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STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE  
COUNTY OF WAKE 2020 AUG 10 PM 4:21 SUPERIOR COURT DIVISION  
FILE NO.: 20 CvS

WAKE COUNTY, C.S.C.  
JERMANY ALSTON, CLARK MADDUX,  
MATTHEW ROBINSON, DAVID TRAVIS,  
SHAUN FARTHING, DUANE DAVIS,  
MICHAEL PALM, ZOFIA KNOREK,  
JOHN COX, WENDY BRENNER,  
JEFFREY EADDY, RACHELLE GOLD,  
JOHN HEDLUND, BETH BEE, ENRIQUE  
GOMEZ, JACK SUMMERS, and JIM  
PEARCE, individually and in a  
representative capacity on behalf of a class  
or classes similarly Situated,

Plaintiffs,

vs.

THE UNIVERSITY OF NORTH  
CAROLINA SYSTEM, by and through Its  
Board of Governors, and its constituent  
institutions: East Carolina University;  
University of North Carolina - Chapel Hill;  
University of North Carolina - Wilmington;  
University of North Carolina - Asheville;  
University of North Carolina -Charlotte;  
University of North Carolina - Greensboro;  
University of North Carolina - Pembroke;  
North Carolina Central University; North  
Carolina State University; Western  
Carolina University; Winston Salem State  
University; Appalachian State University;  
Fayetteville State University; Elizabeth  
City State University; North Carolina  
School of Science and Mathematics; North  
Carolina A&T State University, University  
of North Carolina - School of the Arts; and  
GOVERNOR ROY COOPER,

Defendants.

**CLASS ACTION COMPLAINT; MOTION  
FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION; ACTION FOR WRIT OF  
MANDAMUS; MOTION FOR  
EXCEPTIONAL CASE DESIGNATION**

Plaintiffs, individually and on behalf of proposed Sub-Classes of Employees of the constituent institutions of the University of North Carolina, as defined below, complaining of the Defendant the University of North Carolina, by and through its Board of Governors, and the following constituent institutions: East Carolina University; North Carolina State University; University of North Carolina at Chapel Hill; University of North Carolina at Wilmington; University of North Carolina at Asheville; University of North Carolina at Charlotte; Western Carolina University; North Carolina Central University; and Appalachian State University, and Roy Cooper, the Governor of North Carolina, and alleges and says:

### **NATURE OF THE ACTION**

1. This is an action by the Plaintiffs, both individually and on behalf of Sub-Classes of Employees of constituent institutions of the University of North Carolina system, for declaratory and injunctive relief and a writ of mandamus, associated with the conscious decision made by the University of North Carolina (herein “UNC”), through its Board of Governors, and thereafter, the named constituent institutions, as Plaintiffs’ Employers, and Governor Roy Cooper, to place the named Plaintiffs and the Sub-Classes they seek to represent at an increased risk of exposure to COVID-19, a virus that is known to cause illness, hospitalization and death, by reason of the decision to adopt plans to return to “on-site” campus operations and therefore, return tens of thousands of students to each of these campuses and the communities in which they are located, and delegate the responsibility of not only trying to keep students safe to the Plaintiffs and the Sub-Classes they seek to represent, but themselves.

2. Having made the decision on March 11, 2020 (at a time when there were less than 1,000 reported cases in North Carolina) that, due to the COVID-19 outbreak, all constituent Institutions within the entire UNC system, including each of the named constituent Institutions, would end “in-person” classes and move to “alternative course delivery” for the health and safety

of students, employees and the communities in which these campuses are located, UNC has now made the decision to return students to these campuses and communities in which they are located at a time when North Carolina has more than 136,000 confirmed cases of COVID-19, more than 2,100 people have died, the number of new cases continues to double every 30 days, and North Carolina has now been officially designated as a “red zone” by the Whitehouse coronavirus task force (<https://publicintegrity.org/health/coronavirus-and-inequality/exclusive-white-house-document-shows-18-states-in-coronavirus-red-zone-covid-19/>).

3. In North Carolina, Employers, including UNC and each of its constituent Institutions, owe a “non-delegable” duty to their Employees, including the Plaintiffs and the Sub-Classes they seek to represent, to provide a safe workplace. Edwards v. GE Lighting Sys., Inc., 200 N.C. App. 754, 758, 685 S.E.2d 146, 149 (2009); N.C. Gen. Stat. § 95-129 (“Each employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees”). UNC and its constituent Institutions cannot, in the face of this pandemic, provide conditions and places of employment safe or “free from” recognized hazards associated with COVID-19 by returning students to these campuses and the communities in which they are located under the current plans, where they will live and learn in poorly ventilated dormitories and class room spaces, be expected (as college-aged students) to fully comply, both on-campus and off-campus, with the “mandatory” mask and “social-distancing” rules, when, as of the date of the filing of this Complaint, UNC and its constituent institutions that have already had students return to the campus communities know that IS NOT happening.

4. Plaintiffs and the Sub-Classes they seek to represent cannot lawfully be forced to accept these increased risks of exposure to known complication from COVID-19 simply to exercise the rights granted to them under the North Carolina Constitution, Art. I, § 1 to work and

earn a living. (“We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.”). The basic principle underlying this section is “the right of the individual to be free to enjoy the faculties with which he has been endowed by his Creator, to live and work where he will, to earn his livelihood by any lawful calling, and to pursue any legitimate business, trade or vocation.” State v. Warren, 252 N.C. 690, 693, 114 S.E.2d 660, 663 (1960).

5. In his latest Executive Order, Governor Roy Cooper confirmed what Plaintiffs and the Sub-Classes they seek to represent already knew, that reopening the constituent institution campuses for “in-person” instruction increases the risk of COVID-19 spread:

**WHEREAS, there are many public health benefits, economic benefits, and societal benefits to reopening K-12 schools, colleges, and universities for in-person instruction, but these in-person gatherings of students, staff, teachers, and professors will increase the risk of COVID-19 spread, even after all health and safety measures are put in place; and**

6. Plaintiffs and the Sub-Classes they seek to represent, by working or being required to work in a place and conditions of employment where, “even after all health and safety measures are put in place”, they each will be at an increased risk of exposure to COVID-19, suffer from unusual and special damage differing from that suffered by the general public. Given that UNC and its constituent Institutions and the Governor of North Carolina recognize that current plans do, indeed, place Plaintiffs and the Sub-Classes they seek to represent at an increased risk of exposure to COVID-19, their constitutional rights are being violated, their health is being threatened, and the law affords them redress, either “remedial or preventive.” Barrier v. Troutman, 231 N.C. 47, 49–50, 55 S.E.2d 923, 925 (1949)(citations omitted).

7. Plaintiffs and Sub-Class Members have no adequate remedy at law, either under the Workers’ Compensation Laws of the State of North Carolina (Ch. 97 of the North Carolina



General Statutes) or otherwise, as COVID-19 has not been recognized as an “occupational disease;” there exists no clearly established right on the part of Plaintiffs and the Sub-Classes they seek to represent to recover medical expenses and lost income resulting from Plaintiffs and Sub-Class Members becoming ill and/or incapacitated from COVID-19, and UNC and the constituent Institutions have implemented nothing to insure that Plaintiffs and the Sub-Classes they seek to represent will be fully insured and fully compensated.

8. The business or enterprise that is the UNC system and its constituent Institutions given the manner in which they will be conducted, as to Plaintiffs and the Sub-Classes they seek to represent, will operate as a nuisance, by depriving them of Constitutionally protected rights, and this Court may clearly enter such orders as are necessary to “correct the evil and prevent the injury” associated therewith.

## **II. PARTIES AND JURISDICTION**

9. The Plaintiff Germany Alston is a citizen and resident of Orange County, and an Employee (member of the “Staff Sub-Class”) at UNC-Chapel Hill, and performs, may perform and/or is required to perform essential functions of her job on the campus of UNC-Chapel Hill.

10. The Plaintiff Clark Maddux is a citizen and resident of Watauga County, and an Employee (member of the “Faculty Sub-Class”) at Appalachian State University, and performs, may perform and/or is required to perform essential functions of his job on the campus of Appalachian State University.

11. The Plaintiff Matthew Robinson is a citizen and resident of Watauga County, and an Employee (member of the “Faculty Sub-Class”) at Appalachian State University, and performs, may perform and/or is required to perform essential functions of his job on the campus of Appalachian State University.

12. The Plaintiff David Travis is a citizen and resident of Ashe County, and an Employee (member of the "Staff Sub-Class) at Appalachian State University, and performs, may perform and/or is required to perform essential functions of his job on the campus of Appalachian State University.

13. The Plaintiff Shaun Farthing is a citizen and resident of Watauga County, and an Employee (member of the "Staff Sub-Class) at Appalachian State University, and performs, may perform and/or is required to perform essential functions of his job on the campus of Appalachian State University.

14. The Plaintiff Duane Davis is a citizen and resident of Buncombe County, and an Employee (member of the "Faculty Sub-Class) at UNC-Asheville, and performs, may perform and/or is required to perform essential functions of his job on the campus of UNC-Asheville.

15. The Plaintiff Michael Palm is a citizen and resident of Orange County, and an Employee (member of the "Faculty Sub-Class) at UNC-Chapel Hill, and performs, may perform and/or is required to perform essential functions of his job on the campus of UNC-Chapel Hill.

16. The Plaintiff Zofia Knorek is a citizen and resident of Orange County, and an employee/graduate worker (member of either/both the "Faculty Sub-Class and "Staff Sub-Class") at UNC-Chapel Hill, and performs, may perform and/or is required to perform essential functions of her job on the campus of UNC-Chapel Hill.

17. The Plaintiff John Cox is a citizen and resident of Mecklenburg County, and an Employee (member of the "Faculty Sub-Class") at UNC-Charlotte, and performs, may perform and/or is required to perform essential functions of his job on the campus of UNC-Charlotte.

18. The Plaintiff Wendy Brenner is a citizen and resident of New Hanover County, and an Employee (member of the "Faculty Sub-Class") at UNC-Wilmington, and performs, may

perform and/or is required to perform essential functions of his job on the campus of UNC-Wilmington.

19. The Plaintiff Jeffrey Eaddy is a citizen and resident of Durham County, and an Employee (member of the "Staff Sub-Class") at North Carolina Central University, and performs, may perform and/or is required to perform essential functions of his job on the campus of North Carolina Central University.

20. The Plaintiff Rachelle Gold is a citizen and resident of Durham County, and an Employee (member of the "Faculty Sub-Class") at North Carolina Central University, and performs, may perform and/or is required to perform essential functions of his job on the campus of North Carolina Central University.

21. The Plaintiff Jim Pearce is a citizen and resident of Durham County, and an Employee (member of the "Faculty Sub-Class") at North Carolina Central University, and performs, may perform and/or is required to perform essential functions of his job on the campus of North Carolina Central University.

22. The Plaintiff John Hedlund is a citizen and resident of Wake County, and an Employee (member of the "Faculty Sub-Class") at North Carolina State University, and performs, may perform and/or is required to perform essential functions of his job on the campus of North Carolina State University.

23. The Plaintiff Beth Bee is a citizen and resident of Pitt County, and an Employee (member of the "Faculty Sub-Class") at East Carolina University, and performs, may perform and/or is required to perform essential functions of his job on the campus of East Carolina University.

24. The Plaintiff Enrique Gomez is a citizen and resident of Jackson County, and an Employee (member of the "Faculty Sub-Class") at Western Carolina University, and performs,

may perform and/or is required to perform essential functions of his job on the campus of Western Carolina University.

25. The Plaintiff Jack Summers is a citizen and resident of Jackson County, and an Employee (member of the "Faculty Sub-Class") at Western Carolina University, and performs, may perform and/or is required to perform essential functions of his job on the campus of Western Carolina University.

26. The Defendant University of North Carolina, by and through its Board of Governors, is a body politic and corporate, organized and existing under the laws of the State of North Carolina, with the power to do "all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue." Section 101, The UNC Policy Manual. The University of North Carolina constitutes a single, multi-campus university composed of the following constituent institutions: Appalachian State University; East Carolina University; Elizabeth City State University; Fayetteville State University; North Carolina A&T State University; North Carolina Central University; the North Carolina School of Science and Mathematics; North Carolina State University; the University of North Carolina at Asheville; the University of North Carolina at Chapel Hill; the University of North Carolina at Charlotte; the University of North Carolina at Greensboro; the University of North Carolina at Pembroke; the University of North Carolina at Wilmington; the University of North Carolina School of the Arts; Western Carolina University; and Winston Salem State University.

27. Governor Roy Cooper is the duly elected Governor of the State of North Carolina.

28. This Court has jurisdiction over the Parties and matters in controversy herein, and they are properly before this Court pursuant to N.C.G.S. §1-75.4.

29. Venue is proper pursuant to N.C.G.S. §1-76.

#### **FACTUAL ALLEGATIONS**

30. At the time of the filing of this action, North Carolina and the rest of the United States finds itself in a global COVID-19 pandemic as a result of the continued spread of coronavirus 19 (“COVID-19”), a respiratory disease that is known to cause serious illness and death.

31. COVID-19 reproduces in the body’s upper and lower respiratory tracts, and is emitted when people talk, breathe, sing, cough or sneeze. There exists much debate currently within the scientific community on what proportion of droplets are emitted from infected people, how infectious those droplets are, and how they travel.

32. COVID-19 is a novel pathogen, and it has taken centuries for scientists to figure out how other pathogens, such as the plague, smallpox and yellow fever are transmitted, and there is still much debate about how something as common as the flu is transmitted.

33. Since the beginning of the pandemic, the World Health Organization (“WHO”) and the Centers for Disease Control (“CDC”) have considered respiratory droplets to be the primary mode of COVID-19 transmission, with those droplets travelling “ballistically” a known range of three (3) to six (6) feet.

34. The reason, therefore, for masks, “social-distancing” and “hand-washing” requirements are to avoid droplets from being absorbed by someone’s nose, mouth, and eyes, and hands picking up droplets from surfaces and then bringing them to the face. Plaintiffs and the Sub-Classes they seek to represent cannot control whether thousands of students located within their campus communities comply with any, much less all, of these requirements, imposed not only for the safety of students, but the Plaintiffs and the Sub-Classes they seek to represent.

35. As of the date of the filing of this Complaint, there is still no consensus among infectious disease experts about whether, given that no UNC system student will be tested upon arrival to campus or at any regular intervals thereafter, wearing masks or distancing alone will

avoid risk of exposure to COVID-19. There exists, therefore, no consensus among even internationally known infectious disease experts located on the UNC system campuses or infectious disease experts that advise Governor Cooper that bringing UNC system students back to campus under the plans adopted by UNC and its constituent institutions will keep the Plaintiffs and the Sub-Classes they seek to represent safe.

36. All age groups can become infected with COVID-19. As the months of this pandemic have continued, current data from the CDC shows that the rate of hospitalization for young adults, like the college students that will return to the UNC constituent institution campuses, in the 18-to-29 age bracket have increased over 200%, with the “myth” having been dispelled that young people do not suffer complications from this disease.

<https://www.cnbc.com/2020/06/23/fauci-warns-of-more-and-more-coronavirus-complications-in-young-people.html>

37. As the months of this pandemic have continued, both the short-term and potential long-term effects of COVID-19, beyond the known risk of hospitalization and death, have become known. Individuals recovering from COVID-19 suffer and struggle to recover from a number of respiratory, cardiac and kidney problems, and an increased risk of blood clots, potentially leading to a stroke or heart attack. <https://www.futurity.org/long-term-covid-19-effects-2400212-2/>

38. Some of the most common long-term effects include heart trouble, with COVID-19 patients shown to have suffered inflammation in the heart and muscle lining, with inflammation in the heart known to lead to long-lasting cardiac disease, heartbeat irregularities and failure.

39. COVID-19 attacks the lungs, causing inflammation, which may leave survivors with persistent shortness of breath. People who recover from COVID-19 can experience a dry cough or pain when breathing, and those that have been placed on a ventilator have more severe long-term symptoms.



40. Research has shown that COVID-19 can affect the brain and central nervous system, with reported symptoms like headaches, dizziness, trouble concentrating or recalling things and even hallucinations after “recovering” from COVID-19, with symptoms being more common in patients who had severe forms of the disease.

41. Strokes continue to be a great cause of concern related to COVID-19, due to increased inflammation in the body and therefore, the increased risk of the development of stroke-causing blood clots

42. In addition, the virus has resulted in social and economic disruption in all 50 states, including the largest economic recession since the Great Depression, the postponement or cancellation of sporting, religious, political, and cultural events, the closing of businesses, schools, universities and colleges throughout the United States, and economic losses in the billions of dollars.

43. On January 30, 2020, the WHO declared COVID-19 a Public Health Emergency of International Concern and, the next day, the United States Department of Health and Human Services Secretary declared a public health emergency in the United States for COVID-19.

44. On February 11, 2020, Governor Roy Cooper (“Governor Cooper”) announced the creation of the Novel Coronavirus Task Force for North Carolina, and a state health department hotline.

45. On March 3, 2020, Governor Cooper announced that North Carolina had its first confirmed case of COVID-19.

46. On March 9, 2020, after the North Carolina Department of Health and Human Services (“NCDHHS”) identified five (5) more presumptive confirmed cases of COVID-19, the Governor issued an executive order declaring a state of emergency in North Carolina. As of the

date of the filing of this Complaint, that executive order declaring a state of emergency, while it has been modified, has not been rescinded.

47. On March 11, 2020, the WHO declared the COVID-19 outbreak a pandemic.

48. On March 11, 2020, UNC announced that all of its constituent institutions would end in person classes by March 20, 2020, and transition to alternative course delivery due to the COVID-19 outbreak.

49. On March 20, 2020, in a UNC Board of Governors special meeting, interim President Bill Roper emphasized that the “most critical issues” pertaining to the UNC System was “health and safety, the transition to online learning, and the well-being of our students in need.” Within a span of two weeks, 95% of UNC System classes were available online. (<https://www.northcarolina.edu/apps/bog/doc.php?id=63917&code=bog>).

50. In that same special meeting, when discussing the legal implications of moving students out of the residence halls, general counsel for UNC, Thomas Shanahan, represented to the Board that the “starting point” is “what is in the best interest of the University Communities and the interest of public health.” The “right thing to do from a health perspective is what drives the decision from there.” Based upon that ideology, the decision was that it is better for public health and individual health to “substantially reduce the number of people in close quarters and residence halls.” (<https://www.pbs.org/video/bog-032020-special-meeting-of-the-board-of-governors-0zjuvy/>)

51. As of the date of the filing of this Complaint, upon information and belief, no one has informed UNC and its constituent institutions that the “right thing to do from a health perspective” for Plaintiffs and the Sub-Classes they seek to represent is to re-open campuses with students “in close quarters and residence halls,” and the complete inability to fully supervise these students off-campus activities.

52. The decision to end in-person classes by March 20, 2020, transition to alternative course delivery and moving students out of the residence halls placed the Plaintiffs and the Sub-Classes they seek to represent at a decreased risk of exposure to COVID-19 than continuing in-person classes.

