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*Exempt from Filing Fees,  
Gov. Code, § 6103*

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**12/14/2020** at 08:50:00 PM  
Clerk of the Superior Court  
By Melinda McClure, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

**MIDWAY VENTURE LLC dba PACERS  
SHOWGIRLS/PACERS SHOWGIRLS  
INTERNATIONAL, a California limited  
liability company, et al.,**

Plaintiffs and Petitioners,

v.

**COUNTY OF SAN DIEGO, a governmental  
agency, et al.,**

Defendants and  
Respondents.

**GAVIN NEWSOM, Governor of the State  
of California; and CALIFORNIA  
DEPARTMENT OF PUBLIC HEALTH, a  
department of the State of California,**

Defendants and Cross-  
Complainants,

v.

Case No. 37-2020-00038194

**VERIFIED CROSS-COMPLAINT OF  
GAVIN NEWSOM AND CALIFORNIA  
DEPARTMENT OF PUBLIC HEALTH  
FOR INJUNCTIVE RELIEF FOR  
VIOLATION OF STATEWIDE PUBLIC  
HEALTH OFFICER ORDERS; ANSWER  
OF GAVIN NEWSOM AND  
CALIFORNIA DEPARTMENT OF  
PUBLIC HEALTH TO COMPLAINT**

Dept: C-73  
Judge: The Honorable Joel R. Wohlfeil  
Action Filed: October 21, 2020

[Deemed verified pursuant to Cal. Code of Civ.  
Proc. § 446]

1 **MIDWAY VENTURE LLC dba PACERS**  
2 **SHOWGIRLS/PACERS SHOWGIRLS**  
3 **INTERNATIONAL, a California limited**  
4 **liability company; PETER BALOV, an**  
5 **individual; F-12 ENTERTAINMENT**  
6 **GROUP INC. dba CHEETAHS, a Nevada**  
7 **corporation; RICH BUONANTONY, an**  
8 **individual, and DOES 1-50,**

9 Plaintiffs and Cross-Defendants.

10 **CROSS-COMPLAINT**

11 Cross-Complainants Gavin Newsom, Governor of the State of California, and the  
12 California Department of Public Health, allege as follows:

13 **PARTIES**

14 1. Cross-Complainant Gavin Newsom is the Governor of the State of California and  
15 is hereby acting in his official capacity as Governor.

16 2. Cross-Complainant California Department of Public Health (“CDPH”) is an  
17 agency of the State of California.

18 3. Cross-Complainants are informed and believe, and based thereon allege, that  
19 Cross-Defendant Midway Venture LLC dba Pacers Showgirls/Pacers Showgirls International  
20 (“MIDWAY VENTURE LLC”) does operate, and at all relevant times herein, has operated  
21 within the City of San Diego, County of San Diego, California, as an adult entertainment  
22 establishment within the meaning of San Diego Municipal Code section 33.3601 et seq., under  
23 Nude Entertainment Business Permit number 2010022137, issued by the Chief of the San Diego  
24 Police Department.

25 4. Cross-Complainants are informed and believe, and based thereon allege, that  
26 Cross-Defendant Peter Balov (“BALOV”) is, and at all relevant times herein was, an individual  
27 serving as the responsible managing officer for MIDWAY VENTURE LLC and the qualifier for  
28 MIDWAY VENTURE LLC’s Nude Entertainment Business Permit. Cross-Defendants  
MIDWAY VENTURE LLC and BALOV are collectively referred to hereinafter as “MIDWAY.”

5. Cross-Complainants are informed and believe, and based thereon allege, that  
Cross-Defendant F-12 Entertainment Group Inc. dba Cheetahs (“F-12 ENTERTAINMENT

1 GROUP”) does operate, and at all relevant times herein, has operated within the City of San  
2 Diego, County of San Diego, California, an adult entertainment establishment within the meaning  
3 of San Diego Municipal Code section 33.3601 et seq., under a Nude Entertainment Business  
4 Permit issued by the Chief of the San Diego Police Department.

5 6. Cross-Complainants are informed and believe, and based thereon allege, that  
6 Cross-Defendant Rich Buonantony (“BUONANTONY”) is, and at all relevant times herein was,  
7 an individual serving as the responsible managing officer for F-12 ENTERTAINMENT GROUP  
8 and the qualifier for F-12 ENTERTAINMENT GROUP’s Nude Entertainment Business Permit.  
9 Cross-Defendants “F-12 ENTERTAINMENT GROUP” and “BUONANTONY” are collectively  
10 referred to hereinafter as “F-12.”

11 7. The actions sued upon herein allow for jurisdiction and venue in San Diego  
12 County, California, the county in which MIDWAY and F-12 do business.

13 8. Cross-Complainants are ignorant of the true names and capacities of cross-  
14 defendants sued herein as Does 1 through 50, inclusive, and therefore sue these cross-defendants  
15 by such fictitious names. Cross-Complainants will amend this complaint to allege their true  
16 names and capacities when ascertained, together with such other allegations as may be  
17 appropriate.

18 9. Cross-Complainants are informed and believe, and on that basis allege, that each  
19 cross-defendant listed herein is the agent of every other cross-defendant, and in performing the  
20 actions described in this complaint, each cross-defendant was acting within the scope of that  
21 agency. Further, Cross-Complainants are informed and believe, and on that basis allege, that  
22 each cross-defendant is the alter ego of every other cross-defendant herein, such that each cross-  
23 defendant in equity should be held responsible under law for the damages caused by every other  
24 cross-defendant herein.

## 25 **GENERAL ALLEGATIONS**

### 26 **The COVID-19 Pandemic**

27 10. COVID-19 is the disease caused by SARS-CoV-2, which refers to the novel  
28 coronavirus currently spreading throughout the world. The World Health Organization (“WHO”)

1 declared COVID-19 a pandemic on March 11, 2020. That declaration remains in effect. In  
2 addition to the WHO, the United States Centers for Disease Control and Prevention (“CDC”), the  
3 United States Department of Health and Human Services, the National Institutes of Health, the  
4 California Department of Public Health, and the per curium opinion of the United States Supreme  
5 Court in *Roman Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87, 2020 WL 6948354 (U.S.  
6 Nov. 25, 2020), all refer to COVID-19 as a pandemic.

7 11. With no known cure and vaccines not yet widely available, COVID-19 is  
8 highly contagious, spreading primarily by respiratory droplets and aerosols through the air.  
9 It is often spread by people exhibiting no symptoms. As a result, the only means currently  
10 available to protect the public from COVID-19 is to undertake risk-mitigation measures to  
11 prevent transmission and infection, such as avoiding indoor gatherings; wearing face  
12 coverings; keeping sufficient physical distance, with greater distancing for high-exertion  
13 activities; frequent handwashing and regular cleaning and disinfection; and avoiding singing,  
14 shouting, coughing, sneezing, or breathing heavily near others while indoors.

15 12. As described below, public health orders are in effect throughout the State. But  
16 even with those orders, the ongoing ravages of COVID-19 are alarming. As of December 14,  
17 2020, data reported to the California Department of Public Health shows that statewide there have  
18 been 1,585,044 COVID-19 cases and 21,046 deaths. The 14-day rolling average of daily new  
19 cases has more than quadrupled in a month—to a rate of more than 26,577 positive tests per day.  
20 The 14-day rolling average of COVID-19 hospitalizations has also more than tripled in the past  
21 month, to 11,487. (See State of California, Tracking COVID-19 in California—Coronavirus  
22 COVID-19 Response, <https://covid19.ca.gov/state-dashboard/#top>.)

23 13. As of December 14, 2020, the Southern California Region had 2.7 percent actual  
24 intensive care unit (“ICU”) capacity remaining. (See [https://covid19.ca.gov/state-  
26 dashboard/#top](https://covid19.ca.gov/state-<br/>25 dashboard/#top).)

26 14. As of December 14, 2020, San Diego County reports 107,372 total cases, and  
27 1,162 total deaths. On December 11, 2020, San Diego County experienced its highest numbers of  
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1 new cases (2,867) and deaths (34) on any day since the beginning of the pandemic. (See  
2 <https://covid19.ca.gov/state-dashboard/#top> (San Diego County).)

3 15. Data at the national level are also concerning. Experts consider this outbreak the  
4 worst public health epidemic since the influenza outbreak of 1918, and recent case numbers  
5 indicate the outbreak is worsening. As of December 13, 2020, public health authorities have  
6 confirmed at least 15,932,116 total cases in the United States, and 296,818 deaths, according to  
7 the CDC. (See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.)  
8 On December 9, 2020, the United States hit its highest one-day death toll from COVID-19, with  
9 3,054 deaths. (See <https://covidtracking.com/data/charts/us-daily-deaths>; see also  
10 [https://www.npr.org/sections/coronavirus-live-updates/2020/12/09/944844088/u-s-hits-highest-  
11 one-day-death-toll-from-coronavirus-with-3-054](https://www.npr.org/sections/coronavirus-live-updates/2020/12/09/944844088/u-s-hits-highest-one-day-death-toll-from-coronavirus-with-3-054).)

12 16. Because the spread of COVID-19 is exponential, any spread prevention produces  
13 enormous risk reduction over time.

14 17. When COVID-19 has high prevalence in a community, the ability to reduce its  
15 exponential spread depends on the ability, first, to reduce the number of interactions between  
16 people during which the virus can be transmitted, and, second, to reduce the likelihood of  
17 transmission. Stay at home orders, including the closure of restaurants, bars, and other  
18 gatherings, reduce the number of interactions, and the use of masks, hygiene, and handwashing  
19 and conducting activities outdoors reduces the likelihood of transmission. The higher the  
20 community prevalence of the virus, the more critical it is to reduce interactions and likelihood of  
21 transmission.

### 22 **The State's Public Health Orders**

23 18. California law grants CDPH and other health officials broad authority to respond  
24 to public health crises, including the prevention and control of communicable diseases. The  
25 Communicable Disease Prevention and Control Act, Stats. 1995, c. 415 (SB 1360), § 7  
26 (“CDPCA”), requires CDPH to “examine into the causes of communicable disease . . . occurring  
27 or likely to occur in this state” (Health & Saf. Code, §§ 27, 120125), and grants it broad powers to  
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1 combat the spread of such diseases.

2 19. For example CDPH may take such “measures as are necessary to ascertain the  
3 nature of the disease and prevent its spread.” (*Id.*, § 120140.) Additionally, CDPH “may from  
4 time to time adopt and enforce regulations requiring strict or modified isolation, or quarantine, for  
5 any of the contagious, infectious, or communicable diseases, if in the opinion of the department  
6 the action is necessary for the protection of the public health.” (Health & Saf. Code, § 120130,  
7 subd. (c), (d).) CDPH may also “quarantine, isolate, inspect, and disinfect persons, animals,  
8 houses, rooms, other property, places, cities, or localities, whenever in its judgment the action is  
9 necessary to protect or preserve the public health.” (*Id.*, § 120145; see also *id.* § 120135  
10 [allowing establishment of “places of quarantine or isolation”].)

11 20. The California Emergency Services Act of 1970, Gov. Code § 8550 *et seq.*  
12 (“ESA”), also grants the Governor broad power to respond to emergencies. The Legislature  
13 enacted the ESA to fulfill the State’s “responsibility” to “mitigate the effects of natural,  
14 manmade, or war-caused emergencies that result in conditions of disaster or in extreme peril to  
15 life, property, and the resources of the state.” (*Id.*, § 8550.) The ESA authorizes the Governor to  
16 proclaim a “state of emergency” when the State faces “conditions of disaster or of extreme peril  
17 to the safety of persons and property within the state.” (*Id.*, §§ 8558, subd. (b); 8625.)

18 21. The Act also “confers upon the Governor broad powers to deal with such  
19 emergencies.” (*Cal. Correctional Peace Officers Assn. v. Schwarzenegger* (2008) 163  
20 Cal.App.4th 802, 811; Gov. Code, §§ 8565 *et seq.*) During an emergency, the Governor may,  
21 among other things, issue orders and regulations with “the force and effect of law” (Gov. Code,  
22 § 8567, subd. (a)); “suspend any regulatory statute, or statute prescribing the procedure for  
23 conduct of state business” if it would “in any way prevent, hinder, or delay the mitigation of the  
24 effects of the emergency” (*id.*, § 8571); coordinate a state emergency plan (*id.*, §§ 8569-8570);  
25 and expend funds to carry out the purposes of the Act (*id.*, §§ 8566, see also *id.*, §§ 8645, 8654).  
26 These powers are “in addition” to any other powers that the ESA grants the Governor. (*Id.*,  
27 § 8565.)  
28

1           22.     In a proclaimed state of emergency, the ESA grants the Governor “complete  
2 authority over all agencies of the state government” and the right to exercise “all police power  
3 vested in the state” for the purpose of mitigating the effects of an emergency, including by  
4 “promulgat[ing], issu[ing], and enforce[ing] such orders and regulations as he deems necessary . .  
5 . .” (*Id.*, § 8627.) Thus, the ESA “makes clear that in situations of ‘extreme peril’ to the public  
6 welfare the State may exercise its sovereign authority to the fullest extent possible consistent with  
7 individual rights and liberties.” (*Macias v. State of California* (1995) 10 Cal.4th 844, 854.)

8           23.     In response to the threat of COVID-19, the Governor and state health officials  
9 acted swiftly to protect public health. On March 4, 2020, the Governor proclaimed a state of  
10 emergency in California due to the threat of 2019 novel coronavirus (“COVID-19”). Attached  
11 hereto as **Exhibit A** is a true and correct copy of that proclamation.

12           24.     Subsequent to his proclamation of a state of emergency, and in order to lower  
13 levels of transmission and reduce risk to the public, Governor Newsom issued multiple Executive  
14 Orders, such as N-25-20 issued on March 12, 2020, requiring people to follow local and state  
15 public health directives. Attached as **Exhibit B** is a true and correct copy of Executive Order N-  
16 25-20.

17           25.     Since that time, CDPH has issued multiple public health directives in response to  
18 the unprecedented pandemic. Specifically, the State’s stay-at-home order issued March 19, 2020  
19 effectively suspended restaurant service except for carry-out and delivery services, suspending  
20 indoor or outdoor dining and other services, including live entertainment, and entirely closing  
21 bars that did not serve full meals. Attached hereto as **Exhibit C** is a true and correct copy of the  
22 State’s March 19, 2020 stay-at-home order.

23           26.     During the month of June 2020, many parts of California experienced a spike in  
24 COVID-19 cases and hospitalizations. To combat this increased spread, on July 1, 2020, CDPH  
25 issued new guidance restricting many activities. In particular, the guidance recommended that in  
26 counties that were placed on the County Monitoring List due to disease transmission rate,  
27 hospitalization rate, and hospital capacity for three consecutive days, a local health officer order  
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1 the closure of bars that did not serve meals, due to the high risk of transmission in those settings.  
2 That guidance explained that bars are particularly risky settings because they are social settings  
3 where “groups mix with other groups,” where loud environments “require raised voices and  
4 greater projection of oral emitted viral droplets,” where patrons remove face coverings to  
5 consume drinks, and where contact tracing is difficult because of constant mixing and extended  
6 contact with unknown persons, among other risk factors. Attached hereto as **Exhibit D** is a true  
7 and correct copy of the State’s June 28, 2020 Proposal for Selective Sector Closing of Bars in  
8 Counties on the County Monitoring List.

9 27. Subsequently, CDPH issued new guidance, on July 1, 2020. The guidance  
10 provided that, in counties that were placed on the County Monitoring List due to disease  
11 transmission rate, hospitalization rate, and hospital capacity for three consecutive days, certain  
12 business sectors were required to close indoor, but not outdoor, operations. Attached hereto as  
13 **Exhibit E** is a true and correct copy of the State’s July 1, 2020 Guidance on Closure of Sectors in  
14 Response to COVID-19.

15 28. On July 13, 2020, based on worsening conditions, CDPH issued additional  
16 guidance applicable to counties on the County Monitoring List. The guidance required counties  
17 on the County Monitoring List—including San Diego County—to temporarily close certain  
18 indoor activities, including indoor dining at restaurants. Establishments that serve full meals,  
19 such as restaurants, were required to discontinue live entertainment. Attached hereto as **Exhibit**  
20 **F** is a true and correct copy of the State’s July 13, 2020 Guidance on Closure of Sectors in  
21 Response to COVID-19.

22 29. On August 28, 2020, based on the new scientific understanding of the virus and  
23 lessons learned from prior reopening, the State unveiled a new plan for relaxing restrictions, the  
24 Blueprint for a Safer Economy. (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx>) This framework, commonly known as the  
25 Blueprint, was based on a new public health order issued August 28, 2020. Attached hereto as  
26 **Exhibit G** is a true and correct copy of the State’s August 28, 2020 Statewide Public Health  
27 Officer Order. The Blueprint permits “[l]ower risk activities or sectors” to reopen and expand  
28

1 operations before “higher risk activities or sectors.” The risk level of activities is determined  
2 based on criteria such as the ability to accommodate face coverings and ensure physical  
3 distancing, to limit duration of exposure, to limit the amount of mixing from different households  
4 and communities, to optimize ventilation, to limit the amount of physical interactions of patrons,  
5 and to limit “activities that are known to cause increased spread (e.g., . . . shouting . . .; loud  
6 environs will cause people to raise voice).” In addition, unlike the July order, which divided the  
7 counties into two categories—those on the County Monitoring List and those not—the Blueprint  
8 is more tailored to local circumstances and divides counties into four tiers “based on risk of  
9 community disease transmission.” The Purple Tier (also referred to as Tier 1) is the most  
10 restricted tier, based on widespread transmission of COVID-19. The Red Tier (also referred to as  
11 Tier 2) is the next most restricted tier, based on substantial transmission of COVID-19.

