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Attorneys for Plaintiff, COUNTY OF RIVERSIDE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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| 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:  **VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY**  **INJUNCTIVE RELIEF**  **FOR ABATEMENT OF NUISANCE**:   1. **VIOLATION OF THE STATE PUBLIC HEALTH ORDER;** 2. **PUBLIC NUISANCE**   Complaint Filed: July 10, 2020 |
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Plaintiff, COUNTY OF RIVERSIDE, a political subdivision of the State of California, on behalf of the people of the State of California, complains of Defendants VILLA DE AMORE, INC., EILEEN RIVARD, an individual, and DOES 1 through 100, inclusive (collectively referred to as “Defendants”) as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff, COUNTY OF RIVERSIDE ("the County"), is, and at all times relevant herein, a general law county and a political subdivision of the State of California.
2. The property which is the subject of this litigation is located at 40205 Calle Cabernet in Temecula, California 92591 and identified as the Villa de Amore (hereinafter referred to as “Villa”).
3. Defendant VIILLA DE AMORE, INC. is, and at all times relevant herein has been, a business incorporated within the State of California and operating within the City of Temecula.
4. Defendant EILEEN RIVARD is the owner of VILLA DE AMORE, INC., the operator of Villa, and is believed to be a resident of Riverside County.
5. Defendants are causing, allowing, permitting, aiding, abetting, suffering or concealing the operation of unlawful public gathering as prohibited by the March 19, 2020, Order by Governor Gavin Newsom and referenced as Executive Order N-33-20 which directs all residents immediately to heed current State public health directives to stay home, except as needed to maintain continuity of operations of essential critical infrastructure sectors.
6. Defendants actions are further prohibited by the July 2, 2020 Order specific to Riverside County, issued by Dr. Sonia Y. Angell, California Department of Public Health Director and State Health Officer, 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 “A”.

7. 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, a true and correct copy of which is attached hereto as Exhibit “B”, 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.

8. 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”. 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 “C”.

9. 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. 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 this correspondence is attached hereto as Exhibit “D”.

10. 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.

11. 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. Follow-up correspondence was sent to counsel for Villa via email on July 5, 2020. A true and correct copy of this correspondence is attached hereto as Exhibit “E”.

12. 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 stating 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 this correspondence is attached hereto as Exhibit “F”.

13. Defendants’ refusal to comply with the State law, including the March 19, 2020 Stay-at-Home Order, is in violation of the law and subject to civil penalties up to $1000.00 per day, injunctive relief and attorney fees pursuant to Government Code sections 8665 and 25132, Health & Safety Code section 120295, and Riverside County Ordinances 533 and 556. Health care orders are necessary for the health and safety of the citizens of Riverside County and the State as a whole, and immediate and irreparable injury will result if Defendants do not comply.

14. The Defendants named as DOES 1 through 100, inclusive, are sued and designated by fictitious names pursuant to Section 474 of the Code of Civil Procedure, for the reason that their true names and capacities are unknown by the County. The County will amend its complaint to show the true names and capacities of such defendants fictitiously named when ascertained. The County is informed and believes, and thereon alleges, that each of the DOE Defendants is responsible in some manner for the nuisance and violation of the County’s health order ordinances herein alleged.

15. The County is informed and believes, and on that basis alleges, that at all times mentioned herein, each of the Defendants were and now are the agents, officers, employees, members, representatives, or alter egos of one or more of the remaining Defendants, and, in doing the things hereinafter alleged, were acting within the scope of his, her or its authority as such agent, officer, employee, member, representative or alter ego with the permission and consent of the remaining Defendants.

**FIRST CAUSE OF ACTION**

**VIOLATION OF THE STATE’S HEALTH ORDER BY CONTINUING TO ORGANIZE AND WEDDING RECEPTIONS**

**(Against All Defendants)**

16. The County re-alleges and incorporates by reference each and every one of the allegations contained in Paragraphs 1 through 15 of this Complaint.

17. 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. As referenced above, based upon these statutes, A Proclamation of a State Emergency was issued by Governor Gavin Newsom on March 4, 2020. 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 10, 2020.

18. The County of Riverside’s Public Health Officer, may promulgate orders as necessary to protect life and property pursuant to *Government Code* section 8684.

19. *California Health and Safety Code* section 101040(a) holds that “The local health officer may take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any ‘state of war emergency,’ ‘state of emergency,’ or ‘local emergency,’ as defined by Section 8558 of the *Government Code*, within his or her jurisdiction.”

20. The County of Riverside has authority to have its Health Officer issue these orders pursuant to the County under *Article XI of the California Constitution*, section 7, wherein a “county … may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws”.

21. Based upon the trajectory of the Covid-19 pandemic, the State, by and through the Governor and State Health Officer determined that prohibiting public gatherings at this time is a preventative measure that is necessary to protect the public health during this time pursuant to *Government Code* Section 8630. “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.

22. *Health and Safety Code* section 120175 states that a health officer who knows or has reason to believe that any contagious, infectious or communicable diseases exists, or recently existed “shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases.” Section 120575 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).

23. Likewise under *Title 17 California Code of Regulations* section 2501(a) “… the local health officer shall take whatever steps deemed necessary for the investigation and control of the disease, condition or outbreak reported…”

24. Furthermore, *Health and Safety Code* sections 101030(b) and (c) provide: “the county health officer shall enforce and observe in the unincorporated territory of the county, all of the following: (b) Orders, including quarantine and other regulations, prescribed by the department; and (c) Statutes relating to public health.”

