

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THE CRACKED EGG, LLC,

Plaintiff,

v.

No. 2:20-cv-1434

**COUNTY OF ALLEGHENY, a political
subdivision of the Commonwealth of
Pennsylvania and the ALLEGHENY
COUNTY HEALTH DEPARTMENT,**

Defendants.

COMPLAINT

AND NOW, the Plaintiff, The Cracked Egg, LLC, by and through its attorneys, Robert O Lampl, James R. Cooney, Ryan J. Cooney, Sy O. Lampl, Alexander L. Holmquist, Dennis M. Blackwell and Nicolette A. Blackwell, files the within Complaint:

1. The Plaintiff is The Cracked Egg, LLC, d/b/a the Crack'd Egg (Crack'd Egg), a Pennsylvania Limited Liability Company located at 4131 Brownsville Road, Pittsburgh, PA 15227.
2. The Defendant, County of Allegheny (the County), is a home rule county and political subdivision of the Commonwealth of Pennsylvania.
3. The Defendant, Allegheny County Health Department (the ACHD), is a local health department organized under the Local Health Administration Law.

Jurisdiction and Venue:

4. This Honorable Court has jurisdiction over this proceeding pursuant to *28 U.S.C. Section 1331*.

5. Venue of this action is appropriate in the Western District of Pennsylvania pursuant to *28 U.S.C. Sections 1391 (b) (1) and 1391 (b) (2)*.

Background:

6. The Crack'd Egg operates a family restaurant in the Brentwood Section of the City of Pittsburgh.

7. The Crack'd Egg serves breakfast and lunch and is open from 7:00 AM to 2:00 PM on Monday through Saturday.

8. The Crack'd Egg has been open for business since October 5, 2015 when the ACHD issued a permit for its operation as a restaurant.

The "disaster" declarations:

9. On March 6, 2020, Pennsylvania Governor Tom Wolf issued a Proclamation of Disaster Emergency in response to the COVID-19 pandemic. A true and correct copy of the Proclamation is attached hereto as Exhibit "A."¹

10. The Governor's Proclamation was issued pursuant to the Emergency Management Services Code, *35 Pa.C.S. 7101 et seq.*

11. The Governor's emergency powers under the Code are set forth in *35 Pa.C.S. 7301 (c)*, which provides in relevant part, that:

(c) Declaration of disaster emergency. — A disaster emergency shall be declared by executive order or proclamation of the Governor upon finding that a disaster

¹ The Governor has extended the Disaster Proclamation twice. The Proclamation was first extended on June 3, 2020 and extended for a second time on August 31, 2020. See Exhibits "B" and "C" hereto.

has occurred or that the occurrence or the threat of a disaster is imminent. The state of disaster emergency shall continue until the Governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than 90 days unless renewed by the Governor.

12. In connection with the Governor's Proclamation, on July 1, 2020, the Secretary of the Pennsylvania Department of Health issued an Order "requiring universal face coverings." A true and correct copy of the Order is attached hereto as Exhibit "D."

13. In issuing her Order (Exhibit "D"), the Secretary failed to comply with the mandatory rule making procedure required under the Commonwealth Documents Law (*45 P.S. 1102 et seq.*), the Regulatory Review Act (*71 P.S. 745.1 et seq.*) and the Commonwealth Attorneys Act (*71 P.S. 732-101 et seq.*).

14. On July 16, 2020, Governor Wolf issued an Order "Directing Targeted Mitigation Measures." A true and correct copy of the Order is attached hereto as Exhibit "E."

15. Pursuant to the "Targeted Mitigation Measures," (Exhibit "E"), among other things, restaurants were limited to the lesser of:

- A. 25% of fire code stated maximum occupancy for indoor dining; or
- B. 25 persons including staff.

16. In issuing his Order (Exhibit "E"), the Governor failed to comply with the mandatory rule making procedure required under the Commonwealth

Documents Law (*45 P.S. 1102 et seq.*), the Regulatory Review Act (*71 P.S. 745.1 et seq.*) and the Commonwealth Attorneys Act (*71 P.S. 732-101 et seq.*).

The “closure” Order:

17. On August 11, 2020, the ACHD conducted an inspection of the Crack’d Egg’s restaurant.

18. As the result of its inspection, the ACHD issued a Food Safety Assessment Report. A true and correct copy of the Food Safety Assessment Report is attached hereto as Exhibit “F.”

19. As indicated, the ACHD ordered that the restaurant be closed “for failure to comply with mask or facial covering guidelines.”

20. The Report did not cite any failure of the Crack’d Egg to comply with published rules or regulations, but instead, relied solely upon the Secretary’s Order of July 1, 2020 “requiring universal face coverings.”

21. By its letter dated August 11, 2020, the ACHD suspended the Crack’d Egg’s Health Permit and ordered the Crack’d Egg to close. A true and correct copy of the letter is attached hereto as Exhibit “G.”

22. As indicated, the suspension letter asserts that “An inspection of your facility on 8/11/20 indicates an imminent hazard to public health.”

The state court case:

23. On September 16, 2020, the ACHD filed a Complaint in Civil Action-Equity against the Crack’d Egg.

24. The Complaint was filed in the Court of Common Pleas of Allegheny County at Docket No. GD-20-009809. The Crack'd Egg hereby incorporates the averments of the Complaint herein as if set forth in their entirety.

25. In its Complaint, the ACHD has asserted, among other things, that the Crack'd Egg has:

- A. Failed to comply with mask or facial covering guidelines.
- B. Failed to sufficiently space its outdoor seating.

26. ACHD's Complaint requests:

A. A declaratory judgment declaring that the Crack'd Egg has failed to comply with "control measure orders."

B. An injunction to prevent the Crack'd Egg from operating its business "until a compliance plan is approved by the ACHD."

C. Payment of fines and civil penalties.

27. In connection with its Complaint, the ACHD has also filed an Emergency Motion for Preliminary Injunction.

28. The ACHD did not employ the Sheriff to serve the Complaint and Motion as required by the Pennsylvania Rules of Civil Procedure.

29. Instead, the Complaint and Motion were improperly served by E-mail on Thursday afternoon (September 17, 2020) for an emergency hearing scheduled for Monday morning (September 21, 2020). In fact, the original E-mail failed to identify the subject or contents, but instead, it simply indicated that "A package has been posted for you." See Exhibit "H" hereto.

30. Not knowing what the “package” was, the owners of the Crack’d Egg were afraid to open it. The following day, Counsel for the ACHD sent a second E-mail which identified the “package” as an Emergency Motion. See Exhibit “I” hereto.

31. The Crack’d Egg believes and therefore avers that the failure to effectuate proper service was calculated to allow the ACHD to obtain its requested relief in an *ex parte* manner without any opposition.

32. On September 18, 2020, the Crack’d Egg filed a Notice of Removal to this Honorable Court pursuant to *28 U.S.C. Sections 1331, 1441 and 1446*.

The within case:

33. The Crack’d Egg now files the within case for violation of its civil rights pursuant to *42 U.S.C. 1983*.

34. The ACHD, as an arm of the County (a political subdivision of the Commonwealth of Pennsylvania), was clearly acting under color of state law for purposes of *42 U.S.C. 1983*.

35. The ACHD has violated the Crack’d Egg’s civil rights while acting under color of state law as is more fully set forth below. Among other things:

A. The “orders” which the ACHD has attempted to enforce have no valid basis in law.

B. The Secretary of Health failed to comply with the mandatory rule making procedure required under the Commonwealth Documents Law (*45 P.S. 1102 et seq.*), the Regulatory Review Act (*71 P.S. 745.1 et seq.*) and the Commonwealth Attorneys Act (*71 P.S. 732-101 et seq.*).

C. The Governor failed to comply with the mandatory rule making procedure required under the Commonwealth Documents Law (*45 P.S. 1102 et seq.*), the Regulatory Review Act (*71 P.S. 745.1 et seq.*) and the Commonwealth Attorneys Act (*71 P.S. 732-101 et seq.*).

D. The sole basis for the ACHD's closure Order was the Universal Face Covering Order issued pursuant to the Governor's Emergency Declaration under *35 Pa.C.S. 7301 (c)*. However, the Governor has illegally extended "the emergency" contrary to both federal and state law.

E. The Secretary of Health's Order "requiring universal face coverings" was issued in violation of the separation of powers doctrine.

F. The Governor's Order "Directing Targeted Mitigation Measures" was issued in violation of the separation of powers doctrine.

