GREGORY P. PRIAMOS, County Counsel (SBN 136766)

(Exempt from Filing Fees

Pursuant to Govt. Code § 6103)

(Exempt from Filing Fees

Pursuant to Govt. Code § 6103)

KELLY A. MORAN (SBN 267147)

3960 Orange Street, Suite 500

Riverside, CA 92501

Telephone: (951) 955-6300

Facsimile: (951) 955-6363

Email: Kmoran@rivco.org

Attorneys for Plaintiff, COUNTY OF RIVERSIDE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

|  |  |  |
| --- | --- | --- |
| COUNTY OF RIVERSIDE; Plaintiff,vs.VILLA DE AMORE, INC.; EILEEN RIVARD, an individual; DOES 1 THROUGH 100, Defendants. | ))))))))))))))))))))) | Case No. Assigned for All Purposes: Judge Vineyard; Department: **NOTICE OF AND EX PARTE****APPLICATION FOR****TEMPORARY RESTRAINING****ORDER AND ORDER TO SHOW****CAUSE RE ISSUANCE OF****PRELIMINARY INJUNCTION;****MEMORANDUM OF POINTS****AND AUTHORITIES; DECLARATION OF KELLY A. MORAN; DECLARATION OF GREGORY P. PRIAMOS; DECLARATION OF DR. CAMERON KAISER, M.P.H.** **DATE: July 13, 2020****TIME: 8:30 a.m.****DEPARTMENT:** Complaint Filed: July 10, 2020  |
|                                                                                   ) |

**TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

Pursuant to Code Civ. Proc. § 527, Rule of Court 3.1150, and Rule of Court 3.1200 to 3.1207, Plaintiff, the County of Riverside (hereinafter the “County”), hereby applies for a Temporary Restraining Order (“TRO”) and Order to Show Cause (“OSC”) re Issuance of a Preliminary Injunction temporarily restraining defendants, VILLA DE AMORE, INC. and EILEEN RIVARD (hereinafter collectively “Villa”) and its agents, servants, employees and attorneys, and all those in active concert or participation with defendants from failing to comply with:

* Governor Newsom’s Executive Order N-33-20 of March 19, 2020, ordering all persons to stay at home to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19. This Order encompasses the Order of the State Public Health Officer, also dated March 19, 2020, which states in relevant part: “To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay at home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors…”; and
* The July 2, 2020 Order of Dr. Sonia Y. Angell, California Department of Public Health Director and State Health Officer, specific to Riverside County which restricted the operations of various sectors after the “current data reflect that community spread of infection is of increasing concern across the state, and most particularly in those counties on the County Monitoring List” like Riverside County.

The County seeks an Order of this Court requiring **immediate compliance** with the State’s Stay-at-Home Order of March 19, 2020 and July 2, 2020 Order specific to Riverside County. Of note, the County **is not** seeking a full ban on all activities hosted by Villa. On July 3, 2020, California Department of Public Health confirmed the following:

“Gatherings of non-household members are not permitted at this time **except for religious services or cultural ceremonies and wedding ceremonies** only as described below. This venue is inaccurately describing an ability to hold mass gathering and celebrations/parties beyond the ceremony which is all that is permitted.

**Wedding ceremonies** (religious or non-religious) are permitted following the Place of Worship guidance <https://covid19.ca.gov/pdf/guidance-places-of-worship.pdf./>

Indoor venues are limited to 25% of capacity or 100 people whichever is fewer. Outdoor venues are limited by their natural limits depending on the size of the space that permits the distancing required in the guidance and approved by the local health officer.

**Wedding receptions/parties/celebrations** are NOT permitted at this time. We cannot speculate as to when receptions would be permitted as it depends on counties meeting certain public health metrics.”

(*See* Declaration of Gregory P. Priamos, Paragraph 3, Exhibit “J”.)

Thus, in accordance with the State’s directives, the County seeks an Order of this Court as it applies to any event *other than* a wedding ceremony (religious or non-religious) offered in compliance with the Place of Worship guidance. Specifically, the County requests that this Court issue an Order requiring that Villa cease holding, offering, and hosting wedding receptions immediately, in compliance with State law.

This Application is made on the grounds that the Orders of the Governor, the California Department of Public Health, and the State Health Officer are necessary for the health and safety of the citizens in Riverside County, and the State as a whole, and immediate and irreparable injury, along with clear and present harm, will result to the County and the persons therein unless Villa immediately complies with the relevant public health Orders pending hearing on Order to Show Cause why a preliminary injunction should not issue.

The Application will be based on this Application, the accompanying Memorandum of Points and Authorities, the Declaration of Kelly A. Moran, the Declaration of Gregory P. Priamos, the Declaration of Dr. Cameron Kaiser, M.P.H., and such other and further evidence as may be presented to the Court at the time of hearing.

On July 2, 2020 the Riverside County Department of Environmental Health (“DEH”) conducted an inspection of Villa and spoke with the “person in charge”, David Musser. Per the DEH report, attached as Exhibit D to the Declaration of Kelly A. Moran, Mr. Musser confirmed that Villa was holding receptions and indicated that the business had been advised by counsel and was “operating with reason”. Mr. Musser was issued a verbal warning that further legal action may occur as a result of continued non-compliance with State law by Villa. (*See* Declaration of Kelly A. Moran, Paragraph 5, Exhibit “D”.)

On July 3, 2020, a cease and desist letter was sent via email to Villa’s owner, Eileen Rivard. A copy of such letter was also personally served upon Ms. Rivard on July 4, 2020. (*See* Declaration of Kelly A. Moran, Paragraph 7, Exhibit “E”.) By way of such letter, Villa was advised:

“Please be advised, however, that the State has determined that wedding receptions, parties, and celebrations are NOT permitted as a Stage 2 activity. In fact, at this time, the State’s ‘Stay-at-Home’ Order continues to prohibit gatherings of non-household members except for religious services, cultural ceremonies, and wedding ceremonies which follow the State’s Place of Worship guidance.”

“**Pursuant to State Law,** Villa de Amore **must cease holding, offering, and hosting wedding receptions immediately.** Please note that unless written confirmation is received by **July 7, 2020** that Villa de Amore will comply with the requirements of the State of California, the County will be forced to pursue further action against Villa de Amore through avenues including but not limited to: civil penalties of up to $1,000 per violation per day; injunctive relief; attorneys’ fees and costs; imprisonment; revocation of County land use approvals due to both the failure to adhere to the terms and conditions of the permit and the activities being detrimental to public health, safety, and general welfare; and/or the reporting of the violation to State Departments such as Cal-OSHA and the California Department of Alcoholic Beverage Control.”

(*See* Declaration of Kelly A. Moran, Paragraph 7, Exhibit “E”.)

Upon receiving such correspondence, Ms. Rivard contacted counsel for the County by phone and was once again advised that further non-compliance by Villa may result in further action including: civil penalties of up to $1,000 per violation per day; injunctive relief; attorneys’ fees and costs; imprisonment; revocation of County land use approvals due to both the failure to adhere to the terms and conditions of the permit and the activities being detrimental to public health, safety, and general welfare; and/or the reporting of the violation to State Departments such as Cal-OSHA and the California Department of Alcoholic Beverage Control. (*See* Declaration of Kelly A. Moran, Paragraph 8.)

