IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

CATTLEMANS, INC.
1 North Main Street
Ashland, OH 44859

and

MANDY ANN CLOSE
592 Township Road 761
Ashland, OH 44805

Plaintiffs,

v.

ASHLAND COUNTY HEALTH DEPARTMENT
1763 State Route 60
Ashland, OH 44805

and

HEATHER REFFETT, ***in her official capacity as Commissioner of the Ashland County Health Dept.***
1763 State Route 60
Ashland, OH 44805

Defendants.

Case No.

Judge

COMPLAINT for DECLARATORY JUDGMENT AND IMMEDIATE INJUNCTIVE RELIEF

Exhibit 1: July 15, 2020 Cease and Desist Order

Exhibit 2: Dine Safe Ohio Order

Exhibit 3: Affidavit of Mandy Close

Now comes Plaintiffs, and for their Complaint for Declaratory Judgment and Injunctive Relief, allege as follows:

INTRODUCTION

1. This is an action for declaratory judgment, and preliminary and permanent injunction, pursuant to Ohio Rev. Code Chapter 2721 and Ohio Rev. Code Chapter 2727, arising from Defendants' unconstitutional official conduct, policies, practices, regulations, restrictions and/or harassment.

2. While the Ashland County Health Department and its Commissioner claim the authority to suspend food licenses anytime a restaurant employee fails to wear a mask, Plaintiffs remain entitled to due process and a government that abides by the doctrine of separation of powers with the attendant checks and balances.

3. The Defendants' July 15, 2020 "Cease and Desist Order," - - issued solely on the basis of an alleged violation of the administrative *Dine Safe Ohio Order's* partial mask mandate for restaurant employees - - displays Defendants' commitment to a policy that violates the doctrine of separation of powers.

4. As a direct and proximate result of the unconstitutional conduct, policies, practices, regulations, restrictions, threats, and/or harassment of the Defendants, Plaintiffs (as well as many others) face ongoing, indefinite, and unlawful shutdown of their business.

5. Defendants' unlawful decimation of Plaintiffs' businesses, livelihoods, and economic security, continues to inflict irreparable harm on Plaintiffs.

6. This harm may only be remedied by a ruling from this Court, and Defendants must be immediately and permanently enjoined from suspending or continuing the suspension of Plaintiffs' business license, and more globally, continuing their policy of suspending Ashland County business licenses in response to the mask mandate or any other requirement of the *Dine Safe Ohio Order*.

PARTIES

7. Plaintiff Cattlemans, Inc. dba Cattlemans Restaurant is an Ohio Corporation doing business in the village of Savannah in Ashland County, Ohio.

8. Plaintiff Mandy Close, a resident of Ashland County, is the owner of Cattlemans, Inc. and the operator of Cattlemans Restaurant.

9. Defendant Ashland County Health Department is a county health district organized under Ohio Rev. Code Chapter 3709, charged with enforcing the Ohio Department of Health's Orders and empowered to make its own orders.

10. Defendant Heather Reffett is the Commissioner of the Ashland County Health Department and the person who authorized and imposed the July 15, 2020 *Cease and Desist Order* on Plaintiffs, indefinitely suspended Plaintiffs food license, denied Plaintiffs a hearing, and hired an undocumented Lebanese immigrant to surveil and harass Plaintiffs.

11. At all times relevant to the allegations in this Complaint, each and all of the acts of Defendants alleged herein were undertaken in attempted conformity with the regulations, customs, usages, policies, and practices of the State of Ohio and the Ohio Department of Health.

12. The actions of Defendant Reffett described herein were either outside the scope of her respective office, or, if within the scope, undertaken in an arbitrary manner, grossly abusing the lawful powers of her office.

13. Defendants have personally undertaken and/or threaten to continue to personally undertake specific action so as to deprive and/or violate the constitutional rights of the Plaintiffs.

14. All Defendants are being sued in their official capacities.

FACTS

15. On March 22, 2020, Amy Acton, in her capacity as the Director of the Ohio Department of Health, issued a *Director's Stay at Home Order*, ordering that "non-essential businesses and operations must cease" and "effective at 11:59 pm on March 23, 2020, all persons are to stay at home or their place of residence unless they are engaged in Essential Activities, Essential Governmental Functions, or to operate Essential Businesses and Operations as set forth in this Order."

16. Rather than defining the category articulated as "Essential Businesses and Operations," the *Director's Stay at Home Order* attempted to name "essential businesses and operations" over the course of three pages and 25 paragraphs.

17. While the standard of "essentiality" may initially appear clear, *i.e.*, "necessary for survival," the *Director's Stay at Home Order* included within the category of "essential", *inter alia*, liquor, marijuana, dry cleaners, and the state lottery.

18. Plaintiffs business was not deemed "essential."

19. Plaintiffs were permitted to open their business in May of 2020, subject to the new restrictions of the *Dine Safe Ohio Order*.

20. The *Dine Safe Ohio Order* provides that, "face coverings must be worn at all times unless exceptions apply." See *June 5, 2020 "Dine Safe Ohio Order,"* at p. 2, Section 4.

21. Employees of Ohio restaurants are plainly exempt when "facial coverings are not advisable for health reasons," "when the employee works alone in an assigned work area;" or if "there is a functional (practical) reason for an employee not to wear a facial covering in the workplace." See *June 5, 2020 "Dine Safe Ohio Order,"* at p. 2, Section 4.

22. Through a July 15, 2020 "Cease and Desist Order," the Ashland County Health Department rendered Mandy Close the first Ohio proprietor to permanenlty lose her Food Service Operations License ("food license") for an alleged failure to abide by an Order of the Director of the Ohio Department of Health putatively issued puruant to R.C. 3701.13. See *Exhibit 1.*

23. The Department's Order claims that "effective immediately the food service license issued to Cattlemans Restaurant is suspended by authority delegated to the Health Commissioner via R.C. 3717.49(B)(1) and (C)(1)," and "this suspension requires the establishement to cease and desist all provison of food services to the public." *Id.*

24. In the Order, Defendants claim as follows: "On July 14, 2020, . . . a public health employee identified that no employee of Cattleman's Restaurant was in compliance with the [sic] Section 10, number iii" of the State's May 14, 2020 Dine Safe Ohio Order." *Id.*[1]

25. Ohio Rev. Code § 3701.13 delegates to the Director of the Ohio Department of Health, amongst other things, "ultimate authority in matters of quarantine and isolation" and authority "to make special orders."

