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20 *dba* CHEETAHS and RICH BUONANTONY

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA

22 IN AND FOR THE COUNTY OF SAN DIEGO

23 MIDWAY VENTURE LLC *dba* PACERS) Case No.: 37-2020-00038194-CU-CR-CTL
24 SHOWGIRLS/PACERS SHOWGIRLS)
25 INTERNATIONAL, a California limited) **COMPLAINT FOR:**
26 liability company; PETER BALOV, an)
27 individual; F-12 ENTERTAINMENT GROUP) **(1) DECLARATORY AND INJUNCTIVE**
28 INC. *dba* CHEETAHS, a Nevada corporation,) **RELIEF; AND**
) **(2) VIOLATION OF 42 U.S.C. § 1983**

) **(COUNTS 1-3);**
) **(3) PETITION FOR WRIT OF MANDAMUS**
) **(CODE CIV. PROC. § 1085)**

29 vs.)
30)

31 COUNTY OF SAN DIEGO, a governmental)
32 agency; WILMA J. WOOTEN, in her official)
33 capacity as Public Health Officer, County of San)
34 Diego; GOVERNOR GAVIN NEWSOM, in his)
35 official capacity as the Governor of the State of)
36 California; the CALIFORNIA DEPARTMENT)
37 OF PUBLIC HEALTH, a department of the)
38)

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Ines Quirarte, Deputy Clerk

1 State of California; and DOES 1 through 100,)
2 inclusive,)
3 Defendants/Respondents.)
4 _____)

5 Plaintiffs/Petitioners alleges as follows:

6 **PARTIES AND VENUE**

7 1. At all times mentioned herein, Plaintiffs/Petitioners Midway Venture, LLC *dba*
8 Pacers Showgirls/Pacers Showgirls International (“Pacers”) has operated within the City of San
9 Diego, County of San Diego, as an adult entertainment establishment within the meaning of San
10 Diego Municipal Code (SDMC) section 33.3601 et seq. under Nude Entertainment Business
11 Permit number 2010022137 issued by the Chief of the San Diego Police Department.

12 2. Plaintiff/Petitioner Peter Balov, an individual, serves as the responsible managing
13 officer for Pacers and serves as the qualifier for Pacers’ Nude Entertainment Business Permit.

14 3. At all times mentioned herein, Plaintiffs/Petitioners F-12 Entertainment Group Inc.
15 *dba* Cheetahs (“Cheetahs”) has operated within the City of San Diego, County of San Diego, as
16 an adult entertainment establishment within the meaning of SDMC section 33.3601 et seq. under
17 a Nude Entertainment Business Permit issued by the Chief of the San Diego Police Department.

18 4. Plaintiff/Petitioner Rich Buonantony, an individual, serves as the responsible
19 managing officer for Cheetahs and serves as the qualifier for Cheetahs’ Nude Entertainment
20 Business Permit.

21 5. Defendant/Respondent the County of San Diego (the “County”) is and at all times
22 mentioned herein was a governmental agency operating in the State of California, County of San
23 Diego, City of San Diego, and is directly responsible for the orders, actions, and directives at issue
24 in this Complaint.

25 6. Defendant/Respondent Wilma J. Wooten (“Dr. Wooten”) is the County’s Public
26 Health Officer. Dr. Wooten signed the orders at issue in this Complaint and Plaintiffs are informed
27 and believe, and based thereon allege that Dr. Wooten is responsible for devising, enacting,
28 enforcing, and interpreting the orders and directives she issues in her official capacity with the

1 County, and that she is also responsible for interpreting the orders of the State of California
2 concerning the Covid-19 “stay-at-home” and closure orders as applicable to the City of San Diego
3 and the County.

4 7. Defendant/Respondent Governor Gavin Newsom (the “Governor”) is and at all
5 times mentioned herein the Governor of California. Plaintiffs are informed and believe, and based
6 thereon alleges that the Governor is responsible for issuing the executive orders upon which the
7 County and Dr. Wooten have relied upon in exercising their authority.

8 8. Plaintiffs are informed and believe that Defendant/Respondent the California
9 Department of Public Health (CDPH) is an executive branch of the State of California, which is
10 under the direction and control of the Governor, and is responsible for the policies upon which the
11 County and Dr. Wooten have relied upon in exercising their authority.

12 9. Plaintiffs/Petitioners are ignorant of the true names and capacities of
13 Defendants/Respondents sued herein as DOES 1 through 100, inclusive, and their involvement
14 with the orders, actions, and directives at issue in this Complaint, and therefore
15 Plaintiffs/Petitioners sue these Defendants/Respondents by such fictitious names.
16 Plaintiffs/Petitioners will amend the Complaint to allege the DOE Defendants/Respondents’ true
17 names, capacities, and involvement in this action when the information is ascertained. Plaintiffs
18 are informed and believe and based thereon allege that each of the DOE Defendants/Respondents
19 was responsible in some manner for orders, actions, and directives at issue in this Complaint. The
20 County, Dr. Wooten, the Governor, CDPH and DOES 1-100 may sometimes be referred to herein
21 collectively as “Defendants.”

22 10. The San Diego Superior Court is the appropriate venue for this action because all
23 of the events, orders, actions, and directives at issue in this Complaint occurred within San Diego
24 County, and Defendants/Petitioners maintain offices, exercise their authority in their official
25 capacities, and will enforce the orders, actions, and directives at issue within San Diego County.

26 **FACTS COMMON TO ALL CAUSES OF ACTION AND WRIT**

27 11. It is well settled that adult oriented nude entertainment is recognized by both state
28 and federal courts as being protected by the First Amendment of the United States Constitution

1 and the California Constitution. The First Amendment protects the right of adult entertainment
2 establishments, adult entertainers and audience members to free expressive association and
3 performances, subject only to reasonable and clear regulations for the preservation of public health,
4 safety, welfare and morals. (*City of Erie v. Pap's A.M.* (2000) 529 U.S. 277, 289; *Tily B., Inc. v.*
5 *City of Newport Beach* (1998) 69 Cal.App.4th 1, 10; *Krontz v. City of San Diego* (2006) 136 Cal.
6 App. 4th 1126, 1135.)

7 12. Adult entertainment establishments within the City of San Diego, such as Pacers
8 and Cheetahs, that provide live nude entertainment are subject to a number of social distancing
9 requirements that pre-date the various federal, state, and local Covid-19 recommendations,
10 restrictions and orders that have been issued during the pandemic. Among other rules and
11 requirements, adult entertainers must stay six (6) feet or further from audience members while
12 performing nude entertainment. (SDMC § 33.3610(a).) Adult entertainers are also prohibited from
13 touching any member of the audience. (SDMC § 33.3610(b).) The failure of an adult entertainment
14 establishment to enforce these restrictions can have significant and dire consequences to the
15 operator of the adult entertainment establishment. (See *Coe v. City of San Diego* (2016) 3
16 Cal.App.5th 772, 784-785.) By the same token, adult entertainers must be licensed in the City and
17 County of San Diego, and the failure of an adult entertainer to follow the requirements of the
18 SDMC may result in the revocation of his or her license. Accordingly, well before the Covid-19
19 pandemic adult entertainment establishments and the adult entertainers within the City and County
20 of San Diego were already well accustomed to social distancing.

21 13. Consistent with the orders of the Governor Plaintiffs and the adult entertainers that
22 perform at their venues dutifully complied with the “stay-at-home” orders despite the significant
23 infringement upon their First Amendment rights and the significant economic consequences to
24 them by being prohibited from offering such performances. During this period, Plaintiffs patiently
25 waited for guidance from state and local officials regarding when they could reopen for live adult
26 performances.

27 14. On or about May 7, 2020, the Governor announced that he would begin modifying
28 the stay at home order to begin reopening California under what was described at the time as the

1 “Resilience Roadmap,” which set forth a four tiered system for reopening California. Dr. Wooten,
2 acting as the Health Officer for the County, would subsequently adopt and modify the State’s
3 restrictions and reopening plan through an ever changing series of health orders and
4 regulations. (https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epide
5 [miology/dc/2019-nCoV/health-order.html](https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epide/miology/dc/2019-nCoV/health-order.html).)

6 15. As of May 22, 2020, Dr. Wooten, acting as the Public Health Officer for the County
7 had issued a revised order concerning the reopening of “restaurants and bars,” among the other
8 businesses, venues, and facilities that were allowed to reopen. Because Plaintiffs had onsite
9 restaurants, in addition to their adult entertainment venues, Plaintiffs reached out to Dr. Wooten to
10 obtain clarification as to how the County’s orders would apply to adult entertainment within the
11 guidelines for reopening restaurants and bars. The “four-tier system” for reopening California
12 launched by the Governor did not address adult entertainment, nor did any of Dr. Wooten’s
13 published orders. In circular fashion, however, Dr. Wooten responded to Plaintiffs’ inquiry by
14 instructing Plaintiffs to follow “the guidance from the Governor’s Office and the California
15 Department of Public Health,” which provided no such guidance as related to adult entertainment.
16 This placed Plaintiffs in the difficult position of having to devise their own reopening plans, which
17 ultimately were based upon the reopening plans applicable to restaurants, churches, and other
18 facilities where people gathered, with the added requirements of SDMC as it relates to adult
19 entertainment.

20 16. On June 12, 2020, Dr. Wooten was specifically asked during a press conference if
21 live music would be allowed in restaurants and bars under the County’s orders. Dr. Wooten
22 explained that it was not because it “encourages people to get up and start dancing,” and Dr.
23 Wooten did not want people to engage in such activity. Shortly after the press-conference, Dr.
24 Wooten issued a revised order specifying that “[d]ance floors shall be closed and performances
25 such as musical or dance acts that encourage large gatherings shall be discontinued.” (See Order
26 of Health Officer and Emergency Regulation Effective June 16, 2020, at ¶ 13(g), **Exhibit “A”**
27 hereto.) Notably, however, the prohibition was facially inapplicable to adult entertainment as adult
28 entertainers are expressly prohibited from touching patrons.

1 17. Like many businesses and other venues, Plaintiffs sought to make sense of the
2 restrictions and closure orders, and to this end Pacers initially proposed a plan to reopen with only
3 outside activity. Consistent with the “Safe Reopening Plan” being enforced at the time, Pacers
4 applied for permission to operate outdoors, and to that end submitted a detailed plan to the County
5 and the San Diego Police Department, Permits & Licensing Unit seeking permission to operate
6 outside. Attached hereto as **Exhibit “B”** and incorporated herein by this reference is a true and
7 correct copy of Pacers’ submission of its plan to operate outside. Pacers, however, was told that
8 it could not operate outside, and fearing administrative or criminal action Pacers decided not to
9 reopen, despite having already rented tables and equipment for outside operations. Other adult
10 entertainment establishments, including Cheetahs, learned of the restriction and also decided not
11 to submit their own plans for reopening outside for fearing similar rejection. Significantly,
12 however, Plaintiffs are informed and believe, and based thereon allege that at the time of the
13 rejection of Pacers’ plan for outdoor adult performances, the County was allowing other businesses
14 and venues to operate outside, including but not limited to churches and other venues that draw
15 large groups of people.

16 18. On or about August 28, 2020, the Governor announced California’s new reopening
17 plan called the “The Blueprint for a Safer Economy” (hereinafter the “Blueprint”). The Blueprint,
18 which became effective August 31, 2020, set forth four color coded tiers: yellow, orange, red and
19 purple. Yellow indicates minimal Covid-19 spread and allows for nearly all businesses to reopen
20 indoor operations. Orange means that some in-door business operations can open with
21 modifications. Red means that some non-essential indoor business operations are closed. Purple
22 means there is widespread Covid-19 transmission in the county and nearly all businesses have to
23 keep indoor operations closed or severely limited. The Blueprint also provides a list of covered
24 activities and businesses. Notably, however, adult entertainment and adult entertainment
25 establishments are not listed on the Blueprint and to date no specific guidance has been given to
26 adult entertainers or to adult entertainment establishments regarding reopening. (See Blueprint for
27 a Safer Economy Activity and Business Tiers, **Exhibit “C”** hereto.)

28 ////

1 19. The express restrictions on open dance floors and musical or dance acts remained
2 in Dr. Wooten’s order until August 22, 2020. (See Order of Health Officer and Emergency
3 Regulation Effective August 22, 2020, at ¶ 14(k), **Exhibit “D”** hereto.) These express restrictions,
4 however, were removed shortly after the Blueprint was published and after the County was
5 designated as falling into “Tier 2,” *i.e.*, the “Red Category.” Upon entering “Tier 2,” various
6 businesses arbitrarily designated “nonessential” were allowed to reopen with restrictions for inside
7 operations. (See Order of Health Officer and Emergency Regulation Effective September 1, 2020,
8 **Exhibit “E”** hereto.)