On July 4, 2020, counsel for the County had a conference with counsel for Villa wherein the County’s position concerning Villa’s failure to comply with State public health laws was again conveyed. (*See* Declaration of Kelly A. Moran, Paragraph 9.) Follow-up correspondence was sent to counsel for Villa via email on July 5, 2020. (*See* Declaration of Kelly A. Moran, Paragraph 10, Exhibit “F”.)

On July 7, 2020, counsel for Villa sent correspondence in which he indicated that he and his client “are not in agreement with your assertion that Villa de Amore is conducting any activity ‘in violation of State Law’.” Counsel’s correspondence then argues that the State’s public health laws “violates rights under both the California and United States Constitutions” and concludes by stating that Federal criminal prosecution could be raised against government employees as related to efforts to enforce State public health laws. (*See* Declaration of Kelly A. Moran, Paragraph 11, Exhibit “G”.)

On July 8, 2020, counsel for Villa refused to provide clarification as to the issue of whether Villa will be moving forward with hosting receptions. (*See* Declaration of Kelly A. Moran, Paragraph 12, Exhibit “H”.) Accordingly, the County is left to assume that Villa will continue to host wedding receptions in violation of State law. Because of the continued threat to public health resulting from Villa’s actions and the blatant defiance of State direction, the County is left with no other option but to seek the immediate assistance of this Court.

On July 9, 2020 at 7:42am, and again by phone at approximately 9:30 am, counsel for the County advised counsel for Villa that the County would proceed with filing a Complaint and an ex parte application for a Temporary Restraining Order (“TRO”) against Villa. Specific notice of a hearing on the ex parte TRO for Monday, July 13, 2020 at 8:30 a.m. in an as-yet-unknown Department of the Riverside Superior Court was conveyed by email to counsel for Villa at 4:18 p.m. Counsel was also advised that the County would reach out on July 10, 2020 once a department and call-in number for a telephonic appearance had been provided by the Court. Counsel kindly confirmed receipt of such notice at 4:29pm the same day. (*See* Declaration of Kelly A. Moran, Paragraph 14, Exhibit “I”.)

 GREGORY P. PRIAMOS

 County Counsel

 Kelly A. Moran

Dated: July 9, 2020 KELLY A. MORAN,

 Supervising Deputy County Counsel

 Attorneys for Plaintiff, COUNTY OF RIVERSIDE

**TABLE OF CONTENTS**

 **Page**

I. BACKGROUND AND FACTS 9

II. NOTICE OF APPLICATION 12

III. LEGAL ARGUMENT 13

1. The County is Likely to Prevail on the Merits as

Against Villa 14

1. Necessity has been shown for Taking These Protective Measures 16
2. The Balance of Hardship Tips Lopsidedly in the Favor of Public Health as the County and Persons Therein will Suffer Irreparable Harm if State Law is Not Enforced… 19

IV. CONCLUSION 20

**TABLE OF AUTHORITIES**

Cases

*Aids Healthcare Foundation v. Los Angeles County Department of Health* (2011)

 197 Cal.App. 8th 693, 701-702 16, 17

*City of New Orleans v. Charouleau*, 121 La. 890, 46 So. 911, 912, 18 L. R. A. (N. S.) 368, 126 Am. St. Rep. 332, 15 Ann. Cas. 46. 457 18

*Dodge, Warren & Peters Ins. Servs., Inc. v. Riley* (2003) 105 Cal. App. 4th 1414, 1418 20

*Gray v. Reclamation Dist*. (1917) 174 Cal. 622, 638 18

*Houston v. State*, 98 Wis. 481, 486, 74 N. W. 111, 113, 42 L. R. A. 39 18

*Hunt v. Superior Court* (1999) 21 Cal.4th 894, 999 13

*IT Corp v. County of Imperial* (1983) 35 Cal. 3d 63, 72 13

*Patrick v. Riley* (1930) 209 Cal. 350, 354 18

*People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater* (1981) 118 Cal. App. 3d 863,870-71 20

*Right Site Coalition v. Los Angeles Unified School Dist.* (2008) 160 Cal. App. 4th 336, 338-39 13

*White v. Davis* (2003) 30 Cal.4th 528, 554 13

*Wilson v. California Health Facilities Com*. (1980) 110 Cal. App. 3d 317 18

*Wind v. Herbert* (1960)186 Cal. App. 2d 276, 285 20

Statutes

Code of Civil Procedure section 526 13

Code of Civil Procedure sections 527, 527(a) 12, 13

Government Code section 8558 16

Government Code sections 8567 14

Government Code sections 8627 14

Government Code sections 8665 14

Health and Safety Code section 101040 16

Health and Safety Code section 101080 16

Health and Safety Code section 120125 14

Health and Safety Code section 120140 14

Health and Safety Code section 131080 14

Health and Safety Code section 120130(c) 14

Health and Safety Code section 120135 14, 15

Health and Safety Code section 120145 14

Health and Safety Code section 120175 14

Health and Safety Code section 120150 14

Health and Safety Code section 101030 15

Health and Safety Code section 120130(c) and (d) 14

Health and Safety Code section 120140 14, 15

Health and Safety Code section 120175 14, 16

Health and Safety Code section 120195 14

**MEMORANDUM OF POINTS AND AUTHORITIES**

The County submits the following Memorandum of Points and Authorities in Support of its Ex Parte Application for Temporary Restraining order and Order to Show Cause Preliminary Injunctions:

**I.**

**BACKGROUND AND FACTS**

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering all persons to stay at home to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19. This Order encompasses the Order of the State Public Health Officer, also dated March 19, 2020, which states in relevant part: “To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay at home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors…” A true and correct copy of this Executive Order and the Order of the State Public Health Officer incorporated therein are attached as Exhibit “A” to the Declaration of Kelly A. Moran.

On March 22, 2020, the State Public Health Officer designated a list of “’Essential Critical Infrastructure Workers’ to help state, local, tribal, and industry partners as they work to protect communities, while ensuring the continuity of functions critical to public health and safety, as well as economic and national security.” A true and correct copy of the State Public Health Officer’s “Essential Critical Infrastructure Workers” list, as updated on April 28, 2020, is attached as Exhibit “B” to the Declaration of Kelly A. Moran. Wedding reception venues are not included on this list.

On July 2, 2020, Dr. Sonia Y. Angell, California Department of Public Health Director and State Health Officer, issued an Order specific to Riverside County which restricted the operations of various sectors after the “current data reflect that community spread of infection is of increasing concern across the state, and most particularly in those counties on the County Monitoring List” like Riverside County. A true and correct copy of this Order is attached as Exhibit “C” to the Declaration of Kelly A. Moran.