26. Ohio Rev. Code § 3701.352 mandates that "[n]o person shall violate any rule the director of health or department of health adopts or any order the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event."

[1] The Defendants cite the wrong Order: the Director of the Ohio Department of Health signed the "Dine Safe Ohio Order" on June 5, 2020, and renewed it on July 6, 2020.

27. In turn, Ohio Rev. Code § 3701.99(C) provides that any violation of Ohio Rev. Code § 3701.352 constitutes a second-degree misdemeanor, thus, subjecting any person violating Ohio Rev. Code § 3701.352 to up to 90 days in jail and a $750 fine, or both.

28. R.C. 3717.49(A) authorizes local health departments to suspend food service operation licenses, but only upon "determining that the license holder is in violation of any requirement of this chapter or the rules adopted under it applicable to food service operations, including a violation evidenced by the documented failure to maintain sanitary conditions within the operation."

29. The "requirements" of Chapter 3717 relevant to Plaintiffs are located in R.C. 3717.04, which simply authorizes "rules" to be adopted so long as those rules are "adopted in accordance with Chapter 119 of the Revised Code" and "subject to the approval of the joint committee on agency rule review," and R.C. 3717.05, which adopts a "Uniform Food Safety Code."

30. Administrative rules applicable to Plaintiffs are located in OAC 3717-1-02.1, 3717-1-02.2, 3717-1-02.3, and 3717-1-02.4.

31. Despite extensive regulation of health, safety, and articles of clothing, all with an expressed concern over communicable diseases, none of the foregoing administrative code sections require facial masks for restaurant employees. See, *inter alia*, 3717-1-02.3(C)(requiring "hair restraints," "hats," "net," or "beard restraints" in certain circumstances," and 3717-1-02.2 (H) (regulating "outer clothing"); and OAC 3717-1-02.1 (chronicling communicable disease and regulation to avoid their spread).

32. R.C. 3717.49(B)(1) provided as follows: "Except in the case of a violation that presents an immediate danger to the public health, prior to initiating action to suspend or revoke a food service operation license, the licensor shall give the license holder written notice specifying each violation and a reasonable time within which each violation must be corrected to avoid suspension or revocation of the license. The licensor may extend the time specified in the notice for correcting a violation if the license holder is making a good faith effort to correct it. * * * If the license holder fails to correct the violation in the time granted by the licensor, the licensor may initiate action to suspend or revoke the food service operation license by giving

the license holder written notice of the proposed suspension or revocation. The licensor shall include in the notice a description of the procedure for appealing the proposed suspension or revocation. The license holder may appeal the proposed suspension or revocation by giving written notice to the licensor. The license holder shall specify in the notice whether a hearing is requested. The appeal shall be conducted in accordance with division (B)(3) of this section. * * * Any action that may be taken by a licensor under division (B)(1) of this section may be taken by a health commissioner or other person employed by the licensor if the person or health commissioner is authorized by the licensor to take the action.

33. R.C. 3717.49(C)(1) provided as follows: On determining that a license holder is in violation of any requirement of this chapter or the rules adopted under it applicable to food service operations and that the violation presents an immediate danger to the public health, the licensor may suspend the food service operation license without giving written notice or affording the license holder the opportunity to correct the violation. If the license holder is operating a mobile or catering food service operation, either the licensor that issued the license or the licensor for the health district in which the operation is being operated may suspend the license. * * * A suspension under division (C)(1) of this section takes effect immediately and remains in effect until the licensor lifts the suspension. When a mobile food service operation license is suspended under this division, the licensor that suspended the license shall hold the license until the suspension is lifted and the licensor receives from the license holder written notice of the next location at which the license holder proposes to operate the food service operation. * * * After suspending a license under division (C) (1) of this section, the licensor shall give the license holder written notice of the procedure for appealing the suspension. The license holder may appeal the suspension by giving written notice to the licensor and specifying in the notice whether a hearing is requested. The appeal shall be conducted in accordance with division (C)(2) of this section. * * * Any action that may be taken by a licensor under division (C)(1) of this section may be taken by a health commissioner if the health commissioner is authorized by the licensor to take the action. A health commissioner who suspends a license under this

authority may, on determining that there is no longer an immediate danger to the public health, lift the suspension without consulting the licensor.

34. A true and accurate copy of the July 15, 2020 *Cease and Desist Order* is attached hereto as Exhibit 1.

35. A true and accurate copy of the June 5, 2020 *Director's Dine Safe Ohio Order* is attached hereto as Exhibit 2.

DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
Article I, Sections 1, 2, 16, 19 and 20 and Article II, Section 1 of the Ohio Constitution

36. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

37. In order to prevent the continued violation of Plaintiffs' constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment be issued, declaring unconstitutional and otherwise unlawful the *Director's Dine Safe Ohio Order*.

38. It is further appropriate and hereby requested that preliminary and permanent injunctions issue prohibiting the Defendants from enforcing the *Director's Dine Safe Ohio Order*, the Defendants' July 20, 2020 Cease and Desist Order, and any materially similar rules or orders against Plaintiffs.

39. It is further appropriate and hereby requested that preliminary and permanent injunctions issue enjoining Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in any further official conduct that threatens, attempts to threaten, and/or actually interferes with Plaintiffs' exercise of the rights and liberties preserved through R.C. 3717 and the Ohio Constitution.

Vagueness and Separation of Powers

40. Defendants may not rely solely upon orders issued pursuant to 3701.13, such as the *Dine Safe Ohio Order,* to suspend Plaintiffs' food license because (1) those orders, including mask mandates, are constitutionally impermissible; (2) even if permissible, the sanctions for violation of those orders do not

include suspension of food licenses; and (3) even if those orders were applicable, Plaintiffs' activities are exempt from the mask mandate articulated in the *Dine Safe Ohio Order*.

41. Section 1, Article II of the Ohio Constitution vests the legislative power of the state solely in the Ohio General Assembly.

