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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES - NORTH DISTRICT**

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12 TRANSPLANTS BREWING, LLC ) Case No.  
13 Plaintiffs, )  
14 v. ) **COMPLAINT FOR DECLARATORY AND**  
15 ) **INJUNCTIVE RELIEF**  
16 COUNTY OF LOS ANGELES, MUNTU ) **(1) Violation of the Equal Protection Clause of**  
DAVIS, and DOES 1 through 40, inclusive, ) **the Fourteenth Amendment;**  
17 Defendants. ) **(2) Violation of the Due Process Clause of the**  
18 ) **Fourteenth Amendment;**  
19 ) **(3) Violation of the Takings Clause of the Fifth**  
20 ) **Amendment;**  
21 ) **(4) Violation of the California Constitution**  
22 ) **Article I § 7; and**  
23 ) **(5) Violation of the California Constitution**  
24 ) **Article 1 § 19**  
25 )  
26 )  
27 )  
28 )

1 Plaintiff Transplants Brewing, LLC (“Transplants”) alleges as follows:

2 **INTRODUCTION AND BACKGROUND**

3 1. In an effort to control the novel coronavirus pandemic California’s governor has  
4 declared a “State of Emergency.” Along with this declaration came a suspension of the normal checks  
5 and balances of the legislative process, giving the governor dictator like powers. Pursuant to California  
6 law, the governor’s declaration resulted in a similar suspension of legislative checks and balances, and  
7 a dictator like power for Defendant County of Los Angeles’ Department of Public Health, and more  
8 specifically its Public Health officer.

9 2. As California begins to reopen various sectors of its economy following Governor Gavin  
10 Newsom’s March 4, 2020, order the State has adopted a four-stage “Resilience Roadmap” for  
11 reopening “non-essential” businesses throughout the state. Under this roadmap, a wide array of  
12 businesses are to reopen, including retailers, restaurants, personal services, and childcare.

13 3. Effective July 13, 2020, California’s Department of Public Health decreed that bars,  
14 brewpubs, breweries, and pubs were ordered to close all operations both indoor and outdoor statewide.  
15 However, these businesses were allowed to operate if they offered “sit-down, outdoor, dine-in meals.”  
16 (July 13, 2020, Statewide Public Health Officer Order, Section 1, subd. (a).) Pursuant to the state  
17 order, alcohol could be sold to patrons, so long as it was sold “in the same transaction as a meal.”  
18 (*Ibid.*) Bars and breweries which lack an “on site” kitchen to prepare food are permitted to “contract  
19 with another vendor” to provide food, and in that case, “can serve dine-in meals when operating  
20 outdoors provided both businesses follow the dine-in restaurant guidance and alcohol is sold only in the  
21 same transaction as a meal.” The State Order was superseded by an order dated August 28 2020,  
22 providing the same guidelines for reopening.

23 4. Following the authority granted under the governor’s emergency declaration, Defendant  
24 County of Los Angeles’ public health officer issued a similar order applicable to bars, breweries,  
25 brewpubs and pubs (“LA County Order”). Under the LA County Order bars, breweries, brewpubs and  
26 pubs falling within the County’s jurisdictional borders are ordered closed, but can qualify for an  
27 exemption for outdoor operations, so long as food was purchased in the same transaction as the sale of  
28 alcohol. Unlike the state order, however, the County Order prevents such businesses from “contracting

1 with a vendor” to provide food service, and instead mandates that only businesses with onsite kitchens  
2 qualify for the exemption. (See [publichealth.lacounty.gov/media/Coronavirus/docs/protocols/  
3 Reopening\\_Restaurants.pdf](http://publichealth.lacounty.gov/media/Coronavirus/docs/protocols/Reopening_Restaurants.pdf), incorporated herein by reference, and attached hereto as “**Exhibit A.**”)

4 5. Plaintiff Transplants has owned and operated Transplants Brewing Company located at  
5 40242 La Quinta Ln Unit 101, Palmdale, CA 93551 as a brewery and bar since June of 2014.  
6 Transplants has outdoor space for patrons. Transplants lacks an onsite kitchen, but has contracted with  
7 third party vendors to provide food service for consumption onsite. As such, Transplants can satisfy all  
8 of the conditions for re-opening set forth in the Statewide Public Health Officer Order dated August 28,  
9 2020. However, because Transplants falls within Defendant County’s jurisdictional borders, it cannot  
10 qualify for an exemption because it lacks an onsite kitchen, but rather must rely on a third party vendor  
11 for food preparation.

