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11 identification purposes only

12 SUPERIOR COURT OF ARIZONA

13 MARICOPA COUNTY

14 JAVIER AGUILA, LUCILLE  
15 ARAGON, ALICIA BALDWIN,  
16 MICHAEL BATES, MONICA BEARD,  
17 MICHAEL BEAVER, MATHEW  
18 BECKER, JENNIFER BEEMAN,  
19 JACQUELYN BENDIG, JESSIE  
20 BLACKBURN, JASON BOWEN, ARI  
21 BRACAMONTE, MATT BRASSARD,  
22 DAVE BRENNAN, PENNY  
23 BRENNAN, DEBORAH BROTEN,  
24 JAMES BROWER, JESSE ISAIAH  
25 BURKE, SCOTT BUSSE, BRIAN  
26 CAVENDER, DARYL CHESTER,  
27 SUSAN COMPTON, AUDREY  
28 CORLEY, KAREN CRUMP, TIMOTHY  
DAMICO, TERRY DAVIS, DAVID  
DELOS, LORI DELOS, CRAIG  
DENNY, PATRICIA DION, TONY  
DOHRMAN, CHARLES E. DUFF,  
JOHN EHALT, GARY ERWIN, JACK  
ESTES, LEE FABRIZIO, LOUIE  
FERNANDEZ, PATRICIA FULLER,  
DAVID GILBERT, SCOTT  
GOLDSMITH, STEVEN GORDON,  
JOLIE GRANT, JEREMIAH GRATZA,  
MISTIE GREEN, DEBORAH GRIFFIN,  
JAMES GRIFFIN, KIMBERLY  
GUETHLE, MARK HALSTENGARD,

CASE NO: \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
DAMAGES**

Priority Case: Arizona Rule of Civil  
Procedure 57

**JURY TRIAL DEMANDED**

1 DAVID HARMON, DAREL  
2 HARRISON, TAMIE HARRISON,  
3 JOHN HEALY, BRAD HENRICH, R.J.  
4 HERRIG, KIMBERLY HERRIG,  
5 JENNIFER HOLLIDAY, MARION  
6 HOOPER, MARY HULTMAN,  
7 CHARLES JENKINS, CURTIS  
8 JOHNSON, SHANE JONES, IAN JUUL,  
9 COREY KELLY, COLLEEN  
10 KENDALL, KIMBERLY KOLACEK,  
11 ALAN KOWALSKI, DOUGLAS  
12 LANDRETH, ELDA LEE, MAXINE  
13 LEE, IAN LIKWARZ, BARRY LUCAS,  
14 JOSH MAKRAUER, PHILLIP  
15 MARCUS, THOMAS MCCAULEY,  
16 JOHN MCCORMICK, VICKI MCKEE,  
17 DAWN MCMILLAN, DUSTIN  
18 MCMILLAN, KELLY MEIXLER,  
19 JULIE MIKKELSEN, DAVID  
20 MONAHAN, LEESA MONTAGUE,  
21 ALEX MUNDY, MICHAEL NELSON,  
22 CHAD NEWBERRY, LINDA  
23 NIBLETT, KIMBERLY O'DONNELL,  
24 CARRIE PARKER, DIANE  
25 PEDERSEN, LUTHER PEDIGO,  
26 ELMER PINEDA, DANIEL POUNDS,  
27 GRANT QUEZADA, KEITH  
28 REDMANN, JILL REDMANN, BRUCE  
REID, JEFF RIGGS, RUSSEL  
ROBERTS, JACOB ROER, VANESSA  
ROER, STEVEN ROGERS, ROBERT  
ROSA, VICKIE SANDERS, JEFFREY  
SCHACHT, REBECCA SCHEMMER,  
WES SCHEMMER, PAUL SCHULDT,  
KYLE SCHWAB, PETER SCIACCA,  
CLAUDIA SHADID, RAY SHADID,  
JAMES SHAFFER, SHERI SHAW,  
STEVEN SHELDON, THOMAS  
SMITH, JOHN SPAUGH, IOANNIS  
SPENTZOS, TOSHA SPRING,  
KIMBERLY STAM, EVA  
STAPLETON, MITCHELL STEVENS,  
LUCIE STEVENS, NANY STEVENS,  
ALAN SWENSON, TRACY

1 TOLLESON, FRANK VAIRO,  
2 EUGENE WALDEN, HEATHER  
3 WARD, JUSTIN WARD, GARY  
4 WELCH, CHERI WELLS, LARRY  
5 WENDT, TUCKER WOODBURY,  
6 PAUL YORK, and LESLIE ZINKE,

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Plaintiffs,

vs.

DOUG DUCEY, in his individual  
capacity, and in his official capacity as  
the Governor of the State of Arizona;  
THE ARIZONA DEPARTMENT OF  
HEALTH SERVICES; and THE  
ARIZONA DEPARTMENT OF  
LIQUOR LICENSES AND CONTROL,

Defendants,

and

THE STATE OF ARIZONA,

Real Party-in-Interest.

### **Introduction**

1. Plaintiffs are small business owners all over Arizona whose businesses have been shut down by the Governor’s executive orders. They hold series 6 or 7 liquor licenses and are subject to closure orders in Executive Order 2020-43 and related orders. The reason they are closed is because Governor Ducey believes that “bars” should be closed to stem the spread of the novel coronavirus. The problem is, bars are still open—about 5,000 of them. That is because most series 12 licensees (“restaurants”) also have bars, and those bars are open. Hotel bars—with a series 11 license—are also open. Bars at microbreweries (series 3), wineries (series 13), private clubs (series 14), distilleries (series 18), and tasting rooms (series 19), are all also open. Only a *subset* of bars—series 6 and 7

1 licensees—have been targeted by Defendants’ executive orders and implementing  
2 guidance. The only *legal* distinctions, however, between series 6 and 7 licensees and, for  
3 example, series 12 licensees typically associated with “restaurants,” is that series 6s and  
4 7s paid for the privilege of not having to maintain a minimum amount of food sales, and  
5 for the privilege of “off-sale,” that is, selling for off-premise consumption. See A.R.S.  
6 Title 4. Neither legal distinction has anything to do with public health. Many *do* serve  
7 food. Many “restaurant” owners utilize series 6 licenses for the primary purpose of being  
8 able to sell all types of alcoholic beverages with to-go food orders.

9         2.       Indeed, some of the Plaintiffs are more like restaurants. For example,  
10 Plaintiff Steven Gordon owns “Firestone Pizza Express.” Why is he closed down but his  
11 competitors in the pizza industry are open? Because Mr. Gordon paid upwards of  
12 \$100,000 for a series 6 license instead of the mere \$1,500 for a series 12. Even for those  
13 who do not serve food, neither legal distinction bears on whether a business can properly  
14 implement safety measures. Plaintiffs have documented numerous instances of series 12  
15 “restaurants” turning into nightclubs or not requiring social distancing. The legal  
16 distinction between series 6s and 7s on the one hand, and their direct competitors with  
17 series 3, 11, 12, 13, 14, 18, and 19 licenses on the other, simply has nothing to do with  
18 public health.

19         3.       Plaintiffs argue that the Governor’s orders, and any guidance or regulation  
20 implemented in pursuance of those orders, are unlawful or unconstitutional on a number  
21 of grounds.

22         4.       First, the Governor’s orders are made pursuant to a statute that purports to  
23 delegate to the Governor the entire “police power” of the state in the event of an  
24 “emergency.” This statute unconstitutionally delegates the legislative power of this state  
25 to the Governor. Fortunately, it is possible to construe that authority narrowly in light of  
26 more specific authorities the state legislature has granted the Governor specifically to deal  
27 with contagious diseases. Under those authorities, the Governor and the Arizona  
28 Department of Health Services (ADHS) can impose “sanitary measure,” but cannot order

1 businesses of any kind to shut down. Indeed, the authority to close down businesses is  
2 granted in the emergency statute precisely once, and it is given to cities where such  
3 closures are necessary to “peace” and “order.”

4 5. Additionally, the Governor’s executive orders, and ADHS’s implementing  
5 guidelines, violate Article 2, Section 13 of the Arizona Constitution, which provides, “No  
6 law shall be enacted granting to any citizen, class of citizens, or corporation other than  
7 municipal, privileges or immunities which, upon the same terms, shall not equally belong  
8 to all citizens or corporations.” They also violate the equal protection clause of the  
9 Fourteenth Amendment to the U.S. Constitution.

10 6. Specifically, the Governor’s orders and ADHS’s implementing guidelines  
11 arbitrarily and irrationally discriminate against Plaintiffs because they have series 6 or 7  
12 licenses, while allowing their direct competitors with series 3, 11, 12, 13, 14, 18, and 19  
13 licenses to continue to operate. As explained, the only legal distinction between series 6  
14 and 7 licensees and these other licensees is that Plaintiffs each paid upwards of \$100,000  
15 to obtain one of a limited number of series 6 or 7 licenses, which come with two unique  
16 privileges. The first privilege is that a series 6 or 7 licensee need not serve a minimum  
17 amount of food. (Series 12 licensees, in contrast, must have a minimum of 40 percent food  
18 sales.) The second privilege is that of “off-sale,” or sale of packaged alcoholic beverages  
19 for off-premise consumption. With limited exceptions, only series 6 (“bars”), series 7  
20 (“beer and wine bars”), and series 9 (liquor stores and grocery stores) have that  
21 privilege—for which they paid valuable consideration.

22 7. These two distinctions have no relation whatsoever to public health. Forcing  
23 series 6 and 7 licensees to close, or to meet onerous conditions to operate, while allowing  
24 their direct competitors to continue operating without similar restrictions even though the  
25 distinction between series 6 and 7 and these other licenses has no relation to public health,  
26 is discrimination in violation of Art. 2, Sec. 13 of the state constitution.

27 8. Because these orders also violate the federal equal protection clause, the  
28 Governor has also violated 42 U.S.C. § 1983 and must pay Plaintiffs damages for the

1 closures and restrictions.

2 9. More still, the Governor, through executive fiat and directly in opposition to  
3 existing statute law, has permitted series 12 licensees (“restaurants”) to sell alcohol for  
4 off-premise consumption. That is the precise privilege series 6, 7, and 9 licensees paid for,  
5 and for which series 12 licensees have paid nothing. The Governor’s order is a violation  
6 of procedural due process under both the state and federal constitutions. It is, in fact, the  
7 *classic* due process violation: the “taking” of property from “A” and “giving” it to “B” by  
8 executive fiat, without a judicial adjudication, and contrary to existing law.

9 10. Because the Governor’s orders are a direct violation of due process of law  
10 under the classic, procedural understanding, the Governor has violated Plaintiffs’  
11 constitutional rights. He, and the departments that have implemented his orders, have  
12 therefore violated 42 U.S.C. § 1983 and must pay Plaintiffs damages for taking their  
13 valuable privileges and giving it to others. There is absolutely no grounds for qualified  
14 immunity: that “taking property from A and giving it to B” is the *quintessential* violation  
15 of due process of law has been established law for *hundreds* of years.

16 11. Finally, the orders requiring Plaintiffs to shut down, or to operate at  
17 extremely limited capacity with onerous restrictions not applicable to their competitors,  
18 deprived and continues to deprive Plaintiffs of their entire property interest in their  
19 licenses. The orders taking Plaintiffs’ paid-for privilege of off-sale and giving it to their  
20 competitors, who did not pay for it, is a further deprivation of what little property value  
21 was left in Plaintiffs’ series 6 or 7 licenses upon the closures of their businesses.  
22 Plaintiffs’ *only* hope while being shut down was the ability to sell alcohol to go. But that  
23 privilege, too—which Plaintiffs paid for *exclusively*—was given to their competitors, who  
24 did not pay for them. Together, these orders have deprived Plaintiffs of essentially *all* the  
25 value in their licenses and all hope for any revenue. The orders have obliterated their  
26 investment-backed expectations. The orders therefore constitute a regulatory taking for  
27 which just compensation must be paid.

28 12. In closing, it is reasonable to believe that the country, and the state, now

1 confront an emergency stemming from the novel coronavirus. But, as Justice William  
2 Douglas wrote in the famous *Steel Seizure Case* involving President Truman’s seizure of  
3 the steel mills in the midst of a labor strike during the Korean War, “There can be no  
4 doubt that the emergency which caused the President to seize these steel plants was one  
5 that bore heavily on the country. But the emergency did not create power; it merely  
6 marked an occasion when power should be exercised.” *Youngstown Sheet & Tube Co. v.*  
7 *Sawyer*, 343 U.S. 579, 629 (1952) (Douglas, J., concurring). “We therefore cannot decide  
8 this case by determining which branch of government can deal most expeditiously with  
9 the present crisis. The answer must depend on the allocation of powers under the  
10 Constitution.” *Id.* at 630. And as with the federal Constitution and the Korea War  
11 emergency, so too with Arizona’s own constitution and the coronavirus emergency.

### 12 **Jurisdiction and Venue**

13 13. This Court has jurisdiction pursuant to Article 6, § 14 of the Arizona  
14 Constitution, A.R.S. § 12-123, and A.R.S. § 12-1831 (declaratory judgments).

15 14. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401 and § 12-  
16 401(16) because the Defendants reside in Maricopa County and the seat of government of  
17 the State of Arizona is in Maricopa County.

### 18 **Parties**

19 15. Doug Ducey, the Governor of the State of Arizona, is a defendant in this  
20 action. The executive orders challenged in this case were issued by him. He is sued in his  
21 official capacity for declaratory relief and injunctive relief. He is sued in his individual  
22 capacity for damages sought in this action in the alternative to damages sought under  
23 Plaintiffs’ regulatory takings theory.

24 16. The Arizona Department of Health Services (ADHS) and the Arizona  
25 Department of Liquor Licenses and Controls (DLLC) are defendants in this action. They  
26 are responsible for implementing Governor Ducey’s executive orders. Those orders are  
27 alleged to violate the state and federal constitutions, and to constitute a regulatory taking,  
28 for which damages and compensation must be paid by the State of Arizona.



1           22. The legal distinctions between these series of licenses, however, do not  
2 track the colloquial understandings. The only legal distinctions between series 6 and 7  
3 licenses on the one hand and series 12 licenses on the other are that: (1) series 6 and 7  
4 licenses are “quota” licenses that are limited in number by law, which number is adjusted  
5 every 10 years according to population, see A.R.S. § 4-206.01; (2) as a result, series 6 and  
6 7 licenses are actually property rights, because, unlike a series 12 license, series 6 and 7  
7 licenses can be bought and sold on the open market, or inherited, and such licenses never  
8 disappear; (3) Plaintiffs each paid upwards of \$100,000 or more for each series 6 license,  
9 and upwards of \$50,000 for each series 7 license; and (4) a series 6 or 7 license accords  
10 the licensee (i) the privilege of not having to have a minimum number of food sales (in  
11 contrast, series 12 licensees must have a minimum 40 percent food sales), and (ii) the  
12 privilege of “off-sale,” that is, selling packaged alcoholic beverages for consumption off-  
13 premise, A.R.S. § 4-206.01(G). No series of license other than series 6, 7 and 9 (grocery  
14 and liquor stores) includes the extensive off-sale privilege. Other series of licenses include  
15 extremely limited off-sale privileges, for example series 12s can sell growlers and  
16 wineries can sell wine produced at their vineyard.

17           23. Importantly, the legal distinction between series 6 and 7 licensees on the one  
18 hand and series 12 (or any other series) on the other—that series 6 and 7 licensees paid for  
19 the privileges of not having to have a minimum number of food sales and for the privilege  
20 of off-sale—has no relation to the public health. Because the distinction between a series  
21 6 license and a series 12 license does not track the colloquial distinction between a “bar”  
22 or “nightclub” and a “restaurant,” series 6 licensees often have spacious seating, outdoor  
23 patios, table service, no dancing, and no loud music, just a series 12 licensees often have  
24 cramped spaces, loud music, dancing, and no outdoor seating. Moreover, many series 6  
25 licensees *do* serve food—they have simply paid for the privilege of not having to prove to  
26 the Arizona Department of Liquor that their food sales are at least 40 percent of their total  
27 sales. Indeed, as explained by Plaintiffs’ expert declarant, “Many ‘Restaurant’ owners  
28 utilize series 6 licenses for the ability to sell all types of alcoholic beverages with to-go

1 food orders.” Ex. B, Expert Decl. of Craig Miller ¶ 6.

2 24. To summarize, unlike any other series of liquor license, a series 6 and 7  
3 license is a *property right*—they can be bought and sold on the open market. The reason is  
4 that such licenses are limited in number by law, which number is adjusted every 10 years  
5 according to population. The going rate for a series 6 license in Maricopa County before  
6 the coronavirus pandemic was \$135,000. Ex. B ¶ 5. Most Plaintiffs paid about that  
7 amount of money for each of their licenses. And, as noted, the two privileges associated  
8 with this property right in their licenses are the rights to operate a business establishment  
9 for the sale of alcoholic beverages without having to meet a minimum amount of food  
10 sales, and the privilege of off-sale.

11 **The Coronavirus Pandemic and the Governor’s Executive Orders**

12 25. It is common knowledge that the world, the country, and the state of  
13 Arizona are now confronting a novel coronavirus, COVID-19, a contagious disease.

14 26. Because of the spread of the novel coronavirus, Governor Doug Ducey  
15 began issuing executive orders on March 19, 2020, which purported to implement  
16 strategies and safety measures that would stem the spread of this coronavirus.

17 27. On March 19, 2020, Governor Ducey issued Executive Order No. 2020-09,  
18 “Limiting the Operations of Certain Businesses to Slow the Spread of COVID-19.” Ex. C.

19 28. EO 2020-09 provided, in relevant part, that beginning on March 20, 2020,  
20 until further notice, all bars, movie theaters, and indoor gyms and fitness clubs shall close  
21 in counties with confirmed cases of COVID-19; and that restaurants in such counties shall  
22 close access to on-site dining.

23 29. The Governor did not cite any specific statutory authority in EO 2020-09.

24 30. As a result of EO 2020-09, the Plaintiffs had to shut down their businesses,  
25 at great loss.

26 31. In addition, EO 2020-09 permitted restaurants to sell alcohol “off sale,” that  
27 is, for off-premise consumption, contrary to existing law. This privilege of “off sale,” by  
28 law, applies to series 6 and 7 licensees—the Plaintiffs in this action—and not to series 12

1 licensees that operate “restaurants.” Plaintiffs paid upwards of \$100,000 to obtain their  
2 series 6 or 7 licenses for the privileges appertaining to such licenses. EO 2020-09 robbed  
3 these licensees of the value of their licenses by taking their property right in off-sale and  
4 giving it to series 12 restaurants, who did not pay for the privilege. EO 2020-09 also  
5 robbed these licensees of the value of their licenses by taking away the privilege of  
6 operating their businesses, which is also part of the property right for which they paid  
7 valuable consideration.

8 32. The Arizona Department of Liquor specifically stated that the purpose of  
9 giving off-sales privileges to series 12 establishments was “intended to mitigate the loss of  
10 a restaurant’s on-premise sales.” Ex. D. In short, taking Plaintiffs’ paid-for privileges and  
11 giving them for free to their series 12 competitors had nothing to do with the public  
12 health.

13 33. On March 30, 2020, Governor Ducey issued Executive Order No. 2020-18,  
14 “Stay Home, Stay Healthy, Stay Connected: Physical Distancing to Mitigate COVID-19  
15 Transmission.” Ex. E.

16 34. EO 2020-18 provided, in relevant part, that “all individuals in the State of  
17 Arizona shall limit their time away from their place of residence or property, except: a. To  
18 conduct or participate in Essential Activities. b. For employment, to volunteer or  
19 participate in Essential Functions. c. To utilize any services or products provided by  
20 Essential Businesses. d. Employment, if as a sole proprietor or family owned business,  
21 work is conducted in a separate office space from your home and the business is not open  
22 to serve the public. e. No person shall be required to provide documentation or proof of  
23 their activities to justify their activities under this order.” Paragraph 4 of EO 2020-18  
24 defined essential activities as, *inter alia*, “[o]btaining necessary supplies and services for  
25 family,” “seeking medical [services],” caring for family members, “[e]ngaging in outdoor  
26 exercise,” and engaging in constitutionally protected activities. Paragraph 6 provided that  
27 “[a]ll persons may leave their place of residence only for Essential Activities . . . .”

28 35. EO 2020-18 cited as statutory authority for its promulgation, and the

1 promulgation of EO 2020-09, A.R.S. §§ 26-303 and 36-787.

2 36. As a result of EO 2020-18, the Plaintiffs’ businesses continued to be shut  
3 down, at great loss.

4 37. On April 8, 2020, Governor Ducey issued Executive Order No. 2020-25,  
5 keeping EO 2020-09 in place, including its provisions granting the privilege of “off sale”  
6 to series 12 restaurants. Ex. F.

7 38. On April 29, 2020, a day before EO 2020-18 was due to expire, Governor  
8 Ducey issued Executive Order No. 2020-33, “Returning Stronger: Amending the Stay  
9 Home, Stay Healthy, Stay Connected Order.” Ex. G.

10 39. EO 2020-33, in relevant part, continued the requirement of EO 2020-18 that  
11 all individuals in the State of Arizona shall limit their time away from their place of  
12 residence or property except for essential activities and the other enumerated exceptions  
13 from EO 2020-18, and that “[a]ll persons may leave their place of residence only for  
14 Essential Activities . . . .” EO 2020-33 further provided that non-essential businesses,  
15 which is defined to include Plaintiffs’ businesses, may continue to operate activities “that  
16 do not require in-person, on-site transactions.” Such businesses involving the sale of  
17 goods could operate “delivery service, window services, walk-up service, drive-through  
18 service, drive-up service, curbside delivery or appointment, provided that they establish  
19 and implement protocols and best practices for businesses to address COVID-19 as  
20 outlined in this order.”

21 40. EO 2020-33 cited A.R.S. §§ 26-303(E) and 36-787 as authority for its  
22 promulgation.

23 41. As a result of EO 2020-33, some Plaintiffs began to operate their businesses  
24 at extremely limited capacities, providing such “take out” services where possible, at great  
25 loss; and other Plaintiffs’ businesses continued to be shut down entirely or almost entirely,  
26 at great loss.

27 42. On May 4, 2020, Governor Ducey issued Executive Order No. 2020-34,  
28 allowing barbers, cosmetologists, and dine-in restaurants to resume operations—but not

1 “bars,” defined as establishments with series 6 or 7 licenses. EO 2020-34 also continued  
2 the provisions of EO 2020-09 granting the privilege of “off sale” to series 12 licensees.  
3 Ex. H.

4 43. As a result of EO 2020-34, most of Plaintiffs’ businesses continued to be  
5 shut down.

6 44. On May 12, 2020, Governor Ducey issued Executive Order No. 2020-36,  
7 “Stay Healthy, Return Smarter, Return Stronger.” Ex. I.

8 45. EO 2020-36 rescinded, as of midnight on May 16, 2020, EO 2020-18 and  
9 2020-33. Paragraph 5 of EO 2020-36 ordered businesses “to limit and mitigate the spread  
10 of COVID-19” by: “a. Promoting healthy hygiene practices; b. Intensifying cleaning,  
11 disinfection and ventilation practices; c. Monitoring for sickness; d. Ensuring physical  
12 distancing; e. Providing necessary protective equipment; f. Allowing for and encouraging  
13 teleworking where feasible; g. Providing plans, where possible, to return to work in  
14 phases; and h. Limiting the congregation of groups of no more than 10 persons when  
15 feasible and in relation to the size of the location.”

16 46. As a result of EO 2020-36, Plaintiffs finally began operating their  
17 businesses, after nearly two months of being shut down by earlier executive orders.  
18 Additionally, Plaintiffs all worked to comply with Paragraph 5 of EO 2020-36 and  
19 implemented a variety of hygiene and safety measures.

20 47. EO 2020-36 continued in place provisions of EO 2020-09 granting the  
21 privilege of “off sale” to series 12 licensees.

22 48. On June 29, 2020, Governor Ducey issued Executive Order No. 2020-43,  
23 “Pausing of Arizona’s Reopening—Slowing the Spread of COVID-19.” This order  
24 remains in force and is one of the primary orders challenged by Plaintiffs. Ex. J.

25 49. EO 2020-43 provides, in relevant part:

26 4. Notwithstanding any other law or executive order, effective at 8:00 pm on  
27 Monday, June 29, 2020, the following establishments shall pause operations  
until at least July 27, 2020, unless extended:

28 a. Bars, meaning an entity who holds a series 6 or 7 liquor license from

1 the Department of Liquor Licenses and Control and whose primary business  
2 is the sale or dispensing of alcoholic beverages. These entities may continue  
3 serving the public through pick up, delivery, and drive-thru operations as  
4 provided for series 12 liquor licenses in Executive Order 2020-09, *Limiting*  
5 *The Operations Of Certain Businesses To Slow The Spread Of COVID-19*.

- 6 b. Indoor gyms and fitness clubs or centers.
- 7 c. Indoor movie theaters.
- 8 d. Water parks and tubing operators.

9 5. To receive authorization to reopen, entities shall complete and submit a  
10 form as prescribed by the Arizona Department of Health Services that  
11 attests the entity is in compliance with guidance issued by ADHS related to  
12 COVID-19 business operations.

13 50. The meaning of EO 2020-43 is that Plaintiffs could not open any of their  
14 businesses until July 27, a date that could be pushed back an indefinite number of times.

15 51. EO 2020-43 cites as statutory authority for its promulgation A.R.S. §§ 26-  
16 303 and 36-787.

17 52. As a result of EO 2020-43, Plaintiffs had to shut down their businesses  
18 *again*, after being shut down for almost two months, and being open for barely a month.

19 53. EO 2020-43 did not rescind the provisions of prior executive orders granting  
20 “off sale” privileges to series 12 licensees.

21 54. On July 23, 2020, Governor Ducey issued Executive Order No. 2020-52,  
22 continuing EO 2020-43 for an additional two weeks, through August 9. Ex. K.

23 55. On August 10, 2020, the Arizona Department of Health Services (“ADHS”)  
24 promulgated guidelines to implement EO 2020-43. Ex. L. These guidelines make it  
25 virtually impossible for most of the Plaintiffs to open. Those guidelines provide that  
26 “bars,” that is, series 6 and 7 licensees, cannot open at all until coronavirus positivity rates  
27 dip below 3 percent for two weeks in the particular county. Coronavirus positivity rates in  
28 Arizona have not dropped below 3 percent since the start of this “public health  
emergency.” They may not do so for *years*. In addition, the guidelines provide that, when  
positivity rates drop below 3 percent, series 6 and 7 licensees can open only at 50 percent  
capacity, and without music, karaoke, dancing, or open seating—all requirements that do  
not apply to their series 12 competitors, several of whom continue to operate with  
karaoke, dancing, and open seating.



1           60. Plaintiffs have suffered great harm from being unable to operate their  
2 businesses in pursuit of their lawful occupations and ordinary callings. Plaintiffs continue  
3 to suffer great harm. Almost all of them remain closed. Some have been able to open with  
4 severe restrictions not applicable to series 12, or to series 3, 11, 13, 14, 18, or 19 licensees.  
5 All of the Plaintiffs were investing in meeting public safety measures before the closures.  
6 All can do so if given the opportunity. All have observed their direct competitors with  
7 different series of licenses continue to operate—including with loud music and dancing.

8           61. For example, Plaintiff Alan Kowalski, the owner of Clicks Billiards in  
9 Tucson, explains that “we covered every other pool table and had assigned seating for  
10 increased safety.” More still, “After the first shutdown we installed plexiglass shields to  
11 increase safety for employees and guests. We installed two hand sanitizing dispensers for  
12 use by employees and guests. We also had two spray bottles of hand sanitizer that could  
13 be used anywhere in the building. . . . We had the floors marked for socially distancing  
14 while waiting in line at the front counter. . . . We purchased disinfectants that could be  
15 used on bathroom fixtures, tables, chairs, pool tables, pool table cloth, pool balls, pool  
16 cues, racks, and counter surfaces. We implemented a log and required frequent cleaning  
17 and sanitation of all surfaces. . . . Masks were required for all guests and employees. . . .  
18 We adjusted and reduced our hours of operation so that we had time for increased  
19 sanitation. We only used paper food menus to reduce surfaces being touched by more than  
20 one person. . . . We removed all table tents and drink menus for increased safety.” Ex. P,  
21 Decl. of Alan Kowalski, ¶¶ 3-4.

22           62. The damages are severe and, potentially, irreparable. “In June we had profits  
23 of around \$5,700. We had zero revenue due to the shutdown in July. Our loss in July will  
24 be about \$11,400.” *Id.* ¶ 7. “This situation is almost at a point of no return. Employees  
25 need to go back to work and us owners do as well. We have suffered irreparable harm and  
26 even if we were allowed to open we will be spending months if not years just to get back  
27 to even. We are holding on but each day we are closed brings us closer to not being able  
28 to survive this situation. We will be forced to close our doors forever if there is not a

1 quick remedy to this shutdown.” *Id.* ¶ 8.

2 63. Plaintiffs David Delos, the owner of six bars with series 6 licenses, explains,  
3 “When we could open, we took safety precautions seriously and not only implemented  
4 safety protocols but spent thousands of dollars to ensure the safety of our customers and  
5 our employees. We provided masks, hand sanitizer, followed social distancing guidelines.  
6 We also hired a crew to clean each location every night which included wiping down all  
7 bar surfaces, chairs, doors, bathrooms video and parlor games with approved cleaning  
8 supplies specific for Covid-19.” Ex. Q, Decl. of David Delos ¶ 4.

9 64. He explains that “I have lost many customers and some employees.” Even  
10 when he can open, “I will only be allowed to operate at 50% capacity including strict new  
11 guidelines of no dancing, no billiards, no darts or karaoke for the foreseeable future—all  
12 while my competitors with different license numbers can stay open without similar  
13 restrictions.” *Id.* ¶ 8.

14 65. He further explains the urgency of this matter and the likelihood of  
15 irreparable harm. “I have continued to incur debt as I have remained closed. Including  
16 over 30K a month in rent plus utilizes this time of year that add up to over 8k a month.  
17 These are cost that will not be abated. Four of my six locations received 5K per location in  
18 the form of Covid -19 disaster relief grant, two locations received no assistance. Not even  
19 close to expenses I have incurred.” *Id.* ¶ 9. “I have been able to establish an emergency  
20 fund for tough times. These emergency funds have taken years of putting away a small  
21 amount of money each month. After being closed over 3 months that emergency fund is  
22 gone and now we must go into our savings to keep our rents and utilities payed with the  
23 hope that some day soon we can reopen at full capacity and under the same conditions we  
24 once enjoyed.” *Id.* ¶ 10.

25 66. Plaintiff Ian Juul, owner of Mooney’s Irish Pub in Sedona, explains that  
26 before the closure, “We had ceased all Live Music, Dancing, Karaoke, Darts and Foosball.  
27 All our employees were wearing face coverings and they knew to wash their hands as  
28 often as possible. All customers were required to wear face coverings and we were giving

1 away free masks to customers who didn't have masks. We had installed two high volume  
2 medical grade air purifying systems that filtrate air to remove viruses. We had limited our  
3 internal capacity to around 60 occupants which is 30% of our permitted capacity of 203  
4 occupants. We had removed seating and tables so that there was at least 6 feet social  
5 distancing clearance between chairs, tables and bar counter space. We had placed several  
6 hand sanitizer stations within the bar to encourage hand sanitization by employees and  
7 customers. We were wiping down all seats, tabletops, menus, door handles and pens after  
8 use with alcohol. We had educational Covid-19 signs and messages posted on doors and  
9 walls. We weren't permitting more than 10 people to group together. Employees were  
10 also told to stay at home if they felt sick and we were encouraging customers to sit outside  
11 on our patio areas rather than sit inside as that is safer." Ex. R, Decl. of Ian Juul ¶ 4.

12 67. He explains that he emailed the Department of Liquor to ask why "a direct  
13 competitor (Olde Sedona Bar and Restaurant) who had a Series 12 Liquor License was  
14 allowed to continue trading just like a traditional bar with Live Music, Karaoke, Dancing,  
15 Pool and Darts until 2am in the morning," and to note "that most of my customers were  
16 just socializing at this venue, or any of the other 102 businesses in Sedona selling  
17 alcohol." *Id.* ¶ 6. He asks, "Safely assuming that all businesses are following similar and  
18 sensible Covid-19 sanitary measures, how can closing 2% of the businesses that sell liquor  
19 in a small town like Sedona that has an extremely low Covid-19 infection rate be an  
20 effective strategy to mitigate the spread of Covid-19 when the public can freely frequent  
21 over 102 other competitor businesses that remain open for business selling alcohol in  
22 Restaurants (60), Breweries (3), Hotels (15), Beer and Wine Bars (13), Wine Tasting  
23 Rooms (3), Casino's and Bars that still remain open (8)." *Id.* ¶ 9.

24 68. Mr. Juul also explains the extent of the damages, and the risk of irreparable  
25 harm. "Keeping my business closed due to Executive Orders financially costs me \$  
26 25,000 a month or \$ 6,000 a week as I need to pay business and personal commitments.  
27 The biggest tangible financial costs are rentals, loans, utilities, insurance and personal  
28 living expenses. I have also lost monthly profits of at least \$ 10,000 a month as I have no

1 sales and I have been closed over the busiest / best months of the year being March, April  
2 and May. There are other financial losses too which are harder to quantify but they still  
3 exist. These include the loss of inventory that expires and that needs to be dumped (at  
4 least \$ 5,000). The ‘Goodwill’ value of my business diminishes every week I remain  
5 closed as I have attrition in my customer base as customers are drinking and eating at the  
6 other 102 competing establishments in my town. The ‘Market Value’ of my business is  
7 way lower having been closed 40% of 2020 as its overall profitability and attractiveness to  
8 potential buyers is way lower now. Who really wants to buy a Bar right now? The  
9 ‘Market Value’ of my previously coveted Coconino Series 6 Liquor was around \$ 100,000  
10 before Covid-19 and I doubt I could find a buyer right now. I have also lost good  
11 employees who are forced to seek alternative employment and it is very disruptive  
12 rehiring and training employees and our Employee Turn-over Rate is over 50% so far in  
13 2020. I have also suffered mentally and emotionally as most of the Executive Orders that  
14 apply to my business don’t have a rational basis and there is so much confusion and  
15 uncertainty.” *Id.* ¶ 10.

16 69. He continues, “Due to Executive Order closures so far in 2020, I have  
17 personally funded over \$ 80,000 in tangible financial losses up to August 6, 2020. I have  
18 also lost at least \$ 30,000 in profits. The ‘Market Value’ of my business and its liquor  
19 license has safely diminished by 50% and that is at least \$ 300,000 in ‘value’. I have  
20 contingent liabilities that affect me personally in the form of Lease, Loan and Tax  
21 commitments and these amount to over \$ 750,000. I cannot continue or hold-out much  
22 longer and there is no certainty into the future. What reasonable person can continue  
23 trying to run a business like this?? How much more does Gov Ducey and Arizona  
24 Department of Health Services want me to sacrifice?? I immigrated to United States of  
25 America in 2011 as I consider myself an Economic Refugee from Zimbabwe and South  
26 Africa, both African countries who economically persecute minorities and what I find  
27 myself in today is not the ‘American Dream’.” *Id.* ¶ 11.

28 70. Plaintiff Kyle Schwab demonstrates the discrimination of the Governor’s

1 orders. “I have visited several Bars that are open despite alcohol being the obvious focus  
2 of their business they have been determined otherwise. An example is Union Public  
3 House and Reforma in Tucson, AZ. I have seen live concerts, DJ’s, overcrowding,  
4 Standing Room only, People not wearing face masks, dancing, kissing, bar fights, people  
5 so over in toxified they were swaying back and forth about to fall over. This was only  
6 around 11:30 PM and I believe this only got worse as the night progressed until they  
7 closed at 2:00am. It is my opinion that a type of bottleneck has been created in the  
8 industry as the demand for drinking establishments has not diminished as much as the  
9 amount of businesses have. This new environment has created such a demand it has the  
10 feel of a Las Vegas Club at these venues and them being busier now than ever before and  
11 trying but failing to keep the crowds under control. This is not an outlier as everyone in  
12 the area knows the venues that are still open and operating full bars and those that are  
13 not.” Ex. S, Decl. of Kyle Schwab ¶ 5. Mr. Schwab includes photographic evidence of the  
14 crowding and dancing at these open establishments. He also includes video evidence. The  
15 atmosphere is that of a nightclub—the exact problem that Defendants seek to avoid. Yet a  
16 series 12 establishment can continue operating as a nightclub. A series 6 cannot.

17 71. Mr. Schwab describes the likelihood of irreparable harm: “If this persists, I  
18 do not see a future for my business. I am not wealthy and have an extremely limited  
19 amount of funds to keep going. Even if allowed to open today I would have to ask my  
20 landlord for some sort of forgiveness or forbearance. If this persists, I doubt he would  
21 reconcile the amount of money needed for me to re-open and get business running  
22 sufficiently again.” *Id.* ¶ 7.

23 72. Plaintiff Lee Fabrizio explains the likelihood of irreparable harm to him, his  
24 co-owners, and their business: “We are still being charged rent with zero revenue. We  
25 estimate we have 2 months cash reserve before we will be forced to close our doors.  
26 Franchises can survive intentional discriminatory actions with great success. Small  
27 businesses cannot.” Ex. T, Decl. of Lee Fabrizio ¶ 6.

28 73. “As of the writing of this document, I am heading into my fourth month of

1 closure and hence, fourth month of no income,” explains Plaintiff Sheri Marie Shaw, the  
2 single woman owner of a small wine bar. Ex. U, Decl. of Sheri Marie Shaw ¶ 3. When she  
3 was briefly open, she explains, “I implemented daily temperature checks and health  
4 checks on my employees and posted COVID related signage on my entrance for patrons. I  
5 removed tables and bar stools and stored them in my garage so that I could properly  
6 implement social distancing. I tape measured the distance between each seating to ensure  
7 that they were at least 6 feet apart and limited my occupancy to 30. My full capacity is 58.  
8 No party was seated until the table and chairs were fully sanitized. This was done in  
9 between every seating. Approximately 10 days after opening, masks were required by all  
10 employees. We offer a cheese plate and a hummus plate and since opening day, in March  
11 of 2019 (a year before the pandemic) I have required clean gloves to be worn while  
12 preparing these plates. Handwashing is always and always has been strictly enforced.” *Id.*  
13 ¶ 4.

14 74. Ms. Shaw explains the blatant discrimination. “People come in and ask if  
15 they can have a glass of wine. When I tell them that I can only do bottle sales, they walk  
16 directly across the alley (approximately 50 feet away) to the winery that is open and have  
17 one there. Their business model is the same as mine, minus the food. There are, in fact,  
18 three wineries in town that are currently open. Same business model. Different license  
19 number. The only difference is that they make their product while I purchase mine. I don’t  
20 understand how the “making of your product” helps to defend against COVID. In fact, it  
21 does not. I can assure the powers that be, that I can fully and adequately implement the  
22 same sanitizing and social distancing measures that these wineries are implementing. I,  
23 however, have not even been given a chance.” *Id.* ¶ 6.

24 75. Moreover, “There is also a restaurant with a bar just down the alley from my  
25 business that is doing live music and dancing on a weekly basis. In fact, after my last  
26 bottle sale, I decided to grab some food at this establishment. It is a large venue with a  
27 large occupancy. There were easily 150-200 people inside and most of the “bar” patrons  
28 were not eating food. It was so disheartening to witness when I can’t even have twenty

1 people in my business. I had to leave. There is another establishment in town that is a  
2 series 6 and does not have a kitchen. They are having patrons order food from the  
3 business next store and are then serving them. Their employee informed me that they were  
4 approved to do so by the liquor board. In short, there are multiple businesses taking  
5 advantage of the current situation. I see advertisements for karaoke, live music and  
6 dancing. I see Facebook photos of large gatherings in the bar areas of restaurants, many of  
7 which are not even serving food in these areas.” *Id.* ¶ 7.

8         76. Ms. Shaw explains the severe and soon-to-be irreparable damages: “It is  
9 impossible to sustain this. My series 7 license was 35K and it took me a year to obtain it. I  
10 don’t know if I’ll ever be able to sell it or make any profit on it after the beating that bars  
11 have taken this year. I saved 10% of my income my entire life, I live in a house with a  
12 mortgage of less than \$600/month. I have been financially responsible and have lived well  
13 below my means my entire adult life, just so that I could, one day, open my dream  
14 business and pay cash for it. I’ve done that. I built a successful business that was starting  
15 to make money the first year. This was dream. This was my life savings. I’m about to  
16 lose it all because of this shut down.” *Id.* ¶ 8. “If this continues, my doors will shut forever  
17 and I will have lost everything due to no fault of my own.” *Id.* ¶ 9.

18         77. Plaintiff Ian Francis Likwarz, the owner of Sazerac in downtown Phoenix,  
19 explains, “In addition to creating craft cocktails, and serving local craft beer, we also  
20 maintain a permanent Food Trailer on our 3,000 square foot outdoor patio area, that serves  
21 food during business hours. We have had, and maintained, the permanent food trailer  
22 providing a full menu of food for over a year prior to the coronavirus outbreak. We have  
23 been forced to close our doors, even though we serve a full menu of food, whereas our  
24 local competitors who have similar establishments, also serving alcohol and food, are able  
25 to remain open because they have an Arizona #12 License and we operate with an  
26 Arizona #6 License.” Ex. V, Decl. of Ian Francis Likwarz ¶ 3. Mr. Likwarz includes a  
27 photo of his business’s patio—which can easily accommodate social distancing, and  
28 certainly which does so more than establishments that are open.

1           78. “During this closure of #6 & #7 license holders, I have personally witnessed  
2 MANY other bars, breweries, and restaurants operating with #3, #12 & #18 licenses at a  
3 heavy capacity, with little to no social distancing, and events like Karaoke taking place,”  
4 he continues. “The biggest personal frustration has been to have my hands tied, sit back  
5 and watch other competitors doing far less than what was required to operate safely during  
6 this time of us being shut down, while we had implemented so many of the current safety  
7 protocols prior to the order to close. We were being much safer than our competitors who  
8 were allowed to stay open.” *Id.* ¶ 7. “We may be able to hold on for a few more months,  
9 and then we will have no choice but to close our doors for good.” *Id.* ¶ 9.

10           79. Plaintiff Matt Brassard, the owner of Matt’s Saloon in Prescott, Arizona, on  
11 the famous whiskey row, provides multiple examples of discrimination. His declaration  
12 includes eight (8) photographs from Facebook of advertisements from his direct  
13 competitors, all while Mr. Brassard himself was closed down. His competitors—with  
14 series 12 licenses—hosted dances, karaoke nights, ladies nights, and live music. For  
15 example, Danny B’s Fish and Chips, with a series 12 licenses (#12133678), advertised  
16 Karaoke night every Thursday. A local Moose Lodge advertised “karaoke night” with a  
17 “full bar” and “no membership required.” Ex. W, Decl. of Matthew Brassard, ¶ 7.  
18 Karaoke is specifically prohibited to series 6 licensees in ADHS’s August 10 guidelines.  
19 Ex. L. Yet apparently it is perfectly acceptable to serve alcohol and offer karaoke if you  
20 have a series 12 or series 14 license. Mr. Brassard explains, “Nothing can ever un-do the  
21 damage that has been done to my livelihood and the livelihood of my entire staff, DJ’s  
22 and musicians that all rely on me and my business.”

23           80. Plaintiff Eva Stapleton, owner of Dirty Blonde Tavern in Chandler, provides  
24 several photos of three locations with series 12 “restaurants.” As the photos indicate, all of  
25 them have *bars*. All of them are packed. All of them are serving alcohol. Ex. X, Decl. of  
26 Eva Stapleton, ¶ 8.

27           81. Plaintiff Larry Wendt owns Buffalo Chip Saloon & Steakhouse. He explains  
28 that Handlebar J’s Bar and Grill in Scottsdale, which has a series 6 license (06070248), is

1 a direct competitor of his. While Mr. Wendt is closed down, Defendant DLLC has  
2 permitted Handlebar J's to stay open. In fact, on August 7, Handelbar J's published a  
3 photo on its Facebook page of live music. On July 17, they posted a photo of a large  
4 group, including someone drinking a beer. More still, Mr. Wendt does more than 40  
5 percent in food sales every year. He *could* have a series 12 license. Yet he is shutdown,  
6 and his direct competitor can stay open. "We are at risk of being able to reopen now and I  
7 estimate within 3 weeks, I will be forced to close permanently." Ex. Y.

### 8 **Legal Arguments**

9 82. Executive Order 2020-43, and most of Governor Ducey's other executive  
10 orders, are unconstitutional on two or three grounds (depending on the order). First, the  
11 statute on which they are based violates Article 3 and Article 4, § 1 of the State  
12 Constitution, which provide that "[t]he powers of the government of the state of Arizona  
13 shall be divided into three separate departments, the legislative, the executive, and the  
14 judicial; and, except as provided in this constitution, such departments shall be separate  
15 and distinct, and no one of such departments shall exercise the powers properly belonging  
16 to either of the others," and that "[t]he legislative authority of the state shall be vested in  
17 the legislature." That is, the Governor's orders are invalid because, if the Governor has  
18 not exceeded statutory authority, then the statute on which his orders are based is an  
19 invalid delegation of legislative power.

20 83. Second, the statute on which his orders are based, if it authorizes the  
21 Governor's executive orders and ADHS's guidelines in this case, violates Article 2, § 13  
22 of the State Constitution, which provides, "No law shall be enacted granting to any  
23 citizen, class of citizens, or corporation other than municipal, privileges or immunities  
24 which, upon the same terms, shall not equally belong to all citizens or corporations." The  
25 only legal distinction between series 6 and 7 licensees and other licensees such as series  
26 12 is that series 6 and 7 licensees paid for the valuable privileges of off-sale and of not  
27 having to maintain a minimum amount of food sales. There is no legal distinction between  
28 a series 6 or 7 establishment and a series 12 establishment—or a series 3, 11, 13, 14, 18,

1 or 19 establishment—that has any relation to public health.

2 84. In addition, the Governor’s orders violate the equal protection clause of the  
3 federal constitution for the same reasons. Because they violate the federal constitution, the  
4 Governor has also violated 42 U.S.C. § 1983, and must pay Plaintiffs damages for the  
5 periods in which they have been closed

6 85. Third, Executive Order 2020-09 and related orders directly deprive  
7 Plaintiffs of their property with no process at all, in direct violation of Article 2, § 4 of the  
8 State Constitution, and Amend. V of the U.S. Constitution, which provide, “No person  
9 shall be deprived of life, liberty, or property without due process of law.” Specifically, the  
10 Governor’s order directly “takes” property from series 6 and 7 licensees—their valuable  
11 privilege of off-sale—and “gives” that property to others—series 12 licensees who did not  
12 pay for the privilege. This is a classic violation of procedural due process.

13 86. Because taking property from A and giving it to B has been the  
14 quintessential violation of due process for hundreds of years, the Governor has also  
15 violated clearly established law—and must pay for damages under 42 U.S.C. § 1983 for  
16 giving away Plaintiffs’ paid-for off-sale privileges.

17 87. Fourth, the executive orders also constitute a regulatory taking of Plaintiffs’  
18 property for the period in which the Plaintiffs were deprived of their property interest in  
19 their licenses and their use of their licenses. As explained, series 6 and 7 licenses are  
20 *property rights*—they can be bought, sold, transferred, or inherited, and Plaintiffs paid  
21 upwards of \$100,000 for each series 6 license. The two principal sticks in the bundle of  
22 property rights conferred by a series 6 (or 7) license are the privileges of selling alcoholic  
23 beverages on-premise without having to have a minimum number of food sales, and of  
24 off-sale. The Governor’s executive orders, taken together, has all but destroyed the value  
25 of Plaintiffs’ series 6 or 7 licenses. They constitute a regulatory taking of Plaintiffs’  
26 property.

27 **A.R.S. § 26-303(E)(1) Is Unconstitutional Under the Arizona Constitution, But Can**  
28 **Be Narrowly Construed In These Circumstances**

1           88.     Articles 3 and 4 of the State Constitution supply a fundamental principle of  
2 our government: the legislature may not delegate its legislative power to another. This is  
3 called the “nondelegation doctrine.” “Under the doctrine of ‘separation of powers’ the  
4 legislature alone possesses the lawmaking power and, while it cannot completely delegate  
5 this power to any other body, it may allow another body to *fill in the details of legislation*  
6 already enacted.” *State v. Arizona Mines Supply Co.*, 107 Ariz. 199, 205 (1971) (emphasis  
7 added). “A statute need establish no more than a sufficient basic standard, i.e., a definite  
8 policy and rule of action which will serve as a guide for the administrative agency, in  
9 order for the delegation of legislative power to be deemed valid.” *Id.* at 205–06 (quoting  
10 *Department of Health v. Owens-Corning Fiberglas Corp.*, 100 N.J. Super. 366 (1968)).  
11 The language of *Arizona Mines* evokes Chief Justice Marshall’s dictum in *Wayman v.*  
12 *Southard* that Congress cannot delegate “exclusively legislative” power, but “Congress  
13 may certainly delegate to others, powers which the legislature may rightfully exercise  
14 itself.” 23 U.S. 1, 42–43 (1825). “The line has not been exactly drawn,” Chief Justice  
15 Marshall continued, “which separates those important subjects, which must be entirely  
16 regulated by the legislature itself, from those of less interest, in which a general provision  
17 may be made, and power given to those who are to act under such general provisions to  
18 *fill up the details.*” *Id.* at 43 (emphases added).

19           89.     The Governor’s executive orders are purportedly authorized by A.R.S. § 26-  
20 303(E)(1), which provides, “During a state of emergency . . . [t]he governor shall have  
21 complete authority over all agencies of the state government and the right to exercise,  
22 within the area designated, all police power vested in the state by the constitution and laws  
23 of this state in order to effectuate the purposes of this chapter.” A “state of emergency” is  
24 defined as “the duly proclaimed existence of conditions of disaster or of extreme peril to  
25 the safety of persons or property within the state caused by air pollution, fire, flood or  
26 floodwater, storm, epidemic, riot, earthquake or other causes, except those resulting in a  
27 state of war emergency, which are or are likely to be beyond the control of the services,  
28 personnel, equipment and facilities of any single county, city or town, and which require

1 the combined efforts of the state and the political subdivision.” *Id.* § 26-301(15).

2 90. The “police power” of a state is, in effect, its legislative power: its power  
3 over the health, safety, welfare, and morals of the people. “The state acting pursuant to  
4 its police powers may ‘make, ordain and establish all manner of wholesome and  
5 reasonable laws, statutes and ordinances either with penalties or without as shall be judged  
6 to be good for the welfare of the state and its residents.” *Campbell v. Superior Court In &*  
7 *For Maricopa Cty.*, 106 Ariz. 542, 546 (1971) (quoting *McKinley v. Reilly*, 96 Ariz. 176,  
8 179 (1964)); see also Ilan Wurman, *The Origins of Substantive Due Process*, 87 U. Chi. L.  
9 Rev. 815 (2020) (describing a variety of police power doctrines in the antebellum era).

10 91. The governor’s discretion is not cabined by this statute in any way, except  
11 by the general purpose to confront and resolve emergencies. It is a naked delegation of the  
12 state’s legislative power to the governor. The Governor’s actions are not merely matters of  
13 detail. They involve wide-ranging and important subjects.

14 92. To illustrate the breadth and importance of the authority the Governor has  
15 purported to exercise, the Governor, without citation to specific authorities, has, in  
16 addition to shutting down certain businesses, issued executive orders to force health  
17 insurers, among other requirements, to cover diagnostic testing, EO 2020-07; to prohibit  
18 price gouging, *id.*; to allow restaurants, contrary to existing law, to sell liquor for off-  
19 premise consumption, EO 2020-09; to prohibit “non-essential or elective” surgeries, EO  
20 2020-10; to suspend some of the legal requirements for obtaining unemployment  
21 insurance, EO 2020-11; to prohibit local governments from interfering with businesses he  
22 defines as “essential,” EO 2020-12; to delay enforcement of eviction actions, EO 2020-14,  
23 EO 2020-49; to require individuals to stay home unless for essential activity, EO 2020-18;  
24 to prohibit pharmacists and medical professionals from prescribing certain medications  
25 except under specified conditions, notwithstanding their medical judgment, EO 2020-20;  
26 to prohibit the commercial eviction of small businesses, EO 2020-21; to suspend  
27 regulatory requirements to allow restaurants to increase profits by selling grocery items,  
28 EO 2020-25; to immunize healthcare workers from civil liability contrary to existing

1 statutes, EO 2020-27; to delay the start of the school year and waive regulatory  
2 requirements related to education, EO 2020-41, EO 2020-44; and to fund and extend  
3 programs, such as those administered by the Arizona Department of Environmental  
4 Quality, without legislative approval, EO 2020-46.