Also on July 2, 2020, following complaints related to the property hosting wedding receptions, the Riverside County Department of Environmental Health (“DEH”) conducted an inspection of Villa and spoke with the “person in charge”, David Musser. Per the DEH report, attached as Exhibit D to the Declaration of Kelly A. Moran, Mr. Musser confirmed that Villa was holding receptions and indicated that the business had been advised by counsel and was “operating with reason”. Mr. Musser was issued a verbal warning that further legal action may occur as a result of continued non-compliance with State law by Villa. (*See* Declaration of Kelly A. Moran, Paragraph 5, Exhibit “D”.)

On July 3, 2020, the County forwarded to the California Department of Public Health’s (“CDPH”) Essential Business Inquiry site a copy of an email from Villa describing “a list of precautions we are implementing at all our events while we are in the midst of the current Covid situation”. (*See* Declaration of Gregory P. Priamos, Paragraph 3, Exhibit “J”.) Within the hour, CDPH responded, providing the following clarification based upon Villa’s own explanation of what was being done on-site:

“Gatherings of non-household members are not permitted at this time **except for religious services or cultural ceremonies and wedding ceremonies** only as described below. **This venue is inaccurately describing an ability to hold mass gathering and celebrations/parties beyond the ceremony which is all that is permitted.**

**Wedding ceremonies** (religious or non-religious) are permitted following the Place of Worship guidance <https://covid19.ca.gov/pdf/guidance-places-of-worship.pdf./>

Indoor venues are limited to 25% of capacity or 100 people whichever is fewer. Outdoor venues are limited by their natural limits depending on the size of the space that permits the distancing required in the guidance and approved by the local health officer.

**Wedding receptions/parties/celebrations** are NOT permitted at this time. We cannot speculate as to when receptions would be permitted as it depends on counties meeting certain public health metrics.”

(*See* Declaration of Gregory P. Priamos, Paragraph 3, Exhibit “J”.) (Emphasis added.)

On July 3, 2020, a cease and desist letter was sent via email to Villa’s owner, Eileen Rivard. A copy of such letter was also personally served upon Ms. Rivard on July 4, 2020. (*See* Declaration of Kelly A. Moran, Paragraph 7, Exhibit “E”.) By way of such letter, Villa was advised:

“Please be advised, however, that the State has determined that wedding receptions, parties, and celebrations are NOT permitted as a Stage 2 activity. In fact, at this time, the State’s ‘Stay-at-Home’ Order continues to prohibit gatherings of non-household members except for religious services, cultural ceremonies, and wedding ceremonies which follow the State’s Place of Worship guidance.”

“**Pursuant to State Law,** Villa de Amore **must cease holding, offering, and hosting wedding receptions immediately.** Please note that unless written confirmation is received by **July 7, 2020** that Villa de Amore will comply with the requirements of the State of California, the County will be forced to pursue further action against Villa de Amore through avenues including but not limited to: civil penalties of up to $1,000 per violation per day; injunctive relief; attorneys’ fees and costs; imprisonment; revocation of County land use approvals due to both the failure to adhere to the terms and conditions of the permit and the activities being detrimental to public health, safety, and general welfare; and/or the reporting of the violation to State Departments such as Cal-OSHA and the California Department of Alcoholic Beverage Control.”

(*See* Declaration of Kelly A. Moran, Paragraph 7, Exhibit “E”.)

Upon receiving such correspondence, Ms. Rivard contacted counsel for the County by phone and was once again advised that further non-compliance by Villa may result in further action including: civil penalties of up to $1,000 per violation per day; injunctive relief; attorneys’ fees and costs; imprisonment; revocation of County land use approvals due to both the failure to adhere to the terms and conditions of the permit and the activities being detrimental to public health, safety, and general welfare; and/or the reporting of the violation to State Departments such as Cal-OSHA and the California Department of Alcoholic Beverage Control. (*See* Declaration of Kelly A. Moran, Paragraph 8.)

On July 4, 2020, counsel for the County had a conference with counsel for Villa wherein the County’s position concerning Villa’s failure to comply with State public health laws was again conveyed. (*See* Declaration of Kelly A. Moran, Paragraph 9.) Follow-up correspondence was sent to counsel for Villa via email on July 5, 2020. (*See* Declaration of Kelly A. Moran, Paragraph 10, Exhibit “F”.)

On July 7, 2020, counsel for Villa sent correspondence in which he indicated that he and his client “are not in agreement with your assertion that Villa de Amore is conducting any activity ‘in violation of State Law’.” Counsel’s correspondence then argues that the State’s public health laws “violates rights under both the California and United States Constitutions” and concludes by stating that Federal criminal prosecution could be raised against government employees as related to efforts to enforce State public health laws. (*See* Declaration of Kelly A. Moran, Paragraph 11, Exhibit “G”.)

On July 8, 2020, counsel for Villa refused to provide clarification as to the issue of whether Villa will be moving forward with hosting receptions. (*See* Declaration of Kelly A. Moran, Paragraph 12, Exhibit “H”.) Accordingly, the County is left to assume that Villa will continue to host wedding receptions in violation of State law. Because of the continued threat to public health resulting from Villa’s actions and the blatant defiance of State direction, the County is left with no other option but to seek the immediate assistance of this Court. The County has been forced to file this action and brings this ex parte application for a temporary restraining order to prevent the irreparable damage that will ensue if Villa continues to violate the State’s Orders, encouraging the spread of COVID-19 throughout the County and State as a whole.

This application is made pursuant to Code Civ. Proc. § 527 on the grounds that: (i) the County is likely to succeed on the merits of their claim; (ii) that unless the temporary restraining order is granted, the County and the persons within will suffer irreparable injury; and (iii) that the balance of hardships tips lopsidedly in the County’s favor.

**II.**

**NOTICE OF APPLICATION**

Pursuant to Rule of Court 3.1204(b)(1), on July 9, 2020 at 7:42am, and again by phone at approximately 9:30 am, counsel for the County advised counsel for Villa that the County would proceed with filing a Complaint and an ex parte application for a Temporary Restraining Order (“TRO”) against Villa. Specific notice of a hearing on the ex parte TRO for **Monday, July 13, 2020** at 8:30 a.m. in an as-yet-unknown Department of the Riverside Superior Court was conveyed by email to counsel for Villa at 4:18 p.m. on July 9, 2020. Counsel was also advised that the County would reach out on July 10, 2020 once a department and call-in number for a telephonic appearance had been provided by the Court. Counsel kindly confirmed receipt of such notice at 4:29pm the same day. (*See* Declaration of Kelly A. Moran, Paragraph 14, Exhibit “I”.)

**III.**

**LEGAL ARGUMENT**

Code of Civil Procedure sections 526 and 527 authorize courts to issue preliminary injunctions, including temporary restraining orders. Code of Civil Procedure section 527(a) states that “[a] preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor.”