12 6. Transplants brings the instant action challenging the LA County Order, and specifically  
13 that portion which prevents bars, breweries, pubs and brewpubs from contracting with outside vendors  
14 to provide food services for onsite consumption. The distinction between food prepared in an onsite  
15 kitchen versus that prepared by a third party vendor is arbitrary, has no scientific basis and is not  
16 necessary to address the risks of viral transmission. Consumption of alcohol along with food prepared  
17 by a third party vendor creates no greater risk of viral infection than consumption of alcohol with food  
18 prepared at an onsite kitchen.

19 7. The LA County Order, and specifically the ban on contracting with a third party vendor  
20 food preparation is causing substantial and irreparable harm to businesses such as Transplants which  
21 have no means by which they can qualify for an exemption and resume business operations. Defendant  
22 County and its public health officer refuses to modify the LA County Order requiring judicial  
23 intervention to protect the rights of Plaintiff Transplants and similarly situated businesses.

24 **PARTIES**

25 8. At all relevant times, Plaintiff Transplants is a California limited liability company  
26 licensed to do business, and transacting business, in California. Transplants owns and operates a  
27 brewery and bar located at 40242 La Quinta Ln Unit 101, Palmdale, CA 93551.  
28

1           9.       At all relevant times, Defendant County of Los Angeles is a government entity that  
 2 controls, manages, and oversees the County of Los Angeles Department of Public Health. Defendant  
 3 Muntu Davis is Defendant County of Los Angeles’ “Health Officer” who issued the challenged order.

4  
 5   **FACTUAL ALLEGATIONS**

6           10.       In an effort to combat the Covid-19 pandemic State and Local governments have issued  
 7 a myriad of public health decrees, mandating the closure or modification of business operations. These  
 8 decrees are issued pursuant to the State and Local governments’ emergency powers, and therefore  
 9 bypass normal legislative authority and oversight.

10          11.       No industry has been impacted harder by these decrees than the food and beverage  
 11 industry, and within that industry bars and breweries have been impacted most severely.

12          12.       Defendant Los Angeles County is a political subdivision of the State of California, and  
 13 derives its powers from California Government Code section 23000, et. seq.

14          13.       Defendant County of Los Angeles operates through established officers, as set forth in  
 15 California Government Code section 24000, et. seq. Pursuant to Section 24000(s), Defendant may  
 16 designate a county “health officer.” Defendant County of Los Angeles has designated defendant  
 17 Muntu Davis s its “health officer.”

18          14.       Pursuant to California Health and Safety Code section 101040(a), the County “health  
 19 officer may take any preventative measure that may be necessary to protect and preserve the public  
 20 health from any public health hazard during any ... ‘state of emergency’ ... as defined in Section 8558  
 21 of the Government Code ...”

22          15.       Pursuant to Government Code 8558, the Governor of California may declare a “state of  
 23 emergency” when there is an “existence of conditions of disaster or of extreme peril to the safety of  
 24 persons and property within the state caused by conditions such as air pollution, fire, flood, storm,  
 25 epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, plant or animal infestation  
 26 or disease, ...earthquake, or other conditions, other than conditions resulting from a labor controversy  
 27 or conditions causing a state of war emergency ....”

1           16. Pursuant to Government Code section 8558, on March 4, 2020, California Governor  
2 Gavin Newsome declared a State of Emergency relating to the Covid-19 pandemic. Pursuant to this  
3 declaration, both State and local health officials have issued a variety of decrees regulating the conduct  
4 of businesses within the State of California.

5           17. The Governor has adopted a four-stage “Resilience Roadmap” for reopening “non-  
6 essential” businesses throughout the state. California is in “Stage 2,” during which the Governor’s  
7 Orders permit a wide array of businesses to reopen, including retailers, restaurants, personal services,  
8 and childcare.

