

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: Civil Other/Misc.

Willy McCoys of Albertville, LLC; Willy McCoys of Andover, LLC; Willy McCoys of Bloomington, LLC; Willy McCoys of Champlin, LLC; Willy McCoys of Chaska, LLC; Willy McCoys of Shakopee, LLC (d/b/a Copper Pint); Whiskey Jacks of Ramsey LLC (d/b/a Willy McCoys Ramsey); Brickhouse Tavern, LLC (d/b/a Brewtus' Brickhouse); Last Call, LLC (d/b/a Legends Bar & Grill); Wagon Wheel of Middle River, Inc. (d/b/a The Wheel Bar and Bottle Shop); Two Captains, Inc. (d/b/a Crooks Bar and Bottle Shop); Hudy's Café, Inc. (d/b/a Hudy's Café & The Li'l Bar); Neighbors Bar and Grill, Inc. (d/b/a Neighbors Bar and Grill – Albertville); Route 75 Saloon, Inc. (d/b/a Neighbors Route 75); The Appian Way Company, LLC (d.b.a Crooked Pint Ale House Mpls); Hunn, Inc. (d.b.a Keys Café and Bakery); Jac's Bar & Grill, Inc., Acapulco of Minnesota, Inc.; Acapulco of Stillwater, Inc.; San Jose Hospitality, Inc., Acapulco of Blaine, Inc.; Acapulco of Woodbury, Inc.; Acapulco of New Brighton, Inc.; Acapulco of Ramsey, Inc.; Acapulco of Ham Lake, Inc.; and Torg Brewery, LLC,

Plaintiffs,

v.

Tim Walz, in his official capacity as  
Governor of Minnesota; Attorney General  
Keith Ellison, in his official capacity;

Court File No. \_\_\_\_\_

**SUMMONS**

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Jan Malcolm, in her capacity as the  
Commissioner of the Minnesota  
Department of Health; Steve Grove, in his  
capacity as the Commissioner of the  
Minnesota Department of Employment  
and Economic Development; and John  
Harrington, in his official capacity as the  
Commissioner of the Minnesota  
Department of Public Safety,

Defendants.

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**THIS SUMMONS IS DIRECTED TO:** Governor Tim Walz, Attorney General Keith Ellison, Commissioner Jan Malcolm, Commission Steve Grove, and Commissioner John Harrington:

1. **YOU ARE BEING SUED.** The Plaintiffs have started a lawsuit against you. The Plaintiffs' Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this Summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at:

Chestnut Cambronne PA  
100 Washington Avenue South  
Suite 1700  
Minneapolis, MN 55401

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiffs' Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiffs should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiffs everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

**CHESTNUT CAMBRONNE PA**

Dated: January 4, 2021

By: /s/ Francis J. Rondoni

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**ATTORNEYS FOR PLAINTIFFS**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: Civil Other/Misc.

Willy McCoys of Albertville, LLC; Willy McCoys of Andover, LLC; Willy McCoys of Bloomington, LLC; Willy McCoys of Champlin, LLC; Willy McCoys of Chaska, LLC; Willy McCoys of Shakopee, LLC (d/b/a Copper Pint); Whiskey Jacks of Ramsey LLC (d/b/a Willy McCoys Ramsey); Brickhouse Tavern, LLC (d/b/a Brewtus' Brickhouse); Last Call, LLC (d/b/a Legends Bar & Grill); Wagon Wheel of Middle River, Inc. (d/b/a The Wheel Bar and Bottle Shop); Two Captains, Inc. (d/b/a Crooks Bar and Bottle Shop); Hudy's Café, Inc. (d/b/a Hudy's Café & The Li'l Bar); Neighbors Bar and Grill, Inc. (d/b/a Neighbors Bar and Grill – Albertville); Route 75 Saloon, Inc. (d/b/a Neighbors Route 75); The Appian Way Company, LLC (d.b.a Crooked Pint Ale House Mpls); Hunn, Inc. (d.b.a Keys Café and Bakery); Jac's Bar & Grill, Inc., Acapulco of Minnesota, Inc.; Acapulco of Stillwater, Inc.; San Jose Hospitality, Inc., Acapulco of Blaine, Inc.; Acapulco of Woodbury, Inc.; Acapulco of New Brighton, Inc.; Acapulco of Ramsey, Inc.; Acapulco of Ham Lake, Inc.; and Torg Brewery, LLC,

Plaintiffs,

v.

Tim Walz, in his official capacity as  
Governor of Minnesota; Attorney General  
Keith Ellison, in his official capacity;

Court File No. \_\_\_\_\_

**COMPLAINT**

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Jan Malcolm, in her capacity as the  
Commissioner of the Minnesota  
Department of Health; Steve Grove, in his  
capacity as the Commissioner of the  
Minnesota Department of Employment  
and Economic Development; and John  
Harrington, in his official capacity as the  
Commissioner of the Minnesota  
Department of Public Safety,

Defendants.

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### **INTRODUCTION**

This is an action seeking a declaratory judgment from the Court finding that Executive Orders 20-99 and 20-103, issued by Governor Tim Walz, restricting the right of Plaintiffs as restaurant owners to provide indoor services, violate Plaintiffs' rights under the Equal Protection Clause of the Minnesota Constitution. While Plaintiffs do not doubt the severity of the Covid-19 pandemic nor the need for collective action to combat the effects of this insidious disease, Governor's Walz's actions have defied reason and are placing an arbitrary and severe burden on a major industry and employer in the State of Minnesota. The choice to shut down Minnesota establishments serving food and beverages, including restaurants and bars (hereinafter collectively "Restaurants" or "Restaurant" in the singular) is not supported by a rational basis and will cause irreparable harm to Plaintiffs.

## PARTIES

1. Plaintiff Willy McCoys of Albertville LLC (d/b/a Willy McCoys) (“Willy McCoys Albertville”) is a Minnesota limited liability company, with its registered office located at 515 165 Ave. NW, Andover, Minnesota. Willy McCoys Albertville owns and operates a Restaurant, Willy McCoys, which is located in Albertville, Minnesota.

2. Plaintiff Willy McCoys of Andover LLC (d/b/a Willy McCoys) (“Willy McCoys Andover”) is a Minnesota limited liability company, with its registered office located at 515 165 Ave. NW, Andover, Minnesota. Willy McCoys Andover owns and operates a Restaurant, Willy McCoys, which is located in Andover, Minnesota.

3. Plaintiff Willy McCoys of Bloomington LLC (d/b/a Willy McCoys) (“Willy McCoys Bloomington”) is a Minnesota limited liability company, with its registered office located at 515 165 Ave. NW, Andover, Minnesota. Willy McCoys Bloomington owns and operates a Restaurant, Willy McCoys, which is located in Bloomington, Minnesota.