42. In delegating "ultimate authority in matters of quarantine and isolation" to the Ohio Department of Health, the Ohio General Assembly has delegated legislative authority without an intelligible principle, resulting in untethered mask mandates of the type Defendants seek to use against Plaintiffs here.

43. "Without sufficient limitations, the delegation of authority can be deemed void for vagueness as allowing ad hoc decisions or giving unfettered discretion." *Biener v. Calio*, 361 F.3d 206, 215-17 (3d Cir. 2004).

44. "A delegation of legislative authority offends due process when it is made to an unaccountable group of individuals and is unaccompanied by 'discernible standards,' such that the delegatee's action cannot be 'measured for its fidelity to the legislative will.'" *Ctr. for Powell Crossing, LLC v. City of Powell, Ohio*, 173 F. Supp. 3d. 639, 675-79 (S.D. Ohio 2016).

45. "Though the degree of review for vagueness is not described with specificity, if the enactment 'threatens to inhibit the exercise of constitutionally protected rights,' (such as property rights in Ohio), a more stringent vagueness test is to be applied." *Yoder v. City of Bowling Green, Ohio*, No. 3:17 CV 2321, 2019 WL 415254, at 4-5 (N.D. Ohio Feb. 1, 2019), citing *Norwood*, 110 Ohio St.3d at 379.

46. Because there is no means of exercising judicial review over any order issued by the Director of Health purportedly under the authority of Ohio Rev. Code § 3701.13, that delegation is impermissibly vague.

47. The vague delegation, both on its own and in combination with the various orders issued by the Director of Health, has violated, continues to violate, and will further violate Plaintiffs' rights.

48. At the time of this filing, just two Ohio Court have adjudicated the merits of the Defendants' pandemic "orders," shutting down Ohio businesses, issued by Director of the Ohio Department of Health.

49. The aforesaid Courts each held that the penalties flowing from such orders to be impermissibly unconstitutional and otherwise unlawful. See *Rock House Fitness, Inc. v. Acton,* Case No. 20CV000631 (Lake Cty. C.P. 5-20-2020)(Decision attached).[2]

50. In *Rock House Fitness,* the Court explained that "[t]he director has quarantined the entire people of the state of Ohio, for much more than 14 days. The director has no statutory authority to close all businesses . . . She has acted in an impermissibly arbitrary, unreasonable, and oppressive manner and without any procedural safeguards . . . Fundamental liberties to own and use property and earn a living are at stake and are violated [Acton's] actions . . . and there is no administrative appeal process within the department of health regulation for this taking." *Id.*, at ¶26, 31, 34.

51. Further, the *Rock House Fitness* court rejected the notion that "one unelected individual could exercise such unfettered power to force everyone to obey impermissibly, vague, arbitrary, and unreasonable rules that the Director devised and revised, modified and reversed, whenever and as she pleases, without any legislative guidance." *Id*., at ¶37. The Court then enjoined Director Acton and the local health department "from imposing or enforcing penalties solely for noncompliance with the director's order." *Id.,* at ¶37.

52. In addition, "the statute granting [the Health Director] the authority, power to enforce, and criminalize also violates the separation of powers that exist in our Constitutional framework to protect our citizens from the consolidation of power in one person." *LMV DEV SPE, LLC DBA Kalahari Resorts & Conventions v. Acton,* Case No. 2020-CV-0201 (Erie Cty. C.P. 6-20-2020)(Decision attached).[3]

53. "Moreover, if one unelected, unaccountable to the public, official is allowed to invoke unfettered Orders, which can criminalize an otherwise non-criminal activity only for disobedience to her Orders, then the right to Due Process is extinguished. The authority to issue Orders, create strict liability crimes without legislative or Administrative oversight, and impose criminal sanctions. To restrict the fundamental right of

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[2] The decision is available online here: *https://ohioconstitution.org/wp-content/uploads/2020/05/20CV000631-Rock-House-Fitness-Inc.-v-Amy-Acton-Director-ODOH-order-granting-preliminary-injunction.pdf*

[3] The decision is available online here: *https://drive.google.com/file/d/1dFHe-xURkgWPEy-FQBqNucl26QlEL-Aj/view.*

property based on an impermissible classification of 'identity' rather than on 'safety'. To violate the separation of powers by delegating policy making, rather than policy shaping, to an Administrative agency without proper oversight or reservation of authority to override Orders. All these are a concern for this Court in regards to Due Process and Equal Protection rights of the citizens being violated." *Id.*

54. The Ohio Department of Health has "been improperly granted the power to create and criminally enforce, with strict liability, laws simply by a decision of an unelected, unaccountable to the general public, administrative officer by virtue of an Order, application of which is, can and does trample of the fundamental rights of the citizens." *Id.*

55. Thus, the *Director's Dine Safe Ohio Order* and any materially similar rules or orders are imposed pursuant to vague and unfettered enforcement authority that violates the doctrine of separation of powers, and Defendants may not rely solely on those orders when suspending Plaintiffs' food license.

56. Because Orders imposed on Plaintiffs pursuant to R.C. 3701.13 fail constitutional scrutiny, any order imposed on Plaintiffs in sole reliance on that statute or an order arising therefrom, such as the Defendants' July 15, 2020 *Cease and Desist Order*, must be enjoined.

The Defendants may not Override Legislative Acts

57. In framing the Ohio Constitution, the people of this state conferred on the General Assembly the legislative power. This lawmaking prerogative cannot be delegated to or encroached upon by the other branches of government. *See State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, ¶ 46; *Cent. Ohio Transit Auth. v. Transport Workers Union of Am., Local 208*, 37 Ohio St.3d 56, 62 (1988) (plurality opinion); *Matz v. J.L. Curtis Cartage Co.*, 132 Ohio St. 271, 279 (1937). *City of Toledo v. State*, 2018-Ohio-2358, 154 Ohio St. 3d 41, 47.

58. The *only* purpose of an administrative act is to accomplish the ends sought by legislation enacted by the General Assembly. *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 2002-Ohio-4172, ¶¶ 40, 96 Ohio St. 3d 250, 254–57; *Hoffman v. State Med. Bd. of Ohio*, 113 Ohio St.3d 376, 2007-Ohio-2201, at ¶ 17.

