

# ZAUNER & MTIMET, P.A.

ATTORNEYS AT LAW

ONE CHARLES CENTER  
100 NORTH CHARLES STREET  
SUITE 1700  
BALTIMORE, MARYLAND 21201

(410) 962-0500

FACSIMILE (410) 962-0589

JOSEPH F. ZAUNER III  
Direct Dial: (410) 843-0513

Email: [joe.zauner@zaunerlaw.com](mailto:joe.zauner@zaunerlaw.com)

December 18, 2020

Circuit Court for Baltimore City  
Attention: Civil Clerk's Office  
Courthouse East, Room 462  
111 N. Calvert Street  
Baltimore, Maryland 21202

Re: Restaurant Association of Maryland, Inc., et al  
v. Mayor and City Counsel of Baltimore City

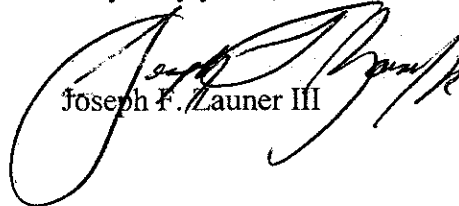
Dear Mr./Ms. Clerk:

Enclosed herewith please find the original and one copy of the following:

1. Complaint for Declaratory and Injunctive Relief
2. Motion for *Ex Parte* Temporary Restraining Order and Preliminary Injunction
3. Memorandum in Support of Motion for *Ex Parte* Temporary Restraining Order and Preliminary Injunction
4. Exhibits
5. Temporary Restraining Order

Kindly return a time stamped copy of all documents to this office. A return envelope has been provided for this purpose.

Very truly yours,



Joseph F. Zauner III

JFZ/JMO:em  
Enclosures

**CIVIL—NON-DOMESTIC CASE INFORMATION SHEET****Directions:**

**Plaintiff:** This Information Sheet must be completed and attached to the complaint filed with the Clerk of Court. A copy must be included for each defendant to be served. NOTE: If this information sheet is not completed, no action on the case will commence and the complaint may be subject to dismissal.

**Defendant:** You must complete bottom portion on page 2 and file with your answer. This Information Sheet cannot be accepted as an answer or response. Failure to file this form will be deemed to be an agreement with the Plaintiff's information.

CASE NAME: Restaurant Association of Maryland Inc. v Brandon Scott CASE NUMBER: \_\_\_\_\_  
Plaintiff Defendant  
 PLAINTIFF'S NAME: Restaurant Asso of Md. et al PHONE: ( ) \_\_\_\_\_  
(Clerk to insert)

ADDRESS: \_\_\_\_\_

PLAINTIFF'S ATTORNEY'S NAME: Joseph F. Zauner, III PHONE: (410) 962-0500

ATTORNEY'S ADDRESS: 100 N. Charles Street, Suite 1700, Baltimore, MD 21201

☐ I am not represented by an attorney

JURY DEMAND: ☐ Yes ☒ No Anticipated Length of Trial: 2 days or \_\_\_\_\_ hours

RELATED CASE PENDING? ☐ Yes ☒ No If Yes, Case #(s), if known: \_\_\_\_\_

Has any form of Alternate Dispute Resolution (ADR) been tried? ☐ Yes ☐ No If yes, describe: \_\_\_\_\_

Is there any reason ADR is not advisable? ☒ Yes ☐ No If so, state reason Injunctive relief  
sought

SPECIAL ADA REQUIREMENTS? ☐ Hearing impaired interpreter ☐ Other ADA accommodation

**NATURE OF ACTION**

TORTS		REAL PROPERTY
<b>PERSONAL INJURY/with or without property damage</b> <input type="checkbox"/> Motor Tort <input type="checkbox"/> Personal Injury <input type="checkbox"/> Assault & Battery <input type="checkbox"/> Product Liability <input type="checkbox"/> Professional Malpractice <input type="checkbox"/> Other	<b>PROPERTY DAMAGE ONLY</b> <input type="checkbox"/> Motor Tort <input type="checkbox"/> Product Liability <input type="checkbox"/> Other <b>OTHER TORTS</b> <input type="checkbox"/> Business Torts <input type="checkbox"/> Libel & Slander <input type="checkbox"/> Other Intentional Tort	<input type="checkbox"/> Ejectment/Title Dispute <input type="checkbox"/> Breach of Lease <input type="checkbox"/> Mechanic's Liens <input type="checkbox"/> Mortgage Foreclosure <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation <input type="checkbox"/> Other Real Property
<b>CONTRACT</b> <input type="checkbox"/> Insurance <input type="checkbox"/> Other Contract <input type="checkbox"/> Confessed Judgment Note		<b>MISCELLANEOUS</b> <input type="checkbox"/> Adoption/Guardianship <input checked="" type="checkbox"/> Other <u>TRO and injunction</u>
<b>RELIEF REQUESTED</b> <input type="checkbox"/> Damages \$ _____ <input type="checkbox"/> Declaratory Relief		
<input checked="" type="checkbox"/> Injunction/Other Equitable Relief <input type="checkbox"/> Other: (please specify) _____		

**DISTRICT COURT/ADMVE AGENCY**

☐ District Court Appeal  
☐ Record ☐ De Novo  
☐ Jury Trial Prayer  
☐ Appeal from Admin Agency  
☐ Workers Comp  
☐ Other

CASE NAME: \_\_\_\_\_ Plaintiff \_\_\_\_\_ v \_\_\_\_\_ Defendant \_\_\_\_\_ CASE NUMBER: \_\_\_\_\_ (Clerk to insert)

**Track Assignment (Requested):**

- ☒ Expedited Non-jury case expected to go to trial within 2 months to 7 months.
- ☐ Standard-Short Case expected to go to trial in 7 months.
- ☐ Standard-Medium Case expected to go to trial in 12 months.
- ☐ Standard-Complex Case requires judicial intervention to determine appropriateness of the track. Please specify below your reasons for requesting this track:

**Other Specialized Tracks**

- ☐ Asbestos
- ☐ Lead Paint
- ☐ Other: (specify) \_\_\_\_\_

Signature of Plaintiff's Counsel/Party

Print Name

12/18/2020  
Date

**Defendant: I concur with Plaintiff's Information Sheet** ☐ Yes ☐ No If "No," you must file a separate Information Sheet or state basis of disagreement.

I concur except as follows: \_\_\_\_\_

I plan to file: ☐ Counter Complaint ☐ Cross Complaint ☐ Third Party Complaint

Signature of Defendant's Counsel/Party

Date

Print Name

Address

Telephone

IN THE CIRCUIT COURT FOR BALTIMORE CITY

Restaurant Association of Maryland, Inc.	*
6301 Hillside Court	
Columbia, Maryland 21046	*
26 E. Cross, LLC	*
26 East Cross Street	
Baltimore, Maryland 21230	*
1700 East Fort Avenue, LLC	*
1700 East Fort Avenue	
Baltimore, Maryland 21230	*
2844 Hudson LLC d/b/a Lee's Pint & Shell	*
109 Bayside Drive	
Dundalk, Maryland 21222	*
3131 Eastern Avenue, Inc. d/b/a Matthew's Pizza	*
5 Fieldstream Court	
Lutherville Timonium, Maryland 21093	*
Admiral's of Fells Point, LLC	*
605 S. Exeter Street, Suite 1095	
Baltimore, Maryland 21202	*
Algos, Inc.	*
1626 Thames Street	
Baltimore, Maryland 21213	*
Alfred Hospitality, Inc. d/b/a Duck Duck Goose	*
5520 Muncaster Mill Road	
Rockville, Maryland 20855	*
All American Creamery, LLC	*
675 S. President Street, Apt. 2504	
Baltimore, Maryland 21202	*
Amendola Restaurant Group, LLC	*
3520 Chestnut Avenue	
Baltimore, Maryland 21209	*
Annoula Enterprises, LLC	*
6 West Cross Street	
Baltimore, Maryland 21230	*

Atlas Restaurant Group, LLC	*
675 S. President Street, Apt. 2504	
Baltimore, Maryland 21202	*
Avenue K&B, LLC	*
911 W. 36 <sup>th</sup> Street	
Baltimore, Maryland 21218	*
Barracuda, LLC	*
1230 East Fort Avenue	
Baltimore, Maryland 21230	*
Bond Street Baltimore LLC	*
901 South Bond Street	
Baltimore, Maryland 21224	*
Checkerspot Brewing, LLC	*
2520 East Baltimore Street	
Baltimore, Maryland 21224	*
D&U, LLC	*
1207 Register Street	
Baltimore, Maryland 21239	*
DVML, Inc.	*
2918 O'Donnell Street	
Baltimore, Maryland 21224	*
Fells Point Venture, LLC	*
675 S. President Street, Apt. 2504	
Baltimore, Maryland 21202	*
GPA, LLC	*
685 S. President Street	
Baltimore, Maryland 21202	*
Jimmy's Seafood, Inc.	*
6526 Holabird Avenue	
Baltimore, Maryland 21224	*
JMB 3 Holdings, LLC	*
1718 Thames Street	
Baltimore, Maryland 21230	*

KCR Enterprises, LLC	*
1700 Thames Street	
Baltimore, Maryland 21231	*
Kooper's Tavern	*
1702 Thames Street	
Baltimore, Maryland 21231	*
LightRandall Corporation	*
1542 Light Street	
Baltimore, Maryland 21230	*
Mad Cow, LLC	*
675 S. President Street	
Baltimore, Maryland 21202	*
Mad River Baltimore, LLC	*
1110 S. Charles Street	
Baltimore, Maryland 21230	*
MEFBMS, Inc.	*
2900 O'Donnell Street	
Baltimore, Maryland 21224	*
Mervis Diamond Corporation	*
2405 York Road, Suite 201	
Lutherville Timonium, Maryland 21093	*
MillerZ, LLC	*
811 S. Broadway	
Baltimore, Maryland 21231	*
Mother's Federal Hill Grille, Inc.	*
7683 Colonial Beach Road	
Pasadena, Maryland 21122	*
Orto Management, LLC	*
1709 North Charles Street	
Baltimore, Maryland 21201	*
Phillips Seafood-Baltimore, LLC	*
3761 Commerce Drive, Suite 413	
Baltimore, Maryland 21227	*

PoDoPac, Inc.	*
720 South Broadway	
Baltimore, Maryland 21231	*
Promenade Venture, LLC	*
675 S. President Street	
Baltimore, Maryland 21202	*
Pull The Trigger, LLC d/b/a Wayward Smoke House	*
829 7 <sup>th</sup> Street NW	
Washington, D.C. 20001	*
JMB 3 Holdings, LLC	*
1718 Thames Street	
Baltimore, Maryland 21231	*
Ropewalk, Inc.	*
1209 South Charles Street	
Baltimore, Maryland 21230	*
Sam's Italian Restaurant, LLC	*
1200 North Charles Street	
Baltimore, Maryland 21201	*
Shotti's Point, LLC	*
701 East Fort Avenue	
Baltimore, Maryland 21230	*
Siderail, Inc.	*
1939 Fleet Street	
Baltimore, Maryland 21231	*
Smertz, LLC	*
2814 Hudson Street	
Baltimore, Maryland 21224	*
Sotto, Inc.	*
405 North Charles Street	
Baltimore, Maryland 21201	*
Tagliata/Elk Room, LLC	*
29 W. Susquehanna Avenue, Suite 300	
Towson, Maryland 21204	*

The Betor Corporation \*  
735 South Broadway  
Baltimore, Maryland 21231 \*

The Manor Baltimore, LLC \*  
7531 Honey Locust Lane  
Hanover, Maryland 21076 \*

The Sobo Taco Spot, LLC \*  
1118 South Charles Street  
Baltimore, Maryland 21230 \*

Thames Street Baltimore, LLC \*  
1629 Thames Street  
Baltimore, Maryland 21231 \*

Verde Corporation \*  
641 South Montford Avenue  
Baltimore, Maryland 21224 \*

Restaurant Law Center \*  
2055 L Street, N.W., Suite 700  
Washington, D.C. 20036 \*

Plaintiffs \*

v. \*

Mayor & City Council of Baltimore City \*  
250 City Hall  
100 North Holliday Street \*  
Baltimore, Maryland 21202

Serve on: \*  
Dana P. Moore, Esquire, Acting City Solicitor  
101 City Hall \*  
Baltimore, Maryland 21202 \*

Defendants

\* \* \* \* \*



## **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

The Restaurant Association of Maryland, Inc., a Maryland Domestic Not for Profit Corporation, and the above-named Plaintiffs who operate restaurants, taverns and/or bars in Baltimore City, by their attorneys Joseph F. Zauner, III, Michelle D. Mtimet, and Zauner & Mtimet, P.A., hereby bring this Complaint for Declaratory and Injunctive Relief, and plead as follows:

### **PARTIES**

1. Plaintiff The Restaurant Association of Maryland, Inc. is a not for profit corporation operating within the State of Maryland.
2. Plaintiff 26 E. Cross, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.
3. Plaintiff 1700 East Fort Avenue, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.
4. Plaintiff 2844 Hudson LLC d/b/a Lee's Pint & Shell is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.
5. Plaintiff 3131 Eastern Avenue, Inc. d/b/a Matthew's Pizza is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.
6. Plaintiff Admiral's of Fells Point, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

7. Plaintiff Alfred Hospitality, Inc. d/b/a Duck Duck Goose is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

8. Plaintiff All American Creamery, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

9. Plaintiff Amendola Restaurant Group, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

10. Plaintiff Annoula Enterprises, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

11. Plaintiff Atlas Restaurant Group, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

12. Plaintiff Avenue K&B, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

13. Plaintiff Barracuda, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

14. Plaintiff Bond Street Baltimore, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

15. Plaintiff Checkerspot Brewing, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

16. Plaintiff D&U, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

17. Plaintiff DVML, Inc. is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

18. Plaintiff Fells Point Venture, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

19. Plaintiff GPA, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

20. Plaintiff Jimmy's Seafood, Inc. is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

21. Plaintiff JMB 3 Holdings, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

22. Plaintiff KCR Enterprises, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

23. Plaintiff Kooper's Tavern is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

24. Plaintiff LightRandall Corporation is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

25. Plaintiff Mad Cow, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

26. Plaintiff Mad River Baltimore, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

27. Plaintiff MEFBMS, Inc. is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

28. Plaintiff Mervis Diamond Corporation is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

29. Plaintiff MillerZ, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

30. Plaintiff Mother's Federal Hill Grille, Inc. is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

31. Plaintiff Orto Management, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

32. Plaintiff Phillips Seafood-Baltimore, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

33. Plaintiff PoDoPac, Inc. is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

34. Plaintiff Promenade Venture, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

35. Plaintiff Pull The Trigger, LLC d/b/a Wayward Smoke House is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

36. Plaintiff Ropewalk, Inc. is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

37. Plaintiff Sam's Italian Restaurant, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

38. Plaintiff Shotti's Point, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

39. Plaintiff Siderail, Inc. is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

40. Plaintiff Smerttz, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

41. Plaintiff Sotto, Inc. is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

42. Plaintiff Tagliata/Elk Room, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

43. Plaintiff The Betor Corporation is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

44. Plaintiff The Manor Baltimore, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

45. Plaintiff The Sobo Taco Spot, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

46. Plaintiff Thames Street Baltimore, LLC is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

47. Plaintiff Verde Corporation is a business organized under the laws of the State of Maryland and operates one or more restaurants, taverns and/or bars within the City of Baltimore.

48. Plaintiff Restaurant Law Center is a business organized under the laws of the State of Maryland and operated one or more restaurants, taverns and/or bars within the City of Baltimore.

49. Defendant Brandon M. Scott is the Mayor of and for Baltimore City, Maryland.

#### JURISDICTION AND VENUE

50. The Baltimore City Circuit Court has personal jurisdiction over this matter, as it involves an executive order issued by the Mayor of Baltimore City that directly impacts restaurants doing business in Baltimore City.

51. The Baltimore City Circuit Court has subject matter jurisdiction over this matter, because the action brought seeks declaratory relief and injunctive relief.

52. The Baltimore City Circuit Court is the proper venue for this matter, as it involves parties whose principal place of business is in Baltimore City, Maryland.

#### FACTS

53. On December 9, 2020, Defendant announced in a press conference that a new Executive Order would be in effect across the entire City of Baltimore beginning December 11, 2020 (hereinafter EO 12/11/2020) and would purportedly continue in force indefinitely, affecting all indoor and outdoor dining facilities within the City of Baltimore. Defendant's Executive Order would include the following measures, among others: limiting gatherings (indoors and outdoors) to no more than ten people (indoor) and twenty five people (outdoor), total; and

specifically limiting eating and drinking establishments to take-out and delivery only; and other limitations on various commercial and public enterprises (but not all). For example, casinos, fitness centers, “personal service establishments” (beauty salons and barbers, etc.), religious facilities (churches, synagogues, mosques, temples, etc.), retail establishments and malls, governmental facilities, and certain outdoor recreational facilities would be permitted to continue operating under certain occupancy restrictions. When EO 12/11/2020 was issued on the afternoon of December 9, 2020, Defendant stated that it would last indefinitely. EO 12/11/2020 is attached hereto as *Exhibit A*.