12 30. The State guidance issued under the Blueprint prohibited live entertainment  
13 indoors and outdoors, in the Purple Tier (Tier 1) and Red Tier (Tier 2), but live performances  
14 were permitted to operate outdoors in accordance with guidance concerning private gatherings.  
15 Attached hereto as **Exhibit H** is a true and correct copy of Guidance for Private Gatherings,  
16 California Department of Public Health, issued October 9, 2020. This guidance permits live  
17 performances to operate outdoors with three households (including the performer as one  
18 household).

19 31. On November 24, 2020, the State issued updated industry-specific guidance for  
20 restaurant operations based on the tier status of California counties (“Restaurant Guidance”).  
21 Attached hereto as **Exhibit I** is a true and correct copy of COVID-19 Industry Guidance:  
22 Restaurants, issued November 24, 2020. The updated restaurant guidance permits live  
23 performances with modifications, subject to the same guidance and restrictions applicable to all  
24 restaurants.

25 32. The “Questions and Answers” section of CDPH’s webpage “About COVID-19  
26 restrictions” addresses the question, “Are gatherings for musical, theatrical, and artistic  
27 performances permitted?” As provided on this webpage, which sets forth legally binding  
28 guidance, “live performances are permitted to the extent that they are permitted by applicable

1 sector guidance for the venue hosting such a performance (such as restaurants, wineries, or bars).”  
2 Attached hereto as **Exhibit J** is a true and correct copy of “Are gatherings for musical, theatrical,  
3 and artistic performances permitted?”, as of December 14, 2020.

4 33. The Restaurant Guidance permits restaurants to provide live performances indoors  
5 in Red Tier (Tier 2) counties, subject to certain conditions: “Indoor operations are permitted but  
6 must be limited to 25% capacity or 100 people, whichever is fewer, and continue to follow the  
7 modifications in this guidance. For indoor performances conducted at restaurants, “performers  
8 must wear face coverings at all times and maintain physical distancing from spectators and other  
9 performers. Performers are counted toward the occupancy capacity limit.

10 34. In Purple Tier (Tier 1) counties, the Restaurant Guidance permits restaurants,  
11 including those offering live performances, to operate outdoors subject to certain conditions:  
12 “Outdoor operations are permitted and must continue to follow the modifications in this  
13 guidance.” For live performances conducted at restaurants operating outdoors, “[p]erformers  
14 must maintain physical distancing from spectators and other performers. Performers who are  
15 singing, shouting, playing a wind instrument, or engaging in similar activities without a face  
16 covering must maintain at least twelve feet of distance from spectators.”

17 35. The pandemic began resurging nationwide in October, and the number of new  
18 cases, hospitalizations, and deaths have increased to unprecedented levels. As of the date of this  
19 filing, the United States has seen the worst daily infection rates over the course of the pandemic,  
20 with the number of daily positive infections climbing to a 7-day case average of 209,941 as of  
21 December 12, 2020. (See [https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html)  
22 [us.html](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html).) On December 9, 2020, the United States hit its highest one-day death toll from COVID-  
23 19, with 3,054 deaths. (See <https://covidtracking.com/data/charts/us-daily-deaths>; see also  
24 [https://www.npr.org/sections/coronavirus-live-updates/2020/12/09/944844088/u-s-hits-highest-](https://www.npr.org/sections/coronavirus-live-updates/2020/12/09/944844088/u-s-hits-highest-one-day-death-toll-from-coronavirus-with-3-054)  
25 [one-day-death-toll-from-coronavirus-with-3-054](https://www.npr.org/sections/coronavirus-live-updates/2020/12/09/944844088/u-s-hits-highest-one-day-death-toll-from-coronavirus-with-3-054).) State and local officials across the country  
26 have begun retightening restrictions on businesses and activities.

27 36. Over the past month, California has experienced an unprecedented surge in new  
28 COVID-19 cases. From November 12, 2020, to December 12, 2020, the State’s 14-day rolling

1 average of new cases per day and hospitalizations have both more than tripled. (See State of  
2 California, Tracking COVID-19 in California—Coronavirus COVID-19 Response,  
3 <https://covid19.ca.gov/state-dashboard/#top>.) In San Diego County, new cases have more than  
4 tripled over a matter of a month, and daily deaths from COVID-19 in the County have reached  
5 their highest rate in the pandemic. The number of COVID-19 patients hospitalized has  
6 skyrocketed, as the number of available ICU beds has fallen. (*Id.* (San Diego County).)

7 37. Recognizing that the unprecedented rate of rise in case numbers had the potential  
8 to overwhelm the ability of California hospitals to deliver healthcare to its residents suffering  
9 from COVID-19 and from other illnesses requiring hospital care, on November 19, 2020 the  
10 Governor and CDPH announced a limited Stay-at-Home Order, requiring non-essential work,  
11 movement, and gatherings to stop between 10:00 p.m. and 5:00 a.m. in counties in the Purple  
12 Tier. Unfortunately, cases, hospitalizations and deaths continued to rise dramatically. As of  
13 December 13, 2020, 54 of California’s 58 counties have moved into the Purple Tier due to the  
14 rising number of infections across the state, including San Diego County, where MIDWAY and  
15 F-12 operate.

16 38. The State and CDPH responded to this unprecedented rise in cases,  
17 hospitalizations, and test positivity rates by issuing a Regional Stay at Home Order on December  
18 3, 2020. Attached hereto as **Exhibit K** is a true and correct copy of the December 3, 2020,  
19 Regional Stay at Home Order. Attached hereto as **Exhibit L** is a true and correct copy of the  
20 December 6, 2020, Supplement to Regional Stay at Home Order.

21 39. Pursuant to the December 3 order, CDPH established five geographic regions to be  
22 evaluated based on hospital capacity – specifically, adult Intensive Care Unit (“ICU”) bed  
23 capacity. The five regions are:

- 24 • Northern California: Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino,  
25 Modoc, Shasta, Siskiyou, Tehama, Trinity
- 26 • Bay Area: Alameda, Contra Costa, Marin, Monterey, Napa, San Francisco, San  
27 Mateo, Santa Clara, Santa Cruz, Solano, Sonoma
- 28 • Greater Sacramento: Alpine, Amador, Butte, Colusa, El Dorado, Nevada, San  
Diego, Plumas, Sacramento, Sierra, Sutter, Yolo, Yuba

- 1 • San Joaquin Valley: Calaveras, Fresno, Kern, Kings, Madera, Mariposa,  
2 Merced, San Benito, San Joaquin, Stanislaus, Tulare, Tuolumne
- 3 • Southern California: Imperial, Inyo, Los Angeles, Mono, Orange, Riverside,  
4 San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura

5 40. The Regional Stay at Home Order is triggered if an adjusted ICU capacity measure  
6 that factors in the specific impact of COVID-19 on ICUs drops below 15% in a given region.  
7 Once triggered, the Stay at Home Order applies to the region for at least three weeks. The  
8 Regional Stay at Home Order uses ICU bed availability metric as a trigger for further restrictions  
9 because ICU beds are a critical resource for individuals who need the most advanced support and  
10 care, and the ability to add additional ICU capacity is limited by the lack of available ICU nurses  
11 and physicians as a result of the nationwide surge in hospitalizations and ICU admissions.

12 41. The December 3 order provides that all gatherings with members of other  
13 households are prohibited in the region except as expressly permitted in the order, and that  
14 residents are required to stay at home as much as possible and minimize mixing to reduce  
15 unnecessary exposure, while still being able to take care of essential needs. (See Ex. K; see also  
16 <https://www.gov.ca.gov/2020/12/03/california-health-officials-announce-a-regional-stay-at-home-order-triggered-by-icu-capacity/>.)

17 42. The Southern California Region, which includes San Diego County, became  
18 subject to the Regional Stay at Home Order on December 6, 2020. As of December 14, 2020, the  
19 Southern California Region had 2.7 percent actual ICU capacity remaining. ICU bed availability  
20 in San Diego County is on a sharp downward trend, with only 179 beds available as of December  
21 13, 2020.

22 43. Under the Regional Stay at Home Order that currently applies to the Southern  
23 California Region, MIDWAY and F-12's restaurants, like all restaurants in San Diego County,  
24 are prohibited from offering indoor or outdoor dining experiences. Under the Regional Stay at  
25 Home Order, MIDWAY and F-12's restaurants, like all restaurants in San Diego County, can  
26 offer only take-out or delivery.

27 44. In addition, San Diego County remains in the Purple Tier and subject to the  
28 updated restrictions under the Blueprint. After the Regional Stay at Home Order no longer

1 applies to the Southern California Region, San Diego will be subject to restrictions under the  
2 Blueprint that are appropriate for its tier assignment at that time.

3 **MIDWAY and F-12's Operations in Violation of Public Health Orders**

4 45. MIDWAY and F-12 own and operate two adult entertainment establishments,  
5 known as Pacers and Cheetahs, respectively, located in San Diego County.

6 46. Both establishments have onsite restaurants. MIDWAY is licensed to sell alcohol  
7 on its premises.

8 47. Having been closed since March 2020 in accordance with State and County health  
9 orders, MIDWAY and F-12 each reopened at some point in September 2020. MIDWAY and F-  
10 12 submitted reopening plans to the County of San Diego but reopened without receiving the  
11 required approvals.

12 48. Restaurants in San Diego County, even those offering live entertainment, such as  
13 the restaurants operated by MIDWAY and F-12, are not permitted to operate for indoor dine-in  
14 service, due to the County's status in the Purple Tier, pursuant to the Blueprint. Nor does the  
15 Regional Stay at Home Order, which is currently in effect for San Diego County, permit  
16 restaurants to operate for indoor or outdoor dine-in service.

17 **MIDWAY and F-12 Obtain a Temporary Restraining Order Regarding Enforcement of**  
18 **Public Health Orders and Guidance in Effect as of October 2020**

19 49. In October 2020, San Diego County issued cease and desist orders directing  
20 MIDWAY and F-12 to come into compliance with the relevant State and local health orders.  
21 Attached hereto as **Exhibit M** is a true and correct copy of the cease and desist order sent to  
22 MIDWAY by San Diego County. Attached hereto as **Exhibit N** is a true and correct copy of the  
23 cease and desist order sent to F-12 by San Diego County.

24 50. MIDWAY and F-12 filed the Complaint in this action on October 21, 2020, suing  
25 Governor Newsom, CDPH, the County, and the County's Public Health Officer (collectively,  
26 "State and County Defendants"). MIDWAY and F-12 contended that State and County  
27 Defendants' "orders, actions, and directives" have enacted a "ban" on live adult entertainment  
28

1 that violates their rights of free expression, equal protection, and due process under the state and  
2 federal constitutions. (Complaint ¶¶ 5, 9, 29, 33.)

3 51. MIDWAY and F-12 then sought a temporary restraining order pending issuance of  
4 a preliminary injunction. The temporary restraining order was issued on November 6, 2020,  
5 temporarily enjoining State and County Defendants “from enforcing the provisions [of] the cease  
6 and desist orders, or any other related orders, that prevent [MIDWAY and F-12] from being  
7 allowed to provide adult entertainment subject to the least restrictive means to further [State and  
8 County] Defendants’ response to control the spread of COVID.” Attached hereto as **Exhibit O** is  
9 a true and correct copy of the November 6, 2020 Temporary Restraining Order.

10 52. After San Diego County became subject to restrictions applicable to counties in  
11 the Purple Tier on November 14, 2020, MIDWAY continued to provide live entertainment, but  
12 moved its operations outdoors. F-12 also continued to operate, though it is not clear whether  
13 those operations were indoors or outdoors.

14 53. On November 23, 2020, the San Diego Superior Court denied an application for a  
15 Temporary Restraining Order in a challenge to State and County public health orders filed by San  
16 Diego County restaurants and gyms. (*640 Tenth, LP v. Newsom*, Order on Appl. For TRO (Nov.  
17 23, 2020) (San Diego Sup. Ct., Case No. 37-2020-00041316-CU-MC-CTL). Restrictions  
18 applicable to restaurants, gyms, and other industries while a county is in the Purple Tier remain  
19 applicable to those businesses in San Diego County.

20 54. On November 24, 2020, CDPH published updated Restaurant Guidance, as well as  
21 updated guidance applicable to bars, breweries, wineries, and other similar establishments. The  
22 updated guidance permits live performances, with modifications, in such establishments to the  
23 same extent that those establishments are permitted to operate. (See Exs. I, J.)

24 55. The application for a preliminary injunction based on the Complaint filed by  
25 MIDWAY and F-12 has been fully briefed as of December 11, 2020, and is scheduled to be heard  
26 on December 16, 2020.

27  
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1           **Midway and F-12 Continue to Operate in Violation of the Regional Stay at Home Order**

2           56.     MIDWAY and F-12 have continued to operate in violation of the State’s public  
3 health orders. MIDWAY and F-12 have relied upon the November 6, 2020 Temporary  
4 Restraining Order as a shield against the Regional Stay at Home Order, which did not exist at the  
5 time the Temporary Restraining Order was issued.

6           57.     Although other businesses have ceased indoor operations or ceased operations  
7 altogether in compliance with the Regional Stay at Home Order, MIDWAY and F-12 have  
8 continued to operate, and they have moved their operations indoors. As the Associated Press  
9 reported on December 10, 2020, “While California’s new stay-at-home order has shut down  
10 restaurant dining, shuttered salons and kept church services outside, two strip clubs in San Diego  
11 are still welcoming patrons nightly, protected by a court order.” (See  
12 [https://apnews.com/article/california-coronavirus-pandemic-san-diego-  
13 220f2f6cf8d46a9764578b7c5f5a3a87](https://apnews.com/article/california-coronavirus-pandemic-san-diego-220f2f6cf8d46a9764578b7c5f5a3a87).)

14           58.     MIDWAY and F-12 advertise themselves as open for business seven days a week,  
15 and they have been operating for ten or more hours every day of the week since September 2020.

16           **Midway and F-12 Are Ordered to Cease and Desist, but They Continue to Operate**

17           59.     On December 11, 2020, the Governor and CDPH—through its counsel, the  
18 California Office of the Attorney General—e-mailed counsel for MIDWAY and F-12 a letter  
19 ordering them to cease and desist from operating in violation of the Regional Stay at Home Order.  
20 The letter stated that MIDWAY and F-12 may continue to operate for carry-out and delivery  
21 services but may not offer indoor or outdoor dining or other services that cause people from  
22 different households to come into contact for extended periods of time and thereby increase the  
23 risk of transmission of COVID-19. Attached hereto as **Exhibit P** is the December 11, 2020 letter  
24 to MIDWAY and F-12.

25           60.     The December 11, 2020 letter asked MIDWAY and F-12 to provide written  
26 confirmation that they agreed to cease and desist the described activities. MIDWAY and F-12  
27 did not provide such written confirmation.  
28

1           61.     On December 12, 2020, a sworn peace officer agent from the California  
2 Department of Alcoholic Beverage Control observed that MIDWAY was offering live adult  
3 entertainment indoors and outdoors, while serving food and alcohol, with dozens of employees  
4 and patrons present. Patrons were not required to purchase a meal in addition to alcoholic  
5 beverages, and performers did not consistently wear face coverings, including when speaking  
6 with patrons.

7           62.     On December 12, 2020, a sworn peace officer agent from the California  
8 Department of Alcoholic Beverage Control observed that F-12 was offering live adult  
9 entertainment indoors, with dozens of employees and patrons present. Agents observed that  
10 performers and patrons did not maintain physical distance and in some cases were in close  
11 proximity or in physical contact.

12           63.     On December 13, 2020, a sworn peace officer agent from the California  
13 Department of Alcoholic Beverage Control observed that MIDWAY was offering live adult  
14 entertainment indoors, with no outdoor operations. The agent observed approximately 18 patrons  
15 inside the facility, none of whom were wearing face coverings. Patrons were not required to  
16 purchase a meal in addition to purchasing alcoholic beverages. Some performers were wearing  
17 face coverings that did not cover their noses or mouths. Patrons without face coverings  
18 approached performers to provide tips, without maintaining physical distancing. Performers  
19 without face coverings or whose face coverings did not cover their noses or mouths also  
20 approached patrons to speak with them.

21           64.     On December 13, 2020, a sworn peace officer agent from the California  
22 Department of Alcoholic Beverage Control observed that F-12 was conducting indoor operations.

23           65.     On December 14, 2020, counsel for MIDWAY responded to the December 11,  
24 2020 cease and desist letter with a letter to counsel for Cross-Complainants that stated, in part:  
25 “As for . . . Midway Venture dba Pacers Showgirls/Pacers Showgirls International (‘Pacers’), it is  
26 incorrect that Pacers has been conducting indoor operations, and in fact all live adult  
27 entertainment has been conducted outdoors since California entered the ‘purple tier.’” Attached  
28

1 hereto as **Exhibit Q** is a true and correct copy of the December 14, 2020 letter from counsel for  
2 MIDWAY.

3 66. MIDWAY and F-12's behavior shows a complete disregard for the safety of the  
4 community and a complete disregard of the public health orders of the State and Public Health  
5 Officials. In fact, MIDWAY is not complying with the restrictions it represented to the Court that  
6 it was undertaking, including keeping patrons 15 feet from performers, performers wearing face  
7 coverings, and patrons remaining seated, among others. Nor are representations by counsel for  
8 MIDWAY regarding the absence of any indoor operations consistent with the observations of  
9 sworn peace officers from the California Department of Alcoholic Beverage Control.