53. As of March 20, 2020, there were less than 280 reported COVID-19 cases in the State of North Carolina, and on March 25, 2020, the North Carolina Department of Health and Human Services (“NCDHHS”) reported its first COVID-19 associated death. (<https://covid19.ncdhhs.gov/latest-updates#march-22-march-28>; <https://www.ncdhhs.gov/news/press-releases/north-carolina-reports-first-covid-19-associated-deaths>) (See attached Exhibit A (Coronavirus Cases By Day – Total Cases, New Cases); Exhibit B (Coronavirus Cases By Day – 7 Day Average Cases, Recoveries); Exhibit C (DHHS COVID-19 adult ICU cases); Exhibit D (The Pace of Coronavirus Cases in NC); Exhibit E (NC Coronavirus Deaths and Hospitalizations – Deaths and Hospitalizations); Exhibit F (NC Coronavirus Deaths and Hospitalizations – 7 Day Average Hospitalizations and Deaths; source: NCDHHS)

54. As a result of the decision to end in-person classes for the Spring of 2020, students at UNC’s constituent institutions received a pro-rata refund of unused housing and dining services, but no refund of tuition and fees already paid by these students. In June, 2020, the North Carolina Legislature enacted legislation granting “immunity” to UNC and its constituent institutions for any claims for the refund of tuition or other fees associated with the decision to suspend in-person classes and close portions of UNC campuses because of the spread of COVID-19.

55. On March 23, 2020, Governor Cooper closed all K-12 public schools statewide, banned mass gatherings of over 50 people, and closed gyms, movie theaters, sweepstakes parlors, health clubs, and other similar facilities.

56. On March 27, 2020, a statewide stay-at-home order was issued by Governor Cooper.

57. As of March 30, 2020, there were approximately 1,300 reported cases of COVID-19 in North Carolina and approximately 137 reported hospitalizations, and still only one (1) reported death.

58. On May 8, 2020, Governor Cooper eased the March 27, 2020 stay-at-home order, beginning "Phase 1" of North Carolina's three-phase process for reopening the State.

59. On May 22, 2020, Governor Cooper announced the beginning of "Phase 2" of North Carolina's reopening plan.

60. By May, 2020, UNC and its constituent institutions had suffered a significant decrease in revenues from the preceding year; "in-person" graduation ceremonies were cancelled, as were "in-person" courses for the Summer 2020 academic sessions.

61. UNC and its constituent institutions derive revenues from, among other things, tuition, fees, housing, and dining, and the impact of having to suspend "in-person" classes on UNC campuses beginning in March, 2020 has had a significant financial impact on UNC and its constituent institutions.

62. In April, 2020, UNC announced that each of its constituent institutions would resume in-person classes in the Fall of 2020. As of April 30, 2020 there were only 10,500 confirmed cases of COVID-19 in North Carolina, and the seven (7) day average was approximately 400 new cases.

63. Upon information and belief, each constituent institution was instructed to prepare plans for students to return to campuses, living in dormitories or off-campus housing, to resume the use of class-room spaces, common areas, recreational areas and other spaces.

64. No office, dormitory, class-room space, common area, recreational area or any other space located on the UNC system campuses where Plaintiffs and the Sub-Classes they seek to represent will work were designed and constructed with the idea of COVID-19 in mind, and specifically, the ventilation in those spaces.

65. On or about May 28, 2020, UNC published "COVID-19 RETURN TO ON-SITE WORK GUIDANCE: Faculty and Staff." (Exhibit G). That document required certain "institutional measures," including "use of face coverings;" "social distancing;" "continuous facilities cleaning and disinfection;" "reasonable access control for institution visitors other than faculty, staff and students;" and "COVID-19 Symptom Screening for faculty, staff, students and others."

66. UNC's Guidance provided that through the end of North Carolina's "Phase 2," "employees who are not currently designated as mandatory on-site employees should continue to work remotely to the extent practicable." However, Management, on a case by case basis, may "require and/or permit certain employees to work on-site if they need access to certain equipment, technology, internet connectivity, etc. to perform the essential functions of their job and do not otherwise have such access at their residence."

67. Certain of the named Plaintiff and the Sub-Classes they seek to represent have been informed that they will be required to work "on-site," while others will need to be "on-site" to perform essential functions of their jobs. "Accommodations" (teaching/working remotely) are available only, upon information and belief, if an Employee or a member of their family suffers from some underlying medical condition that places them at an "increased risk" of COVID-19 complications.

68. Employees, including Plaintiffs and the Sub-Classes they seek to represent, that have been instructed to "return to the workplace" are required to self-monitor and self-report

symptoms and whether they have been exposed to COVID-19. However, those Employees are not required to provide that information to the people that they work with everyday who would otherwise unknowingly be exposed.

69. According to UNC's Guidance, Employees may "request a flexible work arrangement" but only concerns "related to an underlying health condition" may entitle an Employee "to a reasonable accommodation, depending on the employee's particular circumstances."

70. Employees, with or without "an underlying health condition" should not be required to "return to the workplace" at any of the UNC constituent institutions if the essential functions of their jobs can be handled remotely. Therefore, "remote" teaching/working should be the default, not an option. As of the date of the filing of this Complaint, there is no guaranteed right on the part of Plaintiffs and the Sub-Classes they seek to represent to work remotely.

71. Employees who are required to return to campus for any reason to perform essential functions of their job should not be required to be exposed to an increased risk of getting sick from COVID-19, being hospitalized, incurring significant medical expenses, loss of income and of dying, which the conscious decisions to reopen UNC and its constituent institutions does. The Plaintiffs and the Sub-Classes they seek to represent have the right to protect themselves from exposure by decisions they make and not be dependent upon the decisions that others make, most especially college-aged students.

72. While all of the plans adopted by the UNC constituent institutions vary in some degree, they each share common features: thousands of students being "on-campus" (and therefore, "off-campus"); the "mandatory" wearing of masks and maintaining "social distancing." Students and Employees, including the Plaintiffs and the Sub-Classes they seek to represent, are required to wear face masks (with Employees being encouraged to provide their own) and



Plaintiffs and the Sub-Classes they seek to represent are part of enforcement mechanism for students, becoming the “Mask Police” of sorts. “It is our shared responsibility to practice social distancing, cleanliness, hygiene, and other safety measures so that we can contain the spread of COVID-19.” However, there are exceptions to the mask requirements for both students and Employees, and obviously, no way for UNC and its constituent institutions to monitor whether students and Employees are complying with mask requirements when they are not on-campus.

73. Even though the non-delegable duty to provide a safe workplace is that of the Employer in North Carolina, Employees, including the Plaintiffs and the Sub-Classes they seek to represent, are expected to be enforcers of the mandatory face mask requirements for students, and to police other behaviors purportedly designed to reduce the risk of the spread of COVID-19 on campuses (setting up and maintaining classroom spaces, cleaning classroom spaces, enforcing social distancing “guidelines,” for example). UNC and its constituent institutions presently do not have strict rules or any immediate means of enforcement in place regarding students wearing masks. There is an expectation that there will be an “adjustment period” to help students understand the mandatory mask requirements, and Plaintiffs and the Sub-Classes they seek to represent are expected to “remind students” if they see a violation, and if there are “multiple violations,” to report that student to the appropriate student affairs office on campus or another designated office. Thus, Plaintiffs and the Sub-Classes they seek to represent face not only a requirement to confront students who are not complying with the rules, but no immediate consequences for the non-compliant students.

74. The requirement being imposed upon the Plaintiffs and the Sub-Classes they seek to represent, as Employees, to be the so-called “Mask Police,” does not place the non-delegable duty upon UNC and its constituent institutions, as Employers, to provide Plaintiffs and the Sub-Classes they seek to represent with a safe place to work. Plaintiffs and the Sub-Classes they seek

to represent do not have the required training, expertise or, for some, the personalities to keep others on the UNC constituent institutions safe, when they will struggle to keep themselves safe, against the invisible enemy that is COVID-19.

75. Students who do not wear masks will not be subject to immediate discipline. UNC and each of its constituent institutions have procedures which they must follow prior to any discipline being imposed upon a student for any infraction, much less the failure to wear a mask. Therefore, the inability to strictly enforce the requirement for students to wear masks, social-distance, wash their hands, etc., will mean that the ability to protect the Plaintiffs and the Sub-Classes they seek to represent will be left to the discretion and judgment of college-aged students, whose off-campus behaviors will not be monitored by anyone other than themselves, and potentially, local public health experts.

76. The CDC has published “Considerations for Institutions of Higher Education” (<https://www.cdc.gov/coronavirus/2019-ncov/community/colleges-universities/considerations.html>), that contain, among other things, “Guiding Principles to Keep in Mind,” such as “[t]he more an individual interacts with others, and the longer that interaction, the higher the risk of COVID-19 spread” and provide that “[t]he risk of COVID-19 spread increases in IHE (Institutions of Higher Education) non-residential and residential (e.g. on-campus housing) settings,” designated as “IHE General Settings,” and “IHE On-Campus Housing Settings,” with risks being ranked from “Lowest Risk,” “More Risk” and “Highest Risk.”

77. Upon information and belief, the CDC’s “Considerations for Institutions of Higher Education” was a source used by UNC and its constituent institutions in developing plans for the return of students for “in-person” instruction for the Fall 2020 Semester.

78. As it pertains to “IHE On-Campus Housing Settings” set forth by the CDC, UNC and each of its constituent institutions chose the one that places the Plaintiffs, Sub-Classes

Members and students at or near the “Highest Risk.” While the overall number of “on-campus” students at the UNC constituent institutions is lower for Fall 2020 than the number of “on-campus” students for the Spring of 2020, for instance, there are still thousands of students in dormitories on each of the UNC constituent institution campuses that are crowded into rooms, using common bathroom and shower spaces, and not complying with all of the required mask and social-distancing requirements, issues which the CDC has recognized presents “challenges with social distancing to prevent the sharing of COVID-19.”

79. Upon information and belief, UNC and its constituent institutions did not get the consent and approval of all Local Health Directors in the Counties in which the UNC constituent institution campuses are located, and have not confirmed with these Local Health Directors that the departments are prepared for the increased risk of COVID-19 in their communities which reopening campuses with students in attendance provides.

80. No student will be tested upon arrival to any of the UNC system campuses and the entire system of determining whether any in-coming student has symptoms, has tested positive for COVID-19, or has been potentially exposed to someone with COVID-19 is dependent upon each student “self-reporting” that information. After a student arrives on campus, there will be no required screening undertaken of students.

81. It is well recognized by the CDC that there exists a significant risk of COVID-19 transmission occurring prior to the onset of any symptoms. (<https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>). It being accepted that the “time from exposure to symptom onset” can be approximately 6 days. Therefore, at any/all of the UNC constituent institutions campuses, students will arrive who are asymptomatic yet have been exposed and will develop symptoms after they have arrived on campus. However, without a

system of required testing, the system that will be in place at all of the UNC constituent institution campuses must rely upon students to “self-report.”

82. Effective May 1, 2020, UNC and each of its constituent institutions, upon information and belief, implemented the Federal Families First Coronavirus Response Act (“FFCRA”) which provides Emergency Paid Sick Leave (EPSL) and Expanded Family Medical Leave (EFML) from April 1, 2020 through December 31, 2020. (<https://hr.unc.edu/benefits/ffcra/>)

83. Under the FFCRA, if an Employee has a “Qualifying Event,” that Employee may be entitled to EPSL of up to “100% of regular pay, up to \$511 daily, and \$5,110 total.” EFML is available under limited circumstances.

84. Obviously, if the Plaintiffs and/or members of the Sub-Classes they seek to represent are exposed and become ill from COVID-19, their loss of pay may well exceed any benefits available under the FFCRA.

85. In North Carolina, there exists a system of “Workers Compensation” under Chapter 97 of the North Carolina General Statutes. However, there is no reported case where worker’s compensation benefits have been provided to an “injured” worker in North Carolina by reason of having contracted COVID-19 in a workplace setting.

86. Employees “injured” in the course and scope of their employment may file a claim for workers’ compensation benefits, but with significant limitations.

87. For instance, “injury” is defined as “injury by accident arising out of and in the course of the employment, *and shall not include a disease in any form, except where it results naturally and unavoidably from the accident.*” N.C.G.S. § 97-2.

88. COVID-19 has never been recognized as an “injury” under the laws of the State of North Carolina.

89. Similarly, COVID-19 has never been determined to be an “occupational disease” as the term is defined and interpreted under the laws of the State of North Carolina.

90. To be compensable as an “occupational disease,” Employees, including the Plaintiffs and the Sub-Classes they seek to represent, would have to prove that they contracted COVID-19 “due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment” and cannot be an “ordinary disease of life to which the general public is equally exposed outside of the employment.”

91. Any Employee, including the Plaintiffs and the Sub-Classes they seek to represent, has no absolute right to worker’s compensation benefits in North Carolina, as Employers, including UNC and each of its constituent institutions, have a right to contest each claim and until a right to compensation is either accepted by the Employer or ordered by the North Carolina Industrial Commission, Employees are not entitled to the receipt of benefits for medical expenses and lost wages.

92. On or about June 16, 2020, the UNC Faculty Executive Committee revealed the results of a survey of 1,263 faculty members at the University of North Carolina – Chapel Hill. (<https://thewell.unc.edu/2020/06/17/survey-results-shared-with-faculty-executive-committee/>).

While that survey showed that almost 65% of faculty members understood the UNC system plan for a return to campus, only 25% of faculty members believed those plans would reasonably protect them. Upon information and belief, as of June 16, 2020, there were approximately 46,000 reported cases of COVID-19 in North Carolina, and as of the date of the filing of this Complaint, confirmed cases in North Carolina are three (3) times that amount, such that if that same survey were taken today of faculty members at each of the UNC constituent institutions, no one could or would believe that any of the adopted plans would protect them, given that each contemplate the return

of students to campus and each performing or being required to perform essential functions of their jobs on-campus.

93. On July 14, 2020, the Whitehouse Coronavirus Task Force designated 18 states, including North Carolina, as being in the “red zone” for COVID-19 cases, meaning that more than 10% of diagnostic testing had come back positive, and as of that date, listed the “Top 12 counties based on number of new cases in the last 3 weeks,” including Counties where UNC constituent institutions are located and where thousands of students will be returning: Mecklenburg County (home of UNC-Charlotte); Wake County (home of NC State University); Durham County (home of North Carolina Central University); Guilford County (home of UNC-Greensboro); Forsyth County (home of Winston Salem State University); New Hanover County (home of UNC-Wilmington) and Cumberland County (home of Fayetteville State University).

94. On July 31, 2020, a report of an analytic modeling study of a hypothetical cohort of 4990 college-age students without COVID-19 and 10 students with undetected asymptomatic cases was published in the *JAMA Network Open*, “an international, peer-reviewed, open access, general medical journal that publishes research on clinical care, innovation in health care, health policy, and global health across all health disciplines and countries for clinicians, investigators, and policy makers.” (<https://jamanetwork.com/journals/jamanetworkopen/pages/for-authors> )

95. The study (“Assessment of SARS-CoV-2 Screening Strategies to Permit the Safe Reopening of College Campuses in the United States”), the very first of its kind, funded in part by the National Institute of Health, and authored, in part, by Dr. Rochelle Walensky, Chief, Division of Infectious Diseases at Massachusetts General Hospital and a Professor of Medicine at Harvard Medical School (<https://www.massgeneral.org/doctors/17245/rochelle-walensky>), and Dr. David Paltiel, Professor of Public Health (Health Policy), Professor of Management and Professor in the Institution for Social and Policy Studies, and Co-Director of the Public Health Modeling



Concentration at the Yale School of Medicine ([https://medicine.yale.edu/profile/david\\_paltiel/](https://medicine.yale.edu/profile/david_paltiel/)) focused on the question of “[w]hat screening and isolation programs.....will keep students at US residential colleges safe and permit the reopening of campuses?” and concluded that “screening every 2 days using a rapid, inexpensive, and even poorly sensitive...test, coupled with strict behavioral interventions....is estimated to maintain a controllable number of COVID-19 infections and permit the safe return of students to campus.” See: (<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2768923>).

96. This study noted that “[r]esidential colleges, with communal living arrangements, shared dining spaces, intimate classrooms, and a population of young adults anxious to socialize, pose a particular challenge,” and therefore noted that “[i]n the absence of an effective vaccine, a proven therapy, and/or sufficient herd immunity, the best hope for reopening campuses in the fall is likely to be a robust strategy of behavior-based prevention combined with regular monitoring to rapidly detect, isolate, and contain new severe acute respiratory syndrome coronavirus...infections when they occur.”

97. This study noted what is by now well understood and common knowledge: “For many US colleges, COVID-19 poses an existential threat: either they open doors to students in September or they suffer severe financial consequences.” (citing <https://www.insider.com/smaller-colleges-may-never-reopen-because-of-the-coronavirus-2020-4>).

98. Results from this modelling study “suggest that a highly specific screening test that can easily be administered to each student every 1 to 7 days – and that reports results quickly enough to permit newly detected cases to be isolated within hours – would be required to blunt the further transmission of infection and to control outbreaks at a justifiable cost. We identified *no circumstance in this modelling study under which symptom-based screen alone would be sufficient to contain an outbreak.*”

99. Each of the plans proposed by UNC and its constituent institutions will not test students upon their arrival or at any regular intervals thereafter, and provide for “symptom-based screen alone,” which according to the study, will not be sufficient to contain an outbreak.

100. The study confirmed that “obtaining an adequate supply of testing equipment will be a challenge,” and certainly UNC and its constituent institutions do not have an adequate supply of testing equipment to test all of its students, much less Plaintiffs and the Sub-Classes they seek to represent. However, this study concluded that there was real “value” in undertaking this testing, “when comparing our findings with a rough estimate of the societal WTP (willingness to pay) per infection averted.”

101. As it pertains to the instant case, the study noted that “[r]eopening college campuses imposes risks that extend beyond students to the faculty who teach them, the many university employees (administrative and facilities staff) who come into close daily contact with them, and the countless other members of the surrounding community with whom students come into contact.”

102. Upon arrival, students at UNC’s constituent institutions will be provided, among other things, a thermometer and cloth facing coverings. After that student is “on-campus,” the system of monitoring whether that student becomes sick is dependent upon that student “self-reporting” that information and taking appropriate action.

103. Upon information and belief, as part of its reopening plan, UNC-Chapel Hill promised that each of their students, faculty and staff members would receive “care kits” that included, among other things, two face masks, hand sanitizer and a thermometer. This was to be available to students between August 8<sup>th</sup>-14<sup>th</sup>, and to graduate and professional students “beginning August 10<sup>th</sup>.” (<https://www.unc.edu/posts/2020/08/05/carolina-together-care-kits-help-prepare-tar-heels-for-the-fall-semester/>). Despite this, upon information and belief, faculty, graduate

students and staff, as late as today, have been informed that the “care kits” have been delayed until “August 20<sup>th</sup>, at the earliest.”