G. There is no rational or scientific basis for the Order requiring universal face coverings.²

H. There is no rational or scientific basis for the Order "Directing Targeted Mitigation Measures."

I. The ACHD's actions have deprived the Crack'd Egg of due process of law, both procedurally and substantively.

J. The closure order will deprive the owners of the Crack'd Egg of their right to make a living.

K. The ACHD's actions have deprived the Crack'd Egg of equal protection under the law.

² Scientific evidence on the efficacy of face masks is conflicting. For example, Cyril H. Wecht, M.D., J.D., the former Coroner of Allegheny County, has stated that the mandatory mask order is "totally absurd."

L. The ACHD's actions have violated the Crack'd Eggs rights to freedom of speech.³

COUNT 1:

The Orders are not enforceable:

36. The Plaintiff hereby incorporates paragraphs 1 through 35 above as if set forth in their entirety.

37. On July 1, 2020, the Secretary of the Pennsylvania Department of Health issued an Order "requiring universal face coverings." (See Exhibit "D" hereto).

38. In issuing her Order, the Secretary failed to comply with the mandatory rule making procedure required under the Commonwealth Documents Law (*45 P.S. 1102 et seq.*), the Regulatory Review Act (*71 P.S. 745.1 et seq.*) and the Commonwealth Attorneys Act (*71 P.S. 732-101 et seq.*).

39. On July 16, 2020, Governor Wolf issued an Order "Directing Targeted Mitigation Measures." (See Exhibit "E" hereto).

40. In issuing his Order, the Governor failed to comply with the mandatory rule making procedure required under the Commonwealth Documents Law (*45 P.S. 1102 et seq.*), the Regulatory Review Act (*71 P.S. 745.1 et seq.*) and the Commonwealth Attorneys Act (*71 P.S. 732-101 et seq.*).

41. The law is clear that:

The Commonwealth Documents Law, the Regulatory Review Act, and the Commonwealth Attorneys Act establish a mandatory, formal rulemaking procedure that is, with rare exceptions, required for the promulgation of all regulations. See *Germantown*

³ The Crack'd Egg believes that the ACHD's actions have been motivated, at least in part, by the Crack'd Egg's postings on Facebook.

Cab Co. v. Philadelphia Parking Auth., 993 A.2d 933, 937 (Pa. Cmwlth. 2010), *aff'd*, 614 Pa. 133, 36 A.3d 105 (2012). Under the Commonwealth Documents Law, an agency must give notice to the public of its proposed rulemaking and an opportunity for the public to comment. Section 201 of the Commonwealth Documents Law, 45 P.S. § 1201; *Borough of Bedford v. Dept. of Env'tl. Prot.*, 972 A.2d 53 (Pa. Cmwlth. 2009). Under the Regulatory Review Act, the agency must also submit its proposed regulation to IRRC for public comment, recommendation from IRRC, and, ultimately, IRRC's approval or denial of a final-form regulation. Section 5 of the Regulatory Review Act, *as amended*, 71 P.S. § 745.5. The Commonwealth Attorneys Act requires the agency to submit all proposed regulations to the Attorney General and Governor's Office of General Counsel for review of the form and legality. 71 P.S. §§ 732-204(b), -301(10).

Naylor v. Commonwealth, 2012 Pa. Commw. LEXIS 285, 54 A.3d 429, 433-434 (2012). See also, *Northwestern Youth Services v. Dep't of Public Welfare*, 620 Pa. 140, 66 A.3d 301 (2013).

42. In enacting the Orders at issue in the present case, both the Governor and the Secretary of Health wholly failed to comply with these requirements.

43. Such failure clearly causes the Orders to be unenforceable as a matter of law. See, *Germantown Cab Co. v. Philadelphia Parking Authority*, 614 Pa. 133, 36 A.3d 105 (2012) and cases cited therein.

COUNT 2:

The Defendants (and the Governor)

have improperly extended the "emergency powers":

44. The Plaintiff hereby incorporates paragraphs 1 through 43 above as if set forth in their entirety.

45. On March 6, 2020, Pennsylvania Governor Tom Wolf issued his first Proclamation of Disaster Emergency (See Exhibit "A").

46. Pursuant to 35 Pa.C.S. 7301 (c), the Governor's emergency powers under the Emergency Management Services Code only last for 90 days unless the disaster emergency is "renewed" by the Governor.

47. On April 13, 2020, the Supreme Court of Pennsylvania issued its opinion in the case *Friends of Devito v. Wolf*, 2020 Pa. LEXIS 1987, 227 A.3d 872 (2020). In *Devito*, the plaintiffs filed a Petition for King's Bench Jurisdiction asserting that the Governor lacked the authority to order the closure of "non-life-sustaining businesses." The Pennsylvania Supreme Court held that the Governor's Order was within his emergency powers since the closure was "temporary." As stated by the Court:

We consider the appropriateness of the due process afforded in light of the fact that the ***loss of Petitioner's property rights are temporary and find this significant***. The temporary deprivation impact effects each of the factors in the *Mathews* balancing test. While the private interest, the closure of the business, is important, the risk of erroneous temporary deprivation does not outweigh the value of additional or substitute safeguards which could not be provided within a realistic timeframe.

(emphasis added).

48. On June 3, 2020, the Governor extended the Disaster Proclamation for the first time. See Exhibit "B" hereto.

49. On August 24, 2020, Governor Wolf sent a letter to the Members of the Senate of Pennsylvania. In his letter, the Governor advised the Senate that:

In July, I extended that initial Order through August 31st. Unfortunately, given my authority under the Emergency

Services Management Code, an executive order further extending protections from foreclosure and eviction is not a viable option. Any further relief must be a product of the Legislature.

A true and correct copy of the Governor's August 24, 2020 letter to the Senate is attached hereto as Exhibit "J."

50. Despite his letter to the Senate, on August 31, 2020, Governor Wolf extended the Emergency Declaration for a second time. See Exhibit "C" hereto.

51. The Crack'd Egg believes that the second extension constituted an abuse of the Governor's emergency powers. In fact, the Governor's letter (Exhibit "J") is an admission that he lacked the power to issue a further extension.

52. In *County of Butler v. Wolf*, 2020 U.S. Dist. LEXIS 167544 (W.D. Pa. 2020), the Honorable William S. Stickman, IV held that the second extension constituted an abuse of power by the Governor. As stated by Judge Stickman:

It is true that under 35 Pa.C.S.A § 7301(c), the Governor's declaration of emergency, and related measures, will expire after ninety days. However, the Governor is able to *sua sponte* issue a continued emergency declaration. In *Wolf v. Scarnati*, __A.3d__, 2020 Pa. LEXIS 3603, 2020 WL 3567269 (Pa. Jul. 1, 2020), the Pennsylvania Supreme Court held that a vote of the legislature was powerless to vitiate the declaration, unless the governor signed off (as in normal legislation). See 2020 Pa. LEXIS 3603, ("because H.R. 836 was not presented to the Governor, and, in fact, affirmatively denied the Governor the opportunity to approve or veto that resolution, H.R. 836 did not conform with the General Assembly's statutory mandate in section 7301(c) or with the Pennsylvania Constitution.").

Thus, in practical effect, absent a veto-override, the Governor's orders can be reissued without limit. Professors Wiley & Vladeck recognized that this situation could lead to the situation of the permanent emergency: "[a]t least under federal law, emergencies, once declared, tend not to end; the President can unilaterally extend national emergency declarations on an annual basis in perpetuity, and can be stopped only by veto-proof supermajorities of both houses of Congress. And unless courts are going to rigorously review whether the factual justification for the emergency mea-

sure is still present[,] . . . the government can adopt measures that wouldn't be possible during "normal" times long after the true exigency passed." Wiley & Vladeck, *supra* page 16, at 187. On August 31, 2020, the Governor renewed the emergency declaration, extending his extraordinary authority for an additional ninety days. (ECF No. 73-1). Again, absent an extraordinary veto-proof vote of the General Assembly, there is no limit on the number of times the Governor may renew the declaration and vest himself with extraordinary unilateral powers.

53. In his Dissenting Opinion in the case of *Calvary Chapel Dayton Valley v. Sisolak*, 2020 U.S. LEXIS 3584 (July 24, 2020), the Honorable Justice Samuel Alito agreed with Judge Stickman as follows:

A public health emergency does not give Governors and other public officials *carte blanche* to disregard the Constitution for as long as the medical problem persists. As more medical and scientific evidence becomes available, and as States have time to craft policies in light of that evidence, courts should expect policies that more carefully account for constitutional rights.