10 67. In light of the frequency and size of MIDWAY and F-12's indoor and outdoor  
11 activities, as well as the fact that COVID-19 spreads easily and quickly from person to person  
12 indoors and among persons not wearing face coverings, MIDWAY and F-12's conduct creates an  
13 immediate and serious risk to the health and safety of the people of the State of California.

14 68. Because MIDWAY and F-12 will not voluntarily comply with State public health  
15 orders, and because MIDWAY and F-12's ongoing unlawful conduct is irreparably injurious to  
16 the public health, injunctive relief is the only remedy that will protect the health and welfare of  
17 the residents of the State of California.

18 **FIRST CAUSE OF ACTION**

19 **FOR VIOLATION OF STATE PUBLIC HEALTH OFFICER ORDERS**

20 69. Cross-Complainants reallege and incorporate by reference paragraphs 1 through 68  
21 of this Cross-Complaint.

22 70. The wrongful conduct of Cross-Defendants, and each of them, as alleged herein,  
23 unless enjoined and restrained by the Court, will cause and continue to cause great and irreparable  
24 injury to the general public, including persons throughout the State of California, by creating a  
25 significant risk of further community spread of COVID-19, including hospitalizations and death,  
26 which in turn is likely to result in continued and further restrictions on businesses and other  
27 operations and activities in the State of California directly affecting the quality of life of the  
28 public at large.





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**THIRD DEFENSE**

The Complaint, and each cause of action alleged therein, is barred because the action is premature and is not ripe, and no actual controversy exists.

**FOURTH DEFENSE**

Plaintiffs have failed to exhaust administrative remedies.

**FIFTH DEFENSE**

The Complaint, and each cause of action, is barred by the doctrines of estoppel, laches, and/or waiver.

**SIXTH DEFENSE**

To the extent that the Complaint asks the Court to rewrite various statutes or constitutional provisions, this Court has no jurisdiction.

**SEVENTH DEFENSE**

All alleged acts or omissions by Defendants, their agents, employees, or representatives were discretionary acts or omissions such that a writ of mandate may not issue to control the exercise of such discretion.

**EIGHTH DEFENSE**

All alleged acts done by Defendants, their agents, employees, or representatives were performed fairly, in good faith and for a lawful purpose, and were reasonable and justified under the circumstances.

**NINTH DEFENSE**

The Complaint, and each cause of action, fails because Defendants have simply fulfilled their duties as provided by law.

**TENTH DEFENSE**

The requested relief is barred as a matter of law because granting such relief would result in an unlawful order compelling Defendants to act contrary to their statutory duties.

**ELEVENTH DEFENSE**

Plaintiffs have failed to name various indispensable parties to this action.

1 **TWELFTH DEFENSE**

2 Defendants assert a reservation of rights to amend should any further defenses become  
3 apparent in the course of this action.

4  
5 WHEREFORE, Defendants pray that:

6 1. The Complaint for (1) Declaratory and Injunctive Relief; (2) Violation of 42  
7 U.S.C. § 1983; and (3) Petition for Writ of Mandamus, and all claims and prayers for relief  
8 therein, be denied in their entirety;

9 2. Plaintiffs take nothing from Defendants by this action;

10 3. Defendants be awarded their costs incurred in defending this action; and

11 4. Defendants be awarded such further relief that the Court may deem just and  
12 proper.

13  
14 Dated: December 14, 2020

Respectfully Submitted,

15 XAVIER BECERRA  
16 Attorney General of California  
17 ANTHONY R. HAKL  
Supervising Deputy Attorney General

18  
19  
20 */s/ P. Patty Li*  
P. PATTY LI  
21 Deputy Attorney General  
22 *Attorneys for Defendants and Cross-*  
23 *Complainants Gavin Newsom, in his official*  
24 *capacity as Governor of California, and the*  
25 *California Department of Public Health*  
26  
27  
28

**DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL**

Case Name: *Midway Venture, LLC, et al. v. County of San Diego, et al.*  
Case No.: 37-2020-00038194

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the One Legal electronic filing system. Participants who are registered with One Legal will be served electronically. Participants in this case who are not registered with One Legal will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On December 14, 2020, I electronically served the attached

- **VERIFIED CROSS-COMPLAINT OF GAVIN NEWSOM AND CALIFORNIA DEPARTMENT OF PUBLIC HEALTH FOR INJUNCTIVE RELIEF FOR VIOLATION OF STATEWIDE PUBLIC HEALTH OFFICER ORDERS; ANSWER OF GAVIN NEWSOM AND CALIFORNIA DEPARTMENT OF PUBLIC HEALTH TO COMPLAINT**

by transmitting a true copy via this Court's One Legal system to the following participants in this case:

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*Attorneys for Defendants County of San  
Diego and Wilma J. Wooten*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 14, 2020, at San Francisco, California.

\_\_\_\_\_  
M. Mendiola  
Declarant

\_\_\_\_\_  
  
Signature

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# Exhibit A

**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**PROCLAMATION OF A STATE OF EMERGENCY**

**WHEREAS** in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

**WHEREAS** the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

**WHEREAS** on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

**WHEREAS** on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

**WHEREAS** the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

**WHEREAS** as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

**WHEREAS** as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

**WHEREAS** for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

**WHEREAS** California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and

**WHEREAS** experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

**WHEREAS** it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

**WHEREAS** if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

**WHEREAS** personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

**WHEREAS** state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

**WHEREAS** I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

**WHEREAS** I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

**WHEREAS** under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

**IT IS HEREBY ORDERED THAT:**

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.

14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

**I FURTHER DIRECT** that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of March 2020.



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

# Exhibit B

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

EXECUTIVE ORDER N-25-20

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** despite sustained efforts, the virus remains a threat, and further efforts to control the spread of the virus to reduce and minimize the risk of infection are needed; and

**WHEREAS** state and local public health officials may, as they deem necessary in the interest of public health, issue guidance limiting or recommending limitations upon attendance at public assemblies, conferences, or other mass events, which could cause the cancellation of such gatherings through no fault or responsibility of the parties involved, thereby constituting a force majeure; and

**WHEREAS** the Department of Public Health is maintaining up-to-date guidance relating to COVID-19, available to the public at <http://cdph.ca.gov/covid19>; and

**WHEREAS** the State of California and local governments, in collaboration with the Federal government, continue sustained efforts to minimize the spread and mitigate the effects of COVID-19; and

**WHEREAS** there is a need to secure numerous facilities to accommodate quarantine, isolation, or medical treatment of individuals testing positive for or exposed to COVID-19; and

**WHEREAS**, many individuals who have developmental disabilities and receive services through regional centers funded by the Department of Developmental Services also have chronic medical conditions that make them more susceptible to serious symptoms of COVID-19, and it is critical that they continue to receive their services while also protecting their own health and the general public health; and

**WHEREAS** individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources such as shelters and food banks; and

**WHEREAS** in the interest of public health and safety, it is necessary to exercise my authority under the Emergency Services Act, specifically Government Code section 8572, to ensure adequate facilities exist to address the impacts of COVID-19; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571 and 8572, do hereby issue the following order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

1. All residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.
2. For the period that began January 24, 2020 through the duration of this emergency, the Employment Development Department shall have the discretion to waive the one-week waiting period in Unemployment Insurance Code section 2627(b)(1) for disability insurance applicants who are unemployed and disabled as a result of the COVID-19, and who are otherwise eligible for disability insurance benefits.
3. For the period that began January 24, 2020 through the duration of this emergency, the Employment Development Department shall have the discretion to waive the one-week waiting period in Unemployment Insurance Code section 1253(d) for unemployment insurance applicants who are unemployed as a result of the COVID-19, and who are otherwise eligible for unemployment insurance benefits.
4. Notwithstanding Health and Safety Code section 1797.172(b), during the course of this emergency, the Director of the Emergency Medical Services Authority shall have the authority to implement additions to local optional scopes of practice without first consulting with a committee of local EMS medical directors named by the EMS Medical Directors Association of California.
5. In order to quickly provide relief from interest and penalties, the provisions of the Revenue and Taxation Code that apply to the taxes and fees administered by the Department of Tax and Fee Administration, requiring the filing of a statement under penalty of perjury setting forth the facts for a claim for relief, are suspended for a period of 60 days after the date of this Order for any individuals or businesses who are unable to file a timely tax return or make a timely payment as a result of complying with a state or local public health official's imposition or recommendation of social distancing measures related to COVID-19.
6. The Franchise Tax Board, the Board of Equalization, the Department of Tax and Fee Administration, and the Office of Tax Appeals shall use their administrative powers where appropriate to provide those individuals and businesses impacted by complying with a state or local public health official's imposition or recommendation of social

distancing measures related to COVID-19 with the extensions for filing, payment, audits, billing, notices, assessments, claims for refund, and relief from subsequent penalties and interest.

7. The Governor's Office of Emergency Services shall ensure adequate state staffing during this emergency. Consistent with applicable federal law, work hour limitations for retired annuitants, permanent and intermittent personnel, and state management and senior supervisors, are suspended. Furthermore, reinstatement and work hour limitations in Government Code sections 21220, 21224(a), and 7522.56(b), (d), (f), and (g), and the time limitations in Government Code section 19888.1 and California Code of Regulations, title 2, sections 300-303 are suspended. The Director of the California Department of Human Resources must be notified of any individual employed pursuant to these waivers.
8. The California Health and Human Services Agency and the Office of Emergency Services shall identify, and shall otherwise be prepared to make available—including through the execution of any necessary contracts or other agreements and, if necessary, through the exercise of the State's power to commandeer property – hotels and other places of temporary residence, medical facilities, and other facilities that are suitable for use as places of temporary residence or medical facilities as necessary for quarantining, isolating, or treating individuals who test positive for COVID-19 or who have had a high-risk exposure and are thought to be in the incubation period.
9. The certification and licensure requirements of California Code of Regulations, Title 17, section 1079 and Business and Professions Code section 1206.5 are suspended as to all persons who meet the requirements under the Clinical Laboratory Improvement Amendments of section 353 of the Public Health Service Act for high complexity testing and who are performing analysis of samples to test for SARS-CoV-2, the virus that causes COVID-19, in any certified public health laboratory or licensed clinical laboratory.
10. To ensure that individuals with developmental disabilities continue to receive the services and supports mandated by their individual program plans threatened by disruptions caused by COVID-19, the Director of the Department of Developmental Services may issue directives waiving any provision or requirement of the Lanterman Developmental Disabilities Services Act, the California Early Intervention Services Act, and the accompanying regulations of Title 17, Division 2 of the California Code of Regulations. A directive may delegate to the regional centers any authority granted to the Department by law where the Director believes such delegation is necessary to ensure services to individuals with developmental disabilities. The Director shall describe the need justifying the waiver granted in each directive and articulate how the waiver is necessary to protect the public health or safety from the threat of COVID-19 or necessary to ensure that services to individuals with developmental disabilities are not disrupted. Any waiver granted by a directive shall expire 30 days from the date of its issuance. The Director may grant one or more 30-day extensions if the waiver continues to be necessary

to protect health or safety or to ensure delivery of services. The Director shall rescind a waiver once it is no longer necessary to protect public health or safety or ensure delivery of services. Any waivers and extensions granted pursuant to this paragraph shall be posted on the Department's website.

11. Notwithstanding any other provision of state or local law, including the Bagley-Keene Act or the Brown Act, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to attend and to address the local legislative body or state body, during the period in which state or local public officials impose or recommend measures to promote social distancing, including but not limited to limitations on public events. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, at least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended, on the conditions that:

- (i) each state or local body must give advance notice of each public meeting, according to the timeframe otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) consistent with the notice requirement in paragraph (i), each state or local body must notice at least one publicly accessible location from which members of the public shall have the right to observe and offer public comment at the public meeting, consistent with the public's rights of access and public comment otherwise provided for by the Bagley-Keene Act and the Brown Act, as applicable (including, but not limited to, the requirement that such rights of access and public comment be made available in a manner consistent with the Americans with Disabilities Act).

In addition to the mandatory conditions set forth above, all state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 12th day of March 2020.



A handwritten signature in black ink, appearing to read 'Gavin Newsom', is written over a horizontal line. The signature is stylized and somewhat messy.

GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

# Exhibit C

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

EXECUTIVE ORDER N-33-20

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

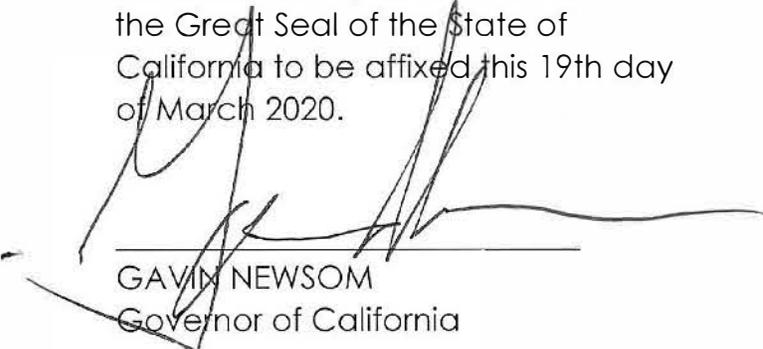
The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of March 2020.

  
\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

# Exhibit D



State of California—Health and Human  
Services Agency  
**California Department of  
Public Health**



June 28, 2020

**TO:** Counties on the County Monitoring List

**SUBJECT:** Proposal for Selective Sector Closing of Bars in Counties on the County Monitoring List

## **Proposal for Selective Sector Closing of Bars in Counties on the County Monitoring List**

### **Background**

As part of the State's efforts to address COVID-19, the State monitors county specific data and provides technical assistance, support and interventions to counties that have concerning levels of disease transmission, hospitalizations, or insufficient testing. Counties on the County Monitoring List are under active monitoring by the state, and may receive targeted engagement and technical support from CDPH and other agencies and departments including the Business, Consumer Services and Housing Agency, the Department of Industrial Relations and the California Department of Food and Agriculture. Counties that do not demonstrate substantial progress at 14 days are candidates for reinstating community measures. (1)

As of June 27th, there are 15 counties on the County Monitoring List. As of June 27th, all of them will have been on the list for three or more days. Seven will have been on the list for 14 days or more.

To reduce disease transmission and to protect residents across the state, one strategy available to the state is to work with counties to reverse some or all of the sector openings currently allowed under the State order.

On June 5th, the state posted guidance allowing for the opening of bars in counties as of June 12th, if their opening could be allowed by local public health officer order (2). Of the 15 counties on the County Monitoring List, all except four have allowed for the opening of bars. Those four include Contra Costa, Imperial, San Joaquin and Santa Clara.

### **Proposed action**

Given current rates of disease transmission in some counties and the need to reduce non-essential gatherings where mixing and disease spread occur, CDPH recommends that all counties on the list for three or more consecutive days but less than 14 days, close bars through local health officer order (or do not allow for the opening if bars have not yet been allowed to open in the county). Further, counties which have been on the list for 14 days or greater, are required to immediately close bars within the county. Reopening at that time would be subject to

county health office approval, as per usual protocol.

The scope of this action is defined as follows:

- Brewpubs, breweries, bars, and pubs, should close until those establishments are allowed to resume operation per state guidance and local permission, unless they are offering sit-down, dine-in meals. Alcohol can only be sold in the same transaction as a meal.
- Dine-in restaurants, brewpubs, breweries, bars, and pubs that provide sit-down meals should follow the dine-in restaurant guidance (PDF) and should continue to encourage takeout and delivery service whenever possible.
- Brewpubs, breweries, bars, and pubs that do not provide sit-down meals themselves, but can contract with another vendor to do so, can serve dine-in meals provided both businesses follow the dine-in restaurant guidance (PDF) and alcohol is only sold in the same transaction as a meal.
- Venues that are currently authorized to provide off sale beer, wine, and spirits to be consumed off premises and do not offer sit-down, dine-in meals should follow the guidance for retail operations (PDF) and offer curbside sales only, until local and/or statewide rules allow additional retail activity.
- Producers of beer, wine, and spirits should follow the guidance for manufacturing operations (PDF).
- This guidance is not intended for concert, performance, or entertainment venues. Those types of establishments should remain closed until they are allowed to resume modified or full operation through a specific reopening order or guidance. Establishments that serve full meals must discontinue this type of entertainment until these types of activities are allowed to resume modified or full operation.
- Brewpubs, breweries, bars, and pubs in counties unaffected by this order and whose health officer has approved further reopening may follow the guidance for restaurants, wineries, and bars on the COVID-19 County Roadmap website.

### **Justification**

Community spread of infection is of increasing concern across the state, and in particular for those counties on the County Monitoring List. Beyond the impact on the general population, community spread increases the likelihood of expanded transmission of COVID-19 in congregate settings such as nursing homes, homeless shelters, jails and prisons. Infection of vulnerable populations in these settings can be catastrophic, both in terms of high rates of morbidity and mortality of individual residents, as well as through the high demand such infections would place on the hospital delivery system. Higher levels of community spread also increase the likelihood of infection among individuals at high risk of serious outcomes from COVID-19, including the elderly and those with underlying health conditions who might live or otherwise interact with an infected individual.

California's Pandemic Resiliency Roadmap for reopening is a risk-based framework that guides state and local governments on a path to re-opening industries under strict workplace modifications. Whereas other industries and establishments were permitted to open with modifications in Stage 2, bars are in Stage 3 because they pose the highest risk of all sectors allowed to open so far. They create an environment anchored in significantly high levels of community mixing of individuals outside of one's own household, increasing the risk escalating the R-effective, or effective transmission rate, of COVID-19.