59. "Rules promulgated by administrative agencies" may not be "in conflict with statutory enactments covering the same subject matter." *State ex rel. Curry v. Indus. Comm.* (1979), 58 Ohio St.2d 268, 269.

60. If an administrative act either adds to or subtracts from a legislative enactment, it creates a clear conflict with the statute, and the rule is invalid and unconstitutional. *Cent. Ohio Joint Vocational School Dist. Bd. of Edn. v. Ohio Bur. of Emp. Servs.* (1986), 21 Ohio St.3d 5, 10; *Midwestern College of Massotherapy v. Ohio Med. Bd.* (1995), 102 Ohio App.3d 17, 23, 656 N.E.2d 963 (stating that "a rule that is in conflict with the law is unconstitutional because it surpasses administrative powers and constitutes a legislative function").

61. "All powers of governmental agencies are legislatively granted, and such agencies have only such regulatory authority as is granted, and the acts of such agency may not exceed such authority or be in direct conflict with the exercise of specific powers granted to state departments for statewide regulatory control." *Johnson's Markets, Inc. v. New Carlisle Dep't of Health*, 58 Ohio St. 3d 28, 36 (1991).

62. It is well settled that an administrative agency has only such regulatory power as is delegated to it by the General Assembly. Authority that is conferred by the General Assembly cannot be extended by the administrative agency. *Burger Brewing Co. v. Thomas* (1975), 42 Ohio St.2d 377, 379.

63. "In construing such grant of power, particularly administrative power through and by a legislative body, the rules are well settled that the intention of the grant of power, as well as the extent of the grant, must be clear; that in case of doubt that doubt is to be resolved not in favor of the grant but against it." *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 2002-Ohio-4172, ¶¶ 40, 96 Ohio St. 3d 250, 254–57, citing *State ex rel. A. Bentley & Sons Co. v. Pierce* (1917), 96 Ohio St. 44, 47.

64. No executive branch official or agency may "transcend its administrative rule-making power and exercise legislative functions in violation of Section 1 of Article II of the Constitution of Ohio." *Weber*, 148 Ohio St. 389.

65. There is no express grant of power in R.C. 3709.21, or elsewhere, allowing local boards of health unfettered authority to promulgate any health regulation deemed necessary. Since there is no express

delegation, it follows that there is no implied authority . . . Administrative regulations cannot dictate public policy but rather can only develop and administer policy already established by the General Assembly." *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 2002-Ohio-4172, ¶¶ 37-41 ("[P]olicy-making require[es] a balancing of social, political, economic, and privacy concerns. Such concerns are legislative in nature, and by engaging in such actions, petitioners have gone beyond administrative rule-making and usurped power delegated to the General Assembly").

66. Chapter 3717 of the Ohio Revised Code does not authorize local health departments to suspend food license solely on the grounds of a violation of the Dine Safe Ohio Order or any other R.C. 3701.13 Order.

67. Defendants have unilaterally created their own food license suspension policies that depart from governing statute, and enforced those policies against Plaintiffs.

68. Absent declaratory and injunctive relief, Defendants will continue to employ those policies to harm not just Plaintiffs and their employees and customers, but other Ashland County businesses, employees, and communities.

69. Defendants' policy of suspending food license for grounds other than those authorized by statute exceeds their limited administrative authority and therefore violates the Ohio Constitution;

70. In addition to over-relying on the *Director's Dine Safe Ohio Order*, the Defendants have simultaneously failed to accurately apply that Order to Plaintiffs.

71. Even if Defendants' fabricated policy, were lawful, Plaintiffs' operations were exempt from the mask mandate at the time of the alleged mask infraction.

72. In heat and when socially distant, Plaintiffs operations are exempt from the *Dine Safe Ohio Order's* mask mandate when "facial coverings are not advisable for health reasons," "when the employee works alone in an assigned work area;" or if "there is a functional (practical) reason for an employee not to wear a facial covering in the workplace." See *June 5, 2020 "Dine Safe Ohio Order,"* at p. 2, Section 4.

73. Facial coverings are not advisable for health reasons and are impractical when Plaintiffs' waitresses are already experiencing physical exertion, particularly in high temperatures.

74. Facial coverings are inappropriate in Plaintiffs' kitchen when the temperature of the kitchen is too warm or when cooks and dishwashers are working alone in isolation from customers and distant from one another.

Procedural Due Process

75. Prolonged suspension of Plaintiffs' license without notice, warning, or a hearing violates Plaintiffs' right to Procedural Due Process.

76. A procedural due process limitation, unlike its substantive counterpart, does not require that the government refrain from making a substantive choice to infringe upon a person's life, liberty, or property interest. It simply requires that the government provide 'due process' before or after making such a decision.

77. The goal is to minimize the risk of substantive error, to assure fairness in the decision-making process, and to assure that the individual affected has a participatory role in the process. The touchstone of procedural due process is the fundamental requirement that an individual be given the opportunity to be heard 'in a meaningful manner.'" *Howard v. Grinage*, 82 F.3d 1343, 1349 (6th Cir. 1996), citing *Loudermill v. Cleveland Bd. of Educ.*, 721 F.2d 550, 563 (6th Cir.1983), *aff'd*, 470 U.S. 532 (1985).

78. Interests in operating a business or earning a living are more than sufficient to invoke procedural due process guarantees. *Johnson v. Morales*, 946 F.3d 911, 935–37 (6th Cir. 2020)("Johnson's interest in her business license is enough to invoke due process protection").

79. "There is no dispute that *never* providing an opportunity to challenge a permit revocation violates due process. Thus, the revocation of [the right to remain in business] without a pre-deprivation hearing or a post-deprivation hearing violated due process." *United Pet Supply, Inc. v. City of Chattanooga, Tenn.*, 768 F.3d 464, 488 (6th Cir. 2014).

80. Even when such property interests are deprived in an "emergency situation," government must provide an "adequate post-deprivation process." *United Pet Supply*, 768 F.3d at 486.

81. These safeguards for liberty are so beyond objection that "[n]o reasonable officer could believe that revoking a permit to do business without providing any pre-deprivation or post-deprivation remedy [is] constitutional." *Id.,* at 488.

