orders limiting mass gatherings and limiting personal and business freedoms.

23. In particular, on March 28, 2020, the Governor issued Executive Order 20-16<sup>2</sup> (“EO 20-16”) which established the Kansas Essential Functions Framework (“KEFF”) categorizing “essential functions” and designated businesses “essential” or “non-essential.” A copy of EO 20-16 is attached hereto as **Exhibit D**.

24. EO 20-16 stated it was effective “12:01 a.m. on March 30, 2020” and in effect until “April 19, 2020, or until the statewide State of Disaster Emergency proclaimed on March 12, 2020, relating to COVID-19 expires, whichever is earlier.” *See* Exhibit D.

25. EO 20-16’s criteria for “essential businesses” did not include gyms or fitness centers. *See* Exhibit D.

26. Guidance from the Kansas Governor’s Office specifically stated that “gyms and personal trainers” were not considered “essential functions.”<sup>3</sup>

27. Accordingly, by issuing EO 20-16, the Kansas Governor ordered that the Plaintiff’s business use of its property remain out of operation in response to the COVID-19 declarations for the benefit of the general public.

28. Because operation of Plaintiff’s business was already ceased, EO 20-16 ordered Plaintiff’s business to remain out of operation until “12:01 a.m. on March 30, 2020.” Such order to remain out of operation was in effect until “April 19, 2020, or until the statewide State of

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<sup>2</sup> Available at <https://governor.kansas.gov/wp-content/uploads/2020/03/EO20-16.pdf> (last accessed December 2, 2020).

<sup>3</sup> Available at <https://governor.kansas.gov/kansas-essential-functions-faq/> (last accessed December 2, 2020).

Disaster Emergency proclaimed on March 12, 2020, relating to COVID-19 expires, whichever [was] earlier.”

29. At the time, the Plaintiff wished to operate its business and otherwise use its property and the business property for operations but was denied such ability by the State of Kansas’ use of such property involuntarily pursuant to an order by the Kansas Governor in coping with the COVID-19 disaster for the benefit of the general public.

30. On April 16, 2020, the Kansas Governor issued Executive Order 20-24 (“EO 20-24”) extending EO 20-16 “until 11:59 p.m. on May 3, 2020, or until the statewide State of Disaster Emergency proclaimed on March 12, 2020, relating to COVID-19 expires, whichever [was] earlier.” A copy of EO 20-24 is attached hereto as **Exhibit E**.

31. Accordingly, the Plaintiff’s business was ordered to remain out of operation for the benefit of the general public by EO 20-24 “until 11:59 p.m. on May 3, 2020, or until the statewide State of Disaster Emergency proclaimed on March 12, 2020, relating to COVID-19 expires, whichever [was] earlier.” *See* Exhibit E.

32. At the time, Plaintiff wished to operate its business and otherwise use its property for its gym and fitness center operations but was prohibited from doing so by the State of Kansas’ use of such property pursuant to an order by the Kansas Governor in coping with the COVID-19 disaster.

33. On April 30, 2020 the Governor of the State of Kansas issued a Disaster Proclamation related to COVID-19 activating certain powers under KEMA (the “April 30, 2020 Disaster Declaration”), declaring the area affected by the disaster as the “[e]ntire 105 counties in Kansas; Iowa Tribe of Kansas and Nebraska; Kickapoo Tribe of Kansas; Prairie Band of Potawatomi Nation; and Sac and Fox Nation of the Missouri in Kansas and Nebraska.” This area

included Sedgwick County. A copy of the April 30, 2020 Disaster Declaration is attached hereto as **Exhibit F**.

34. On April 30, 2020, the Kansas Governor issued Executive Order 20-29 (“EO 20-29”) beginning “Phase One of “Ad Astra: A Plan to Reopen KANSAS.” EO 20-29 went into effect 1200 a.m. on May 4, 2020 and was to remain in effect “until rescinded or until the statewide State of Disaster Emergency proclaimed on April 30, 2020, relating to COVID-19 expires, whichever is earlier.” A copy of EO 20-29 is attached hereto as **Exhibit G**.