54. As it pertains to those businesses that Plaintiffs work on behalf of, or in fact operate, in the City of Baltimore - food and drink establishments - EO 12/11/2020 completely removes any possibility of conducting a substantial portion of any typical bar or restaurant operation, namely the ability of such establishments to permit their patrons to enjoy food or drink on site, whether in indoor seating or in outdoor seating. Plaintiffs, individual businesses and/or the businesses they represent, have spent substantial sums to construct, build and create indoor and outdoor safety dividers, outdoor seating for customers, outdoor weather protection, and other safety precautions and protections. Such costs were incurred in reliance on previous Executive Orders of the Governor of the State of Maryland and the former Mayor of the City of Baltimore, which Executive Orders and guidance generally were rationally based on medical and scientific facts. (*Exhibits 1 and 2 attached.*) EO 12/11/2020 lacks such rational basis in scientific and medical facts differentiating the categories of dining and drinking that are prohibited, from those activities which are allowed to continue. Specifically, during the pendency of EO 12/11/2020, “restaurants, bars, nightclubs, adult entertainment, breweries, tour boat dining other similar establishments that sell food or beverages for consumption on-premises may not offer or allow

on-premises consumption of food or drink, inside or outside.” EO 12/11/2020. The only method permissible for such businesses to stay in business is to offer take-out, drive through, or delivery. EO 12/11/2020 expressly exempts other businesses that are very similar, and similarly situated to those defined as “food and drink” establishments whose indoor and outdoor operation is prohibited by the Executive Order. On its face, EO 12/11/2020 permits a wide variety of commercial and public entities to continue to operate indoor operations. EO 12/11/2020. By its terms, EO 12/11/2020 may be enforced as permitted under by penalties of a maximum fine of \$5,000 and imprisonment for not more than one year per violation. EO 12/11/2020. The Executive Order of the Governor dated November 25, 2020 is attached hereto as *Exhibit B*.

55. There are 24 counties (including Baltimore City) in Maryland. 20 of them have *not* closed outdoor or indoor dining in their restaurants, bars and taverns although there are restrictions on operating hours or maximum occupancy to varying degrees, only. Only two Maryland jurisdictions have ordered restaurants, bars and taverns to close altogether as to indoor and outdoor seated dining – Baltimore City and Anne Arundel County. Two other Maryland local jurisdictions, Montgomery County and Prince George’s County, allow outdoor dining (with certain safety restrictions) but have directed that indoor dining be suspended. Thus, 5/6 of Maryland’s local jurisdictions allow indoor *and* outdoor dining with sensible restrictions, and only 8% (2 of 24) restrict indoor and outdoor dining completely. Furthermore, of the five jurisdictions bordering the State of Maryland (Pennsylvania, Delaware, Virginia, West Virginia, and the District of Columbia), *none* of them has put in place a statewide prohibition against indoor and/or outdoor seated dining in their restaurants, taverns and bars and nor has the State of Maryland imposed such draconian restrictions statewide. According to Governor Larry Hogan of Maryland at a press conference on December 10, 2020, “In all of our hundreds of discussions



with all the top public health doctors and epidemiologists and experts, they told us in the very beginning that outdoor dining is safe, that outdoors is better than indoors.” He described shutting down indoor dining as a “death sentence” for many businesses. The Governor’s latest Executive Order allows indoor and outdoor dining with limited occupancy capacities, restricted hours, masks, social distancing and other health and safety measures. A Temporary Restraining Order has been issued by the Circuit Court for Anne Arundel County on December 16, 2020 granting restaurants in that County the relief sought by your Plaintiffs herein in Baltimore City.

*Exhibit C.*

56. The approximately 15 hospitals in Baltimore City are fully staffed, financially sound, and prepared for any surge in COVID-19 cases. The Mayor’s Executive Order makes no reference whatsoever to potential overcrowding or overburdening of city hospitals.

57. Restaurants are not recognized to be a significant source of COVID-19 contamination. The Mayor’s Executive Order provides no “cause and effect” allegations or evidence whatsoever on this point.

58. The closure of restaurants will cause immeasurable, immediate, and irreparable injury to citizens of Baltimore City. In particular,

- a. employees of all restaurants and bars will be laid off at the beginning of the holiday season, one of the best times of year for many foodservice business;
- b. owners of restaurants, already devastated by nearly ten months of closure or severe restriction, are on the verge of financial ruin; the closure of their business for a month over the holiday season is likely to close their business for good;
- c. suppliers to restaurants and bars will again be dramatically impacted, as their customers will be closed; these suppliers will also have to lay off employees;

and these businesses have also been devastated by the COVID-19 crisis and may be on the verge of financial collapse;

- d. the service industry for the foodservice industry, including sellers of equipment, maintenance of that equipment, and similar industries, will be impacted just as the suppliers and the restaurants themselves;
- e. landlords and property managers of properties where many restaurants are located will be unable to collect rent, pay their property managers, pay their mortgages, employees, and expenses associated with those properties, as the restaurant-tenants will be once again unable to pay their rent;
- f. investors in restaurants that close permanently will lose their capital investment;

59. Directly contrary to Mayor Scott's stated purpose and authority, it is likely that the closure of restaurants will lead to an increase in the spread of COVID-19. Citizens of Baltimore City will continue to gather and dine for social and business purposes; however, with the closure of restaurants, these gatherings will occur at their personal residences or their places of business. These homes and offices, while perhaps clean, are not licensed and inspected by health department officials; they are not required to enforce social distance requirements or the wearing of masks; they are not subject to the stringent measures set forth in the GEO set forth above.

60. The psychological impact upon the citizens of Baltimore City of EO 12-11-2020 is substantial. Already throughout the COVID-19 crisis, there has been a dramatic increase in suicide, drug and alcohol abuse, domestic violence, child abuse, and other criminal and undesirable behavior. Further, the inability of a person to be productive, provide for herself or himself or their family is devastating, especially during the holidays when vulnerable persons are already at greater risk, such as those who suffer from mental illnesses.

61. EO 12-11-2020 and the GEO require that the measures taken by Mayor Scott further the purposes of saving lives and preventing the spread of COVID-19. EO 12-11-2020 has the opposite effect. It endangers the citizens of Baltimore City by subjecting them to a greater risk of the spread of COVID-19 and by destroying the lives of many financially, emotionally, and psychologically. These are real and present dangers.

62. Further, EO 12-11-2020 and Governor's Executive Order require that the measures taken to save lives or prevent exposure to COVID-19 must be "necessary and reasonable". The statistics regarding hospital capacity and COVID transmission at restaurants directly contradict the underlying premise of EO 12-11-2020 that the closure of restaurants for a month during the holiday season is necessary, reasonable, and designed to save lives or prevent the spread of COVID-19. The Executive Order as it pertains to restaurants, taverns and/or bars can best be summarized as "COVID19 cases in Baltimore City are on the rise, so I have decided to close or prohibit seated dining" without any connective reasoning whatsoever between the two.

#### DECLARATORY AND INJUNCTIVE RELIEF

63. Plaintiffs hereby restate and re-allege each and every allegation contained in paragraphs 1 through 62.

64. Pursuant to Md. Annotated Code Courts and Judicial Proceedings Article, Sections 3-401, et seq., this court may "declare rights, status, and other legal relations whether or not further relief is or could be claimed." Further, "any person...whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation...may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation..."

65. Plaintiffs request that this honorable Court declare the rights and status of the Plaintiffs with regard to Mayor Scott's EO 12-11-2020. Specifically, Plaintiffs request that this court declare that the portion of Mayor Scott's EO 12-11-2020 that requires closure of foodservice establishments exceeds the authority of the Mayor, abuses the discretion of the Mayor, and violates the terms of the Governor's Executive Order.

66. The restrictions on foodservice establishments set forth in EO 12-11-2020 do not protect life; they increase the risk to it. The restrictions on foodservice establishments do not protect property; they destroy it.

67. The Governor's Executive Order allows the issuance of more restrictive orders only if it is necessary to save lives and prevent the spread of COVID-19. The closure of foodservice establishments beginning with a month over the holiday season as set forth in EO 12-11-2020 does not save lives or prevent the spread of COVID-19; it worsens the situation in both instances.

68. EO 12-11-2020 also requires that the measures set forth therein act to save lives and prevent the spread of COVID-19. The closure of foodservice establishments for a month over the holiday season as set forth in EO 12-11-2020 does not save lives or prevent the spread of COVID 19; it risks lives and increases the spread of COVID-19.

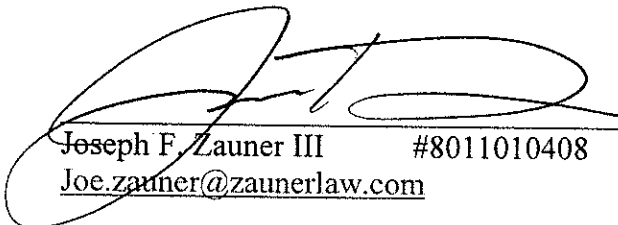
69. The Governor's Executive Order requires that if a political subdivision issues more restrictive orders, those orders must be reasonable and necessary. The closure of foodservice establishments in Baltimore City set forth in EO 12-11-2020 are neither reasonable nor necessary. The closure is unreasonable in that it destroys the lives of those citizens of Baltimore City associated with the foodservice industry as well as those who are customers thereof. The closure is unnecessary in that the measures already in place are sufficient to minimize the spread of COVID-19. Foodservice establishments are not a significant source of the spread of COVID-19.

Closing them will only cause the gathering of citizens of Baltimore City to dine in venues that are unregulated and less safe.

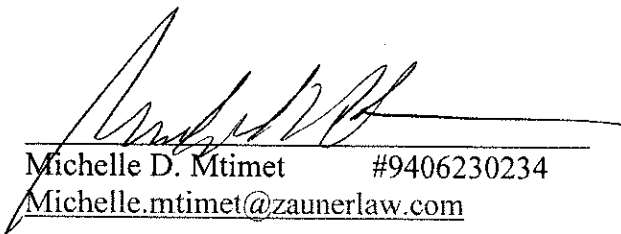
70. Plaintiffs request that this court enter a temporary restraining order, preliminary injunction, and a permanent injunction staying the effect of the portion of Mayor Scott's EO 12-11-2020 that requires the closure of foodservice establishments, leaving in place current restrictions applicable thereto.

WHEREFORE, Plaintiffs respectfully request that this honorable Court:

- A. Declare the rights of the plaintiffs under the Mayor Scott's EO 12-11-2020;
- B. Declare that the Mayor has exceeded his authority by closing all foodservice establishments as set forth in EO 12-11-2020;
- C. Declare that the Mayor has abused his discretion in implement the closure of foodservice establishments as set forth in EO 12-11-2020;
- D. Declare that the closure of foodservice establishments is neither necessary nor reasonable;
- E. Enter a temporary restraining order staying the effect of the portion of EO 12-11-2020 that requires the closure of foodservice establishments from December 11, 2020;
- F. Enter a preliminary injunction staying the effect of the portion of Mayor Scott's EO 12-11-2020 that requires the closure of foodservice establishments from December 11, 2020;
- G. And for such other and further relief as the nature of this cause may require.



Joseph F. Zauner III      #8011010408  
Joe.zauner@zaunerlaw.com



Michelle D. Mtimet #9406230234  
Michelle.mtimet@zaunerlaw.com

Zauner & Mtimet, P.A.  
100 N. Charles St., Suite 1700  
Baltimore, MD 21201  
(410) 962-0500  
*Attorneys for Plaintiffs*

**IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND**

RESTAURANT ASSOCIATION OF MARYLAND, INC. \*  
a Maryland Domestic Non-Profit Corporation, *et al.* \*

Plaintiffs \*

v. \*

Civil No. \_\_\_\_\_

BRANDON M. SCOTT, in his official capacity \*  
as the Mayor of the City of Baltimore \*

Defendant \*

**MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

Plaintiffs hereby file this Motion for *ex parte* Temporary Restraining Order and Preliminary Injunction against Baltimore City Mayor Brandon M. Scott (hereinafter “Defendant” or “Mayor Scott”) to enjoin the enforcement of a portion of Executive Order 12-11-2020 (hereinafter EO 12-11-2020), and in support thereof states:

1. On December 9, 2020, Mayor Scott signed EO 12-11-2020, a true and accurate copy of which is attached to the Complaint for Declaratory and Injunctive Relief as Exhibit A thereto, which prohibits indoor or outdoor service at Foodservice establishments effective December 11, 2020 at 5:00 pm, indefinitely.
2. Plaintiffs are various business owners directly involved or heavily impacted by regulations of the foodservice sector, and the trade organization which represents many of the Plaintiffs and other similarly-situated restaurants in Baltimore City.

3. Plaintiff is entitled to injunctive relief for many reasons, as more fully set forth in the Memorandum in Support of Motion for *ex parte* Temporary Restraining Order and Preliminary Injunction filed herewith:

- a. Mayor Scott's closure of Foodservice Establishments for indoor and outdoor dining is a violation of his grant of authority under Governor Larry Hogan's Executive Order No. 20-11-17-01, attached hereto and incorporated herein as Exhibit B.
- b. This forced closure of Foodservice Establishments for both indoor and outdoor service will cause immediate and irreparable harm to Foodservice Establishments.
- c. If enforced as written, many Foodservice Establishments will be forced to indefinitely close or go out of business, leaving thousands unemployed during the holiday season.
- d. The provisions of Mayor Scott's Order prohibiting indoor and outdoor seating in Foodservice Establishments is not imminently necessary, reasonable, or substantially related to preventing the loss of life or spread of COVID-19.
- e. The percentage of COVID-19 infections originating from restaurants is not a statistically significant deviation from infections originating from other establishment that are allowed to remain operational at 25% capacity or outdoors under Mayor Scott's order.
- f. The harm in enforcement of Mayor Scott's Order will cause a greater irreparable harm to Foodservice Establishments than the harm allegedly prevented by closing Foodservice Establishments to both indoor and outdoor dining.
- g. Public policy supports the continued employment of those in the Foodservice Establishment sector over any speculative detriment that might result from dining



in or outside of establishments that follow CDC recommendations and health code regulations.

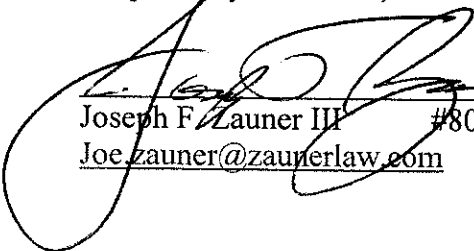
4. Plaintiff is likely to succeed on the merits of its underlying suit; Plaintiffs are facing irreparable harm to their businesses and employees upon the implementation of EO 12-11-2020, harm to Foodservice Establishments is significantly greater than the speculative harm to health and safety; and, public policy supports the continued operation of Foodservice Establishments just like other business sectors under Mayor Scott's Order.

5. Pursuant to Maryland Rule 15-503 (b), the court "may dispense with the requirement of a bond and shall do so when required by law" when the State of Maryland, a political subdivision of the State of Maryland, or any officer or agency of the State or its political subdivisions is the person or entity sought to be enjoined.

WHEREFORE, Plaintiffs, individually and collectively, respectfully requests that this honorable Court:

- A. Grant this Motion for Ex Parte Temporary Restraining Order and Preliminary Injunction; and
- B. Grant such other and further relief as the nature of this cause may require.

Respectfully submitted,



\_\_\_\_\_  
Joseph F. Zauner III #8011010408  
Joe.zauner@zaunerlaw.com



Michelle D. Mtimet

#9406230234

[Michelle.mtimet@zaunerlaw.com](mailto:Michelle.mtimet@zaunerlaw.com)

Zauner & Mtimet, P.A.  
100 N. Charles St., Suite 1700  
Baltimore, MD 21201  
(410) 962-0500

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_\_ day of December, 2020, a copy of the foregoing Motion for ex parte Temporary Restraining Order and Preliminary Injunction was served electronically, and sent via First Class Mail, to: Dana P. Moore, Esquire, Acting City Solicitor, 101 City Hall, Baltimore, Maryland 21202.

\_\_\_\_\_  
Joseph F. Zauner III

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

MARYLAND RESTAURANT ASSOCIATION, INC.  
a Maryland Domestic Non-Profit Corporation, et al.

Plaintiffs

v.

BRANDON M. SCOTT, in his official capacity  
as the Mayor of the City of Baltimore

Defendant

\*  
\*  
\*  
\*  
\*  
\* Civil No. \_\_\_\_\_  
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**MEMORANDUM IN SUPPORT OF MOTION FOR *EX PARTE* TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The Restaurant Association of Maryland, Inc., a Maryland Domestic Not for Profit Corporation, and the above-named Plaintiffs who operate restaurants, taverns and/or bars in Baltimore City, hereby file their Memorandum in Support of their Motion for *Ex Parte* Temporary Restraining Order, and in support thereof state:

**FACTS**

1. On December 9, 2020, Defendant announced in a press conference that a new Executive Order would be in effect across the entire City of Baltimore beginning December 11, 2020 and would purportedly continue in force indefinitely, affecting all indoor and outdoor dining facilities within the City of Baltimore. See *Exhibit A* attached to the Plaintiff's Complaint for Declaratory and Injunctive Relief.