4. Plaintiff Willy McCoys of Champlin LLC (d/b/a Willy McCoys) (“Willy McCoys Champlin”) is a Minnesota limited liability company, with its registered office located at 515 165 Ave. NW, Andover, Minnesota. Willy McCoys Champlin owns and operates a Restaurant, Willy McCoys, which is located in Champlin, Minnesota.

5. Plaintiff Willy McCoys of Chaska LLC (“Willy McCoys Chaska”) is a Minnesota limited liability company, with its registered office located at 515 165 Ave.

NW, Andover, Minnesota. Willy McCoys Chaska owns and operates a Restaurant, Willy McCoys, which is located in Chaska, Minnesota.

6. Plaintiff Willy McCoys of Shakopee LLC (d/b/a Copper Pint) (“Willy McCoys Shakopee”) is a Minnesota limited liability company, with its registered office located at 515 165 Ave. NW, Andover, Minnesota. Willy McCoys Shakopee owns and operates a Restaurant, Willy McCoys, which is located in Shakopee, Minnesota.

7. Plaintiff Whiskey Jacks of Ramsey, LLC (d/b/a Willy McCoys Ramsey) (“Willy McCoys Ramsey”) is a Minnesota limited liability company, with registered office located at 6415 Highway 10 NW, Ramsey, Minnesota. Willy McCoys Ramsey owns and operates a Restaurant, Willy McCoys, which is located in Ramsey, Minnesota.

8. Plaintiff Brickhouse Tavern, LLC (d/b/a Brewtus’ Brickhouse) (“Brickhouse Tavern”) is a Minnesota limited liability company, with registered office located at 702 4<sup>th</sup> Avenue NE, Barnesville, Minnesota. Brickhouse Tavern owns and operates a Restaurant, Brewtus’ Brickhouse, which is located in Moorhead, Minnesota.

9. Plaintiff Last Call, LLC (d/b/a Legends Bar & Grill) (“Last Call”) is a Minnesota limited liability company, with registered office located at 1107 13<sup>th</sup> Street South, Moorhead, Minnesota. Last Call owns and operates a Restaurant, Legends Bar & Grill, which is located in Moorhead, Minnesota.

10. Plaintiff Wagon Wheel of Middle River, Inc. (d/b/a The Wheel Bar and Bottle Shop) (“Wagon Wheel of Middle River”) is a Minnesota limited liability company,



with registered office located at 115 Hill Avenue South, Middle River, Minnesota. Wagon Wheel of Middle River owns and operates a Restaurant, The Wheel Bar and Bottle Shop, which is located in Middle River, Minnesota.

11. Plaintiff Two Captains, Inc. (d/b/a Crooks Bar and Bottle Shop) (“Two Captains”) is a Minnesota limited liability company, with registered office 223 North Main Avenue, Crookston, Minnesota. Two Captains owns and operates a Restaurant, Crooks Bar and Bottle Shop, which is located in Crookston, Minnesota.

12. Plaintiff Hudy’s Café, Inc. (d/b/a Hudy’s Café & The Li’l Bar) (“Hudy’s Cafe”) is a Minnesota limited liability company, with registered office located at 11350 Aquila Drive, Champlin, Minnesota. Hudy’s Café owns and operates a Restaurant, Hudy’s Café & The Li’l Bar, which is located in Champlin, Minnesota.

13. Plaintiff Neighbors Bar and Grill, Inc. (d/b/a Neighbors Bar and Grill Albertville) (“Neighbors Bar and Grill”) is a Minnesota limited liability company, with registered office located at 5772 Maine Avenue NE, Albertville, Minnesota. Neighbors Bar and Grill owns and operates a Restaurant, Neighbors Bar and Grill Albertville, which is located in Albertville, Minnesota.

14. Plaintiff Route 75 Saloon, Inc. (d/b/a Neighbors Route 75) (“Route 75 Saloon”) is a Minnesota limited liability company, with registered office located at 14420 83<sup>rd</sup> Street, Becker, Minnesota. Route 75 Saloon owns and operates a Restaurant, Neighbors Route 75, which is located in St. Joseph, Minnesota.

15. Plaintiff The Appian Way Company, LLC (d/b/a Crooked Pint Ale House Mpls) (“The Appian Way Company”) is a Minnesota limited liability company, with registered office located at 7124 17<sup>th</sup> Avenue South, Richfield, Minnesota. The Appian Way Company owns and operates a Restaurant, Crooked Pint Ale House Mpls, which is located in Minneapolis, Minnesota.

16. Plaintiff Hunn, Inc. (d/b/a Keys Café and Bakery) (“Hunn, Inc.”) is a Minnesota limited liability company, with registered office located at 1682 North Lexington Avenue, Roseville, Minnesota. Hunn Inc. owns and operates a Restaurant, Keys Café and Bakery, which is located in Roseville, Minnesota.

17. Plaintiff Jac’s Bar & Grill, Inc. (d/b/a Jac’s Bar & Grill) (“Jac’s Bar & Grill”) is a Minnesota limited liability company, with registered office located at 129 Main Street South, Chatfield, Minnesota. Jac’s Bar and Grill owns and operates a Restaurant, Jac’s Bar & Grill, which is located in Chatfield, Minnesota.

18. Plaintiff Acapulco of Minnesota, Inc. (d/b/a Acapulco) (“Acapulco of Minnesota”) is a Minnesota limited liability company, with registered office located at 12759 Riverdale Boulevard #102, Coon Rapids, Minnesota. Acapulco of Minnesota owns and operates a Restaurant, Acapulco, which is located in Andover, Minnesota.

19. Plaintiff Acapulco of Stillwater, Inc. (d/b/a Acapulco) (“Acapulco of Stillwater”) is a Minnesota limited liability company, with registered office located at

12759 Riverdale Boulevard #102, Coon Rapids, Minnesota. Acapulco of Stillwater owns and operates a Restaurant, Acapulco, which is located in Stillwater, Minnesota.

20. Plaintiff Acapulco of Blaine, Inc. (d/b/a Acapulco) (“Acapulco of Blaine”) is a Minnesota limited liability company, with registered office located at 12759 Riverdale Boulevard #102, Coon Rapids, Minnesota. Acapulco of Blaine owns and operates a Restaurant, Acapulco, which is located in Blaine, Minnesota.