5 93. Simply put, the Governor has stated repeatedly that the current situation is  
6 “our new normal for the foreseeable future” and “[t]here’s no end in sight,” Gov. Doug  
7 Ducey, Press Conference, at 0:10:39–59, 0:20:55–21:01 (July 16, 2020),  
8 <https://azgovernor.gov/video>; the legislature is able to meet, whether or not it desires to do  
9 so and whether or not the Governor chooses to call them into session; and the response to  
10 the coronavirus pandemic involves wide-ranging, important, and contested policy  
11 questions. It cannot be that a single person gets to answer such questions for the  
12 foreseeable future. The conclusion is inescapable: either the statute purporting to give the  
13 Governor the authority he has exercised is an unconstitutional delegation of legislative  
14 power, or the Governor has exceeded his statutory authority.

15 94. The Governor is expected to rely for support on *Globe School District No. 1*  
16 *of Globe v. Board of Health of City of Globe*, 20 Ariz. 208 (1919), in which the Arizona  
17 Supreme Court upheld a delegation of broad authority to a “city health board” to confront  
18 the Spanish Flu epidemic. Resp. 24. That case has nothing to do with this one.  
19 Delegations to municipal authorities are governed by entirely different legal rules. The  
20 first and primary reason such delegations are permissible is because they are vertical  
21 delegations of actual legislative power. That is why Congress can delegate legislative  
22 power over territorial matters to territories, and legislative power over local matters to the  
23 District of Columbia. See Ilan Wurman, *Nondelegation at the Founding*, 130 *Yale L.J.*  
24 (forthcoming 2021) (manuscript at 28–30),  
25 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3559867](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3559867). The matter is entirely  
26 different when the legislature delegates its legislative authority to the executive, who can  
27 veto any legislative attempts to reclaim that delegated power. *Id.*

28 95. Delegations to municipal authorities are different for another reason:

1 historically, courts rigorously reviewed municipal exercises of delegated police powers to  
2 ensure they were reasonable, not monopolistic, and not in restraint of trade. See Ilan  
3 Wurman, *The Origins of Substantive Due Process*, 87 U. Chi. L. Rev. 815, 825–37  
4 (2020). That is still the law in Arizona. *City of Tucson v. Stewart*, 45 Ariz. 36, 46 (1935)  
5 (“If such regulations . . . are reasonable and not monopolistic or oppressive, they are a  
6 proper exercise of the city’s police power.”); *City of Tucson v. Rineer*, 193 Ariz. 160, 166  
7 (Ct. App. 1998) (similar).

8         96. The Governor is also expected to rely on the idea that the legislature has  
9 retained for itself the power to issue a concurrent resolution to terminate the Governor’s  
10 emergency powers. A.R.S. § 26-303(F). Such an argument falls flat because the  
11 legislature will not be in session until January and the Governor has no apparent plan to  
12 call them into special session. But such an argument also has a constitutional defect: this  
13 provision was enacted prior to *INS v. Chadha*, 462 U.S. 919 (1983), declaring legislative  
14 veto provisions unconstitutional. If the Governor is exercising executive and not  
15 legislative power—as the Governor is expected to argue—then the legislature cannot keep  
16 a back-end check on such exercises of executive power. The legislature can only make  
17 law, which requires bicameralism and presentment. It cannot veto an exercise of law-  
18 execution. Ariz. Const. art. 4, § 12; *id.* art. 5, § 7.

19         97. As a general matter, courts will avoid striking down a statute for being  
20 unconstitutional if there is a plausible alternative reading of the statute that avoids the  
21 constitutional difficulty. *Slayton v. Shumway*, 166 Ariz. 87, 92 (1990) (“[W]here alternate  
22 constructions are available, we should choose that which avoids constitutional  
23 difficulty.”). At the federal level this “constitutional avoidance” doctrine has been applied  
24 (at least arguably) in two nondelegation challenges. See *Industrial Union Dept., AFL-CIO*  
25 *v. American Petroleum Institute*, 448 U.S. 607 (1980) (“The Benzene Case”); *Gundy v.*  
26 *United States*, 588 U.S. \_\_ (2019).

27         98. Here, the Governor has a suite of specific authorities for handling  
28 contagious disease epidemics in Title 36 of the Arizona statutes. The sweeping delegation

1 of authority in § 303(E)(1), if it is not struck outright, can be narrowly construed in light  
2 of those authorities.

3 99. Title 36 of the Arizona statutes is on “Public Health and Safety.” Chapter 6  
4 is on “Public Health Control.” Article 2 of this chapter (§§ 36-621–631) is on “Contagious  
5 Diseases,” and Article 9 (§§ 36-781–790) is on “Enhanced Surveillance Advisories and  
6 Public Health Emergencies.” These statutory provisions grant the Governor and county  
7 health authorities a handful of specific authorities to combat contagious diseases.

8 100. Section 36-782, “Enhanced surveillance advisory,” provides,

9 A. The governor, in consultation with the director [of the department  
10 of health services], may issue an enhanced surveillance advisory if the  
11 governor has reasonable cause to believe that an illness, health condition or  
12 clinical syndrome caused by bioterrorism, epidemic or pandemic disease or  
13 a highly fatal and highly infectious agent or biological toxin has or may  
14 occur or that there is a public event that could reasonably be the object of a  
15 bioterrorism event. The illness or health condition may not include acquired  
16 immune deficiency syndrome or any other infection caused by the human  
17 immunodeficiency virus.

18 B. As determined by the governor after considering the least  
19 restrictive measures necessary that are consistent with public health and  
20 safety, the enhanced surveillance advisory shall direct the following in  
21 accordance with this article:

22 1. Those persons and entities required to report.

23 2. The clinical syndromes, any illness or health condition that may be  
24 associated with bioterrorism or a specific illness or health condition to be  
25 reported.

26 3. Patient tracking.

27 4. Information sharing.

28 5. Specimen testing coordination.

101. Nothing in § 36-782 authorizes the Governor in a pandemic to close down  
businesses, or to assign their privilege of off-sale to Plaintiffs’ direct competitors who did  
not pay for that privilege.

102. Section 36-787, “Public health authority during state of emergency or state  
of war emergency,” provides in Part A: “During a state of emergency or state of war  
emergency declared by the governor in which there is an occurrence or imminent threat of  
an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or  
a highly fatal infectious agent or biological toxin and that poses a substantial risk of a  
significant number of human fatalities or incidents of permanent or long-term disability,

1 the department [of health services] shall coordinate all matters pertaining to the public  
2 health emergency response of the state.”

3 103. The reference to a declared “state of emergency or state of war emergency”  
4 in the event of an “epidemic or pandemic disease” is a cross-reference back to a  
5 declaration under § 26-303.

6 104. The remainder of § 36-787(A) provides that the Department of Health  
7 Services has primary jurisdiction, responsibility, and authority for planning and executing  
8 public health assessments; coordinating public health emergency responses among local  
9 governments; collaborating with the federal government and private entities; organizing  
10 public information activities; establishing waivers for professional licensure; and similar  
11 authorities.

12 105. Nothing in § 36-787(A) authorizes the Governor in a pandemic to close  
13 down businesses, or to assign their privilege of off-sale to Plaintiffs’ direct competitors  
14 who did not pay for that privilege.

15 106. Section 36-787(B) then provides that the Governor, in consultation with the  
16 director of the Department of Health Services, “may issue orders that: 1. Mandate medical  
17 examinations for exposed persons[;] 2. Ration medicine and vaccines[;] 3. Provide for  
18 transportation of medical support personnel and ill and exposed persons[; and] 4. Provide  
19 for procurement of medicines and vaccines.”

20 107. Nothing in § 36-787(B) authorizes the Governor in a pandemic to close  
21 down businesses, or to assign their privilege of off-sale to Plaintiffs’ direct competitors  
22 who did not pay for that privilege.

23 108. Section 36-787(C) then provides that “[i]n addition to the authority provided  
24 in subsections A and B, during a state of emergency or state of war emergency in which  
25 there is an occurrence or the imminent threat of smallpox, plague, viral hemorrhagic  
26 fevers or a highly contagious and highly fatal disease with transmission characteristics  
27 similar to smallpox, the governor, in consultation with the director of the department of  
28 health services, may issue orders that: 1. Mandate treatment or vaccination of persons who

1 are diagnosed with illness resulting from exposure or who are reasonably believed to have  
2 been exposed or who may reasonably be expected to be exposed[; and] 2. Isolate and  
3 quarantine persons.”

4 109. Nothing in § 36-787(C) authorizes the Governor in a pandemic to close  
5 down businesses, or to assign their privilege of off-sale to Plaintiffs’ direct competitors  
6 who did not pay for that privilege.

7 110. Section 36-788(A) provides that, “[s]ubject to the provisions of this article,  
8 persons *who have contracted the disease* or who have *been exposed* to the disease may be  
9 subject to isolation and quarantine if the director determines that quarantine *is the least*  
10 *restrictive* means by which the public can be protected from transmission of the disease,  
11 due to the nature of the disease and available preventive measures, or refusal by an  
12 individual to accept less restrictive measures to prevent disease transmission.”

13 111. Nothing in § 36-788(A) authorizes the Governor in a pandemic to close  
14 down businesses, or to assign their privilege of off-sale to Plaintiffs’ direct competitors  
15 who did not pay for that privilege.

16 112. Section 36-788(B) provides that the Department of Health Services may  
17 “[e]stablish and maintain places of isolation and quarantine, which may include the  
18 residence of the person quarantined.” It may also “[r]equire isolation or quarantine of any  
19 person by the least restrictive means necessary to protect the public health.” The  
20 department “shall use all reasonable means to prevent the transmission of disease among  
21 the isolated or quarantined persons.”

22 113. Nothing in § 36-788(B) authorizes the Governor in a pandemic to close  
23 down businesses, or to assign their privilege of off-sale to Plaintiffs’ direct competitors  
24 who did not pay for that privilege.

25 114. Section 36-789 provides due process rights to “person or persons to be  
26 isolated or quarantined.”

27 115. Section 36-624 provides, “When a county health department or public  
28 health services district is apprised that infectious or contagious disease exists within its

1 jurisdiction, it shall immediately make an investigation. If the investigation discloses that  
2 the disease does exist, the county health department or public health services district may  
3 adopt quarantine and sanitary measures consistent with department rules and sections 36-  
4 788 and 36-789 to prevent the spread of the disease. The county health department or  
5 public health services district shall immediately notify the department of health services of  
6 the existence and nature of the disease and measures taken concerning it.”

7 116. As noted, §§ 36-788 and 36-789 do not authorize the Governor to close  
8 down businesses. Section 36-624 allows the county health department to adopt quarantine  
9 and “sanitary measures.” Nothing in that section authorizes the Governor in a pandemic to  
10 close down businesses, or to assign their privilege of off-sale to Plaintiffs’ direct  
11 competitors who did not pay for that privilege.

12 117. No other provision of the Arizona statutes authorizes the Governor to take  
13 any additional actions in the event of a pandemic or epidemic.

14 118. The conclusion is inescapable. Either the Governor has exceeded statutory  
15 authority by exercising the powers he has purported to exercise, or A.R.S. § 303(E)(1) is  
16 an unconstitutional delegation of legislative power as applied to the coronavirus  
17 “emergency.” Such a delegation should therefore be narrowly construed in light of the  
18 Governor’s more specific authorities in Title 36 of the Arizona statutes. Nothing in that  
19 Title authorizes the Governor to close down Plaintiffs’ businesses or assign their off-sale  
20 privileges to their competitors.

21 119. Indeed, it appears that the Governor has exceed statutory authority *even if*  
22 that authority is not limited by Title 36, at least in some instances. Even if we look only to  
23 Title 26, the emergency statute defines “Emergency management” as “the preparedness,  
24 response, recovery and mitigation activities necessary to respond to and recover from  
25 disasters, emergencies or contingencies.” A.R.S. § 301(6). And it defines “Mitigation” as  
26 “measures taken to reduce the need to respond to a disaster and to reduce the cost of  
27 disaster response and recovery.” *Id.* § 301(11). It defines “Preparedness” as “actions taken  
28 to develop the response capabilities needed for an emergency.” *Id.* § 301(12). It defines

1 “Recovery” as “short-term activities necessary to return vital systems and facilities to  
2 minimum operating standards and long-term activities required to return life to normal or  
3 improved levels.” *Id.* § 301(13). Finally, it defines “Response” as “activities that are  
4 designed to provide emergency assistance, limit the primary effects, reduce the probability  
5 of secondary damage and speed recovery operations.” *Id.* § 301(14).

6 120. How, exactly, does taking away Plaintiffs’ off-sale privileges and giving  
7 them to their competitors fit these definitions? That action has nothing to do with response  
8 capability, returning “vital systems” to normal, and they have nothing to do with reducing  
9 the primary effects or secondary damage *to the health* of the public or individuals. Surely  
10 these statutory authorities do not authorize the Governor to do *anything and everything*  
11 under the sun that has some secondary or tertiary relationship to the coronavirus. Nothing  
12 authorizes him to enact *social* or *economic* policies to counteract secondary social or  
13 economic effects of the virus. He has authority to combat *the virus*. Nothing more,  
14 nothing less. The privilege of off-sale surely does not count.

15 **The Governor’s Order Violates Art. 2, § 13 of the Arizona Constitution, Which**  
16 **Requires Equality in Privileges and Immunities**

17 121. Article 2, § 13 of the State Constitution provides, “No law shall be enacted  
18 granting to any citizen, class of citizens, or corporation other than municipal, privileges or  
19 immunities which, upon the same terms, shall not equally belong to all citizens or  
20 corporations.”

21 122. Article 2, § 13, by its text, is limited to “enacted laws.” Had the legislature  
22 enacted into law the governor’s order, it would have violated this clause. *A fortiori*, it  
23 cannot be the case that the governor can *on his own* issue orders pursuant to vague  
24 delegations if those orders, had they been “laws,” would have violated this clause.

25 123. Put another way, if A.R.S. § 303(E)(1), or any other statute, were interpreted  
26 to allow the Governor’s executive orders, then that statute as applied would violate Art. 2,  
27 § 13 of the State Constitution by effectively “granting” to some citizens “privileges or  
28 immunities” to pursue a lawful occupation on the “terms” that they engage in proper

1 sanitary measures, while denying to other citizens the same privilege to pursue *essentially*  
2 *the same* lawful occupation “upon the same terms” of complying with such sanitary  
3 measures.

4 124. This state’s privileges or immunities clause, like the privileges or  
5 immunities clauses in several other states, require equality in the privileges and  
6 immunities of state citizenship. See Ilan Wurman, *The Second Founding: An Introduction*  
7 *to the Fourteenth Amendment* (Cambridge University Press forthcoming) (on file with  
8 counsel) (describing state privileges or immunities clauses). These clauses were products  
9 of Jacksonian-era antipathy to special privileges and, in the Reconstruction constitutions  
10 in the Southern states, to the insidious Black Codes that systematically denied the same  
11 civil rights to black Americans as white Americans enjoyed. *Id.*

12 125. The privileges or immunities clause of this and other states’ constitutions, as  
13 well as of the federal Constitution, protect all civil rights, but not political rights. A  
14 fundamental civil right includes the right to pursue a lawful calling. Interpreting Article  
15 IV of the U.S. Constitution, which requires a state to accord the same privileges and  
16 immunities to citizens visiting from other states as it accords its own citizens, Justice  
17 Bushrod Washington held that “the privileges and immunities of citizens in the several  
18 states . . . belong, of right, to the citizens of all free governments,” and these include “the  
19 enjoyment of life and liberty, with the right to acquire and possess property of every  
20 kind,” “to pursue and obtain happiness and safety,” and “to reside in any . . . state, for  
21 purposes of trade, agriculture, professional pursuits, or otherwise,” subject nevertheless  
22 “to such restraints as the government may justly prescribe for the general good of the  
23 whole.” *Corfield v. Coryell*, 6 F. Cas. 546, 551–52 (C.C.E.D. Pa. 1825);<sup>2</sup> see also  
24 *Slaughter-House Cases*, 83 U.S. 36, 76 (1872) (noting this definition of state privileges  
25 and immunities had been adopted by the Supreme Court); *id.* at 88 (Field, J., dissenting)

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27 <sup>2</sup> Although this case is often reported as dating from 1823, it was decided in 1825. 6 F.  
28 Cas. at 550.

1 (“right to pursue one of the ordinary trades or callings of life . . . is a right appertaining  
2 solely to the individual”); *id.* at 119 (Bradley, J., dissenting) (“the privilege of engaging in  
3 any lawful employment for a livelihood” is a privilege of state and national citizenship).

4 126. In numerous cases, Arizona courts have struck down different taxes or  
5 regulations imposed on similarly situated businesses or persons where the difference was  
6 not in furtherance of the public health, safety, or welfare. In *Gila Meat Co. v. State*, the  
7 Supreme Court struck down a statute that “impose[d] different taxes upon persons  
8 engaged in the same business, without such difference being based upon a reasonable  
9 classification for purposes of the public health, safety, or general welfare,” on the basis  
10 that such a statute “in effect grant[ed] to certain citizens privileges and immunities which  
11 are not granted to others similarly situated on equal terms.” 35 Ariz. 194, 202 (1929).

12 127. In *Killingsworth v. W. Way Motors, Inc.*, 87 Ariz. 74 (1959), the Arizona  
13 Supreme Court, while upholding numerous exercises of the police power, invalidated a  
14 state law re-quiring dealers of new cars to own their buildings in fee simple, or lease  
15 buildings with space sufficient to display two or more vehicles, with the ostensible  
16 purpose of preventing fraud. The Court held the law had “no reasonable relationship . . . to  
17 the purpose sought to be achieved, the restriction [was] arbitrary, discriminatory, and  
18 unlawful.” *Id.* at 80. Indeed, the Court asked, was “there any valid reason for *failing to*  
19 *impose the same requirements* upon a dealer engaged in the business of buying and selling  
20 used motor vehicles?” *Id.* (emphases added). The opportunity to defraud customers was  
21 certainly “as great” for the used car dealer as for the new car dealer. Thus, the limitation  
22 was “arbitrary, unreasonable and discriminatory and violate[d] . . . Article 2, Section 13 of  
23 the state constitution.” *Id.*

24 128. Importantly, Petitioners do not argue that the legislature cannot impose  
25 regulations on an industry, so long as there is a rational basis for them. But what it cannot  
26 do is shut down only bars owned by African-Americans, or only bars owned by women.  
27 The legislature’s general power over liquor does not answer the constitutional question of  
28 discrimination. Petitioners argue that when the government discriminates among similarly

1 situated businesses and competitors, that discrimination triggers the protection of the state  
2 privileges or immunities clause.

3 129. To be sure, it is not obvious what constitutes a discrimination as opposed to  
4 a regulation. The distinction, however, was articulated in a famous case, *City of Chicago*  
5 *v. Rumpff*, rejecting the grant of a slaughterhouse monopoly by a municipal corporation.  
6 “Where that body have made the necessary regulations required for the health or comfort  
7 of the inhabitants, all persons inclined to pursue such an occupation should have the  
8 opportunity of conforming to such regulations, otherwise the ordinance would be  
9 unreasonable and tend to oppression.” 45 Ill. 90, 97 (1867). In other words, a regulation of  
10 slaughterhouses would have been legitimate so long as anyone in the occupation had a fair  
11 chance of conforming to the regulations. “We regard it neither as a regulation nor a  
12 license of the business,” however, “to confine it to one building, or to give it to one  
13 individual. Such action is oppressive, and creates a monopoly that never could have been  
14 contemplated by the general assembly.” *Id.*

15 130. Distinctions based on immutable characteristics are therefore classic  
16 examples of discrimination. An African-American who is discriminated against cannot  
17 “conform” to the purported “police power regulation” because she cannot change her skin  
18 color. Monopolies are also discriminations because they prevent similarly situated  
19 individuals from being able to “conform” to a genuine police power regulation. That is  
20 what we have here: a purported “police power regulation” that benefits some citizens  
21 while discriminating against other, similarly situated citizens without giving them an  
22 equal opportunity to “conform” to reasonable health measures

23 131. EO 2020-43 and related orders, at a minimum, unconstitutionally  
24 discriminate against series 6 and 7 licensees. Their direct competitors—series 3, 11, 12,  
25 13, 14, 18 and 19 licensees, i.e. microbreweries, hotel bars, restaurants, wineries, private  
26 clubs, distilleries, and tasting rooms—all continue to operate and serve the same  
27 customers. As explained above, however, the *only* legal distinctions between series 6 and  
28 7 licensees and these other licensees are that series 6 and 7 licensees paid valuable

1 consideration for the privileges of not having to have a minimum number of food sales  
2 and of “off-sale.” These two distinctions have *nothing whatsoever* to do with public  
3 health. Indeed, all establishments holding a liquor license are susceptible to the same  
4 concerns involving eating and drinking, social distancing, potentially cramped spaces, and  
5 loud music. The amount of food served, simply put, has nothing to do with how  
6 coronavirus spreads. Even the CDC itself treats bars and restaurants the same. Ex. Z.

7 132. The discrimination is hard to ignore. In Arizona, there are over 4,000 series  
8 12 licensees—restaurants that serve alcohol—but only 2,100 series 6 and 7 licensees.  
9 And, according to the Arizona Restaurant Association, there are 4,000 additional “eating  
10 and drinking” locations in Arizona. Ex. AA. Among these 10,000 establishments, only  
11 Petitioners—series 6 and 7 licensees—have been forced to shut down. One wonders  
12 whether the Governor’s choices are directly correlated to the political power of the  
13 industry. That is, to appease two constituencies—to appear to be doing something about  
14 the coronavirus without totally devastating the economy—the Governor has dis-  
15 criminated against Plaintiffs. He has picked winners and losers, and his politically  
16 powerful friends in the restaurant industry are the winners. But political expediency is not  
17 a legitimate police-power purpose. In this case, it is an unconstitutional one.

18 **The Governor’s Orders Similarly Violate the Equal Protection Clause**  
19 **and 42 U.S.C. § 1983.**

20 133. Additionally, the Governor’s orders, and ADHS’s implementing regulations,  
21 violate the federal equal protection clause because they lack any rational basis. As  
22 explained, there is *no* legal distinction between series 6 and 7 licensees and other licensees  
23 that has any relation to public health.

24 134. As a result, the Governor has violated 42 U.S.C. § 1983, which provides,  
25 “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of  
26 any State or Territory or the District of Columbia, subjects, or causes to be subjected, any  
27 citizen of the United States or other person within the jurisdiction thereof to the  
28 deprivation of any rights, privileges, or immunities secured by the Constitution and laws,

1 shall be liable to the party injured in an action at law, suit in equity, or other proper  
2 proceeding for redress.”

3 135. Discriminating against series 6 and 7 licensees, when such discrimination  
4 has no relation whatsoever to public health or other legitimate police power, violates  
5 clearly established law.

6 **EO 2020-09 and Related Orders Work a Direct Deprivation**  
7 **of Property without Due Process of Law**

8 136. Article 2, § 4 of the State Constitution provides, “No person shall be  
9 deprived of life, liberty, or property without due process of law.” The Fifth Amendment to  
10 the U.S. Constitution contains similar language.

11 137. Due process of law is fundamentally a separation of powers provision: it  
12 requires that there be established law that is violated, and that an adjudication of that  
13 violation be in accordance with a certain minimum of judicial procedures. See Nathan S.  
14 Chapman & Michael W. McConnell, *Due Process as Separation of Powers*, 121 Yale L.J.  
15 1672 (2012); Ilan Wurman, *The Second Founding: An Introduction to the Fourteenth*  
16 *Amendment* (Cambridge University Press forthcoming) (on file with counsel) (arguing  
17 that state due process of law clauses required that there be established law, violations of  
18 which were adjudicated according to a minimum of judicial procedure); Ilan Wurman,  
19 *The Origins of Substantive Due Process*, 87 U. Chi. L. Rev. 815 (2020) (same); cf. also  
20 *State v. Cota*, 99 Ariz. 233, 236 (1965) (statutes that are too vague violate due process of  
21 law, thereby affirming the requirement of established law); *Forman v. Creighton Sch.*  
22 *Dist. No. 14*, 87 Ariz. 329, 332 (1960) (due process requires, at a minimum, “notice and  
23 opportunity to be heard”).

24 138. The quintessential violation of due process is when the legislature or  
25 executive “takes” property from “A” and “gives” it to “B,” contrary to existing standing  
26 laws. Chapman & McConnell, *supra* at 1729 n. 246, 1755-59; *see also Sadler v.*  
27 *Langham*, 34 Ala. 311, 329 (1859) (invalidating the “transfer of property by mere  
28 legislative edict, from one person to another”); *Sherman v. Buick*, 32 Cal. 241, 249-50

1 (1867) (holding that the due process provision of the state constitution prohibits a statute  
2 authorizing taking property from one person and giving it to another); *Bd. of Cnty.*  
3 *Comm'rs v. Carter*, 2 Kan. 109, 123-29 (1863) (invalidating a retroactive statute that  
4 would have transferred property from one person to another); *Regents of the Univ. of Md.*  
5 *v. Williams*, 9 G. & J. 365, 411-12 (Md. 1838) (invalidating a statute taking property from  
6 the Regents and giving it to another).

7 139. As Justice Joseph Story explained in 1829, “We know of no case, in which a  
8 legislative act to transfer the property of A. to B. without his consent, has ever been a  
9 constitutional exercise of legislative power in any state in the union. On the contrary, it  
10 has been constantly resisted as inconsistent with just principles, by every judicial tribunal  
11 in which it has been attempted to be enforced.” *Wilkinson v. Leland*, 27 U.S. (2 Pet.) 627,  
12 658 (1829). Chapman and McConnell explain that a “law that takes property from A and  
13 gives it to B was the paradigmatic example of an impermissible quasi-judicial act” that  
14 violated due process of law. Chapman & McConnell, *supra*, at 1755.

15 140. A clear example is provided by *Taylor v. Porter*, 4 Hill 140 (N.Y. Sup. Ct.  
16 1843). A New York statute allowed highway commissioners upon certain conditions to  
17 divest a landowner of land and vest it in another if there was a need for private road.  
18 Because it was for private use, such a “taking” did not fall within the eminent domain  
19 rules. The Court held such transfers of property were unconstitutional:

20 The words “due process of law,” in this place, cannot mean less than a  
21 prosecution or suit instituted and conducted according to the prescribed  
22 forms and solemnities for ascertaining guilt, or determining the title to  
23 property. It will be seen that the same measure of protection against  
24 legislative encroachment is extended to life, liberty and property; and if the  
25 latter can be taken without a forensic trial and judgment, there is no security  
26 for the others. If the legislature can take the property of A. and transfer it to  
27 B., they can take A. himself, and either shut him up in prison, or put him to  
28 death. But none of these things can be done by mere legislation. There must

1 be “due process of law.” *Id.* at 147.

2 141. Here, the Governor’s orders have just as literally taken property from A and  
3 given them to B. They have “taken” Plaintiffs’ property right in their licenses, which  
4 includes the privilege of off-sale, and given it for free to their direct competitors. For  
5 hundreds of year it has been clearly established that such actions violate due process of  
6 law.

7 142. Importantly, Plaintiffs do not argue that the legislature could not provide for  
8 an increase in the number of series 6 or 7 licenses, thereby decreasing the value of their  
9 licenses. Nor do they argue that the legislature cannot prohibit liquor altogether, or create  
10 a new licensing regime. Plaintiffs understand that they always hold property and liberty  
11 interests subject to potential changes in the regulatory environment. Plaintiffs argue only  
12 that they bought their licenses under the promises of *existing law*. Although the legislature  
13 could change that law—supplying due process of law—the *executive* could not, without  
14 legislative authorization, unilaterally change the licensing scheme and obliterate the  
15 investment-backed expectations of Plaintiffs. *That* is not “due process of law.”

16 143. Because the Governor’s orders also violate the due process clause of the  
17 Fourteenth Amendment, his orders also violate 42 U.S.C. § 1983.

18 **The Governor’s Orders Constitute a Regulatory Taking of Plaintiffs’ Property for**  
19 **Which Just Compensation Is Owed Under The Fifth Amendment**

20 144. The federal Constitution provides, in the Fifth Amendment, among other  
21 things, that “private property [shall not] be taken for public use, without just  
22 compensation.” U.S. Const. amend. V.<sup>3</sup>

23 145. As explained previously, Plaintiffs all have a property right in their series 6  
24 or 7 licenses which, unlike other series of license (except for series 9), can be bought and

25 \_\_\_\_\_  
26 <sup>3</sup> In the next few weeks, Plaintiffs will file a notice of claim with the Attorney General of the State  
27 of Arizona on Plaintiffs’ regulatory takings claim under Arizona law. Plaintiffs will amend their  
28 complaint in 60 days after such notice is provided to add this state-law claim if they have not  
heard from the Attorney General or a settlement agreement is not reached. A.R.S. § 12-  
801.01(A).

1 sold. Plaintiffs each paid upwards of \$100,000 for each series 6 license, for example. The  
2 privileges appertaining to this property right are the privileges of selling alcohol on-  
3 premise without having to meet a minimum number of food sales, and of selling alcohol  
4 for off-premise consumption. These privileges are denied to other licensees by law.

5 146. The Governor’s executive orders deprive Plaintiffs of almost the entire  
6 value of their licenses and their rights under the licenses. By executive fiat, Plaintiffs were  
7 deprived of both privileges appertaining to their licenses. They were ordered to shut  
8 down, all while their competitors were allowed to be open, notwithstanding that they paid  
9 far more for the very privilege denied to them and allowed to those competitors. Not only  
10 that, but the only thing Plaintiffs could do to make *any* money while shut down was “take  
11 out,” that is, selling alcohol to go. But *this* privilege—which they paid for exclusively—  
12 was *also* given to their competitors. Whatever limited value their licenses might have had,  
13 whatever minimal profit Plaintiffs might have made, the two sets of orders together  
14 deprived Plaintiffs of *all* value and essentially all hope for revenue.

15 147. In short, this case is no different than if each Plaintiff had bought a \$100,000  
16 tract of land zoned for two business purposes, and the state or municipality rezoned the  
17 land to eliminate almost all use for the land. Such an action would constitute a regulatory  
18 taking. So too here.

19 148. On these facts, Defendants have “taken” Plaintiffs’ property, and just  
20 compensation is owed. Whether under the Arizona or the federal Constitution, the analysis  
21 is generally the same.<sup>4</sup> *Ranch 57 v. City of Yuma*, 152 Ariz. 218 (Ct. App. 1986) (noting  
22 the same analysis for regulatory takings under both constitutions). However, Arizona law  
23 is more protective in one respect. Under Arizona law, temporary takings are compensable.  
24 *Corrigan v. City of Scottsdale*, 149 Ariz. 538 (1986); *Ranch 57 v. City of Yuma*, 152 Ariz.

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25  
26 <sup>4</sup> Again, Plaintiffs intend to file a notice of claim on their state takings claim and will in due  
27 course amend their complaint to include that claim. For now, they are only making a federal  
28 claim. However, because takings jurisprudence is *generally* similar, cases from both jurisdictions  
will be discussed.

1 218, 226 (Ct. App. 1986). Under federal law, temporary regulatory takings are sometimes  
2 compensable, and sometimes not. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe*  
3 *Regional Planning Agency*, 535 U.S. 302 (2002).

4 149. A takings analysis usually proceeds as follows. A court must first determine  
5 whether there is a cognizable property interest. Second, there are a limited number of  
6 government actions that *sometimes* do not constitute takings. At the third step, there are  
7 two categories of “categorical” takings. Fourth, if the case does not involve a categorical  
8 taking, the court must weigh the “*Penn Central*” factors.

9 150. Plaintiffs’ property interest in their licenses is cognizable under a takings  
10 analysis. *Am. Pelagic Fishing Co., L.P. v. United States*, 379 F.3d 1363, 1372 (Fed. Cir.  
11 2004) (“as a threshold matter, the court must determine whether the claimant has  
12 established a property interest for purposes of the Fifth Amendment”); *Mutschler v. City*  
13 *of Phoenix*, 212 Ariz. 160, 165 (Ct. App. 2006) (“the first question a court must address in  
14 any takings case . . . is whether the property use at issue was in fact one of the sticks in the  
15 bundle of rights acquired by the owner”) (quoting secondary source). In *American Pelagic*  
16 *Fishing*, the court, in the context of fishing permits, summarized the law on whether a  
17 license was a property right subject to takings analysis. Where a plaintiff “could not  
18 assign, sell, or transfer his swordfishing permit, because it did not confer exclusive fishing  
19 privileges, and because the government at all times retained the right to revoke, suspend,  
20 or modify it,” the plaintiff “did not possess a property interest in his permit.” *Id.* at 1374  
21 (citing *Conti v. United States*, 291 F.3d 1334, 1341–42 (Fed. Cir. 2002)). “This ‘absence  
22 of crucial indicia of a property right, coupled with the government’s irrefutable retention  
23 of the right to suspend, revoke, or modify’ the swordfishing permit ‘compels the  
24 conclusion that the permit bestowed a revocable license, instead of a property right.’” *Id.*  
25 (quoting *Conti*, 291 F.3d at 1342).

26 151. Here, there is no question that series 6 and 7 licenses, which are “quota”  
27 licenses as described above, are assignable, sellable, and transferable on the open market.  
28 They are even inheritable. See also Ex. B (expert declaration). Additionally, those licenses

1 confer *exclusive* privileges—including the privilege of off-sale, which is inapplicable to  
2 series 12 licensees. The licenses also confer exclusively on their holders the privilege of  
3 selling beverages without having a minimum number of food sales. Moreover, the  
4 privileges are fixed by law—the liquor department cannot freely modify the privileges,  
5 and it cannot suspend licenses except for violations of existing regulations. Plaintiffs  
6 undeniably have a property right in their licenses. There can be no question that the  
7 privileges Plaintiffs bought were “sticks in the bundle of rights acquired by the owner.”  
8 *Mutschler*, 212 Ariz. at 165.

9 152. Additionally, in *United Nuclear Corp. v. U.S.*, 912 F. 2d 1432 (1990), the  
10 plaintiff, United, had obtained leases on tribal lands to explore and mine uranium, at  
11 considerable expense. After investing millions of dollars in exploration, United discovered  
12 at least 20 million pounds of uranium. Before mining the uranium, United had to obtain  
13 approval from the Department of the Interior. United met all the existing regulatory  
14 requirements. The Secretary of Interior, however, refused to approve the mining without  
15 the approval of the tribal council, which demanded millions of dollars in additional  
16 payment for its approval. Eventually, the leases expired, with no mining and no approval.  
17 The federal circuit held that the Secretary’s actions constituted a regulatory taking. The  
18 court held that United had a “property interest in the leases,” that United “lost whatever  
19 profits it would have made had it been permitted to mine the leased land,” and that “the  
20 Secretary’s refusal to approve the mining plan seriously interfered with United’s  
21 investment-backed expectation by destroying them.”

22 153. To be sure, “the basic rule” is “that as against reasonable state regulation, no  
23 one has a legally protected right to use property in a manner that is injurious to the safety  
24 of the general public.” *Allied-Gen. Nuclear Servs. v. United States*, 839 F.2d 1572, 1576  
25 (Fed. Cir. 1988) (citing *Mugler v. Kansas*, 123 U.S. 623 (1887)). A state appeals court  
26 recently summarized the law on regulatory takings, holding that the threshold inquiry  
27 (beyond whether there is a cognizable property interest) is whether Plaintiffs “could have  
28 been restrained from operating their business in a common-law action for public

1 nuisance.” *Mutschler*, 212 Ariz. at 165.

2 154. But the touchstone of the analysis from *Mugler* and cases interpreting it is  
3 *reasonable* regulation—not unconstitutional or otherwise discriminatory regulation, as we  
4 have here. And in *Mutschler*, the Arizona appellate court defined a public nuisance as “an  
5 unreasonable interference with a right common to the general public.” 212 Ariz. at 166.  
6 Under this definition, it is impossible to define series 6 and 7 licensees as operating public  
7 nuisances because they did not create an “unreasonable interference with a right common  
8 to the general public.” Their establishments could not create an “unreasonable  
9 interference” if “bars” are otherwise open—just in hotels, restaurants, private clubs,  
10 breweries, or wineries. In any event, bars are *not* public nuisances at common law. They  
11 are nothing like noise- or pollution-generating buildings or the sex clubs at issue in  
12 *Mutschler*.

13 155. More still, even if the Governor’s exercise of power was reasonable, some  
14 Arizona and federal courts have held that there still may be a compensable taking.  
15 “[A]lthough a zoning ordinance may be a proper exercise of police power, it nevertheless  
16 may result in an unconstitutional taking or property.” *Ranch 57 v. City of Yuma*, 152 Ariz.  
17 218, 225 (Ct. App. 1986). For example, *Yancey v. U.S.*, 915 F.2d 1534 (Fed. Cir. 1990),  
18 involved the USDA’s imposition of a turkey quarantine due to the avian influenza. The  
19 quarantine reduced the value of Yancey’s turkey breeder stock by 77% after the  
20 quarantine. The Federal Circuit stated that “the Government’s proper exercise of  
21 regulatory authority does not automatically preclude a finding that such action is a  
22 compensable taking.” *Id.* at 1540. The Federal Circuit even concluded that a taking  
23 occurred, explaining:

24 When adverse economic impact and unanticipated deprivation of an  
25 investment backed interest are suffered, as when the poultry quarantine  
26 forced the Yanceys to sell their turkey flock, compensation under the Fifth  
27 Amendment is appropriate. Even when pursuing the public good, as the  
28 USDA was doing when it imposed the poultry quarantine, the Government

1 does not operate in a vacuum. Bluntly stated, the consequences of the  
2 Government’s action cannot be ignored. Why should the Yanceys be forced  
3 to bear their own losses when their turkeys were not diseased? The  
4 Yanceys’ losses came about because of the Government’s action. *If the*  
5 *intent of the poultry quarantine was to benefit the public, the public should*  
6 *be responsible for the Yanceys’ losses.*

7 *Id.* at 1542 (emphasis added).

8 156. As there, so too here. Why should Plaintiffs “bear their own losses” when  
9 there is no evidence that any of their establishments have led to spread of the coronavirus?  
10 Why should they bear the losses when their direct competitors remain open? The  
11 government’s emergency powers are no excuse for a regulatory taking. The touchstone of  
12 the analysis is who should bear the burden, and here, the entire public should bear it—  
13 especially because of the discriminatory nature of the taking.

14 157. Moving past these threshold questions, a regulatory taking under federal  
15 (and state) law is determined by weighing the “*Penn Central*” factors: (1) the severity of  
16 the economic impact on Plaintiffs, (2) the interference with investment-backed  
17 expectations, and (3) the character of the government’s actions. *Lingle v. Chevron U.S.A.*  
18 *Inc.*, 544 U.S. 528, 538–39 (2005); *Penn Central Transp. Co. v. New York City*, 438 U.S.  
19 104 (1978). There are, however, two categories of cases that are considered “categorical”  
20 takings. “First, where government requires an owner to suffer a permanent physical  
21 invasion of her property—however minor—it must provide just compensation.” *Lingle*,  
22 544 U.S. at 538 (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419  
23 (1982)). Second, a “categorical rule applies to regulations that completely deprive an  
24 owner of ‘all economically beneficial us[e]’ of her property.” *Id.* (citing *Lucas v. South*  
25 *Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992)).

26 158. Here, the Governor’s orders constitute a categorical taking. The *only* reasons  
27 Plaintiffs each paid approximately \$100,000 or more for a series 6 license, and \$35,000 or  
28 more for a series 7, is for the privilege of selling alcoholic beverages without minimum

1 food sales and for the *exclusive* privileges of off-sale (other than in grocery stores). If  
2 Plaintiffs did not want these privileges, they could have merely spent \$1,500 on a series  
3 12 license. And now, the Governor’s orders have deprived Plaintiffs of *all* economically  
4 beneficial use of their series 6 or 7 licenses. If they had not spent \$100,000, and instead  
5 spent only \$1,500 for a series 12, Plaintiffs would both be open and have the privilege of  
6 off-sale. Instead, Plaintiffs literally spent \$100,000 *for nothing*. The Governor’s orders  
7 now mean that Plaintiffs’ licenses literally give them *none* of the privileges they paid for.  
8 They constitute a total regulatory taking of their property right in their licenses. To put the  
9 point another way, if the Governor’s orders were extended indefinitely—suppose they  
10 never expired—the value of a series 6 or 7 license would fall essentially to zero. Ex. B  
11 ¶ 16 (expert declaration).

12         159. Even if there is no categorical taking, the first two prongs of the *Penn*  
13 *Central* analysis clearly favor Plaintiffs. The question boils down to the third prong and  
14 how to weigh it along with the first two. As to that prong, whether or not the government  
15 actions were unconstitutional, they unfairly targeted Plaintiffs and thus this prong favors  
16 Plaintiffs, too. The Supreme Court has explained that the question is one of “the actual  
17 burden imposed on property rights, or how that burden is allocated,” so that courts can tell  
18 “when justice might require that the burden be spread among taxpayers through the  
19 payment of compensation.” *Lingle*, 544 U.S. at 543. This inquiry plainly favors Plaintiffs.  
20 Is it “just” that series 6 and 7 licensees should bear the burden, but not series 3, 11, 12, 13,  
21 14, 18 and 19 licensees, even though the legal distinctions between the former and latter  
22 have nothing to do with public health? The answer is obvious.

23         160. The so-called “temporary” nature of the regulatory taking is immaterial  
24 here. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535  
25 U.S. 302 (2002). In *Tahoe-Sierra*, the Supreme Court rejected any categorical rule  
26 respecting temporary regulatory takings. In that case, the Court held there was no taking.  
27 But that case involved a moratorium on *development* of undeveloped property so that the  
28 city could develop a comprehensive development strategy. That case involved “real

1 property,” which is “defined by the metes and bounds that describe its geographic  
2 dimensions *and* the term of years that describes the temporal aspect of the owner’s  
3 interest.” *Id.* at 331–32 (emphasis added). That is leagues away from what we have here:  
4 plaintiffs who have been deprived of their *very livelihoods* for months on end, with no end  
5 in sight. All the while their competitors have been allowed to flourish. Plaintiffs *depend*  
6 on their property interest in their licenses, and their ability to operate under their licenses,  
7 to survive. *Tahoe Regional* was also different because of the plain governmental interest  
8 in obtaining feedback on development plans. Here, the governmental action is arbitrary  
9 and discriminatory. It cannot save the government from liability.

10 161. As a result of the above analysis, just compensation must be paid under the  
11 Fifth Amendment to the United States Constitution.

12 **First Claim for Relief**

13 **(Declaration that A.R.S. § 26-303(E)(1) violates the nondelegation doctrine and**  
14 **Governor’s orders are therefore null and void)**

15 162. Plaintiffs restate and incorporate the allegations contained in paragraphs 1  
16 through 161, above.

17 163. Plaintiffs seek an expedited declaration pursuant to A.R.S. § 12-1831 and  
18 Ariz. Rule Civ. Pro. 57 setting forth the rights and duties of the parties and stating that  
19 Defendant’s Executive Order 2020-43, and related executive orders, are illegal and void  
20 because the statute which purportedly authorizes them unconstitutionally violates the  
21 nondelegation doctrine, or because the Governor’s orders exceed statutory authority.

22 164. Plaintiffs seek costs and attorneys’ fees for seeking declaratory and  
23 injunctive relief pursuant to A.R.S. § 12-341 and A.R.S. § 12-348(A)(4).

24 **Second Claim for Relief**

25 **(Declaration that Governor’s orders violate Art. II, § 13 of the Arizona Constitution**  
26 **(privileges or immunities claim))**

27 165. Plaintiffs restate and incorporate the allegations contained in paragraphs 1  
28 through 161, above.



1 174. Plaintiffs restate and incorporate the allegations contained in paragraphs 1  
2 through 161, above.

3 175. Plaintiffs seek an expedited declaration pursuant to A.R.S. § 12-1831 and  
4 Ariz. Rule Civ. Pro. 57 setting forth the rights and duties of the parties and stating that  
5 Defendant's Executive Order 2020-43, and related executive orders, are illegal and void  
6 because they violate Art. II, § 4 of the Arizona Constitution and the Fourteenth  
7 Amendment to the federal Constitution, which provide that no person shall be deprived of  
8 liberty without due process of law.

9 176. Plaintiffs seek a declaration that, as a result, the Governor's orders have also  
10 violated 42 U.S.C. § 1983 for violating Plaintiffs' constitutional rights under color of law.

11 177. Plaintiffs seeks damages for the Governor's violations of their constitutional  
12 rights.

13 178. Plaintiffs seek costs and attorneys' fees for seeking declaratory and  
14 injunctive relief pursuant to A.R.S. § 12-341 and A.R.S. § 12-348(A)(4).

15 179. Plaintiffs seek costs and attorneys' fees under 42 U.S.C. § 1988 for seeking  
16 relief from Defendants' violations of their constitutional rights.

17 **Fifth Claim for Relief**

18 **(Injunctive Relief Pursuant to A.R.S. § 12-1801)**

19 180. Plaintiffs restate and incorporate the allegations contained in paragraphs 1  
20 through 161, above.

21 181. Plaintiffs seek injunctive relief pursuant to A.R.S. § 12-1801 enjoining  
22 Defendants from ordering Plaintiffs to shut down their businesses or otherwise citing them  
23 for violating executive orders that are illegal and void.

24 182. Plaintiffs seek injunctive relief pursuant to A.R.S. § 12-1801 enjoining  
25 Defendants from treating Plaintiffs differently from their series 3, 11, 12, 13, 14, 18, and  
26 19 competitors.

27 183. Plaintiffs seek injunctive relief pursuant to A.R.S. § 12-1801 enjoining  
28 Defendants from continuing to grant the privilege of off-sale to their competitors, in direct

1 violation of existing law.

2 184. Plaintiffs seek costs and attorneys' fees for seeking declaratory and  
3 injunctive relief pursuant to A.R.S. § 12-341 and A.R.S. § 12-348(A)(4).

4 **Sixth Claim for Relief**

5 **(Declaration that Governor's orders constitute a regulatory taking of Plaintiffs'**  
6 **property under the Fifth Amendment, for which just compensation must be paid)**

7 185. Plaintiffs restate and incorporate the allegations contained in paragraphs 1  
8 through 161, above.

9 186. Plaintiffs seek a declaration that the Governor's orders constitute a  
10 regulatory taking of Plaintiffs' property.

11 187. Plaintiffs demand a jury trial to determine just compensation for such  
12 regulatory takings.

13 **Prayer for Relief**

14 188. WHEREFORE, Plaintiffs request that the Court grant the following relief:

- 15 a. Expedite the resolution of this case pursuant to Arizona Rule  
16 of Civil Procedure 57;
- 17 b. Declare that Executive Order 2020-43, and related executive  
18 orders, are illegal and void because they are made pursuant to  
19 unconstitutional delegations of authority, or, in the alternative,  
20 that the Governor has exceeded his statutory authority under  
21 A.R.S. § 303(E)(1);
- 22 c. Declare that Executive Order 2020-43, and related executive  
23 orders, are illegal and void because they violate Art. 2, § 13 of  
24 the Arizona Constitution by arbitrarily discriminating against  
25 series 6 and 7 licensees;
- 26 d. Declare that Executive Order 2020-43, and related executive  
27 orders, are illegal and void because they violate the Equal  
28 Protection Clause of the Fourteenth Amendment to the United

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- States Constitution, for irrationally discriminating against series 6 and 7 licensees;
- e. Declare that Executive Order 2020-09, and related executive orders, are illegal and void because they work direct executive deprivations of property, by taking Plaintiffs' bought-for off-sale privileges and giving those privileges, with no basis in law, to their competitors, in violation of Art. 2, § 4 of the Arizona Constitution;
  - f. Declare that Executive Order 2020-09, and related executive orders, are illegal and void because they work direct executive deprivations of property, by taking Plaintiffs' bought-for off-sale privileges and giving those privileges, with no basis in law, to their competitors, in violation of the Fourteenth Amendment to the U.S. Constitution;
  - g. Issue a temporary restraining order and then permanent injunctive relief enjoining the Governor and ADHS from enforcing Executive Order 2020-43, and similar orders and guidelines, against the Plaintiffs;
  - h. Issue permanent injunctive relief enjoining the Governor from continuing to implement EO 2020-09 and related orders granting the privilege of off-sale to any non-series 6 or 7 licensee;
  - i. Grant damages in the form of just compensation for the regulatory taking of Plaintiffs' property;
  - j. In the alternative, grant damages for violations of 42 U.S.C. § 1983 to the extent Plaintiffs have been harmed by the discriminatory treatment directed at them; and for the harm Plaintiffs have suffered as a result of taking their off-sale

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- privileges and giving those privileges to their competitors, in violation of existing law;
- k. Grant attorneys’ fees and costs associated with seeking declaratory and injunctive relief under A.R.S. § 12-341 and A.R.S. § 12-348(A)(4);
- l. Grant attorneys’ fees and costs associated with seeking damages under 42 U.S.C. § 1983, pursuant to 42 U.S.C. § 1988;
- m. Grant any and all other appropriate relief.

DATED this 25th day of August, 2020.