35. Paragraph 5.c.iv of EO 20-29 stated that “Fitness centers and gyms” were to remain closed to the public unless they were somehow repurposed under KEFF. However, no guidance was given by EO 20-29 on how such repurposing might occur or how such “repurposing” could allow the business to continue. *See* Exhibit G.

36. Accordingly, the Plaintiff’s business was ordered to remain out of operation by EO 20-29 “until rescinded or until the statewide State of Disaster Emergency proclaimed on April 30, 2020, relating to COVID-19 expires, whichever [was] earlier.” *See* Exhibit G.

37. At the time, Plaintiff wished to operate its business and otherwise use its property for its gym and fitness center operations but was prohibited from doing so by the State of Kansas’ use of such property pursuant to an order by the Kansas Governor issued to cope with the COVID-19 disaster for the benefit of the general public.

38. On May 14, 2020, the Kansas Governor issued Executive Order 20-31 (“EO 20-31”) “Implementing Phase 1.5 of “Ad Astra: A Plan to Reopen KANSAS’.” EO-20-31 went into effect 12:00 a.m. on May 18, 2020, and was to “remain in force until rescinded or until the statewide State of Disaster Emergency proclaimed on April 30, 2020, relating to COVID-19 expires, whichever [was] earlier.” A copy of EO 20-31 is attached hereto as **Exhibit H**.

39. EO 20-31 allowed gyms and fitness centers to open, subject to the following conditions:

- They maintain at least 6 feet of distance between customers or groups of customers;
- They follow fundamental cleaning and public health practices detailed on [covid.ks.gov](https://www.covid.ks.gov); and
- They avoid any instances in which groups of more than 10 individuals are in one location and unable to maintain a 6-foot distance with only infrequent or incidental moments of closer proximity. This does not limit the total occupancy of a business, but requires that businesses limit mass gatherings in areas and instances in which physical distancing cannot be maintained, such as at tables or in entrances, lobbies, break rooms, check-out areas, etc.

*See Exhibit H, Paragraph 5.a.*

40. In addition, EO 20-31 exerted further control on gyms and fitness centers in comparison to other businesses by stating, “[f]itness centers and health clubs may open, but in-person group classes may not occur and locker rooms must be closed except as necessary to use restroom facilities.” *See Exhibit H, Paragraph 5.c.ii.*

41. Accordingly, the Kansas Governor used the Plaintiff’s business by proscribing business use of its locker rooms and preventing its normal business operations of conducting in person classes until EO 20-31 was rescinded or until the statewide State of Disaster Emergency proclaimed on April 30, 2020, relating to COVID-19 expires, whichever was earlier.

42. At the time, Plaintiff wished to operate its business and otherwise use its property for its gym and fitness center operations but was prohibited from doing so by the State of Kansas’ use of such property pursuant to an order by the Kansas Governor issued to cope with the COVID-19 disaster for the benefit of the general public.

43. The closure of Plaintiff’s locker rooms had an economic impact on Plaintiff’s business as patrons were not allowed to change or shower, which decreased business overall.

44. On May 19, 2020, the Kansas Governor issued Executive Order 20-34, “Implementing Phase 2 of ‘Ad Astra: A Plan to Reopen KANSAS.’” EO 20-34 went into effect

12:00 a.m. on May 22, 2020, and was to remain in effect “until rescinded or until the statewide State of Disaster Emergency proclaimed on April 30, 2020, relating to COVID-19 expires, whichever is earlier.” A copy of EO 20-34 is attached hereto as **Exhibit I**.

45. EO 20-34 allowed gyms and fitness centers to open, subject to the following conditions:

- They maintain at least 6 feet of distance between customers or groups of customers;
- They follow fundamental cleaning and public health practices detailed on [covid.ks.gov](https://www.covid.ks.gov); and
- They avoid any instances in which groups of more than 10 individuals are in one location and unable to maintain a 6-foot distance with only infrequent or incidental moments of closer proximity. This does not limit the total occupancy of a business, but requires that businesses limit mass gatherings in areas and instances in which physical distancing cannot be maintained, such as at tables or in entrances, lobbies, break rooms, check-out areas, etc.