2. Defendant's Executive Order would include the following measures, among others: limiting gatherings (indoors and outdoors) to no more than ten people (indoor) and twenty five people (outdoor), total; and specifically limiting eating and drinking establishments to take-out

and delivery only; and other limitations on various commercial enterprises (but not all). For example, casinos, fitness centers, “personal service establishments (beauty salons and barbers, etc.) churches, synagogues, mosques, temples, etc., retail establishments and malls, governmental facilities, and certain outdoor recreational facilities would be permitted to continue operating under certain occupancy restrictions. See *Exhibit A* attached to the Plaintiff’s Complaint for Declaratory and Injunctive Relief.

3. When EO 12-11-2020 was issued it stated that it would last indefinitely. There is no end or expiration date in the Order. See *Exhibit A* attached to the Plaintiff’s Complaint for Declaratory and Injunctive Relief.

4. As it pertains to those businesses that Plaintiffs work on behalf of, or are in fact, in the City of Baltimore, food and drink establishments, EO 12-11-2020 completely removes any possibility of conducting a substantial portion of any typical bar or restaurant operation, namely the ability of such establishments to permit their patrons to enjoy food or drink on site, whether in indoor seating or in outdoor seating. See *Exhibit A* attached to the Plaintiff’s Complaint for Declaratory and Injunctive Relief.

5. Plaintiffs, individually and the businesses they represent, have spent substantial sums to construct, build and create indoor and outdoor safety dividers, outdoor seating for customers, outdoor weather protection, and other safety precautions and protections. Such costs were incurred in reliance on previous Executive Orders of the Governor of the State of Maryland and the former Mayor of the City of Baltimore, which Executive Orders and guidance generally were rationally based on medical and scientific facts. EO 12-11-2020 lacks such rational basis in scientific and medical facts differentiating the categories of dining and drinking that are prohibited, from those

activities which are allowed to continue. See, attached as *Exhibit D* hereto, Affidavit of Marshall Weston.

6. Specifically, during the pendency of EO 12-11-2020, “restaurants, bars, nightclubs, adult entertainment, breweries, tour boat dining other similar establishments that sell food or beverages for consumption on-premises” may not offer or allow on-premises consumption of food or drink, inside or outside.” EO 12-11-2020. The only method permissible for such businesses to stay open and operating is to offer take-out, drive through, or delivery. See, attached as *Exhibit D* hereto, Affidavit of Marshall Weston.

7. EO 12-11-2020 expressly exempts other businesses that are very similar, and similarly situated to those defined as “food and drink” establishments whose indoor and outdoor operation is prohibited by the Executive Order. On its face, EO 12-11-2020 permits a wide variety of commercial and public entities to continue to operate indoor operations. EO 12-11-2020.

8. EO 12-11-2020 expressly discriminates against those in the restaurant and hospitality businesses by permitting other similarly situated businesses to operate with only limited restrictions or in some cases no restrictions whatsoever. For example, under EO 12-11-2020 fitness centers, retail stores, personal service facilities, religious centers, museums, zoos, aquariums, and indoor and outdoor malls may continue to operate at various stated percentage capacity with no restrictions whatsoever on how long members of the public are permitted to remain on site. EO 12-11-2020.

9. Outdoor recreation and outdoor sports, are similarly not restricted. EO 12-11-2020.

10. The Executive Department of the State of Maryland has adopted regulations requiring ventilation with outside air for food service businesses, that adequately protect customers, when

combined with existing preventive measures including social distancing and mask wearing (except when eating or drinking).

11. By its terms, EO 12-11-2020 may be enforced as permitted under by penalties of a maximum fine of \$5,000 and imprisonment for not more than one year per violation. EO 12-11-2020. Plaintiffs maintain that they and those similarly situated should be able to continue business operations within the appropriate public health guidelines offered by the CDC and OHA, as applicable, without the restrictions imposed by EO 12-11-2020.

12. In EO 12-11-2020, Mayor Scott purports to exercise authority found in an Executive Order issued by Governor Hogan on or about November 17, 2020, a true and accurate copy of which is attached to the Motion for TRO and Preliminary Injunction as *Exhibit B*, (hereinafter referred to as “Governor Hogan’s Order”). In Governor Hogan’s Order, the following language is found:

To protect the public health, welfare, and safety, prevent the transmission of the novel coronavirus, control the spread of COVID-19, and save lives, it is necessary to control and direct the movement of individuals in Maryland...;

It is further necessary to control and direct in Maryland the occupancy and use of buildings and premises, as well as places of amusement and assembly;

If a political subdivision determines that doing so is necessary and reasonable to save lives or prevent exposure to COVID-19, the political subdivision is hereby authorized to issue orders that are more restrictive than this Order (emphasis added);

Governor Hogan’s Order goes on to limit activity in restaurants, under section (f.) entitled Foodservice Establishments:

...restaurants, bars, nightclubs, catering and banquet halls, and other similar establishments that sell and/or serve food or beverages for consumption on premises in Maryland, and ...Social Clubs with dining facilities (collectively, "Foodservice Establishments") may, to the extent permitted by applicable law:

1. Serve food and beverages to customers for consumption in outdoor seating areas;
2. Sell food and beverages that are promptly taken from the premises, i.e., on a carry-out or drive-through basis;
3. Deliver food and beverages to customers off the premises; and
4. Serve food and beverages to customers for consumption in indoor seating areas.

Foodservice Establishments shall:

1. Not allow the number of persons in the Foodservice Establishment to exceed 50% of the Foodservice Establishment's Maximum Occupancy (defined below);
2. Not serve food in a buffet format;
3. Not serve customers who are not seated;
4. Clean and disinfect each table between each seating in accordance with CDC and MDH guidelines, using cleaning products that meet the criteria of the U.S. Environmental Protection Agency for use against COVID-19; and
5. Not be open to the public between the hours of 10:00 p.m. and 6:00 a.m.; provided, however, that during such hours Foodservice Establishments may continue to (a) sell food and beverages that are promptly taken from the premises (i.e., on a carry-out basis or drive-through basis), and (b) deliver food and beverages to customers off the premises.

In EO 12-11-2020, Mayor Scott states:

WHEREAS, [Governor Hogan's Order] authorizes political subdivisions such as Baltimore City to issue local orders that are more restrictive than

[Governor Hogan's Order] such as those requiring any businesses, organizations, establishments, or facilities to close or modify their operations and/or requiring individuals to remain indoors or refrain from congregating, if deemed necessary and reasonable to save lives or prevent exposure to COVID-19;

Mayor Scott then goes on to completely close Foodservice Establishments except that they may "sell food and beverages that are promptly taken from the premises ... and deliver food and beverages to customers off the premises".

The factual premises for EO 12-11-2020 has been identified by Mayor Scott in the following WHEREAS clauses:

WHEREAS, COVID-19 is an infectious and highly contagious respiratory disease that continues to pose serious health risks for the citizens of Baltimore City, particularly elderly residents and those who are immunosuppressed or otherwise have high-risk medical conditions;

WHEREAS, pursuant to the Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths, December, 2020 issued by the Center for Disease Control, the currently known and available scientific evidence and best practices support universal use of fact masks., physical distancing and limiting contacts, avoiding non-essential indoor spaces and crowded outdoor settings among other things;

WHEREAS, in response to a new surge in COVID-19 throughout Maryland and evidence of widespread community transmission., on November 17, 2020 Governor Hogan issued Order Number 20-11-17-01 reinstituting certain restrictions for individuals and businesses ("Order No. 20-11-17-01");



WHEREAS, between October 12, 2020 and November 29, 2020, the 7-day averages for rate of new COVID-19 cases per 100,000 increased 337% among Baltimore City residents and for percent positivity for COVID-19 tests among City residents by 294%;

WHEREAS, for the period October 2, 2020 through December 6, 2020 the number of COVID-19 patients in acute care beds increased 337% and the number of COVID-19 patients in ICU beds increased 520% in Baltimore City;

WHEREAS, between September 30, 2020 and December 3, 2020 the daily number (7-day average) of COVID-19 admissions to City hospitals increased by 314%;

There is no citation to any authority in the Baltimore City Code (as there is apparently none) to support this extraordinary mayoral action. There is no demonstrated catastrophic impact likely to be visited upon the local hospitals, but rather a recitation of numbers without context is presented as a factual basis for the Mayor's EO. Large (over 100%) increases are noted without indicating the baseline numbers which are described as having more than doubled (an increase in excess of 100%). An increase of 337%, for example, may only be 68 people if applied to a baseline of 20 people. These alleged increases mean nothing without reference to the raw numbers. Baltimore City (without considering the surrounding adjacent counties) has fifteen (15) operating hospitals including the VA hospital. No allegation of an impending crisis for these hospitals was made in the Mayor's EO 12-11-2020, nor have any prior issues with those hospitals been attributed to restaurant, bar and/or tavern attendance under the prior restrictions.

Further, restaurants are not a significant source of COVID contamination. See Affidavits of Hubert J. Allen, Jr. (attached hereto as *Exhibit E*), and Marshall Weston, president of the Restaurant Association of Maryland (attached hereto as *Exhibit D*), attesting to the care with which restaurants are currently operated, as to cleanliness and safety for customers. As shown, the

percentage of cases that may be attributed to activity at foodservice establishments is reported to be below 2%. The Mayor provides no allegation or evidence whatsoever that seated restaurant dining, indoors or outdoors, poses a significant, greater, or different risk to the public than their presence in any number of other public and commercial spaces.

The closure of restaurants will cause immeasurable, immediate, and irreparable injury to citizens of Baltimore City. In particular,

- a. employees of all restaurants and bars will be laid off at the beginning of the holiday season, one of the best times of year for many foodservice businesses;
- b. owners of restaurants, already devastated by nearly ten months of closure or severe restriction, are on the verge of financial ruin; the closure of their business for a month over the holiday season is likely to close their business for good;
- c. suppliers to restaurants and bars will again be dramatically impacted, as their customers will be closed; these suppliers will also have to lay off employees; and these businesses have also been devastated by the COVID-19 crisis and may be on the verge of financial collapse;
- d. the service industry for the foodservice industry, including sellers of equipment, maintenance of that equipment, and similar industries, will be impacted just as the suppliers and the restaurants themselves;
- e. landlords and property managers of properties where many restaurants are located will be unable to collect rent, pay their property managers, pay their mortgages, employees, and expenses associated with those properties, as the restaurant-tenants will be once again unable to pay their rent;
- f. investors in restaurants that close permanently will lose their capital investment.

Directly contrary to Scott's stated purpose and authority, it is likely that the closure of restaurants will lead to an increase in the spread of COVID-19. Citizens of Baltimore City will continue to gather and dine for social and business purposes; however, with the closure of restaurants, these gatherings will occur at their personal residences or their places of business. These homes and offices, while perhaps clean, are not licensed and inspected by Health

Department officials; they are not required to enforce social distance requirements or the wearing of masks; they are not subject to the stringent measures set forth in Governor Hogan's Order as set forth above. See Affidavits of Hubert A. Allen, Jr, of Riccardo Bosio (*Exhibit F*) and Ashish Alfred (*Exhibit G*), and Marshall Weston.

The psychological impact upon the citizens of Baltimore City of EO 12-11-2020 is substantial. Already throughout the COVID-19 crisis, there has been a dramatic increase in suicide, drug and alcohol abuse, domestic violence, child abuse, and other criminal and undesirable behavior. Further, the inability of a person to be productive, provide for herself or himself or their family is devastating, especially during the holidays when vulnerable persons are already at greater risk, such as those who suffer from mental illnesses. See Affidavit of Maureen Vernon, PhD.

The EO 12-11-2020 and Governor Hogan's Order require that the measures taken by Mayor Scott further the purposes of saving lives and preventing the spread of COVID-19. EO 12-11-2020 has the opposite effect. It endangers the citizens of Baltimore City by subjecting them to a greater risk of the spread of COVID-19 and by destroying the lives of many citizens of Baltimore City financially, emotionally, and psychologically. These are real and present dangers. To compound the error of the imposition of a complete closure of foodservice establishments, there is no evidence that it will materially impact the transmission of COVID-19.

Further, EO 12-11-2020 and Governor Hogan's Order require that the measures to be taken to save lives or prevent exposure to COVID-19 must be "necessary and reasonable". Although reference is made to City hospitals, there is no allegation of potential difficulties handling the ongoing COVID-19 caseload in the Mayor's Order. The presented statistics regarding hospital capacity and COVID transmission at restaurants directly contradict the underlying premise of EO 12-11-2020 that the closure of restaurants (even during the holiday season) is necessary,

reasonable, and designed to save lives or prevent the spread of COVID-19 to the extent these passing references to hospitals may be relevant. As of December 14, 2020, there were 2,245 staffed acute care and 505 staffed adult ICU hospital beds in Baltimore City. Of these 2,245 acute care beds, 1,951 beds were occupied and of the ICU beds, 449 were occupied. Of those 1,951 acute care beds only 296 were in use by COVID-19 patients. Of that 449 ICU beds, only 99 are occupied by COVID-19 patients. The City's overall acute care hospital bed occupancy rate was 87% and ICU hospital bed occupancy rate was 89%, but COVID-19 patients make up only 13% of the total acute care in use and 20% of ICU beds in use. In raw numbers 294 beds remained available in acute care and 56 available in ICU, and the COVID-19 patient usage rate is running at only 13-20% overall while restaurants were remaining open. Source: Baltimore City Health Department Statistics, [www.baltimorecity.gov](http://www.baltimorecity.gov), as of 12/14/2020.

#### TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

When determining whether to grant injunctive relief, the court must examine four factors: (1) the likelihood that the plaintiff will succeed on the merits; (2) the balance of convenience determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4), the public interest. *Fogle v. H&G Restaurant*, 337 Md. 441, 455-56 (1995). For the reasons more fully set forth below, Plaintiffs can establish each of these four factors.

#### I. LIKELIHOOD OF SUCCESS ON THE MERITS

In the underlying Complaint filed in conjunction with the Motion for *Ex Parte* Temporary Restraining Order and Preliminary Injunction, Plaintiffs are seeking a declaratory judgment that Mayor Scott has exceeded his authority, abused the discretion afforded him by the Governor's

Executive Order, and the language of EO 12-11-2020, by the portion which requires the closure of foodservice establishments in Baltimore City. Plaintiffs also seek injunctive relief from the enforcement of the portion of EO 12-11-2020 which requires closure of foodservice establishments beginning December 11, 2020. For the following reasons, Plaintiffs are likely to succeed on the merits of their underlying Complaint.

Mayor Scott, in EO 12-11-2020, cites to Governor Hogan's order No. 20-11-17-01 (hereinafter referred to as "Governor Hogan's Order"). In Governor Hogan's Order No. 20-11-17-01, the Governor stated that "if a political subdivision determines that doing so **is necessary and reasonable to save lives or prevent exposure to COVID-19**, the political subdivision is hereby authorized to issue orders that are more restrictive than this Order. ("Local Orders")" (emphasis added). Governor Hogan's Order grants authority to "political subdivisions" to issue "Local Orders" that are more restrictive than the Governor's Order. Governor Hogan's Order gives this authority to "Political Subdivisions", not specifically to county executives. As such, any action taken by a Political Subdivision must meet the standard in Governor Hogan's Order of being "necessary and reasonable to save lives and prevent exposure to COVID-19." The unilateral action of Mayor Scott in issuing EO 12-11-2020 is a violation of this authority and his basis for closing restaurants down to protect hospitals from any alleged unprecedented impact on hospital capacity is unsupported by the data.

These numbers are significantly below an unprecedented impact on hospitals. Further, as more fully explained in the Affidavits attached hereto, the impact on the mental health of many Baltimore City citizens resulting from the closure of all foodservice establishments will be immediate, irreparable, and substantial.

As set forth in the Affidavits filed herewith, the increase in unprotected gatherings in people's homes, offices, and other places not subject to the licensing, inspection, and regulatory restrictions placed on restaurants is likely to increase the frequency of COVID-19.

Mayor Scott's closing of Foodservice Establishments is not listed as an expressly authorized measure under any section of the Baltimore City Code.

As discussed in the Affidavits filed herewith and elsewhere in this Memorandum, the measures imposed by EO 12-11-2020 against foodservice establishments do not protect life or property; rather, property and lives are damaged. The impact upon the citizens of Baltimore City is severe to their physical, mental, emotional, and psychological health, as well as to their property, be it business interests, financial condition, or just basic income, not to mention the potential loss of their homes or cars due to default on their secured obligations. The loss of employment and the income therefrom is devastating to persons who have already suffered through a terrible year. The mental health consequences of these actions upon those involved in any way with the foodservice industry is significant. As a result of these lockdowns and closures, suicides and other mental health problems have substantially increased. These impacts directly contradict the requirements that the measures taken by Mayor Scott be "imminently necessary for the protection of life and property"; nor are they reasonable, necessary, and directed towards saving lives.

There is a certainty that as a result of this EO 12-11-2020 closing foodservice establishments, business will be forced to close indefinitely, putting potentially thousands Baltimore City citizens out of work. As such, the measures that Mayor Scott is attempting to take in his EO 12-11-2020 fails to meet the standard of being "imminently necessary for the protection of life and property in the County" and are thus not authorized by Baltimore City.