9 20. Plaintiffs are informed and believe, and based thereon allege that Dr. Wooten is
10 responsible for interpreting the orders of the Governor and CDPH, which gives her substantial
11 power and nearly unchecked discretion given the vagueness of the various orders of the Governor
12 and CDPH. Exercising this authority, Dr. Wooten’s orders have undergone endless and
13 bewildering changes, yet none of them even attempted to address adult entertainment. With no
14 guidance as to how adult entertainment establishments fit into the tier system or Dr. Wooten’s
15 various orders, Plaintiffs were again left guessing on how best to proceed with reopening.
16 Nonetheless, in an effort to avoid violating any of the vague and arbitrary orders at issue, Pacers
17 submitted its proposed plan to City and County officials, including Dr. Joel Day, who is leading
18 the City of San Diego Covid-19 response and recovery. Plaintiffs are informed and believe, and
19 based thereon allege that Dr. Day works closely with the County and Dr. Wooten. Under Pacers’
20 plan, as it pertained specifically to adult entertainment, Pacers proposed the following additional
21 restrictions above and beyond those already in place under the SDMC:

- 22 • Stages to be located on two (2) foot platforms, fifteen (15) feet from any tables.
- 23 • Stages to be roped off with signs strictly advising patrons not to pass within the
24 fifteen foot buffer.
- 25 • Adult entertainers to perform one artist at a time per stage.
- 26 • All stage equipment to be sanitized after a performance.
- 27 • All performers to wear mask coverings while performing.
- 28 • The announcer and disc jockey (“DJ”) to be located fifteen (15) feet from any

- 1 tables, roped off and designated for one person at a time.
- 2 • Audio stage to be sanitized and cleaned after every daily use.
 - 3 • The announcer and DJ to wear a mask covering.
 - 4 • The announcer and DJ to issue regular reminders to patrons that they are not to
 - 5 approach performers and they are to remain seated at their tables.

6 21. After submitting its plan to Dr. Day and the County on or about August 20, 2020,
7 Pacers received no input or objection from the City or County, and based upon oral discussions
8 with County representatives, Pacers believed it had the County’s express, if not tacit approval, of
9 its plan to allow adult entertainment. Attached hereto as **Exhibit “F”** and incorporated herein by
10 this reference is a true and correct copy of Pacers’ reopening plan as outlined to Dr. Day on August
11 20, 2020, which Plaintiffs are informed and believe, and based thereon allege was communicated
12 to the County. As it is noteworthy, Pacers is informed and believes, and based thereon alleges that
13 its plan for reopening was subsequently adopted by many other adult entertainment establishments
14 in the city and county of San Diego.

15 22. After San Diego County officially moved into “Tier 2” and following the removal
16 of the restriction on dancing from Dr. Wooten’s orders, Pacers reopened for business inside on or
17 about September 3, 2020, under the plan it previously outlined to the City and County concerning
18 adult entertainment. After reopening Pacers received no complaints from the City or County, and
19 more importantly no Covid-19 cases can be tracked to Pacers’ reopening. As Pacers has done
20 throughout its long tenure in the City of San Diego, it served as a model for other adult
21 entertainment establishments and provided many adult performers – who had been unable to
22 perform for nearly six months – a venue to perform.

23 23. On or about September 18, 2020, Cheetahs reopened, complying with all of the
24 requirements of Dr. Wooten’s September 1, 2020 Health Order, cited above in paragraph 17, and,
25 like Pacers, no Covid-19 cases can be tracked to Cheetahs’ reopening.

26 24. On October 11, 2020, at approximately 10:00 p.m. as Pacers began to close as
27 required by the restrictions applicable to restaurants, a group of young men demanded to enter
28 Pacers. They were told, however, that Pacers was closing and no one was being admitted as

1 required by Dr. Wooten’s orders requiring all restaurants to close at 10:00 p.m. These men were
2 unhappy with being told that they could not enter Pacers and they took it upon themselves to
3 attempt to bypass security in order to enter Pacers. After being thwarted in their efforts, the men
4 began to congregate outside of the parking lot of Pacers and nearby a vehicle owned by a member
5 of the Padres professional baseball team. While the events of what transpired next remain unclear,
6 words appear to have been exchanged between the group of men and the Padres ballplayer, which
7 escalated to a violent encounter where the Padres ballplayer suffered a stab wound to his back.
8 Pacers, as it has always done when contacted by the authorities, subsequently fully cooperated
9 with the investigation of the San Diego Police Department. Nonetheless, this incident resulted in
10 much negative media attention toward Pacers, which included false stories regarding the operation
11 of Pacers. Among other false news reports, it was reported that Pacers was allowing adult
12 entertainers to perform so-called “lap dances.” Ironically, this incident was caused in no little part
13 by the Covid-19 curfew restrictions as imposed by Dr. Wooten, which have resulted in much
14 frustration by members of the public concerning their loss of liberty and freedom, and in this
15 instance the ability to view live adult entertainment.

16 25. Apparently relying upon the false news reports referenced above, on October 14,
17 2020, Dr. Wooten, acting in her official capacity, issued a cease and desist order to Pacers
18 prohibiting Pacers from having any form of live entertainment. Dr. Wooten threatened that any
19 violation of the cease and desist order may result in criminal prosecution and monetary fines for
20 each violation. And, while Dr. Wooten acknowledged Pacers’ right to remain open solely as a
21 restaurant, Dr. Wooten warned that if there were any violations of her order prohibiting live adult
22 entertainment, she would issue an order closing Pacers entirely. Significantly, Dr. Wooten
23 performed no investigation into the truth of the news reports nor did Dr. Wooten contact Pacers to
24 discuss its operations before issuing the cease and desist order.

25 26. On October 15, 2020, Pacers respectfully wrote to Dr. Wooten seeking clarification
26 of the basis of her order prohibiting Pacers from continuing with adult entertainment. Pacers
27 further pointed out that her cease and desist order was based upon false news reports regarding the
28 activities of Pacers, and that Pacers had apparently been singled out because of the unfortunate

1 event that occurred on October 11th. Pacers made clear its desire to work with Dr. Wooten and
2 the County to arrive at clear guidance from the County that would allow for the continuation of
3 adult performances within San Diego County, as protected by the First Amendment. Pacers further
4 reiterated its desire to provide a safe environment for live adult entertainment. Again, however,
5 Dr. Wooten provided no clarification of her cease and desist order, nor have any exceptions been
6 provided that would allow adult performances to occur under the apparent orders of Dr. Wooten.

7 27. On October 16, 2020, Pacers received a visit from Brandon Posada of the County
8 of San Diego to verify that Pacers was in compliance with Dr. Wooten's cease and desist order.
9 Consistent with Dr. Wooten's order Pacers ceased all adult entertainment at its venue, which was
10 verified by Mr. Posada during his inspection. Mr. Posada further advised that the County intended
11 to closely monitor Pacers' compliance with Dr. Wooten's cease and desist order, and it was made
12 impliedly clear that any violation would result in swift punishment.

13 28. On October 20, 2020, Rich Buonantony was served with a cease and desist order
14 signed by Dr. Wooten, threatening criminal charges and closure of the business for having live
15 entertainment. (See **Exhibit "G"** hereto.)

16 29. As a consequence of Defendants' orders to cease and desist from engaging in
17 activity protected by the First Amendment, Plaintiffs are and will continue to be threatened with
18 criminal and civil penalties, as well as suffer a denial of due process and their civil rights on the
19 basis of the enforcement of the challenged cease and desist orders if they exercise their protected
20 liberties similar to other venues in San Diego County that are being permitted, implicitly or tacitly,
21 to allow live performances. Indeed, there is in effect a complete ban on live adult entertainment
22 in the City and County of San Diego due to the directives of Dr. Wooten.

23 30. Plaintiffs are informed and believe, and based thereon allege that while the County
24 of San Diego has prohibited Pacers and Cheetahs (and presumably other adult entertainment
25 establishments) from allowing adult oriented performances under the restrictions outlined above,
26 the County of San Diego has allowed, implicitly or tacitly, restaurants and other venues to have
27 live music at locations such as the Inn at Rancho Bernardo, McP's Irish Pub in Coronado, the Del
28 Mar Highlands Town Center, and Fluxx Nightclub to name just a few. Plaintiffs are also informed

1 and believe that the County has also allowed stand-up comedy at venues such as the Comedy
2 Palace and other comedy venues, as apparently these venues have the ear of council member Chris
3 Cate. By the same token, under the County’s reopening plan concerning “Tier 2,” the following
4 are allowed to remain open despite the possibility of far more contact among members of the public
5 than what is even conceivably possible under Plaintiffs’ reopening plan for adult entertainment:

- 6 • Places of worship. 25% capacity or 100 people, whichever is lower.
- 7 • Movie theaters. 25% capacity or 100 people, whichever is lower.
- 8 • Museums. 25% capacity.
- 9 • Gyms and fitness centers. 10% capacity.
- 10 • Dance studios. 10% capacity.
- 11 • Yoga studios. 10% capacity.
- 12 • Zoos and aquariums. 25% capacity.
- 13 • Hair salons and barbershops
- 14 • Nail salons
- 15 • Body waxing
- 16 • Tattoo parlors
- 17 • Piercing
- 18 • Skin care and cosmetology

19 31. The limitation on allowing adult entertainment is arbitrary and capricious, and is
20 discriminatory toward adult entertainment establishments and adult performers. From the
21 perspective of imposing restrictions to prevent the spread of Covid-19, Defendants have allowed
22 restaurants, churches, dance studios, yoga studios, and various personal service industries to
23 operate, while prohibiting Plaintiffs and adult performers from operating under much more
24 stringent safety protocols, and threatening Plaintiffs with “criminal” liability for attempting to do
25 so. The order smacks of unfairness.

26 32. Moreover, the financial and non-financial losses the Plaintiffs have suffered during
27 the period of time since issuance of the cease and desist orders have been substantial, and are the
28 direct result of the discriminatory, irrational, and unequal restrictions flowing from Dr. Wooten’s

1 overreaching construction of the orders of Governor Newsom and CDPH. Plaintiffs and all those
2 similarly situated are not viable without adult entertainment and unless the cease and desist orders
3 are immediately lifted, Plaintiffs may be required to close permanently. Plaintiffs are and will
4 continue to be threatened with criminal and civil penalties, as well as suffer a denial of due process
5 and their civil rights on the basis of the enforcement of the challenged cease and desist orders if
6 they exercise their protected freedoms and liberties similar to other venues in San Diego County
7 that are being permitted, implicitly or tacitly, to allow live performances. This will not only result
8 in significant losses to Plaintiffs, but also to the adult performers who rely on their ability to
9 perform at Plaintiffs' venues and members of the public that seek out adult themed entertainment
10 in a safe and regulated environment. Defendants' restrictions will in effect force adult entertainers
11 to perform outside the safety of regulated venues. Plaintiffs themselves have no adequate remedy
12 at law. No amount of money damages could adequately compensate the Plaintiffs for the
13 irreparable harm described herein, specifically the deprivation of constitutionally protected
14 fundamental rights.

15 **RELIEF SOUGHT BY PLAINTIFFS/PETITIONERS**

16 33. As set forth more fully below, based upon misinformation and an ever growing
17 tenancy to infringe upon the rights of the citizens of San Diego under the "Big Brother" mentality
18 of Defendants, there is little doubt that Defendants have become drunk on power and run amuck
19 with their expansive and overly burdensome construction of the Covid-19 related restrictions that
20 trample on the liberties of Plaintiffs and the citizens of San Diego. Justice O'Scannlain in his
21 dissenting opinion in *Harvest Rock Church, Inc. v. Newsom* (9th Cir. 2020) --- F.3d ----2020 WL
22 5835219 encapsulates this sentiment in his observation that the Covid-19 restrictions are a
23 "complex morass," which are not content neutral in their application. The abuse of power must
24 be checked and the Orwellian rules that have been imposed under the guise of "protecting" against
25 transmission of Covid-19 must no longer be rubber stamped by the courts. Accordingly, Plaintiffs
26 seek, among other remedies: (1) equitable injunctive relief to enjoin the enforcement of the cease
27 and desist orders; (2) declaratory relief from this Court in declaring that the orders of the State and
28 County violate Plaintiffs' civil rights under: (a) 42 U.S.C. Section 1983 of the Federal Civil Rights

1 Act, (b) Due Process and (c) Equal Protection Clauses of the 5th and 14th Amendments, (d) the
2 First Amendment, and (e) Sections 1, 2, 7, 19, and 24 of Article 1 to the California Constitution;
3 (3) a writ of mandate compelling the County of San Diego to issue clear guidelines to allow for
4 adult entertainment; (4) attorney’s fees and costs for the reasonable and necessary legal services
5 provided by Plaintiffs’ counsel, where allowed by law; and (5) for such other and further relief as
6 the Court deems just and appropriate.

7 **FIRST CAUSE OF ACTION**

8 **DECLARATORY AND INJUNCTIVE RELIEF**

9 **(By Plaintiffs Against all Defendants and DOES 1 through 100)**

10 34. Plaintiffs re-allege and incorporate herein by this reference each of the allegations
11 of paragraphs 1 through 33, above.

12 35. By reason of the aforementioned acts, policies, procedures, and/or orders, created,
13 adopted, and enforced under color of law by Defendants and DOE 1 through 100, Plaintiffs have
14 been deprived of their First Amendment rights of free speech and free expressive association. The
15 restrictions that have been imposed upon Plaintiffs lack any rational basis, are arbitrary, capricious,
16 vague, overbroad, and are a palpable invasion of rights secured by fundamental law in violation of
17 the Equal Protection Clause of both the United States Constitution and California Constitution.
18 When the government treats an individual disparately as compared to similarly situated persons,
19 and that disparate treatment burdens a fundamental right, targets a suspect class, or has no rational
20 basis, such treatment plainly violates the equal protection guarantees of the Fourteenth
21 Amendment.