54. These principles clearly apply in the present case.

COUNT 3:

**The Orders violate the
separation of powers doctrine:**

55. The Plaintiff hereby incorporates paragraphs 1 through 54 above as if set forth in their entirety.

56. As set forth above, both the Secretary of Health and the Governor failed to comply with the mandatory rule making procedure required under the Commonwealth Documents Law (45 P.S. 1102 *et seq.*), the Regulatory Review Act (71 P.S. 745.1 *et seq.*) and the Commonwealth Attorneys Act (71 P.S. 732-101 *et seq.*).

57. Accordingly, the Orders are nothing more than an attempt to control the citizens of the Commonwealth of Pennsylvania by executive fiat.

58. As such, the Orders violate the doctrine of separation of powers.

59. The law is clear that:

The doctrine of separation of powers is concerned with the allocation of official power among the three co-equal branches of our Government. The Framers "built into the tripartite Federal Government . . . a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Buckley v. Valeo*, 424 U.S. at 122. Thus, for example, the Congress may not exercise the judicial power to revise final judgments, *Plaut v. Spendthrift [*700] Farm, Inc.*, 514 U.S. 211, 131 L. Ed. 2d 328, 115 S. Ct. 1447 (1995), or the executive power to manage an airport, see *Metropolitan Washington Airports Authority v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 276, 115 L. Ed. 2d 236, 111 S. Ct. 2298 (1991) (holding that "if the power is executive, the Constitution does not permit an agent of Congress to exercise it"). See *J. W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 406, 72 L. Ed. 624, 48 S. Ct. 348 (1928) (Congress may not "invest itself or its members with either executive power or judicial power"). Similarly, the President may not exercise the legislative power to authorize the seizure of private property for public use. *Youngstown*, 343 U.S. at 588. And, the judicial power to decide cases and controversies does not include the provision of purely advisory opinions to the Executive, or permit the federal courts to resolve nonjusticiable questions.

Clinton v. Jones, 520 U.S. 681, 699-700, 117 S. Ct. 1636, 1647, 137 L. Ed. 2d 945, 964 (1997).

60. The case of *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 72 S.Ct. 863, 96 L. Ed. 1153 (1952) is directly on point. In *Youngstown*, the Supreme Court of the United States held that the president, as part of the executive branch, lacked the power to enact legislative rules. As stated by the Court:

Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States" After granting many powers to the Congress, Article I goes on to provide that Congress may "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

This same analysis clearly applies to state governments.

61. In *County of Butler v. Wolf*, 2020 U.S. Dist. LEXIS 167544 (W.D. Pa. 2020), the Honorable William S. Stickman, IV made the following observation that is relevant to the separation of powers issue:

There is no question that our founders abhorred the concept of one-person rule. They decried government by fiat. Absent a robust system of checks and balances, the guarantees of liberty set forth in the Constitution are just ink on parchment. There is no question that a global pandemic poses serious challenges for governments and for all Americans. But the response to a pandemic (or any emergency) cannot be permitted to undermine our system of constitutional liberties or the system of checks and balances protecting those liberties. Here, Defendants are statutorily permitted to act with little, if any, meaningful input from the legislature. For the judiciary to apply an overly deferential standard would remove the only meaningful check on the exercise of power.

62. In fact, the Pennsylvania Legislature has attempted to limit or terminate Governor Wolf's exercise of the emergency powers.

63. On June 9, 2020, the Pennsylvania Senate and the Pennsylvania House of Representatives adopted a concurrent resolution that ordered Governor Wolf to terminate the disaster emergency.

64. Governor Wolf vetoed the resolution, and on June 11, 2020, Joseph B. Scarnati, III, the President Pro Tempore of the Senate, filed a Complaint in Mandamus to enforce the resolution.

65. In response, Governor Wolf filed a Petition for King's Bench Jurisdiction to the Supreme Court of Pennsylvania.

66. In its Opinion, entered on July 1, 2020, the Supreme Court held that the Legislature could only override the Governor's veto by a two-thirds majority vote. See *Wolf v. Scarnati*, 2020 Pa. LEXIS 3603 (July 1, 2020). In response to Scarnati's argument that the governor's veto violated the separation of powers doctrine, the Majority declined to address the constitutional issue.

67. Justice Saylor, joined by Justice Mundy, authored a Dissenting Opinion based upon the separation of powers doctrine. As set forth in the Dissent:

I simply cannot envision that the framers of the Pennsylvania Constitution contemplated that the Governor could be invested with a panoply of exceptional powers - including the delegated power to suspend laws and commandeer private property - but that the Legislature nonetheless would be powerless to implement a counterbalance that was not then subject to the chief executive's own veto power.

COUNT 4:

The Plaintiff was

deprived of procedural due process:

68. The Plaintiff hereby incorporates paragraphs 1 through 67 above as if set forth in their entirety.

69. The ACHD suspended the Crack'd Egg's health permit without prior notice and the opportunity to be heard.

70. Notice and the opportunity to be heard are the touchstones of due process. See, *Armstrong v. Manzo*, 380 U.S. 545, 85 S. Ct. 1187, 14 L.Ed. 2d 62 (1965):

A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner.

See also, *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S. Ct. 1983, 1994, 32 L. Ed. 2d 556 (1971); *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 786, 28 L. Ed. 2d 113 (1971).

71. The ACHD also violated the Crack'd Egg's right to due process by its failure to employ the Sheriff to serve the Complaint and Motion in the state court action as required by the Pennsylvania Rules of Civil Procedure.

72. Instead, the Complaint and Motion were improperly served by E-mail on Thursday afternoon (September 17, 2020) for an emergency hearing scheduled for Monday morning (September 21, 2020). In fact, the original E-mail

failed to identify the subject or contents, but instead, it simply indicated that “A package has been posted for you.” See Exhibit “H” hereto.

73. Not knowing what the “package” was, the owners of the Crack’d Egg were afraid to open it. The following day, Counsel for ACHD sent a second E-mail which identified the “package” as an Emergency Motion. See Exhibit “I” hereto.

74. The Crack’d Egg believes and therefore avers that the failure to effectuate proper service was calculated to allow the ACHD to obtain its requested relief in an *ex parte* manner without any opposition.

75. The law is clear that citizens are entitled to due process even in times of emergency or crisis. See, *Friends of Devito v. Wolf*, 2020 Pa. LEXIS 1987, 227 A.3d 872 (2020):

We cannot agree, however, with Respondents’ contention that Petitioners were not entitled to any procedural due process, either before or after the entry of the Executive Order. Respondents’ Brief at 35 (“Viewing the present public health emergency through a *Mathews* lens, it is apparent what balance is to be struck. — No additional safeguards are feasible, and the countervailing public interest is beyond debate.”). The Supreme Court has held that at all times, even when the country is at war, essential liberties remain in effect. *Bell v. Burson*, 402 U.S. 535, 542, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971).

76. The ACHD’s violation of the Crack’d Egg’s rights to due process of law is clearly actionable under 42 U.S.C. 1983. See, *Lewis v. N.M. Dep’t of Health*, 261 F.3d 970 (10th Cir. 2001) and cases cited therein.

COUNT 5:

**The Plaintiff was deprived of substantive
due process: The Owners' right to earn a living**

77. The Plaintiff hereby incorporates paragraphs 1 through 76 above as if set forth in their entirety.

78. On July 16, 2020, Governor Wolf issued an Order "Directing Targeted Mitigation Measures." A true and correct copy of the Order is attached hereto as Exhibit "E."

79. Pursuant to the Targeted Mitigation Measures Order, among other things, restaurants were limited to the lesser of:

- A. 25% of fire code stated maximum occupancy for indoor dining; or
- B. 25 persons including staff.

80. As a result of the "Targeted Mitigation Measures," the Crack'd Egg suffered a severe loss of business and income.

81. According to The Pittsburgh Business Times, the Covid shutdown has caused more than 130 restaurants to go out of business permanently.

82. The owners of the Crack'd Egg depend upon the income from the Crack'd Egg to pay their living expenses. In fact, the income loss suffered as the result of the Targeted Mitigation Measures Order made it impossible for the Crack'd Egg to pay its bills.

83. The ACHD has now suspended the Crack'd Egg's health license and ordered it to shut down until a "plan that is satisfactory to the ACHD" is put into place.

84. As set forth above, the suspension order was imposed without due process of law and for reasons unrelated to the spread of Covid.