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**FILED this** 25th day of August, 2020, with:

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**COPY** of the foregoing emailed this 25th day of August, 2020, to:

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*Ilan Wurman*

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APPENDIX A

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Javier Aguila  
Aguila's Hidaway  
1235 N Dysart Rd  
Avondale, AZ 85323  
Liquor License #06070562  
//  
Aguila's Hidaway Saloon  
24202 W US Highway 85326  
Buckeye, AZ 853  
Liquor License #06070332  
//  
Aguila's Hidaway Lighthouse  
12351 W Indian School Rd  
Avondale, AZ 85392  
Liquor License #INP070011699  
  
Lucille Aragon  
Jakes Corner Bar and Grill  
57564 N Hwy 188  
Payson AZ 85541  
Liquor License #06040016  
  
Alicia Baldwin  
TT Roadhouse  
2915 N 68th St  
Scottsdale, AZ 85251  
Liquor License #06070662  
  
Michael Bates  
Bull Shooters  
3337 W. Peoria Ave.  
Phoenix, AZ 85029  
Liquor License #06070511  
  
Monica Beard  
The Maverick Inn  
1460 S. 4th Ave.  
Yuma, AZ 85364  
Liquor License # 06140044

1 Michael Beaver  
2 The Beaver Bar  
3 11801 N. 19th Avenue  
4 Phoenix, Az. 85029  
5 Liquor License #06070105

6 Mathew Becker  
7 Chuckleheads  
8 41 Brewery Ave  
9 Bisbee, AZ 85603  
10 Liquor License #06020029

11 Jacquelyn Bendig  
12 Chad Newberry  
13 1881 Spirits  
14 144 S Montezuma St  
15 Prescott, AZ 86303  
16 Liquor License #06130074

17 Jessie Blackburn  
18 Jewel's Desert Sands  
19 1515 N. Pinal Ave.  
20 Casa Grande, AZ 85122  
21 Liquor License # 06110009

22 Matt Brassard  
23 Matt's Saloon  
24 112 S. Montezuma Street  
25 Prescott, AZ 86303  
26 Liquor License #06130053

27 Dave and Penny Brennan  
28 Brennan's Pub & Grub  
3510 E Bell Rd  
Phoenix, AZ 85032  
Liquor License # 06070374

Deborah Broten  
Iron Horse Saloon  
1161 Hancock Rd, Bullhead City  
Arizona 86442  
Liquor License # 06080051

1 James Brower  
2 Coach House Tavern  
3 7011 E. Indian School Rd.  
4 Scottsdale, AZ 85251  
Liquor License # 06070076

5 Scott Busse  
6 Territorial  
7 3727 S Palo Verde Rd.  
8 Tucson, AZ 85713  
Liquor License #06100228

9 Brian Cavender  
10 Connolly's Sports Grill  
11 2605 W Carefree Hwy  
12 Phoenix, AZ 85085  
Liquor License #06070436

13 Daryl Chester  
14 Jester's Billiards  
15 1515 N. Gilbert Rd., Suite 115-123  
16 Gilbert, AZ 85234  
Liquor License # 06070744

17 Susan Compton  
18 Bay Horse  
19 2802 E Grant Rd  
20 Tucson, AZ 85716  
Liquor License #06100052

21 Audrey Corley  
22 Boycott Bar  
23 4301 N 7th Ave.  
24 Phoenix, AZ 85013  
Liquor License # 06070552

25 Karen Crump  
26 Clifton Hotel LLC  
27 163 Park Avenue  
28 Clifton, AZ 85533  
Liquor License # 06060007

1 Timothy Damico  
2 Jimbo's Sports Bar & Grill  
3 12224 N. 51st Ave.  
4 Glendale, AZ 85304  
5 Liquor License # 06070627

6 Terry Davis  
7 Longbranch Saloon  
8 10600 W Buckeye Rd.  
9 Tolleson, AZ 85353  
10 Liquor License #06070373

11 David and Lori Delos  
12 Tony's Cocktail Lounge  
13 5930 W Greenway Rd.  
14 Glendale, AZ 85306  
15 Liquor License # 06070370  
16 //

17 Marino's Cocktail Lounge  
18 6666 W. Peoria Ave.  
19 Glendale, AZ 85302  
20 Liquor License # 06070369  
21 //

22 5030 Cocktail Lounge  
23 5030 W. Peoria Ave.  
24 Glendale, AZ 85302  
25 Liquor License # 06070022  
26 //

27 The Other Room Cocktail Lounge  
28 4404 W. Peoria Ave.  
Glendale, AZ 85302  
Liquor License # 06070361  
//

Dunes Cocktail Lounge  
3611 W. Dunlap Ave.  
Phoenix, AZ 85051  
Liquor License # 06070236  
//

Dave's on Northern  
234 W. Northern Ave.  
Phoenix, AZ 85021  
Liquor License # 06070506

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1 Craig Denny  
2 Pudge and Asti's Sports Grill  
3 721 6th St  
4 Prescott, AZ 86301  
5 Liquor License #06130018  
6  
7 Tony Dohrman  
8 Sonny's  
9 19011 S Arizona Ave.  
10 Chandler, AZ 85286  
11 Liquor License #06070318  
12  
13 Charles E. Duff  
14 Tucker Woodbury  
15 Ari Bracamonte  
16 Cobra Arcade Bar  
17 63 E. Congress St.  
18 Tucson, AZ 85701  
19 Liquor License # 06100041  
20 //  
21 Cobra Arcade Bar  
22 801 N. 2nd St.  
23 Phoenix, AZ 85004  
24 Liquor License # 06070050  
25 //  
26 Ziggy's Magic Pizza Shop / Stardust Pinbar  
27 401 W. Van Buren Unit B  
28 Phoenix, AZ 85003  
Liquor License # 06070007055  
29  
30 John Ehalt  
31 PJ's Village Pub  
32 40 W Cortez Dr # 7  
33 Sedona, AZ 86351  
34 Liquor License #06130009  
35  
36 Gary Erwin  
37 Brookside II Sports Bar and Grille  
38 15170 W Bell Rd # 115  
39 Surprise, AZ 85374  
40 Liquor License # 06070137  
41  
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43  
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1 Jack Estes  
2 Dirty Dogg Saloon  
3 10409 N Scottsdale Rd  
4 Scottsdale, AZ 85253  
5 Liquor License #06070140

6 Lee Fabrizio  
7 Dawn McMillan  
8 Dustin McMillan  
9 Growler's Taphouse  
10 8275 N. Silverbell Rd. Suite 137  
11 Marana, AZ 85743  
12 Liquor License # 06100051

13 Louie Fernandez  
14 Patricia Dion  
15 Douglas Landreth  
16 Jester's Sports Lounge  
17 877 Hancock Rd.  
18 Bullhead City, Arizona 86442  
19 Liquor License #06080013

20 Patricia Fuller  
21 Pattie's First Ave. Lounge  
22 7220 E. First Ave.  
23 Scottsdale, AZ 85251  
24 Liquor License #06070624

25 David Gilbert  
26 Jason Bowen  
27 On The Green Sports Grill  
28 801 S Power Rd Suite 101  
Mesa, AZ 85206  
Liquor License # 06070098

Scott Goldsmith  
Level 1 Arcade Bar  
60 W. Vaughn Ave. #107  
Gilbert, AZ 85233  
Liquor License #006070009320

1 Steven Gordon  
2 Firestone Pizza Express  
3 7 County Rd Hwy 61  
4 Concho, AZ 85924  
Liquor License #06010027  
5 Jolie Grant  
6 Jolie's Place  
7 140 W Warner Rd  
8 Chandler, AZ 85225  
Liquor License #06070566  
9 Jeremiah Gratza  
10 Thunderbird Lounge  
11 710 W Montecito Ave  
12 Phoenix, AZ 85013  
Liquor License # 06070541  
13 Mistie Green  
14 Larrys Cocktails  
15 20027 N Cave Creek RD  
16 Phoenix AZ 85024  
Liquor License #06070356  
17 Deborah and James Griffin  
18 Loft Again  
19 15002 N Cave Creek Rd  
20 Phoenix, AZ 85032  
Liquor License #06070618  
21 Kimberly Guethle  
22 Duchess Bar and Grille  
23 3929 E Main St. #2  
24 Mesa, AZ 85205  
Liquor License # 006070442  
25 //  
26 Dog Run Saloon  
27 320 W Superstition Blve #111/113  
28 Apache Jct, AZ 85120  
Liquor License # 006110070

1 Mark Halstengard  
2 O'Kelley's Sports Bar & Grill  
2120 W. Guadalupe Rd.  
3 Mesa, AZ 85202  
4 Liquor License # 06071012

5 David Harmon  
6 Moose Henri's Grille, Corks and Taps  
4207 West White Mountain Boulevard  
7 Lakeside, AZ 85929  
8 Liquor License #07094000

9 Darel and Tamie Harrison  
10 Music Box Lounge  
6951 E 22nd Street  
11 Tucson, 85710  
12 Liquor License #06100069

13 John Healy  
14 Cowpony Bar  
6510 E Tanque Verde Rd  
15 Tucson, AZ 85715  
16 Liquor License #06100055

17 Brad Henrich  
18 Shady's Fine Ale and Cocktails  
2701 E Indian School Rd  
19 Phoenix, AZ 85016  
20 Liquor License #06070635

21 Kimberly Herrig  
22 Crystal Palace Saloon  
420 E. Allen St.  
23 Tombstone, AZ 85638  
24 Liquor License #06020082

25 R.J. Herrig  
26 Wyatt Earp's Oriental Saloon & Theater  
500 E. Allen Street  
27 Tombstone, AZ  
28 Liquor License #06020055

1 Jennifer Holliday  
2 Paradise Lounge  
3 4541 E. Cactus Rd.  
4 Phoenix, AZ 85032  
Liquor License #06070174

5 Marion Hooper  
6 Trackside Bar and Grill  
7 19194 W Gordon Way  
8 Surprise, AZ 85361  
Liquor License #06070703

9 Mary Hultman  
10 Azool Grill  
11 3134 W Carefree HWY #3  
12 Phoenix, AZ 85086  
Liquor License # 06070176

13 Charles Jenkins  
14 Office Sports Bar  
15 330 S. Gilbert Rd. #3  
16 Mesa Az. 85204  
Liquor License #06070158

17 Curtis Johnson  
18 Pockets Billiards  
19 1062 S. Wilmot Rd.  
20 Tucson, AZ 85711  
Liquor License # 06100250

21 Shane Jones  
22 Shane's Place  
23 609 S. Sixth Ave.  
24 Safford, AZ 85546  
Liquor License # 06050023

25 Ian Juul  
26 Mooney's Irish Pub  
27 671 AZ-179  
28 Sedona, AZ 86336  
Liquor License #06030002

1 Corey Kelly  
2 Mickey B's Cocktail Lounge  
3 12635 S. Frontage Rd.  
4 Yuma, AZ 85367  
5 Liquor License #06140047  
6  
7 Colleen Kendall  
8 The Windsock, LLC  
9 1365 Iron Springs Rd  
10 Prescott, AZ 86305  
11 Liquor License #06130016  
12  
13 Kimberly Kolacek  
14 G Bar G Lounge  
15 5324 E. Main  
16 Mesa, AZ 85205  
17 Liquor License # 06070192  
18  
19 Alan Kowalski  
20 Clicks Billiards  
21 3325 N 1st Avenue #100  
22 Tucson Arizona 85719  
23 Liquor License #06100028  
24  
25 Elda Lee  
26 Maxine Lee  
27 Mickeys Again  
28 235 White Mountain Dr  
St Johns, AZ 85936  
Liquor License # 06010018  
29  
30 Ian Likwarz  
31 Sazerac  
32 821 N 2ND Street  
33 Phoenix, AZ 85004  
34 Liquor License #06073601  
35  
36 Barry Lucas  
37 DJ's of Scottsdale  
38 7320 E. Stetson Dr.  
39 Scottsdale, AZ 85251  
40 Liquor License # 06070714  
41  
42

1 Josh Makrauer  
2 Jersey Lilly Saloon  
3 116 S Montezuma St  
4 Prescott, AZ 86303  
5 Liquor License #06130076  
6  
7 Phillip Marcus  
8 Runner's Sports Bar  
9 12751 W. Bell Rd. Ste. 117  
10 Surprise, AZ 85378  
11 Liquor License #06070657  
12 //  
13 Hambone  
14 903 E. Main St.  
15 Mesa, AZ 85203  
16 Liquor License#06070244  
17  
18 Thomas McCauley  
19 Tom's Tavern  
20 PO Box C  
21 1500 E Third Street  
22 Winslow, AZ 86047  
23 Liquor License #06090022  
24  
25 John McCormick  
26 Chopper John's  
27 2547 E Indian School Rd  
28 Phoenix, AZ 85016  
Liquor License #06070684  
Vicki McKee  
McKee's Pub & Grill  
2112 McCulloch Blvd.  
Lake Havasu City, AZ 86403  
Liquor License #06080020  
Kelly Meixler  
Truck Stop AZ  
5549 SR 260  
Lakeside, AZ 85929  
Liquor License #06090041

1 Julie Mikkelsen  
2 Airport Tavern  
3 1801 N. Pinal Ave.  
4 Casa Grande, AZ 85122  
5 Liquor License # 06110039

6 David Monahan  
7 Irish Wolfhound Restaurant and Pub  
8 16811 N Litchfield Rd #104  
9 Surprise, AZ 85374  
10 Liquor License #06070135

11 Leesa Montague  
12 Cheers Tavern  
13 5915 W Bell Road  
14 Glendale, AZ 85308  
15 Liquor License #06070431

16 Alex Mundy  
17 Rockbar Inc.  
18 4245 N Craftsman Ct.  
19 Scottsdale, AZ 85251  
20 Liquor License #06070449

21 Michael Nelson  
22 Pomeroy's  
23 5555 N. 7th St. Ste. 100  
24 Phoenix, AZ 85014  
25 Liquor License #06070444

26 Kimberly O'Donnell  
27 Kimmyz on Greenway  
28 5930 W Greenway Rd  
Glendale, AZ 85306  
Liquor License #06071011

//  
Kimmyz Tatum Point  
4601 E Bell Rd #9338  
Phoenix, AZ 85032  
Liquor License #06070377

1 Carrie Parker  
2 Cactus Taproom & Bottle Shop  
20429 N Lake Pleasant Rd #104  
3 Peoria, AZ 85382  
4 Liquor License #07070819

5 Diane Pedersen  
6 Charley's Place  
4324 W. Thunderbird Rd.  
7 Glendale, AZ 85306  
8 Liquor License # 06070503

9 Luther Pedigo  
10 Tumbleweed Bar  
3802 W Frontier Street  
Eloy, AZ 85131  
11 Liquor License #06110051

12 Elmer Pineda  
13 Old Corral Bar  
P.O. Box 1373  
14 Cottonwood, AZ 86326  
15 Liquor License #06130058

16 Daniel Pounds  
17 Ole Brass Rail  
3738 E. Thomas Rd.  
18 Phoenix, AZ 85018  
19 Liquor License #06070673

20 Grant Quezada  
21 Jesse Isaiah Burke  
City Tavern  
22 218 N. Granite St.  
Prescott, AZ 86301  
23 Liquor License #06130029

24 Keith and Jill Redmann  
25 Bird Cage Saloon  
160 S. Montezuma St.  
26 Prescott, AZ 86303  
27 Liquor License # 06130066  
28

1 Bruce Reid  
2 Barefoot Bob's Billiards  
3 8367 E Pecos Dr Suite 2  
4 Prescott Valley, AZ 86314  
5 Liquor License #06130055

6 Jeff Riggs  
7 Jennifer Beeman  
8 Roadrunner Restaurant and Saloon  
9 47801 N Black Canyon Hwy  
10 New River, AZ 85087  
11 Liquor License #06070118

12 Russell Roberts  
13 Lyzzards Lounge  
14 120 N Cortez St.  
15 Prescott, AZ 86301  
16 Liquor License #06130035

17 Vanessa Roer  
18 XA Bar and Grill  
19 18 W. Main St.  
20 Springerville, AZ 85938  
21 Liquor License #06010026

22 Steven Rogers  
23 DWNTWN The Grand  
24 702-708 N Central Ave.  
25 Phoenix, AZ 85004  
26 Liquor License #06070115

27 Robert Rosa  
28 The 44 Sports Grill & Nightlife  
4494 W Peoria Ave.  
Glendale, AZ 85302  
Liquor License #06070342

Vickie Sanders  
River Valley Tavern  
8804 S. Highway 95  
Mohave Valley, AZ 86440  
Liquor License #06080038

28

1 Jeffrey Schacht  
2 Enoch's Sports Lounge  
3 6750 W. Peoria  
4 Peoria, AZ 85345  
Liquor License #06071010

5 Wes and Rebecca Schemmer  
6 Vino di Sedona,  
7 2575 West SR 89A  
8 Sedona, AZ 86336  
Liquor License #07130063

9 Paul Schuldt  
10 The Route 66 Roadhouse Bar and Grill  
11 11840 W. Rt. 66  
12 Bellemont, AZ 86015  
Liquor License # 06030026

13 Kyle Schwab  
14 Casa Marana  
15 8225 N. Courtney Page Way, Suite 191  
16 Marana, AZ 85743  
Liquor License #06100199

17 Peter Sciacca  
18 QuartHaus  
19 201 S Washington St.  
Chandler, AZ 85225  
Liquor License #07070573

20 Ray and Claudia Shadid  
21 Copper Door Sports Bar  
22 13818 N. 51st Ave.  
23 Glendale, AZ 85306  
24 Liquor License # 06070429

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26  
27  
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1 James Shaffer  
2 Roxy  
3 830 S. Magnolia Ave.  
4 Yuma, AZ 85364  
5 Liquor License #06140028  
6 //  
7 Platinum Cabaret  
8 822 E 21St Street  
9 Yuma, AZ 85364  
10 Liquor License #06140008  
11  
12 Sheri Shaw  
13 The Back Alley Wine Bar  
14 156 S Montezuma St.  
15 Prescott, AZ 86303  
16 Liquor License #07133001  
17  
18 Steven Sheldon  
19 Three Canyon Beer and Wine Garden  
20 4999 N Sabino Canyon Rd  
21 Tucson, AZ 85750  
22 Liquor License #07100040  
23  
24 Thomas Smith  
25 Jersey D's Tavern and Grill  
26 5945 W Ray Rd #13  
27 Chandler, AZ 85226  
28 Liquor License #06070418  
29  
30 John Spaugh  
31 Showcase Sports Bar  
32 2703 S. 4th Ave.  
33 Yuma, AZ 85364  
34 Liquor License # 06140042  
35  
36 Ioannis Spentzos  
37 Hob Nob Sports Grill  
38 7200 W. Chandler Blvd. Suite 14  
39 Chandler, AZ 85226  
40 Liquor License #06070350  
41  
42  
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1 Tosha Spring  
2 Desert Martini  
3 2120 McCulloch Blvd N  
4 Lake Havasu City, AZ 86403  
5 Liquor License #06085000  
6 //  
7 Office Cocktail Lounge  
8 2180 W Acoma Blvd,  
9 Lake Havasu City, AZ 86403  
10 Liquor License #06080030  
11  
12 Kimberly Stam  
13 Lucy's Bar & Grill  
14 3020 AZ-89  
15 Chino Valley, AZ 86323  
16 Liquor License # 06130065  
17  
18 Eva Stapleton  
19 Dirty Blonde Tavern  
20 4929 W Chandler Blvd  
21 Chandler, AZ 85226  
22 Liquor License #06070018  
23  
24 Mitchell and Lucie Stevens  
25 Sage and Sand Bar  
26 13831 W Glendale Ave  
27 Glendale, AZ 85307  
28 Liquor License #06070539  
29  
30 Nancy Stevens  
31 Pub Rock  
32 8005 E. Roosevelt St.  
33 Scottsdale, AZ 85257  
34 Liquor License #06070677  
35  
36 Alan Swenson  
37 O'Briens Sports Bar and Grill  
38 7829 N. 35th Ave  
39 Phoenix, AZ 85051  
40 Liquor License #06070696  
41  
42  
43  
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1 Tracy Tolleson  
2 Tall Pines Café  
290 Hwy 87  
3 Happy Jack, AZ 86024  
4 Liquor License #06030034  
  
5 Frank Vairo  
6 Breakroom Bar & Grill  
4729 E. McDowell Rd.  
7 Phoenix, AZ 85008  
8 Liquor License #06070264  
9 //  
10 Dilly Dally Cocktail Lounge  
3639 E. Indian School Rd.  
11 Phoenix, AZ 85018  
12 Liquor License #06070207  
13 //  
14 The Bar  
3174 E. Indian School Rd.  
15 Phoenix, AZ 85016  
16 Liquor License #06070548  
  
17 Eugene Walden  
18 Red Garter Saloon  
19 3143 E Speedway Blvd  
20 Tucson, AZ 85716  
21 Liquor License #06100251  
  
22 Heather and Justin Ward  
23 Monkey Bar  
1120 S Wilmot Rd.  
24 Tucson, AZ 85711  
25 Liquor License #06100196  
  
26 Gary Welch  
27 Dirtbag's  
1800 E. Speedway  
28 Tucson, AZ 85719  
Liquor License # 06100122

1 Cheri Wells  
2 Aint Nicks Tavern  
3 6840 N. 27th Ave  
4 Phoenix, AZ 85017  
Liquor License #06070472

5 Larry Wendt  
6 Buffalo Chip Saloon  
7 6823 E Cave Creek Rd,  
8 Cave Creek, AZ 85331  
Liquor License #06070277

9 Paul York  
10 Linda Niblett  
11 Last Stop Sports Bar & Grill  
12 3358 W. Northern Ave.  
Phoenix, AZ 85051  
Liquor License #06070484

13 Leslie Zinke  
14 Cowtown Tavern  
15 36796 W. Hwy 84  
16 Stanfield, AZ 85172  
Liquor License #06110074

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# **Exhibit A**

**Retry for a live version**

This page (<https://azliquor.gov/forms.cfm>) is currently offline. However, because the site uses Cloudflare's Always Online™ technology you can continue to surf a snapshot of the site. We will keep checking in the background and, as soon as the site comes back, you will automatically be served the live version. Always Online™ is powered by [Cloudflare](#) | [Hide this Alert](#)

Department of Liquor Licenses and Control



## Liquor License Application Kits

**Below, you will find the most up to date forms utilized by the Dept. of Liquor Licenses & Control.**

After reviewing the material, return here to access the department's [E-License System](#). At the present time, License Type 15 - Special Event and License Type 16 - Festival/Fair cannot be done using the online tool.

### Easy Reference - Licensing Options

[Arizona Taxes - Tool Kit & Contacts](#)

[Multiple Licenses Allowed at a Single Location.](#)

[Fee Chart - Quick Reference](#)

[Required Training For Licensees](#)

[Arizona City and Town Website Search Tool](#)

### Accepted Forms of Payment

You may pay fees using one of these payment methods:

1. cash
2. personal check
3. money order
4. cashier's check
5. credit cards - MasterCard, Visa, American Express & Discover

### Fingerprint Services

Applicants have three options to complete fingerprint card requirements:

1. Department of Liquor fingerprint services are available in the licensing offices for \$35
2. through local law enforcement agencies (prices vary), or
3. through a bona fide fingerprinting service on FBI-approved fingerprint cards (prices vary).

### License Application Kits

#### [In-State Producer Application Kit - Series 1](#)

This non-transferrable liquor license allows an in-state producer to produce or manufacture beer, wine and distilled spirits (all spirituous liquor) and sell/deliver the product to a licensed wholesaler. A person who holds an In-State Producer license may also sell to on-site patrons liquor produced

or manufactured on the licensed premises. A.R.S. §4-243. Also see [Internet Sales & Residential Shipping](#).

#### [Out-Of-State Producer Application Kit - Series 2](#)

This non-transferable liquor license allows an out-of-state producer, exporter, importer or rectifier to ship beer, wine and distilled spirits to Arizona liquor-licensed wholesalers. An out-of-state producer or supplier may not sell its products to an Arizona wholesaler at a cost higher than the lowest price at which the item was sold by the producer or supplier to any other wholesaler. An out-of-state producer, exporter, importer or rectifier must comply with the provisions of Title 4 as if an in-state producer.

Except for as permitted in A.R.S. §4-205.04(C)(9) through (G), [Internet Sales & Residential Shipping](#) are limited in this state.

#### [Out-of-state Craft Distiller Application Kit - Series 2D](#)

An Out-of-state Craft Distillery is located outside of Arizona and produces not more than 20,000 gallons of distilled spirits annually.

An Out-of-state Craft Distillery that produces not more than 1,189 gallons of distilled spirits in a calendar year may self-distribute which means they may sell and deliver spirits produced on the premises to businesses licensed to sell distilled spirits in and out-of-state. Sales of distilled spirits produced by other craft distillers may not exceed 20 percent of sales by volume.

#### [Limited Out-of-state Winery Application Kit - Series 2L](#)

This non-transferrable liquor license allows an out-of-state winery to sell/deliver not more than 240 gallons of wine produced on the premises to Arizona liquor-licensed wholesalers. The licensee must report annual gallonage delivered to a licensed wholesaler in the state. This license has no direct to consumer privileges. A.R.S. §4-205.04 and A.R.S. §4-209(B)(15)

#### [Out-of-state Farm Winery Application Kit \(Series 2W\)](#)

The Out-of-State Farm Winery license has specific privileges based on these production limits:

Must produce at least 200 and not more than 40,000 gallons of wine per calendar year, or

If producing, not more than 20,000 gallons of wine per calendar year, may operate in all three tiers.

Except for as permitted in A.R.S. §4-205.04(C)(9) through (G), [Internet Sales & Residential Shipping](#) are limited in this state. The licensee must report annual production gallonage to the Arizona Department of Liquor annually.

#### [Out-of-state Microbrewery Application Kit \(Series 2M\)](#)

This non-transferable liquor license allows an out-of-state microbrewery which produces more than 5,000 gallons and less than 6,240,000, of beer during a [calendar year \(A.R.S. §205.08\(B\)\)](#) to sell and ship the beer into the state to Arizona-licensed wholesalers. An out-of-state Microbrewery must comply with the provisions of Title 4 as does an in-state licensee.

[Internet Sales & Residential Shipping](#).

The licensee must [submit an annual production report](#) to the Arizona Department of Liquor.

### In-state Microbrewery Application Kit - Series 3

This non-transferable liquor license allows for on & off-sale retail privileges for a licensed in-state microbrewery which produces more than 5,000 gallons, and less than 6,240,000, of beer during the 12-month reporting period (A.R.S. §205.08(B)). Sales or beer produced by other microbreweries may not exceed 20% of the licensee's annual sales by volume on the licensed premises.

With this license, when production is no more than 1,240,000 gallons per calendar year, the in-state microbrewery may make sales and deliveries of beer to any retail license licensed to sell beer except for its retail licenses on or adjacent to the microbrewery.

#### Internet Sales & Residential Shipping.

The licensee must submit an annual production report to the Arizona Department of Liquor.

### Wholesaler Application Kit - Series 4

This non-transferable liquor license allows a wholesaler to warehouse, sell and distribute all types of spirituous liquor (beer, wine, distilled spirits) to Arizona-licensed retailers.

### Government Application Kit - Series 5

This non-transferable, on-sale retail privileges license allows the holder of a government license to sell and serve all types of spirituous liquor solely for consumption on the premises for which the license is issued. The license is issued in the name of a county, city, town, state university or the Arizona Coliseum and exposition centerboard whose governing body has authorized its use. A separate license is required for each premise upon which spirituous liquor is served. The application must designate, for each location, a manager or other individual responsible for administering the license.

### Bar Application Kit - Series 6

The bar (series 6) liquor license is a "quota" license available only through the Liquor License Lottery or for purchase on the open market. Once issued, this liquor license is transferable from person to person and/or location to location within the same county and allows the holder both on- & off-sale retail privileges. This license allows a bar retailer to sell and serve all types of spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises. A retailer with off-sale ("To Go") privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. A.R.S. 4-206.01.F. states that after January 1, 2011, the off-sale privileges associated with a bar license shall be limited to no more than 30% of the total annual sales receipts of liquor by the licensee at that location. Payment must be made no later than the time of delivery. Off-sale ("To Go") package sales of spirituous liquor can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the ones provided for the bar. A hotel or motel with a Series 06 license may sell spirituous liquor in sealed containers in individual portions to its registered guests at any time by means of a minibar located in the guest rooms of registered guests. The registered guest must be at least twenty-one (21) years of age. Access to the minibar is by a key or magnetic card device and not furnished to a guest between the hours of 2:00 a.m. and 6:00 a.m. Internet Sales & Residential Shipping.

### Beer and Wine Bar Application Kit - Series 7

The beer and wine bar (series 7) liquor license is a "quota" license available only through the Liquor License Lottery or for purchase on the open market. Once issued, this liquor license is

transferable from person to person and/or location to location within the same county and allows the holder both on- & off-sale retail privileges. This license allows a beer and wine bar retailer to sell and serve beer and wine (no other spirituous liquors), primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises. A retailer with off-sale ("To Go") privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. A.R.S. 4-206.01.F. states that after January 1, 2011, the off-sale privileges associated with a bar license shall be limited to no more than 30% of the total annual sales receipts of liquor by the licensee at that location. Off-sale ("To Go") package sales can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the one provided for the bar. Payment must be made no later than the time of delivery. [Internet Sales & Residential Shipping](#).

#### [Conveyance Application Kit - Series 8](#)

This non-transferable, on-sale retail privileges liquor license allows the owner or lessee of an operating airline, railroad or boat to sell all spirituous liquors in individual portions or in original containers for consumption only on the plane, train or boat.

##### Boats:

1. Applicant must designate a dock as the homeport for the boat.
2. Notice of the application must be prominently placed on the dock that is the homeport.
3. The boat must have a displacement of not less than fifty (50) tons and a passenger capacity of eighty (80) persons or more.
4. The boat must have a current Coast Guard certification.
5. No spirituous liquor sales may be made on a boat in dock earlier than fifteen (15) minutes prior to departure and shall not be served after a boat returns to the dock.

#### [Liquor Store Application Kit - Series 9](#)

The liquor store (series 9) license is a "quota" license available only through the [Liquor License Lottery](#) or for purchase on the open market. Once issued, this liquor license is transferable from person to person and/or location to location within the same county and allows a spirituous liquor store retailer to sell all types of spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises. A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of delivery. Series 9 (liquor store) licensees and applicants may apply for unlimited sampling privileges by completing the Sampling Privileges form. [Internet Sales & Residential Shipping](#).

#### [Beer and Wine Store Application Kit - Series 10](#)

This non-transferable, off-sale retail privileges liquor license allows a retail store to sell beer and wine (no other spirituous liquors), only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises. A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of delivery. Series 10 (beer and wine store) licensees and applicants may apply for unlimited sampling privileges by completing the Sampling Privileges form. [Internet Sales & Residential Shipping](#).

#### [Hotel/Motel Application Kit - Series 11](#)

This non-transferable, on-sale retail privileges liquor license allows the holder of a hotel/motel license to sell and serve all types of spirituous liquor solely for consumption on the premises of a hotel or motel that has a restaurant where food is served on the premises. The restaurant on the licensed premises must derive at least forty percent (40%) of its gross revenue from the sale of food. The holder of this license may sell spirituous liquor in sealed containers in individual portions

to its registered guests at any time by means of a minibar located in the guest rooms of registered guests. The registered guest must be at least twenty-one (21) years of age. Access to the minibar is provided by a key or magnetic card device and may not be furnished to a guest between the hours of 2:00 a.m. and 6:00 a.m.

#### Restaurant Application Kit - Series 12

This non-transferable, on-sale retail privileges liquor license allows the holder of a restaurant license to sell and serve all types of spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food. Failure to meet the 40% food requirement may result in revocation of the license.

#### In-state Farm Winery Application Kit - Series 13

An In-state Farm Winery is a winery located in Arizona that produces at least 200 gallons but not more than 40,000 gallons of wine annually.

This non-transferable, In-state Farm Winery liquor license has on- and off-sale retail privileges and allows the holder to sell and deliver wine produced on the premises to businesses licensed to sell wine in and out-of-state, and to serve wine produced on the premises for on and off-sale consumption and for the purpose of sampling. A in-state farm winery that produces not more than 20,000 gallons of wine in a calendar year may make sales of wine produced on premises to consumers who order by telephone, mail, fax, catalogue or internet per A.R.S. §4-205.04(C)(9) (a)-(g). The licensee may apply for two (2) remote tasting rooms (series 19) which are located in the state of Arizona. A.R.S. §4-205.04(D)

#### Private Club Application Kit - Series 14

This non-transferable, on-sale retail privileges liquor license allows the holder of a club license to sell and serve all types of spirituous liquor for consumption only on the premises owned, leased or occupied by the club, and only to bona fide members of the club and their bona fide guests. A "club" is defined in the statutes as including veterans and fraternal organizations and their building associations, golf, social and airline clubs.

#### Special Event Permit Application Kit - Series 15

**Special Event applications must be received by the Department of Liquor 10 days prior to the event.**

This temporary, non-transferable, liquor license with retail privileges that allows a political party or campaign ballot measure, government entity, or non-profit entity to sell and serve spirituous liquor for consumption on the premises where the spirituous liquor is sold, and only for the period authorized on the license. Off-sale privileges apply only to special events holding auctions/wine or distilled spirit pull.

The applicant for a special event license must fill out a special event application and file the application with the local governing body where the special event is to take place, for approval or disapproval. If held at a licensed premises, no local governing body approval is required.

If the application is approved by the local governing body, and the event meets the requirements for granting the license, the director may issue a special event license to the qualifying organization. Qualifying organizations will be granted a special event license for no more than ten (10) days in a calendar year. Events must be held on consecutive days and at the same location or additional licenses will be required. The license is automatically terminated upon closing of the last

day of the event or the expiration of the license, whichever occurs first. The qualified organization must receive at least twenty-five percent (25%) of the gross revenues of the special events.

#### Festival/Fair Application Kit - Series 16

**Fair/Festival applications must be received by the Department of Liquor 10 days prior to the event.**

A Fair/Festival license allows a licensed farm winery or craft distillery to serve products they produce at a festival, sanctioned county or state fair or within the premises of a licensed special event. Liquor produced under the provisions of the farm winery or craft distillery license may be served for consumption on the fair/festival premises or "to-go" in the original, sealed container. This application requires state approval, and may require the approval of the local government where the fair/festival will take place. A.R.S. §4-203.03, 4-203.02 and 4-205.11.

#### Direct-to-Consumer Wine Shipment Application Kit - Series 17W

The Arizona Direct-to-Consumer Wine Shipment License allows United States-licensed wineries to ship limited amounts of wine produced at their winery to Arizona residents. The application will serve both in- and out-of-state applicants. An Arizona Transaction Privilege Tax (TPT) license is required.

To report your annual shipment into the state of Arizona, please use the template below. You will be required to submit this report online using the Direct Shipment Portal. The link to the portal as well as instructions will be included here after January 1, 2019.

[Shipment Report Template](#)

Privileges for this license can be found using this link to the [Arizona Liquor Lawbook](#). The Direct-to-Consumer Wine Shipment law is A.R.S. §4-203.04 found on page 20.

#### In-state Craft Distiller Application Kit - Series 18

An In-state Craft Distillery is located in Arizona and produces not more than 20,000 gallons of distilled spirits annually.

This license has on- and off-sale retail privileges. The licensee may serve spirits produced on the premises for consumption on the premises, sampling, and in the original, sealed container for sales "to-go". The licensee may sell and deliver to consumers who order by telephone, mail, fax, catalogue or internet per A.R.S. §4-205.10(7). [Internet Sales & Residential Shipping](#) are limited in this state.

An In-state Craft Distillery that produces not more than 1,189 gallons of distilled spirits in a calendar year may self-distribute which means they may sell and deliver spirits produced on the premises to businesses licensed to sell distilled spirits in and out-of-state. Sales of distilled spirits produced by other craft distillers may not exceed 20 percent of sales by volume.

This license is non-transferable (person-to-person or location-to-location).

The licensee may apply for two (2) Remote Tasting Room (series 19) which is to be located in the State of Arizona.

The licensee must report annual production gallonage to the Arizona Department of Liquor annually. A.R.S. §4-205.10

#### Remote Tasting Room Application Kit - Series 19

Remote Tasting Rooms are located in Arizona and are owned and operated by a licensee that concurrently owns one of these four Arizona liquor licenses:

1. Out-of-state Farm Winery - Series 2W
2. Out-of-state Craft Distillery - Series 2D
3. In-state Farm Winery Application Kit - Series 13
4. In-state Craft Distiller Application Kit - Series 18

When tied to a Remote Tasting Room license the above license becomes the Master License and must be in "active" and good standing for the Remote Tasting Room to operate. The Remote Tasting Room is a retail location.

The Remote Tasting Room (series 19) license application is first submitted to the city, town, or municipality where the tasting room will be located. Upon approval from the city, town, or municipality, the application will then go to the state. This is the only Arizona liquor application which first is approved by the local government.

Remote tasting room for farm wineries: A.R.S. §4-205.04(F). Remote tasting room for craft distilleries: A.R.S. §4-205.10(D).

#### Alternating Proprietorship - Series 20

This license allows for two (2) or more Farm Winery licenses to operate in one licensed premises. Each Farm Winery will need approval to operate as Alternating Proprietorships from the United States Tax and Trade Bureau (TTB). This allows Farm Wineries to utilize the same space for production of wine. Each Farm Winery must have a separate storage space within the licensed premises. Each Farm Winery is responsible for filing individual annual production reports. A.R.S. §4-205.04(D).

#### Custom Crush - Series 21

The Custom Crush license is an agreement between a "host" Farm Winery and a "tenant" Farm Winery to produce wine on behalf of the tenant.

A licensee wishing to participate in a Custom Crush arrangement must hold a permit from the United States Tax and Trade Bureau (TTB) prior to entering a Custom Crush agreement. The host winery will apply for the Custom Crush license and list all tenant wineries on the Custom Crush license.

The tenant winery supplying the grapes shall report all volumes from the Custom Crush arrangement on its annual production report.

# **Exhibit B**

1 Ilan Wurman (#034974)  
2 Sandra Day O'Connor College of Law  
3 Arizona State University  
4 111 E. Taylor Street  
5 Mail Code 9520  
6 Phoenix, AZ 85004-4467  
7 Telephone: 480-965-2245  
8 [ilan.wurman@asu.edu](mailto:ilan.wurman@asu.edu)

9 *Attorney for Plaintiffs*

10 SUPERIOR COURT OF ARIZONA  
11 MARICOPA COUNTY

12 JAVIER AGUILA, et al.,  
13  
14 Plaintiffs,

15 vs.

16 DOUG DUCEY, in his individual  
17 capacity, and in his official capacity as  
18 the Governor of the State of Arizona;  
19 THE ARIZONA DEPARTMENT OF  
20 HEALTH SERVICES; and THE  
21 ARIZONA DEPARTMENT OF  
22 LIQUOR LICENSES AND  
23 CONTROL,

24 Defendants,

25 and

26 THE STATE OF ARIZONA,  
27  
28 Real Party-in-Interest.

CASE NO: \_\_\_\_\_

**Expert Declaration of Jeffrey "Craig" Miller**

1. I, Jeffrey Craig Miller, declare as follows:
2. From 1997 to 2016 I worked for the Arizona Department of Liquor as a police officer. During my employment at DLLC I taught Title 4 for law enforcement throughout

1 the State of Arizona. I worked all areas of the state and worked closely with licensees to  
2 ensure compliance with liquor laws. During my employment I taught nationally Trade  
3 Practice, Special Event Enforcement and How to Detect Fictitious Identifications. I  
4 represented the Department at many industry meetings, and conferences. I was one of the  
5 DLLC representatives during the Arizona Administrative Code Rule Writing. Since retiring  
6 I have been a partner at Arizona Liquor Industry Consultants. We are a full service liquor  
7 consulting company that serves as the Agent for hundreds of liquor licenses. We broker  
8 licenses, consult for best industry practices and work closely with licensees to comply with  
9 all laws governing their businesses. We are an authorized Title 4 Basic and Management  
10 training provider.

11 3. Arizona liquor law establishes different series of licenses which authorize  
12 different rights, whether selling liquor for on-site consumption, off-site consumption, or  
13 both.

14 4. Arizona's current law prohibits "off-sale," that is, the sale of packaged  
15 alcoholic beverages, to series 12 licensees, with only one very limited exception not  
16 applicable here. Arizona's laws prohibit the sale of broken packages, "products not sealed  
17 by the manufacturer." Series 12 licenses are called "restaurant licenses" and are generally  
18 associated with "restaurants" because the licensees must maintain a minimum 40 percent of  
19 food sales. There is no limit on the number of series 12 licenses that can be issued by the  
20 DLLC. The initial fee for a series 12 is \$1,500.

21 5. A series 6 license under Arizona law is a "quota" license. The number of  
22 series 6 licenses is fixed by law, and that number is adjusted proportionally with population  
23 growth in each county. Because series 6 licenses are quota license, they can be bought, sold,  
24 transferred, and inherited. The going rate for a series 6 license in Maricopa County before  
25 the pandemic was about \$135,000. Series 6 licenses historically appreciate in value and  
26 become an asset for the business owner.

27 6. The legal privileges associated with a series 6 do not require the licensee to  
28 maintain a minimum number of food sales, and series 6 licensees also have off-sale

1 privileges for the full range of liquor products. Many “Restaurant” owners utilize series 6  
2 licenses for the ability to sell all types of alcoholic beverages with to-go food orders.

3 7. A series 7 license is also a quota license. The difference between a series 6  
4 and series 7 license is that the latter is limited to beer and wine sales. The going rate for a  
5 series 7 license before the pandemic was approximately \$45,000.

6 8. A series 9 license called a “liquor store” license is used at grocery and liquor  
7 stores and includes full off-sales privileges for the full range of liquor products. The value  
8 of a series 9 license in Maricopa County is approximately \$250,000. With a very small  
9 exception, no other retail liquor license other than series 6, 7 and 9 licenses permits off-sale.

10 9. The privilege of off-sale for series 6, 7 and 9 comes with other restrictions.  
11 For example, under Arizona law, series 6 and 9 licensees generally cannot be located within  
12 300 feet of a church or school. Such requirements do not apply to series 12 licensees.

13 10. There are approximately 2,100 series 6 and 7 licensees in the state of Arizona.  
14 There are more than 4,000 series 12 licensees.

15 11. Starting with EO 2020-09, the Governor has granted to series 12 licensees the  
16 privilege of full off-sale privileges, with no basis in existing law. That is one of the  
17 privileges included in series 6 and 9 licenses. This order also allowed the sale of “broken  
18 packages” / open containers.

19 12. The liquor service setting that is traditionally operated as a “bar / on-sale” can  
20 be found in series 6, 7, 11, 12, 13, 14, 18, 19, with a high table service area and a back bar  
21 for setting out liquor products.

22 13. Since June, the Governor has ordered series 6 and 7 licensees closed, while  
23 allowing series 12 licensees to continue operating. The Governor’s orders also permit series  
24 3, 11, 13, 14, 18, and 19 licensees to remain open, despite the fact that all of these classes  
25 of licenses are permitted to have “bars.” Series 6 and 7 licensees were allowed selling  
26 alcoholic beverages “to-go” as their only option, while the Governor’s orders allowed series  
27 12 licensees to continue operating for on-premises consumption *and* to continue the newly  
28 authorized privilege of selling “to-go.”

1           14. In my opinion, which is informed by my extensive years in the industry, the  
2 distinctions between series 6 and 7 licensees on one hand and these other licensees on the  
3 other hand have no relation to public health. Many series 6 licensees do in fact sell food—  
4 they merely paid for the privilege of not having to prove a minimum number of food sales.  
5 And, as mentioned earlier, many restaurants own series 6 licenses so they can sell alcohol  
6 along with to-go food orders. Additionally, there is no connection between the series of  
7 license and the availability or occurrence of wide open spaces, table seating, social  
8 distancing measures, loud music, karaoke, or dancing. The series of license has nothing to  
9 do with the ability to implement health or safety measures. In my opinion, the Governor’s  
10 distinction between series 6 and 7 licensees and other licensees is completely arbitrary.  
11 Series 6 and series 7 licensees and employees are required the same food handler training  
12 to ensure safety for all customers. More locations open allow for easier social distancing.

13           15. The series license used at a business does not indicate the type of business  
14 that the licensee conducts. The primary purpose of a licensed establishment indicates what  
15 the business is. Title 4 references on-sale licensees, off-sale licensees, or licensee and  
16 regulates them based on business activity not license type.

17           16. In my opinion, if the current orders were to extend indefinitely, the value of  
18 a series 6 or 7 license would fall essentially to zero. A series 6 or 7 licensee would be unable  
19 to make almost any revenue. Simply put, the owners of the approximately 2,000 series 6  
20 licenses and series 9 licenses paid from \$100,000 to \$250,000 or more, and the owners of  
21 series 7 license paid as much as \$45,000, which, unlike any other license, can be bought  
22 and sold. These licenses are frequently by far the most valuable asset of any liquor license  
23 business—either on-sale or off-sale.

24           17. Also, in my opinion, the granting of off-sale privileges to restaurants to allow  
25 the sale of package goods by restaurants to include the broad right of selling all liquors off-  
26 site destroys the value and investment of the over 2,000 owners of series 6, 7, and 9 licenses.  
27 In the future, who would pay \$100,000 for a series 6 license, where they could instead  
28 purchase a restaurant license for \$1,500 and obtain almost the same rights?

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18. In my opinion, the combined effect of the Governor’s order, closing those liquor establishments, series 6 and 7 licensees, while allowing other “on-sale” establishments to remain open, together with granting to series 12 licensees the right to sell package goods, which is otherwise contrary to law, has eliminated the ability of series 6 and 7 licensees to make any income, and has seriously, if not totally, damaged the value of their liquor license and their business.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 24th day of August, 2020.



---

Jeffrey “Craig” Miller

# **Exhibit C**

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

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★

EXECUTIVE ORDER

**Executive Order 2020-09**

**LIMITING THE OPERATIONS OF CERTAIN BUSINESSES TO SLOW THE SPREAD OF COVID-19**

**WHEREAS**, both the state of Arizona and the federal government have declared a public health emergency to address the 2019 novel Coronavirus (COVID-19); AND

**WHEREAS**, the President of the United States has declared a national emergency due to both the health and economic implications of the COVID-19 virus; AND

**WHEREAS**, the disease caused by COVID-19 is contagious and can be fatal, resulting in the World Health Organization declaring it a global pandemic; AND

**WHEREAS**, the State of Arizona has experienced community spread of COVID-19 in multiple counties as it continues to spread across the country and the state, posing an increasing threat to public health and having a devastating impact on the economy; AND

**WHEREAS**, on March 16, 2020, the United States Centers for Disease Control and Prevention issued updated guidance recommending that individuals avoid social gatherings of more than 10 people and use drive-thru, pickup, or delivery options at restaurants and bars to slow the spread of the disease; AND

**WHEREAS**, the time has come for further measures to protect public health and safety, protect our most vulnerable citizens, and mitigate the strain on our health care providers by slowing the spread of COVID-19; AND

**WHEREAS**, in taking such critical measures to protect public health there will be direct economic consequences for businesses across the state of Arizona that provide employment for many Arizonans, including bars and restaurants; AND

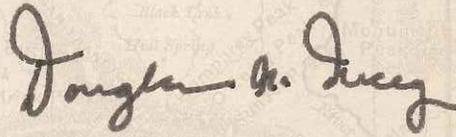
**WHEREAS**, Arizona is committed to both mitigating the economic harm of COVID-19 and ensuring the safety of those in our state.

**NOW, THEREFORE**, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this state, hereby order as follows:

1. Beginning at close of business on Friday, March 20, 2020, all of the following establishments located in counties of the State with confirmed cases of COVID-19 shall close access to the public until further notice:
  - a. Bars
  - b. Movie theaters
  - c. Indoor gyms and fitness clubs
2. Beginning at close of business on Friday, March 20, 2020, all restaurants in counties of the State with confirmed cases of COVID-19 shall close access to on-site dining until further notice. Restaurants may continue serving the public through pick up, delivery, and drive-thru operations.
3. Beginning at 5:00 p.m. on Friday, March 20, 2020, in counties of the State with confirmed cases of COVID-19, the Arizona Department of Liquor Licenses and Control and any Arizona Peace Officer Standards and Training Board certified law enforcement officer shall not enforce provisions of the series 12 liquor license that prohibit the sale by restaurants of beer, wine and spirituous liquor off-premises subject to the following provisions:
  - a. Any sale of beer, wine and spirituous liquor shall be in sealed containers.
  - b. Title 4 licensees shall ensure that sales of beer, wine and spirituous liquor for consumption off premises is only for consumption for individuals over the age of 21 as for other sale of alcoholic beverages both on and off-premises and that all other title 4 laws are followed.
  - c. In the event that the Arizona Department of Liquor Licenses and Control determines that a title 4 licensee has otherwise violated title 4 by selling to a minor or not providing alcohol in a sealed container, the Department may take enforcement action against the title 4 licensee.
4. The Arizona Department of Liquor Licenses and Control shall post guidance to title 4 licensees on its website to assist in compliance with this order.
5. The Department of Liquor Licenses and Control shall not enforce any restriction on manufacturers, wholesalers or retailers to buy back unopened products from restaurants, bars and clubs.
6. Cafeterias at nursing homes, hospitals, and similar facilities as well as soup kitchens that provide meals to the needy are not subject to these restrictions and may continue normal operations while taking precautions to ensure social distancing and appropriate hygiene according to Centers for Disease Control and Prevention standards.

7. This order shall remain in place until further notice, and shall be reconsidered for repeal or revision every two weeks following issuance.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

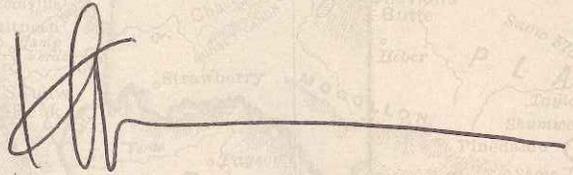


GOVERNOR

DONE at the Capitol in Phoenix on this nineteenth day of March in the Year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.



ATTEST:



Secretary of State

# **Exhibit D**



STATE OF ARIZONA  
DEPARTMENT OF LIQUOR LICENSES AND CONTROL

Douglas A. Ducey  
GOVERNOR

John Cocca  
DIRECTOR

March 20, 2020

On March 19, 2020, Governor Ducey issued Executive Order 2020-09, which contained provisions dealing with the sale and service of spirituous liquor, and directed the Department to publish guidance to the public on its website. This is that guidance.

This guidance is subject to change depending on questions and comments that the Department may receive and shall apply for only so long as the Governor's Executive Order 2020-09 remains in place. Interested persons should check the Department's website regularly for updated guidance.

This guidance does not create any rights or privileges for licensees or the public. It does not constitute legal advice. Interested persons should consult with their own legal counsel for questions related to the Order, this guidance, or compliance with Title IV liquor laws generally.

#### **Non-Restaurant Retailers May Deliver Spirituous Liquor**

The Governor's Executive Order 2020-09 closes bars. This restriction applies to all retail licensees that do not hold an active restaurant (series 12) license. This is not a cease of operations. This restriction does not prevent retail licensees with off-sale privileges from selling spirituous liquors in unbroken packages for delivery under A.R.S. § 4-203(J) or direct shipment under A.R.S. § 4-203.04.

- The Department will consider the sale of spirituous liquor by non-restaurant retailers with off-sale privileges under A.R.S. § 4-209(B) using pick-up, delivery, or drive-thru options as a delivery of alcohol under A.R.S. § 4-203(J) and not in violation of the Executive Order.

#### **Temporarily Modified Licensed Premises and Restaurant Deliveries that include Alcohol.**

The Governor has ordered the closure of restaurants except for pick-up, delivery, or drive thru options. This is not a cease of operations. The Governor has also ordered, however, that the Department shall not enforce regulations such as A.R.S. § 4-209(B)(12) that prohibit restaurants from serving spirituous liquors off the licensed premises.

800 WEST WASHINGTON, 5<sup>th</sup> FLOOR PHOENIX, ARIZONA 85007-2934 PHONE (602) 542-5141 FAX (602) 542-5707

[WWW.AZLIQUOR.GOV](http://WWW.AZLIQUOR.GOV)

Individuals requiring special accommodations please call (602)542-9027

- Restaurant licensees may therefore temporarily use delivery services including themselves under A.R.S. § 4-203(J) and are responsible for complying with related Title IV regulations except as provided in this guidance.
- All retail licensees that because of the configuration of their licensed premises cannot sell or deliver spirituous liquor for off-sale consumption without first removing it from the licensed premises will not be disciplined under A.R.S. § 4-207.01 for operating outside of the licensed premises, unless the Department determined that the licensee otherwise violated Title IV. Licensees should use their best judgment to deliver spirituous liquor in a manner that is controlled, direct, and short in distance. Curb-side service will be considered pick-up.
- Restaurant licensees that use pick-up and curb-side services that include alcohol must comply with A.R.S. § 4-244(10), which prohibits licensees from employing individuals under the age of eighteen to sell or dispose of spirituous liquors.

### **Gross Food-Sales Percentage and Volume Limitations**

- The Executive Order does not permit a restaurant licensee from failing to continue to maintain 40% gross food-sales percentages as required in A.R.S. § 4-205.02 and A.R.S. § 4-213, but rather is intended to mitigate the loss of a restaurant's on-premises sales.
- Licensees holding growler permits under A.R.S. § 4-205.02 and § 4-244(32) must still comply with all applicable regulations including limiting the volume of spirituous liquor to no more than one gallon and total sales to no more than 10% of the licensee's total spirituous liquor sales.
- The Executive Order does not permit retailers of any type from exceeding applicable volume limitations regarding the percentage of alcohol sold off the licensed premises. Off-sale retailers (not including restaurants under the Executive Order) that use A.R.S. § 4-203(J) delivery services must continue to maintain records of these sales for this purpose.

### **Sealed Containers**

The Governor's Executive Order 2020-09 permitted restaurants to make sales for consumption off the premises in only "sealed containers." The Department has confirmed that the Order permits the sale of mixed drinks that meet this requirement.

- Licensees should be mindful of Arizona's Open Container laws. Under A.R.S. § 4-251(A)(2), it is unlawful for any person to: "[p]ossess an open container of spirituous liquor within the passenger compartment of a motor vehicle that is located on any public highway or right-of-way of a public highway in this state."

Questions may arise regarding how a licensee can seal a mixed drink to comply with the Order. Under existing law in A.R.S. § 4-101(7), "a 'broken package' means any container of spirituous liquor on which the United States tax seal has been broken or removed, or from which the cap, cork or seal placed thereupon by the manufacturer has been removed." Also, in A.R.S. § 4-244(32)(a), if purchased with a meal, a consumer may remove an opened bottle of wine "if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed." Lastly, existing Department and TTB guidance permitted the use of a "plastic adhesive" to seal growler bottles.

- Licensees selling any mixed drinks must seal the container before removing it from their designated licensed premises and ensure that the seal remains in place until the time the consumer takes possession.
- Licensees may apply any number methods to seal containers to include the use of capping and applying a plastic adhesive seal or corking flush with the top of a bottle as is already permitted in some circumstances. Merely placing a plastic cap on top of a Styrofoam or paper cup as one might expect with a non-alcoholic fountain drink is not sealing the container.

### Age-Verification and Documentation

- All licensees providing services such as curbside pick-up and take-out should continue to comply with A.R.S. § 4-241's age-verification requirements. A licensee that has reason to question that a person ordering spirituous liquor is under the legal drinking age must still examine identification, but may do so in a manner consistent with social distancing such as by requiring the consumer to display the front and back of a license but not taking possession of it.
- All licensees using delivery services including themselves under A.R.S. § 4-203(J) should comply with Arizona Administrative Code R19-1-504 ([https://azliquor.gov/forms/inv\\_recdelivery\\_access.pdf](https://azliquor.gov/forms/inv_recdelivery_access.pdf)). To promote social distancing, however, **licensees may, however, temporarily dispense with the requirement in subsection 504(B)(4) to obtain the consumer's signature.**
- All licensees remain responsible for any sale to a person under the legal drinking age or that otherwise violates Title IV.