104. Alternatively, just a few miles from the campus of UNC-Chapel Hill, students at Duke University are tested upon arrival and confined to their dorm rooms until the results are obtained. <https://www.newsobserver.com/news/local/education/article244797507.html>

105. Similarly, no Employee of any UNC constituent institution will be required to be tested. While testing may be available, it is clear that no Employee will be tested unless they are symptomatic and ask to be tested.

106. On June 24, 2020, Governor Cooper issued an executive order extending Phase 2, further delaying reopenings.

107. Governor Cooper’s June 24, 2020 executive order, which is still in effect, requires face masks in public settings, especially in “certain high-density occupational settings where social distancing is difficult.”

108. By June 24, 2020, the number of reported COVID-19 cases in North Carolina had grown to more than 56,000, with the number of reported cases doubling every ten (10) days or so.

109. During the month of July, 2020, the NCDHHS reported North Carolina’s highest one-day number of COVID-19 cases, on July 11, July 18 and July 30, 2020.

110. On July 23, 2020, Dr. David Weber, medical director of UNC Hospital’s Departments of Hospital Epidemiology informed the UNC Board of Governors that “the wave we’re in could go on for a very long time because the great majority of people have not been infected.” (<https://www.newsobserver.com/news/local/education/article244404477.html>). Dr. Weber informed the Board of Governors that there had been a “dramatic increase of cases among 18 to 22 year olds across the nation, including in North Carolina and in Chapel Hill,” and promised

that “if [students] don’t follow the guidelines and they go to towns or in dorm rooms and have parties and don’t physical distance and don’t wear masks, there will be transmission.”

111. It is inevitable that some students of the UNC constituent institutions will not “follow the guidelines,” they will “go to towns or in dorm rooms and have parties” and will not “physical distance” and will not “wear masks.” In fact, as of the date of the filing of this action, at UNC constituent institution campus that has already permitted students to return to the campus environment, students are not “following the guidelines”; are going “to towns or in dorm rooms” and having “parties”, are not “physically distancing” and are not “wearing masks.”

112. In order to avoid working on-campus at the UNC constituent institutions in which Plaintiffs and the Sub-Classes they seek to represent are employed, they must first seek “accommodations” from their university, citing, upon information and belief, some underlying medical condition or co-morbidity that increases the risk from COVID-19.

113. However, there is absolutely no scientific evidence to support the notion that merely because someone does not have some underlying medical condition or co-morbidity that they will not become ill from COVID-19, become hospitalized, be unable to work, or die.

114. The CDC has recognized that age alone increases the risk of someone getting severely ill from COVID-19. (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>). “As you get older, your risk for severe illness from COVID-19 increases. For example, people in their 50s are at higher risk for severe illness than people in their 40s.”

115. In fact, the CDC has stated that “[t]he best way to protect yourself and to help reduce the spread of the virus that causes COVID-19 is to....[l]imit your interactions with other people as much as possible,” which, of course, Plaintiffs and the Sub-Classes they seek to

represent cannot do when they perform essential functions of their jobs on-campus while thousands of students are there.

116. Plaintiffs and the Sub-Classes they seek to represent, and upon information and belief, UNC, its Board of Governors, each of its constituent institutions and Governor Cooper, fully understand what the CDC has made clear: “There is no way to ensure that you have zero risk of infection.” (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>). Understanding that, it is unimaginable that UNC and its constituent institutions and Governor Cooper would make a conscious decision to force Plaintiffs and the Sub-Classes they seek to represent to increase their risks of exposure to a disease that will make them sick, and expose them to a risk of hospitalization, permanent side effects and/or death.

117. On July 29, 2020, Quintana Stewart, MPA, Health Director for Orange County, where the University of North Carolina – Chapel Hill is located, provided a “MEMORANDUM” (Exhibit H) to UNC-Chapel Hill’s Chancellor, Kevin M. Guskiewicz, and its contents are disturbing.

“As students have begun to return to campus prior to the official start of the Fall Semester we’ve experienced a small fraction of what we will see if the campus fully reopens and all the students return for in-person class. In the last 4 weeks we’ve seen positive COVID clusters among UNC staff and athletic teams. We’ve experienced the increased activity and gathering on Franklin Street that resulted in clusters that visited a couple of local restaurant/bar establishments. We’ve seen the off-campus parties and gatherings at Greek Houses. We’ve also experienced the lack of cooperation from students with the communicable disease investigation and control measures mandated by NC General Statute 130A-144. For multiple cases staff had to spend several hours trying to gather information and cooperation from students. As a last resort, legal remedies were suggested to gain cooperation. This is absolutely not the desired outcome for our campus students.

While everyone has worked tirelessly on mitigation plans for COVID-19, to date there are still capacity issues with testing and contact tracing. There is a national supply shortage for the chemical reagent used to process the COVID-PCR test (most reliable diagnostic COVID-19 Test). This shortage has resulted in a

significant delay in test results. When waiting for results to begin case investigation and issue quarantine orders, this is a significant amount of time and can result in further spread of the virus.....

To date, a major piece of our planning efforts remain incomplete. As a college town, Chapel Hill is highly dependent on public transportation.....To keep the town operational we could potentially create several clusters of cases from one single bus ride.

In addition to the aforementioned concerns that public health highlights, I have received a massive amount of emails from community members, UNC staff, faculty and students sharing their concern for fully reopening campus for the Fall Semester. If students begin to move back on campus next week, we could quickly become a hot spot for new cases as thousands of students from all across the country/world merge onto the UNC Campus and being the interact in a manner very normal for college students in a congregate setting. The recent outbreak among the football team was informative of how challenging it will be for the student population to practice the 3 W's even with the best of intentions. We believe the student athletes are likely some of the most disciplined and motivated groups of students on campus and despite their best efforts, the virus spread rapidly between teammates.

118. Ms. Stewart therefore recommended that UNC-Chapel Hill: (a) "Restrict on campus housing to at-risk students with no access to equitable educational resources and those with true housing needs (i.e., international students, Carolina Covenant & marginalized students); and (b) "Consider virtual classes for the entire Fall Semester, but at a minimum begin the first 5 weeks of the semester with online instruction only with plans to reassess the situation at the 5 week mark."

119. Ms. Stewart's Memorandum of 7/29/20 and the recommendations contained therein were not provided to the Faculty and Staff at UNC-Chapel Hill until word of its existence leaked to the press and a copy of the same reviewed by them, which prompted Dr. Mimi Chapman to send an email to UNC-Chapel Hill's Chancellor, expressing "dismay" that Faculty were not made aware of the Orange County Health Director's recommendations:

This morning members of the FEC had the attached letter forwarded to us. We are completely shocked that such a letter would've been received last week and that none of us have known about it until now – hours before it has turned up in the News and Observer. It feels like a serious breach of trust to have kept such recommendations from the campus community of faculty, staff and students.



Yesterday, I received word from a faculty member that in student store, which was packed, only a third of people were wearing masks. Just now I received a video from a citizen who videotaped a line of what appeared to be sorority women – at least 50 – coming out of an indoor, unmasked gathering at 210 Ransom Street.

These look like off ramps to me. For myself, I am changing my plans to hold an in-person orientation for our doctoral students tomorrow, and my class that was planned to be delivered in person will change to remote. I could not possibly do otherwise in the face of such a letter from our local health department.

Since assuming this role, it has been my intention to interact collaboratively. I recognize that people occupying roles such as yours are balancing many competing priorities, and that in the current environment, the choices are very difficult. However, with outside guidance from public health authorities such as is included in this letter, to proceed without completely candid discussion with your faculty, as well as other interested parties, feels like a betrayal. I urge you to call a meeting of the general faculty immediately and to address the concerns that are outlined in this letter. Of if you would like me to call it, I will. If the implications of this letter means that we must send some students home, that is how it will have to be. If it means bringing this information to the BOG so that might grapple with the implications of ignoring these warnings, then by all means do that, and I will stand with you.

<http://pulse.ncpolicywatch.org/2020/08/05/chair-of-unc-ch-faculty-a-serious-breach-of-trust-faculty-were-not-aware-of-county-health-recommendation/>

120. The experience in Orange County and at UNC-Chapel Hill is not unique. Faculty and staff at each of the UNC constituent institution campuses are concerned for their safety, given especially that public schools in the Counties in which these UNC constituent institution campuses are located have made the right decision – to teach students remotely. (Orange County Schools to teach remotely (<https://www.orangecountyfirst.com>); Wake County to teach remotely (<https://www.newsobserver.com/news/local/education/article244374482.html>); Durham County to teach remotely for first 9 weeks (<https://www.wral.com/coronavirus/durham-public-schools-vote-to-move-classes-online>); Mecklenburg County to go online after 2 week “socially distanced” orientation (<https://www.charlotteobserver.com/news/local/article244254462.html>); Watauga County to open with 9 weeks of “remote learning” (<https://www.wataugaschools.org/site/>); Guilford County to have remote learning through at least October 20

(<https://www.gcsnc.com/site/default>); New Hanover County Schools to open with on-line only (<https://www.whqr.org/post/new-hanover-county-schools-will-reopen-online-only-instruction#stream>); Pitt County – parents may choose options, including completely on-line (<https://www.pitt.k12.nc.us/Page/6337>); Jackson County – limited attendance for 2 weeks then completely online thereafter (<https://www.jcpsnc.org/reentry>); Forsyth County Schools – online for first 9 weeks (<https://www.wsfc.k12.nc.us/site/default>); Buncombe County to go online after 2 week “socially distanced” orientation (<https://www.buncombeschools.org/> ).

121. On August 2, 2020, Dr. Deborah Birx, the White House coronavirus task force coordinator, informed CNN in an interview that the United States is in a “new phase” in its fight against the coronavirus pandemic, and said that the deadly virus is more widespread than when it first took hold in the United States earlier in 2020. (<https://www.cnn.com/2020/08/02/politics/birx-coronavirus-new-phase-cnntv/index.html>).

122. Dr. Birks said: “What we are seeing today is different from March and April. It is extraordinarily widespread. It’s into the rural as equal urban areas.” When asked whether schools in states with a 5% positivity rate should remain closed or have distance learning only, Dr. Birks said: “If you have high case load and active community spread....we are asking people to distance learn at this moment so we can get this epidemic under control.” On August 9, 2020, North Carolina reached 6% for the first time since May, 2020, with the positivity ranging from 7% to 10% since June.

123. As of the date of the filing of this action, North Carolina has a high case load and active community spread.

124. As of August 8, 2020, at least 136,000 people in North Carolina had tested positive for COVID-10 and 2,168 have died.

125. As of August 8, 2020, North Carolina reported an approximate 8% positivity rate for those tested, with a 5% positivity rate for more than two (2) weeks being indicative that the virus may be under control.

126. As of August 8, 2020, 1,129 North Carolinians were reported hospitalized with COVID 19, and reported hospitalizations have not dropped below 1,000 since July 7, 2020 or below 1,100 since July 19, 2020. (Source: NCDHHS -<https://covid19.ncdhhs.gov/dashboard>).

127. On August 5, 2020, Governor Roy Cooper issued Executive Order No. 155, announcing that he was extending “Phase Two” of North Carolina’s reopening plan until at least September 11, 2020, and keeping all current restrictions in place through the 2020 Labor Day weekend. Dr. Mandy Cohen, secretary of North Carolina’s DHHS confirmed that the total number of cases in North Carolina was still “too high.”  
<https://www.newsobserver.com/news/coronavirus/article244737227.html>;  
<https://files.nc.gov/governor/documents/files/EO155-Extension-of-Phase-2.pdf>

128. In Executive Order No. 155, Gov. Cooper admitted that UNC and its constituent institutions’ plans to reopen campuses “will increase the risk of COVID-19 spread” and therefore, places the Plaintiffs and the Sub-Classes they seek to represent to an increased risk of exposure to COVID-19:

**WHEREAS**, there are many public health benefits, economic benefits, and societal benefits to reopening K-12 schools, colleges, and universities for in-person instruction, but these in-person gatherings of students, staff, teachers, and professors will increase the risk of COVID-19 spread, even after all health and safety measures are put in place; and

129. The Governor’s acknowledgment of the conscious decision made by the government, through its political subdivision, UNC and its constituent institutions, to place the

Plaintiffs and the Sub-Classes they seek to represent at an increased “risk of COVID-19 spread” is a risk that UNC cannot lawfully impose upon them.

130. Governor Cooper’s willingness to place the Plaintiffs and the Sub-Classes they seek to represent at an increased “risk of COVID-19 spread” is in stark contrast to the position that Governor Cooper took in his “Brief in Opposition to Motion for Preliminary Injunction” and the supporting materials that he filed in *North Carolina Proprietary Bowlers Association v. Cooper* (20 CvS 6422, Wake County), filed on June 17, 2020. (<https://ncbc.nccourts.org/public/>; 2020 CVS 6422; ECF No. 13)

131. “COVID 19 is a serious and emergent threat to public health and the lives of Americans – indeed, the virus has already killed as many Americans in four months as the Vietnam war did in a decade.” (Id. at p. 1). In support of the Governor’s position, Dr. Mandy Cohen, Secretary of the Department of Health and Human Services, affirmed that North Carolina’s numbers are “trending in the wrong direction.” (Id at p. 2). In her Declaration offered in support of Governor Cooper’s position, Dr. Cohen predicted that “infections may begin to spike in the summer months ahead meaning that more people will become infected and die.” (Id. at p. 2). “COVID-19 has caused in less than four months nearly as many deaths as traffic accidents caused in a year.” “The emergency is not over.” (Id. at p. 7). “Nearly half of COVID-19 cases are spread by people who are not showing symptoms at the time.” (Id. at pp. 7-8). “The young and the middle-aged North Carolinians are among the group that represents the largest share of laboratory confirmed infections.” (Id. at p. 8). “Indoor activities or activities in confined or contained areas generally carry a greater risk of contraction and transmission of the virus than in unconfined outdoor activities.” (Id. at p. 9). “Existing knowledge suggest the potential for those who survive a severe COVID-19 infection to suffer long-term health effects from the disease.” “The public

health risk are too great to open schools to unrestricted, in person instruction in the fall. And moving too quickly overall may require a return to stricter measures later.” (Id. at p. 14)

132. As Dr. Cohen correctly opines in her Declaration, “Current research shows that the virus that causes Covid-19 is spread mainly from person-to-person between people in close contact (within six feet) through respiratory droplets.” (Declaration of Dr. Mandy Cohen, Case No. 2020 CVS 6422; ECF No. 12.1, ¶ 13). “The virus can also spread through contact with surfaces contaminated by respiratory droplets if someone else touches that surface and then touches their own eyes, nose or mouth- even if they never come into contact with the infected person.” (Id. at ¶ 14). “Covid-19 can affect people of all ages, not just those who are old or have underlying chronic conditions.” (Id. at ¶ 16).

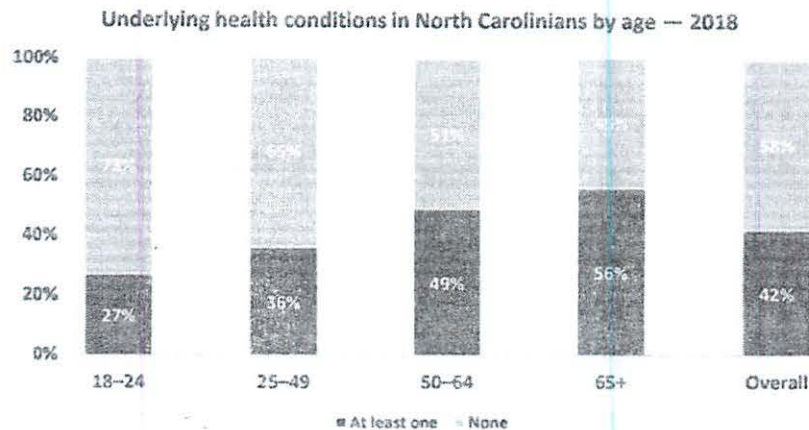
133. Data reported on the DHHS Covid-19 Dashboard, as of today, shows that confirmed cases of Covid-19 have affected all ages and all demographics of the population in North Carolina, especially the ages pertaining to Plaintiffs and the subclass in which they seek to represent.



134. Moreover, as Dr. Cohen correctly points out, and as NC DHHS’s own reports provide, anyone with an underlying health condition is at an increased risk from Covid-19, regardless of age. “An estimated 42% of people in North Carolina have one of the underlying



health conditions included in the CDC's guidance on people at high risk for severe illness from Covid-19." (Case No. 2020 CVS 6422; ECF No. 12.1, ¶ 17)



135. “Serious illnesses frequently require hospitalization, intensive care, and intrusive ventilation, and some may cause death. Even those who survive an infection of Covid-19 may suffer numerous serious long-term effects,” including “chronic lung, heart, kidney and liver disease, and other longer lasting ailments.” (Case No. 2020 CVS 6422; ECF No. 12.1, ¶ 18).

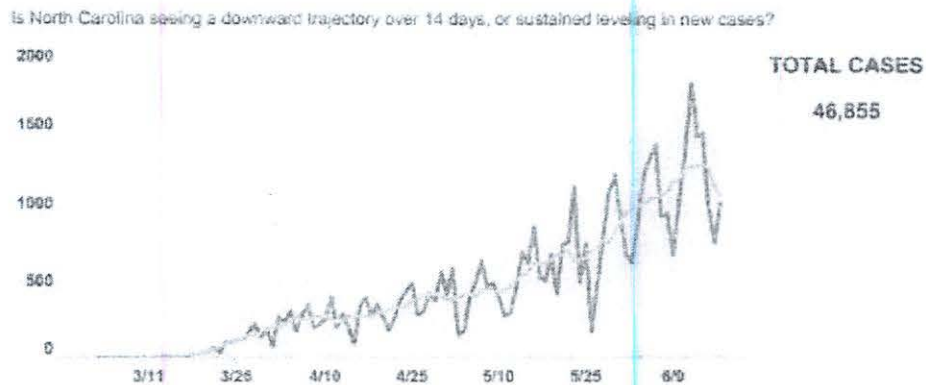
136. Dr. Cohen provides a number of ways to minimize transmission of the virus and prevent disease resulting from infection with the virus, including, but not limited to:

- Limiting the number of people who are in one place at the same time to decrease the chance of an infected person coming into contact with a non-infected person.
- Keep people six feet away from each other to decrease the chance that respiratory droplets will travel from person-to-person.
- Limit the amount of time people are in close contact with one another.