85. Accordingly, such order violates the Crack'd Egg's substantive due process rights.

86. In *County of Butler v. Wolf*, 2020 U.S. Dist. LEXIS 167544 (W.D. Pa. 2020), the Honorable William S. Stickman, IV held that:

A total shutdown of a business with no end-date and with the specter of additional, future shutdowns can cause critical damage to a business's ability to survive, to an employee's ability to support him/herself, and adds a government-induced cloud of uncertainty to the usual unpredictability of nature and life.

87. The same principle clearly applies in the present case.

COUNT 6:

The Plaintiff has been

deprived of equal protection under the law:

88. The Plaintiff hereby incorporates paragraphs 1 through 87 above as if set forth in their entirety.

89. The ACHD (and Governor Wolf) have strictly limited the Crack'd Egg's occupancy limits, while at the same time, they have condoned and participated in large gatherings, including public protests and political gatherings.

90. These actions clearly violate the Crack'd Egg's right to equal protection under the law.

91. In *County of Butler v. Wolf*, 2020 U.S. Dist. LEXIS 167544 (W.D. Pa. 2020), Judge Stickman made the following observations which are relevant to the equal protection issue:

While permitting commercial gatherings at a percentage of occupancy may not render the restrictions on other gatherings content-based, they do highlight the lack of narrow tailoring. See *Ramsek*, 2020 U.S. Dist. LEXIS 110668, ("retail stores, airports, churches and the like serve as an inconvenient example of how the Mass Gatherings Order fails at narrow tailoring."). Indeed, hundreds of people may congregate in stores, malls, large restaurants and other businesses based only on the occupancy limit of the building. Up to 20,000 people may attend the gathering in Carlisle (almost 100 times the approved outdoor limit!)—with Defendants' blessing.

Ostensibly, the occupancy restriction limits in Defendants' orders for those commercial purposes operate to the same end as the congregate gathering limits to combat the spread of COVID-19. However, they do so in a manner that is far less restrictive of the First Amendment right of assembly than the orders permit for activities that are more traditionally covered within the ambit of the Amendment—political, social, cultural, educational and other expressive gatherings.

COUNT 7:

The Plaintiff is entitled to

recover attorneys' fees pursuant to 42 U.S.C. 1988:

92. The Plaintiff hereby incorporates paragraphs 1 through 91 above as if set forth in their entirety.

93. 42 U.S.C. 1988 provides in relevant part that a plaintiff in a civil rights action may cover reasonable attorneys' fees as part of the costs.

94. The Crack'd Egg hereby requests recovery of its reasonable attorneys' fees pursuant to 42 U.S.C. 1988.

WHEREFORE, the Plaintiff respectfully requests this Honorable Court to enter judgment in favor of the Plaintiff and against the Defendants for the following relief: (1) a declaratory judgment finding that the "emergency orders"

are unconstitutional, and that the Defendants have violated the Plaintiff's civil rights by attempting to enforce such orders ; (2) an injunction to prevent further violations; (3) damages; (4) attorneys' fees pursuant to 42 U.S.C 1988; and (5) any other relief that is just and appropriate.

Respectfully Submitted,

/s/ James R. Cooney

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JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS THE CRACKED EGG, LLC

(b) County of Residence of First Listed Plaintiff Allegheny
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Robert O Lampl, James R. Cooney, Ryan J. Cooney, Sy O. Lampl, Alexander L. Holmquist; Robert O Lampl Law Office; 223 Fourth Ave., 4th Floor, Pittsburgh, PA 15222; (412) 392-0330

DEFENDANTS COUNTY OF ALLEGHENY, a political subdivision of the Commonwealth of Pennsylvania, and the ALLEGHENY COUNTY HEALTH DEPARTMENT

County of Residence of First Listed Defendant Allegheny
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys *(If Known)*
Vijyalakshmi Patel, Michael A. Parker; Allegheny County Health Department Solicitor's Office; 301 39th Street, Building #7, Pittsburgh, PA 15201; (412) 578-2653

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

1 U.S. Government Plaintiff

3 Federal Question *(U.S. Government Not a Party)*

2 U.S. Government Defendant

4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for [Nature of Suit Code Descriptions](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i> <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District *(specify)*

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*
 First Amendment to U.S. Constitution; Fourteenth Amendment to U.S. Constitution

Brief description of cause
 Defendants' laws and enforcement thereof have violated Plaintiff's Constitutional rights

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions)*

JUDGE _____ DOCKET NUMBER _____

DATE 09/23/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ James R. Cooney

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

JS 44A REVISED June, 2009

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (Erie Johnstown Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. This case is related to Number _____ . Short Caption _____
2. This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

I. CIVIL CATEGORY (Select the applicable category).

1. Antitrust and Securities Act Cases
2. Labor-Management Relations
3. Habeas corpus
4. Civil Rights
5. Patent, Copyright, and Trademark
6. Eminent Domain
7. All other federal question cases
8. All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. Insurance indemnity, contract and other diversity cases.
10. Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: September 23, 2020

/s/ James R. Cooney

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH FORMS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.



PROCLAMATION OF DISASTER EMERGENCY

March 6, 2020

WHEREAS, a novel coronavirus (now known as "COVID-19") emerged in Wuhan, China, began infecting humans in December 2019, and has since spread to 89 countries, including the United States; and

WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention ("CDC") have declared COVID-19 a "public health emergency of international concern," and the U.S. Department of Health and Human Services ("HHS") Secretary has declared that COVID-19 creates a public health emergency; and

WHEREAS, the Commonwealth of Pennsylvania ("Commonwealth") has been working in collaboration with the CDC, HHS, and local health agencies since December 2019 to monitor and plan for the containment and subsequent mitigation of COVID-19; and

WHEREAS, on February 1, 2020, the Commonwealth's Department of Health activated its Department Operations Center at the Pennsylvania Emergency Management Agency's headquarters to conduct public health and medical coordination for COVID-19 throughout the Commonwealth; and

WHEREAS, on March 4, 2020, the Director of the Pennsylvania Emergency Management Agency ordered the activation of its Commonwealth Response Coordination Center in support of the Department of Health's Department Operations Center, to maintain situational awareness and coordinate the response to any potential COVID-19 impacts across the Commonwealth; and

WHEREAS, as of March 6, 2020, there are 233 confirmed and/or presumed positive cases of COVID-19 in the United States, including 2 presumed positive cases in the Commonwealth; and

WHEREAS, while it is anticipated that a high percentage of those affected by COVID-19 will experience mild influenza-like symptoms, COVID-19 is a disease capable of causing severe symptoms or loss of life, particularly to older populations and those individuals with pre-existing conditions; and

WHEREAS, it is critical to prepare for and respond to suspected or confirmed cases in the Commonwealth and to implement measures to mitigate the spread of COVID-19; and

WHEREAS, with 2 presumed positive cases in the Commonwealth as of March 6, 2020, the possible increased threat from COVID-19 constitutes a threat of imminent disaster to the health of the citizens of the Commonwealth; and

WHEREAS, this threat of imminent disaster and emergency has the potential to cause significant adverse impacts upon the population throughout the Commonwealth; and

WHEREAS, this threat of imminent disaster and emergency has already caused schools to close, and will likely prompt additional local measures, including affected county and municipal governments to declare local disaster emergencies because of COVID-19; and

EXHIBIT A

WHEREAS, this threat of imminent disaster and emergency situation throughout the Commonwealth is of such magnitude and severity as to render essential the Commonwealth's supplementation of emergency resources and mutual aid to the county and municipal governments of this Commonwealth and to require the activation of all applicable state, county, and municipal emergency response plans.

NOW THEREFORE, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. § 7101, et seq., I do hereby proclaim the existence of a disaster emergency throughout the Commonwealth.

FURTHER, I hereby authorize the Pennsylvania Emergency Management Agency Director or his designee, to assume command and control of all statewide emergency operations and authorize and direct that all Commonwealth departments and agencies utilize all available resources and personnel as is deemed necessary to cope with this emergency situation.

FURTHER, I hereby transfer up to \$5,000,000 in unused appropriated funds to the Pennsylvania Emergency Management Agency for Emergency Management Assistance Compact expenses related to this emergency, to be decreased as conditions require, pursuant to the provisions of section 7604(a) of the Emergency Management Services Code, 35 Pa. C.S. § 7604(a). In addition, I hereby transfer up to \$20,000,000 in unused appropriated funds, to be decreased as conditions require, to the Pennsylvania Emergency Management Agency pursuant to section 1508 of the Act of April 9, 1929 (P.L.343, No. 176) (the Fiscal Code), 72 P.S. § 1508. The aforementioned funds shall be used for expenses authorized and incurred related to this emergency. These funds shall be credited to a special account established by the Office of the Budget. I hereby direct that any funds transferred herein that remain unused after all costs related to this emergency have been satisfied shall be returned to the General Fund.