25. As referenced in detail above the County of Riverside’s Public Health Officer has the authority under the law to promulgate orders which prohibits public gatherings in the face of a public health crisis such as the one currently faced. Moreover, he has the **obligation** to enforce the Orders of the State, CDPH, and the State Health Officer concerning public health. Defendants are in violation of such State orders by continuing to organize, plan and hold in-person wedding receptions.

**SECOND CAUSE OF ACTION**

**DEFENDANTS’ REFUSAL TO COMPLY WITH THE STATE ORDERS CONSTITUTES A PUBLIC NUISANCE.**

**(Against All Defendants)**

26. The COUNTY re-alleges and incorporates by reference each and every one of the allegations contained in Paragraphs 1 through 25 of this Complaint.

27. Defendants are willfully violating the directives of the County and the State’s own public health Orders since, at a minimum, the date of the investigation and verbal warning provided by DEH on July 2, 2020. Therefore, each date after July 2, 2020, during which Defendants continued to conduct or allow the unlawful gatherings of non-household members at weddings receptions held at Villa, Defendants knowingly and willfully in violation of the law.

28. The State public health orders are necessary for the health and safety of the citizens of Riverside County and the State of California as a whole. As the increase in COVID-19 cases statewide has shown, irreparable injury will result if such laws are not followed. As of July 9, 2020, according to the Riverside University Health System’s Department of Public Health, there have been 23,334 confirmed cases of Covid-19 in Riverside County and 533 deaths. Of those figures, there have been 392 confirmed cases in Temecula where Villa is located. (Rivcoph.org).

29. A “public nuisance” or “common nuisance” is a species of catch-all criminal offense, consisting of an interference with the rights of the community at large. *People v. McDonald* (2006) 137 Cal. App. 4th 521, 534; *Cal.Penal Code* §§ 370, 374. In contrast to law of private nuisances, which is tied to and designed to vindicate individual ownership interests in land, public nuisance doctrine is aimed at protection and redress of community interests and embodies collective ideal of civil life. An act or condition may constitute a public nuisance even if it does not cause any loss of enjoyment in the use of private land. In determining whether a particular activity constitutes a public nuisance, a court considers three elements: (1) the proscribed act, (2) whether the result of the act interferes with the comfortable enjoyment of life or property, and (3) whether the act affects a sufficient number of persons. *Id*.

30. By refusing to comply with State law, including the State’s Stay-at-Home Order, Defendants are committing a crime punishable by fine, imprisonment or both. Violators are also subject to civil enforcement actions including civil penalties of up to $1000 per violation per day, injunctive relief, and attorney’s fees and costs. See *Penal Code* section 19, *Government Code* sections 8665 and 23132; *Health and Safety Code* section 12095; *County Ordinances* 533 and 566. Based on the number of citizens who have already been infected with the Covid-19 virus in Riverside County and the concern that this virus is rapidly spreading the continuation of non-essential services, including wedding receptions, by Defendants at Villa constitutes a public nuisance and should be abated immediately. Defendants received sufficient notice regarding the violation because the State’s Stay-at-Home Order of March 19, 2020 cites to Government Code section 8665, which sets forth the provisions regarding the repercussions of violating such Order. This was again shared with Defendants verbally on July 2, 2020 by DEH, and through Cease and Desist correspondence from the County Counsel’s office on July 3, 2020 and July 4, 2020.

31. The County of Riverside cannot be fully compensated in damages and is without a plain, speedy or adequate remedy at law because the exact amount of the damages to the general public’s health, safety and welfare are unascertainable.

32. Unless each Defendant is restrained and enjoined by order of this court and/or the court provides other equitable relief permissible by law, Defendants will continue to cause, allow, permit, aid, organize and plan their wedding receptions at Villa, as evidenced by their continuing actions and knowing refusal to comply with the County’s Cease and Desist letter.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff COUNTY OF RIVERSIDE (“the COUNTY”) prays for judgment against all Defendants, and each of them, as follows:

AS TO ALL CAUSES OF ACTION:

1. For a temporary restraining order and preliminary injunction, enjoining and prohibiting each Defendant, as well as all of their agents, officers, employees, representatives, members, volunteers, and all persons acting for or in concert with them, and their assignees and successors, from planning, organizing and holding wedding receptions at Villa which constitutes an unlawful public gathering under State law, including the State’s Stay-at-Home Orders of March 19, 2020.
2. For individual and separate liability of civil penalties as to each Defendant pursuant to *Government Code* sections 8665 and 25132, *Health & Safety Code* section 120295 and *Riverside County Ordinances* 533 and 556, for One Thousand Dollars ($1,000.00) **per day** accruing from July 2, 2020, until such time as the public nuisance is permanently abated as well as for the County of Riverside’s attorney fees and costs for filing this action and making the appearance; and
3. For such other and further relief as the court deems just and proper.

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

**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:

**VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY**

**INJUNCTIVE RELIEF FOR ABATEMENT OF NUISANCE**:

1. **VIOLATION OF THE STATE PUBLIC HEALTH ORDER;**
2. **PUBLIC NUISANCE**

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

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| --- |
| John A. Messina, Jr.  MESSINA & HANKIN, LLP  24910 Las Brisas Road, Suite 102  Murrieta, California 92562  T: 951-894-7332  E: [jmessina@messinahankinlaw.com](mailto:jmessina@messinahankinlaw.com)  Attorney for Plaintiffs |

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