22 36. Plaintiffs, however, are informed and believe, and based thereon allege, that
23 Defendants and DOE 1 through 100 contend and believe that they are within their authority to
24 trample on Plaintiffs’ Constitutional rights given the orders of Governor Newsom and given their
25 own claimed authority to prohibit all forms of adult entertainment, irrespective of the rights
26 afforded to Plaintiffs and all those similarly situated. As a result, an actual controversy has arisen
27 and now exists between Plaintiffs, on the one hand, and Defendants and DOE 1 through 100, on
28 the other hand. Plaintiffs therefore seek a declaration of their right to allow adult themed

1 performances to occur at their venues under the ridged guidelines previously submitted by
2 Plaintiffs to the County, or under those reasonable (and logical) rules and regulations Plaintiffs
3 and Defendants agree may be appropriate under the circumstances. Plaintiffs further seek a
4 declaration preventing Defendants from completely prohibiting all live adult entertainment and
5 requiring Defendants to provide clear guidance that would allow for live adult entertainment in the
6 City and County of San Diego.

7 37. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
8 dispute Plaintiffs' contentions regarding Defendants' obligations as outlined above, and that
9 Defendants intend to continue violating Plaintiffs' rights absent a declaratory judgment and
10 injunction issued by this Court.

11 **SECOND CAUSE OF ACTION**

12 **VIOLATION OF 42 U.S.C. § 1983**

13 **(By Plaintiffs Against all Defendants and DOES 1 through 100)**

14 38. Plaintiffs re-allege and incorporate herein by this reference each of the allegations
15 of paragraphs 1 through 37, above.

16 39. 42 U.S.C. Section 1983 was enacted "to deter state actors from using the badge of
17 their authority to deprive individuals of their federally guaranteed rights and to provide relief to
18 victims if such deterrence fails." (*Modacure v. B&B Vehicle Processing, Inc.* (2018) 30 Cal. App.
19 5th 690, 693, quoting *Wyatt v. Cole* (1992) 504 U.S. 158, 161.) "A claim under 42 United States
20 Code section 1983 may be based on a showing that the defendant, acting under color of state law,
21 deprived the plaintiff of a federally protected right." (*Id.* at 694.)

22 40. The acts and orders of Defendants and DOES 1 through 100 were and are being
23 performed under color of law and therefore constitute state action within the meaning of 42 U.S.C.
24 Section 1983. These actions violate Plaintiffs' civil rights as follows:

25 ***Count One – Violation of the Free Speech Clause of the First Amendment to the United***
26 ***States Constitution Applicable through the Fourteenth Amendment and Violation of Article 1,***
27 ***Section 2 of the California Constitution.***

28 41. Plaintiffs operate venues that provides adult themed entertainment to members of

1 the public in the form of adult oriented dance performances, and the presentation of recorded music
2 presented by DJs. All such entertainment is protected by the rights of free speech and free
3 expressive association. The cease and desist orders issued to Plaintiffs expressly prohibits this
4 type of speech and expressive conduct, and based upon the facts alleged above that other types of
5 live performances are permitted by Defendants, implicitly or tacitly, the limitations are predicated
6 upon the content of the speech and are presumptively unconstitutional. (*Reed v. Town of Gilbert*
7 (2015) 576 U.S. 155, 163-164.) Accordingly, the restrictions on adult performances found in the
8 challenged cease and desist orders comprise an unconstitutional content-based speech prohibition.

9 ***Count Two – Violation of the Equal Protection Clause of the Fourteenth Amendment to***
10 ***the United States Constitution and Violation of Article 1, Section 7 of the California Constitution.***

11 42. By reason of the aforementioned acts, policies, and/or orders, created, adopted, and
12 enforced under color of law by Defendants, Defendants have deprived Plaintiffs of the equal
13 protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment
14 to the United States Constitution and 42 U.S.C. § 1983, as well as the right to equal protection
15 under the California Constitution. As set forth in this Complaint, the applicable provisions of the
16 challenged cease and desist orders deprive Plaintiffs of their fundamental rights and freedoms by
17 forcing the continued prohibition on adult performances, yet providing exceptions for other
18 activity and conduct that is similar, if not identical, in its impact and effects as related to the
19 prevention of the spread of Covid-19. The challenged measures lack any rational basis, are
20 arbitrary, capricious, and vague, and are a palpable invasion of rights secured by fundamental law
21 in violation of the Equal Protection Clause.

22 ***Count Three – Violation of Plaintiffs’ Due Process Rights Compromise a Taking in***
23 ***Violation of the Fifth and Fourteenth Amendments to the United States Constitution and Violation***
24 ***of Article 1, Section 7 of the California Constitution.***

25 43. With no due process whatsoever, Defendants have denied Plaintiffs the right to
26 allow adult oriented performances at their venues and have taken away property rights and liberties
27 of Plaintiffs without due process of law. Defendants, to date, refuse to even answer Plaintiffs’
28 inquiries regarding the basis of the cease and desist orders and have instead acted as one might

1 expect a monarch might act in simply issuing an order with no justification, clarification, or
2 exceptions. Plaintiffs have a fundamental and protected interest in the use and enjoyment of their
3 venue. Plaintiffs have no adequate remedy at law and Plaintiffs, as well as members of the public,
4 will suffer serious and irreparable harm to their constitutional rights unless Defendants are
5 enjoined from the continuous implementation and enforcement of the cease and desist order, or
6 any other similar orders.

7 **THIRD CAUSE OF ACTION**

8 **WRIT OF MANDATE – CODE CIV. PROC. § 1085**

9 **(By Plaintiffs Against the County, Dr. Wooten, and DOES 1 through 100)**

10 44. Plaintiffs and Petitioners herein re-allege and incorporates herein by this reference
11 each of the allegations of paragraphs 1 through 43, above.

12 45. Pursuant to Code of Civil Procedure section 1085, “[a] writ of mandate may be
13 issued by any court to any . . . person, to compel the performance of an act which the law specially
14 enjoins, . . . and from which the party is unlawfully precluded by that inferior tribunal, corporation,
15 board, or person.” Here, the County, Dr. Wooten, and DOES 1 through 100 are infringing upon
16 Pacers’ constitutional rights, including, the freedom of speech and equal protection at its expense.
17 Moreover, Defendants/Respondents have arbitrarily and discriminatorily prevented
18 Plaintiffs/Petitioners from exercising their rights under the First Amendment under the guise of
19 the Covid-19 safety concerns. Consequently, Plaintiffs/Petitioners have suffered and continue to
20 suffer loss of liberty and economic losses.

21 46. Plaintiffs/Petitioners have no adequate remedy at law and will suffer serious and
22 irreparable harm to their constitutional rights unless Defendants/Respondents are enjoined from
23 the continuous implementation and enforcement of the cease and desist order, or any other order
24 they may claim gives them the right to prevent adult entertainment at Plaintiffs’ venues.

25 ////

26 ////

27 ////

28 ////

1 **PRAYER**

2 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

3 On the First Cause of Action:

4 1. For a determination of the rights and obligations of Plaintiffs as it relates to all
5 issues encompassed by the dispute alleged above, and that the Court issue a declaration finding as
6 follows:

7 (a) Plaintiffs are entitled to permit live adult entertainment under the reasonable
8 restrictions outlined by Plaintiffs above;

9 (b) Defendants are enjoined from completely prohibiting live adult
10 entertainment; and

11 (c) Recognizing that Plaintiffs' Constitutional rights to free speech and free
12 expressive conduct are not eliminated due to the Covid-19 related restrictions and pandemic.

13 2. All appropriate orders to carry out the Court's declaration of the rights of the
14 parties, including injunctive relief.

15 On the Second Cause of Action:

16 1. Declare the provisions of the cease and desist orders, or any other related orders, to
17 be violative of the aforementioned United States and California Constitutional provisions.

18 2. For the issuance of a Temporary Restraining Order and/or preliminary injunction
19 restraining and preventing any governmental entity or law enforcement officer from applying and
20 enforcing the provisions the cease and desist orders, or any other related orders, that prevent
21 Plaintiffs from being allowed to provide live adult entertainment under the restrictions outlined
22 above, and finding that Plaintiffs are exempt from all of the requirements of the cease and desist
23 orders.

24 3. For the issuance of a Permanent Injunction restraining and preventing any
25 governmental entity or law enforcement officer from applying and enforcing the provisions of the
26 cease and desist orders, or any other related orders, that prevent Plaintiffs from being allowed to
27 provide live adult entertainment under the restrictions outlined above, and finding that Plaintiffs
28 are exempt from all of the requirements of the cease and desist orders.

- 1 4. Award Plaintiffs any and all attorney’s fees and costs as authorized by law.
2 5. Award Plaintiffs any and all actual, consequential, and special damages to which
3 Plaintiffs are entitled.

4 On the Third Cause of Action (Writ of Mandate):

- 5 1. A peremptory writ of mandate issued under Code of Civil Procedure section 1085
6 compelling Defendant/Respondents to set aside their cease and desist orders, and to allow for live
7 adult entertainment.
8 2. Plaintiffs/Petitioners recover their attorney’s fees, expenses and costs in this action.
9 3. Plaintiffs/Petitioners recover damages.

10 On All Causes of Action:

- 11 1. For injunctive relief.
12 2. For costs of suit and attorney’s fees.
13 3. For such other and future relief as the court finds just and reasonable.

14
15 Dated: October 21, 2020

VIVOLI SACCUZZO, LLP

16
17 By: /s/ Jason P. Saccuzzo
18 JASON P. SACCUZZO
19 Attorneys for Plaintiffs,
20 MIDWAY VENTURE LLC *dba* PACERS
SHOWGIRLS/PACERS SHOWGIRLS
INTERNATIONAL, and PETER BALOV

21 Dated: October 21, 2020

LAW OFFICE OF STEVE HOFFMAN

22
23 By: /s/ Steve Hoffman
24 STEVE HOFFMAN
25 Attorneys for Plaintiffs,
26 F-12 ENTERTAINMENT GROUP INC.
27 *dba* CHEETAHS and RICH BUONANTONY
28

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County of San Diego

NICK MACCHIONE, FACHE
AGENCY DIRECTOR

HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH SERVICES
3851 ROSECRANS STREET, MAIL STOP P-578
SAN DIEGO, CA 92110-3134
(619) 531-5800 • FAX (619) 542-4188

WILMA J. WOOTEN, M.D.
PUBLIC HEALTH OFFICER

ORDER OF THE HEALTH OFFICER AND EMERGENCY REGULATIONS (Effective June 16, 2020)

Pursuant to California Health and Safety Code sections 101040, 120175, and 120175.5 (b) the Health Officer of the County of San Diego (Health Officer) **ORDERS AS FOLLOWS:**

Effective 12:00 a.m. on Tuesday, June 16, 2020 and continuing until further notice, the following will be in effect for San Diego County (county):

1. All persons are to remain in their homes or at their place of residence, except for employees or customers travelling to and from essential businesses, reopened businesses, or essential activities as defined in section 21, below, or to participate in individual or family outdoor activity as allowed by this Order.
2. All public or private "gatherings," as defined in section 21 below, are prohibited.
3. All businesses not meeting the definition of essential business or reopened business in section 21 below are referred to in this Order as "non-essential businesses" and shall be and remain closed for the duration of this Order. All essential businesses and reopened businesses must comply with the requirements of this Order. Notwithstanding the foregoing, any business may remain open if its employees and owners can provide its services from home, including by telecommuting, without direct contact with the public.
4. All public, charter and private schools may hold classes or school business operations on the school campus, provided the school complies with the measures contained in the State COVID-19 Industry Guidance: Schools and School-Based Programs issued by the CDPH (including the face covering requirements contained therein), also incorporating where feasible the guidelines provided in Stronger Together: A Guidebook for the Safe Reopening

EXHIBIT
A

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of California's Public Schools issued by the California Department of Education. Each school shall complete and post a document detailing the actions the school is taking to comply with the CDPH Industry Guidance measures after considering the CDE Guidelines noted above. Colleges and Universities shall not hold classes or other school activities where students gather on the school campus, except for research-related activities in colleges and universities and where necessary to train students who will serve as essential workers.

5. Child daycare and child care providers shall operate in compliance with the measures set forth in State COVID-19 Updated Guidance: Child Care Programs and Providers and shall prepare and post a Safe Reopening Plan pursuant to section 11, below.
6. "Non-essential personnel," as defined in section 21 below, are prohibited from entry into any hospital or long-term care facility. All essential personnel who are COVID-19 positive or show any potential signs or symptoms of COVID-19 are strictly prohibited from entry into hospitals or long-term care facilities. Notwithstanding the foregoing, individuals requiring medical care for COVID-19 or related conditions may be admitted to hospitals or other medical facilities if the hospital or medical facility is appropriate for treating COVID-19 and has adequate precautions in place to protect its patients, medical personnel and staff.
7. Hospitals and healthcare providers, including dentists shall:
 - a. Take measures to preserve and prioritize resources; and,
 - b. May authorize and perform non-emergent or elective surgeries or procedures based on their determination of clinical need and supply capacity, and where consistent with State guidance.
 - c. Nothing in this Order shall prevent physicians and other healthcare providers from conducting routine preventive care provided it conforms to any applicable State guidance.
 - d. Nothing in this Order shall prevent dentists or dental hygienists from conducting routine preventive care provided it conforms to any applicable State guidance.
8. Hospitals, healthcare providers, and commercial testing laboratories shall report all COVID-19 test results to the Public Health Officer immediately after such results are received.
9. All persons two year old or older who are present in the county shall have possession of a face covering described in California Department of Public Health Face Covering Guidance issued

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on April 1, 2020, (available at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Face-Coverings-Guidance.aspx>), when they leave their home or place of residence and shall wear the face covering whenever they are within six feet of another person who is not a member of their family or household. Persons with a medical or mental health condition, or developmental disability that prevents wearing a face covering shall be exempt from this requirement.