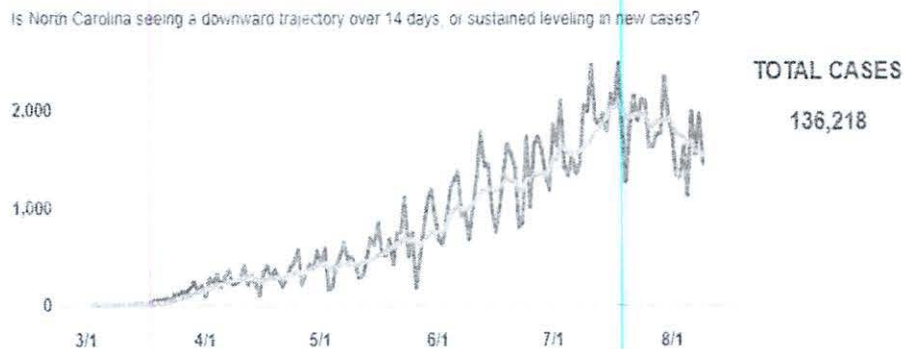
137. At the time these opinions were provided in her declaration, Dr. Cohen was concerned that North Carolina's numbers were trending in the wrong direction. (Case No. 2020 CVS 6422; ECF No. 12.1, ¶ 18).

138. Importantly, those numbers have only increased since Dr. Cohen's Declaration, which was executed on June 17, 2020.

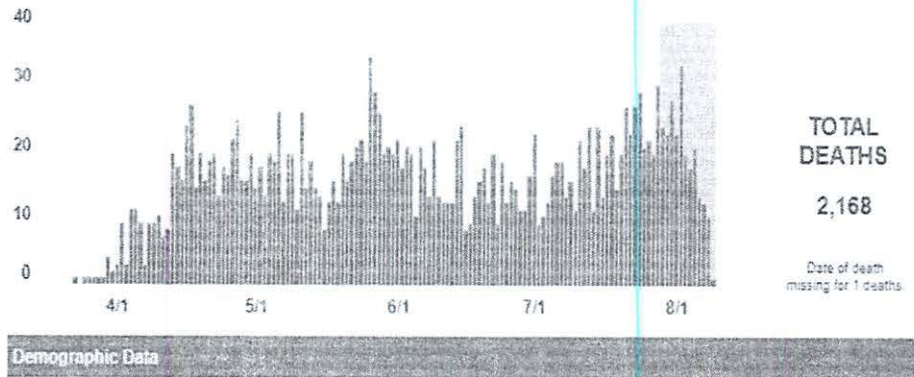
139. For instance, at the time of her declaration, the number of total cases in North Carolina was 46,855.



140. As of today, the total number of cases has almost tripled since June 2020 according to DHHS's own dashboard.



141. Furthermore, as of June 17, 2020 the number of deaths resulting from Covid-19 was 1,168. Since then, that number has almost doubled.



142. Yet, Governor Cooper’s position as of June 2020, when the numbers were far less than they are now, was that “Covid-19 is a serious and emergent threat to public health and the lives of Americans- indeed, the virus has now killed twice as many Americans in four months as the Vietnam War did in a decade.” (2020 CVS 6422, Governor Cooper’s Brief in Opposition to Motion to Preliminary Injunction, p. 1).

143. As Dr. Cohen correctly predicted, based upon the available data, the rate of infection continues to accelerate, thereby contributing to the number of people infected and deaths resulting from the underlying infection. “National models show that daily deaths are expected to ... remain stable in August, but rise sharply in September.” (Case No. 2020 CVS 6422; ECF No. 12.1, ¶ 30).

144. “The data trends reveal that we must be cautious and measured as we consider easing restrictions. Opening-high risk ... businesses too soon could cause rapid spread of a highly contagious and for some, a deadly disease. It could also trigger super-spreading events. These circumstances would erase the hard-won gains in preventing the spread of Covid-19 achieved by the sacrifices of North Carolina citizens. I am concerned that, if the Governor’s authority is undermined, this will significantly limit his ability to take critical steps in the future to protect the public health, just as conditions are becoming much worse.” (Case No. 2020 CVS 6422; ECF No. 12.1, ¶ 32).



145. “The virus is not restricted by county borders. It can cross county lines as people travel across the state. This makes the spread of virus across county lines inevitable and makes it necessary to have either a statewide or regional approach to establishing the minimum public health restrictions people and business must follow.” (Id. at ¶ 34).

146. “Indoor activities, or activities in confined or contained areas, generally carry a greater risk of contraction and transmission of the virus than in unconfined outdoor activities. Sharing indoor spaces is a ‘major’ cause of Covid-19 transmission and contraction.” (Id. at ¶ 40).

147. “Similarly, stationary activities that have extended contact ... (for example, activities where people are sitting or standing next to others for more than 10-20 minutes) generally carry a greater risk of contraction and transmission of the virus than activities in which people are constantly circulating and moving. Limiting the duration of contact with others is critical to lowering the likelihood of contraction and transmission of the virus.” (Id. at ¶ 41).

148. In her Declaration, Dr. Cohen provided a list of “factors that lead to activities and settings being higher risk” and the “relative risk of activities and settings.”

Factors that Lead to Activities and Settings Being Higher Risk

Activities that involve increased respiratory effort, such as heavy, deep or rapid breathing while exercising, shouting, or singing
Indoor activities
Stationary activities where people come into extended contact with other customers or patrons (for example, where people are sitting or standing next to others for more than 10-20 minutes)
Gatherings of people who are older or who have underlying chronic conditions
Extended, close-range, face-to-face conversation
Places where people's pre-COVID learned behavior involves high-risk activities like chatting, singing, working out or dancing in close contact with one another
Alcohol consumption being expected and part of the entertainment

Relative Risk of Activities and Settings

	Stationary	Moving
Indoor	High Risk (for example, sitting in a movie theater)	Moderate Risk (for example, shopping in a retail setting)
Outdoor	Moderate Risk (for example, sitting at an event in an outdoor setting)	Lower risk (for example, walking on a park trail)

149. Upon information and belief, based upon Dr. Cohen's own risk factors, teaching in a classroom would pose the "highest risk" given the "extended, close-range, face-to-face conversations" in an "indoor" setting, individuals being "stationary" for more than 10-20 minutes and the constant "chatting."

150. On August 5, 2020, UNC-Chapel Hill's Chancellor posted a "Message from Chancellor Guskiewicz on letter from the Orange County Health Department."  
<https://www.unc.edu/posts/2020/08/05/message-from-guskiewicz-on-letter-from-the-orange->

county-health-department/. In it, Chancellor Guskiewicz, while not addressing Ms. Stewart's concerns that the Orange County Health Department was not ready for what was occurring with students returning to the campus community, "reiterated that we believe we are well prepared for the start of the fall semester and we will continue to track trends that could lead us to recommend a modification to our plans," and that after consulting "with the UNC system," the Chancellor was advised "to stay the course with our current plan." Conspicuously absent from Chancellor Guskiewicz's "Message" was the assurance that Plaintiffs and the Sub-Classes they seek to represent seek: assurances from "infectious disease experts and public health experts" to whom Chancellor Guskiewicz refers that they will be safe.

151. Prior to the filing of this action, Plaintiffs, through counsel, notified the North Carolina Department of Labor about the concerns surrounding the requirement for UNC and its constituent institutions to comply with its non-delegable duty to provide the Plaintiffs and the Sub-Classes they seek to represent, a "safe" workplace, and a workplace free of recognized risks associated with COVID-19, and requested that the North Carolina Department of Labor take appropriate action.

152. The North Carolina Department of Labor declined to take any action, in part, because Plaintiffs and the Sub-Classes they seek to represent have not yet suffered an illness.

153. Prior to the filing of this action, Plaintiffs, through counsel, requested the Defendant, through counsel, to suspend the process of bringing tens of thousands of students to the UNC constituent institutions to take the Spring 2020 semester "on-line" and not "in-person;" to provide for the mandatory testing of students if they were going to return to campus; and to otherwise modify the workplace requirements imposed upon the Plaintiffs and the Sub-Classes they seek to represent that delegate the responsibility of providing a safe workplace to them, and not UNC and its constituent institutions, as their Employer.



154. UNC and its constituent institutions, the UNC Board of Governors, and the Governor of North Carolina have failed to provide the Plaintiffs and the Sub-Classes they seek to represent with the assurance that the law requires: that if they return to work “on-site” under current plans, with thousands of students on these campuses, they will be safe.

155. As of the filing of this action, members of the faculty at UNC’s constituent institutions have petitioned UNC’s system leaders to reconsider a mass return to campus, and to move “online.” (<http://pulse.ncpolicywatch.org/2020/07/08/126086/>).

156. Similarly, housekeepers at UNC-Chapel Hill have petitioned for “upgraded safety demands.” (<https://abc11.com/unc-housekeepers-petition-campus-covid-19-football-north-carolina-coronavirus/6329478/>).

157. In an open letter from tenured faculty members at UNC-Chapel Hill, undergraduate students were requested not to return to campus in the Fall: “We need to stay safe from COVID-19 by staying at home – and we need you to stay home in order to protect yourselves and your fellow students, your teachers, the many workers who serve you on campus, the residents of Chapel Hill and Carrboro, and your own family members and loved ones.” (<https://www.newsweek.com/unc-tenured-faculty-tell-students-stay-home-amid-covid-concerns-it-not-safe-you-come-campus-1522162>).

158. Plaintiffs and the Sub-Classes they seek to represent are now faced with a false dichotomy: go to work and risk exposure to COVID-19 or not go to work and risk termination from their jobs. UNC and its constituent institutions, however, have a better choice that reduces the risks that Plaintiffs and the Sub-Classes they seek to represent face by simply making complete “on-line” instruction the default for the Fall of 2020, permitting anyone else who can perform the essential functions of their jobs remotely to continue to do so, and reducing the population of

students on campus, just as they did in March, 2020 when there were less than 280 reported COVID-19 cases in the State of North Carolina.

159. Since the decision was made on March 11, 2020 to terminate all “in-person” activities on the UNC constituent institution campuses, effective March 20, 2020, there have been more than 136,000 new, confirmed cases of COVID-19 in North Carolina, and more than 2,100 deaths, leaving the Plaintiffs and the Sub-Classes they seek to represent questioning why anyone could possibly believe that safe and/or “hazard free” conditions or places of employment could be provided to them now when things have only gotten worse, not better, since March, 2020.

### CLASS ACTION ALLEGATIONS

160. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 159 as if fully set forth herein.

161. The individually named Plaintiffs, on behalf of themselves and the Sub-Classes they seek to represent, bring this action individually and as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, on behalf of the following classes/sub-classes:

a. The Faculty Subclass, defined as: All current Faculty, whether full-time or part-time, employed by or at any UNC constituent institution, who perform, may perform or are required to perform any essential functions of their job on the campus of the UNC constituent institution where they are employed.

b. The Staff Subclass, defined as: All current Staff or other employees (other than Faculty), including graduate workers, whether full-time or part-time, employed at any UNC constituent institution, who perform, may perform or are required to perform any essential functions of their job on the campus of the UNC constituent institution where they are employed.

162. Plaintiffs reserve the right to redefine the Class prior to certification.



163. The Class is so numerous that the individual joinder of all its Members is impractical. Plaintiffs estimate that the Class will consist of thousands of individuals.

164. The Plaintiffs' claims, set forth below, are typical of the claims of the Members of the Class/Sub-Classes.

165. Plaintiffs will fairly and adequately represent and protect the interests of the Class/Sub-Classes. Plaintiffs are represented by experienced counsel, experienced in the litigation of class action cases. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of themselves and the Class/Sub-Classes. Neither Plaintiffs, nor their counsel, have any interests adverse to or potentially in conflict with the interests of the Class/Sub-Classes.

166. Common questions of law and fact exist as to all members of the Class/Sub-Classes which predominate over any questions affecting only individual Class Members. This common legal and factual questions include, but are not limited to, the following:

- a. Whether bringing students back to the UNC system campuses places the Plaintiffs and Sub-Classes Members at an increased risk of exposure to COVID-19;
- b. Whether providing educational services to students for the Spring of 2020 "remotely" or "online" decreases the Plaintiffs and Sub-Classes Members risk of exposure to COVID-19;
- c. Whether bringing students back to the UNC constituent campus communities increases the risk of community spread of COVID-19;
- d. Whether the increased risk of community spread of COVID-19 creates an increased risk to Plaintiffs and Sub-Classes Members as Employees;
- e. Whether an increased risk of exposure to COVID-19 exposes each Plaintiff and the Sub-Classes they seek to represent to an increased risk of harm;

f. Whether an increased risk of exposure to COVID-19 exposes each Plaintiff and the Sub-Classes they seek to represent to a risk of the need for medical treatment;

g. Whether the increased risk of exposure to COVID-19 creates an increased risk for Plaintiffs and the Sub-Classes they seek to represent to the payment of medical expenses associated therewith;

h. Whether the increased risk of exposure to COVID-19 exposes each Plaintiff and the Sub-Classes they seek to represent to a risk of hospitalization;

i. Whether the increased risk associated with exposure to COVID-19 exposes each Plaintiff and the Sub-Classes they seek to represent to a risk of death;

j. Whether the increased risk associated with exposure to COVID-19 exposes each Plaintiff and the Sub-Classes they seek to represent to a potential loss of earnings;

k. Whether the increased risk by Plaintiffs and the Sub-Classes they seek to represent of a loss of earnings will be fully compensated for by benefits to which they would be entitled;

l. Whether the increased risk of medical expenses and hospitalization will be fully compensated for by benefits to which the Plaintiffs and the Sub-Classes they seek to represent would be entitled;

m. Whether UNC and its constituent institutions have provided the necessary benefits to insure that Plaintiffs and the Sub-Classes they seek to represent who incur medical expenses and/or loss of earnings by reason of the increased risk of exposure to COVID-19 will be fully compensated;

n. Whether the revenues from all sources which UNC and its constituent institutions would receive by bringing students back to campus versus offering Fall 2020 courses

fully online was a reason for the decision to increase the risk of exposure to COVID-19 to Plaintiffs and the Sub-Classes they seek to represent;

o. Whether it is possible for UNC and its constituent institutions to provide all educational services required for students for the Fall 2020 completely online;

p. Whether providing all educational services for UNC system students for Fall 2020 completely online decreases the Plaintiffs and the Sub-Classes they seek to represent risk of exposure to COVID-19;

q. Whether providing all educational services for UNC system students for Fall 2020 completely online decreases the risk that Plaintiffs and the Sub-Classes they seek to represent will incur medical expenses;

r. Whether providing all educational services for UNC system students for Fall 2020 completely online decreases the risk that Plaintiffs and the Sub-Classes they seek to represent will be hospitalized;

s. Whether providing all educational services for UNC system students for Fall 2020 completely online decreases the risk that Plaintiffs and the Sub-Classes they seek to represent will die;

t. Whether providing all educational services for UNC system students for Fall 2020 completely online decreases the risk that Plaintiffs and the Sub-Classes they seek to represent will suffer lost wages and income;

u. Whether the benefits to Plaintiffs and the Sub-Classes they seek to represent of providing all educational services for UNC system students for Fall 2020 completely online outweighs any burdens associated therewith;

v. Whether, if students are to return to the UNC campuses, UNC and its constituent institutions could test students when they arrive and at regular intervals thereafter;



w. Whether testing students as they return to UNC campuses and at regular intervals thereafter decreases the risk to Plaintiffs and the Sub-Classes they seek to represent of exposure to COVID-19;

x. Whether testing students as they return to UNC campuses and at regular intervals thereafter decreases the risk of further spread of COVID-19;

y. Whether UNC and its constituent institutions owe a non-delegable duty to Plaintiffs and the Sub-Classes they seek to represent to provide a place and conditions of employment free from recognized risks that may cause serious illness or death;

z. Whether UNC and its constituent institutions owe a non-delegable duty to Plaintiffs and the Sub-Classes they seek to represent to provide a safe workplace;

aa. Whether UNC and its constituent institutions have a continuing responsibility to ensure that adequate safety precautions are taken to protect Plaintiffs and the Sub-Classes they seek to represent;

bb. Whether the conditions and places of employment in which Plaintiffs and the Sub-Classes they seek to represent work are free from recognized risks that may cause serious illness or death;

cc. Whether the conditions and places of employment in which Plaintiffs and the Sub-Classes they seek to represent work are safe;

dd. Whether the Plaintiffs and the Sub-Classes they seek to represent should be required to work in conditions and places of employment that are not safe;

ee. Whether the Plaintiffs and the Sub-Classes they seek to represent should be required to work in conditions and places of employment that increase their risk of becoming infected with COVID-19;

ff. Whether the substantial risk of being infected with COVID-19 at the constituent institutions constitutes an inherently dangerous activity;

gg. Whether COVID-19 is a “recognized hazard.”

167. The common issues of fact and law presented by this action, including those specified above, are predominant over any individual issues.

168. A class action is superior to other available means of adjudicating the claims of the Class, and is the only means to achieve a fair, efficient, uniform, and conclusive result. Absent certification of a class, each individual Class Member would be required to bring their own individual action, but likely not pursue relief from the Court for enforcement of their rights, due to the substantial burden and expense associated with the complex, expensive and extensive litigation necessary to enforce their rights and obtain adequate relief. Individualized litigation increases the expense and delay for all parties and multiplies the burden on the judicial system in handling the complex legal and factual issues present in this case. A class action far fewer practical difficulties and provides several benefits, including single and efficient adjudication. Class treatment of the issues present in this case will ensure that each claimant receives a fair and consistent adjudication.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment – N.C.G.S. §1-253, *et. seq.*)**

169. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 168 as if fully set forth herein.