21. Plaintiff Acapulco of Woodbury, Inc. (d/b/a Acapulco) (“Acapulco of Woodbury”) is a Minnesota limited liability company, with registered office located at 12759 Riverdale Boulevard #102, Coon Rapids, Minnesota. Acapulco of Woodbury owns and operates a Restaurant, Acapulco, which is located in Woodbury, Minnesota.

22. Plaintiff Acapulco of New Brighton, Inc. (d/b/a Acapulco) (“Acapulco of New Brighton”) is a Minnesota limited liability company, with registered office located at 12759 Riverdale Boulevard #102, Coon Rapids, Minnesota. Acapulco of New Brighton owns and operates a Restaurant, Acapulco, which is located in New Brighton, Minnesota.

23. Plaintiff Acapulco of Ramsey, Inc. (d/b/a Acapulco) (“Acapulco of Ramsey”) is a Minnesota limited liability company, with registered office located at 12759 Riverdale Boulevard #102, Coon Rapids, Minnesota. Acapulco of Ramsey owns and operates a Restaurant, Acapulco, which is located in Ramsey, Minnesota.

24. Plaintiff Acapulco of Ham Lake, Inc. (d/b/a Acapulco) (“Acapulco of Ham Lake”) is a Minnesota limited liability company, with registered office located at 2021

Broadway Street North, Stillwater, Minnesota. Acapulco of Ham Lake owns and operates a Restaurant, Acapulco, which is located in Ham Lake, Minnesota.

25. Plaintiff San Jose Hospitality, Inc. (d/b/a Acapulco) (“San Jose Hospitality”) is a Minnesota limited liability company, with registered office located at 12759 Riverdale Boulevard #102, Coon Rapids, Minnesota. San Jose Hospitality owns and operates a Restaurant, Acapulco, which is located in Maplewood, Minnesota.

26. Plaintiff Torg Brewery, LLC is a Minnesota limited liability company, with its registered office located at 3511 153rd Avenue N.W., Andover, MN 55304. Torg Brewery owns and operates a brewery and taproom, which is located in Spring Lake Park, Minnesota.

27. Defendant Tim Walz is the Governor of the State of Minnesota and is being sued in his official capacity. Governor Walz maintains his office at 130 State Capitol, 75 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota. Governor Walz has exercised emergency relief powers reserved under Minnesota Statutes Chapter 12 in response to the COVID-19 pandemic and the related public health threat that COVID-19 poses. However, the manner in which Governor Walz has exercised such powers has violated the rights of Restaurants across the state to be secured equal protection under the laws of the State of Minnesota in violation of the Minnesota Constitution.

28. Defendant Keith Ellison is the Attorney General of the State of Minnesota and is being sued in his official capacity. Attorney General Ellison maintains his office at

445 Minnesota Street, Saint Paul, Minnesota. Attorney General Ellison is the chief law enforcement officer with supervision over the laws in the State of Minnesota, including the enforcement of executive orders issued by Governor Walz.

29. Defendant Jan Malcolm is the Commissioner of the Minnesota Department of Health (“MDH”) and is being sued in her official capacity. MDH operates out of its principal office located at 625 N. Robert Street, St. Paul, Minnesota. MDH is the designated agency for overseeing the protection, maintenance, and improvement of the health of all Minnesotans. Commissioner Malcolm has been tasked by Governor Walz with overseeing the determination of which businesses may open and regulating how Restaurants may resume operations.

30. Defendant Steve Grove is the Commissioner for the Minnesota Department of Employment and Economic Development (“DEED”) and is being sued in his official capacity. DEED operates out of its principal office located at 332 Minnesota Street, Suite E200, St. Paul, Minnesota. DEED is the designated agency for overseeing Minnesota’s workforce and economic development. Commissioner Grove has been tasked by Governor Walz with overseeing the determination of which businesses may open and implementing mandatory guidelines regulating how Restaurants may resume operations.

31. Defendant John Harrington is the Commissioner for the Minnesota Department Public Safety (“DPS”) and is being sued in his official capacity. DPS operates

out of its principal office located at 445 Minnesota Street, St. Paul, Minnesota. Within DPS is the Alcohol and Gambling Enforcement division (“AGE”), the designated agency for overseeing licenses, investigation and compliance with the alcohol laws and regulations in the State of Minnesota. DPS and AGE are responsible for enforcing Governor Walz’s Executive Orders related to Restaurants.

### **JURISDICTION AND VENUE**

32. This action raises questions under the Minnesota Constitution, and thus, this Court has jurisdiction over all of Plaintiffs’ claims pursuant to Minn. Stat. § 484.01, subd. 1(1), and pursuant to Minn. Const., Art. VI, § 3.

33. This Court is authorized to grant declaratory relief pursuant to Minn. Stat. § 555.01 and to grant injunctive relief pursuant to Rule 65 of the Minnesota Rules of Civil Procedure.

34. Venue is proper in this county and in this district because one or more of the named defendants presently reside in Ramsey County and because the cause of action, or some part thereof, arose in Ramsey County, pursuant to Minn. Stat. § 542.03 and § 542.09.

### **BACKGROUND FACTS**

#### ***Restrictions Imposed by Governor Walz Through Executive Order on Restaurants During the COVID-19 Public Health Emergency***

35. On March 13, 2020, Governor Walz issued Emergency Executive Order 20-01, thereby declaring a peacetime emergency and in so doing, authorized the Minnesota

Department of Health to lead the coordination of the State's response to the COVID-19 (a.k.a. the "coronavirus" or "SARS-CoV-2") pandemic, including, but not limited to, providing strategies and guidance on how to prevent and reduce the community spread of COVID-19 within Minnesota. Plaintiffs recognize that COVID-19 is an unprecedented public health problem and this action is not intended to suggest otherwise.

36. On March 16, 2020, Governor Walz issued Emergency Executive Order 20-04, which ordered the closure of Restaurants for on-premises consumption and the closure of other places of public accommodation to ingress, egress, use, and occupancy by members of the public. The closure order set forth in 20-04 was to begin at 5:00 p.m. on March 17, 2020 and continue through 5:00 p.m. on March 27, 2020.

37. The purpose of Executive Order 20-04 was to slow the spread of the COVID-19 pandemic in public accommodations in which Minnesotans congregate that "pose a threat to public health by providing environments for the spread of COVID-19."

38. Order 20-04 expressly prohibited the public from entering, using, or occupying "restaurants" "and other places of public accommodation offering food or beverage for on-premises consumption."

39. Order 20-04 defined "Places of Public Accommodation" to include any business, educational facility, or institution of any kind "whose goods, services, and facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public."