### Accepting Returns of Spirituous Liquor

The Governor's Executive Order 2020-09 required that the Department shall not enforce restrictions on the return of spirituous liquors. On March 13, 2020, the Department issued guidance on the return of spirituous liquor to wholesalers and producers, respectively, that is due to the impact of COVID-19. Copies of the Department's earlier guidance are available on the Department's website at [https://azliquor.gov/assets/documents/homepage\\_docs/COVID-19\\_returns\\_March13.pdf](https://azliquor.gov/assets/documents/homepage_docs/COVID-19_returns_March13.pdf). That guidance is consistent with the Executive Order and shall remain in place to enforce the Order.

- The Executive Order does not permit licensees to otherwise violate A.R.S. § 4-243(A)(4) and give or lend to retailers any goods or services of value, such as by engaging in new contracts involving credit or consignment terms.
- The Executive Order does not permit licensees to violate A.R.S. § 4-244(7) by purchasing spirituous liquor other than from wholesalers, subject to several exceptions already existing in Title IV, such as limited producer self-distribution privileges.

### For the Public

The Governor's Executive Order 2020-09 allows for restaurants to sell alcohol for consumption off the premises in sealed containers. It also closes all non-restaurant retail licensees to the public, which will result in these licensees likely engaging in increased sales for consumption off the premises. The Executive Order does not modify existing Title IV consumer regulations about the purchase or consumption of spirituous liquor.

## Open Containers

The Executive Order and existing law permits the sale of only sealed containers of alcohol for consumption off the premises. Consumers are responsible to follow Arizona's open-container laws when transporting spirituous liquor. Consumers should not unseal containers before or during transport.

A handwritten signature in black ink, appearing to read "John Cocca". The signature is fluid and cursive, with the first name "John" and the last name "Cocca" clearly distinguishable.

John Cocca  
Director

# **Exhibit E**

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

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★

EXECUTIVE ORDER

Executive Order 2020-18

**Stay Home, Stay Healthy, Stay Connected**  
*Physical Distancing to Mitigate COVID-19 Transmission*

**WHEREAS**, Arizona is committed to combating COVID-19, which represents a serious threat to public health; and

**WHEREAS**, the State of Arizona has taken proactive actions to mitigate the risk of COVID-19 to public health and address the economic impact of the COVID-19 pandemic; and

**WHEREAS**, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

**WHEREAS**, on March 15, 2020, a statewide school closure was issued in coordination with Superintendent of Public Instruction Kathy Hoffman, later extended on March 30, 2020, through the end of the school year; and

**WHEREAS**, many businesses have greatly reduced their hours and operations as directed by health officials and in an effort to protect the public health and slow the spread of COVID-19; and

**WHEREAS**, on March 17, 2020, following updated guidance from the Centers for Disease Control and Prevention (CDC), the Arizona Department of Health Services (ADHS) issued updated guidance that included canceling or postponing gatherings of 10 or more people, recommending telework and other alternatives, restricting access to nursing homes, retirement homes and long-term care facilities to provide critical assistance, and providing recommendations to restaurants and eating establishments to mitigate the risk of COVID-19 transmission; and

**WHEREAS**, on March 19, 2020, Executive Order 2020-09 was issued requiring restaurants in Arizona counties with confirmed COVID-19 cases to provide dine-out options only and required all bars, gyms and movie theaters in those counties to close; and

**WHEREAS**, on March 19, 2020, Executive Order 2020-10 halted all elective surgeries in the State of Arizona to free up medical resources and maintain the capacity for hospitals and providers to continue offering vital services; and

**WHEREAS**, essential services were identified in Executive Order 2020-12 as those specifically necessary to promote the public health, safety and welfare of the state or assist others in fulfilling such functions; and

**WHEREAS**, to combat COVID-19, and at the recommendation of the state’s health officials, the State of Arizona must continue its efforts by further limiting potential exposure through a policy of physical distancing while maintaining social connectedness; and

**WHEREAS**, pursuant to A.R.S. §§ 26-303(E), the Governor of Arizona, after a Declaration is issued, has “the right to exercise, within the area designated, all police power vested in the state by the constitution and laws of this state”; and

**WHEREAS**, pursuant to A.R.S. § 36-787(A), during a State of Emergency declared by the Governor, the Arizona Department of Health Services has primary jurisdiction, responsibility and authority for:

- (1) Planning and executing public health emergency assessment, mitigation, preparedness response and recovery of the State;
- (2) Coordinating public health emergency response among State, local and tribal authorities;
- (3) Collaborating with relevant federal government authorities, elected officials or other states, private organizations and private sector companies; and
- (4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and

**WHEREAS**, on March 30, 2020, the Director of the Arizona Department of Health Services, based on an epidemiological assessment of Arizona specific data and in alignment with CDC guidance, recommended the state implement enhanced mitigation strategies.

**NOW, THEREFORE, I**, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. § 26-303 and after consultation with the Director of the Arizona Department of Health Services, do hereby order, effective at 5:00 p.m. on March 31, 2020:

1. Arizona shall institute a “Stay home, Stay healthy, Stay connected” policy that promotes physical distancing, while also encouraging social connectedness. This builds on actions the state has already taken, and further memorializes some already in effect, to slow the spread of COVID-19 and protect our citizens.
2. Under this policy, all individuals in the State of Arizona shall limit their time away from their place of residence or property, except:
  - a. To conduct or participate in Essential Activities.
  - b. For employment, to volunteer or participate in Essential Functions.
  - c. To utilize any services or products provided by Essential Businesses.
  - d. Employment, if as a sole proprietor or family owned business, work is conducted in a separate office space from your home and the business is not open to serve the public.
  - e. No person shall be required to provide documentation or proof of their activities to justify their activities under this order.
3. Arizonans are encouraged to improve social connectedness, resiliency, and help-seeking behavior by:

- a. Maintaining ongoing connections and communication with current social supports and structures such as family, friends, neighbors and other social groups;
- b. Educating fellow Arizonans on the negative health impacts of social isolation;
- c. Developing habits and activities that increase resilience, such as physical activity, virtual social gatherings, assisting neighbors, implementing or participating in connection campaigns for at-risk populations, and participating in volunteer activities;
- d. Sharing information and awareness of newly available social services and resources to improve the stability of families and reduce financial stressors; and
- e. Sharing information and awareness of resources in the community by providing information on where and how high risk populations can access suicide prevention services throughout Arizona, including specific resources that are targeted to high risk populations.

4. Under this policy, Essential Activities include:

- a. Obtaining necessary supplies and services for family, household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, assignments for completion of distance learning and products necessary to maintain safety, sanitation and essential maintenance of the home and residence.
- b. Engaging in activities essential for the health and safety of family, household members and pets, including things such as seeking medical, behavioral health or emergency services and obtaining medical supplies or medication.
- c. Caring for a family member, friend, or pet in another household or residence, which includes but is not limited to transportation of a family member, friend or their pet for essential health and safety activities and to obtain necessary supplies and services for the other household.
- d. Engaging in outdoor exercise activities, such as walking, hiking, running, biking or golfing, but only if appropriate physical distancing practices are used.
- e. Attending or conducting work or volunteering in Essential Functions which includes but is not limited to transporting children to child care services for attending work in an essential service.
- f. Engaging in constitutionally protected activities such as speech and religion, and any legal or court process provided that such is conducted in a manner that provides appropriate physical distancing to the extent feasible.

5. To the extent individuals are using shared or outdoor spaces when outside their residence or property for Essential Activities, they shall to the extent possible maintain physical distancing of at least six feet from any other person, consistent with guidance from the CDC.

6. All persons may leave their place of residence only for Essential Activities, to participate in or receive Essential Governmental Functions, or to participate in or fulfill Essential Functions outlined in Executive Order 2020-12.

7. Individuals shall limit use of public transportation to when absolutely necessary to obtain or conduct Essential Activities or attend work in an Essential Function. While using public transportation, riders shall maintain to the extent possible recommended physical distancing of at least six feet from other riders and the operator.

8. Individuals experiencing homelessness are exempt from this directive, but are strongly urged to obtain shelter as soon as possible and to the maximum extent practicable.
9. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location.
10. For purposes of this Executive Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.
11. Businesses and entities that remain open shall implement rules and procedures that facilitate physical distancing and spacing of individuals of at least six feet.
  - a. All businesses that are classified as Essential Functions may remain open and maintain operations, but shall establish and implement social distancing and sanitation measures established by the United States Department of Labor or the Arizona Department of Health Services.
  - b. Essential Functions conducted by governmental entities shall remain open. Government leaders may adjust operations to promote physical distancing, including but not limited to offering on-line services as feasible, limiting the number of persons in a physical space or limiting access to specific facilities or areas to protect from the spread of COVID-19.
  - c. Employment in Essential Businesses and Operations means an essential employee performing work for an Essential Function as identified in the "Prohibiting the Closure of Essential Services" Executive Order list.
12. Non-essential businesses may continue to operate those activities that do not require in-person, on-site transactions and are encouraged to maintain at least minimum basic operations that maintain the value of the business' inventory, preserve the condition of the business' physical plant and equipment, ensure security, process payroll and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions to include mail pickup.
13. This Executive Order shall not be construed to prohibit working from home, operating a single owner business with no in-person, on-site public interaction, or restaurants and food services providing delivery or take-away services, so long as proper physical distancing and sanitation measures are established and implemented.
14. Arizonans are already acting responsibly during this public health emergency. The intent of this Executive Order is to ensure that people maintain physical distance to the maximum extent feasible, while enabling essential services to continue, protecting people's rights and slowing the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with physical distancing recommendations. All provisions of this Executive Order shall be interpreted to effectuate this intent. Prior to any enforcement action being taken to enforce this order in accordance with A.R.S. § 26-317, a person shall be notified and given an opportunity to comply.

15. Pursuant to A.R.S. § 26-307, no county, city or town may make or issue any order, rule or regulation that conflicts with the policy, directives or intent of this Executive Order, including any order, rule or regulation that limits an individual from conducting, participating in or receiving Essential Services, Essential Activities or Non-essential Services as outlined in this order and prior executive orders.
16. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
17. This Executive Order shall be in effect until April 30, 2020, unless extended.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



*Douglas R. Ducey*

**GOVERNOR**

**DONE** at the Capitol in Phoenix on this Thirtieth Day of March in the Year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

**ATTEST:**

*[Signature]*

**Secretary of State**

# **Exhibit F**

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

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EXECUTIVE ORDER

Executive Order 2020-25

**Flexible Food Item & Sale of Goods at Restaurants**

**WHEREAS**, a Public Health State of Emergency was declared in Arizona on March 11, 2020 to prepare for and respond to the outbreak of the 2019 novel coronavirus (COVID-19); and

**WHEREAS**, the President of the United States declared a national emergency on March 13, 2020 due to both the health and economic implications of the COVID-19 virus; and

**WHEREAS**, the State of Arizona has experienced community spread of COVID-19 in all counties as it continues to spread across the country and the state, posing an increasing threat to public health and having a devastating impact on the economy; and

**WHEREAS**, the state has taken critical measures to protect public health and safety, which will result in direct economic consequences for businesses across the State of Arizona that provide employment for many Arizonans; and

**WHEREAS**, the economic impacts of COVID-19 on Arizona businesses have been significant; and

**WHEREAS**, on March 19, 2020, Executive Order 2020-09 was issued requiring restaurants in Arizona counties with confirmed COVID-19 cases to provide dine-out options only; and

**WHEREAS**, though many restaurants are still operating, they are unable to generate the same level of revenue through sales in a takeout and delivery only model; and

**WHEREAS**, many restaurants rely on suppliers who are also suffering economic loss due to the decline in restaurant sales; and

**WHEREAS**, due to the decrease in business, many restaurants are in possession of commodities that they do not currently need and could sell; and

**WHEREAS**, regulations regarding weights and measures and food labeling may prevent such sales and limit the ability of restaurants to adapt to the current market which limits their original business model; and

**WHEREAS**, on March 26, 2020, the Food and Drug Administration provided temporary flexibility for nutrition labeling of packaged food; and

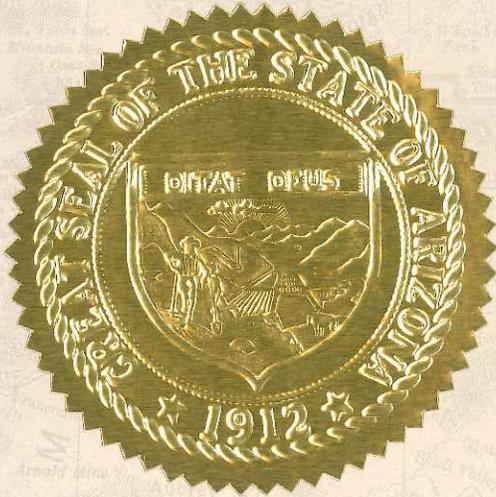
**WHEREAS**, by suspending enforcement of such provisions while requiring minimal labeling requirements, restaurants can mitigate damage from the economic impacts of COVID-19 while facilitating access to food and reducing logistical burdens on the grocery store supply chain.

**NOW, THEREFORE**, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this state, hereby order as follows:

1. Restaurants currently licensed or permitted to serve prepared food may sell grocery items including, but not limited to, paper goods, cleaning supplies, prepared food in bulk, meat and vegetables whether or not those items are normally packaged for resale or are raw provided that the following provisions are followed:
  - a. Food sold must be wholesome and unadulterated.
  - b. Open ready-to-eat foods must be within the date marking requirements to be sold.
  - c. Products requiring refrigeration must remain under temperature control (41°F or less) until ready for pick up or delivery. Customers should be instructed to get food home quickly and placed under refrigeration.
  - d. Bulk household goods should be sold in their original containers.
  - e. Raw meats should be separated from other foods, especially produce and other ready-to-eat food items to prevent cross contamination.
  - f. Businesses shall assess their customer traffic flows to ensure a takeout or curbside business model will maintain the Governor's social distancing requirements.
2. No county, city or town may make, restrict, or prohibit a restaurant covered by this order from placing temporary signage to indicate that they are open, have delivery, drive-thru or carryout available or that the restaurant has other items for sale. Any restrictions currently in place by a county, city or town, other than those necessary for safety purposes shall be suspended for the duration of this order.
3. The Arizona Department of Agriculture, Weights and Measures Division and any county, city or town entity that enforces the provisions outlined by the National Institute for Standards and Technology Handbook 130-2020 and 133-2020, shall suspend enforcement of such standards in relation to restaurants currently licensed or permitted to serve prepared or packaged food by a state or local jurisdiction.
4. This order does not permit a restaurant that does not hold a current license from the Arizona Department of Liquor Licensing and Control to sell alcoholic beverages. The provisions of Executive Order 2020-09 are still in effect.
5. To the extent possible, a restaurant shall sell items in their original packing. However, if it is not possible to sell food items in their original packaging, restaurants shall maintain information to ensure traceability for food safety purposes.

6. This order shall remain in place until further notice, and shall be reconsidered for repeal or revision every two weeks following issuance.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



*Douglas R. Lucey*

**GOVERNOR**

**DONE** at the Capitol in Phoenix on this seventh day of April in the Year Two Thousand Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

**ATTEST:**

*[Signature]*

**Secretary of State**

# **Exhibit G**

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

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EXECUTIVE ORDER

Executive Order 2020-33

Returning Stronger

*Amending the Stay Home, Stay Healthy, Stay Connected Order*

**WHEREAS**, Arizona is committed to combating COVID-19, which represents a serious threat to public health; and

**WHEREAS**, the State of Arizona has taken proactive actions to mitigate the risk of COVID-19 to public health and address the economic impact of the COVID-19 pandemic; and

**WHEREAS**, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

**WHEREAS**, many businesses have greatly reduced their hours and operations as directed by health officials and in an effort to protect the public health and slow the spread of COVID-19; and

**WHEREAS**, on March 17, 2020, following updated guidance from the Centers for Disease Control and Prevention (CDC), the Arizona Department of Health Services (ADHS) issued updated guidance that included canceling or postponing gatherings of 10 or more people, recommending telework and other alternatives, restricting access to nursing homes, retirement homes and long-term care facilities to provide critical assistance, and providing recommendations to restaurants and eating establishments to mitigate the risk of COVID-19 transmission; and

**WHEREAS**, on March 19, 2020, Executive Order 2020-09 was issued requiring restaurants in Arizona counties with confirmed COVID-19 cases to provide dine-out options only and required all bars, gyms and movie theaters in those counties to close; and

**WHEREAS**, on March 19, 2020, Executive Order 2020-10 halted all elective surgeries in the State of Arizona to free up medical resources and maintain the capacity for hospitals and providers to continue offering vital services; and

**WHEREAS**, essential services were identified in Executive Order 2020-12 as those specifically necessary to promote the public health, safety and welfare of the State or assist others in fulfilling such functions; and

**WHEREAS**, to combat COVID-19, and at the recommendation of the state's health officials, the State of Arizona must continue its efforts by further limiting potential exposure through a policy of physical distancing while maintaining social connectedness; and

**WHEREAS**, pursuant to A.R.S. § 26-303(E), the Governor of Arizona, after a Declaration is issued, has “the right to exercise, within the area designated, all police power vested in the state by the constitution and laws of this state”; and

**WHEREAS**, pursuant to A.R.S. § 36-787(A), during a State of Emergency declared by the Governor, the Arizona Department of Health Services has primary jurisdiction, responsibility and authority for:

- (1) Planning and executing public health emergency assessment, mitigation, preparedness response and recovery of the State; and
- (2) Coordinating public health emergency response among State, local and tribal authorities; and
- (3) Collaborating with relevant federal government authorities, elected officials or other states, private organizations and private sector companies; and
- (4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and

**WHEREAS**, on March 30, 2020, the Director of the Arizona Department of Health Services, based on an epidemiological assessment of Arizona specific data and in alignment with CDC guidance, recommended the State implement enhanced mitigation strategies; and

**WHEREAS**, since the issuance of Executive Order 2020-18, *Stay Home, Stay Healthy, Stay Connected*, the federal government issued guidance on the criteria that states should meet prior to allowing gatherings of people and opening businesses that have been closed due to the need to mitigate COVID-19; and

**WHEREAS**, due to the availability of Personal Protective Equipment (PPE) and efforts taken to increase capacity in our hospitals and intensive care units, Arizona is now more prepared to face the potential for an increase in patients needing treatment for COVID-19; and

**WHEREAS**, even with this increased capacity, the data is still showing significant numbers of people testing positive for COVID-19 and we are still learning the extent to which the disease has spread within our state; and

**WHEREAS**, increased diagnostic and serology testing is beginning in Arizona in partnership with private labs and the universities; and

**WHEREAS**, since April 1, 2020, essential businesses have innovated and proven they can implement protocols to ensure that employees and the public are safe as they fulfill Essential Activities and participate in Essential Functions; and

**WHEREAS**, although strides to assess, mitigate and prepare for the COVID-19 response and recovery have been made, the current efforts in the State to limit potential exposure through a policy of physical distancing while maintaining social connectedness is necessary; and

**WHEREAS**, in continuing efforts to mitigate, respond and recover from COVID-19, there is the ability to slowly and strategically loosen some restrictions while others remain in place as we turn toward reenergizing our economy..

**NOW, THEREFORE**, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. §§ 26-303 and 36-787, and after consultation with the Director of the Arizona Department of Health Services, do hereby order:

1. Arizona shall institute a “Stay home, Stay healthy, Stay connected” policy that promotes physical distancing, while also encouraging social connectedness. This builds on actions the State has already taken, and further memorializes some already in effect, to slow the spread of COVID-19 and protect our citizens.
2. Under this policy, all individuals in the State of Arizona shall limit their time away from their place of residence or property, except:
  - a. To conduct or participate in Essential Activities;
  - b. For employment, to volunteer or participate in Essential Functions;
  - c. To utilize any services or products provided by Essential Businesses;
  - d. Employment, if as a sole proprietor or family owned business, work is conducted in a separate office space from your home and the business is not open to serve the public; and
  - e. No person shall be required to provide documentation or proof of their activities to justify their activities under this order.
3. Arizonans are encouraged to improve social connectedness, resiliency, and help-seeking behavior by:
  - a. Maintaining ongoing connections and communication with current social supports and structures such as family, friends, neighbors and other social groups;
  - b. Educating fellow Arizonans on the negative health impacts of social isolation;
  - c. Developing habits and activities that increase resilience, such as physical activity, virtual social gatherings, assisting neighbors, implementing or participating in connection campaigns for at-risk populations, and participating in volunteer activities;
  - d. Sharing information and awareness of newly available social services and resources to improve the stability of families and reduce financial stressors; and
  - e. Sharing information and awareness of resources in the community by providing information on where and how high risk populations can access suicide prevention services throughout Arizona, including specific resources that are targeted to high risk populations.
4. Under this policy, Essential Activities include:
  - f. Obtaining necessary supplies and services for family, household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, assignments for completion of distance learning and products necessary to maintain safety, sanitation and essential maintenance of the home and residence;

- g. Engaging in activities essential for the health and safety of family, household members and pets, including things such as seeking medical, behavioral health or emergency services and obtaining medical supplies or medication;
    - h. Caring for a family member, friend, or pet in another household or residence, which includes but is not limited to transportation of a family member, friend or their pet for essential health and safety activities and to obtain necessary supplies and services for the other household;
    - i. Engaging in outdoor exercise activities, such as walking, hiking, running, biking or golfing, but only if appropriate physical distancing practices are used;
    - j. Attending or conducting work or volunteering in Essential Functions which includes but is not limited to transporting children to child care services for attending work in an essential service;
    - k. Engaging in constitutionally protected activities such as speech and religion, and any legal or court process provided that such is conducted in a manner that provides appropriate physical distancing to the extent feasible; and
    - l. Persons may visit retailers permitted to operate pursuant to this order.
5. To the extent individuals are using shared or outdoor spaces when outside their residence or property for Essential Activities, they shall to the extent possible maintain physical distancing of at least six feet from any other person, consistent with guidance from the CDC.
6. All persons may leave their place of residence only for Essential Activities, to participate in or receive Essential Governmental Functions, or to participate in or fulfill Essential Functions outlined in Executive Order 2020-12.
7. Individuals shall limit use of public transportation to when absolutely necessary to obtain or conduct Essential Activities or attend work in an Essential Function. While using public transportation, riders shall maintain to the extent possible recommended physical distancing of at least six feet from other riders and the operator.
8. Individuals experiencing homelessness are exempt from this directive, but are strongly urged to obtain shelter as soon as possible and to the maximum extent practicable.
9. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location.
10. For purposes of this Executive Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.
11. Businesses and entities that remain open shall implement rules and procedures that facilitate physical distancing and spacing of individuals of at least six feet.
  - a. All businesses that are classified as Essential Functions may remain open and maintain operations, but shall establish and implement social distancing and sanitation measures established by the United States Department of Labor or the Arizona Department of Health Services.
  - b. Essential Functions conducted by governmental entities shall remain open. Government leaders may adjust operations to promote physical distancing, including but not limited to offering on-line services as feasible, limiting the number of persons

in a physical space or limiting access to specific facilities or areas to protect from the spread of COVID-19.

- c. Employment in Essential Businesses and Operations means an essential employee performing work for an Essential Function as identified in the “Prohibiting the Closure of Essential Services” Executive Order list.
12. Except as provided herein, non-essential businesses may continue to operate those activities that do not require in-person, on-site transactions and are encouraged to maintain at least minimum basic operations that maintain the value of the business’ inventory, preserve the condition of the business’ physical plant and equipment, ensure security, process payroll and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions to include mail pickup.
- a. Effective May 4, 2020, retailers which are not classified as essential under Executive Order 2020-12, *Prohibiting the Closure of Essential Services*, and whose business involves the sale of goods, may operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery or appointment provided they establish and implement protocols and best practices for businesses to address COVID-19 as outlined in this order.
  - b. Effective May 8, 2020 retailers which are not classified as essential under Executive Order 2020-12, *Prohibiting the Closure of Essential Services*, and whose business involves the sale of goods may open, operate and offer goods for sale to customers in their stores provided they establish and implement protocols and best practices for businesses to address COVID-19 as outlined in this order.
  - c. To operate under this order, retailers for goods shall follow those provisions outlined in paragraph 11.
  - d. Areas where people may be inclined to congregate in an enclosed or confined area such as indoor shopping malls shall continue to limit operations. Retailers located within such buildings or areas whose only entrance is through the shopping mall or other enclosed area may operate through delivery or curbside service or appointment only.
  - e. Nothing in this order shall be construed as requiring a retailer to open for business.
13. This Executive Order shall not be construed to prohibit working from home, operating a single owner business with no in-person, on-site public interaction, or restaurants and food services providing delivery or take-away services, so long as proper physical distancing and sanitation measures are established and implemented.
14. Arizonans are already acting responsibly during this public health emergency. The intent of this Executive Order is to ensure that people maintain physical distance to the maximum extent feasible, while enabling essential services to continue, reinvigorating our economy, protecting people’s rights and slowing the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with physical distancing recommendations. All provisions of this Executive Order shall be interpreted to effectuate this intent. Prior to any enforcement action being taken to enforce

this order in accordance with A.R.S. § 26-317, a person shall be notified and given an opportunity to comply.

15. Pursuant to A.R.S. § 26-307, no county, city or town may make or issue any order, rule or regulation that conflicts with the policy, directives or intent of this Executive Order, including any order, rule or regulation that limits an individual from conducting, participating in or receiving Essential Services, Essential Activities or Non-essential Services as outlined in this order and prior executive orders.
16. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
17. This Executive Order shall be in effect until May 15, 2020 at 11:59 p.m., unless modified, extended or rescinded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



*Douglas R. Ducey*

**GOVERNOR**

**DONE** at the Capitol in Phoenix on this twenty-ninth day of April in the Year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

**ATTEST:**

*[Signature]*

**Secretary of State**

# **Exhibit H**

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA  
★  
EXECUTIVE ORDER

Executive Order 2020-34

**Building on COVID-19 Successes**

***Resuming additional business operations for barbers, cosmetologists and dine-in restaurants***

**WHEREAS**, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

**WHEREAS**, on March 30, 2020, the Director of the Arizona Department of Health Services, based on an epidemiological assessment of Arizona specific data and in alignment with CDC guidance, recommended the State implement enhanced mitigation strategies; and

**WHEREAS**, since the issuance of Executive Order 2020-18, *Stay Home, Stay Healthy, Stay Connected*, the federal government issued guidance on the criteria that states should meet prior to allowing gatherings of people and opening businesses that have been closed due to the need to mitigate COVID-19; and

**WHEREAS**, due to the availability of Personal Protective Equipment (PPE) and efforts taken to increase capacity in our hospitals and intensive care units, Arizona is now more prepared to face the potential for an increase in patients needing treatment for COVID-19; and

**WHEREAS**, increased diagnostic and serology testing has begun in Arizona in partnership with private labs and the universities; and

**WHEREAS**, since April 1, 2020, essential businesses have innovated and proven they can implement protocols to ensure that employees and the public are safe as they fulfill Essential Activities and participate in Essential Functions; and

**WHEREAS**, on April 29, 2020, Executive Order 2020-33, *Returning Stronger*, was issued to allow for retailers to resume operation in a limited capacity while still directing people to stay home to the extent possible; and

**WHEREAS**, on May 4, 2020, additional data was released by the Arizona Department of Health Services showing continued progress in mitigating and limiting the spread of COVID-19 and sustaining adequate hospital capacity; and

**WHEREAS**, in continuing efforts to mitigate, respond and recover from COVID-19, there is the ability to slowly and strategically loosen some restrictions while others remain in place as we turn toward reenergizing our economy; and

**WHEREAS**, even as some restrictions are lifted, the data must continue to be monitored to determine the impacts of opening businesses on the rates of COVID-19 Like Illnesses (CLI) in our community to ensure that such actions are not negatively impacting the strides made to our healthcare system; and

**WHEREAS**, pursuant to A.R.S. § 26-303(E), the Governor of Arizona, after a Declaration is issued, has “the right to exercise, within the area designated, all police power vested in the state by the constitution and laws of this state”; and

**WHEREAS**, pursuant to A.R.S. § 36-787(A), during a State of Emergency declared by the Governor, the Arizona Department of Health Services has primary jurisdiction, responsibility and authority for:

1. Planning and executing public health emergency assessment, mitigation, preparedness response and recovery of the State;
2. Coordinating public health emergency response among State, local and tribal authorities;
3. Collaborating with relevant federal government authorities, elected officials or other states, private organizations and private sector companies; and
4. Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies.

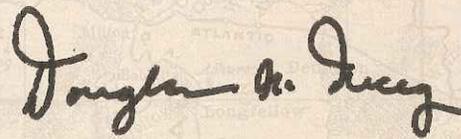
**NOW, THEREFORE**, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. §§ 26-303 and 36-787, and after consultation with the Director of the Arizona Department of Health Services, do hereby order:

1. Notwithstanding Executive Order 2020-33, effective Friday, May 8, 2020, barbers and cosmetologists defined and licensed by Title 32 of the Arizona Revised Statutes may resume operations provided they establish and implement protocols and best practices for businesses to address COVID-19, including using face coverings for employees and customers, operating by appointment only and following protocols as directed by the Centers for Disease Control and Prevention, the United States Department of Labor Division of Occupational Safety and the Arizona Department of Health Services. All other provisions of Executive Order 2020-33 shall remain in effect.
2. Notwithstanding Executive Order 2020-09, effective Monday, May 11, 2020, dine-in services may resume provided they establish and implement protocols and best practices for businesses to address COVID-19, including enacting physical distancing policies, limiting the number of diners and following protocols as directed by the Centers for Disease Control and Prevention, the United States Department of Labor Division of

Occupational Safety and Health Administration and the Arizona Department of Health Services. All other provisions of Executive Order 2020-09 shall remain in effect.

3. Persons visiting businesses providing services under this order shall not be deemed to be in violation of Executive Order 2020-33.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



**GOVERNOR**



**DONE** at the Capitol in Phoenix on this fourth day of May in the Year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

**ATTEST:**



**Secretary of State**

# **Exhibit I**

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

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EXECUTIVE ORDER

**Executive Order 2020-36**

**Stay Healthy, Return Smarter, Return Stronger**

**WHEREAS**, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

**WHEREAS**, on March 30, 2020, the Director of the Arizona Department of Health Services (ADHS), based on an epidemiological assessment of Arizona specific data and in alignment with the Centers for Disease Control and Prevention (CDC) guidance, recommended the State implement enhanced mitigation strategies; and

**WHEREAS**, due to the availability of Personal Protective Equipment (PPE) and efforts taken to increase capacity in our hospitals and intensive care units, Arizona is now more prepared to face the potential for an increase in patients needing treatment for COVID-19; and

**WHEREAS**, increased diagnostic and serology testing has accelerated in Arizona in partnership with private labs and the universities; and

**WHEREAS**, since April 1, 2020, businesses have innovated and demonstrated they can implement protocols to ensure that employees and the public are safe; and

**WHEREAS**, on April 29, 2020, Executive Order 2020-33, *Returning Stronger*, was issued to allow for retailers to resume operation in a limited capacity while still directing people to stay home to the extent possible; and

**WHEREAS**, on May 4, 2020, additional data was released by ADHS showing continued progress in mitigating and limiting the spread of COVID-19 and sustaining adequate hospital capacity; and

**WHEREAS**, on May 8, 2020, retailers, cosmetologists and barbers were able to open for customers; and

**WHEREAS**, on May 11, 2020, dine-in services were opened; and

**WHEREAS**, Arizona has satisfied the gating criteria outlined in the Guidelines for Opening Up America Again published by the CDC and the White House Coronavirus Task Force and has entered Phase I of the proposed phased approach; and

**WHEREAS**, in continuing efforts to mitigate, respond and recover from COVID-19, there is the ability to slowly and strategically loosen some restrictions while others remain in place as we turn toward reenergizing our economy; and

**WHEREAS**, even as some restrictions are lifted, the data must continue to be monitored to determine the impacts of opening businesses on the rates of COVID-19 Like Illnesses (CLI) in our community to ensure that such actions are not negatively impacting the strides made to our healthcare system; and

**WHEREAS**, pursuant to A.R.S. § 36-787(A), during a State of Emergency declared by the Governor, ADHS has primary jurisdiction, responsibility and authority for:

1. Planning and executing public health emergency assessment, mitigation, preparedness response and recovery of the State;
2. Coordinating public health emergency response among State, local and tribal authorities;
3. Collaborating with relevant federal government authorities, elected officials or other states, private organizations and private sector companies; and
4. Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies.

**NOW, THEREFORE**, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. §§ 26-303 and 36-787, and after consultation with the Director of ADHS, do hereby order that effective May 16, 2020 at 12:00 a.m.:

1. Arizona shall institute a “Stay Healthy, Return Smarter, Return Stronger” policy that promotes physical distancing, while encouraging social connectedness and allows businesses to gradually and safely open in compliance with federal guidelines as the state continues to mitigate and prevent the spread of COVID-19. This builds on actions the state has already taken, and further memorializes some already in effect, to slow the spread of COVID-19 and protect our citizens.
2. Executive Orders 2020-18, 2020-24 and 2020-33 are hereby expired and rescinded. Provisions of all other orders issued and still in effect since the March 11, 2020 Declaration of Public Health Emergency remain in place unless guidance is or has been provided by ADHS on how to safely reopen or operate while mitigating COVID-19 or the orders expire, are amended or rescinded.
3. Under this policy, all vulnerable individuals, including the elderly and individuals with underlying health conditions, are advised to take reasonable steps to continue limiting their time away from their place of residence or property. Members of households with

vulnerable individuals should take precautions to protect vulnerable individuals and should be aware that by returning to work or being out in public, they could carry the virus back home.

4. All individuals, when in public areas, should maximize physical distance from others. Social settings where appropriate physical distancing is not practical should be avoided unless precautionary measures are observed and CDC guidelines are followed.
5. Any business, whether for-profit or non-profit, institution, profession or entity that physically operates in this state and serves the public or is an employer shall develop, establish and implement policies based on guidance from the CDC, Department of Labor, Occupational Safety and Health Administration (OSHA) and ADHS to limit and mitigate the spread of COVID-19 including the following:
  - a. Promoting healthy hygiene practices;
  - b. Intensifying cleaning, disinfection and ventilation practices;
  - c. Monitoring for sickness;
  - d. Ensuring physical distancing;
  - e. Providing necessary protective equipment;
  - f. Allowing for and encouraging teleworking where feasible;
  - g. Providing plans, where possible, to return to work in phases; and
  - h. Limiting the congregation of groups of no more than 10 persons when feasible and in relation to the size of the location.
6. Nothing in this order prevents a person from engaging in constitutionally protected activities such as speech and religion or participating in the democratic process.
7. Pursuant to A.R.S. § 26-307, no county, city or town may make or issue any order, rule or regulation that conflicts with or is in addition to the policy, directives or intent of this Executive Order, including but not limited to any order restricting persons from leaving their home due to the COVID-19 public health emergency, or any other order, rule or regulation that was not in place as of March 11, 2020. This includes but is not limited to any function or service designated as an Essential Service in Executive Order 2020-12.
8. Arizonans have continued to act responsibly during this public health emergency. The intent of this Executive Order is to ensure that the State of Arizona continues to mitigate the spread of COVID-19 to the greatest extent possible. All law enforcement and regulatory agencies that have enforcement authority under existing law should focus first on educating and working to promote best practices to accomplish this goal. An individual shall be notified of the provisions of this order and given an opportunity to comply prior to any enforcement action being taken.
9. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

10. This order shall remain in place until further notice, and shall be considered for repeal or revision at least every two weeks following issuance.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



*Douglas R. Jucey*

**GOVERNOR**

**DONE** at the Capitol in Phoenix on this twelfth day of May in the year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

**ATTEST:**

*[Signature]*

**Secretary of State**

# **Exhibit J**

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

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EXECUTIVE ORDER

Executive Order 2020-43

**Pausing of Arizona's Reopening  
Slowing the Spread of COVID-19**

**WHEREAS**, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

**WHEREAS**, on March 30, 2020, the Director of the Arizona Department of Health Services (ADHS), based on an epidemiological assessment of Arizona specific data and in alignment with the Centers for Disease Control and Prevention (CDC) guidance, recommended the State implement enhanced mitigation strategies which are continuing; and

**WHEREAS**, on May 12, 2020, Executive Order 2020-36, *Stay Healthy, Return Smarter, Return Stronger*, was issued outlining requirements for businesses to assist in mitigating the spread of COVID-19 as they reopened and mandated that businesses adopt policies consistent with guidance from the CDC and the ADHS; and

**WHEREAS**, as of June 28, 2020, there have been 73,908 diagnosed cases of COVID-19 in Arizona including 1,588 deaths, and the State is seeing an increase in the number of cases and hospitalizations; and

**WHEREAS**, the increased case numbers and hospitalizations also necessitate the need for an increased focus on precautionary measures by both businesses and individuals; and

**WHEREAS**, data has shown that community spread continues to grow at an exponential pace and is greatest among the demographic of 20-44 year olds; and

**WHEREAS**, there has not been sufficient time for mask mandates and limiting groups to have a demonstrable effect on containing the spread and additional measures need to be taken to ensure quicker containment; and

**WHEREAS**, it is necessary to impose additional measures to protect public health and safety and mitigate the strain on our health care providers by slowing the spread of COVID-19; and

**WHEREAS**, in taking such critical measures to protect public health there will be direct economic consequences for businesses across the State of Arizona that provide employment for many Arizonans, including bars and restaurants; and

**WHEREAS**, A.R.S. § 4-203, allows “[a] spirituous liquor license...[to] be issued only after satisfactory showing of the capability, qualifications and reliability of the applicant and, with the exception of

wholesaler, producer, government or club licenses, that the public convenience requires and that the best interest of the community will be substantially served by the issuance.” ; and

**WHEREAS**, due to community spread of COVID-19, the state will not be substantially served by the issuance of certain liquor licenses; and

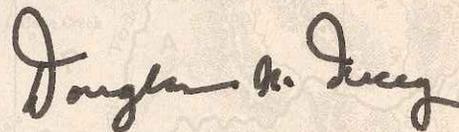
**WHEREAS**, Arizona is committed to containing the spread of COVID-19.

**NOW, THEREFORE**, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this state including A.R.S. §§ 26-303 and 36-787, hereby order as follows:

1. Effective June 29, 2020, organized public events of more than 50 people are prohibited unless the city, town or county in unincorporated areas has approved the event, and only if adequate safety precautions are implemented, including physical distancing measures. A city, town or county in unincorporated areas may deny a request for an organized event due to public health concerns related to COVID-19. Any approval may be subject to certain conditions or restrictions not inconsistent with this or any other executive order. Nothing in this order shall inhibit a person from engaging in constitutionally protected activities such as speech and religion, and any legal or court process provided that such is conducted in a manner that provides appropriate physical distancing to the extent feasible.
2. The Department of Liquor Licenses and Control shall cease issuing series 15, Special Event licenses and series 16, Festival/Fair licenses for the period of June 29, 2020 through July 27, 2020.
3. Notwithstanding any other law or executive order, effective at 8:00 pm on Monday, June 29, 2020, the following establishments shall pause operations until at least July 27, 2020, unless extended:
  - a. Bars, meaning an entity who holds a series 6 or 7 liquor license from the Department of Liquor Licenses and Control and whose primary business is the sale or dispensing of alcoholic beverages. These entities may continue serving the public through pick up, delivery, and drive-thru operations as provided for series 12 liquor licenses in Executive Order 2020-09, *Limiting The Operations Of Certain Businesses To Slow The Spread Of COVID-19*.
  - b. Indoor gyms and fitness clubs or centers.
  - c. Indoor movie theaters.
  - d. Water parks and tubing operators.
4. Pools may continue to operate as follows:
  - a. Pools operated as part of a public accommodation, such as those at hotels but not those at multi-housing complexes, shall prohibit groups larger than 10 from congregating together in or near the pool.
  - b. Privately owned pools located in public areas such as those at multi-housing complexes or other privately owned facilities may continue to be open provided that signage is included at all entrances to the pool reminding people to maintain physical distance and that groups larger than 10 should not congregate.

5. To receive authorization to reopen, entities shall complete and submit a form as prescribed by the Arizona Department of Health Services that attests the entity is in compliance with guidance issued by ADHS related to COVID-19 business operations. The form shall also be posted in an easily visible public place on the entity's premises. ADHS shall provide information to the public on those entities that have submitted such attestations on its website.
6. A local governmental jurisdiction shall have the authority to take immediate action against an entity that operates without submitting the prescribed attestation to the Arizona Department of Health Services.
7. Notwithstanding any other law or executive order, this executive order allows law enforcement and any regulatory agency, pursuant to their regulatory authority, to take immediate enforcement action against any business that fails to follow this Executive Order or any guidance issued by the Arizona Department of Health Services relating to COVID-19 for the protection of the public health, safety and welfare up to and including summary suspension for any license that the business holds.
8. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
9. This order shall remain in place until further notice, and shall be reconsidered for repeal or revision every two weeks after July 27, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



GOVERNOR

DONE at the Capitol in Phoenix on this twenty-ninth day of June in the year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

ATTEST:



Secretary of State



# **Exhibit K**

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

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EXECUTIVE ORDER

Executive Order 2020-52

Continuation of Executive Order 2020-43  
*Slowing the Spread of COVID-19*

**WHEREAS**, on June 29, 2020, Executive Order 2020-43 was issued providing measures to protect public health and safety and mitigate the strain on our health care providers by slowing the spread of COVID-19; and

**WHEREAS**, at the time of issuance, Arizona had 73,908 diagnosed cases of COVID-19 including 1,588 deaths, and the State was seeing an increase in the number of cases and hospitalizations; and

**WHEREAS**, the increased case numbers and hospitalizations necessitated the need for an increased focus on precautionary measures by both businesses and individuals; and

**WHEREAS**, since the issuance of that Order, action was taken to limit restaurant capacity to 50% and other mitigation measures such as eliminating standing at restaurants; and

**WHEREAS**, as of July 23, 2020, there have been 152,944 diagnosed cases of COVID-19 in Arizona including 3,063 deaths; and

**WHEREAS**, the weekly Arizona State Report issued by the White House Coronavirus Task Force on July 19, 2020, identifies that all but two Arizona counties are in the “red zone” which indicates there were new cases above 100 per 100,000 population and a diagnostic test positivity result above 10%; and

**WHEREAS**, the policy recommendations in the State Report, include that gyms and bars should be closed, that outdoor dining opportunities should be provided as possible and that groups should be limited to 10 people or fewer; and

**WHEREAS**, Executive Order 2020-43, outlined that certain businesses should be closed until at least July 27, 2020 to respond to and mitigate the spread of COVID-19; and

**WHEREAS**, Executive Order 2020-43 stated it “shall remain in place until further notice and reviewed for repeal or revision every two weeks after July 27, 2020;” and

**WHEREAS**, mask mandates, limitations on groups and closure of certain businesses have resulted in slight improvements to the growth of cases, these measures need to continue due to continued high rates of hospitalizations and high numbers of cases; and

**WHEREAS**, Arizona is committed to containing the spread of COVID-19.

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this state including A.R.S. §§ 26-303 and 36-787, hereby order as follows:

1. The provisions of Executive Order 2020-43, ordered through July 27, 2020, including those pausing business operations for certain businesses, shall be extended, remain in place and continue to be reviewed for repeal or revision every two weeks.
2. The Governor's Office will issue a notice of review and current status of this and Executive Order 2020-43 which shall be published on the Governor's Office website at [www.azgovernor.gov](http://www.azgovernor.gov).
3. If any provision of this Executive Order, and Executive Order 2020-43 which is incorporated herein, or their application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order or any other Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



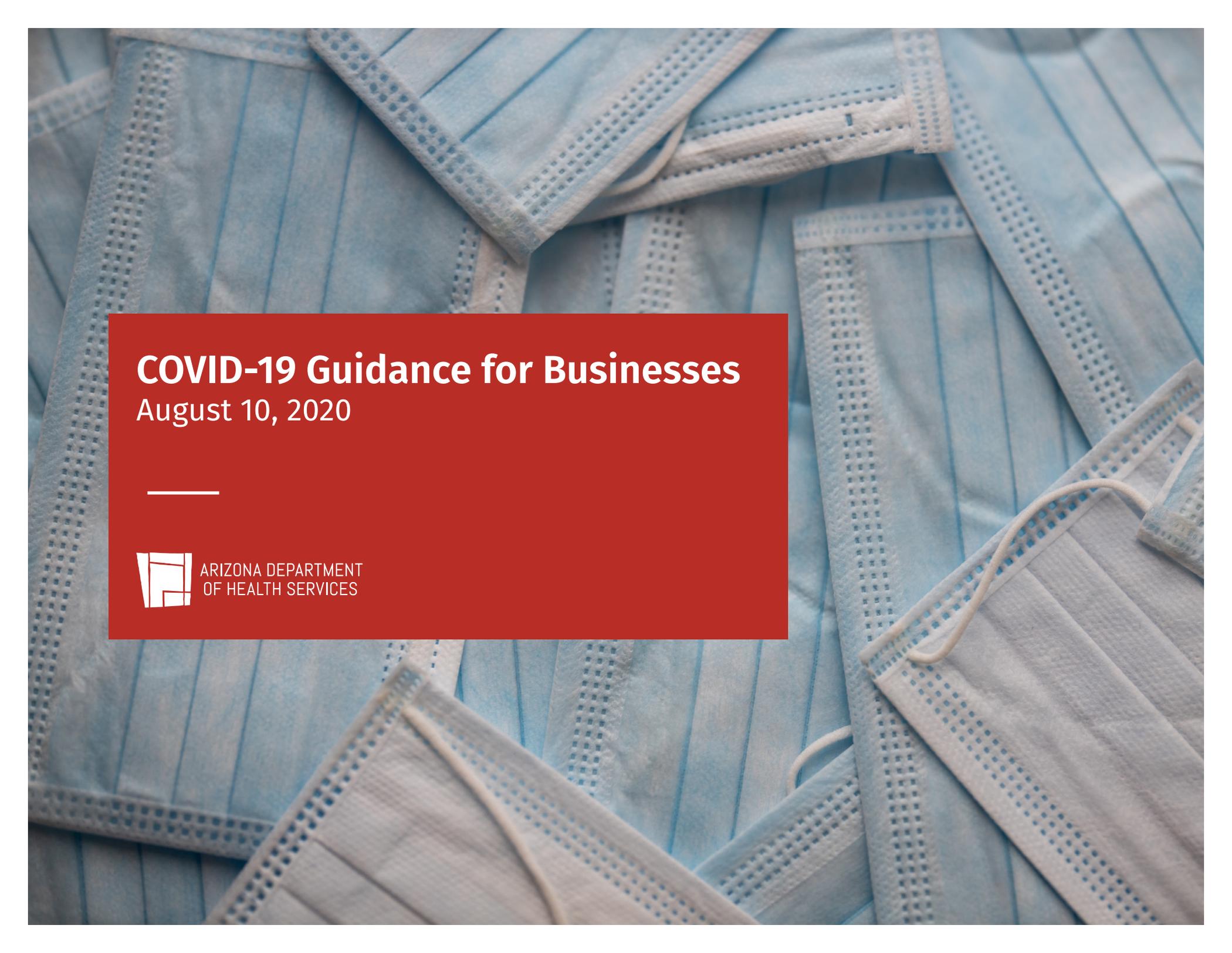
GOVERNOR

DONE at the Capitol in Phoenix on this twenty- third day of July in the year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty- Fifth.

ATTEST:

Secretary of State

# **Exhibit L**



# COVID-19 Guidance for Businesses

August 10, 2020

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ARIZONA DEPARTMENT  
OF HEALTH SERVICES

# Contents

## Introduction

## Benchmarks

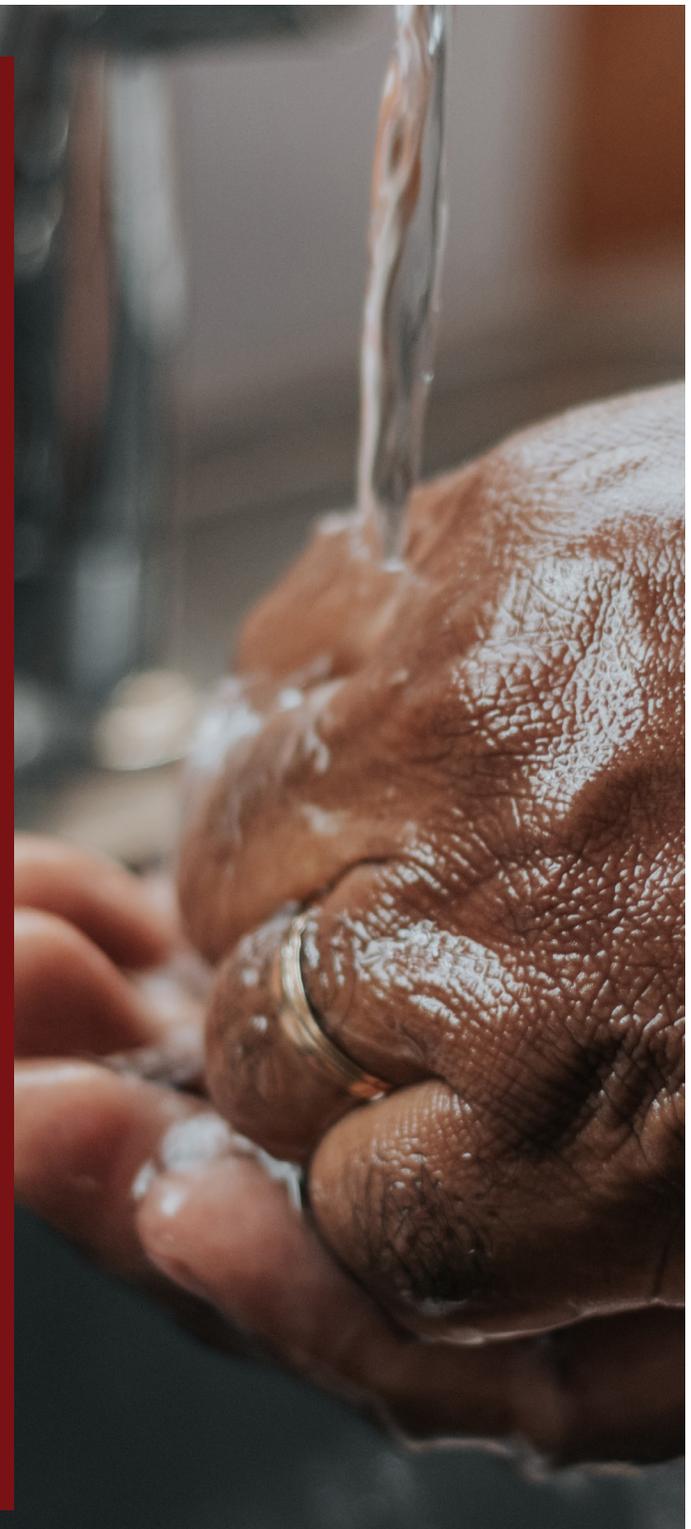
## Responding to COVID-19 in Businesses

## Requirements for Operations

- Indoor Gyms and Fitness Centers
- Bars and Nightclubs Providing Dine-In Services
- Bars and Nightclubs Not Operating as a Restaurant
- Indoor Theaters
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- How to Wear a Mask
- How to Wash Your Hands
- Symptoms of COVID-19
- Sample Visitor Screening Protocol
- COVID-19 Risk Gradient
- Attestation for Resuming Operations
- Flowchart of Attestation Process



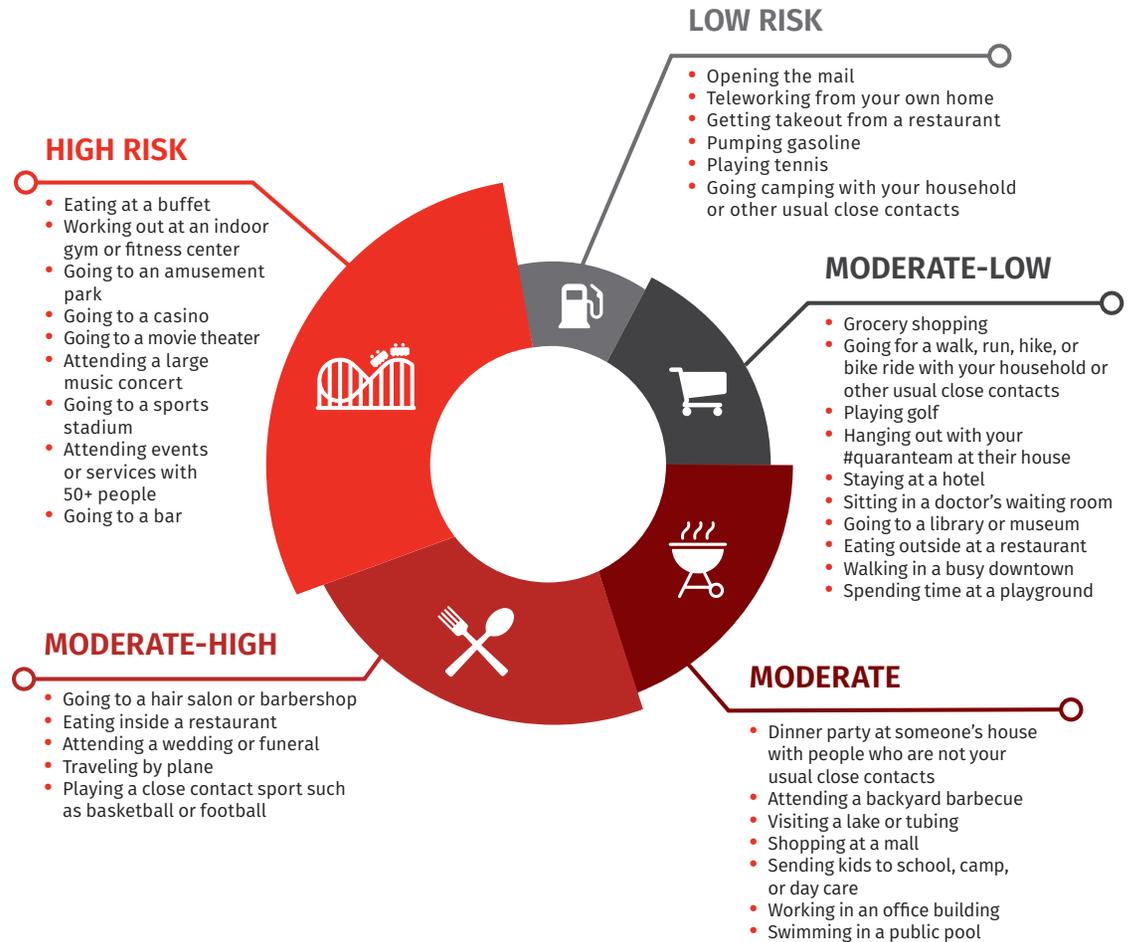
# Introduction

On June 27, Governor Ducey issued Executive Order 2020-43 “Pausing of Arizona’s Reopening.” This paused the reopening of several specific industries with operations that are considered by public health to have a high-risk of spreading COVID-19, specifically indoor gyms and fitness centers, bars and nightclubs, waterparks and tubing, and movie theaters. It also limited indoor and outdoor gatherings to no more than 50 people. Since this pause, Arizona has seen a decline in its percent positivity, an increase in hospital capacity, and an improvement in other indicators. On July 23, that order was extended, with a review every two weeks.