FURTHER, All Commonwealth agencies purchasing supplies or services in response to this emergency are authorized to utilize emergency procurement procedures set forth in Section 516 of the Commonwealth Procurement Code, 62 Pa. C.S. § 516. This Proclamation shall serve as the written determination of the basis for the emergency under Section 516.

FURTHER, I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency. Commonwealth agencies may implement emergency assignments without regard to procedures required by other laws, except mandatory constitutional requirements, pertaining to performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and expenditures of public funds.

FURTHER, pursuant to the powers vested in me by the Constitution and laws of the Commonwealth pursuant to 51 Pa. C.S. § 508, I hereby authorize the Adjutant General of Pennsylvania to place on state active duty for the duration of the emergency disaster proclamation, such individuals and units of the Pennsylvania National Guard, for missions designated by the Pennsylvania Emergency Management Agency, as are needed to address the consequences of the aforementioned emergency.

FURTHER, I authorize the Commissioner of the Pennsylvania State Police to use all available resources and personnel in whatever manner he deems necessary during this emergency to assist the actions of the Pennsylvania Emergency Management Agency in addressing the consequences of the emergency.

FURTHER, I hereby authorize the Secretary of the Pennsylvania Department of Health, in her sole discretion, to suspend or waive any provision of law or regulation which the Pennsylvania Department of Health is authorized by law to administer or enforce, for such length of time as may be necessary to respond to this emergency.

FURTHER, I hereby authorize the Secretary of the Pennsylvania Department of Education, in his sole discretion, to suspend or waive any provision of law or regulation which the Pennsylvania Department of Education is authorized by law to administer or enforce, for such length of time as may be necessary to respond to this emergency.

FURTHER, if investigations made on my behalf determine that the Commonwealth needs greater flexibility in the application of state and federal motor carrier regulations to accommodate truck drivers involved in emergency activities during this emergency, I hereby direct the Commonwealth Department of Transportation to waive or suspend any laws or federal or state regulations related to the drivers of commercial vehicles.

FURTHER, I hereby direct that the applicable emergency response and recovery plans of the Commonwealth, counties, municipalities and other entities be activated as necessary and that actions taken to implement those plans be coordinated through the Pennsylvania Emergency Management Agency.

STILL FURTHER, I hereby urge the governing bodies and executive officers of all political subdivisions affected by this emergency to act as necessary to meet the current exigencies as legally authorized under this Proclamation, namely, by the employment of temporary workers, by the rental of equipment, and by entering into such contracts and agreements as may be required to meet the emergency, all without regard to those time consuming procedures and formalities normally prescribed by law, mandatory constitutional requirement excepted.



GIVEN under my hand and the Seal of the Governor, at the City of Harrisburg, this sixth day of March in the year of our Lord two thousand twenty, and of the Commonwealth the two hundred and forty fourth.

Tom Wolf
TOM WOLF
Governor

Commonwealth of Pennsylvania



Governor's Office

AMENDMENT TO PROCLAMATION OF DISASTER EMERGENCY

June 3, 2020

WHEREAS, on March 6, 2020, I declared a disaster emergency due to the coronavirus disease 2019 (COVID-19) pandemic that is devastating the country, including the Commonwealth of Pennsylvania and its citizens;

WHEREAS, my Proclamation of Disaster Emergency of March 6, 2020, will automatically expire on June 4, 2020, unless renewed by Amendment;

WHEREAS, as of June 3, 2020, 72,894 persons have tested positive or meet the requirements to be considered as presumed probable cases for COVID-19 in the Commonwealth in all 67 counties, and 5,667 persons are reported to have died from the virus; and

WHEREAS, the COVID-19 pandemic continues to be of such magnitude or severity that emergency action is necessary to protect the health, safety and welfare of affected citizens in Pennsylvania.

NOW THEREFORE, pursuant to the provisions of section 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. §7301(c), I do hereby order and direct as follows:

- 1. The Proclamation of Disaster Emergency of March 6, 2020, is renewed for a period of ninety days, and shall continue to apply to the Commonwealth of Pennsylvania.*
- 2. All directives, authorized actions and provisions of the March 6, 2020, Proclamation of Disaster Emergency shall remain in full force and effect until either rescinded by me or terminated by law.*

This Proclamation Amendment shall take effect immediately.



GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this third day of June two thousand twenty, the year of the commonwealth the two hundred and forty-fourth.

Tom Wolf
TOM WOLF
Governor

EXHIBIT B

Commonwealth of Pennsylvania



Governor's Office

AMENDMENT TO PROCLAMATION OF DISASTER EMERGENCY

August 31, 2020

WHEREAS, on March 6, 2020, I declared a disaster emergency due to the coronavirus disease 2019 (COVID-19) pandemic that is devastating the country, including the Commonwealth of Pennsylvania and its citizens;

WHEREAS, the March 6, 2020, Proclamation of Disaster Emergency would have automatically expired by operation of law on June 4, 2020, unless further extended by my official action;

WHEREAS, I renewed the Proclamation of Disaster Emergency dated March 6, 2020, by Amendment to Proclamation of Disaster Emergency (1st Amendment) on June 3, 2020, for an additional ninety days;

WHEREAS, the June 3, 2020, Amendment to Proclamation is set to automatically expire by operation of law on September 1, 2020, unless further extended by my official action;

WHEREAS, as of August 31, 2020, 134,025 persons have tested positive or meet the requirements to be considered probable cases for COVID-19 in the Commonwealth in all 67 counties, and 7,495 persons are reported to have died from the virus; and

WHEREAS, the COVID-19 pandemic continues to be of such magnitude or severity that emergency action is necessary to protect the health, safety, and welfare of affected citizens in Pennsylvania.

NOW THEREFORE, pursuant to the provisions of section 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. § 7301(c), I do hereby order and direct as follows:

- 1. The Proclamation of Disaster Emergency of March 6, 2020, renewed by Amendment to Proclamation of Disaster Emergency dated June 3, 2020, is renewed for a period of ninety days, and shall continue to apply to the Commonwealth of Pennsylvania.*
- 2. All directives, authorized actions, and provisions of the March 6, 2020, Proclamation of Disaster Emergency and June 3, 2020, Amendment to Proclamation shall remain in full force and effect until either rescinded by me or terminated by law.*
- 3. This Proclamation Amendment (2nd Amendment) shall take effect immediately.*



GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this thirty-first day of August two thousand twenty, the year of the commonwealth the two hundred and forty-fifth.

Tom Wolf
TOM WOLF
Governor

EXHIBIT C



Order of the Secretary of the Pennsylvania Department of Health Requiring Universal Face Coverings

COVID-19 is a contagious disease that is rapidly spreading from person to person. People infected are capable of exposing others to COVID-19 even if their symptoms are mild, such as a cough, or even if they are asymptomatic. Additionally, exposure is possible by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes. Symptoms of COVID-19 may include fever, cough, shortness of breath, chills, repeated shaking with chills, muscle pain, headache, sore throat, and new loss of taste or smell. Early symptoms may also include chills, body aches, sore throat, headache, diarrhea, nausea or vomiting, and runny nose. Older adults and people who have serious chronic medical conditions are at a higher risk for serious illness.

The first cases of COVID-19 were reported in the United States in January 2020. Since then, multiple areas of the United States have experienced "community spread" of COVID-19, meaning that the illness is being transmitted through unknown contact, and not from contacts with known cases. On March 6, 2020, after the first cases of COVID-19 in the Commonwealth of Pennsylvania were confirmed, the Governor issued a Proclamation of Disaster Emergency. Since that date, the number of positive cases has continued to rise, and community spread has continued in the Commonwealth as well. Case counts rapidly increased throughout the Commonwealth in March and April, 2020. As of July 1, 2020, every county in the Commonwealth has been affected, the number of cases is 87,242, and 6,687 individuals have died from COVID-19.

In order to slow the spread and protect the people of the Commonwealth, the Governor and I issued Orders on March 19, 2020, closing all Commonwealth businesses that are not life sustaining. *See Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses That Are Not Life Sustaining*, as amended; *Order of the Secretary of the Pennsylvania Department of Health Regarding the Closure of All Businesses That Are Not Life Sustaining*, as amended. On April 1, 2020, the Governor and I issued Orders directing all individuals in Pennsylvania to stay at home. *See Order of the Governor of the Commonwealth of Pennsylvania for Individuals to Stay at Home*, as amended; *Order of the Secretary of the Pennsylvania Department of Health to Stay at Home*, as amended.