40. In issuing Order 20-04, Governor Walz differentiated Places of Public Accommodation subject to the closure orders from businesses that were deemed “essential.” Specifically, Governor Walz stated that “supermarkets, pharmacies, and other establishments providing essential retail goods and services” should remain open, but that “certain other public accommodations in which Minnesotans congregate pose a threat to the public health by providing environments for the spread of COVID-19.”

41. To clarify the scope of businesses and Places of Public Accommodation subject to Order 20-04, the Governor issued Executive Order 20-08 on March 18, 2020 expanding the list of businesses prohibited from continuing to provide services under 20-04 to include a variety of additional personal care establishments, including, but not limited to, tattoo parlors, piercing parlors, massage therapy businesses, spas, salons, and barber shops.

42. Orders 20-04 and 20-08 were uniformly applied and enforced with respect to Places of Public Accommodation that provide indoor services, including, but not limited to, Restaurants, retail stores, shopping malls, churches and places of worship, and business providing personal care services.

43. On March 25, 2020, Governor Walz issued Emergency Executive Order 20-18 extending the mandatory closure of Restaurants and Places of Public Accommodation offering on-site consumption and indoor services to May 1, 2020 and further ordering



that all mandates set forth in Executive Order 20-04 with respect to the same were to remain in effect until said date.

44. On March 25, 2020, Governor Walz also issued Emergency Executive Order 20-20, in which he ordered “all persons currently living within the State of Minnesota... to stay at home or in their place of residence” except for certain exempted essential activities and work, effective at 11:59pm on March 27, 2020 and continuing through 5:00pm on April 10, 2020 (a.k.a. Minnesota’s Stay at Home Order).

45. In Order 20-20, Governor Walz declared that the “restrictions on restaurants, bars, and other places of public accommodation adopted in Executive Orders 20-04 and 20-18 remain in effect.”

46. On April 8, 2020, Governor Walz issued Emergency Executive Order 20-33, in which he extended both the Stay at Home Order set forth in Order 20-20 and the restrictions on the operations of Restaurants and Places of Public Accommodation set forth in Order 20-04 and 20-18 to 11:59 p.m. on May 3, 2020.

47. On April 13, 2020, Governor Walz issued Executive Order 20-35 extending the declared peacetime public health emergency to May 13, 2020.

48. On April 24, 2020, Governor Walz began lifting the restrictions set forth in Order 20-20 pursuant to Executive Order 20-40, which permitted employees of certain businesses in Non-Critical Sectors, including employees of industrial, manufacturing, and office-based businesses that do not involve direct interactions with customers or the

general public, to return to the workplace so long as the business established and implemented a COVID-19 Preparedness Plan and set forth plans and practices for a safe work environment.

49. On April 30, 2020, Governor Walz extended the Stay at Home Order set forth in Order 20-20 through May 17, 2020 but lifted certain restrictions to allow certain Non-Critical Sector businesses and activities to resume so long as the business established and implemented a COVID-19 Preparedness Plan and adhered to guidance issued by DEED. Businesses deemed “Non-Critical” and authorized to allow workers to return to the workplace and resume indoor operations included, but were not limited to, retail businesses, which could sell goods for outside pick-up, and businesses that provide maintenance services, repair services, and pet grooming.

50. However, Order 20-48 expressly prohibited Restaurants from reopening for on-site consumption and extended the restrictions in place regarding the same until May 17, 2020.

51. On May 13, 2020, Governor Walz issued Executive Order 20-53, which extended the peacetime emergency through June 12, 2020.

52. By May 2020, many of Minnesota’s businesses were at a point where they would have to permanently close down if not permitted to resume business operations, including Restaurants, which were hit particularly hard as a result of the Governor’s Orders restricting their operation.

53. On May 13, 2020, Governor Walz acknowledged the “sacrifices” that businesses across the state had made and issued Executive Order 20-56, which lifted and rescinded the Stay at Home Order set forth in Order 20-48 as of May 17, 2020 at 11:59 p.m.

54. Order 20-56 permitted gatherings of up to 10 persons who are not members of the same household, so long as social distancing could be maintained and permitted certain Non-Critical Business that were “customer facing” to resume providing indoor services, so long as the business adhered to certain restrictions set forth by DEED, including, but not limited to, establishing and implementing a COVID-19 Preparedness Plan with additional provisions to keep the public and workers safe.

55. Despite the lifting of restrictions for many similarly situated customer-based businesses, Governor Walz excluded Restaurants from this classification of businesses and extended the closure of Restaurants for indoor services through May 31, 2020.

56. Ten days later, Governor Walz amended Order 20-56 by issuing Order 20-62, which authorized places of worship, funeral homes, and venues offering space for weddings, funerals, and other planned services, to provide their respective services and allowed more than 10 people to gather for any such service, up to a maximum of 25 percent of the normal occupancy for indoor settings, up to a maximum of 250 people.

57. On May 27, 2020, Governor Walz issued Executive Order 20-63 requiring Restaurants to remain closed for indoor dining and limited the services that they could

provide to either (i) “to-go” orders, including take-out, drive-through, or delivery service and/or (ii) provide on-premises *outdoor service*.

58. In order for a Restaurant to provide outdoor service, DEED was ordered, pursuant to Order 20-63, to issue mandatory guidance regulating the reopening of Restaurants. MDH and the Minnesota Department of Labor and Industry were also directed to issue guidance to allow businesses to reopen.

59. On June 5, 2020, Governor Walz issued Executive Order 20-74, rescinding Executive Order 20-63 as of June 9, 2020 at 11:59 p.m. Restaurants were allowed to reopen with a maximum of 250 people, but not to exceed “50 percent of the normal occupant capacity as determined by the fire marshal.”

60. MDH created a checklist for Restaurants to operate with optimal consideration paid to the risks of indoor services. The items on this checklist are:

- Establishments are requiring customers to make reservations.
- All employees are wearing face coverings at all times over their mouth and nose.
- Customers are wearing face coverings over their mouth and nose at all times while indoors unless they are eating or drinking.
- Customers are maintaining six feet of social distancing while waiting to be seated, to use the restroom, to order a drink or food, or to pay their bill.
- All customers are seated at tables limited to parties of four, or six if members of the same household, and tables are six feet apart.
- Signs are posted that communicate face covering requirements to customers and workers.

- Establishment are filled to no more than 50 percent capacity, with a maximum of 250 people, with social distancing.
- Establishments have developed and implemented a COVID-19 preparedness plan.

(<https://www.health.state.mn.us/news/pressrel/2020/covid090920.html>).

61. On September 9, 2020, MDH issued a news release, stating that most Restaurants observed were in compliance with the safeguards listed in the checklist.

During those visits, officials say most bars and restaurants are working to comply with COVID-19 executive orders and required guidance designed to reduce the spread of the disease and keep Minnesotans safe.