A bar, foundationally, is a social setting where typically not only small groups convene, but also where groups mix with other groups. Physical movement within the establishment, duration of time spent in the establishment, and the degree of social mixing within individuals and groups are all greater in bars than in other hospitality sectors. Further, alcohol consumption slows brain activity, reduces inhibition, and impairs judgment, factors which contribute to reduced compliance with recommended core personal protective measures, such as the mandatory use of face coverings and maintaining six feet of distance from people outside of one's own household. Louder

environments and the cacophony of conversation that are typical in bar settings, also require raised voices and greater projection of oral emitted viral droplets. The sector's workforce faces higher exposure to diseases transmission because of the environment in which they work, compounded by the necessity for patrons to remove face coverings to consume drinks, especially while seated at a bar or moving around and mixing. In their totality, these factors present a higher likelihood of transmission of the coronavirus within groups, between groups, and among the workforce. These factors have led to an increasing concern by public health professionals within California and throughout the nation identifying bars as the highest risk sector of non-essential business currently open. There is a growing body of evidence tracing large COVID-19 outbreaks in both urban and rural states, to bars.

Beyond higher risk of transmission in bar settings, contact tracing, a key measure needed to control spread, is also more challenging in bars. Undertaking contact tracing of a droplet-spread communicable disease based on exposure at a bar is extremely difficult because of the constant mixing among persons, including unknowing prolonged and close contact, and lack of record-keeping of patron attendance. Unlike other sectors where tracking who comes in and out of a setting and where duration of visits are shorter, bars are particularly challenged to do these tasks as well as necessary, even under the best of modifications.

Bars generally attract a younger adult population. While younger adults without co-morbidities tend to have less severe symptoms and overall disease outcomes, increased cases, even in this cohort, will lead to increased hospitalizations and deaths. As the virus spreads more broadly in this population, younger individuals become a source of spread to more vulnerable adults and the broader community, a factor that is complicated by the fact that younger individuals have a higher likelihood of asymptomatic or mildly symptomatic infection.

1 County Data Monitoring

2 County Variance Information

California Department of Public Health  
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377  
Department Website ([cdph.ca.gov](http://cdph.ca.gov))



Page Last Updated : June 28, 2020

# Exhibit E



State of California—Health and Human  
Services Agency  
**California Department of  
Public Health**



July 1, 2020

**TO:** All Californians

**SUBJECT:** Guidance on Closure of Sectors in Response to COVID-19

## **Guidance on Closure of Sectors in Response to COVID-19**

**July 1, 2020**

### **Summary**

As COVID-19 transmission rates continue to rise, this guidance instructs counties that have been on the County Monitoring List for three consecutive days or more to close indoor operations for certain sectors which promote the mixing of populations beyond households and make adherence to physical distancing with face coverings difficult. Within those sectors, those that are not able to continue their business through outdoor operations must close that portion of their business effective immediately for at least three (3) weeks, in order to further mitigate the spread of the virus. In addition, all brewpubs, breweries, bars, and pubs in these counties must close, both indoors and outdoors, unless they are offering sit down, dine-in meals as described under the actions section of the guidance issued on June 28.

### **Background**

As part of the State's efforts to address COVID-19, the State monitors county specific data and provides technical assistance, support and interventions to counties that have concerning levels of disease transmission, hospitalizations, or insufficient testing. Counties on the County Monitoring List are under active monitoring by the state, and may receive targeted engagement and technical support from CDPH and other agencies and departments including the Business, Consumer Services and Housing Agency, the Department of Industrial Relations and the California Department of Food and Agriculture.

As of July 1, there are 19 counties on the County Monitoring List, which includes:

- Contra Costa
- Fresno

- Glenn
- Imperial
- Kern
- Kings
- Los Angeles
- Merced
- Orange
- Riverside
- Sacramento
- San Bernardino
- San Joaquin
- Santa Barbara
- Santa Clara
- Solano
- Stanislaus
- Tulare
- Ventura

To reduce disease transmission and to protect residents across the state, one strategy available to the state is to work with counties to further modify or close some or all of the sector openings currently allowed under the State order.

### **Proposed Action**

Given current rates of disease transmission in some counties and the need to reduce gatherings where mixing with individuals outside of one's household and disease spread occur, CDPH is requiring closure, within counties on the county monitoring list for three or more consecutive days, of indoor operations, while allowing outdoor operations with appropriate modifications, including physical distancing and face coverings, for the following sectors:

- Dine-in Restaurants
- Wineries and Tasting Rooms
- Movie Theaters
- Family Entertainment Centers
- Zoos and Museums
- Cardrooms

All industry or sector guidance documents that have been issued to date, including all infectious control measures outlined in those guidance documents, apply in outdoor settings, and thus must be adhered to. In addition, all brewpubs, breweries, bars, and pubs must close indoor and outdoor operations in these counties.

**Justification**

The data is clear that community spread of infection is of increasing concern across the state, and in particular for those counties on the County Monitoring List. Beyond the impact on the general population, community spread increases the likelihood of expanded transmission of COVID-19 in congregate settings such as nursing homes, homeless shelters, jails and prisons. Infection of vulnerable populations in these settings can be catastrophic, both in terms of high rates of morbidity and mortality of individual residents, as well as through the high demand such infections would place on the hospital delivery system. We are seeing these increases already in many of the counties. Higher levels of community spread also increase the likelihood of infection among individuals at high risk of serious outcomes from COVID-19, including the elderly and those with underlying health conditions who might live or otherwise interact with an infected individual.

California's Pandemic Resiliency Roadmap for reopening is a risk-based framework that guides state and local governments on a path to re-opening industries under strict workplace modifications. Whereas other industries and establishments were permitted to open with modifications in Stage 2 or Stage 3, the above outlined sectors operating indoors operate at the highest risk of all sectors allowed to open so far. These specific sectors also create an environment that increases levels of community mixing of individuals outside of one's own household, increasing the risk of escalating the R-effective, or effective transmission rate, of COVID-19.

The sectors at issue in this document are all high risk of transmission due to a number of features of the businesses and the behaviors that occur within them. These sectors, foundationally, are settings where groups convene and may mix with others for prolonged periods of time without appropriate protective equipment, such as a face covering. For example, it is difficult to consistently wear a face covering in a restaurant. Additionally, physical movement within the establishment, duration of time spent in the establishment, and the degree of social mixing among individuals and groups outside one's household are all significant in these sectors, which substantially elevates the risk of transmission even where face coverings can be worn.

The risk is particularly high in indoor settings. Reinstating indoor closures among these sectors is not only important because of data from counties on the monitoring list, but because the science of disease transmission and from recent studies have shown that the transmissions is greater in indoor settings due to the release of infectious particles into the air when someone speaks, coughs, sneezes, or sings, which is exacerbated in indoor spaces particularly when lacking appropriate ventilation. Furthermore, in some of these sectors centered on eating and drinking, compliance with face coverings is not possible for the full duration of time someone spends in these establishments. Additionally, the workforce of these sectors face higher exposure to diseases transmission because of the environment in which they work.

A recent study published by the Centers for Disease Control and Prevention, for example, demonstrates clearly the effect of a single asymptomatic carrier in a restaurant environment. The study shows that approximately 50 percent of the people at the infected person's table become sick over seven (7) days, 75 percent of the people on the adjacent table that is downwind in the interior ventilation system become infected, and even two of seven people on the upwind table become infected. (1)

Physical distancing also protects an individual with brief exposures or outdoor exposures. When distanced, there is not enough time to achieve the infectious viral load when standing six (6) feet apart or where wind and the infinite outdoor space for viral dilution reduces viral load. A study, which still needs to be peer-reviewed, suggests that the odds an infected person transmitting the virus in a closed environment was 18.7 times greater compared to an open-air environment. (2)

Alcohol consumption slows brain activity, reduces inhibition, and impairs judgment, factors which contribute to reduced compliance with recommended core personal protective measures, such as the mandatory use of face coverings and maintaining six feet of distance from people outside of one's own household, making outdoor operations for brewpubs, breweries, bars, and pubs challenging, further creating opportunities for virus transmission and thus need for closure. Additionally, there is a growing body of evidence tracing large COVID-19 outbreaks in both urban and rural states, to indoor and outdoor operations of bars.

In the setting of an increasing body of evidence demonstrating that transmission is decreased when activities are conducted outside, and risk for exposure is increased when mixing beyond those with whom one lives, in an effort to mitigate to potential spread of COVID 19, the state is requiring that settings where patrons gather to be served or participate in the businesses' primary activity be moved outdoors.

(1) Lu, J., Gu, J., Li, K., Xu, C., Su, W., Lai, Z....Yang, Z. (2020). COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020. *Emerging Infectious Diseases*, 26(7), 1628-1631.

<https://dx.doi.org/10.3201/eid2607.200764>.

(2) Nishiura et al. (2020). Closed environments facilitate secondary transmission of coronavirus disease 2019 (COVID-19). <https://www.medrxiv.org/content/10.1101/2020.02.28.20029272v2>.

California Department of Public Health  
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377  
Department Website ([cdph.ca.gov](http://cdph.ca.gov))



Page Last Updated : July 2, 2020

# Exhibit F



State of California—Health and Human  
Services Agency  
**California Department of  
Public Health**



**GAVIN NEWSOM**  
Governor

July 13, 2020

AFL 17-\_\_

**TO:** All Californians

**SUBJECT:** Guidance on Closure of Sectors in Response to COVID-19

## **Guidance on Closure of Sectors in Response to COVID-19**

**July 13, 2020**

### **Summary**

COVID-19 transmission rates continue to rise across the state, including increasing numbers of cases in rural counties that had not previously experienced significant infection rates. Despite the closure of certain indoor sectors in counties on the County Monitoring list, those counties continue to demonstrate concerning levels of disease transmission that impact not only the general population but vulnerable populations in the community.

This guidance and the Statewide Public Health Officer Order, dated July 13, 2020:

- Closes, on a statewide basis, indoor operations for certain sectors, and both indoor and outdoor operations for bars and similar establishments, consistent with the June 28 and July 1 restrictions on counties on the County Monitoring List.
- Closes, for counties on the County Monitoring List for three or more consecutive days, indoor operations for additional sectors which promote the mixing of populations beyond households and make adherence to physical distancing with face coverings difficult. Within these sectors, and in the affected counties, those specified businesses that are not able to continue their business through outdoor operations must close that portion of their business effective immediately in order to further mitigate the spread of the virus.

### **Background**

As part of the State's efforts to address COVID-19, the State monitors county specific data to determine whether and how to modify the pace of reopening. Additionally, the State provides technical assistance, support and interventions to counties that have concerning levels of disease transmission, hospitalizations, or insufficient testing. Counties on the County Monitoring List are under active monitoring by the State, and may receive targeted

engagement and technical support from CDPH and other agencies and departments including the Business, Consumer Services and Housing Agency, the Department of Industrial Relations and the California Department of Food and Agriculture.

As of July 13, there are 29 counties that have been on the County Monitoring List for three consecutive days:

- Colusa
- Contra Costa
- Fresno
- Glenn
- Imperial
- Kings
- Los Angeles
- Madera
- Marin
- Merced
- Monterey
- Napa
- Orange
- Placer
- Riverside
- Sacramento
- San Benito
- San Bernardino
- San Diego
- San Joaquin
- Santa Barbara
- Solano
- Sonoma
- Stanislaus
- Sutter
- Tulare
- Ventura
- Yolo
- Yuba

### **Actions Taking Effect Immediately**

Given current rates of disease transmission and the increase in hospitalization and ICU utilization, CDPH is:

- Closing, on a statewide basis, consistent with the June 28 and July 1 restrictions on counties on the County Monitoring List, the following sectors:
  - Dine-in Restaurants (indoor)
  - Wineries and Tasting Rooms (indoor)
  - Movie Theater (indoor)
  - Family Entertainment Centers (indoor)
  - Zoos and Museums (indoor)
  - Cardrooms (indoor)
  - Brewpubs, breweries, bars, and pubs (indoor and outdoor), unless an exception below applies:
    1. Bars, pubs, brewpubs, and breweries, may operate outdoors if they are offering sit-down, outdoor, dine-in meals. Alcohol can be sold only in the same transaction as a meal. When operating outdoors, they must follow the dine-in restaurant guidance and should continue to encourage takeout and delivery service whenever possible.

2. Bars, pubs, brewpubs, and breweries that do not provide sit-down meals themselves, but can contract with another vendor to do so, can serve dine-in meals when operating outdoors provided both businesses follow the dine-in restaurant guidance and alcohol is sold only in the same transaction as a meal.
  3. Venues that are currently authorized to provide off sale beer, wine, and spirits to be consumed off premises and do not offer sit-down, dine-in meals must follow the guidance for retail operations and offer curbside sales only.
  4. Concert, performance, or entertainment venues must remain closed until they are allowed to resume modified or full operation through a specific reopening order or guidance. Establishments that serve full meals must discontinue this type of entertainment until these types of activities are allowed to resume modified or full operation.
- Closing, for counties on the Monitoring List for three or more consecutive days, additional **indoor** operations for certain sectors which promote the mixing of populations beyond households and make adherence to physical distancing with face coverings difficult. Within those sectors, those that are not able to continue their business through outdoor operations must close that portion of their business effective immediately in order to further mitigate the spread of the virus. This applies to the following sectors/events:
    - Gyms and Fitness Centers
    - Places of Worship
    - Indoor Protests
    - Offices for Non-Critical Infrastructure Sectors
    - Personal Care Services (including nail salons, massage parlors, and tattoo parlors)
    - Hair Salons and Barbershops
    - Malls

These actions remain in effect until further notice.

All industry or sector guidance documents that have been issued to date, including all infectious control measures outlined in those guidance documents, including the use of face coverings, which is mandated statewide apply in outdoor settings, and thus must be adhered to. Outdoor operations may be conducted under a tent, canopy, or other sun shelter, but only as long as no more than one side is closed, allowing sufficient outdoor air movement.

### **Justification**

The data is clear that community spread of infection is of increasing concern across the state, and continues to grow in those counties on the County Monitoring List. The number of hospitalized patients with COVID has increased between 50-100% in all regions in California, with a state average increase of 77% since June 12. In that same time, the number of counties with case rates over 100 per 100,000 residents has gone from 3 counties to 31 counties, confirming state-wide increased transmission of COVID. While these counties are primarily located in the south and central valley, there are now counties on the monitoring list from all regions of California. Beyond the impact on the general population, community spread increases the likelihood of expanded transmission of COVID-19 in congregate settings such as nursing homes, homeless shelters, jails and prisons. Infection of vulnerable populations in these settings can be catastrophic, both in terms of high rates of morbidity and mortality of individual residents, as well as through the high demand such infections would place on the hospital delivery system. We are seeing these increases already in many of the counties. Higher levels of community spread also increase the likelihood of infection among individuals at high risk of serious outcomes from COVID-19, including the elderly and those with underlying health conditions who might live or otherwise interact with an infected individual.

California's Pandemic Resiliency Roadmap for reopening is a risk-based framework that guides state and local governments on a path to re-opening activities and industries under strict workplace modifications. The above outlined sectors operating indoors create an environment that increases levels of community mixing of individuals outside of one's own household, increasing the risk of escalating the R-effective, or effective transmission rate, of COVID-19.

As described in the June 28 guidance and July 1 guidance, the sectors required to modify operations statewide under this guidance are sectors where there is increased risk of transmission due to a number of features of the business and the behaviors that occur within them. Because of noted trends in community spread statewide, well beyond those on the monitoring list, it is necessary to expand changes made to sectors in our order of June 28 and July 1 statewide.

Additionally, given the increased level of community transmission, this guidance requires additional sectors to close indoor operations in counties on the County Monitoring List for three or more consecutive days. Counties continue to be added to the county monitoring list and evidence of community transmission persists in these jurisdictions, requiring enhanced intervention through the additional sectors modifications.

The rationale for moving activities outdoors to reduce risk is anchored in the science of disease transmission and recent studies show that transmission is greater in indoor settings due to the release of infectious particles into the air when someone speaks, coughs, sneezes, or sings, which is exacerbated in indoor spaces particularly when lacking appropriate ventilation.

Physical distancing also protects an individual with brief exposures or outdoor exposures. When distanced, there is not enough time to achieve the infectious viral load when standing six (6) feet apart or where wind and the infinite outdoor space for viral dilution reduces viral load. A study, which still needs to be peer-reviewed, suggests that the odds an infected person transmitting the virus in a closed environment was 18.7 times greater compared to an open-air environment. (1)

In the setting of an increasing body of evidence demonstrating that transmission is decreased when activities are conducted outside, and risk for exposure is increased when mixing beyond those with whom one lives, in an effort to mitigate to potential spread of COVID 19, the state is requiring that additional settings where patrons gather to be served or participate in the businesses' primary activity be moved outdoors.