Safe operation of businesses is an important strategy to reduce COVID-19 transmission in Arizona. While many businesses provide significant benefits including economic opportunities for staff, social connections for staff and patrons, and physical fitness options for the community in the case of gyms, the risk of COVID-19 transmission may outweigh these benefits if the virus is widespread. Thus, the level of COVID-19 spread in the community is an important factor in determining when, and to what extent, it is safe to resume certain business operations.

## COVID-19 Risk Index

### Know Your Risk During COVID-19



# Benchmarks

There are two key components to resuming business operations. First is the quality of the establishment’s implementation of COVID-19 mitigation strategies. This plan outlines mitigation strategies tailored for specific types of business operations. Business must attest to their implementation of these strategies prior to operating. The second is the level of spread occurring in the community. The Centers for Disease Control and Prevention (CDC) defines community spread as follows:

**Minimal Community Spread:** Evidence of isolated cases or limited community transmission, case investigations underway; no evidence of exposure in large communal setting.

**Moderate Community Spread:** Sustained transmission with high likelihood or confirmed exposure within communal settings and potential for rapid increase in cases.

**Substantial Community Spread:** Large scale, controlled community transmission, including communal settings (e.g., schools, workplaces).

ADHS further defines community spread levels with the thresholds outlined below. These thresholds are consistent with the national standards set by the Coronavirus Task Force.

Benchmarks	Minimal	Moderate	Substantial
Cases	<10 cases/100,000	10-100 cases/100,000	>100 cases/100,000
Percent Positivity	<5%	5-10%	≥10%
Covid Like Illness	<5%	5-10%	>10%

## Applying the Benchmarks to Business Operations

The benchmark categories correspond with phased reopening strategies for various business types. All three benchmarks must be met for 14 days with a 12-day reporting lag period to move from a higher transmission category to a lower one.

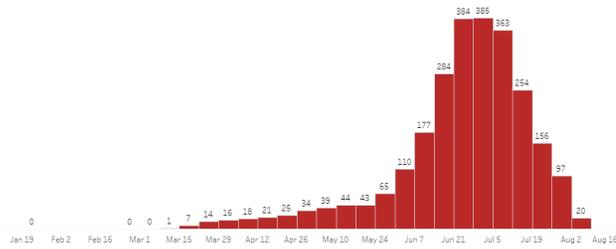
Establishment Type	Minimal	Moderate	Substantial
Indoor Gyms and Fitness Centers	50% occupancy with ADHS mitigation requirements until < 3% positivity.	25% occupancy with ADHS mitigation requirements	Closed
Indoor Theaters, Water Parks and Tubing	50% occupancy with ADHS mitigation requirements until < 3% positivity.	50% occupancy with ADHS mitigation requirements	Closed
Bars and Nightclubs Providing Dine-In Services	50% occupancy, only if converted to restaurant service per ADHS mitigation requirements until < 3% positivity.  Once < 3% positivity, 50% occupancy operating as a bar with ADHS mitigation requirements.	50% occupancy, only if converted to restaurant service per ADHS mitigation requirements  Encourage outdoor dining	Closed
Bars and Nightclubs Not Operating as a Restaurant	Closed until 3% positivity. Once 3% positivity, operate at 50% occupancy with ADHS mitigation requirements.	Closed	Closed

# Understanding the Benchmarks

## Cases

**Benchmark:** Two weeks below 100 cases per 100,000

Rate of COVID-19 cases per 100,000 population by week

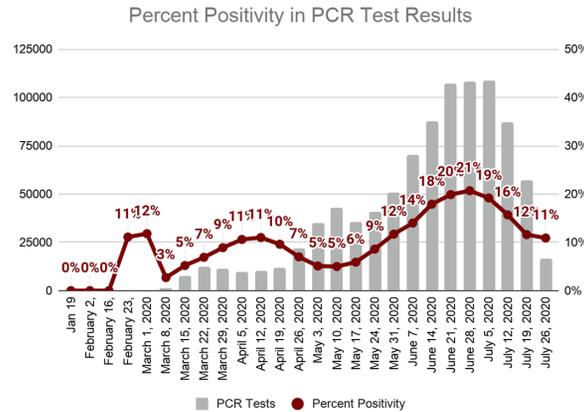


**Data Source:** ADHS MEDSIS Confirmed and Probable Cases

**Available by:** County

## Percent Positivity

**Benchmark:** Two weeks with percent positivity below 10%

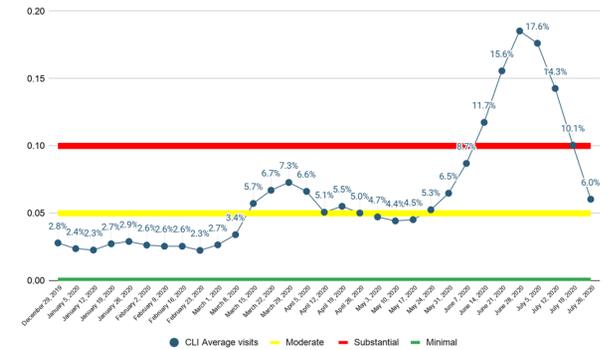


**Data Source:** ADHS Electronic Laboratory Data

**Available by:** County

## COVID-like Illness

**Benchmark:** Two weeks with hospital visits due to COVID-like illness below 10%



**Data Source:** BioSense Syndromic Surveillance Platform

**Available by:** BioSense Region

**Northern:** Apache, Coconino, Navajo, Yavapai Counties

**Central:** Gila, Maricopa, Pinal Counties

**Southeastern:** Cochise, Graham, Greenlee, Pima, Santa Cruz Counties

**Western:** La Paz, Mohave, Yuma Counties

# Data Dashboard

ADHS provides a data dashboard showing performance on each of the benchmarks. This dashboard is updated weekly on Thursdays to provide real-time information for decision making by business operators.

This image provides examples using the August and September dashboard updates with the data time period. Dashboard updates will continue beyond the dates in the table.

Dashboard Update	Date Time Period
August 6, 2020	07/12 - 07/18 07/19 - 07/25
August 13, 2020	07/19 - 07/25 07/26 - 08/01
August 20, 2020	07/26 - 08/01 08/02 - 08/08
August 27, 2020	08/02 - 08/08 08/09 - 08/15
September 3, 2020	08/09 - 08/15 08/16 - 08/22
September 10, 2020	08/16 - 08/22 08/23 - 08/29
September 17, 2020	08/23 - 08/29 08/30 - 09/05
Sept 24, 2020	08/30 - 09/05 09/06 - 09/12

## July 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

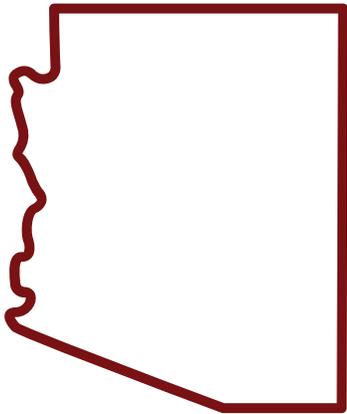
## August 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

## September 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

The dashboard should be used to determine the level of community spread of COVID-19 in Arizona. Users may select a county to filter the data. The dashboard includes easy to read, color coded indicators.



### What is this dashboard?

ADHS Business Operations Dashboard

This dashboard is used to determine the level of community spread of COVID-19 in Arizona to provide information about business operations and allowed occupancy.

### Time Frame

This dashboard does not look at the past two weeks due to potential lags in data.

### Benchmark Definitions

All three metrics must be met for two consecutive weeks

#### Minimal Transmission

<10 cases per 100k, <5% positivity, <5% COVID-like illness

#### Moderate Transmission

10-99 cases per 100k, 5-10% positivity, 5-10% COVID-like illness

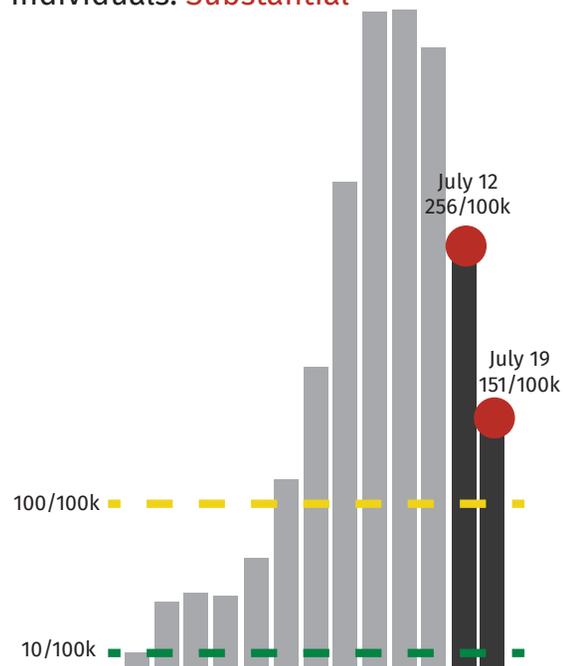
#### Substantial Transmission

>=100 cases per 100k, >=10% positivity, >=10% COVID-like illness

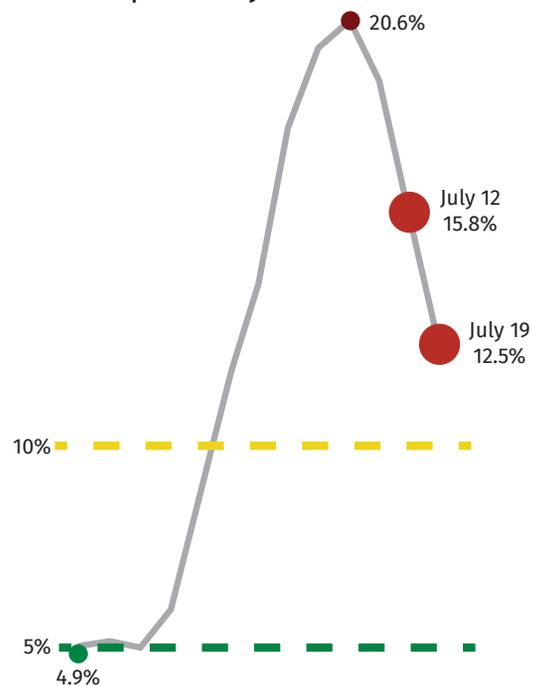
### Showing Data for All Counties

#### 1) Cases per 100,000

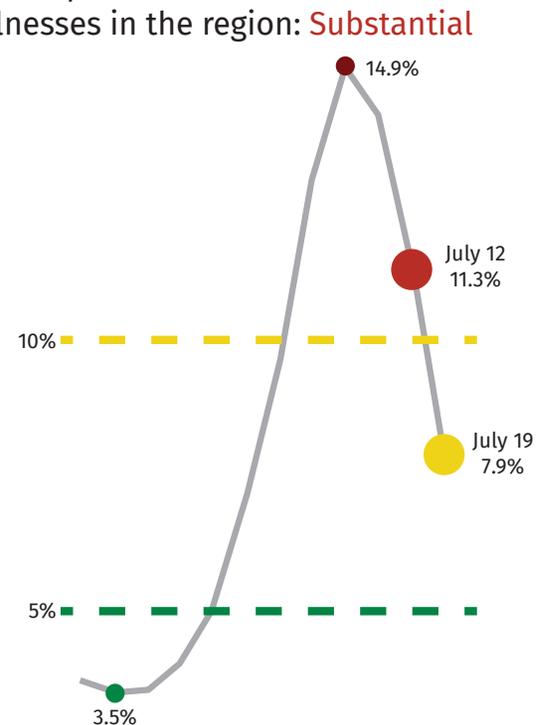
Individuals: **Substantial**



#### 2) Percent positivity: **Substantial**



#### 3) Hospital visits for COVID-like illnesses in the region: **Substantial**



# Responding to COVID-19 in Businesses

The importance of staying home when sick cannot be emphasized enough. Businesses should encourage all patrons and staff to monitor for symptoms. Symptoms include:

- Fever (greater than or equal to 100.4° F or 38° C)
- Subjective chills
- Cough
- Shortness of breath or difficulty breathing
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea
- Fatigue
- Muscle or body aches
- Headache
- New loss of taste or smell

Any person experiencing symptoms should remain home. Businesses should implement symptom screening or temperature checks for employees prior to the start of their shift.

## What to do When Someone On-Site has COVID-19 Symptoms

Business should set a low threshold for sending patrons or staff members home if illness is suspected. Any of the symptoms listed above that are not related to an already diagnosed condition or illness could be COVID-19. The patron or staff member should not physically present to the business until clearance from [isolation criteria](#) have been met or an alternative diagnosis is made. It is important to note that release from isolation DOES NOT require a provider's note and DOES NOT require repeat testing or a negative test.

As with other infectious diseases, if a patron or staff member develops any symptoms while on-site, they should be immediately removed from any group setting and vacate the establishment. Call 9-1-1 if the individual is exhibiting any serious symptoms, including difficulty getting enough air, change in alertness or responsiveness, bluish lips or face.

All household members of someone confirmed or suspected to have COVID-19 should quarantine at home for 14 days.

# Requirements for Operations

In order to continue to prevent and control the continued spread of COVID-19, which still poses a serious threat to public health and welfare, ADHS prescribed emergency measures to establish the process for phased reopening under conditions most likely to protect public health and welfare.

The following pages provide the requirements specific business types must follow when they reopen. Businesses are required to submit an [attestation form](#) to ADHS in order to resume operations and must adhere to the occupancy limits as directed by the benchmarks based on minimal, moderate, or substantial spread.

# Requirements for Indoor Gyms and Fitness Centers

## ADHS Requirements for Indoor Gyms and Fitness Centers

### *Indoor Gyms and Fitness Centers*

Community Spread Level	Occupancy	Hand Hygiene & Respiratory Etiquette	Enhanced Cleaning	Proper Ventilation	Symptom Screening	Physical Distancing (6 feet)	Masks	Communal Spaces Closed
<b>Minimal</b>	50% until < 3% positivity.	x	x	x	x	x	x	x
<b>Moderate</b>	25%	x	x	x	x	x	x	x
<b>Substantial</b>	Closed	N/A	N/A	N/A	N/A	N/A	N/A	N/A

# Requirements for Bars and Nightclubs Providing Dine-In Services

## ADHS Requirements for Bars and Nightclubs Providing Dine-In Services

### *Bars and Nightclubs Providing Dine-In Services*

Community Spread Level	Occupancy	Hand Hygiene & Respiratory Etiquette	Enhanced Cleaning	Proper Ventilation	Prohibit open seating	Symptom Screening	Physical Distancing (6 feet)	Masks	Communal Spaces Closed
<b>Minimal</b>	50% occupancy, only if converted to restaurant service until < 3% positivity.  Once < 3% positivity, 50% occupancy operating as a bar.	x	x	x	x	x	x	x	x
<b>Moderate</b>	50% only if converted to restaurant service.	x	x	x	x	x	x	x	x
<b>Substantial</b>	Closed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

# Requirements for Bars and Nightclubs Not Operating as a Restaurant

## ADHS Requirements for Bars and Nightclubs Not Operating as a Restaurant

*Bars and Nightclubs Not Operating as a Restaurant*

Community Spread Level	Occupancy	Hand Hygiene & Respiratory Etiquette	Enhanced Cleaning	Proper Ventilation	Prohibit open seating	Symptom Screening for Staff	Physical Distancing (6 feet)	Cloth Face Coverings	Cohorting	Communal Spaces Closed
Minimal	Closed until <3% positivity.									
	Once 3% positivity, 50% occupancy.	x	x	x	x	x	x	x	x	x
Moderate	Closed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Substantial	Closed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

# Requirements for Indoor Theaters

## ADHS Requirements for Indoor Theaters

### *Indoor Theaters*

Community Spread Level	Occupancy	Hand Hygiene & Respiratory Etiquette	Enhanced Cleaning	Proper Ventilation	Symptom Screening for Staff	Physical Distancing (6 feet)	Masks	Concession Area Policies	Child Care Policies
<b>Minimal</b>	50% until < 3% positivity	x	x	x	x	x	x	x	x
<b>Moderate</b>	50%	x	x	x	x	x	x	x	x
<b>Substantial</b>	Closed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

# Requirements for Water Parks and Tubing Operators

## ADHS Requirements for Water Parks and Tubing Operators

### Water Parks and Tubing Operators

Community Spread Level	Occupancy	Hand Hygiene & Respiratory Etiquette	Enhanced Cleaning	Proper Ventilation (buildings and buses)	Symptom Screening for staff	Physical Distancing (6 feet)	Masks	Communal Spaces Restricted	Towel Policies	Transportation Policies
Minimal	50% until < 3% positivity	x	x	x	x	x	x	x	x	x
Moderate	50%	x	x	x	x	x	x	x	x	x
Substantial	Closed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

# Supplemental Materials

[How to Wear a Mask](#)

[How to Wash Your Hands](#)

[Symptoms of COVID-19](#)

[Sample Visitor Screening Protocol](#)

[COVID-19 Risk Gradient](#)

[Attestation for Resuming Operations](#)

[Flowchart of Attestation Process](#)

# How to Wear a Mask

## Who should wear a mask?

Everyone over the age of 2 should wear a mask in public. It is one of the best tools you have to protect yourself, your family, and others from COVID-19.

### ✓ DO'S



Wash or sanitize your hands before and after touching your mask.



Wear the mask snugly but comfortably over your nose and mouth. If it hurts your ears, try one that ties behind your head instead of looping over your ears.



Keep it on over your mouth and nose when speaking with others or when on the phone.



Wear the mask in public until you need to eat or drink, then make sure to keep it clean and uncontaminated.

### ✗ DON'TS



Don't let the mask sit under your nose. If it gapes open, it's not doing its job.



Don't touch your mask when wearing it.

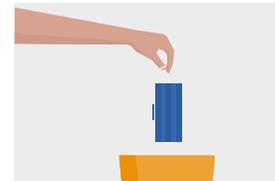


Don't adjust your mask too much, and refrain from pulling on or touching the front of your mask.

### REMOVING AND STORING A MASK



1. Make sure you are more than 6 feet from others and then remove the mask by touching the ear loops or ties only.



2. Place your mask in a clean paper bag, container, or on a designated surface.

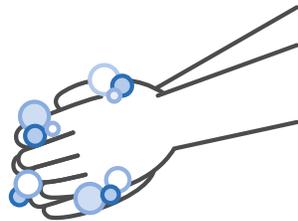


3. Wash your mask after each day's use and store it in a clean bag or container.

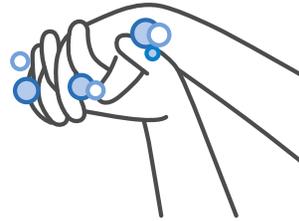
# How Nurses and Doctors Wash Their Hands



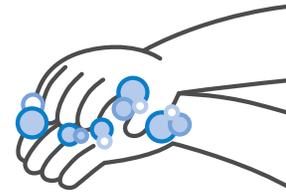
1. Wet & Soap



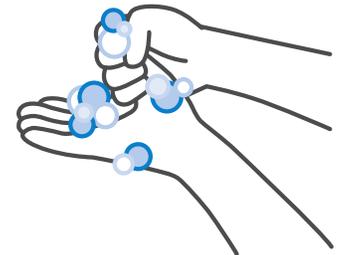
2. Palms



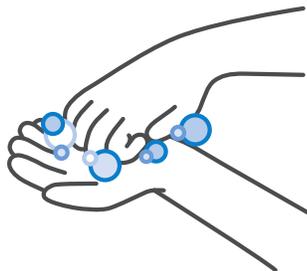
3. Between Fingers



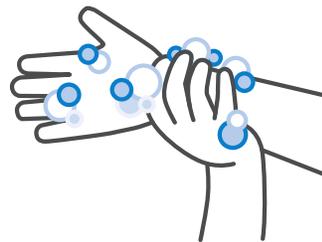
4. Back of Fingers



5. Thumbs



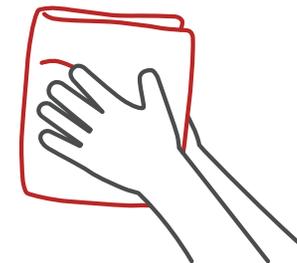
6. Fingernails



7. Wrists



8. Rinse & Dry

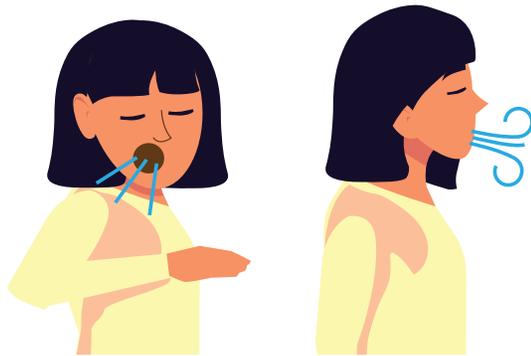


9. Use Towel to Turn Off Faucet & Open Door

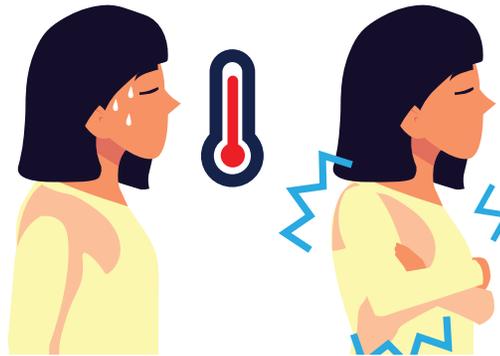
Information + Updates: [azhealth.gov/COVID-19](https://azhealth.gov/COVID-19)  
For questions call the Arizona Poison Control System at 1-844-542-8201

# Symptoms of Coronavirus (COVID-19)

Know the symptoms of COVID-19, which can include the following:



Cough, shortness of breath or difficulty breathing



Fever or chills



Muscle or body aches



Vomiting or diarrhea



New loss of taste or smell

Symptoms can range from mild to severe illness, and appear 2-14 days after you are exposed to the virus that causes COVID-19.

Seek medical care immediately if someone has emergency warning signs of COVID-19.

- Trouble breathing
- Persistent pain or pressure in the chest
- New confusion
- Inability to wake or stay awake
- Bluish lips or face

This list is not all possible symptoms. Please call your healthcare provider for any other symptoms that are severe or concerning to you.

# Guidance On Screening Of Visitors for COVID-19

## Who To Screen?

Anyone who is coming into the facility including:

- Staff
- Essential outside contractors
- Visitors (restricted to compassionate care only)

## What To Do?

Post signage that everyone entering the building is to be screened. Limit movement in the facility to those areas that are necessary for the purpose of the visit. Log all visitors. Designate a staff member who will screen for:

- Symptoms consistent with COVID-19, including:
  - Fever ( $\geq 100.4$  F)
  - Cough (*note: a cough is defined as new onset of cough within the previous 14 days*)
  - Shortness of Breath
- Contact with a COVID-19 patient within the previous 14 days

Anyone who has symptoms consistent with COVID-19 or contact with a known COVID-19 patient in the previous 14 days should not be permitted into the facility.

## All Visitors Should Be Educated On:

- Hand hygiene (have visitors demonstrate hand hygiene entry);
- Limit touching of surfaces;
- Limiting movement to area of business only;
- Limit physical contact, and clean hands before/after (hand sanitizer or washing hands);
- Contact the facility if they become ill with COVID within 14 days after visit.

## What Facilities Can Do To Help?

While physical distancing is encouraged, social interactions are still encouraged, including virtual interactions.

Think about designating a room close to the entrance for essential visits. This room would be disinfected after each meeting.

## What Can Families And Loved Ones Do?

While physical distancing is promoted, phone calls and electronic visits are encouraged. Think about if your loved one may be able to stay with family during this time period.

# Guidance On Screening Of Visitors for COVID-19

Example screening:

Name of Visitor: \_\_\_\_\_ Date of visit: \_\_\_\_\_

Who they are Visiting: \_\_\_\_\_

Access to this facility is limited to staff and visitors that do not have signs and symptoms of possible COVID-19.

Check all that apply below:

- You do not have a cough (*note: a cough is defined as new onset of cough within the previous 14 days*)
- You do not have a fever over 100.4° F. Temperature on entry: \_\_\_\_\_
- You are not experiencing any shortness of breath
- You have not had contact with someone with suspected or confirmed COVID-19 within the past 14 days.
- You do not have a household member with fever or respiratory symptoms.

**Help us practice good infection prevention to keep residents, visitors and staff safe. During your visit you agree to:**

- Stay in designated area for the duration of your visit
- Practice good hand hygiene
- Limit touching of surfaces to only what is necessary
- Limit physical contact and practice good hygiene before/after
- Reach out to a staff member if you have any questions or concerns
- Contact us at \_\_\_\_\_ if you are diagnosed with COVID-19 within 14 days after your visit.**

# COVID-19 RISK INDEX

## Know Your Risk During COVID-19

Always wear a mask  
when in public

For more information,  
visit: [azhealth.gov/COVID19](https://azhealth.gov/COVID19)



ARIZONA DEPARTMENT  
OF HEALTH SERVICES

Risk level	Activity <i>On a scale of 1 to 10, how risky is...</i>	
1	Opening the mail	LOW RISK
1	Teleworking from your own home	
2	Getting takeout from a restaurant	
2	Pumping gasoline	
2	Playing tennis	
2	Going camping with your household or other usual close contacts	MODERATE-LOW
3	Grocery shopping	
3	Going for a walk, run, hike, or bike ride with your household or other usual close contacts	
3	Playing golf	
4	Hanging out with your #quaranteam at their house	
4	Staying at a hotel	MODERATE RISK
4	Sitting in a doctor's waiting room	
4	Going to a library or museum	
4	Eating outside at a restaurant	
4	Walking in a busy downtown	
4	Spending time at a playground	MODERATE-HIGH
5	Dinner party at someone's house with people who are not your usual close contacts	
5	Attending a backyard barbecue	
5	Visiting a lake or tubing	
5	Shopping at a mall	
6	Sending kids to school, camp, or day care	HIGH RISK
6	Working in an office building	
6	Swimming in a public pool	
7	Going to a hair salon or barbershop	
7	Eating inside a restaurant	
7	Attending a wedding or funeral	
7	Traveling by plane	
7	Playing a close contact sport such as basketball or football	
8	Eating at a buffet	
8	Working out at an indoor gym or fitness center	
8	Going to an amusement park	
8	Going to a casino	
8	Going to a movie theater	
9	Attending a large music concert	
9	Going to a sports stadium	
9	Attending events or services with 50+ people	
9	Going to a bar	

# Attestation for Resuming Operations



## Official Reopening Attestation for Indoor Gyms and Fitness Clubs/Centers, Indoor Theaters, Waters Parks and Tubing Operators, and Bars

Executive Order ("E.O.") 2020-43  
Pausing of Arizona's Reopening, Slowing the Spread of COVID-19

On June 29, 2020 Governor Ducey issued E.O. 2020-43, Pausing Arizona's Reopening, Slowing the Spread of COVID-19. Pursuant to E.O. 2020-43, beginning on Monday, June 29, at 8:00 P.M., all indoor gyms and fitness clubs or centers, indoor movie theaters, waters parks and tubing operators, and bars in the State of Arizona, were required to pause operations.

On July 23, 2020 Governor Ducey issued E.O. 2020-52, Continuation of Executive Order 2020-43, Slowing the Spread of COVID-19. Pursuant to E.O. 2020-52, the pause in operations for indoor gyms and fitness clubs or centers, indoor movie theaters, waters parks and tubing operators, and bars was ordered to remain in place and continue to be reviewed for repeal or revision every two weeks.

On August 4, 2020, the Honorable Timothy J. Thomason, in Maricopa County Superior Court Case No. CV2020-093916, ruled that indoor gyms and fitness clubs or centers must be provided an opportunity to apply for reopening ("Ruling"). Governor Ducey and the Arizona Department of Health Services ("ADHS") have determined that the process ordered in the Ruling also should be applied to the paused operations of indoor theaters, waters parks and tubing operators, and bars.

On August 10, 2020 ADHS issued Emergency Measure 2020-02, Slowing the Spread of COVID-19: Phased Reopening. Emergency Measure 2020-02 establishes and describes the process whereby any business subject to the paused operations requirements of E.O. 2020-43 may reopen or, if not authorized by its terms to automatically reopen, to apply to ADHS for express approval to reopen.

This form is intended to allow businesses operating as indoor gyms and fitness clubs or centers, indoor theaters, waters parks and tubing operators, and bars to attest they are in compliance with COVID-19 guidance related to business operations. This completed form will be published on ADHS' website, and a copy shall be posted in an easily visible public place on the business premises.

ADHS or a local governmental jurisdiction shall have authority to take immediate action against any business that operates without submitting this attestation to ADHS or posting it in an easily visible public place on the entity's premises or operates in violation of applicable ADHS Guidelines.

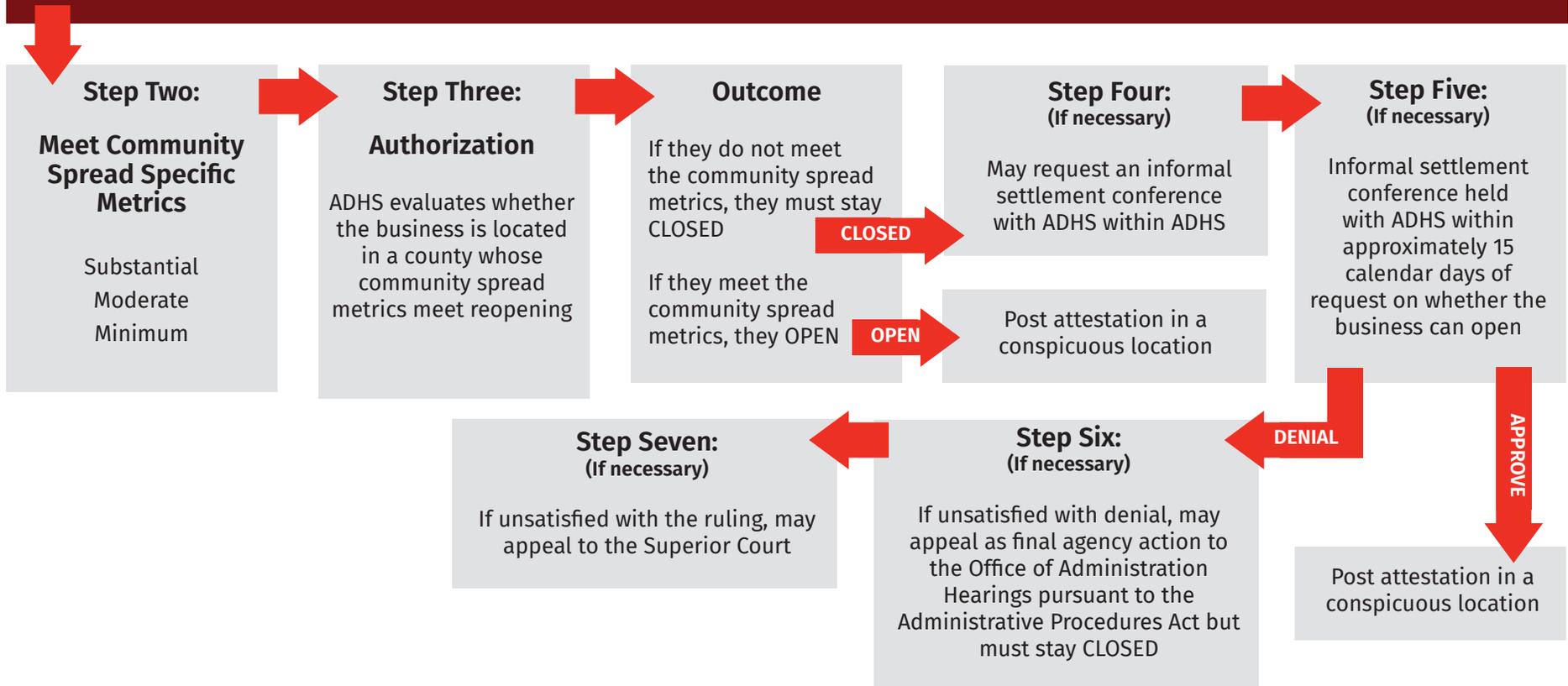
To review up-to-date information regarding ADHS' emergency response to COVID-19 and information for businesses, please visit [www.azhealth.gov/covid19](http://www.azhealth.gov/covid19).

## Attestation Process Businesses Closed by EO2020-43

### Step One: Complete Attestation

Businesses affected by EO2020-43 will go to the ADHS website to complete the attestation form which includes the following:

- Develop, establish and implement written policies based on guidance from the CDC, Department of Labor, Occupational Safety and Health Administration (OSHA) and ADHS, which includes strictly adhering to the ADHS Requirements specific to your establishment to limit and mitigate the spread of COVID-19
- Promote healthy hygiene practices
- Monitor for sickness
- Ensure physical distancing
- Allow for and encourage virtual visits and teleworking when feasible
- Provide plans to limit the capacity of the facility as directed by ADHS
- Limit the congregation of groups in the facility





# Requirements for Restaurants and Bars Providing Dine-In Services

August 10, 2020



ARIZONA DEPARTMENT  
OF HEALTH SERVICES

# Benchmarks

There are two key components to resuming business operations. First is the quality of the establishment's implementation of COVID-19 mitigation strategies. This plan outlines mitigation strategies tailored for specific types of business operations. Business must attest to their implementation of these strategies prior to operating. The second is the level of spread occurring in the community. The Centers for Disease Control and Prevention (CDC) defines community spread as follows:

**Minimal Community Spread:** Evidence of isolated cases or limited community transmission, case investigations underway; no evidence of exposure in large communal setting.

**Moderate Community Spread:** Sustained transmission with high likelihood or confirmed exposure within communal settings and potential for rapid increase in cases.

**Substantial Community Spread:** Large scale, controlled community transmission, including communal settings (e.g., schools, workplaces).

ADHS further defines community spread levels with the thresholds outlined below. These thresholds are consistent with the national standards set by the Coronavirus Task Force.

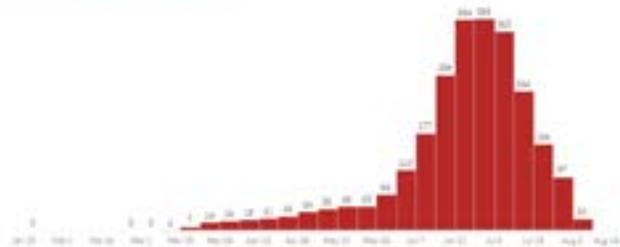
Benchmarks	Minimal	Moderate	Substantial
Cases	<10 cases/100,000	10-100 cases/100,000	>100 cases/100,000
Percent Positivity	<5%	5-10%	≥10%
Covid Like Illness	<5%	5-10%	>10%

# Understanding the Benchmarks

## Cases

**Benchmark:** Two weeks below 100 cases per 100,000

Age of COVID-19 cases per 100,000 population by week

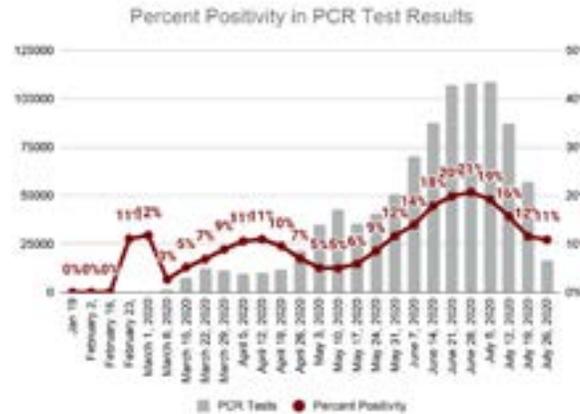


**Data Source:** ADHS MEDSIS Confirmed and Probable Cases

**Available by:** County

## Percent Positivity

**Benchmark:** Two weeks with percent positivity below 10%



**Data Source:** ADHS Electronic Laboratory Data

**Available by:** County

## COVID-like Illness

**Benchmark:** Two weeks with hospital visits due to COVID-like illness below 10%



**Data Source:** BioSense Syndromic Surveillance Platform

**Available by:** BioSense Region

**Northern:** Apache, Coconino, Navajo, Yavapai Counties

**Central:** Gila, Maricopa, Pinal Counties

**Southeastern:** Cochise, Graham, Greenlee, Pima, Santa Cruz Counties

**Western:** La Paz, Mohave, Yuma Counties

# Requirements for Bars and Nightclubs Providing Dine-In Services

## ADHS Requirements for Bars and Nightclubs Providing Dine-In Services

### *Bars and Nightclubs Providing Dine-In Services*

Community Spread Level	Occupancy	Hand Hygiene & Respiratory Etiquette	Enhanced Cleaning	Proper Ventilation	Prohibit open seating	Symptom Screening	Physical Distancing (6 feet)	Masks	Communal Spaces Closed
<b>Minimal</b>	50% occupancy, only if converted to restaurant service until < 3% positivity.  Once < 3% positivity, 50% occupancy operating as a bar.	x	x	x	x	x	x	x	x
<b>Moderate</b>	50% only if converted to restaurant service.	x	x	x	x	x	x	x	x
<b>Substantial</b>	Closed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

**Per the Centers for Disease Control and Prevention (CDC) guidance**, under all circumstances, the following **precautions must be taken by people visiting restaurants and bars providing dine-in services:**



**Stay home if you are sick.**



**Protect yourself while visiting restaurants and bars providing dine-in services:**

- Arizonans are safer at home and should evaluate their personal risk of visiting a restaurant or bar providing dine-in services based on the [Arizona COVID-19 Risk Index](#).
- Avoid close contact and stay more than 6 feet away from others.
- You are required to wear a mask while at the establishment at all times, **except while actively eating or drinking.**
  - Masks should not be placed on children less than 2 years of age, anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the cover without assistance.
- Wash your hands often, especially after leaving the establishment, with soap and water for at least 20 seconds. If soap and water are not available, use an alcohol-based hand sanitizer that contains at least 60% alcohol.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Cover your cough or sneeze with a tissue or your sleeve (not your hands) and immediately throw the tissue in the trash.
- If possible, use touchless payment methods. If you must handle money, a card, or use a keypad, use hand sanitizer or wash your hands immediately after.
- If you are at [higher risk](#) for severe illness, you should avoid visiting restaurants and bars providing dine-in services. People at higher risk for [severe illness](#) include adults 65 or older and people of any age who have serious underlying medical conditions.

**The Arizona Department of Health Services** requires the following additional steps **be taken by restaurants and bars providing dine-in services** and **providers shall take measures to ensure that employees and guests follow** these guidelines:

- ☑ **Comply with all local, state, and federal laws pertaining to restaurants and bars, including the food code.**
- ☑ **Implement occupancy limitations as required based on the community transmission category within the county your establishment operates.**
  - **Substantial:** closed unless special dispensation received from ADHS
  - **Moderate:** Operate at 50% occupancy, only if converted to restaurant service
  - **Minimal:**
    - Operate at 50% occupancy, only if converted to restaurant service until 3% positivity
    - Once <3% positivity, bars may resume operation at 50% occupancy, following the ADHS Requirements for Bars and Nightclubs Not Operating as a Restaurant

☑ **Enforce physical distancing of more than 6 feet between customers who do not live in the same household.**

- Maintain physical distancing by ensuring more than 6 feet of separation between parties or groups at different tables, booths or bar tops, unless the tables are separated by glass, plexiglass or some other type of divider.
- Limit parties to no more than 10.
  - Clearly mark tables and chairs that are not in use.
- **Prohibit open seating** (defined as a customer choosing their own seat or having the ability to move seats).
  - Customers should be brought to a designated seating area (including bar top seating) by a staff member.
  - Patrons should stay seated throughout the duration of their visit, except to visit the bathroom, and may not be standing, mingling, or dancing.
- Maintain clearly marked 6-foot spacing marks and/or signage along entrances, waiting areas, hallways, patios, and restrooms and any other location within an establishment where queues may form or patrons may congregate.
  - Assign an employee to monitor and enforce physical distancing in any locations where queues may form or patrons may congregate, if feasible.
- Customer Waiting Areas – Areas used by customers waiting for their seats should be limited to ensure 10sq ft exists for each person waiting. Additional customers should be instructed to wait outside or in their cars until their seats are ready. Customers waiting for a table must be wearing masks (unless they have a qualified medical exemption or are under two years of age).

☑ **Enforce the use of masks for both employees and customers, even if not mandated by the local or county government.**

**Prohibit the following activities:**

- **Dancing** – Dancing is temporarily prohibited and anyone with a dance floor or dance space must close that section to the public or repurpose it for seating to allow for greater social distancing.
- **Parlor games** – Parlor games (such as pool, darts, or other games commonly associated with eating and drinking establishments) shall temporarily be closed.
- **Karaoke** – Karaoke or other live performances in which customers are active participants shall be temporarily halted.

**Continue to provide options for delivery, pick-up, or curbside service even if a location offers dine-in.**

**Follow [CDC reopening guidance](#) for facilities that have been shut down, including taking measures to ensure potable water safety.**

**Enforce healthy hygiene practices for both employees and customers:**

- Enforce handwashing, covering coughs and sneezes.
- Ensure adequate supplies to support healthy hygiene practices for both employees and customers including soap, hand sanitizer with at least 60 percent alcohol (perhaps on every table and counter, if supplies allow), and tissues.
- Ensure hand sanitizer is available at or adjacent to entrances to the facility, restrooms and in employee work areas, or soap and running water readily accessible to staff and customers at marked locations.

**Post physical and/or electronic signage at the entrance of public health advisories prohibiting individuals who are symptomatic from entering the premises.**

**Post signs on how to stop the spread of COVID-19, properly wash hands, promote everyday protective measures, and properly wear a mask.**

**☑ Increase ventilation, if possible, and ensure that ventilation systems of indoor spaces operate properly.**

- Increase the circulation of outdoor air as much as possible by opening windows and doors, using fans, or other methods.

**☑ Intensify cleaning, disinfection, and ventilation practices.**

- Wash, rinse, and sanitize food contact surfaces, food preparation surfaces, and beverage equipment after use.

**☑ Implement comprehensive sanitation protocols, including increased sanitation schedules for bathrooms.**

**Sanitize customer areas after each sitting with EPA-registered disinfectant, including but not limited to:**

- Tables
- Bar tops and counters
- Tablecloths
- Chairs/booth seats
- Any other surface or item a customer or staff is likely to have touched

**☑ Eliminate instances where customers serve their own food, including salad bars and buffets.**

**☑ Avoid using or sharing items such as menus, condiments, and any other food. Instead, use disposable or digital menus, single-serving condiments, and no-touch trash cans and doors.**

**☑ Wipe any touchpads between each use.**

**☑ Wipe any pens, counters, or hard surfaces between use or customer.**

**The Arizona Department of Health Services requires, under all circumstances, the following additional steps be taken for staff:**

- ☑ **Require sick employees to stay home and not return to work until they have met criteria to return to work.**
  - Employees who appear to have symptoms or who become ill while at work should immediately be separated from others and sent home.
  - Document and communicate sick leave policies to employees and staff.
- ☑ **Implement flexible sick leave policies that permit adherence to public health isolation and quarantine guidance.**
- ☑ **Masks and frequent handwashing are required for all employees.**
  - Develop standards for the use of masks by employees at all times.
  - Develop and enforce handwashing policy for servers as it exists in the Food Code.
- ☑ **Implement symptom screening for employees prior to the start of their shift.**
  - Conduct wellness/symptom checks, including temperature checks for all personnel, at the door and before the opening of the establishment.
- ☑ **Assign duties to vulnerable workers that minimize their contact with customers and other employees.**
- ☑ **Train all employees on appropriate cleaning and disinfection, hand hygiene, and respiratory etiquette.**
- ☑ **Ensure that all employees are notified of new facility rules and any changes in rules.**
- ☑ **Ensure that employees maintain more than 6 feet of separation from other individuals, when possible.**
- ☑ **Provide appropriate personal protective equipment (PPE) for employees in accordance with public health recommendations.**

- ☑ **Provide adequate supplies in employee workspaces to support healthy hygiene behaviors, including soap, hand sanitizer with at least 60% alcohol, disinfecting wipes, tissues, and no-touch trash cans.**
- ☑ **Train all employees in the above safety actions.**
- ☑ **See Department of Labor and Occupational Safety and Health Administration (OSHA) COVID-19 guidance for employers and workers.**

The list of EPA-approved disinfectant products for emerging viral pathogens expected to be effective against COVID-19 can be accessed [here](#).

For additional guidance on cleaning, visit CDC's [Cleaning and Disinfecting Your Facility](#) page and CDC's [Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes](#).

## **For COVID-19 questions, please call the Arizona COVID-19 Hotline at: 1-844-542-8201**

Businesses impacted by E.O. 2020-43 and 2020-52 are required to complete an attestation prior to resuming operations. Approval for resuming operations is dependent upon community transmission within the county the establishment is physically located and the establishment's implementation of ADHS required mitigation steps. Further information can be found in the [ADHS COVID-19 Guidance for Businesses](#).

Any business affected by these provisions may request an informal settlement conference to dispute their categorization on reopening. A denial after an informal settlement conference becomes a final agency action that is appealable to the Office of Administrative Hearings.

For more information on Arizona's response to COVID-19, please visit: [azhealth.gov/COVID19](https://azhealth.gov/COVID19).



# Requirements for Bars and Nightclubs Not Operating as a Restaurant

August 10, 2020

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ARIZONA DEPARTMENT  
OF HEALTH SERVICES

Bars with a Series 6 or 7 Liquor License were closed under EO2020-43 which was continued by EO2020-52. However, these guidelines apply to all liquor licensees that operate with any of the elements listed in A.A.C. R19-1-206(C), no matter what series of license is held.

# Benchmarks

There are two key components to resuming business operations. First is the quality of the establishment's implementation of COVID-19 mitigation strategies. This plan outlines mitigation strategies tailored for specific types of business operations. Business must attest to their implementation of these strategies prior to operating. The second is the level of spread occurring in the community. The Centers for Disease Control and Prevention (CDC) defines community spread as follows:

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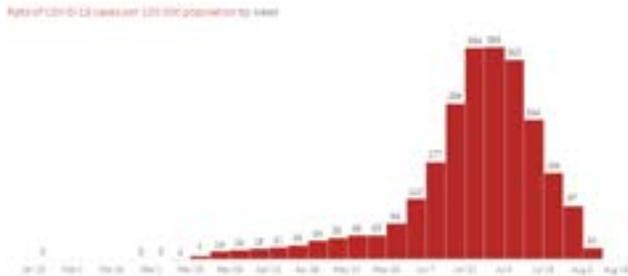
ADHS further defines community spread levels with the thresholds outlined below. These thresholds are consistent with the national standards set by the Coronavirus Task Force.

Benchmarks	Minimal	Moderate	Substantial
Cases	<10 cases/100,000	10-100 cases/100,000	>100 cases/100,000
Percent Positivity	<5%	5-10%	≥10%
Covid Like Illness	<5%	5-10%	>10%

## Understanding the Benchmarks

### Cases

**Benchmark:** Two weeks below 100 cases per 100,000

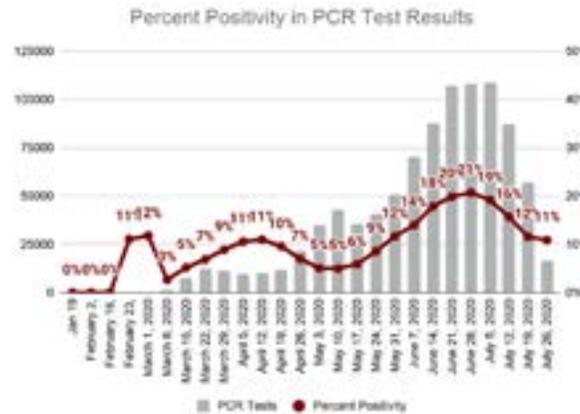


**Data Source:** ADHS MEDSIS Confirmed and Probable Cases

**Available by:** County

### Percent Positivity

**Benchmark:** Two weeks with percent positivity below 10%



**Data Source:** ADHS Electronic Laboratory Data

**Available by:** County

### COVID-like Illness

**Benchmark:** Two weeks with hospital visits due to COVID-like illness below 10%



**Data Source:** BioSense Syndromic Surveillance Platform

**Available by:** BioSense Region

**Northern:** Apache, Coconino, Navajo, Yavapai Counties

**Central:** Gila, Maricopa, Pinal Counties

**Southeastern:** Cochise, Graham, Greenlee, Pima, Santa Cruz Counties

**Western:** La Paz, Mohave, Yuma Counties

# Requirements for Bars and Nightclubs Not Operating as a Restaurant

## ADHS Requirements for Bars and Nightclubs Not Operating as a Restaurant

*Bars and Nightclubs Not Operating as a Restaurant*

Community Spread Level	Occupancy	Hand Hygiene & Respiratory Etiquette	Enhanced Cleaning	Proper Ventilation	Prohibit open seating	Symptom Screening for Staff	Physical Distancing (6 feet)	Cloth Face Coverings	Cohorting	Communal Spaces Closed
<b>Minimal</b>	Closed until <3% positivity.  Once 3% positivity, 50% occupancy.	X	X	X	X	X	X	X	X	X
<b>Moderate</b>	Closed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Substantial</b>	Closed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

**Per the Centers for Disease Control and Prevention (CDC) and Arizona Department of Health Services (ADHS) guidance**, under all circumstances, the following **precautions must be taken by people visiting bars:**



**Stay home if you are sick.**



**Protect yourself while visiting bars and nightclubs:**

- Arizonans are safer at home and should evaluate their personal risk of visiting a bar or nightclub based on the [Arizona COVID-19 Risk Index](#).
- Avoid close contact and stay more than 6 feet away from others.
- You are required to wear a mask while at the establishment at all times, except while actively eating or drinking.
  - Masks should not be placed on children less than 2 years of age, anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the cover without assistance.
- Wash your hands often, especially after leaving the bar, with soap and water for at least 20 seconds. If soap and water are not available, use an alcohol-based hand sanitizer that contains at least 60% alcohol.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Cover your cough or sneeze with a tissue or your sleeve (not your hands) and immediately throw the tissue in the trash.
- If possible, use touchless payment methods. If you must handle money, a card, or use a keypad, use hand sanitizer or wash your hands immediately after.
- If you are at [higher risk](#) for severe illness, you should avoid visiting bars. People at higher risk for [severe illness](#) include adults 65 or older and people of any age who have serious underlying medical conditions.