These actions fail to meet the standard of Governor Hogan's Order that they be "necessary and reasonable" for the protection of life. For the foregoing reasons, Plaintiff is likely to succeed on the merits of their underlying Complaint for Declaratory Judgment.

## II. PLAINTIFFS' IRREPARABLE INJURY

As previously discussed, the closure of restaurants will cause immeasurable, immediate, and irreparable injury to citizens of Baltimore City. In particular, employees of all restaurants and bars will be laid off at the beginning of the holiday season, one of the best times of year for many foodservice businesses; owners of restaurants, already devastated by nearly ten months of closure or severe restriction, are on the verge of financial ruin; the closure of their business for a month over the holiday season is likely to close their business for good; suppliers to restaurants and bars will again be dramatically impacted, as their customers will be closed; these suppliers will also have to lay off employees; and these businesses have also been devastated by the COVID-19 crisis and may be on the verge of financial collapse; the service industry for the foodservice industry, including sellers of equipment, maintenance of that equipment, and similar industries, will be impacted just as the suppliers and the restaurants themselves; landlords and property managers of properties where many restaurants are located will be unable to collect rent, pay their property managers, pay their mortgages, employees, and expenses associated with those properties, as the restaurant-tenants will be once again unable to pay their rent; and investors in restaurants that close permanently will lose their capital investment.

As set forth in the Affidavits of Hubert J. Allen, Jr., Marshall Weston, Rocco Bosio, Ashish Alfred, the injury goes beyond just the owners of the restaurants. Employees, vendors, suppliers, maintenance workers, wholesalers, landlords, and customers will all suffer financially, psychologically, and emotionally from a devastating closure of their businesses during the entire

holiday season after an already ruinous year. Additionally, submitted here collectively as *Exhibit H hereto*, are the affidavits of E. P. Alexander, M.D., and Maureen Vernon, PhD filed in a similar action filed in the Anne Arundel County Circuit Court (see Exhibit C).

Further, the likelihood of an increase in COVID-19 transmission from the increased social gatherings at places other than restaurants will create further injury, while, of course, proving the point that the closure contemplated by EO 12-11-2020 fails to reach its goal.

### III. BALANCE OF CONVENIENCE

In light of the irreparable injury discussed in the foregoing section, it is clear that the balance of convenience weighs heavily in the favor of granting the injunction. Restaurants have not been shown by any data given by Baltimore City, or any other source, as a location which causes higher rates of COVID-19 infection than any of the other establishments that can remain open under EO 12-11-2020. Given this lack of data, the harm in allowing restaurants to remain operational under existing CDC guidelines, Maryland Department of Health guidelines, and other health codes is negligible in comparison to the irreparable damage that will befall those involved in and related to the food service industry.

### IV. THE PUBLIC INTEREST

The public is directly served by allowing businesses to continue to operate, by providing livelihood to the citizens of Baltimore City, and by acting in the best interest of the mental and physical health of the citizens of Baltimore City. The remainder of the State of Maryland is subject to Governor Hogan's Order; allowing Maryland to follow the Governor's Order rather than the more-restrictive EO 12-11-2020 is in the best interest of the public.



For the foregoing reasons, it is respectfully requested that this Court enter an immediate temporary restraining order and preliminary injunction staying the imposition and effectiveness of the sections of EO 12-11-2020 that requires the closure of all food service establishments.

Respectfully submitted

  
\_\_\_\_\_  
Joseph F. Zauner III #8011010408  
Joe.zauner@zaunerlaw.com

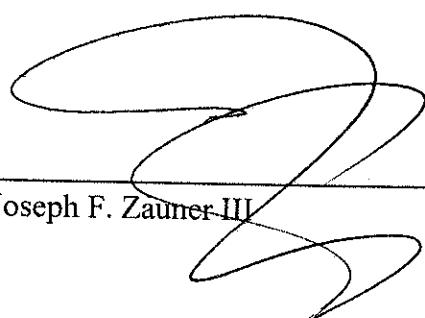
  
\_\_\_\_\_  
Michelle D. Mtimet #9406230234  
Michelle.mtimet@zaunerlaw.com

Zauner & Mtimet, P.A.  
100 N. Charles St., Suite 1700  
Baltimore, MD 21201  
(410) 962-0500

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18 day of December, 2020, a copy of the foregoing Motion for *Ex Parte* Temporary Restraining Order and Preliminary Injunction was served electronically, and sent via First Class Mail, to: Dana P. Moore, Esquire, Acting City Solicitor, 101 City Hall, Baltimore, Maryland 21202.

  
\_\_\_\_\_  
Joseph F. Zauner III

# **EXHIBITS**

**MAYORAL EXECUTIVE ORDER**  
**RESTRICTING GATHERINGS AND INDOOR AND OUTDOOR DINING**  
Effective December 11, 2020

WHEREAS, a state of emergency and catastrophic health emergency was proclaimed by the Governor of Maryland on March 5, 2020 and renewed on March 17, 2020, April 10, 2020, May 6, 2020, June 3, 2020, July 1, 2020, August 10, 2020, September 8, 2020, October 6, 2020 and October 29, 2020, to control and prevent the spread of COVID-19 within the state, and the state of emergency and the catastrophic health emergency still exists;

WHEREAS, on March 19, 2020, Mayor Bernard "Jack" C. Young of Baltimore City declared a State of Emergency for Baltimore City due to the spread of COVID-19, which is still in place;

WHEREAS, COVID-19 is an infectious and highly contagious respiratory disease that continues to pose serious health risks for the citizens of Baltimore City, particularly elderly residents and those who are immunosuppressed or otherwise have high-risk medical conditions;

WHEREAS, pursuant to the Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths, December 2020 issued by the Center for Disease Control, the currently known and available scientific evidence and best practices support universal use of face masks, physical distancing and limiting contacts, avoiding non-essential indoor spaces and crowded outdoor settings among other things;

WHEREAS, in response to a new surge in COVID-19 throughout Maryland and evidence of widespread community transmission, on November 17, 2020 Governor Hogan issued Order Number 20-11-17-01 reinstituting certain restrictions for individuals and businesses ("Order No. 20-11-17-01");

WHEREAS, Order No. 20-11-17-01 authorizes political subdivisions such as Baltimore City to issue local orders that are more restrictive than Order No. 20-11-17-01, such as those requiring any businesses, organizations, establishments, or facilities to close or modify their operations and/or requiring individuals to remain

indoors or to refrain from congregating, if deemed necessary and reasonable to save lives or prevent exposure to COVID-19;

WHEREAS, between October 12, 2020 and November 29, 2020, the 7-day averages for rate of new COVID-19 cases per 100,000 increased 337% among Baltimore City residents and for percent positivity for COVID-19 tests among city residents increased by 294%;

WHEREAS, for the period October 2, 2020 through December 6, 2020, the number of COVID-19 patients in acute care beds increased 363% and the number of COVID-19 patients in ICU beds increased 520% in Baltimore City hospitals;

WHEREAS, between September 30, 2020 and December 3, 2020 the daily number (7-day average) of COVID-19 admissions to city hospitals increased by 314%;

NOW THEREFORE, I, Brandon M. Scott, Mayor of the City of Baltimore, in consultation with the Commissioner of Health for Baltimore City and by virtue of the authority vested in me by the Charter and laws of Baltimore City and pursuant to the authority granted to local jurisdictions in Order No. 20-11-17-01, and to save lives and prevent further exposure to the COVID-19 virus within Baltimore City and the State of Maryland, do hereby proclaim and order on this 9th day of December, 2020:

#### **I. Administrative Provisions**

A. This Mayoral Order rescinds all prior Executive orders related to COVID-19 and specifically the Orders effective dated May 15, 2020, May 29, 2020, June 8, 2020, June 12, 2020, June 22, 2020, June 29, 2020, July 22, 2020, August 3, 2020, August 7, 2020, September 8, 2020 and November 12, 2020 however, residents should continue to stay at home and continue to work from home when possible. Older and more vulnerable residents, and those who live with them, are strongly advised to stay home whenever possible.

B. Residents and visitors should practice safe physical distancing, comply with the Health Commissioner Updated Directive and Order Regarding Face Coverings in Public dated November 6, 2020 (the "Updated Masking Order") and frequently wash their hands and sanitize high-touch areas. Employers should continue to encourage telework for their employees when possible.

## **II. Gatherings**

Gatherings (defined as "an indoor or outdoor assembly or meeting, especially a social or festive one or one for a specific purpose"). Gatherings include but are not limited to a celebration, event, party, cookout, parade, or a festival.

A. Indoor gatherings at public and private facilities, private homes and any public space are limited to no more than 10 persons; provided however, there must be sufficient space for persons to remain socially distant.

B. Outdoor gatherings at public and private facilities, private homes and any public space are limited to no more than 25 persons; provided however, there must be sufficient space for persons to remain socially distant.

C. Sports gatherings at facilities controlled by the Baltimore City Department of Recreation and Parks are prohibited in accordance with guidance from Baltimore City Recreation and Parks in consultation with the Mayor and the Health Commissioner.

## **III. Religious Facilities**

A. Churches, synagogues, mosques, temples, and other similar religious facilities of any faith in Baltimore City ("Religious Facilities") may open to the general public, provided, however, the total number of persons permitted in a religious facility at any one time shall not exceed 25% of that religious facility's Maximum Occupancy (defined below).

B. Religious Facilities shall make every effort to clean the facility between each use, shall require facial covering and shall encourage social distancing.

## **IV. Retail Establishments and Malls.**

A. Retail businesses, organizations, establishments, and facilities in the City of Baltimore ("Retail Establishments") may open to the general public, provided, however, that the total number of persons permitted in a Retail Establishment at any one time shall not exceed 25% of that Retail Establishment's Maximum Occupancy (defined below).

B. Shopping centers in the City of Baltimore that have one or more enclosed pedestrian concourses may open to the general public not to exceed 25% capacity at any one time.

C. Businesses with a BD7 or D tavern license and with a separate packaged goods section that was in operation prior to March 5, 2020, may operate under and subject to this section IV.

#### **V. Indoor Recreational Establishments.**

A. Indoor recreational establishments in Baltimore City identified or similar to those listed below ("Indoor Recreational Establishments") must close effective 5p.m., December 11, 2020:

1. bingo halls;
2. bowling alleys;
3. pool halls;
4. roller and ice skating rinks;
5. social and fraternal clubs (including without limitation, American Legion posts, VFW posts, and Elks Clubs) ("Social Clubs"); and
6. Indoor Pools;
7. Cigar and Hookah establishments; and
8. Adult entertainment venues.

#### **VI. Outdoor Recreational Establishments.**

A. Outdoor recreational establishments in Baltimore City identified or similar to those listed below ("Outdoor Recreational Establishments") may operate, subject to applicable State Orders and Secretary's Directives, but shall not exceed 25% of that facility's Maximum Occupancy (defined below):

1. golf courses and driving ranges;
2. outdoor archery and shooting ranges;
3. marinas and watercraft rental businesses;
4. campgrounds;
5. horse boarding and riding facilities;
6. outdoor day camps; and

7. tour boats (except for dining or beverage service which are prohibited under Section VII below).

## **VII. Foodservice Establishments**

A. All restaurants, bars, nightclubs, adult entertainment, breweries, tour boat dining, and other similar establishments that sell food or beverages for consumption on-premises and Social Clubs or facilities of any kind with dining facilities (collectively, "Foodservice Establishments") shall remain closed to on-premises indoor and outdoor service. Foodservice Establishments may, to the extent permitted by applicable law:

1. sell food and beverages that are promptly taken from the premises, i.e., on a carry-out or drive-through basis; and
2. deliver food and beverages to customers off the premises.

## **VIII. Fitness Centers**

A. Fitness centers, health clubs, health spas, gyms, aquatic centers, and self-defense schools in Baltimore City ("Fitness Centers") may open for individual fitness activities; provided, however, the total number of persons permitted in a fitness center at any one time shall not exceed 25% of that fitness center's Maximum Occupancy (defined below). Group fitness activities are prohibited and patrons shall abide by the Updated Masking Order.

## **IX. Casinos**

- A. Casinos in Baltimore City are prohibited from providing food and beverage service but may continue their gaming operation; provided however, the total number of persons permitted in the Casino at any one time shall not exceed 25% of that Casino's Maximum Occupancy (defined below).

## **X. Personal Services**

A. Subject to applicable State Orders, Secretary's Directives and paragraph B. and C. below, establishments in Baltimore City identified or similar to those listed below ("Personal Services Establishments") may open to the general public but shall not exceed 25% of that facility's Maximum Occupancy (defined below):

1. beauty salons;
2. barber shops;
3. tattoo parlors;
4. tanning salons;
5. massage parlors; and
6. establishments that provide esthetic services or provide nail technician services (as described in Title 5 of the Business Occupations Article of the Maryland Code).

B. All customers over the age of two are required to comply with the Updated Masking Order while inside any Personal Services Establishment.

C. Personal Services Establishments shall:

1. require staff to wear Face Coverings at all times while indoors;
2. provide services on an appointment basis only and keep a log of each customer's name and that of anyone who accompanied them to the appointment and the name of the person who provided their services; and
3. after providing services to each customer, clean and disinfect the area in which services were performed in accordance with applicable guidelines from the CDC, MDH, and the Baltimore City Health Department.

#### **XI. Other Businesses.**

A. Except as otherwise closed by this Order or other Mayoral or Governor's Order and subject to applicable Local Health Commissioner's Orders and Secretary's Directives and the provisions contained herein, businesses, organizations, establishments, and facilities that are not part of the critical infrastructure sectors identified by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (currently described at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>) may open at 25% of maximum capacity (defined below) to the general public.

#### **XII. Miscellaneous Cultural Venues / Family Attractions.**

A. Libraries may continue to operate with curbside pickup service.



B. Museums, Zoos and Aquariums may open to the general public but shall not exceed 25% of that facility's Maximum Occupancy (defined below).

### **XIII. Theaters and Outdoor Entertainment Venues.**

A. Indoor and outdoor theaters and performance venues shall close. Live performances and live streamed performances from any venue not permitted to operate under this Executive Order are prohibited.

### **XIV. Businesses, Organizations, Establishments, and Facilities Required to Close.**

A. Senior Centers. All senior citizen activities centers (as defined in Section 10-501(j) of the Human Services Article of the Maryland Code) shall remain closed.

1. Staff and owners may continue to be on-site at any business, organization, establishment, or facility that is required to be closed pursuant to this Order for only the following purposes:

- i. Facilitating remote working (a/k/a/ telework) by other staff;
- ii. Maintaining essential property;
- iii. Preventing loss of, or damage to property, including without limitation, preventing spoilage of perishable inventory;
- iv. Performing essential administrative functions, including without limitation, picking up mail and processing payroll;
- v. Caring for live animals; and
- vi. Activities related to the pandemic response such as testing and vaccinations.

B. Closure by Other Order. All businesses, organizations, establishments, and facilities that are required to close pursuant to any other Order of the Governor of the State of Maryland or any other Order of a political subdivision, shall be and remain closed in accordance with such other Order, as the case may be.

C. City issued permits will not be issued until further notice.

**XV. Government Buildings and Facilities with Large Occupancy or Attendance.**

A. State and local government buildings and facilities with an expected occupancy or attendance of more than 10 people shall:

1. Promptly and conspicuously post in the building or facility a copy of the MDH recommendations for social distancing; and
2. Provide all occupants and attendees with the capability to wash their hands.

B. A copy of this Order shall be made available to all occupants or attendees at any State or local government building and facility with an expected occupancy or attendance of more than 10 people.

**XVI. Definitions.**

A. "Maximum Occupancy" means:

1. The maximum occupancy load of the Facility under the applicable fire code as set forth on a certificate issued for the Facility by a local fire code official;
2. If no such certificate has been issued for the Facility by the local fire code official, the maximum occupancy of the Facility pursuant to applicable laws, regulations, and permits.

**XVII. Face Coverings.**

A. The use of face coverings is required as more fully set forth in the Updated Masking Order.

**XVIII. General Provisions**

A. All businesses, organizations, establishments, and facilities that are permitted to be open under this Mayoral Order shall comply with:

1. applicable Local and Governor's Orders;
2. applicable Directives issued by the Maryland Secretary of Health;
3. applicable social distancing guidance published by the CDC and the Maryland Department of Health; and

4. orders issued by the applicable Local Health Officer/Mayor.

B. Each law enforcement officer of the State or a political subdivision shall execute and enforce Order No. 20-11-17-01 and this Local Order pursuant to the terms of Order No. 20-11-17-01, which provides that a person who knowingly and willfully violates this Order or any Local Order is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding \$5,000 or both.

C. In accordance with the Governor's Order allowing for local decision making, the Mayor reserves the right to rescind any or all parts of this Order or issue a new order revising this mayoral order, in the event that this Order is not complied with or if it is in the public health interest of the citizens of Baltimore City to issue additional restrictions.

D. This Order remains effective until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, superseded, amended, or revised by additional orders.

E. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order is hereby suspended to the extent of the inconsistency.

F. The bold paragraph headings in this Order are for convenience of reference only and shall not affect the interpretation of this Order.