82. Heavily regulating an Ohioan or putting an Ohioan out of business without any opportunity for a hearing "is one of the rare situations where the unconstitutionality of the application of a statute to a situation is plainly obvious" such that "a clearly established right" is violated, and even qualified immunity is to be denied. *Id.,* at 489.

83. The fundamental requirement of due process is the opportunity to be heard and it is an "opportunity which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545, 552 (1965).

84. *Further*, even when the "the government has a substantial interest in ensuring the safety of its citizens," a postdeprivation hearing is still required. See *Johnson v. Morales,* 946 F.3d 911, at 923 (6th Cir. 2020).

85. *Finally*, in requiring a postdeprivation hearing, at least with respect to the decimation of one's business and livelihood, it matters not that the deprivation may be only "temporary" in nature. *Fuentes v. Shevin,* 407 U.S. 67, at 84–85 ("[I]t is now well settled that a temporary, nonfinal deprivation of property is nonetheless a 'deprivation' in the terms of the Fourteenth Amendment.").

86. "Due process of law requires that plaintiffs be afforded a *prompt* hearing before a neutral judicial or administrative officer." *Krimstock v. Kelly,* 464 F.3d 246, 255 (2d Cir. 2006)(25 day delay for post-deprivation hearing unconstitutional); see also *United States v. James Daniel Good Real Prop.,* 510 U.S. 43, 56 (1993)("the Due Process Clause requires ... an opportunity for some kind of predeprivation or *prompt* post-deprivation hearing at which some showing of the probable validity of the deprivation must be made").

87. Defendants were and are required to supply Plaintiffs with a prompt hearing where the burden is on the Department to justify its decision to either close Plaintiffs' business.

88. Defendants have entirely ignored these clear and important safeguards in imposing its "Cease and Desist Orders" indefinitely suspending Plaintiffs' businesses.

89. With each passing day and week that Plaintiffs' businesses remain closed or impermissibly regulated, additional irreparable harm is inflicted on the Plaintiffs' many employees and affiliates, surrounding businesses, and local governments.

90. Although Defendants initially offered Plaintiffs a July 20, 2020 "meeting," Defendants revoked that offer and cancelled the meeting after Plaintiffs inquired as to the scope and gravity of the meeting.

Conclusion

91. Because Plaintiffs' food license is subject to ongoing regulation by Defendants, Plaintiffs require declaratory relief beyond the scope of the immediate controversy regarding suspension of Plaintiffs food license in response to an alleged mask mandate.

92. Neither the Defendants' July 15, 2020 Cease and Desist Order nor the Director's Dine Safe Ohio Order is entitled to any deference or presumption of constitutionality, because neither is a statute duly-enacted by the Ohio General Assembly nor an administrative rule enacted through the Notice and Comment rulemaking procedures required by R.C. 119.

93. Plaintiffs respectfully incorporate by reference all Exhibits identified in the caption of this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and that this Court:

(1) Issue a temporary restraining order, and a preliminary and permanent injunction, prohibiting Defendants and Defendants' agents from enforcing their July 15, 2020 *Cease and Desist Order* or any materially identical order against Plaintiffs so long as Plaintiffs abide by the general safety strictures articulated in Chapter 3717 of the Ohio Revised Code, Chapter 3717 of the Ohio Administrative Code, and the *Dine Safe Ohio Order*, to the extent that its limits are constitutionally permissible.

(2) Issue a temporary restraining order, and a preliminary and permanent injunction, prohibiting Defendants and Defendants' agents from enforcing their policy of suspending business licenses predicated solely on violations of the *Dine Safe Ohio Order*, including but not limited to the mask requirement.

(3) Issue a temporary restraining order, and a preliminary and permanent injunction, prohibiting Defendants and Defendants' agents from enforcing any Director's Order issued pursuant to R.C. 3701.13 to suspend business licenses.

(4) Declare that the Defendants' July 15, 2020 *Cease and Desist Order* and Defendants' policy of suspending business licenses in response to alleged but unadjudicated violations of R.C. 3701.13 Director's Orders is constitutionally and statutorily impermissible.

(5) Enjoin Defendants from enforcing penalties for non-compliance with any state or local Order or any other non-statutory limit so long as Plaintiffs operate within the limits of the Ohio Revised Code and adhere to otherwise generally-applicable safety guidelines.

(6) Declare that Defendants' suspension of Plaintiffs' license without a prior hearing or prompt post-deprivation hearing violates Plaintiffs' right to procedural due process.

(7) Pursuant to Ohio Rev. Code § 2335.39 ("the Equal Access to Justice Act"), 42 U.S.C. 1988, and other applicable law, award Plaintiff its costs, actual damages, nominal damages and expenses incurred in bringing this action, including reasonable attorneys' fees;

and

(8) Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

/s/ Maurice A. Thompson
Maurice A. Thompson (0078548)
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122 E. Main Street
Columbus, Ohio 43215
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MThompson@OhioConstitution.org
Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on Defendants, through email to Defendants, on **July 22, 2020**

Respectfully submitted,
/s/ Maurice A. Thompson
Maurice A. Thompson (0078548)

ASHLAND COUNTY HEALTH DEPARTMENT

July 15, 2020

CEASE AND DESIST ORDER

Cattleman's Inc.
1 North Main Street
Savannah, OH 44874

To Whom It May Concern::

This letter serves as official government communication that effective immediately the food service license, #9305, issued to Cattlemans Restaurant is suspended by authority delegated to the Health Commissioner via the Ohio Revised Code 3717.49 (B)(1) and (C)(1). This suspension requires the establishment to cease and desist all provision of food services to the public.

Be aware that the Health Commissioner has legal authority to enforce this Order. This action is being taken in light of the fact that the Cattlemans Restaurant has failed to comply with applicable state rules. Specifically, the Cattlemans Restaurant is not in compliance with the requirements of the Ohio Department of Health Director's Dine Safe Ohio Order issued May 14, 2020. Section10, number iii states that "Employees, face coverings must be worn at all times unless exceptions apply, see Section 4."

On July 14, 2020, an on-site observation from a public health employee identified that no employee of Cattlemans Restaurant was in compliance with the Section 10, number iii. Upon speaking with the person in charge, there was no satisfactory resolution of this violation. If you have any questions regarding this Order, you may contact me at (419) 685-6336. At this time, an emergency meeting of the Board of Health is being scheduled to review the permanent status of the establishment's license. Once a date and time is set, you will be notified.