9           18. Effective July 13, 2020, all counties were ordered to close indoor operations for dine-in  
10 restaurants, wineries and tasting rooms, movie theaters, family entertainment centers (for example:  
11 bowling alleys, miniature golf, batting cages and arcades), zoos, museums, and cardrooms.  
12 Additionally, bars, brewpubs, breweries, and pubs were ordered to close all operations both indoor and  
13 outdoor statewide. However, bars and breweries were allowed to operate their business if they met the  
14 following criteria:

15           a. Bars, pubs, brewpubs, and breweries, may operate outdoors if they are offering sit-down,  
16 outdoor, dine-in meals. Alcohol can be sold only in the same transaction as a meal. When  
17 operating outdoors, they must follow the dine-in restaurant guidance and should continue to  
18 encourage takeout and delivery service whenever possible.

19           b. Bars, pubs, brewpubs, and breweries that do not provide sit-down meals themselves, but can  
20 contract with another vendor to do so, can serve dine-in meals when operating outdoors  
21 provided both businesses follow the dine-in restaurant guidance and alcohol is sold only in  
22 the same transaction as a meal.

23 (July 13, 2020, Statewide Public Health Officer Order, Section 1, subd. (a).)

24           19. The Statewide Order explains that bars and breweries are treated differently because:  
25 “Bars, both indoor and outdoor, have additional risk factors. A bar, foundationally, is a social setting  
26 where typically not only small groups convene, but also where groups mix with other groups. Bars also  
27 have an added risk imposed by the consumption of alcohol as a primary activity offered in such venues.  
28 Alcohol consumption slows brain activity, reduces inhibition, and impairs judgment, factors which

1 contribute to reduced compliance with recommended core personal protective measures, such as the  
2 mandatory use of face coverings and maintaining six feet of distance from people in different  
3 households, both indoors and outdoors. Louder environments and the cacophony of conversation that  
4 are typical in bar settings also require raised voices and greater projection of orally emitted viral  
5 droplets.” The July 13, 2020, order was superseded by an order dated August 28, 2020, which provides  
6 the identical guidelines for reopening bars, breweries, pubs and brewpubs.

7 20. Pursuant to the authority granted under Health and Safety Code section 101040(a), and  
8 the declaration of a State of Emergency under Government Code section 8558, Defendant Los Angeles  
9 County, by and through its health officer Muntu Davis, issued a “Protocol for Restaurants” which  
10 mirrors the State Order, with one major exception.

11 21. Like the State Order, pursuant to the LA County Order, “brewpubs, bars, brewery and  
12 winery tasting rooms, and craft distilleries are to remain closed for onsite beverage or food  
13 consumption until allowed by the County Health Officer to resume modified or full operation.” The  
14 County Health Officer could grant such a special permit to “[r]estaurants, bars, or brewpubs that  
15 possess a moderate risk or high risk restaurant public health permit may continue to offer sit-down,  
16 meals in an outside dining area which are prepared on site as allowed by the Health Officer Order,”

17 22. Unlike the State Order, however, the LA County Order requires that food served must be  
18 prepared in an existing, onsite kitchen: “Brewpubs, bars, brewery and winery tasting rooms, and craft  
19 distilleries are prohibited from contracting with a food vendor to resume operation.”

20 23. Plaintiff Transplants is ready and able to meet all of the criteria for resumption of onsite  
21 beverage and food consumption. Transplants has an outdoor space designated for onsite consumption,  
22 and has contracted with a vendor to provide food services which will be sold in the same transaction as  
23 any alcohol sales. Transplants, however, is prevented from reopening for onsite consumption under the  
24 LA County Order because it lacks an onsite kitchen.

25 24. No explanation or justification is provided in the LA County Order for the disparate  
26 treatment of breweries which lack an onsite kitchen, but can otherwise meet the criteria of the State  
27 Order by contracting with an outside food vendor, from those breweries who can prepare food in an  
28 onsite kitchen. Nor is there is any public health distinction between food prepared onsite, versus that

1 which is prepared by a vendor. The risk of viral transmission is no greater where alcohol is consumed  
2 along with food prepared by a vendor, than it is when consumed with food prepared onsite.