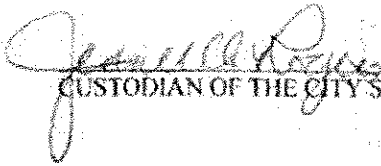
G. If any provision of this Order or its application to any person, entity, or circumstance is held invalid by any court of competent jurisdiction, all other provisions or applications of the Order shall remain in effect to the extent possible without the invalid provision or application. To achieve this purpose, the provisions of this Order are severable.


This Executive Order shall take effect Friday, December 11, 2020 at 5:00 p.m.

IN WITNESS WHEREOF I HAVE  
HEREUNTO PLACED MY HAND AND  
THE GREAT SEAL OF THE CITY OF  
BALTIMORE

ATTEST:

THIS 9th DAY OF December, 2020

  
CUSTODIAN OF THE CITY SEAL

  
BRANDON M. SCOTT, MAYOR  
CITY OF BALTIMORE

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
BY THE BALTIMORE CITY LAW DEPARTMENT

  
DANA P. MOORE  
ACTING CITY SOLICITOR



*The State of Maryland*  
Executive Department

ORDER  
OF THE  
GOVERNOR OF THE STATE OF MARYLAND  
NUMBER 20-11-17-01

AMENDING AND RESTATING THE ORDER OF NOVEMBER 10, 2020,  
REGULATING CERTAIN BUSINESSES AND FACILITIES AND  
GENERALLY REQUIRING USE OF FACE COVERINGS

- WHEREAS, A state of emergency and catastrophic health emergency was proclaimed on March 5, 2020, and renewed on March 17, April 10, May 6, June 3, July 1, July 31, August 10, September 8, October 6, and October 30, 2020, to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency still exists;
- WHEREAS, COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death, is a public health catastrophe and has been confirmed throughout Maryland;
- WHEREAS, To reduce the spread of COVID-19, the U.S. Centers for Disease Control and Prevention and the Maryland Department of Health recommend canceling large gatherings and social distancing in smaller gatherings;
- WHEREAS, The currently known and available scientific evidence and best practices support limitations on large gatherings and social distancing to prevent exposures and transmissions, and reduce the threat to especially vulnerable populations, including older individuals and those with chronic health conditions;
- WHEREAS, To reduce the threat to human health caused by transmission of the novel coronavirus in Maryland, and to protect and save lives, it is necessary and reasonable that individuals in the state refrain from congregating;
- WHEREAS, To protect the public health, welfare, and safety, prevent the transmission of the novel coronavirus, control the spread of COVID-19, and save lives, it is necessary to control and direct the movement of individuals in Maryland, including those on the public streets;



WHEREAS, It is further necessary to control and direct in Maryland the occupancy and use of buildings and premises, as well as places of amusement and assembly;

WHEREAS, the Coronavirus Recovery Team continues to advise on related public health and emergency management decisions;

WHEREAS, the State has implemented measures to reduce community transmission rates of COVID-19, while strategically activating the Maryland Strong: Roadmap to Recovery plan;

WHEREAS, the State is continuously expanding COVID-19 laboratory testing capacity and locations throughout Maryland, and has increased its disease-investigation capabilities by implementing operations to trace the contacts of up to 1,000 new cases per day;

WHEREAS, the State has carefully monitored hospital capacity, and has worked with hospitals to ensure their surge capacity can accommodate Marylanders who may become ill;

WHEREAS, the State is procuring necessary protective equipment to safeguard critical facilities and staff; and

WHEREAS, the Coronavirus Recovery Team has advised that widespread use of Face Coverings is likely to help control the spread of COVID-19;

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, DO HEREBY ORDER:

I. Administrative and Implementing Provisions.

- a. The Order of the Governor of the State of Maryland, dated March 12, 2020, entitled "Prohibiting Large Gatherings and Events and Closing Senior Centers," as amended and restated on March 16, 2020, and further amended and restated on March 19, 2020 by Order Number 20-03-19-01, and further amended and restated on March 23, 2020 by Order Number 20-03-29-01, and further amended and restated on March 30, 2020 by Order Number 20-03-30-01, and further amended and restated on May 6, 2020 by Order Number 20-05-06-01, and further amended and restated on May 13, 2020 by Order Number 20-05-13-01, and further amended and restated on May 27, 2020 by Order Number 20-05-27-01, further amended and restated on June 3, 2020 by Order Number 20-06-03-01, further amended and restated on June 10, 2020 by Order Number 20-06-10-01, further amended and restated on July 29, 2020 by Order Number 20-07-29-01, further amended and restated on August 3, 2020 by Order Number 20-08-03-01, further

amended and restated on September 1, 2020 by Order Number 20-09-01-01, and further amended and restated on September 18, 2020 by Order Number 20-09-18-01, further amended and restated on September 28, 2020 by Order Number 20-09-28-01, further amended and restated on October 16, 2020 by Order Number 20-10-16-01, and further amended and restated on November 10, 2020 by Order Number 20-11-10-01, is further amended and restated in its entirety as set forth herein.

- b. The Secretary of Health (the “Secretary”) is hereby authorized to issue directives under this Order (“Secretary’s Directives”), as the Secretary deems necessary, to monitor, treat, prevent, reduce the spread of, and suppress COVID-19 in relation to any activity permitted under this Order or any business, organization, establishment, or facility that is permitted by this Order to be open to the general public, which directives may consist of binding requirements and/or non-binding recommendations, and may include, without limitation, requirements pertaining to physical distancing, cleaning, disinfection, COVID-19 symptom screening, restrooms and other shared facilities, concessions, and/or ingress, egress, and movement of persons.
- c. Political subdivisions are not prohibited from opening outdoor public spaces to the general public (such as parks, sports fields and courts, beaches, dog parks, and playgrounds), subject to the following:
  - i. The decision to do so shall be made after consultation with the health officer for the county in which the outdoor public space is located (or, in the case of outdoor public spaces located in Baltimore City, the Commissioner of Health for Baltimore City) (the “Local Health Officer”).
  - ii. The Local Health Officer may issue such directives or orders as may be necessary to monitor, prevent, reduce the spread of, and suppress COVID-19 with respect to the use of the outdoor public space (“Health Officer Directives”).
  - iii. The political subdivision must require persons using the outdoor public space to comply with applicable Secretary’s Directives, applicable Health Officer Directives, and applicable social distancing guidance published by the U.S. Centers for Disease Control and Prevention (“CDC”) and the Maryland Department of Health (“MDH”).
- d. If a political subdivision determines that doing so is necessary and reasonable to save lives or prevent exposure to COVID-19, the political subdivision is hereby authorized to issue orders that are more restrictive than this Order (“Local Orders”):
  - i. requiring any businesses, organizations, establishments, or facilities (except schools) to close or modify their operations; and/or
  - ii. requiring individuals to remain indoors or to refrain from congregating.

- e. Local Orders may remain in effect for so long as the authority granted by paragraph I.d (as it may be amended from time to time) remains in effect. The authority granted by paragraph I.d (as it may be amended from time to time) is in addition to, not in derogation of, any authority of a political subdivision under its charter, laws, ordinances, or regulations.

## II. Social Distancing.

- a. It is strongly recommended that all Marylanders continue following the most current guidance from CDC and MDH regarding social distancing, including, without limitation, avoidance of large gatherings and crowded places.
- b. The Secretary is hereby authorized to issue Secretary's Directives requiring individuals to remain indoors or to refrain from congregating, as the Secretary deems necessary to monitor, treat, prevent, reduce the spread of, and suppress COVID-19.

## III. Businesses, Organizations, Establishments, and Facilities That May Be Open.

- a. Religious Facilities. Subject to applicable Local Orders and Secretary's Directives, churches, synagogues, mosques, temples, and other similar religious facilities of any faith in Maryland ("Religious Facilities") may open to the general public, *provided, however*, that the total number of persons permitted in a Religious Facility at any one time shall not exceed 50% of that Religious Facility's Maximum Occupancy (defined below).
- b. Retail Establishments and Malls.
  - i. Subject to applicable Local Orders and Secretary's Directives:
    - 1. retail businesses, organizations, establishments, and facilities in the State of Maryland ("Retail Establishments") may open to the general public, *provided, however*, that the total number of persons permitted in a Retail Establishment at any one time shall not exceed 50% of that Retail Establishment's Maximum Occupancy (defined below); and
    - 2. shopping centers in the State of Maryland that have one or more enclosed pedestrian concourses may open to the general public.
  - ii. All Retail Establishments shall, in good faith and to the extent possible:
    - 1. where any queue is expected to form, designate with signage, tape, or by other means at least six-foot spacing for persons in line;
    - 2. sanitize, or provide customers with a means to sanitize, handles of carts and baskets that are available to customers;
    - 3. provide staff and customers with clean restrooms stocked with



soap or sanitizer, and allow staff to wash their hands at least once every 30 minutes; and

4. post signage at each entrance advising customers about the requirement to wear Face Coverings described in paragraph IV.b.

c. Manufacturing. Subject to applicable Local Orders and Secretary's Directives, all manufacturing businesses and facilities in Maryland may open.

d. Personal Services.

- i. Subject to applicable Local Orders, applicable Secretary's Directives and paragraph III.d.ii below, the following establishments in Maryland ("Personal Services Establishments") may open to the general public:

1. beauty salons;
2. barber shops;
3. tattoo parlors;
4. tanning salons;
5. massage parlors; and
6. establishments that provide esthetic services or provide nail technician services (as described in Title 5 of the Business Occupations Article of the Maryland Code);

- ii. All Personal Services Establishments shall:

1. provide services on an appointment basis only;
2. not allow the number of persons in the Personal Services Establishment to exceed 50% of the Personal Services Establishment's Maximum Occupancy (defined below); and
3. after providing services to each customer, clean and disinfect the area in which services were performed in accordance with applicable guidance from the CDC and MDH.

e. Other Recreational Establishments.

- i. Subject to applicable Local Orders and Secretary's Directives, the following establishments in Maryland may open to the general public:

1. golf courses and driving ranges;
2. outdoor archery and shooting ranges;
3. marinas and watercraft rental businesses;
4. campgrounds;
5. horse boarding and riding facilities;
6. drive-in movie theaters;
7. outdoor swimming pools;
8. outdoor day camps;
9. tour boats;

10. amusement parks;
  11. miniature golf establishments;
  12. go-kart tracks; and
  13. the outdoor areas of any other establishments that are subject to the admission and amusement tax under Title 4 of the Tax-General Article of the Maryland Code.
- ii. Subject to applicable Local Orders and Secretary's Directives, the following establishments in Maryland ("Indoor Recreation Establishments") may open to the general public:
1. bingo halls;
  2. bowling alleys;
  3. pool halls;
  4. roller and ice skating rinks;
  5. social and fraternal clubs (including without limitation, American Legion posts, VFW posts, and Elks Clubs) ("Social Clubs"); and
  6. the indoor areas of any other establishments that are subject to the admission and amusement tax under Title 4 of the Tax-General Article of the Maryland Code;

*provided, however*, that the total number of persons permitted in an Indoor Recreation Establishment at any one time shall not exceed 50% of that Indoor Recreation Establishment's Maximum Occupancy (defined below).

f. Foodservice Establishments.

- i. Subject to applicable Local Orders, applicable Secretary's Directives, and paragraph III.f.ii below, (a) restaurants, bars, nightclubs, banquet and catering halls, and other similar establishments that sell and/or serve food or beverages for consumption on-premises in Maryland, and (b) Social Clubs with dining facilities (collectively, "Foodservice Establishments") may, to the extent permitted by applicable law:
1. serve food and beverages to customers for consumption in outdoor seating areas;
  2. sell food and beverages that are promptly taken from the premises, i.e., on a carry-out or drive-through basis;
  3. deliver food and beverages to customers off the premises; and
  4. serve food and beverages to customers for consumption in indoor seating areas.
- ii. Foodservice Establishments shall:
1. not allow the number of persons in the Foodservice Establishment to exceed 50% of the Foodservice Establishment's Maximum Occupancy (defined below);
  2. not serve food in a buffet format;

3. not serve customers who are not seated;
4. clean and disinfect each table between each seating in accordance with CDC and MDH guidelines, using cleaning products that meet the criteria of the U.S. Environmental Protection Agency for use against COVID-19; and
5. not be open to the public between the hours of 10:00 p.m. and 6:00 a.m.; *provided, however*, that during such hours Foodservice Establishments may continue to (a) sell food and beverages that are promptly taken from the premises (i.e., on a carry-out or drive-through basis), and (b) deliver food and beverages to customers off the premises.

iii. As used in this paragraph III.f:

1. the term “indoor seating area” means a portion of a Foodservice Establishment that is an indoor area, as defined in COMAR 10.19.04.02.B(9); and
2. the term “outdoor seating area” means a portion of a Foodservice Establishment that is not an indoor seating area.

g. *Fitness Centers*. Subject to applicable Local Orders and Secretary’s Directives, fitness centers, health clubs, health spas, gyms, aquatic centers, and self-defense schools in Maryland (“Fitness Centers”) may open to the general public; *provided, however*, that the total number of persons permitted in a Fitness Center at any one time shall not exceed 50% of that Fitness Center’s Maximum Occupancy (defined below).

h. *Casinos, Racetracks, and Simulcast Betting Facilities*.

i. Subject to applicable Local Orders, Secretary’s Directives, and paragraph III.h.iii below, the following establishments (“Gaming Facilities”) may open to the general public:

1. MGM National Harbor;
2. Live! Casino & Hotel;
3. Horseshoe Casino Baltimore;
4. Hollywood Casino Perryville;
5. Ocean Downs Casino;
6. Rocky Gap Casino Resort; and
7. all simulcast betting facilities in the State, to the extent not otherwise included in the buildings and premises listed above.

ii. Subject to applicable Local Orders, Secretary’s Directives, and paragraph III.h.iv below, the following establishments (“Racing Facilities”) may open to the general public:

1. Laurel Park;
2. Pimlico Race Course;

3. Timonium Race Course;
  4. Fair Hill Races;
  5. Rosecroft Raceway; and
  6. Ocean Downs.
- iii. The total number of persons permitted in a Gaming Facility at any one time shall not exceed 50% of that Gaming Facility's Maximum Occupancy (defined below).
  - iv. The total number of persons permitted in a Racing Facility at any one time shall not exceed the lesser of (a) 50% of that Racing Facility's Maximum Occupancy (defined below), or (b) 250 persons.
- i. Other Businesses. Except as otherwise closed by this Order or any other Order of the Governor of the State of Maryland, subject to applicable Local Orders and Secretary's Directives, businesses, organizations, establishments, and facilities that are not part of the critical infrastructure sectors identified by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (currently described at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>) may open to the general public.
  - j. Theaters, Outdoor Entertainment and Sporting Venues. Subject to applicable Local Orders and Secretary's Directives:
    - i. theatres in Maryland at which live performances occur or motion pictures are shown indoors ("Indoor Theaters") may open to the general public; *provided, however*, that the total number of persons permitted in an Indoor Theater at any one time (per individual auditorium or performance stage) shall not exceed the lesser of (i) 50% of that Indoor Theater's Maximum Occupancy (defined below), or (ii) 100 persons;
    - ii. venues in Maryland at which live performances occur or motion pictures are shown outdoors, and at which entry is limited to ticketed customers ("Outdoor Entertainment Venues"), may open to the general public; *provided, however*, that the total number of persons permitted in an Outdoor Entertainment Venue at any one time shall not exceed the lesser of (A) 50% of that Outdoor Entertainment Venue's Maximum Occupancy (defined below), or (B) 250 persons; and
    - iii. outdoor venues at which sporting events occur (including, without limitation, major league, professional, minor league, semi-professional, amateur, recreational, motor sports, and collegiate sporting events) ("Outdoor Sporting Venues"), may open to the general public, *provided, however*, that the total number of persons permitted in an Outdoor Sporting Venue at any one time shall not exceed the lesser of (A) 50% of that Outdoor Sporting Venue's Maximum Occupancy (defined below), or (B) 250 persons.

k. Maximum Occupancy; Indoor vs. Outdoor.

- i. With respect to a Religious Facility, Retail Establishment, Foodservice Establishment, Fitness Center, Gaming Facility, Racing Facility, Indoor Recreation Establishment, Personal Services Establishment, Indoor Theater, Outdoor Entertainment Venue, or Outdoor Sporting Venue (a “Facility”), “Maximum Occupancy” means:
  1. The maximum occupancy load of the Facility under the applicable fire code, as set forth on a certificate issued for the Facility by a local fire code official; or
  2. If no such certificate has been issued for the Facility by the local fire code official, the maximum occupancy of the Facility pursuant to applicable laws, regulations, and permits.
- ii. As used herein:
  1. the term “indoor area” has the meaning provided in COMAR 10.19.04.02.B(9); and
  2. the term “outdoor area” means an area that is not an indoor area.

- l. Operating Requirements. All businesses, organizations, establishments, and facilities in Maryland shall comply with:
  - i. applicable Local Orders;
  - ii. applicable Secretary’s Directives;
  - iii. applicable social distancing guidance published by CDC and MDH; and
  - iv. orders issued by the applicable Local Health Officer pursuant to the Order of the Governor of the State of Maryland Number 20-04-05-02, dated April 5, 2020, entitled “Delegating Authority to Local Officials to Control and Close Unsafe Facilities”, as it may be amended from time to time.