**“We applaud the efforts of the many establishments and customers doing the right things and protecting workers and the public,”** said Minnesota Health Commissioner Jan Malcolm. **“We know the past six months have been tough for Minnesota’s bars and restaurants and we also know that if proper precautions are not followed in these settings, the result can be accelerated spread of COVID-19 in the community. These enforcement efforts are aimed at ensuring that the minority of businesses that are not following the guidelines bring their establishments into compliance.”**

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**“Requiring the right actions of everyone will help ensure a level playing field for businesses and will help keep bars and restaurants open in Minnesota. It will also keep our economy moving in the right direction and slow the spread of COVID-19 throughout the state,”** said Minnesota Public Safety Commissioner John Harrington.

(*Id.* (emphasis in the original).)

62. On November 10, 2020, effective November 13, 2020, Governor Walz issued Executive Order 20-96, which limited the hours for Restaurants and dialed back the capacity limit.

63. Executive Order 20-96 decreased the hours that Restaurants could be open to indoor services, based in part on Governor Walz's assertion that:

Social gatherings, celebrations, restaurants, and bars by their nature, allow people to gather and congregate around people from different households to eat and drink without face coverings, often for extended periods of interaction. These settings and gatherings can be loud, leading to a larger volume of respiratory droplets in the air as people talk, raise their voices to be heard, laugh, or sing. Many gatherings, celebrations, bars, and restaurants also serve or involve alcohol, which can lower inhibitions and interfere with effective social distancing. Further, we tend to let our guard down when we gather around close friends and family, even though the data shows that these gatherings are often just as risky as gathering around strangers. All of these factors elevate the potential for COVID-19 transmission and Minnesota is not alone in recognizing these risks. Many other states have implemented significant restrictions on gatherings and bars, restaurants, and similar places of congregation to limit the spread of COVID-19. These varied restrictions relate to gathering size; occupant capacity; indoor seating; seating at bars or other areas of close congregation; hours of operation; and alcohol sales.

(Executive Order 20-96 at 2.)

64. On November 18, 2020, eight days after issuing Executive Order 20-96, Governor Walz issued Executive Order 20-99, titled "Implementing a Four Week Dial Back on Certain Activities to Slow the Spread of COVID-19." This Order called for the

closing of all Restaurants for on-premises services, other than take-out services within certain restrictions.

65. Within the Preamble to Executive Order 20-99, Governor Walz laid out his claimed justification for the new closure order:

I recently issued Executive Order 20-96, which placed limits on the social gatherings and establishments that posed the most serious concern according to MDH data. In the week since, MDH has confirmed over 30 additional outbreaks connected to the gatherings, bars, and restaurants that were encompassed by Executive Order 20-96. Unfortunately, these numbers, our statewide cases, hospitalization rates, and our levels of community spread demonstrate that a temporary dial back on in-person social activity and restrictions on certain businesses are necessary.

66. As the four weeks “Dial Back” period was set to expire, on December 16, 2020, Governor Walz issued Executive Order 20-103, extending the closure of Restaurants for in-premises consumption, but permitting limited outdoor services to resume in Minnesota’s winter. This Order is scheduled to be in effect until January 21, 2021.

67. In Executive Order 20-103, Governor Walz stated:

With the progress we have made, we can afford to take small, measured steps to provide Minnesotans needed outlets to address these worrisome impacts. This includes some flexibility to gather in small groups with family and friends in safe, outdoor environments, including at the restaurants, bars, and entertainment venues that have been impacted so heavily by this pandemic.

Governor Walz encouraged physical activity to combat the mental health issues associated with the long-term pandemic restrictions in place, allowing that indoor “[g]ymnasiums, fitness centers, recreation centers, indoor sports facilities, indoor

climbing facilities, indoor and outdoor exercise facilities, martial arts facilities, and dance and exercise studios may be open for individual exercise” with restrictions and recognized “that restrictions on gatherings and activities create their own public health problems,” though he did nothing to lift the restrictions on indoor service at Restaurants.

68. Although Orders 20-99 and 20-103 restricted the right of Restaurants to allow customers inside of their establishments to provide indoor services, the Orders, without any sound scientific or articulable basis for the distinction, allow the following similarly-situated public gathering and accommodation businesses to continue to permit indoor operations and services, subject to certain restrictions:

- a. Barbershops, salons, and establishments providing personal care services, including tattoo and piercing parlors;
- b. Weddings, funerals, and venues that offer gathering space for weddings, funerals, or planned services; and
- c. Retail businesses, including shopping malls.

69. Thus, the effect and necessary result of Orders 20-99 and 20-103 is that Restaurants were not treated equally to other indoor customer-facing businesses and discriminated against by not being permitted to provide indoor services in the same way that Governor Walz authorized similarly situated customer-facing businesses to do so.

***The Data Produced by the State Does Not Provide a Data-Driven Basis for Differentiating Between Restaurants versus Other Customer-Facing Indoor Services.***

70. Data provided to the public by the State does not support the differentiation between Restaurants and other customer-facing businesses.



71. The Minnesota Department of Health (MDH) has published a great deal of information and statistics related to the spread of the COVID-19 virus in the State. See <https://www.health.state.mn.us/diseases/coronavirus/stats/index.html>.

72. On MDH's "Stay Safe Minnesota" FAQ page (<https://mn.gov/covid19/for-minnesotans/stay-safe-mn/faq.jsp>), MDH states that its analysis is based on "three key factors":

- [h]ow do we best control the spread of COVID-19 and keep Minnesotans safe;
- at the same time, how can we keep Minnesota employees and small businesses whole;
- and what is the safest way we can gather with loved ones, send our kids to school, and keep our minds and bodies in good shape?

Further, the MDH says that "[a]bove all else, we listen to our public health experts, doctors, nurses and front-line workers who are tirelessly serving our state every day."

73. As claimed evidence for the State's decisions, including the choice to disfavor Restaurants relative to other customer-facing businesses, the State publishes weekly "Covid-19 Reports." Included in these reports are the efforts of the MDH to attribute the "likely exposure" to the virus resulting in a case to one of nine categories.

Currently, these categories are:

- Community (outbreak): Case was exposed to a known outbreak setting in Minnesota that is not also a congregate living setting (e.g., long-term care, corrections, shelter) or health care setting. This includes restaurant/bars, sports, worksites that are not living settings, etc.
- Travel: Case traveled outside of Minnesota in the 2 weeks before illness.