170. This Court has jurisdiction over the parties and there exists an actual justiciable case and/or controversy between the Plaintiffs and the Sub-Classes they seek to represent and UNC and the named constituent institutions regarding, among other things:

- a. Whether bringing students back to the UNC system campuses places the Plaintiffs and Sub-Classes Members at an increased risk of exposure to COVID-19;
- b. Whether providing educational services to students for the Spring of 2020 “remotely” or “online” decreases the Plaintiffs and Sub-Classes Members risk of exposure to COVID-19;
- c. Whether bringing students back to the UNC constituent campus communities increases the risk of community spread of COVID-19;
- d. Whether the increased risk of community spread of COVID-19 creates an increased risk to Plaintiffs and Sub-Classes Members as Employees;
- e. Whether an increased risk of exposure to COVID-19 exposes each Plaintiff and the Sub-Classes they seek to represent to an increased risk of harm;
- f. Whether an increased risk of exposure to COVID-19 exposes each Plaintiff and the Sub-Classes they seek to represent to a risk of the need for medical treatment;
- g. Whether the increased risk of exposure to COVID-19 creates an increased risk for Plaintiffs and the Sub-Classes they seek to represent to the payment of medical expenses associated therewith;
- h. Whether the increased risk of exposure to COVID-19 exposes each Plaintiff and the Sub-Classes they seek to represent to a risk of hospitalization;
- i. Whether the increased risk associated with exposure to COVID-19 exposes each Plaintiff and the Sub-Classes they seek to represent to a risk of death;
- j. Whether the increased risk associated with exposure to COVID-19 exposes each Plaintiff and the Sub-Classes they seek to represent to a potential loss of earnings;

k. Whether the increased risk by Plaintiffs and the Sub-Classes they seek to represent of a loss of earnings will be fully compensated for by benefits to which they would be entitled;

l. Whether the increased risk of medical expenses and hospitalization will be fully compensated for by benefits to which the Plaintiffs and the Sub-Classes they seek to represent would be entitled;

m. Whether UNC and its constituent institutions have provided the necessary benefits to insure that Plaintiffs and the Sub-Classes they seek to represent who incur medical expenses and/or loss of earnings by reason of the increased risk of exposure to COVID-19 will be fully compensated;

n. Whether the revenues from all sources which UNC and its constituent institutions would receive by bringing students back to campus versus offering Fall 2020 courses fully online was a reason for the decision to increase the Plaintiffs and the Sub-Classes they seek to represent risk of exposure to COVID-19;

o. Whether it is possible for UNC and its constituent institutions to provide all educational services required for students for the Fall 2020 completely online;

p. Whether providing all educational services for UNC system students for Fall 2020 completely online decreases the Plaintiffs and the Sub-Classes they seek to represent risk of exposure to COVID-19;

q. Whether providing all educational services for UNC system students for Fall 2020 completely online decreases the risk that Plaintiffs and the Sub-Classes they seek to represent will incur medical expenses;

r. Whether providing all educational services for UNC system students for Fall 2020 completely online decreases the risk that Plaintiffs and the Sub-Classes they seek to represent will be hospitalized;

s. Whether providing all educational services for UNC system students for Fall 2020 completely online decreases the risk that Plaintiffs and the Sub-Classes they seek to represent will die;

t. Whether providing all educational services for UNC system students for Fall 2020 completely online decreases the risk that Plaintiffs and the Sub-Classes they seek to represent will suffer lost wages and income;

u. Whether the benefits to Plaintiffs and the Sub-Classes they seek to represent of providing all educational services for UNC system students for Fall 2020 completely online outweighs any burdens associated therewith;

v. Whether, if students are to return to the UNC campuses, UNC and its constituent institutions could test students when they arrive and at regular intervals thereafter;

w. Whether testing students as they return to UNC campuses and at regular intervals thereafter decreases the risk to Plaintiffs and the Sub-Classes they seek to represent of exposure to COVID-19;

x. Whether testing students as they return to UNC campuses and at regular intervals thereafter decreases the risk of further spread of COVID-19;

y. Whether UNC and its constituent institutions owe a non-delegable duty to Plaintiffs and the Sub-Classes they seek to represent to provide a place and conditions of employment free from recognized risks that may cause serious illness or death;

z. Whether UNC and its constituent institutions owe a non-delegable duty to Plaintiff and the Sub-Classes they seek to represent to provide a safe workplace;

aa. Whether UNC and its constituent institutions have a continuing responsibility to ensure that adequate safety precautions are taken to protect Plaintiffs and the Sub-Classes they seek to represent;

bb. Whether the conditions and places of employment in which Plaintiffs and the Sub-Classes they seek to represent work are free from recognized risks that may cause serious illness or death;

cc. Whether the conditions and places of employment in which Plaintiffs and the Sub-Classes they seek to represent work are safe;

dd. Whether the Plaintiffs and the Sub-Classes they seek to represent should be required to work in conditions and places of employment that are not safe;

ee. Whether the Plaintiffs and the Sub-Classes they seek to represent should be required to work in conditions and places of employment that increase their risk of becoming infected with COVID-19;

ff. Whether the substantial risk of being infected with COVID-19 at the constituent institutions constitutes an inherently dangerous activity; and

gg. Whether COVID-19 is a “recognized hazard.”

171. The Plaintiffs respectfully request this Court to issue its declaratory judgment on the foregoing and any other issues that may arise during the pendency of these proceeding.

**SECOND CLAIM FOR RELIEF**  
**(Nuisance - Violation of Private Rights)**

172. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 171 as if fully set forth herein.

173. “We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.” N.C. Const. Art. I, § 1.

174. The rights guaranteed by the Declaration of Rights in Article I of the North Carolina Constitution are clearly established and are “individual and personal rights entitled to protection against state action,” and the fundamental purpose for its adoption “was to provide citizens with protection from the State's encroachment upon these rights. Encroachment by the State is, of course, accomplished by the acts of individuals who are clothed with the authority of the State. The very purpose of the Declaration of Rights is to ensure that the violation of these rights is never permitted by anyone who might be invested under the Constitution with the powers of the State. Corum v. Univ. of N. Carolina Through Bd. of Governors, 330 N.C. 761, 782–83, 413 S.E.2d 276, 289–90 (1992).

175. “The right to work and to earn a livelihood is a property right that cannot be taken away except under the policy power of the State in the paramount public interest for reasons of health, safety, morals or public welfare.” Roller v. Allen, 245 N.C. 516, 518, 96 S.E.2d 851, 854 (1957).

176. Requiring the Plaintiffs and the Sub-Classes they seek to represent to perform any essential functions of their jobs “on-campus,” after having brought tens of thousands of students who have not been tested for COVID-19 (and will not be tested in the absence of the student “self-reporting” symptoms) to the campus environment where Plaintiffs and the Sub-Classes they seek to represent will be working, is not in the “paramount public interest for reasons of health, safety, morals or public welfare” and given the increased risk of exposure to COVID-19, substantially interferes with the Plaintiffs and the Sub-Classes they seek to represent “right to work and earn a livelihood,” as these Employees are forced to make a decision about whether they work in conditions and at a place that increases the risk of exposure to COVID-19, and therefore, their risk of becoming ill such that they cannot work, may become hospitalized, disabled or even die.



177. Further, “economic insecurity due to unemployment” has been declared to be against the public policy of this State and “a serious menace to the health, morals and welfare of the people of this State.” N.C. Gen. Stat. Ann. § 96-2. Given the limited benefits available to Employees who are exposed to COVID-19 and who cannot work, the conscious decision made by UNC and its constituent institutions to fully reopen its campuses increases, not decreases, the Plaintiff and the Sub-Classes they seek to represent “economic insecurity,” as they face the prospect of unemployment after being exposed to COVID-19 and being unable to work.

178. UNC and the named constituent institutions’ use of their campuses, as described above, involving bringing, housing, feeding and teaching tens of thousands of students to the campus environment in which Plaintiffs and the Sub-Classes they seek to represent work, under the circumstances, unreasonably invades and/or interferes with the Plaintiffs and the Sub-Classes they seek to represent Constitutional and property rights, and because of that unreasonable invasion or interference, Plaintiffs and the Sub-Classes they seek to represent will be forced to make a conscious decision to risk or forego entirely those rights, as presently, they are not being offered any conditions or places where they will perform the essential functions of their jobs on-campus that will be safe and free of the recognized risks associated with COVID-19, causing substantial injury to Plaintiffs and the Sub-Classes they seek to represent constitutionally protected property interests, and therefore constituting a nuisance. Elliott v. Muehlbach, 173 N.C. App. 709, 712, 620 S.E.2d 266, 269 (2005); *see also* McManus v. S. Ry. Co., 150 N.C. 655, 64 S.E. 766, 769 (1909) (“when the alleged nuisance would constitute a private wrong by injuring property or health, or creating personal inconvenience and annoyance, for which an action might be maintained in favor of a person injured, it is none the less actionable because the wrong is committed in a manner and under circumstances which would render the guilty party liable to indictment for a common nuisance.”)



179. The conduct of UNC and its constituent institutions is negligent, reckless, and/or ultra-hazardous and substantially injurious to the rights of the Plaintiffs and the Sub-Classes they seek to represent.

180. UNC and its constituent institutions have acted with the purpose to invade the interests of the individual Plaintiffs and Sub-Classes they seek to represent in the exercise of their Constitutional inalienable rights, including life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness, and UNC and its constituent institutions know that injury will result, or will substantially result, to the Plaintiffs and the Sub-Classes they seek to represent.

181. UNC and its constituent institutions' intentional invasion or interference with the rights of the Plaintiffs and the Sub-Classes they seek to represent Members is unreasonable, given the surroundings and conditions under which the UNC constituent institutions will be maintained; the character of the UNC constituent institution campuses; the nature, utility and social value of their operation; the nature and utility of the rights of the individual Plaintiffs and the Sub-Classes they seek to represent which will be invaded by the actions of UNC and its constituent institutions; the suitability (or better said, the unsuitability) of the locality for these campus operations in this global pandemic; the suitability of the locality for the Plaintiffs and the Sub-Classes they seek to represent to exercise their rights; and the extent, nature and frequency of the harm to their interests.

182. The nuisance will violate the private rights of the Plaintiffs and the Sub-Classes they seek to represent, and constitute a private wrong as to them by injuring their property rights (the right to work and earn a livelihood) and their health, and the use of the UNC constituent institution campuses with tens of thousands of students on them and the conditions to which Plaintiffs and the Sub-Classes they seek to represent will be exposed will be different from that of the public at large, who can choose to avoid these campuses so as to decrease their risk of exposure

to COVID-19. Plaintiffs and the Sub-Classes they seek to represent cannot make this choice. Barrier v. Troutman, 231 N.C. 47, 49-50, 55 S.E.2d 923, 925 (1949).

183. The law affords Plaintiffs and the Sub-Classes they seek to represent “remedial or preventive” redress. Id.

184. The injury that will be suffered by Plaintiffs and the Sub-Classes they seek to represent will be continuous and recurrent, each day they go to work, and any remedy at law will be either inadequate or non-existent.

185. The on-campus operations of the UNC constituent institutions, with tens of thousands of students in attendance, in the manner in which it will be conducted, is a nuisance as to the Plaintiffs and the Sub-Classes they seek to represent, and the mandatory injunctive relief sought by Plaintiffs and the Sub-Classes they seek to represent, in order to maintain the status quo, will not extend beyond what is necessary to correct the issues (“evil”) about which the Plaintiffs complain and to prevent injury to them.

**THIRD CLAIM FOR RELIEF**  
**(Injunctive Relief – Temporary Restraining Order, Preliminary and Permanent Injunction)**

186. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 185 as if fully set forth herein.

187. Pursuant to N.C.G.S. §1-485, *et. seq.* and Rule 65 of the North Carolina Rules of Civil Procedure, Plaintiffs hereby request the entry of a Temporary Restraining Order, a Preliminary Injunction, and a Permanent Injunction.

188. Plaintiffs have shown a substantial likelihood of success on the merits of their claims for Declaratory Relief and Nuisance and the requested Order that will necessarily flow therefrom.

189. Injunctions may be granted to prevent a violation of rights or to restore the Plaintiffs to rights that have already been violated. Roberts v. Madison Cty. Realtors Ass'n, Inc., 344 N.C. 394, 399, 474 S.E.2d 783, 787 (1996).

190. The injunction sought by the Plaintiffs and the Sub-Classes they seek to represent is both “prohibitory” and “mandatory.” Plaintiffs seek to prevent UNC and its constituent institutions from violating their clearly established right to a safe work place; their right to conditions and a place of work free from recognized hazards and/or dangerous activities that are likely to cause them injury or death; their constitutionally protected property rights to work and earn a livelihood, and their rights to life, liberty and the pursuit of happiness; and to forbid the continuance of any wrongful acts or the doing or some threatened or anticipated injury. Plaintiffs likewise seek an injunction that is “mandatory” given the apparent intent on the part of UNC and its constituent institutions to move forward with their plans, and one that is affirmative in character, requiring positive action involving a change of existing conditions – the doing or undoing of any acts that are necessary to protect the rights, health and safety of the Plaintiffs and the Sub-Classes they seek to represent.

191. In order to maintain the status quo and to otherwise preserve and enforce the Plaintiffs’ rights during the pendency of this action, the Plaintiffs are entitled to, and the ends of justice would be materially promoted by, the issuance of a Temporary Restraining Order, a Preliminary Mandatory and Prohibitory Injunction and a Permanent Injunction:

- a. Ordering UNC and its constituent institutions to provide conditions and a place of work to the Plaintiffs and the Sub-Classes they seek to represent that is safe;
- b. Ordering UNC and its constituent institutions to provide conditions and a place of work to the Plaintiffs and the Sub-Classes they seek to represent that is free from recognized

hazards or dangerous activities that are known or likely to cause injury, illness and/or death to the Plaintiffs and the Sub-Classes they seek to represent;

c. Enjoining and restraining UNC and its constituent institutions from interfering with Plaintiffs and the Sub-Classes they seek to represent in the exercise of their Constitutional inalienable rights, including life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness;

d. Enjoining and restraining UNC and its constituent institutions interference with the property right of Plaintiffs and the Sub-Classes they seek to represent right to work and to earn a livelihood.

192. By reason of the actions and failures, actual or threatened, on the part of UNC and its constituent institutions, the Plaintiffs and the Sub-Classes they seek to represent have suffered and will continue to suffer irreparable harm and damage and interference with their legal rights, for which they do not have an adequate remedy at law.

193. There is reasonable apprehension on the part of the Plaintiffs of immediate and irreparable loss and damage unless injunctive relief is granted, and such relief is necessary to protect the rights of the Plaintiffs.

194. Plaintiffs have shown, or can show, a substantial likelihood of prevailing on the merits of this action.

**FOURTH CLAIM FOR RELIEF**  
**(Writ of Mandamus)**

195. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 194 as if fully set forth herein.

196. The duties of the Governor of the State of North Carolina include, but are not limited to, an obligation to “take care that the laws be faithfully executed.” N.C. Const. art. III, § 5.

197. The UNC Board of Governors is empowered “to govern the constituent institutions”, and responsible for “the general determination, control, supervision, management and governance of all affairs of the constituent institutions.” Sec. 203, UNC Policy Manual.

198. As recognized by the Board of Governors (Sec. 300.2.15), “in case of a public health emergency, the Governor has broad powers to issue an emergency order to protect the public health”, including the power to “close all schools, community colleges, universities....”

199. Given that North Carolina and the rest of the United States is in a pandemic and a “communicable disease outbreak”, the UNC Board of Governors has the authority to close one or more “universities or part of a university by order of the Governor.” (Section 300.2.15 IV)

200. A UNC constituent institution “may choose to practice social distancing by use of alternate worksite or teleworking.” Id.

201. As of the date of the filing of this Complaint, neither the Governor or the Board of Governors have done anything to insure that the Plaintiffs and the Sub-Classes they seek to represent are not placed at an increased risk of exposure to COVID-19 by performing or being required to perform essential functions of their jobs on-campus where tens of thousands of students are located.

202. As of the date of the filing of this Complaint, both the Governor and the Board of Governors recognize that the Plaintiffs and the Sub-Classes they seek to represent will be at an increased risk of exposure to COVID-19 by performing or being required to perform essential functions of their jobs on-campus, and have made a conscious decision to place them at this increased risk.

203. Plaintiffs and the Sub-Classes they seek to represent, as discussed in detail in this Complaint, have a clear right to relief from the conscious decision to place the Plaintiffs and the Sub-Classes they seek to represent at an increased risk of exposure to COVID-19, as the North

Carolina Constitution guarantees each of them the right to life, liberty and the pursuit of happiness, the right to work and earn a livelihood, and therefore, the Constitutional right to be free of the increased risk of exposure to COVID-19 by performing or being required to perform essential functions of their jobs on campuses where thousands of students are located.

204. Plaintiffs and the Sub-Classes they seek to represent have no other appropriate remedy at law. Further, as discussed, the Governor or the UNC Board of Governors have done nothing to insure that Plaintiffs and the Sub-Classes they seek to represent *will be* (not just *may be*) *safe* when they perform or are required to perform essential functions of their jobs on the campuses of the UNC constituent institutions, despite the non-delegate obligation on the part of Employers in North Carolina to do so.

205. Thus, Plaintiffs seek, and are entitled to, on behalf of themselves and the Sub-Classes they seek to represent, a writ of mandamus compelling the Governor and the UNC Board of Governors to perform their official duties consistent with the law, specifically: (a) Compelling the Governor and the UNC Board of Governors to provide conditions and a place of work to the Plaintiffs and the Sub-Classes they seek to represent that are safe; (b) Compelling the Governor and the UNC Board of Governors to provide conditions and a place of work to the Plaintiffs and the Sub-Classes they seek to represent that are free from recognized hazards or dangerous activities that are known or likely to cause injury, illness and/or death to the Plaintiffs and the Sub-Classes they seek to represent; (c) Enjoining the Governor and the UNC Board of Governors from interfering with Plaintiffs and the Sub-Classes they seek to represent in the exercise of their Constitutional inalienable rights, including life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness; (d) Enjoining and restraining the Governor and the UNC Board of Governors from interfering with the property right of Plaintiffs and the Sub-Classes they seek to represent right to work and to earn a livelihood.

**MOTION FOR EXPEDITED DISCOVERY**

206. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 205 as if fully set forth herein.

207. Plaintiffs, on behalf of themselves and the Sub-Classes they seek to represent, moves this Court for an Order allowing expedited discovery, consisting of: (a) the “Zoom” depositions of each of the Chancellors for the named constituent institutions (of no longer than 1 hour each, exclusive of “cross-examination”); (b) the “Zoom” depositions of local public health directors of the Counties where the named constituent institutions are located (of no longer than 1 hour each, exclusive of “cross-examination”); and (c) the “Zoom” deposition of Dr. Mandy Cohen.

208. Good cause exists for the discovery sought by Plaintiffs on an expedited basis. *Ehrenhaus v. Baker*, 2008 NCBC LEXIS 20, at \*13, 2008 WL 4787594 (N.C.Super.Ct. Nov. 3, 2008). Plaintiffs are in need of this expedited discovery to prepare for a preliminary injunction hearing, and this motion is property considering “the entirety of the record to date and the reasonableness of the request in light of all the surrounding circumstances.” *Dimension Data N. Am., Inc. v. NetStar-I, Inc.*, 226 F.R.D. 528, 531 (E.D.N.C.2005).

209. Plaintiffs have articulated “a sufficiently colorable claim” and shown a sufficient possibility of a threatened irreparable injury “to justify imposing on the defendants and the public the extra (and sometimes substantial) costs of an expedited ... proceeding.” *Ehrenhaus*, 2008 NCBC LEXIS 20, at \*13, 2008 WL 4787594 (omission in original).

210. Plaintiffs’ depositions will be narrowly tailored to the issues in this case.

**MOTION FOR EXCEPTIONAL CASE DESIGNATION**

211. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 210 as if fully set forth herein.

212. This matter warrants exceptional case designation pursuant to Rule 2.1(a) of the General Rules of Practice. Prior to the filing of this action, counsel for the Plaintiffs has conferred with counsel for the Defendants who have each consented to the designation of this case as exceptional pursuant to Rule 2.1 of the General Rules of Practice.

213. Due to the significance of this case and the claims of Plaintiffs and the Class they seek to represent, this case requires focused judicial attention and oversight.

214. Plaintiffs are informed and believe and therefore allege that other cases involving legal issues that have arisen during this pandemic have been designated as exceptional and assigned to the Honorable James L. Gale, and Plaintiffs move for exceptional case designation and assignment to Judge Gale to promote judicial efficiency and avoid the dangers of inconsistent rulings. Prior to the filing of this action, counsel for the Plaintiffs has conferred with counsel for the Defendants who have each consented to this matter being assigned to Judge Gale.