The standard for issuing a temporary restraining order or a preliminary injunction is well-established. Typically, the trial court weighs two interrelated factors: (1) the likelihood that the moving party will prevail on the merits; and (2) the relative interim harm to the parties from the issuance or non-issuance of the injunction. *White v. Davis* (2003) 30 Cal.4th 528, 554; *Hunt v. Superior Court* (1999) 21 Cal.4th 894, 999. These two factors balance each other out, such that "[t]he more likely it is that plaintiffs will ultimately prevail, the less severe must be the harm that they allege will occur the injunction does not issue." *Right Site Coalition v. Los Angeles Unified School Dist.* (2008) 160 Cal. App. 4th 336, 338-39. As a result, "if the party seeking the injunction can make a sufficiently strong showing of likelihood of success on the merits" or "that the balance of harms tips in [the party's] favor," the trial court has discretion to issue the injunction. *Common Cause v. Board of Supervisors* (1989) 49 Cal. 3d 432, 441-42.

Moreover, “[w]here a government entity seeking to enjoin the alleged violation of an ordinance which specifically provides for injunctive relief established that it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant.” *IT Corp v. County of Imperial* (1983) 35 Cal. 3d 63, 72. Only if defendants show that they would suffer grave or irreparable harm from the issuance of the preliminary injunction, must the court then examine the relative actual harms to the parties. *Id.*

*/ / /*

1. **The County is Likely to Prevail on the Merits as Against Villa.**

 The County is likely to prevail on the merits of a claim as against Villa as Villa has failed to comply with the authority of the Governor, the State Public Health Officer, and the California Department of Public Health.

 A Proclamation of a State Emergency was issued by Governor Gavin Newsom on March 4, 2020. Similarly, a Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in Riverside County was made on March 8, 2020. Both a Resolution of the Board of Supervisors of the County of Riverside proclaiming the existence of a Local Emergency in the County of Riverside regarding COVID-19 and a Resolution of the Board of Supervisors of the County of Riverside ratifying and extending the Declaration of Local Health Emergency due to COVID-19 were made on March 10, 2020. (*See* Declaration of Dr. Cameron Kaiser, M.P.H., Paragraph 14; *See* Declaration of Kelly A. Moran, Paragraph 2, Exhibit “A”.)

 As a result of the COVID-19 virus, on March 19, 2020 Governor Newsom issued Executive Order N-33-20, ordering all persons to stay at home to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19. This Order was issued by Governor Newsom “in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665”. The March 19, 2020 Executive Order also encompassed the Order of the State Public Health Officer of the same date which states in relevant part: “To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay at home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors…” This Order was similarly issued by the State Public Health Officer pursuant to the “authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150”.

 On July 2, 2020, Dr. Sonia Y. Angell, California Department of Public Health Director and State Health Officer, issued an Order specific to Riverside County which restricted the operations of various sectors after the “current data reflect that community spread of infection is of increasing concern across the state, and most particularly in those counties on the County Monitoring List” like Riverside County. This Order was issued “Pursuant to the authority under EO N-60-20, and *Health and Safety Code* sections, 120125, 120130(c), 120135, 120140, 120145, 120150, 120175,120195 and 131080”. Specifically, *Health and Safety Code* section 120130(c) and (d) provides the authority for CDPH or the health officer to requiring “strict or modified isolation, or quarantine, for any case of contagious, infectious, or communicable disease” when such action is necessary for the protection of the public health. Likewise, *Health and Safety Code* section 120140 allows CDPH to “take measures as are necessary to ascertain the nature of the disease and prevent its spread”. The language of the *Health and Safety Code* goes on to permit the power to quarantine, and in some case disinfect or destroy, livestock, property, cities, locations, persons, and possessions due to threats to public health. The inherent powers of CDPH and the State Health Officer were only further enhanced by Executive Order N-60-20 which directed the State Public Health Officer to “establish criteria and procedures …to determine whether and how particular local jurisdictions may implement public health measures that depart from the statewide directives” and to “as she deems necessary respond to the dynamic threat posed by COVID-19, revised criteria and procedures”.

Additionally, while the *Health and Safety Code* gives authority to the State to make regulations concerning public health, it ***requires* t**hat the Local Health Officer enforce such Orders. *Health and Safety Code* section 101030 prescribes that: “The county health officer **shall enforce** and observe in the unincorporated territory of the county, all of the following: (a) Orders and ordinances of the board of supervisors, pertaining to the public health and sanitary matters; (b) **Orders, including quarantine and other regulations, prescribed by the department;** (c) Statutes relating to public health.” (Emphasis added.) This mandate would necessarily include the State Public Health Officer’s Stay-at-Home Order of March 19, 2020, the March 22, 2020 (revised April 28, 2020) designation of “’Essential Critical Infrastructure Workers”, which does not include “wedding venues” like Villa as an “essential” business, and the July 2, 2020 Order specific to Riverside County as a result of the “current data (which) reflect that community spread of infection is of increasing concern across the state, and most particularly in those counties on the County Monitoring List” like Riverside County.

 The Governor and the State Public Health Officer have the authority to make orders and regulations for the protection of life and property during the state of emergency, in this case an emergency being experienced at a local, state, nation, and worldwide level. Governor Newsom, the State Public Health Officer, and CDPH have very clearly indicated that the regulations in place **do not permit** wedding receptions in order to prevent the spread of the disease or occurrence of additional cases of COVID-19. It is all but certain that the County, acting through its local Health Officer under his obligationto enforce the Orders of the State, will prevail against Villa and its agents, staff, and employees, for the failure to comply with State law. As such, and in the interest of immediate public health, the granting of a temporary restraining order is warranted at this time.

1. **Necessity has been Shown for Taking these Protective Measures**.

 The Covid-19 virus has created both a health emergency as defined by *Health & Safety Code* section 101080 and a local emergency as defined by *Government Code* section 8558 for the State of California including the County of Riverside. Notably, *Health and Safety Code* section 120175 specifically states it is the duty of the Health Officer to investigate all cases, to ascertain the sources of infection, and to take “all measures reasonably necessary to prevent the transmission of infection.” *Aids Healthcare Foundation v. Los Angeles County Department of Health* (2011) 197 Cal.App. 8th 693, 701-702. “The health officer must take “measures as may be necessary,” or “reasonably necessary,” to achieve the Department's goals and policies, leaving the course of action to the health officer's discretion. The statutory scheme sets forth certain actions, ranging from quarantine and isolation for contagious and communicable diseases ….” (citations omitted). These statutory measures, however, are not exhaustive or mandatory, giving the health officer discretion to act in a particular manner depending upon the circumstances.” *Id*. at 702. “Preventative measure” means abatement, correction, removal of **any other protective step** that may be taken against any public health hazard that is caused by a disaster and affects the public health. *Health & Safety Code* section 101040. (Emphasis added.)

 Based upon the trajectory of the Covid-19 pandemic, the Governor and the State Health Officer determined that it was necessary to Order that all persons *stay at home* other than as required to maintain continuity of operations of the federal critical infrastructure sectors. Wedding venues have never been included in the State’s list of such “critical infrastructure sectors”. In fact, on July 3, 2020, CDPH specifically clarified that:

“Gatherings of non-household members are not permitted at this time **except for religious services or cultural ceremonies and wedding ceremonies** only as described below. **This venue is inaccurately describing an ability to hold mass gathering and celebrations/parties beyond the ceremony which is all that is permitted.**

**Wedding ceremonies** (religious or non-religious) are permitted following the Place of Worship guidance <https://covid19.ca.gov/pdf/guidance-places-of-worship.pdf./>

Indoor venues are limited to 25% of capacity or 100 people whichever is fewer. Outdoor venues are limited by their natural limits depending on the size of the space that permits the distancing required in the guidance and approved by the local health officer.