IV. Face Coverings.

a. Definitions. As used herein:

- i. “Face Covering” means a covering that fully covers a person’s nose and mouth and is secured to the person’s head, but is not a Medical-Grade Mask. The term “Face Covering” includes, without limitation, scarves, bandanas, and plastic full-face shields.
- ii. “Medical-Grade Mask” means an N95, KN95, surgical, or other mask that would be appropriate for a health care setting.
- iii. “Public Transportation” means shared-ride surface transportation services that are open to the general public, including without limitation, taxi services, ride-sharing services, car services, transit services provided by

any other unit of the State or any political subdivision, and all related stations and platforms. Examples of Public Transportation include, but are not limited to MTA bus service, MARC train service, Light Rail train service, MTA Metro subway service, and Mobility and Paratransit services.

b. Requirement to Wear Face Coverings.

i. Except as provided in paragraph IV.c, all persons in Maryland over the age of five (5) years old are required to wear a Face Covering when they are:

1. in or on any Public Transportation;
2. indoors at any location where members of the public are generally permitted, including without limitation, Religious Facilities, Retail Establishments, Foodservice Establishments, Fitness Centers, Gaming Facilities, the indoor portions of Racing Facilities, Indoor Recreation Establishments, Personal Services Establishments, and Indoor Theaters;
3. at any Outdoor Sporting Venue or Outdoor Entertainment Venue;
4. outdoors at any location other than an Outdoor Sporting Venue or Outdoor Entertainment Venue, and unable to consistently maintain at least six feet of distance from individuals who are not members of their household;
5. obtaining healthcare services, including without limitation, in offices of physicians and dentists, hospitals, pharmacies, and laboratories; and
6. engaged in work in any area where:
  - a. interaction with others is likely, including without limitation, in shared areas of commercial offices; or
  - b. food is prepared or packaged.

ii. Single-use Face Coverings shall be properly discarded in trash receptacles. It is recommended that all reusable Face Coverings be cleaned frequently (at least once per day).

iii. Wearing a Medical-Grade Mask satisfies any requirement in paragraph IV.b.i to wear a Face Covering, but all Marylanders are urged to reserve Medical-Grade Masks for use by health care workers and first responders.

c. Exceptions. Paragraph IV.b.i does not require persons to wear Face Coverings:

- i. if, due to a bona fide disability or medical condition, it would be unsafe for the person to do so;

- ii. to the extent wearing a Face Covering would impede communication by or with persons who have a hearing impairment or other disability, where the ability to see the mouth is essential for communication;
- iii. if wearing a Face Covering would subject the person to an unsafe working condition, as determined by federal, state, or local occupational safety regulators or workplace safety guidelines;
- iv. to the extent wearing a Face Covering would make it impossible to receive services requiring access to the face, mouth, or head, including without limitation, dental care, shaving, and facial treatments;
- v. while consuming food or beverages;
- vi. while swimming or engaging in other physical activities where the use of a Face Covering is likely to pose a bona fide safety risk;
- vii. while operating any Public Transportation conveyance, provided that the person is (1) the sole operator of the conveyance, and (2) located in a separate compartment that is off-limits to riders; or
- viii. to the extent it is necessary to observe the person's entire face to verify such person's identity for bona fide security purposes.

V. Businesses, Organizations, Establishments, and Facilities Required to Close.

- a. Senior Centers. All senior citizen activities centers (as defined in Section 10-501(i) of the Human Services Article of the Maryland Code) shall remain closed.
- b. Minimal Operations. Staff and owners may continue to be on-site at any business, organization, establishment, or facility that is required to be closed pursuant to this Order for only the following purposes:
  - i. Facilitating remote working (a/k/a/ telework) by other staff;
  - ii. Maintaining essential property;
  - iii. Preventing loss of, or damage to property, including without limitation, preventing spoilage of perishable inventory;
  - iv. Performing essential administrative functions, including without limitation, picking up mail and processing payroll; and
  - v. Caring for live animals.
- c. Closure By Other Order. All businesses, organizations, establishments, and facilities that are required to close pursuant to any other Order of the Governor of the State of Maryland or any other Order of a political subdivision, shall be and remain closed in accordance with such other Order, as the case may be.

VI. Government Buildings and Facilities with Large Occupancy or Attendance.

- a. State and local government buildings and facilities with an expected occupancy or attendance of more than 10 people shall:
  - i. Promptly and conspicuously post in the building or facility a copy of the MDH recommendations for social distancing; and
  - ii. Provide all occupants and attendees with the capability to wash their hands.
- b. A copy of this Order shall be made available to all occupants or attendees at any State or local government building and facility with an expected occupancy or attendance of more than 10 people.

VII. General Provisions.

- a. Each law enforcement officer of the State or a political subdivision shall execute and enforce this Order and any Local Order.
- b. A person who knowingly and willfully violates this Order or any Local Order is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding \$5,000 or both.
- c. This Order remains effective until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.
- d. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order is hereby suspended to the extent of the inconsistency.
- e. The underlined paragraph headings in this Order are for convenience of reference only and shall not affect the interpretation of this Order.
- f. If any provision of this Order or its application to any person, entity, or circumstance is held invalid by any court of competent jurisdiction, all other provisions or applications of the Order shall remain in effect to the extent possible without the invalid provision or application. To achieve this purpose, the provisions of this Order are severable.

ISSUED UNDER MY HAND THIS 17TH DAY OF NOVEMBER, 2020, TO  
BE EFFECTIVE AS OF 5:00 P.M. ON NOVEMBER 20, 2020.

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Lawrence J. Hogan, Jr.  
Governor



**TITAN HOSPITALITY GROUP,  
LLC, et al.**

*Plaintiffs*

v.

**STEUART PITTMAN**  
Anne Arundel County Executive

*Defendant*

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* ANNE ARUNDEL COUNTY  
\*  
\* Case No.: C-02-CV-20-2268

\* \* \* \* \*

### TEMPORARY RESTRAINING ORDER

HAVING READ AND CONSIDERED the Motion for Temporary Restraining Order and Preliminary Injunction, and having heard from the parties in chambers by way of a conference call, and after careful consideration of all the matters, it is this 16<sup>th</sup> day of December, 2020, at 2:30 p.m., by the Circuit Court for Anne Arundel County

FOUND that the Plaintiffs have a sufficient and reasonably likelihood of success on the merits, as the County Executive appears to have relied on a selective interpretation of the data relating to Covid 19 matters that ignores or minimizes other sources of Covid 19 contact, and has not clearly explained the overall hospital capacity in Anne Arundel County as it relates to Covid exposure. It is clear based on the pleadings and affidavits and exhibits that the restrictions on Plaintiff's businesses were applied in an inconsistent manner from other businesses that contribute significantly to Covid contact sources. In other words, there appears at this stage to be an arbitrary and capricious application of restrictions to Plaintiff's businesses when compared to other business activities.

Plaintiffs have demonstrated that they will suffer immediate and irreparable injury as the businesses in question have been devastated by the COVID-19 crisis. Employees

12/16/2020 DC



of all restaurants and bars in Anne Arundel County will be, or may be, laid off at the beginning of the holiday season, one of the best times of the year for them in terms of work opportunities and income. Owners of restaurants, already severely impacted by months of closure and severe restrictions on operations, are on the verge of financial ruin; the closure of their business for a month over the holiday season may possibly cause them to be closed permanently.

Further, suppliers to restaurants and bars will again be dramatically impacted, as their customers (restaurants) will be closed. These suppliers will also have to lay off employees, and these businesses have also been devastated by the COVID-19 crisis and may also be on the verge of financial collapse. The service industry, including sellers of equipment, those who perform maintenance on that equipment, and similar industries, will be impacted just as the suppliers, employees, and the restaurants themselves.

Last, the financial cost to landlords and property managers where many restaurants are located, with lost or unpaid rent cannot be ignored, and their inability to pay their property managers, pay their mortgages, employees, and expenses associated with those properties is in jeopardy. With the restaurant-tenants once again unable to pay their rent, investors in restaurants that close permanently will lose their capital investment.

These costs are not purely financial to all of these parties. There is no request here for monetary damages. The request is to work, to live, to provide a service to others, and to survive as citizens in society in an occupation of one's choice. The health and well-being of these individuals is also at harm and this cannot be underestimated.

Since the balance of inconvenience weighs strongly in favor of plaintiffs, and the public interest favors keeping the restaurants and this vital industry open under the State of Maryland's not unreasonable restrictions rather than closed down or restricted as proposed by the Defendant, it is hereby

ORDERED that the Temporary Restraining Order is GRANTED, and that the provisions of Anne Arundel County Executive Order 39 and 39 as amended and restated that require the closure or restriction of all foodservice establishments from December 16, 2020 to January 13, 2021 are hereby stayed, suspended, and enjoined from future enforcement and effect, pending a hearing on the Motion for Preliminary Injunction, which is hereby scheduled December 28, 2020 at 9:00 a.m. Per Maryland Rule 15-504(c), any person affected by the order may apply for a modification or dissolution of the order on two days' notice to the party who obtained the order<sup>1</sup>, and it is further

ORDERED that plaintiffs do not need to file a bond, as no financial damage to the County is likely to occur as a result of the entry of this Temporary Restraining Order.

12/16/2020 2:35:09 PM



Judge William C. Mulford, II

William C. Mulford, II, Judge

Cc: C. Edward Hartman, III  
Hartman, Attorneys at Law  
116 Defense Highway, Suite 300  
Annapolis, Maryland 21401

Gregory Swain  
Anne Arundel County Office of Law  
2660 Riva Road, 4<sup>th</sup> Floor  
Annapolis, Maryland 21401

<sup>1</sup> Per Maryland Rule 1-203(a), when computing time, as the injunction will expire after 10 days, this day is a Saturday, and Courts are not open, the TRO will remain in effect until Court resumes.

**Note: The Preliminary Injunction Hearing will be conducted primarily by Zoom. Council may, if they wish, personally appear in court, but all witnesses will testify by Zoom. A link will be sent at a later date.**

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

MARYLAND RESTAURANT ASSOCIATION, INC.  
a Maryland Domestic Non-Profit Corporation, et al.

Plaintiffs

v.

BRANDON M. SCOTT, in his official capacity  
as the Mayor of the City of Baltimore

Defendant

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\* Civil No. \_\_\_\_\_  
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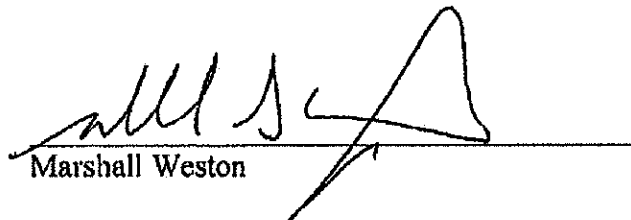
AFFIDAVIT OF MARSHALL WESTON

I HEREBY CERTIFY:

1. I am Marshall Weston, president of the Restaurant Association of Maryland (hereinafter referred to as "RAM"), the largest non-profit restaurant advocacy group in Maryland.
2. RAM regularly gathers, examines, and presents statistics regarding restaurant usage in order to act in the best interests of our member restaurants.
3. In 2020, much of our activity has centered around COVID practices.
4. Data regarding transmission of COVID-19 at restaurants throughout Maryland shows that restaurants are safe venues for recreational and business activities. Fewer than 2% of all COVID-19 cases have resulted from foodservice establishments.
5. Regulation of restaurants in Baltimore City pertaining to cleanliness, safety, and health is substantial, including regular inspections by government agencies. Further, restaurants are encouraged by RAM and other incentives to maintain highest standards of cleanliness.
6. This is especially true since the COVID-19 pandemic began. The extra measures introduced to the local restaurant industry are costly, time-consuming, and slow down the frequency of customers' usage of our institutions; nevertheless, our restaurants have embraced these measures, recognizing the catastrophic impact of any restaurant being the source of a significant number of cases of COVID-19.



7. The financial impact of the existing restrictions have been substantial and devastating. Even before the most recent Baltimore City Executive Order shutting down the restaurants effective December 11, 2020, restaurants have been closing their doors for good, representing a substantial and permanent loss of capital for the owners and investors, and a loss of income for employees, vendors, suppliers, contractors, landlords, and all other affiliated businesses.
8. The complete closure of restaurants for a month from December 11, a period that includes the holidays, will be financially devastating to these restaurants and the persons dependent thereon,
9. Based on my experience with restaurants and their customers, it is my firm belief that people will still gather in groups to socialize or conduct business while dining; however, in these instances, there will be no assurance that any safety measures will be imposed. The hosts of these gatherings will not be regulated businesses having to protect their licenses and review their bottom line; rather, they will be casual gatherings without social distance, masks, or other efforts to sanitize. The likelihood of the spread of COVID-19 among the public is greater by closing the restaurants.



Marshall Weston

**IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND**

MARYLAND RESTAURANT ASSOCIATION, INC.  
a Maryland Domestic Non-Profit Corporation, et al

Civil Case No.

Plaintiffs

v.

BRANDON M. SCOTT, in his official capacity  
as the Mayor of the City of Baltimore

Defendant

**AFFIDAVIT OF HUBERT A. ALLEN, JR.**

1. My name is Hubert A. Allen, Jr., I am over 18 years of age and competent to testify as a witness in this matter.

2. I have a Masters of Science degree in Biostatistics from Johns Hopkins University, Bloomberg School of Public Health. My current resume is attached. I have been in public health for 39 years, lived in Malawi Africa for three years doing public health work, published numerous refereed papers, and am passionate about using data as evidence to evaluate difficult public health questions such as the role of restaurants in the COVID-19 epidemic in the USA.

3. I am independent researcher who works as a contractor. I first approached the restaurant industry in my home state of New Mexico as the very same issue of indoor dining closure was raised in the Supreme Court of the State of New Mexico because of my philosophy, "In the time of a pandemic, in a court of law, both sides deserve epidemiologic/biostatistical representation as a matter of fairness." I stand in this court as a paid expert witness who works with data and evaluates public health interventions.

4. The COVID-19 epidemic in the USA and Maryland has been devastating in 2020. December of this difficult year is seeing the feared and predicted winter spike and, I believe will be the peak of the COVID-19 pandemic. Attached as Exhibit A is a graph of the new test-positive COVID-19 cases in Maryland over time showing the much higher point we have reached in December compared to the start of the outbreak and the summer spike.



5. State of Maryland Contact Tracing data is a source of scientifically-based data on the possible contagion risk of many activities. Exhibit B is a screen shot (taken on 12-17-2020) of the key elements found by contact tracing in Maryland in three graphs.

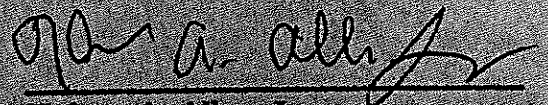
6. The left most graph is of "Social Gatherings of More than 10 People- Weekly 11/8/2020 - 11/14/2020." There were 1,502 responses and this was before the Thanksgiving travel and holiday occurred. Interestingly, we are not given data for those two last weeks in November.

7. Work outside the home in the middle chart of three shows that the most common High Risk Location was "Work Outside the Home" with 2,693 persons, followed by 1,586 who said "Indoor Retail/Shopping."

8. There is a combined category "Restaurant/Bar" for both indoor and outdoor dining and indoor and outdoor are ranked third and fourth with 1,231 and 556 people respectively. Also, there is a large proportion of traced contacts who do not give a response 4,635 or 41% of all those contacted. Based on the state of Maryland's contact tracing, one cannot conclude that indoor dining has driven the fall spike or that the closure of indoor dining in this county can dramatically alter the course of the epidemic in the state or county.

12/18/2020

Date



Hubert A. Allen, Jr.



CURRICULUM VITAE  
HUBERT  
EPIDEMIOLOGIST/ BIOSTATISTICIAN/COVID-19 PUBLIC HEALTH  
2020

Contacts: Cell: (505)639-3892, Email: HubertAllen@comcast.net  
720-25 Tramway Lane, NE, Albuquerque, NM 87122

Career Summary: After receiving a Master of Science in Biostatistics in 1986, I began three years of public health consulting in Malawi, Africa associated with a USAID/CDC funded projects on health, refugees and energy for the United Nations (UNDP and UNHCR). I returned to Baltimore, Maryland in 1989 and started 10 years of international public health/biostatistics/evaluation consulting (projects listed below). I moved to New Mexico in 1995, and quickly contracted with the New Mexico Department of Health to assist on some Diabetes Epidemiology Research. In open competitions, I became the first Vaccines or Children (VFC) Contractor in New Mexico in 1996. Three different stages of VFC are listed below. I recently helped collect survey data for the Center for Disease Control and Prevention (CDC) sponsored National Immunization Survey (NIS) and was a field data collector for a groundbreaking study of urban parks usage funded by The National Health, Lung and Blood Institute of the National Institutes of Health. In the COVID-19 pandemic, became a citizen-activist providing epidemiologic/biostatistical expert witness services in legal cases related to the understanding the decision-making basis government puts forth to order business and personal restrictions.

## EDUCATION

Master of Science, Biostatistics, Johns Hopkins University, School of Hygiene and Public Health, Baltimore, Maryland, 1986. Thesis: Methods of Band Survival Analysis: Applied to Studies of the Tundra Swan (*Cygnus columbianus columbianus*).