**WHEREFORE**, Plaintiffs pray the Court as follows:

1. That this case be designated as an exceptional case and assigned to the Honorable James L. Gale for further proceedings.
2. That the Court certify this action as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure.
3. That this Court issue a Declaratory Judgment on the issues set forth in the First Claim for Relief and on such other issues as may arise during the pendency of this matter;
4. That on Plaintiffs' Second and Third Claims for Relief, this Court issue a Temporary Restraining Order, Preliminary and Permanent Injunction, as set forth above.
5. That on Plaintiffs' Fourth Claim for Relief, this Court issue a writ of mandamus to the Governor and the UNC Board of Governors;



6. That this verified Complaint be accepted as an affidavit in support of the relief prayed for herein;

7. That the Plaintiffs' Motion for Expedited Discovery be allowed;

8. That the costs of this action, including the Plaintiffs' reasonable attorneys fees, be taxed by the Court against the Defendant;

9. For trial by jury on all issues so triable; and

10. For such other and further relief as to the Court seems just and proper.

This the 10th day of August, 2020.

**SHIPMAN & WRIGHT, L.L.P.**

  
**GARY K. SHIPMAN**  
N.C. Bar No.: 9464

**JAMES T. MOORE**  
N.C. Bar. No: 38377  
575 Military Cutoff Rd., Suite 106  
Wilmington, NC 28405  
Tel.: (910) 762-1990  
Fax: (910) 762-6752

STATE OF NORTH CAROLINA

COUNTY OF orange  
(County of Residence)

Germany alston, under penalty of perjury, says that he/she has ready the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 7 day of August, 2020.

Germany alston

Name Printed

DocuSigned by:



Signature

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STATE OF NORTH CAROLINA

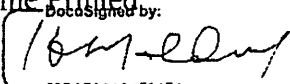
COUNTY OF Watauga  
(County of Residence)

Clark Maddux, under penalty of perjury, says that he/she has ready the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 7<sup>th</sup> day of August, 2020.

Clark Maddux

Name Printed



Signature

STATE OF NORTH CAROLINA

COUNTY OF watauga  
(County of Residence)

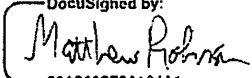
Matthew Robinson, under penalty of perjury, says that he/she has read the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 10<sup>th</sup> day of August, 2020.

Matthew Robinson

Name Printed

Signature

DocuSigned by:  
  
63AB462F06A84A1...

STATE OF NORTH CAROLINA

COUNTY OF Ashe  
(County of Residence)

David Travis, under penalty of perjury, says that he/she has read the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 8<sup>th</sup> day of August, 2020.

David Travis

Name Printed

DocuSigned by:

*David Travis*

8A2140AC07344F8

Signature

STATE OF NORTH CAROLINA

COUNTY OF Watauga  
(County of Residence)

Shaun Farthing

\_\_\_\_\_, under penalty of perjury, says that he/she has read the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 8<sup>th</sup> day of August, 2020.

Shaun Farthing

Name Printed

DocuSigned by:

*Shaun L. Farthing*

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Signature

STATE OF NORTH CAROLINA

COUNTY OF Buncombe  
(County of Residence)

Duane H. Davis

\_\_\_\_\_, under penalty of perjury, says that he/she has read the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 8<sup>th</sup> day of August, 2020.

Duane H. Davis

Name Printed

DocuSigned by:

*Duane H. Davis*

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Signature

STATE OF NORTH CAROLINA

COUNTY OF orange

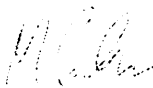
Michael Palm

\_\_\_\_\_, under penalty of perjury, says that he/she has ready the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 7th day of August, 2020.

Michael Palm

Name Printed



Signature



STATE OF NORTH CAROLINA

COUNTY OF Orange

Zofia Knorek, under penalty of perjury, says that he/she has ready the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 7<sup>th</sup> day of August, 2020.

Zofia Knorek

Name Printed

Zofia Knorek

Signature

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg  
(County of Residence)

John Cox, under penalty of perjury, says that he/she has ready the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 8<sup>th</sup> day of August, 2020.

John Cox

Name Printed

DocuSigned by:

*John Cox*

Signature

STATE OF NORTH CAROLINA

COUNTY OF New Hanover  
(County of Residence)

wendy Brenner, under penalty of perjury, says that he/she has ready the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 7<sup>th</sup> day of August, 2020.

wendy Brenner  
Name Printed

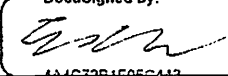
DocuSigned by:  
Wendy Brenner  
Signature 3CD4A5653CF4E8

STATE OF NORTH CAROLINA

COUNTY OF Durham

Jeff Eaddy, under penalty of perjury, says that he/she has ready the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 8/7/2020 day of August, 2020.

Jeff Eaddy  
Name Printed  
DocuSigned by:  
  
4A4G72B1F05C443...  
Signature

STATE OF NORTH CAROLINA

COUNTY OF Durham  
(County of Residence)

Rachelle Gold, under penalty of perjury, says that he/she has ready the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 9<sup>th</sup> day of August, 2020.

Rachelle Gold

Name Printed

DocuSigned by:

*Rachelle Gold*

Signature

3128AEF00976427...

STATE OF NORTH CAROLINA

COUNTY OF wake  
(County of Residence)

John Hedlund

\_\_\_\_\_, under penalty of perjury, says that he/she has ready the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 7th day of August, 2020.

John Hedlund

Name Printed

DocuSigned by:

John Hedlund

Signature 890FB275AE184DD...

STATE OF NORTH CAROLINA

COUNTY OF Pitt

Beth Bee under penalty of perjury, says that he/she has ready the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 8<sup>th</sup> day of August, 2020.

Beth Bee

Name Printed

DocuSigned by:

*Beth Bee*

374E31C82A404FD  
Signature

STATE OF NORTH CAROLINA

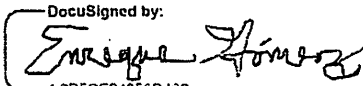
COUNTY OF Pitt  
(County of Residence)

Enrique Gomez, under penalty of perjury, says that he/she has read the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 8<sup>th</sup> day of August, 2020.

Enrique Gomez

Name Printed

DocuSigned by:  
  
ACB5CE24056D463

Signature



STATE OF NORTH CAROLINA

COUNTY OF Jackson

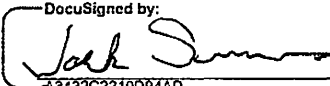
Jack Summers, under penalty of perjury, says that he/she has ready the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 8th day of August, 2020.

Jack Summers

Name Printed

DocuSigned by:

A handwritten signature in black ink, appearing to read "Jack Summers", is written over a horizontal line.

Signature

A2432C2210084AD...

STATE OF NORTH CAROLINA

COUNTY OF Durham  
(County of Residence)

Jim Pearce

\_\_\_\_\_, under penalty of perjury, says that he/she has read the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things, he/she believes them to be true.

This the 10<sup>th</sup> day of August, 2020.

Jim Pearce

Name Printed

DocuSigned by:

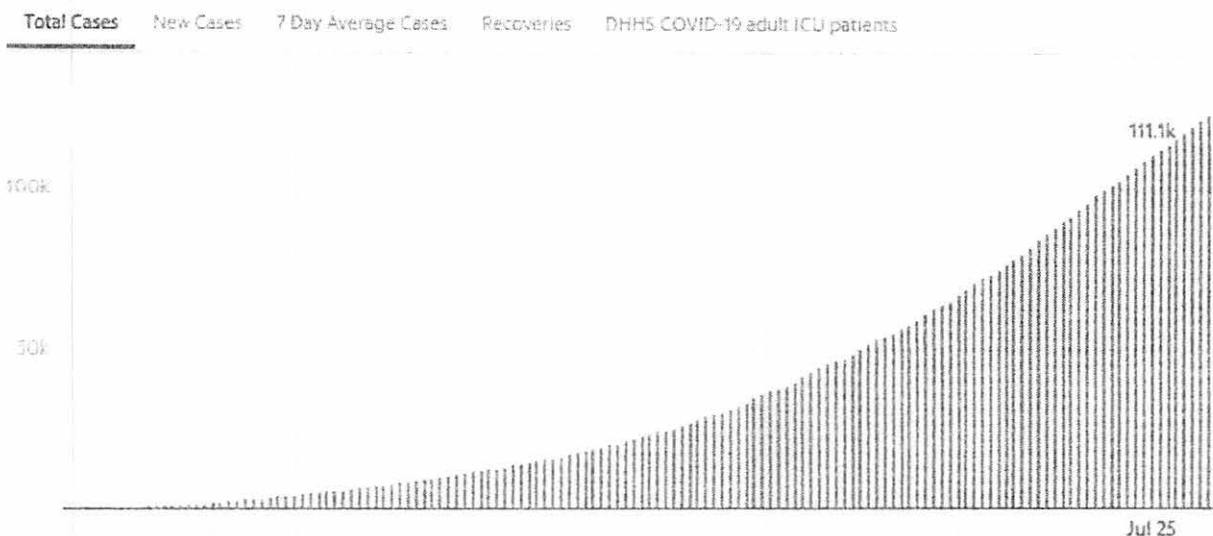
*Jim Pearce*

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Signature

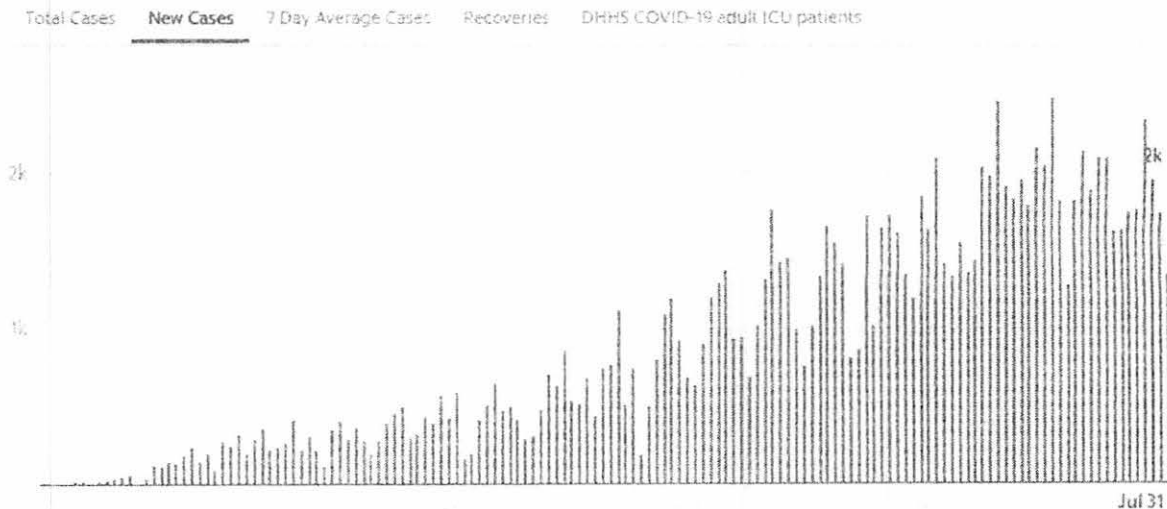
## CORONAVIRUS CASES BY DAY

"Total Cases" shows the cumulative number of cases over time. "New Cases" shows the number of new cases by day. "7-Day Rolling Average" shows a 7-day average of new cases in order to account for the lag-time of how cases are reported by county health departments to the state. We flatten the curve by reducing the number of new cases per day.



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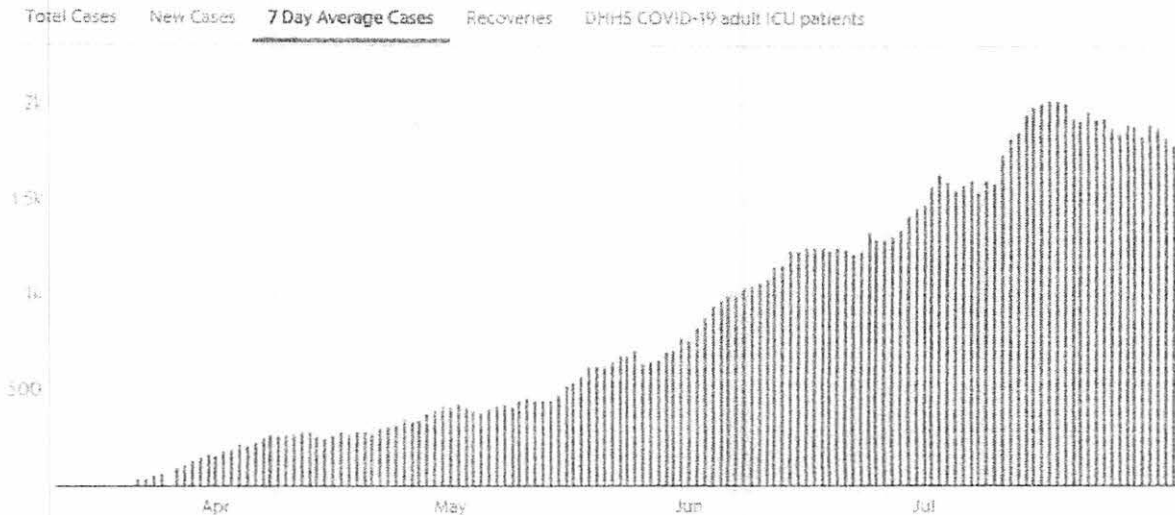


Data is from the NC DHHS daily updates and does not reflect the total case count as reported throughout the day by The News & Observer which compiles case counts directly from county health departments. Not all cases of COVID-19 are tested, so this does not represent the total number of people who have or had the virus. The number of recovered patients is reported each Monday by DHHS.



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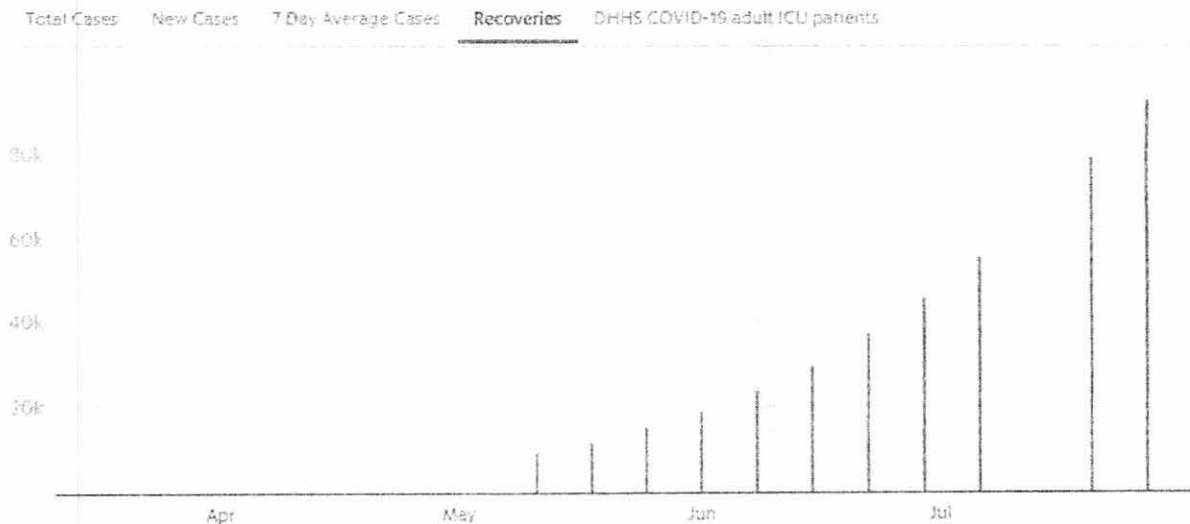


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Chart: David Raynor • Get the data

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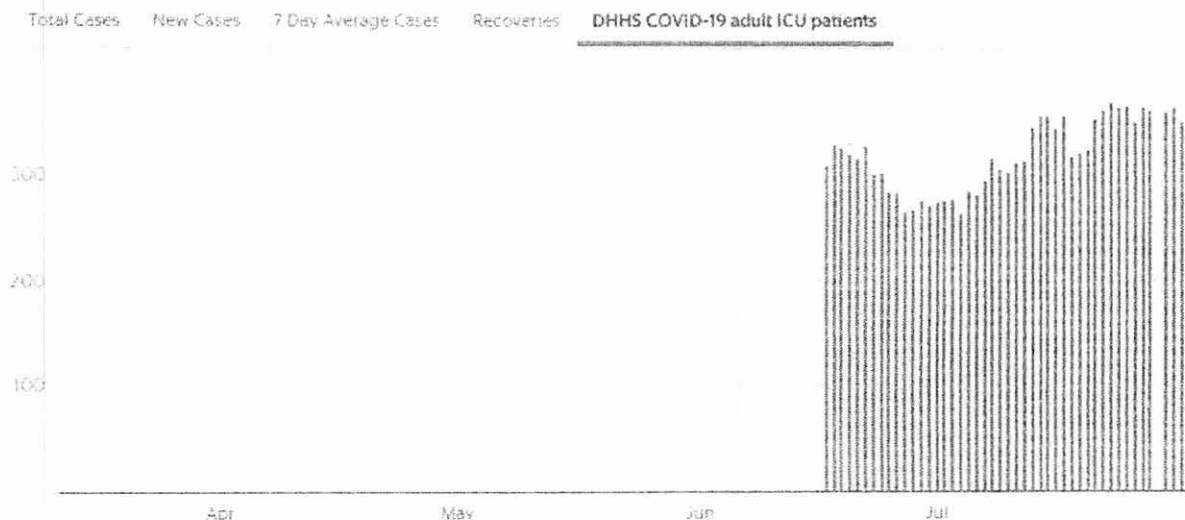
EXHIBIT

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Chart: David Raynor - Get the data

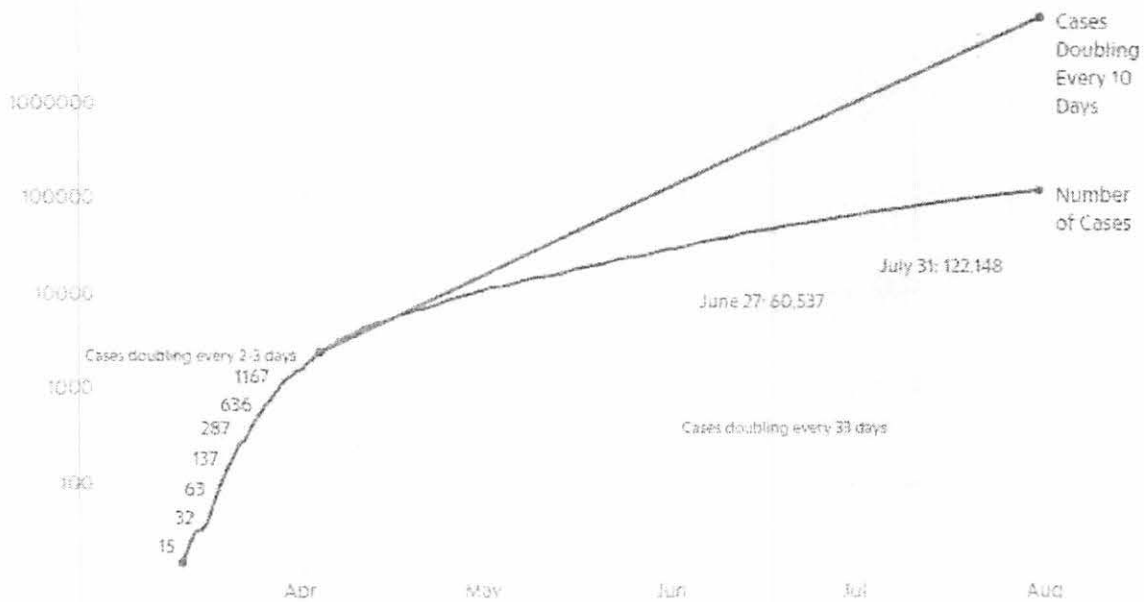
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## THE PACE OF CORONAVIRUS CASES IN NC

This chart shows the number of positive cases doubling every 2 to 3 days in the first three weeks since the first COVID-19 case was confirmed in NC. As of July 31 the time for the number of cases doubling is about 33 days. We flatten the curve by reducing the number of new cases per day. This reduction in the slope flattens the curve with the impact of lengthening the number of days to double



The chart is plotted on a logarithmic scale, which shows exponential growth. Not all cases of COVID-19 are tested, so this does not represent the total number of people who have or had the virus.