(1) Nishiura et al. (2020)

Closed environments facilitate secondary transmission of coronavirus disease 2019 (COVID-19)

<https://www.medrxiv.org/content/10.1101/2020.02.28.20029272v2>



Page Last Updated : July 17, 2020

# Exhibit G



SANDRA SHEWRY, MPH, MSW  
Acting Director

State of California—Health and Human Services Agency  
California Department of Public Health



GAVIN NEWSOM  
Governor

**Statewide Public Health Officer Order,  
August 28, 2020**

On March 19, 2020, the State Public Health Officer issued an order directing all individuals living in the State of California to stay at home except as needed to facilitate authorized activities or to maintain the continuity of operations of critical infrastructure sectors. (See [March 19, 2020 Order](#).) The scope of activities authorized under this order was subsequently modified in additional state public health directives. Then, consistent with Executive Order N-60-20, the State Public Health Officer set out California's path forward from this "Stay-at-Home" Order in California's [Pandemic Resilience Roadmap](#). That Roadmap identified four stages of the pandemic: safety and preparation (Stage 1), reopening of lower-risk workplaces and other spaces (Stage 2), reopening of higher-risk workplaces and other spaces (Stage 3), and finally an easing of final restrictions leading to the end of the stay-at-home order (Stage 4). On July 13, 2020, in response to a significant increase in the spread of COVID-19, the State Public Health Officer ordered the statewide closure of operations in certain high-risk sectors. (See [July 13, 2020 Order](#).) Counties on the County Monitoring List for three consecutive days were also required to close additional indoor operations for certain sectors in order to further slow community transmission.

Community spread of infection remains a significant concern across the state. In addition to the impact on the general population, community spread increases the likelihood of expanded transmission of COVID-19 in congregate settings such as nursing homes, homeless shelters, jails and prisons. Infection of vulnerable populations in these settings can be catastrophic. Higher levels of community spread also increase the likelihood of infection among individuals at higher risk of serious outcomes from COVID-19, including the elderly and those with underlying health conditions who might live or otherwise interact with an infected individual. COVID-19 infection is also disproportionately impacting our essential workforce. The anticipated influenza season is likely to impose additional burdens on the healthcare delivery system, increasing demand for space, supplies, and personnel.

The COVID-19 pandemic continues to evolve, and CDPH is continually monitoring new scientific evidence and improving its understanding of the disease. Based on the current state of the pandemic in California and current scientific understanding of transmission, it is my judgment that it is appropriate to further refine the approach in order to gradually reopen businesses and activities while reducing the risk of increased community spread. A targeted system for sector reopenings which considers both current epidemiological conditions and the latest understanding of transmission risk in certain



sectors will allow CDPH to monitor both counties and sectors for evidence of increased epidemiological risk and will reduce risk as California continues to reopen its economy and protect public health. [California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe](#) sets forth in detail the basis for the new Framework.

**NOW, THEREFORE, I, as Acting State Public Health Officer of the State of California, order all of the following:**

1. The updated framework for reopening, which shall be known as California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe, will rely on a set of Tiers corresponding to specific epidemiological profiles based on indicators of disease burden including case rates per capita and percent of positive covid-19 tests and proportion of testing and other covid-19 response efforts addressing the most impacted populations within a county. For each progressive Tier, this framework will permit a broader range of reopening guided by risk-based criteria pertinent to each sector. I may modify the epidemiological criteria for each Tier as well as the sectors, businesses, establishments, or activities within the Tiers as necessary based on the latest available public health information and research to protect public health and safety. The up-to-date Tier profiles and those sectors, businesses, establishments, or activities that are permitted to open in each Tier will be posted (along with necessary modifications), at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx>.
2. Pursuant to this framework, all local health jurisdictions in the state may reopen specified sectors according to their respective county's Tier. However, a local health jurisdiction that moves to a Tier permitting further reopening must pause for 21 days, or a different period that I identify, before reopening additional sectors.
3. Conversely, a local health jurisdiction must also close sectors according to their respective county's Tier consistent with the timeline and procedures set forth in California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.
4. A local health jurisdiction may continue to implement or maintain more restrictive public health measures if the jurisdiction's Local Health Officer determines that health conditions in that jurisdiction warrant such measures.

## Terms of Orders

5. This order shall go into effect August 31, 2020 and shall supersede the July 13, 2020 State Public Health Officer Order.
6. This order shall remain in effect until I determine it is appropriate to modify the order based on public health conditions.
7. I will continue to monitor the epidemiological data and will modify California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe as required by the evolving public health conditions. If I determine that it is necessary to change what will reopen or close, or otherwise modify the Plan, these modifications will be posted at [California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe](#).
8. Except to the extent this order or other state public health directives expressly provide otherwise, all CDPH guidance continues to apply statewide.
9. All references in CDPH or other State guidance to the County Monitoring List or the County Data Monitoring List shall refer to those counties falling within Tier 1 of California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.
10. This order is issued pursuant to Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120150, 120175, 120195 and 131080; EO N-60-20, N-25-20, and other authority provided for under the Emergency Services Act; and other applicable law.



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Erica S. Pan, MD, MPH  
Acting State Public Health Officer  
California Department of Public Health

# Exhibit H



Sandra Shewry  
Acting Director  
Erica S. Pan, MD, MPH  
Acting State Health Officer

State of California—Health and Human  
Services Agency  
**California Department of  
Public Health**



GAVIN NEWSOM  
Governor

October 9, 2020

**TO:** All Californians

**SUBJECT:** Guidance for Private Gatherings

**NOTE: The following guidance is superseded by updated guidance released on November 13, 2020.**

## Summary

This guidance provides an updated plan for Californians to gather outside their household and replaces the prior gatherings guidance issued on September 12, 2020 and March 16, 2020. It applies to private gatherings, and all other gatherings not covered by existing sector guidance are prohibited. Gatherings are defined as social situations that bring together people from different households at the same time in a single space or place. When people from different households mix, this increases the risk of transmission of COVID-19.

## Mandatory Requirements for All Gatherings

All persons planning to host or participate in a private gathering, as defined above, must comply with the following requirements. Local health jurisdictions may be more restrictive than this guidance. Refer to your local guidance for what is allowed in your area.

### 1. Attendance

- *Gatherings that include more than **3 households are prohibited**. This includes everyone present, including hosts and guests. Remember, the smaller the number of people, the safer.*
- *Keep the households that you interact with stable over time. By spending time with the same people, risk of transmission is reduced. Participating in multiple gatherings with different households or groups is strongly discouraged.*
- *The host should collect names of all attendees and contact information in case contact tracing is needed later.*

## 2. *Gather Outdoors*

- Gatherings that occur outdoors are significantly safer than indoor gatherings. All gatherings must be held outside. Attendees may go inside to use restrooms as long as the restrooms are frequently sanitized.
- Gatherings may occur in outdoor spaces that are covered by umbrellas, canopies, awnings, roofs, and other shade structures provided that at least three sides of the space (or 75%) are open to the outdoors.
- A gathering of no more than three households is permitted in a public park or other outdoor space, even if unrelated gatherings of other groups up to three households are also occurring in the same park or other outdoor space. If multiple such gatherings are occurring, mixing between group gatherings is not allowed. Additionally, multiple gatherings of three households cannot be jointly organized or coordinated to occur in the same public park or other outdoor space at the same time – this would constitute a gathering exceeding the permitted size.

## 3. *Don't Attend Gatherings If You Feel Sick or You Are in a High-Risk Group*

- Anyone with any COVID-19-like symptoms (fever, cough, shortness of breath, chills, night sweats, sore throat, nausea, vomiting, diarrhea, tiredness, muscle or body aches, headaches, confusion, or loss of sense of taste/smell), **must stay home and not come into contact with anyone outside their household.**
- Anyone who develops COVID-19 within 48 hours after attending a gathering should notify the other attendees as soon as possible regarding the potential exposure.
- People at higher risk of severe illness or death from COVID-19 (such as older adults and people with chronic medical conditions) are strongly urged not to attend any gatherings.

## 4. *Practice Physical Distancing and Hand Hygiene at Gatherings*

- For any gatherings permitted under this guidance, the space must be large enough so that everyone at a gathering can maintain at least a 6-foot physical distance from others (not including their own household) at all times.
- Seating must provide at least 6 feet of distance (in all directions—front-to-back and side-to-side) between different households.
- Everyone at a gathering should frequently wash their hands with soap and water, or use hand sanitizer if soap and water are not available. A place to wash hands or hand sanitizer must be available for participants to use.
- Shared items should not be used during a gathering. As much as possible, any food or beverages at outdoor gatherings must be in single-serve disposable containers. If providing single-serve containers is not possible, food and beverages must be served by a person who washes or sanitizes their hands frequently, and wears a face covering. Self-serve items from communal containers should not be used.

## 5. *Wear a Face Covering to Keep COVID-19 from Spreading*

- When gathering, face coverings must be worn in accordance with the CDPH Guidance on the Use of Face Coverings (PDF), unless an exemption is applicable.
- People at gatherings may remove their face coverings briefly to eat or drink as long as they stay at least 6 feet away from everyone outside their own household, and put their face covering back on as soon as they are done with the activity.
- Face coverings can also be removed to meet urgent medical needs (for example, to use an asthma inhaler, take medication, or if feeling light-headed).

#### 6. *Keep it short*

- Gatherings should be two hours or less. The longer the duration, the risk of transmission increases.

#### 7. *Rules for Singing, Chanting, and Shouting at Outdoor Gatherings*

- Singing, chanting, shouting, and physical exertion significantly increases the risk of COVID-19 transmission because these activities increase the release of respiratory droplets and fine aerosols into the air. Because of this, singing, chanting, and shouting are strongly discouraged, but if they occur, the following rules and recommendations apply:
  - All people who are singing or chanting should wear a face covering at all times while singing or chanting, including anyone who is leading a song or chant. Because these activities pose a very high risk of COVID-19 transmission, face coverings are essential to reduce the spread of respiratory droplets and fine aerosols;
  - People who are singing, shouting, chanting, or exercising are strongly encouraged to maintain physical distancing beyond 6 feet to further reduce risk.
  - People who are singing or chanting are strongly encouraged to do so quietly (at or below the volume of a normal speaking voice).
- Instrumental music is allowed as long as the musicians maintain at least 6-foot physical distancing. Musicians must be from one of the three households. Playing of wind instruments (any instrument played by the mouth, such as a trumpet or clarinet) is strongly discouraged.

## Context

COVID-19 continues to pose a severe risk to communities and requires all people in California to follow necessary precautions and to adapt the way they live and function in light of this ongoing risk. The safest way to gather is to spend time with people in the same household or to gather virtually.

In general, the **more people from different households** a person interacts with at a gathering, the **closer** the physical interaction is, and the **longer** the interaction lasts, the higher the risk that a person with a COVID-19 infection, symptomatic or asymptomatic, may spread it to others. Public health studies have also shown that the risk of transmission is increased **in indoor spaces**, particularly when there isn't appropriate ventilation.[1] Unlike indoor spaces, wind and air in outdoor spaces can help reduce spread of the virus from one person to another.

Planning scenarios published by the CDC estimate that, on average, a person with COVID-19 goes on to infect between 2-4 people, with a best estimate of 2.5 when there are no preventive measures.[2] For example, if each infected person spreads the virus to two people, who in turn spread it to two others each; those four will spread the

virus to eight others; those eight will spread the virus to 16; and so on. As a result, after 10 transmission cycles, one person could be responsible for 1,024 other people contracting the virus.[3] Additionally, there is broad agreement that people who are not experiencing symptoms can still spread COVID-19[4]. The fact that COVID-19 can be spread by people who don't have symptoms or aren't showing symptoms yet is one of the aspects of the COVID-19 that makes it difficult to control.

All gatherings pose a higher risk of transmission and spread of COVID-19 when people mix from different households and communities. The likelihood of transmission and spread increases with laughing, singing, loud talking and difficulty maintaining physical distance. Limiting attendance at gatherings is a way to reduce the risk of spread as it lowers the number of different people who are interacting. Additionally, by limiting attendance there is an improved ability to perform effective contact tracing if there is a positive case discovered, which can help to slow the spread of COVID-19[5]. People who do choose to attend gatherings should discuss and agree upon the specific group rules before convening together.

[1] See, e.g., Hiroshi Nishiura, et al., Closed environments facilitate secondary transmission of coronavirus disease 2019 (COVID-19) (PDF), ([www.medrxiv.org/content/10.1101/2020.02.28.20029272v2.full.pdf](http://www.medrxiv.org/content/10.1101/2020.02.28.20029272v2.full.pdf)); Hu Qian, et al., "Indoor transmission of SARS-CoV-2" ([www.medrxiv.org/content/10.1101/2020.04.04.20053058v1](http://www.medrxiv.org/content/10.1101/2020.04.04.20053058v1)) [pre-print] published in medRxiv on April 4, 2020.

[2] See the CDC COVID-19 Pandemic Planning Scenarios web page

[3] See, e.g., Report 3: Natsuko Imai et al, WHO Collaborating Centre for Infectious Disease Modelling, MRC Centre for Global Infectious Disease Analysis, J-IDEA, "Imperial college London, UK. Transmissibility of 2019 -n-CoV)." See also Inglesby T B JAMA Public Health Measures and the Reproduction Number of SARS-CoV-2. JAMA Network.2020.7878 (May 1, 2020).

[4] World Health Organization (WHO) Transmission of SARS-CoV-2: implications for infection prevention precautions

[5] See Harvard Health Preventing the spread of the coronavirus Social distancing, hand washing, and other preventive measures

California Department of Public Health  
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Department Website ([cdph.ca.gov](http://cdph.ca.gov))



# Exhibit I



# COVID-19 INDUSTRY GUIDANCE: Restaurants

**November 24, 2020**

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*This guidance is designed to address sectors and activities opening statewide. However, local health officers may implement more stringent rules tailored to local epidemiological conditions, so employers should also confirm relevant local opening policies.*



## OVERVIEW

On March 19, 2020, the State Public Health Officer and Director of the California Department of Public Health issued an order requiring most Californians to stay at home to disrupt the spread of COVID-19 among the population.

The impact of COVID-19 on the health of Californians is not yet fully known. Reported illness ranges from very mild (some people have no symptoms) to severe illness that may result in death. Certain groups, including people aged 65 or older and those with serious underlying medical conditions, such as heart or lung disease or diabetes, are at higher risk of hospitalization and serious complications. Transmission is most likely when people are in close contact or in a poorly ventilated area with an infected person, even if that person does not have any symptoms or has not yet developed symptoms.

Precise information about the number and rates of COVID-19 by industry or occupational groups, including among critical infrastructure workers, is not available at this time. There have been multiple outbreaks in a range of workplaces, indicating that workers are at risk of acquiring or transmitting COVID-19 infection. Examples of these workplaces include hospitals, long-term care facilities, prisons, food production, warehouses, meat processing plants, restaurants, and grocery stores.

As stay-at-home orders are modified, it is essential that all possible steps be taken to ensure the safety of workers and the public.

Key prevention practices include:

- ✓ ensuring adequate ventilation in all spaces,
- ✓ physical distancing to the maximum extent possible,
- ✓ use of face coverings by workers (where respiratory protection is not required) and customers/clients,
- ✓ frequent handwashing and regular cleaning and disinfection,
- ✓ training workers on these and other elements of the COVID-19 prevention plan.

In addition, it will be critical to have in place appropriate processes to identify new cases of illness in workplaces and, when they are identified, to intervene quickly and work with public health authorities to halt the spread of the virus.

# PURPOSE

This document provides guidance for restaurants to support a safe, clean environment for workers and customers. Businesses must identify and monitor the County Risk Level for the county the business is operating in and make required adjustments to their operations:

- **Purple – Widespread – Tier 1:** Outdoor operations are permitted and must continue to follow the modifications in this guidance. Performers must maintain physical distancing from spectators and other performers. Performers who are singing, shouting, playing a wind instrument, or engaging in similar activities without a face covering must maintain at least twelve feet of distance from spectators. Additional modifications for performances may be required by the forthcoming Live Performances guidance.
- **Red – Substantial – Tier 2:** Indoor operations are permitted but must be limited to 25% capacity or 100 people, whichever is fewer, and continue to follow the modifications in this guidance. For indoor performances, performers must wear face coverings at all times and maintain physical distancing from spectators and other performers. Performers are counted toward the occupancy capacity limit. Additional modifications for performances may be required by the forthcoming Live Performances guidance.
- **Orange – Moderate – Tier 3:** Indoor operations are permitted but must be limited to 50% capacity or 200 people, whichever is fewer, and continue to follow the modifications in this guidance. For indoor performances, performers must wear face coverings and observe all other required modifications consistent with the forthcoming Live Performance guidance. In the interim, performers must wear face coverings at all times and maintain physical distancing from spectators and other performers. Performers are counted toward the occupancy capacity limit.
- **Yellow – Minimal – Tier 4:** Indoor operations are permitted at 50% capacity and must continue to follow the modifications in this guidance. For indoor performances, performers must wear face coverings and observe all other required modifications consistent with the forthcoming Live Performance guidance. In the interim, performers must wear face coverings at all times and maintain physical distancing from spectators and other performers. Performers are counted toward the occupancy capacity limit.

For the most updated information on county tier status, visit [Blueprint for a Safer Economy](#). Please note that local health departments can have more restrictive criteria and different closures. Find [your county's local information](#).

**NOTE:** Restaurants should continue to encourage takeout and delivery service whenever possible. Restaurants providing takeout, drive-through pick-up, and delivery may only sell unsealed containers of alcoholic beverages (such as cocktails) when purchased in the same transaction [as a meal](#). A meal is not required for the sale or delivery of alcoholic beverages in manufacturer-sealed containers. Restaurants should

refer to [COVID-19 guidance](#) from the California Department of Alcoholic Beverage Control. Restaurants may also have other operational aspects and service offerings covered in other guidance, which are available on the [Industry Guidance to Reduce Risk](#) website. Restaurants may not open those operations until permitted by the Blueprint and when doing so must review this guidance to apply the appropriate protocols to all aspects of operations, including:

- Takeout and delivery (Delivery Services guidance)
- Bars and breweries (Bars, Breweries, and Distilleries guidance)
- Wineries and tasting rooms (Wineries and Tasting Rooms guidance)
- Offices (Office guidance)
- Game operations, such as bowling alleys, pool tables, etc. (Family Entertainment Centers guidance)
- Maintenance and custodial work (Limited Services guidance)

This guidance is not intended for concert, performance, or entertainment venues. Those types of establishments should remain closed until they are allowed to resume modified or full operation through a specific reopening order or guidance.