3 25. While the Defendant health officer has discretion to enact orders protecting the public  
4 health, he does not have discretion to enact and enforce arbitrary rules that have no public health  
5 benefit and unfairly discriminate against particular businesses.

6 26. Transplants is ready, willing, and able to take all appropriate steps to protect the health  
7 and safety of visitors to its Palmdale location, and it is committed to following guidelines and  
8 recommendations to maintain social distancing and decrease the risk of transmission of the novel  
9 coronavirus.

10 27. Transplants has adopted and pledged to implement and comply with all applicable state  
11 and federal safety guidance, including guidance from the California Department of Public Health  
12 (CDPH), Centers for Disease Control and Prevention (CDC), Occupational Safety and Health  
13 Administration (OSHA) and the U.S. Food and Drug Administration (FDA). The protocols Transplants  
14 has adopted and pledged to implement and comply with at all times specifically comport with the State  
15 Public Health Officer's guidance for retailers, restaurants, and bars/breweries with dine-in food service.

16 28. Transplants seeks to support Defendants' goals of protecting the health and safety of the  
17 County's citizens, and mitigating the risk of the spread of COVID-19. However, Defendants must  
18 apply the law to similar businesses in a similar fashion.

19 29. The distinction between establishments with an onsite "kitchen" versus those who utilize  
20 a third-party vendor to provide food service is amorphous when juxtaposed with the stated goals of  
21 Defendants regarding public health and safety. On the one hand, a bar or brewery with its own kitchen  
22 can continue to operate so long as the sit-down, dine in experience is outside and the transaction  
23 includes alcohol *and* food. On the other, bars or breweries without their own kitchen cannot.  
24 Defendants violate the guarantee of equal treatment under the law by refusing to permit Transplants—  
25 and all other bars/breweries that operate without providing dine-in food via their own onsite kitchen—  
26 from reopening and contributing to the local economy.

27 30. While bars and breweries with their own onsite kitchen may reopen under the LA  
28 County Order, Transplants has suffered significant economic losses related to the ordered closure of its

1 Palmdale location. Those losses increase each day and continue to rise. Transplants has also incurred  
2 non-pecuniary damages as other bars and breweries with onsite kitchens are permitted to reopen while  
3 uncertainty and confusion affect Transplants' operations and industry and consumer reputation.

4 31. By and through the LA County Order, Defendants are causing considerable damage to  
5 Transplants and similarly situated bars/breweries: injuries to their businesses, reputations, and  
6 relationships with their customers, vendors, and employees.

7 32. Defendants have not offered any compensation to Transplants in exchange for the  
8 regulatory taking of its property.

9 33. The harm suffered by Transplants and other similar businesses is irreparable and cannot  
10 be rectified with an award of damages. Transplants competes with other breweries and bars located in  
11 its geographical vicinity. Because of the LA County Order, Transplants has been placed in a  
12 competitive disadvantage to those bars and breweries that have onsite kitchens, and is losing market  
13 share which it will not be able to regain. Moreover, the long-term closure of its operations has resulted  
14 in a financial drain threatening the very existence of its business.

15 **FIRST CAUSE OF ACTION**

16 **(Violation of the Equal Protection Clause of the Fourteenth Amendment)**

17 34. Transplants incorporates by reference the allegations contained in all preceding  
18 paragraphs of this complaint, and each and every part thereof, with the same force and effect as though  
19 fully set forth at length herein.

20 35. "When those who appear similarly situated are nevertheless treated differently, the Equal  
21 Protection Clause requires at least a rational reason for the difference, to ensure that all persons subject  
22 to legislation or regulation are indeed being 'treated alike, under like circumstances and conditions.' "  
23 (*Engquist v. Oregon Dept. of Agriculture* (2008) 553 U.S. 591.)