Bachelor of Science, Applied Math-Biology, Brown University, Providence, Rhode Island, June 1980.

High School Diploma, New Trier West High School, Northfield, Illinois, June 1976.

## COVID-19 BIOSTATISTICAL/EPIDEMIOLOGICAL EXPERT WITNESS CONSULTING (2020)

California Restaurant Association. Contracted as the epidemiologist/biostatistician to provide expert advice on COVID-19 public health issues and on closures in California restaurants in San Diego County. Analyzes data as needed and scrutinized scientific literature on the topic. Provides a science-based perspective on COVID-19 issues as they relate to restaurant. October - current 2020.

In Superior Court of the State of California, County of San Diego, Case No. 37-2020-00041316-CU-MC-CTL, Declaration filed November 17, 2020.

In Superior Court of the State of California, County of Los Angeles, Central District. Declaration filed November 24, 2020.

WARB LLC. Contracted with this New Mexico law firm representing three Albuquerque youth-oriented Family Fun businesses (think putt put, rock climbing wall, go carts, indoor parachute simulations, outdoor rides) versus the state of New Mexico on a question of 14<sup>th</sup> Amendment rights to open under COVID-19 safe procedures after being closed since March 2020. Responded to a State Affidavit, presented arguments for a COVID-19 safe resumption of operations. In the United States District Court for the District of New Mexico, Case No. 1:20-cv-01025-MV-KK. Declaration filed November 2020.

New Mexico Restaurant Association. Contracted as the epidemiologist/biostatistician to analyze state data (NMED Rapid Response database) to determine the actual burden of COVID-19 cases among restaurant employees and to counter the State of New Mexico's claim that indoor dining was the epicenter of the outbreak. Gave expert witness statements. Provided NMRA with public health advice on interpreting government data, and recommending mitigation strategies for restaurants. In the New Mexico State Supreme Court, Case No. S-1-SC-38396 Real Parties versus the Governor of New Mexico and the Secretary of Health. Declaration filed August 2020.

### **NEW MEXICO BASED CONSULTING (2003 - 2020)**

Epidemiology and statistical tutoring - for the following services Varsity Tutors, Frog Tutors, MobileMath: Educated over 800 students mostly undergraduate and graduate students in public health, statistics and epidemiology. Including currently guiding students on covid19 assignments and theses. August 2017 - October 2020.

NORC at the University of Chicago. Interviewer for the CDC-sponsored National Immunization Survey (NIS). The NIS is one of the largest telephone surveys in the nation and its data are considered the gold standard for public health surveillance on immunization rates. Being a telephone interviewer requires both computer skills and interviewing skills which were applied to this important national health survey. Using random selection of cell phone and land line numbers, as an interviewer I had to determine if the household was eligible for the survey, and if so to conduct the full NIS as carefully as possible. Was named "Top Ten" in performance for three months in a row for completing NIS surveys. August 2016 - August 2017.

New Mexico State Department of Health, VFC Stage III. Managed a \$1.2 million VFC Quality Assurance Grant for the Department of Health. Hired, trained and supervised over 10 in staff (mostly nurses) who expanded the services I provided to nurse-driven activities such as storage and handling training. During this time the new CDC SAMS system was rolled out, this is a CDC-standardized database all grantees enter their data into for ease of comparison and to evaluate each state's progress over time. 2012-2015.

New Mexico State Department of Health, VFC Stage II. Developed and implemented the adolescent vaccination evaluation protocol for use during the annual quality assurance visit. Special emphasis was placed on reaching all Indian Health Service, Pueblo or tribal clinics in the state. For the adolescent population, Tdap, MMR and HPV vaccination coverage rates were calculated and shared with the clinics. I provided a special list to all my clinics, definitely the clinics in Indian Country, which was a list of clients who began the HPV series but who had failed to complete the three-shot series. 2003 - 2011.

New Mexico State Department of Health, Stage I. Based on winning an RFP, I was the first Vaccines For Children (VFC) Program Contractor in New Mexico. Established the first protocols for clinic audits and defined evaluation metrics such as coverage rates for each vaccine (e.g. polio, MMR etc), missed opportunities, and drop-out rates that could be applied to both private and public providers of VFC childhood immunizations. Made on-site clinic visits, collected data and analyzed on the spot, and presented results to management and staff at the end of each visit. Provided positive strategies towards helping the clinics achieve goals of high immunization coverage rates (90% or greater). Established relationships with VFC clinics across the state of New Mexico including the Indian Health Service facilities in Indian Country and in the urban setting. Pulled a sample of clinic records to estimate coverage rates using the CDC software CoCASA for analysis. VFC Stage I, 1996 - 1997.

Shore Health Systems, Biostatistician Consultant on Domestic Violence Research Study. Advised and conducted analysis for a study of the incidence of DV in a rural health system in support for the Magnet Nursing Program at Shore Health Systems, Easton Maryland. The DV study was presented at the International Association of Forensic Nurses in the fall 2009 conference (Domestic Violence Screening in the Rural Community Hospital, Authors: Trinkley, Bryan, Allen and Speroni). 2008 - 2010.

New Mexico Primary Care Association, Assisted in the design of a data collection system which would allow Association members to satisfy a federal reporting requirement (UDS) using the state of New Mexico Internet database of immunizations. This new federal data collection mandate was being used to standardize the evaluation of immunization services by the members of the Association. Working with the leadership of the NMPCA, designed several strategies for the members to be able to generate the statistics required by federal mandate in a cost-effective manner. July 2008-Feb 2009.

## BIOLOGY/ECOLOGY

IVM Partners. Chief statistician developing an ecological metric, the Pollinator Site Value Index (PSVI) for assessing sample vegetation for its food value to a specific pollinator (e.g. European Honey Bee, Monarch Butterfly, bats). This PSVI can be used to evaluate whether ecological change over time has benefited pollinators in spaces such as power line rights-of-ways. January 2016 through October 2020.

City Parks Alliance/RAND Corporation/The Trust for Public Land. Field Data Collector for the "National Study of Neighborhood Parks." Using observational and photographic documentation to record visitor activity in Albuquerque urban parks. This groundbreaking study of urban parks usage was funded by The National Health, Lung and Blood Institute of the National Institutes of Health in order to understand the role our urban parks play in chronic disease prevention. January - June 2016.

## *HIS / AIDS / TB CONSULTING*

Initiatives Inc. Provided Technical Assistance into the design of the "Operations Research: Influence of Community Health Worker (CHW) Program Functionality Strengthening on CHW Engagement and Performance Research Protocol." This USAID-funded project is designed to strengthen the ramping up of 100,000 CHWs particularly, but not exclusively, in Africa. March - May 2010.

American Red Cross / Kazakhstan Red Crescent. Tuberculosis research statistical advisor for mid-term evaluation. Traveled to Kazakhstan to review and advise on a study of TB patients and the use of incentives to complete DOTs treatment. International funds supported consultant and the Kazak Research Team project to evaluate which incentives led to the highest compliance rate for taking medication for TB. May - June 2004.

Initiatives Inc. Provided Technical Assistance on the Zambia HIV workforce Study data using telephone, fax and e-mail. May - July 2003.

Family Health International, Consulting Statistician, The Socio-cultural Context of AIDS Prevention In Uganda, Dr. D. Schumann P.I. January - February 1993.

Project Hope, Atyrau, Kazakstan. Provided Technical Assistance to the Project Hope Implemented "Tengizchevroil (TCO) Bonus Fund" including assessment of computerization, planning for training, co-designing health information systems for tuberculosis, cardiac care, maternity and a new Urgent Care Health Clinic. September - October 1995.

## *NEW MEXICO CONSULTING (1995 -2004 selected)*

First Choice Community Healthcare. Consultant in Quality and Childhood Immunizations. Provides expert direction in Quality research and in improving the immunization coverage rates at the health system. Working with leadership (the pediatricians and Medical Director) improved policies and practices to increase childhood immunization rates. Annual evaluation showed great improvement, until most FCCH clinics reached the 90% coverage rate goal as the result of these changes. January 2002 - July 2004.

First Choice Community Healthcare. Consultant in Diabetes and Health Indicators. Provides technical guidance in research on diabetes and other health indicators. January 2002 -December 2003.

Lovelace Healthcare Innovations. Consultant for disease management program. January 1999 to June 1999.

New Mexico State Department of Health, Public Health Division, Diabetes Control Project. Consultant, Design of Diabetes Epidemiology Studies. Contact: Ms. Georgia Cleverley. January 1996 - June 1998.

Planned Parenthood of New Mexico. Evaluation Consultant for the Prevention of Adolescent Pregnancy Project. Contact: Mr. Marc Davidson. January 1996 to July 1996.

## *OTHER INTERNATIONAL HEALTH CONSULTING*

### **HEALTH INFORMATION SYSTEMS**

National Institute of Cholera and Enteric Diseases, Calcutta, India. Technical Assistance, Designed data entry, management and analysis plan for three-year study of persistent diarrhoea in children under five. June 1988, August 1989. WHO-funded.

Project Hope, Milot, Haiti. Co-author of a Handbook on Child Survival Health Indicators for a USAID Child Survival Project and developed a user-friendly trends tracking system. August 1995.

The Environmental Health Project, Washington, DC. Technical Director for Health and Management Information Systems. Camp, Dresser and McKee, Inc. as prime contractors, International Science and Technology Institute, Inc. employee. Half-time position. May 1994 to June 1995.

The World Health Organisation, Geneva, Switzerland. Contributed to the design of the WHO Global Breastfeeding Trends Monitoring System. October 1993.

Project Hope, Thyolo, Malawi. Developed a user-friendly Estate Health Monitoring System using Epi Info which allows 56 health status indicators to be tracked at the Compound, Estate and Company Levels. July 1992.

The Expanded Program on Breastfeeding Promotion, Wellstart, Washington DC. Developed a user-friendly Global Breastfeeding Trends Monitoring System using Epi Info software, and a core of DHS data. February 1992 - July 1996.

The Romania Family Planning Project, The Centre for Development and Population Activities, Romania. Designed the forms for a clinic based family planning information system. January 1992, October 1992, March - November 1993.

U.S. Peace Corps, Office of Medical Services, Washington DC. Consultant to University Research Corporation. Reviewed the OMS health information systems and proposed an umbrella information system for use in Quality Assurance and country program evaluations. May 1991.

Ministry of Health, Mozambique. Developed a comprehensive health information system in the Zambezi Pilot Child Survival Project using Epi Info software, involving six modules, with routine reporting from 17 districts. January, September 1991. Johns Hopkins University. Institute for International programs. USAID funded.

Save the Children Federation. Computerized Mbalachanda, Malawi, census of 40,000 individuals for Primary Health Care Information System. 1988-1989.

United Nations High Commissioner for Refugees (UNHCR). Computerized census of 277,000 Mozambican Refugees in Malawi using a staff of Malawians. Trained local people to use early IBM PCs and software to enter data during a refugee crisis. 1988-1989.

### *FAMILY PLANNING/DEMOGRAPHY*

The Family Health Training Project, Development Associates, Inc. I helped design the data collection for the first modern family planning services in Oman for the government of Oman, funded by USIAD. Designed a Family Planning Form which collected vital information for the tracking and evaluation of the national birth spacing program in Oman. March 1994 - April 1994.

The Romania Family Planning Project, The Centre for Development and Population Activities, Romania. Designed the computer software for a clinic based family planning information system. March 1993 - August 1993.

The Ghana Family Planning Monitoring System. Population Communication Services. Johns Hopkins University. Developed a demonstration family planning monitoring system for an IEC campaign, using CDC Epi Info software, involving extensive, user-friendly statistical and graphical reporting. June 1991. USAID-funded.

Baseline Analysis, Population Communication Services, Johns Hopkins University. Analysis of a baseline (KAP) survey of family planning in Burkina Faso. March 1990. USAID funded.

Evaluation, Population Communication Services. Evaluation of a family planning IEC campaign for Niger. November 1989 -February 1990. USAID-funded.

Research, The Futures Group, Washington D.C. Data analysis of a family planning panel study in Egypt. Technical assistance to Family of the Future, Cairo. July 1989 - October 1990. USAID-funded.

Evaluation, Population Communication Services, Johns Hopkins University. Data entry and analysis of Plateau State, Nigeria, IEC campaign on family planning. August 1988. USAID-funded.

Research Assistant, Department of International Health, School of Hygiene and Public Health, Johns Hopkins University. Life tables analysis of postpartum amenorrhea data from Matlab Bangladesh. 1984 - 1985.

#### *DIARRHEAL DISEASE*

Evaluation Design Strategist, Management Sciences for Health, PRITECH Project. Assisted in the design of evaluation strategies for National Diarrheal Disease Control Programs in developing countries. September 1990 -January 1991. USAID-funded.

Technical Assistance, University Research Corporation, PRICOR project. Dr. Marilyn Nations, Fortaleza, Brazil. Data analysis on an Apple 2+ computer using Stats Plus for "Mobilization of Traditional Healers for Primary Health Care." November 1985. USAID-funded.

#### *COMPUTER KNOWLEDGE/TRAINING*

Training, clients include: Save the Children Federation, UNICEF, UNDP, The Tea Research Foundation of Central Africa, The World Bank. Indian Country Clinics and hospitals in New Mexico on the state vaccine registry NMSIIS. Training includes all aspects of hardware and software mentioned below.

Hardware, IBM 4341, IBM compatible PCs; Apple 2, 2+, III; Zenith LapTop.

Software, Operating Systems: DOS, Windows. Wordprocessing: Word Perfect, WordStar, Word, MultiMate; Spreadsheets: Lotus 1-2-3, HAL, SuperCalc 3; Data Base Managers: Dbase III+, IV, Power Base, Ask Sam, Kedit, Epi Info; Statistical packages: SAS, SPSS PC/+, Statpak; Graphics: Harvard Graphics, Freelance. Direct-Tree. **CDC CASA/AFIX software. Familiar with the Indian Health Service RPMS**

#### *SELECTED PUBLICATIONS*

Annette A. Ghee, Helitzer-Allen, Deborah L., H.A. Allen Jr., Mark Lurie, "The Manual for Targeted Intervention on Sexually Transmitted Illnesses for the Setting of Commercial Sex." Copyright by Family Health International, Published by Hubert Allen and Associates, 1997.

Helitzer-Allen, Deborah L., H.A. Allen Jr., "The Manual for Targeted Intervention on Sexually Transmitted Illnesses with Community Members." Copyright by Family Health International, Published by Hubert Allen and Associates, ISBN:0-9641694-0-1. 1994.

Helitzer-Allen, Deborah L., H.A. Allen Jr., M.L. Field, G. Dallabetta, "Targeted Intervention Research on Sexually Transmitted Illnesses." *Practicing Anthropology*. In Press, 1996.

Allen, H.A. Jr., "Risky Business." *The American Alpine News*. Volume 5:173. June 1985.

Bowie, W.S., Hunt, T.K., and Allen, H.A. Jr., "Rock Climbing Injuries in Yosemite National Park." *The Western Journal of Medicine*, 149:172-177; August 1988.

Charache, S., Gittelsohn, A., Allen, H.A. Jr., et. al., "Noninvasive Assessment of Tissue Iron Stores." *American Journal of Clinical Pathology*, Vol. 88, No. 3. 1987.

Ford, Kathleen, Sandra L. Huffman, A.K.M.A. Chowdhury, Stan Becker, Hubert Allen, and Jane Menken, "Birth-Interval Dynamics in Rural Bangladesh and Maternal Weight." *Demography* 26, No. 3 (August 1989): 425-438.

Huffman, S.L., O'Gara, C., Figueroa de Espinoza, V., Ponce, M., Pinel, M.A., Allen, H., Holley-Newsome, M., Canahuati, J., Lung'aho, M., "The Honduran Contradiction: Can Exclusive Breast-Feeding Increase and Decrease at the same time?" Submitted to: *the International Journal of Epidemiology*. 1/97.

Perez-Escamilla, R., Segura-Millan, S., Canahuati, J., Allen, H. "Prelacteal Feeds are Negatively Associated with Breast-Feeding Outcomes in Honduras." *The Journal of Nutrition*, 1996.