In addition, I issued an Order on April 15, 2020, requiring mitigation measures to be applied at businesses that are permitted to engage in in-person operations, including a requirement that all customers wear masks while on premises of businesses that serve the public within a building or a defined area and directs businesses to deny entry to individuals not wearing masks, unless the business is providing medication, medical supplies, or food, in which case the business must provide alternative methods of pick-up or delivery of such goods. Individuals who cannot wear a mask due to a medical condition (including children under the age of 2 years per CDC guidance) are permitted to enter the premises and are not

required to provide documentation of such medical condition. *See Order of the Secretary of the Pennsylvania Department of Health Directing Public Health Safety Measures for Businesses Permitted to Maintain In-person Operations.*

Those mitigation efforts slowed the spread of the disease, protected our hospitals from being overwhelmed, and enabled our hospitals to care for our ill residents. Accordingly, in Orders on May 7, 2020, the Governor and I suspended restrictions for certain areas instituted in the orders on March 19, 2020, as amended, and April 1, 2020, as amended. *See Order of the Governor of the Commonwealth of Pennsylvania for Limited Opening of Business, Lifting of Stay at Home Requirements, and Continued Aggressive Mitigation Efforts, as amended; Order of the Secretary of the Pennsylvania Department of Health for a Limited Opening of Businesses, Lifting of Stay Home Requirements and Continued Aggressive Mitigation Efforts, as amended.*

These mitigation strategies, practiced by all persons in the Commonwealth, have been successful in slowing the spread of the virus, and have allowed the phased and considered reopening of the Commonwealth, *see Order of the Governor of the Commonwealth of Pennsylvania for the Continued Reopening of the Commonwealth of May 27, 2020, as amended; Order of the Secretary for the Continued Reopening of the Commonwealth of May 27, 2020, as amended.* Person-to-person spread does continue however, and with the reopening, the Commonwealth is beginning to see increases in new cases. Mindful of the need to slow this increase, in order to avoid the types of stringent Commonwealth-wide mitigation strategies that were discontinued a short time ago, and in order to avoid the resurgence that is overwhelming the health care systems and public health systems in other states, I am ordering that all persons in the Commonwealth wear face coverings in accordance with this Order. Face coverings can decrease the spread of respiratory droplets from people. *See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html#recent-studies>.* When used in public settings, face coverings will work to reduce the spread of COVID-19 in the Commonwealth.

COVID-19 is a threat to the public's health, for which the Secretary of Health may order general control measures, including, but not limited to, closure, isolation, and quarantine. This authority is granted to the Secretary of Health pursuant to Pennsylvania law. *See* section 5 of the Disease Prevention and Control Law, 35 P.S. § 521.5; sections 2102(a) and 2106 of the Administrative Code of 1929, 71 P.S. §§ 532(a), and 536; and the Department of Health's regulations at 28 Pa. Code §§ 27.60-27.68 (relating to disease control measures; isolation; quarantine; movement of persons subject to isolation or quarantine; and release from isolation and quarantine). Particularly, the Department of Health has the authority to take any disease control measure appropriate to protect the public from the spread of infectious disease. *See* 35 P.S. § 521.5; 71 P.S. § 532(a), and 1403(a); 28 Pa. Code § 27.60.

Accordingly, on this date, July 1, 2020, to protect the public from the spread of COVID-19, I hereby order:

Section 1: Face Coverings Defined

“Face covering” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is wrapped around the lower face. A “face covering” can be made of a variety of synthetic or natural fabrics, including cotton, silk, or linen. For purposes of this order, a face covering includes a plastic face shield that covers the nose and mouth. “Face coverings” may be factory-made, sewn by hand, or be improvised from household items, including but not limited to, scarfs, bandanas, t-shirts, sweatshirts, or towels. While procedural and surgical masks intended for healthcare providers and first responders meet these requirements, such as N95 respirators, these specialized masks should be reserved for appropriate occupational and health care settings.

Section 2: Face Coverings Required

Except as provided in Section 3, individuals are required to wear face coverings if they are:

- A. outdoors and unable to consistently maintain a distance of six feet from individuals who are not members of their household;
- B. in any indoor location where members of the public are generally permitted;
- C. waiting for, riding on, driving, or operating public transportation or paratransit or while in a taxi, private car service or ride-sharing vehicle;
- D. obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank; or
- E. engaged in work, whether at the workplace or performing work off-site, when interacting in-person with any member of the public, working in any space visited by members of the public, working in any space where food is prepared or packaged for sale or distribution to others, working in or walking through common areas, or in any room or enclosed area where other people, except for members of the person’s own household or residence, are present when unable to physically distance.

Section 3: Exceptions to Face Covering Requirement

- A. The following are exceptions to the face covering requirement in Section 2:
 - i. Individuals who cannot wear a mask due to a medical condition, including those with respiratory issues that impede breathing, mental health condition, or disability;

- ii. Individuals for whom wearing a mask while working would create an unsafe condition in which to operate equipment or execute a task as determined by local, state, or federal regulators or workplace safety guidelines;
 - iii. Individuals who would be unable to remove a mask without assistance;
 - iv. Individuals who are under two years of age;
 - v. Individuals who are communicating or seeking to communicate with someone who is hearing-impaired or has another disability, where the ability to see the mouth is essential for communication;
- B. Individuals are not required to show documentation that an exception applies.

Section 4: Prior Orders

This Order is intended to be read in concert with my Order Relating to Public Health Safety Measures for Businesses Permitted to Maintain In-person Operations, dated April 15, 2020, and with the Governor's and my Orders for the Continued Reopening of the Commonwealth, dated May 27, 2020.

Section 5: Effective Date

This Order is effective immediately and will remain in effect until further notice.



Rachel Levine, MD
Secretary of Health



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR

**ORDER OF
THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA
DIRECTING TARGETED MITIGATION MEASURES**

WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention declared the coronavirus disease 2019 ("COVID-19") a pandemic; and

WHEREAS, the COVID-19 pandemic has created a national emergency in the United States of America; and

WHEREAS, pursuant to section 7301(a) of the Emergency Management Services Code, 35 Pa. C.S. § 7301(a), I am charged with the responsibility to address dangers facing the Commonwealth of Pennsylvania ("Commonwealth") that result from disasters; and

WHEREAS, on March 6, 2020, pursuant to section 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. § 7301(c), I proclaimed the existence of a disaster emergency throughout the Commonwealth as a result of COVID-19, and further extended the disaster emergency by Amendment on June 3, 2020; and

WHEREAS, in executing the extraordinary responsibility outlined above, I am authorized during a disaster emergency to issue, amend and rescind executive orders, proclamations and regulations and those directives shall have the force and effect of law pursuant to 35 Pa. C.S. § 7301(b); and

WHEREAS, in addition to the authorities to which I am granted by law, my Secretary of Health has the authority to determine and employ the most efficient and practical means for the prevention and suppression of disease pursuant to 71 P.S. § 532(a) and 71 P.S. § 1403(a); and

WHEREAS, these means include isolation, quarantine, and any other control measure needed pursuant to 35 P.S. § 521.5; and

WHEREAS, I previously issued an Order closing all businesses that are not life sustaining in the Commonwealth; see Order of March 19, 2020, as amended; and

WHEREAS, I previously issued an Order directing all individuals in Pennsylvania to stay at home; see Order of April 1, 2020, as amended; and

WHEREAS, while the Commonwealth's mitigation efforts to date have helped curtail the spread of COVID-19 without overwhelming medical resources, the number of positive cases continues to rise; and

WHEREAS, as of July 15, 2020, the Commonwealth has 97,665 positive cases of COVID-19 in all sixty-seven counties and 6,957 deaths from COVID-19; and

WHEREAS, the Pennsylvania Department of Health has seen new increases in cases due to community spread; and

WHEREAS; my Secretary of Health issued an Order on July 1, 2020, requiring universal face coverings to be worn by all persons in the Commonwealth; and

WHEREAS, despite the Secretary of Health's July 1, 2020 Order, there remains an urgent need to further efforts to slow this new increase in cases to avoid the more-stringent mitigation strategies pursuant to previous Orders recently discontinued; and

EXHIBIT E

WHEREAS, in addition to my general powers, during a disaster emergency I am authorized specifically to:

- 1) suspend any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency;*
- 2) utilize all resources of the Commonwealth and each political subdivision as reasonably necessary;*
- 3) transfer the direction, personnel, or functions of Commonwealth agencies or units thereof for performing or facilitating emergency services;*
- 4) commandeer any private or public property if necessary to cope with the disaster;*
- 5) direct and compel the evacuation of all or part of the population from any stricken or threatened area;*
- 6) prescribe routes and modes of transportation and destinations;*
- 7) control ingress and egress to and from a disaster area and the movement of persons within the area and the occupancy of premises therein;*
- 8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.*

35 Pa. C.S. § 7301(f).

NOW THEREFORE, pursuant to the authority vested in me and my Administration by the laws of the Commonwealth of Pennsylvania, I do hereby ORDER and PROCLAIM as follows:

Section 1: Businesses in the retail food services industry, including bars, restaurants, and private catered events

A. Bars

All bars are prohibited from conducting operations unless they offer sit-down, dine-in meals or take-out sales of alcoholic beverages. Alcohol only can be served for on-premises consumption when in the same transaction as a meal. All service must be at a table or booth; bar service is prohibited. Take-out sales of alcohol for the purposes of off-site consumption are permitted subject to any limitations or restrictions imposed by Pennsylvania law. For purposes of this Order, occupancy requirements shall be the following:

- i. Limited to 25% of stated fire code maximum occupancy for indoor dining.*
- ii. A discrete indoor event or gathering within a bar is limited to 25 persons.*

B. Restaurants & Private Catered Events

- i. The Guidance for Businesses in the Restaurant Industry Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public, dated May 27, 2020, as updated June 17, 2020 (the "Guidance"), is incorporated herein by reference, with the exception of occupancy requirements. For purposes of this Order, occupancy requirements shall be the following:*
 - a. Limited to 25% of stated fire code maximum occupancy for indoor dining.*
 - b. A discrete indoor event or gathering in a business in the retail food services industry is limited to 25 persons.*
- ii. All businesses in the retail food services industry, including restaurants, wineries, breweries, private clubs and bars, are permitted to provide take-out and delivery sales of food, as well as dine-in service in both indoor and outdoor seating areas so long as they strictly adhere to the requirements of the Guidance, as required by this Order, including the following:*

- a. *Non-bar seating in outdoor areas (i.e., tables or counter seats that do not line up to a bar or food service area) may be used for customer seating.*
- b. *Customers being served must be seated at a table.*
- c. *The maximum occupancy limit includes staff.*
- iii. *Social distancing, masking, and other mitigation measures must be employed to protect workers and patrons.*
- iv. *Alcohol only can be served for on-premises consumption when in the same transaction as a meal. Take-out sales of alcohol for the purposes of off-site consumption are permitted subject to any limitations or restrictions imposed by Pennsylvania law.*

Section 2: Nightclubs

All nightclubs, as defined by the Clean Indoor Air Act, 35 P.S. § 637.2, are prohibited from conducting operations.

Section 3: Events and gatherings other than those in businesses in the retail food services industry addressed by Section 1

- A. *Indoor events and gatherings of more than 25 persons are prohibited.*
- B. *Outdoor events and gatherings of more than 250 persons are prohibited.*
- C. *For the purposes of this Order, "event and gathering" is defined as:*

A temporary grouping of individuals for defined purposes, that takes place over a limited timeframe, such as hours or days. For example, events and gatherings include fairs, festivals, concerts, or shows and groupings that occur within larger, more permanent businesses, such as shows or performances within amusement parks, individual showings of movies on a single screen/auditorium within a multiplex, business meetings or conferences, or each party or reception within a multi-room venue.

The term does not include a discrete event or gathering in a business in the retail food services industry addressed by Section 1.

- D. *The maximum occupancy limit includes staff.*

Section 4: Teleworking

Unless not possible, all businesses are required to conduct their operations in whole or in part remotely through individual teleworking of their employees in the jurisdiction or jurisdictions in which they do business. Where telework is not possible, employees may conduct in-person business operations, provided that the businesses fully comply with all substantive aspects of: the Order of the Secretary of the Pennsylvania Department of Health Directing Building Safety Measures, issued April 5, 2020; the Order of the Secretary of the Pennsylvania Department of Health Directing Business Safety Measures (to keep employees and customers safe), issued April 15, 2020; and all existing and future applicable guidance issued by my Administration, the Department of Health and the Centers for Disease Control and Prevention.

Section 5: Gyms and fitness facilities

All gyms and fitness facilities, while permitted to continue indoor operations, are directed to prioritize outdoor physical fitness activities. Outdoor activities must follow masking requirements as provided by the Order of the Secretary of the Pennsylvania Department of Health Requiring Universal Face Coverings, dated July 1, 2020, and must provide for social distancing requirements of persons being at least 6 feet apart, as well as being limited by section 3 above, related to gatherings.

Section 6: Other Orders

Any provisions of the my prior Order for the Continued Reopening of the Commonwealth, dated May 27, 2020, and of the Order for a Limited Opening of Businesses, Lifting of Stay Home Requirements and Continued Aggressive Mitigation Efforts, effective May 8, 2020, that are in conflict with this Order are hereby superseded.

Section 7: Enforcement

Enforcement of this Order will begin on the effective date. All Commonwealth agencies involved in the licensing or inspection of any of the above-described facilities are directed to increase their enforcement efforts to ensure compliance with these critical mitigation measures. All local officials currently involved or able to be involved in the Commonwealth's enforcement efforts are called upon to enforce these critical mitigation measures.

Section 8: Effective Date

This order shall take effect at 12:01 a.m. on July 16, 2020, and continue until further notice.



GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this fifteenth day of July two thousand twenty, the year of the commonwealth the two hundred and forty-fifth.

Tom Wolf
TOM WOLF
Governor



ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

3901 PENN AVE,
PITTSBURGH, PA 15224

PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT
REPORT

Client ID: 201510290005

Client Name: The Crack'd Egg

Address: 4131 Brownsville Road

Inspection Date: 08/11/2020

City: Pittsburgh

State: PA Zip: 15227

Purpose: Partial Reinsp

Municipality: Brentwood

Inspector: Nakkeow, Varangkorn

Permit Exp. Date: 10/31/2020

Category Code: 211-Restaurant without Liquor

Priority Code: H

Re-Inspection: Pending - Inspector

Re-Inspection Date:

Food Safety Assessment Categories

	◆	Assessment Status				Violation Risk		
		S	NO	NA	V	High	Med.	Low
1 Food Source/Condition								
2 Cooking Temperatures #								
3 Consumer Advisory								
4 Reheating Temperatures #								
5 Cooling Food #								
6 Hot Holding Temperatures #								
7 Cold Holding Temperatures #								
8 Facilities to Maintain Temperature								
9 Date Marking of Food								
10 Probe-Type Thermometers								
11 Cross-Contamination Prevention #								
12 Employee Health #								
13 Employee Personal Hygiene #								
14 Cleaning and Sanitization #								
15 Water Supply								
16 Waste Water Disposal								
17 Plumbing								
18 Handwashing Facilities								
19 Pest Management #								
20 Toxic Items								
21 Certified Food Protection Manager								
22 Demonstration of Knowledge								
23 Contamination Prevention - Food, Utensils and Equipment								
24 Fabrication, Design, Installation and Maintenance								
25 Toilet Room								
		0	0	0	0	0	0	0

General Sanitation

	◆	Assessment Status				Violation Risk		
		S	NO	NA	V	High	Med.	Low
26 Garbage and Refuse								
27 Floors								
28 Walls and ceilings								
29 Lighting								
30 Ventilation								
31 Dressing rooms and Locker rooms								
32 General Premises								
33 Administrative					x			
		0	0	0	0	1	0	0
# U.S. Centers for Disease Control and Prevention "high risk" for		0	0	0	0	1		

◆ - Diamond
Client # 201

erved NA - Not Applicable V- Violation

EXHIBIT F

202008110058



ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

3901 PENN AVE,

PITTSBURGH, PA 15224

PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT
REPORT

INSPECTION DETAILS

Inspector Name: Nakkeow , Varangkorn	Balance Amount: \$0.00
Placarding: Closure/Imminent Hazard	Contact: Kimberly & Don Waigar
Start Time: 12:30.00 PM End Time: 01:45:00 PM	Phone: (412) 881-3000

Violation: 33 Administrative

Comments: 330.1b
 - Failure to comply with mask or facial covering guidelines. 4 employees who take orders and deliver food to guests observed not wearing facial coverings. Facility owner observed not wearing a facial covering. Observed one guest enter the facility without a mask or facial covering and proceeded to seat himself.
 - Facility will remain closed for 7 days. Do not conceal or remove the closure placard. A reinspection must be requested and an inspection must be conducted prior to permit reinstatement.