Chart: David Raynor • Source: NC Department of Health and Human Services • Get the data



## NC CORONAVIRUS DEATHS AND HOSPITALIZATIONS

NC DHHS reports the number of patients currently hospitalized due to the coronavirus each day. The state did not start regularly reporting these figures until March 27. The number of deaths per day represent total deaths reported by DHHS as of that day. It is not the date the death actually occurred.

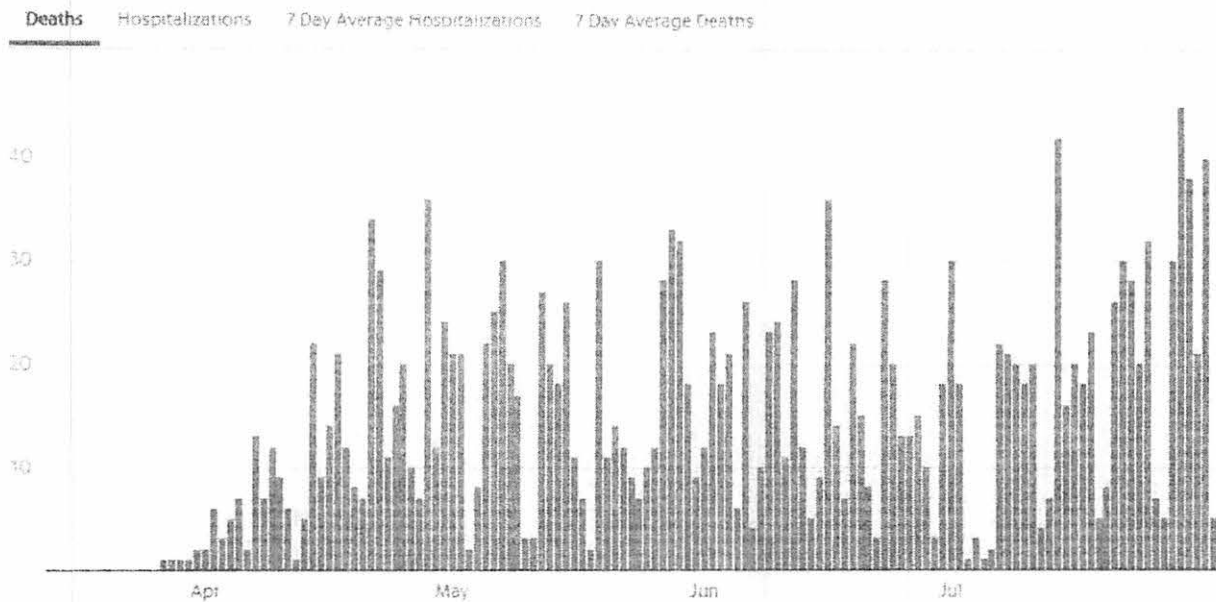


Chart: David Raynor • Source: NC Department of Health and Human Services • Get the data

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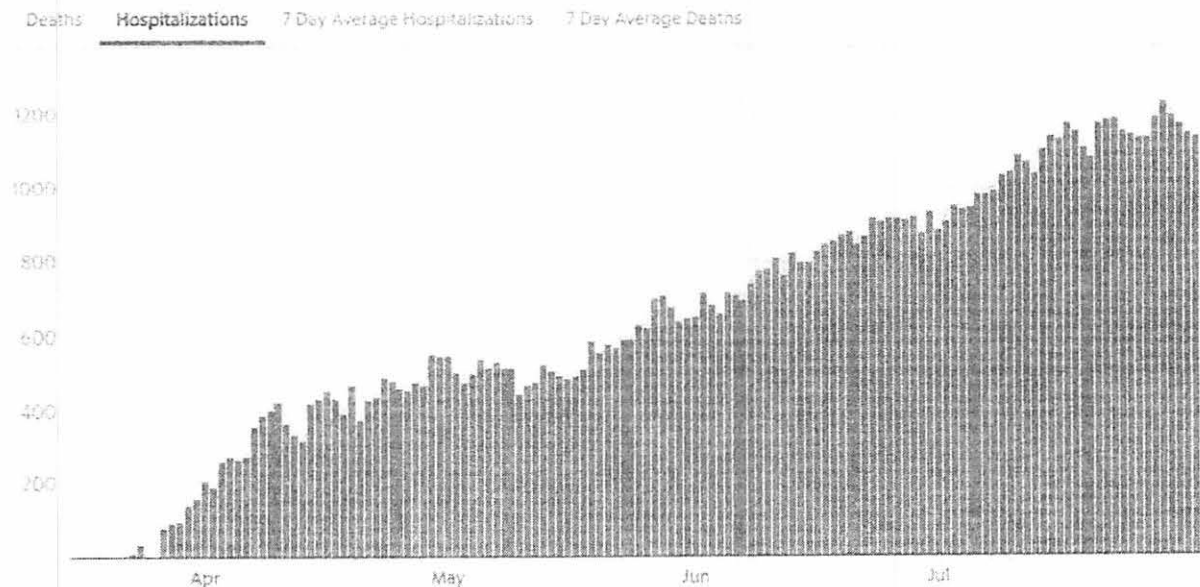
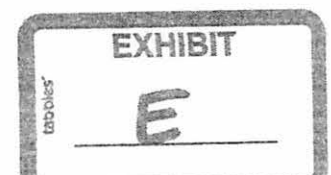


Chart: David Raynor • Source: NC Department of Health and Human Services • Get the data



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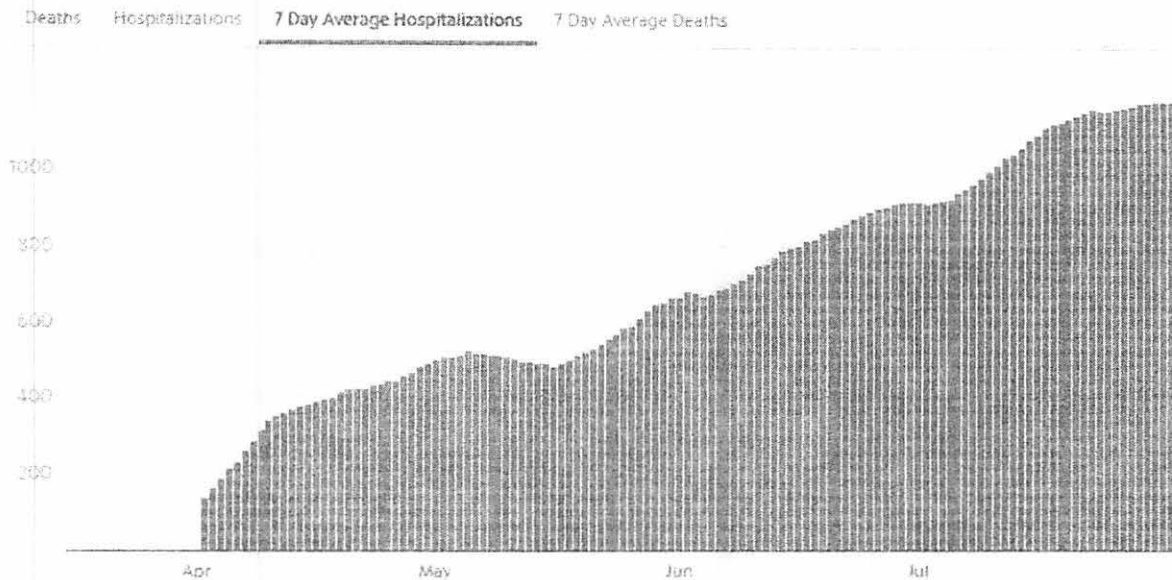


Chart: David Raynor • Source: NC Department of Health and Human Services • Get the data

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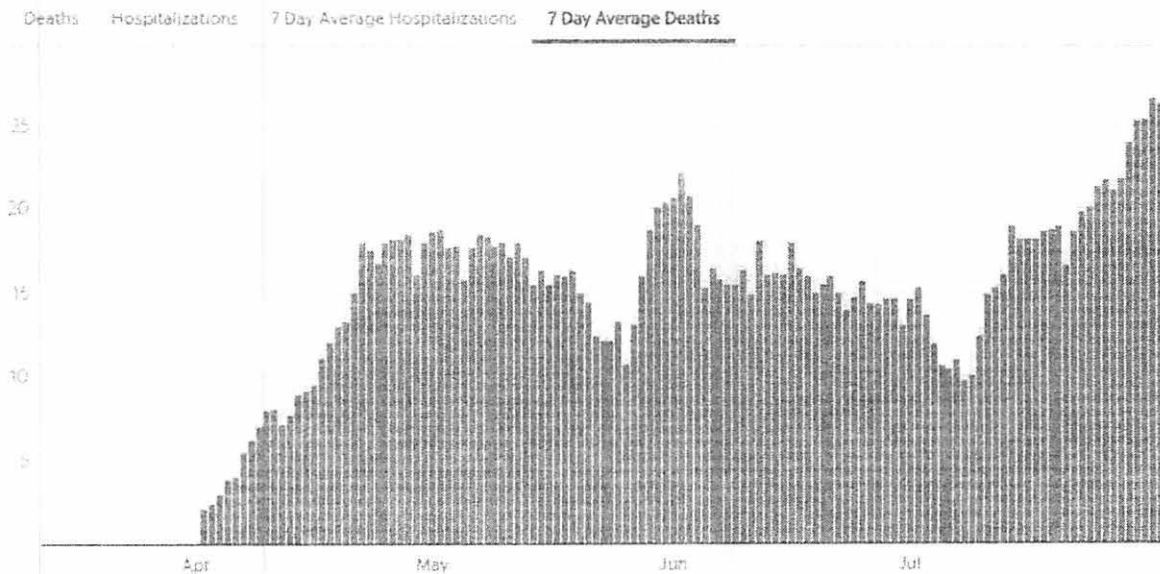


Chart: David Raynor • Source: NC Department of Health and Human Services • Get the data

EXHIBIT

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# COVID-19 RETURN TO ON-SITE WORK GUIDANCE: Faculty and Staff



THE UNIVERSITY OF  
NORTH CAROLINA SYSTEM

VERSION 1.0

MAY 28, 2020

tabbles

EXHIBIT

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## GUIDING PRINCIPLES

The University of North Carolina System and its constituent institutions are

working collectively with employees to provide a safe workplace in light of the public health concerns surrounding COVID-19. Faculty and staff must be protected, trained, and adequately prepared by the University to safely carry out their work assignments. In addition, all members of the University community have a collective responsibility for the health and safety of their fellow community members, including students, faculty, staff, and visitors.

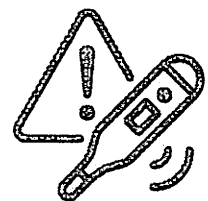
Each constituent institution's return-to-on-site operations will be aligned and consistent with guidance from local, state and federal public health authorities, as well as applicable orders and regulations from the governor and relevant federal agencies, such as the Occupational Safety and Health Administration (OSHA) and the U.S. Equal Employment Opportunity Commission (EEOC).

At a minimum, each constituent institution is expected to follow the COVID-19 monitoring, containment, and response protocols established and updated by the Centers for Disease Control and Prevention (CDC) for colleges and universities. These protocols can be found at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-ihe-response.html>.

***Given the evolving nature of both our understanding of the virus that causes COVID-19 and the recommended guidance from public health and other governmental bodies, please understand that University's guidance may need to be updated periodically to respond to continuing developments.***

## RETURN TO THE WORKSITE

### WORKPLACE EXPECTATIONS:



For your safety and those of your colleagues, all UNC System employees are expected to comply fully with the COVID-19-related policies and protocols announced by your home institution with respect to returning to on-site work. **While you may be empowered to make individual choices on personal protective measures outside of the workplace, such measures are not discretionary when the University formally requires them in the workplace. A failure to comply with such measures could result in disciplinary action or other corrective measures.**

Students, visitors, contractors, and others will also be required to follow all institutional and local health protocols while on site to protect the safety of the entire community.

### PHASED RETURN TO ON-SITE OPERATIONS:

The leadership of each constituent institution of the UNC System will make final decisions about who will return to on-site work and when. The UNC System recommends an incremental and phased approach to the return to on-site operations, based on the State's three-phased reopening plan. Each institution will take reasonable measures to ensure the health and safety of faculty and staff, as well as the broader University community. Each institution will keep faculty and staff informed of changes to workplace expectations, the status of the state-wide reopening plan as it applies to the institution, and any related health and safety requirements.

Each institution will consider gradually expanding on-site work based on the following factors:

- ability to control and manage conditions in specific work environments;
- feasibility of remote work as opposed to the need to perform essential functions on site at a University worksite;
- need for an employee to access on-site resources, such as equipment or technology;
- individual employee health risks and/or the risks to an employee's immediate family members;
- availability of face coverings, hand sanitizer, and other materials designed to promote hygiene
- availability of any personal protective equipment (PPE) that might be required for some unique positions; and
- COVID-19 testing and monitoring capabilities.

All decisions on return to on-site operations, once approved, will be communicated through the employee's direct supervisor, the institution's HR office, and/or other designated University management. This may vary from institution to institution, but there should be consistency in how such communications are accomplished to assure comprehensive understanding and clarity of decision-making authority.

The need to reduce the number of people on-site to maintain appropriate social distancing requirements will continue for the foreseeable future. Workgroups that can continue to effectively work remotely will likely continue to do so, at least until Phase 3 of the State's reopening plan and potentially beyond for certain high-risk individuals (as defined by the CDC).

Each institution's return to on-site work measures should consider how faculty and staff would maximize remote instruction and telework, should it become necessary. For those jobs and functions that are not conducive to telework, the institution should consider how to help employees minimize exposure and contact while they perform essential job requirements, including providing face coverings and related training, as well as any PPE that might be required for some positions.

Specifically, each institution is responsible for determining optimum and reasonable measures to facilitate the return-to-on-site work process. These institutional measures are expected to include:

- Use of face coverings and, in some circumstances, PPE
- Social distancing
- Continuous facilities cleaning and disinfection
- Reasonable access control for institution visitors other than faculty, staff and students
- COVID-19 Symptom screening for faculty, staff, students, and others

**For employees, none of these measures is discretionary when required by the institution, unless an employee receives a specific accommodation through the Americans with Disabilities Act (ADA) accommodation process.**

As on-site staffing increases and operations expand, each institution will closely monitor and assess the potential spread of the COVID-19 virus. Institutions will continuously adapt policies and protocols to mitigate any suspected or confirmed virus spread. **Testing and monitoring will be a critical part of assessing the impact of increased staffing. If localized outbreaks emerge, tighter restrictions and reduced on-site staffing may need to be implemented again, potentially on very short notice.**



The timing and specifics of each phase of expanded on-site work are highly contingent on the progression of COVID-19 within the State of North Carolina and your institution's immediate surrounding area, as well as continued official public health guidance.

Through the end of the State's Phase 2, employees who are not currently designated as mandatory on-site employees should continue to work remotely to the extent practicable. Institutions should provide flexibility so that high-risk employees (as defined by the CDC), can avoid returning to on-site work during this period. (See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.) Employees who self-identify as high risk will be subject to a formal request process instituted by the institution that may include the requirement to provide supporting medical documentation.

**Management may require employees whose on-site presence is deemed essential to operations or whose job duties cannot be performed remotely to return to on-site work, if these employees are not categorized as high-risk per CDC guidelines.**

Management may also either require and/or permit certain employees to work on-site if they need access to particular equipment, technology, internet connectivity, etc. to perform the essential functions of their job and do not otherwise have such access at their residence.

Guidance for the State's Phase 3 reopening plan will depend heavily on specific circumstances present with respect to COVID-19 spread within the State and within each institution's local community at that time. Each constituent institution should continue a gradual and controlled return of employees to on-site operations, as conditions permit.

## **STAFFING OPTIONS:**

As employees gradually begin to return to the worksite, institutions may continue to use any of the following options, as permitted by management, to maintain required social distancing measures and reduce population density within buildings and workspaces.

**Remote Work:** Those who can work remotely to fulfill a portion or all of their work responsibilities may continue to do so. This will reduce the number of individuals on site and the potential spread of the COVID-19 virus. These arrangements, which should be approved by the immediate supervisor, can be done on a full or partial day/week schedule as appropriate.

**Alternating Schedules:** In order to limit the number of individuals and interactions among those on site, departments should schedule partial staffing on alternating schedules to the extent possible. Such schedules will help enable social distancing, especially in areas with large common workspaces.

**Staggered Reporting/Departing:** The beginning and end of the workday typically bring many people together at common entry/exit points of buildings. Staggering reporting and departure times by at least 30 minutes, where possible, will reduce traffic in common areas and help meet social distancing requirements.

## **SYMPTOM MONITORING REQUIREMENT:**

Any employee who has been instructed to return to the workplace must conduct symptom monitoring every day before reporting to work. An employee must be free of ANY symptoms potentially related to COVID-19 or have had evaluation and clearance by a licensed healthcare provider to be eligible to report to work.

**Employees who have had direct contact with a COVID-19 patient or who are otherwise at high risk of exposure should not return to on-site work until they have completed the recommended self-quarantine.**

Each institution will implement measures designed to confirm employee-self screening and/or equip qualified staff to perform screening procedures.

At this time, COVID-19 symptoms include the following:

- Cough
- Shortness of breath or difficulty breathing
- Fever
- Chills
- Muscle pain
- Sore throat
- GI symptoms (e.g, nausea, vomiting, or diarrhea)
- New loss of taste or smell

This list of possible symptoms is not comprehensive.