10. All essential businesses that allow members of the public to enter a facility must prepare and post a “Social Distancing and Sanitation Protocol” on the form available at: [https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/SOCIAL_DISTANCING AND SANITATION PROTOCOL 04022020 V1.pdf](https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/SOCIAL_DISTANCING_AND_SANITATION_PROTOCOL_04022020_V1.pdf)), or on a form required by another governmental entity requiring substantially similar information, for each of their facilities open to the public in the county. The Social Distancing and Sanitation Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. A copy of the Social Distancing and Sanitation Protocol must also be provided to each employee performing work at the facility. All essential businesses shall implement the Social Distancing and Sanitation Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing and Sanitation Protocol must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing are implemented at each facility that will ensure social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, the business shall promptly modify its Social Distancing and Sanitation Protocols to ensure proper social distancing and sanitation. Any business that fails to successfully implement social distancing and sanitation may be required to close.

11. All reopened businesses, with the exception of restaurants, bars, wineries and breweries which do not limit services to take-out or delivery, must prepare and post a “Safe Reopening Plan” on the form available at: https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/Community_Sector_Support/BusinessesandEmployers/SafeReopeningPlanTemplate.pdf for each of their facilities in the county. Restaurants bars, wineries and breweries which do not limit services to take-out or delivery, must prepare and post a “COVID-19 Restaurant Operating Protocol” on the form available at https://www.sandiegocounty.gov/content/dam/sdc/deh/fhd/food/pdf/covid19sdrestaurantoperatingprotocol_en.pdf for each restaurant in the county. The Safe Reopening Plan or COVID-19 Restaurant Operating Protocol must be posted at or near the entrance of the relevant facility,

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and shall be easily viewable by the public and employees. A copy of the Safe Reopening Plan or COVID-19 Restaurant Operating Protocol must also be provided to each employee performing work at the facility. All reopened businesses shall implement the Safe Reopening Plan or COVID-19 Restaurant Operating Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Safe Reopening Plan or COVID-19 Restaurant Operating Protocol must ensure all required measures are implemented. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, the business shall promptly modify its Safe Reopening Plan or COVID-19 Restaurant Operating Protocol to ensure proper social distancing and sanitation. Any business that fails to comply with its Safe Reopening Plan or COVID-19 Restaurant Operating Protocol shall immediately close.

12. When the State of California has issued an industry guidance with mandatory and/or suggested measures to be implemented by a particular type of business or industry, a reopened business must include all mandatory measures as part of its Safe Reopening Plan. The reopened business shall include all suggested measures necessary to maintain proper sanitation, employee screening, social distancing and facial coverings. Any mandatory measures required by this Order must also be included in the Safe Reopening Plan.
13. All restaurants, bars, wineries and breweries shall also be required to ensure their customers comply with all of the following measures and shall immediately close if they are not able to do so:
 - a. Customers shall not stand in the restaurant, bar, winery or brewery except in the reception area while waiting for a table or to pick up take-out food. If customers cannot be socially distanced in the reception area they shall wait in their cars or outside of the restaurant in a line with six feet between each customer.
 - b. Discontinue open seating. All members of the party must be present before seating and the host must bring the entire party to the table at one time. The customers allowed at a table are limited to members of a single household or customers who have asked to be seated together at the time a table is requested.
 - c. No food or beverages shall be served to or consumed by a customer who is not seated at a table designated by the restaurant for dining.
 - d. Discontinue seating customers and/or groups at bar counters, sushi preparation bars, etc. where they cannot maintain at least six feet of distance from employee work areas/stations. Install physical barriers or partitions in areas where maintaining a physical distance of six feet is difficult.

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- e. Notwithstanding section 9, above, customers are not required to wear face coverings while at a table. However, customers not sitting at a table shall wear face coverings whenever they may come within 6 feet of another person.
- f. Tables designated for dining shall be six feet apart, or separated by barriers or partitions that extend above the heads of customers while seated. Customer shall not be allowed to bring additional chairs to the table that interfere with the six foot separation.
- g. Dance floors shall be closed and performances such as musical or dance acts that encourage large gatherings shall be discontinued.
- h. Any customer that refuses to comply with this section shall be subject to enforcement per Health and Safety Code section 120295.

14. Places of Worship – Religious services and cultural ceremonial activities may be conducted in conformance with the State Guidance pursuant to sections 11 and 12, above. Given the high risk of this activity, outdoor ceremonies are encouraged and vulnerable members of the population (over 65 years old, compromised immune system or underlying condition) are strongly encouraged to participate through streaming or some other form of remote technology. Outdoor services and cultural ceremonial activities may be conducted provided all persons practice social distancing as defined in section 21e, below.

15. Each essential business and reopened business shall:

- a. Require all employees/on-site contractors (hereinafter referred to as employees) to have possession of face coverings and wear them as described in section 9 above when in the business facility; and,
- b. Shall conduct temperature screening of all employees and prohibit employees with a temperature of 100 degrees or more, or employees exhibiting COVID-19 symptoms as described by the Centers for Disease Control and Prevention, or employees who have been exposed to a person who has tested positive for COVID-19 from entering the workplace.

16. Outdoor Recreation

- a. Each public park and recreation area or facility, shall operate in compliance with the measures set forth in the State COVID-19 Industry Guidance: Campgrounds, RV Parks and Outdoor Recreation. The operator of the park shall prepare a Safe Reopening Plan pursuant to section 11, above, indicating how the park or recreation facility will implement the required measures. Any park or recreation area/facility at which the Protocol requirements cannot be effectively implemented may be required to close.
- b. Outdoor recreation instruction and day camps that comply with the State COVID-19

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Industry Guidance: Day Camps, may be conducted in park and recreation areas/facilities.

- c. Swimming pools owned or operated by a Homeowners' Association, Condominium or Apartment complex may be open provided the owner or operator completes and posts a Safe Reopening Plan that shows conformance with the requirements of this Order and with the swimming pool/aquatic venues requirements of the State COVID-19 Industry Guidance on Fitness Facilities.

17. All essential businesses and reopened businesses that remain in operation in accordance with the Order shall make every effort to use telecommuting for their workforces.

18. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home or other suitable location.

19. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://wwwnc.cdc.gov/travel/notices>) shall be subject to 14-day home or other suitable location quarantine and self-monitoring.

20. Persons who have been diagnosed with COVID-19, or who are likely to have COVID-19, shall comply with the Order of the Health Officer titled: "Isolation of All Persons with or Likely to have COVID-19", or as subsequently amended. Persons who have a close contact with a person who either has COVID-19, or is likely to have COVID-19, shall comply with the Order of the Health Officer titled: "Quarantine of Persons Exposed to COVID-19," or as subsequently amended. Both orders are available at: https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/2019-nCoV/health-order.html. If a more specific isolation or quarantine order is issued to a person, that order shall be followed.

21. For purposes of this Order:

- a. "Essential business" is any business or activity (or a business/activity that employs/utilizes workers) designated by the State Public Health Officer as "Essential Critical Infrastructure Workers" set forth in: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>) as that list may be updated from time-to-time, and

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referenced in Executive Order N-33-20 issued by the Governor of the State of California. For the purposes of this Order, the following businesses in the Food and Agriculture Sector are considered “groceries” or “other retail that sells food and beverages”: grocery stores, corner stores and convenience stores, liquor stores that sell food, farmer’s markets, food banks, farm and produce stands, supermarkets, big box stores that sell groceries and essentials, or similar business that sell food so long as the store has a current permit related to the sale of food and/or beverages from the San Diego County Department of Environmental Health.

- b. “Gathering” is any event or convening that brings together more than one person in a single room or single indoor or outdoor space at the same time. A gathering does not include:
 - i. A gathering consisting only of members of a single family or household.
 - ii. Operations at airports, public transportation or other spaces where persons in transit are able to practice social distancing.
 - iii. Operations at essential businesses as defined in section 21a above and reopened businesses as defined in 21f below and where the other requirements set forth in this Order are followed.
- c. “Long term care facility” is a facility serving adults that require assistance with activities of daily living, including a skilled nursing facility, and that is licensed by the California Department of Community Care and Licensing, or the California Department of Public Health.
- d. “Non-essential personnel” are employees, contractors, or members of the public who do not perform treatment, maintenance, support, or administrative tasks deemed essential to the healthcare mission of the long-term care facility or hospital. Non-essential personnel do not include first responders, nor State, federal, or local officials, investigators, or medical personnel carrying out lawful duties. Non-essential personnel do not include visitors to hospitals and long-term care facilities who are granted entry by the facility’s director, or designee, because they are family or friends who are visiting a resident in an end of life or similar situation, are parents or guardians visiting a child who is a patient, or because of any other circumstances deemed appropriate by the facility director, or designee, and where appropriate precautions by the facility that follow federal, State, and local public health guidance regarding COVID-19 are followed.
- e. “Social distancing” is maintaining a six-foot separation from all persons except for household members, first responders and medical providers or employees conducting temperature screenings.
- f. “Reopened business” is a business that is not an essential business as stated in section

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21a above, and has reopened in conformance with the State of California’s Resilience Roadmap (available at: <https://covid19.ca.gov/roadmap/>), as may be subsequently amended as indicated by the posting of a new State COVID-19 INDUSTRY GUIDANCE for the business. A reopened business may open when the State has posted the applicable COVID-19 INDUSTRY GUIDANCE, the Public Health Officer has posted an acknowledgement of the reopened status on the County of San Diego Coronavirus website and the business has complied with the requirements of this Order.

22. Hotels and lodging establishments may be open for all guests, including tourists and leisure guests, provided they comply with the State COVID-19 Industry Guidance: Hotels, Lodging and Short Term Rentals and complete and post a Safe Reopening Plan pursuant to section 11, above.

23. This Order is issued as a result of the World Health Organization’s declaration of a worldwide pandemic of COVID-19 disease, also known as “novel coronavirus.”

24. This Order is issued based on scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect vulnerable members of the public from avoidable risk of serious illness or death resulting from exposure to COVID-19. The age, condition, and health of a significant portion of the population of the county places it at risk for serious health complications, including death, from COVID-19. Although most individuals who contract COVID-19 do not become seriously ill, persons with mild symptoms and asymptomatic persons with COVID-19 may place other vulnerable members of the public—such as older adults, and those with underlying health conditions—at significant risk.

25. The actions required by this Order are necessary to reduce the number of individuals who will be exposed to COVID-19, and will thereby slow the spread of COVID-19 in the county. By reducing the spread of COVID-19, this Order will help preserve critical and limited healthcare capacity in the county and will save lives.

26. This Order is issued in accordance with, and incorporates by reference: a) the Declaration of Local Health Emergency issued by the Health Officer on February 14, 2020; b) the Proclamation of Local Emergency issued by the County Director of Emergency Services on February 14, 2020; c) the action of the County Board of Supervisors to ratify and continue

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both the local health emergency and local emergency on February 19, 2020; d) the Proclamation of a State of Emergency issued by the Governor of the State of California on March 4, 2020; e) Executive Order N-25-20 issued by the Governor of the State of California on March 12, 2020 which orders that “All residents are to heed any orders and guidance of state and local health officials, including but not limited to the imposition of social distancing measures, to control COVID-19”; f) Proclamation 9984 regarding COVID-19 issued by the President of the United States on March 11, 2020; g) Executive Order N-33-20 issued by the Governor of the State of California on March 19, 2020; h) the “Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes” issued by the CDC; i) COVID-19 guidance issued by the California Department of Public Health on including, but not limited to the Face Coverings Guidance issued on April 1, 2020; and j) the State of California’s “Resilience Roadmap.”

27. This Order is issued to prevent circumstances often present in gatherings that may exacerbate the spread of COVID-19, such as: 1) the increased likelihood that gatherings will attract people from a broad geographic area; 2) the prolonged time period in which large numbers of people are in close proximity; 3) the difficulty in tracing exposure when large numbers of people attend a single event or are at a single location; and 4) the inability to ensure that such persons follow adequate hygienic practices.
28. This Order is issued to provide additional opportunities for recreational activities while also requiring additional protections from the spread of COVID-19 to the public who are taking advantage of these opportunities for recreational activities. And providing additional protections for employees of essential businesses or reopened business and their customers/clients by increasing facial covering requirements and health checks and temperature screening.
29. This Order is issued to protect the public health as businesses are allowed to reopen by requiring businesses to implement procedures necessary to ensure their employees and customers comply with social distancing, sanitation and screening practices.
30. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the CDC, and other public health officials throughout the United States and around the world.
31. Pursuant to Health and Safety Code section 120175.5 (b) all governmental entities in the county shall take necessary measures within the governmental entity’s control to ensure

compliance with this Order and to disseminate this Order to venues or locations within the entity's jurisdiction where gatherings may occur.

32. Violation of this Order is subject to fine, imprisonment, or both. (California Health and Safety Code section 120295.)
33. To the extent necessary, this Order may be enforced by the Sheriff or chiefs of police pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029.
34. Once this Order takes effect it shall supersede the Order of the Health Officer and Emergency Regulations dated June 8, 2020.