Weekly

Cumulative

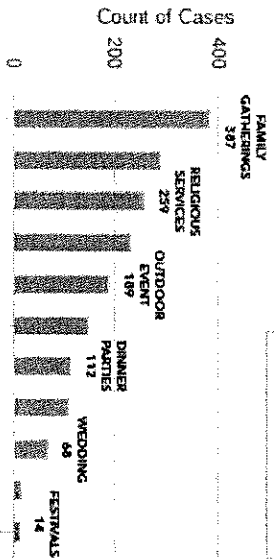
First Outreach Within 24 Hours of Case Entered

Explanation

### Social Gatherings of More than 10 People

Weekly 11/8/2020 - 11/14/2020\*\*

600



Back to Responses

1,502 Responses - Attended at least one gathering of more than 10 people  
Respondents may select more than one response

Gatherings

Explanation

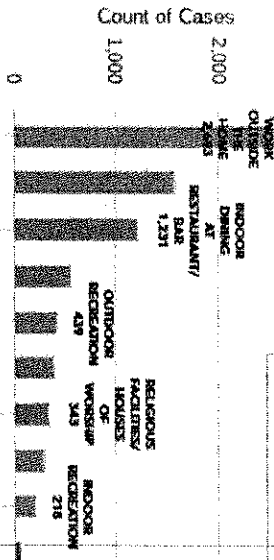
Weekly Exposure

Cumulative Exposure

### High Risk Locations

Weekly 11/8/2020 - 11/14/2020\*\*

3,000



Back to Responses

4,328 Responses - Went to one or more high-risk locations  
Respondents may select more than one response

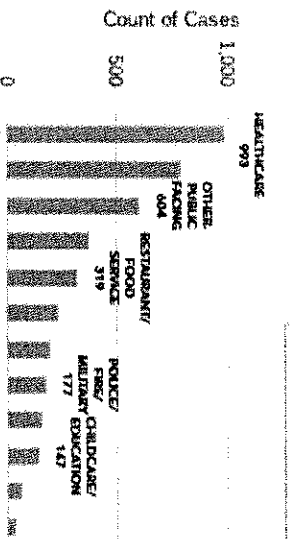
High Risk Locations

Explanation

### Reported Employment

Weekly 12/6/2020 - 12/12/2020

1,500



Back to Responses

3,850 Responses - Went to work  
Respondents may select more than one response

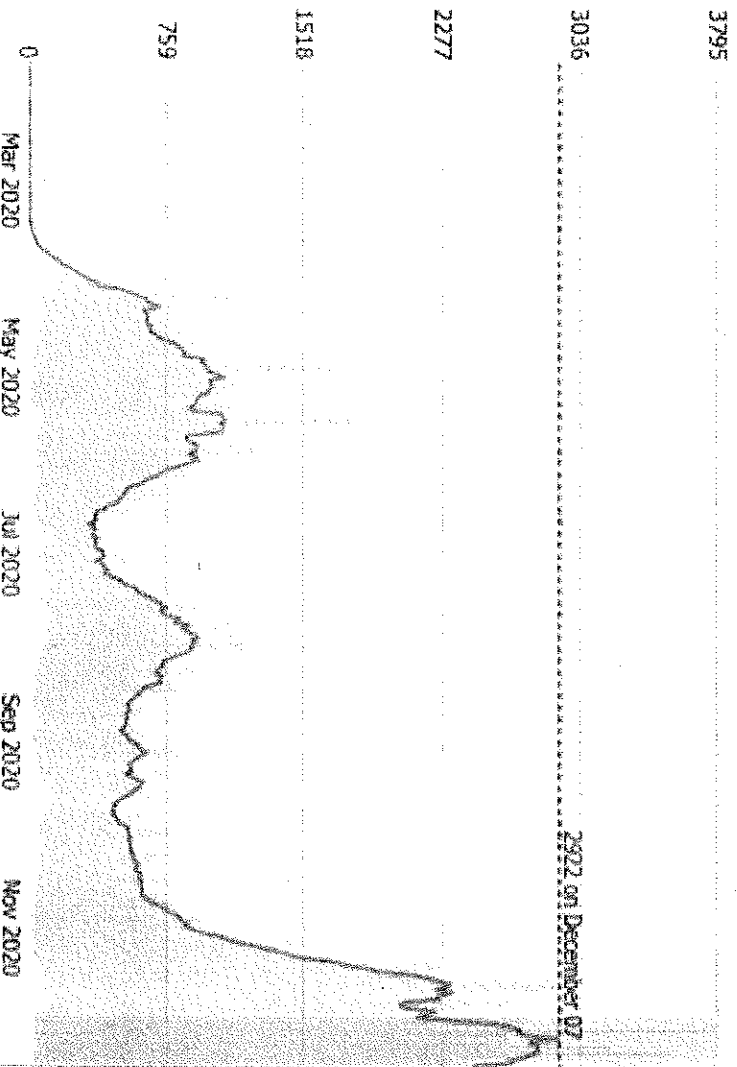
Employment

Explanation

Note: The Maryland Department of Health updates these data weekly on Wednesday during the 10 a.m. hour (data is reported through the previous Saturday).

All States

Maryland





**IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND**

MARYLAND RESTAURANT ASSOCIATION, INC.  
a Maryland Domestic Non-Profit Corporation, et al

Plaintiffs

v.

BRANDON M. SCOTT, in his official capacity  
as the Mayor of the City of Baltimore

Defendant

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Civil Case No.

**AFFIDAVIT OF RICCARDO BOSIO**

I, Riccardo Bosio, being over 18 years of age and competent to testify in this matter, do hereby declare and affirm under the penalties of perjury that the following is true and correct and based upon my personal knowledge.

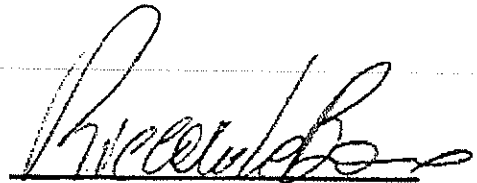
1. I operate Sotto Sopra Italian restaurant, a fine dining facility located at 405 N Charles St, Baltimore, MD 21201 and owned by Sotto, Inc.
2. Our restaurant venture has already suffered substantial harm to our businesses since the time the COVID-19 pandemic began. We have lost approximately \$700,000 in revenue and our employees have been reduced from 25 to 3. Under the Mayor's latest Executive Order the prohibitions will cause additional irreparable harm that will only increase the longer it is in effect. We are anticipating unsustainable losses of up to \$200,000 over the next month, and if such losses continue this will result in potential closure of the business. We are still in negotiations with our lending bank in



order to keep our premises open. Our restaurants' sales have been down significantly when comparing November 2019 and November 2020 (\$40-60,000 compared to \$150,000), which losses cannot continue to be sustained. The Mayor's latest Executive Order will have a substantially adverse impact upon our business that could include team members losing their jobs, training costs incurred, reduced hours that put financial pressure on our employees, and sales reductions that might not permit reopening without significant outside support. The longer the Executive Order remains in place, the harder it will be for us to reopen at all. This creates the very real possibility, even likelihood that our businesses will close. In addition, the upcoming Christmas-New Year's week is a critical time for Baltimore City restaurants such as ours to be open to the fullest extent possible. Restaurants such as ours need to be open for this holiday week to employ and pay our employees and staff during a traditionally very busy week in the restaurant business. The harm presented here will only grow the longer the Mayor's prohibition remains in effect.

12-17-2020

Date



Riccardo Bosio

**IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND**

MARYLAND RESTAURANT ASSOCIATION, INC.	*
a Maryland Domestic Non-Profit Corporation, et al.	*
	*
Plaintiffs	*
	*
v.	*
	*
BRANDON M. SCOTT, in his official capacity	*
as the Mayor of the City of Baltimore	*
	*
Defendant	*

**AFFIDAVIT OF ASHISH ALFRED**

I, Ashish Alfred, being over 18 years of age and competent to testify in this matter, do hereby declare and affirm under the penalties of perjury that the following is true and correct and based upon my personal knowledge.

1. I operate Duck Duck Goose restaurant, a restaurant located at 814 South Broadway, Baltimore, MD 21231 and owned by Alfred Hospitality, Inc.
2. Our restaurant venture has already suffered substantial harm to our businesses since the time the COVID-19 pandemic began. We have lost over \$500,000 in revenue and our employees have been reduced by approximately 50% in 2020. Under the Mayor's latest Executive Order the prohibitions will cause additional irreparable harm that will only increase the longer it is in effect. We are anticipating unsustainable losses of over \$100,000 over the next month, and if such losses continue this will result in potential closure of the business. Our restaurants' sales have been down significantly when comparing November 2019 and November 2020 (approximately 70-80 percent lower), which losses cannot continue to be sustained. The Mayor's latest Executive Order will have a substantially adverse impact upon our



business that could include team members losing their jobs, training costs incurred, reduced hours that put financial pressure on our employees, and sales reductions that might not permit reopening without significant outside support. The longer the Executive Order remains in place, the harder it will be for us to reopen at all. This creates the very real possibility, even likelihood that our businesses will close. In addition, the upcoming Christmas-New Year's week is a critical time for Baltimore City restaurants such as ours to be open to the fullest extent possible. Restaurants such as ours need to be open for this holiday week to employ and pay our employees and staff during a traditionally very busy week in the restaurant business. The harm presented here will only grow the longer the Mayor's prohibition remains in effect.

12-17-2020

**Date**



**Ashish Alfred**

IN THE CIRCUIT COURT OF ANNE ARUNDEL COUNTY, MARYLAND

TITAN HOSPITALITY GROUP, LLC, et al.

*Plaintiffs,*

v.

STEUART PITTMAN

Anne Arundel County Executive

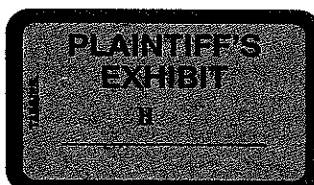
*Defendant*

Case No.: \_\_\_\_\_

**AFFIDAVIT OF E. P. ALEXANDER, M.D.**

I HEREBY CERTIFY:

1. I am Dr Pendleton Alexander, a semi-retired Cardiothoracic Surgeon. I am over the age of eighteen years and competent to testify to the matters and facts set forth herein. I have had a long career in Academic Medicine, and I am the past Chief of Cardiac Surgery and the past Director of the Thoracic Surgical Residency Program at the George Washington University, and the past Chief of Cardiothoracic Surgery at the Washington DC VAMC. I am a graduate of the University of Nevada Medical School where I received multiple honors including the graduation awards for Outstanding Student in Surgery, Outstanding Student in Internal Medicine, and Outstanding Student Preceptor. I trained in Surgery, Critical Care, Cardiothoracic Surgery, and Pediatric Cardiac Surgery at the George Washington University, where I also received awards including Resident of the Year, and the Golden Apple Teaching Award.
2. During my career I have served a number of regional and national organizations in a leadership capacity. I have served on advisory boards for the NIH and the Department of Veterans Affairs, and have twice been named an Alley-Sheridan Fellow of the Thoracic Surgery Foundation.



3. My clinical work has included a wide range of care for patients including those with heart disease, cancer, and infectious disease.
4. I have had a deep exposure to the epidemiology and treatment of COVID-19. I have served in an advisory capacity to multiple patients and organizations, including the development of safety protocols and treatment algorithms.
5. My career in medicine has been governed by two axioms: *Primum Non Nocere* (First, Do No Harm), and an oft quoted maxim "In God We Trust, everyone else must have data". On the basis of these two guides it is my opinion that there is currently inadequate data to support County Executive Order 39.
6. It is clear that the consequences of this order, effectively closing indoor and outdoor service at restaurants, has devastating consequences to restaurant owners and employees, particularly during the Holiday season. There is abundant data regarding the impact of this on food service workers, many of whom have had substantial financial hardship as a result of the pandemic. There also many restaurants that will not recover from a second closure.
7. I have requested Contact Tracing data from the Health Officer of Anne Arundel County, hoping to receive data that would support the possibility of a significant improvement in COVID incidence and prevalence from a new restaurant lockdown. Dr. Kalyanaraman has referenced this data in media reports. I have not been able to obtain it from his office.
8. Contact tracing data became available on December 11 from New York State. Share of Exposure reported in New York includes Households/Social Gatherings 73.84%, and Restaurants/Bars 1.43%.
9. The human and economic cost of another restaurant closure, including mental, physical and emotional distress will be considerably in excess of 1.43%.
10. I believe the Health Department should be compelled to provide this statistic and the supporting data. In advance of this I believe the restaurant closure should be considered unnecessary and that it will do significant harm, far greater than any predicted benefit.

I HEREBY CERTIFY UNDER THE PENTALTIES OF PERJURY THAT THE  
CONTENTS OF THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO  
THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

ms.

E. P. Alexander, MD

12/16/20

IN THE CIRCUIT COURT OF ANNE ARUNDEL COUNTY, MARYLAND

TITAN HOSPITALITY GROUP, LLC, et al.

*Plaintiffs,*

v.

STEUART PITTMAN  
Anne Arundel County Executive

*Defendant*

Case No.: \_\_\_\_\_

**AFFIDAVIT OF MAUREEN VERNON, PhD**

I HEREBY CERTIFY:


1. I am Maureen Vernon, PhD., a licensed Psychologist in private practice since 1986. My curriculum vitae is attached. I have been recognized in Anne Arundel County Circuit Court as an expert witness in the field of psychology in dozens of cases.
2. I have been made aware of the County Executive's order mandating closure of restaurants and other foodservice establishments beginning 5:00 p.m. Wednesday, December 16, 2020 until January 13, 2021. This raises some serious concerns on several levels. The following opinions are specific to the current emotional impact and the overall long-term consequences for restaurant owners and employees, their families and other persons associated with providing supplies and services to the industry.
3. In my expert opinion, the majority of restaurants have been acting responsibly and implementing all of the safeguards and health criteria given to them in order to continue doing business. The closing of restaurants now may result in frustration and feelings of futility, which will only exacerbate the significant negative mental health issues that accompany not being able to provide for themselves and their families. It can feel like things "are stacked against them" and they are powerless. This leads to hopelessness that can lead to chronic mental health consequences affecting those employed by the entire foodservice industry, including the employees, owners, investors, vendors, suppliers, repair personnel, landlords, and even the customers.
4. The loss of one's ability to earn an income can significantly impact the self-esteem and emotional stability of an individual. Not being able to provide for oneself and members of your family is devastating, both financially and psychologically. The stress associated with fearing you aren't able to work in order to pay your bills and expenses, erodes your self-respect. Individuals experience a sense of pride in being a responsible contributing member of their family and of society in general. Losing that opportunity can have long-lasting negative emotional and behavioral consequences including



increased alcohol and drug abuses, fractured family relationships, desperate and dysfunctional decision-making, child abuse, domestic violence, divorce and even suicide. The data shows that the incidence of these conditions and conduct has risen dramatically since March of 2020 when the lockdowns began.

5. Similarly, from a social-psychological standpoint, individuals need to be able to continue with some of their normal activities and have the chance to meet in person with family, friends, colleagues, co-workers, clients (present, past, and prospective). This can be done safely over breakfast, lunch, or dinner rather than gathering in much larger groups that are not able to be restricted the same as in restaurants. For many people, the ability to get out and socialize or to build their businesses is a critical part of their lives, and many clients have said it has given them something to look forward to and has helped them cope with negative feelings of isolation and despair. Mental health needs of our Anne Arundel County residents should also be a primary consideration when determining mandates for managing the Covid-19 virus.
6. It is the nature of humans to need to gather, to share experiences, and to personally interact. These meetings may be for purely social or for business reasons. It is customary to share food and drink. It is my opinion that the citizens of Anne Arundel County will continue to meet and share food and drink; however, they will do so in venues such as their homes and offices, which are not licensed, inspected, regulated, or regularly cleaned to the degree that restaurants are. The likelihood of these citizens sitting close to one another without masks is far greater with the closure of restaurants than otherwise.
7. It is my opinion that greater harm may be done by closing the restaurants entirely, especially during the holiday season that includes Christmas, Hanukkah, and New Year's Eve/Day. These are already difficult times for many persons suffering from depression, loneliness, and more severe mental health issues. To cause these persons to be unemployed and/or sequestered during this time only exacerbates their pre-existing conditions, just as COVID-19 appears to be more severe to those with pre-existing medical conditions. The shutting down of restaurants will place undo burden on those individuals who have less economic resources and options. They will be unfairly impacted and once again emotionally and psychologically disenfranchised by no fault of their own.

I SOLEMNLY SWEAR UPON THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING AFFIDAVIT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

  
Maureen Vernon, PhD

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

RESTAURANT ASSOCIATION OF MARYLAND, INC. \*  
a Maryland Domestic Non-Profit Corporation, et al. \*

Plaintiffs \*

v. \*

\* Civil No. \_\_\_\_\_

BRANDON M. SCOTT, in his official capacity \*  
as the Mayor of the City of Baltimore \*

Defendant \*

**TEMPORARY RESTRAINING ORDER**

HAVING READ AND CONSIDERED the Motion for Temporary Restraining Order and Preliminary Injunction, and having heard the parties, after 24-hours notice was given to the Defendant, it is this \_\_\_ day of December, 2020, by the Circuit Court for Baltimore City,

FOUND that the Plaintiffs have a sufficient likelihood of success on the merits, that they will suffer immediate and irreparable injury, that the balance of inconvenience weighs in favor of Plaintiffs, and that the public interest favors keeping the restaurants open under their current restrictions rather than closed down, it is hereby

ORDERED that the provisions of Baltimore City Executive Order 12-11-2020 that require the closure of all foodservice establishments commencing December 11, 2020 be, and are hereby, stayed and suspended, pending a hearing on the Motion for Preliminary Injunction, which is hereby scheduled for December \_\_\_\_, 2020 at \_\_\_\_ a.m/p.m.

ORDERED that Plaintiffs do not need to file a bond, as no financial damage to the City is likely to occur as a result of the entry of this Temporary Restraining Order, pursuant to Maryland Rule 15-503(b).

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JUDGE, CIRCUIT COURT FOR BALTIMORE CITY

cc: Dana P. Moore, Esquire  
Acting City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

Joseph F. Zauner III, Esquire  
Michelle D. Mtimet, Esquire  
100 N. Charles St., Suite 1700  
Baltimore, MD 21201