*See Exhibit I, Paragraph 5.a.*

46. In addition, EO 20-34 exerted further control on gyms and fitness centers by directing that fitness centers and health clubs may open, including in-person group classes but only if they comply with the restrictions listed above, but locker rooms were to be closed except as necessary to use restroom facilities. *See Exhibit I, Paragraph 5.c.ii.*

47. Governor used the Plaintiff’s business by proscribing business use of its locker rooms until EO 20-34 was rescinded or until the statewide State of Disaster Emergency proclaimed on April 30, 2020, relating to COVID-19 expired, whichever was earlier.

48. At the time, the Defendant wished to operate its business by utilizing locker rooms but was prohibited from doing so by the State of Kansas’ use of such property pursuant to an order by the Kansas Governor issued to cope with the COVID-19 disaster.

49. On May 26, 2020, the Kansas Governor announced her intention to relay on to Kansas counties the responsibility to impose restrictions to cope with the COVID-19 disaster if they deemed it necessary.<sup>4</sup>

50. In conjunction with her announcement, the April 30, 2020 Disaster Declaration and EO 20-34 both expired. At the same time, the Governor of the State of Kansas issued a new Disaster Proclamation related to COVID-19 activating certain powers under KEMA (“the May 26, 2020 State Disaster Declaration”), stating that the area affected by the disaster “Entire 105 counties in Kansas; Iowa Tribe of Kansas and Nebraska; Kickapoo Tribe of Kansas; Prairie Band of Potawatomi Nation; and Sac and Fox Nation of the Missouri in Kansas and Nebraska.” This area included Sedgwick County. A copy of the May 26, 2020 State Disaster Declaration is attached hereto as **Exhibit J**.

51. The May 26, 2020 Disaster Declaration has been extended by the State Finance Council from time to time as required under KEMA. The declaration is still in effect at the time this Petition is filed.

52. On May 27, 2020, the Sedgwick County Commission decided not to impose additional restrictions on businesses but rather make recommendations on safe business practices.

53. Accordingly, on May 27, 2020, the State of Kansas relinquished its use of Plaintiff’s property at that time.

54. However, on July 8, 2020, the Sedgwick County began to issue a series of new local health orders to cope with the COVID-19 disaster for the benefit of the general public.

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<sup>4</sup> Melissa Greenstein, “KS Gov. Puts Re-opening Plan in Counties’ Hands,” KSHB Kansas City (May 26, 2020) available at <https://www.kshb.com/news/coronavirus/ks-gov-laura-kelly-puts-reopening-plan-in-counties-hands> (last accessed December 3, 2020).

Such orders were issued in conjunction with the May 26, 2020 State Disaster Declaration under KEMA.

55. The government use of Plaintiff's property from March 25, 2020 to May 26, 2020 was particularly onerous on the Plaintiff when compared to other businesses and individuals, and particularly compared with those businesses considered "essential" during this timeframe. Accordingly, the Plaintiff shouldered a disproportionate economic impact for the overall public good in coping with COVID-19. Therefore, the Plaintiff's obligations exceeded those of most other businesses and individuals in the Plaintiff's particular case. Accordingly, the Plaintiff is entitled to compensation under KEMA and the Eminent Domain Procedure Act ("EDPA").

56. The scheme described above categorized certain businesses as favored "essential" status and others, like Plaintiff, as disfavored "non-essential" status and thus targeted for closure by orders issued pursuant to KEMA. Accordingly, Plaintiff is entitled to compensation under KEMA and the EDPA.

57. Such targeting of specific businesses for the shouldering of disproportionate burdens for the public good constitutes targeted and excessive use of private property by the government under KEMA.