**Wedding receptions/parties/celebrations** are NOT permitted at this time. We cannot speculate as to when receptions would be permitted as it depends on counties meeting certain public health metrics.”

(*See* Declaration of Gregory P. Priamos, Paragraph 3, Exhibit “J”.) (Emphasis added.)

 Similarly, in the face of rapidly increasing COVID-19 numbers within the County of Riverside, including at the time of this filing 23,334 cases countywide, 533 deaths, and 513 hospitalizations, the State Public Health Officer issued an Order further restricting the operation of businesses within the County specifically.

 Using their authority to take measures that are “necessary to prevent the transmission of” the Covid-19 virus, the Health Officer and the Governor have issued these Orders after “COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance” and for the “preservation of public health and safety throughout the entire State of California”. Notably, this discretion to determine what is necessary as the Health Officer in controlling infectious diseases is not subject to review. For example, in *Aids Healthcare Foundation v. Los Angeles County Department of Health* cited above, the Court of Appeal determined that a writ of mandate will not lie to impose the Foundation's discretion upon the Department's health officer. 197 Cal.App. 8th at 705. In this case, the Court found that the *Health and Safety Code* does not require the Department to issue a regulatory order mandating condom use for performers in the adult film industry. In making their ruling, the Court stated “[w]e cannot compel another branch of the government to exercise its discretion in a particular manner.” Similarly, in the instant case, the Health Officer and the Governor have laid out the necessity of the measures in the relevant public health orders and they cannot be questioned by Villa in terms of whether these measures are reasonably necessary or not.

 In addition, few constitutional questions arise from actions taken by health officers to control infectious disease. “[H]ealth regulations enacted by a statute under its police power and providing even drastic measures for the elimination of disease…in a general way are not affected by constitutional provision, either of the state or national government.” *Patrick v. Riley* (1930) 209 Cal. 350, 354. For example, when a statute primarily concerns health and safety, no fundamental right to privacy is at stake. *Wilson v. California Health Facilities Com*. (1980) 110 Cal. App. 3d 317. Or, in the case of the government’s destruction of cattle to contain tuberculosis outbreak there was no right for the owners to claim just compensation. *Patrick*, *supra*, 209 Cal. at 354. The Court in *Patrick* determined that [i]n the exercise of the right of eminent domain, private property may not be taken without compensation therefor, whereas, in the exercise of the police power, the use of property may be restricted or it may even be destroyed, and no legal liability arise to compensate the owner therefor. Id. (citing *Gray v. Reclamation Dist*. (1917) 174 Cal. 622, 638; *Houston v. State*, 98 Wis. 481, 486, 74 N. W. 111, 113, 42 L. R. A. 39; *City of New Orleans v. Charouleau*, 121 La. 890, 46 So. 911, 912, 18 L. R. A. (N. S.) 368, 126 Am. St. Rep. 332, 15 Ann. Cas. 46. 457). *Patrick*, *supra*, 209 Cal. at 355.

 The Health Officer and the Governor issued these public health orders in an attempt to slow the transmission of COVID-19. Though businesses designated as “essential” must remain open in order to “ensure continuity of functions critical to public health and safety, as well as economic and national security”, **wedding receptions were not identified as essential by the State Health Officer,** and with an understanding of the services being provided by Villa, CDPH has specifically determined that they are in fact *“inaccurately describing an ability to hold mass gathering and celebrations/parties beyond the ceremony which is all that is permitted”.* In the face of now over **twelve million** cases of the virus worldwide and over **twenty three thousand** cases locally, prohibiting public gatherings in non-essential businesses was determined to be *necessary* to prevent the spread of the disease or occurrence of additional cases. That decision is not subject to question by Villa and the Temporary Restraining Order requiring Villa’s immediate compliance with State law should be granted.

1. **The Balance of Hardship Tips Lopsidedly in the Favor of Public Health as the County and Persons Therein will Suffer Irreparable Harm if State Law is Not Enforced.**

 As described above, the State’s Orders, including the Stay-at-Home Order and the July 2, 2020 Order to Riverside County, were issued specifically to prevent a clear and present danger of harm, namely the spread of the COVID-19 virus through individuals closely gathering to larger members of the public. As this Court may be aware, groups that gather, despite public health orders that prohibit such gathering, have been termed: “super-spreaders”. Such groups have included choir practices, (*See* Richard Read, *A choir decided to go ahead with rehearsal. Now dozens have COVID-19 and two are dead*, March 29, 2020, <https://www.latimes.com/world-nation/story/2020-03-29/coronavirus-choir-outbreak>), parties (See David Downey, *Lake Elsinore man killed by coronavirus warned others in final Facebook post*, July 7, 2020, <https://www.pe.com/2020/07/07/lake-elsinore-man-killed-by-coronavirus-after-party-warned-others-in-final-facebook-post/>), and weddings (See Soo Kim, *Coronavirus Outbreak at Wedding Kills Groom, Infects Over 100 Guests,* July 1, 2020, <https://www.newsweek.com/coronavirus-outbreak-wedding-kills-groom-infects-over-100-guests-1514757>).

 These are just a few examples of a single assembly of individuals who gathered for non-essential purposes leading to the uncontrolled spread of COVID-19 that resulted in harm against other individuals and the community at large. In this situation, the County has no choice but to assume that Villa will not comply with the State law prohibiting public gatherings of non-household members. With expert guidance against and State Orders prohibiting public gatherings, the County likewise recognizes the clear and present danger that permitting Villa to move forward with in-person sales poses to the community and to the State as a whole. Based upon these provisions, the County of Riverside, therefore, is seeking civil enforcement of the State law in order to protect the public health of the citizens in the community. The primary purpose of a temporary restraining order is to preserve the status quo and avoid irreparable harm.  *Dodge, Warren & Peters Ins. Servs., Inc. v. Riley* (2003) 105 Cal. App. 4th 1414, 1418. Irreparable harm includes harms arising from wrongs of "continuing character" and wrongs that cannot be righted through monetary compensation. *People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater* (1981) 118 Cal. App. 3d 863,870-71; *Wind v. Herbert* (1960)186 Cal. App. 2d 276, 285.

 Villa’s failure to comply with the State Public Health Officer’s Stay-at-Home Order and CDPH restrictions of gatherings is not only a direct violation of the health officer’s legal authority in a state of emergency such as we find ourselves in today, but more importantly puts at risk the health and safety of all persons within the County of Riverside and the State of California. *See* Declaration of Dr. Cameron Kaiser, M.P.H., Paragraphs 14, 15, and 17. Accordingly, the Temporary Restraining Order requiring Villa’s immediate compliance with the State law, ceasing all hosting of wedding receptions, should be granted for the good of all.