24 36. Strict scrutiny under the Equal Protection Clause applies where the classification  
25 impinges on fundamental rights, including the right to due process. (*San Antonio Independent School*  
26 *Dist. v. Rodriguez* (1973) 411 U.S. 1.) As described more fully below, Defendants have also violated  
27 Transplants' due process rights under the Fourteenth Amendment, thus the application of strict scrutiny  
28 to the LA County Order is appropriate.



1 37. Defendants’ LA County Order, which distinguishes between bars and breweries that have  
2 an onsite kitchen, on the one hand, and those like Transplants that contract with a third-party food  
3 service vendor, on the other hand, are unsupported by any rational reason. Permitting the onsite  
4 consumption of alcohol accompanied by food prepared in an onsite kitchen, versus that prepared by an  
5 outside vendor, is unlikely to decrease the risk of transmission of the novel coronavirus. It is the  
6 consumption of the food, not the location of its preparation, which is thought to reduce the risk of  
7 transmission.

8 38. Defendants’ LA County Order cannot satisfy strict scrutiny because the classifications at  
9 issue are arbitrary, and are not narrowly tailored to further compelling government interests.

10 39. Accordingly, Transplants respectfully seeks a declaration that the LA County Order  
11 prohibiting it from reopening its business for onsite consumption due to its inability to serve food  
12 prepared in an onsite kitchen violates the Equal Protection Clause of the Fourteenth Amendment to the  
13 United States Constitution.

14 40. Transplants has no adequate remedy at law and will suffer serious and irreparable harm  
15 including loss of market share and permanent closure unless Defendants are enjoined from  
16 implementing and enforcing that portion of the LA County Order prohibiting bars and breweries from  
17 contracting for food service with outside vendors.

18 **SECOND CAUSE OF ACTION**

19 **(Violation of the Due Process Clause of the Fourteenth Amendment)**

20 41. Transplants incorporates by reference the allegations contained in all preceding  
21 paragraphs of this complaint, and each and every part thereof, with the same force and effect as though  
22 fully set forth at length herein.

23 42. The Due Process Clause of the Fourteenth Amendment provides that “[n]o [government  
24 entity] shall . . . deprive any person of life, liberty, or property, without due process of law.”  
25 Defendants violate this guarantee by depriving one of property under a law “so vague that it fails to  
26 give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary  
27 enforcement.” (*Johnson v. United States* (2015) 576 U.S. 591.)



1 48. The Takings Clause of the Fifth Amendment states that “nor shall private property be  
2 taken for public use, without just compensation.”

3 49. The actions taken by Defendants have resulted in Transplants being deprived of the  
4 economically beneficial and productive use of its property including, without limitation, its use  
5 licenses, business property, and opportunity to sell its alcoholic beverages at its Palmdale property,  
6 resulting in the involuntary cessation of its business.

7 50. Defendants’ LA County Order and the enforcement thereof has caused a regulatory  
8 taking of Plaintiffs’ property without just compensation in violation of the Takings Clause of the Fifth  
9 Amendment to the United States Constitution. At a minimum, the effect of Defendants’ LA County  
10 Order constitutes a “partial” taking under *Penn Cent. Transp. Co. v. City of New York* (1978) 438 U.S.  
11 104, 123–124.) This violation of the Takings Clause has caused proximate and legal harm to  
12 Transplants.

13 51. Accordingly, Transplants respectfully seeks a declaration that the LA County Order, and  
14 specifically that portion which prevents Transplants from contracting with a third party vendor to  
15 provide food services, violates the Takings Clause of the Fifth Amendment to the United States  
16 Constitution and that Transplants is entitled to compensation for its economic loss as a result of the  
17 taking.

18 52. Transplants has no adequate remedy at law and will suffer serious and irreparable harm  
19 unless Defendants are enjoined from implementing and enforcing the LA County Order prohibiting  
20 Transplants from reopening its business.

21 **FOURTH CAUSE OF ACTION**

22 **(Violation of the California Constitution Article I § 7)**

23 53. Transplants incorporates by reference the allegations contained in all preceding  
24 paragraphs of this complaint, and each and every part thereof, with the same force and effect as  
25 though fully set forth at length herein.