58. In part, K.S.A. 48-933 provides:

- (a) Each person within this state shall act and manage the affairs of such person and such person's property in any way which reasonably will assist and not detract from the ability of the state and the public successfully to meet disasters. This obligation includes appropriate personal service and use or restriction on the use of property during a declared state of disaster emergency under K.S.A. 48-924, and amendments thereto, or a declared state of local disaster emergency under K.S.A. 48-932, and amendments thereto. This act neither increases nor decreases these obligations, but recognizes their existence under the constitution and statutes and the common law of this state. Compensation for services or for the taking or use of property shall be

only to the extent that obligations recognized in this subsection are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered services or property without compensation. . . .

- (c) Compensation for property shall be only if the property was commandeered or otherwise used in coping with a disaster and its use or destruction was ordered by the governor, adjutant general, an official of a county, city or interjurisdictional disaster agency, or some other authorized member of the emergency management forces of this state.
- (d) Any person claiming compensation for the use, damage, loss or destruction of property under this act shall file a claim therefor in the district court in the same manner as any other civil action. The court shall determine the validity of such claim in the same manner and under the same conditions prescribed for condemnation actions pursuant to K.S.A. 26-501 et seq., and amendments thereto. Unless the amount of compensation on account of property damaged, lost or destroyed is agreed upon by the claimant and the adjutant general, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation law of this state.

K.S.A. 48-933.

**COUNT I – CLAIM FOR COMPENSATION FROM THE STATE OF KANSAS  
PURSUANT TO K.S.A. 48-933**

59. Plaintiff includes and incorporates at this point each and every allegation contained within this pleading.

60. From March 25, 2020 through May 17, 2020, the State of Kansas was under the above-referenced disaster declarations pursuant to KEMA.

61. During this period, the Sedgwick County LHO's March 24, 2020 LHO Order and Kansas Governor's EO 20-16, 20-24, and 20-29 prohibited the Plaintiff from operating in its indoor property.

62. During this period, Plaintiff's property was used by the State in coping with the COVID-19 pandemic to cope with the above-referenced declared disasters when the state prohibited the indoor business activity the Plaintiff's property was uniquely designed and outfitted to facilitate or employ commercially.



63. From March 25, 2020 to May 17, 2020, Plaintiff's property was used in coping with the COVID-19 disaster and its use was ordered by the Governor and the Sedgwick County LHO pursuant to the above-referenced orders and disaster declarations issued under KEMA.

64. Plaintiff is entitled for compensation for each day from March 25, 2020 through May 17, 2020 that the State and Sedgwick County exerted control over its property or otherwise used its property to cope with the above-referenced declared disaster.

**COUNT II – CLAIM FOR COMPENSATION FROM THE STATE OF KANSAS  
PURSUANT TO K.S.A. 48-933**

65. Plaintiff includes and incorporates at this point each and every allegation contained within this pleading.

66. From May 18, 2020 through May 21, 2020, the State of Kansas was under the above-referenced disaster declarations pursuant to KEMA.

67. During this period, the Kansas Governor's EO-20-31 prohibited the Plaintiff from fully operating its indoor properties by disallowing in-person classes and use of locker rooms.

68. During this period, Plaintiff's property was used by the State in coping with the COVID-19 Pandemic by prohibiting specific areas and business uses of Plaintiff's property that the property was uniquely designed and outfitted to facilitate or employ commercially.

69. From May 18, 2020 through May 21, 2020, Plaintiff's property was used in coping with the COVID-19 disaster and its use was ordered by the Kansas Governor pursuant to the above-referenced orders and disaster declarations issued under KEMA.

70. Plaintiff is entitled for compensation for each day from May 18, 2020 through May 21, 2020 in that the State exerted control over its property or otherwise used its property to cope with the declared disaster.

**COUNT III – CLAIM FOR COMPENSATION FROM THE STATE OF KANSAS  
PURSUANT TO K.S.A. 48-933**

71. From May 22, 2020 through May 25, 2020, the State of Kansas was under the above-referenced disaster declarations pursuant to KEMA.

72. During this period, the Kansas Governor’s EO 20-34 prohibited the Plaintiff from fully operating its indoor properties by closing locker rooms except as necessary to use restroom facilities.