**IV.**

**CONCLUSION**

For the foregoing reasons, the County respectfully requests that the Court grant this ex parte application and enter the requested temporary restraining order, **specifically requiring that Villa cease holding, offering, and hosting wedding receptions immediately**, in compliance with State law, and set an order to show cause why a preliminary injunction should not be issued pending trial in this action.

 GREGORY P. PRIAMOS

 County Counsel

 Kelly A. Moran

Dated: July 9, 2020 By:

 KELLY A. MORAN,

 Supervising Deputy County Counsel

 Attorneys for Plaintiff, COUNTY OF

RIVERSIDE

GREGORY P. PRIAMOS, County Counsel (SBN 136766)

(Exempt from Filing Fees

Pursuant to Govt. Code § 6103)

(Exempt from Filing Fees

Pursuant to Govt. Code § 6103)

KELLY A. MORAN (SBN 267147)

3960 Orange Street, Suite 500

Riverside, CA 92501

Telephone: (951) 955-6300

Facsimile: (951) 955-6363

Email: Kmoran@rivco.org

Attorneys for Plaintiff, COUNTY OF RIVERSIDE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

|  |  |  |
| --- | --- | --- |
| COUNTY OF RIVERSIDE; Plaintiff,vs.VILLA DE AMORE, INC.; EILEEN RIVARD, an individual; DOES 1 THROUGH 100, Defendants. | ))))))))))))))))) | Case No. Assigned for All Purposes: Judge Vineyard; Department: **DECLARATION OF KELLY A. MORAN IN SUPPORT OF EX PARTE****APPLICATION FOR****TEMPORARY RESTRAINING****ORDER AND ORDER TO SHOW****CAUSE RE ISSUANCE OF****PRELIMINARY INJUNCTION****DATE: July 13, 2020****TIME: 8:30 a.m.****DEPARTMENT:** Complaint Filed: July 10, 2020  |
|                                                                                   ) |

**DECLARATION OF KELLY MORAN**

I, KELLY MORAN, declare as follows:

1. I am an attorney at law duly licensed to practice before this Court, and one of the attorneys for the County of Riverside (hereinafter the “County”), in this action. I have personal knowledge of each fact stated in this declaration.

2. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering all persons to stay at home to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19. This Order encompasses the Order of the State Public Health Officer, also dated March 19, 2020, which states in relevant part: “To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay at home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors…” A true and correct copy of this Executive Order and the Order of the State Public Health Officer incorporated therein are attached hereto as Exhibit “A”. I personally pulled and printed this document from the website https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf on July 9, 2020.

3. On March 22, 2020, the State Public Health Officer designated a list of “’Essential Critical Infrastructure Workers’ to help state, local, tribal, and industry partners as they work to protect communities, while ensuring the continuity of functions critical to public health and safety, as well as economic and national security.” A true and correct copy of the State Public Health Officer’s list, as amended on April 28, 2020, is attached hereto as Exhibit “B”. I personally pulled and printed this document from the website <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf> on July 9, 2020. At no point are “wedding reception venues” included on this list.

4. On July 2, 2020, Dr. Sonia Y. Angell, California Department of Public Health Director and State Health Officer, issued an Order specific to Riverside County which restricted the operations of various sectors after the “current data reflect that community spread of infection is of increasing concern across the state, and most particularly in those counties on the County Monitoring List” like Riverside County. A true and correct copy of this Order is hereto as Exhibit “C”. I personally pulled and printed this document from the website

<https://rivcoph.org/Portals/0/Documents/CoronaVirus/July/GovernorOrders/Order_Closing_Indoor_Services_and_Sectors-Riverside.pdf?ver=2020-07-02-132939-667&timestamp=1593721789591> on July 9, 2020.

5. On July 2, 2020, following complaints related to the property hosting wedding receptions, the Riverside County Department of Environmental Health (“DEH”) conducted an inspection of Villa and spoke with the “person in charge”, David Musser. Per the DEH report, true and correct copies of which are attached hereto as Exhibit “D” to the Declaration of Kelly A. Moran, Mr. Musser confirmed that Villa was holding receptions and indicated that the business had been advised by counsel and was “operating with reason”. Mr. Musser was issued a verbal warning that further legal action may occur as a result of continued non-compliance with State law by Villa.

6. On July 3, 2020, my office forwarded to the California Department of Public Health’s (“CDPH”) Essential Business Inquiry site a copy of an email from Villa describing “a list of precautions we are implementing at all our events while we are in the midst of the current Covid situation”. A true and correct copy of such correspondence is attached as Exhibit J to the Declaration of Gregory P. Priamos. Within the hour, CDPH responded, providing the following clarification based upon Villa’s own explanation of what was being done on-site:

“Gatherings of non-household members are not permitted at this time except for religious services or cultural ceremonies and wedding ceremonies only as described below. This venue is inaccurately describing an ability to hold mass gathering and celebrations/parties beyond the ceremony which is all that is permitted.

Wedding ceremonies (religious or non-religious) are permitted following the Place of Worship guidance https://covid19.ca.gov/pdf/guidance-places-of-worship.pdf./

Indoor venues are limited to 25% of capacity or 100 people whichever is fewer. Outdoor venues are limited by their natural limits depending on the size of the space that permits the distancing required in the guidance and approved by the local health officer.

Wedding receptions/parties/celebrations are NOT permitted at this time. We cannot speculate as to when receptions would be permitted as it depends on counties meeting certain public health metrics.”

7. On July 3, 2020, I emailed a cease and desist letter to Villa’s owner, Eileen Rivard. A copy of such letter was also personally served upon Ms. Rivard by the County’s investigator on July 4, 2020. By way of such letter, Villa was advised:

“Please be advised, however, that the State has determined that wedding receptions, parties, and celebrations are NOT permitted as a Stage 2 activity. In fact, at this time, the State’s ‘Stay-at-Home’ Order continues to prohibit gatherings of non-household members except for religious services, cultural ceremonies, and wedding ceremonies which follow the State’s Place of Worship guidance.”

“Pursuant to State Law, Villa de Amore must cease holding, offering, and hosting wedding receptions immediately. Please note that unless written confirmation is received by July 7, 2020 that Villa de Amore will comply with the requirements of the State of California, the County will be forced to pursue further action against Villa de Amore through avenues including but not limited to: civil penalties of up to $1,000 per violation per day; injunctive relief; attorneys’ fees and costs; imprisonment; revocation of County land use approvals due to both the failure to adhere to the terms and conditions of the permit and the activities being detrimental to public health, safety, and general welfare; and/or the reporting of the violation to State Departments such as Cal-OSHA and the California Department of Alcoholic Beverage Control.”

A true and correct copy of such letter is attached hereto as Exhibit “E”.

8. Upon receiving such correspondence, Ms. Rivard contacted me by phone and I once again advised that further non-compliance by Villa may result in further action including: civil penalties of up to $1,000 per violation per day; injunctive relief; attorneys’ fees and costs; imprisonment; revocation of County land use approvals due to both the failure to adhere to the terms and conditions of the permit and the activities being detrimental to public health, safety, and general welfare; and/or the reporting of the violation to State Departments such as Cal-OSHA and the California Department of Alcoholic Beverage Control.