Sincerely,

Heather Reffett

Heather A. Reffett, MPA, CPM
Health Commissioner

1763 State Route 60 · Ashland, Ohio 44805 · 419-282-4231 · www.ashlandhealth.com
Environmental Health 419-282-4337 · Fax 419-282-4333 Nursing 419-282-4357 · Fax 419-282-4271
Vital Statistics 419-282-4231 · Fax 419-282-4360

Ohio | Department of Health

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

DIRECTOR'S DINE SAFE OHIO ORDER

Re: Director's Amended Order that Reopens Restaurants, Bars, Banquet and Catering Facilities and Services to Dine-in Service, with Exceptions

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders…for preventing the spread of contagious or infectious diseases" **Order** the following to prevent the spread of COVID-19 into the State of Ohio:

1. **Preamble:** The sacrifices and incredible efforts that Ohioans have undertaken, make it possible to begin to lift the mandatory requirements and restrictions that were needed during the initial phase of the COVID-19 Pandemic. The adjustment of these orders is able to proceed based upon the facts and the science existing at this time in Ohio, however if the situation continues to improve, then more restrictions will be lifted, and if the situation deteriorates additional targeted restrictions will need to be made. While government can set the baseline, it should be understood that these orders set forth the minimum acts that must be taken and if people do more than the minimum to act safely, it will benefit everyone.

2. **Restaurants, Bars, Banquet and Catering Facilities and Services to reopen**. All restaurants, bars, banquet and catering facilities and services and other like businesses and operations in the State, which have the onsite consumption of food, beer, wine and liquor, are permitted to reopen for full, dine-in service within the State so long as all workplace safety standards are met. These businesses and operations are encouraged to either reopen or remain open if they have not ceased operation during the prior Stay at Home or other ODH Orders. Businesses and operations shall continue to comply with Social Distancing Requirements as defined in this Order, including by maintaining six-foot social distancing for both employees and members of the public when possible, including, but not limited to, when any customers are standing in line. Tables are to be limited to no more than 10 persons. Banquet and Catering Facilities and Services are to be limited to no more than 300 persons. Live entertainment is permitted. Customers must be seated when consuming food, beer, wine and liquor on the premises of the business. The open congregate areas in restaurants, bars, banquet and catering facilities (billiards, card playing, pinball games, video games, arcade games, dancing, entertainment) are permitted to open but businesses must follow all social distancing guidelines as well as sanitation guidelines as provided in this and other orders.

3. **Elderly people and those who are vulnerable as a result of illness should take additional precautions.** People at high risk of severe illness from COVID-19, including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care. According to CDC, those at high-risk for severe illness from COVID-19 include people who are sixty-five years or older and people of all ages with underlying medical conditions, particularly if not well controlled, including:

    a. People with chronic lung disease or moderate to severe asthma;

b. People who have serious heart conditions;
c. People who are immune compromised;
d. People with severe obesity (body mass index [BMI] of 40 or higher);
e. People with diabetes;
f. People with chronic kidney disease undergoing dialysis; and
g. People with liver disease.

4. **Facial Coverings (Masks).** Businesses must allow all customers, patrons, visitors, contractors, vendors and similar individuals to use facial coverings, except for specifically documented legal, life, health or safety considerations and limited documented security considerations. Businesses must require all employees to wear facial coverings, except for one of the following reasons:

   a. Facial coverings in the work setting are prohibited by law or regulation;
   b. Facial coverings are in violation of documented industry standards;
   c. Facial coverings are not advisable for health reasons;
   d. Facial coverings are in violation of the business's documented safety policies;
   e. Facial coverings are not required when the employee works alone in an assigned work area; or
   f. There is a functional (practical) reason for an employee not to wear a facial covering in the workplace.

   Businesses must provide written justification, upon request, explaining why an employee is not required to wear a facial covering in the workplace. At a minimum, facial coverings (masks) should be cloth/fabric and cover an individual's nose, mouth, and chin.

5. **Prior Director of Health Order.** The Director of Health Order signed March 15, 2020 that closed restaurants and bars to all but carry-out and delivery activities in the State is rescinded effective at 12:01 a.m. on May 21, 2020.

6. **Social Distancing Requirements.** For purposes of this Order, Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

   a. **Required measures.** Businesses and Operations and businesses must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:

      i. **Designate six-foot distances.** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;

      ii. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers; and

      iii. **Online and remote access.** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

7. **General COVID-19 Information and Checklist for Businesses/Employers.** Business and employers are to take the following actions:

a. Strongly encourage as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing, subject to the discretion of the employer;

b. Actively encourage sick employees to stay home until they are free of fever (without the use of medication) for at least 72 hours (three full days) AND symptoms have improved for at least 72 hours AND at least seven days have passed since symptoms first began. Do not require a healthcare provider's note to validate the illness or return to work of employees sick with acute respiratory illness; healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way;

c. Ensure that your sick leave policies are up to date, flexible, and non-punitive to allow sick employees to stay home to care for themselves, children, or other family members. Consider encouraging employees to do a self-assessment each day to check if they have any COVID-19 symptoms (fever, cough, or shortness of breath);

d. Separate employees who appear to have acute respiratory illness symptoms from other employees and send them home immediately. Restrict their access to the business until they have recovered;

e. Reinforce key messages — stay home when sick, use cough and sneeze etiquette, and practice hand hygiene — to all employees, and place posters in areas where they are most likely to be seen. Provide protection supplies such as soap and water, hand sanitizer, tissues, and no-touch disposal receptacles for use by employees;

f. Frequently perform enhanced environmental cleaning of commonly touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label. Provide disposable wipes so that commonly used surfaces can be wiped down by employees before each use;

g. Be prepared to change business practices if needed to maintain critical operations (e.g., identify alternative suppliers, prioritize customers, or temporarily suspend some of your operations); and

h. Comply with all applicable guidance from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health regarding social distancing.