26 54. Article 1, Section 7 of the California Constitution provides, in part: “A person may  
27 not be deprived of life, liberty, or property without due process of law or denied equal protection of  
28 the laws . . . .”

1 55. Prohibiting Transplants from reopening its business while allowing similarly situated  
2 businesses to do so solely because they have an onsite kitchen for food preparation,  
3 unconstitutionally deprives Transplants of its property rights under the California Constitution.

4 56. Accordingly, Transplants respectfully seeks a declaration that the LA County Order,  
5 and specifically that portion which prevents Transplants from contracting with a third party vendor  
6 to provide food services, violates Article I, Section 7 of the California Constitution.

7 57. Transplants has no adequate remedy at law and will suffer serious and irreparable  
8 harm unless Defendants are enjoined from implementing and enforcing the LA County Order  
9 prohibiting it from reopening its business.

10 **FIFTH CAUSE OF ACTION**

11 **(Violation of the California Constitution Article 1 § 19)**

12 58. Transplants incorporates by reference the allegations contained in all preceding  
13 paragraphs of this complaint, and each and every part thereof, with the same force and effect as  
14 though fully set forth at length herein.

15 59. Article 1, Section 19 of the California Constitution provides, in relevant part:

16 Private property may be taken or damaged for a public use and only  
17 when just compensation, ascertained by a jury unless waived, has first  
18 been paid to, or into court for, the owner. The Legislature may provide  
19 for possession by the condemnor following commencement of eminent  
20 domain proceedings upon deposit in court and prompt release to the  
owner of money determined by the court to be the probable amount of  
just compensation.

21 60. The California Supreme Court has held that “While the police power is very broad in  
22 concept, it is not without restrictions in relation to the taking or damaging of property. When it  
23 passes beyond proper bounds in its invasion of property rights, it comes within the purview of the  
24 law of eminent domain and its exercise requires compensation.” (*House v. Los Angeles County*  
25 *Flood Control Dist.* (1944) 25 Cal.2d 384, 385.)

26 61. California courts have routinely held that the California Constitution requires just  
27 compensation to property owners when their property is taken for public use, because the law seeks  
28 to bar the government from forcing some people alone to bear public burdens, which should be borne

1 by the public as a whole. (*Jefferson St. Ventures, LLC v. City of Indio* (2015) 236 Cal.App.4th  
2 1175.)

3 62. The principle underlying just compensation for property taken for public use is to put  
4 the owner in as good a position as he or she would have occupied if his or her property had not been  
5 taken. (*City of Carlsbad v. Rudvalis* (2003) 109 Cal.App.4th 667.)

6 63. The constitutional guarantee of just compensation for property taken by the  
7 government is not only intended to protect the property owner, but also to protect the public by  
8 limiting its liability to losses that can fairly be attributed to the taking. (*Emeryville Redevelopment v.*  
9 *Harcros Pigments, Inc.* (2002) 101 Cal.App.4th 1083.)

10 64. Transplants has a property interest in its bar/brewery and use licenses to operate there.  
11 Prohibiting Transplants from reopening its business while allowing similarly situated businesses to  
12 do so solely because they have an onsite kitchen constitutes a taking of Transplants' property under  
13 the California Constitution.

14 56. Accordingly, Transplants respectfully seeks a declaration that the LA County Order,  
15 and specifically that portion which prevents Transplants from contracting with a third party vendor  
16 to provide food services, violates Article I, Section 19 of the California Constitution, and that  
17 Transplants is entitled to compensation for its economic loss as a result of the taking.

18 61. Transplants has no adequate remedy at law and will suffer serious and irreparable  
19 harm unless Defendants are enjoined from implementing and enforcing the LA County Order  
20 prohibiting Transplants from reopening its business.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Transplants prays for judgment against Defendants, and each of them, as  
23 follows:

- 24 1. For declaratory relief;
- 25 2. For temporary, preliminary, and permanent injunctive relief;
- 26 3. For reasonable attorneys' fees and costs in the prosecution of this action pursuant to law,  
27 including California Code of Civil Procedure § 1021.5; and
- 28 4. For such other and further relief as this Court may deem just and proper.

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Date: September 30, 2020

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