**The Arizona Department of Health Services** requires the following additional steps **be taken by bar operators** and **providers shall take measures to ensure that employees and guests follow** these guidelines:

- ☑ **Implement occupancy limitations as required based on the community transmission category within the county your establishment operates.**
  - **Substantial:** closed unless special dispensation received from ADHS
  - **Moderate:** closed unless special dispensation received from ADHS
    - If converted to restaurant with a county issued food establishment permit, bars can operate at 50% occupancy with ADHS mitigation requirements
      - > Please refer to the “Restaurants and Bars Providing Dine-In Services” Requirements
  - **Minimal:**
    - Closed until 3% positivity.
    - Once 3% positivity, operate at 50% occupancy with ADHS mitigation requirements.
    - If converted to restaurant with a county issued food establishment permit, bars can operate at 50% occupancy with ADHS mitigation requirements
      - > Please refer to the “Restaurants and Bars Providing Dine-In Services” Requirements
  - Establishments that convert to restaurant service must also adhere to the ADHS Requirements for Restaurants and Bars Providing Dine-In Services
- ☑ **Enforce physical distancing of more than 6 feet between customers who do not live in the same household.**
  - Maintain physical distancing by ensuring more than 6 feet of separation between parties or groups at different tables, booths, bar tops or counter seating, unless the tables are separated by glass, plexiglass or some other type of divider.
  - Limit parties to no more than 10.
    - Clearly mark tables and chairs that are not in use.
  - Prohibit open seating (defined as a customer choosing their own seat or having the ability to move seats).
    - Customers should be brought to a designated seating area (including bar top seating) by a staff member.

- Patrons should stay seated throughout the duration of their visit, except to visit the bathroom, and may not be standing, mingling, or dancing.
- Maintain clearly marked 6-foot spacing marks and/or signage along entrances, waiting areas, hallways, patios, and restrooms and any other location within a bar where queues may form or patrons may congregate.
- Assign an employee to monitor and enforce physical distancing in any locations where queues may form or patrons may congregate, if feasible.
- Bars with outdoor dining areas shall ensure more than 6 feet of physical distance between tables, benches or other areas for patrons to sit while dining or waiting to be seated.
- Eliminate any indoor standing room where patrons can congregate.
- Close communal spaces and common areas where people are likely to congregate and interact.
  - If unable to close the area, restrict access and have employees staff the area to enforce physical distancing.
- Customer Waiting Areas – Areas used by customers waiting for their seats should be limited to ensure 10sq ft exists for each person waiting. Additional customers should be instructed to wait outside or in their cars until their seats are ready. Customers waiting for a table must be wearing masks (unless they have a qualified medical exemption or are under two years of age).

☑ **Enforce the use of masks for both employees and customers.**

☑ **Prohibit the following activities:**

- **Dancing** – Dancing is temporarily prohibited and anyone with a dance floor or dance space must close that section to the public or repurpose it for seating to allow for greater social distancing.
- **Parlor games** – Parlor games (such as pool, darts, or other games commonly associated with eating and drinking establishments) shall temporarily be closed.
- **Karaoke** – Karaoke or other live performances in which customers are active participants shall be temporarily halted.

- ☑ **Continue to provide options for delivery, pick-up, or curbside service even if a location offers dine-in.**
- ☑ **Follow CDC reopening guidance for facilities that have been shut down, including taking measures to ensure potable water safety.**
- ☑ **Enforce healthy hygiene practices for both employees and customers:**
  - Enforce handwashing, covering coughs and sneezes.
  - Ensure adequate supplies to support healthy hygiene practices for both employees and customers including soap, hand sanitizer with at least 60 percent alcohol (perhaps on every table and counter, if supplies allow), and tissues.
  - Ensure hand sanitizer is available at or adjacent to entrances to the facility, restrooms and in employee work areas, or soap and running water readily accessible to staff and customers at marked locations.
- ☑ **Post physical and/or electronic signage at the bar entrance of public health advisories prohibiting individuals who are symptomatic from entering the premises.**
- ☑ **Post signs on how to stop the spread of COVID-19, properly wash hands, promote everyday protective measures, and properly wear a mask.**
- ☑ **Ensure that ventilation systems of indoor spaces operate properly.**
  - Increase the circulation of outdoor air as much as possible by opening windows and doors, using fans, or other methods.
- ☑ **Intensify cleaning, disinfection, and ventilation practices.**
  - Wash, rinse, and sanitize food contact surfaces, food preparation surfaces, and beverage equipment after use.

- ☑ **Implement comprehensive sanitation protocols, including increased sanitation schedules for bathrooms.**
  
- ☑ **Sanitize customer areas after each sitting with EPA-registered disinfectant, including but not limited to:**
  - Tables
  - Bar tops and counters
  - Tablecloths
  - Chairs/booth seats
  - Any other surface or item a customer or staff is likely to have touched
  
- ☑ **Eliminate instances where customers could share food, such as bowls of food items (nuts, chips, etc).**
  
- ☑ **Avoid using or sharing items such as menus, condiments, and any other food. Instead, use disposable or digital menus, single-serving condiments, and no-touch trash cans and doors.**
  
- ☑ **Wipe any touchpads between each use.**
  
- ☑ **Wipe any pens, counters, or hard surfaces between use or customer.**

**The Arizona Department of Health Services requires, under all circumstances, the following additional steps be taken for staff:**

**☑ Require sick employees to stay home and not return to work until they have met criteria to return to work.**

- Employees who appear to have symptoms or who become ill while at work should immediately be separated from others and sent home.
- Document and communicate sick leave policies to employees and staff.

**☑ Implement flexible sick leave policies that permit adherence to public health isolation and quarantine guidance.**

**☑ Masks and frequent handwashing are required for all employees.**

- Develop standards for the use of masks by employees at all times.
- Develop and enforce handwashing policy for servers as it exists in the Food Code.

**☑ Implement symptom screening for employees prior to the start of their shift.**

- Conduct wellness/symptom checks, which may include temperature checks for all bar personnel, prior to the start of their shift.

**☑ Assign duties to vulnerable workers that minimize their contact with customers and other employees.**

**☑ Train all employees on appropriate cleaning and disinfection, hand hygiene, and respiratory etiquette.**

**☑ Ensure that all employees are notified of new facility rules and any changes in rules.**

**☑ Ensure that employees maintain more than 6 feet of separation from other individuals, when possible.**

**☑ Provide appropriate personal protective equipment (PPE) for employees in accordance with public health recommendations.**

- ☑ **Provide adequate supplies in employee workspaces to support healthy hygiene behaviors, including soap, hand sanitizer with at least 60% alcohol, disinfecting wipes, tissues, and no-touch trash cans.**
- ☑ **Train all employees in the above safety actions.**
- ☑ **See Department of Labor and Occupational Safety and Health Administration (OSHA) COVID-19 guidance for employers and workers.**

The list of EPA-approved disinfectant products for emerging viral pathogens expected to be effective against COVID-19 can be accessed [here](#).

For additional guidance on cleaning, visit [CDC's Cleaning and Disinfecting Your Facility](#) page and [CDC's Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes](#).

## **For COVID-19 questions, please call the Arizona COVID-19 Hotline at: 1-844-542-8201**

Businesses impacted by E.O. 2020-43 and 2020-52 are required to complete an attestation prior to resuming operations. Approval for resuming operations is dependent upon community transmission within the county the establishment is physically located and the establishment's implementation of ADHS required mitigation steps. Further information can be found in the [ADHS COVID-19 Guidance for Businesses](#).

Any business affected by these provisions may request an informal settlement conference to dispute their categorization on reopening. A denial after an informal settlement conference becomes a final agency action that is appealable to the Office of Administrative Hearings.

For more information on Arizona's response to COVID-19, please visit: [azhealth.gov/COVID19](https://azhealth.gov/COVID19).

# **Exhibit M**



ARIZONA DEPARTMENT  
OF HEALTH SERVICES

## Application for Approval to Reopen for Indoor Gyms and Fitness Clubs/Centers, Indoor Theaters, Waters Parks and Tubing Operators, and Bars

On June 29, 2020 Governor Ducey issued Executive Order ("E.O.") 2020-43, Pausing Arizona's Reopening, Slowing the Spread of COVID-19. Pursuant to E.O. 2020-43, beginning on Monday, June 29, at 8:00 P.M., all indoor gyms and fitness clubs or centers, indoor movie theaters, waters parks and tubing operators, and bars in the State of Arizona, were required to pause operations (i.e. close), and remain closed until at least July 27, 2020.

On July 23, 2020 Governor Ducey issued E.O. 2020-52, Continuation of Executive Order 2020-43, Slowing the Spread of COVID-19. Pursuant to E.O. 2020-52, the pause in operations for indoor gyms and fitness clubs or centers, indoor movie theaters, waters parks and tubing operators, and bars required under E.O. 2020-43, was ordered to to be extended, remain in place, and continue to be reviewed for repeal or revision every two weeks.

On August 4, 2020, the Honorable Timothy J. Thomason, in Maricopa County Superior Court Case No. CV2020-093916, ruled that indoor gyms and fitness clubs or centers must be provided an opportunity to apply for reopening ("Ruling"). Governor Ducey and the Arizona Department of Health Services ("ADHS") have determined that the process ordered in the Ruling also should be applied to the paused operations of indoor theaters, waters parks and tubing operators, and bars.

On August 10, 2020 ADHS issued **Emergency Measure 2020-02**, Slowing the Spread of COVID-19: Phased Reopening. Emergency Measure 2020-02 establishes and describes the process whereby any business subject to the paused operations requirements of E.O. 2020-43, as extended by E.O. 2020-52, may reopen or, if not authorized by its terms to automatically reopen, to apply to ADHS for express approval to reopen.

If a closed business is located in a county that does not meet the community transmission metrics in the Moderate or Minimal category (i.e., the county transmission category is Substantial), the business must remain closed.

A business that must remain closed may apply to ADHS for approval to reopen if it can prove that it has taken or will take extra steps, beyond those required in the **Guidelines and Benchmarks** for counties whose community transmission metrics has taken and will take such additional actions as necessary to operate safely. **Any business filing such an application shall remain closed unless or until it expressly granted approval to reopen.**

This form is intended to allow a business that must remain closed to apply to ADHS for approval to reopen. Upon your submission of this Application, ADHS will review and issue you an approval or denial. A business whose Application for approval to reopen is denied may request an Informal Settlement Conference with ADHS. If required to remain closed after an Informal Settlement Conference, the business has the right to request a hearing before the Arizona Office of Administrative Hearings and to have an Administrative Law Judge review the continuing closure.

Notwithstanding any other law or E.O., in order to ensure coordination between the State and local authorities related to Emergency Measure 2020-02, law enforcement, any regulatory agency, pursuant to their regulatory authority, ADHS and local health departments may take immediate action against any entity that operates in violation of Emergency Measure 2020-02.

To review up-to-date information regarding ADHS' emergency response to COVID-19 and information for businesses, please visit [www.azhealth.gov/businessCOVID19](http://www.azhealth.gov/businessCOVID19).

Type of Establishment \*

County in which the establishment is physically located \*

I hereby attest, by submitting this form, that the business entity listed below is acknowledging its understanding that it shall comply with the requirements of Emergency Measure 2020-02 and applicable ADHS Requirements and any other requirements or guidelines incorporated therein, including that the entity has or will: \*

- Develop, establish and implement written policies based on guidance from the CDC, Department of Labor, Occupational Safety and Health Administration (OSHA) and ADHS Requirements applicable to such business.
- Limit the capacity of the business premises based on community transmission as directed by ADHS in the [COVID-19 Guidance for Businesses](#). This may include reducing occupancy or closing in the event of increased community spread.
- Promote healthy hygiene practices.
- Intensify and modify, as necessary, cleaning and disinfection practices and ventilation.
- Monitor all persons in the business premises for sickness.
- Ensure physical distancing.
- Provide necessary protective equipment to all persons in the

- business premises.
- Allow for and encourage virtual visits and teleworking when feasible.
- Limit the congregation of groups in the facility.

Please provide additional information about the steps your establishment has taken or will take beyond those required in the ADHS Guidelines and Benchmarks for counties whose community transmission metrics are in the Moderate category to operate safely. Please see option below if you would like to submit a PDF to support your plan.

Please upload 1 PDF file you wish to submit. Name your file by your business name and zip code.

Example of file Name: Ex: Arizona Department of Health 85007.PDF

No file chosen

#### Attestation

By electronically submitting this form, the submitter is attesting under penalty of perjury that the foregoing is true and correct to the best of their knowledge, information, and belief, that they have authority to act on the behalf of the business and that the business, in all of its locations, agrees to be bound by this attestation.

By submitting this application, the business is agreeing to meet the guidance in the ADHS [COVID-19 Guidance for Businesses](#), as may be updated or modified from time-to-time. Direct links to the requirements for each type of business are at the bottom of this Application form.

ADHS will publish changes in the Requirements not less than 48 hours before they become effective. Changes imposing additional requirements will be communicated to each business that has filed an attestation at the email address used to submit the attestation.

The business submitting this application agrees that ADHS or the county health department shall not be required to give prior notice of any inspection intended to determine compliance with this Application or the Requirements. This agreement does not authorize any warrantless search of the business premises.

Notwithstanding the submission of this Application, if ADHS becomes aware of actions taken by the entity that jeopardize the health, safety, and welfare of the public or that the representations in this Application are false, ADHS may take additional action as necessary to protect the health, safety and welfare of the public.

Name of the Business Establishment \*

Name of Individual Submitting this Application, and Title \*

Email Address of Individual Submitting this Application \*

Phone Number of Individual Submitting this Application \*

Street Address of Business Establishment \*

City \*

Zip Code \*

**CAPTCHA** 

What is **ńńńé mńńűs ńńńé** (numbers only)? \*

**Resources**

- [ADHS Emergency Order 2020-02](#)
- [ADHS COVID-19 Guidance for Businesses](#)
- [ADHS Data Dashboard for Businesses](#)
- [ADHS Requirements Bars and Nightclubs Providing Dine-In Services](#)
- [ADHS Requirements for Bars and Nightclubs Not Operating as a Restaurant](#)
- [ADHS Requirements for Indoor Theaters](#)
- [ADHS Requirements for Indoor Gyms and Fitness Centers](#)

- **ADHS Requirements for Water Parks & Tubing Operators**

Submit

# **Exhibit N**



# ARIZONA DEPARTMENT OF HEALTH SERVICES

August 19, 2020

RE: Denial of Application to Reopen: Kimmyz On Greenway

Thank you for your application for approval to reopen pursuant to Emergency Measure 2020-02 for Kimmyz On Greenway located at 5930 West Greenway Rd Glendale, Az 85306, GLENDALE, 85306.

Pursuant to Emergency Measure 2020-02, a business that must remain closed may apply to ADHS for approval to reopen if it can prove that it has taken or will take such extra steps, beyond those required in the [Guidelines and Benchmarks](#) for counties whose community transmission metrics are in the moderate category.

Your application failed to provide proof that your business has taken or will take such extra steps, beyond those required, as necessary to operate safely. As a result, ADHS is unable to approve your application for approval to reopen at this time. Because your application was not approved, **your business is required to remain closed**. You may request an Informal Settlement Conference with ADHS to discuss this decision and whether there are conditions under which you may reopen by sending a request to [acr@azdhs.gov](mailto:acr@azdhs.gov).

Please note that businesses that have been approved to reopen have implemented specific more stringent requirements beyond those required in the Guidelines and Benchmarks. These include the following:

- Operating as a restaurant at  $\leq 25\%$  occupancy or  $\leq 5$  customers at one time
- Setting modified hours, such as a 10 PM closure
- Requiring the purchase of food along with the purchase of alcoholic beverages

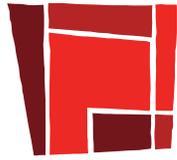
We recognize that all businesses are unique. **If you believe your business can meet the criteria above, you may [submit a modified application](#) to the department outlining additional steps you will take to safely operate rather than requesting an informal settlement conference.**

You may also re-submit your [attestation form](#) in the future if the transmission rate in your county changes such that your establishment becomes eligible for reopening.

Thank you.

Douglas A. Ducey | Governor    Cara M. Christ, MD, MS | Director

# **Exhibit O**



# ARIZONA DEPARTMENT OF HEALTH SERVICES

August 18, 2020

RE: Denial of Application to Reopen: Cactus Taproom LLC

Thank you for your application for approval to reopen pursuant to Emergency Measure 2020-02 for Cactus Taproom LLC located at 20429 N Lake Pleasant Road, #104, Peoria, 85382.

Pursuant to Emergency Measure 2020-02, a business that must remain closed may apply to ADHS for approval to reopen if it can prove that it has taken or will take such extra steps, beyond those required in the [Guidelines and Benchmarks](#) for counties whose community transmission metrics are in the moderate category.

Your application failed to provide proof that your business has taken or will take such extra steps, beyond those required, as necessary to operate safely. As a result, ADHS is unable to approve your application for approval to reopen at this time. Because your application was not approved, **your business is required to remain closed**. You may request an Informal Settlement Conference with ADHS to discuss this decision and whether there are conditions under which you may reopen by sending a request to [acr@azdhs.gov](mailto:acr@azdhs.gov).

Please note that businesses that have been approved to reopen have implemented specific more stringent requirements beyond those required in the Guidelines and Benchmarks. These include the following:

- Operating as a restaurant at  $\leq 25\%$  occupancy or  $\leq 5$  customers at one time
- Setting modified hours, such as a 10 PM closure
- Requiring the purchase of food along with the purchase of alcoholic beverages

We recognize that all businesses are unique. **If you believe your business can meet the criteria above, you may [submit a modified application](#) to the department outlining additional steps you will take to safely operate rather than requesting an informal settlement conference.**

You may also re-submit your [attestation form](#) in the future if the transmission rate in your county changes such that your establishment becomes eligible for reopening.

Thank you.

Douglas A. Ducey | Governor    Cara M. Christ, MD, MS | Director

# **Exhibit P**

Ilan Wurman (#034974)  
Sandra Day O'Connor College of Law  
Arizona State University  
111 E. Taylor Street  
Mail Code 9520  
Phoenix, AZ 85004-4467  
Telephone: 480-965-2245  
[ilan.wurman@asu.edu](mailto:ilan.wurman@asu.edu)

*Attorney for Plaintiffs*

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

JAVIER AGUILA, et al.,

Plaintiffs,

vs.

DOUG DUCEY, in his individual  
capacity, and in his official capacity as  
the Governor of the State of Arizona;  
THE ARIZONA DEPARTMENT OF  
HEALTH SERVICES; and THE  
ARIZONA DEPARTMENT OF  
LIQUOR LICENSES AND  
CONTROLS,

Defendants,

and

THE STATE OF ARIZONA,

Real Party-in-Interest.

CASE NO: \_\_\_\_\_

**Declaration of Alan Kowalski**

1. I, Alan Kowalski, declare as follows:
2. I am over the age of 18 and have personal knowledge of the information set

forth in this declaration.

3. I am a plaintiff in this action. I am majority owner of Clicks Billiards. We are a pool hall and bar. We have a #6 liquor license in Tucson, Arizona. We have 20 pool tables on approximately 6000 square feet of retail space. The majority of our revenue comes from pool table rentals, alcoholic beverages, food, soft drinks, and retail items. My establishment naturally promotes social distancing due to the distance between pool tables and the seating arrangement we have. Even on a very busy night we are below 50% occupancy with guests spread out. When we were allowed to reopen after the first shut down we covered every other pool table and had assigned seating for increased safety. We were constantly being told by guests that we were the safest place they had been to during the pandemic.

4. After the first shutdown we installed plexiglass shields to increase safety for employees and guests. We installed two hand sanitizing dispensers for use by employees and guests. We also had two spray bottles of hand sanitizer that could be used anywhere in the building. We posted a sign at the front entrance stating our policy on not entering if you are feeling sick. We had the floors marked for socially distancing while waiting in line at the front counter. We also had the sidewalk marked outside the front entrance as well at six foot intervals. We also had the floors marked at six foot lengths in front of restrooms. We also set up a sanitation table with sanitation supplies and written leaflets that could be used by employees and guests. We purchased disinfectants that could be used on bathroom fixtures, tables, chairs, pool tables, pool table cloth, pool balls, pool cues, racks, and counter surfaces. We implemented a log and required frequent cleaning and sanitation of

all surfaces. We also cleaned all items pertaining to playing pool after each use. Masks were required for all guests and employees. Signs were posted on restroom doors and inside restrooms requesting thorough hand washing. Signs were posted throughout the establishment asking all to socially distance. We adjusted and reduced our hours of operation so that we had time for increased sanitation. We only used paper food menus to reduce surfaces being touched by more than one person. All food condiments we changed to single use disposable packets to reduce touching by more than one person. We also changed to using wrapped straws for all drinks. We also offered for all drinks to be made in disposable cups for increased safety. We removed all table tents and drink menus for increased safety.

5. I did not have direct contact with the department of liquor. I asked a colleague that also owns a pool hall to ask about us being open without serving alcohol and was told if we have a #6 liquor license we could not be open. No exceptions.

6. I have seen many establishments that have been allowed to stay open that are no more safe than mine. Peter Piper Pizza is a prime example. They have a #7 license but apparently could stay open because they served enough food. They have a huge game room and cannot adhere to socially distancing. Kids are running around without masks touching many surfaces. Even though the only rule they have is to sanitize your hands at the entrance they are allowed to stay open for some reason. Bowling alleys are allowed to be open and it is perfectly okay to play pool there. The liquor agents have used their personal opinions to decide who may open and who may not even though there are no guidelines in place to make these decisions. Chilis has been allowed to stay open with the bar area full of people

with no social distancing.

7. In June we had profits of around \$5,700. We had zero revenue due to the shutdown in July. Our loss in July will be about \$11,400. That does not include \$4300 in rent that we were unable to pay. This does not include the loss of product due to there being no warning of closing us at a moments notice. The spoilage has been an added loss. The value of my liquor license has also been compromised because the Governor has allowed restaurants to have all of the benefits of my license without the costs associated with it. My license is absolutely worthless at this point in time. I have also suffered the loss of business that I will not be able to recover. It would be irresponsible to think that my customers have just been sitting at home while I have been shut down. They are going to other establishments like mine that are open right now and may never return.

8. This situation is almost at a point of no return. Employees need to go back to work and us owners do as well. We have suffered irreparable harm and even if we were allowed to open we will be spending months if not years just to get back to even. We are holding on but each day we are closed brings us closer to not being able to survive this situation. We will be forced to close our doors forever if there is not a quick remedy to this shutdown.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 18th day of August, 2020.

Alan Kowalski  
Alan Kowalski

# **Exhibit Q**

1 Ilan Wurman (#034974)  
2 Sandra Day O'Connor College of Law  
3 Arizona State University  
4 111 E. Taylor Street  
5 Mail Code 9520  
6 Phoenix, AZ 85004-4467  
7 Telephone: 480-965-2245  
8 [ilan.wurman@asu.edu](mailto:ilan.wurman@asu.edu)

9 *Attorney for Plaintiffs*

10 SUPERIOR COURT OF ARIZONA  
11 MARICOPA COUNTY

12 JAVIER AGUILA, et al.,

13 Plaintiffs,

14 vs.

15 DOUG DUCEY, in his individual  
16 capacity, and in his official capacity as  
17 the Governor of the State of Arizona;  
18 THE ARIZONA DEPARTMENT OF  
19 HEALTH SERVICES; and THE  
20 ARIZONA DEPARTMENT OF  
21 LIQUOR LICENSES AND  
22 CONTROLS,

23 Defendants,

24 and

25 THE STATE OF ARIZONA,

26 Real Party-in-Interest.

CASE NO: \_\_\_\_\_

**Declaration of David Delos**

- 27 1. I, David Delos, declare as follows:  
28 2. I am over the age of 18 and have personal knowledge of the information set forth in this declaration.

1           3.     I am a plaintiff in this action. I along with my wife own six Series 6 liquor  
2 licenses in Maricopa County. All six of our locations have been shut down for over 100  
3 days this year. My wife and I purchased our first neighborhood sports bar over 22 years  
4 ago. Since then we have saved our money and slowly reinvested it in acquiring other like  
5 businesses. As our business grew we were not only able to hire over 50 employees but in  
6 every sense of the word we became a true family business as our son and daughter were  
7 able to join us in the daily operations of the business.

8           4.     When we could open, we took safety precautions seriously and not only  
9 implemented safety protocols but spent thousands of dollars to ensure the safety of our  
10 customers and our employees. We provided masks, hand sanitizer, followed social  
11 distancing guidelines. We also hired a crew to clean each location every night which  
12 included wiping down all bar surfaces, chairs, doors, bathrooms video and parlor games  
13 with approved cleaning supplies specific for Covid-19.

14          5.     I have had two interactions with the liquor department (DLLC) regarding  
15 complaints that had been received on my establishments since closing. As I sold liquor to-  
16 go I was told complaints were made about people drinking in cars in the parking lot. I  
17 advised them by law I am not responsible for liquor after it legally leaves my premises. I  
18 believe most liquor agents were confused or misinformed regarding the Executive orders  
19 that were intentionally vague and arbitrarily written.

20          6.     Some of my employees and most of my customers have moved across the  
21 street to restaurants with a 12 license, private clubs, casinos, or bars at golf courses that  
22 have unfairly been allowed to remain open. Whether food is served or not there should be  
23 no reason why if we are all following the same guidelines all businesses should not be  
24 given the chance to open, and those that don't follow the guidelines should have their  
25 liquor license suspended. What these executive orders have created is winners and losers  
26 and the losers in this are losing everything that we have worked so hard for without being  
27 given a chance to prove that we can follow the same guidelines that allowed restaurants to  
28 remain open.

1           7.     Many things in the executive orders make no sense and are not clear enough  
2 to arbitrarily take away our rights as business owners that employ tens of thousands of  
3 Arizonians. Why can bowling alleys and top golf venues remain open but pool halls and  
4 dart bars must remain closed. Why can private clubs (series 14) that are not required to  
5 serve food allowed to remain open and just sell alcohol?

6           8.     I believe the value of my series 6 liquor license has been devalued for many  
7 reasons. As a high value license that comes with privileges not included in other state  
8 issued liquor licenses I have lost the ability to remain open while other liquor licensees  
9 remain open, I have lost the exclusive privilege to serve alcohol to-go as for some  
10 unknown reason that was given to 12 licenses during EO 2020-09. I have lost many  
11 customers and some employees. I will only be allowed to operate at 50% capacity  
12 including strict new guidelines of no dancing, no billiards, no darts or karaoke for the  
13 foreseeable future—all while my competitors with different license numbers can stay  
14 open without similar restrictions. Dr. Christ was quoted saying until there is a vaccination  
15 or a cure, we will operate under strict guidelines for 6 and 7 liquor licenses.

16           9.     I have continued to incur debt as I have remained closed. Including over  
17 30K a month in rent plus utilizes this time of year that add up to over 8k a month. These  
18 are cost that will not be abated. Four of my six locations received 5K per location in the  
19 form of Covid -19 disaster relief grant, two locations received no assistance. Not even  
20 close to expenses I have incurred.

21           10.    We have been luckier than most 6 and 7 busines owners as being in this  
22 industry I have been able to establish an emergency fund for tough times. These  
23 emergency funds have taken years of putting away a small amount of money each month.  
24 After being closed over 3 months that emergency fund is gone and now we must go into  
25 our savings to keep our rents and utilities payed with the hope that some day soon we can  
26 reopen at full capacity and under the same conditions we once enjoyed.

27           I declare under penalty of perjury that the foregoing is true and correct.  
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DATED this 17th day of August, 2020.

David Delos

# **Exhibit R**

1 Ilan Wurman (#034974)  
2 Sandra Day O'Connor College of Law  
3 Arizona State University  
4 111 E. Taylor Street  
5 Mail Code 9520  
6 Phoenix, AZ 85004-4467  
7 Telephone: 480-965-2245  
8 [ilan.wurman@asu.edu](mailto:ilan.wurman@asu.edu)

9 *Attorney for Plaintiffs*

10 SUPERIOR COURT OF ARIZONA  
11 MARICOPA COUNTY

12 JAVIER AGUILA, et al.,  
13  
14 Plaintiffs,

15 vs.

16 DOUG DUCEY, in his individual  
17 capacity, and in his official capacity as  
18 the Governor of the State of Arizona;  
19 THE ARIZONA DEPARTMENT OF  
20 HEALTH SERVICES; and THE  
21 ARIZONA DEPARTMENT OF  
22 LIQUOR LICENSES AND  
23 CONTROLS,

24 Defendants,

25 and

26 THE STATE OF ARIZONA,  
27  
28 Real Party-in-Interest.

CASE NO: \_\_\_\_\_

**Declaration of Ian Juul**

1. I, Ian Juul declare as follows:
2. I am over the age of 18 and have personal knowledge of the information set forth in this declaration.

1           3.       I am a plaintiff in this action. I own Mooney's Irish Pub in Sedona, AZ. My  
2 business is ten years old and I have owned it since October 2017. I have a #6 Coconino  
3 Liquor License, one of the more coveted and expensive Liquor Licenses probably worth  
4 around \$ 100,000 before we faced mandated Executive Order Covid-19 closures. Between  
5 January 1, 2020 and August 6, 2020 we have been forced to remain closed for 87 days out  
6 of a possible 219 trading days. So far, we have been closed for 40% of 2020.

7           4.       Before the mandated closure of Executive Order 2020-43 dated June 29, 2020  
8 we had the following sanitary measures in place to address the spread and effects of Covid-  
9 19. We had ceased all Live Music, Dancing, Karaoke, Darts and Foosball. All our  
10 employees were wearing face coverings and they knew to wash their hands as often as  
11 possible. All customers were required to wear face coverings and we were giving away free  
12 masks to customers who didn't have masks. We had installed two high volume medical  
13 grade air purifying systems that filtrate air to remove viruses. We had limited our internal  
14 capacity to around 60 occupants which is 30% of our permitted capacity of 203 occupants.  
15 We had removed seating and tables so that there was at least 6 feet social distancing  
16 clearance between chairs, tables and bar counter space. We had placed several hand  
17 sanitizer stations within the bar to encourage hand sanitization by employees and customers.  
18 We were wiping down all seats, tabletops, menus, door handles and pens after use with  
19 alcohol. We had educational Covid-19 signs and messages posted on doors and walls. We  
20 weren't permitting more than 10 people to group together. Employees were also told to stay  
21 at home if they felt sick and we were encouraging customers to sit outside on our patio areas  
22 rather than sit inside as that is safer.

23           5.       On June 29, 2020 Executive Order 2020-43 was passed and Para 3.a. reads  
24 'Bars, meaning an entity who holds a series 6 or 7 liquor license from the Department of  
25 Liquor Licenses and Control and whose primary business is the sale or dispensing of  
26 alcoholic beverages' are required to pause operations but we could continue to sell 'To Go'  
27 (Curbside and Take-out) liquor and food. I interpreted this and opened for business on June  
28 30, 2020 trading as a restaurant and we wouldn't allow any alcoholic beverage sales without

1 food on order that we could achieve at least 40% food to alcohol sales ratio which is the  
2 minimum food to alcohol sales ratio required to hold a Restaurant Series 12 Liquor License.  
3 We also insisted that customers stay seated and walk-around and we would meet new  
4 arriving customers at the entrance door like a Host and take them to available seating, just  
5 like restaurants do. Around 5.30pm on June 30, 2020 I received a phone call from my area  
6 Detective from Department of Liquor Licenses and Control, Mr Herb Carruthers. Mr  
7 Carruthers told me to cease operations immediately as historically I was trading as a bar  
8 with primarily liquor sales. I told Mr Carruthers that we had converted our operations to  
9 emulate and copy a restaurant and were striving to sell at least 40% food sales. Mr  
10 Carruthers told me that this was not permissible according to the guidelines he had been  
11 given, so we shut-down operations and within an hour of this phone call I had two Officers  
12 from Sedona Police Department arrive to ensure that we were closed for business and were  
13 given 45 minutes to vacate our own business by these Police Officers.

14 6. On July 1, 2020 I sent Mr Carruthers an eMail appealing to remain open if we  
15 achieved a 40% food sales ratio just like restaurants are required to do. I never got a reply  
16 from Mr Carruthers so on July 13, 2020 I wrote an eMail to Mr Jeffery Trillo, Assistant  
17 Director, Licensing and Administration Division of Arizona Department of Liquor Licenses  
18 and Control asking him why I had to close but a direct competitor (Olde Sedona Bar and  
19 Restaurant) who had a Series 12 Liquor License was allowed to continue trading just like a  
20 traditional bar with Live Music, Karaoke, Dancing, Pool and Darts until 2am in the morning  
21 and that most of my customers were just socializing at this venue, or any of the other 102  
22 businesses in Sedona selling alcohol. Mr Trillo immediately responded and made it clear  
23 that Mr Carruthers would have final guidance and determination on our situation. At this  
24 point Mr Carruthers responded to my first eMail dated July 1, 2020 clarifying that my two  
25 Options were Option 1) to either stay open for 'To Go' sales only or Option 2) voluntarily  
26 close or face a suspension of my Liquor License which closure time could well last longer  
27 than Executive Order 2020-43 and further, risk losing my Liquor License altogether. Option  
28 1 was not feasible. When we encounter foot traffic because we operate as a normal bar, to-

1 go sales never amount to more than \$500 a day, at best. Although we might have had a  
2 boost in customers purchasing to-go alcohol during the closures, the Governor's executive  
3 orders also gave the privilege of selling to-go alcohol to restaurants. As a result, most of my  
4 former patrons have simply been buying alcohol at restaurants.

5 7. On July 19, 2020 I sent an eMail to Mr Trillo and Mr Carruthers asking their  
6 guidance if I could park an air-conditioned bus outside my bar so that my 'To Go' customers  
7 could at least sit in air-conditioned comfort to consume their beverages and/or food, rather  
8 than being outdoors in the hot sun. I received a strange reply from Mr Carruthers on July  
9 20, 2020 that read 'Look at what he's trying to do now'. There are several eMails between  
10 myself, Mr Trillo and Mr Carruthers, all of them are attached. I also Appealed to the offices  
11 of Gov Ducey around July 13, 2020 via their Website portal and I have yet to receive a reply  
12 by August 6, 2020.

13 8. As of August 5, 2020 per Arizona Department of Liquor Licenses and Control  
14 there are 104 establishments in Sedona licensed to sell liquor to the public and there are  
15 only 2 establishments that were required to close due to Executive Order 2020-43. There  
16 are 23 establishments in Sedona with Series 6 and 7 Liquor Licenses and 21 of these 23  
17 establishments were allowed to remain open according to the subjective and confusing  
18 application of Executive Order 2020-43 by Arizona Department of Liquor Licenses and  
19 Control. Per Arizona Department of Health Services Website there were 0,05% (86 cases)  
20 of Covid-19 cases in Sedona out of the 182,203 cases statewide. Sedona has an estimated  
21 resident population of 10,000 people (0,14% of the 7,3 million state population) and an  
22 estimated daily tourist population of 20,000 people (per Sedona Chamber of Commerce).  
23 In the 4 months between March 1 and June 29, 2020 (the latter being the date of Executive  
24 Order 2020-43), there were around 1,588 recorded Covid-19 deaths in the state. Since June  
25 29 to July 31, 2020 (roughly one month) Covid-19 deaths have more than doubled to 3,694  
26 deaths and during this time the state has been open for 'business as usual' for every other  
27 type of business except for Bars, Gyms and Water Parks who have been kept closed. One  
28 could almost foolishly say that the Covid-19 death rate was actually way lower before Bars,

1 Gyms and Water Parks were closed down on June 29, 2020. By August 5, 2020 around 72%  
2 of state Covid-19 deaths (2,827 out of 3,932) are attributed to a demographic of people aged  
3 65 years of age and older. This demographic are not your typical bar customers. Phoenix  
4 and Tucson located in Maricopa and Pima counties have a combined population of 5,5  
5 million (75% of the state population) and they account for nearly 70% of Covid-19 deaths  
6 and Executive Order 2020-43 makes no reasonable accommodation for any business in or  
7 outside these Covid-19 'hotspots'.

8 9. Executive Order 2020-43 dated June 29, 2020 refers to Covid-19 sanitary  
9 measures that Bars shall Attest (commit) to before they can reopen and by August 6, 2020  
10 (6 weeks later) Arizona Department of Health Services still had not published any guidance  
11 for bars. Moreover, the Centers for Disease Control and Prevention has publicly available  
12 Covid-19 mitigating guidelines for Bars and Restaurants and Centers for Disease Control  
13 and Prevention believes that Bars and Restaurants have similar Covid-19 risks. Safely  
14 assuming that all businesses are following similar and sensible Covid-19 sanitary measures,  
15 how can closing 2% of the businesses that sell liquor in a small town like Sedona that has  
16 an extremely low Covid-19 infection rate be an effective strategy to mitigate the spread of  
17 Covid-19 when the public can freely frequent over 102 other competitor businesses that  
18 remain open for business selling alcohol in Restaurants (60), Breweries (3), Hotels (15),  
19 Beer and Wine Bars (13), Wine Tasting Rooms (3), Casino's and Bars that still remain open  
20 (8). In my opinion, the underlying essence and rationale behind Executive Order 2020-43  
21 and its application in Sedona and similar low risk communities outside Maricopa and Pima  
22 counties is nothing short of gross incompetence and a lack of effort and empathy by Gov  
23 Ducey and Arizona Department of Health Services. Arizona Department of Liquor  
24 Licenses and Control have also had the unenviable and illogical task of implementing an  
25 Executive Order that has very little to no impact on mitigating the spread of Covid-19 in  
26 my community and similar low risk communities.

27 10. Keeping my business closed due to Executive Orders financially costs me \$  
28 25,000 a month or \$ 6,000 a week as I need to pay business and personal commitments. The

1 biggest tangible financial costs are rentals, loans, utilities, insurance and personal living  
2 expenses. I have also lost monthly profits of at least \$ 10,000 a month as I have no sales  
3 and I have been closed over the busiest / best months of the year being March, April and  
4 May. There are other financial losses too which are harder to quantify but they still exist.  
5 These include the loss of inventory that expires and that needs to be dumped (at least \$  
6 5,000). The 'Goodwill' value of my business diminishes every week I remain closed as I  
7 have attrition in my customer base as customers are drinking and eating at the other 102  
8 competing establishments in my town. The 'Market Value' of my business is way lower  
9 having been closed 40% of 2020 as its overall profitability and attractiveness to potential  
10 buyers is way lower now. Who really wants to buy a Bar right now? The 'Market Value' of  
11 my previously coveted Coconino Series 6 Liquor was around \$ 100,000 before Covid-19  
12 and I doubt I could find a buyer right now. I have also lost good employees who are forced  
13 to seek alternative employment and it is very disruptive rehiring and training employees  
14 and our Employee Turn-over Rate is over 50% so far in 2020. I have also suffered mentally  
15 and emotionally as most of the Executive Orders that apply to my business don't have a  
16 rational basis and there is so much confusion and uncertainty.

17 11. Due to Executive Order closures so far in 2020, I have personally funded over  
18 \$ 80,000 in tangible financial losses up to August 6, 2020. I have also lost at least \$ 30,000  
19 in profits. The 'Market Value' of my business and its liquor license has safely diminished  
20 by 50% and that is at least \$ 300,000 in 'value'. I have contingent liabilities that affect me  
21 personally in the form of Lease, Loan and Tax commitments and these amount to over \$  
22 750,000. I cannot continue or hold-out much longer and there is no certainty into the future.  
23 What reasonable person can continue trying to run a business like this?? How much more  
24 does Gov Ducey and Arizona Department of Health Services want me to sacrifice?? I  
25 immigrated to United States of America in 2011 as I consider myself an Economic Refugee  
26 from Zimbabwe and South Africa, both African countries who economically persecute  
27 minorities and what I find myself in today is not the 'American Dream'.  
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I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of August, 2020.

Ian Juul  
Ian Juul

**From:** Ian Juul <ian@juul.biz>  
**Sent:** Thursday, August 6, 2020 10:01 AM  
**Subject:** FW: Mooney's Irish Pub - Sedona - Appeal

---

**From:** Ian Juul <ian@juul.biz>  
**Date:** Wednesday, July 1, 2020 at 3:50 AM  
**To:** Herbert Carruthers <herb.carruthers@azliquor.gov>  
**Subject:** Mooney's Irish Pub - Sedona - Appeal

Hi,

Following-up on your phone call yesterday and the subsequent enforcement visit by Sedona Police, please can I submit an Appeal of sorts to remain open provided I adhere to the following;

- I conduct business as a regular restaurant who has a Number 12 License striving for 50% food sales but at least 40% sales. Yesterday in the 5 hours we traded as a 'restaurant' our food sales were 35% and by end of dinner it would have surpassed 40%. We were only selling alcohol yesterday if food was purchased and educating our strong local customer base that we have had to temporarily change our business model to a 'restaurant'.
- There will be no alcohol sold with-out food.
- I will close trading at 9pm like typical restaurants do and not the 2am close that we typically do as a bar.
- There will only be table service, like restaurants typically do.
- I will continue not having live music, karaoke, darts, foosball and all similar 'bar' like activities will cease. I stopped most of these activities last week when masks were mandated.
- We shall continue to commit and practice solid Covid related Health guidelines, in addition to those imposed by the County and other regulatory bodies who oversee us.
- We have authorized capacity for 154 and 49 (total 203 customers) and we shall reduce that to 30%, being 60 people.
- Between my wife and I and a Manager, we shall be on premises every hour we are open to manage staff and customers and adhere to the above.

Some additional information about us;

- I am a serial businessman and accounting professional and this is my 20<sup>th</sup> business. I am law-abiding and I have never had a citation in my life. I have also worked as a Money Laundering Analyst for one of the world's largest banks which requires frequent drug tests and complying to high security clearance standards, as does my pending US Naturalization application which got suspended on April 22 this year due to the effects of Covid. I have very strong moral standards and I also believe in supporting my community as I will tell you below. We play an essential part in our small Community and if we want evidence, I can muster up some very quickly.
- The type of things we do in our community include offering half-price meals because we know a lot of our locals are poor and they cannot always afford to eat and get nutrition. We contribute about \$ 50,000 a year to subsidized product to locals. We feed a few homeless people who are allowed to come and eat our food and drink soda everyday by us, we raised \$ 7,500 two weeks ago for a staff member who just lost his son, we have paid staff members arrear rent because they were about to get evicted, we have paid staff members to get counselling because they have substance abuse struggles, we have donated thousands of dollars to customers and others who needed financial support due to 'hard times', we recently purchased a passenger van as a free service to help intoxicated customers get home and we work closely with Sedona PD and we are very grateful for their help and our partnership of sorts.

- We employ about 18 staff and over the past lockdown in March / April I personally gave away all my unemployment money of \$ 754 every week to staff and customers who couldn't get unemployment assistance. I also gave away other personal money during this time to help people I knew were struggling. I am not rich but I do what I can.
- We are busy expanding our existing kitchen and last week we paid \$ 22,000 for new kitchen equipment and I have the un-signed lease agreements for the adjoining vacant space. This new kitchen will boost our food to alcohol ratio as well create more jobs and taxes. However, I cannot now make this commitment to expand our food facilities given latest developments as I have to save the last of my savings to hopefully survive further lockdowns.
- You witnessed yourself how quickly we complied with the requirements needed last week by AZ Liquor for our Extension of Premises / Patio Application. We completed the installation within 24 hours of being asked to.
- We are strongly committed to playing a responsible role in the mitigation of Covid. We already follow Covid related Health guidelines with staff wearing masks and being told to stay at home if they feel unwell, offering free masks to customers and nobody is allowed in the premises without wearing a mask, sanitizing and wiping all tables and surfaces between sittings, having public hand sanitizer in 4 stations through-out the bar, distancing at least 6 feet between tables and chairs, removing stools away from the bar counter and encouraging customers to sit outside as far as possible. We also installed air filters in the premises last week to filter all our internal air volume x3 times an hour using medical grade filters than filter for viruses. We will comply with any other health requirement deemed necessary.
- My confusion and request for an Appeal is because the Governors Executive Order 2020-43 Para 3.a. says that if we primarily sell alcoholic beverages we need to close. However, if we are given an opportunity to trade like # 12 restaurant licenses with min 40% sales, we can comply with this Order. We just need this opportunity. There are over 100 restaurants in Sedona and most have # 12 licenses. Closing us and a few others like wine tasting rooms doesn't make sense just because we have either # 6 or # 7 licenses and not # 12 licenses. Stopping 'bar' like behavior makes sense and we can commit to this and we shall get all our customers to commit to this. We will comply with any other health requirement deemed necessary.

The State lock-down in March / April cost us \$ 50,000 and it will cost us \$ 25,000 a month if we are closed again. This is not financially sustainable. We face business closure if this continues and we are not being given a fair chance to save ourselves or the jobs of our 18 staff or to continue being an 'essential' partner in our community.

Please can you help us.

In addition, the Governors Executive Order 2020-43 Para 5. refers to an Attest Form offered by Arizona Department of Health Services. It is not clear where we can obtain this Form and who do we submit it to. What is the complete process for this?

*Please excuse any grammar or typographical mistakes as I am writing this eMail at 3 am as I couldn't sleep and I am stressed-out trying to save my business in these very difficult times.*

Best regards,

**Ian Juul**  
**Mooney's Irish Pub – Sedona, AZ**  
 Tel (+1) 941 730 1745  
[ian@juul.biz](mailto:ian@juul.biz)

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**ilan.wurman@gmail.com**

---

**From:** Ian Juul <ian@juul.biz>  
**Sent:** Thursday, August 6, 2020 9:35 AM  
**To:** i  
**Subject:** FW: State of Arizona, Governor's Executive Order 2020-43 Department of Liquor Guidance

---

**From:** Jeffery Trillo <jeffery.trillo@azliquor.gov>  
**Date:** Monday, July 13, 2020 at 10:52 AM  
**To:** Ian Juul <ian@juul.biz>  
**Cc:** Herb Carruthers <HCarruthers@azliquor.gov>, Herbert Carruthers <herb.carruthers@azliquor.gov>  
**Subject:** Re: State of Arizona, Governor's Executive Order 2020-43 Department of Liquor Guidance

Good day, Ian.

You may not necessarily be required to close, and your competitor could be at risk of adverse action against their license. Please read as I share information and decision points on what you do next.

I also see you included Detective Carruthers. If you have history with Detective Carruthers, meaning he knows your business and you two have worked together previously, then whatever guidance he provides you will supersede my guidance contained herein.

With that, and for the purposes of what follows, I would ask you to seriously consider first what is it that Mooney's is about. Our industry has numbers of licensees who hold a series 6 but they operate and are in actuality a series 12. Going the route of a series 6 provides the licensee relief in that they need not be concerned with the 40:60 food to alcohol sales ratio as required by law. Still, for them, food is the epicenter of their operations. With that, for Mooney's to even consider getting out of the gate, the sale of food has to be a prominent variable in its business plan. Mooney's must think, look, and act like a restaurant.

From there, the roadmap for your success is in these three documents below that I've imbedded links to. As you review them, you must set your mind to these and understand, under no unequivocal terms, these are requirements. All of them. No exceptions. Overwhelmingly where licensees are missing is failing to meet the requirements. Secondly, entity work staff then failing to enforce requirements.

I will highlight a subtle nuance to pull from sub-paragraph 1 of the "Now Therefore" section in the executive order 47 document. The language strongly suggests every patron should have a chair and be in it. This ties next to sub-paragraph 3 in that there are no free range areas for groups to intermix or congregate.

<https://azgovernor.gov/file/35147/download?token=4zgksq5W>

<https://azgovernor.gov/file/35221/download?token=dcqvammZ>

[https://azgovernor.gov/sites/default/files/requirements\\_for\\_restaurants\\_2\\_0\\_0\\_0.pdf](https://azgovernor.gov/sites/default/files/requirements_for_restaurants_2_0_0_0.pdf)

From there, it is all up to you and your team's assessment on pulling it together and keeping it together.

Please do understand my response though is not an approval for Mooney's to operate. You need to make that decision within your team. Should you choose to open, Mooney's may be visited by our agency and other enforcement entities to observe operations. We are actively responding to complaints and visiting entities in close proximity. If Mooney's is found noncompliant with requirements, it does risk sanctions as specified in the executive orders.

As for your competitor, series 12 licenses are too under strict responsibility to comply with all requirements as specified in the above documents. This agency has and will continue to take action against series 12 licensees who choose to, or are unable to, comply. Would you kindly please share the name of your competitor and we will follow up.

Respectfully Submitted,  
Jeffery Trillo

On Mon, Jul 13, 2020 at 8:06 AM Ian Juul <[ian@juul.biz](mailto:ian@juul.biz)> wrote:

Hi,

In my small town of Sedona there are two bars, ourselves with a #6 selling nearly 40% food and another that has a #12 License.

I don't understand why we are forced to close yet my competitor who has a #12 license can continue trading and still host Live Music, Karaoke, Darts, Pool and basically continue operations as a bar ??

Best regards,

**Ian Juul**

**Mooney's Irish Pub – Sedona, AZ**

Tel (+1) 941 730 1745

[ian@juul.biz](mailto:ian@juul.biz)

---

**From:** Jeffery Trillo <[jeffery.trillo@azliquor.gov](mailto:jeffery.trillo@azliquor.gov)>

**Date:** Tuesday, June 30, 2020 at 9:02 PM

**To:** <undisclosed-recipients:;>

**Subject:** State of Arizona, Governor's Executive Order 2020-43 Department of Liquor Guidance

On June 29, 2020, Governor Ducey issued Executive Order 2020-43, which specifically addresses series 6 (bar) and series 7 (beer and wine bar) licenses. You are receiving this email as you are listed in the Department of Liquor's records system as the agent on record, or absent an agent, the licensee of either a series 6 or 7 license.

Attached is a link to an important Department of Liquor guidance document that is deemed important to you in managing business decisions and Executive Order 2020-43.

[https://azliquor.gov/assets/documents/homepage\\_docs/Covid19\\_EO\\_2020-43\\_Guidance.pdf](https://azliquor.gov/assets/documents/homepage_docs/Covid19_EO_2020-43_Guidance.pdf)

Thank you for your service to Arizona. Together we can reduce the spread of COVID-19.

**Jeffery Trillo**

**Assistant Director, Licensing and Administration Division**

**Arizona Department of Liquor Licenses and Control**

[800 W Washington St., 5th FL.](#)

[Phoenix AZ 85007](#)

602.364.1952

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--

**Jeffery Trillo**

**Assistant Director, Licensing and Administration Division**

**Arizona Department of Liquor Licenses and Control**

800 W Washington St., 5th FL.

Phoenix AZ 85007

602.364.1952

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**From:** Ian Juul <ian@juul.biz>  
**Sent:** Thursday, August 6, 2020 9:35 AM  
**Subject:** FW: State of Arizona, Governor's Executive Order 2020-43 Department of Liquor Guidance

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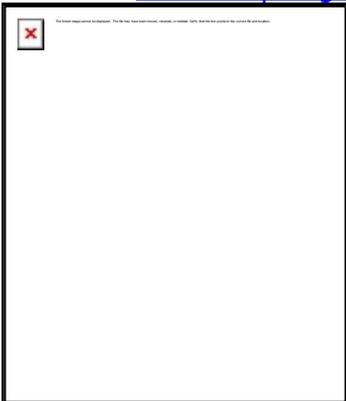
**From:** Herb Carruthers <HCarruthers@azliquor.gov>  
**Date:** Monday, July 13, 2020 at 11:58 AM  
**To:** Ian Juul <ian@juul.biz>  
**Cc:** Jeffery Trillo <jeffery.trillo@azliquor.gov>, Adam Palubeskie <adam.palubeskie@azliquor.gov>  
**Subject:** Re: State of Arizona, Governor's Executive Order 2020-43 Department of Liquor Guidance

Mr. Juul,

I appreciate your sentiments, however, I can only do what i can do given my area of responsibility.

If there is anything I can do that is within the scope of my responsibilities please do not hesitate to contact me....

Det. Herbert W. Carruthers #36  
Police - Special Investigations  
Wrong - Way Driver Task Force  
Arizona Department of Liquor  
PH: 928-289-1459  
Fax: 602-542-5707  
Email: [hcarruthers@azliquor.gov](mailto:hcarruthers@azliquor.gov)  
Web Site: [www.azliquor.gov](http://www.azliquor.gov)



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On Mon, Jul 13, 2020 at 11:47 AM Ian Juul <[ian@juul.biz](mailto:ian@juul.biz)> wrote:

Mr Carruthers,

Agreed, historically we have operated as a Bar and I agree that 'Bar like' activities do-not support the mitigation of Covid. We are committed to change, as per my earlier eMail.

EO 2020-43 provisions to allow To Go, Curbside etc cannot sustain ours or many of the other businesses affected by EO 2020-43. That is fact and it is the same as being Shut down. Can you make a living if your salary is reduced by 80% - doubtful.

Of course I had to comply voluntarily. What other options do I have – try trade at 20% or face a temporary suspension and fall foul of AZ Liquor.

I respect the fact that you have to enforce laws etc but we need a voice of reason and AZ Liquor please needs to speak to the Governor.