8. **Sector Specific COVID-19 Information and Checklist for Businesses/Employers Covered by this Order.** Businesses and employers, whether currently open or reopening, are to take the following actions:

   a. Employees:

      i. Where possible, ensure a minimum of 6 feet distance between workers and where not possible, utilize barriers if applicable and increase the frequency of surface cleaning, handwashing, sanitizing and monitor compliance;
      ii. Businesses must allow all customers, patrons, visitors, contractors, vendors and similar individuals to use facial coverings, except for specifically documented legal, life, health or safety considerations and limited documented security considerations;

iii. Face coverings (per CDC guidelines) must be worn at all times unless exceptions apply, see Section 4 of this Order for guidance;
iv. Employees must perform a daily symptom assessment that should include taking temperature with a thermometer, monitoring for fever and watching for coughing or trouble breathing;
v. Require employees to stay at home if symptomatic and perform daily symptom assessment before returning to work;
vi. Provide ServSafe, or other approved COVID-19 education, as soon as possible. Add COVID-19 symptoms to the current standard Health Agreement required by the food safety code;
vii. Require regular handwashing (soap and water for at least 20 seconds) a minimum of every 2 hours or more often as necessary;
viii. Comply with person in charge certification requirements and manager certification requirements as set forth in Ohio Admin. Code Sections 3701-21-25 and 3717-1-02.4, as applicable;
ix. Maintain compliance with ODH sanitation and food safety regulations;
x. Limit number of employees allowed in break rooms at the same time. Maximum to be the group size limitation set forth in the Stay Safe Ohio Order dated April 30, 2020 or as thereafter amended (currently 10 persons);
xi. It is recommended that third party delivery services be required to wait outside or in non-congested areas while adhering to the social distancing guidelines;
xii. It is recommended that third party delivery services be required to wear face coverings (per CDC guidelines) at all times unless exceptions apply, see Section 4 of this Order for guidance;
xiii. It is recommended that employees be educated on the proper use, disposal and maintenance of face coverings and update and enhance the education on proper glove use pursuant to the relevant administrative code;
xiv. It is recommended that health checks include temperature assessments, questionnaires, employee self-checks, screening apps or other tools. Files should be updated with a file of "Health Checks";
xv. It is recommended that telephone symptom assessments be conducted for employees that were ill and are now planning to return to work;
xvi. It is recommended that as the rehiring of employees commences, interviews and onboarding occur virtually;
xvii. It is recommended that education be reinforced on when to wash hands pursuant to current food safety regulations, that ODH handwashing posters be placed at sinks and workstations and that set times for periodic handwashing be established; and
xviii. It is recommended that employees avoid switching tasks when possible to reduce cross contamination concerns and increase handwashing if changing tasks is necessary.

b. Customers and Guests

i. Where possible, ensure minimum of 6 feet between parties waiting and when dining, and where not possible, then utilize barriers and other protective devices;
ii. Post a list of COVID-19 symptoms in a conspicuous place;
iii. Ask customers and guests not to enter if symptomatic;
iv. Provide access to hand sanitizing methods while in the food service establishment and, if possible, place approved hand cleansing/sanitizing methods in high-contact areas;
v. Food service establishments offering dine-in service must take affirmative steps with customers to achieve safe social distancing guidelines;
vi. It is recommended that customers and guests wear face coverings at all times, except when dining;
vii. It is recommended that health questions for symptoms be posted at the entrance and follow current guidelines of the CDC and ODH;
viii. It is recommended that, if possible, separate, dedicated entrances and exit doors be identified;
ix. It is recommended that, where possible, enhance dining room ventilation (open doors and windows);
x. It is recommended that, where possible, encourage customers to make dine-in reservations or use drive through, pick-up, call-in, curbside or delivery options; and
xi. It is recommended that at-risk customers be encouraged to utilize options other than dine-in.

c. Physical spaces

i. Establish and post maximum dining capacity using updated COVID-19 compliant floor plans and with a maximum reservation or party size limitation as set forth in Stay Safe Ohio Order dated April 30, 2020 or as thereafter amended (currently 10 persons);
ii. Post a kitchen floor plan establishing safe social distancing guidelines and following established ODH guidance for masks and gloves;
iii. Perform daily cleaning (front and back of facility). Clean and sanitize tabletops, chairs, and menus between seatings. Clean all high touch areas (door handles, light switches, phones, pens, touch screens) every two hours or more frequently as needed;
iv. Provide approved hand cleansing/sanitizing methods in common areas;
v. Where appropriate, establish ordering areas and waiting areas with clearly marked safe distancing and separations per individual/social group for both restaurant and bar service;
vi. Remove self-service, table, and common area items (examples: table tents, vases, lemons, straws, stir sticks, and condiments);
vii. Salad bars and buffets are permitted if served by staff with safe 6 feet of social distancing between parties;
viii. Private dining and bar seating areas within a foodservice establishment must follow all approved social distancing guidelines;

ix. The open congregate areas in restaurants and bars (billiards, card playing, pinball games, video games, arcade games, dancing, entertainment) may be open but are required to follow social distancing and sanitation guidelines;
x. It is recommended that barriers be utilized in high volume areas;
xi. It is recommended that, if possible, workstations be staggered so employees avoid standing directly opposite or next to each other and, if not possible, then that the frequency of surface cleaning, handwashing, and sanitizing be increased and compliance monitored;
xii. It is recommended that entry and exit options be limited while still maintaining compliance with all applicable administrative code requirements;
xiii. It is recommended that weekly deep cleaning checklists be updated and enhanced;
xiv. It is recommended that, where possible, disposable menus be utilized;
xv. It is recommended that ODH "Best Practices" be posted that illustrate and highlight continuous cleaning and sanitizing of all food equipment and common surfaces;
xvi. It is recommended that employee education and compliance hand washing, glove use, employee health and food handler training continue to be emphasized;
xvii. It is recommended that, if possible, HVAC systems receive updated air filtration improvements; and
xviii. It is recommended that designated curbside pickup zones for customers be continued and encouraged.

d. Confirmed cases

i. Immediately isolate and seek medical care for any individual who develops symptoms while at work;
ii. Contact the local health district about suspected cases or exposures;
iii. Shutdown area for deep sanitation if possible;
iv. It is recommended that businesses work with local health department to identify potentially infected or exposed individuals to help facilitate effective contact tracing/ notifications;
v. It is recommended that once testing is readily available, businesses test all suspected infections or exposures; and
vi. It is recommended that following testing, businesses contact the local health department to initiate appropriate care and tracing.