- Congregate Care Setting: Residents, and staff who are not part of a non-congregate care setting outbreak and did not have an exposure to a positive household member. Congregate care settings include long-term care facilities (LTCF), assisted living facilities, group homes, or residential behavioral health (RBH) facilities.
- Corrections: Inmates who were exposed while incarcerated, and staff of a jail/prison setting who are not part of a non-corrections outbreak and did not have an exposure to a positive household member.
- Homeless/Shelter: Residents/guests, and staff who are not part of a non-shelter outbreak and did not have an exposure to a positive household member.
- Health Care: Patients who were part of nosocomial outbreaks, and staff who are not part of a non-acute health care setting outbreak and did not have an exposure to a positive household member.
- Community (known contact with confirmed case): Case has a known exposure to a positive case and does not fit into any of the previous categories.
- Community (unknown contact with confirmed case): Case has no known exposure to a positive case and does not fit into any of the previous categories.

(MDH Weekly COVID-19 Report: Updated 12/17/2020.)

74. Since late June 2020, MDH changed the way it reported the tracing of infections from contacts to “outbreaks.” An outbreak has been defined by MDH as “an incident in which two or more persons experience a similar illness after a common exposure.” In the context of contact tracing, it appears the definition accounts for a larger number of people (either 5 or 7) who became infected and had been in a similar place within a discrete timeframe. This change had the effect of increasing the attribution to places of public accommodation, because it tracked the common locations where people

who tested positive had been, though it does not mean that the infected person was infected in that location. In other words, MDH's shift to an outbreak-based method of attempting to trace infections leads to a larger probability of attributing cases to a setting that was a location common to two positive cases without any contraction of the virus necessarily having taken place at that location; the shift in method elevates correlation over causation.

75. On December 10, 2020, an organization called Let Them Play Minnesota, organized to advocate for the lifting of restrictions on youth sports, filed a federal lawsuit in the District of Minnesota. (*See* D. Minn. No. 20-cv-02505.) In that Complaint, the plaintiff described the issue with the altered method of tracking very well. The plaintiff offered a hypothetical where “a Hutchinson High School football player who played in an away game at Rocori High School on November 12 and a fan from Grand Rapids who drove down to watch a game at Rocori on November 20, both tested positive for COVID-19 on November 22, MDH would classify Rocori High School as having an ‘outbreak’ of COVID-19 even if it was obvious that both the Hutchison player and the Grand Rapids fan had contracted COVID at two different retail stores 190 miles apart and no one affiliated with Rocori contracted COVID.” (*Id.* ¶ 75.)

76. Similarly, based on MDH's definition of “Community (outbreak).” suppose 2 people unknown to each other both worked at a large worksite, and both persons went to the same Restaurant, though at different times, after having been exposed to Covid-19.

After contact tracing, the State could not differentiate between whether the exposures were at the Restaurant or the worksite, or somewhere completely different. All that would be known is that two people who were at one time exposed were at the same Restaurant. The “Community (outbreak)” category does not distinguish between the two, and these two persons could be the only ones who tested positive who had been at the Restaurant, but the Restaurant would be considered a likely source of exposure.

77. What makes this hypothetical worse, in terms of overstating the attribution of likely infection to Restaurants, is that when the MDH does its contact tracing it skews its questions to determine whether the person has been at a restaurant or bar.

78. On information and belief, a person who tested positive for COVID-19 was asked three questions as part of her contact tracing interview by the State:

- “14 days before your onset of symptoms did you go to a restaurant or bar?”
- “14 days before your onset of symptoms did you attend a community event like church, a wedding, concert or large gathering?”
- “14 days before your onset of symptoms were you directly exposed to someone with Covid?”

None of the three questions asked about the interviewee’s activities at other customer-facing indoor establishments (*e.g.* salons, barbers, tattoo parlors, retail shopping locations, etc.).

79. On information and belief, another person who tested positive for COVID-19 was asked multiple times by the State whether she had been to a Restaurant, youth

sporting event, gym or social gathering, despite the person answering each time in the negative and never being asked if she had been to other indoor settings.

80. The manner in which the State is gathering COVID-19 contact-related information unfairly and inherently slants the data against Restaurants, assuming them to be the source of outbreaks and therefore singling them out for contact tracing questioning. However, even with assuming the result, the evidence does not support the conclusion as “Community (outbreak)”, which cannot all be attributed to Restaurants, accounts for a small portion of the total likely exposures.

81. According to one report purporting to make the differentiation within the “Community (outbreak)” category, during the course of contact tracing, Minnesota had, around the time Governor Walz issued Executive Order 20-99, attributed 2766 cases to “outbreaks” at 139 Restaurants (out of the nearly 10,000) within the state. (<https://www.twincities.com/2020/11/18/here-is-every-minnesota-restaurant-and-bar-thats-had-a-covid-outbreak/>.) This represents 1.1% of the total cases where there is a “known” likely source of the infection.

82. Beyond the minimal percentage of cases attributable to the State’s contact-tracing, in the most recent COVID-19 Report by MDH the total “likely exposures” listed

as attributable to “restaurant/bars, sports, worksites that are not living settings” was 16,715 cases out of the total of 389,171, or 4.3%.<sup>1</sup>

83. These figures are undifferentiated between other members of the category and Restaurants, as is evidenced when reviewing the change in likely exposures attributed to “Community (outbreak)” the week before Governor Walz issued the shutdown of in-person dining and the most recent week for which there is data, when there was no legal indoor service at Restaurants.

84. From November 13 to November 20, 2020, the total number of cases where the “likely exposure” was classified as “Community (outbreak)” was 241 (11,666 as of 11/12 and 11,907 as of 11/19), while the total number of cases increased by 48,111 (201,795 as of 11/12 and 249,906 as of 11/19). The “Community (outbreak)” represented .5% of the increase. The week prior, from 11/5 to 11/12 showed no increase in the “Community (outbreak)” category, while there were 36,930 cases reported.

85. Governor Walz stated that the marginal increase that occurred in the week between the partial and complete shutdown of Restaurants was the reason for the need

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<sup>1</sup> Even here, the State’s data is unclear. “Community (known contact with confirmed case)” is defined where a “[c]ase has a known exposure to a positive case **and does not fit into any of the previous categories.**” (Emphasis added.) A previous category includes Restaurants, meaning it is possible, even though absurd, that if someone were to have had a known exposure to someone they met outside a restaurant or bar setting, if they attended a restaurant where there was another, unrelated exposure within 14 days (including prior to their known contact exposure), they could be attributed to the restaurant/bar category first because they would “not fit into any previous category.”

for Executive Order 20-99, referencing the “30 additional outbreaks connected to the gatherings, bars, and restaurants that were encompassed by Executive Order 20-96.” Executive Order 20-99.