IT IS SO ORDERED:

Date: June 15, 2020



Wilma J. Wooten, M.D., M.P.H.
Public Health Officer
County of San Diego

EMERGENCY REGULATIONS

As Director of Emergency Services for the County of San Diego, I am authorized to promulgate regulations for the protection of life and property pursuant to Government Code Section 8634 and San Diego County Code section 31.103. The following shall be in effect for the duration of the Health Officer Order issued above which is incorporated in its entirety by reference:

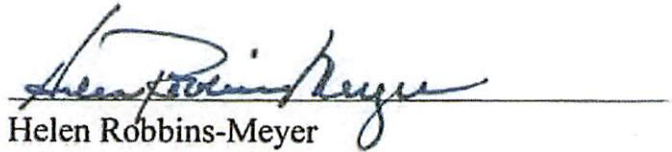
The Health Officer Order shall be promulgated as a regulation for the protection of life and property.

Any person who violates or who refuses or willfully neglects to obey this regulation is subject to

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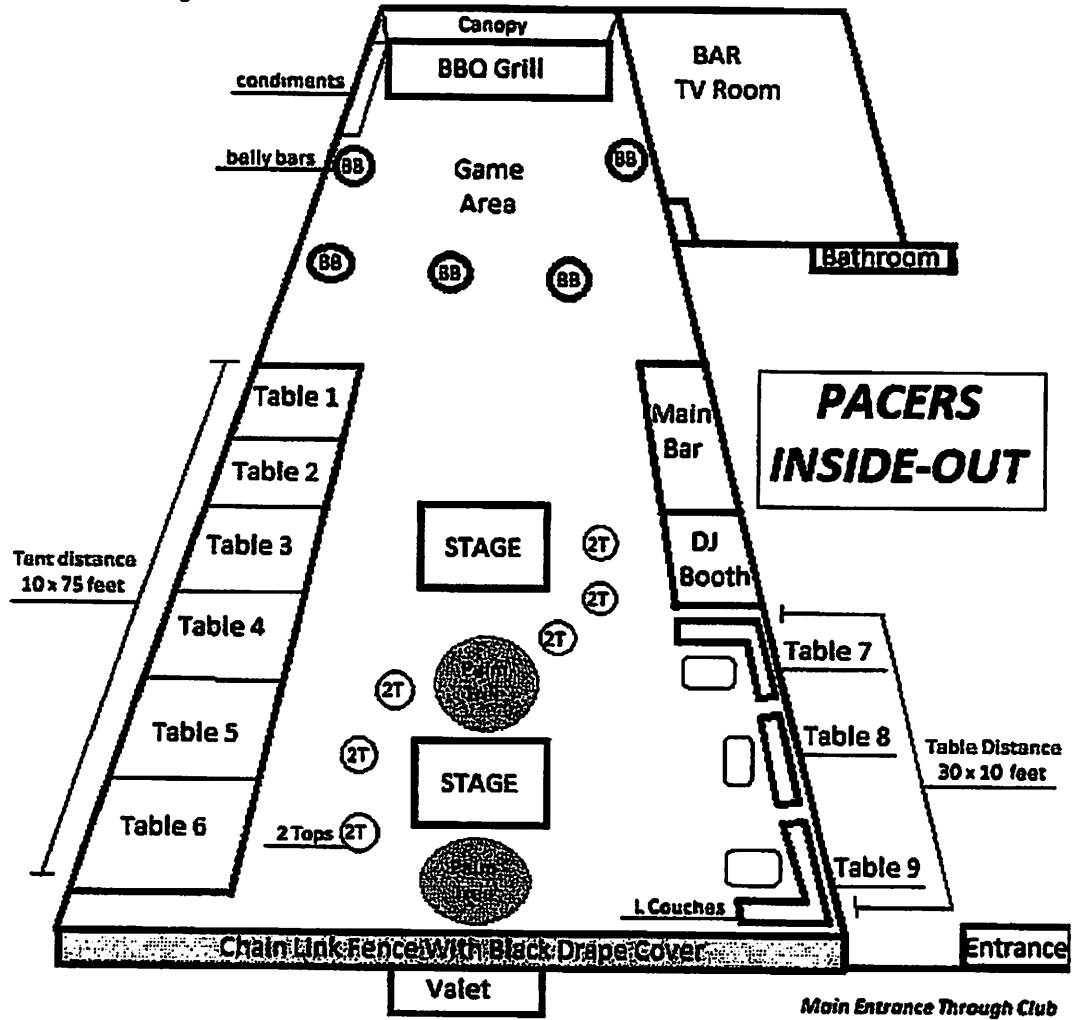
Any person who violates or who refuses or willfully neglects to obey this regulation is subject to fine, imprisonment, or both. (Government Code section 8665.)

Date: June 15, 2020

A handwritten signature in blue ink, appearing to read "Helen Robbins-Meyer", is written over a horizontal line.

Helen Robbins-Meyer
Chief Administrative Officer
Director of Emergency Services
County of San Diego

Pacers Main Parking Lot



Blueprint for a Safer Economy

Activity and Business Tiers

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Critical Infrastructure	Open with modifications	Open with modifications	Open with modifications	Open with modifications
Limited Services	Open with modifications	Open with modifications	Open with modifications	Open with modifications
Outdoor Playgrounds & Outdoor Recreational Facilities**	Open with modifications	Open with modifications	Open with modifications	Open with modifications
Hair Salons & Barbershops	Open Indoors with modifications	Open indoors with modifications	Open indoors with modifications	Open indoors with modifications
All Retail (including critical infrastructure, except standalone grocers)	Open Indoors with modifications • Max 25% capacity	Open Indoors with modifications • Max 50% capacity	Open Indoors with modifications	Open Indoors with modifications

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Shopping Centers (Malls, Destination Centers, Swap Meets)	Open Indoors with modifications <ul style="list-style-type: none"> • Max 25% capacity • Closed common areas • Closed food courts 	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity • Closed common areas • Reduced capacity food courts (see restaurants) 	Open indoors with modifications <ul style="list-style-type: none"> • Closed common areas • Reduced capacity food courts (see restaurants) 	Open Indoors with modifications <ul style="list-style-type: none"> • Reduced capacity food courts (see restaurants)
Personal Care Services****	Open Indoors with modifications	Open indoors with modifications	Open indoors with modifications	Open indoors with modifications
Museums, Zoos, and Aquariums	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> • Indoor activities max 25% capacity 	Open indoors with modifications <ul style="list-style-type: none"> • Indoor activities max 50% capacity 	Open indoors with modifications
Places of Worship	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> • Max 25% capacity or 100 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity or 200 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity
Movie Theaters	Outdoor Only with modifications	Open Indoors with modifications <ul style="list-style-type: none"> • Max 25% capacity or 100 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity or 200 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Hotels and Lodging	Open with modifications	Open with modifications <ul style="list-style-type: none"> +Fitness centers (+10%) 	Open with modifications <ul style="list-style-type: none"> +Fitness centers (+25%) +Indoor pools 	Open with modifications <ul style="list-style-type: none"> +Fitness Centers (50%) +Spa facilities etc.
Gyms and Fitness Centers	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> Max 10% capacity +Climbing walls 	Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity +Indoor pools 	Open indoors with modifications <ul style="list-style-type: none"> +Saunas +Steam rooms Max 50% capacity
Restaurants	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity or 100 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity or 200 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity
Wineries	Outdoor Only with modifications	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> Max 25% capacity indoors, or 100 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity or 200 people indoors, whichever is fewer

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Bars, Breweries, and Distilleries (where no meal provided) (follow restaurants where meal is provided)	Closed	Closed	Open Outdoors with modifications	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity
Family Entertainment Centers	Outdoor Only with modifications e.g. <ul style="list-style-type: none"> • Kart Racing • Mini Golf • Batting Cages 	Outdoor Only with modifications e.g. <ul style="list-style-type: none"> • Kart Racing • Mini Golf • Batting Cages 	Open Indoors for naturally distanced activities with modifications <ul style="list-style-type: none"> • Max 25% capacity • Bowling Alleys 	Open indoors for activities with increased risk of proximity and mixing with modifications <ul style="list-style-type: none"> • Max 50% capacity • Arcade Games • Ice and roller skating • Indoor playgrounds
Cardrooms, Satellite Wagering	Outdoor Only with modifications	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> • Max 25% capacity 	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity
Offices	Remote	Remote	Open indoors with modifications <ul style="list-style-type: none"> • Encourage telework 	Open indoors with modifications <ul style="list-style-type: none"> • Encourage telework
Professional Sports	Open <ul style="list-style-type: none"> • Without live audiences • With modifications 	Open <ul style="list-style-type: none"> • Without live audiences • With modifications 	Open <ul style="list-style-type: none"> • Without live audiences • With modifications 	Open <ul style="list-style-type: none"> • Without live audiences • With modifications

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Live Audience Sports***	Closed	Closed	Outdoors Only <ul style="list-style-type: none"> • Max 20% • Regional visitors (120 miles) • Advanced reservations only • Assigned seating only • In-seat concessions only (No concourse sales) 	Outdoors Only <ul style="list-style-type: none"> • Max 25% • Regional visitors (120 miles) • Advanced reservations only • Assigned seating only • In-seat concessions only (No concourse sales)
Amusement Parks***	Closed	Closed	Smaller Parks Open <ul style="list-style-type: none"> • 25% capacity or 500 people, whichever is fewer • Outdoor attractions only • In-county visitors only • Advanced reservations only 	Larger Parks Open <ul style="list-style-type: none"> • 25% capacity • Advanced reservations only

**Outdoor playgrounds and outdoor recreational facilities updated September 28, 2020

***Personal care services, live audience professional sports and amusement parks updated October 20, 2020

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County of San Diego

HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH SERVICES

ORDER OF THE HEALTH OFFICER AND EMERGENCY REGULATIONS (Effective August 22, 2020)

Pursuant to California Health and Safety Code sections 101040, 120175, and 120175.5 (b) the Health Officer of the County of San Diego (Health Officer) **ORDERS AS FOLLOWS:**

Effective 12:00 a.m. on **Saturday, August 22, 2020** and continuing until further notice, the following will be in effect for San Diego County (county):

1. All persons are to remain in their homes or at their place of residence, except for employees or customers traveling to and from essential businesses, reopened businesses, or essential activities as defined in section 22, below, or to participate in individual or family outdoor activity as allowed by this Order.
2. All public or private “gatherings,” as defined in section 22 below, are prohibited.
3. All businesses not meeting the definition of essential business or reopened business in section 22 below are referred to in this Order as “non-essential businesses” and shall be and remain closed for the duration of this Order. All essential businesses and reopened businesses must comply with the requirements of this Order. Notwithstanding the foregoing, any business may remain open if its employees and owners can provide its services from home, including by telecommuting, without direct contact with the public.
4. **All public, charter, and private schools may hold classes and other school activities only under circumstances permitted by the State and in compliance with the COVID-19 Industry Guidance: Schools and School - Based Programs, and as may be updated or superseded by further State guidance. Institutions of higher education may hold classes or other school activities only under circumstances permitted by the State and in compliance with the COVID – 19 Industry Guidance: Institutions of Higher Education and as may be updated or superseded**

by further State guidance.

5. Child daycare and child care providers shall operate in compliance with the measures set forth in State COVID-19 Updated Guidance: Child Care Programs and Providers and shall prepare and post a Safe Reopening Plan pursuant to section 11, below.
6. “Non-essential personnel,” as defined in section 22 below, are prohibited from entry into any hospital or long-term care facility. All essential personnel who are COVID-19 positive or show any potential signs or symptoms of COVID-19 are strictly prohibited from entry into hospitals or long-term care facilities. Notwithstanding the foregoing, individuals requiring medical care for COVID-19 or related conditions may be admitted to hospitals or other medical facilities if the hospital or medical facility is appropriate for treating COVID-19 and has adequate precautions in place to protect its patients, medical personnel and staff.
7. Hospitals and [healthcare providers](#), including dentists shall:
 - a. Take measures to preserve and prioritize resources; and,
 - b. May authorize and perform non-emergent or elective surgeries or procedures based on their determination of clinical need and supply capacity, and where consistent with State guidance.
 - c. Nothing in this Order shall prevent physicians and other healthcare providers from conducting routine preventive care provided it conforms to any applicable State guidance.
 - d. Nothing in this Order shall prevent dentists or dental hygienists from conducting routine preventive care provided it conforms to any applicable State guidance.
8. Hospitals, healthcare providers, pharmacies and commercial testing laboratories shall report all COVID-19 test results to the Public Health Officer immediately after such results are received.
9. All persons two years of age or older who are present in the county shall have possession of a face covering when they leave their home or place of residence and shall wear the face covering as described and required in California Department of Public Health Face Covering Guidance issued on June 18, 2020, (available at: https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf).

