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FILED 03-18-2021 CIRCUIT COURT DANE COUNTY, WI 2021CV000143

STATE OF WISCONSIN

CIRCUIT COURT BRANCH 9 DANE COUNTY

JEFFREY BECKER, ANDREA KLEIN, and A LEAP ABOVE DANCE, LLC,

Plaintiffs,

v.

Case No. 21-CV-143

DANE COUNTY, JANEL HEINRICH, in her official capacity as Public Health Officer and Director of Public Health of Madison & Dane County, and PUBLIC HEALTH OF MADISON & DANE COUNTY,

Defendants.

PLAINTIFF A LEAP ABOVE'S NOTICE OF MOTION AND MOTION TO DISMISS COUNTERCLAIM

PLEASE TAKE NOTICE that Plaintiff A Leap Above, by undersigned counsel, hereby moves the Court, pursuant to Wis. Stat. § 802.06(2)(a)(6), to dismiss the counterclaim filed against it by Defendant Dane County in the amended answer Defendants filed on February 26. Dkt. 42. The counterclaim should be dismissed, in whole in or in part, for seven independently sufficient reasons: (1) the ordinance and health order Dane County relies on are unlawful and unenforceable because they violate or are preempted by multiple statutes indicating that local health officers cannot unilaterally issue enforceable orders generally regulating otherwise lawful conduct during a pandemic; (2) the ordinance (and/or Wis. Stat § 252.03) and order violate the non-delegation doctrine and certain constitutional and statutory provisions by transferring local legislative power vested exclusively in the county board to the local health director without sufficient constraints; (3) the two sections of the order Dane County invokes did not apply to A Leap Above, by the order's own terms; (4) even if those sections did apply to A Leap Above, the event in question was at most one violation under the text of the order and ordinances; (5) the order is void for vagueness and cannot be enforced against A Leap Above; (6) the restrictions violated the First Amendment and Article I, Section 3 of the Wisconsin Constitution, both facially and as applied to the conduct alleged in the counterclaim; and (7) Wis. Stat. § 252.03 does not permit a local health officer to ban *private* gatherings in a business. Further grounds for this motion are set forth in the accompanying memorandum filed herewith.

PLEASE TAKE FURTHER NOTICE that this motion will be heard on a date and time to be set by the Court.

Dated: March 18, 2021.

Respectfully Submitted,

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