9. Also on July 4, 2020, I had a conference with counsel for Villa, Mr. John Messina, wherein the County’s position concerning Villa’s failure to comply with State public health laws was again conveyed.

10. Follow-up correspondence was sent by to counsel for Villa via email on July 5, 2020. A true and correct copy of such correspondence is included herein as Exhibit “F”.

11. On July 7, 2020, Mr. Messina sent correspondence in which he indicated that he and his client “are not in agreement with your assertion that Villa de Amore is conducting any activity ‘in violation of State Law’.” Counsel’s correspondence then argues that the State’s public health laws “violates rights under both the California and United States Constitutions” and concludes by seemingly insinuating that Federal criminal prosecution could be raised against government employees as related to efforts to enforce State public health laws. A true and correct copy of the letter received from Mr. Messina is attached hereto as Exhibit “G”.

12. On July 8, 2020, I emailed Mr. Messina requesting that “As it is not explicitly stated, am I correct to assume that your client will continue hosting wedding receptions at Villa de Amore?”. Mr. Messina responded shortly thereafter stating: “I believe my letter is clear and needs no further clarification.” A true and correct copy of this correspondence is attached hereto as Exhibit “H”.

13. Based upon this correspondence with Mr. Messina, the County is left to assume that Villa will continue to host wedding receptions in violation of State law. Because of the continued threat to public health resulting from Villa’s actions and the blatant defiance of State direction, the County is left with no other option but to seek the immediate assistance of this Court.

14. On July 9, 2020 at 7:42am, I emailed Mr. Messina to provide him notice of the County’s Complaint and an ex parte application for a Temporary Restraining Order (“TRO”) against Villa. I also contacted Mr. Messina by phone at approximately 9:30 am, at which point in time I spoke with his office staff member, Ms. Carol Schuwman, about the details concerning the ex parte TRO. On July 9, 2020 at 4:18 p.m. I sent notification to Mr. Messina, via email, indicating that the hearing on the ex parte application for a TRO would be set for Monday, July 13, 2020 at 8:30 a.m. in an as-yet-unknown Department of the Riverside Superior Court. I indicated to Mr. Messina that I would reach out on July 10, 2020 once a department and call-in number for a telephonic appearance had been provided by the Court. Mr. Messina kindly confirmed receipt of such notice at 4:29 p.m. the same day. A true and correct copy of our correspondence is attached hereto as Exhibit “I”.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on July 9, 2020 at Riverside, California.

 *Kelly A. Moran*

 KELLY MORAN. Supervising Deputy County Counsel

 COUNTY OF RIVERSIDE

GREGORY P. PRIAMOS, County Counsel (SBN 136766)

(Exempt from Filing Fees

Pursuant to Govt. Code § 6103)

(Exempt from Filing Fees

Pursuant to Govt. Code § 6103)

KELLY A. MORAN (SBN 267147)

3960 Orange Street, Suite 500

Riverside, CA 92501

Telephone: (951) 955-6300

Facsimile: (951) 955-6363

Email: Kmoran@rivco.org

Attorneys for Plaintiff, COUNTY OF RIVERSIDE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

|  |  |  |
| --- | --- | --- |
| COUNTY OF RIVERSIDE; Plaintiff,vs.VILLA DE AMORE, INC.; EILEEN RIVARD, an individual; DOES 1 THROUGH 100, Defendants. | ))))))))))))))))) | Case No. Assigned for All Purposes: Judge Vineyard; Department: **DECLARATION OF GREGORY P. PRIAMOS IN SUPPORT OF EX PARTE****APPLICATION FOR****TEMPORARY RESTRAINING****ORDER AND ORDER TO SHOW****CAUSE RE ISSUANCE OF****PRELIMINARY INJUNCTION****DATE: July 13, 2020****TIME: 8:30 a.m.****DEPARTMENT:** Complaint Filed: July 10, 2020  |
|                                                                                   ) |

**DECLARATION OF GREGORY P. PRIAMOS**

I, GREGORY P. PRIAMOS, declare as follows:

1. I am the County Counsel for the County of Riverside and an attorney at law duly licensed to practice before this Court, and one of the attorneys for the County of Riverside (hereinafter the “County”), in this action. I have personal knowledge of each fact stated in this declaration.

2. California Department of Public Health has established a method by which business related inquiries may be addressed during the ongoing COVID-19 pandemic. On July 3, 2020, I forwarded to the California Department of Public Health’s (“CDPH”) Essential Business Inquiry site a copy of an email from Villa de Amore, Inc. describing “a list of precautions we are implementing at all our events while we are in the midst of the current Covid situation”.

3. Within the hour, CDPH responded, providing the following clarification based upon Villa’s own explanation of what was being done on-site:

“Gatherings of non-household members are not permitted at this time except for religious services or cultural ceremonies and wedding ceremonies only as described below. This venue is inaccurately describing an ability to hold mass gathering and celebrations/parties beyond the ceremony which is all that is permitted.

Wedding ceremonies (religious or non-religious) are permitted following the Place of Worship guidance https://covid19.ca.gov/pdf/guidance-places-of-worship.pdf./

Indoor venues are limited to 25% of capacity or 100 people whichever is fewer. Outdoor venues are limited by their natural limits depending on the size of the space that permits the distancing required in the guidance and approved by the local health officer.

Wedding receptions/parties/celebrations are NOT permitted at this time. We cannot speculate as to when receptions would be permitted as it depends on counties meeting certain public health metrics.”

A true and correct copy of this correspondence is attached hereto as Exhibit “J”

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on July 9, 2020 at Riverside, California.

 ­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 GREGORY P. PRIAMOS, County Counsel

 COUNTY OF RIVERSIDE

GREGORY P. PRIAMOS, County Counsel (SBN 136766)

(Exempt from Filing Fees

Pursuant to Govt. Code § 6103)

(Exempt from Filing Fees

Pursuant to Govt. Code § 6103)

(Exempt from Filing Fees

Pursuant to Govt. Code § 6103)

KELLY A. MORAN (SBN 267147)

3960 Orange Street, Suite 500

Riverside, CA 92501

Telephone: (951) 955-6300

Facsimile: (951) 955-6363

Email: Kmoran@rivco.org

Attorneys for Plaintiff, COUNTY OF RIVERSIDE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

|  |  |  |
| --- | --- | --- |
| COUNTY OF RIVERSIDE; Plaintiff,vs.VILLA DE AMORE, INC.; EILEEN RIVARD, an individual; DOES 1 THROUGH 100, Defendants. | ))))))))))))))))) | Case No. Assigned for All Purposes: Judge Vineyard; Department: **DECLARATION OF DR. CAMERON KAISER, M.D., M.P.H. IN SUPPORT OF EX PARTE APPLICATION FOR****TEMPORARY RESTRAINING****ORDER AND ORDER TO SHOW****CAUSE RE ISSUANCE OF****PRELIMINARY INJUNCTION****DATE: July 13, 2020****TIME: 8:30 a.m.****DEPARTMENT:** Complaint Filed: July 9, 2020  |
|                                                                                   ) |

**DECLARATION OF CAMERON KAISER, M.D., M.P.H.**

I, CAMERON KAISER, M.D., M.P.H., declare as follows:

1. Since March 19, 2013, I have served as the Public Health Officer for the County of Riverside. In that capacity, I act as the medical and legal authority for public health care programs in the County of Riverside.