86. While at most, Restaurants accounted for .5% of the new “likely exposures” reported in that one-week period, Governor Walz took the drastic step of closing all Restaurants for indoor services and only otherwise shutdown social gatherings of more than 10 people and amateur sporting events, public pools, indoor fitness facilities, mini-golf, paintball and racetracks facilities, and theatres, concert halls and bowling alleys.

87. From December 10 to December 17, 2020, sufficiently after the closing of Restaurants that there would have been no indoor services during the relevant period, the total number of cases for that period where the “likely exposure” was classified as “Community (outbreak)” was 755 (15,960 as of 12/10 and 16,715 as of 12/17), while the total number of cases increased by 21,953 (367,218 as of 12/10 and 389,171 as of 12/17). The “Community (outbreak),” which could not have included Restaurants’ indoor services, still represented 3.44% of the increase.

88. Yet even with this negative correlation between closing Restaurants to indoor services and the changes in the community outbreak rate, Governor Walz issued Executive Order 20-103 to continue the closing of Restaurants to indoor services, while maintaining the status quo for the other aspects that contribute to the “Community

(outbreak)” category or re-opening some, including indoor fitness facilities and some sporting activities.<sup>2</sup> This is not rational.

89. Governor Walz has called for **all** Restaurants shut down, notwithstanding the possibility that Restaurants might otherwise be able to comply with guidelines applicable to other consumer-facing business. In fact, compliance checks of Restaurants show they were following the rules and guidelines provided. (See <https://www.health.state.mn.us/news/pressrel/2020/covid090920.html>.) This complete shutdown, with the implicit assumption that Restaurants cannot operate safely, is not rational.

*Governor Walz’s decision to close Restaurants to indoor services will have a severe effect on a large number of Minnesotans and Minnesota businesses, with no differentiation between those that can operate with relative safety and those that cannot.*

90. Minnesota is the land of approximately 10,000 Restaurants, employing over 275,000 people.

91. Each of the named Plaintiffs can operate their businesses in a safe and sanitary manner in accordance with guidelines issued by DEED and the Center for Disease Control (“CDC”).

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<sup>2</sup> Restaurants were permitted some outdoor activities, though outdoor dining in Minnesota in December and January is of negligible financial opportunity for Minnesota’s Restaurants.



92. Most Minnesota Restaurants are capable of establishing spacing, mask requirements when not eating or drinking, limited contact with staff, or otherwise limiting the risks of exposure, short of a total ban. Instead, they were simply treated with the blunt instrument of a complete shutdown.

93. In addition to the devastating financial impact of the repeated closings, the Governor's Orders restricting the operations of Restaurants has had a very significant emotional impact upon employees and owners of Plaintiffs.

94. The uncertainty of not knowing whether an employee will be able to remain employed, and how long employment will last, creates an enormous amount of stress that continues to compound daily that is detrimental to their health and well-being. Plaintiffs are deeply concerned about the breadth of damage that the Governor's Orders will have upon workers and their families.

95. Plaintiffs have serious concern about the short and long-term effects that the harmful stress created by the loss of jobs and business is currently having and will continue to have on the health and wellbeing of the citizens of the State of Minnesota so long as Restaurants, which employ a significant portion of the state's workforce, continue to be discriminated against and prohibited from reopening in a meaningful way.

96. Governor Walz's Executive Orders 20-99 and 20-103 provide no meaningful opportunity for Plaintiffs to provide revenue-generating services or resume, at least

partially, their primary business – which is indoor services, as similarly situated customer facing businesses are able to do.

97. As a result of Executive Orders 20-99 and 20-103, Restaurants have been unfairly differentiated from substantially similar customer-facing businesses and face irreparable harm, in that Plaintiffs' businesses, their employees, and property owners will be permanently deprived of employment and ongoing business concerns without recourse.

98. Plaintiffs will no longer be able to sustain the losses incurred as a result of the Governor's Executive Orders and will be forced to permanently close down, causing further irreparable harm to all concerned.

***Executive Orders 20-99 and 20-103 violate the Equal Protection Clause of the Minnesota Constitution.***

99. The equal protection guarantees contained in Article 1, Section 2 of the Minnesota Constitution "require that persons similarly situated be treated alike unless a rational basis exists for discriminating among them." *Bernthal v. City of St. Paul*, 376 N.W.2d 422, 424 (Minn. 1985) (citing *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955); *Glassman v. Miller*, 356 N.W.2d 655 (Minn. 1984)).

100. Plaintiffs, as Restaurants, are like other similarly-situated customer-facing businesses, which have been permitted to continue indoor services, including retail businesses and personal care service businesses, where there is no rational basis upon which to make this distinction.

101. Restaurants have not been treated alike with other similarly situated businesses and disparately limited to providing only outdoor seating and services.

102. Restaurants are similar to retail businesses and personal care service businesses in all relevant respects in relation to their operations, customer services, and ability to limit the risk of exposure to and transmission of COVID-19. The State's published statistics do not warrant the distinction being made, and the disparate treatment.

103. Relevant similarities between Restaurants and businesses permitted to continue indoor operations include, but are not limited to, the following:

- a. ***Customer-Based Businesses:*** Plaintiffs, as Restaurants, primarily serve individual members of the public, and thus, are customer-based. This is similar to retail businesses, shopping malls, and personal-care service businesses, such as salons, tattoo parlors, spas, and barbershops, whose primary customers are also individual customers.
- b. ***Customer and Worker Contact:*** Plaintiffs, as Restaurants, service customers primarily through in-person interactions. When a customer comes into a Restaurant, the customer may interact with a worker for purposes of submitting an order and receiving their food or drink. This interchange is of limited duration and can be done in a masked and relatively distanced manner. Customers receiving indoor services at a Restaurant need not have further interactions with Restaurant staff. There is no physical contact required for Restaurants to provide indoor services. This is similar to retail businesses, where a customer may interact with a store worker to locate or inquire about a product and will also generally also interact with an employee to purchase the product. The customer-worker interaction for Restaurants, however, is even less than that which a customer would experience by receiving indoor services from a personal care service business, such as a hair salon, barber shop, and/or spa, where the service being performed indoor necessarily requires a hands-on interaction, where the worker must, to some degree, physically touch or come in contact with

the customer. Tattoo parlors and piercing parlors, which necessarily involve the recreational drawing of blood from a customer and consistent, prolonged and close physical contact, and therefore should carry a much higher risk of virus transmission, are permitted to resume indoor services as personal care service businesses; yet Restaurants, which simply wish to bring a customer food and drink, are prohibited from so doing.