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10. All essential businesses that allow members of the public to enter a facility must prepare and post a “Social Distancing and Sanitation Protocol” on the form available at: https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/SOCIAL_DISTANCING_AND_SANITATION_PROTOCOL_04022020_V1.pdf), or on a form required by another governmental entity requiring substantially similar information, for each of their facilities open to the public in the county. The Social Distancing and Sanitation Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. A copy of the Social Distancing and Sanitation Protocol must also be provided to each employee performing work at the facility. All essential businesses shall implement the Social Distancing and Sanitation Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing and Sanitation Protocol must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing are implemented at each facility that will ensure social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, the business shall promptly modify its Social Distancing and Sanitation Protocols to ensure proper social distancing and sanitation. Any business that fails to successfully implement social distancing and sanitation may be required to close.
11. All reopened businesses, with the exception of restaurants, bars, wineries, distilleries and breweries which do not limit services to take-out or delivery, must prepare and post a “Safe Reopening Plan” on the form available at: https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/Community_Sector_Support/BusinessesandEmployers/SafeReopeningPlanTemplate.pdf for each of their facilities in the county. Restaurants bars, wineries, distilleries and breweries which do not limit services to take-out or delivery, must prepare and post a “COVID-19 Restaurant Operating Protocol” on the form available at https://www.sandiegocounty.gov/content/dam/sdc/deh/fhd/food/pdf/covid19sdrestaurantoperatingprotocol_en.pdf for each restaurant in the county. The Safe Reopening Plan or COVID-19 Restaurant Operating Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. A copy of the Safe Reopening Plan or COVID-19 Restaurant Operating Protocol must also be provided to each employee performing work at the facility. All reopened businesses shall implement the Safe Reopening Plan or COVID-19 Restaurant Operating Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Safe Reopening Plan or COVID-19 Restaurant Operating Protocol must ensure all required measures are implemented. If the

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measures identified and implemented are not effective in maintaining proper social distancing and sanitation, the business shall promptly modify its Safe Reopening Plan or COVID-19 Restaurant Operating Protocol to ensure proper social distancing and sanitation. Any business that fails to comply with its Safe Reopening Plan or COVID-19 Restaurant Operating Protocol shall immediately close.

12. When the State of California has issued an [industry guidance](#), or any subsequent amendments thereto, with mandatory and/or suggested measures to be implemented by a particular type of business or industry, a reopened business must include in its Safe Reopening Plan all of the industry guidance mandatory measures, including, but not limited to, all of the requirements and guidance set forth in the Statewide Public Health Officer Order, issued by the California Department of Health Services on July 13, 2020, all portions of which are operative in San Diego County effective immediately, and available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>. The reopened business shall include all suggested measures necessary to maintain proper sanitation, employee screening, social distancing and facial coverings. Any mandatory measures required by this Order must also be included in the Safe Reopening Plan.
13. All brewpubs, breweries, bars and pubs shall close unless they comply with section 14c, below, in which case they shall comply with all other requirements in this section and section 14 below. All other restaurants, bars, wineries, distilleries and breweries shall close indoor service in conformance with the requirements set forth in the Statewide Public Health Officer Order, issued by the California Department of Health Services on July 13, 2020, all portions of which are operative in San Diego County effective immediately, and available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>, and shall be closed from 10:00 p.m. until 5:00 a.m. every day. Guests already in the facility at 10:00 p.m. may remain in the facility until 11:00 p.m. Only staff needed to close, open or clean shall be in the facility between the hours of 11:00 p.m. and 5:00 a.m.
14. All restaurants, bars, wineries and breweries shall also be required to ensure their customers comply with all of the following measures and shall immediately close if they are not able to do so:
 - a. No food or beverages shall be served to or consumed by a customer who is not seated at a table designated by the restaurant for dining.

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- b. The bar area of a restaurant may be used only for table service of meals.
- c. Alcoholic drinks shall only be served as part of a meal and must be sold and served in the same transaction as the meal. All meals shall be served by a food operator permitted by the San Diego County Department of Environmental Health. This restriction shall not be applicable to outdoor service of wine at a winery or spirits at a distillery.
- d. Customers shall not stand in the restaurant, bar, winery, distillery or brewery except in the reception area while waiting for a table or to pick up take-out food. If customers cannot be socially distanced in the reception area they shall wait in their cars or outside of the restaurant in a line with six feet between each customer.
- e. Discontinue open seating. All members of the party must be present before seating and the host must bring the entire party to the table at one time. The customers allowed at a table are limited to members of a single household or customers who have asked to be seated together at the time a table is requested.
- f. Discontinue seating customers and/or groups at bar counters, sushi preparation bars, etc. where they cannot maintain at least six feet of distance from employee work areas/stations. Install physical barriers or partitions in areas where maintaining a physical distance of six feet is difficult.
- g. Customers are not required to wear face coverings while at a table with members of the same household. Customers at a table with non-household members are not required to wear face coverings when eating and drinking. Customers are required to wear face coverings at all other times in conformance with paragraph 9, above.
- h. Tables designated for dining shall be six feet apart, or separated by barriers or partitions that extend above the heads of customers while seated. Customer shall not be allowed to bring additional chairs to the table that interfere with the six foot separation.
- i. Self-serve food or drink options, such as buffets, salad bars, and drink stations are not allowed.
- j. Shared entertainment items such as board games, arcade games and vending machines are prohibited and customers shall not have access to game and entertainment areas such as pool tables or darts.
- k. Dance floors shall be closed and live performances such as musical or dance acts shall be discontinued.
- l. Any customer that refuses to comply with this section shall be subject to enforcement per Health and Safety Code section 120295.

15. Places of Worship – Religious services and cultural ceremonial activities (including wedding ceremonies but not receptions) may be conducted in conformance with the State Guidance pursuant to sections 11 and 12, above. Given the high risk of this activity, vulnerable members

of the population (over 65 years old, compromised immune system or underlying condition) are strongly encouraged to participate through streaming or some other form of remote technology. Outdoor services and cultural ceremonial activities may be conducted provided all persons practice social distancing as defined in section 22e, below.

16. Each essential business and reopened business shall:

- a. Require all employees/on-site contractors (hereinafter referred to as employees) to have possession of face coverings and wear them as described in section 9 above when in the business facility; and,
- b. **Require** temperature screening of all employees and prohibit entry to the workplace of employees with a temperature of 100 degrees or more, employees exhibiting COVID-19 symptoms as described by the Centers for Disease Control and Prevention, or employees who have recently been exposed to a person who has tested positive for COVID-19 (either directly or through a breach of Personal Protective Equipment in the case of healthcare workers/first responders); and
- c. Take all of the following actions if an employer becomes aware that an employee is diagnosed with COVID-19:
 - i. Promptly notify the County Department of Public Health that there is an employee diagnosed with COVID-19, together with the name, date of birth, and contact information of the employee.
 - ii. Cooperate with the County Department of Public Health's COVID-19 response team to identify and provide contact information for any persons exposed by the employee at the workplace.
 - iii. Provide notice of the exposure to any employees, and contractors (who regularly work at the workplace), who may have been exposed to COVID-19, as stated in the State's COVID-19 Employer Playbook for a Safe Reopening, available at {<https://files.covid19.ca.gov/pdf/employer-playbook-for-safe-reopening--en.pdf>}.

17. Outdoor Recreation

- a. Each public park and recreation area or facility, shall operate in compliance with the measures set forth in the State COVID-19 Industry Guidance: Campgrounds, RV Parks and Outdoor Recreation. The operator of the park shall prepare a Safe Reopening Plan pursuant to section 11, above, indicating how the park or recreation facility will implement the required measures. Any park or recreation area/facility at which the Protocol requirements cannot be effectively implemented may be required to close.

- b. Outdoor recreation instruction and day camps that comply with the State COVID-19 Industry Guidance: Day Camps, may be conducted in park and recreation areas/facilities.
 - c. Swimming pools owned or operated by a Homeowners' Association, Condominium or Apartment complex may be open provided the owner or operator completes and posts a Safe Reopening Plan that shows conformance with the requirements of this Order and with the swimming pool/aquatic venues requirements of the State COVID-19 Industry Guidance on Fitness Facilities.
18. All essential businesses and reopened businesses that remain in operation in accordance with the Order shall make every effort to use telecommuting for their workforces.
19. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home or other suitable location.
20. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://wwwnc.cdc.gov/travel/notices>) shall be subject to 14-day home or other suitable location quarantine and self-monitoring.
21. Persons who have been diagnosed with COVID-19, or who are likely to have COVID-19, shall comply with the Order of the Health Officer titled: "Isolation of All Persons with or Likely to have COVID-19", or as subsequently amended. Persons who have a close contact with a person who either has COVID-19, or is likely to have COVID-19, shall comply with the Order of the Health Officer titled: "Quarantine of Persons Exposed to COVID-19," or as subsequently amended. Both orders are available at: https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/2019-nCoV/health-order.html. If a more specific isolation or quarantine order is issued to a person, that order shall be followed.
22. For purposes of this Order:
- a. "Essential business" is any business or activity (or a business/activity that employs/utilizes workers) designated by the State Public Health Officer as "Essential Critical Infrastructure Workers" set forth in: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>) as that list may be updated from time-to-time, and referenced in Executive Order N-33-20 issued by the Governor of the State of

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California. For the purposes of this Order, the following businesses in the Food and Agriculture Sector are considered “groceries” or “other retail that sells food and beverages”: grocery stores, corner stores and convenience stores, liquor stores that sell food, farmer’s markets, food banks, farm and produce stands, supermarkets, big box stores that sell groceries and essentials, or similar business that sell food so long as the store has a current permit related to the sale of food and/or beverages from the San Diego County Department of Environmental Health.

- b. “Gathering” is any event or convening that brings together more than one person in a single room or single indoor or outdoor space at the same time. A gathering does not include:
 - i. A gathering consisting only of members of a single family or household.
 - ii. Operations at airports, public transportation or other spaces where persons in transit are able to practice social distancing.
 - iii. Operations at essential businesses as defined in section 22a above and reopened businesses as defined in 22f below and where the other requirements set forth in this Order are followed.
- c. “Long term care facility” is a facility serving adults that require assistance with activities of daily living, including a skilled nursing facility, and that is licensed by the California Department of Community Care and Licensing, or the California Department of Public Health.
- d. “Non-essential personnel” are employees, contractors, or members of the public who do not perform treatment, maintenance, support, or administrative tasks deemed essential to the healthcare mission of the long-term care facility or hospital. Non-essential personnel do not include first responders, nor State, federal, or local officials, investigators, or medical personnel carrying out lawful duties. Non-essential personnel do not include visitors to hospitals and long-term care facilities who are granted entry by the facility’s director, or designee, because they are family or friends who are visiting a resident in an end of life or similar situation, are parents or guardians visiting a child who is a patient, or because of any other circumstances deemed appropriate by the facility director, or designee, and where appropriate precautions by the facility that follow federal, State, and local public health guidance regarding COVID-19 are followed.
- e. “Social distancing” is maintaining a six-foot separation from all persons except for household members, first responders and medical providers or employees conducting temperature screenings.
- f. “Reopened business” is a business that is not an essential business as stated in section

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22a above, and has reopened in conformance with the State of California’s Resilience Roadmap (available at: <https://covid19.ca.gov/roadmap-counties/>) and the Statewide Public Health Officer Order, issued by the California Department of Health Services on July 13, 2020, all portions of which are operative in San Diego County effective immediately, and available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>}. A reopened business may open when the State has posted the applicable COVID-19 INDUSTRY GUIDANCE, the Public Health Officer has posted an acknowledgement of the reopened status on the County of San Diego Coronavirus website and the business has complied with the requirements of this Order.

23. Hotels and lodging establishments may be open for all guests, including tourists and leisure guests, provided they comply with the State COVID-19 Industry Guidance: Hotels, Lodging and Short Term Rentals and complete and post a Safe Reopening Plan pursuant to section 11, above.
24. This Order is issued as a result of the World Health Organization’s declaration of a worldwide pandemic of COVID-19 disease, also known as “novel coronavirus.”
25. This Order is issued based on scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect vulnerable members of the public from avoidable risk of serious illness or death resulting from exposure to COVID-19. The age, condition, and health of a significant portion of the population of the county places it at risk for serious health complications, including death, from COVID-19. Although most individuals who contract COVID-19 do not become seriously ill, persons with mild symptoms and asymptomatic persons with COVID-19 may place other vulnerable members of the public—such as older adults, and those with underlying health conditions—at significant risk.
26. The actions required by this Order are necessary to reduce the number of individuals who will be exposed to COVID-19, and will thereby slow the spread of COVID-19 in the county. By reducing the spread of COVID-19, this Order will help preserve critical and limited healthcare capacity in the county and will save lives.
27. This Order is issued in accordance with, and incorporates by reference: a) the Declaration of Local Health Emergency issued by the Health Officer on February 14, 2020; b) the

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Proclamation of Local Emergency issued by the County Director of Emergency Services on February 14, 2020; c) the action of the County Board of Supervisors to ratify and continue both the local health emergency and local emergency on February 19, 2020; d) the Proclamation of a State of Emergency issued by the Governor of the State of California on March 4, 2020; e) Executive Order N-25-20 issued by the Governor of the State of California on March 12, 2020 which orders that “All residents are to heed any orders and guidance of state and local health officials, including but not limited to the imposition of social distancing measures, to control COVID-19”; f) Proclamation 9984 regarding COVID-19 issued by the President of the United States on March 11, 2020; g) Executive Order N-33-20 issued by the Governor of the State of California on March 19, 2020; h) the “Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes” issued by the CDC; i) COVID-19 guidance issued by the California Department of Public Health on including, but not limited to the Face Coverings Guidance issued on April 1, 2020; and j) the State of California’s “Resilience Roadmap.”