9. **Duration.** This Order shall be effective at 12:01 a.m. on June 1, 2020 and remains in full force and effect until 11:59 p.m. on July 1, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date.

COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person

coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.

On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.

On January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern.

On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19.

On February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria.

On February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed.

On February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday.

On February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting.

On February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19.

On February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio.

On February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University.

On February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center.

On February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term

care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments.

On March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications.

On March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff.

On March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19.

On March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.

On March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center.

On March 9, 2020, the Governor Declared a State of Emergency in Executive Order 2020-01D.

On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

On March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio.

On March 11, 2020, the Ohio Departments of Health and Veterans Services issued a Joint Directors' Order to limit access to Ohio nursing homes and similar facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit access to Ohio's jails and detention facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only.

On March 15, 2020, the CDC issued Interim Guidance for mass gatherings or large community events, stating that such events that consist of 50 or more people should be cancelled or postponed.

On March 16, 2020 the Ohio Department of Health issued a Director's Order closing polling locations for the March 17, 2020 primary election.

On March 17, 2020 the Ohio Department of Health issued a Director's Order for the management of non-essential surgeries and procedures throughout Ohio.

On March 17, 2020 the Ohio Department of Health issued an Amended Director's Order to limit and/or prohibit mass gatherings and the closure of venues in the State of Ohio.

On March 19, 2020, the Ohio Department of Health issued a Director's Order closing hair salons, nail salons, barber shops, tattoo parlors, body piercing locations, and massage therapy locations.

On March 21, 2020, the Ohio Department of Health issued a Director's Order closing older adult day care services and senior centers.

On March 21, 2020, the Ohio Department of Health issued a Director's Order closing family entertainment centers and internet cafes.

On March 22, 2020, the Ohio Department of Health issued a Director's Order that all persons are to stay at home unless engaged in essential work or activity.

On March 24, 2020, the Ohio Department of Health issued a Director's Order that closed facilities providing child care services.

On March 30, 2020, the Ohio Department of Health issued an Amended Director's Order that closed all K-12 schools in the State of Ohio.

On April 2, 2020, the Ohio Department of Health issued an Amended Director's Order that all persons are to stay at home unless engaged in essential work or activity.

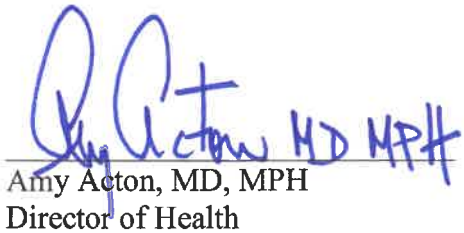
On April 30, 2020, the Ohio Department of Health issued the Stay Safe Ohio Order that reopened businesses, with exceptions, and continued a stay healthy and safe at home order.

Multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread.

The CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads.

Mass gatherings (10 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, I hereby **ORDER** that restaurants and bars may reopen or continue to operate as set forth in this Order. This Order shall remain in full force and effect until 11:59 p.m. on July 1, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date. To the extent any public official enforcing this Order has questions regarding what services are prohibited under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order.



June 5, 2020

Amy Acton, MD, MPH
Director of Health

AFFIDAVIT OF MANDY ANN CLOSE

STATE OF OHIO:

COUNTY OF ASHLAND:

I, MANDY A. CLOSE, declare the following:

1. I have personal knowledge of the factual matters alleged in Plaintiffs' Complaint in this case and the matters below because I own and operate Cattlemans Inc., DBA Cattlemans Restaurant, at 1 North Main Street in Savannah, Ohio.

2. I have reviewed Plaintiffs' Complaint in this case, and all factual allegations contained in the Complaint are true and accurate.

3. On July 15, 2020, I received a Cease and Desist Order from the Ashland County Health Department, relying on the fact that three Cattlemans employees were not wearing face mask at the time of a July 14, 2020 investigation.

4. Two of these employees, our cook, Kaitlyn A. Close, and our dishwasher, Taylor J. Ruckman, were working in a kitchen where the temperature was well over 85 degrees on July 14, 2020 (the kitchen is always very hot compared to the rest of the restaurant, especially over the grill and over the hot water when washing dishes). Also, these two employees are at all times at least ten feet apart from one another with their backs turned to one another, and the kitchen is very much separated from the remainder of the restaurant.

5. The third employee, our waitress that day, Jillian G. Carrick, was overheating due to running back and forth between the kitchen and to tables, and could not wear a mask at the time for this reason. She was behind the counter in the waitress station / prep area, away from all customers.

6. I have noticed that in our restaurant, face masks carry some dangers, at least some of the time: (1) employees unknowingly and constantly touch their face and adjusting their masks, creating a potential risk; and (2) excessive heat and humidity inside the restaurant makes it dangerous and impractical to constantly wear a mask.

7. We do not forbid any employee from wearing a face mask, and we make masks available for any employee who chooses to wear a mask.

8. I am not "anti-mask," and I encourage the use of masks in safer conditions such as cooler weather with less humidity.

9. The Cattlemans Restaurant has incurred no significant health code violations in its seven years of operation: it is safe and clean.

10. With each passing day that our license remains suspended, our seven employees and I remain unemployed, creating great financial distress for each of us.

11. With each passing day that our license remains suspended, it becomes increasingly likely that I might not be able to re-open the restaurant.

12. My husband is a cattle farmer and cannot currently sell cattle. In addition, much of our cattle are sold for consumption at our restaurant, and that has now been taken from us.

13. I continue to be obligated to pay fixed expenses, such as a $1,000 mortgage on the building, even though we are completely shut down.

14. The Ashland County Health Department (the Department) has refused to hear my objections that my employees were exempt from the face mask requirement at the time of the Department's investigation.

15. The Department initially appeared to have offered me a hearing. However, the Department revoked that hearing on July 20, 2020, after I asked questions regarding the scope of that hearing.

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

Executed this 20th day of July 2020.

/s/
Mrs. Mandy Ann Close
Owner and Operator
Cattlemans Restaurant

Notary: Kellie M Light

KELLIE M. LIGHT
Notary Public - State of Ohio
My Commission Expires January 5 2021