73. During this period, Plaintiff’s property was used by the State in coping with the COVID-19 Pandemic by prohibiting specific areas and business uses of Plaintiff’s property that the property was uniquely designed and outfitted to facilitate or employ commercially.

74. From May 22, 2020 through May 25, 2020, Plaintiff’s property was used in coping with the COVID-19 disaster and its use was ordered by the Kansas Governor pursuant to the above-referenced orders and disaster declarations issued under KEMA.

75. Plaintiff is entitled for compensation for each day from May 18, 2020 through May 21, 2020 in that the State exerted control over its property or otherwise used its property to cope with the declared disaster.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Enter a judgment declaring that Omega Bootcamps Inc. is entitled to compensation for governmental use of its property and property interests in coping with the COVID-19 disaster;
- b. Appoint an appraiser panel to determine to amount of compensation required as required by K.S.A. 26-501 et seq.

- c. Schedule and conduct a trial to determine the amount of compensation owed, if necessary, after the appraiser panel makes its report as required by K.S.A. 26-501 et seq.
- d. Award Plaintiff's court costs and reasonable attorney fees; and
- e. Award such other and further relief as to which Plaintiff may be entitled.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted this 9<sup>th</sup> day of December, 2020.

/s/ Ryan A. Kriegshauser  
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ATTORNEYS FOR PLAINTIFF

# EXHIBIT 2

**IN THE DISTRICT COURT SEDGWICK COUNTY  
EIGHTEENTH JUDICIAL DISTRICT OF KANSAS**

OMEGA BOOTCAMP INC. and RYAN )  
FLOYD )  
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Plaintiffs, )  
 )  
v. ) Case No. 20-CV-1880-RD  
 )  
THE STATE OF KANSAS )  
 )  
Defendant. )  
\_\_\_\_\_ )

**JOINT MOTION FOR ORDER ENTERING STAY OF PROCEEDINGS**

COME NOW JOINTLY the parties in this matter and move the Court for an order entering a stay of proceedings on the parties' Joint Motion for Entry of Stay of Proceedings. Plaintiffs Omega Bootcamps Inc. and Ryan Floyd appear by and through counsel, Ryan Kriegshauser of Kriegshauser Law, LLC and Josh Ney of Ney Law Firm, LLC. Defendant State of Kansas appears by and through Attorney General Derek Schmidt, as represented by Assistant Attorney General Arthur Chalmers and Deputy Attorney General Dennis Depew. In support of their motion, the plaintiffs claim the following:

1. This matter implicates significant public policy questions of statewide and national importance regarding the costs borne by private businesses and individuals that have been subject government shutdown orders by the state and local units of government during the COVID-19 pandemic.
2. The issues raised in this matter are likely a matter of first impression in Kansas and have the potential of creating varying legal and statutory interpretations in the event similar compensation claims are brought in other jurisdictions across the state.

3. Furthermore, compensation provisions exist in other state emergency management acts increasing the risk of disparate interpretations and outcomes.

Further, the parties agree that:

4. The parties desire to allow the Kansas Legislature and other public policy interests time to consider legislative changes that would allow for a consistent statewide process for considering compensation claims of private businesses and individuals economically harmed by government shutdown orders by units of government during the COVID-19 pandemic.
5. The parties also desire time to consider the joining of other necessary parties to this action, including Sedgwick County, Kansas as appropriate parties that the plaintiffs claim may be responsible to pay compensation. This determination may also be informed by legislative action.

WHEREFORE, the parties respectfully move the court to enter an order staying the proceedings in this matter until June 1, 2021 or the adjournment of the Kansas Legislature *Sine Die* for the 2021 regular legislative session, whichever date is later in time.

JOINTLY PREPARED AND SUBMITTED BY:

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**ATTORNEYS FOR DEFENDANT**

# EXHIBIT 3



ELECTRONICALLY FILED  
2020 Dec 31 PM 3:04  
CLERK OF THE SEDGWICK COUNTY DISTRICT COURT  
CASE NUMBER: 2020-CV-001880-RD



**Court:** Sedgwick County District Court  
**Case Number:** 2020-CV-001880-RD  
**Case Title:** Omega Bootcamps Inc., et al. vs. State of Kansas  
**Type:** PROPOSED ORDER OF STAY OF PROCEEDINGS

SO ORDERED.