28. This Order is issued to prevent circumstances often present in gatherings that may exacerbate the spread of COVID-19, such as: 1) the increased likelihood that gatherings will attract people from a broad geographic area; 2) the prolonged time period in which large numbers of people are in close proximity; 3) the difficulty in tracing exposure when large numbers of people attend a single event or are at a single location; and 4) the inability to ensure that such persons follow adequate hygienic practices.
29. This Order is issued to provide additional opportunities for recreational activities while also requiring additional protections from the spread of COVID-19 to the public who are taking advantage of these opportunities for recreational activities. And providing additional protections for employees of essential businesses or reopened business and their customers/clients by increasing facial covering requirements and health checks and temperature screening.
30. This Order is issued to protect the public health as businesses are allowed to reopen by requiring businesses to implement procedures necessary to ensure their employees and customers comply with social distancing, sanitation and screening practices.
31. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the CDC, and other public health officials throughout the United States and around the world.

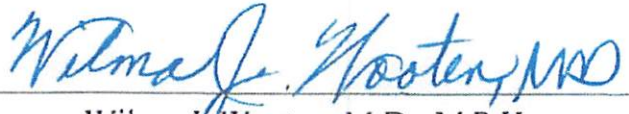
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32. The statement of facts and circumstances set forth as justification for each Guidance issued by the California Department of Health Services that is referenced in this Order are hereby accepted and incorporated by reference into this Order.
33. Pursuant to Health and Safety Code section 120175.5 (b) all governmental entities in the county shall take necessary measures within the governmental entity's control to ensure compliance with this Order and to disseminate this Order to venues or locations within the entity's jurisdiction where gatherings may occur.
34. Violation of this Order is subject to fine, imprisonment, or both. (California Health and Safety Code section 120295.)
35. To the extent necessary, this Order may be enforced by the Sheriff or chiefs of police pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029.

36. Once this Order takes effect it shall supersede the Order of the Health Officer and Emergency Regulations dated August 7, 2020.

IT IS SO ORDERED:

Date: August 21, 2020



Wilma J. Wooten, M.D., M.P.H.
Public Health Officer
County of San Diego

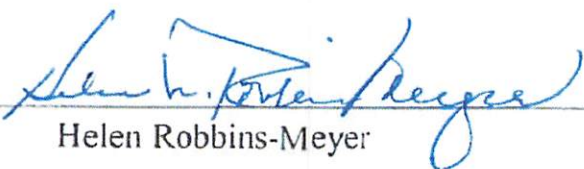
EMERGENCY REGULATIONS

As Director of Emergency Services for the County of San Diego, I am authorized to promulgate regulations for the protection of life and property pursuant to Government Code Section 8634 and San Diego County Code section 31.103. The following shall be in effect for the duration of the Health Officer Order issued above which is incorporated in its entirety by reference:

The Health Officer Order shall be promulgated as a regulation for the protection of life and property.

Any person who violates or who refuses or willfully neglects to obey this regulation is subject to fine, imprisonment, or both. (Government Code section 8665.)

Date: August 21, 2020



Helen Robbins-Meyer
Director of Emergency Services
County of San Diego

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County of San Diego

HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH SERVICES

ORDER OF THE HEALTH OFFICER AND EMERGENCY REGULATIONS (Effective September 1, 2020)

Pursuant to California Health and Safety Code sections 101040, 120175, and 120175.5 (b) the Health Officer of the County of San Diego (Health Officer) **ORDERS AS FOLLOWS:**

Effective 12:01 a.m. on Tuesday, September 1, 2020 and continuing until further notice, the following will be in effect for San Diego County (county):

1. All persons are to remain in their homes or at their place of residence, except for employees or customers traveling to and from essential businesses or reopened businesses as defined in sections 10 and 11, below, or to participate in individual or family outdoor activity as allowed by this Order.
2. All public or private “gatherings,” as defined in section 15 below, are prohibited.
3. All public, charter, and private schools may hold classes and other school activities only under circumstances permitted by the State and in compliance with the [COVID-19 Industry Guidance: Schools and School - Based Programs](#), and as may be updated or superseded by further State guidance. Institutions of higher education may hold classes or other school activities only under circumstances permitted by the State and in compliance with the [COVID – 19 Industry Guidance: Institutions of Higher Education](#) and as may be updated or superseded by further State guidance.
4. Child daycare and child care providers shall operate in compliance with the measures set forth in State [COVID-19 Updated Guidance: Child Care Programs and Providers](#) and shall prepare and post a Safe Reopening Plan pursuant to section 11c, below.
5. “Non-essential personnel,” as defined in section 15b below, are prohibited from entry into any hospital or long-term care facility. All essential personnel who are COVID-19 positive or



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show any potential signs or symptoms of COVID-19 are strictly prohibited from entry into hospitals or long-term care facilities. Notwithstanding the foregoing, individuals requiring medical care for COVID-19 or related conditions may be admitted to hospitals or other medical facilities if the hospital or medical facility is appropriate for treating COVID-19 and has adequate precautions in place to protect its patients, medical personnel and staff.

6. Hospitals and [healthcare providers](#), including dentists shall:
 - a. Take measures to preserve and prioritize resources; and,
 - b. May authorize and perform non-emergent or elective surgeries or procedures based on their determination of clinical need and supply capacity, and where consistent with State guidance.
 - c. Nothing in this Order shall prevent physicians and other healthcare providers from conducting routine preventive care provided it conforms to any applicable State guidance.
 - d. Nothing in this Order shall prevent dentists or dental hygienists from conducting routine preventive care provided it conforms to any applicable State guidance.

7. Hospitals, healthcare providers, pharmacies and commercial testing laboratories shall report all COVID-19 test results to the Public Health Officer immediately after such results are received.

8. Face coverings shall be worn as described and required in California Department of Public Health Face Covering Guidance issued on June 18, 2020, (available at: https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf).

9. All businesses not meeting the definition of essential business or reopened business in section 10 and 11 below are referred to in this Order as “non-essential businesses” and shall be and remain closed for the duration of this Order. All essential businesses and reopened businesses must comply with the requirements of this Order. Notwithstanding the foregoing, any business may remain open if its employees and owners can provide its services from home, including by telecommuting, without direct contact with the public.

10. ESSENTIAL BUSINESSES

- a. “Essential business” is any business or activity (or a business/activity that employs/utilizes workers) designated by the State Public Health Officer as “Essential

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Critical Infrastructure Workers” set forth in: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>) as that list may be updated from time-to-time, and referenced in Executive Order N-33-20 issued by the Governor of the State of California.

- b. All essential businesses that allow members of the public to enter a facility must prepare and post a “Social Distancing and Sanitation Protocol” on the form available at: https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/SOCIAL_DISTANCING_AND_SANITATION_PROTOCOL_04022020_V1.pdf), or on a form required by another governmental entity requiring substantially similar information, for each of their facilities open to the public in the county. The Social Distancing and Sanitation Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. A copy of the Social Distancing and Sanitation Protocol must also be provided to each employee performing work at the facility. All essential businesses shall implement the Social Distancing and Sanitation Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing and Sanitation Protocol must describe all measures required in section c below. Any business that fails to prepare and successfully implement a Social Distancing and Sanitation Protocol shall immediately close.
- c. When the State of California has issued an industry guidance, or any subsequent amendments thereto, with mandatory or suggested restrictions and/or measures to be implemented by a particular sector of essential business, every essential business in that sector must comply with the guidance and shall include in its Social Distancing and Sanitation Protocol (prepared pursuant to section d, below) all of the measures listed in the industry guidance. Any mandatory measures required by this Order must also be included in a Social Distancing and Sanitation Protocol.

11. REOPENED BUSINESSES

- a. “Reopened business” is a business that is not an essential business as defined in section 10a above, and has reopened in conformance with the State of California’s Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe (available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx> Statewide Public Health Officer Order, issued by the California Department of Health Services on August 28, 2020, all portions of which are operative in San Diego County

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effective immediately, and available at { https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/8-28-20_Order-Plan-Reducing-COVID19-Adjusting-Permitted-Sectors-Signed.pdf}. A

reopened business may open when the Public Health Officer has posted an acknowledgement of the reopened status on the County of San Diego Coronavirus website and the business has complied with the requirements of this Order.

- b. The State of California’s Blueprint for a Safer Economy establishes a four tier system for reopening business sectors. Those business sectors listed in the “Substantial/Tier2” column of the [Activities and Business Tiers](#) chart are allowed to reopen under the conditions set forth in the chart.

- i. Every business in the following sectors listed in the [Activities and Business Tiers](#) shall require all customers who receive services indoors or use indoor facilities to sign in with their name and telephone number:

1. Hair Salons & Barbershops
2. Personal Care Services
3. Gyms & Fitness Centers
4. Restaurants, Wineries, Bars, Breweries, and Distilleries (where meal is provided) as required in section g below.

- c. All reopened businesses, with the exception of restaurants, bars, wineries, distilleries and breweries which do not limit services to take-out or delivery, must prepare and post a “Safe Reopening Plan” on the form available at: https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/Community_Sector_Support/BusinessesandEmployers/SafeReopeningPlan_Template.pdf for each of their facilities in the county. Restaurants bars, wineries, distilleries and breweries which do not limit services to take-out or delivery, must prepare and post a “COVID-19 Restaurant Operating Protocol” on the form found at https://www.sandiegocounty.gov/content/dam/sdc/deh/fhd/food/pdf/covid19sdrestaurantoperatingprotocol_en.pdf for each restaurant in the county.

- d. The Safe Reopening Plan or COVID-19 Restaurant Operating Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. A copy of the Safe Reopening Plan or COVID-19 Restaurant Operating Protocol must also be provided to each employee performing work at the facility. All reopened businesses shall implement the Safe Reopening Plan or COVID-19 Restaurant Operating Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Safe Reopening Plan or COVID-19 Restaurant Operating Protocol must describe all measures required in section e, below.

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Any business that fails to prepare and comply with its Safe Reopening Plan or COVID-19 Restaurant Operating Protocol shall immediately close.

- e. When the State of California has issued an industry guidance, or any subsequent amendments thereto, with mandatory or suggested restrictions and/or measures to be implemented by a particular sector of reopened business, every reopened business in that sector must comply with the guidance and shall include in its Safe Reopening Plan or COVID-19 Restaurant Operating Protocol (prepared pursuant to section c, above) all of the measures listed in the industry guidance. Any mandatory measures required by this Order must also be included in a Social Distancing and Sanitation Protocol.
- f. All restaurants, bars, wineries, distilleries and breweries shall be closed from 10:00 p.m. until 5:00 a.m. every day. Guests already in the facility at 10:00 p.m. may remain in the facility until 11:00 p.m. Only staff needed to close, open or clean shall be in the facility between the hours of 11:00 p.m. and 5:00 a.m.
- g. All restaurants, bars, wineries, distilleries and breweries which are allowed to provide indoor service pursuant to the State of California Dine-in Restaurant Guidance shall comply with the following additional requirements applicable only to persons dining indoors:
 - i. Limiting persons sitting at a table to members of the same household is strongly encouraged.
 - ii. The restaurant shall obtain the name of each guest seated at a table and the telephone number of at least one guest and shall maintain the list of names and telephone numbers for three weeks.
 - iii. Guests will be required to wear face coverings at all times while in the facility, including when seated at a table before the meal is served and after the meal is finished

12. Each essential business and reopened business shall take all of the following actions if an employer becomes aware that an employee is diagnosed with COVID-19:

- i. Promptly notify the County Department of Public Health that there is an employee diagnosed with COVID-19, together with the name, date of birth, and contact information of the employee.
- ii. Cooperate with the County Department of Public Health's COVID-19 response team to identify and provide contact information for any persons exposed by the employee at the workplace.
- iii. Provide notice of the exposure to any employees, and contractors (who regularly work at the workplace), who may have been exposed to COVID-19, as stated in the State's COVID-19 Employer Playbook for a Safe

Reopening, available at {<https://files.covid19.ca.gov/pdf/employer-playbook-for-safe-reopening--en.pdf>}.

13. Outdoor Recreation

- a. Each public park and recreation area or facility, shall operate in compliance with the measures set forth in the [State COVID-19 Industry Guidance: Campgrounds, RV Parks and Outdoor Recreation](#). The operator of the park shall prepare a Safe Reopening Plan pursuant to section 11, above, indicating how the park or recreation facility will implement the required measures. Any park or recreation area/facility at which the Protocol requirements cannot be effectively implemented may be required to close.
- b. Outdoor recreation instruction and day camps that comply with the State COVID-19 Industry Guidance: Day Camps, may be conducted in park and recreation areas/facilities.

14. Persons who have been diagnosed with COVID-19, or who are likely to have COVID-19, shall comply with the Order of the Health Officer titled: “Isolation of All Persons with or Likely to have COVID-19”, or as subsequently amended. Persons who have a close contact with a person who either has COVID-19, or is likely to have COVID-19, shall comply with the Order of the Health Officer titled: “Quarantine of Persons Exposed to COVID-19,” or as subsequently amended. Both orders are available at: https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/2019-nCoV/health-order.html. If a more specific isolation or quarantine order is issued to a person, that order shall be followed.

15. For purposes of this Order:

- a. “Gathering” is any event or convening that brings together more than one person in a single room or single indoor or outdoor space at the same time. A gathering does not include:
 - i. A gathering consisting only of members of a single family or household.
 - ii. Operations at airports, public transportation or other spaces where persons in transit are able to practice social distancing.
 - iii. Operations at essential businesses as defined in section 15a above and reopened businesses as defined in 15f below and where the other requirements set forth in this Order are followed.
 - iv. A religious service or cultural ceremony including a wedding ceremony which is allowed provided [the State Guidance on Places of Worship and Providers of Religious Services and Cultural Ceremonies](#) is followed.