The guidance is not intended to revoke or repeal any worker rights, either statutory, regulatory or collectively bargained, and is not exhaustive, as it does not include county health orders, nor is it a substitute for any existing or newly created safety and health-related regulatory requirements such as those of Cal/OSHA, including a pending [Emergency Temporary Standard](#) expected to go into effect soon.<sup>1</sup> Stay current on changes to public health guidance and state/local orders as the COVID-19 situation continues. Cal/OSHA has more comprehensive guidance on their [Cal/OSHA General Guidelines on Protecting Workers from COVID-19 webpage](#). The U.S. Food and Drug Administration has [guidance for restaurants](#) and the CDC has additional requirements in their [guidance](#) for businesses and employers.

## Required Use of Face Coverings

Consult the [CDPH Guidance on the Use of Face Coverings](#), which broadly requires the use of face coverings for both members of the public and workers in all public and workplace settings outside the home. Complete details, including all requirements and exemptions to these rules, can be found in the [guidance, which should be checked periodically for updates.](#)

For the most updated information on county status, visit [Blueprint for a Safer Economy](#). Please note that local health departments can have more restrictive criteria and different closures. Find [your county's local information](#).



## Workplace Specific Plan

- Establish a written, workplace-specific COVID-19 prevention plan at every location, perform a comprehensive risk assessment of all work areas and work tasks, and designate a person at each establishment to implement the plan.
- Incorporate the [CDPH Face Covering Guidance](#) into the Workplace Specific Plan and include a policy for handling exemptions.
- Identify contact information for the local health department where the restaurant is located for communicating information about COVID-19 outbreaks among workers or customers.
- Train and communicate with workers and worker representatives on the plan and make the plan available to workers and their representatives.
- Regularly evaluate the establishment for compliance with the plan and document and correct deficiencies identified.
- Investigate any COVID-19 illness and determine if any work-related factors could have contributed to risk of infection. Update the plan as needed to prevent further cases.
- Implement the necessary processes and protocols when a workplace has an outbreak, in accordance with [CDPH guidelines](#) and orders or guidance from the local health department.
- Identify close contacts (within six feet for a cumulative total of 15 minutes or more over a 24-hour period) of an infected person and take steps to isolate COVID-19 positive worker(s) and close contacts.
- Notify all employees in writing, and employers of subcontracted employees, who may have been exposed to COVID-19 and report workplace outbreaks to the local health department. For additional information on employer responsibilities under [AB 685](#) (Chapter 84, Statutes of 2020), refer to the [Enhanced Enforcement and Employer Reporting Requirements](#) from Cal/OSHA and the [Employer Questions about AB 685](#) from CDPH.
- **For outdoor operations:** Establish an effective heat illness prevention plan with written procedures in both English and the language understood by the majority of the employees. The plan must be available to employees at the worksite. See the [Cal/OSHA heat illness prevention page](#) for resources, including FAQs, a webinar, and a sample written plan. Elements of a heat illness prevent plan must include:
  - Access to potable drinking water

- Access to shade
- Cool down breaks
- Emergency procedures for heat illness cases
- High heat procedures when the temperature exceeds 95 degrees
- Monitoring of employees who are acclimatizing during a heat wave
- Training on heat illness prevention and symptoms
- Adhere to the guidelines below. Failure to do so could result in workplace illnesses that may cause operations to be temporarily closed or limited.



## Topics for Worker Training

- Information on [COVID-19](#), how to prevent it from spreading, and which [people are at higher risk](#) for severe illness or death.
- Self-screening at home, including temperature and/or symptom checks using [CDC guidelines](#).
- The importance of not coming to work:
  - If a worker has symptoms of COVID-19 as [described by the CDC](#), such as a fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea, vomiting, or diarrhea, OR
  - If a worker was diagnosed with COVID-19 and has not yet been released from isolation, OR
  - If, within the past 14 days, a worker has had contact with someone who has been diagnosed with COVID-19 and is considered potentially infectious (i.e. still on isolation).
- To return to work after a worker receives a COVID-19 diagnosis only after meeting [CDPH Guidance on Returning to Work or School Following COVID-19 Diagnosis](#).
- To seek medical attention if their symptoms become severe, including persistent pain or pressure in the chest, confusion, or bluish lips or face. Updates and further details are available on [CDC's webpage](#).
- The importance of frequent handwashing with soap and water, including scrubbing with soap for 20 seconds (or using hand sanitizer with at least 60% ethanol or 70% isopropanol when workers cannot get to a sink or handwashing station, per [CDC guidelines](#)). Never use hand sanitizers with [methanol](#) due to its high toxicity to both children and adults.

- The importance of physical distancing, both at work and off work time (see Physical Distancing section below).
- Proper use of face coverings, including:
  - Face coverings provide some protection to the wearer but are not designed to meet standards for filtering virus-containing particles.
  - Face coverings do not replace the need for physical distancing and frequent handwashing.
  - Face coverings must cover the nose and mouth.
  - Workers should wash or sanitize hands before and after using or adjusting face coverings.
  - Avoid touching the eyes, nose, and mouth.
  - Face coverings must not be shared and should be washed or discarded after each shift.
- Information contained in the [CDPH Face Covering Guidance](#), which mandates the circumstances in which face coverings must be worn and the exemptions, as well as any policies, work rules, and practices the employer has adopted to ensure the use of face coverings. Training should also include the employer's policies on how people who are exempted from wearing a face covering will be handled.
- Ensure any independent contractors, temporary or contract workers, and volunteers at the facility are also properly trained in COVID-19 prevention policies and have necessary supplies and PPE. Discuss these responsibilities ahead of time with organizations supplying temporary and/or contract workers.
- Information on paid leave benefits the worker may be entitled to receive that would make it financially easier to stay at home. See additional information on [government programs supporting sick leave and workers' compensation for COVID-19](#), including workers' sick leave rights under the [Families First Coronavirus Response Act](#).



## Individual Control Measures and Screening

- Provide temperature and/or symptom screenings for all workers at the beginning of their shift and any vendors, contractors, or other workers entering the establishment. Make sure the temperature/symptom screener avoids close contact with workers to the extent possible.
- If requiring self-screening at home, which is an appropriate alternative to providing it at the establishment, ensure that screening was performed prior to the worker leaving the home for their shift and follows [CDC guidelines](#), as described in the Topics for Worker Training section above.
- Encourage workers who are sick or exhibiting symptoms of COVID-19 to stay home.
- Employers must provide and ensure workers use all required protective equipment, including face coverings and gloves where necessary.
- Employers should consider where disposable glove use may be helpful to supplement frequent handwashing or use of hand sanitizer; examples are for workers who are screening others for symptoms or handling commonly touched items. Workers should wear gloves when handling items contaminated by body fluids.
- Servers, bussers, and other workers moving items used by customers (dirty cups, plates, napkins, etc.) or handling trash bags should use disposable gloves (and wash hands before putting them on and after removing them) and provide aprons and change frequently.
- Dishwashers should use equipment to protect the eyes, nose, and mouth from contaminant splash using protective glasses, goggles, or a face shield in addition to a face covering. Dishwashers must be provided impermeable aprons and change frequently. Reusable protective equipment, such as shields and glasses, should be properly disinfected between uses.
- Employers must ensure workers maintain six feet of distance from others whenever possible. When it is not possible, the length and frequency of interaction should be kept to a minimum. Where job duties require regular interaction (e.g. wait staff), employers should offer a secondary barrier (i.e. face shields or safety goggles) for use by workers who wish to use one and permit workers to use their own if they prefer.
- Employers must take reasonable measures, including public address announcements, posting signage in strategic and highly-visible locations, and in reservation confirmations, to remind the public that they must use face coverings whenever not eating or drinking (unless exempted per

the [CDPH Face Covering Guidance](#)), practice physical distancing, not touch their face, frequently wash their hands with soap and water for at least 20 seconds, and use hand sanitizer.

- Remind guests in advance to bring a face covering and make them available to anyone who arrives without one, otherwise they should not be allowed to enter the premises (unless exempted per the [CDPH Face Covering Guidance](#)).
- Guests should be temperature and/or symptom screened upon arrival, asked to use hand sanitizer, and must bring and wear a face covering when not eating or drinking if not exempted per the [CDPH Face Covering Guidance](#). Employers have the right to cancel reservations for individuals/parties with symptomatic guests and refuse entry.
- Display a set of clearly visible rules for customers and restaurant personnel at the restaurant entrance(s) that are to be a condition of entry. The rules could include instructions to use hand sanitizer, maintain physical distance from other customers, avoid unnecessary touching of restaurant surfaces, contact information for the local health department, and changes to restaurant services. Whenever possible, the rules should be available digitally, include pictograms, and included on/with menus.



## Ventilation, Cleaning, and Disinfecting Protocols

- Restaurants should increase fresh air circulation by opening windows or doors, if possible, and in accordance with security and safety protocols.
- Position tables indoors near windows and doors to maximize air exchange and ventilation but avoid having air flow from where one party is seated directly toward another party.
- For indoor locations, maximize the amount of outdoor air supplied by ventilation systems. Install the highest efficiency filters compatible with the ventilation system.
- Where possible, install portable high-efficiency air cleaners, upgrade the building's air filters to the highest efficiency possible, and make other modifications to increase the quantity of outside air and ventilation in all working areas.
- Check the [CDPH website](#) periodically for updates on indoor air quality and ventilation guidance for airborne diseases in indoor settings.

- Perform thorough cleaning in high traffic areas, such as customer waiting areas and lobbies, break rooms, lunch areas and areas of ingress and egress including host stands, entry ways, stairways, stairwells, escalators, handrails, and elevator controls. Frequently disinfect commonly used surfaces including doors, door handles, crash bars, light switches, waiting area chairs, credit card terminals, ATM PIN pads, receipt trays, bus tubs, serving trays, phones, toilets, and handwashing facilities.
- Frequently clean items touched by patrons, especially those that might attract contact from children including candy and toy vending machines, display cases, decorative fountains, etc.
- Clean touchable surfaces between shifts or between users, whichever is more frequent, including but not limited to working surfaces, phones, registers, touchpads/touchscreens, tablets, timeclocks, appliances, kitchen and bar utensils and implements, oven doors, grill and range knobs, carts and trolleys, keys, etc.
- Avoid sharing audio equipment, phones, tablets, laptops, desks, pens, and other work supplies wherever possible. Never share PPE.
- Discontinue shared use of audio headsets and other equipment between workers unless the equipment can be properly disinfected after use. Consult equipment manufacturers to determine appropriate disinfection steps, particularly for soft, porous surfaces such as foam earmuffs.
- Provide time for workers to implement cleaning practices during their shift. Assign cleaning assignments during working hours as part of the employee's job duties. Procure options for third-party cleaning companies to assist with the increased cleaning demand, as needed.
- Procure options for third-party cleaning companies to assist with the increased cleaning demand, as needed.
- Equip spaces such as dining rooms, bar areas, host stands, and kitchens with proper sanitation products, including hand sanitizer and sanitizing wipes to all staff directly assisting customers.
- Ensure that sanitary facilities stay operational and stocked at all times and provide additional soap, paper towels, and hand sanitizer when needed.
- When choosing disinfecting chemicals, use products approved for use against COVID-19 on the [Environmental Protection Agency \(EPA\)-approved](#) list and follow product instructions. Use disinfectants labeled to be effective against emerging viral pathogens, diluted household bleach solutions (5 tablespoons per gallon of water), or alcohol solutions with at least 70% alcohol that are appropriate for the surface. Provide workers training on the chemical hazards, manufacturer's directions, ventilation

requirements, and Cal/OSHA requirements for safe use. Workers using cleaners or disinfectants must wear gloves and other protective equipment as required by the product instructions. Follow the [asthma-safer cleaning methods](#) recommended by the California Department of Public Health and ensure proper ventilation.

- Continue to follow existing codes regarding requirements for sanitizing (rather than disinfecting) food contact surfaces.
- To minimize the risk of [Legionnaires' disease](#) and other diseases associated with water, [take steps](#) to ensure that all water systems and features are safe to use after a prolonged facility shutdown.
- Where possible, do not clean floors by sweeping or other methods that can disperse pathogens into the air unless all persons in the area have appropriate PPE. Use a vacuum with a HEPA filter wherever possible.
- Provide disposable menus to guests and make menus available digitally so that customers can view on a personal electronic device, if possible. If disposable menus cannot be provided, properly disinfect menus before and after customer use. Consider options for customers to order ahead of time.
- Discontinue pre-setting tables with napkins, cutlery, glassware, food ware, etc. These should be supplied individually to customers as needed. Do not leave card stands, flyers, napkin holders, or other items on tables.
- Suspend use of shared food items such as condiment bottles, salt and pepper shakers, etc. and provide these foods in single serve containers, if possible. Where this is not possible, shared items such as condiment bottles, shakers, etc., should be supplied as needed to customers and disinfected after each use.
- Pre-roll utensils in napkins prior to use by customers. Workers must wash hands before pre-rolling utensils in napkins. The pre-roll should then be stored in a clean container. After customers are seated, the pre-roll should be put on the table by a worker who recently washed their hands.
- Reusable customer items including utensils, food ware, breadbaskets, etc., must be properly washed, rinsed, and sanitized. Cleaned flatware, stemware, dishware, etc., must be properly stored away from customers and personnel until ready for use. Use disposable items if proper cleaning of reusable items is infeasible.
- Takeout containers for leftovers must be filled by customers and available only upon request.
- Dirty linens used at dining tables such as tablecloths and napkins should be removed after each customer use and transported from dining areas in sealed bags. Workers should wear gloves when handling dirty linens.

- Thoroughly clean each customer dining location after every use. This will include disinfecting tables, chairs, booster seats, highchairs, booths, etc. and allowing adequate time for proper disinfection, following product instructions. Many EPA-approved disinfectants require minimal contact time (seconds to one minute) against human coronavirus.
- Close areas where customers may congregate or touch food or food ware items that other guests may use. Modify delivery of these items by providing items to guests individually, converting to cafeteria-style service, etc. Discard or clean, disinfect, or sanitize shared items after each use, as appropriate. The areas that should be closed include but are not limited to:
  - Self-service areas with condiment caddies, utensil caddies, napkins, lids, straws, water pitchers, to-go containers, etc.
  - Self-service machines including ice, soda, frozen yogurt dispensers, etc.
  - Self-service food areas such as buffets, salsa bars, salad bars, etc.
- Discontinue tableside food preparation, e.g. guacamole preparation, and presentation of uncovered food items on selection carts and conveyor belts. Carts and conveyor belts can be used only if the food is fully covered in covers that are adequately cleaned and disinfected after each use or are disposable and immediately discarded after use.
- Do not leave out after-meal mints, candies, snacks, or toothpicks for customers. Offer them with the check or provide only on request.
- Install hand sanitizer dispensers, touchless if possible, at guest and worker entrances and contact areas such as driveways, reception areas, in dining rooms, near elevator landings, etc.



## Physical Distancing Guidelines

- **WARNING:** physical distancing alone is insufficient to prevent transmission of COVID-19.
- Prioritize outdoor seating and curbside pickup to minimize cross flow of customers in enclosed environments. Restaurants can expand their outdoor seating, and alcohol offerings in those areas, if they comply with local laws and regulations.
- Provide takeout, delivery, and drive through options for customers when possible. Takeout items should be made available using contactless pick-up and delivery protocols.

- Eliminate person-to-person contact for delivery of goods whenever possible. Designate drop-off locations to receive deliveries away from high traffic areas. Maintain physical distance of at least six feet with delivery drivers.
- Encourage reservations to allow for time to disinfect restaurant areas and provide guidance via digital platforms, if possible, to customers for physical distancing while at the restaurant.
- Consider allowing dine-in customers to order ahead of time to limit the amount of time spent in the establishment. Ask customers to wait in their cars or away from the establishment while waiting to be seated. If possible, alert patrons through their mobile phones when their table is ready to avoid touching and use of “buzzers.”
- Indoor and outdoor dining service tables must be at least six feet apart, measured from the back of the chair at one table to the back of the chair at the adjacent table while diners are seated. Maximize the distance between indoor service tables beyond the required six feet wherever possible, to minimize the risks from customers eating indoors without face coverings.
- Limit the number of patrons at a single table to a household unit or patrons who have asked to be seated together. People in the same party seated at the same table do not have to be six feet apart. All members of the party must be present before seating and hosts must bring the entire party to the table at one time.
- Implement measures to ensure physical distancing of at least six feet between workers and customers. This can include use of physical partitions or visual cues (e.g., floor markings or signs to indicate to where workers and/or guests should stand).
- Install physical barriers or partitions at cash registers, bars, host stands, and other areas where maintaining physical distance of six feet is difficult.
- Any area where guests or workers queue should also be clearly marked for appropriate physical distancing. This includes check-stands and terminals, deli counters and lines, restrooms, elevator lobbies, host stands and waiting areas, valet drop off and pickup, and any other area where customers congregate.
- Physical distancing protocols should be used in any office areas, kitchens, pantries, walk-in freezers, or other high-density, high-traffic work areas, where possible.
- Worker pre-shift meetings and trainings should be conducted virtually or in areas that allow for appropriate physical distancing between workers. Food, beverages, food ware, etc., must not be shared.