A handwritten signature in blue ink, appearing to read "Eric Commer".

/s/ Honorable Judge Eric Commer

**IN THE DISTRICT COURT SEDGWICK COUNTY  
EIGHTEENTH JUDICIAL DISTRICT OF KANSAS**

OMEGA BOOTCAMPS INC. and RYAN	)	
FLOYD	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 20-CV-1880-RD
	)	
THE STATE OF KANSAS	)	
	)	
Defendant.	)	
<hr style="border: 0.5px solid black;"/>		

**ORDER OF STAY OF PROCEEDINGS**

NOW ON THIS DATE, this matter comes before the court on the parties’ Joint Motion for Order Entering Stay of Proceedings. Plaintiffs Omega Bootcamps Inc. and Ryan Floyd appear by and through counsel, Ryan Kriegshauser of Kriegshauser Law LLC and Josh Ney of Ney Law Firm LLC. Defendant State of Kansas appears by and through Attorney General Derek Schmidt, as represented by Assistant Attorney General Art Chalmers and Deputy Attorney General Dennis Depew.

Being fully advised on the basis of parties’ request as represented in the filed pleading and motion in this matter, THE COURT NOW FINDS that it is in the best interest of the economy of justice to stay the proceedings in this matter until the conclusion of the 2021 regular session of the Kansas legislature.

IT IS THEREFORE ORDERED that all proceedings, procedural deadlines, and further hearings in this matter shall be STAYED until June 1, 2021 or the adjournment of the Kansas Legislature *Sine Die* for the 2021 regular legislative session, whichever date is later in time.

IT SO ORDERED.

This order shall become effective as of the date and time of the electronic file stamp.

JOINTLY PREPARED AND SUBMITTED BY:

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**ATTORNEYS FOR DEFENDANT**

# EXHIBIT 4

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**From:** Blaes, Clint

**Sent:** Thursday, December 31, 2020 10:11 AM

**To:** Blaes, Clint <[Clint.Blaes@ag.ks.gov](mailto:Clint.Blaes@ag.ks.gov)>; Milburn, John <[John.Milburn@ag.ks.gov](mailto:John.Milburn@ag.ks.gov)>

**Subject:** [RELEASE] AG Derek Schmidt statement on delay of lawsuit seeking compensation for businesses shutdown by emergency orders

FOR IMMEDIATE RELEASE  
December 31, 2020

Contact: John Milburn  
785-296-8495  
[john.milburn@ag.ks.gov](mailto:john.milburn@ag.ks.gov)

**AG Derek Schmidt statement on delay of lawsuit seeking compensation for businesses shutdown by emergency orders**

TOPEKA – (December 31, 2020) – Kansas Attorney General Derek Schmidt today issued the following statement regarding an agreement between the parties to delay *Omega Bootcamps Inc. and Ryan Floyd v State of Kansas*, a lawsuit filed in Sedgwick County District Court seeking compensation for the government-ordered closures of businesses during the pandemic:

“This lawsuit raises important public policy questions extending well beyond this individual case that would be better answered by the Legislature rather than courts. I agree with the basic principle, reflected in current law, that at least some of those whose property is significantly damaged by government actions undertaken for the public good during a state of emergency should be compensated for their loss. However, current law was not designed to address these sorts of business shutdown orders, and it is not certain (nor does the state concede) that the law as written applies on the facts of this or similar cases. Therefore, rather than proceeding directly to litigation, we have reached agreement with the plaintiffs to jointly ask the court to put this lawsuit on hold during the 2020 legislative session so we can ask the Legislature to consider in a comprehensive manner the public policy issue of compensation for businesses for losses caused by lockdowns. In the event the Legislature fails to resolve this issue globally, the litigation will resume and we will provide the state a proper legal defense under current law.”

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