- c. **Revenue:** Restaurants derive the majority of their revenue and income from on-premises indoor services provided to customers. This is similar to retail businesses, shopping malls, and personal care service businesses, which each generate revenue from providing on-premises indoor services, such as the selling of products and providing haircuts, grooming, skincare treatments, and other services, respectively, within the confines of their respective stores and buildings.
- d. **Location of Premises:** Restaurants operate out of rented or owned commercial space, which is similar to the physical location of retail and personal care service businesses that also operate out of commercial premises located in a stand-alone building, strip mall, or inside of a mall. While customers visiting a Restaurant are generally able to enter directly into the premises from the outdoors, customers who wish to visit retail or personal care services in malls are required to be in a shared indoor space to travel from the outdoors to the business they are visiting. Thus, it is likely that customers will have less risk of exposure entering and exiting Restaurants than customers visiting stores or businesses located in malls.
- e. **Community Space:** Restaurants, like retail businesses, are located in premises that take various forms, but generally include one shared room, with possible enclosed additions. There is no science or other reasonable basis to conclude that a customer is exposed to more risk of exposure in a community space that is located in a Restaurant than in community space maintained by a retail or personal care service business. If social distancing is maintained and the same sanitary and safety guidelines are followed, a customer shopping in a retail store would have the same, if not more, risk-exposure than a customer eating or drinking in a confined and segregated manner in a Restaurant. There is further no reason that Restaurants cannot create individual booths or confined indoor eating or drinking spaces similar to those that may be provided to customers receiving personal care services.

- f. ***Customer-to-Customer Contact:*** Restaurants pose no greater inherent risk for customer to customer interaction than the risk posed for a customer visiting a retail business or personal care service business when proper safeguards are, as they have been, instituted. In fact, the potential risk of contact with other customers is arguably less for Restaurants than for retail businesses, as customers at a Restaurant would remain stationary and seated in a designated space during their time at the Restaurant. Conversely, customers at retail business will likely be mobile during the entirety of their visit, and in so doing, interact with more customers, workers, objects, and physical space than a customer seated at a Restaurant.
- g. ***Sanitation and Safety:*** Not only are Restaurants able to employ the same safety and sanitary measures of retail businesses and personal care service businesses, but Restaurants are already do so for to-go and take-out orders. Examples include, but are certainly not limited to: requiring all patrons to remain 6-feet apart while waiting to be served and pick up to-go orders, requiring all workers to wear masks (and requiring customers to wear masks when not seated and when the server approaches the table), and routinely sanitizing frequently used surfaces, such as counters, door handles, tables, rails, chairs, keyboards, and pens. Restaurants can easily set up segregated tables so that customers are not in contact with others, open windows and direct outdoor air in for ventilation purposes, and coordinate staff so that only certain workers attend certain customers.

104. There is no justification for the disparate treatment and unequal restrictions imposed upon Restaurants prohibiting indoor services and other similarly-situated customer-facing businesses which are permitted to provide indoor services.

105. The restrictions imposed by Executive Orders 20-99 and 20-103 are manifestly arbitrary and lack any connection between the safety needs of Restaurants and those of retail businesses and/or personal care service businesses.

106. Executive Orders 20-99 and 20-103 do not legitimately allow for the state to reduce the risk of transmission of COVID-19 in a way that could not similarly be achieved by allowing Restaurants to provide indoor services with pertinent safety restrictions.

107. The State has shown no cost-benefit analysis to support the shutdown of Minnesota's Restaurants, and cannot provide a rational explanation for this disparate treatment.

**COUNT I**  
**VIOLATION OF THE EQUAL PROTECTION CLAUSE OF**  
**THE MINNESOTA CONSTITUTION**  
**(Declaratory Judgment Under Minn. Stat. § 555.01, et. seq.)**

108. Plaintiffs reallege and incorporate by reference here the allegations in the preceding paragraphs of this Complaint.

109. Plaintiffs, as businesses providing indoor Restaurant services, are similarly situated in all relevant respects with customer-facing businesses providing retail and/or personal care services to customers in the State of Minnesota.

110. Despite the similarities between Restaurants and other customer-facing businesses, Executive Orders 20-99 and 20-103 discriminate invidiously and without rational basis against Plaintiffs, as Restaurants are prohibited from providing indoor services while retail businesses, malls, and personal-care service businesses are permitted to provide indoor services.

111. The distinctions in regulatory guidance and restrictions imposed upon Plaintiffs is manifestly arbitrary and lacks a genuine or substantial basis for the disparate treatment.

112. Plaintiffs' classification as customer-facing businesses and the similar classification of retail and personal care service businesses is relevant to the alleged purpose of the law, which is purportedly to reduce the risk of transmission of COVID-19.

113. Therefore, Executive Orders 20-99 and 20-103 violate Plaintiffs' right to equal protection of the laws guaranteed by Article 1, Section 2 of the Minnesota Constitution.

114. Pursuant to Minn. Stat. §§ 555.01 *et seq.*, Plaintiffs are entitled to judgment of this Court in favor of them that declares Executive Orders 20-99 and 20-103 restricting Restaurant operations to be invalid and unenforceable with respect to its prohibition against the right of restaurants and bars to provide indoor services.

WHEREFORE, Plaintiffs respectfully requests that this Court grant relief as follows:

1. Declaring that Executive Orders 20-99 and 20-103 are invalid on grounds that they violate the Equal Protection Clause of Article 1, Section 2 of the Minnesota Constitution, in general and as applied to Plaintiffs, as owners of restaurants and bars, by restricting their ability to provide indoor services;
2. Entering a permanent injunction against Defendants prohibiting Governor Walz, the Minnesota Department of Employment and Economic Development, the Minnesota Department of Health, and the Minnesota Department of Public Safety from enforcing the provisions of Executive Orders 20-99 and 20-103 prohibiting Plaintiffs, as owners of restaurants and bars, from providing indoor services during the declared COVID-19 public health emergency;

3. Declaring that Executive Orders 20-99 and 20-103 are invalid to the extent that they restrict Restaurants from providing indoor service offerings beyond the safety restrictions previously put in place and that are currently in place for other providers of indoor services; and/or
4. For such other relief as the Court deems just and equitable.

**CHESTNUT CAMBRONNE PA**

Dated: January 4, 2021

By: /s/ Francis J. Rondoni

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**ACKNOWLEDGMENT**

Pursuant to Minn. Stat. § 549.211, subd. 1, the undersigned acknowledges that non-monetary sanctions and monetary sanctions, such as costs, disbursements, and reasonable attorney and witness fees, may be imposed.

Dated: January 4, 2021

/s/ Francis J. Rondoni  
Francis J. Rondoni, Esq.