2. Prior to my appointment as Public Health Officer, I worked for the Department of Public Health for more than six years and was named interim health officer in October of 2011.

3. I received my medical degree from Loma Linda University in 2003. I also have a Master’s Degree in Public Health from the University of California Berkeley. I received my undergraduate degree from the University of California San Diego in 1997.

4. In my capacity of Public Health Officer, I enforce county ordinances and state and federal statutes pertaining to public health and sanitary matters within the unincorporated areas of the county and within all cities in Riverside County according to California Health and Safety Code §101030. This includes the City of Temecula where Villa de Amore is located.

5. A pandemic occurs when a novel virus causes a worldwide outbreak of disease with a very high attack rate among all age groups and even among the healthy population. With all pandemics, there is a very significant potential to cause rapid increases in death and illness. The 1918 Spanish flu pandemic caused over 500,000 U.S. deaths and more than 20 million deaths worldwide.

6. In the event of a pandemic, I am tasked with working with the federal, state, and local governments to respond in a manner that best protects the people of Riverside County.

7. The Riverside County Department of Public Health is working within the recommendations of the California Department of Public Health and the U.S. Centers for Disease Control and Prevention (CDC) to respond to a novel coronavirus. I am working to inform the public and prevent the spread of this virus.

8. The novel coronavirus, the illness known as COVID-19, has epidemiologic properties comparable to the influenza virus. The virus can easily spread through droplets generated when an infected person coughs or sneezes, or through droplets of saliva or discharge from the nose. These droplets can also live on skin as well as objects, and there is potential for spread when there is contact between people and when a person touches contaminated objects. Symptoms include fever, difficulty breathing and fatigue, and it can lead to pneumonia and ultimately death. COVID-19 spreads at a higher rate than a typical influenza strain, and the illness can strike vulnerable individuals with greater force. This can cause a person who initially felt little to no symptoms to severe symptoms that require hospitalization within a few days.

9. Older adults and persons with underlying conditions, such as heart and lung disease and compromised immune symptoms, are more likely to be infected and experience more severe symptoms.

10. In issuing and enforcing public health orders designed to slow the spread of the COVID-19 in Riverside County, I rely upon (1) my medical training and experience as a licensed physician since 2005, (2) my professional training and experience in the public health field since 2007 and (3) best practices for infection control as recommended by both the California Department of Public Health and the U.S. Centers for Disease Control and Prevention.

11. Limiting activities to those that are essential is an integral part of the medical containment strategy designed to slow the spread of COVID-19, otherwise known as “flattening the curve”, and is consistent with the Governor’s statewide order. This limit on non-essential activity has been effective in slowing the spread of this pandemic in Riverside County as demonstrated by the consistent decline in our countywide “doubling rate,” the time for which it takes the number of detected infections to double. This allows sufficient time for the development, production and use of a vaccine and effective treatments, and also reduces strain upon the healthcare system.

12. Notwithstanding our prior success in slowing the spread of COVID-19, the current number of cases in Riverside County is now at 23,334 and the total number of deaths is at 533 as of July 9, 2020. There continue to be infections and deaths at a rate in Riverside County and the State of California as a whole which necessitate a swift response and lasting limitations on non-essential events, businesses, and gatherings. More to the point, gatherings in particular have been identified as significant contributors to the recent rise in county cases, whether private or facilitated by a business.

13. Under Health and Safety Code section 120175, I am authorized to take necessary steps to contain infectious, contagious, or communicable diseases to prevent the spread of disease or occurrence of additional infections.

14. I understand that minimizing all non-essential activities outside of the home during the state of emergency has caused disruption, but it is in my best medical opinion and consistent with other state and national authorities that such bold action is needed to slow the spread of the pandemic. This has included, at various times, the closure of all public and private K-12 schools and facilities; closing restaurants, community centers, malls and theaters; and prohibiting outdoor events enjoyed by the public such as sports events, concerts, parades and festivals.

15. When a person avoids non-essential activities, they are also necessarily separated from others, breaking the chain of transmission. Even if a person is not sick at the moment, he or she may be exposed to the virus, may still become infectious and then spread the disease to others.

16. Pursuant to Health and Safety Code section 101030, as the County Health Officer, I am required to enforce and observe in the unincorporated territory of the county, all Orders prescribed by the California Department of Public Health and all statutes relating to public health. This includes the March 19, 2020 Stay-at-Home Order of the Governor and State Public Health Officer, the July 2, 2020 Order specific to Riverside County, and the CDPH directive stating that wedding receptions are not permitted at this time sent to the County of Riverside on July 3, 2020.

17. I understand that the closing/cancellation of any business, activity, or event not identified as “essential” will likely have an impact upon those in the community. Unfortunately, COVID-19 does not discriminate. Any time there is a gathering of people, and especially when that gathering is in close quarters, the risk of spreading COVID-19 rises. While such impacts are regrettable and should be minimized where possible, they must always yield to public health concerns where a serious and demonstrable threat to the public exists as it does here.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and that this declaration is executed on July 9, 2020, at Riverside, California.

 Dr. C. Kaiser, M.D.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Dr. Cameron Kaiser, MD, MPH, FAAFP

 Public Health Officer

 County of Riverside

**PROOF OF SERVICE**

***County of Riverside v. Villa De Amore, et al. -* Superior Court Case No.**

 I, the undersigned, say that I am a citizen of the United States and am employed in the county of Riverside, over the age of 18 years and not a party to the within action or proceeding; that my business address is: 3960 Orange Street, Suite 500, Riverside, CA 92501-3611.

 That on July 10, 2020, I served a copy of the following listed documents:

**NOTICE OF AND EX PARTE APPLICATION FOR TEMPORARY RESTRAINING**

**ORDER AND ORDER TO SHOW CAUSE RE ISSUANCE OF PRELIMINARY INJUNCTION;**

**MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KELLY A. MORAN; DECLARATION OF GREGORY P. PRIAMOS; DECLARATION OF DR. CAMERON KAISER, M.P.H.**

by delivering a true copy thereof in a sealed envelope(s) addressed as follows:

|  |
| --- |
| John A. Messina, Jr.MESSINA & HANKIN, LLP24910 Las Brisas Road, Suite 102Murrieta, California 92562T: 951-894-7332E: jmessina@messinahankinlaw.com Attorney for Plaintiffs  |

[x]  ELECTRONIC SERVICE. Based on an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above.  I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

 Executed on      July 10, 2020     , at Riverside, California.

 /s/ Denise Esparza

 Denise Esparza