Our town of Sedona is not like Maricopa County where they have 50% of Covid deaths. The Clubs in Scottsdale were out of line and they have contributed to all Bars across the whole state now paying an unfair price.

EO 2020-43 is going to decimate the Bar industry. We have been closed over 3 months this year out of now 7 months. This is not sustainable.

I have to try and fight to save my business and bigger circle of what our business does in Sedona. I am not trying to be difficult.

Best regards,

**Ian Juul**

**Mooney's Irish Pub – Sedona, AZ**

Tel (+1) 941 730 1745

[ian@juul.biz](mailto:ian@juul.biz)

---

**From:** Herb Carruthers <[HCarruthers@azliquor.gov](mailto:HCarruthers@azliquor.gov)>  
**Date:** Monday, July 13, 2020 at 11:28 AM  
**To:** Ian Juul <[ian@juul.biz](mailto:ian@juul.biz)>  
**Cc:** Jeffery Trillo <[jeffery.trillo@azliquor.gov](mailto:jeffery.trillo@azliquor.gov)>, Adam Palubeskie <[adam.palubeskie@azliquor.gov](mailto:adam.palubeskie@azliquor.gov)>  
**Subject:** Re: State of Arizona, Governor's Executive Order 2020-43 Department of Liquor Guidance

Mr. Juul,

As we spoke on the phone. You were not forced to close. You were informed that you were subject to Executive Order 2020-43. As you have a series 6 license, you operate as a bar, and have historically been a bar (not a restaurant) that executive order does apply to you. However, you were informed that you were allowed to operate to-go, curbside pick, and delivery (providing you used the delivery form if your order continued alcohol). You were not forced to close, as you voluntarily complied with the executive order, which we appreciate. However, you were not "Shut Down" by DLLC as you refer to in your facebook posting.

Unfortunately, there is no appeal to the governor's executive order. However, you may submit a form/application (when available) on the Arizona Department of Health Services website <https://www.azdhs.gov/> (please check their website as they will post when the form is available). This form/application may allow you to reopen on July 28, 2020, if you meet the requirements, providing the executive order is not extended. You will still need to wait until July 27, 2020, to see what the governor decides.

As we spoke and you were informed, series 12 restaurant licenses are not included in the current executive order (2020-43) only the series 6 and series 7 licenses. As I stated before, we appreciate that you voluntarily complied with executive order 2020-43. However, as you were informed if you decided to no longer comply you will be in violation of the executive order and there will be an administrative action against your license which will most likely will result in a summary suspension of your liquor license, which most likely will last longer than the initial executive order date of July 27, 2020.

As previously stated, I do appreciate you voluntarily complying with the current executive order. Should you need any further information or have any additional questions please do not hesitate to contact me.....

Det. Herbert W. Carruthers #36

Police - Special Investigations

Wrong - Way Driver Task Force

Arizona Department of Liquor

PH: 928-289-1459

Fax: 602-542-5707

Email: [hcarruthers@azliquor.gov](mailto:hcarruthers@azliquor.gov)

Web Site: [www.azliquor.gov](http://www.azliquor.gov)

**Error! Filename not specified.**

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On Mon, Jul 13, 2020 at 10:52 AM Jeffery Trillo <[jeffery.trillo@azliquor.gov](mailto:jeffery.trillo@azliquor.gov)> wrote:

Good day, Ian.

You may not necessarily be required to close, and your competitor could be at risk of adverse action against their license. Please read as I share information and decision points on what you do next.

I also see you included Detective Carruthers. If you have history with Detective Carruthers, meaning he knows your business and you two have worked together previously, then whatever guidance he provides you will supersede my guidance contained herein.

With that, and for the purposes of what follows, I would ask you to seriously consider first what is it that Mooney's is about. Our industry has numbers of licensees who hold a series 6 but they operate and are in actuality a series 12. Going the route of a series 6 provides the licensee relief in that they need not be concerned with the 40:60 food to alcohol sales ratio as required by law. Still, for them, food is the epicenter of their operations. With that, for Mooney's to even consider getting out of the gate, the sale of food has to be a prominent variable in its business plan. Mooney's must think, look, and act like a restaurant.

From there, the roadmap for your success is in these three documents below that I've imbedded links to. As you review them, you must set your mind to these and understand, under no unequivocal terms, these are requirements. All of them. No exceptions. Overwhelmingly where licensees are missing is failing to meet the requirements. Secondly, entity work staff then failing to enforce requirements.

I will highlight a subtle nuance to pull from sub-paragraph 1 of the "Now Therefore" section in the executive order 47 document. The language strongly suggests every patron should have a chair and be in it. This ties next to sub-paragraph 3 in that there are no free range areas for groups to intermix or congregate.

<https://azgovernor.gov/file/35147/download?token=4zgksq5W>

<https://azgovernor.gov/file/35221/download?token=dcqvammZ>

[https://azgovernor.gov/sites/default/files/requirements\\_for\\_restaurants\\_2\\_0\\_0\\_0.pdf](https://azgovernor.gov/sites/default/files/requirements_for_restaurants_2_0_0_0.pdf)

From there, it is all up to you and your team's assessment on pulling it together and keeping it together.

Please do understand my response though is not an approval for Mooney's to operate. You need to make that decision within your team. Should you choose to open, Mooney's may be visited by our agency and other enforcement entities to observe operations. We are actively responding to complaints and visiting entities in close proximity. If Mooney's is found noncompliant with requirements, it does risk sanctions as specified in the executive orders.

As for your competitor, series 12 licenses are too under strict responsibility to comply with all requirements as specified in the above documents. This agency has and will continue to take action against series 12 licensees who

choose to, or are unable to, comply. Would you kindly please share the name of your competitor and we will follow up.

Respectfully Submitted,

Jeffery Trillo

On Mon, Jul 13, 2020 at 8:06 AM Ian Juul <[ian@juul.biz](mailto:ian@juul.biz)> wrote:

Hi,

In my small town of Sedona there are two bars, ourselves with a #6 selling nearly 40% food and another that has a #12 License.

I don't understand why we are forced to close yet my competitor who has a #12 license can continue trading and still host Live Music, Karaoke, Darts, Pool and basically continue operations as a bar ??

Best regards,

**Ian Juul**

**Mooney's Irish Pub – Sedona, AZ**

Tel (+1) 941 730 1745

[ian@juul.biz](mailto:ian@juul.biz)

---

**From:** Jeffery Trillo <[jeffery.trillo@azliquor.gov](mailto:jeffery.trillo@azliquor.gov)>

**Date:** Tuesday, June 30, 2020 at 9:02 PM

**To:** <undisclosed-recipients:;>

**Subject:** State of Arizona, Governor's Executive Order 2020-43 Department of Liquor Guidance

On June 29, 2020, Governor Ducey issued Executive Order 2020-43, which specifically addresses series 6 (bar) and series 7 (beer and wine bar) licenses. You are receiving this email as you are listed in the Department of Liquor's records system as the agent on record, or absent an agent, the licensee of either a series 6 or 7 license.

Attached is a link to an important Department of Liquor guidance document that is deemed important to you in managing business decisions and Executive Order 2020-43.

[https://azliquor.gov/assets/documents/homepage\\_docs/Covid19\\_EO\\_2020-43\\_Guidance.pdf](https://azliquor.gov/assets/documents/homepage_docs/Covid19_EO_2020-43_Guidance.pdf)

Thank you for your service to Arizona. Together we can reduce the spread of COVID-19.

***Jeffery Trillo***

***Assistant Director, Licensing and Administration Division***

***Arizona Department of Liquor Licenses and Control***

[800 W Washington St., 5th FL.](#)

[Phoenix AZ 85007](#)

602.364.1952

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--

***Jeffery Trillo***

***Assistant Director, Licensing and Administration Division***

***Arizona Department of Liquor Licenses and Control***

*800 W Washington St., 5th FL.*

*Phoenix AZ 85007*

*602.364.1952*

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**ilan.wurman@gmail.com**

---

**From:** Ian Juul <ian@juul.biz>  
**Sent:** Thursday, August 6, 2020 9:36 AM  
**Subject:** FW: Department of Liquor Guidance

---

**From:** Herb Carruthers <HCarruthers@azliquor.gov>  
**Date:** Monday, July 20, 2020 at 9:54 AM  
**To:** Ian Juul <ian@juul.biz>  
**Subject:** Re: Department of Liquor Guidance

Look at what he's trying to do now

On Sun, Jul 19, 2020 at 12:32 Ian Juul <[ian@juul.biz](mailto:ian@juul.biz)> wrote:

EO 2020-43 allows for To Go & Curbside per EO 2020-09.

Question – I have a parked bus near my bar parked in the public parking. Are the To Go consumers permitted to consume their To Go drinks & food (pizza's etc) in this bus as it has air conditioning?

Are these consumers allowed to use my bathrooms, or must they use the public bathrooms behind my bar in the complex.

Best regards,

**Ian Juul**

**Mooney's Irish Pub – Sedona, AZ**

Tel (+1) 941 730 1745

[ian@juul.biz](mailto:ian@juul.biz)

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--

Det. Herbert W. Carruthers # 36  
Police - Special Investigations  
Arizona Department of Liquor  
Wrong Way Driver Task Force  
Phone: 928-289-1459  
Email: [herb.carruthers@azliquor.gov](mailto:herb.carruthers@azliquor.gov)  
Website: [www.azliquor.gov](http://www.azliquor.gov)

# **Exhibit S**

1 Ilan Wurman (#034974)  
2 Sandra Day O'Connor College of Law  
3 Arizona State University  
4 111 E. Taylor Street  
5 Mail Code 9520  
6 Phoenix, AZ 85004-4467  
7 Telephone: 480-965-2245  
8 [ilan.wurman@asu.edu](mailto:ilan.wurman@asu.edu)

9 *Attorney for Plaintiffs*

10 SUPERIOR COURT OF ARIZONA  
11 MARICOPA COUNTY

12 JAVIER AGUILA, et al.,

13 Plaintiffs,

14 vs.

15 DOUG DUCEY, in his individual  
16 capacity, and in his official capacity as  
17 the Governor of the State of Arizona;  
18 THE ARIZONA DEPARTMENT OF  
19 HEALTH SERVICES; and THE  
20 ARIZONA DEPARTMENT OF  
21 LIQUOR LICENSES AND  
22 CONTROLS,

23 Defendants,

24 and

25 THE STATE OF ARIZONA,

26 Real Party-in-Interest.

CASE NO: \_\_\_\_\_

**Declaration of Kyle Schwab**

- 27
- 28 1. I, Kyle Schwab, declare as follows:
  2. I am over the age of 18 and have personal knowledge of the information set forth in this declaration.

1           3.       I am a plaintiff in this action. I own Casa Marana Craft Beer • Wine • Spirits.  
2 I have a #6 liquor license.

3           4.       In order to be open safely we adhered to all regulations set forth by CDC and  
4 AZDHS, and Pima County Health including six foot spacing between tables, Masks  
5 required until seated, employees required to wear masks, temperature checks of employees,  
6 non-contact check out available on POS. We kept double garage doors open to outdoor  
7 seating to improve airflow and left the door to business open in order to prevent  
8 contamination of door handle as well as other sanitary measures.

9           5.       I have visited several Bars that are open despite alcohol being the obvious  
10 focus of their business they have been determined otherwise. An example is Union Public  
11 House and Reforma in Tucson, AZ. I have seen live concerts, DJ's, overcrowding, Standing  
12 Room only, People not wearing face masks, dancing, kissing, bar fights, people so over in  
13 toxified they were swaying back and forth about to fall over. This was only around 11:30  
14 PM and I believe this only got worse as the night progressed until they closed at 2:00am. It  
15 is my opinion that a type of bottleneck has been created in the industry as the demand for  
16 drinking establishments has not diminished as much as the amount of businesses have. This  
17 new environment has created such a demand it has the feel of a Las Vegas Club at these  
18 venues and them being busier now than ever before and trying but failing to keep the crowds  
19 under control. This is not an outlier as everyone in the area knows the venues that are still  
20 open and operating full bars and those that are not. I am attaching photos from my visit to  
21 Union Public House and Reforma on August 8, 2020. (License #12G104129).



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I also took video evidence, which can be viewed here:

<https://www.dropbox.com/sh/0d5598zbm065o51/AAAVlt-2yi3MI0H-B6xMI8Aea?dl=0>.

6. During initial shutdown our business was down 45% from the previous month. During this second shutdown our business has been down 85%. During the first shutdown we were able to keep some business going in order to pay some bills because all other businesses were closed for to go sales only making an even demand for neighboring businesses of the same type. We still took a huge financial hit during the first closure and barely were able to get enough funds going to get back open even with the PPP. In this industry the margins are almost entirely in the draft and spirits. Package beer has a small marginal profit that is outpaced by the expenditures of the business. Even if some customers might have come to get alcohol to go, they had no incentive to do so because restaurants were also selling to go. Despite it looking like we had some money coming in we had to

1 spend double our normal ordering after the initial shutdown and we had all the expenses of  
2 re-opening including hiring new staff and training, paying state taxes, rent due without  
3 forgiveness of any portion and all the various other expenses that come with running a  
4 business. Furthermore, I have also always counted on the value of my liquor license  
5 appreciating with time and being a part of my financial security. I doubt it will hold any  
6 value close to anything it did before and will not have much value for some time.

7         7.       If this persists, I do not see a future for my business. I am not wealthy and  
8 have an extremely limited amount of funds to keep going. Even if allowed to open today I  
9 would have to ask my landlord for some sort of forgiveness or forbearance. If this persists,  
10 I doubt he would reconcile the amount of money needed for me to re-open and get business  
11 running sufficiently again. I own the business myself and it is my sole source of income. I  
12 am not somewhere that caters to people looking to overindulge in Alcohol. I am a family  
13 friendly, neighborhood venue that offers Craft Beer, Wine, Spirits and Neapolitan pizza.  
14 We have Families come in all the time and even have board games set up and chalk outside  
15 for the kids to mark up the patio. By not looking at the issue on a case by case basis it is  
16 hurting families and businesses it shouldn't. It is not fair and unfathomable that Arizona  
17 would institute such an order without giving us the option to show we can abide by the  
18 precautions as any other business can.

19             I declare under penalty of perjury that the foregoing is true and correct.

20  
21             DATED this 9th day of August, 2020.

22                             Kyle Schwab  
23                             \_\_\_\_\_  
24                             Kyle Schwab  
25  
26  
27  
28

# **Exhibit T**

1 Ilan Wurman (#034974)  
2 Sandra Day O'Connor College of Law  
3 Arizona State University  
4 111 E. Taylor Street  
5 Mail Code 9520  
6 Phoenix, AZ 85004-4467  
7 Telephone: 480-965-2245  
8 [ilan.wurman@asu.edu](mailto:ilan.wurman@asu.edu)

9 *Attorney for Plaintiffs*

10 SUPERIOR COURT OF ARIZONA  
11 MARICOPA COUNTY

12 JAVIER AGUILA, et al.,

13 Plaintiffs,

14 vs.

15 DOUG DUCEY, in his individual  
16 capacity, and in his official capacity as  
17 the Governor of the State of Arizona;  
18 THE ARIZONA DEPARTMENT OF  
19 HEALTH SERVICES; and THE  
20 ARIZONA DEPARTMENT OF  
21 LIQUOR LICENSES AND  
22 CONTROLS,

23 Defendants,

24 and

25 THE STATE OF ARIZONA,

26 Real Party-in-Interest.

CASE NO: \_\_\_\_\_

**Declaration of Lee Fabrizio**

- 27
- 28 1. I, Lee Fabrizio, declare as follows:
  2. I am over the age of 18 and have personal knowledge of the information set forth in this declaration. Dawn McMillan, my wife, and Dustin McMillan, my stepson, and

1 I are owners of Growler's Taphouse, Inc., 8275 North Silverbell Road, Marana, Arizona  
2 85743. We are in possession of a Series 6 liquor license.

3 3. For the past year we have operated at 57% food sales.

4 4. We have followed 15 of 17 stated guidelines of the Pima County health  
5 Department since their inception during the Covid crisis. The inspector gave us an excellent  
6 rating for our cleanliness and measures taken to ensure the safety of our staff and patrons.  
7 We estimate that we have suffered the loss of over \$300,000 of revenue since the beginning  
8 of Covid-19, not to mention the loss estimated at \$100,000 since the order.

9 5. We have a scratch kitchen. We do not sell frozen food. The above losses do  
10 not include the loss of inventory which we estimate at about \$15,000, due to three separate  
11 shutdowns, as all branches of government were unable to provide clarity of the constant  
12 change in rules and guidelines which created a great deal of confusion. We did our due  
13 diligence by reaching out to the Governor's office for clarification, where we were told a  
14 form would be available on their website that we could fill out and attach our over all sales  
15 to show percentage of food sales. We re-opened as we understood that we were o.k. to do  
16 so. Two weeks later, liquor agents showed up to give our warning to shut down or our  
17 license would be suspended. That would be our 3rd shutdown.

18 6. We are still being charged rent with zero revenue. We estimate we have 2  
19 months cash reserve before we will be forced to close our doors. Franchises can survive  
20 intentional discriminatory actions with great success. Small businesses cannot. As illogical  
21 as our state's government actions are, it will not make much difference to us if we are out  
22 of business and money.

23 7. Other establishments such as major food chains, restaurant franchises who  
24 sell alcohol, are allowed to remain open for business because of their liquor license series  
25 and do not practice any of the guidelines set forth as we did when we were open at half  
26 capacity.

27 8. The newest guidelines for re-open released Monday August 10, 2020, are  
28 unreasonable. It does not apply to bars and restaurants who are currently open for business.

1 It imposes requirements on all of us that do not apply to our competitors. This makes no  
2 sense.

3 9. We strongly believe that the Governor's Office has set us up for failure. We  
4 cannot compete with take-out only, when all the bars and restaurants for miles around us  
5 are open for dine-in, all because of the number on their liquor license. Discrimination at its  
6 finest. We took another financial hit attempting to do take-out but could not compete.

7

8 I declare under penalty of perjury that the foregoing is true and correct.

9

10 DATED this 11th day of August, 2020.

11

12

13

*Lee Fabrizio*

\_\_\_\_\_  
Lee Fabrizio

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# **Exhibit U**

1 Ilan Wurman (#034974)  
2 Sandra Day O'Connor College of Law  
3 Arizona State University  
4 111 E. Taylor Street  
5 Mail Code 9520  
6 Phoenix, AZ 85004-4467  
7 Telephone: 480-965-2245  
8 [ilan.wurman@asu.edu](mailto:ilan.wurman@asu.edu)

9 *Attorney for Plaintiffs*

10 SUPERIOR COURT OF ARIZONA  
11 MARICOPA COUNTY

12 JAVIER AGUILA, et al.,

13 Plaintiffs,

14 vs.

15 DOUG DUCEY, in his individual  
16 capacity, and in his official capacity as  
17 the Governor of the State of Arizona;  
18 THE ARIZONA DEPARTMENT OF  
19 HEALTH SERVICES; and THE  
20 ARIZONA DEPARTMENT OF  
21 LIQUOR LICENSES AND  
22 CONTROLS,

23 Defendants,

24 and

25 THE STATE OF ARIZONA,

26 Real Party-in-Interest.

CASE NO: \_\_\_\_\_

**Declaration of Sheri Marie Shaw**

- 27 1. I, Sheri Marie Shaw, declare as follows:  
28 2. I am over the age of 18 and have personal knowledge of the information set forth in this declaration.

1           3.       I am a plaintiff in this action. I own The Back Alley Wine Bar (The Arizona  
2 Wine Experience LLC). I am a Series 7 License holder and my business focuses on Arizona  
3 wines, wines from around the globe and wine education. While I do offer a handful of beers,  
4 they are not my main focus. We offer an AZ wine flight and do periodic wine tastings and  
5 wine education classes. I built my business from the ground up and opened in March of  
6 2019. I was first ordered to shut down in March of this year, just a few days before my one  
7 year anniversary. I reopened on May 15<sup>th</sup> and was open for approximately six weeks before  
8 I was ordered to shut down a second time. As of the writing of this document, I am heading  
9 into my fourth month of closure and hence, fourth month of no income.

10           4.       Upon reopening in May, I took extensive measures to ensure the safety of my  
11 patrons and my employees. As a retired R.N. of 17 years, I had a very good understanding  
12 of what we were up against. I implemented daily temperature checks and health checks on  
13 my employees and posted COVID related signage on my entrance for patrons. I removed  
14 tables and bar stools and stored them in my garage so that I could properly implement social  
15 distancing. I tape measured the distance between each seating to ensure that they were at  
16 least 6 feet apart and limited my occupancy to 30. My full capacity is 58. No party was  
17 seated until the table and chairs were fully sanitized. This was done in between every  
18 seating. Approximately 10 days after opening, masks were required by all employees. We  
19 offer a cheese plate and a hummus plate and since opening day, in March of 2019 (a year  
20 before the pandemic) I have required clean gloves to be worn while preparing these plates.  
21 Handwashing is always and always has been strictly enforced.

22           5.       I am aware that if you “present” as a restaurant, even if you have a series 6 or  
23 7, you may remain open. Nowhere have I found any official documentation on this, from  
24 the Governor or from the Liquor Board. There are no set guidelines as to what constitutes a  
25 “restaurant” and it seems to be up to the whim of whomever happens to be on duty that day.  
26 This has left every series 6 and/or 7 bar owner that serves food confused and quite frankly  
27 fearful. We were all watching when the Governor threatened our licenses and our  
28 livelihoods. We all want to reopen but none of us has any idea how much food would allow

1 us to do so.

2 6. I have been holding “to go” bottle sales on the weekends to try and keep my  
3 business alive. This has not been easy considering that the majority of bar/restaurants are  
4 still open. People come in and ask if they can have a glass of wine. When I tell them that I  
5 can only do bottle sales, they walk directly across the alley (approximately 50 feet away) to  
6 the winery that is open and have one there. Their business model is the same as mine, minus  
7 the food. There are, in fact, three wineries in town that are currently open. Same business  
8 model. Different license number. The only difference is that they make their product while  
9 I purchase mine. I don’t understand how the “making of your product” helps to defend  
10 against COVID. In fact, it does not. I can assure the powers that be, that I can fully and  
11 adequately implement the same sanitizing and social distancing measures that these  
12 wineries are implementing. I, however, have not even been given a chance.

13 7. There is also a restaurant with a bar just down the alley from my business  
14 that is doing live music and dancing on a weekly basis. In fact, after my last bottle sale, I  
15 decided to grab some food at this establishment. It is a large venue with a large occupancy.  
16 There were easily 150-200 people inside and most of the “bar” patrons were not eating food.  
17 It was so disheartening to witness when I can’t even have twenty people in my business. I  
18 had to leave. There is another establishment in town that is a series 6 and does not have a  
19 kitchen. They are having patrons order food from the business next store and are then  
20 serving them. Their employee informed me that they were approved to do so by the liquor  
21 board. In short, there are multiple businesses taking advantage of the current situation. I  
22 see advertisements for karaoke, live music and dancing. I see Facebook photos of large  
23 gatherings in the bar areas of restaurants, many of which are not even serving food in these  
24 areas. Everything mentioned here leads to the conclusion that just picking two license  
25 numbers and shutting only them down, is completely useless in the fight against COVID. It  
26 has been made very clear that it is “behavior”, not license number, that is contributing to  
27 the spread.

28 8. It is impossible to know the full financial damage this has done to me. I was

1 fully open during January and February and these are slowest months of the year in Prescott.  
2 We were just starting to come into season when the first shut down occurred. I had to throw  
3 away approximately \$250 in food and lost a \$300 keg. I had projected to gross 25K for the  
4 months of March, April, and May. All of that was lost. I missed out on two of the busiest  
5 weekends of the year by being closed on Mother's Day and on the Fourth of July. August,  
6 September and October are some of the slowest months in Prescott and I was counting on  
7 the money made in July and over the Fourth to get me through. It costs me, at MINIMUM,  
8 5K a month to keep my business locked up and closed. This is money that, at this point, I  
9 am literally throwing away. I'll never get a return on it. On the first month of closure, it's  
10 closer to 8k, after paying TPT and payroll for the previous month. I'm doing everything in  
11 my power to minimize costs but I must still keep the electric on or I could lose 4K worth of  
12 wine inventory. I can't cancel my internet as I need my POS system for bottle sales, my  
13 landlord still wants his rent, and I'm still paying insurance on a business that is not open. I  
14 also had to pay my quarterly taxes to the state. The state that shut down my business. I wrote  
15 my first quarter check during the first shut down and my second quarter check during the  
16 second shut down. I wasn't able to apply for PUA assistance until May 15<sup>th</sup>. That's the day  
17 I reopened after the first shut down. I received approximately \$1400. That's the equivalent  
18 to one day of earnings for me. This shutdown, I have received nothing. It is impossible to  
19 sustain this. My series 7 license was 35K and it took me a year to obtain it. I don't know if  
20 I'll ever be able to sell it or make any profit on it after the beating that bars have taken this  
21 year. I saved 10% of my income my entire life, I live in a house with a mortgage of less  
22 than \$600/month. I have been financially responsible and have lived well below my means  
23 my entire adult life, just so that I could, one day, open my dream business and pay cash for  
24 it. I've done that. I built a successful business that was starting to make money the first year.  
25 This was dream. This was my life savings. I'm about to lose it all because of this shut down.

26 9. If this continues, my doors will shut forever and I will have lost everything  
27 due to no fault of my own. If I at least had an ending date, I could possibly make a financial  
28 plan. When I was told that I would be closed for the month of July, I thought I could make

1 it work. Then, its was another two weeks. My physical and mental health are suffering  
2 greatly. As of today, there seems to be no end in sight. I am about one month away from  
3 losing everything. I'm writing this on Thursday, August 6<sup>th</sup>. This was the day that we were  
4 supposed to get an update from the governor but instead, the press conference was canceled.  
5 I feel betrayed and forgotten about. I feel that the Governor, the man I voted for, the man  
6 that was supposed to fight for small business, just doesn't care about me, my business, or  
7 how difficult this has been.

8 I declare under penalty of perjury that the foregoing is true and correct.

9  
10 DATED this 6th day of August, 2020.

11 SHERI MARIE SHAW

12  
13 *Sheri Marie Shaw*  
14 Sheri Marie Shaw

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# **Exhibit V**

1 Ilan Wurman (#034974)  
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7 Telephone: 480-965-2245  
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9 *Attorney for Plaintiffs*

10 SUPERIOR COURT OF ARIZONA  
11 MARICOPA COUNTY

12 JAVIER AGUILA, et al.,

13 Plaintiffs,

14 vs.

15 DOUG DUCEY, in his individual  
16 capacity, and in his official capacity as  
17 the Governor of the State of Arizona;  
18 THE ARIZONA DEPARTMENT OF  
19 HEALTH SERVICES; and THE  
20 ARIZONA DEPARTMENT OF  
21 LIQUOR LICENSES AND  
22 CONTROLS,

23 Defendants,

24 and

25 THE STATE OF ARIZONA,

26 Real Party-in-Interest.

CASE NO: \_\_\_\_\_

**Declaration of Ian Francis Likwarz**

- 27
- 28 1. I, Ian Francis Likwarz, declare as follows:
  2. I am over the age of 18 and have personal knowledge of the information set forth in this declaration.
  3. I am a plaintiff in this action. I am an entrepreneur and multiple small business owner and have started and self-operated several small businesses in Arizona since my

1 relocation to Arizona in 2007. I currently own The Sazerac Cocktails & Craft, which opened  
2 in December 2018, located in downtown Phoenix. I lease the building we're in and have  
3 invested nearly \$1,000,000 (One Million Dollars), of my own money, into the tenant  
4 improvements and licenses for this business. In addition to creating craft cocktails, and  
5 serving local craft beer, we also maintain a permanent Food Trailer on our 3,000 square  
6 foot outdoor patio area, that serves food during business hours. I have included a photo  
7 below of our patio. As you can see, we can easily maintain social distancing—and we were.  
8 We have also had, and maintained, the permanent food trailer providing a full menu of food  
9 for over a year prior to the coronavirus outbreak. We have been forced to close our doors,  
10 even though we serve a full menu of food, whereas our local competitors who have similar  
11 establishments, also serving alcohol and food, are able to remain open because they have  
12 an Arizona #12 License and we operate with an Arizona #6 License.



1           4.       The type of license we hold has absolutely no bearing on our ability, nor our  
2 competitors' ability to run, maintain, and operate a clean and healthy business that follow  
3 the guidelines of the CDC, Department of Labor, Occupational Safety & Health  
4 Administration (OSHA), and Arizona Department of Health Services (ADHS) for safe  
5 COVID-19 business operating standards.

6           5.       With the safety of our employees and guests in mind, we have always stayed  
7 several steps ahead of our competitors to maintain a healthy and safe work environment.  
8 Less than one week prior to the governor's latest executive order for Bars with #6 licenses  
9 to close on June 29th, we took it upon our own initiative to have a mobile registered medical  
10 professional come to our location and test every one of our employees, at our own expense.  
11 We have also created a list of over 50 protocols for enhanced mitigation and safety measures  
12 above and beyond the current requirements for Bars and restaurants to operate safely. Many  
13 of those protocols were implemented prior to the June shutdown.

14           6.       Immediately after the shutdown, within days, I had tried to call both the  
15 Arizona Liquor Board Department and the ADHS immediately to find out how we could  
16 comply with other establishments to re-open. It took days, with multiple attempts and calls,  
17 just to be told that there was no information they could provide at the time.

18           7.       During this closure of #6 & #7 license holders, I have personally witnessed  
19 MANY other bars, breweries, and restaurants operating with #3, #12 & #18 licenses at a  
20 heavy capacity, with little to no social distancing, and events like Karaoke taking place.  
21 The biggest personal frustration has been to have my hands tied, sit back and watch other  
22 competitors doing far less than what was required to operate safely during this time of us  
23 being shut down, while we had implemented so many of the current safety protocols prior  
24 to the order to close. We were being much safer than our competitors who were allowed to  
25 stay open.

26           8.       Not only have I invested my personal savings of nearly \$1,000,000 just into  
27 the costs of Tenant Improvements and Licensing, but now we continue to pay Rent, utilities,  
28 insurances, some payroll, and other expenses while our doors are closed. We are losing

1 between \$20,000 & \$30,000 in revenue weekly during the summer. This has taken a  
2 devastating hit on me financially and mentally. This closure also substantially diminishes  
3 the value of my business, and my liquor license.

4 9. Although we have applied and received some financial aid, this money is  
5 quickly running out. Since we are closed indefinitely, and because of the historical actions  
6 of the Governor's unlawful decisions to arbitrarily close any business he chooses with no  
7 end in sight, there is currently no value in my business to try and sell. In addition, we have  
8 a large financial obligation to our landlord for the remainder of the lease term that we will  
9 be fully held responsible for paying and may become a claim to future damages in a lawsuit.  
10 We may be able to hold on for a few more months, and then we will have no choice but to  
11 close our doors for good.

12 I declare under penalty of perjury that the foregoing is true and correct.

13  
14 DATED this 19th day of August, 2020.

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17 Signature Ian Francis Likwarz  
18 Ian Francis Likwarz / Owner / The Sazerac  
19  
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23  
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# **Exhibit W**

1 Ilan Wurman (#034974)  
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3 Arizona State University  
4 111 E. Taylor Street  
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6 Phoenix, AZ 85004-4467  
7 Telephone: 480-965-2245  
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9 *Attorney for Plaintiffs*

10 SUPERIOR COURT OF ARIZONA  
11 MARICOPA COUNTY

12 JAVIER AGUILA, et al.,  
13 Plaintiffs,

14 vs.

15 DOUG DUCEY, in his individual  
16 capacity, and in his official capacity as  
17 the Governor of the State of Arizona;  
18 THE ARIZONA DEPARTMENT OF  
19 HEALTH SERVICES; and THE  
20 ARIZONA DEPARTMENT OF  
21 LIQUOR LICENSES AND  
22 CONTROLS,

23 Defendants,

24 and

25 THE STATE OF ARIZONA,  
26 Real Party-in-Interest.

CASE NO: \_\_\_\_\_

**Declaration of Matthew Brassard**

- 27 1. I, Matthew Brassard, declare as follows:  
28 2. I am over the age of 18 and have personal knowledge of the information set forth in this declaration.  
3. I am a plaintiff in this action. I own Matt's Saloon in Prescott, Arizona. I have owned and operated Matt's Saloon for 18 years. Matt's Saloon is located on Historic

1 Whiskey Row and has been a bar since 1934. I own a series 6 License and voluntarily  
2 cooperated with the earlier executive Order and closed my doors on March 20, 2020. I  
3 remained closed until June 10<sup>th</sup>, even after the Governor opened establishments for Dine -  
4 In on May 12<sup>th</sup>, 2020, where I was told chips and snacks would qualify. I did not open then  
5 as I found it to be a very gray area and wanted to fully do my part in slowing the spread of  
6 Covid-19. As I waited for Bars to be opened I realized could no longer wait as bills were  
7 piling up and feared I may have to ultimately close my doors for good, and opened under  
8 Dine-In on June 12<sup>th</sup>, 2020.

9         4.         Since no guidelines were clearly given for opening under Dine-In, I had to  
10 establish my very own strict guidelines when I opened under dine-in on June 12<sup>th</sup>, 2020. I  
11 purchased forehead thermometers to use upon entrance and any patron with a fever over  
12 100 degrees was turned away. I purchased gallons of hand sanitizer to ensure I had enough  
13 throughout my establishment. I worked with a local printing company to have both floor  
14 decals for social distancing as well as signage throughout, from hand washing tips, Covid  
15 symptom checks and employee guidelines we were following. All employees upon arrival  
16 were screened for Covid, and an employee temperature log was kept for each shift, and  
17 every employee was REQUIRED to wear a mask for the duration of their shift. I limited  
18 my capacity strictly to 50% (150) and ensured increased fresh airflow throughout by  
19 keeping all doors open, fans throughout and my fresh air swamp cooler running 24/7. At  
20 least a total of 60-man hours was spent on employee training for sanitary measures and  
21 symptom screening. I believed I was doing everything possible to keep both my employees  
22 and patrons safe while being able to keep my doors open.

23         5.         On June 29<sup>th</sup> 2020, we were given 5 hours' notice to shut our doors for at least  
24 30 days. This was days after receiving beer and liquor orders to stock up for what is  
25 historically our biggest and literally "make or break" week of the year, Rodeo week in  
26 Prescott. Although I knew it would be limited and not typical, it was still going to be the  
27 boost I needed to keep my doors open for the immediate future. I would worry later about  
28 getting through the slower winter months which I would normally have to save for from my

1 busy summer months. The immediate closure was literally a Gut Punch after already having  
2 been closed for almost 3 months. I had no experience with any liquor agents during the  
3 second closure since I fully complied, however I began to hear how arbitrary the ruling was  
4 with one licensee closed because one agent did not feel they sold enough food and another  
5 being allowed to remain open because a different agent felt they were fine. My biggest  
6 competitor flew under the radar for 3 weeks before being shut down by the liquor board,  
7 apparently because they were so backed up, they did not get to them. I watched as a large  
8 series 12 two doors down from me packed in my customers over 4<sup>th</sup> of July weekend and  
9 listened to stories of all these series 12 restaurants having record breaking weekends, weeks  
10 and now months, all while I was closed, indefinitely.

11         6.       As the Month of July progressed, I began to see on social media series 12  
12 Licenses and 14 (Private Club) advertising their new “late night Hours;” Ladies night,  
13 Karaoke nights and even a series 6 that has Friday Night Barn Dances. My customers did  
14 not all together stop going out, they simply started going to locations that were allowed to  
15 remain open and adjusted their restaurants to become late night bars. A series 14 Private  
16 club advertised Saturday night Karaoke, while boasting there was “no membership  
17 required”. I normally have Karaoke 2 nights a week and fear I have permanently lost  
18 customers to this Private Club since they offer deeply discounted drinks and no membership  
19 necessary, simply because the number of their liquor license. While I watched this all unfold  
20 throughout July, I could not help but feel disgust. I had already been doing more to keep  
21 my employees and customers safe than any of the places that continued to remain open.

22         7.       I have included some snapshots of social media posts, pictures, etc. of the  
23 above-mentioned events. A Moose Lodge in Prescott Valley that suddenly started Karaoke  
24 Night every Saturday Night, an Italian restaurant advertising their new late-night hours and  
25 lady’s night, A Friday night barn dance in Dewey (Series 6 License), a Mexican restaurant  
26 putting on concerts, a fish and chips place now doing Karaoke. Photos 4 and 8 were of  
27 events that took place on July 30<sup>th</sup> and July 25<sup>th</sup>, respectively.

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Photo 1

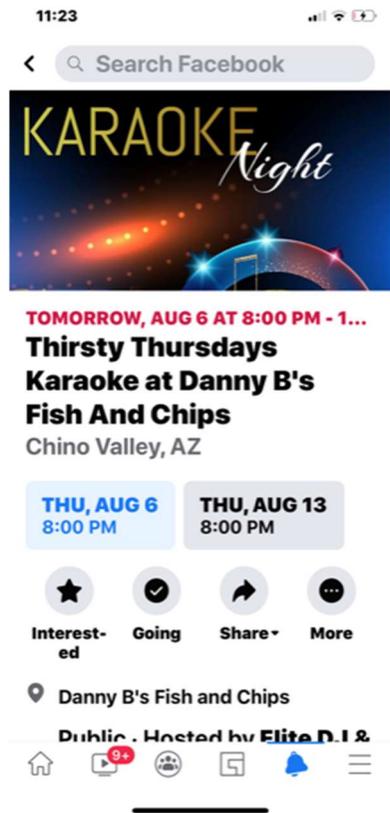


Photo 2



Photo 3

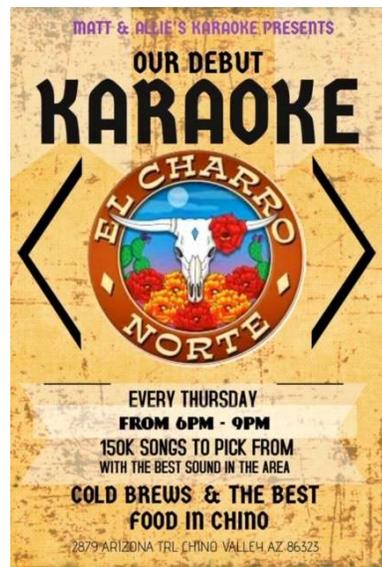


Photo 4

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Photo 5



Photo 7



Photo 6



Photo 8

1           8.       This shutdown has been devastating financially and will carry on for many  
2 years to come. I am not sure I will ever recover from this. Over my 18 years in business, I  
3 have narrowly survived many industry changes, the “No Smoking” ban of 2004, the  
4 economic recession of 2008-2011 and the impact of social media that has negatively  
5 affected the industry. Nothing could have ever prepared me to lose nearly 5 months of  
6 revenue due to a government mandated shutdown, the financial equivalent of over \$500,000  
7 in sales. The few weeks I was able to open barely scratched the surface when it came to  
8 catching up on the mounting bills. My mortgage payments did not cease, my electric bills  
9 did not stop, or any of my utility bills for that matter. My insurance companies did not stop  
10 installments or did any of my business loans, music licenses, property tax or general  
11 maintenance on my building. The only thing that stopped was my income and cash flow  
12 and my ability to pay all of the above. I now have a business that for 18 years was profitable  
13 and successful that I can now only compare to a broken-down car, worth pennies on the  
14 dollar that I am still making payments on. I fear it will be years before I could ever  
15 successfully try to even sell my license and business for even half the value it was before  
16 this mandated shutdown. Who would want to buy a business that was one of the most  
17 impacted and arbitrarily discriminated against during this pandemic, no matter how  
18 successful it was before Covid?

19           9.       While I am fortunate to be in a County that has met the August 10 benchmarks  
20 to open with very strict guidelines (that do not apply to my competitors with different  
21 license numbers), I do not believe it is sustainable for very long and my fear is I will have  
22 to close permanently sometime in the months ahead. My place is one that people come to  
23 dance at, it is what I am known for, and no opportunity has been given to allow dancing  
24 with specific mitigation requirements (i.e.: Mask requirements and distancing). I have  
25 missed out on nearly the entire tourist season in my area that I rely on to get through the  
26 slower months. I have lost customers to series 12’s where they have made friends and  
27 gotten to know the staff. Nothing can ever un-do the damage that has been done to my  
28 livelihood and the livelihood of my entire staff, DJ’s and musicians that all rely on me and

1 my business.

2 I declare under penalty of perjury that the foregoing is true and correct.

3

4 DATED this 23rd day of August, 2020.

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Matthew Brassard

Matthew L. Brassard

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# **Exhibit X**

1 Ilan Wurman (#034974)  
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9 *Attorney for Plaintiffs*

10 SUPERIOR COURT OF ARIZONA  
11 MARICOPA COUNTY

12 JAVIER AGUILA, et al.,  
13 Plaintiffs,

14 vs.

15 DOUG DUCEY, in his individual  
16 capacity, and in his official capacity as  
17 the Governor of the State of Arizona;  
18 THE ARIZONA DEPARTMENT OF  
19 HEALTH SERVICES; and THE  
20 ARIZONA DEPARTMENT OF  
21 LIQUOR LICENSES AND  
22 CONTROLS,

23 Defendants,

24 and

25 THE STATE OF ARIZONA,  
26 Real Party-in-Interest.

CASE NO: \_\_\_\_\_

**Declaration of Eva Stapleton**

- 27 1. I, Eva Stapleton, declare as follows:
- 28 2. I am over the age of 18 and have personal knowledge of the information set forth in this declaration.
3. I am a plaintiff in this action. I own Dirty Blonde Tavern in Chandler. I have a Class 6 liquor license and have been closed on and off for roughly 10 weeks.

1           4.     We have reduced capacity to less than half (normally it was 100). We  
2 reduced the hours to close at 9 pm during the week and 10 pm on the weekend. We have  
3 hand sanitizer by the front door and in the hallway, sanitizer station for all pens, menus,  
4 etc. that anyone would touch. We have pulled all but 6 chairs from the bar (normally 20).  
5 We have signs posted at all entrances stating masks must be worn when not seated (and  
6 will provide them if necessary). We have told ALL guests that they are REQUIRED to  
7 order food. We have every other table closed off and have signs telling people no  
8 standing at the bar. We have cancelled all Karaoke, Live Music, Trivia, covered pool  
9 table, have shut off the darts and golden tee games.

10           5.     When Governor Ducey ordered us closed at the end of June my liquor  
11 Agent from Arizona Liquor Industry Consultants called to inform me that we could be  
12 open if we operated as a restaurant. She did not have a name of a DLLC Agent so I  
13 chose to remain closed until I could speak to one directly. I Spoke to DLLC  
14 Agent/Detective Adam (did not catch last name) the first or 2nd week of July when we  
15 were closed. He also stated that if we were operating as a “Restaurant” we could  
16 remain open. I have had a full kitchen with a four page menu since I opened on  
17 January 1<sup>st</sup> 2015. Our kitchen was always open until midnight and we were open until 2  
18 am. (When we reduced our hours we had everything close at the same time, 9 or 10  
19 pm). He would not give me any specific information about what we were allowed or  
20 not allowed to do, just stating that it was “at my discretion” and if they had a  
21 complaint they would send someone in to look and determine if THEY thought I was  
22 operating as a bar or restaurant. He did say they were “not allowed” to give us any  
23 specific information such as how much food I must sell, but again, stated it was at my  
24 discretion. The only difference between my \$75,000 (prices vary) Class 6 Bar license  
25 and a \$2500 Class 12 Restaurant License is that I do not get audited yearly on my food  
26 sales (theirs are required to be 40% food to 60% alcohol) and I was able to sell alcohol  
27 to-go (which I never did because I did not want the liability of it). The Governor’s office  
28 has now allowed ALL restaurants to sell alcohol to go and I know for a fact they will

1 not meet that food standard since at every neighborhood "Restaurant/bar" I have  
2 been in I do not even see people eating. The Liquor Board has actually told my fellow  
3 bar owners that they are not interested in seeing what the Class 12 establishments are  
4 doing.

5 6. A DLLC Agent came in at 7pm last night (8/21/20) and told me they had a  
6 complaint and that was the only reason why he was here. He said looking around he  
7 would consider it a bar not a restaurant as we have about equal high-top to low top tables  
8 (high top being bar), music from jukebox was semi-loud, and I have a lot of large screen  
9 TV's. He said he noticed I had every other table closed off, almost all chairs removed  
10 from bar, pool table covered, and golden tee shut off. He said he didn't see a whole lot of  
11 people eating though. I offered to bring him in the kitchen to look at all the tickets or go  
12 through the closed out or open checks since I have told all employees that guests are only  
13 allowed 2 drinks and then are Required to order food or leave. He said he didn't need to do  
14 that. I asked him what I could possibly do to be more of a restaurant. I can't go buy a  
15 bunch of low top tables. He said nothing really. He said I could only have up to 49 people  
16 in the bar (capacity is 100). There were maybe 25-30 people and that is typical unless I  
17 had a band or UFC. We are a small neighborhood bar so it's mainly regulars and people  
18 who live within 3 miles. He didn't tell me to close, just that he would have to come back at  
19 some point soon and if I was still open he would have to suspend my license.

20 7. I personally have been to a Class 12 Restaurant on Chandler/Kyrene that has  
21 Live Music and Pool tables open. I have been to a Class 12 Restaurant at Ray/ Rural  
22 that is openly advertising on a Facebook page stating Saturday Night Club Night. They  
23 are packed and not social distancing. I have been to a Class 12 Restaurant at  
24 Chandler/48<sup>th</sup> Street on a Tuesday that was packed, full bar, all tables full, not social  
25 distancing and having Trivia. A man at the bar told me "this was the busiest it's every  
26 been and you should see Karaoke on Saturdays". I have been to a Class 12 Restaurant  
27 at Ray/101 that had a full bar of people, and all tables and chair seated. (I saw that  
28 personally but was also informed by a friend who knows the owner that they have

1 NEVER shut down this entire time because the owner "knows someone"). I have been  
2 to a very small Class 12 Restaurant on Greenfield/Warner that had a full bar, no social  
3 distance. I have a really hard time understanding why, if Governor Ducey and ADHS  
4 are actually concerned about Covid-19, that they are allowing these establishments to  
5 now operate as full bars while we remain limited to take out only. Why is there not the  
6 same uniform standard for all bars and restaurants? If it made a shred of common  
7 sense I could get behind it. But when he/they are allowing neighborhood  
8 restaurant/bars to operate at FULL capacity, have bar games, Karaoke, Trivia and Live  
9 music how is that helping do anything except put others out of business? There are  
10 only so many loans and grants you can get before the money runs out. In fact, why is  
11 ADHS telling "Bars" that we have an even more stringent set of guidelines than the  
12 ones already set by the State of AZ and the CDC? And yet, most of us are not even  
13 sure what those are.

14 8. I have taken photos at Tukee's in Ahwatukee, Lucky Lou's in Chandler, and  
15 Rick's Pub in Chandler (who is posting about their Saturday Club Night). The first two  
16 pictures were taken by my bartender on August 14, at 10:58 PM. I saw the pictures on her  
17 phone with that timestamp. I recognize the location as Rick's Pub. The second two photos  
18 I took at Lucky Lou's in Chandler on August 12. The final picture I took myself at  
19 Tukee's in Ahkatukee in August 11. As you can see, there is alcohol being served in all of  
20 these location. These locations have *bars* even though they have series 12 licenses.





9. I realize that because of this Pandemic almost everyone has had various problems, financial or otherwise. My sales went down drastically as did many other businesses. I am not asking for SPECIAL treatment. I am asking that we be treated the SAME as the other Class 12 Establishments that are allowed to remain open for no reason

1 other than they have a different (and much less expensive) license than we do. I am asking  
2 that they be held to the same standards as we are not a different set of standards. If we  
3 can't have Live Music, why can they? The same with Karaoke, Trivia, Parlor Games, etc.  
4 Please, enough with the double standards, they are only causing problems. I know for a  
5 fact there are Class 12 restaurant/bars calling the Liquor Board on Class 6 bars with the  
6 sole purpose of having them closed. Just so that the guests from those bars will go down  
7 the street to theirs.

8 10. For me to do take-out only is not worth being open. I pay my cooks \$16-  
9 \$21/hour, the bartender \$9/hour (to answer the phone and run the computer). My rent is  
10 roughly \$7500/month, SRP \$2500 last month, Direct TV \$800, SW Gas \$400, Century  
11 Link \$165. Then throw in Liability and Workman's Comp Insurance. These bills are not  
12 stopping. Payroll (if there is any). I feel my liquor license, that used to be worth a lot, is  
13 now worth nothing. I do not know how much longer I will be able to remain in business. I  
14 am still applying for other grants and loans through the County and City so if they are  
15 given to me I can hold out a few more months. And what happens when Flu Season hits?

16 I declare under penalty of perjury that the foregoing is true and correct.  
17

18 DATED this 22nd day of August, 2020.  
19  
20

21 Eva Stapleton

Eva Stapleton  
22  
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# **Exhibit Y**

1 Ilan Wurman (#034974)  
2 Sandra Day O'Connor College of Law  
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4 111 E. Taylor Street  
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7 Telephone: 480-965-2245  
8 [ilan.wurman@asu.edu](mailto:ilan.wurman@asu.edu)

9 *Attorney for Plaintiffs*

10 SUPERIOR COURT OF ARIZONA  
11 MARICOPA COUNTY

12 JAVIER AGUILA, et al.,  
13  
14 Plaintiffs,

15 vs.

16 DOUG DUCEY, in his individual  
17 capacity, and in his official capacity as  
18 the Governor of the State of Arizona;  
19 THE ARIZONA DEPARTMENT OF  
20 HEALTH SERVICES; and THE  
21 ARIZONA DEPARTMENT OF  
22 LIQUOR LICENSES AND  
23 CONTROLS,

24 Defendants,

25 and

26 THE STATE OF ARIZONA,  
27  
28 Real Party-in-Interest.

CASE NO: \_\_\_\_\_

**Declaration of Larry Wendt**

1. I, Larry Wendt, declare as follows:
2. I am over the age of 18 and have personal knowledge of the information set forth in this declaration.

1           3.       I am a plaintiff in this action. I own The Buffalo Chip Saloon & Steakhouse,  
2 Cowpunchers LLC. I have a class (6) License #06070277. I closed to takeout only on March  
3 16, 2020 to May 15, 2020, closed for curfew at 8pm from May 31, 2020 to June 8, 2020,  
4 closed completely on July 9, 2020 to current.

5           4.       Prior to June 29, 2020, I posted the following signage at all entrances and set  
6 up the following sanitation and operations protocols:

7                   A. Asked all staff and customers to stay home if they had COVID  
8                   symptoms or felt uncomfortable coming to The Buffalo Chip.

9                   B. Revised all seating and standing capacities by removing tables &  
10                   chairs and instructing customers to distance. Indoor and outdoor  
11                   capacities were reduced by 67%.

12                   C. Served all drinks in covered plastic disposable cups with lids and  
13                   wrapped straws.

14                   D. Served all food in single use disposable, covered containers for on site  
15                   or off site consumption.

16                   E. All eating utensils and condiments served in wrapped or portion  
17                   controlled packets.

18                   F. Underwent complete kitchen remodel with installation of heated  
19                   serving units and N.S.F. sneeze guards in all service areas.

20                   G. All staff required to wear face masks.

21                   H. Scanned temperature of staff each shift prior to working and scanned  
22                   customers before entering.

23                   I. Prepared and encouraged “to go” meal and drink kits for off-site  
24                   consumption.

25                   J. Reduced hours of operation from 10am-2:30am daily to 10am-8pm.

26                   K. Eliminated ALL entertainment including special events, bull riding,  
27                   live music and dancing, and gatherings over 50 people.

28                   NOTE: The Buffalo Chip is in the small community of Cave Creek which

1 had a small number of COVID cases and deaths.

2 Staff was encouraged to get tested for COVID if they had symptoms or  
3 were worried about contracting COVID. Out of 77 staff, ZERO tested  
4 positive.

5 To our knowledge, no customer of The Buffalo Chip has contracted  
6 COVID.

7 The Buffalo Chip has a 1,580 square foot commercial kitchen and holds  
8 (3) MCESD Licenses including eating & drinking, off-site catering, and  
9 outdoor grilling.

10 80% of seating at The Buffalo Chip is in outdoor/covered areas.  
11

12 5. Only July 8, 2020, Liquor Control Detective Mark Ramirez came to The  
13 Buffalo Chip and observed operations for about 25 minutes until I could arrive and meet  
14 with him. He introduced himself and said “I’ve got some bad news for you, you are going  
15 to have to close by tomorrow to comply with Governor Ducey’s order.” I said “as you can  
16 see the (3) customers in here are eating and drinking and in fact, they all (3) are working  
17 here. I have a full commercial kitchen, follow COVID guidelines, and average 57% sales  
18 of food for the past year. I have point of sales reports for you to look at to prove this.” I am  
19 attaching my sales report to this declaration.

