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September 22, 2020

*****TIME SENSITIVE MATTER*****

SENT VIA CERTIFIED MAIL AND EMAIL

Los Angeles County
Board of Supervisors
Kenneth Hahn Hall of Administration
500 West Temple Street, Suite 383
Los Angeles, CA 90012
executiveoffice@bos.lacounty.gov

Re: *Transplants Brewing, LLC*

Dear Members of The Board of Supervisors:

Please be advised that the Parris Law Firm has been retained by Transplants Brewing, LLC (“Transplants”) to evaluate the legal sufficiency of the County of Los Angeles’ Department of Public Health Order (“County Order”), which is currently in effect and publicly available at:

http://www.publichealth.lacounty.gov/media/Coronavirus.docs.protocols./Reopening_Restaurants.pdf

Transplants is a brewery located in the City of Palmdale, in Northern Los Angeles County, that is subject to the County Order which sets forth the criteria in which bars, breweries, brewpubs and pubs may resume onsite operations. That criteria is modeled after a statewide order, issued July 13, 2020, by the State Department of Public Health. That order has been superseded by an August 28, 2020, statewide order which provides for the identical criteria (“State Order”).

The State Order provides criteria which businesses in various industries must meet in order to resume onsite operations. The State Order permits bars, breweries, brewpubs and pubs to operate for “sit-down, outdoor, dine-in meals” only. Where the business lacks an onsite kitchen, the State Order provides that the business is permitted to “contract with another vendor” and “can serve dine-in meals when operating outdoors provided both businesses follow the dine-in restaurant guidance and alcohol is sold only in the same transaction as a meal.” (*Id.*, Section 1, subd. (b).)

The County Order tracks the State Order by permitting bars, breweries, brewpubs and pubs to reopen for onsite operations, so long as food is purchased in the same transaction as alcohol. However, unlike the State Order, the County Order expressly prohibits bars, breweries, brewpubs and pubs who lack an onsite kitchen from contracting with a third party vendor. The County Order

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also allows the Department of Public Health to arbitrarily discriminate between the types of food that must be included in the same transaction as the alcohol (ie bar food, salads, and entrees).

Transplants is ready, willing and able to satisfy all of the criteria for reopening under the County Order, with the exception of food preparation. Transplants lacks an onsite kitchen, and therefore cannot serve food prepared onsite. Transplants, however, contracted with a third party vendor to provide food, which will be sold in the same transaction as the sale of any alcohol, and therefore can readily meet the criteria for reopening onsite operations set forth in the State Order.

It is Transplants' contention that the County Order, and specifically the prohibition against providing food prepared by a third party vendor, violates its rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment and the Takings Clause of the Fifth Amendment to the United States Constitution. The State Order, under which the County Order is modeled, explains that the requirement of food consumption is not related to the location where such food is prepared, but rather is meant to dampen the intoxicating effects of alcohol consumption. Specifically, the State Order explains that:

“Bars, both indoor and outdoor, have additional risk factors. A bar, foundationally, is a social setting where typically not only small groups convene, but also where groups mix with other groups. Bars also have an added risk imposed by the consumption of alcohol as a primary activity offered in such venues. Alcohol consumption slows brain activity, reduces inhibition, and impairs judgment, factors which contribute to reduced compliance with recommended core personal protective measures, such as the mandatory use of face coverings and maintaining six feet of distance from people in different households, both indoors and outdoors. Louder environments and the cacophony of conversation that are typical in bar settings also require raised voices and greater projection of orally emitted viral droplets.”

The requirement that food be consumed with alcohol is meant to minimize the risk of reduced compliance with protective measures. Thus, it is the consumption of the food itself, not the site or source of its preparation, which is designed to curtail viral transmission. As such, the County Order's prohibition against contracting with a third party vendor is not related to any legitimate health concern, and is unfairly prejudicial to businesses like Transplants that lack the ability to prepare food onsite.

Transplants hereby requests that the County modify the County Order to remove the prohibition against contracting with an outside food vendor, or otherwise grant Transplants and other similarly situated businesses with a waiver from that requirement.

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Please note that the County Order is causing ongoing, substantial and irreparable harm to Transplants. Transplants steadily lost business due to the County's shutdown order, and thus is at risk of permanently closing. Transplants must also compete with other bars and breweries in its vicinity that remain open because they have onsite kitchens. As a result, Transplants continues to lose market share to its competition, further impacting its long-term financial wellbeing.

Pursuant to the foregoing, the County's immediate attention and action in response to this letter is necessary so that Transplants can avoid further harm. In the event the County does not respond to this letter by agreeing to modify the County Order or provide Transplants and other similarly situated businesses with a waiver, Transplants will have no recourse but to initiate litigation against the County. In that regard, enclosed is a copy of a draft complaint Transplants will file against the County if a modification/waiver is not granted by **September 30, 2020**.

We thank you in advance for your immediate attention to this important matter.

Sincerely,

PARRIS LAW FIRM



R. Rex Parris
Attorneys for Plaintiffs

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