## **IF SYMPTOMATIC:**

If you have any one or more of these symptoms or have been exposed to COVID-19, you must follow your institution's guidelines for reporting and assessment of symptoms and potential COVID-19 testing, which will align with CDC guidelines. You should wear a face covering to avoid possibly transmitting the virus to others. You should self-isolate until CDC guidelines allow you to return to work. **If you have any concerns that a colleague may be exhibiting COVID-19 symptoms, please reach out to your direct supervisor.**

According to the CDC, individuals with certain underlying conditions may have a higher risk for COVID-19 infection. Those conditions may include:

- Older adults (aged 65 years and older)
- People who live in a nursing home or long-term care facility
- Asthma (moderate-to-severe)
- Chronic lung disease
- Diabetes
- Serious heart conditions
- Chronic kidney disease being treated with dialysis
- Severe obesity
- Being immunocompromised

**Employees who have been instructed to return to work on site and have concerns about doing so may request a flexible work arrangement from their direct supervisor. If those concerns are related to an underlying health condition, the employee may be entitled to a reasonable accommodation, depending on the employee's particular circumstances.**

Prior to returning to the workplace, any employee who has questions or concerns should contact their direct supervisor or the appropriate designated institutional office, such as HR, employee health, health and safety, etc. Each institution will designate specific points of contact who can address employee matters related to COVID-19.

## HEALTH & SAFETY GUIDANCE

### PERSONAL SAFETY PRACTICES



When leaving your home, and especially when returning to your workplace, UNC System employees are strongly encouraged to follow the "Know your W's" guidance from the North Carolina Department of Health and Human Services: <https://covid19.ncdhhs.gov/materials-resources/know-your-ws-wear-wait-wash>.

#### KNOW YOUR W'S

- Wear a cloth face covering if you will be with other people
- Wait 6 feet apart. Avoid close contact.
- Wash your hands often with soap and water for at least 20 seconds or use hand sanitizer.

**Handwashing:** Wash your hands often with soap and water for at least 20 seconds, especially after you have been in a public place, or after blowing your nose, coughing, sneezing, or touching your face. If soap and water are not readily available, use a hand sanitizer that contains at least 60% alcohol. Cover all surfaces of your hands and rub them together until they feel dry. Avoid touching your eyes, nose, and mouth, and wash your hands after touching your face.

**Social Distancing:** Keeping space between you and others is one of the best tools we have to avoid being exposed to the COVID-19 virus and slowing its spread. Since people can spread the virus before they know they are sick, it is important to stay away from others when possible, even if you have no symptoms. Social distancing is important for everyone, especially to those who are at higher risk of getting very sick. Employees must follow these social distancing practices:

- Stay at least 6 feet (about 2 arms' length) from other people at all times
- Do not gather in groups of 10 or more
- Stay out of crowded places and avoid mass gatherings

**Face Masks/Cloth Face Coverings:** Each institution will provide guidance to faculty and staff on any requirement for masks/face coverings, especially with regard to common workspaces, meeting rooms, classrooms, etc. In accordance with DHHS and CDC guidance, appropriate use of face masks or coverings is critical in minimizing risks to your colleagues; wearing one protects those around you, not yourself. The mask or cloth face covering is not a substitute for social distancing.

Face coverings will be provided by your institution, if needed. Disposable masks may only be worn for one day and then must be properly discarded.

You may also wear a self-supplied cloth face covering. Cloth face coverings must only be worn for one day at a time and must be properly laundered between each use. Having a week's supply of cloth face coverings can help reduce the need for daily laundering.

Employees whose jobs require the use of PPE, including respirators, will do so in accordance with instructions from supervisors.

The following chart discusses various face covering/mask options.

### Use and care of face coverings:



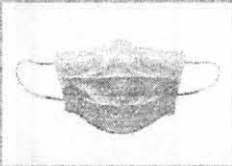

#### Putting on the face covering/disposable mask

- Wash hands or use hand sanitizer prior to handling the face covering/disposable mask.
- Ensure the face covering/disposable mask fits over the nose and under the chin.
- Situate the face covering/disposable mask properly with nose wire snug against the nose (where applicable).

- Tie straps behind the head and neck or loop around the ears.
- Throughout the process: Avoid touching the front of the face covering/disposable mask.

#### Taking off the face covering/disposable mask

- Do not touch your eyes, nose, or mouth when removing the face covering/disposable mask.
- When removing the face covering/disposable mask, loop your finger into the strap and pull the strap away from the ear, or untie the straps.
- Wash hands immediately after removing.

TYPE AND INTENDED USE OF FACE COVERINGS/MASKS				
TYPE	CLOTH FACE COVERING	DISPOSABLE MASK	MEDICAL-GRADE SURGICAL MASK	N95 RESPIRATOR
				
<b>Description</b>	<ul style="list-style-type: none"> <li>• Home-made or commercially manufactured face coverings that are washable and help contain wearer's respiratory emissions</li> </ul>	<ul style="list-style-type: none"> <li>• Commercially manufactured masks that help contain wearer's respiratory emissions</li> </ul>	<ul style="list-style-type: none"> <li>• FDA-approved masks to protect the wearer from large droplets and splashes; helps contain wearer's respiratory emissions</li> </ul>	<ul style="list-style-type: none"> <li>• Provide effective respiratory protection from airborne particles and aerosols; helps contain wearer's respiratory emissions</li> </ul>
<b>Intended Use</b>	<ul style="list-style-type: none"> <li>• Required for campus community use in non-healthcare settings (office spaces, general research/work settings, shops, community areas where 6' social distancing cannot be consistently maintained. Cloth face coverings and disposable masks must be replaced daily. (While likely necessary for ingress and egress, not required when working alone in an office).</li> </ul>		<ul style="list-style-type: none"> <li>• These masks are reserved for healthcare workers and other approved areas with task-specific hazards determined by OESO.</li> </ul>	



#### *Care, storage, and laundering*

- Keep face coverings/disposable masks stored in a paper bag when not in use.
- Cloth face coverings may not be used more than one day at a time. Cloth face coverings should be properly laundered, with regular clothing detergent, before first use and after each shift. Cloth face coverings should be replaced immediately if they are soiled, damaged (e.g. ripped, punctured), or visibly contaminated.
- Disposable masks must not be used for more than one day and should be placed in the trash after your shift or if it is soiled, damaged (e.g., stretched ear loops, torn or punctured material), or visibly contaminated.

**Gloves:** Healthcare workers and others in designated areas should use gloves as part of PPE (personal protective equipment), but according to the CDC, gloves are not necessary for general use and do not replace good hand hygiene. Washing your hands often is considered the best practice for common everyday tasks.

**Goggles/Face Shields:** Staff do not need to wear goggles or face shields as part of general activity on campus. Maintaining good hand hygiene and avoiding touching your face are generally sufficient for non-healthcare environments.

**Cleaning/Disinfection:** Housekeeping teams will clean office and workspaces based on CDC guidelines for disinfection to avoid the spread of the COVID-19 virus. Facilities management groups will also maintain hand-sanitizer stations at major building entrances, elevator stops, and high-traffic areas. Mechanical, electrical, plumbing, and monitoring systems will be assessed and readied prior to reopening of buildings.

Building occupants should also wipe down commonly used surfaces before and after use with products that meet the U.S. Environment Protection Agency's (EPA) criteria for use against COVID-19 and are appropriate for the surface. This includes any shared-space location or equipment (e.g. copiers, printers, computers, A/V and other electrical equipment, coffee makers, desks and tables, light switches, doorknobs, etc.).

The institution will also follow NCDHHS guidelines for environmental cleaning after a potential exposure to COVID-19 at a worksite.

**Coughing/Sneezing Hygiene:** If you are in a private setting and are not wearing your face covering, remember to always cover your mouth and nose with a tissue or the inside of your elbow when you cough or sneeze. Then throw used tissues in the trash. Immediately wash your hands with soap and water for at least 20 seconds. If soap and water are not readily available, clean your hands with a hand sanitizer that contains at least 60% alcohol.

#### **GUIDANCE FOR SPECIFIC WORKPLACE SCENARIOS**

It is our shared responsibility to practice social distancing, cleanliness, hygiene, and other safety measures so that we can contain the spread of COVID-19.

**Public Transportation:** If you must take public transportation, wear a mask before boarding and avoid touching surfaces with your hands. Upon disembarking, wash your hands or use alcohol-based hand sanitizers as soon as possible and before removing your mask.

**Working in Office Environments:** Employees should follow any institutional measures to physically separate and increase distance between individuals, which may include:

- Visual cues, such as floor decals, colored tape, or signs, that indicate where individuals should stand while waiting in line;
- One-way directional signage for large open workspaces with multiple through-ways to increase distance between individuals moving through the space; and
- Designated stairways for up or down traffic if building space allows.

No more than one person should be in the same room or office unless the occupants can maintain the required six feet of distancing. Whenever more than one person is in a room, each individual should wear a mask or face covering at all times. A mask or face covering is not required when individuals are working alone in a confined office space (this does not include partitioned work areas in a large open environment).

Masks/face coverings should be worn in reception/receiving areas, in any workplace facility where others are present, including narrow hallways where others travel, and in break rooms, conference rooms, and other meeting locations.

**Using Restrooms:** Use of restrooms should be limited based on size to ensure at least 6 feet distance between individuals. Wash your hands thoroughly afterward to reduce the potential transmission of the virus.

**Using Elevators:** No more than one person may enter an elevator at a time, so please use the stairs whenever possible. If you are using the elevator, wear your mask or face covering and avoid touching the elevator buttons with your exposed hand/fingers, if possible. Wash your hands or use alcohol-based hand sanitizers upon departing the elevator.

**Meetings:** Convening in groups increases the risk of viral transmission. Where feasible, meetings should be held in whole or part using the extensive range of available online collaboration tools (e.g. Zoom, WebEx, Microsoft Teams, telephone, etc.).

In-person meetings are limited to the restrictions of local, state, and federal orders and should not exceed 50 percent of a room's capacity, assuming individuals can still maintain 6 feet of separation for social distancing requirements. All attendees should wear a mask or face covering while sharing space in a common room.

During your time on site, you are encouraged to communicate with your colleagues and supervisors as needed by email, instant message, telephone, or other available technology to minimize face-to-face interactions.

**Meals:** Before and after eating, you should wash your hands thoroughly to reduce the potential transmission of the virus.

If dining at work, you should wear your mask or face covering until you are ready to eat and then replace it afterward. Individuals should not sit facing one another. Staff are encouraged to take food back to their office area or eat outside, if this is reasonable for your situation.

If you are eating in your work environment (break room, office, etc.), maintain 6 feet distance between you and others. Individuals should not sit facing one another. Only remove your mask or face covering in order to eat, then put it back on. Wipe all surfaces in common areas (tables, refrigerator handles, coffee machines, etc.) after using.

**Laboratory Work:** Your institution may have specific criteria developed for faculty and staff working in laboratory environments.

**Entrances/Exits:** Entry to buildings will be regulated and monitored to the extent practicable. Maintaining social distance at this time is the most important courtesy we can extend to our colleagues. At secure access buildings that require an employee ID card/badge for entry, you should not hold or prop open exterior doors for any other person. It is possible that some buildings may be subject to more rigorous access control during the COVID-19 event.

Once you have been instructed to return to the workplace, you should report to and depart from work through the designated building access and at the designated time. This will limit the number of people entering and exiting buildings at any one time.

Building occupants are expected to follow signage designed to help manage traffic flow through building entrances, exits, elevator usage, and similar common use areas.

Violation of these guidelines may result in the immediate revocation of building access privileges, as well as potential disciplinary or other corrective action.

**Travel:** Follow any institutional restrictions or limitations on travel to off-site meetings/conferences and travel to and from other worksites at your institution.

## **MENTAL AND EMOTIONAL WELL-BEING**

Managing COVID-19 and adapting to significant changes in the work environment can be a stressful experience for everyone and may evoke emotions that are unfamiliar or difficult to work through. Each employee will handle the transition back to the worksite differently. The University is committed to supporting your overall health and well-being during this stressful time. For assistance with any mental or emotional health issues, please remember that your institution's Employee Assistance Program (EAP) is available to all employees.

The EAP is an employer-sponsored benefit program that offers support and resources to address personal or work-related challenges and concerns. Best of all, it is free for you and members of your household and is completely confidential.

Learn more about the EAP and how to contact them on the [UNC System HR website](#).

# COVID-19 RETURN TO ON-SITE WORK GUIDANCE: Faculty and Staff

The University of North Carolina • System Office • Chapel Hill, North Carolina



**THE UNIVERSITY OF  
NORTH CAROLINA SYSTEM**



ORANGE COUNTY  
HEALTH DEPARTMENT

*Improving health. Inspiring change.*

Quintana Stewart, MPA - Health Director

**MEMORANDUM**

**TO:** Chancellor Kevin M. Guskiewicz  
Provost Bob Blouin  
Vice Chancellor George Battle

**FROM:** Quintana Stewart, MPA, Health Director

**CC:** Erica Pettigrew, MD, JD, MPH  
Medical Director, Orange County Health Department  
Medical Director, Occupational Health at UNC Health Care  
Assistant Professor, University of North Carolina

**RE:** Public Health Recommendations for Fall 2020 Reopening Plans

**DATE:** July 29, 2020

The Orange County Health Department (OCHD) appreciates the partnership and cooperation from the University of North Carolina Chapel Hill (UNC-CH) during our response and planning efforts to COVID-19. As you know this has been an unprecedented Pandemic and the virus has not spread in the manner predicted earlier by several public health experts. This has required everyone to make multiple adjustments to our plans to ensure the safety and well-being of our respective communities.

**Current Situation in Orange County, NC**

To date, Orange County has been home of approximately 1,241 lab confirmed positive COVID-19 cases and 45 deaths. Over the past month we've watched our daily case count nearly double with record highs in early July of 38 new cases per day. We've also seen an increase in cases for those in the 18-24 age group (22%) and the 24-49 age group (37%). While the data reports that our local cases appear to be stabilizing the last couple of weeks, we at public health know this is not a totally accurate picture of what is happening in our community. As the State moved into Phase 2 and things began to open up, we saw an increase in our cases. As students have begun to return to campus prior to the official start of the Fall Semester we've experienced a small fraction of what we will see if the campus fully reopens and all the students return for in-person class. In the last 4 weeks we've seen positive COVID clusters among UNC staff and athletic teams. We've experienced the increased activity and gathering on Franklin Street that resulted in clusters that visited a couple of local restaurant/bar establishments. We've seen the off campus parties and gatherings at Greek Houses. We've also experienced the lack of cooperation from students with the communicable disease investigation and control measures mandated by NC General Statute §130A-144. For multiple cases staff had to spend several hours trying to gather information and cooperation from students. As a last resort, legal remedies were suggested to gain cooperation. This is absolutely not the desired outcome for our campus students. Due to the reporting structure for positive cases, our data does not necessarily capture each of these cases as they are attributed to the home county of residence, however the reality is Orange County Health Department Staff and UNC Campus Health Staff have been tasked with the monitoring and investigation of these cases here in Orange County.

While everyone has worked tirelessly on mitigation plans for COVID-19, to date there are still capacity issues with testing and contact tracing. There is a national supply shortage for the chemical reagent used to process the COVID PCR test (most reliable diagnostic COVID-19 Test). This shortage has resulted in a significant



delay in test results. Many of the labs used to process tests from Orange County now see a 5-7 day turnaround time for results. When waiting for results to begin case investigation and issue quarantine orders, this is a significant amount of time and can result in further spread of the virus. We continue to recruit and train case investigators and contact tracers, but our ability to stabilize this group is challenging as many are temporary staff from the community or via a contracted position with the State.

To date, a major piece of our planning efforts remain incomplete. As a college town, Chapel Hill is highly dependent on public transportation. The public buses are not only used by local college students that do not physically live on campus, but a large percentage of our healthcare workers also utilize the buses to commute to work at the medical center. At this time we do not have solid plans to maintain the volume of riders while simultaneously adhering to the mask mandate and the physical distancing of six feet or more. To keep the town operational we could potentially create several clusters of cases from one single bus ride.

In addition to the afore mentioned concerns that public health highlights, I have received a massive amount of emails from community members, UNC staff, faculty and students sharing their concern for fully reopening campus for the Fall Semester. If students begin to move back on campus next week, we could quickly become a hot spot for new cases as thousands of students from all across the country/world merge onto the UNC Campus and begin to interact in a manner very normal for college students in a congregate setting. The recent outbreak among the football team was informative of how challenging it will be for the student population to practice the 3 W's even with the best of intentions. We believe the student athletes are likely some of the most disciplined and motivated groups of students on campus and despite their best efforts, the virus spread rapidly between teammates.

Orange County has attempted to control the spread of COVID-19 by adopting policies and mandates to encourage healthy and safe behaviors during this pandemic. We adopted a Countywide Mask Mandate and we close restaurants at 10pm daily to prevent the pop-up club/bar scene during late night operations as observed in early July. While these are valiant efforts, I fear it will not be enough to contain the full campus community upon return for the Fall Semester.

At this time, the Orange County Health Department recommends that the University of North Carolina at Chapel Hill consider the following:

- Restrict on campus housing to at-risk students with no access to equitable educational resources and those with true housing needs (i.e. International students, Carolina Covenant & marginalized students)
- Consider virtual classes for the entire Fall Semester but at minimum begin the first 5 weeks of the semester with online instruction only with plans to reassess the situation at the 5 week mark

#### *On-Campus Housing*

The goal of limiting on-campus housing is to create a situation where students that need to return to campus are able to do so in a single occupancy room. Significantly lowering the census of students in the dorms will also allow for additional capacity for isolation & quarantine measures as needed.

#### *First Five Weeks - Online Instruction only*

As we continue to watch the data in Orange County, we want to ensure the community's ability to respond to new cases. Earlier in this Pandemic, our numbers were driven by the older age group, most of whom lived in one of the long-term care facilities in our community. Today we are seeing more cases with the younger age group and more community transmission and asymptomatic cases than originally seen. For this reason, if the first five weeks of instruction is virtual, we may be able to reduce further spread of the virus by eliminating in class instruction which would create more opportunities for close contact and possible viral spread.

There are still so many unknowns about this virus and how it will continue to spread throughout North Carolina and Orange County. The data trends over the past couple weeks seem optimistic, however we've seen this all

change drastically in a short period of time when we move too quickly to reopen our communities. This is the time to double down to maintain the hard work we've done with mask wearing, distancing and frequent hand hygiene to slow the spread. At minimum the five week start of online exclusively would allow the University, the Orange County Health Department, and the UNC Healthcare system more time to monitor the spread of this virus and prepare for any unanticipated campus impact. Additionally, this delay for classroom instruction would give us additional time to see how seasonal influenza may present in our community this fall. As you are aware, we may see a spike in influenza cases as students return and it will be challenging to differentiate these symptoms from COVID-19 since they are very similar. This additional time would also allow the hospital to prepare for possible surge capacity of both COVID-19 and Influenza.

OCHD understands that this decision is difficult and requires consideration of many perspectives. We do not offer this recommendation lightly, and we recognize that there will be educational, economic, and logistical challenges. OCHD is providing this recommendation from the public health perspective with the best information we have at the current time during these extraordinary circumstances.