20 6. Detective Ramirez replied “I was in last Saturday night, under cover, and I  
21 saw you were following the rules. It has nothing to do with how much food you sell or if  
22 you have masks and distancing. It is being enforced by the DLLC and Governor because  
23 you are a Class 6 License.” I explained that “other Class 6’s” throughout the area were  
24 completely open and that I had received no prior notice or warning I was going to be closed.  
25 He asked if I intended to comply and I explained “I had no choice if you intend to suspend  
26 my license.” He reinforced they would. I asked if I would receive anything formally to  
27 document closing and he said “no, but I’ll come back Monday to make sure you are closed.”

28 7. We completely closed on July 9<sup>th</sup>, 2020 and remain closed. It is not cost

1 effective to open for takeout only, when 20 of 27 eating and drinking establishments in  
2 Cave Creek were allowed to stay open and serve food and drink, with live entertainment,  
3 indoors, for extended hours. I have included photographs of some of these establishments.

4 8. Handle Bar J's Bar and Grill in Scottsdale is a direct competitor and friend.  
5 They are a class 6 establishment and offer BBQ, beer, wine, and liquor at a full bar, and live  
6 entertainment, including live music and dancing. They have not been ordered to close as of  
7 August 15,2020. We share the same customer base and COVID risks. I have attached  
8 photographs and evidence.

9 9. 1. From January 1, 2020 to March 19, 2020 while The Buffalo Chip was open  
10 without Coronavirus sanctions, we grossed \$1,725,116.03 in 2 ½ months.  
11 From March 20, 2020 to May 15, 2020 while The Buffalo Chip was under  
12 Governors Sanctions, we grossed \$164,828.06 in 2 ½ months (A loss of  
13 \$1,560,287.97).

14 2. We have not opened or sold any food or beverage since July 9, 2020.  
15 During this same period, during 2019, we grossed approximately  
16 \$878,000.00.

17 I estimate we have lost 2.6 million dollars so far.

18 3. Our Class 6 license has decreased severely in value because of the sanctions  
19 and the Governor allowing Class 12's the same privileges a Class 6 had  
20 without the sanctions including "to go" liquor.

21 4. I still pay mortgage, utilities, insurance, taxes and employee benefits of  
22 about \$2,000.00 per day to keep the business legitimate. Otherwise, I will lose  
23 the entire value of the business I built over 22 years and spent my entire life  
24 savings to purchase.

25 10. We are at risk of being able to reopen now and I estimate within 3 weeks, I  
26 will be forced to close permanently.

27 I declare under penalty of perjury that the foregoing is true and correct.  
28

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DATED this 21st day of August, 2020.

Larry Wendt  
Larry Wendt

EVIDENCE  
FROM A

Handkebar J

HANDKE BAR "J" BAR &  
GRILL 7116 E. BUCKER LN  
SCOTTSDALE AZ 85254  
CLASS B LICENSE



DINNER MENU HAPPY HOUR

BECOME AN HBJ STAR Receive updates on special events, new menu items, menu reviews, and more!

Write a Review, Win \$500! Help guests by leaving a review of your favorite dishes. Be entered in a drawing to win \$500 on 9/1.

Come enjoy one of the best happy hours in Scottsdale!  
Wednesday-Saturday 3-6pm. (bar area and patio only.)  
(Times could vary due to Covid issues)

No substitutions on HH menu. HH is available for dine-in only!

## Hours

^ Handlebar J BBQ Restaurant & Bar

<b>Monday</b>	<b>Closed</b>
Tuesday	Closed
Wednesday	4:30–10PM
Thursday	4:30–11PM
Friday	4:30–11PM
Saturday	4:30–11PM
Sunday	Closed

Suggest an edit

---

∨ Happy hours 4–7PM

---

Updated by business 3 days ago



Handlebar J

Jul 17 · 🌐



9

1 Comment



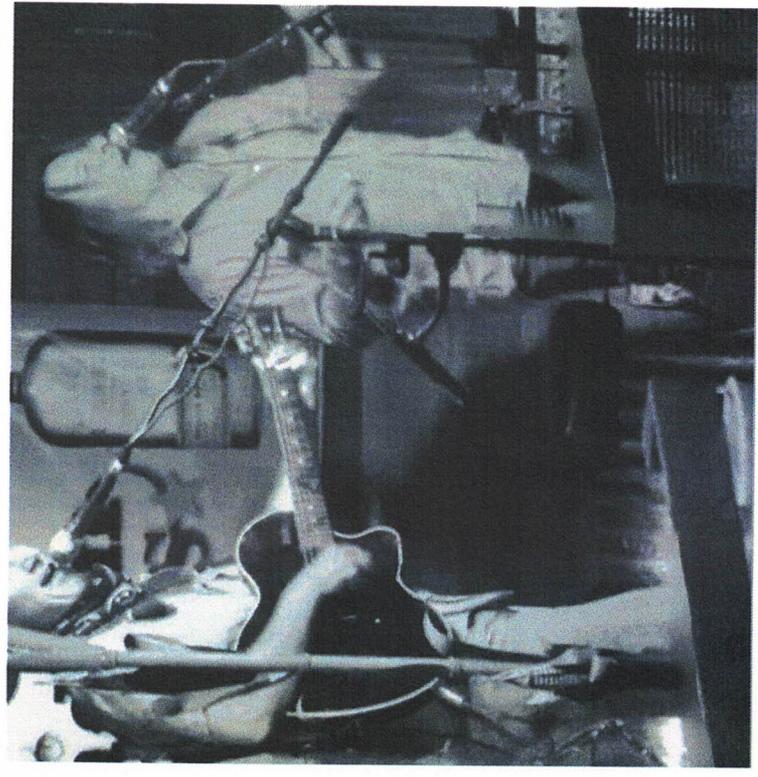
[Home](#) [Reviews](#) [Photos](#) [Posts](#) [Videos](#) [C...](#)



**Handlebar J** added a 3D photo — 😊  
feeling lucky.

Aug 7 · 🌐

Live Music Tonight. The Ray & Gary Show. 7:30-10ish



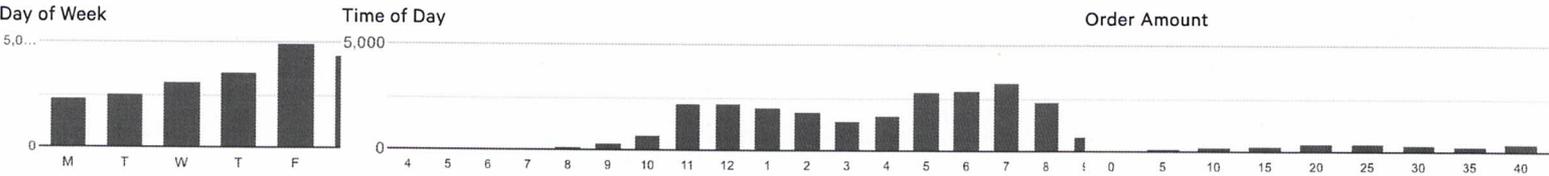
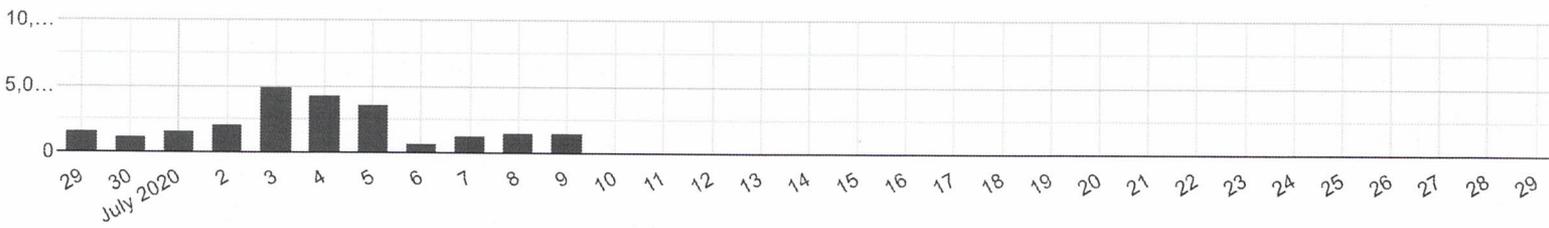
Call Now



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**Sales Summary** Orders Order Details Payments Shifts Cash Activity Audit Cash Drawer History

### Sales Summary



Net Sales	\$24,468.63
Gratuity	\$0.00
Tax Amount	\$2,257.64
Tips	\$3,821.93
Tips Withheld	\$0.00
Deferred (Gift Cards)	\$100.00
<b>Total Amount</b>	<b>\$30,648.20</b>

Expected Closeout Cash ⓘ	\$1,964.07
Actual Closeout Cash ⓘ	\$1,961.58
<b>Cash Overage/Shortage</b>	<b>-\$2.49</b>
Expected Deposit ⓘ	\$1,961.58
Actual Deposit ⓘ	\$1,981.25
<b>Deposit Overage/Shortage</b>	<b>\$19.67</b>

*Liquor = 10,780.94*  
*Food = 13,611.76*

Sales Category	Items	Net
Merchandise	54	\$1,068.99
Beverages	536	\$1,046.00
Events & VIP	2	\$246.66
Wine	23	\$159.62
Draft Beer	572	\$3,536.37
Bottled Beer	536	\$2,684.18
Liquor	549	\$4,400.77
Food	1,157	\$11,250.11
No Sales Category Assigned	12	\$75.93

Total Cash Payments	\$5,786.00
- Cash adjustments	-\$2.49
<i>(Excludes tip outs and cash collected)</i>	
Cash before Tipouts	\$5,783.51
- Cash gratuity	\$0.00
- Credit/Non-Cash gratuity	\$0.00
- Credit/Non-Cash tips	-\$3,821.93
<b>Total Cash</b>	<b>\$1,961.58</b>

Revenue Centers	Items	Net
Wagon Camp	120	\$811.44
Church	111	\$847.24
Dining Room	1,200	\$8,865.91
Patio	491	\$3,551.91
Bar	1,519	\$10,392.13

	Count	Amount	Tips	Grat	Tips/Grat %	Total
<b>Credit</b>	455	\$20,790.27	\$3,821.93	\$0.00	20.0%	\$24,612.20
Amex	18	\$1,199.05	\$260.51	\$0.00	23.7%	\$1,459.56
Discover	10	\$641.51	\$103.29	\$0.00	17.6%	\$744.80
Mastercard	71	\$3,020.03	\$622.02	\$0.00	22.5%	\$3,642.05
Visa	356	\$15,929.68	\$2,836.11	\$0.00	19.4%	\$18,765.79
<b>Gift Card</b>	2	\$250.00	\$0.00	\$0.00	0.0%	\$250.00
<b>Cash</b>	262	\$5,786.00 ⓘ	\$0.00	\$0.00	0.0%	\$5,786.00
<b>Other</b>	0	\$0.00	\$0.00	\$0.00	0.0%	\$0.00
<b>Subtotal</b>	719	\$26,826.27	\$3,821.93	\$0.00	19.7%	\$30,648.20
<b>Refunds</b>						-\$200.00

Dining Option	Orders	Net Sales
Dine In	693	\$24,344.43
Phone Take Out	3	\$70.22
Walk In To Go	2	\$53.98
None	1	\$0.00

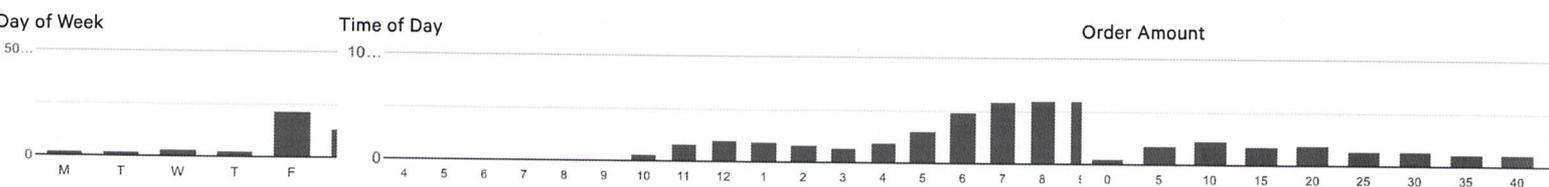
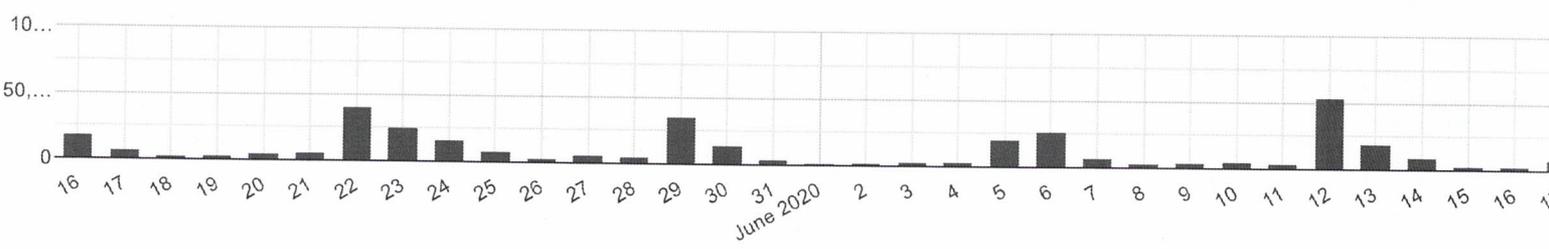
Tax Rate	Tax	Net
Sales Tax	\$2,257.64	\$24,268.63
Non Taxable	N/A	\$200.00

Discount	Count	Amount
15% Discount	1	\$1.65
Manager Comp 100% (Item)	1	\$10.98
Employee Discount (Check)	45	\$306.37
Manager Comp 100% (Check)	26	\$482.98

	TOTAL	Quick Service	Table Service
<b>Net Sales:</b>	\$24,468.63	\$11,045.98	\$13,422.65
% of Total:		45.14%	54.86%
<b>Total Guests:</b>	1,157	461	696
% of Total:		39.84%	60.16%
<b>Avg/Guest:</b>	\$21.15	\$23.96	\$19.29
<b>Total Payments:</b>	719	452	267
% of Total:		62.87%	37.13%
<b>Avg/Payment:</b>	\$37.31	\$26.89	\$54.95
<b>Total Orders:</b>	699	456	243
% of Total:		65.24%	34.76%
<b>Avg/Order:</b>	\$35.01	\$24.22	\$55.24

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### Sales Summary



Net Sales	\$498,979.08
Gratuity	\$4,217.79
Tax Amount	\$46,431.32
Tips	\$79,750.74
Tips Withheld	\$0.00
Deferred (Gift Cards)	\$150.00
<b>Total Amount</b>	<b>\$629,528.93</b>

Expected Closeout Cash	\$38,915.81
Actual Closeout Cash	\$39,066.72
<b>Cash Overage/Shortage</b>	<b>\$150.91</b>
Expected Deposit	\$39,066.72
Actual Deposit	\$38,782.50
<b>Deposit Overage/Shortage</b>	<b>-\$284.22</b>

*Liquor = 329,628.28*  
*Food = 168,787.72*

Unpaid Amount	\$376.22
---------------	----------

Total Cash Payments	\$122,874.14
+ Cash adjustments	\$1,055.82
(Excludes tip outs and cash collected)	
Cash before Tipouts	\$123,929.96
- Cash gratuity	-\$155.15
- Credit/Non-Cash gratuity	-\$4,062.64
- Credit/Non-Cash tips	-\$79,750.62
<b>Total Cash</b>	<b>\$39,961.55</b>

Sales Category	Items	Net
Merchandise	576	\$12,017.51
Beverages	10,040	\$17,474.99
Events & VIP	391	\$13,096.79
Wine	642	\$4,550.93
Draft Beer	8,356	\$52,834.58
Bottled Beer	20,733	\$101,721.52
Liquor	21,424	\$170,521.25
Food	13,719	\$126,198.43
No Sales Category Assigned	54	\$563.08

	Count	Amount	Tips	Grat	Tips/Grat %	Total
<b>Credit</b>	13,792	\$422,110.04	\$79,750.62	\$4,051.81	21.6%	\$505,912.47
Amex	549	\$23,269.20	\$4,488.10	\$299.65	22.5%	\$28,056.95
Discover	175	\$4,802.03	\$861.54	\$42.61	20.5%	\$5,706.18
Mastercard	1,730	\$59,857.02	\$12,135.64	\$513.11	23.1%	\$72,505.77
Visa	11,338	\$334,181.79	\$62,265.34	\$3,196.44	21.3%	\$399,643.57
<b>Gift Card</b>	17	\$320.98	\$0.00	\$0.00	0.0%	\$320.98
<b>Cash</b>	8,378	\$122,718.99	\$0.12	\$155.15	0.1%	\$122,874.26
<b>Other</b>	3	\$59.17	\$0.00	\$10.83	20.0%	\$70.00
VIP Deposit Redeem	3	\$59.17	\$0.00	\$10.83	20.0%	\$70.00
<b>Subtotal</b>	22,190	\$545,209.18	\$79,750.74	\$4,217.79	21.6%	\$629,177.71

Revenue Centers	Items	Net
Skybox	481	\$7,309.64
Pavilion	658	\$9,059.24
Merchandise	230	\$4,711.06
Buffet Bar	3,958	\$23,789.23
Wagon Camp	5,219	\$32,650.10
Suites	841	\$6,568.20
Church	12,730	\$77,120.53
Dining Room	12,096	\$83,722.47
Patio	6,864	\$45,738.72
Bar	32,858	\$208,309.89

Refunds	-\$105.00
Refunds In Range	-\$25.00
<b>Total Payments</b>	<b>\$629,072.71</b>

Dining Option	Orders	Net Sales
Dine In	21,252	\$498,017.94
Phone Take Out	24	\$956.11
Walk In To Go	1	\$5.03
None	3	\$0.00

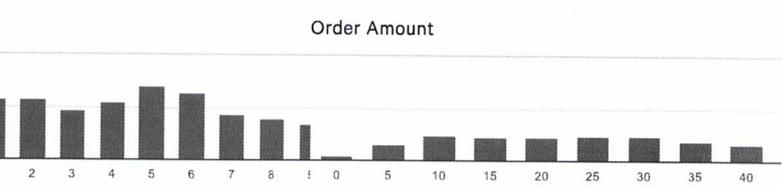
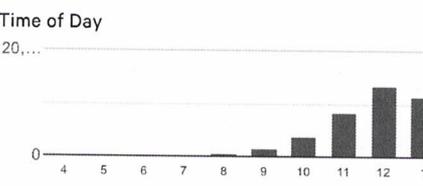
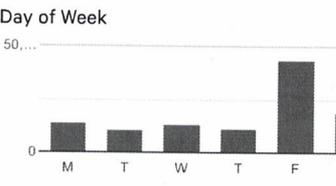
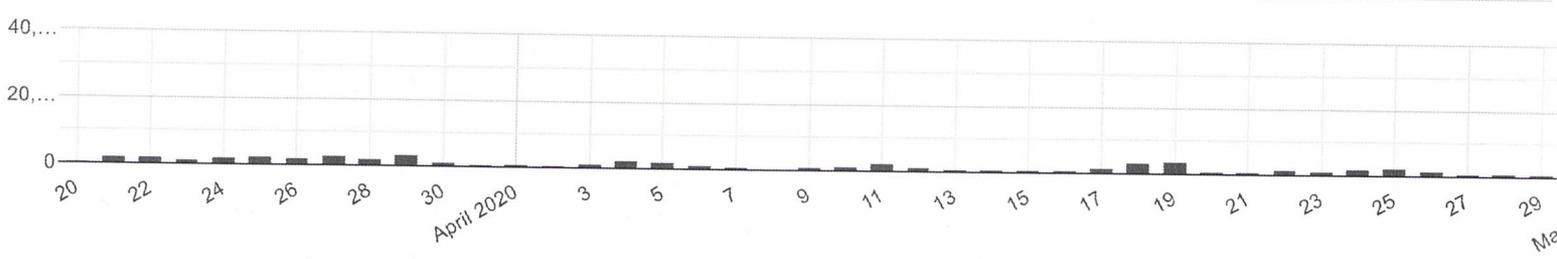
	TOTAL	Quick Service	Table Service
Net Sales:	\$498,979.08	\$312,776.80	\$186,202.28
% of Total:		62.68%	37.32%
Total Guests:	27,874	17,783	10,091
% of Total:		63.80%	36.20%
Avg/Guest:	\$17.90	\$17.59	\$18.45
Total Payments:	22,190	17,531	4,659
% of Total:		79.00%	21.00%
Avg/Payment:	\$24.57	\$19.49	\$55.68

Tax Rate	Tax	Net
Sales Tax	\$46,431.32	\$498,979.06

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Sales Summary Orders Order Details Payments Shifts Cash Activity Audit Cash Drawer History

### Sales Summary



Net Sales	\$131,763.59
Gratuity	\$11.26
Tax Amount	\$12,240.61
Tips	\$20,287.60
Tips Withheld	\$0.00
Deferred (Gift Cards)	\$525.00
<b>Total Amount</b>	<b>\$164,828.06</b>

Expected Closeout Cash	\$22,765.88
Actual Closeout Cash	\$22,917.78
<b>Cash Overage/Shortage</b>	<b>\$151.90</b>
Expected Deposit	\$22,917.78
Actual Deposit	\$22,992.45
<b>Deposit Overage/Shortage</b>	<b>\$74.67</b>

Liquor = 67,433.07  
Food = 60,456.83

Sales Category	Items	Net
Merchandise	242	\$4,336.68
Beverages	1,939	\$4,475.06
Offsite Catering	1	\$5.00
Events & VIP	41	\$427.62
Wine	225	\$1,724.46
Draft Beer	2,517	\$14,401.49
Bottled Beer	3,815	\$18,453.35
Liquor	3,945	\$32,853.77
Food	5,976	\$51,212.47
No Sales Category Assigned	507	\$3,873.69

Total Cash Payments	\$42,983.47
+ Cash adjustments	\$151.90
(Excludes tip outs and cash collected)	
Cash before Tipouts	\$43,135.37
- Cash gratuity	-\$8.33
- Credit/Non-Cash gratuity	-\$2.93
- Credit/Non-Cash tips	-\$20,287.60
<b>Total Cash</b>	<b>\$22,836.51</b>

	Count	Amount	Tips	Grat	Tips/Grat %	Total
<b>Credit</b>	3,343	\$101,389.91	\$20,287.60	\$2.93	21.8%	\$121,680.44
Amex	205	\$7,511.99	\$1,739.95	\$0.00	25.3%	\$9,251.94
Discover	37	\$1,201.72	\$240.77	\$0.00	21.8%	\$1,442.49
Mastercard	451	\$13,760.42	\$2,980.65	\$1.10	23.6%	\$16,742.17
Visa	2,650	\$78,915.78	\$15,326.23	\$1.83	21.2%	\$94,243.84
<b>Gift Card</b>	5	\$164.15	\$0.00	\$0.00	0.0%	\$164.15
<b>Cash</b>	2,448	\$42,975.14	\$0.00	\$8.33	0.0%	\$42,983.47
<b>Other</b>	0	\$0.00	\$0.00	\$0.00	0.0%	\$0.00
<b>Subtotal</b>	5,796	\$144,529.20	\$20,287.60	\$11.26	21.8%	\$164,828.06
<b>Refunds</b>						-\$3,170.00

Revenue Centers	Items	Net
Merchandise	7,489	\$54,755.68
Buffet Bar	425	\$2,603.11
Wagon Camp	506	\$3,397.80
Church	1,517	\$9,092.95
Dining Room	2,563	\$17,458.47
Patio	1,203	\$8,250.09
Bar	5,484	\$35,942.65
No Revenue Center	21	\$262.84

Dining Option	Orders	Net Sales
Dine In	5,661	\$128,383.26
Phone Take Out	78	\$3,296.16
Walk In To Go	1	\$84.17
None	3	\$0.00

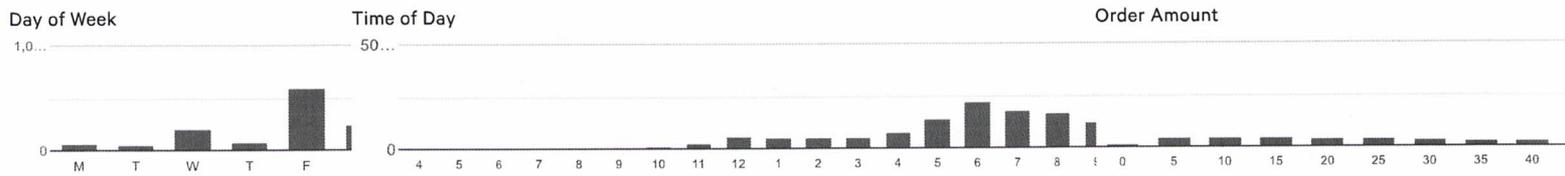
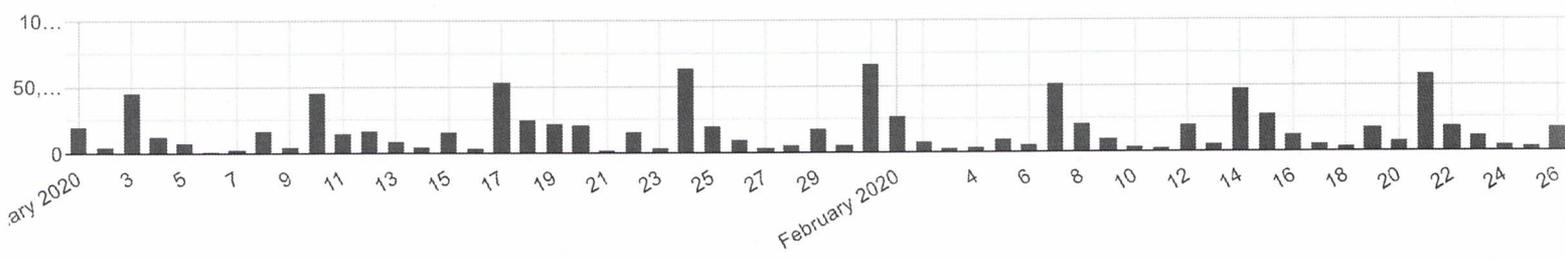
Tax Rate	Tax	Net
Sales Tax	\$12,240.61	\$131,608.59
Non Taxable	N/A	\$155.00

Service Charge	Count	Amount

	TOTAL	Quick Service	Table Service
<b>Net Sales:</b>	\$131,763.59	\$110,563.09	\$21,200.50
% of Total:		83.91%	16.09%
<b>Total Guests:</b>	6,361	5,327	1,034
% of Total:		83.74%	16.26%
<b>Avg/Guest:</b>	\$20.71	\$20.76	\$20.50
<b>Total Payments:</b>	5,796	5,248	548
% of Total:		90.55%	9.45%
<b>Avg/Payment:</b>	\$24.94	\$23.12	\$42.28
<b>Total Orders:</b>	5,743	5,290	453
% of Total:		92.11%	7.89%
<b>Avg/Order:</b>	\$22.94	\$20.90	\$48.50

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### Sales Summary



Net Sales	\$1,362,920.22
Gratuity	\$45,583.77
Tax Amount	\$126,640.42
Tips	\$157,961.62
Tips Withheld	\$0.00
Deferred (Gift Cards)	\$600.00
Deferred (Other)	\$31,410.00
<b>Total Amount</b>	<b>\$1,725,116.03</b>
Unpaid Amount	\$5,698.40

Sales Category	Items	Net
Merchandise	2,000	\$51,039.53
Beverages	11,386	\$35,034.78
Events & VIP	7,944	\$148,838.31
Wine	3,788	\$28,307.89
Draft Beer	25,101	\$148,939.04
Bottled Beer	43,878	\$203,512.98
Liquor	43,794	\$363,504.74
Food	45,836	\$383,742.95

Revenue Centers	Items	Net
Skybox	2,862	\$32,991.07
Pavilion	6,387	\$83,359.05
Merchandise	1,286	\$32,480.80
Buffet Bar	10,118	\$60,280.28
Wagon Camp	17,710	\$91,124.64
Suites	3,677	\$26,842.22
Church	26,955	\$212,394.43
Dining Room	27,767	\$234,981.54
Patio	21,146	\$161,680.09
Bar	65,819	\$426,786.10

Dining Option	Orders	Net Sales
Dine In	48,618	\$1,362,590.98
Phone Take Out	7	\$129.69
Walk In To Go	10	\$199.55

Tax Rate	Tax	Net
Sales Tax	\$126,640.42	\$1,362,235.70
Non Taxable	N/A	\$684.52

Expected Closeout Cash	\$163,886.59
Actual Closeout Cash	\$164,131.59
<b>Cash Overage/Shortage</b>	<b>\$245.00</b>
Expected Deposit	\$164,131.59
Actual Deposit	\$167,869.65
<b>Deposit Overage/Shortage</b>	<b>\$3,738.06</b>
Total Cash Payments	\$371,537.52
- Cash adjustments	-\$3,278.49
<i>(Excludes tip outs and cash collected)</i>	
Cash before Tipouts	\$368,259.03
- Cash gratuity	-\$1,542.35
- Credit/Non-Cash gratuity	-\$44,061.42
- Credit/Non-Cash tips	-\$157,945.62
<b>Total Cash</b>	<b>\$164,709.64</b>

Liquor = 744,264.65  
Food = 618,655.75

	Count	Amount	Tips	Grat	Tips/Grat %	Total
<b>Credit</b>	29,426	\$1,126,129.89	\$157,937.12	\$39,538.03	19.1%	\$1,323,605.04
Amex	1,810	\$132,501.14	\$15,099.28	\$8,997.21	19.8%	\$156,597.63
Discover	570	\$18,053.66	\$2,787.40	\$90.11	17.3%	\$20,931.17
Mastercard	4,287	\$208,481.85	\$27,367.29	\$9,704.36	19.4%	\$245,553.50
Visa	22,759	\$767,093.24	\$112,683.15	\$20,746.35	18.9%	\$900,522.74
<b>Gift Card</b>	32	\$660.29	\$8.50	\$0.00	1.4%	\$668.79
<b>Cash</b>	21,999	\$369,995.17	\$16.00	\$1,542.35	0.5%	\$371,553.52
<b>Other</b>	177	\$24,836.84	\$0.00	\$4,523.39	19.9%	\$29,360.23
Deposit Redeem	39	\$10,947.08	\$0.00	\$2,003.15	20.0%	\$12,950.23
VIP Deposit Redeem	138	\$13,889.76	\$0.00	\$2,520.24	19.8%	\$16,410.00
<b>Subtotal</b>	51,634	\$1,521,622.19	\$157,961.62	\$45,603.77	19.1%	\$1,725,187.58
<b>Refunds</b>						-\$2,951.64
<b>Refunds In Range</b>						-\$6,049.95
<b>Total Payments</b>						\$1,722,235.94

	TOTAL	Quick Service	Table Service
<b>Net Sales:</b>	\$1,362,920.22	\$877,322.62	\$485,597.60
% of Total:		64.37%	35.63%
<b>Total Guests:</b>	67,915	40,581	27,334
% of Total:		59.75%	40.25%
<b>Avg/Guest:</b>	\$20.07	\$21.62	\$17.77
<b>Total Payments:</b>	51,634	40,441	11,193
% of Total:		78.32%	21.68%

# **Exhibit Z**

# Considerations for Restaurants and Bars

## Considerations for Restaurants & Bars

Updated July 17, 2020

[Print](#)

As restaurants and bars resume operations in some areas of the United States, CDC offers the following considerations for ways in which operators can protect employees, customers, and communities and slow the spread of COVID-19. Restaurants and bars can determine, in collaboration with [state and local health officials](#), whether and how to implement these considerations, making adjustments to meet the needs and circumstances of the local community. Implementation should be guided by what is feasible, practical, acceptable, and tailored to the needs of each community. These considerations are meant to supplement—**not replace**—any state, local, territorial, or tribal health and safety laws, rules, and regulations with which businesses must comply.

## Guiding Principles to Keep in Mind

The more an individual interacts with others, and the longer that interaction, the higher the risk of COVID-19 spread. The risk of COVID-19 spread increases in a restaurant or bar setting as follows:

- **Lowest Risk:** Food service limited to drive-through, delivery, take-out, and curbside pick up.
- **More Risk:** Drive-through, delivery, take-out, and curbside pick up emphasized. On-site dining limited to outdoor seating. Seating capacity reduced to allow tables to be spaced at least 6 feet apart.
- **Even More Risk:** On-site dining with both indoor and outdoor seating. Seating capacity reduced to allow tables to be spaced at least 6 feet apart.
- **Highest Risk:** On-site dining with both indoor and outdoor seating. Seating capacity **not** reduced and tables **not** spaced at least 6 feet apart.

COVID-19 is mostly spread by respiratory droplets released when people talk, cough, or sneeze. It is thought that the virus may spread to hands from a contaminated surface and then to the nose or mouth, causing infection. Therefore, personal prevention practices (such as [handwashing](#), [staying home when sick](#)) and environmental [cleaning and disinfection](#) are important principles that are covered in this document. Fortunately, there are a number of actions operators of restaurants and bars can take to help lower the risk of COVID-19 exposure and spread.

## Promoting Behaviors that Reduce Spread

Restaurants and bars may consider implementing several strategies to encourage behaviors that reduce the spread of COVID-19 among employees and customers.

- **Staying Home when Appropriate**
  - Educate employees about when they should [stay home](#) and when they can return to work.
    - Actively encourage employees who are sick or have recently had a [close contact](#) with a person with COVID-19 to stay home. Develop policies that encourage sick employees to stay at home without fear of reprisal, and ensure employees are aware of these policies.
    - [Employees should stay home](#) if they have tested positive for or are showing COVID-19 [symptoms](#).
    - Employees who have recently had a [close contact](#) with a person with COVID-19 should also [stay home and monitor their health](#).
    - CDC's criteria can help inform when employees they may return to work:
      - [If they have been sick with COVID-19](#)

- If they have recently had a close contact with a person with COVID-19
- **Hand Hygiene and Respiratory Etiquette**
  - Require frequent employee [handwashing](#) (e.g. before, during, and after preparing food; after touching garbage) with soap and water for at least 20 seconds and increase monitoring to ensure adherence.
  - Encourage employees to cover coughs and sneezes with a tissue. Used tissues should be thrown in the trash and hands washed immediately with soap and water for at least 20 seconds.
    - If soap and water are not readily available, use hand sanitizer that contains at least 60% alcohol.
- **Cloth Face Coverings**
  - Require the use of [cloth face coverings](#) among all staff, as feasible. Face coverings are **most** essential in times when physical distancing is difficult. Information should be provided to staff on [proper use, removal, and washing of cloth face coverings](#).
    - Note: [Cloth face coverings](#) should **not** be placed on:
      - Babies and children younger than 2 years old
      - Anyone who has trouble breathing or is unconscious
      - Anyone who is incapacitated or otherwise unable to remove the cloth face covering without assistance
  - [Cloth face coverings](#) are meant to protect other people in case the wearer is unknowingly infected but does not have symptoms. [Cloth face coverings](#) are not surgical masks, respirators, or personal protective equipment.
- **Adequate Supplies**
  - Ensure adequate supplies to support [healthy hygiene](#) behaviors. Supplies include soap, hand sanitizer containing at least 60% alcohol (placed on every table, if supplies allow), paper towels, tissues, disinfectant wipes, cloth face coverings (as feasible), and no-touch/foot pedal trash cans.
- **Signs and Messages**
  - Post [signs](#) in highly visible locations (e.g., at entrances, in restrooms) that [promote everyday protective measures](#)  and describe how to [stop the spread](#)  of germs such as by [properly washing hands](#) and [properly wearing a cloth face covering](#)  .
  - Include messages (for example, [videos](#)) about behaviors that prevent spread of COVID-19 when communicating with vendors, staff, and customers (such as on business websites, in emails, and on [social media accounts](#)).
  - Find free CDC print and digital resources at the [bars and restaurant page](#), as well as on CDC's [communications resources main page](#).

## Maintaining Healthy Environments

Restaurants and bars may consider several implementing strategies to maintain healthy environments.

- **Cleaning and Disinfection**
  - [Clean and disinfect](#) frequently touched surfaces (e.g., door handles, cash registers, workstations, sink handles, bathroom stalls) at least daily, or as much as possible and as required by food safety requirements. Clean shared objects (e.g., payment terminals, tables, countertops/bars, receipt trays, condiment holders) between each use.
    - Continue to follow all required safety laws, regulations, and rules.
    - Use products that meet [EPA disinfection criteria](#)  and that are appropriate for the surface. Allow the disinfectant to remain on the surface for the contact time recommended by the manufacturer.
    - Establish a disinfection routine and train staff on proper cleaning timing and procedures to ensure safe and correct application of disinfectants.
    - Wash, rinse, and sanitize food contact surfaces with an EPA-approved food contact surface sanitizer. If a food-contact surface must be disinfected for a specific reason, such as a blood or bodily fluid cleanup or deep clean in the event of likely contamination with SARS-CoV-2, use the following procedure: wash, rinse, disinfectant according to the label instructions for the disinfectant, rinse, then sanitize with a food-contact surface sanitizer.
    - Ensure that cleaning or disinfecting product residues are not left on table surfaces. Residues could cause allergic reactions or cause someone to ingest the chemicals.
  - Develop a schedule for increased, routine cleaning and disinfection.
  - Ensure [safe and correct use](#) and storage of disinfectants to avoid food contamination and harm to employees and other individuals. This includes storing products securely away from children.
  - Use [gloves](#) when removing garbage bags or handling and disposing of trash. [Wash hands](#) after removing gloves.

- **Shared Objects**
  - Discourage sharing of items that are difficult to clean, sanitize, or disinfect.
  - Limit any sharing of food, tools, equipment, or supplies by staff members.
  - Ensure adequate supplies to minimize sharing of high-touch materials (e.g., serving spoons) to the extent possible; otherwise, limit use of supplies and equipment by one group of workers at a time and clean and disinfect between use.
  - Avoid using or sharing items that are reusable, such as menus, condiments, and any other food containers. Instead, use disposable or digital menus, single serving condiments, and no-touch trash cans and doors.
  - Use touchless payment options as much as possible, if available. Ask customers and employees to exchange cash or card payments by placing on a receipt tray or on the counter rather than by hand to avoid direct hand to hand contact. [Clean and disinfect](#) frequently touched surfaces such as pens, counters, or hard surfaces between use and encourage patrons to use their own pens.
  - Use disposable food service items (e.g., utensils, dishes, napkins, tablecloths). If disposable items are not feasible or desirable, ensure that all non-disposable food service items are handled with gloves and washed with dish soap and hot water, or in a dishwasher. Change and launder linen items (e.g., napkins and tablecloths) after each customer or party's use. Employees should [wash their hands](#) after removing their gloves or after handling used food service items.
  - Avoid use of food and beverage utensils and containers brought in by customers.
- **Ventilation**
  - Ensure that ventilation systems operate properly and increase circulation of outdoor air as much as possible, for example by opening windows and doors and prioritizing outdoor seating. Do not open windows and doors if doing so poses a safety or health risk to customers or employees (e.g., risk of falling or triggering asthma symptoms).
- **Water Systems**
  - To minimize the risk of [Legionnaires' disease](#) and other diseases associated with water, [take steps](#) to ensure that all water systems and features (e.g., sink faucets, decorative fountains, drinking fountains) are safe to use after a prolonged facility shutdown.
- **Modified Layouts and Procedures**
  - Change restaurant and bar layouts to ensure that all customer parties remain at least 6 feet apart (e.g., marking tables/stools that are not for use).
  - Limit seating capacity to allow for [social distancing](#).
  - Offer drive-through, curbside take out, or delivery options as applicable. Prioritize outdoor seating as much as possible.
  - Ask customers to wait in their cars or away from the establishment while waiting to pick up food or when waiting to be seated. Inform customers of food pickup and dining protocols on the business' website and on posted signs.
  - Discourage crowded waiting areas by using phone app, text technology, or signs to alert patrons when their table is ready. Avoid using "buzzers" or other shared objects.
  - Consider options for dine-in customers to order ahead of time to limit the amount of time spent in the establishment.
  - Avoid offering any self-serve food or drink options, such as buffets, salad bars, and drink stations.
- **Physical Barriers and Guides**
  - Install physical barriers, such as sneeze guards and partitions, particularly in areas where it is difficult for individuals to remain at least 6 feet apart. Barriers can be useful in restaurant kitchens and at cash registers, host stands, or food pickup areas where maintaining physical distance of at least 6 feet is difficult.
  - Provide physical guides, such as tape on floors or sidewalks and signage, to ensure that individuals remain at least 6 feet apart. Consider providing these guides where lines form, in the kitchen, and at the bar.
- **Communal Spaces**
  - Close shared spaces such as break rooms, if possible; otherwise stagger use and [clean and disinfect](#) between use.

## Maintaining Healthy Operations

Restaurants and bars may consider implementing several strategies to maintain healthy operations.

- **Protections for Employees at Higher Risk for Severe Illness from COVID-19**

- Offer options for employees at [higher risk for severe illness](#) (including older adults and people of all ages with certain underlying medical conditions) that limits their exposure risk (e.g., modified job responsibilities such as managing inventory rather than working as a cashier, or managing administrative needs through telework).
- Consistent with applicable law, develop policies to protect the privacy of persons at [higher risk for severe illness in accordance with applicable privacy and confidentiality laws and regulations](#).
- **Regulatory Awareness**
  - Be aware of local or state policies and recommendations related to group gatherings to determine if events can be held.
- **Staggered or Rotated Shifts and Sittings**
  - Rotate or stagger shifts to limit the number of employees in the restaurant or bar at the same time.
  - Stagger and limit dining times to minimize the number of customers in the establishment.
  - When possible, use flexible worksites (e.g., telework) and flexible work hours (e.g., staggered shifts) to help establish policies and practices for social distancing (maintaining distance of approximately 6 feet) between employees and others, especially if social distancing is recommended by state and local health authorities.
- **Gatherings**
  - Avoid group events, gatherings, or meetings where social distancing of at least 6 feet between people cannot be maintained.
- **Travel and Transit**
  - For employees who commute to work using public transportation or ride sharing, encourage them to use transportation options that minimize close contact with others (e.g., walking or biking, driving or riding by car – alone or with household members only) or consider offering the following support:
    - Ask employees to follow the CDC guidance on how to [Protect Yourself When Using Transportation](#).
    - Allow employees to shift their hours so they can commute during less busy times.
    - Ask employees to [wash their hands](#) as soon as possible after their trip.
- **Designated COVID-19 Point of Contact**
  - Designate a staff person for each shift to be responsible for responding to COVID-19 concerns. All staff members should know who this person is and how to contact them..
- **Communication Systems**
  - Put systems in place for:
    - Consistent with applicable law and privacy policies, having staff self-report to the establishment's point of contact if they have [symptoms](#) of COVID-19, a positive test for COVID-19, or were exposed to someone with COVID-19 within the last 14 days in accordance with [health information sharing regulations for COVID-19](#) [🔗](#) (e.g. see "Notify Health Officials and Close Contacts" in the **Preparing for When Someone Gets Sick** section below), and other applicable privacy and confidentiality laws and regulations.
      - Notifying staff, customers, and the public of business closures, and restrictions in place to limit COVID-19 exposure (e.g., limited hours of operation).
- **Leave (Time Off) Policies**
  - Implement flexible sick leave policies and practices that enable employees to stay home when they are sick, have been exposed, or [caring for someone who is sick](#).
    - Examine and revise policies for leave, telework, and employee compensation.
    - Leave policies should be flexible and not punish people for taking time off and should allow sick employees to stay home and away from co-workers. Leave policies should also account for employees who need to stay home with their children if there are school or childcare closures, or to care for sick family members.
  - Develop policies for return-to-work after COVID-19 illness. CDC's [criteria to discontinue home isolation](#) can inform these policies.
- **Back-Up Staffing Plan**
  - Monitor absenteeism of employees, cross-train staff, and create a roster of trained back-up staff.
- **Staff Training**
  - Train all employees in safety actions.
  - Conduct training virtually, or ensure that [social distancing](#) is maintained during training.
- **Recognize Signs and Symptoms**
  - Conduct daily health checks (e.g., temperature screening and/or [symptom checking](#)) of staff safely and respectfully, and in accordance with any applicable privacy laws and regulations.
    - Consider using examples of screening methods in CDC's [General Business FAQs](#) as a guide.

- **Support Coping and Resilience**
  - Promote employees eating healthy, exercising, getting sleep, and finding time to unwind.
  - Encourage employees to talk with people they trust about their concerns and how they are feeling.
  - Consider posting signs for the national distress hotline: 1-800-985-5990, or text TalkWithUs to 66746

## Preparing for Sick Employees

Restaurants and bars may consider implementing several strategies to prepare for when someone gets sick.

- **Advise Sick Employees of Home Isolation Criteria**
  - Communicate to sick employees that they should not return to work until they have met CDC's [criteria to discontinue home isolation](#).
- **Isolate and Transport Those Who are Sick**
  - Make sure that employees know they should not come to work if they are sick, and they should notify their manager or other designated COVID-19 point of contact if they become sick with COVID-19 [symptoms](#), test positive for COVID-19, or have been [exposed](#) to someone with COVID-19 or have been exposed to someone with COVID-19 symptoms or a confirmed or suspected case.
  - Immediately separate employees or customers with COVID-19 [symptoms](#) (i.e., fever, cough, shortness of breath). Individuals who are sick should go home or to a healthcare facility, depending on how severe their symptoms are, and follow [CDC guidance for caring for oneself and others](#) who are sick.
- **Clean and Disinfect**
  - Close off areas used by a sick person and do not use these areas until after [cleaning and disinfecting](#) them.
  - Wait at least 24 hours before cleaning and disinfecting. If 24 hours is not feasible, wait as long as possible. Ensure [safe and correct use](#) and storage of [cleaning and disinfection products](#) [\[ \]](#), including storing them securely away from children.
- **Notify Health Officials and Close Contacts**
  - In accordance with state and local laws, restaurant and bar operators should notify [local health officials](#) and staff immediately of any case of COVID-19 among employees, while maintaining confidentiality in accordance with the [Americans with Disabilities Act \(ADA\)](#) [\[ \]](#).
  - Advise those who have had [close contact](#) with a person diagnosed with COVID-19 to stay home and [self-monitor for symptoms](#), and follow [CDC guidance](#) if symptoms develop. Critical infrastructure workers may refer to [CDC Guidance for Critical Infrastructure Workers](#), if applicable.

## Communication Resources

**RESTAURANT AND BARS FOLLOW THESE 5 SAFETY STEPS to keep us all healthy**

- 1 STAY HOME IF YOU DON'T FEEL WELL** or if you tested positive for COVID-19 or were exposed to someone with COVID-19 in the last 14 days.
- 2 WASH YOUR HANDS OFTEN WITH SOAP AND WATER** for at least 20 seconds, especially before, during, and after preparing food and after handling garbage.

**5 Safety Steps for Staff**  
Restaurants and Bars: follow these 5 safety steps to keep us all healthy

Download [PDF – 290 KB]

**RESTAURANTS AND BARS**  
Reduce the Spread of COVID-19

LOWER RISK → HIGHER RISK

- Pick-up or delivery
- Outdoor seating at least 6 feet apart
- Outdoor & indoor seating at least 6 feet apart
- Outdoor & indoor seating no restrictions

Assess Your Risk  
Use this graphic to assess risk

Download [image 586 KB]

**Letter for staff**

Dear Staff,

**Letter to Staff Template**  
Send out a customized letter to your staff to inform them about steps taken to protect them.

Download [DOC – 64 KB]

**DAILY CHECKLIST FOR MANAGERS OF RESTAURANTS AND BARS**

- Urge employees to stay home if they feel unwell, tested positive for COVID-19, or were exposed to someone with COVID-19 within the last 14 days.
- Require employees to frequently wash their hands with soap and water for at least 20 seconds, especially before, during, and after preparing food and after touching garbage.
- Develop a schedule for increased routine cleaning and disinfection.



## Daily Checklist for Managers of Restaurants and Bars

Managers can use this helpful checklist

[Download](#)  [PDF – 1 page]

## Other Resources

### Cloth Face Coverings

- Require the use of [cloth face coverings](#) among all staff, as feasible. Face coverings are **most** essential in times when physical distancing is difficult. Information should be provided to staff on [proper use, removal, and washing of cloth face coverings](#).
  - Note: [Cloth face coverings](#) should **not** be placed on:
    - Babies and children younger than 2 years old
    - Anyone who has trouble breathing or is unconscious
    - Anyone who is incapacitated or otherwise unable to remove the cloth face covering without assistance
- [Cloth face coverings](#) are meant to protect other people in case the wearer is unknowingly infected but does not have symptoms. [Cloth face coverings](#) are not surgical masks, respirators, or personal protective equipment.

### Adequate Supplies

- Ensure adequate supplies to support [healthy hygiene](#) behaviors. Supplies include soap, hand sanitizer containing at least 60% alcohol (placed on every table, if supplies allow), paper towels, tissues, disinfectant wipes, cloth face coverings (as feasible), and no-touch/foot pedal trash cans.

### Signs and Messages

- Post [signs](#) in highly visible locations (e.g., at entrances, in restrooms) that [promote everyday protective measures](#)  and describe how to [stop the spread](#)  of germs such as by [properly washing hands](#) and [properly wearing a cloth face covering](#) .
- Include messages (for example, [videos](#)) about behaviors that prevent spread of COVID-19 when communicating with vendors, staff, and customers (such as on business websites, in emails, and on [social media accounts](#)).
- Find free CDC print and digital resources at the [bars and restaurant page](#), as well as on CDC's [communications resources main page](#).
- [Latest COVID-19 information](#)
- [Cleaning and Disinfection](#)
- [Guidance for Businesses and Employers](#)
- [COVID-19 Prevention](#)
- [Handwashing information](#)
- [Face coverings](#)
- [Social Distancing](#)
- [COVID-19 Frequently Asked Questions](#)
- [Frequently Asked Questions for Businesses](#)
- [Persons at higher risk](#)
- [Managing Stress and Coping](#)
- [HIPAA and COVID-19](#) 
- [CDC communication resources](#)
- [Community Mitigation](#)

Last Updated July 17, 2020

# **Exhibit AA**

# Arizona

## RESTAURANT INDUSTRY AT A GLANCE

Restaurants are a driving force in Arizona's economy. They provide jobs and build careers for thousands of people, and play a vital role in local communities throughout the state.



**10,281**  
Eating and drinking place  
locations in Arizona in 2018



**\$14.7 billion**  
Estimated sales in Arizona's  
restaurants in 2018



**310,600**  
Restaurant and foodservice jobs  
in Arizona in 2019 = 11% of  
employment in the state

**AND BY 2029, THAT  
NUMBER IS PROJECTED  
TO GROW BY 15.1%**

= 46,900 additional jobs,  
for a total of 357,500

**HOW DOES THE  
RESTAURANT INDUSTRY  
IMPACT THE  
ARIZONA ECONOMY?**

Every dollar spent in the tableservice segment  
contributes \$1.98 to the state economy.

Every dollar spent in the limited-service segment  
contributes \$1.69 to the state economy.



Arizona Restaurant Association

**FOR MORE INFORMATION:** [Restaurant.org](http://Restaurant.org) • [AZRestaurant.org](http://AZRestaurant.org)

# Arizona's Restaurants

**JOBS AND ENTREPRENEURIAL OPPORTUNITIES IN EVERY COMMUNITY**

## U.S. SENATORS

### EATING AND DRINKING PLACES:

Establishments  
in the state

Employees  
in the state\*

Kyrsten Sinema (D)

10,281

241,000

Martha McSally (R)

### EATING AND DRINKING PLACES:

Establishments  
in the state

Employees  
in the state\*

## U.S. REPRESENTATIVES

1	Tom O'Halleran (D)	997	23,364
2	Ann Kirkpatrick (D)	1,169	27,413
3	Raúl M. Grijalva (D)	838	19,638
4	Paul A. Gosar (R)	1,015	23,801
5	Andy Biggs (R)	1,028	24,102
6	David Schweikert (R)	1,562	36,605
7	Ruben Gallego (D)	1,046	24,521
8	Debbie Lesko (R)	870	20,399
9	Greg Stanton (D)	1,756	41,156

TOTAL

10,281

241,000

\*Arizona's 241,000 eating-and-drinking-place jobs represent the majority of the state's total restaurant and foodservice workforce of 310,600 jobs, with the remainder being non-restaurant foodservice positions.



Arizona Restaurant Association

**FOR MORE INFORMATION:** [Restaurant.org](http://Restaurant.org) • [AZRestaurant.org](http://AZRestaurant.org)

Source: National Restaurant Association, based on data from the Bureau of Labor Statistics & U.S. Census Bureau, 2018