- Stagger worker breaks, in compliance with wage and hour regulations, to maintain physical distancing protocols.
- Consider offering workers who request modified duties options that minimize their contact with customers and other workers (e.g., managing inventory rather than working as a cashier or managing administrative needs through telework).
- Reconfigure office spaces, lobbies, beverage bars, kitchens and workstations, host stand areas, and other spaces wherever possible to allow for at least six feet of distance between people dining, working, and passing through areas for entry and exit.
- Remove tables and chairs from dining areas so that six feet of physical distance can be maintained for customers and workers. If tables, chairs, booths, etc., cannot be moved, use visual cues to show that they are not available for use.
- Discontinue seating of customers where customers cannot maintain six feet of distance from workers, work areas, and food and drink preparation areas.
- Limit the number of workers serving individual parties, in compliance with wage and hour regulations.
- All restaurant workers should minimize the amount of time spent within six feet of guests.
- Ensure workers can maintain physical distance in breakrooms, using barriers, increasing distance between tables/chairs to separate workers, etc. Where possible, create outdoor break areas with shade coverings and seating arrangements that ensures physical distancing. Discourage workers from congregating during breaks and ensure they are not eating or drinking without face coverings within six feet of each other.
- Reconfigure kitchens to maintain physical distancing in those areas where practical and, if not practical, stagger shifts, if possible, to do work ahead of time.
- Discourage food preparation workers from changing or entering others' workstations during shifts.
- Discourage people from congregating in high traffic areas such as bathrooms, hallways, bar areas, reservation and credit card terminals, etc.
- Establish directional hallways and passageways for foot traffic, if possible, to eliminate workers from passing by one another.
- Require workers to not use handshakes, fist or elbow bumps, hugs, and similar greetings or other behaviors that break physical distance.

- Guests should enter through doors that are propped open or automated, if possible. Hand sanitizer should be available for guests who must touch door handles.
- Adjust music volume so that workers can maintain distance from customers to hear orders and people can avoid speaking loudly or shouting.
- Implement peak period queueing procedures, including a host to remind guests to queue with at least six feet of distance between parties outside or in waiting areas.
- Avoid touching others' pens and clipboards. If possible, install transfer-aiding materials, such as shelving and bulletin boards, to reduce person-to-person hand-offs.

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<sup>1</sup>Additional requirements must be considered for vulnerable populations. Restaurants must comply with all [Cal/OSHA](#) standards and be prepared to adhere to its guidance as well as guidance from the [Centers for Disease Control and Prevention \(CDC\)](#) and the [California Department of Public Health \(CDPH\)](#). Additionally, employers should be prepared to alter their operations as those guidelines change.



# Exhibit J

Language ▾

Search

  
MenuCALIFORNIA  
**ALL**COVID19.CA.GOV  
Your Actions Save Lives

# About COVID-19 restrictions

Last updated December 11, 2020 at 3:20 PM

All individuals living in the State of California are currently ordered to stay home or at their place of residence, except for permitted work, local shopping or other permitted errands, or as otherwise authorized (including in the [Questions and answers](#) below).

## State orders in place:

- [Stay Home Order](#)
- [Blueprint for a Safer Economy](#)
- [Limited Stay Home Order](#)
- [Regional Stay Home Order – NEW](#)

## Stay Home Order

On March 19, 2020, an [Executive Order \(PDF\)](#) and [Public Health Order \(PDF\)](#) directed all Californians to stay home except to go to an essential job or to shop for essential needs. It was modified on [May 4, 2020](#).

## Blueprint for a Safer Economy

On August 28, 2020, the State released the [Blueprint for a Safer Economy](#) to permit gradual reopening of certain businesses and activities.

## Limited Stay Home Order

As of November 21, 2020, Californians in counties in the Tier 1/Widespread (purple) tier are directed to [stop non-essential activities between 10PM and 5AM](#). To find out if this order applies to your county, see the [county map](#).

## Regional Stay Home Order – NEW

The [Regional Stay Home Order \(PDF\)](#), announced December 3, 2020, and a [supplemental order](#), signed December 6, 2020, will go into effect at 11:59 PM the day after a region has been announced to have less than 15% ICU availability. The supplemental order clarifies retail operations and goes into effect immediately. They prohibit private gatherings of any size, close sector operations except for critical infrastructure and retail, and require 100% masking and physical distancing in all others.

Once triggered, these orders will remain in effect for at least 3 weeks. After that period, they will be lifted when a region's projected ICU capacity meets or exceeds 15%. This will be assessed on a weekly basis after the initial 3 week period.

Learn [more about these orders](#) and find out [what's open in your area](#).

## Regions

The state released a map of the five regions being measured. When a region first falls below 15% ICU bed availability, the Regional Stay Home Order goes into effect there the next evening at 11:59 PM.

- **Northern California:** Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Shasta, Siskiyou, Tehama, Trinity
- **Bay Area:** Alameda, Contra Costa, Marin, Monterey, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma
- **Greater Sacramento:** Alpine, Amador, Butte, Colusa, El Dorado, Nevada, Placer, Plumas, Sacramento, Sierra, Sutter, Yolo, Yuba
- **San Joaquin Valley:** Calaveras, Fresno, Kern, Kings, Madera, Mariposa, Merced, San Benito, San Joaquin, Stanislaus, Tulare, Tuolumne
- **Southern California:** Imperial, Inyo, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura

**Click map to see current ICU bed availability:**

**REGIONAL STAY HOME ORDERS**  
**See Countries**

Last Updated 12/14/2020

MO	36	30,896,229	es per day per 100K
2	22	9,232,931	

CA

77.0%

23.0%

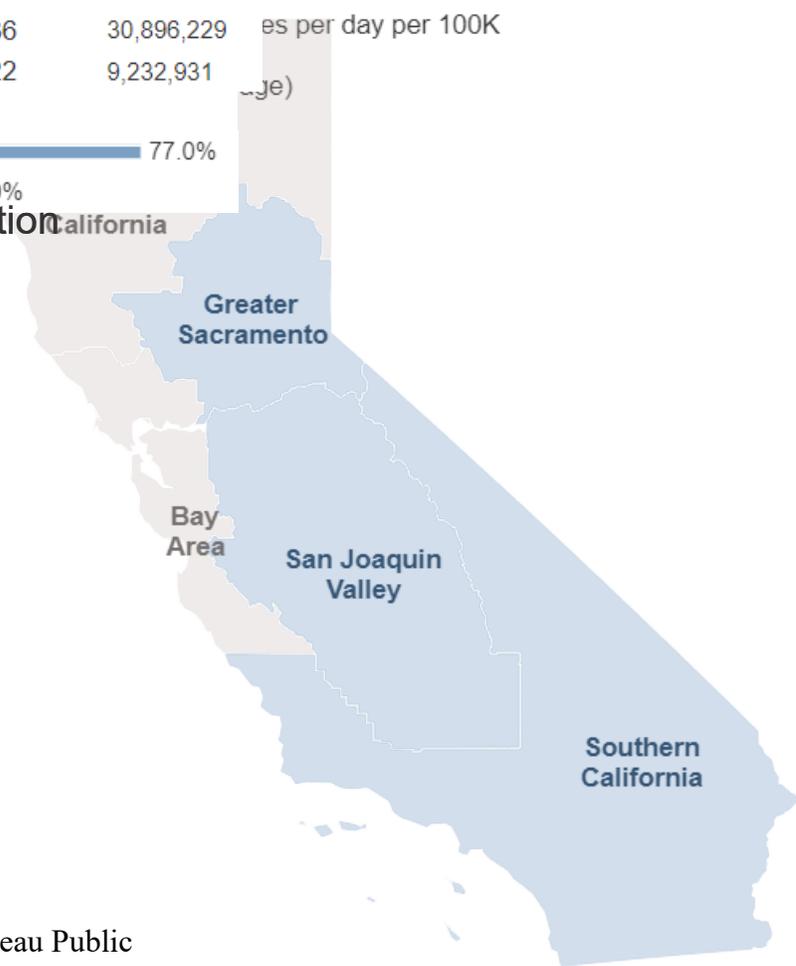
Population

County

Tiers

Go to Tableau Public

Undo



# Questions and answers

## Regional Stay Home Order

**Why is this Regional Stay Home Order being implemented now?**



**What does the Regional Stay Home Order do?**



**When does the Regional Stay Home Order take effect?**



**How do I find out what the hospital/ICU capacity is in my region or county?**

**+**

**How is daily regional available ICU capacity calculated?**

**+**

**How does the Regional Stay Home Order impact schools?**

**+**

**Are playgrounds open?**

**+**

**How does the Regional Stay Home Order impact travel?**

**+**

**Under a Regional Stay Home Order, can hotels, vacation rentals, and short-term lodging sites accept reservations?**

**+**

**What are the regions for the Regional Stay Home Order, and what counties are in each region?**

**+**

**Will the state open up Alternative Care Facilities/surge hospitals in the hardest hit regions to reduce stress on hospitals?**

**+**

**Who does the Regional Stay Home Order apply to?**

**+**

**Under the Regional Stay Home Order, can we go outside?**

**+**

**How will the Regional Stay Home Order slow the spread of COVID-19?**

**+**

**What is considered an essential business?**

**+**

**Can I commute to work under the Regional Stay Home Order?**

**+**

**What am I allowed to do under the Regional Stay Home Order?**

**+**

**Is this Regional Stay Home Order asking businesses to close?**

**+**

**Can I still get takeout or food delivery under a Regional Stay Home Order?**

**+**

**Is there a penalty for violating the Regional Stay Home**

**+**

**Order?**

**Who will be responsible for enforcing the Regional Stay Home Order?**

**+**

**Under what authority is the Regional Stay Home Order being done?**

**+**

**Where can I get resources or information to help encourage those in my community to adhere to this Regional Stay Home Order?**

**+**

**Are gyms required to close in regions where the Regional Stay Home Order is in effect?**

**+**

**Under the Regional Stay Home Order, retail operations are limited to 20% capacity (or 35% for standalone grocery stores). How is this calculated?**

**+**

## **Stay Home Order**

**When does the Stay Home Order go into effect and how long will we stay home? What areas of the state are covered?**

**+**

# Blueprint for a Safer Economy

**What's open in my county?**



**Where can I see a map of California's counties with their tier levels?**



**Can I get a haircut?**



**Are swimming pools open?**



## Limited Stay Home Order

**I heard that in counties in the Widespread (purple) tier, we should be home by 10:00 PM. Why?**



## General

**What is the relationship between the Stay Home Order and these questions and answers?**



**Is it safe to shop at open businesses?**



**Can the Stay Home Order be changed?**



**If I am not an Essential Critical Infrastructure Worker, can I still leave the house?**



**Are safety protocols being enforced? How do I report a business that isn't complying?**



**Can I walk my dog? Take my pet to the vet?**



**Can I visit State Parks? What outdoor spaces are open?**



**Are there travel restrictions within California?**



## **Protected activities**

**I want to express my political views. How can I make my voice heard without raising public health concerns?**



**Can I engage in political rallies and protest gatherings?**



**How do I vote?**

**+**

**Can I go to church?**

**+**

**Can I practice my religious faith?**

**+**

**What conditions must be met to resume religious services and cultural ceremonies at places of worship?**

**+**

**Can children attend group activities (like Sunday school or Hebrew school) at places of worship?**

**+**

**When will current conditions change for places of worship?**

**+**

**Are weddings allowed?**

**+**

**Are gatherings for musical, theatrical, and artistic performances permitted?**

**-**

Gatherings for live musical, theatrical, and other artistic performances are permitted outdoors subject to guidance that is being prepared by CDPH. Because such gatherings frequently involve the mixing of people from different communities creating a high risk of transmission of COVID-19, until that guidance is issued, such

gatherings are allowed only in counties in the “Moderate” (orange) or “Minimal” (yellow) risk levels of the [Blueprint for a Safer Economy](#). In addition, performances are permitted only if, in the exercise of their discretion, the relevant local or city health officer approves the precautions taken to ensure the safety of audience members, performers and others connected with the performance. Performances may have no more than 50 persons in the audience in counties in the “Moderate” risk level and no more than 100 in counties in the “Minimal” risk level. If a local or city health officer approves a performance, the officer shall notify CDPH of the approval within two business days.

During approved performances, all audience members and others not performing must wear masks, and audience members from different households must be spaced at least six feet apart when seated or otherwise viewing the performance. Performers who are not wearing face coverings must be at least six feet apart from each other.

## Government services

**Can I go to the Department of Motor Vehicles (DMV)?**



**Can I get my car smog checked?**



**Who can I reach out to regarding my child custody order and child visitation rights?**



**Do I have to report to jury duty if summoned?**



Is this page useful?

YES

NO

Additional comments:

SUBMIT

# CALIFORNIA ALL

[About COVID-19 restrictions](#)

[Blueprint for a Safer Economy](#)

[What's open](#)

[Industry guidance](#)

[Local info and alerts](#)

**COVID-19 hotline**

**1-833-422-4255**

M-F 8AM-8PM, Sa-Su 8AM-5PM



[CA.gov](#)

[Department of Public Health](#)

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Official California State Government Website



# Exhibit K



SANDRA SHEWRY, MPH,MSW  
*Acting Director*  
ERICA S. PAN, MD,MPH  
*Acting State Health Officer*

State of California—Health and Human Services Agency  
**California Department of Public Health**



GAVIN NEWSOM  
*Governor*

**Regional Stay At Home Order**  
**12/03/2020**

Upon assessment of the recent, unprecedented rise in the rate of increase in COVID-19 cases, hospitalizations, and test positivity rates across California, the California Department of Public Health (CDPH) is taking immediate actions to prevent the spread of the virus.

The State, like the nation, continues to record an unprecedented surge in the level of community spread of COVID-19. California implemented an accelerated application of the Blueprint Framework metrics on November 16 and a limited Stay at Home Order issued on November 19. However, in the interim, the number of new cases per day has increased by over 112%, (from 8,743 to 18,588) and the rate of rise of new cases per day continues to increase dramatically. The number of new hospital admissions has increased from 777 on November 15, to 1,651 on December 2, and because of the lag between case identification and hospitalizations, we can only expect these numbers to increase.

Current projections show that without additional intervention to slow the spread of COVID-19, the number of available adult Intensive Care Unit (ICU) beds in the State of California will be at capacity in mid-December. This is a sign that the rate of rise in cases, if it continues, is at risk of overwhelming the ability of California hospitals to deliver healthcare to its residents suffering from COVID-19 and from other illnesses requiring hospital care. ICU beds are a critical resource for individuals who need the most advanced support and care and the ability to add additional ICU capacity is limited by the lack of available ICU nurses and physicians as a result of the nationwide surge in hospitalizations and ICU admissions.

Because the rate of increases in new cases continues to escalate and threatens to overwhelm the state's hospital system, further aggressive action is necessary to respond to the quickly evolving situation. While vaccines are promising future interventions, they are not available to address the immediate risks to healthcare delivery in the current surge. The immediate aggressive institution of additional non-pharmaceutical public health interventions is critical to avoid further overwhelming hospitals and to prevent the need to ration care.



**NOW, THEREFORE, I, as Acting State Public Health Officer of the State of California, order:**

1. CDPH will evaluate public health based on Regions, responsive to hospital capacity for persons resident in those Regions.
2. CDPH will evaluate the adult ICU bed capacity for each Region and identify on [covid19.ca.gov](https://covid19.ca.gov) any Regions for which that capacity is less than 15%. When that capacity is less than 15%, the following terms (the Terms of this Order) will apply.
  - a. All gatherings with members of other households are prohibited in the Region except as expressly permitted herein.
  - b. All individuals living in the Region shall stay home or at their place of residence except as necessary to conduct activities associated with the operation, maintenance, or usage of critical infrastructure,<sup>1</sup> as required by law, or as specifically permitted in this order.
  - c. [Worship](#) and [political expression](#) are permitted outdoors, consistent with existing guidance for those activities.
  - d. Critical infrastructure sectors may operate and must continue to modify operations pursuant to the [applicable sector guidance](#).
  - e. [Guidance](#) related to schools remain in effect and unchanged. Accordingly, when this Order takes effect in a Region, schools that have previously reopened for in-person instruction may remain open, and schools may continue to bring students back for in-person instruction under the [Elementary School Waiver Process](#) or [Cohorting Guidance](#).
  - f. In order to reduce congestion and the resulting increase in risk of transmission of COVID-19 in critical infrastructure retailers, all retailers may operate indoors at no more than 20% capacity and must follow the [guidance for retailers](#). All access to retail must be strictly metered to ensure compliance with the limit on capacity. The sale of food, beverages, and alcohol for in-store consumption is prohibited.
  - g. To promote and protect the physical and mental well-being of people in California, outdoor recreation facilities may continue to operate. Those facilities may not sell food or drink for on-site consumption. Overnight stays at

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<sup>1</sup> See <https://covid19.ca.gov/essential-workforce/> for full list of California's Critical Infrastructure workforce.

campgrounds are not permitted.