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However a wedding reception is a gathering and is not allowed.

- v. Outdoor protests in which participants maintain social distancing and wear face coverings at all times.
- b. “Non-essential personnel” are employees, contractors, or members of the public who do not perform treatment, maintenance, support, or administrative tasks deemed essential to the healthcare mission of the long-term care facility or hospital. Non-essential personnel do not include first responders, nor State, federal, or local officials, investigators, or medical personnel carrying out lawful duties. Non-essential personnel do not include visitors to hospitals and long-term care facilities who are granted entry by the facility’s director, or designee, because they are family or friends who are visiting a resident in an end of life or similar situation, are parents or guardians visiting a child who is a patient, or because of any other circumstances deemed appropriate by the facility director, or designee, and where appropriate precautions by the facility that follow federal, State, and local public health guidance regarding COVID-19 are followed.
- c. “Social distancing” is maintaining a six-foot separation from all persons except for household members, first responders and medical providers or employees conducting temperature screenings.

16. This Order is issued as a result of the World Health Organization’s declaration of a worldwide pandemic of COVID-19 disease, also known as “novel coronavirus.”

17. This Order is issued based on scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect vulnerable members of the public from avoidable risk of serious illness or death resulting from exposure to COVID-19. The age, condition, and health of a significant portion of the population of the county places it at risk for serious health complications, including death, from COVID-19. Although most individuals who contract COVID-19 do not become seriously ill, persons with mild symptoms and asymptomatic persons with COVID-19 may place other vulnerable members of the public—such as older adults, and those with underlying health conditions—at significant risk.

18. The actions required by this Order are necessary to reduce the number of individuals who will be exposed to COVID-19, and will thereby slow the spread of COVID-19 in the county. By reducing the spread of COVID-19, this Order will help preserve critical and limited healthcare capacity in the county and will save lives.

19. This Order is issued in accordance with, and incorporates by reference: a) the Declaration of Local Health Emergency issued by the Health Officer on February 14, 2020; b) the Proclamation of Local Emergency issued by the County Director of Emergency Services on February 14, 2020; c) the action of the County Board of Supervisors to ratify and continue both the local health emergency and local emergency on February 19, 2020; d) the Proclamation of a State of Emergency issued by the Governor of the State of California on March 4, 2020; e) Executive Order N-25-20 issued by the Governor of the State of California on March 12, 2020 which orders that “All residents are to heed any orders and guidance of state and local health officials, including but not limited to the imposition of social distancing measures, to control COVID-19”; f) Proclamation 9984 regarding COVID-19 issued by the President of the United States on March 11, 2020; g) Executive Order N-33-20 issued by the Governor of the State of California on March 19, 2020; h) the “Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes” issued by the CDC; i) COVID-19 guidance issued by the California Department of Public Health on including, but not limited to the Face Coverings Guidance issued on April 1, 2020; j) the State of California’s “Resilience Roadmap;” the State of California’s Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe; and, the California Statewide Public Health Officer Order dated August 28, 2020.
20. This Order is issued to prevent circumstances often present in gatherings that may exacerbate the spread of COVID-19, such as: 1) the increased likelihood that gatherings will attract people from a broad geographic area; 2) the prolonged time period in which large numbers of people are in close proximity; 3) the difficulty in tracing exposure when large numbers of people attend a single event or are at a single location; and 4) the inability to ensure that such persons follow adequate hygienic practices.
21. This Order is issued to provide additional opportunities for recreational activities while also requiring additional protections from the spread of COVID-19 to the public who are taking advantage of these opportunities for recreational activities. And providing additional protections for employees of essential businesses or reopened business and their customers/clients.
22. This Order is issued to protect the public health as businesses are allowed to reopen by requiring businesses to implement procedures necessary to ensure their employees and

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customers comply with social distancing, sanitation and screening practices.

23. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the CDC, and other public health officials throughout the United States and around the world.
24. The statement of facts and circumstances set forth as justification for each Guidance issued by the California Department of Health Services that is referenced in this Order are hereby accepted and incorporated by reference into this Order.
25. Pursuant to Health and Safety Code section 120175.5 (b) all governmental entities in the county shall take necessary measures within the governmental entity's control to ensure compliance with this Order and to disseminate this Order to venues or locations within the entity's jurisdiction where gatherings may occur.
26. Violation of this Order is subject to fine, imprisonment, or both. (California Health and Safety Code section 120295.)
27. To the extent necessary, this Order may be enforced by the Sheriff or chiefs of police pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029.

28. Once this Order takes effect it shall supersede the Order of the Health Officer and Emergency Regulations dated August 7, 2020.

IT IS SO ORDERED:

Date: August 31, 2020



Wilma J. Wooten, M.D., M.P.H.
Public Health Officer
County of San Diego

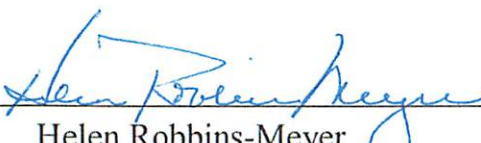
EMERGENCY REGULATIONS

As Director of Emergency Services for the County of San Diego, I am authorized to promulgate regulations for the protection of life and property pursuant to Government Code Section 8634 and San Diego County Code section 31.103. The following shall be in effect for the duration of the Health Officer Order issued above which is incorporated in its entirety by reference:

The Health Officer Order shall be promulgated as a regulation for the protection of life and property.

Any person who violates or who refuses or willfully neglects to obey this regulation is subject to fine, imprisonment, or both. (Government Code section 8665.)

Date: August 31, 2020



Helen Robbins-Meyer
Chief Administrative Officer
Director of Emergency Services
County of San Diego

From: Trever <trever.shamshoian@midwayclub.net>
Sent: Thursday, August 20, 2020 3:04 PM
To: DayJ@sandiego.gov; Jason Saccuzzo
Subject: Pacers Midway Bar and Grill

Good Afternoon Dr. Day,

Thank you for keeping in contact with us while we continue to work with the City of San Diego (the "City") toward a plan that will address *all* legitimate concerns regarding our reopening plan. To that end, we attempted to reach you by phone last week, but your voice mail was full. We assume you have been very busy fielding questions, so we are writing this email to pick-up on our conversation and gather more information regarding what we need to do to gain the City's approval to resume our normal services.

As we discussed over the last week, Midway Venture, LLC *dba* Pacers ("Pacers") has done everything possible to comply with both the letter and spirit of the CDC guidelines, and the guidelines of the City for reopening. In fact, I would respectfully submit that we have gone above and beyond the applicable guidelines, and the safety of our patrons, staff, and adult entertainers is our paramount concern. Below is a list of what we have implemented to keep our patrons, staff, and adult entertainers safe:

1. Mandatory Masks and Gloves for staff.
2. Temperature checks for staff and guests before entering the premises.
3. Mandatory masks for guests unless seated for dining.
4. All tables have clean linens and wiped down then replaced after customers use.
5. All cups, plates, utensils and condiments are disposable.
6. Tables are all placed 6ft apart.
7. All line areas are marked with 6 foot markers.
8. Occupancy limited per CDC guideline

As it relates to adult entertainment, below are the additional precautions that we identified in our plan to be implemented:

1. Stages located on 2 foot platforms, located 15 feet away from any tables.
2. Stages are also roped off with signs strictly advising all guests to not pass the designated area as well as not gather around the stages.
3. Strict policy of only 1 artist performer per stage. Never allowing more than one performer on stage at a time.
4. All stage equipment is sanitized and cleaned after each artist performance.

5. All performances are monitored with strict dress code including mandatory mask coverings while performing.
6. Audio stage for MC is located 15 feet from any tables, roped off and designated for 1 person only.
7. Audio stage is sanitized and cleaned after every daily use.
8. MC is required to wear mandatory face mask.
9. Our designated MC's main duties are to consistently remind guests of our strict guidelines and notifying guests to consistently follow our guidelines.

For a better understanding of our outdoor venue layout please see the diagram below, which we previously submitted to the City with our opening plans to gain a permit to reopen. Notably, there was no mention by the City that performances by individual adult entertainers would be prohibited if they followed the foregoing guidelines.

Again, we would respectfully submit that we have *gone above and beyond* virtually all other establishments in the City, and that we have implemented policies that are *far* stricter than the ones recommended by the CDC. Unfortunately, however, we have been subjected to what would appear to be arbitrary and selective enforcement. Last week you advised that "no outdoor performances are allowed in the city," yet churches (for example), exercising their 1st Amendment rights, were allowed to reopen outside for services, which would include signing and preaching in front of crowds. As it relates to health and safety, there can be no legitimate distinction between an adult entertainer performing *alone* on a stage in front of a group of patrons exercising social distancing (and other precautions) and a pastor giving a sermon to a group of church goers. Indeed, adult entertainment establishments, such as Pacers, are similarly situated as churches in that like churches, adult entertainment establishments have rights under the 1st Amendment.

Churches are just one example of other organizations that have been allowed to engage in conduct that has been prohibited among adult entertainment establishments such as Pacers. Due to that disparate treatment we decided to spend the following days observing other activities, venues, and businesses within the City to see if the statement "no performers" was in fact being enforced by City law enforcement, and the amount of contradicting proof we gathered to date is staggering.

For example, last week we gathered photo/video footage of numerous forms of entertainment/performances around the City that, with law enforcement nearby, was allowed to occur. These activities were not prevented, and the footage we gathered ranges from live bands at local restaurant-bars, individual guitarists, live DJs, outdoor gaming and rides at Belmont Park, a massive indoor pool with hundreds of unmasked children and adults at *Plunge Mission Beach etc.* The most concerning evidence that we have found is that there is in fact other similar adult entertainment establishments in Orange County that have copied our outdoor layout and is fully functioning with performers without any prohibitions by the county. As such, we must know whether this is in fact a statewide and/or citywide mandate that you claim. If this is not a statewide or citywide prohibition, then why is Pacers being singled out for disparate treatment? We can logically arrive at only one answer. It would seem to be that there is a hostility

against the First Amendment protected performances of adult entertainers, despite the fact that these performances would be conducted in full compliance with all applicable social distancing guidelines as stated above. The fact that some would object to these performances on moral grounds is not grounds to prevent them under the guise of attempting to limit the spread of COVID-19.

It is without question that our operation has done much more than most to keep our customers safe and it seems that we are being unfairly restricted regardless of us having full legal compliance to operate as an outdoor dining establishment. As you know, we are getting closer to Phase 3 in the county and records of positive cases has maintained under the minimum amount to be moved off the watch list. This is great news for us to re-open indoors however we would still like to be treated with the same legal fairness as any other restaurant establishment.

With that said when we were first approved by the City to permit our outdoor dining, we had submitted our attached diagram with plans of operation and were cleared to operate. We were never told that outdoor individual performances on our private property would be restricted. Had we been notified of any rules regarding individual performances we would have reconsidered our outdoor plans. Those plans costed us \$6,000 in weekly rentals, plus employee wages that ended up eating because on the very first day of outdoor services that we were unable to have any entertainment. This has had a very negative effect on the morale of our employees and diminished any uplifting hopes to reopen. Any potential income for our employees and the performers who perform at Pacers to provide income for their families was quickly taken away on the first day of service, resulting in us having to close the operation within the first few days. As you can see this is a devastating blow to us in a time when we need all the revenue we can get.

Accordingly, I am writing you today because we were told by the SDPD that we would be cleared for outdoor performances so long as *you* give us the approval. We know times have been stressful and our employees' families are depending on us. Rather than us pointing fingers at so many other establishments who seem to be operating the same way without regulation, and creating more harm than good. We are asking you for approval. We have done everything we could to exceed expectations. We hope that this email finds you well and any further information, documentation, and continued dialogue is greatly appreciated.

Have a great day, we look forward to hearing from you.



County of San Diego

Richard Buonantony
Jaguars/Cheetah's
P.O. Box 777794
Henderson, NV 89077

Re: CEASE AND DESIST HEALTH ORDER VIOLATIONS

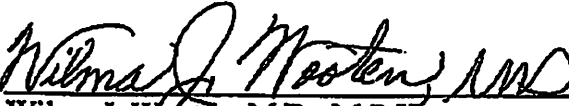
Dear Mr. Buonantony,

Pursuant to the Order of the California Public Health Officer, issued on August 28, 2020, and as incorporated by the Health Officer Order and Emergency Regulations in effect throughout San Diego County, restaurants may operate in compliance with applicable industry guidance. Based on the current tier status in the San Diego County, restaurants may operate in-person dining, and may operate indoors at 25% capacity. *COVID-19 Industry Guidance: Dine-In Restaurants*, published by the California Department of Public Health and CalOSHA, states that restaurants must discontinue live entertainment.

It has been documented during a recent inspection by the San Diego Police Department of Cheetah's, located at 8105 Clairemont Mesa Boulevard in San Diego, that your establishment is putting on live entertainment in violation of the Order of the State Health Officer and the County Order of the Health Officer and Emergency Regulations.

I appreciate the impact these restrictions have on your business. However, as the responsible party for your facility, it is your duty to ensure that the Orders' are complied with. If you do not comply, we will take actions necessary to enforce the Orders. Failure to comply may result in criminal misdemeanor citations with a \$1,000 fine for *each* violation. In addition, if violations continue, I may issue an order closing this facility.

Date: October 20, 2020


Wilma J. Wooten, M.D., M.P.H.
Public Health Officer
County of San Diego

cc: City of San Diego