337.1
 - Summary Suspension/Imminent Hazard If the Director finds there is imminent danger to the public health the permit shall immediately be suspended.

PA Disease Prevention and Control Law, Section 521.5

Order of the Secretary of the Pennsylvania Department of Health for Universal Face Coverings, dated July 1, 2020

Food Code Section(s): 330

Corrective Action: Employees and patrons are to properly wear face covering as described in the Order of the Secretary of the Pennsylvania Department of Health for Universal Face Coverings, dated July 1, 2020.

The facility must provide a written copy of its COVID-19 prevention plan prior to reopening. The facility must provide information on how it will comply to all COVID-19 orders and guidance issued by the Commonwealth and the Allegheny County Health Department.

Other Assesment observations and comments:

Exceptional Observations:

General Comments:

Facility ordered closed per the Food Safety Program. Appeals can be sent to the address listed below. EH Supervisor, Janet Russo, and EH Specialist I, Zachery Prokocki-Loomis, present for the inspection.

Address:
 Dr. Debra Bogen
 542 Fourth Ave
 Pittsburgh, PA 15219

Partial re-inspection conducted in response to violations pertaining to COVID-19 orders and guidance issued by the Commonwealth and the Allegheny County Health Department.

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

August 11, 2020

The Crack'd Egg
Kimberly & Don Waigand
4131 Brownsville Road
Pittsburgh, PA 15227

Re: Client# 201510290005
The Crack'd Egg
4131 Brownsville Road
Brentwood, 15227

Dear Kimberly & Don Waigand,

An inspection of your facility on 08/11/2020 indicates an imminent hazard to the public health.

THEREFORE, IN ACCORDANCE WITH ARTICLE III, SECTION 337, YOUR HEALTH PERMIT IS SUSPENDED AND YOU ARE ORDERED TO CLOSE THE FACILITY IMMEDIATELY UPON RECEIPT OF THIS NOTICE. IT IS ILLEGAL TO OPERATE A FOOD FACILITY IN ALLEGHENY COUNTY WITHOUT A HEALTH PERMIT.

Failure to close will result in immediate initiation of an enforcement action. Notice of permit suspension shall be posted in plain view and shall not be removed or concealed except by direction of the Department.

In order to have the health permit reinstated, you must correct all emergency violations and submit to this office the attached form requesting an inspection and reinstatement of the health permit.

Article XI - "Hearings and Appeals" provides for your right for a hearing if aggrieved by this notice. Requests for a hearing must be made in writing and filed with the Department within thirty (30) days upon receipt of this notice.

Please Contact me at (412)578-7919 to resolve this matter.

Sincerely,

J Russo
Environmental Health Supervisor

Food Safety Program
3901 Penn Avenue, Building I
Pittsburgh, Pennsylvania 15224-1318
Phone: (412) 578-8044
Fax: (412) 578-8190
www.achd.net



Jim Cooney

From: The Crack'd Egg Restaurant <thecrackedegg250@gmail.com>
Sent: Tuesday, September 22, 2020 3:38 AM
To: Jim Cooney; Sy Lampl
Subject: Fwd: New Package Notification

This was the first attempt to serve me. I didn't open it.

----- Forwarded message -----

From: Vijya Patel via Allegheny County Notification Service <moveitftp@alleghenycounty.us>
Date: Wed, Sep 16, 2020 at 8:58 PM
Subject: New Package Notification
To: <thecrackedegg250@gmail.com>

New Package Notification

A package has been posted for you.

From: Vijya Patel

Subject: GD-20-9809 - Emergency Motion for Preliminary Injunction

EXHIBIT H

Please use the following URL to view this package over a secure connection. After viewing this package, you may also download any associated attachments or compose a reply using your favorite web browser.

(
<https://moveit.alleghenycounty.us/human.aspx?OrgID=5901&language=en&Username=thecrackedegg250%40gmail.com&Arg06=704574170&Arg12=message>
)

Use the following credentials when prompted:

Username: thecrackedegg250@gmail.com

Password: db6e3f

If you need assistance, please contact Allegheny County - Computer Services at 412-350-HELP / ServiceDesk@AlleghenyCounty.US.

Regards,

Allegheny County Notification Service

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited.

Hello,

Yesterday evening I emailed a copy of the Emergency Motion and proposed court order for GD-20-9809 to you through FTP. It is a valid email so you may open it and view the documents. I could not send it to you through outlook because the file size was too large. Attached is a pdf copy of the email I sent to you yesterday so that you may easily identify it. Please do not hesitate to contact me if you have any questions.

Thank you,

EXHIBIT I



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR

August 24, 2020

Dear Members of the Senate of Pennsylvania:

As you may be aware, on May 7, 2020 I issued an Executive Order suspending notice provisions under the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act, effectively suspending evictions and foreclosures across the commonwealth in order to protect Pennsylvania renters and property owners affected by the COVID-19 pandemic. In July, I extended that initial Order through August 31st. Unfortunately, given my authority under the Emergency Services Management Code, an executive order further extending protections from foreclosure and eviction is not a viable option. Any further relief must be a product of the Legislature.

In addition, I wish to make you aware of a number of serious defects in Act 24 of 2020 that are preventing funding allocated by the General Assembly for assistance to renters and mortgage holders from achieving their intended purpose. In order to prevent serious negative consequences for Pennsylvania renters and homeowners, I urge the General Assembly to take action as soon as possible to both extend the moratorium and fix Act 24.

My May 7th Executive Order was issued pursuant to authority under the Emergency Services Code, 35 Pa. C.S. § 7302(a), which allows me to temporarily suspend or modify the requirements of statutes or regulations necessary to provide temporary housing for disaster victims. Pursuant to this authority, I suspended certain preconditions for foreclosure and eviction actions under the Loan Interest Protection Law, 41 P.S. § 101, et seq., the Homeowners Emergency Assistance Act, 35 P.S. § 1680.41, et seq., the Landlord and Tenant Act of 1951, 68 P.S. § 250.101, et seq., and the Manufactured Home Community Rights Act, 68 P.S. § 398.1 et seq. Unfortunately, the statutory language of Section 7302(a) contains a narrow limitation on the amount of time that suspensions may be exercised related to temporary housing, preventing me from further extending the moratorium beyond the end of this month.

The expiration of the moratorium would be less significant if the programs established to assist renters and homeowners in Act 24 were functioning as intended to provide payment assistance. Unfortunately, there are a number of provisions of the legislation that are creating significant administrative and programmatic challenges for the Pennsylvania Housing Finance Authority (PHFA), which is charged with administering the programs. In particular, the \$750 cap on assistance has proven too low for landlords to go through the process necessary to participate in the program. I have attached a letter from PHFA's Executive Director Robin Wiessmann further outlining the issues her agency believes must be addressed in order for the program to be successful.

The General Assembly must act to fix these problems immediately to provide meaningful assistance to this vital sector of the economy and prevent the displacement of Pennsylvanians as we continue to fight the COVID-19 virus. The Legislature should raise the \$750 a month payment to at least 130% of HUD limits which would actually assist landlords in higher cost areas, lead to greater participation in the program and increase the number of tenants assisted. In addition, the program should allow participants

EXHIBIT J

that need assistance to get rental assistance without being in arrears. Pennsylvanians should not have to forego food or medicine in order to remain current on rent and to be eligible for relief. Finally, landlords and tenants should be permitted to enter into repayment agreements for amounts not paid.

Without these urgently needed changes, payment assistance is not reaching residents who badly need it and these funds will ultimately be returned to the federal government at the end of the year. Upon the expiration of the moratorium at the end of the month, notices of eviction and foreclosure will again be able to be sent. This begins a process that takes time, but that ultimately concludes with our fellow Pennsylvanians being removed from their homes. I understand that members of the General Assembly have been working with affordable housing advocates and representatives of landlords on issues including forbearance flexibility, and I certainly hope that work continues. In the interim, I urge the General Assembly to act immediately to prevent evictions and foreclosures by passing legislation to temporarily extend the existing moratorium and fix the PHFA rent and mortgage programs so they can provide the assistance desperately needed to keep Pennsylvanians in their homes during this unprecedented time.

Thank you for your consideration.

Sincerely,



TOM WOLF
Governor