- h. Nothing in this Order prevents any number of persons from the same household from leaving their residence, lodging, or temporary accommodation, as long as they do not engage in any interaction with (or otherwise gather with) any number of persons from any other household, except as specifically permitted herein.
  - i. Terms (a) and (b) of this section do not apply to persons experiencing homelessness.
- 3. Except as otherwise required by law, no hotel or lodging entity in California shall accept or honor out of state reservations for non-essential travel, unless the reservation is for at least the minimum time period required for quarantine and the persons identified in the reservation will quarantine in the hotel or lodging entity until after that time period has expired.
- 4. This order shall take effect on December 5, 2020 at 1259pm PST.
- 5. For Regions where the adult ICU bed capacity falls below 15% after the effective date of this order, the Terms of this Order shall take effect 24 hours after that assessment.
- 6. The Terms of this Order shall remain in place for at least three weeks from the date the order takes effect in a Region and shall continue until CDPH's four-week projections of the Region's total available adult ICU bed capacity is greater than or equal to 15%. Four-week adult ICU bed capacity projections will be made approximately twice a week, unless CDPH determines that public health conditions merit an alternate projection schedule. If after three weeks from the effective date of the Terms of this Order in a Region, CDPH's four-week projections of the Region's total available adult ICU bed capacity is greater than or equal to 15%, the Terms of this Order shall no longer apply to the Region
- 7. After the termination of the Terms of this Order in a Region, each county within the Region will be assigned to a tier based on the [Blueprint for a Safer Economy](#) as set out in my August 28, 2020 Order, and the County is subject to the restrictions of the Blueprint appropriate to that tier.
- 8. I will continue to monitor the epidemiological data and will modify this Regional Stay-at-Home Order as required by the evolving public health conditions. If I determine that it is necessary to change the Terms of this Order, or otherwise modify the Regional Stay-at-Home Order, these modifications will be posted at [covid19.ca.gov](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Regional-Stay-at-Home-Order.aspx).

9. When operative in a Region, the Terms of this Order supersede any conflicting terms in other CDPH orders, directives, or guidance. Specifically, for those Regions with ICU bed capacity triggering this order, the Terms of this Order shall supersede the State's [Blueprint for a Safer Economy](#) and all guidance (other than guidance for critical infrastructure sectors) during the operative period. In all Regions that are not subject to the restrictions in this order, the [Blueprint for a Safer Economy](#) and all guidance shall remain in effect.
  
10. This order is issued pursuant to Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120175, 120195 and 131080; EO N-60-20, N-25-20, and other authority provided for under the Emergency Services Act; and other applicable law.



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Erica S. Pan, MD, MPH  
Acting State Public Health Officer  
California Department of Public Health

# Exhibit L



**Sandra Shewry**  
Acting Director  
**Erica S. Pan, MD, MPH**  
Acting State Health Officer

State of California—Health and Human  
Services Agency  
**California Department of  
Public Health**



**GAVIN NEWSOM**  
Governor

December 6, 2020

**TO:** All Californians

**SUBJECT:** Supplement to Regional Stay At Home Order

**I, as Acting State Public Health Officer of the State of California, order as follows:**

1. In order to ensure that California's grocery stores are able to safely deliver sufficient quantities of food to California households, it is necessary to ensure capacity for grocery stores. Therefore, in the Regions that are subject to my Regional Stay At Home Order of December 3, 2020, stand-alone grocery stores where the principal business activity is the sale of food may operate at 35% of capacity (based on fire department occupancy limits). All access to grocery stores must be strictly metered to ensure compliance with the limit on capacity. The sale of food, beverages, and alcohol for in- store consumption is prohibited.
2. The travel restriction in paragraph 3 of my Regional Stay At Home Order is applicable only when at least one Region has an adult ICU bed capacity of less than 15%, as set forth in paragraph 2 of that Order.
3. Paragraph 5 of my Regional Stay At Home Order is modified as follows: For Regions where the adult ICU bed capacity falls below 15% after the effective date of this order, the Terms of this Order shall take effect the next day after that assessment is made, at 11:59pm.
4. All other terms of my remain in effect as stated in that Order.
5. This order is effective immediately and shall remain in effect as long as the Regional Stay At Home Order.
6. This order is issued pursuant to Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120175, 120195 and 131080; EO N-60-20, N-25-20, and other authority provided for under the Emergency Services Act; and other applicable law.

Erica S. Pan, MD, MPH  
Acting State Public Health Officer  
California Department of Public Health



Page Last Updated : December 7, 2020

# Exhibit M



## County of San Diego

Peter Balov, Manager  
Midway Venture, LLC  
12792 Valley View Street #203  
Garden Grove, CA 92845

d.b.a. Pacers Showgirls International  
3334 Midway Dr.  
San Diego, CA 92110

Re: CEASE AND DESIST HEALTH ORDER VIOLATIONS

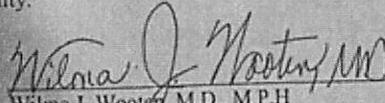
Dear Mr. Balov,

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

It has been documented during a recent inspection by the San Diego Police Department of Pacers Showgirls, located at 3334 Midway Dr. in San Diego, that your establishment is conducting live entertainment in violation of the Order of the State Health Officer and the County Order of the Health Officer and Emergency Regulations.

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

Date: October 14, 2020

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

cc. City of San Diego

# Exhibit N



# County of San Diego

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

Re: CEASE AND DESIST HEALTH ORDER VIOLATIONS

Dear Mr. Buonantony,

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

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

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

Date: October 20, 2020

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

cc: City of San Diego

# Exhibit O

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**FILED**  
Clerk of the Superior Court

NOV 06 2020

By: A. TAYLOR

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

MIDWAY VENTURE LLC *dba* PACERS ) Case No.: 37-2020-00038194-CU-CR-CTL  
SHOWGIRLS/PACERS SHOWGIRLS ) [Assigned for All Purposes to Hon. Joel R.  
INTERNATIONAL, a California limited ) Wohlfeil, Dept. C-73]  
liability company; PETER BALOV, an )  
individual; F-12 ENTERTAINMENT GROUP ) **[PROPOSED] TEMPORARY**  
INC. *dba* CHEETAHS, a Nevada corporation, ) **RESTRAINING ORDER PENDING OSC**  
and RICH BUONANTONY, an individual. ) **RE: ISSUANCE OF A PRELIMINARY**  
) **INJUNCTION**

Plaintiffs/Petitioners,

vs.

COUNTY OF SAN DIEGO, a governmental ) [Filed Concurrently with Memorandum of  
agency; WILMA J. WOOTEN, in her official ) Points & Authorities in Support Thereof;  
capacity as Public Health Officer, County of San ) Declaration of Jason P. Saccuzzo in Support  
Diego; GOVERNOR GAVIN NEWSOM, in his ) Thereof; Declaration of Trevor Shamshoian  
official capacity as the Governor of the State of ) in Support Thereof; Declaration of Rich  
California; the CALIFORNIA DEPARTMENT ) Buonantony in Support Thereof; and  
OF PUBLIC HEALTH, a department of the ) Appendix of Exhibits in Support Thereof]  
State of California; and DOES 1 through 100, )  
inclusive, ) **Date: November 3, 2020**  
) **Time: 8:30 a.m.**  
) **Complaint Filed: October 21, 2020**

Defendants/Respondents.

Based on the *Ex Parte* Application by Plaintiffs Midway Venture LLC *dba* Pacers Showgirls/Pacers Showgirls International, Peter Balov, F-12 Entertainment Group Inc. *dba* Cheetahs, and Rich Buonantony (collectively, Plaintiffs”), the Memorandum of Points and



1 Authorities filed in support thereof, the evidence presented in support of Plaintiffs' application via  
2 Appendix of Exhibits, the Declaration of Trevor Shamshoian, the Declaration of Rich Buonantony,  
3 and the Declaration of Jason P. Saccuzzo and good cause appearing therefrom, it appearing to the  
4 Court that Plaintiffs will suffer irreparable harm if the relief sought pursuant to Plaintiffs'  
5 application were not granted on an *ex parte* basis, and Plaintiffs having a probability of success at  
6 trial, IT IS HEREBY ORDERED:

7 That Plaintiffs' application is GRANTED. Defendants County of San Diego, Wilma J.  
8 Wooten, Governor Gavin Newsom, and California Department of Public Health (collectively  
9 "Defendants"), and each of them and their respective agents and assigns, and any governmental  
10 entity or law enforcement officer, are hereby temporarily ENJOINED from enforcing the  
11 provisions the cease and desist orders, or any other related orders, that prevent Plaintiffs from  
12 being allowed to provide live adult entertainment <sup>subject to the least restrictive</sup> under the restrictions outlined in their respective  
13 reopening plans, <sup>means to further Defendants' best case to control the</sup> and finding that Plaintiffs are exempt from all of the requirements of the cease  
14 ~~and desist orders.~~ <sup>Emergency COVID.</sup> Further, Defendants shall show cause, if any exists, why a preliminary injunction  
15 should not issue pending trial, enjoining all Defendants from continuing to operate their respective  
16 businesses. The hearing of the OSC shall be on 11-20-20 @ 1:30pm. <sup>Plaintiffs shall</sup> Defendants shall file  
17 <sup>file and serve supplemental papers not later than 11-11-20.</sup> any opposition to the OSC on or before 11-20-20. Any reply in support thereof  
18 shall be filed and served on or before 11-24-20.

19  
20 IT IS SO ORDERED.

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23 Dated: 11-6-20

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HON. JOEL R. WOLFEL  
JUDGE OF THE SUPERIOR COURT

# Exhibit P

**XAVIER BECERRA**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**



455 GOLDEN GATE AVENUE, SUITE 11000  
SAN FRANCISCO, CA 94102-7004

Public: (415) 510-4400  
Facsimile: (415) 703-1234  
E-Mail: [Patty.Li@doj.ca.gov](mailto:Patty.Li@doj.ca.gov)

December 11, 2020

**VIA EMAIL**

Jason Saccuzzo  
Vivoli Saccuzzo, LLP  
3104 Fourth Ave  
San Diego, CA 92103  
[jsaccuzzo@vivolilaw.com](mailto:jsaccuzzo@vivolilaw.com)

Steve Hoffman  
Law Office of Steve Hoffman  
180 Broadway, Suite 1810  
San Diego, CA 92101  
[shoffmanlaw@gmail.com](mailto:shoffmanlaw@gmail.com)

RE: **Cease-and-Desist Letter to MIDWAY VENTURE LLC dba PACERS  
SHOWGIRLS/PACERS SHOWGIRLS INTERNATIONAL, PETER BALOV, F-12  
ENTERTAINMENT GROUP INC. dba CHEETAHS, and RICH BUONANTONY**

Dear Mr. Saccuzzo and Mr. Hoffman:

I write on behalf of Governor Gavin Newsom, Governor of the State of California, and the California Department of Public Health (CDPH). In this letter, we will refer to your clients collectively as “MIDWAY AND F-12.”

We are informed and believe that MIDWAY AND F-12 are continuing to conduct indoor operations notwithstanding the Regional Stay at Home Order currently in effect in the County of San Diego. Such indoor operations violate the terms of the Regional Stay at Home Order, which permits restaurants, such as those run by MIDWAY AND F-12, to operate for take-out and delivery services only.

As you are aware, the current operative CDPH Guidance for Restaurants—as updated on December 1, 2020 and which incorporates the COVID-19 Industry Guidance: Restaurants, dated November 24, 2020—permits restaurants to offer dine-in experiences either indoors or outdoors, depending on the epidemiological conditions prevailing in the county at the time, as identified by the county’s tier assignment. As part of those dine-in experiences, restaurants may also offer live performances, including adult entertainment, subject to certain modifications. This is consistent with the court’s order in *Midway Venture LLC v County of San Diego*, which enjoined

enforcement by the Governor, CDPH, and the County of the prior restaurant guidance which prohibited live performances, including adult entertainment.

However, as of December 3, 2020, in light of the unprecedented surge in COVID-19 cases and the resulting crisis in hospital and intensive care unit (ICU) capacity, the State issued a Regional Stay at Home Order that takes effect in counties within regions that have less than 15% adult bed capacity in their ICUs. The Southern California Region, which includes San Diego County, became subject to that order on December 6, 2020, and currently has only 6.2% capacity in its ICUs. COVID-19 cases and resulting deaths have skyrocketed in San Diego in the past weeks to levels previously unseen during this pandemic. If the transmission of the virus is not slowed, California's hospital system will be overwhelmed and patients' access to critical medical care may be in jeopardy including specifically in San Diego where your clients' restaurants are located. With no known cure and vaccines not yet in distribution, the only tools available to slow the spread of the deadly virus are (1) reducing interactions among people to the greatest extent possible, and (2) requiring masks and other interventions to reduce the chances that interactions result in transmission.

To protect the health care delivery system of Southern California from being overwhelmed, the State Health Officer determined that immediate, aggressive non-pharmaceutical interventions must be implemented. Specifically, the Regional Stay at Home Order requires that restaurants, including your clients' restaurants, may continue to operate for carry-out and delivery services but may not offer indoor or outdoor dining or other services that cause people from different households to come into contact for extended periods of time and thereby increase the risk of transmission of COVID-19.

**Therefore, MIDWAY AND F-12 are hereby ordered to cease and desist from operating in violation of the Regional Stay at Home Order.**

**Please provide written assurance by no later than 5:00 p.m. on December 12, 2020, that MIDWAY AND F-12 will agree to cease and desist the above-identified actions.** The written assurance should be directed to: [patty.li@doj.ca.gov](mailto:patty.li@doj.ca.gov).

If you do not confirm, in writing via email to my email address, that MIDWAY AND F-12 will cease and desist from the aforementioned wrongful and unlawful activities, Governor Newsom and CDPH shall have no alternative but to pursue formal legal action against you to prevent the above-described actions from continuing. Governor Newsom and CDPH are committed to protecting the safety and well-being of the public. Businesses and individuals who fail to comply with necessary public health measures endanger the public health and pose a serious risk to all Californians.

December 11, 2020

Page 3

Sincerely,

/s/ P. Patty Li

P. PATTY LI

Deputy Attorney General

For XAVIER BECERRA  
Attorney General

cc: Timothy White, Senior Deputy County Counsel  
(timothy.white@sdcountry.ca.gov)

# Exhibit Q



December 14, 2020

**Via Email ONLY**  
[Patty.Li@doj.ca.gov](mailto:Patty.Li@doj.ca.gov)

Patty Li, Esq.  
Department of Justice  
Office of the Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102

**Re: Midway Venture LLC dba Pacers et al. v. County of San Diego et al.**  
SDSC Case No. 37-2020-00038194-CU-CR-CTL

Dear Ms. Li:

This letter is in response to the “cease-and-desist” letter issued by your office late Friday, December 11, 2020. As we trust Governor Newsom is aware, the Court’s November 6, 2020, order expressly enjoined Defendants County of San Diego, Wilma J. Wooten, Governor Gavin Newsom, and the California Department of Public Health (collectively “Defendants”) “from enforcing the provisions of the cease and desist orders, *or any other related orders*, that prevent Plaintiffs from being allowed to provide live adult entertainment.” (Emphasis added.) This order was extended by stipulation through December 16, 2020, and we believe that any attempt by Defendants to prevent Plaintiffs from being allowed to provide live adult entertainment would be in clear violation of the order and would subject the government actors to contempt of court.

As for Plaintiffs Midway Venture *dba* Pacers Showgirls/Pacers Showgirls International (“Pacers”), it is incorrect that Pacers has been conducting indoor operations, and in fact all live adult entertainment has been conducted outdoors since California entered the “purple tier.” Notably, however, by moving outdoors this was not a concession that Pacers was limited to outdoor operations under the Court’s order, but rather a voluntary move made by Pacers. Again, as expressed in the past, Pacers is fully committed to ensuring the safety of its patrons, entertainers, and employees, and Pacers has gone above and beyond all reasonable safety measures that have been promulgated by various health experts and the CDC.

Please also be advised that Pacers has planned maintenance today and tomorrow, and as a result it will not be conducting live entertainment until the Court rules on Plaintiffs’ motion for preliminary injunction, which is set for hearing Wednesday, December 16, 2020. This planned maintenance has nothing to do with Governor Newsom’s cease and desist order, which we believe is ineffective in light of the Court’s existing order.

**Vivoli Saccuzzo, LLP**  
3104 Fourth Avenue, San Diego, CA 92103/Tel: (619) 744-9992 | Fax: (619) 744-9994  
Email: [jsaccuzzo@vivolilaw.com](mailto:jsaccuzzo@vivolilaw.com)

Patty Li, Esq.  
Department of Justice  
Office of the Attorney General  
December 14, 2020  
Page 2

Lastly, we would add that Governor Newsom's cease and desist order conclusively demonstrates that the dispute is not moot, which was the main thrust of Defendants' argument as to why a preliminary injunction should not be issued. The cease and desist order confirms that Plaintiffs are still subject to being shut down anytime, which would constitute an infringement upon their First Amendment rights. And, in recent days we have seen that California courts are heeding the comments of the United States Supreme Court in *Roman Catholic Diocese of Brooklyn v. Cuomo* (Nov. 25, 2020) Case No. 20A87, 592 U.S --, 2020 WL 6948354, as evidenced most recently in *Father Trevor Burfitt v. Gavin Newsom*, Kern County Superior Court Case No. BCV-20-102267 where Governor Newsom was enjoined from enforcing the Blueprint for a Safer Economy and the Regional Stay at Home Orders. We anticipate that the district courts in *South Bay United Pentecostal Church v. Newsom*, S.D. Cal., Case No. 3:20-cv-00865-BAS-AHG and *Harvest Rock Church, Inc. v. Newsom*, C.D. Cal., Case No. 2:20-cv-06414 will also follow the lead of the Supreme Court in the *Roman Catholic Diocese* case.

Very truly yours,



Jason P. Saccuzzo

cc: Steve Hoffman, Esq.  
([shoffmanlaw@gmail.com](mailto:shoffmanlaw@gmail.com))

Timothy White, Esq.  
([timothy.white@sdcounty.ca.gov](mailto:timothy.white@sdcounty.ca.gov))